



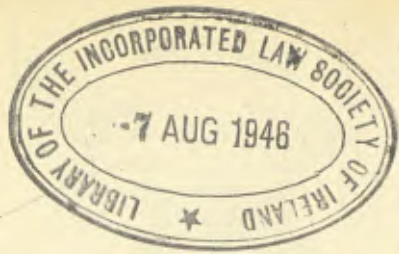


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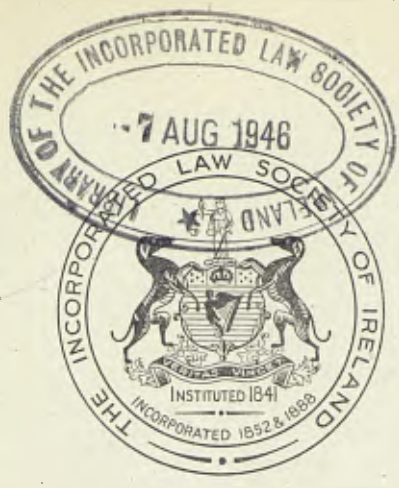
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May
1944



THE GAZETTE

of the

INCORPORATED LAW SOCIETY OF IRELAND

President:
LOUIS E. O'DEA

Vice-Presidents:
ROBERT A. MACAULAY
ARTHUR COX

Secretary:
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

MEETING OF THE COUNCIL.

APRIL 27th : The President in the Chair. Present : Messrs. R. A. Macaulay and A. Cox, Vice-Presidents ; J. J. Lynch, P. R. Boyd, P. F. O'Reilly, D. O'Connell, M. E. Knight, H. P. Mayne, F. J. W. Darley, R. Greene, S. Ó hUadhaigh, J. S. O'Connor, J. B. Hamill, J. J. Dunne, E. M. Fitzgerald.

The following matters among others were dealt with :—

Solicitors' Bill.

THE Secretary read a further letter from the Department of Justice with reference to the draft Bill which was considered and discussed. It was ordered that a suitable reply should be sent to the Department.

Department of Defence.

THE Council considered a report from a Committee recommending that a letter should be

written to the Department of Defence pointing out that a case had been brought before the Council in which an official from the Department had personally approached a claimant for compensation arising out of the occupation of his property, by the Defence Forces; that the claimant at that time was represented by a solicitor who had been in communication with the Department; and suggesting that Departmental officials should be instructed that negotiations for the settlement of such claims should not be conducted direct with claimants where solicitors are acting for them in connection with claims against the Department.

Unqualified Person.

THE Council made an order that proceedings should be brought in the name of the Secretary against an unqualified person for preparing a letting agreement for fee or reward contrary to the provisions of the Conveyancers (Ireland) Act, 1864.

RESIGNATION OF MR. E. F. COLLINS

At their last meeting the Council considered a letter from Mr. Eugene Collins stating that he was compelled to resign from the Council under doctor's orders. The Council with great regret decided to accept his resignation. Mr. Collins has served continuously on the Council since 1929 and was Vice-President in 1934-35. Some years ago he refused to allow his name to go forward in the election for the Presidency on the ground that his health would not permit him to devote himself as he would wish to the duties of the office. The Council passed the following resolution:—

“That the Council have considered the letter of resignation received from Mr. Eugene Collins on the ground of ill-health and wish to express to him their very deep regret and their hope for his restoration to health and have decided to accept his resignation only on receiving a special communication that he would prefer not to be asked to reconsider it. The Council wish to place on record their deep appreciation of the great services to the profession rendered by Mr. Collins during his long period as a member of the Council and their regret that his services in that capacity should be unavoidably lost to the profession.”

CURRENT TOPICS.

Execution of Documents in U.S.A.

THE Society has received a letter from the Department of External Affairs drawing attention to certain matters in connection with the completion of affidavits and other documents by persons resident in the United States of America intended for use in Éire. It appears that in some cases Irish solicitors instruct their clients in the United States to execute documents before notaries public and then to bring or send them to the nearest Irish Consul for legalisation of the notary's signature and seal. The Consul General has pointed out that it is not the practice of Irish consular officers in the United States to legalise the signatures and seals of notaries public practising in the various States of the Union, and accordingly an instruction in the form mentioned sometimes causes delay and occasionally extra expense when the client is

required to make a journey to one of the consular offices concerned.

The present practice is to require the signature and seal of a notary public practising in the United States to be authenticated by the certificate of the county clerk within whose area the notary practises. Only when this certificate is affixed to the document witnessed by the notary can it be legalised by an Irish consular officer. The certificate of the county clerk costs only 25 cents.

As an alternative to the above arrangement the Department points out that under the Commissioners for Oaths (Diplomatic and Consular) Act, 1931, Irish diplomatic and consular officers are authorised to do notarial acts, and it is accordingly open to any solicitor desiring to have a document authenticated abroad to arrange for its direct authentication by the nearest Irish diplomatic or consular officer. The fees charged for such services are prescribed by the Oaths (Diplomatic and Consular) Fees Regulations, 1934.

Lease for Duration of the War.

In the *Gazette* of November last, reference was made to the decision in *re Engels* (195 L.T.138) in which the Court, taking a somewhat unoptimistic view of future possibilities, held that, as it could not be said, as a matter of legal certainty, that the present war will end within the period limited by the rule against perpetuities, a gift even on a condition which could happen only after the termination of the war, was void as contravening the rule. A somewhat similar point on the construction of a case recently came before the English Courts in *Lace v. Chantler* (60 T.L.R. 244): The plaintiff had made a letting of a furnished dwellinghouse to the defendant expressed to be for the duration of the war. The evidence of the terms of the letting was contained in the defendant's rent book which was endorsed with the words “furnished for the duration.” A dispute having arisen as to whether the defendant had contravened the terms of the letting, the plaintiff served him with notice to quit. The plaintiff contended that the letting was a weekly tenancy, the rent being payable weekly, while the defendant maintained that the premises were let to him for the duration of the war by reason of the words endorsed on the rent book. The case was decided on the basis of the effectiveness or otherwise of a provision in a lease pur-

porting to demise premises for the duration of the war. The English Court of Appeal held that the habendum in a lease must point out the period during which the enjoyment of the premises is to be had, so that the duration as well as the commencement of the term must be stated. The certainty of a lease as to its continuance must be ascertainable either by the express limitation of the parties at the time the lease is made, or by reference to some collateral act which may with equal certainty measure the continuance of it, otherwise it is void. In the result it was held that the agreement for the duration of the war could not take effect as a good tenancy, and that the relationship between the parties should be ascertained on the footing that the tenant was in occupation and was paying a weekly rent, in other words as a weekly tenant.

REVIEW.

A CALENDAR of the Statute Roll by Mr. Justice Gavan Duffy, Three Candles Press, price 21s., post free 21s. 6d.

This work is fully entitled "A Calendar of the Statute Roll for twenty-one years now in force exhibiting a complete, alphabetical table of the general acts, promulgated since the 22nd December, 1922, and remaining operative on New Year's Day, 1944, with a record of every repealed section, prefaced by the heads of the Constitution." The publication of any legal work at the present time is an event that is particularly welcomed by the legal profession, whose labours are lightened by everything that makes the law more easily accessible. Especially is this true of the work under review. The name of its learned author, whose other publications, including an index of the vast field of administrative law, have proved invaluable to lawyers, will be regarded as a guarantee of the quality of his latest work. The statute law of every State and particularly of our own, which is still in its political adolescence, is characterised by a process of continual evolution. The lawyer who is daily engaged in the practical pursuit of the law has little leisure to study and note its changes, except in so far as he has to deal with them in particular instances from day to day. So much is heard in the Press and elsewhere of the necessity for the reform of our legal system that the public tend to lose sight of the immediate necessity of making our existing laws, with their admitted imperfections and omissions, readily and expeditiously ascertainable. Such an undertaking is indeed an indispensable preliminary to any study of law reform.

The plan adopted by the author of the Calendar is to give a complete list of the Statutes enacted since the Treaty which were still in force on January 1st, 1944, with their official short titles. Repealed statutes have been omitted; and the repeal of any section or sub-section of an act which is still in force is noted with a reference to the statute effecting the repeal of the particular section. The statutes listed in the Calendar have been grouped under convenient subject headings, such, for example, as Agriculture, Housing, Local Government and Land Law, and, where necessary, as an additional aid the reader is guided by key words in alphabetical order throughout the volume to the location of the principal citation of a statute under its appropriate subject heading. In the appendices the author has given a table of acts passed since December 6th, 1922, and now repealed, and a table of acts passed since the same date that have since expired or spent their force although not specifically repealed. The Calendar deals primarily with statutes and not with their sections, and amendments of sections, as distinct from their repeal, are not shown. To do more would have been impracticable, for apart from the additional space required for an index of all amendments of sections of acts it would have been virtually impossible to give an exhaustive list; as amendments of sections are often matters of inference or opinion. In any event, as the author points out in the preface, the Calendar cites immediately after each act the reference to any amending act, and by means of the index printed at the end of each annual volume of the statutes the practitioner can easily trace amendments of sections by later legislation.

What Mr. Justice Gavan Duffy has given us in the Calendar is a relief map of the entire field of living statutory law enacted between 6th December, 1922, and New Year's Day, 1944, on which the effect of subsequent legislation on the structure of each antecedent statute can be seen at a glance. The modern legislative habit of incorporating repeals of sections of acts in statutes which deal primarily with dissimilar or even entirely different subject matter is no doubt inevitable in the conditions under which the legislature has to transact its business. Lawyers will be unanimous in the verdict that it makes the work of ascertaining the law both harassing and protracted. An idea of the saving of time that can be effected, and the pitfalls they can be avoided, by the use of the Calendar may be conveyed by the fact that it enables the reader to detect immediately that Section 89 of the Housing (Miscellaneous Provisions) Act, 1939, was repealed in the Acquisition of Der-

elict Sites Act, 1940 ; Section 9 (2) of the Waterford City Management Act, 1939, in the Local Government Act 1941 ; and Section 8 of the Old Age Pensions Act, 1932, in the same Local Government Act. These examples are taken at random. No doubt there are many others. With the development of methods of photographic reproduction some future Government may find it a practical proposition to issue periodically and at reasonable cost revised editions of the statutes in which all repeals and amendments of sections in statutes effected by subsequent legislation will be included in the body of each revised act. Under such a system a work such as the Calendar would still be valuable ; under present conditions it will be regarded as an indispensable addition to the library of every practising lawyer. For solicitors it is a book which should be kept, not among the Law Reports in the book-case, but on the office desk where its presence for convenient and frequent use will save its owner many hours of painstaking and perhaps wasted research.

LEGAL APPOINTMENT.

MR. PATRICK J. MURPHY has been appointed Finance Solicitor in place of Mr. Patrick Coll, Solicitor, who has retired, Mr. Murphy was admitted in Easter Sittings, 1929. He was appointed an Assistant Solicitor in the Irish Land Commission in 1929 and in 1936 became Assistant Finance Solicitor.

LIBRARY.

THE attention of members of the Society is drawn to the fact that on account of the recent restriction in train services the Librarian cannot guarantee that books borrowed by members from the Library will reach them on any particular date. Members are requested to facilitate the Librarian by returning books immediately after they have finished with them as delay may cause inconvenience to other members of the Society, in present circumstances.

EXAMINATION RESULTS.

Preliminary Examination.

At the Preliminary Examination for intending apprentices to Solicitors held on 5th and 6th April, the following passed the examination and their names are arranged in order of merit :—

1. Patrick E. Thornton.
2. Paul Kearns.
3. Michael J. O'Callaghan.

4. Patrick L. Fagan.
5. Brendan Breathnac.
6. Thomas J. Kelly.
7. Lionel A. Stewart.
8. Thomas K. O'Connor.
9. Theodore H. E. Shera.
10. F. H. C. Salmon.

Thirteen candidates attended ; ten passed ; three were postponed.

The Council has awarded Silver Medals to Patrick E. Thornton, Paul Kearns and Michael J. O'Callaghan, and a Special Certificate to Patrick L. Fagan.

Final Examination.

At the Final Examination for apprentices to Solicitors held on 3rd and 4th April, the following passed the examination and their names are arranged in order of merit.

- | | |
|---|---------|
| 1. John M. O'Farrell. | |
| 2. Marguerite S. Meagher, Mary T. J. Sweeney, B.A.N.U.I. | } Equal |
| 4. James D. Kiernan. | |
| 5. John P. Rogan. | |
| 6. Mary O'R. Huggard. | |
| 7. Edward A. Kelly. | |
| 8. James P. McD. Concannon. | |
| 9. Daniel O'C. Miley Cecil E. Prentice | } Equal |
| 11. Simon T. Kelly. | |
| 12. Philip H. Ordman. | |
| 13. Thomas P. O'Reilly. | |
| 14. Thomas K. FitzGibbon Beatrice Mshatt, | } Equal |
| 16. Patrick J. Brennan, Philip A. E. Gallagher | } Equal |
| 18. Sean P. Maguire. | |
| 19. Edmund O. Sheil. | |
| 20. William H. C. Mason. | |
| 21. Leslie S. Kettle. | |
| 22. Michael Morrissey. | |
| 23. Thomas B. Dwane. | |
| 24. Thomas B. Bowes. | |
| 25. Vincent P. J. Forde. | |

Twenty-seven candidates attended ; twenty-five passed ; two were postponed.

The Council has awarded a Silver Medal to John M. O'Farrell.

SOLICITORS' GOLFING SOCIETY.

THE Annual General Meeting of the Society was held in the Solicitors' Buildings on 19th April, when the following Officers were elected for the year :—

President : The President of the Incorporated Law Society.

Captain : W. J. O'Reilly.

Hon. Secretary : A. Marshall.

Hon. Treasurer : T. D. McLoughlin.

Committee : P. Glynn, H. Fitzpatrick, T. A. O'Reilly, H. D. Rooney and K. Burke.

It was decided to hold the Society's Spring Meeting on Thursday, 25th May, at Royal Dublin, when the usual competitions will be played. Owing to travel difficulties it will not be possible to hold the annual dinner this year, but luncheon and supper can be had at the Club. The annual subscription to the Society is 10s., which includes entrance fees to competitions.

Will solicitors who wish to join the Society please communicate with the Hon. Secretary, A. Marshall, Solicitor, 119, Stephen's Green, Dublin.

ALL Communications connected with THE GAZETTE (other than advertisements) should be addressed to the Secretary of the Society, Solicitor's Buildings, Four Courts, Dublin. Telephone: 73092.

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ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

MEETING OF THE COUNCIL.

16TH MAY, 1944. The President in the chair. Present : Arthur Cox, Vice-President, C. G. Stapleton, J. B. Hamill, Roger Greene, Peter O'Connor, J. Travers Wolfe, J. J. Smyth, J. P. Carrigan, P. F. O'Reilly, P. R. Boyd, W. S. Hayes, E. M. FitzGerald, D. O'Connell, S. Ó hUadhaigh, W. J. Norman, H. P. Mayne, G. A. Overend.

The following were among the matters dealt with :

Vacancy on the Council.

It was ordered that Mr. J. R. Quirke, whose name is next on the supplemental list, be invited to attend the next meeting of the Council to fill the vacancy caused by the retirement of Mr. E. F. Collins, Mr. W. G. Bradley, whose name was first on the supplemental list having resigned.

Seanad Election.

IN pursuance of the provisions of the Seanad Electoral (Panel Members) Act, 1937, the Council nominated Mr. Louis E. O'Dea, President, and Mr. Arthur Cox, Vice-President, to the Cultural and Educational Panel to which the Council has the right to nominate two members for the purpose of the election.

Solicitors' Apprentices and Income Tax Allowance.

THE Council considered a report from a Committee as to the legal position in connection with claims by parents for children's allowance under the Finance Act, 1920, section 21, in respect of persons articleed as solicitors' apprentices. The Revenue Commissioners will not admit such claims on the ground that the education being received by a

solicitor's apprentice in his master's office is not full-time instruction at any university, college, school, or other educational establishment, within the meaning of the above-mentioned section. The report of the Committee pointed out that in England provision has been made in the Finance Act, 1938, section 20, applying the provisions of the Finance Act, 1920, section 21, to a child undergoing training for any trade, profession, or vocation, subject to certain conditions. The President and Mr. Cox were deputed to approach the Revenue Commissioners with reference to the matter.

Accountant General's Office.

ON the report of a committee, the Secretary was instructed to write to the Department of Justice, pointing out that delays which cause serious inconvenience to the public and the profession are occurring in the Accountant General's Office, apparently owing to shortage of staff.

Apprentices' Applications.

AN application by an intending apprentice to the Chief Justice for total exemption from the Preliminary Examination was considered, and it was ordered that the application be opposed.

SENATE ELECTION.

THE attention of members of the Society is drawn to the fact that the Council has appointed Mr. Louis E. O'Dea, President of the Society, and Mr. Arthur Cox, one of the Vice-Presidents of the Society as nominees on the Cultural and Educational Panel for the election of the new Senate. In the interest of the profession it is desirable that the Society should have representatives in a position to speak with authority on its behalf in the Senate, particularly in view of the fact that the Solicitors' Bill may be introduced in the life of the new Dáil. It is hoped that members throughout the country will use their influence to secure preferences for the Society's nominees. Those having votes are requested to give the Society nominees their No. 1 vote. Failing in No. 1 vote they are requested to give the Society nominees their next or as early as possible preference.

HALF-YEARLY GENERAL MEETING.

A HALF-YEARLY General Meeting of the Society was held on Tuesday, 16th May, 1944, in the

Solicitors' Buildings, Four Courts, Dublin, the President, Mr. Louis E. O'Dea, in the chair. The following members were also present:— Arthur Cox, Vice-President, P. R. Boyd, J. P. Carrigan, E. M. FitzGerald, Roger Greene, J. B. Hamill, W. S. Hayes, H. P. Mayne, W. J. Norman, Daniel O'Connell, Peter O'Connor, Seán Ó hUadhaigh, P. F. O'Reilly, G. Acheson Overend, Cecil G. Stapleton, J. Travers Wolfe, J. F. Donovan, K. M. Meares, A. G. Ardagh, H. W. Flanagan, G. Stapleton, D. D. MacDonald, R. V. H. Downey, J. A. Geary, W. Fry, Alex. Marshall, G. E. Grove-White, D. O'Donnell, D. Pigot, C. T. Blair-White, J. W. Gentleman.

The notice convening the meeting, by permission of the meeting, was taken as read. The minutes of the previous meeting, held on 28th November, 1943, were read, confirmed and signed by the President.

The President announced that Senator H. G. Sweetman, who for some years past has acted as one of the scrutineers of the Ballot for the election of the Council, had intimated that he could not continue so to act, and he expressed thanks to Senator Sweetman for his past services as scrutineer. The President then nominated the following as scrutineers of the ballot for the election to be held on 26th November, 1944:—Messrs. John R. McC-Blakeney, Desmond J. Collins, Thomas Jackson, Brendan P. McCormack, and Roderick J. Tierney.

The President's Speech.

THE President, addressing the Meeting said:—

Coicthigheas ó shoin fuair deichneabhair printis an chéad scrúdú le trí bonn geal agus teastas speisialta agus fuair cúigear is fiche an scrúdú deireannach. Deirim comhghárdeacas an Chumainn seo do na printisi sin a fuair an chéad scrúdú agus go mór mhór do na dlíghedoiri óga a fuair an scrúdú deireannach. De bhrigh gur rinneadar comh maith 'sau scrúdú sin táim cinnte go bhfuighidh siad neart oibre dlíghche. Cuirimid fáilte rómpa agus tá suil againn go dtugaidh Dia saoghal fada do gach duine aca agus gach aoibhneas 'san oifig, ins na cúirteanna agus in a mbaile féin.

During the past half-year, despite travel difficulties, the attendances at Council meetings have

been very good, which is a proof of the great interest which the members take in the honour and welfare of the profession.

During that short period we have lost ten members of our Society, namely: Archibald Montgomery, once County Solicitor and afterwards County Registrar, Joseph M. Collins, of Limerick, Michael J. Macnamara, of Ennis, William J. Skinner, of Clonmel, Rev. Sir John O'Connell, Arthur G. Riggs, Castlepollard, Albert Woodcock, Francis C. D. Joynt, Henry Exham, Ernest I. Thornton, John D. Ryan, of Limerick.

The late Mr. Exham was the senior solicitor in Ireland, having been admitted in Trinity, 1874, over seventy years ago. Mr. Thornton was admitted in 1888, and Mr. Montgomery the following year, so these three men enjoyed over half-a-century in the practice of our profession.

You all know the President's chair in the next room, perhaps the best work of the late Mr. Hicks. That chair was given by the late Rev. Sir John O'Connell in recognition of the kindnesses his father and himself received from the Council.

Go ndéanfaidh Dia trócaire ar gac duine aca agus ar anma na marbh.

We have to record the fact that during the past half-year it was our painful duty to cause four of our members to be struck off the Roll, a very unusual record.

Three of those men were so often brought to trial and so often remanded before they were returned for trial, and their cases received such prominence with much leaded type in our daily papers, that one would imagine that a large percentage of the solicitors of Éire had gone wrong and robbed their clients. I don't know who was responsible for the delays, but I think the numerous remands were uncalled for.

Most people in this country are illogical; they make the mistake of judging from the particular to the general and putting every member of the profession in the same boat as those who have gone wrong. They do not realise that there are 1,400 solicitors in the twenty-six counties, and that through the hands of most of them very large sums of money pass every day and are accounted for to the last penny; that they are the most trusted and respected men in their several localities. How many of our critics—given equal oppor-

tunities—would come through the test with so clean a record?

This Council is very severe on any member who goes off the course. We expect from our members a high standard of honesty and honour. If we find anything wrong, we act immediately. When the new Bill shall become law we shall be more exacting. We hope to get the power to suspend or strike off the Roll, subject to an appeal to the Chief Justice. We wish to have that control in our own house that every other profession enjoys. We also believe that the keeping of separate bank accounts for clients' monies as is provided for in the Bill will ensure greater caution and be a great safeguard to our members for the future. We have gone a long way in insisting upon such safeguards, but I trust that no legislator will suggest that we should go further. There is talk of providing an indemnity fund. This would have the effect of making each member pay for the lapse of a dishonest member and may lead to dishonest claims being made against the fund. It may create a new type of crime.

No member of the public has a greater incentive to remain honest than a solicitor. The smallest whisper of crookedness or of putting his interest before the interest of his client ruins his practice and prospects. The clients have an appeal to our Council with immediate results. That is a safeguard which other callings and professions do not possess.

The overcrowding of the profession has caused our Council a certain amount of alarm. In many small towns, particularly villages, you find two, three and sometimes four solicitors where formerly no solicitor resided. It is time that young men and their parents should realise the danger of the young men embarking on a profession that may lead to respectable starvation.

Mr. William S. Hayes, whom I am glad to see present in his usual health and vigour, has this year been sixty years in the profession. He was the thirty-sixth President of our Council, and there are thirty-six names on the board, including Mr. Hamill's, following his name, so that his presidency was the centre of the history of our Society. He has been fifty years a member of the Council, which is a wonderful record and one that may never again occur in the Society's history. His long record of hard work in the interests of

the profession has been remarkable. His good nature and kindness have been always appreciated and his sound judgment on our difficult questions has been generally followed. The profession, however, owe him deep gratitude and the Council have decided to mark the occasion in a suitable manner.

Mr. J. Travers Wolfe has been fifty years qualified and is a very old member of the Council and was our President three years ago. Mr. Wolfe was one of the ablest solicitors that Ireland has produced and the number of kind acts he did in the Council and outside are very well known. On the death of certain solicitors he conducted the businesses of the deceased, free of charge, for the benefit of the widow and children until some son was qualified to take up the work. That is the sort of brotherhood I like to see among the members. The men I have just mentioned were exceptional characters and I wish I could hand down a survey of their characters as a shining light to guide the generation of solicitors who will be our successors.

My predecessor, Mr. Hamill, and the Council, got the Government to accept a sixty per cent. pass in our Final Examination as equivalent to a 'University' Degree for those who seek appointments in the Irish Civil Service. That was a valuable achievement, but I fear it will not do much towards helping the numbers who join the ranks. The Government are inclined to take advantage of the fact that young solicitors will work for very small salaries.

At the conclusion of the President's speech, Mr. D. D. MacDonald drew attention to the position arising in appeals to the Supreme Court heard by four judges where members of the Court are equally divided in their opinions and suggested that all such appeals should be heard either by three or five judges. He also referred to the necessity in the Circuit Court of making an application for a case stated before judgment has been delivered.

The President replied to the points raised.

Mr. Cox having been moved to the second chair, Mr. Hayes proposed and Mr. Wolfe seconded a vote of thanks to the President for his address. The motion was passed with acclamation. The President having replied, the proceedings terminated.

MR. WILLIAM S. HAYES

IN Trinity Term, 1884, Mr. William S. Hayes was admitted a solicitor. He was elected a member of the Council in 1894 and has been re-elected each year since then without interruption. He served as President of the Society in 1906-1907. It is unnecessary to refer to the great part which he has during all these years played in the affairs of the Society and of the profession. In the present year he will complete his sixtieth year as a solicitor, and his fiftieth year of continuous service on the Council.

The Council feel that such a golden jubilee, which is unique in the history not only of this Society, but, perhaps, of any other, and which is unlikely to recur in the lifetime of the present generation, if indeed ever, should be commemorated by some appropriate tribute to Mr. Hayes' long and devoted service to the profession, and his distinguished record as one of its leaders. They believe that in sponsoring this proposal they will have the warmhearted approval and support of the entire profession.

In the opinion of the Council the tribute would most fittingly take some form such as will record for future generations of solicitors the association of Mr. Hayes with the Society.

After full consideration the Council have resolved to commission Mr. Leo Whelan, R.H.A., one of Ireland's most distinguished painters, to paint the portrait of Mr. Hayes, which on its completion will be unveiled at a simple ceremony and hung permanently in the Society's premises.

The Council, therefore, acting on behalf of the profession generally, have directed me to invite the members of the Society, and any other solicitors who would so desire, to subscribe to the cost of the portrait. If the required amount should be over-subscribed, the surplus will be paid to the funds of the Solicitors' Benevolent Association.

The Council consider that the portrait executed by this eminent Irish painter will, in addition to being a tribute to Mr. Hayes, add to the dignity of the Society, and they feel confident that the profession as a whole will be anxious to subscribe to it. Subscriptions, which are limited to one guinea, should be addressed to the Secretary, Incorporated Law Society of Ireland, Solicitors' Buildings, Four Courts, Dublin.

THE LAND REGISTRY.

The following note is published at the request of the Registrar of Titles. It has not been considered by the Council.

THE attention of the Legal profession is directed to the fact that new Land Registration Rules, (supplemental to the existing 1937 Rules) and a new Fee Order came into operation on the 1st June, and legal practitioners should make themselves acquainted with the provisions thereof.

An internal re-organisation is taking place in the Registry which, in conjunction with the Rules and the Fee Order above mentioned, is designed to facilitate and expedite the work of registration. Solicitors are requested to note that as from the 1st June:—

(a) All Fees must be assessed by the Solicitors and paid at the time of lodgment of dealings. The Fees can be readily ascertained from the Table appended to the new Fee Order. The practice of accepting undertakings for payment of fees heretofore in force has been abolished by the 1944 Rules.

(b) The dealings, when presented in the Registry, will be subjected to a preliminary scrutiny by legal clerks, and if they reveal obvious defects they will be rejected with a note of such defects. It is only when the documents are *prima facie* in order that they will be officially accepted and referred to the professional staff for examination. A memorandum on certain matters of Law and Practice in relation to Registration has been prepared by the Registrar and has been issued to legal practitioners. This Memorandum deals largely with the prevalent errors and omissions which, in the experience of the Registry, have been responsible for the holding up of business.

It is desirable that country practitioners should forward the necessary documents in relation to Registration to their town agents for lodgment in the Central Office rather than send them by post. By doing so considerable delay will be avoided.

It is in the interests of solicitors and their clients to have strict regard to the Rules and to the several matters dealt with in the Memorandum.

CHANGES IN CIRCUIT COURT SITTINGS.

CHANGES in the opening dates of Circuit Court sittings announced are as follows:—

CARLOW—*Trinity Sittings*—Opening date changed from July 18th to July 17th. *Michaelmas Sittings*—Opening date changed from November 28th to November 27th.

FERMOY—Opening date, June 1st to June 2nd.

KILKENNY — *Trinity Sittings* — Opening date changed from Tuesday, 11th July to Monday, 10th July. *Michaelmas Sittings*—Opening date changed from Tuesday, 21st November to Monday, 20th November.

NENAGH—*Trinity Sittings*—Opening date changed from May 23rd to May 22nd. *Michaelmas Sittings*—Opening date changed from October 10th to October 9th.

THURLES — *Trinity Sittings* — Opening date changed from June 7th to June 5th. *Michaelmas Sittings*—Opening date changed from October 17th to October 16th.

TIPPERARY — *Trinity Sittings* — Opening date changed from June 20th to June 19th. *Michaelmas Sittings*—Opening date changed from October 31st to October 30th.

DUNGARVAN—*Trinity Sittings*—Opening date changed from 28th June, 1944 to 27th June, 1944, at 10.30 a.m. *Michaelmas Sittings*—Opening date changed from 8th November, 1944, to 7th November, 1944.

LISMORE (in Dungarvan Courthouse)—*Trinity Sittings*—Opening date changed from 29th June, 1944 to 27th June, 1944, at 12 noon. *Michaelmas Sittings*—Opening date changed from 9th November, 1944, to 7th November, 1944, at 12 noon.

WATERFORD — *Trinity Sittings* — Opening date changed from 3rd July, 1944, to 30th June, 1944, at 10.30 a.m. *Michaelmas Sittings*—Opening date changed from 13th November, 1944 to 10th November, 1944, at 10.30. a.m.

OBITUARY.

MR. PATRICK BRENDAN RYAN, Solicitor, died on 29th August, 1943, at Newry. He served his apprenticeship with Mr. Thomas G. Quirke, Dublin, was admitted in Hilary Sittings, 1923, and practised in Thurles up to 1933.

MR. JOHN D. RYAN, Solicitor, died on 6th May, 1944, at St. John's Hospital, Limerick. He served his apprenticeship with Mr. A. Blood-Smyth, Limerick, was admitted in Easter Sittings, 1931, and practised in Limerick.

MR. JOSEPH LOCKHART died on 20th May, 1944, at his residence, Ashby, Belsize Road, Lisburn. He was admitted in Hilary Sittings, 1888, and practised in Lisburn in partnership with his son, Mr. Stanley Lockhart, under the style of Joseph Lockhart & Son.

SOLICITORS' GOLFING SOCIETY.

THE Summer Meeting of the Society was held at the Royal Dublin Club on Thursday, the 25th May, when twenty-two members turned out and had a most pleasant day. The Society's Challenge Cup and the Captain's Prize were won by Albert C. Paice, the Veteran's Cup by Seamus O'Connor, and the St. Patrick's Plate by Maurice Horan.

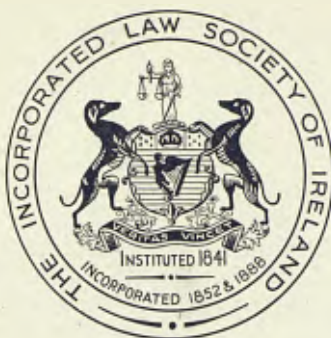
The best thanks of the Society are due to the Royal Dublin Club for the reception given to the members of the Society, and to the staff for the excellent way in which the catering was done, notwithstanding the present difficulties and the exceptional burden which has been thrown on the Club by reason of the loss of its premises.

It is proposed to hold the Autumn Meeting in September, but the venue has not yet been decided upon. Solicitors wishing to join the Society should communicate with A. Marshall, Secretary, 119 Stephen's Green, Dublin.

ALL Communications connected with THE GAZETTE (other than advertisements) should be addressed to the Secretary of the Society, Solicitor's Buildings, Four Courts, Dublin. Telephone: 73092.

Vol. 38
No. 3

July
1944



THE GAZETTE

of the

INCORPORATED LAW SOCIETY OF IRELAND.

President:

LOUIS E. O'DEA

Vice-Presidents:

ROBERT A. MACAULAY

ARTHUR COX

Secretary:

ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

MEETING OF THE COUNCIL.

30TH JUNE, 1944. The President in the chair.

Present: Messrs. R. A. Macaulay, A. Cox, Vice-Presidents; J. J. Smyth, J. Travers Wolfe, P. R. Boyd, C. G. Stapleton, W. S. Hayes, J. R. Quirke, F. J. W. Darley, W. J. Norman, H. P. Mayne, G. A. Overend, D. O'Connell, A. S. Merrick, P. O'Connor, John J. Dunne, J. P. Carrigan, H. St. J. Blake, P. F. O'Reilly, M. E. Knight, J. B. Hamill, Roger Greene.

The following were among the matters dealt with:—

Land Registry Practice.

THE meeting considered the report of a Committee on the memorandum recently issued from the Land Registry dealing with matters requiring particular attention by solicitors. This memorandum stated that it is desirable that documents should, so far as possible, be lodged in the Central

Office by town agents of solicitors instead of being lodged with the Local Registrars or sent to the Central Office by post. The Committee in its report stated that this suggestion is not a requirement of the rules and that solicitors are still entitled to lodge documents in the first instance in the Local Registries. As it appears that compliance with the suggestion would cause inconvenience both to country solicitors and to their Dublin agents the Committee recommended that a deputation from the Council should interview the Registrar of Titles with reference to the matter. The report of the Committee was adopted. On a report from the same Committee the Secretary was directed to interview the Registrar regarding the new requirement that a certificate of the P.L.V. of lands must be lodged with dealings for registration.

Land Registration Fee Order 1944.

THE Council considered a report from the same Committee on the above Order and the resolu-

tions passed by Bar Associations throughout the country with reference to the increase of Land Registry Fees effected by the Order. It was resolved that a deputation from the Council should approach the Minister for Justice in order to point out that the extraordinary increase in the expenses of registration imposed by the Order is viewed with concern by the solicitors profession and to press for a modification in the Order. The President, Messrs. Macaulay and Cox, Vice-Presidents, J. S. O'Connor, T.D., J. J. Dunne and J. P. Carrigan were appointed to form the deputation.

Unqualified Person.

THE Secretary reported that as directed by the Council he had caused proceedings to be instituted in his name against an unqualified person for having prepared an instrument relating to real or personal estate, namely a letting agreement, for fee or reward contrary to the provisions of the Conveyancers Ireland Act, 1864, and that he had received from Mr. P. F. O'Reilly who had acted for him in the matter a letter stating that since the institution of the proceedings the defendant had paid £20, the penalty provided by the Act payable to the Society together with the costs of the civil process.

PROCEEDINGS AGAINST SOLICITORS.

By order of the Chief Justice, dated 17th April, 1944, made on the application of the Society, it was ordered that the name of Edward Daly, Solicitor, who was admitted in Trinity Sittings, 1934, and formerly practised at Ballymahon, Co. Longford, be struck off the Roll of Solicitors on the ground that he had been convicted of conspiracy to defraud.

By order of the Chief Justice, dated 18th May, made on a report from the Statutory Committee, it was ordered that the name of Sydney Edwin Cooper, who was admitted in Hilary Sittings, 1932, and formerly practised at 5, South Frederick Street, Dublin, be struck off the Roll of Solicitors, on the ground that he had been guilty of professional misconduct.

CURRENT TOPICS.

Certificates of Taxation of Costs.

REX v. District Registrar of Kingston-upon-Hull (60 T.L.R.287), recently decided by the Court of Appeal in England, turned upon the exact meaning of the term certificate of taxation or allocatur

of a Taxing Master, which are synonymous terms under both the Rules of the Supreme Court (Ireland) 1905, and the English Rules of the Supreme Court. The application before the Court of Appeal was for an order of mandamus to one of the District Registrars of the High Court directing him to deal with certain objections which the applicant desired to make on the taxation of the plaintiff's costs of an action in which the applicant had been the unsuccessful defendant. The costs had been taxed and certain items disallowed. The applicant's solicitor attending the taxation on his behalf had opposed certain other items in the bill but was overruled, and he had neither intimated before the close of the taxation that he intended to carry in objections in writing, nor requested the Registrar to postpone signing the certificate to give him an opportunity of carrying in such objections. The Registrar then wrote and signed on the bill a certificate in the following terms:—"Taxed and allowed at £493 6s. 4d., August 31st, signed, A. V. Rhodes, District Registrar." The applicant's solicitor, on September 3rd, served notice of objection to the taxation, but the Registrar refused to accept it on the ground that the taxation could not be re-opened after the signing of the certificate. The application for the order of mandamus against the Registrar was based on the ground that the procedure on taxation had not been in accordance with the Rules of Court, and that the note made on the bill of costs was not a certificate of taxation. The Court held that the procedure had not been irregular and that the note on the bill was a sufficient certificate, and satisfied the four essential conditions for that purpose. Those conditions were that it should contain (1) the nature of the cause or matter (2) an indication of the party whose costs are to be paid (3) the amount at which the bill is taxed and (4) the signature of the Taxing Master or other responsible official giving the certificate. O.65 R.66 (1) of R.S.C. (Ireland) 1905, prescribing the proper procedure to obtain a review of taxation, is substantially similar in terms to the corresponding English O.65 R.27 (39). Our Rules of Court contain no general definition or description of a certificate of taxation. O.52 R.9 provides that a certificate of taxation of costs to be paid out of a fund in Court shall be in the form No. 5 in appendix M to the Rules, but this rule is limited in its application to special cases. It would therefore seem that although by custom a certificate of a Taxing Master of the High Court is issued in the familiar form as a separate document it need not necessarily be so, and that (except in the case of costs

to be paid out of a fund in Court) the form and mode of issuing of the certificate lies in the discretion of the Taxing Master, provided that it contains all the material particulars.

Professional Negligence.

THE obligation of a solicitor to exercise skill and care in the course of his professional dealings on behalf of his clients has been the subject of many legal decisions, but it is by no means simple in border-line cases to say where the requisite standard of professional efficiency approaches an infallibility which the law attributes to no human being. The duty which is imposed on the solicitor in regard to those matters of law and procedure which are his professional concern does not, in the absence of special instructions accepted from the client, necessarily extend to matters of business from which they are often inseparable. A client when entrusting his affairs to his solicitor frequently relies on him to keep him right in business as well as in strictly legal matters, and, no doubt, in advising clients, particularly persons of inexperience, solicitors often do try to safeguard their interests generally. The precise point where the professional obligation of the solicitor, in the absence of special instructions, ceases may be difficult to define. Is he, for instance, obliged to notify a client for whom he is acting of the approach of the date for exercising an option to renew or determine a lease? This point was discussed in *Yager v. Fishman & Co.* and *Teff and Teff* (1944, 1 All E.R.552) recently decided in the English Court of Appeal. The facts of the case were complicated but the principal point affecting solicitors was comparatively short. The plaintiff was a business man who had gone surety for the performance by a limited company of the sub-lessee's obligations under a sublease which reserved a substantial rent. The sublease contained an option to the sublessee to determine it by notice at the end of the third, seventh or fourteenth years. The company went into voluntary liquidation and the plaintiff became liable as surety under his guarantee to pay the rent accrued and accruing due. It was proved that he had knowledge of the existence of the option in the sublease. In 1938, in the course of a letter to his former solicitors, he had asked: "Why didn't you call my attention to the fact that I could have got out of this agreement in 1937?", to which the solicitors had replied: "It is no part of our duty to keep a record of when each client has to give notice to determine a lease." His case against the successful appellants was that he had employed

them on a retainer to take steps to end his liability under the sublease by taking the necessary steps to secure the effective exercise of the option to determine it, and that the solicitors had negligently failed to do so or to warn him in time that the option could not be exercised after a certain date. The Court of Appeal found that there was no such retainer as was pleaded by the plaintiff; that the solicitors were, in fact, retained for the purpose of getting the sublessee's term vested in the plaintiff and effecting a sub-underletting of the premises to a tenant at a rent sufficient to discharge the arrears due to the landlord; and that while other solicitors might well have suggested to the plaintiff the advisability of securing the exercise of the option to determine the lease they would have been under no duty to do so. Per Scott, L. J. "There is no allegation in the statement of claim of any request by the respondent for advice upon any question of business as distinct from law—in particular upon the question whether it would be better business for the respondent on the one hand to try and get out of the underlease liability even at the expense of paying all arrears of rent and accepting liability for dilapidations, or on the other hand to maintain the underlease and find a tenant whose rent would cover his current and future financial liability to the landlords. To impose on a solicitor the legal responsibility of answering such a business question would require both unequivocal instructions and unqualified acceptance; for it is no part of a solicitor's normal duty to profess the skill and experience for giving such advice. On what the position would be if he with his eyes open were to accept such a responsibility, I express no opinion." No doubt, in some cases, a solicitor acting for a client would fail in his duty if he omitted to notify him of the approach of the date for exercising an option. The client, however, is presumed to be conversant with his own affairs and his solicitors are not bound to supply defects in his memory unless clearly requested to do so.

Restriction of Rents Order 1943.

A MEMBER of the Society has drawn attention to the fact that there is no provision in the Emergency Powers (No. 318) Order, 1944 prohibiting the taking by a landlord of a premium, commonly known as "key money," as a condition of the grant renewal or continuance of a tenancy of premises to which the Order applies, on the lines

of section 13 of the 1923 Act. Section 12 (3) of the Order does prohibit a statutory tenant from asking or receiving the payment of any sum or the giving of any other consideration by any person other than the landlord as a condition of giving up possession of controlled premises. Our member also points out that the Order contains no provision obliging the landlord on being requested in writing by the tenant to supply him with any information in the landlord's possession or procurement to enable him to ascertain the basic rent or have it determined by the Court. The Order was, no doubt, designed as a temporary measure to meet the difficulties of tenants who were in occupation of premises on the relevant date, and the omissions noticed will not affect the majority of tenants. It is, however, understood that if it is shown that hardship is caused by the omissions the matter may be dealt with by an amending Order.

OBITUARY.

MR. OSBORNE E. BARBER, Solicitor, died at his residence, 66 Garville Avenue, Rathgar, Dublin, on 21st June, 1944.

Mr. Barber served his apprenticeship to the late Mr. John K. Toomey, Dublin, was admitted in Trinity Sittings 1896, and practised under the style of Toomey & Barber at 4 Upper Ormond Quay, Dublin, until 1940, when he retired.

EXAMINATION RESULTS.

At the examinations held in June, 1944, the following candidates were successful.

First Examination in Irish.

Ellen F. M. Beatty.
Brendan Breathnac.
James J. Breen.
Frances M. G. Callan.
John-J. Concannon.
Arthur Dey.
Martin Harin.
John F. Moloney.
John R. Noonan.
Patrick J. O'Hara.
Patrick J. Skehan.
Richard F. Blair White.

Fifteen candidates attended; twelve passed; three failed.

Second Examination in Irish.

Tadhg R. O Braonain.
Thomas P. Byrne.
Anna E. Egan.
Joseph A. Egan.
John M. Gilvarry.
John D. Hutchinson.
Patrick C. Jones.
Michael O'B. Kelly.
Leslie S. Kettle.
Philip E. McCourt.
Maurice M. Power.
Thomas P. O'Reilly.
Patrick I. Pettit.
Noel W. J. A. Purcell.
John D. Quinn.
Daniel T. Ryan.
Mary T. Sweeney.

Twenty-four candidates attended; Seventeen passed; seven failed.

Intermediate Examination.

Passed with Merit

1. Patrick J. O'Connor.
2. Richard J. Crotty.
3. Seosamh O Cuinneagain. } equal
- Martin B. Salmon. }
5. Bernard J. McDermott.

Passed.

John Butler.
Eoin C. J. Daly.
Moya Dixon.
M. A. Farrell.
Daniel O. Healy.
John J. Kinnerk.
Denis A. Lawler.
Kieran W. A. McAnally.
Mary M. McFadden.
Eunan T. McMullen.
Leslie Mellon.
Mary T. O'Connor.
William A. Osborne.
Walter Rhatigan.
Reginald G. H. Roper.
William F. M. J. Semplé.
John C. Walsh.

Thirty candidates attended; twenty-two passed; eight failed.

NEW MEMBERS.

THE following have joined the Society :

R. M. Bell, Dublin.
 John N. H. Brennan, Wexford.
 Murtagh E. Burke, Dingle.
 John G. J. Colman, Dublin.
 F. W. Conway, Claremorris.
 Charles R. Cuffe, Dublin.
 Michael Cussen, Rathkeale.
 Mrs. Lohan Delaney, Menlough, Co. Galway.
 P. J. Donnelly, Westport.
 Raymond V. H. Downey, Dublin.
 Rory C. FitzGibbon, Killaloe.
 Oliver G. Fry, Dublin.
 Henry F. Hayes, Nenagh.
 F. W. Hutchinson, Waterford.
 Robert W. R. Johnston, Dublin.

William R. A. Keller, Dublin.
 Maurice Kenny, Dublin.
 Patrick J. Loftus, Ballina.
 James B. MacClancy, Ennis.
 Daniel J. McGettigan, Milford.
 Bryan McMahon, Ennis.
 Louis V. Nolan, Dublin.
 Thomas D. Noonan, Navan.
 Brendan P. O'Byrne, Dublin.
 J. J. O'Donnell, Tralee.
 John A. O'Loughlin, Dublin.
 Michael B. O'Malley, Limerick.
 George A. Russell, Dublin.
 J. J. Seery, Mullingar.
 George C. Stapleton, Dublin.
 James P. Trainor, Dublin.
 Louis Walsh, Glenties.
 John Wells, Carrickmacross.
 C. M. E. Winder, Dublin.

ADMISSIONS AS SOLICITORS OF EIRE

From 13th January 1944 to 21st June 1944.

| <i>Name</i> | <i>Served Apprenticeship to</i> |
|---|---|
| Bowes, Thomas B., Main Street, Loughrea | A. D. Comyn, Loughrea. |
| Brennan, Patrick J., 4 Seaview Tee., Ailesbury Road, Dublin | Nial McLaughlin, Dublin. |
| Forde, Vincent, P. J., Rockmount, Boyle | John Forde, Boyle. |
| Fry, Oliver G., "Aurcen," Ailesbury Park, Dublin | Wm. H. Fry, Dublin. |
| Horan, William J. C., Eyre Square, Galway | L. E. O'Dea, Galway. |
| Hurley, Cecilia, "Glenbrook," Ballymun Road, Dublin | Thos. H. Hayes, Dublin. |
| Johnston, Robert W. R., 34 Ailesbury Road, Dublin | Wm. C. Roche, Dublin. |
| Kelly, Edward A., "Bella Vista," Mullingar | Patk. J. Shaw, Mullingar. |
| MacCathmhaoil Caoimhghin, Teac Mhuire, Cill Mantain | Micheál O'Cleirigh, Ballyhaunis. |
| Maguire, Sean P., Ballinamore, Co. Leitrim | Michael J. Maguire, Longford. |
| Meagher, Marguerite S., Ballinwillan House, Mitchelstown | W. E. O'Brien, Mitchelstown. |
| Morrissey, Michael, Railway Hotel, Tramore | Henry J. Kenny, Waterford. |
| Nugent, Kevin, Carrick House, Carrick-on-Suir | James A. Binchy, Clonmel. |
| O'Doherty, Edward A., Francis St., Kilrush | James F. Raymond, Listowel. |
| O'Farrell, John M., 5 Priory Road, Kimmage, Dublin | Joseph Barrett, Dublin. |
| O'Reilly, Eileen, "An Grianan," Wood Quay, Galway | L. E. O'Dea, Galway. |
| O'Riordan, Denis H., 21 Edenvale Road, Ranelagh, Dublin | D. D. MacDonald, Dublin. |
| Rogan, John P., 63 Moyne Road, Rathmines, Dublin | W. Trant McCarthy, Dublin. |
| Sheehy, Henry M., Shannongrove, Ballaskenry, Co. Limerick | Chas. J. Holohan, Dublin. |
| Sheil, Edmund O., "St. Anne's," Castlewarden, Rathcoole | John J. Sheil, Dublin. |
| Slattery, David M. G., 18 Wellington Road, Dublin | Francis J. Little, John A. Cullen, Dublin. |
| Toolan, Walter P., Main Street, Carrick-on-Shannon | Thos. P. Burke, Carrick-on-Shannon. |

**STATUTES OF THE OIREACHTAS
1944.**

Signed by the President.

- | | |
|---|----------------|
| 1. Housing (Amendment) .. | 23rd February. |
| 2. Children's Allowances .. | 23rd February. |
| 3. Agriculture (Amendment) | 23rd February. |
| 4. Defence Forces (Temporary Provisions) | 1st March. |
| 5. Military Service Pensions (Amendment) | 15th March. |
| 6. Fisheries (Amendment) .. | 16th March. |
| 7. Seeds and Fertilisers Supply | 16th March. |
| 8. Constitution (Verification of Petition) | 20th March. |
| 9. Vocational Education (Amendment) | 20th March. |
| 10. Midwives | 29th March. |
| 11. Central Fund | 29th March. |
| 12. Conditions of Employment | 26th April. |
| 13. Local Authorities (Education Scholarships) .. | 26th April. |

CORRECTION.

MR. D. D. MACDONALD has drawn attention to the fact that in the June issue of the *Gazette* he is reported as having referred at the half-yearly General Meeting to the necessity of making an application for a case stated in the Circuit Court before delivery of Judgment. The reference to the Circuit Court in this paragraph should read as the High Court on appeal from the Circuit Court.

ALL Communications connected with THE GAZETTE (other than advertisements) should be addressed to the Secretary of the Society, Solicitor's Buildings, Four Courts, Dublin. Telephone: 73092.

Vol. 38
No. 4



August
1944

THE GAZETTE

of the

INCORPORATED LAW SOCIETY OF IRELAND

President:
LOUIS E. O'DEA

Vice-Presidents:
ROBERT A. MACAULAY
ARTHUR COX

Secretary:
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

MEETING OF THE COUNCIL.

21st JULY, 1944. The President in the chair.
Present:—Messrs. R. A. Macaulay and A. Cox,
Vice-Presidents, H. St. J. Blake, J. J. Smyth, W.
L. Duggan, Roger Greene, John J. Dunne, Peter
O'Connor, P. R. Boyd, P. F. O'Reilly, J. B.
Hamill, D. O'Connell, W. J. Norman, W. S.
Hayes, E. M. FitzGerald, C. G. Stapleton, S. Ó
hUadhaigh, J. R. Quirke, J. P. Carrigan, J. J.
Lynch, J. Travers Wolfe, W. S. Huggard, H.
P. Mayne, J. Gillespie.

THE following were among the matters dealt
with:—

Messrs. Little, Ó hUadhaigh & Proud.

THE Council passed the following resolution:—
"That the Council of the Incorporated Law
Society having considered the circumstances
in which Messrs. Little, Ó hUadhaigh &
Proud have been included in the list of persons
with whom British and American nationals are

"prohibited from dealing under Trading with
the Enemy legislation wish to place on record
their confidence in the honour and integrity of
the members of that firm and their conviction
that they were acting purely in a professional
capacity as solicitors for their clients and not
in any political or unneutral manner, and with
no object other than the fulfilment of their duties
and the exercise of their rights as solicitors."

Registry for Solicitors.

THE Council considered and approved of the
establishment by the Society of a registry in
connection with the *Gazette* which can be used
by the profession in connection with practices,
partnerships and assistantships vacant and re-
quired, miscellaneous information required, law
books and office equipment wanted and for sale,
and similar matters. Advertisements connected
with the aforesaid matters will be published in
the *Gazette*. Regulations governing the use of the
Registry are published at page 22 of this issue.

Land Registry Practice.

THE Secretary reported that he had interviewed the Registrar of Titles with reference to the requirement in the Registrar's memorandum recently circulated to the profession that evidence of the P.L.V. of lands must be lodged in connection with applications for first registration, transfers (except on sale), and applications for cancellation of the note as to equities or of qualified or possessory title, and that the Registrar had informed him that the rates demand note will be accepted as sufficient evidence in lieu of the certificate of valuation where it shows the P.L.V. of the property concerned.

The Secretary also reported that he had been informed by the Registrar of Titles that the note in the memorandum recently circulated to solicitors concerning the lodgment of documents in the central office instead of with the local Registrars is not mandatory and that solicitors are free to adopt whichever course they find most convenient.

Land Registration Fee Order, 1944.

THE Council considered the report of a deputation which obtained an interview with the Minister for Justice since the Council last met on the subject of the above Order. The deputation reported that the Minister had requested them to submit a memorandum, and that the memorandum had been prepared. The Meeting also considered a request from the Co. Louth Sessional Bar Association that a special general meeting of the Society should be summoned to press for the revocation of the Order. It was decided that failing a satisfactory reply from the Department to the Society's memorandum a special general meeting should be summoned.

SEANAD ELECTION.

As reported in the June issue of the *Gazette*, the Council nominated the President, Mr. L. E. O'Dea and Mr. Arthur Cox one of the Vice-Presidents to the Cultural and Educational Panel for the Seanad Election. On the result of the poll the President was declared elected to the Seanad. The last previous nominee of the Council who was elected to the Seanad was the late Mr. T. W. Delany who was elected in 1938 and the success of the President at the recent election will give general satisfaction to the profession.

MR. JOHN S. O'CONNOR, T.D.

THE Council at a recent meeting passed a vote of congratulation with Mr. O'Connor on his election as a member of Dáil Eireann. The President stated that it was particularly fortunate that the Council should be represented in the Dáil in view of the expected introduction of the Solicitors Bill. Mr. O'Connor was a Vice-President of the Society for the year 1942-43 and is at present a member of the Council.

REGISTRATION OF LEASES IN REGISTRY OF DEEDS.

THE Council recently received representations from a member of the Society concerning a difference of practice prevailing in the profession as to the right to prepare the memorial and register a lease as between the solicitor for a lessor and the solicitor for a lessee. It was pointed out that although it is undoubtedly the right of the lessee's solicitor to register the lease if he wishes to do so a fairly widespread practice has grown up whereby the lessor's solicitor performs this work. This practice is not universal and differences of opinion often arise as to the proper course to be followed. The Council, after considering the opinions Nos. 38 and 39 printed in the current Calendar of the Society, saw no reason to depart from these opinions. The position, in the opinion of the Council is therefore as follows:—

- (a) In the absence of any agreement to the contrary it is the right of the solicitor for a lessee, should he so desire, to prepare the memorial and register the lease at the expense of his client.
- (b) When the memorial for registering a lease is prepared by the solicitor for a lessee and the lessor is required to execute it the solicitor for the lessor is entitled to be paid by the lessee the costs of approving of and obtaining the execution of the memorial under Schedule 2 in addition to all other charges to which he may be entitled.

The Council also expressed the opinion that as a matter of practice and usage when a surrender of a lease is incorporated in a new lease of the same property the solicitor acting for the lessee should be allowed to register the deed if he wishes to do so as the lessee is the party having the larger interest therein.

While, in the opinion of the Council, the position as between lessor and lessee, in the absence of agreement to the contrary, is as stated above, the lessee can usually save expense by allowing the lessor's solicitor to register the lease, as he will thereby avoid having to pay, in addition to his own solicitor's costs of registering the lease, the costs of the lessors' solicitor of approving of the memorial and having it executed by the lessor.

EXAMINER'S OFFICE, HIGH COURT.

With a view to saving the time spent by solicitors in waiting to obtain adjournments in the Examiner's Office the Council have asked the Examiner to take applications for adjournments as the first item in the list each morning. The Examiner has kindly agreed to this suggestion. Solicitors who wish to obtain adjournments of cases listed in the Examiner's Office should attend at the commencement of the list to make the necessary applications.

CURRENT TOPICS.

Under-Sheriff and County Registrar.

IN the eighteen years which have elapsed since the passing of the Court Officers Act, 1926, the public has had an opportunity of observing the results of the amalgamation of the office of under-Sheriff with that of County Registrar, in areas where the former office became extinct under the Act, on the death of the holder. The change made by the 1926 Act was part of the progressive system of centralising administration in the interests of economy and efficiency which has characterised government policy since the establishment of Saorstát Éireann. It is probable that under no system which man can devise would the administration of the under-Sheriff's duties, whether by the State or by a specially appointed official, give general satisfaction. Complaints from judgment creditors and debtors alike are bound to be heard as to both the severity and the laxity of whatever system is in force. The County Registrars by reason of their legal qualifications and the responsibility attached to their position have, no doubt, excellent personal qualifications and it is understood that the official view is that, in general, the amalgamation of the two offices where it has taken place has been justified on the grounds of efficiency, impartiality and economy. There is no doubt, however, that the system introduced by the Court Officers Act, 1926, while possibly workable in a few country districts is far from ideal in the larger centres of population where the County Registrar

has to carry a heavy burden of official duties in the capacity of Registrar Taxing Master and Examiner to the Court. It is understood that a bill dealing with the matter is under examination by the Government. It will be awaited with interest by the profession. The Council recently passed a resolution advocating the discontinuance of the system of amalgamation of the two offices established by the Court Officers Act, 1926. A copy of the resolution was sent to the Department of Justice.

Certificates of Discharge from Death Duties.

SECTION 11 (1) of the Finance Act, 1894, enacts that the Revenue Commissioners on being satisfied that full estate duty has been or will be paid in respect of an estate or any part thereof may give a certificate to that effect, which certificate shall discharge from any further claim for estate duty the property shown by the certificate to form the estate, or part thereof, as the case may be. This certificate is, however, expressed to relate only to estate duty. The Revenue Commissioners hold the view that this certificate applies only to the case of payment of duty on property which does not pass to the Executor as such, and that it does not apply to the case of an Executor paying duty on the free personal estate, including leaseholds. Furthermore, while the certificate is expressed to discharge the property from duty it does not give a personal discharge to the accounting party. Section 11 (2) enables the Revenue Commissioners to determine the rate of estate duty and to issue a certificate which will discharge both the property and the party accounting for the duty, but such a certificate does not extend to succession or legacy duty.

Certificate No. 149, which is issued by the Revenue Commissioners to the effect that on the facts disclosed there is no outstanding charge for death duties, including legacy and succession duty; does not appear to be issued in pursuance of Section 11 of the Finance Act, 1894, and is, in fact, a non-statutory certificate. The following statement in regard to this certificate appears at page 204 of "A Treatise on the Registration of Ownership of land in Ireland," by Mr. W. E. Glover, the last Registrar of Titles: "The form of certificate issued by the Commissioners to the effect that on the facts disclosed to them they have no claim for duty is not a certificate that complies with Section 11 of the Finance Act; and having regard to the express terms of sub-section 3 of that Section it is difficult to understand why or on what grounds a qualified certificate is issued. Such a certificate at

any rate does not justify an entry in the registry of exemption from duty." The certificate frequently contains the familiar proviso that in the event of any variation from the estimated value of the property, occurring as the result of a sale within a period of six years from the death of the deceased, the affidavit and account may be subject to readjustment. As the purpose for which the certificate is required is, in many cases, to enable the personal representatives to distribute the estate the above-mentioned proviso nullifies its effect as a form of protection to the executors unless they are prepared to delay distribution of the assets for six years.

Correspondence has taken place between the Society and the Controller of Death Duties in which it was suggested on behalf of the Society that where an application is made for a certificate of discharge from death duties the Revenue Commissioners should decide once and for all what value they will accept in respect of the property and issue an unqualified certificate on that basis. It was further suggested that as Section 11 of the Finance Act, 1894, is limited in its application and as the present certificate No. 149 does not appear to be a statutory certificate, it would be advisable to seek statutory authority for the issuing in proper cases of a certificate which would relate to all death duties and would discharge both the property and the personal representatives or other accounting parties from liability for such duties. The following is an extract from a letter received by the Society from the Revenue Commissioners: "It is pointed out that, under the practice at present prevailing, if the Commissioners determine a value for real or leasehold property at a figure different from that placed on it by the accountable parties, and, if such value is either accepted by the parties or an alternative value is fixed as a result of an appeal to the official referee, the assessment of the additional estate duty made on the basis of the value as so determined, or as fixed on appeal, is final and conclusive and cannot be re-opened by the Commissioners in the event of the property being sold at a higher price, or by the parties in the event of a sale taking place at a lower figure. It is only in those cases where the Commissioners of Valuation raise no question on the value placed on the property by the parties that an additional assessment of estate duty is made in the event of a subsequent sale at a higher price within the period of six years from the date of death. But it is pointed out that it is also open to the parties to have the question of value in those types of cases re-opened in the event of a subsequent sale at a

price lower than the original estimate." It would, therefore, appear that in cases where a certificate of discharge from death duties, qualified by the above-mentioned proviso, is issued as the result of the Commissioners of Valuation having raised no question on the value of the property as returned for death duties, the proper course for the executors to adopt in order to have the proviso discharged is to request that the Commissioners should determine a value for the property. While it is not apparent that the Commissioners are under any statutory obligation to have the value of the property so determined, they would probably agree to have it done in proper cases. The duty assessed on property so valued will be final and conclusive and not liable to be reopened by either the State or the taxpayer.

THE REGISTRY.

THE Council has decided to set up a Register for solicitors. This Register will be kept in three Sections:—

SECTION A : Practices for sale, Partnerships and Assistantships vacant.

SECTION B : Practices, Partnerships and Assistantships Wanted.

and

SECTION C : Miscellaneous information required, books, office equipment, etc., wanted or for sale, etc.

REGULATIONS :

1. The fees payable for each entry in each Section of the Register will be, as follows:—

Members of the Society : 3/- for 30 words or less and 1d. for each additional word over the first 30.

Other Solicitors : 6/- for 30 words or less and 2d. for each additional word over the first 30.

2. All entries must be verified to the satisfaction of the Society which will be at liberty to reject or disregard any entries which do not appear to it to be suitable or genuine. Each entry must be accompanied by particulars of the sender's name and address and must specify the Section of the Register in which it is to be made.

3. To avoid unnecessary correspondence, entries will be considered only when accompanied by the appropriate fees.

4. Each entry will be entered by the Society in the appropriate section of the register which may be inspected by solicitors and persons authorised in writing by solicitors at the Society's offices during business hours. No fee for inspection will be payable by a member of the Society or by a person who has within the previous four weeks made and paid for an entry in the appropriate section of the register. In all other cases a fee of 2/6d. will be payable, which fee will cover any number of inspections within two calendar months from the date of its payment. No person other than a solicitor will be permitted to inspect the register without a satisfactory letter of authority signed personally by the solicitor who is his employer.

5. Each entry will be published by the Society free of additional charge once in the *Gazette* as soon as conveniently possible after receipt of the entry. Repeats in subsequent issues of the *Gazette* may be inserted at the discretion of the Society on payment of a charge to be quoted.

6. Each entrant should state whether the entry is to be made and published over his name or over a box number. Entries in Section A, unless otherwise expressly directed in writing, will be made and published over Box Numbers only and the name of any person making an entry in Section A will be disclosed only with his express permission in writing; but a name in Sections B or C may be disclosed and published unless written instructions to the contrary are received at the time of making the entry.

7. Replies to advertisements and to entries in the register must be enclosed in envelopes addressed to the Society, clearly marked with the appropriate Box Number and should be accompanied by a prepaid envelope for forwarding (when so desired) to the entrant.

8. Replies to advertisements will not be forwarded by post unless accompanied by a prepaid envelope as aforesaid or unless the advertiser has lodged beforehand with the Society a fee of 10d. or such larger amount as may be sufficient to cover postages. Replies will, however, be handed out without extra charge to the advertiser applying therefor in person or by an agent authorised in writing as above. Persons wishing to communicate through the Society with entrants must lodge the appropriate postage.

9. Every entry is accepted subject to the approval of the Council but the Council will not accept responsibility for any entry.

10. All entrants or advertisers must notify the Society as soon as their requirements are satisfied so that a note to that effect may be made in the Register.

11. An entry in any section of the Register will be regarded as current for six months from the date on which it is received by the Society and will be preserved for that period, but at any time thereafter may be cancelled without notice to the entrant.

12. The Society reserves the right to discontinue the Scheme at any time without notice to entrants.

STATUTORY COMMITTEE.

THE Chief Justice has appointed Mr. P. F. O'Reilly to be a member of the Statutory Committee in place of Mr. E. F. Collins who has resigned from the Committee owing to ill-health.

OBITUARY.

MR. WILLIAM DEVOY, Solicitor, died on 16th July, 1944, at the Mater Hospital, Dublin.

Mr. Devoy served his apprenticeship with the late Mr. John Hawthorne, Dublin, was admitted in Hilary Sittings, 1920, and practised at 74 Dame Street, Dublin and subsequently at Ballyhaunis until the year 1928.

MR. JAMES A. KIERNAN, Solicitor, (late of Derrycarne, Dromod, Co. Leitrim), died on 16th July, 1944, in Dublin.

Mr. Kiernan served his apprenticeship with the late Mr. Michael D'Alton, Dublin; was admitted in Trinity Sittings, 1901, and practised in Ballinamore up to the year 1926 when he was appointed County Registrar for Co. Leitrim. He retired in 1943.

MR. LOUIS DE MONTFORT, Solicitor, died on 22nd July, 1944, at St. Ann's Hill, Cork.

Mr. de Montfort was admitted in Hilary Sittings, 1895, and practised at 30 College Green, Dublin, up to the year 1918, and at Clones from 1918 to 1923, when he retired.

EXAMINATIONS, OCTOBER, 1944.

| Examination and Date | Last day for lodging notice |
|--|-----------------------------|
| Final Examination— October, 2nd and 3rd .. | September 11th. |
| Intermediate Examination— October 4th | September 13th. |
| First Irish Examination— October 6th | September 15th. |
| Second Irish Examination— October, 6th and 7th .. | September 15th. |
| Preliminary Examination— October, 9th and 10th .. | September 18th. |

NOTICE OF CHANGE OF ADDRESS

THE address of Messrs. Little, Ó hUadhaigh and Proud is now 51 Dawson Street, Dublin, instead of 12 Dawson Street, as heretofore.

LECTURES.

Michaelmas Sittings Lectures, 1944.

THE Junior Lectures which will be delivered on Mondays and Thursdays and will be twelve in number, will begin on Thursday, the 12th October, 1944, at 2.15 p.m. in the Solicitors' Buildings, Four Courts. Notice of intention to attend, with the fee of three guineas should be lodged in the Society's office before the 4th October, 1944. The Senior Lectures, which will be delivered on Tuesdays and Fridays and will be twelve in number, will begin on Friday, the 13th October, 1944, at 2.15 p.m. in the Solicitors' Buildings, Four Courts. Notice of intention to attend, with the fee of three guineas should be lodged in the Society's office before the 5th October, 1944.

ALL Communications connected with THE GAZETTE should be addressed to the Secretary of the Society, Solicitor's Buildings, Four Courts, Dublin. Telephone: 73092.

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No. 3

November
1944



THE GAZETTE

of the

INCORPORATED LAW SOCIETY OF IRELAND

President:
LOUIS E. O'DEA

Vice-Presidents:
ROBERT A. MACAULAY
ARTHUR COX

Secretary:
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

MEETING OF THE COUNCIL.

OCTOBER 6th. The President in the chair. Present : Messrs. A. Cox, Vice-President, R. Greene, D. O'Connell, W. S. Hayes, J. J. Lynch, M. E. Knight, W. J. Norman, G. A. Overend, C. G. Stapleton, E. M. FitzGerald, H. P. Mayne, J. S. O'Connor, P. R. Boyd, J. B. Hamill, P. F. O'Reilly, P. O'Connor, H. O'Donnell, J. J. Dunne, J. Travers Wolfe, J. J. Smyth, J. R. Quirke, F. J. W. Darley, H. St. J. Blake, J. J. Bolger.

The following were among the matters dealt with :—

Land Registration Fee Order, 1944.

THE Council considered a letter from the Department of Justice stating that the Minister had decided to appoint a committee under the chairmanship of Mr. H. B. O'Hanlon, Taxing Master, to consider and make a report on the above Fee Order and also the scales of fees at present in force in the Registry of Deeds and the Courts of

Justice. It was stated in the letter that copies of the Council's memorandum on the Fee Order would be supplied by the Department to the members of the Committee and the Council was invited to nominate a representative to act thereon. The Council ordered that a letter in reply should be written to the Department stating that the Council nominated Mr. J. B. Hamill to act on the Committee and that the Minister should be requested to accept the nomination of Senator L. E. O'Dea and Mr. J. S. O'Connor, T.D. to act as additional members of the Committee, the nomination of such members by the Council to be without prejudice to its right to examine and criticise any recommendations of the Committee on their merits. It was further ordered (1) that the Minister should be requested to suspend the operation of the Land Registration Fee Order pending the Committee's Report; (2) that the Minister should be informed that members of the Society had asked that a Special General Meeting should be summoned to consider the Fee Order but that the Council had expressed the opinion

that the summoning of such a meeting should be postponed; (3) that the matter would appear as an item on the agenda of the Half-Yearly General Meeting of the Society to be held under the Society's Bye-laws on November 27th.

Petrol for Solicitors.

It was ordered that a letter should be written to the Department of Supplies pointing out that the Council hope that as soon as conditions permit of any relaxation of the restriction of petrol supplies the claims of the solicitors' profession for priority would be favourably considered.

Commission on Vocational Organisation.

THE Secretary reported that the report of the above Commission contains a number of recommendations affecting the professions, including the proposal to set up a body to be known as "The Professional Commission" which would be invested with certain supervisory and appellate functions in relation to the governing bodies of the various professions. The matter was referred to a Committee of the Council for consideration.

STATUTORY RULES AND ORDERS.

THE Society is deeply indebted to the Government Publications Office for presenting to the Library a complete set bound in twenty-three numbered and paged volumes of all the Statutory Rules, Orders and other Regulations made between the years 1922 to 1938, inclusive. The volumes also include an Index in which the various Rules, Orders and Regulations are entered (a) according to the governing act or other authority and (b) by subject. This is the first Index published by the Government of the Statutory Rules and Orders. Part I of the Index contains an alphabetical list of governing Acts, showing in each case the Orders made thereunder. It also includes a list of Proclamations, Notices, Orders, and Decrees which do not expressly cite a governing Act. Part II contains an alphabetical list of Orders together with the governing Act or Acts as appropriate. Sets of the volumes have been deposited for reference in the Oireachtas Library, the Law Library of the Four Courts and the Libraries of the King's Inns and the Incorporated Law Society.

The bulk of the Orders had already been published by the Stationery Office and were available in printed form. The remainder had either appeared in *Iris Oifigiúil* or, being for Departmental use, had not been published. These have been

printed and are included in the volumes except Orders of an executive, local or temporary character or having a limited application which are shown in the Index in italicised form. Orders of a merely personal application or otherwise having little or no public interest have been omitted from the volumes and the Index.

Practitioners will require no commendatory notice in the Society's *Gazette* in order to appreciate the excellent work of the Government Publications Office in placing these volumes and Index at their disposal. The volumes themselves are well bound and easy to use, and the Index appears to fulfil all that one might expect in a work compiled by the experts of the Stationery Office. Although the majority of the Statutory Rules and Orders could already have been purchased separately their accessibility in volumes together with an Index will be of the greatest possible assistance to the profession and it is to be hoped that conditions will soon permit the publication of additional volumes and an Index to bring the work up-to-date. Now that the work has been started and carried so far towards completion it should be possible to publish the Statutory Rules and Orders in annual volumes, each complete with an Index as the Statutes are at present published.

The present publication does not touch the Emergency Powers Orders. An Index to these Orders covering the period 1939-43 was recently brought out by the Government Publications Office.

OBITUARY.

MR. DANIEL P. BLAYNEY, Solicitor, died on the 4th September, 1944, at Dublin.

Mr. Blayney served his apprenticeship with the late Mr. Michael McCartan, Belfast, was admitted in Hilary Sittings, 1896; and practised for some time in Cape Town and Bulawayo. He returned to Ireland and practised at Naas from 1912 up to 1927 when he retired.

MR. THOMAS P. EARLY, Solicitor, died on 17th September, 1944, at a private nursing home in Dublin.

Mr. Early served his apprenticeship with Mr. Thomas Early, Dublin, was admitted in Hilary Sittings, 1940, and practised as a partner in the firm of Thomas Early and Son at 63 Upper O'Connell Street, Dublin.

MR. WILLIAM TALBOT PHIBBS, Solicitor, died on 1st October, 1944, at his residence, Quay Street, Sligo.

Mr. Phibbs served his apprenticeship with the late Mr. John R. Lloyd, Dublin, was admitted in Hilary Sittings, 1903, and practised at Sligo under the style of Argue and Phibbs.

MR. WILLIAM IRELAND GOOD, Solicitor, died on 4th October, 1944, in England.

Mr. Good served his apprenticeship with the late Mr. Thomas C. Franks, Dublin, was admitted in Hilary Sittings, 1898, and practised with Mr. Edwin N. Edwards under the style of Edwards and Good, at 12 Molesworth Street, Dublin, until 1917, when he retired.

MR. WILLIAM HUNTER, Solicitor, died on 17th October, 1944, at his residence, Baymount, Sutton, Co. Dublin.

Mr. Hunter was admitted in Trinity Sittings, 1892, and practised under the style of Hunter & Burland at 11, Dame Street, Dublin.

MR. HENRY F. BRENNAN, Solicitor, died on 25th October, 1944, at his residence, The Bungalow, Tullamore.

Mr. Brennan served his apprenticeship with the late Mr. Richard A. Macnamara, Dublin, was admitted in Michaelmas Sittings, 1907, and practised as partner of the firm of Hoey & Denning of Dublin and Tullamore.

CURRENT TOPICS.

Wise Drafting.

THE case of *Dickinson v. St. Aubyn* (1944 1 K.B. 454) is a good illustration of the unforeseen consequences which may attend the unwise practice of using several different terms throughout a lease or other similar document to express a single meaning, when the same result can be achieved more simply, if less elegantly, by the use of identical expressions throughout the instrument. In the case referred to landlords had granted to a tenant a lease of premises for the term of seven years containing a proviso entitling the tenant to terminate the tenancy at the end of the fifth year. The lease also contained the usual covenant by the tenant to keep the premises in good repair and condition and to deliver up the premises in the like repair and condition

at the end or sooner determination of "the tenancy." The tenant further undertook to paint the interior of the premises "in the last quarter of the said term." The tenant having elected to terminate the lease at the end of the fifth year the question arose as to whether the expression "the last quarter of the said term" in the painting covenant should be construed as applying only to the term of seven years created by the lease or whether it was also referable to the substituted term of five years arising from the exercise by the tenant of his option to determine. The landlords contended that the expression "term" in the painting covenant included the abbreviated term of five years and were upheld by the English High Court. This decision was reversed by the Court of Appeal. Lord Justice Goddard referred to the use of the expression "tenancy" in the repairing covenant which clearly referred to the period of the term, whether it was five or seven years, and the words "the said term" in the painting covenant which could only mean the term of seven years in the habendum. If, he said, parties to a lease use in one covenant an expression which shows that they have in mind obligations to arise at the end of the tenancy, whether that be at the end of one period or of another, according as to whether or not the tenant exercises an option which is given to him, and in the next covenant they use an expression which *prima facie* applies only to the full term created by the lease, the proper rule of construction to apply is that they mean something different in the two covenants. It was held, accordingly, that as the lease had been terminated before the expiration of the term indicated by the painting covenant that covenant had not come into operation against the tenant.

Letter "Without Prejudice".

EVERY practising solicitor knows the amount of time spent by the profession in endeavouring to persuade clients to avoid litigation, or having become involved in it to settle their differences by compromise without recourse to the final process of law. One of the most familiar and valuable methods of smoothing the obstacles in the way of settling litigation is the letter written "without prejudice" in the knowledge that admissions and disclosures contained therein will not be used in evidence against the writer.

In a recent English case (*Stotesbury v. Turner*, 1948, K.B. 370) an attempt was made to justify the use of statements made without prejudice in order to deprive the party making them of his costs. The matter arose in the first instance before an arbitrator whose duty it was to arbitrate on a claim by the applicant for £1,135, the defence being that the sum of £120 and no more was lawfully due. In the course of a friendly discussion at a preliminary meeting before the arbitrator the respondent's solicitor informed the arbitrator of attempts made without prejudice to settle the dispute and mentioned that his client was prepared to increase a previous offer, made without prejudice, to £550. The efforts at settlement were inconclusive and at the hearing before the arbitrator a bundle of correspondence was produced on behalf of the respondent which included a letter written by the applicant's solicitor to the respondent's solicitor, marked without prejudice, and refusing the offer of £550. Counsel for the applicant objected to the admission of this letter on the ground that it was marked "without prejudice," but the arbitrator stated that it was useless to object as he knew of the offer which had been made. By his award he directed the respondent to pay to the applicant a sum lower than the amount of £550 which had been offered in settlement by the respondent, and he directed the applicant to pay the costs of the proceedings. An application to the High Court to set aside the award was successful. Atkinson, J., held that the exercise by an arbitrator of his discretion in dealing with the costs of proceedings before him is identical with that of a judge and can be exercised only judicially. A purported direction exercised by an arbitrator on no grounds, or on grounds not properly before him, could not be a judicial discretion. In the present case the arbitrator had stated in his award the reason why he exercised his discretion as he did, and it was plain that he based his discretion on the ground that an offer had been made to the applicant "without prejudice" of an amount which exceeded the amount ultimately awarded by the arbitrator and that that offer had been refused. His Lordship also referred to several cases in which it has been held that nothing which is written or said without prejudice should be looked at without the consent of both parties, for otherwise the whole object of the limitation would be destroyed. Letters written without prejudice ought to be held very sacred; for, if parties were to be afterwards prejudiced by their efforts to compromise it would be impossible to effect an amicable settlement of differences.

MEMORANDUM FROM THE REGISTRAR OF TITLES.

Searches in the Land Registry.

PRACTITIONERS will note that as from 3rd April, 1944, the Registrar has given directions that the card index of the Land Registry shall contain, in addition to the particulars prescribed by the Rules, the name of the townland and the area in each case. As time goes on it is believed that this will facilitate solicitors in ascertaining exactly the particular Folio which they require to inspect. On the indexes the meagre particulars prescribed by the 1937 Rules have entailed the inspection of a large number of Folios and consequent payment of fees which would not be necessary if particulars of the area and townland were given. Of course these particulars are only inserted on the index as new Folios opened or as Dealings with the land take place and the benefit of the new regulation will not be widely felt for some considerable time.

Lodgment of Dealings in Central Office, Land Registry.

As it would appear that practitioners are under some misapprehension with regard to the suggestion contained in the "Memorandum on Land Registry Practice" recently circulated to the Profession, it is thought desirable to emphasise that the suggestion was made solely in the interests of solicitors and their clients in view of Rule 58 of the Land Registration Rules, 1937, which provides that applications and Instruments rank in priority of registration in the order in which they are received in the Central Office.

It was considered that by adopting the suggestion in the Memorandum as to lodgment through the town Agents that time would be saved and priority preserved, or in some cases gained. It is, of course, to be understood that there is no obligation whatever on Practitioners to do this and it is quite open for them either to lodge the documents in the Local Registrar's Office or to forward them to the Central Office by post if the find either of these courses more convenient.

Evidence of Valuation of Property.

As some practitioners seem to be under the impression that the Certificate of Valuation is required where evidence of valuation is necessary, the Registry officials desire to point out that the production of a Certificate of Valuation is not

necessary provided a Rates Demand Note is produced showing the valuation. It will be observed that the Memorandum merely requires evidence of the valuation of the property.

SOLICITORS' GOLFING SOCIETY.

THE Autumn Meeting of the Society was held at Milltown Club on Thursday, 5th October, when, in spite of bad weather, twenty-five members competed for the Incorporated Law Society's Challenge Cup and the Ryan Challenge Cup. The former was won by W. J. O'Reilly (this year's Captain of the Society) and the latter by J. P. Tyrrell. We were delighted to have with us at this outing the President of the Incorporated Law Society (Senator L. E. O'Dea), all the way from Galway. In honour of the occasion an informal supper was held after which

the prizes were presented by Senator O'Dea. The Society is very grateful to the President for his attendance and also for the beautiful salver which he presented with the Incorporated Law Society's Challenge Cup.

Plans for a large-scale outing to take place when the travel restrictions have been lifted are receiving the attention of the Committee. Owing to cost of printing it is impossible to circularize all solicitors irrespective of whether they are members of the Society or not. The subscription for membership of the Society is 10/- per annum, which includes entrance fee to all competitions, and if solicitors wishing to join would forward same to the Hon. Sec. (A. Marshall, 119, Stephen's Green, Dublin) in good time for next year their names will be placed on the Register and they will get notice of the various outings.

A. MARSHALL, *Hon. Sec.*

THE REGISTRY.

(1) Entries will be accepted from solicitors for the Registry under the following headings:—Section A.—Practices for sale, partnerships and assistantships vacant; Section B.—Practices, partnerships and assistantships sought; Section C.—Miscellaneous information required, books, office equipment, etc., wanted or for sale. (2) Each entry accepted will be made in the appropriate section of the register which is open for inspection at the Society's offices during business hours. Each entry accepted will also be published once in the Society's *Gazette*. If the advertiser wishes the entry and advertisement in the *Gazette* may be over a box number. (3) Charges for each entry in

the Register (including one publication in the Society's *Gazette*): members of the Society 3/- for 30 words or less and 1d. for each additional word over 30. Other solicitors double the rate for members of the Society. (4) Replies to entries in the Register and advertisements will not be forwarded by the Society unless postage is prepaid. (5) Replies to advertisements should be marked with the appropriate Box No. and addressed to the Society. (6) The use of the Registry by solicitors is subject to general conditions, copies of which may be obtained from the Secretary.

SECTION B.

SOLICITOR with growing practice desires partnership, preferably with solicitor with established Dublin practice. Box No. B.100.

SOLICITOR wishes to purchase a practice. Box No. B.101.

WANTED Assistantship with Dublin firm. John Grogan, Solicitor, 45, Upper Dominick Street, Dublin.

YOUNG Solicitor with considerable experience of City and Country Practice and possessing excellent references seeks post as Assistant Solicitor, or would be interested in a Partnership or Practice for Sale. Box. No. B.102.

SECTION C.

Notice of Change of Address.

Mr. Patrick F. O'Reilly, Solicitor, has changed his offices to 8 South Great George's Street, Dublin. Telephone Nos. 72847/8, unchanged.

ALL Communications connected with THE GAZETTE should be addressed to the Secretary of the Society, Solicitor's Buildings, Four Courts, Dublin. Telephone: 73092.

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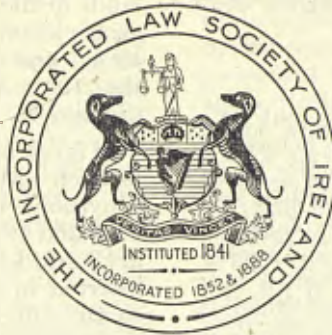
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Grams: "Eirenuia, Dublin."

M. W. O'REILLY, P.C., F.C.I.I., Managing Director

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THE GAZETTE

of the

INCORPORATED LAW SOCIETY OF IRELAND

President:

LOUIS E. O'DEA

Vice-Presidents:

ROBERT A. MACAULAY

ARTHUR COX

Secretary:

ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

MEETINGS OF THE COUNCIL.

OCTOBER 27th. The President in the chair. Present: R. A. Macaulay, Vice-President; A. Cox, Vice-President; P. R. Boyd, P. F. O'Reilly, W. L. Duggan, J. J. Smyth, H. St. J. Blake, H. P. Mayne, W. S. Hayes, C. G. Stapleton, J. R. Quirke, G. A. Overend, W. J. Norman, M. E. Knight, D. O'Connell, E. M. FitzGerald, John S. O'Connor, S. Ó hUadhaigh, J. B. Hamill, J. J. Bolger, Roger Greene, J. Travers Wolfe.

The following was among the matters dealt with:

Land Registration Fee Order, 1944.

THE Secretary read a letter received from the Department of Justice in which it was stated that it was considered impracticable to adopt the suggestion that the new Fee Order should be suspended in its operation pending the report of the Committee to be appointed to consider its effect, but that the Committee could, if it thought

fit, recommend an interim modification of any of the existing fees without disturbing the general form of the Order. The Department further stated, in reply to the Council's request that three of its members should be appointed on the Committee, that it was considered that representation by two members would be sufficient. It was ordered that the Secretary should write to the Department pointing out that the Council was strongly of the opinion that representation by less than three members would be inadequate and expressing the hope that the Minister would appoint the three members whose names had been already submitted.

NOVEMBER 17th. The President in the chair. Present: A Cox, Vice-President; P. R. Boyd, P. F. O'Reilly, J. B. Hamill, Roger Greene, S. Ó hUadhaigh, J. P. Carrigan, H. St. J. Blake, W. S. Hayes, D. O'Connell, W. J. Norman, F. J. W. Darley, H. P. Mayne, J. R. Quirke, E. M. FitzGerald, M. E. Knight, Peter O'Connor, C. G. Stapleton.

The following were among the matters dealt with :

Press Reference to Solicitors.

THE Secretary reported that, arising out of a Press report of an address delivered before the Insurance Institute of Ireland containing injurious references to the profession, a letter had been written to the lecturer asking for an explanation. The lecturer had written, withdrawing and apologising for the references which had been a very minor part of his address, and had published an apology in an agreed form in the newspaper in which the report of his lecture had appeared. Having considered the original report and the apology the Council, while regretting the publicity given to the former, decided to thank the lecturer for withdrawing it so promptly.

Petrol for Solicitors.

THE Secretary read a letter received from the Department of Supplies stating that having regard to the restricted supplies of petrol available for general distribution, the Minister regretted that it was impossible to extend the categories which are now permitted the use of petrol for urgent and essential travelling, *e.g.*, ministers of religion, medical doctors, etc., but that the claims of the solicitors' profession had been noted and would be borne in mind in the event of petrol supplies permitting an extension of private car facilities.

ORDERS FOR RECOVERY OF POSSESSION OF REGISTERED LAND.

Landlord and Tenant Act, 1931.

Landlord and Tenant (Amendment) Act, 1943.

THE following note has been received from the Registrar of Titles :—

I think it right to draw attention to certain matters in connection with Court Orders for recovery of possession in the case of registered land which is subject to a building lease within the meaning of Section 51 of the Landlord and Tenant Act, 1931 (No. 55 of 1931) as amended by the Landlord and Tenant (Amendment) Act, 1943 (No. 10 of 1943).

Section 51 of Landlord and Tenant Act, 1931, provides that where a building lease is determined by ejection for non-payment of rent, breach of covenant, etc., no immediate sub-lease, which is a proprietary lease within the meaning of the 1931 Act, of the lands or any part of the

lands in the building lease shall be terminated by such ejection. For the definitions of "building lease" and "proprietary lease" see Section 46 of the 1931 Act as amended by the 1943 Act (Section 2).

It is essential, therefore, where lands the subject of such ejection proceedings come within the provisions of the Landlord and Tenant Acts, 1931 and 1933, and there are immediate "proprietary" sub-lessees in possession, that a clause be inserted in the Order for recovery of possession to the effect that such Order is made without prejudice to the rights of the sub-lessees to retain possession of their respective premises under Section 51 of the Landlord and Tenant Act, 1931, and it is suggested that the Order should direct the amendment of the register by cancellation of the building lease and the entry on the Folio of the proprietary sub-leases as burdens.

When in the case of registered land such an Order for possession is presented in the Land Registry for registration, the omission of the clause preserving the rights of such sub-lessees or of a clause for amendment of the register would impose on the Registrar the duty of referring the case back to the Court pursuant to Section 16 (2) of the Registration of Title Act, 1891, to have the Order varied by inserting the requisite clauses.

In view of Section 51 above referred to, and particularly of the extension by the Amending Act, 1943, of the provisions of the Principal Act of 1931, to building leases for terms of not less than 20 years in non-urban areas, it is presumed that the Court will require to be satisfied as to the existence of such sub-leases before making the order for possession so that the clause reserving the rights of the sub-lessees and full particulars of the sub-leases, *i.e.*, date parties and premises the subject of the sub-leases may be included in the Order.

Perhaps you would kindly consider this matter with a view to taking such steps as you may consider appropriate to ensure that the orders made in these cases are such as can be acted upon by the Land Registry officials, and thus obviate the inconvenience and delay which would otherwise arise. I may mention that in a recent case before the High Court the Order made was in effect in accordance with these suggestions.

Dated 27th October, 1944.

J. O'BYRNE,

Registrar of Titles.

HISTORICAL DOCUMENTS.

THE Irish Manuscripts Commission was set up for the purpose, *inter alia*, of reporting on the location, extent and nature of historical documents relating to Ireland. The loss of so many of our national records in the past makes it the more necessary to save what is left. The present demand for waste paper endangers some material of this nature in private keeping. In 1929 and again in 1939 the Commission issued a circular to solicitors practising in this country to invite their help in locating old rentals, maps and other documents; pleadings in old law-suits; certified copies of old wills, probates, patents, etc., the originals of which are now lost. The Commission—already indebted to all who responded to the circulars, and to those who have facilitated the Commission's Examiner of Local and Family Archives in recent years—renews its request that Members of the Incorporated Law Society would continue to further historical research by notifying the existence of any additional historical material that may come to their notice.

SOLDIERS' AND SAILORS' WILLS.

A MEMBER of the Society has drawn attention to a case recently decided in England in which oral instructions for a will given by a soldier in England were held to constitute a soldier's will for the purposes of Section 11 of the Wills Act, 1837. By that section it was enacted that any soldier being in actual military service or any mariner or seaman being at sea, may dispose of his personal estate as he might have done before the passing of the Wills Act. The case referred to by our member was summarised in *The Times* newspaper of 14th November, 1944.

"Mr. Justice Bucknill, in giving judgment, said that the defendants alleged that the verbal will was valid on the ground that at the time when it was made the testator was on actual military service. The plaintiff denied that the testator made a valid verbal will, and that he was on actual military service. The testator was called to the Army in November, 1939, and was posted to a combatant mechanised unit. He served continuously as a soldier in England until he was killed by an enemy bomb at Coventry on April 9th, 1941.

On October 2, 1940, he had called on the family solicitor at Bognor, and said that he was about to be sent overseas and thought that he should make a will. He gave the solicitor instructions for a will, and called next day and repeated the instructions.

On October 8 the solicitor posted to the testator a copy of the will for his perusal and approval.

On October 15 the testator acknowledged the receipt of the copy of the will. The solicitor wrote to the testator on October 22 forwarding an engrossment of the will, and on January 27, 1941, again wrote, asking for particulars of execution of the will. The testator replied: "Regarding the will of myself, I am waiting to return to my regiment to get my own officers to sign same." After his death no trace was found either of the will or the draft will.

His Lordship said that he was satisfied that the testator had made up his mind quite definitely, as to the disposal of his property when he gave the verbal instructions on October 2, 1940, and that he then, "intended deliberately to give expression to his wishes as to what should be done with his property in the event of his death"—to quote the words of Mr. Justice Horridge in *In re Stable—Dalrymple v. Campbell* (85 *The Times* L.R. 66, at p. 67; [1919] P. 7. at p. 9).

Whether the testator was on actual military service so as to bring the case within section 11 of the Wills Act, 1837, which referred to the privileged will of a soldier, Mr. Justice Bucknill said that at the material date the testator was a whole-time soldier liable to be called on at any moment to take part in operations against the enemy. In October, 1940, there was an immediate risk of such a call being made on him, and a serious risk of fighting taking place in England. Enemy forces were in occupation of the coast of France immediately across the English Channel, and they were attacking England from the air and preparing to invade this country. He (his Lordship) must assume, in the absence of any evidence to the contrary, that as a soldier on the strength of the regiment the testator was in the same position *qua* actual military service as the regiment itself was.

Having reviewed the authorities on this subject during the present war, his Lordship said that, in his view, a man when serving continuously as a soldier in the Army in time of war at a place where an attack by the enemy might reasonably be expected was on "actual military service." The testator came within that category, and therefore his verbal will made on October 2, 1940, would be admitted to probate."

The Courts have also admitted to Probate wills of minors engaged as soldiers on actual military service, or as mariners at sea. In the standard text books it is stated that such wills of personalty by soldiers or mariners may be validly made at any age after the age of fourteen. The latest reported case on this point is *Estate of W. A. Anderson, deceased.* (78 I.L.T.R. 172).

EXAMINATION RESULTS.

Preliminary Examination.

At the Preliminary Examination for intending apprentices to Solicitors, held on the 9th and 10th October, the following passed the examination, and their names are arranged in order of merit :

1. George J. P. Colley.
2. Patrick J. Skehan.
3. Frances M. G. Callan.
4. Stephen J. McDonagh.

The remaining candidates are postponed.

The Council has awarded a Silver Medal to George J. P. Colley, and Special Certificates to Patrick J. Skehan and Frances M. G. Callan.

At examinations held on the 6th and 7th October under the Legal Practitioners' (Qualification) Act, 1929, the following passed the examinations.

First Examination in Irish.

- Donal E. Browne.
- George J. P. Colley.
- Patrick J. F. Comyn.
- Barry G. M. Donnelly.
- Edward A. Fagan.
- Mary P. G. Hamill.
- Mary C. Hughes.
- John E. Keenan.
- Kenneth C. P. Kennedy.
- Fionntan M. MacGuill.
- Mary B. Maye.
- Augustine A. Mooney.
- Thomas K. O'Connor.
- Edward O'Driscoll.
- Seamus B. O'Floinn.
- Hugh B. O'Reilly.
- John J. O'Reilly.
- Lionel A. Stewart.

Second Examination in Irish.

- Cecil Braund.
- Joan Conway.
- Michael N. Gill.
- Patrick J. B. Keane.
- Ignatius K. Lynch.

William S. A. Warren:
Patrick Woulfe.

The remaining candidates are postponed.

Intermediate Examination.

At the Intermediate Examination for apprentices to Solicitors, held on the 4th October, the following passed the examination.

Passed with Merit :

1. James G. Lyons.
2. Francis J. C. Martin.
3. Pauline O'Donovan.
4. Arthur V. A. Osborne.

Passed :

- John F. Binchy.
- John J. Daly.
- Michael T. B. Davis.
- Henry J. Flattery.
- John Gibbons.
- Patrick Golden.
- Thomas J. Kelly.
- Robert S. Kieran.
- William T. Mahony.
- Matthew F. J. Moore.
- Bathnaid Ni Uadhaigh.
- Josephine M. E. O'Keeffe.
- Denis M. Ronan.
- Henry C. Sexton.
- Patrick Shannon.

The remaining candidates are postponed.

Final Examination.

At the Final Examination for apprentices to Solicitors, held on the 2nd and 3rd October, the following passed the examination, and their names are arranged in order of merit :—

1. Hyman Tarlo, B.A.T.C.D.
2. Maurice M. Power.
3. Nuala Early, B.A.N.U.I.
4. James Binchy, B.A.N.U.I.
5. Thomas F. O'Reilly, B.A.N.U.I.
6. Donal H. O'Byrne, B.A.N.U.I.
7. Patrick T. Liston.
8. Donal T. Ryan.
9. William B. Malone.
10. Thomas F. Millett.
11. Arthur E. MacMahon.

- | | |
|--|----------|
| 12. Gerard Horan Tadg R. Ó Braonain Hubert C. Wine | } equal. |
| 15. Edward Toner. | |
| 16. Patrick C. Jones. | |
| 17. Vincent T. H. Delany. | |
| 18. Thomas P. Byrne. | |
| 19. Daniel Ahern. | |
| 20. John D. Quinn. | |

The remaining candidates are postponed.

The Council has awarded a Silver Medal to Hyman Tarlo, B.A.T.C.D.,

Scholarships, 1944.

THE Findlater Scholarship was awarded to John M. O'Farrell, who served his apprenticeship with Mr. Joseph Barrett, of 15 Eustace Street, Dublin.

The Overend Final Examination Scholarship (Real Property and Conveyancing) was also awarded to John M. O'Farrell.

The Overend Preliminary Examination Scholarship was awarded to Patrick E. Thornton, subject to his compliance with the Regulations governing the Scholarship.

OBITUARY.

MR. NICHOLAS C. SHEE, Solicitor, died on 31st October, 1944, at the Central Hotel, Clonmel.

Mr. Shee served his apprenticeship to Mr. James J. O'Shee of Carrick-on-Suir, was admitted in Michaelmas Sittings, 1902, and practised at Clonmel.

MR. ISAAC J. T. COLQUHOUN, Solicitor, died at his residence, Cloneen, Buncrana, Co. Donegal, on 3rd November, 1944.

Mr. Colquhoun served his apprenticeship with the late Mr. Robert A. Wilson, of Londonderry, was admitted in Hilary Sittings, 1899, and practised at Buncrana and Londonderry.

MR. HUGH C. KELLY, Solicitor, died at his residence, Hecklands, Newtownards Road, Belfast, on 18th November, 1944.

Mr. Kelly was apprenticed to his father, the late Mr. Robert Kelly of Belfast, was admitted in Hilary Sittings, 1873, and practised at Belfast. He was under-Sheriff of County Down for fifty-four years.

A colleague writes:—

Hugh C. Kelly died on the 18th November, 1944, aged 95.

Mr. Kelly was admitted in 1873, and had thus completed seventy-one years as a solicitor. He practised in Belfast. He was appointed Sub-Sheriff of County Down almost immediately on his admission as a solicitor, and held that office for fifty-four years.

Mr. Kelly's main interest in life lay in sport, representing Ireland in Rugby, Cricket, Lawn Tennis and Lacrosse. He also found time for athletics, hunting, swimming, rowing, hurling, hockey, association football, polo, badminton, cycling and billiards. He was one of the founders of the Irish Golfing Union and officiated as starter at the open championship last held at Dollymount, where he held quite a court on the first tee.

He was also keenly interested in yachting, representing the Royal Ulster Yacht Club in the race for the America Cup when Sir Thomas Lipton challenged in 1899, 1901 and 1903. He was, indeed, a great all-rounder.

He will be remembered for his charm of manner and old-world courtesy which he displayed to all, irrespective of creed, class or politics.

Electioneers in County Down will have kindly recollections of him.

MR. STANDISH E. MASON, Solicitor, died at his residence, Prospect, Mullingar, on 25th November, 1944.

Mr. Mason served his apprenticeship with the late Mr. Edwin E. Mason of Dublin, was admitted in Michaelmas Sittings, 1898, and practised under the style of John Mason & Son at 32 Molesworth Street, Dublin, up to the year 1935, and afterwards at Mullingar.

MR. PATRICK H. ROSNEY, Solicitor, died at his residence, Riverview, Cahirciveen, on 29th November, 1944.

Mr. Rosney served his apprenticeship with the late Mr. Joseph Mangan of Tralee, was admitted in Hilary Sittings, 1913, and practised at Cahirciveen.

THE REGISTRY.

(1) Entries will be accepted from solicitors for the Registry under the following headings:—Section A.—Practices for sale, partnerships and assistantships vacant; Section B.—Practices, partnerships and assistantships sought; Section C.—Miscellaneous information required, books, office equipment, etc., wanted or for sale. (2) Each entry accepted will be made in the appropriate section of the register which is open for inspection at the Society's offices during business hours. Each entry accepted will also be published once in the Society's *Gazette*. If the advertiser wishes the entry and advertisement in the *Gazette* may be over a box number. (3) Charges for each entry in

the Register (including one publication in the Society's *Gazette*): members of the Society 3/- for 30 words or less and 1d. for each additional word over 30. Other solicitors double the rate for members of the Society. (4) Replies to entries in the Register and advertisements will not be forwarded by the Society unless postage is prepaid. (5) Replies to advertisements should be marked with the appropriate Box No. and addressed to the Society. (6) The use of the Registry by solicitors is subject to general conditions, copies of which may be obtained from the Secretary.

SECTION B.

SOLICITOR, qualified in Easter Sittings, 1944, with good knowledge of a country solicitor's office work, and District and Circuit Court practice and procedure, desires position as an assistant in solicitor's office. Good reference from well-established solicitor available. Thomas Bowes, Loughrea, Co. Galway.

SECTION C.

FOR PROMPT SALE BY RETIRING SOLICITOR

IRISH LAW TIMES REPORTS, 1899, 1900, 1901, 1902.
IRISH LAW TIMES, 1901, 1902, 1899, 1900.
ENCYCLOPAEDIA OF LAWS OF ENGLAND. 2nd Ed., July, 1906, by Renton & Robertson (Sweet & Maxwell) 16 Vols. and Supplements to end of 1913.
DE MOLYN'S LAND OWNERS GUIDE. 8th Ed. (Quill & Hamilton).
CARLTON COUNTY COURT PRACTICE 2nd Ed. (Dixon), 1891.
O'CONNOR'S JUSTICES OF THE PEACE, 1911.

KISBY'S BANKRUPTCY

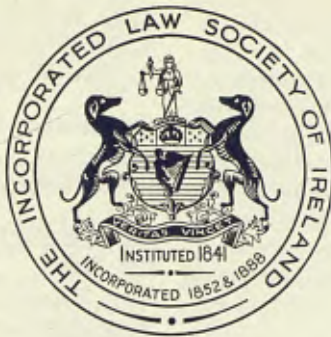
(1) 3rd Ed., 1884
(2) 4th Ed., 1900

BUTTERWORTH'S IRISH FORMS AND PRECEDENTS, 1910.
DUTIES OF CLERK OF CROWN, 1867. (P. J. Byrne).
HUMPHREY'S JUSTICES OF THE PEACE. 9th Ed., 1897.
ANSON'S LAW OF CONTRACT. 7th Ed., 1893.

Box No. C.100.

ALL Communications connected with THE GAZETTE should be addressed to the Secretary of the Society Solicitor's Buildings, Four Courts, Dublin. Telephone: 73092.

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No. 7



January
1945

THE GAZETTE

of the

INCORPORATED LAW SOCIETY OF IRELAND

President:

PATRICK F. O'REILLY

Vice-Presidents:

WILLIAM S. HUGGARD
HUGH P. O'DONNELL

Secretary:

ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

MEMBERS ARE REMINDED THAT ANNUAL CERTIFICATES SHOULD BE TAKEN OUT AND THE DUTY PAID THEREON BEFORE THE 6th DAY OF FEBRUARY, 1945.

THE PRESIDENT.

THE Council, on December 8th, elected Mr. Patrick F. O'Reilly of Dublin to be President of the Society for the coming twelve months. The newly-elected President was admitted a solicitor in Easter Sittings, 1924. He was elected a member of the Council in November, 1933, and was Vice-President of the Society for the year 1937-1938. Nuair a bhí an t-Uachtarán, Seanadóir O Deaghaidh, ag tabhairt an tslabhra oifigiúil do'n Uachtarán nuadh dubhairt sé:—

“Tugann-muidne, do chómh-dhaltai ar an gComhairle seo, onóir-mór agus urraim dhuit ar do thógaint mar Uachtarán ar Cumann Dlígh-eadórai na h-Éireann.

Is cúis áthais domsa tú a chur sa geathaoir seo agus an tslabhra a bhronnadh ort.

Go n-éirigh an t-ádh leat agus tá súil agam go mbeidh do thréimhse chómh aoibhinn is a bhí sé agam-sa agus tá súil agam go bhfuighidh tú an coghnámh o'n gChomhairle is a fuair mise.

THE VICE-PRESIDENTS.

THE Council has elected Mr. William S. Huggard, of Ballina, and Mr. Hugh P. O'Donnell, of Carlow, to be the Vice-Presidents of the Society for the coming twelve months.

THE 1945 CALENDAR.

MEMBERS who wish to be certain of obtaining the 1945 Calendar should lodge an order form with the Society before January 31st.

MEETINGS OF THE COUNCIL.

NOVEMBER 27th. The President in the chair. Present: Mr. Arthur Cox, Vice-President; Messrs. G. A. Overend, Seán Ó hUadhaigh, William J. Norman, J. R. Quirke, J. J. Smyth, W. S. Hayes, P. F. O'Reilly, P. R. Boyd, J. B. Hamill, Roger Greene, C. G. Stapleton, Daniel O'Connell, F. J. W. Darley, H. P. Mayne, E. M. FitzGerald.

Land Registration Fee Order, 1944.

THE Secretary reported that he had received a letter from the Department of Justice stating that the Minister for Justice was not prepared to appoint more than two members of the Council on the proposed Land Registration Fees Committee. It was resolved that Messrs. John B. Hamill and Patrick F. O'Reilly be appointed as the representatives of the Council on that Committee.

A number of matters were considered and referred to Committees for reports.

DECEMBER 8th. Senator O'Dea, and subsequently Mr. Patrick F. O'Reilly in the chair. Present: Messrs. A. Cox, W. S. Huggard, P. R. Boyd, John B. Hamill, William L. Duggan, Seán Ó hUadhaigh, W. S. Hayes, G. A. Overend, C. G. Stapleton, H. P. Mayne, F. J. W. Darley, Daniel O'Connell, William J. Norman, J. R. Quirke, Roger Greene, J. P. Carrigan, H. St. J. Blake, E. M. FitzGerald, John S. O'Connor, Hugh O'Donnell.

A number of applications from apprentices were dealt with.

Consultation Rooms.

It was decided that the charge for each consultation room should be as follows, with effect from 1st January, 1945:—

Use of room for half-hour or less, 5/-
Do. do. over half an hour, 10/-, inclusive.

Salaries Paid to Solicitors in the Employment of the State.

THE Secretary reported that he had written to the Department of Finance asking that a deputation from the Council should be received by the Minister or by one of his Secretaries to put forward the view of the Council that the salaries offered for positions as assistant solicitors in the service of the State advertised for open competition were inadequate for persons possessing professional qualifications, and that a letter had been received from the Department agreeing to receive the proposed deputation. Senator O'Dea and Messrs. Cox, and Norman, together with the President, were appointed to form the deputation.

DECEMBER 15th. The President in the chair. Present: Messrs. W. S. Huggard and Hugh O'Donnell, Vice-Presidents; Messrs. W. S. Hayes, Roger Greene, H. St. J. Blake, C. G. Stapleton, P. R. Boyd, J. R. Quirke, Daniel O'Connell,

J. J. Smyth, William J. Norman, J. Gillespie, J. B. Hamill, Seán Ó hUadhaigh, H. P. Mayne, E. M. FitzGerald, J. S. O'Connor, G. A. Overend, A. Cox, M. G. R. Lardner.

Committees for Year 1944-45.

THE draft list of the Committees of the Council was submitted and adopted.

Salaries Paid to Solicitors in the Employment of the State.

THE President reported that he had attended, with Senator O'Dea and Messrs Cox, Norman, and the Secretary at Government Buildings, and that the deputation had been received by the Minister for Finance. The view of the Council, that the salaries at present offered for the positions of assistant solicitors, awarded by open competition, were altogether inadequate had been fully expressed by the deputation. The President stated that the Minister had given the deputation a very sympathetic hearing and, while unable to commit himself to any promise that the position would be improved during the present emergency, he had indicated that the position would be examined by the officials of his Department.

Land Registration Fee Order, 1944.

THE President reported that Mr. Hamill and himself had received from the Minister for Justice a copy of the terms of reference of the Land Registration Fees Committee and that the first meeting of the Committee would be held on Tuesday, December 19th.

Applications Under Section 47.

TWO applications by solicitors for leave to take out their practising certificates for the current year were considered. One was granted on payment of two years' arrears of licence duty and the other was granted without conditions.

THE President reported that, with the Secretary, he had paid an official call on the Chief Justice to offer him his compliments and to convey to him the good wishes of the Council and the Society.

A number of matters were considered and referred to Committees for reports.

THE INCORPORATED LAW SOCIETY OF NORTHERN IRELAND.

MR. R. A. Corscadden, Solicitor, of Belfast, has been elected President of the above Society for the year 1944/45. The following are the extra-

ordinary members on the Council of the Incorporated Law Society of Ireland for the year 1944/45: Messrs. R. A. Corscadden, Alexander S. Merrick, Charles MacLaughlin, George Murnaghan and James C. Taylor.

THE SOUTHERN LAW ASSOCIATION.

Mr. Edward Emerson, of Cork, has been elected President of the Association for the year 1944/45. The following are the extraordinary members on the Council of the Incorporated Law Society of Ireland for the year 1944/45: Messrs Edward Emerson, John J. Horgan, T. A. Buckley, James W. O'Donovan, and John K. Coakley.

CIRCUIT COURT: SUPPLEMENTAL RULES.

THE attention of solicitors is directed to the fact that the Circuit Court (Appeals from District Court) Rules, 1943, made in December, 1943, are now printed and for sale. These Rules, which are supplemental to the Rules of the Circuit Court, 1931, deal with points arising in appeals to the Circuit Court in criminal cases, not provided for in the 1931 Rules.

DISTRICT COURT: FEES ORDER.

A new District Court Fees Order entitled District Court (Fees) Order, 1944, came into operation on the 14th November, 1944. This Order provides that the fees in the District Court, as prescribed by the District Court (Fees) Order, 1937, shall not be payable on an appeal to the Circuit Court under Section 18 of the Courts of Justice Act, 1928, or by State Solicitors and other specified persons, in prosecutions or other proceedings at the suit of the Attorney General, in prosecutions by a member of the Garda Siochana or a Minister of State or in proceedings instituted by or on the direction of the Revenue Commissioners.

The foregoing Rules and Order will shortly be on sale at the Government Publications Office, 3/4 College Street, Dublin, or through any Bookseller.

PETROL FOR SOLICITORS.

REPRESENTATIONS are again being made to the Department of Supplies with a view to obtaining petrol for solicitors. It is hoped that, immediately the supply position will allow, these representations will be given effect.

NEWSPAPER STATEMENTS AS TO SOLICITORS' BILL.

IN its issue of the 2nd January, 1945, the *Irish Press* contained a number of statements and comments as to the Solicitors' Bill, most of which were entirely incorrect and made without any foundation, and some of which were a grave reflection on the profession. They were regarded as serious enough to require the immediate attention of the Society. The President and Secretary interviewed the Editor of the newspaper on the afternoon of the 2nd January and strongly protested to him against the publication of such statements and comments and requested their withdrawal and an expression of regret for their publication. They informed the Editor that they regarded the publication as a very serious matter and that a letter of protest would be sent to him with a request that it should be published in the *Irish Press* on the 3rd January. This letter was written and sent to the Editor in time for publication on the 3rd January. It did not appear on that day. However, on the following day the newspaper contained a fair summary of the letter with a note from the Editor expressing regret for any wrong impression that had been created by the publication.

The matter will be fully considered at the next meeting of the Council.

LAW TERMS, 1945.

Solicitors are reminded that in accordance with the rules of the High Court and Supreme Court, dated 17th November, 1942, the dates of the beginning and ending of the Sittings for the year 1945 will be as follows:—

Hilary Sittings, January 11th to March 31st.

Easter Sittings, April 16th to May 18th.

Trinity Sittings, June 1st to July 31st.

Michaelmas Sittings, October 10th to December 21st.

The foregoing rules cancel Order 63, Rules 1 to 6 of the High Court and Supreme Court of 1926.

HALF YEARLY GENERAL MEETING.

THE Half-yearly General Meeting of the Society was held in the Hall of the Society, Solicitors' Buildings, Four Courts, on Monday, 27th November, 1944. The President, Senator Louis E. O'Dea, was in the chair. The following members of the Society were also present: Mr. Arthur Cox, Vice-President; Messrs. P. R. Boyd, F. J. W.

Darley, E. M. FitzGerald, Roger Greene, John B. Hamill, W. S. Hayes, H. P. Mayne, W. J. Norman, D. O'Connell, Seán Ó hUadhaigh, P. F. O'Reilly, G. Acheson Overend, J. R. Quirke, J. J. Smyth, C. G. Stapleton, T. H. R. Craig, V. E. Kirwan, H. MacNeice, W. B. Fawsitt, Brendan Walsh, D. M. F. Walsh, P. C. Moore, C. O'Farrell, L. Carr Lett, M. J. K. Dore, M. J. Bowers, Oliver G. Fry, A. G. Joyce, H. E. W. Flanagan, Geo. Crowley, D. Moran, L. Webb, A. E. Walker, V. Walker, R. P. Humphries, M. A. Corrigan, E. J. O'Brien, H. W. McCormick, J. W. Gentleman, T. J. Kenny, P. J. Walsh, J. B. McCann, J. Plunkett Dillon, James Fagan, James Fagan, Junr., Lucy Fagan, M. A. Smyth, Gerald Byrne, Chas. Doyle, R. D. English, Raymond Downey (North Cork Bar Association), Matthew Purcell, W. J. Keery, D. J. Farrell, Arthur Murphy, A. W. Stirling, T. G. Quirke, R. M. Meares, C. G. Stapleton, R. J. Walker, Denis Greene, Wm. Fry, Robt. Hayes, J. D. Hollinger, P. C. Furlong, A. H. S. Orpen, Raymond Kenny, A. G. Ardagh, H. A. Williams, D. R. Pigot, Patk. Glynn, R. J. Tierney, R. W. Johnston, W. H. Phayre, R. C. Bathurst, H. R. Maunsell, B. R. W. Doran, Saml. Hayes, J. P. O'Connell, L. W. Webb, H. D. Hurley, G. G. Overend, C. T. Blair-White, J. Maher, J. F. Donovan, D. V. Miley, D. D. MacDonald, A. E. Prentice, D. FitzGerald, E. Proud, P. Woods (Louth Bar Association), J. P. J. Smyth, Ivan Howe, Eugene Collins, R. E. O'Brien, Miss S. Webb, G. F. McGowan, L. Jameson, John J. Shiel, J. B. Murphy (Monaghan Bar Association), E. N. Edwards, J. Gillespie, F. J. Dunne, Stephen Lynch, Denzil O'Donnell, J. M. Dudley, J. H. Bergin, C. H. Hardman, Francis Clinch, M. J. Fitzmaurice, W. J. Walsh, R. L. McDonnell, C. Gavan Duffy, H. D. Draper, J. Malvern White, Joseph Barrett (Dublin Bar Association), Basil Thompson, Francis Gibney, Thomas J. Greene, A. B. Watson, C. Gore Grimes, C. B. W. Boyle, Gerald Robinson, Miss M. O'Neill, J. R. Cresswell, L. J. O'Neill, G. H. Parkes, H. Sheil, G. Sweetman, R. W. Oulton, J. G. Oulton, G. M. Meares, W. J. Reilly, M. J. Dunne, Kevin Burke, R. N. Matheson, D. B. Gilmore, P. J. Masterson, T. A. W. Purefroy.

By permission of the meeting the notice convening the meeting was taken as read. The minutes of the half-yearly General Meeting, held on May 16th, were read, confirmed and signed by the Chairman.

The audited accounts of the Society for the year ending 30th April, 1944, were adopted and, with the consent of the meeting were signed by

the Chairman. Messrs. Kevans & Son, Auditors and Accountants, were re-appointed Auditors for the year to end 30th April, 1945.

The Secretary read the report of the Scrutineers of the Ballot for the Council for the year to end 26th November, 1945, which stated that the following had been returned unopposed as Provincial Delegates: Ulster, John Gillespie; Munster, A. J. Blood-Smyth; Leinster, William L. Duggan; Connaught, Christopher E. Callan, and that the following had been elected as the thirty-one ordinary members of the Council, having received the number of votes placed after their respective names:—Arthur Cox 405, Louis E. O'Dea 402, William S. Hayes 355, J. Travers Wolfe 355, Patrick R. Boyd 348, Henry St. J. Blake 348, William J. Norman 345, Henry P. Mayne 341, Patrick F. O'Reilly 337, Seán Ó hUadhaigh 333, G. A. Overend 332, John B. Hamill 331, John S. O'Connor 325, Edward M. FitzGerald 316, James J. Lynch 314, Daniel O'Connell 309, John P. Carrigan 307, Peter O'Connor 303, Michael E. Knight 298, Robert A. Macaulay 280, John J. Dunne 275, Cecil G. Stapleton 270, John J. Bolger 268, John J. Smyth 267, Roger Greene 260, James R. Quirke 258, F. J. W. Darley 258, William S. Huggard 255, Hugh O'Donnell 246, John J. Dundon 238, Matthew G. R. Lardner 224, and the following would form a supplemental list in case of vacancies: Joseph Barrett 222, P. C. Moore 214, David R. Pigot 209.

The President, in moving the adoption of the Annual Report said:—

You have all been supplied with copies of the Report of the Council and that, together with the monthly *Gazette*, gives a fair synopsis of the work carried out by the Council and the Committees thereof during the year that has passed and will obviate the necessity of my giving you details of the work.

The history of this Society has great interest for members of the profession, and is given very ably in a work published by Mr. Charles Gamble in the year 1921. In that excellent work he shows that in the year 1607 the Society of Kings' Inns was established, the membership of which included Solicitors and Attorneys as well as practising Barristers. In the year 1841 a Society was formed to watch over and protect the position and interests of the Solicitors' Profession in Ireland, and for assuring the proper control of their own domestic affairs and property and it was in that year the old Solicitors' Buildings were erected. We celebrated the Centenary of the establishment of that Society three years ago under the Presi-

gency of Mr. Jasper Wolfe. That Society was incorporated in the year 1852, and fourteen years afterwards Michael Morris, a Galway man, piloted a Bill through the English Parliament which made the Society full masters in their own house. That Act continued in force until repealed in the year 1898 when a new Act was passed which gave the Society the custody of the Roll of members and the record of apprenticeships with full control over the education, legal training and qualification of solicitors.

Since that date the Society has had to prescribe curricula for the various examinations, appoint and pay Professors and Examiners and arrange for the admission of solicitors on the Roll of the Society. It also gave power to the Statutory Committee to consider complaints made by any members of the public against any member of the profession and, where the hearing justified the complaint, to report the findings of the Committee to the Chief Justice.

Since the year 1866, and particularly since the year 1898, the Society of Kings Inns have no responsibility whatever, and took no hand, act or part in the education, training or qualification of solicitors' apprentices and yet, since the Stamp Act of 1791, they have received £14 out of the Stamp Duty payable on the Indenture of every apprentice. It was estimated that from the year 1866 up to the year 1889 that the Benchers of the Kings Inns had received under that heading alone, £22,876, for which the Society had received no advantage and the Benchers have given nothing in return. Since 1889 they must have received a further sum of £50,000. I have gone back on that history in the hope that the new Solicitors' Bill or some other legislation may now be carried through which may remedy this great injustice to our profession. It may be particularly opportune to raise the matter since we have recently discovered that during the past three or four years we have been spending more than our income. The figures show a sum of over £400 as excess of expenditure over income, and even after deducting the sum set aside for depreciation, the accounts show a loss of well over £200 and that the Council is in danger of wasting some of its valuable assets.

The Solicitors' Bill, as printed for the fourth time, is still under consideration by the Executive Council. At the Half-Yearly Meeting I told you of some difficulty that was presenting itself to some members of the Government and of the danger of carrying out that line of thought and I don't wish to repeat what I have said before. The views I have expressed are as clear and definite as they

were six months ago. There has been no delay on the part of the Council; all reports and answers to queries have been made out promptly and the Council will give their unremitting attention to the matter until the Bill shall become law, which I hope will be the case in the very near future.

We have been agitated since our last Half-Yearly Meeting by an order made by the Minister for Finance, called the Land Registration Fee Order, of 1944. Our report for the year shows the increases in the fees paid to the Land Registry on transfers of Registered Land. The order was made by the Minister without any notice to our Society and without any consultation with any of our members. Of course, the Minister was not legally obliged to consult with us, but if we had been consulted I believe that we would have shown him the absurdity of placing such heavy burdens on the farmers of this country and I believe that our advice would have been much more valuable than that of the clever mathematician who framed the figures of that order. We have given in our Report the fees payable under that Order and those of the Order of 1937 and they show increases of from 76 per cent. to 1,130 per cent.

The Government have now decided to set up a Committee under the chairmanship of Master O'Hanlon to consider the revocation of that order. Our Council pressed the Department of Justice to suspend that order pending the report of that Committee. The Department considered the suggestion impracticable but stated that the Committee could recommend a *interim* modification of the existing fees. We pressed for the right of our Council to nominate three members on that Committee. The Department have agreed to two members. We shall consider that question at our meeting to-day and our members may rest assured that we will advocate the repeal, if possible, of the order.

We have been asked to call a meeting of the solicitors of Ireland to be held in public, to make a protest against the onerous burdens imposed by the order. We have delayed the calling of such a meeting until the outcome of the report of the Committee and its adoption by the Government, but the members can rest assured that if the final result the wishes of the profession are not carried out that such a meeting will be summoned and our grievances fully ventilated.

I do not think that anything remains for me to add, and I now move the adoption of the Annual Report.

Mr. Roger Greene seconded the adoption of the report.

The following members addressed the Meeting on the question of the Land Registration Fee Order, 1944, arising on the Report: Messrs. T. H. R. Craig, Desmond Moran, J. B. Murphy, Clones (representing the Co. Monaghan Bar Association), Seán Ó hUadhaigh, R. Downey (representing the North Cork Bar Association) and Mr. Peter Woods (representing the Co. Louth Bar Association).

Mr. Cox, Vice-President, then took the chair and Mr. A. H. S. Orpen proposed and Mr. Seán Ó hUadhaigh seconded a motion that the best thanks of the Society be given to the President for his great services during the year and for his presidential address. The motion was carried with acclamation. The President thanked the Meeting and the proceedings terminated.

PORTRAIT OF MR. WILLIAM S. HAYES.

A very pleasant function took place at the Half-yearly General Meeting of the Society, on November 27th, when the President unveiled a portrait in oils by Mr. Leo Whelan, R.H.A., of Mr. William S. Hayes. The cost of the portrait was subscribed by members of the Profession and the ceremony was largely attended. The occasion of the ceremony was to commemorate the sixtieth anniversary of Mr. Hayes as a solicitor and the period of more than fifty years during which he has served continuously as a member of the Council. Mr. Hayes was President of the Society in the year 1906-1907 and during his lengthy period of service on the Council has been one of its most active and untiring members. The portrait, which was unveiled by the President, has been hung permanently in the Council Chamber of the Society.

The President, before unveiling the portrait, said: "I have to perform a very pleasant duty. When last addressing apprentices who had passed their Final Examination, I gave them some advice regarding their future life. It is not necessary for me to give such advice to-day, because of the old saying that 'example is greater than precept,' and I now have the pleasure of unveiling the portrait of Mr. Hayes by the great painter, Mr. Whelan, which will be hung in the Council Chamber from this day forth. It is the portrait of a man who became a member of the Profession in the year 1884. He was elected a member of the Council in the year 1894 and in every year of the fifty years that had since elapsed he was re-elected without interruption, and at each election the members of the Profession throughout Ireland

have shown their great regard and affection for him by electing him either at the top of the poll or, at any rate, high up in the poll. This record is unique in the history of the Society and probably unknown in the history of any other Society and may never recur. The members of our Profession decided that this Golden Jubilee of my friend, Mr. Hayes, should not be allowed to pass unnoticed, and that it should be recorded for future generations of solicitors by the presence of the portrait in the Council Chamber. The members of the Profession have taken up the project warmly and generously. Mr. Hayes was President of the Society in the year 1906-1907. It was in that year that the *Gazette* was first published and the members all know what an advantage the *Gazette* is to the Profession. Mr. Hayes has been a most regular member at meetings; his advice on every important subject was sought and followed. He is the ideal member. We are delighted to see him here to-day, looking so hale and hearty. We hope that for many years to come he will be spared to continue the good work as a member of the Council. May the present members of our Profession and those who come after us and look upon this portrait be inspired to follow the example of a great solicitor and citizen. I have now great pleasure in unveiling this portrait."

Mr. Hayes, in replying, said:—

"I have to thank all those who have kindly presented this portrait associated with the name of the great artist, Mr. Leo Whelan. I have to thank first, our past President who, I think, originated the idea, and the President, the Vice-Presidents and the Committee who kindly arranged for the painting of the portrait. I am sorry that at the moment it is the only portrait in the hall. There were many portraits in our old hall of old and respected members of our Profession. We should all endeavour to follow in their footsteps.

My father and myself, taken together, cover a period of 104 years as practising solicitors,—he, having been admitted a solicitor in the year 1840. I have had the pleasure of transacting business with the great-grandfathers of some members here to-day. For instance, with Mr. David FitzGerald's great-grandfather, Mr. Tom FitzGerald, whom I can well remember as a dear old gentleman, one of the founders of the firm of D. & T. FitzGerald. His grandson, Ned, is now a valued member of our Council. The FitzGeralds are only one of several firms established for over 100 years. The year 1840 seems to have been a remarkable year for the foundation of firms: I

could mention a number of these old firms with fine traditions. The Hardmans have continued for four generations and the Hamertons. Mr. William Fry founded the firm of William Fry & Son and he was followed by his son, Sir William Fry, then came W. Haughton Fry, and now his son, here to-day. Archibald Robinson & Son, another firm of four generations, now represented by Archie Robinson, great-grandson of the founder. These are only a few of the long-established firms.

As the sands of life run down, passing through the hour glass, I shall continue to remember your great kindness, and I only trust that there may be many other portraits around our Hall to keep company with mine, for I feel that I am not the only one entitled to the great honour which you have paid to me. I thank you, Mr. Hamill, for originating the idea. I thank the President and Council for arranging for the painting of the portrait, and my brothers and sisters of my profession, who have so kindly joined in the presentation. I shall remember your kindness until the closing days of my life. Many thanks to one and all.

I would also like to thank Mr. Leo Whelan for the time, attention and care which he gave to the painting of my portrait. It was a great pleasure to be associated with him and most restful to be in his studio with no telephone rings or other interruptions."

NEW MEMBERS.

- Donal R. Cullen, 25 Clare Street, Dublin.
 Brendan M. Glynn, Ballinásloe.
 Donald J. Hughes, Edenderry.
 Eunan E. H. McCarron, 18 Hume Street, Dublin.
 Bryan McMahan, Ennis.
 Henry Murray, Carrick-on-Shannon.
 Francis J. O'Flynn, Chief State Solicitor's Office, Dublin Castle.
 Edmund O. Shiel, 18 Bachelor's Walk, Dublin.
 Joseph P. Tyrrell, 9 Main Street, Bray.

FEBRUARY EXAMINATIONS.

First and Second Examinations in Irish will be held on 2nd and 3rd days of February, 1945. Notice of intention to attend either examination should be lodged in the Secretary's Office before the 12th January, 1945.

LECTURES, HILARY SITTINGS, 1945.

SENIOR Lectures will begin on January 9th, 1945. Junior Lectures will begin on January 10th, 1945.

STATUTES OF THE OIREACHTAS FOR THE YEAR, 1944.

Signed by the President

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|---|----------------|
| 1. Housing (Amendment) .. | 23rd February. |
| 2. Children's Allowances .. | 23rd February. |
| 3. Agriculture (Amendment) .. | 23rd February. |
| 4. Defence Forces (Temporary Provisions) | 1st March. |
| 5. Military Service Pensions (Amendment) .. | 15th March. |
| 6. Fisheries (Amendment) .. | 16th March. |
| 7. Seeds and Fertilisers Supply .. | 16th March. |
| 8. Constitution (Verification of Petition) | 20th March. |
| 9. Vocational Education (Amendment) | 20th March. |
| 10. Midwives | 29th March. |
| 11. Central Fund | 29th March. |
| 12. Conditions of Employment .. | 26th April. |
| 13. Local Authorities (Education Scholarships) .. | 26th April. |
| 14. Collection of Taxes (Confirmation) | 26th June |
| 15. Trade Loans- (Guarantee) (Amendment) .. | 10th July. |
| 16. Emergency Powers (Continuance) | 10th July. |
| 17. Appropriation | 11th July. |
| 18. Finance | 11th July. |
| 19. Controller and Auditor-General (Amendment) .. | 20th November. |
| 20. Red Cross | 28th November. |
| 21. Transport | 8th December. |
| 22. Expiring Laws | 13th December. |

OBITUARY.

MR. FREDERICK WILLIAM LAW, Solicitor, died at his residence, Evington, Carlow, on 3rd December, 1944.

Mr. Law served his apprenticeship to the late Sir William Fry of Dublin, was admitted in Michaelmas Sittings, 1893, and practised at Carlow, as senior partner in the firm of Malcolmson & Law;

THE REGISTRY.

(1) Entries will be accepted from solicitors for the Registry under the following headings:—Section A.—Practices for sale, partnerships and assistantships vacant; Section B.—Practices, partnerships and assistantships sought; Section C.—Miscellaneous information required, books, office equipment, etc., wanted or for sale. (2) Each entry accepted will be made in the appropriate section of the register which is open for inspection at the Society's offices during business hours. Each entry accepted will also be published once in the Society's *Gazette*. If the advertiser wishes the entry and advertisement in the *Gazette* may be over a box number. (3) Charges for each entry in

the Register (including one publication in the Society's *Gazette*): members of the Society 3/- for 30 words or less and 1d. for each additional word over 30. Other solicitors double the rate for members of the Society. (4) Replies to entries in the Register and advertisements will not be forwarded by the Society unless postage is prepaid. (5) Replies to advertisements should be marked with the appropriate Box No. and addressed to the Society. (6) The use of the Registry by solicitors is subject to general conditions, copies of which may be obtained from the Secretary.

SECTION B.

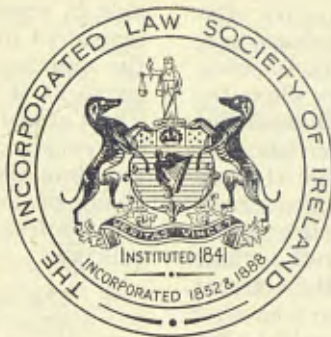
YOUNG Solicitor with considerable experience of City and Country Practice and possessing excellent references seeks post as Assistant Solicitor, or would be interested in a Partnership or Practice for Sale. Box No. B.102.

SECTION C.

REQUIRED, Good copies of O'Connor's "*Justice of the Peace*" (1915) Vol. 2. Bullen & Leake, "*Precedent of Pleadings*" (1915 or 1935). Box No. C.101.

ALL Communications connected with THE GAZETTE should be addressed to the Secretary of the Society Solicitor's Buildings, Four Courts, Dublin. Telephone: 73092.

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No. 8



February
1945

THE GAZETTE

of the

INCORPORATED LAW SOCIETY OF IRELAND

President:
PATRICK F. O'REILLY

Vice-Presidents:
WILLIAM S. HUGGARD
HUGH P. O'DONNELL

Secretary:
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

MEETING OF THE COUNCIL.

JANUARY 12th. The President in the chair. Present: Messrs. H. O'Donnell, Vice-President, S. Ó. hUadhaigh, E. M. FitzGerald, G. A. Overend, W. J. Norman, F. J. W. Darley, J. R. Quirke, W. S. Hayes, H. P. Mayne, C. G. Stapleton, Roger Greene, P. R. Boyd, J. J. Dunne, J. B. Hamill, L. E. O'Dea, J. P. Carrigan, J. J. Smyth, J. S. O'Connor, J. J. Bolger, A. Cox.

Solicitors' Claim for Petrol Allowance.

THE President reported that, with the Secretary, he had interviewed officials of the Department of Supplies with a view to obtaining an allowance of petrol for solicitors for business purposes. He pointed out particularly the difficulty experienced by country solicitors in carrying on their practice having regard to the difficulties of obtaining transport to attend the various courts. The officials of the Department had fully appreciated these difficulties but had informed him that there is very little hope at the present time that the existing restrictions on the supplies of petrol could be raised in respect of the Solicitors' Pro-

profession. They had undertaken to go fully into the position and to communicate with the Society on the subject.

Visit to Árus an Uachtaráin.

THE President reported that, accompanied by the Secretary, he had the honour of being received by President Hyde at Árus an Uachtaráin and presented to him the compliments and the good wishes of the Society. He stated that the President had asked him to convey his good wishes to the Society.

Statutory Committee, 1944-1945.

THE Secretary read a letter from the Chief Justice appointing the following members of the Council to be the Statutory Committee for the year ending 26th November, 1945: H. St. J. Blake, John B. Hamill, H. P. Mayne, L. E. O'Dea, P. F. O'Reilly, Seán Ó hUadhaigh, G. A. Overend.

Department of Defence.

THE Secretary reported the result of correspondence which had taken place between the Department of Defence and the Society, arising out of

complaints received from the Tipperary Bar Association that the Department of Defence had, in a number of cases, approached clients of solicitors and negotiated settlements in cases where the solicitor had been in touch with the Department in connection with claims for compensation in respect of property occupied by the Defence Forces. The Department had stated in correspondence that it was not the normal practice of the Department to approach clients directly where solicitors had been in touch with the Department on their behalf. It was admitted that in a number of cases the clients had been so approached after solicitors had written to the Department on their behalf. Having considered the correspondence, the Council was of opinion that the reasons given for the action of officials of the Department in approaching the clients in the particular cases mentioned were unsatisfactory, and the Secretary was directed to write to the Department expressing the views of the Council, and their opinion that in no case where a solicitor is employed should Government officials approach clients, otherwise than through their solicitors, and their hope that the Minister would see his way to issue a direction to this effect.

Seanad Electoral (Panel Members) (Bye-Election) Act, 1940.

THE Secretary reported that he had received a letter from the Seanad Returning Officer requesting information as to whether there was any change in the representatives of the Council on the nominating Committee for the Cultural and Educational Panel in pursuance of the Seanad Electoral (Panel Members) (Bye Election) Act, 1940. The functions of the nominating committee are to prepare lists of nominees for Bye-elections to Seanad Éireann in the event of casual vacancies, from which the Taoiseach selects the persons to fill such vacancies pursuant to Section 17 of the Act. The Secretary was directed to inform the Seanad Returning Officer that the Society's representatives on the nominating committee are Messrs. C. G. Stapleton, H. P. Mayne and T. G. Quirke.

Decision of Council.

THE Council considered a question submitted for its opinion by two firms of solicitors, arising out of conditions of sale which contained a clause stating that no document other than a plain copy of a grant of administration of a deceased registered owner and a plain copy of the folio of the lands would be given to the purchaser; that the purchaser should assume that all death duties pay-

able in respect of the lands on the death of the registered owner had been duly paid; and that the purchaser should not require evidence of payment of Schedule A Income Tax on the lands. The Council declined to express any opinion on the construction of the contract as a matter of law, but expressed the opinion that as a matter of fair dealing between the vendor and purchaser and professional usage between their respective solicitors:—

1. The vendor should agree to hand over the office certified copy of the Land Registry folio if it comprised only the lands the subject of the contract.
2. The vendor should furnish to the purchaser evidence to prove the discharge of all duties payable on the death of any person appearing on the title, who died within twelve years prior to the date of the contract.
3. The vendor should furnish, free of expense to the purchaser, a certificate of discharge of Income Tax under Section 6 of the Finance Act, 1928.

CURRENT TOPICS.

Costs for Documents drawn by Counsel.

SEVERAL important cases on points affecting solicitors' costs have recently been decided by the Courts, in both cases to the advantage of the profession. In the first case entitled *In re King and Co.* but not yet reported, the solicitor acting for the promoters of a limited liability company had received instructions to prepare the memorandum and articles of association of the intended company. He had consulted Counsel in connection with the matter, and having learned that Counsel would prefer to prepare his own draft of the articles and memorandum rather than revise and amend a draft submitted by the solicitor, he had merely sent Counsel the instructions to prepare the drafts with copies of the necessary documents. Counsel, with the aid of the instructions and documents, sent to him had prepared the complete articles and memorandum of association and in due course the company was incorporated. On the taxation of the solicitor and client costs in connection with the formation of the company the solicitors nominated to oppose the bill raised an objection to the allowance of a substantial fee claimed in the bill for drawing the memorandum and articles of association. On being asked by the Taxing Master, the solicitor who had acted for the company admitted that he had not drafted the document himself and had

done nothing more than to send instructions to Counsel by whom the drafts had subsequently been prepared. The charges made in the bill, based on the usual rate per folio, for drawing the memorandum and articles of association, were substantially higher than the fee charged by Counsel for drawing the documents. On these facts, the solicitor opposing the bill objected to the allowance of any charge by the solicitor for drawing the documents, on the ground that the work charged for had not, in fact, been done by him, and submitted that the greatest amount that could be charged for drawing the documents was the fee paid to Counsel for doing that work. The Taxing master overruled the objection and allowed the solicitor's charges for drawing the documents, to include the fee paid to Counsel. The company appealed to the High Court against the decision of the Taxing Master. In deciding the appeal Overend, J., held that although the respondent had not personally performed any of the work claimed in the item of the bill which was the subject of the appeal, he was entitled to charge for it as if he had, in fact, personally performed it. The argument of the appellant was based on the ground that a solicitor cannot charge for any work which he has agreed to carry out and which is not performed by him personally or by his office employees. His Lordship did not accept that argument as a general proposition. He held that the obligation of the solicitor in the case before him was either to prepare himself or to provide draft articles and a draft memorandum of association. By whom the documents were, in fact, prepared, or what fee or remuneration was agreed upon between the solicitor and any third party for their preparation was immaterial to the question of the costs payable by the client to the solicitor, if the solicitor provided the draft articles and memorandum in accordance with his instructions and accepted responsibility for them. His Lordship, therefore, disallowed the objection against the Taxing Master's decision and allowed the solicitors' charges in the bill of costs. The decision is an important one for the profession, and it is to be hoped that it will be officially reported. It may appear at first sight to admit the principle of sub-contracting into the relations between solicitor and client, but it would be dangerous to push its implications too far. The sub-contracting, if it can be so called, involved in this case was between solicitor and counsel. It is very questionable whether a solicitor whose services had been retained for the purposes of litigation by a particular client could lawfully delegate the conduct of the proceedings to another solicitor not in his permanent employment,

but see official report 1945 I.R. 455.

without the knowledge and consent of the client. This is an important decision which is worth study by the profession.

Charging Orders for Costs.

THE second decided case affecting solicitors' rights, In re Blake-Clutterbuck v. Bradford (61 T.L.R. 106), dealt with the important question whether a judgment for costs only is a judgment for "property recovered or preserved" so as to entitle a solicitor to a charging order thereon for his costs under section 69 of the Solicitors' Act, 1932. This section repeats, in less ambulatory language, the provisions of section 3 of the Legal Practitioners (Ireland) Act, 1876. The substantial effect of each section is to enable a Court before which any action has been heard to declare the solicitor, by whom the proceedings for any party have been conducted, to be entitled to a charge for his costs against the property preserved or recovered through his exertions. In Dallow v. Garrold (14 Q.B.D. 543) a judgment had been obtained for a sum of money and costs and it was held that both the debt and the costs could be made the subject of a charging order for the costs of the action on the application of the plaintiff's solicitor. In the later case of Johnston v. McKenzie (1911 2 I.R. 118) the King's Bench Division held that a judgment for costs alone was a judgment for property recovered within the meaning of the Legal Practitioners (Ireland) Act, 1876, but O'Brien, L. C. J., expressed doubt on the point, and referred in the course of his judgment to the fact that it had been conceded in argument. The recent decision of the English Court of Appeal has settled the question in favour of solicitors. The facts were that a legatee under a will, who also claimed to be a creditor of the estate, had brought certain proceedings against the executors for the recovery of the amount of his claim as a creditor. The will contained a stringent condition with regard to raising questions, binding upon the legatee. The executors took out a construction summons asking for the decision of the Court as to whether the legacy failed having regard to the condition in the will. The Court decided that the legacy had failed, having regard to the condition and the proceedings instituted by the legatee, but made an order entitling him to be paid his costs of the proceedings out of the estate. The solicitor for the legatee applied for a charge on the amount of the costs, when ascertained, on the ground that it was property recovered or preserved within section 69 of the Solicitors Act, 1932. The application was refused by the High Court, but this decision was reversed by the Court of Appeal.

On the construction of the statute the Court held, following *Dallow v. Garrold*, that once it had been conceded that a composite amount consisting of a judgment debt plus costs constituted property recovered or preserved within the meaning of the section, it followed that a judgment for costs alone came equally within it. On the question of the grounds on which the Court should exercise its discretion to make a charging order, the Master of the Rolls said that if, *prima facie*, a solicitor is entitled to the order, some good reason must be shown for depriving him of it. He did not propose to assert, as a matter of principle, that the discretion should be exercised against the solicitor only in cases where some conduct of his own made it unjust to give him the relief asked for, but he thought he was entitled to say that, in a case where no conduct of the solicitor was involved, it would require very exceptional circumstances to justify the Court in refusing to the solicitor that security in respect of the fruits of his labour to which under the section he was, *prima facie*, entitled.

Commission "on introducing a purchaser."

QUESTIONS sometimes arise as to the right of a house-agent to commission on the sale of a house by private treaty when he has done all that was incumbent on him in introducing a person who is willing to purchase, but the sale has gone off through no fault of the agent. In a recent English case the plaintiff was a house agent who had entered into a verbal contract, confirmed by letter, to endeavour to find a purchaser for the defendant's house. The letter continued: "In the event of my introducing a purchaser I look to you for the payment of the usual commission in accordance with the scale fixed by the Auctioneers' and Estate Agents' Institute of the United Kingdom." The price originally fixed by the vendor was £3,750 but she subsequently reduced it to £3,150. The plaintiff introduced a person willing to purchase the property at the stipulated price and the deposit was duly paid. The defendant's solicitors sent to the intending purchasers' solicitors a draft contract for approval, but before the contract had been signed by the intending purchaser he received a letter from the defendant stating that as the result of domestic difficulties she was withdrawing the property from sale. The plaintiff applied to the defendant for payment of commission, which was refused; and he thereupon instituted proceedings claiming that in introducing a willing purchaser he had done all that was required of him under the contract of agency. The defendant contended that the commission

was payable only if the person introduced actually purchased the property or entered into a legally binding purchase agreement. The English King's Bench Division decided in favour of the defendant. Hilbery, J., said that the matter had been settled by previous decisions. The language of the contract had been chosen by the plaintiff and the position could be summed up in a sentence: where a party chooses to say "my commission will be payable on my introducing a purchaser" it means that such commission will be payable only when someone he has introduced has actually purchased. He quoted authority to show that there was no room for the introduction of an implied term in the contract binding the principal not to refuse to complete the sale to the party introduced by the agent. Such an implied term could be introduced only under the compulsion of some urgent necessity. Neither could the plaintiff recover on a *quantum meruit*, where, as in the present case, he had reduced the terms of the contract into writing and they had been accepted by the defendant. The legal position, as clearly stated in the decided cases, seems to be one in which the law does not follow closely what the layman at least will regard as the path of equity. It is open, however, to the agent in choosing the language of his agreement to protect himself by express stipulations as to the events in which his right to commission shall accrue; and there seems little doubt that an extension of the ordinary grammatical meaning assigned by the Courts to the word "purchaser" would introduce an undesirable element of uncertainty into the law. (*Jones v. Lowe* 61 T.L.R. 53). See also *Luxor (Eastbourne) Ltd. v. Cooper* (1941 A.C. 108).

OBITUARY.

MR. HENRY H. GRACE, Solicitor, died at his residence, 62 Ranelagh Road, Dublin, on 14th December, 1944.

Mr. Grace served his apprenticeship with the late Peter C. McGough, Dublin, was admitted in Trinity Sittings, 1891, and practised at 35 Dame Street, Dublin, up to the year 1897. He entered the Estate Duty Office, Dublin, and was Controller from 1923 to 1935, when he retired.

MR. WILLIAM DORGAN, Solicitor, died at Cork, on 28th December, 1944.

Mr. Dorgan served his apprenticeship with the late Mr. Henry B. Julian, Cork, was admitted in Trinity Sittings, 1891, and practised at Cork under the style of Burke and Dorgan.

MR. WILLIAM H. FOGERTY, Solicitor, died at Bank Place, Ennis, on 5th January, 1945.

Mr. Fogerty served his apprenticeship with the late Mr. William Beauchamp of Limerick, was admitted in Michaelmas Sittings, 1888, and practised at Ennis, Co. Clare.

MR. HUTCHINSON DAVIDSON, Solicitor, died at Ivy Lodge, Ballinasloe, on 18th January, 1945.

Mr. Davidson served his apprenticeship with the late Mr. James C. Bell of Armagh, was admitted in Hilary Sittings, 1885, and practised at Ballinasloe.

THE REGISTRY.

(1) Entries will be accepted from solicitors for the Registry under the following headings:—Section A.—Practices for sale, partnerships and assistantships vacant; Section B.—Practices, partnerships and assistantships sought; Section C.—Miscellaneous information required, books, office equipment, etc., wanted or for sale. (2) Each entry accepted will be made in the appropriate section of the register which is open for inspection at the Society's offices during business hours. Each entry accepted will also be published once in the Society's *Gazette*. If the advertiser wishes the entry and advertisement in the *Gazette* may be over a box number. (3) Charges for each entry in

the Register (including one publication in the Society's *Gazette*): members of the Society 3/- for 30 words or less and 1d. for each additional word over 30. Other solicitors double the rate for members of the Society. (4) Replies to entries in the Register and advertisements will not be forwarded by the Society unless postage is prepaid. (5) Replies to advertisements should be marked with the appropriate Box No. and addressed to the Society. (6) The use of the Registry by solicitors is subject to general conditions, copies of which may be obtained from the Secretary.

SECTION C.

SEVERAL new volumes of the following are on sale at less than the published prices—offers desired.
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VANSTON'S PUBLIC HEALTH published at £3 10s. 0d.
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VANSTON'S MUNICIPAL BOROUGH published at 18s. 0d.

Box C.102

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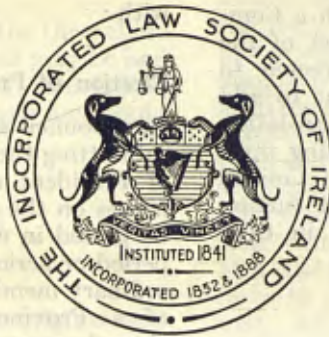
M. W. O'REILLY, P.C., F.C.I.I., Managing Director

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March

1945



THE GAZETTE

of the

INCORPORATED LAW SOCIETY OF IRELAND

President:

PATRICK F. O'REILLY

Vice-Presidents:

WILLIAM S. HUGGARD

HUGH P. O'DONNELL

Secretary:

ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

MEETINGS OF THE COUNCIL.

FEBRUARY 2nd. The President in the chair. Present Mr. W. S. Huggard, Vice-President; Messrs. W. S. Hayes, W. J. Norman, S. Ó hUadh-aigh, D. O'Connell, F. J. W. Darley, J. R. Quirke, E. M. FitzGerald, C. G. Stapleton, G. A. Overend, P. R. Boyd, J. J. Dunne, W. L. Duggan, J. J. Bolger, H. St. J. Blake, Roger Greene, J. J. Smyth, J. Travers Wolfe, A. Cox, J. B. Hamill, H. P. Mayne, Peter O'Connor, J. Gillespie.

The following were among the matters dealt with:

Local Registration of Title (Ireland) Act, 1891, S. 87 (3).

The Council considered a report from a Committee on the practice adopted in the Land Registry of refusing to accept for registration a transfer from a personal representative to a beneficiary under section 87 of the Act unless the personal representative has first been registered for the purpose of administration. The object of the Registry in adopting this practice is apparently to ensure that fees will be collected at some

stage of the transaction. Having regard to the established principle whereby the personal representatives can deal with lands without being themselves registered, and to section 87(3), which enacts that no fee shall be payable on any transfer under the section by personal representatives to a person beneficially entitled to land, the Committee recommended that the Society should assist in having the question brought before the judge for his ruling. The report of the Committee was adopted.

Trustee Acts.

THE Council considered a report from a Committee on a letter from the Department of Justice requesting their views on proposed legislation consolidating and amending the law relating to trustee investments, and as to any amendments generally in the law relating to trustees which might seem appropriate. The report of the Committee referred to the recent suggestion that a Law Reform Advisory Committee should be appointed to consider and report periodically on proposals to reform and consolidate the law, and stated that in its opinion the matters referred

to in the letter from the Department were eminently suitable for reference to such a Committee. The Council adopted the report of the Committee and the Secretary was directed to notify the Department accordingly, but to add that if it is intended to proceed with legislation on the matters mentioned without setting up a Law Reform Advisory Committee the Council will be willing to consider the subject further with a view to giving any assistance in their power.

Solicitors' Claim for Petrol Allowance.

THE Secretary read a letter from the Department of Supplies referring to recent discussions on the question of petrol supplies and stating that the Minister regretted that he was unable to accede to the request of the Council. The Minister was however, willing to grant on application all requests from solicitors, wherever resident, to be allowed to operate their private cars which are fitted with gas producer plants.

Department of Defence.

THE President reported that, accompanied by the Secretary, he had interviewed officials of the Department of Defence in connection with the departmental practice of negotiating settlements direct with clients of solicitors of claims for compensation for the occupation of lands by the military under Emergency Powers Orders, and that the following agreement had been made:—

(1) A direction shall be given to the appropriate officials of the Department that in any case in which a solicitor has notified the Department that he is acting for a claimant correspondence or negotiations for a settlement of the claim shall not be conducted by the department otherwise than through the claimant's solicitor. (2) Officials of the Department shall be at liberty to enter upon lands by arrangement with the claimants for the purpose of estimating the amount of the damage or compensation without notifying the claimant's solicitor, provided that no negotiations or discussions as to the claim take place on such occasions. The report was adopted.

FEBRUARY 23rd. The President in the chair. Present: Mr. W. S. Huggard, Vice-President; Messrs. J. J. Smyth, W. L. Duggan, C. G. Stapleton, W. S. Hayes, D. O'Connell, W. J. Norman, J. R. Quirke, P. R. Boyd, J. P. Carrigan, H. St. J. Blake, P. O'Connor, M. G. R. Lardner, H. P. Mayne, A. Cox, Scán Ó hUadhaigh, L. E. O'Dea, E. M. FitzGerald, J. B. Hamill.

The following were among the matters dealt with:

Election of President and Vice-Presidents.

THE Council adopted the report of a Committee submitting the draft of a new rule for the election of President and Vice-Presidents, whereby the names on the ballot paper for each election shall be placed in order of seniority, reckoned by the period or periods of service of each member as an ordinary member of the Council, but in the event of a Provincial Delegate being subsequently elected as an ordinary member of the Council his service as Provincial Delegate shall be reckoned together with his service as an ordinary member for the purpose of ascertaining his seniority.

Land Registration Rules, 1944.

THE Council considered a report from a Committee dealing with rule 20 of the above rules which contains a provision that on an application for the discharge of equities, where the ownership has been registered for 30 years, the application shall be accompanied by a certificate from a practising solicitor that he has investigated the title to the property on behalf of the applicant and that all the averments in the applicant's affidavit are true. No costs are allowed to the solicitor for the additional work of investigating the title and giving the certificate required by the rule. It was reported that the attention of the Registrar of Titles had been drawn to the matter and that he had expressed the view that rule 20 should be amended by deleting the provision requiring a certificate from the applicant's solicitor, as to the title. Pending the amendment of the rule the Registrar, in the exercise of his powers, has directed that its operation shall be suspended in so far as it requires the above-mentioned certificate.

Unqualified Person.

THE Secretary reported that a letter had been written to an unqualified person, who appeared to have written letters to her tenants regarding arrears of rent, in terms which would lead them to believe that the letters had been written by a solicitor, warning her against continuing the practice. A letter had been received from the writer of the letters admitting the offence and undertaking not to repeat it. It was ordered that no further action should be taken by the Society.

STATUTES 1943.

BOUND volumes of the Statutes of the Oireachtas for the year 1943 are now on sale and may be had from the Government Publications Sale Office, 3/4 College Street, Dublin, or through any bookseller. Price 15/6, post free.

CURRENT TOPICS.

Renewal of Originating Summons.

UNDER O. 8, r. 1 of R.S.C., 1905 no original writ of summons shall be in force for more than twelve months from the day of the date thereof, including the day of such date. By O. 64, r. 7, the Court or a judge is given power to enlarge or abridge the time appointed by the rules for doing any act or taking any proceeding, and time may be enlarged although the application has not been made until after the expiration of the time appointed or allowed. In two recent English cases the courts considered the corresponding English rules in connection with applications to renew writs of summons claiming damages under Lord Campbell's Act. In each case the writ had been issued within the period of twelve months allowed by that Act but had not been served, and the application for renewal of the writ had been made after the expiration of the ensuing twelve months' period. In the earlier case, *Holman v. George Elliott & Co. Ltd.*, (60 T.L.R. 394), the action arose out of the death of the plaintiff's husband on 9th October, 1941. Proceedings under Lord Campbell's Act were instituted on 7th October, 1942, two days before the expiration of the period of twelve months given by the Act. Owing to neglect on the part of a clerk in the employment of the plaintiff's solicitors the writ was not served until 7th October, 1943, which was one day after the expiration of twelve months from the issue of the writ. An application was made to the Court by the plaintiffs for an order extending the writ under the English order corresponding to O. 64, r.7. The application was granted by the King's Bench Division and affirmed by the Court of Appeal. In the subsequent case, *Battersby and others v. Anglo-American Oil Company Ltd and others* (61 T.L.R. 13) the facts were almost precisely similar. The action was brought under Lord Campbell's Act, the writ was issued shortly before the expiration of the statutory period of twelve months, but not served within the ensuing twelve months, and the plaintiff was compelled to rely on the success of an application to have the writ extended in order to prevent his remedy from becoming

statute barred. The application was granted by the High Court but the order of the High Court was reversed on appeal. The Court of Appeal, disapproving of the decision of the same Court in *Holman v. Elliott*, held that there is a consistent line of authorities showing that, as a general rule of conduct, Courts will not grant amendments or extensions where by doing so they would alter the existing rights of the parties. This is the rule in regard to amendments of pleadings, and the same principle applies with greater force to applications to allow the renewal of a writ, where the granting of the application would deprive the defendant of the benefit of the Statute of Limitations. The only reported Irish case on this point is *Magee v. Hastings* (28 L.R.Ir. 288) in which Andrews, J. held that he had no jurisdiction to renew a writ where the debt was barred by the Statute of Limitations. In the latest English case it was held that the Court has a jurisdiction but one that ought not to be exercised in such circumstances.

Application for Direction on Plaintiff's Case.

IF counsel for the defendant applies at the end of case for the plaintiff for a direction in his client's favour, on the ground that the evidence for the plaintiff has not made out a *prima facie* case for the relief sought, and asks for the judge's ruling on his submission does he thereby lose the right to call evidence for the defendant, if his application is unsuccessful? In *Alexander v. Rayson* (1936, K.B. 169) the English Court of Appeal disapproved of the practice of asking for such directions in cases being tried by a judge without a jury on the ground that a judge who is trying both the law and the facts should not be asked to express any opinion upon the evidence until the evidence is completed. It would be unheard of to ask a jury at the end of the plaintiff's case to say what verdict they would be prepared to give if the defendant called no evidence, and the Court saw no reason why a judge should be asked such a question, where he and not a jury had to determine the facts. In *Laurie v. Raglan Building Co., Ltd.* (1942, I.K.B., 152) after the evidence for the plaintiff had concluded counsel for the defendants submitted that there was no case for him to answer. The Court held with him and dismissed the action. The plaintiff appealed and the Court of Appeal, in giving judgment allowing the appeal, stated that the proper course of action for the trial judge in connection with the defendant's application for a direction would have been to refuse to rule on it unless counsel for the defendant elected to call

no evidence. The Court held that counsel had impliedly elected to call no evidence, and in the result allowed the appeal on the issue of liability on the evidence as it stood at the trial, and directed a new trial limited to the question of damages. The latest case in point is *Yuill v. Yuill* (61 T.L.R., 176). In that case the defendant's counsel submitted at the end of the plaintiff's evidence that he had no case to answer. Counsel's submission failed and he was then allowed to call evidence for the defendant. The action was dismissed and the plaintiff appealed. The appellant argued before the Court of Appeal that the defendant's counsel, by making his submission as to no case, had lost his right to call evidence and that, on the Judge's ruling, judgment should have been given for the plaintiff. The Court of Appeal held that this argument was based on a misapprehension as to the meaning of the rule, which did not mean that counsel, by submitting no case, *ipso facto*, lost the right to call evidence. He loses that right only if he elects to call no evidence either expressly or impliedly. The rule amounts to no more than a direction to the judge to put counsel to his election and to refuse to rule on the submission of no case unless Counsel elects to stand on it. If through oversight or misapprehension the judge does not put counsel to his election, and if no election takes place, counsel is entitled to call evidence notwithstanding the submission. The practice in Ireland is not covered by any clear authority. Practitioners will call to mind many cases where no objection was raised to the production of evidence for the defence after the failure of an application for a direction. The cases above referred to show that a successful submission of no case may be as dangerous as it appears attractive, and that it is well to consider it carefully in anticipation of subsequent events should the plaintiff succeed in an appeal against the verdict.

Interest on Estate Duty.

A member, who is also a public representative, has written to say that representations were recently made to the Minister of Finance in regard to the practice of the Estate Duty Office of assessing interest on estate duty down to the day on which the duty itself is assessed, and not merely to the day on which the account is lodged in Dublin Castle. It was pointed out to the Minister that the calculation of the interest in this way was unfair to beneficiaries, when delay occurs in the assessment of the duty, perhaps through shortage of staff due to the emergency.

The Minister's secretary recently gave the following written reply: "The Minister desires me to say that the long established practice in the Estate Duty Office has been to charge interest on estate duty to the date the duty is assessed. He has had the matter considered, however, by the Revenue Commissioners and is satisfied that in certain cases where delay has occurred in the office in dealing with the accounts it is unequitable to charge interest for such delay. The Commissioners are arranging that the practice be altered."

OBITUARY.

MR. JOHN J. HAM, Solicitor, died on 25th January, 1945, at his residence, Halston, Moyvore, Co. Westmeath.

Mr. Ham was admitted in Trinity Sittings, 1889, and practised at Ballymahon.

MR. JAMES F. D'ARCY, Solicitor, died on 30th January, 1945, at his residence, 4 Mount Eden Road, Donnybrook, Dublin.

Mr. D'Arcy served his apprenticeship with the late Mr. William Fréwen of Tipperary, was admitted in Michaelmas Sittings, 1908, and practised as senior partner in the firm of James F. D'Arcy & Co. at Tipperary up to the year 1943 when he retired.

Mr. D'Arcy was a member of the Council of the Incorporated Law Society from 1935 to 1940 and was Vice-President for the year 1939-40.

MR. THOMAS TAGGART, Solicitor, died on 19th February, 1945, at Ballymoney.

Mr. Taggart served his apprenticeship with Mr. Robert O'Neill of Coleraine, was admitted in Trinity Sittings, 1893, and practised at Ballymoney.

EXAMINATIONS—APRIL, 1945.

| Examination | Date | Last date for giving notice |
|-------------|-------------------|-----------------------------|
| Final | April 9th & 10th | March 19th |
| Preliminary | April 11th & 12th | March 20th |

RESULTS OF EXAMINATIONS.

At the Examinations held on the 2nd and 3rd February under The Legal Practitioners' (Qualification) Act, 1929, the following passed the examinations:—

First Examination in Irish.

Thomas H. Bacon.
Patrick Begley.
H. R. Blakeney.
Martin J. Cahill.
Kevin J. Callanan.
Hubert A. J. Fetherstonhaugh.
Desmond G. Houston.
Joseph M. MacGrath.
Richard H. McDonnell.
Liam O. McMenamin.
Philip T. Meagher.
Mary Mooney.
John J. O'Connor.
Eileen Prendiville.
Thomas Shields.
Patrick E. Thornton.

Second Examination in Irish.

William B. Allen.
James P. McD. Concannon.
Toirleach de Valera.
Desmond J. A. Dowdall.

Donal V. Goulding.
Patrick T. Liston.
William B. Malone.
Timothy J. O'Donoghue.
Michael M. Phelan.
Cecil E. Prentice, B.A.T.C.D.
Hyman Tarlo, B.A.T.C.D.
John A. Thornton.
David Twomey.

EASTER SITTINGS, 1945.

THE High Court Easter Sittings will commence on Monday, April 16th.

LECTURES EASTER SITTINGS.

JUNIOR class lectures will commence on Monday, 16th April at 2:15 p.m.

Senior class lectures will commence on Tuesday, 17th April at 2:15 p.m.

CALENDAR 1945.

THE Calendar and Law Directory for 1945 is on sale. After supplying for orders received, a limited number of copies are available and orders will be accepted for these copies. Price 5/-, post free 5/6.

THE REGISTRY.

(1) Entries will be accepted from solicitors for the Registry under the following headings:—Section A.—Practices for sale, partnerships and assistantships vacant; Section B.—Practices, partnerships and assistantships sought; Section C.—Miscellaneous information required, books, office equipment, etc., wanted or for sale. (2) Each entry accepted will be made in the appropriate section of the register which is open for inspection at the Society's offices during business hours. Each entry accepted will also be published once in the Society's *Gazette*. If the advertiser wishes the entry and advertisement in the *Gazette* may be over a box number. (3) Charges for each entry in

the Register (including one publication in the Society's *Gazette*): members of the Society 3/- for 30 words or less and 1d. for each additional word over 30. Other solicitors double the rate for members of the Society. (4) Replies to entries in the Register and advertisements will not be forwarded by the Society unless postage is prepaid. (5) Replies to advertisements should be marked with the appropriate Box No. and addressed to the Society. (6) The use of the Registry by solicitors is subject to general conditions, copies of which may be obtained from the Secretary.

SECTION B.

SOLICITOR (Qualified 1941) practising alone, would be interested in good partnership or practice for sale.

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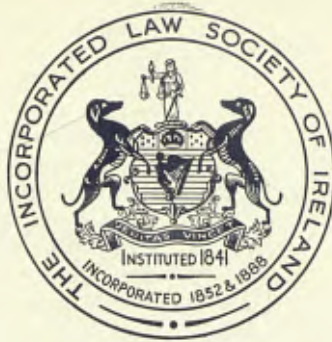
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M. W. O'REILLY, P.C., F.C.I.I., Managing Director

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THE GAZETTE

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HUGH P. O'DONNELL

Secretary:
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

MEETING OF THE COUNCIL.

23rd March, 1945. The President in the chair: Also present: Messrs. J. J. Smyth, P. R. Boyd, J. Travers Wolfe, Roger Greene, G. A. Overend, J. R. Quirke, W. S. Hayes, W. J. Norman, Daniel O'Connell, W. L. Duggan, J. P. Carrigan, C. G. Stapleton, S. Ó hUadhaigh, F. J. W. Darley, J. Gillespie, J. B. Hamill, A. Cox, L. E. O'Dea, H. St. J. Blake, E. M. FitzGerald, J. J. Bolger, H. P. Mayne, J. S. O'Connor, J. J. Dunne.

Department of External Affairs and Foreign Estates.

On a report from a Committee it was ordered that the Secretary should write to the Department of External Affairs stating that the attention of the Council has been called to the fact that the Department undertakes the work of collecting and transmitting to this country the shares of Irish citizens in estates of persons who die domiciled in America and other foreign countries and that it is considered that this practice is an infringement of the established rights of the

solicitors' profession, particularly having regard to the fact that the Department have, in a number of cases, written to the next-of-kin and offered to undertake the work for them on a commission basis. It was also ordered that the Department should be requested to receive a Deputation from the Council in connection with the matter.

Unqualified Person.

THE Secretary reported that he had submitted a case to Counsel for his opinion as to whether an unqualified person resident in Co. Cork had rendered himself liable to proceedings for penalties in respect of an application which he had made to the Central Office of the Land Registry for the registration of a transfer of registered land, and that Counsel had advised that proceedings should be instituted in the name of the Secretary under Section 53 of the Solicitors' (Ireland) Act, 1898, and Section 44 of the Stamp Act, 1891. It was ordered that proceedings should be instituted as advised by Counsel and that solicitors and Counsel should be retained by the Secretary for that purpose.

Apprentices' Applications.

THREE applications from apprentices were considered and granted.

Applications under Section 47.

FOUR applications by solicitors under Section 47 for liberty to take out their practising certificates for the present year were granted.

CURRENT TOPICS.

Costs of High Court Action—subject matter within Circuit Court jurisdiction.

IN the case of *Beaumont v. Figgis* (79 I.L.T.R. 37) the Supreme Court has recently decided several important questions on the interpretation of O.28 r.2 of the Rules of the Supreme Court and the High Court, 1926 and section 12 of the Courts of Justice Act, 1936. O. 28 r.2 provides generally that, except by order of the Court, no costs shall be allowed to a plaintiff in any action or matter which could have been commenced in the Circuit Court or the District Court, save such costs as would have been recoverable by the plaintiff had the proceedings been commenced in the appropriate Court. Section 12 (1) of the Courts of Justice Act, 1936, prescribes further and stricter limits to the amount of the costs which may be allowed to the plaintiff in seven specified classes of action commenced in the High Court but which could have been commenced in the Circuit Court. Section 12 (3) further provides *inter alia* that it shall not be lawful for rules of Court to impose any restrictions on the amount of costs recoverable by any party from any other party in any action or other proceeding, but that nothing in the sub-section shall prevent the insertion in rules of Court of a restriction on the amount of the costs recoverable which is identical with a restriction imposed by the section. In *Ulster Bank Ltd. v. Hassall* (1940 I.R.366) Gavan Duffy, J., held that one effect of the Courts of Justice Act, 1936, Section 12 (3) was to annul O.28 r.2 of the 1926 Rules of Court. As section 12 (1) of the Courts of Justice Act, 1936, did not extend to every class of action falling within O.28 r.3, it was argued that the effect of the decision in *Ulster Bank v. Hassall* was to remove any restrictions as to the costs recoverable in actions not coming within section 12 (1) of the Act of 1936 and to enable the plaintiff to recover High Court costs in such cases, e.g., in an action for an injunction. The Supreme Court overruled the decision in *Ulster Bank v. Hassall* and held that (1) Section 12 (3) of the

Courts of Justice Act, 1936, prescribing specified limits to the costs recoverable in the seven classes of action therein dealt with, did not revoke rule 2 of Order 28 of the rules of 1926 save in regard to the cases specially mentioned at (a) to (g) in section 12 (1) of the Act; (2) accordingly the costs recoverable in a High Court Action not within section 12 (1) of the Act but which could have been brought in the Circuit Court were still subject to O.28 r.2.; (3) an action for damages and an injunction in which £35 damages had been awarded, to be taxed as if an injunction had been granted, was not an action founded on contract or for damages for breach of contract within section 12 (1) (c) of the Courts of Justice Act, 1936, and the costs should be taxed without regard to the limits imposed by that Act but subject to the limits imposed by O.28 r.2 of the Rules of Court, of 1926.

Application for leave to appeal out of time.

Appellate courts do not, as a rule, look kindly on applications to extend the time for serving notice of appeal, particularly if made after the time for appealing has expired, and such applications are, not surprisingly, of infrequent occurrence. In a recent English case *In re Berkeley deceased—Borrer v. Berkeley and others* (61 T.L.R.33) an application was made on rather unusual grounds for leave to appeal, notwithstanding that the time for appealing had expired. The applicants, who were the defendants in an administration suit in the High Court, were tenant for life and in remainder respectively under a will, and the High Court had given a decision affecting them adversely in regard to a certain annuity payable under the will. In giving his decision the judge had followed a previous decision of the High Court. The Court of Appeal subsequently decided in another case before it that the case followed by the judge of the High Court had been incorrectly decided and overruled it, but in the interim the time for appealing in *re Berkeley deceased* had expired and notice of appeal had not been served. In these circumstances the defendants asked the Court of Appeal to extend the time for appealing. The application was granted, but not on the mere ground that the authority followed by the High Court had been subsequently overruled by the Court of Appeal. It was stated by the Master of the Rolls that this fact alone would not be sufficient to justify the Court in extending the time. That alone would be no ground. The Court must take all the circumstances into consideration and has power to enlarge the time if it is just in the

circumstances to do so. In the case before it the Court of Appeal found that there were certain parties who were not before the High Court judge and therefore were not bound by his order ; that beyond mere payment of certain instalments of an annuity nothing had been done under the order ; that no inquiries had been pursued ; and taking these matters into consideration together with the fact that the law had been declared to be different from what it had been thought to be the case was held to be one in which the time ought to be extended.

NOTICE TO BAR ASSOCIATIONS.

THE Honorary Secretaries of Bar Associations are requested to forward to the Secretary of the Society the names and addresses of the Officers of their Associations so that the Society may have a record of same. It is also requested that Secretaries of Bar Associations should notify the Society of changes occurring from time to time. The President has recently issued a circular to every practising solicitor who is not a member of the Society asking him to become a member. A copy of this circular will be sent to the Committee of each Bar Association and they will be asked to keep it before any of their members who may not be members of the Society, and to bring it to the notice of new members of their Associations.

OBITUARY.

MR. ROBERT HUNTER, Solicitor, died on 9th February, 1945, in Coleraine.

Mr. Hunter served his apprenticeship to the late Mr. James Henry, Dublin, was admitted in Michaelmas Sittings, 1885, and practised in Coleraine.

MR. JAMES R. CRESSWELL, Solicitor, died on 24th February, 1945, at his residence, Sorrento House, Dalkey, Co. Dublin.

Mr. Cresswell served his apprenticeship to the late Mr. George J. Hoey, Dublin, was admitted in Trinity Sittings, 1903, and practised at 17 Harcourt Street, Dublin.

EXAMINATIONS—JUNE, 1945.

| Examination | Date | Last date for giving notice |
|--------------|------------------|-----------------------------|
| First Irish | June 1st and 2nd | May 11th |
| Second Irish | June 1st and 2nd | May 11th |
| Intermediate | June 4th | May 14th |

LEGAL APPOINTMENT.

MR. MATTHEW PURCELL has been appointed Solicitor to the Cork County Council. Mr. Purcell was admitted in Michaelmas Sittings, 1935, and practised at Naas. He held the office of Professor of Common Law to the Society from 1938 to 1943.

THE REGISTRY.

(1) Entries will be accepted from solicitors for the Registry under the following headings:—Section A.—Practices for sale, partnerships and assistantships vacant; Section B.—Practices, partnerships and assistantships sought; Section C.—Miscellaneous information required, books, office equipment, etc., wanted or for sale. (2) Each entry accepted will be made in the appropriate section of the register which is open for inspection at the Society's offices during business hours. Each entry accepted will also be published once in the Society's *Gazette*. If the advertiser wishes the entry and advertisement in the *Gazette* may be over a box number. (3) Charges for each entry in

the Register (including one publication in the Society's *Gazette*): members of the Society 3/- for 30 words or less and 1d. for each additional word over 30. Other solicitors double the rate for members of the Society. (4) Replies to entries in the Register and advertisements will not be forwarded by the Society unless postage is prepaid. (5) Replies to advertisements should be marked with the appropriate Box No. and addressed to the Society. (6) The use of the Registry by solicitors is subject to general conditions, copies of which may be obtained from the Secretary.

The Registry—(continued)

SECTION A.

LAW CLERK, Male or Female, required by firm of Solicitors in Leinster provincial town. Competent knowledge of Conveyancing, Land Registry, Probate, High Court,

Circuit Court and District Court practice and costs essential. Good salary. Apply in own hand-writing with copy references to Box No. A.100.

SECTION B.

APPOINTMENT as Assistant in Dublin office required by Solicitor; qualified 1944. University education; experience of Court work and preparation of cases. Box No. B.105.

SOLICITOR, young and experienced, desires Partnership. Would consider arrangement with Practitioner contemplating retirement. Strictest confidence. Box No. B.106.

SECTION C.

SALE.

| | |
|---|------|
| Palmer's Company Law (Topham) | 1924 |
| Bevans Negligence | 1908 |
| Key & Elphinstone Conveyancing Precedents | 1923 |
| Clerk & Lindsell Torts | 1921 |
| Chitty Contracts | 1921 |

| | |
|--------------------------------------|------|
| Williams Personal Property | 1926 |
| Anson Contracts | 1922 |
| Salmond Jurisprudence | 1923 |
| Sandars Justinian Institutes | 1924 |

Offers invited. Connolly, Solicitor, Kinsale.

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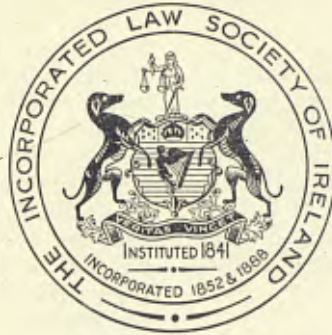
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Vol. 39

No. 1



May

1945

THE GAZETTE

of the

INCORPORATED LAW SOCIETY OF IRELAND

President :

PATRICK F. O'REILLY

Vice-Presidents :

WILLIAM S. HUGGARD

HUGH P. O'DONNELL

Secretary :

ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

MEETING OF THE COUNCIL.

APRIL 27th. The President in the chair : Present : Messrs. W. S. Huggard, H. O'Donnell, S. O. hUadhaigh, G. A. Overend, M. E. Knight, H. P. Mayne, C. G. Stapleton, D. O'Connell, F. J. W. Darley, E. M. FitzGerald, L. E. O'Dea, J. J. Smyth, J. P. Carrigan, J. B. Hamill, A. Cox, W. S. Hayes, W. J. Norman, Alex. S. Merrick, R. Greene, J. R. Quirke.

The following were among the matters dealt with :—

Right of Audience of Solicitors.

It was reported by a Committee that under the Unemployment Assistance (reference and reports to Court of Referees Regulations) Order 1934 (S. R. & O., 1934/124) the procedure to be followed by Courts of Referees on the consideration and examination of claims for Unemployment Assistance is to be the same as the procedure of Courts of Referees under the Unemployment Insurance Acts, 1920-33. By the Unemployment Insurance (Court of Referees) Amending Regula-

tions, 1921 (S. R. & O., 1924/594) it is provided that during the consideration by a Court of any claim the claimant may attend in person or be represented at the sitting of the Court by any person, not being counsel or solicitor, authorised by him. Having regard to these regulations, solicitors have not a right of audience before Courts of Referees either under the Unemployment Insurance Acts or the Unemployment Assistance Acts. The Committee report that solicitors are heard on appeals against the refusal of National Health Insurance. The Committee recommended that the Society should make representations with a view to securing a right of audience to solicitors in connection with both Unemployment Insurance and Unemployment Assistance appeals and the report was adopted..

Solicitor for Offaly County Council.

THE Council considered an advertisement by the County Manager for County Offaly for a solicitor to the County Council at remuneration on the basis of taxed professional fees, outlay and

travelling expenses subject to the following conditions :—

1. The solicitor nominated shall undertake to furnish his bill of professional fees, outlay and travelling expenses for taxation every twelve months and shall undertake that if in any one period of twelve months his taxed professional fees (exclusive of outlay and travelling expenses) shall exceed £500 he will accept the said sum of £500 in full discharge of same.
2. The solicitor nominated shall undertake to maintain a business office in Tullamore.
3. The position shall be non-pensionable.

The Secretary reported that representations had been made to the Department of Local Government concerning the advertisement and that he had been informed by the Department that no appointment on the terms of this advertisement would be made before the matter had been further considered. It was resolved that in the opinion of the Council the terms of this advertisement are most objectionable particularly the condition that the solicitor nominated shall undertake to tax his costs annually and to accept the amount of the taxed costs if they amount to less than £500. and to refund to the Council the amount by which the profit costs may exceed £500. The Council appointed a Deputation to seek an interview with the Minister for Local Government to press for the withdrawal of the advertisement.

CURRENT TOPICS.

Irish Legal Terms Bill, 1945.

THE Society has received a copy of the Irish Legal Terms Bill which has been introduced in Dáil Éireann by the Minister for Justice. The object of the Bill, as stated in its preamble, is to authorise the provision for the purposes of law of standard equivalents in the Irish language for certain terms, and to provide for the publication of legal forms and precedents in the Irish language. Although Article 8 of the Constitution enacts that Irish and English are both official languages of the State, so great is the difficulty, if not impossibility, of obtaining certain Irish equivalents for the various Latin, French and English terms and phrases commonly used in legal documents, that the use of Irish in such documents at the present time is almost imprac-

ticable. The provisions of the Bill are an attempt to meet this difficulty. It proposes to set up an Irish Legal Terms Advisory Committee consisting of one judge each from the Supreme or High Court and the Circuit Court, a District Justice, nominees of the Bar Council and the Incorporated Law Society, a member of the Oireachtas translating staff and another nominee of the Government. Each member of the Committee will hold office for five years. The functions of the Committee will be to consider and report on drafts of Irish equivalents of legal terms referred to it by the Minister for consideration. The Minister is to be empowered after consultation with the Committee to make legal terms orders giving legal effect to the Irish forms therein specified as the authorised equivalents of the specified English terms. The Minister is also to be empowered after consultation with the Committee to publish forms and precedents in the Irish language of legal instruments and documents. Wherever the Minister shall make a legal terms order declaring that the equivalent in Irish of a specified term shall be the word or words specified in the Order, the said word or words occurring in any Act of the Oireachtas, statutory instrument, any instrument intended to have legal effect or consequences, or any document used in or for the purposes of any legal proceeding, shall, unless the contrary intention appears, be construed as having the same force and effect as the specified term.

The position of Irish and English in legal proceedings was discussed in *O'Foghludha v. McClean* (1934 I.R. 469) in which it was held by the Supreme Court that Order XXIX r. 3 of the Rules of the High Court and Supreme Court, 1926, (which requires the party serving any summons or notice in the Irish language to serve therewith an English translation of the document) was not *ultra vires* of Article 4 of the Constitution of 1922, which enacted that the national language of the Irish Free State was Irish, but that English should be equally recognised as an official language. The Constitution of 1937, Article 8, enacts that Irish is the national language and the first official language, and that English is recognised as a second official language. In *O'Foghludha v. McClean* Mr. Justice Sullivan, then President of the High Court, said that in his view the equal recognition of Irish and English involved that every person shall be entitled at his option to use either language in transacting legal business, and that he shall not suffer any impediment or incur any liability by reason of the language which he uses.

Applications for Cases Stated on Circuit Court Appeals.

SECTION 38 of the Courts of Justice Act, 1936, makes provision for appeals to the High Court from judgments or orders of the Circuit Court. The attention of the Council was drawn to a difficulty which arises under Section 38 (3), dealing with applications for cases stated for determination by the Supreme Court on the hearing by a judge of the High Court of an appeal from the Circuit Court. The sub-section enacts that the judge hearing such an appeal may, if he thinks proper, on the application of any party to such an appeal refer any question of law arising in such appeal for determination to the Supreme Court and may adjourn the pronouncement of his judgment or order on such appeal pending the determination of the case stated, and in particular may adjourn such pronouncement to Dublin and may there pronounce his said judgment or order at any time after such determination. One result of this sub-section, whether intentional or otherwise, is that an appellant or respondent may be placed in the position of having to elect either to ask for a case stated or to forego it before he knows definitely whether the appeal will succeed or fail, and the amount awarded for or against him on foot of the civil bill. The Court has no jurisdiction to state a case after it has delivered judgment. There seems to be no good reason why litigants should be placed in this position, and it was suggested to the Department of Justice that the Act might be amended in this respect. The Department has the matter under consideration and it is probable that the sub-section will be amended at the first opportunity.

LAND PURCHASE ACTS RULES, 1945.

THE above rules which were made under Section 3 of the Land Act, 1933, are now in operation. The effect of the new Rules is to amend Rules 1 and 3 of Order IV of the Provisional Rules dated 25th September, 1929, Rule 9 of Order VI of the Rules dated 5th February, 1924, and Rule 1 of Order III of the Rules dated 9th December, 1936. Copies of the Rules may be obtained from the Government Publications Office, 3 College Street.

LAND REGISTRY, CERTIFICATES OF CHARGES.

THE Registrar of Titles some time ago issued a direction that the name of the registered owner of land the subject of a charge registered on the folio should in future be inserted in the certificate

of charge issued to the chargeant. This was the practice prior to the Land Registration Rules, 1937, but through the effect of Rule 55 and form 77 of the 1937 Rules the practice was altered. The recent direction of the Registrar, which revives the practice prior to 1937, will facilitate chargeants such as Banks and Insurance Companies, who are registered as the owners of numerous charges, by enabling them readily to identify a particular Certificate of Charge with the name of the registered owner of the lands.

LAND ACTS.

REVOCATION OF SUSPENSION ORDER.

BY the Emergency Powers (No. 110) Order, 1941 (S. R. & O., 562/1941), the operation of certain part of the Land Acts was suspended to the extent indicated in the Order. The parts of the Land Acts so suspended were Section 10 of the Land Act, 1927, Sections 14 and 44 of the Land Act, 1931, Section 40 of the Land Act, 1933, Sections 37 and 40 of the Land Act, 1936 and Section 53 of the Land Act, 1939.

By the Emergency Powers (No. 110) Order, 1941 (Revocation) Order 1945 (S. R. & O., 31/1945) which came into operation on 1st March, 1945, the Emergency Powers (No. 110) Order, 1941, was revoked and the suspension of parts of the Land Acts affected by the latter Order has now been removed.

CIRCUIT COURT.

AN Order has been made entitled Circuit Court Rules (Service of Originating documents by post) Order, 1944, not yet published whereby certain Circuit Court documents may be served by post. Copies of the Order may be purchased, when published, at the Government Publications Office, 3 College Street, Dublin.

CHANGE OF PROBATE REGISTRY: .

THE District Probate Registry for the Counties of Mayo and Sligo and parts of the County Leitrim is now located at Castlebar in place of Ballina. The change is made as from 1st April, 1945, by Order of the Minister for Justice.

COURT SITTINGS.

EASTER Sittings end on Friday, 18th May, 1945.

Trinity Sittings will commence on Friday 1st, June and end on Tuesday, 31st July, 1945.

OBITUARY.

MR. JAMES D. MITCHELL, Solicitor, died at his residence, Walcot, Birr, on 20th April, 1945.

Mr. Mitchell served his apprenticeship to the late Mr. Thomas Mitchell, was admitted in Trinity Sittings, 1903, and practised at Birr.

MR. THOMAS P. WALSH, Solicitor, died in Dublin on 28th April, 1945.

Mr. Walsh served his apprenticeship to the late Mr. Bernard J. O'Flaherty, Enniscorthy and Mr. Peter C. Furlong, Dublin, was admitted in Trinity Sittings, 1932, and practised as a partner in the firm of Messrs. T. & R. Walsh, at Wexford.

MR. CECIL G. THOMPSON, Solicitor, died at his residence, Claremont, 20 Orwell Park, Rathgar, Dublin, on 29th April, 1945.

Mr. Thompson served his apprenticeship to the late Mr. Norris Goddard, Dublin, was admitted in Trinity Sittings, 1896, and practised as senior partner in the firm of Messrs. Meredith & Son, at 32 Molesworth Street, Dublin.

LEGAL APPOINTMENT.

MR. JOHN F. NEILAN has been appointed State Solicitor for County Roscommon. Mr. Neilan was admitted a Solicitor in Michaelmas Sittings, 1934, and practised in Roscommon.

SOLICITORS' GOLFING SOCIETY.

THE Annual General Meeting of the Society was held in the Solicitors' Buildings on the 16th April, when the following Officers were elected for the year:—

President : P. F. O'Reilly, President I.L.S.

Captain : William C. M. Corrigan.

Hon. Treasurer : T. D. McLoughlin.

Hon. Secretary : A. Marshall.

It was decided to hold the Summer Meeting at Portmarnock on the 24th inst.; when the following Competitions will be played:—

Society's Challenge Cup—18 holes, strokes
Prize to the winner presented by the Captain.

The Veteran's Challenge Cup (presented by the late E. H. Burne) open to all members over 50 years of age—18 holes, strokes.

The St. Patrick's Plate (presented by the late Alfred Lane Joynt) limited to handicaps of 12 and under.

Those intending to compete will please notify the Hon. Secretary not later than the 20th inst.

The annual subscription to the Society (10s. 0d.) is now due. It covers the entrance fee to the Competitions at this Meeting and at the Autumn Meeting.

EXAMINATIONS RESULTS.

Preliminary Examination.

AT the Preliminary Examination for intending apprentices to solicitors held on the 11th and 12th days of April, the following passed the examination and their names are arranged in order of merit:—

1. Augustine A. Mooney.
2. Patrick J. Noonan.
3. Joseph M. MacGrath.
4. Eileen M. B. Prendiville.

Eleven candidates attended : four passed ; seven were postponed.

Final Examination.

AT the Final Examination for apprentices to solicitors held on the 9th and 10th days of April, the following passed the examination and their names are arranged in order of merit:—

1. Thomas A. Morrow.
2. Noel M. J. Purcell, B.A., N.U.I.
3. John P. M. McNally, B.A., N.U.I.
4. William S. A. Warren.
5. Philip E. McCourt } equal.
6. John C. O'Carroll }
7. Anna E. Egan.
8. Samuel J. Shaw.
9. Patrick J. Murray.
10. Patrick A. Healy.
11. Michael A. Nestor.
12. Cornelius Sheehan.
13. Patrick Woulfe, B.A., LL.B.
14. Richard J. Hegarty } equal.
15. Sheila C. P. Keane }
16. Patrick J. O'Doherty.
17. Thomas J. Hanefey.
18. Peter E. O'Connell.
19. Sheila McCrann.
20. Thomas L. Condron.
21. William B. Allen.

Twenty-seven candidates attended ; twenty-one passed ; six were postponed.

The Council has awarded a Special Certificate to Thomas A. Morrow.

NEW MEMBERS.

The following have joined the Society :—

Joseph G. Allen, 6 Clare Street, Dublin.
 Henry H. Barry, Kanturk.
 John F. B. Barry, 19 Upper Merrion Street, Dublin.
 John H. Barry, Donegal.
 Thomas J. Batty, 21 Lincoln Place, Dublin.
 George W. Beaumont, 13 Clare Street, Dublin.
 Michael C. Black, Nenagh.
 Mary J. Brennan, 18-19 College Green, Dublin.
 Patrick J. Brennan, 18-19 College Green, Dublin.
 James L. Byrne, 21 Bachelor's Walk, Dublin.
 John Carr, Ramelton.
 Patrick J. Chambers, Ennistymon.
 James P. McD. Concannon, 13 Finglas Road, Dublin.
 John F. Connolly, Kinsale.
 Robert F. Coonan, Naas.
 Nicholas J. Cosgrave, 17 D'Olier Street, Dublin.
 Robert S. Cresswell, 17 Harcourt Street, Dublin.
 Cornelius Crowley, Cork.
 John C. Devitt, Cashel.
 Joseph R. Downes, Mullingar.
 Patrick J. Dunphy, Central Office, Four Courts, Dublin.
 Dermot S. Dunleavy, Mohill.
 Helena M. Early, 63 Upper O'Connell Street, Dublin.
 John M. Eyre, Law Agent's Office, City Hall, Dublin.
 John P. Feran, Drogheda.
 David Fitzgerald, Limerick.
 David Fleming, Charleville.
 Cuthbert J. Furlong, Letterkenny.
 Eugene Gallagher, Ballyshannon.
 Joseph Gill, Westport.
 Thomas J. Guihan, Kenmare.
 Martin A. Harvey, Cork.
 Cornelius Healy, Killarney.
 Thomas D. Healy, Bandon.
 Christopher Hogan, Callan.
 William Hoyne, Thomastown.
 Patrick M. K. Johnson, Ballymote.
 Michael B. Kelly, 1/2 College Street, Dublin.
 Thomas D. Kelly, Swinford.
 Richard C. Keohane, Strabane.
 Leslie S. Kettle, 14 Ely Place, Dublin.
 George G. King, Central Office, Four Courts, Dublin.
 Edward M. Kirk, Kilrush.
 Liam F. Lanigan, Dungarvan.
 William McCarthy, Kilfinane.
 Herbert McCloughnan, Letterkenny.

Patrick P. McCormack, 11 Hume Street, Dublin.
 Alan MacDonald, Granard.
 James P. MacGeough, Carrickmacross.
 Justin C. McKenna, Kells.
 S. Peter Maguire, Ballinamore.
 Séamus N. Mahon, Tullamore.
 Syngé Millington, 6 Westmoreland Street, Dublin.
 Michael Morrissey, Tramore.
 John C. Murphy, Gort.
 William J. Murphy, Tullow.
 Beatrice Mushatt, 13 Dame Street, Dublin.
 Michael T. Neary, 4 Upper Ormond Quay, Dublin.
 John F. Neilan, Roscommon.
 Patrick J. Neilan, Junior, Ballaghaderreen.
 Kevin Nugent, Tramore.
 Donal H. O'Byrne, 1 Dame Street, Dublin.
 Desmond A. O'Connor, 140 Stephen's Green, Dublin.
 Roderick O'Connor, Charlestown.
 Roderick J. O'Connor, 34 Upper Ormond Quay, Dublin.
 Patrick M. O'Dwyer, Ballyhaunis.
 John M. O'Farrell, 6 Lower Baggot Street.
 Joseph O'Mahony, Listowel.
 Thomas C. O'Mahony, Dundalk.
 Joseph F. St. J. O'Neill, Mitchelstown.
 Phillip H. O'Reilly, 20 Merrion Road, Dublin.
 A. D. O'Riordan, 34 Lower Abbey Street, Dublin.
 Joseph G. O'Shea, Kilrush.
 Denis R. Peart, 38 St. Stephen's Green, Dublin.
 Maurice M. Power, Kilmallock.
 Gerard Quinn, 5 Upper O'Connell Street, Dublin.
 W. H. Richardson, 32 Kildare Street, Dublin.
 Thomas A. Riordan, Malloy.
 Jerome J. Ronayne, Middleton.
 Maurice P. Ronayne, Middleton.
 Diarmuid Rosney, Cahirciveen.
 Christopher G. Ross, Mullingar.
 Sharman C. Ross, Glaslough, Co. Monaghan.
 John A. Shee, Clonmel.
 Eugene Shine, Cahir.
 Henry J. Simms, Strabane.
 Leo B. Skinner, Mitchelstown.
 Maurice de L. Staunton, Castlereagh.
 James P. Sweeney, Falcarragh.
 Patrick J. V. Sweeney, Dungloe.
 Paul Taaffe, Arva.
 Walter P. Toolan, Ballinamore.
 James H. West, 18 Lower Baggot Street, Dublin.
 Thomas C. Williams, Dungarvan.
 R. M. Wilson, 13 Clare Street, Dublin.

THE REGISTRY.

(1) Entries will be accepted from solicitors for the Registry under the following headings:—Section A.—Practices for sale, partnerships and assistantships vacant; Section B.—Practices, partnerships and assistantships sought; Section C.—Miscellaneous information required, books, office equipment, etc., wanted or for sale. (2) Each entry accepted will be made in the appropriate section of the register which is open for inspection at the Society's offices during business hours. Each entry accepted will also be published once in the Society's *Gazette*. If the advertiser wishes the entry and advertisement in the *Gazette* may be over a box number. (3) Charges for each entry in

the Register (including one publication in the Society's *Gazette*): members of the Society 3/- for 30 words or less and 1d. for each additional word over 30. Other solicitors double the rate for members of the Society. (4) Replies to entries in the Register and advertisements will not be forwarded by the Society unless postage is prepaid. (5) Replies to advertisements should be marked with the appropriate Box No. and addressed to the Society. (6) The use of the Registry by solicitors is subject to general conditions, copies of which may be obtained from the Secretary.

SECTION A.

SOLICITOR, Dublin, retiring after 40 years wishes to sell practice and office equipment, books, etc.

Box No. A.101.

SECTION B.

SOLICITOR, young, qualified 1940, experience of country practice, desires Assistantship in provincial office or arrangement with view to partnership. Box No. B.107.

SOLICITOR, qualified in Easter Sittings, 1944, with good knowledge of a country solicitors's office work, and District and Circuit Court practice and procedure, desires position as an assistant in a Solicitor's office. Good references. Thomas Bowes, Loughrea, Galway.

SECTION C.

CHANGE OF ADDRESS. Mr. John P. Dunne, Solicitor, has transferred his offices from 17 Westmoreland Street, to 5 Clare Street, Dublin. Telephone 65011.

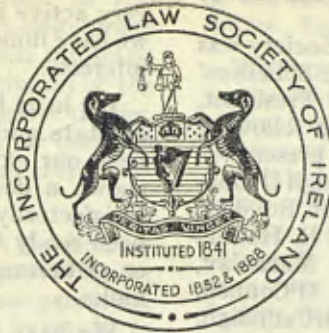
ALL Communications connected with THE GAZETTE should be addressed to the Secretary of the Society, Solicitor's Buildings, Four Courts, Dublin. Telephone: 73092.

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THE GAZETTE

of the

INCORPORATED LAW SOCIETY OF IRELAND

President:

PATRICK F. O'REILLY

Vice-Presidents:

WILLIAM S. HUGGARD

HUGH P. O'DONNELL

Secretary:

ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

MEETING OF THE COUNCIL.

MAY 16th. The President in the chair. Also present: Messrs. W. S. Huggard and Hugh O'Donnell, Vice-Presidents; W. S. Hayes, C. G. Stapleton, J. J. Smyth, J. J. Dunne, P. R. Boyd, Peter O'Connor, R. A. Macaulay, L. E. O'Dea, J. Travers Wolfe, J. B. Hamill, H. St. J. Blake, H. P. Mayne, W. J. Norman, M. E. Knight, G. A. Overend, F. J. W. Darley, J. R. Quirke, A. Cox, S. Ó hUadhaigh, D. O'Connell, E. M. FitzGerald.

The following were among the matters dealt with:

Appointment of Solicitor to Offaly County Council.

THE President reported that, accompanied by the Secretary, he had attended at the Department of Local Government and interviewed Mr. Hurson, Secretary of the Department with reference to the advertisement which had been published by the County Manager setting out the proposed terms of the appointment of a solicitor to the County Council. The advertisement set out that the appointment would be made on the basis of taxed costs subject to a condition obliging the

solicitor appointed to tax his costs each year and in the event of the taxed costs (exclusive of disbursements) exceeding £500 to accept the sum of £500 in full discharge of his professional costs. The President reported that he had informed the Secretary of the Department that the Council regarded this condition as most objectionable, and that he had pressed that it should be withdrawn and that the appointment should be made on a taxed costs basis. He stated that the Secretary of the Department, while unable to commit himself as to whether or not the appointment would be made on a taxed costs basis, had agreed that the advertisement should be withdrawn and that no appointment should be made on the terms which it contained, and that a fresh advertisement should be published before making the appointment. The Council adopted the President's report.

Delays in Public Departments.

COMPLAINTS were received from members of delays in the Irish Land Commission, and it was ordered that the President and the Secretary should seek interviews with the head of the department.

HALF-YEARLY GENERAL MEETING.

A Half-Yearly General Meeting of the Society was held on Wednesday, May 16th, in the Solicitors' Buildings, Four Courts, Dublin, the President, Mr. P. F. O'Reilly, in the chair. The following members signed their names as being present:— William S. Huggard, Vice-President, Hugh O'Donnell, Vice-President; H. St. J. Blake, P. R. Boyd, A. Cox, F. J. W. Darley, J. J. Dunne, J. B. Hamill, W. S. Hayes, M. E. Knight, R. A. Macaulay, H. P. Mayne, W. J. Norman, D. O'Connell, Peter O'Connor, L. E. O'Dea, Seán Ó hUadhaigh, G. A. Overend, J. R. Quirke, J. J. Smyth, C. G. Stapleton, J. Travers Wolfe, Mrs. D. M. O'Reilly, P. O'Grady, J. Allan Osborne, L. J. Jameson, James Fagan, James Fagan, Jnr., Miss Lucy Fagan, J. R. McC. Blakeney, E. J. Kenny, A. H. S. Orpen, R. G. Kenny, K. M. Meares, R. V. Downey, W. B. Fawsitt, E. W. Proud, O. Fry, J. E. Hamerton, D. Moran, W. H. Fry, P. C. Moore, D. Walsh, R. J. Tierney, D. R. Pigot, Noel Reid, J. P. Dunne, W. H. Phayre, J. H. Gorman.

The notice convening the meeting was, by permission of the meeting, taken as read. The Secretary read the minutes of the Half-Yearly General Meeting held on November 26th, 1944, which were then signed by the President.

The President nominated the following members of the Society as the Scrutineers of the Ballot for the Council to be held on November 21st, 1945. Messrs. J. R. McC. Blakeney, Desmond J. Collins, Thomas Jackson, B. P. McCormack and Roderick J. Tierney.

THE President addressing the meeting said:—

Since we last met in General Meeting in November last death has exacted a heavy toll of our members and it is with regret that I have to record their passing and I have also to express to their relatives our sympathy in their bereavement. The following solicitors have died during the past six months:—

Nicholas C. Shee, Isaac J. T. Colquhoun, Hugh C. Kelly, Frederick W. Law, Henry H. Grace, William Dorgan, William H. Fogerty, Hutchinson Davidson, John J. Ham, James F. D'Arcy, who was a member of the Council of this Society for many years and was Vice-President of the Society in the year 1939-40; Thomas Taggart, Robert Hunter, James R. Cresswell, James D. Mitchell, Thomas P. Walsh, Cecil G. Thompson, John F. Dickie, James D. MacCarthy, Edmond B. Slattery, Thomas Elliott, Timothy O'Hanrahan, Charles Ambrose.

The COUNCIL, since its last meeting has been very active in the interests of the profession, and we have done some work too, in the general public interest.

We have had several interviews with Ministers of State and Secretaries of Departments. It has been our experience that in all cases they have shown a desire to help, and have met us very satisfactorily in some matters. They have always been ready to consider carefully any suggestions or criticisms which we thought it necessary to make.

We have seen the Minister for Finance on the matter of salaries offered to solicitors in State appointments which, in many cases, are inadequate. It is confidently hoped that as a result of our interview the matters complained of will be put right in appointments to be filled in the future.

We have interviewed the Minister for Justice and the Secretary of his Department as to our Solicitors' Bill. The present position is that the Bill is receiving, or will very shortly receive, the attention of the Executive Council. We expect to hear in the very near future as to the attitude of the Government on the Bill. There are few points of difference on the Bill, between the Minister and us. We have clearly put before him the fully considered views of this Society on these points, and we have shown the Minister, that, in the main, the purpose of the Bill is to enable us to be "masters in our own house," which will all work in the interests of the profession as a whole, and it follows, as of course, in the interests of the public.

We also interviewed officers of the Department of Supplies in an endeavour to get, for country solicitors at least, petrol to enable them to make the many necessary journeys to attend to their professional work. We were not successful in this. We placed before the Department the strong claim which country practitioners have to priority when the Department is in a position to give an allowance. Now that the War in Europe has come to an end we expect that petrol will be made available as early as possible to enable us to have transport for the purpose of attending to our professional duties.

We have also discussed with the Department of Justice the necessity for reform of some of our existing laws. There is, in my view, a real necessity for such reform, and those fully qualified to speak on the subject, have made this clear for some years past. I will not go into details here, but let me refer to one outstanding matter, in which law reform is an urgent necessity. I refer to the

law governing descent of Real Estate in this country. We know that in very many cases grave hardship is caused, when, on a death intestate, property goes to the heir, to the exclusion of the other members of the family. In a lesser degree, the law relating to the devolution of personal estate also needs reform, as in some cases, too, it operates unfairly.

In making a Will, no man or woman should have the right to ignore the necessity of providing for the wife or husband; and children, and provision, by reform of existing laws, should be made to restrict such a right. We all know cases of, what I shall call unfair wills, made because of a fancied grievance, or even a real grievance, or because of pique, or some other selfish personal reason, property can be disposed of, to the exclusion of the wife and children, to an absolute stranger, so far as they are concerned, and family duties and responsibilities ignored. In other countries, where the law had been, more or less, as it is here matters of this kind have been dealt with by satisfactory legislation; and, in these days of social reform, we should have legislation to remedy the existing defects, as defects they are. We have urged on many occasions that a Law Reform Committee should be set up by the Government. In my opinion, the Committee should consist of nine or ten persons, three of whom should be in a position to devote their whole attention to the work of the Committee. The work of such a Committee would not be easy, and unless there are on it some full time members, no real progress could be made. The Committee should not consist entirely of lawyers, it should include members outside the legal professions, and include women.

Following representations made by the Council to the Minister for Justice on the Land Registration Fee Order of 1944, the Minister appointed a Committee to examine and report to him on the Order. The Society was represented on this Committee by Mr. John B. Hamill and myself. We attended the meetings, several of which were held, and we stressed there the great hardship which the imposition of the largely increased fees under the Order would impose. We, the Society's representatives, endeavoured to satisfy the Minister that the fees were far too high, and that in fact, it was never intended that registration of title in the Land Registry should become an expensive system—the contrary was the intention of the Local Registration of Title (Ireland) Act, 1891: The findings of the Committee have been reported to the Minister, and we now await the result of same. We are hopeful that as a result

of our efforts, and of the setting up of the Committee, that Land Registry fees will be reduced.

We have also had an opportunity of speaking to the Minister for Justice on a subject which is of great importance to our profession. As the law at present stands, solicitors are not eligible for appointment as Circuit Judges. There is no reason why this should be. Solicitors are, by reason of their practical experience and legal training, eminently fitted for such appointment, and in every way should make very satisfactory Circuit Judges. Solicitors have all the experience and legal knowledge, and other attributes requisite and desirable for such appointments, and in my opinion the appointments should no longer be exclusive to the other branch of the legal profession. I can see no reason for this. It is hoped that in time, the necessary amendment of the law in this respect will be made. There can be no reasonable ground for refusal of our claim. Solicitors have been appointed as District Justices, and have been a great success as such. The experience which is gained there qualifies other lawyers for appointment to the Circuit Court bench.

Our judicial system which was established under the Courts of Justice Act, 1924, has given universal satisfaction. It has the complete confidence of the public. The Courts are held in high esteem. It is of great importance that nothing should be done to radically change our judicial system. Recently, in the Dáil, a warning note was sounded as to the growing tendency towards the abolition of trial by jury. Undoubtedly, there has been creeping in, a tendency to trial without jury, and we in this country would do well to bear in mind that trial by jury should be retained as a valuable right. I do not refer now only to the period of National Emergency. Prior to that period, the tendency was there, and during the Emergency period drastic limitations on the right to trial by jury were introduced, and still exist. In Criminal cases in the Circuit Court, the jury is limited to seven in number, whilst on the Civil side the right to a jury does not now exist.

Not of less import is the introduction of retrospective legislation, legislation nullifying in effect decisions of our Courts, and if not nullifying them so far as the particular decided case is concerned, nullifying them to the extent that the decision can no longer be availed of as being decided law. This is to be deplored. It may lead us anywhere. It may lead to the time when an accused person, charged and acquitted, may, consequent on the introduction of legislation to deal with the matter,

the subject of his charge, find himself again in the dock on the same charge.

Recently, there has been some criticism of our judicial system following the setting aside of verdicts by the Court of Criminal Appeal, and it was suggested that there must be something wrong with our law. The Court of Criminal Appeal was established in this country in 1924. The right of every citizen to go before this Court should occasion require, must be safeguarded. The setting aside by this Court of verdicts should not be the subject of adverse criticism of our laws and judicial system, rather should it satisfy the citizen that every opportunity is afforded a defendant of legally establishing his innocence.

Some criticism too has been made of the present system of appeal from the Circuit Court in Civil cases. In accordance with the Courts of Justice Act, 1936, as you all know, these appeals are now heard in the County towns by Judges of the Supreme Court and High Court, who go on circuit, twice yearly. Some say the system is unsatisfactory and that for this reason very few appeals are lodged. This is not the case. The former system—that of having the appeal heard by two High Court Judges sitting in Dublin on the transcript of the notes taken on the hearing in the Court below—had nothing from the litigants' standpoint to recommend it.

It afforded little satisfaction, except to the successful appellant. Litigants, living miles from Dublin appealed: nothing further was heard (except perhaps a note from the solicitor that the appeal was listed) until the appeal had actually been disposed of. One can easily understand the disappointment of an unsuccessful appellant, and his desire for at least an opportunity of being present on the hearing of his appeal. Worse still, is the case of a litigant successful in the Court below, where an appeal has been successfully lodged. His view is, that had he the opportunity of being present at the hearing of the appeal, and giving evidence, the appeal would not have succeeded. In my experience, and from enquiries which I have made, I feel absolutely satisfied that the present system is the one which gives every satisfaction to the citizen.

A vote of thanks to the President for his address and for his conduct of the meeting was carried with acclamation on the motion of Mr. Hayes, seconded by Mr. Knight. The President briefly replied and the proceedings terminated.

OBITUARY.

MR. JOHN F. DICKIE, Solicitor, died at Omagh, on 3rd May, 1945.

Mr. Dickie served his apprenticeship to the late Mr. Robert H. Carson, Omagh, was admitted in Trinity Sittings, 1908, and practised at Omagh.

MR. JAMES D. MACCARTHY, Solicitor, died at his residence, "The Laurels," Carlow, on 5th May, 1945.

Mr. MacCarthy was admitted in Michaelmas Sittings, 1887, and practised in Dundalk up to 1894, when he was appointed Clerk of the Crown and Peace for County Carlow. On the establishment of the Irish Government he was appointed County Registrar, which position he held up to the year 1936, when he retired; he then practised as a Solicitor in Carlow as senior partner in the firm of MacCarthy and Lanigan.

MR. EDMOND B. SLATTERY, Solicitor, died at Mountshannon, Co. Clare, on 5th May, 1945.

Mr. Slattery served his apprenticeship to the late Mr. Joseph Dudley of Dublin, was admitted in Hilary Sittings, 1912, and practised in Tralee.

MR. THOMAS ELLIOTT, Solicitor, died at his residence, Derry Road, Strabane, on 7th May, 1945.

Mr. Elliott served his apprenticeship to the late Mr. John Elliott, Strabane, was admitted in Hilary Sittings, 1894, and practised at Strabane.

MR. TIMOTHY O'HANRAHAN, Solicitor, died in Dublin on 9th May, 1945.

Mr. O'Hanrahan served his apprenticeship to Mr. John R. Peart, Dublin, was admitted in Trinity Sittings, 1931, and practised as a partner in the firm of Peart and O'Hanrahan up to the year 1938, when he was appointed Secretary to the Irish Sugar Company, 7 Clare Street, Dublin, and two years later he was appointed Manager to the Company.

PROCEEDINGS AFFECTING THE PROFESSION.

Eric A. Plunkett, Complainant, v. Denis J. Murphy, Defendant.

KANTURK District Court, 25th May, 1945. Pretending to be a solicitor; unqualified person preparing instrument relating to real or personal estate for fee or reward; Solicitors' (Ireland) Act.

1898, Section 53; Stamp Act, 1891, Section 44 as amended by Finance Act, 1921, Section 60.

The Defendant was charged with wilfully and falsely pretending to be a solicitor contrary to the provisions of Section 53 of the Solicitors' (Ireland) Act, 1898, and with preparing an instrument relating to real estate for or in expectation of fee gain or reward contrary to the provisions of Section 44 of the Stamp Act, 1891.

Charles Shine stated that on 12th April, 1943, he attended with Margaret O'Connor and Mary O'Connor at the residence of the Defendant in Newmarket, Co. Cork, and that the Defendant drew up on his instructions a transfer from Margaret O'Connor to him of her interest as tenant in common of an undivided moiety of lands the subject of Folio 25968, Co. Cork, in consideration of a payment of £250 on the occasion of his intended marriage with her sister, Mary O'Connor, the owner of the other undivided moiety of the said lands. He paid the sum of £250 on the same day to the transferor, Margaret O'Connor, after the deed had been signed and on the same day he paid £1 10s. 0d. to the Defendant to cover the stamp duty. He identified the deed of transfer which was produced, stamped with £1 15s. 0d. revenue duty.

Mary Shine (nee O'Connor) gave evidence of attending with Charles Shine at the Defendant's residence on 12th April, 1943. As the result of a letter received by her husband, Charles Shine, from the Defendant she again went to Newmarket in August, 1943, and paid the Defendant a further sum of £2, being £1 15s. 0d. Land Registry fees and 5s. for himself. She identified the deed of transfer dated 12th April, 1943, and also the handwriting and signature of the Defendant on an application dated 18th January, 1945, for registration of the transfer in Form No. 17 of the Land Registration Rules, 1937.

Mr. George Dolan of the Central Office, Land Registry, Dublin, proved the receipt in the Land Registry on 19th January, 1945, of the deed of transfer dated 12th April, 1943, with an application for registration signed by the Defendant with his name opposite the words "signature of solicitor" and a covering letter from the Defendant, dated 18th January, 1945.

Mr. Plunkett, Secretary, Incorporated Law Society of Ireland attended to prove that the name of the Defendant was not on the Roll of Solicitors. He stated that he had inspected the records in the King's Inns and that the name of

the Defendant did not appear thereon as a Barrister, Conveyancer, Special Pleader or Draftsman in Equity, nor did his name appear on a search on the register of Notaries Public in the custody of the Registrar of the Supreme Court. He handed in certificates from the Under-Treasurer of the King's Inns and the Registrar of the Supreme Court to the same effect. He stated that the facts did not come under his notice until 19th January, 1945.

Mr. Seán MacD. Fawsitt, B.L. (instructed by Messrs. J. J. Lenahan & Son) for the Complainant, produced the Land Registration Fees Order, 1937, to prove that the Land Registry fees payable on the date of the transfer were 15s.

There was no appearance for the Defendant.

The Justice convicted on both charges. On the charge under section 44 of the Stamp Act, 1891, he imposed a fine of £50, and on the charge of pretending to be a solicitor a fine of £1 with £10 10s. 0d. costs, and £5 15s. 0d. witnesses' expenses on each summons or a sentence of six months' imprisonment for non-payment.

ARRANGEMENT OF HIGH COURT LIST.

In the *Irish Law Times and Solicitors' Journal* on May 19th the following resolution passed by the General Council of the Bar of Ireland was reported. The subject matter of the resolution is one which closely affects solicitors and their clients and it is felt that members of the profession will be anxious to do everything in their power to co-operate with the Bar in this matter. The resolution of the Bar Council was as follows:

"That the Council fully appreciates the efforts of the President of the High Court in facilitating not only Members of the Bar but also Solicitors and litigants in fixing dates for hearing of actions, and having regard thereto the Council feels that it is the duty of Members of the Bar to co-operate with the President in this matter by seeing, so far as they possibly can, that cases when listed will be ready for hearing and that due notice will be given of any case in which a settlement has been effected or of which an adjournment is intended to be sought."

SOLICITORS' GOLFING SOCIETY.

THE Summer Meeting of the Society was held at Portmarnock on Thursday, 24th May, when thirty-two members turned out in perfect weather for what was one of the most successful meetings in recent years. The Captain (William C. M. Corrigan) in addition to the Captain's Prize, presented two new Golf Balls, for which a putting competition was run—the entrance fees going to the funds of the Solicitors' Benevolent Association.

The Society's Challenge Cup and Captain's Prize were won by C. M. Ryan, the runner-up being Master Kennedy. The Veteran's Cup was won by Seamus O'Connor for the second year in

succession. The St. Patrick's Plate was won by W. A. Menton, and best gross was by Kevin Burke.

A most enjoyable day was followed by a supper, after which the Captain presented the Prizes.

The next outing will be held in October, and it is hoped that it will be possible to revive the function of the Annual Dinner at this meeting. Will solicitors interested in the Society who are not already members please communicate with the Hon. Sec. (A. Marshall, 119 Stephen's Green, Dublin). The annual subscription to the Society is 10s. 0d., which includes entrance fees to all competitions.

THE REGISTRY.

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the Register (including one publication in the Society's *Gazette*): members of the Society 3/- for 30 words or less and 1d. for each additional word over 30. Other solicitors double the rate for members of the Society. (4) Replies to entries in the Register and advertisements will not be forwarded by the Society unless postage is prepaid. (5) Replies to advertisements should be marked with the appropriate Box No. and addressed to the Society. (6) The use of the Registry by solicitors is subject to general conditions, copies of which may be obtained from the Secretary.

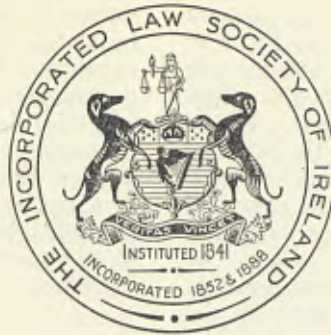
SECTION C.

MR. CALEB C. McCUTCHEON, M.A., LL.B., Solicitor, is now practising at 17 Pearse Street, Nenagh, Co. Tipperary.

ALL Communications connected with THE GAZETTE should be addressed to the Secretary of the Society, Solicitors' Buildings, Four Courts, Dublin. Telephone: 73092.

Vol. 39
No. 3

July
1945



THE GAZETTE

of the

INCORPORATED LAW SOCIETY OF IRELAND

President:
PATRICK F. O'REILLY

Vice-Presidents:
WILLIAM S. HUGGARD
HUGH P. O'DONNELL

Secretary:
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

MEETING OF THE COUNCIL.

JUNE 8th: The President in the chair. Present: Mr. H. O'Donnell, Vice-President; Messrs. P. R. Boyd, Roger Greene, W. L. Duggan, L. E. O'Dea, J. P. Carrigan, H. St. J. Blake, H. P. Mayne, W. S. Hayes, D. O'Connell, W. J. Norman, E. M. FitzGerald, F. J. W. Darley, J. R. Quirke, A. Cox, J. J. Bolger, J. J. Smyth, C. G. Stapleton.

The following was among the business transacted:—

Land Registration Rules, 1937. Rule 34.

THE Council considered a letter from the Registrar of Titles stating that he proposes to recommend to the Local Registration of Titles Rules Committee the rescission of Rule 34 of the Land Registration Rules, 1937, which authorises the discharge of equities in cases where the ownership of lands has been registered for 30 years or upwards on production of an affidavit of title by the registered owner. The Registrar was of opinion that in such cases the title should be fully investigated, but that in cases coming under Rule 35 where there has been a transfer for full value and

a complete investigation of the title within the period of twelve years the Registrar should be entitled to cancel the equity note on an affidavit from the registered owner. The Registrar proposes to recommend the necessary consequential amendments in Rules 242 (iii) and 244 (ii) and Part 2 of the Schedule of Costs appended to the 1937 rules. The Secretary was directed to inform the Registrar of Titles that the Council approve of his suggestions. The recommendations of the Registrar must be submitted to the Local Registration of Titles Rules Committee and will not become effective unless and until they are adopted by that Committee.

CURRENT TOPICS.

Court Officers Bill, 1945.

THE Government have introduced a new Court Officers' Bill in Dáil Éireann for the purpose of amending the Court Officers' Acts, 1926 and 1937. The main provisions of the Bill deal with the offices of the Master of the High Court, Probate Officer, County Registrar, and Under-sheriff.

It also proposes to effect a number of administrative changes in the management of the various Court offices. By Sections 2 and 3 of the Bill it is proposed to enable the Minister for Justice, after consultation with the President of the High Court, to make orders relieving the Master of the High Court of the management of the Central Office and of the general superintendence of such of the offices established by Part I of the Principal Act as are attached to the High Court. On and after the commencement of such orders the management of the offices is to be transferred to such officers serving in the High Court as the Minister may appoint after consultation with the President of the High Court. The effect of the proposed changes is to place the administration of the various Court offices more directly under the control of the Department of Justice, a process of which was commenced in 1926. The rights of the judges to give directions in matters affecting proceedings in their particular Courts is preserved by the provision that the officers nominated by the Minister shall be responsible to him in regard to all matters of general administration, but shall be responsible to the President of the High Court in regard to all matters relating to the conduct of that part of the business of the High Court which is required by law to be transacted by or before the High Court judges. The Bill also proposes to make more adequate provision for pensions for holders of the position of Master of the High Court, Taxing Master, and County Registrar than has heretofore been the case. The interests of solicitors are affected by section 6 of the Bill which defines the qualifications for the appointment of Probate Officer and Examiner. The Minister may after consultation with the President of the High Court appoint to these positions a barrister or solicitor with twelve years' experience in a Court office, or, if no such person can be found who in the opinion of the Minister is suitable for appointment, a practising barrister or solicitor of six years' standing. The position of Under-Sheriff, which is to be renamed "Sheriff," is dealt with by Part II of the Bill. Since the Court Officers' Act, 1926, the functions and duties of any existing Under-Sheriff have on his death devolved upon the County Registrar. This system has been found unsatisfactory in some of the more thickly populated areas, and the Bill proposes to enable the Minister to declare by order that in respect of any county or county borough in which the office of Under-Sheriff becomes vacant, Section 54 of the Principal Act (which provides for the transfer of the duties of the office to the County Registrar) shall cease to have effect. The Minister is also empowered to

appoint Sheriffs in respect of areas where the duties of that office have already been taken over by the County Registrar. No person is to be appointed to the office of Sheriff unless he is either a barrister or solicitor who has practised for not less than five years, or a person who has acted as managing clerk to a sheriff or Under-Sheriff for not less than five years. By Section 12 of the Bill it is proposed to repeal Section 45 of the Debtors' (Ireland) Act, 1840. The effect of this repeal will be to abolish the offices of Under-Sheriff's returning officer in Dublin.

Poor Prisoner's Defence.

EVERYBODY connected with the administration or practice of the law must feel that the existing facilities for the proper defence of poor persons being tried on criminal charges are very inadequate. There is no statutory provision for the assignment of Counsel and Solicitor for any poor person. The only case in which legal aid will be granted to a prisoner is where he is charged with murder, and in this case the facilities are limited to legal representation at the trial, and not at the preliminary investigation. Under the existing scale of fees which will be paid by the State to the solicitor and counsel assigned to defend a prisoner on the charge of murder the defence has to be conducted on the basis of charity. The scale of fees at present allowed to the solicitor is six guineas in the case of a country solicitor and four guineas in the case of a Dublin solicitor, with refreshers of two guineas for each subsequent day of the trial. No solicitor can undertake the defence of a poor prisoner on these terms and give it all his time and attention, as he must do, without serious pecuniary loss to himself. In this connection it is interesting to see that the whole position of legal aid for poor persons has recently been considered in England by the Rushcliffe Committee, which was appointed to deal with the subject and whose report has now been published. The statutory provision in England for aiding poor prisoners is contained in the Poor Prisoners' Defence Act, 1930, which empowers magistrates to grant defence certificates and legal aid certificates in cases where they are satisfied that the accused persons have insufficient means to provide for their own defence. This provision is not confined to cases of persons charged with murder, but extends to any charge, including cases tried under the summary jurisdiction. The Rushcliffe Committee Report criticises the existing system on the ground that it is not sufficiently used, and on the further ground that solicitors and counsel undertaking the defence of poor prisoners are

not fairly remunerated for their services. The Committee bases its report on two principles (a) that legal aid should be granted in all cases heard in criminal courts where it appears desirable in the interests of justice and (b) that solicitors and counsel undertaking the defence of poor prisoners should be adequately remunerated, regard being had for the amount of work in each case. The existing system of legal aid should be more widely extended and the cost of the defence of poor prisoners should be paid by the State. In considering the question of legal aid in civil cases the report contains some revolutionary proposals. It recommends that legal aid should be available in civil cases out of State funds for all persons with net incomes of not more than £420 per annum. The assisted person should be required to pay a graduated contribution, not exceeding £50, towards the costs of his case, except in the case of a single person with £3 per week or under and a married person with not more than £4 per week who should be entitled to legal aid free of charge. The investigation of applications for legal aid in civil cases should be entrusted to local committees charged with the duty of ascertaining the means of the applicants and issuing or withholding certificates for legal aid. The basis of remuneration recommended for solicitors and counsel willing to act for assisted persons in civil cases under the scheme is 85 per cent. of solicitor and client costs in addition to disbursements. In the event of the assisted litigant being unsuccessful the report recommends that his liability for costs towards the successful party should be limited to such amount as the Judge may allow having regard to his financial circumstances. In the event of the assisted party being successful he should recover costs against his opponent in the ordinary way, but the amount so recovered should be paid to the Area Committee for the State. The Committee's report is the most comprehensive scheme of legal aid for poor persons ever contemplated in any country, and could be implemented only at considerable expense. The portion of it which relates to aid for prisoners being tried on criminal charges might with advantage be studied by our Department of Justice.

Interest on debts—deduction of income tax.

In *Westminster Bank v. Riches* (61 T.L.R. 345) the English Court dealt with a point which had apparently not previously been judicially decided, and which is of interest to solicitors. The action was brought by the Plaintiffs, the Westminster Bank Ltd., for a declaration as to whether they were entitled to deduct income tax from a sum of

money payable to the defendant representing interest on a debt. Judgment had been given for the defendant in a previous action against the Bank for a liquidated sum together with interest thereon from a certain date at 4 per cent. per annum, which was calculated and included in the judgment, and the question was whether or not the sum awarded for interest was interest within Schedule D and Rule 21 of the all Schedule rules of the Income Tax Act, 1918, subject to deduction of income tax by the payer. Against the claim of the Bank to deduct income tax it was argued that the interest awarded as part of the judgment was really damages and not interest; furthermore that it was not interest on money within the Income Tax Act as not having the quality of recurrence or liability to recur. It was held by the High Court that the sum awarded in the judgment for interest was properly interest for the purpose of income tax and not damages and that tax was accordingly deductible therefrom by the payer. The decision of the Court was limited to the facts of the case before it, namely, interest on a liquidated sum and the question as to whether income tax is deductible from interest awarded on damages under Section 29 of the Civil Procedure Act, 1833, as distinct from interest on debts under Section 28 of the same Act was left open.

OBITUARY.

THE Council has learned with deep regret of the death of Mr. Arthur B. Kavanagh which occurred at his residence 29 Synge Street, Dublin, on 8th July, 1945.

Mr. Kavanagh was Clerk in the Secretary's Office and was well-known and esteemed by the members. He was appointed in the year 1916 and served the Society faithfully for 29 years.

MR. CHARLES AMBROSE, Solicitor, died at his residence, Crobally, Tramore, Co. Waterford, on 28th April, 1945.

Mr. Ambrose was admitted in Hilary Term, 1877, and practised in Waterford as a partner in the firm of J. & C. Ambrose up to the year 1897, when he retired.

A colleague writes :—

Charles Ambrose, who died at his residence, Crobally, Tramore, Co. Waterford, on the 28th day of April, 1945, was one of the oldest Solicitors in Ireland, if not, indeed the oldest. He was an LL.D. of Trinity College, Dublin, and qualified at Hilary Term, 1877. His father, Joseph Ambrose, was also a Solicitor, and he

and his father carried on business at Henrietta Street, Waterford, under the style of J. & C. Ambrose. The building is now the property of Mr. David C. Boyd, the proprietor of the Waterford Standard Office, and the ground floor of the building is now in the occupation of the United Yeast Company, Ltd.

The late Mr. Ambrose was Secretary and Registrar of the Diocese of Waterford for over 62 years. He was also Probate Registrar, having been appointed in about the year 1889 as successor to James Lorenzo Hickey, and held that Office till about the end of last century. He had not practised as a Solicitor, for many years prior to his death, but he held the office of Diocesan Secretary and Registrar right up to the date of his death. He was a splendid character and a keen follower of all sport.

MR. THOMAS B. MOFFAT, Solicitor, died in London on 20th May, 1945.

Mr. Moffat was admitted in Michaelmas Sittings, 1888, and practised at Enniscorthy up to the year 1917, when he retired.

MR. GOODLETT HAMILL, Solicitor, died at his residence, Castletown House, Dundalk, on 17th June, 1945.

Mr. Hamill served his apprenticeship to the late Robert Dickie of Dundalk; was admitted in Easter Sittings, 1917, and practised as a partner in the firm of Dickie, Coulter & Hamill, Dundalk, up to the year 1943, when he retired. He was a member of the Council for the year 1924-25.

MR. DAVID L. CLARKE, O.B.E., Solicitor, died at 36 Myrtlefield Park, Belfast, on 18th June, 1945.

Mr. Clarke served his apprenticeship to the late Thomas M. Kenny, of Galway; was admitted in Hilary Sittings, 1910, and practised in Castlebar up to the year 1915, when he became an auditor under the Local Government Board. When the Government of Northern Ireland was established he became Accountant in the Ministry of Home Affairs.

MR. CHRISTOPHER GORE-GRIMES, Solicitor, died at his residence, Lissadell, Shrewsbury Road, Dublin, on 22nd June, 1945.

Mr. Gore-Grimes served his apprenticeship to the late William Smyth, Dublin; was admitted in Hilary Sittings, 1902, and practised under the style of Gore & Grimes, 6 Cavendish Row, Dublin. He was a director of the Solicitors Benevolent Association.

EXAMINATION RESULTS.

At the examinations held in June, 1945, the following candidates were successful.

First Examination in Irish.

William D. Boyle.
Peter A. Connellan.
Daniel P. Early.
Helen Kennedy.
Stephen J. McDonagh.
Daniel M. F. Molloy.
Jeremiah J. O'Connor.
Joseph T. L. O'Donnell.
Donal O'Higgins.
Richard Woulfe

Twelve candidates attended; ten passed; two failed.

Second Examination in Irish.

Patrick J. Bergin.
John Butler.
Michael D. Carlos.
Benedict J. Daly.
Carmel Early.
Nuala Early.
Matthew A. Farrell.
James M. Farrelly
Kieran McAnally.
Arthur R. McDonald.
Francis J. C. Martin.
Blatnaid Ni Uadhaigh.
Peter E. O'Connell.
William F. O'Connell.

Twenty-three candidates attended; fourteen passed; nine failed.

Intermediate Examination.

Passed with merit:

Eamon P. Carroll.
Eileen Kennedy.
Florence G. MacCarthy.

Passed:

John M. Flanagan.
Francis Johnston.
Thomas R. R. King.
James Lynch.
William F. O'Connor.
Joseph E. N. Quirk.
Margaret H. Walsh.

Twenty-three candidates attended; ten passed; thirteen failed.

NEW MEMBERS.

The following have joined the Society :—

Terence B. Adams, Tullamore.
 James Binchy, Charleville.
 John G. Bolger, Portlaoighise.
 Thomas Bowes, Loughrea.
 Fergus P. Britton, Donegal.
 T. Osborne Davis, Bray.
 John Deegan, Templemore, Co. Tipperary.
 John Elgee, Wexford.
 Richard J. Elgee, Wexford.
 John B. Farrell, Tullamore.
 Eamonn P. Gallagher, Tubbercurry.
 Patrick J. Gallagher, Galway.
 Joseph G. Groarke, Moate.
 Patrick J. Groarke, Longford.
 Thomas J. Hanefey, 15 Parnell Square, Dublin.
 George M. Hegarty, Castletownbere.
 Edward W. Hughes, Graignamanagh.
 James B. Joyce, Clifden, Co. Galway.
 Edward J. Kelly, Mullingar.
 Joseph J. Little, 64 Dawson Street, Dublin.
 John T. Louth, Wexford.

Patrick McDowell, Arklow.
 Miss Jane T. McGowan, Balbriggan.
 John MacHale, Ballina.
 Patrick C. McLaughlin, Carndonagh.
 John McMahan, Ardee.
 Matthew MacNamara, Cashel.
 John S. MacNeice, Limerick.
 William A. Menton, 12 Trinity Street, Dublin.
 Charles K. Murphy, Cork.
 Patrick J. Murphy, 51 St. Stephen's Green, Dublin.
 Patrick M. Murphy, 16 Dame Street, Dublin.
 Miss Eileen Neilan, Roscommon.
 James A. Neilan, Roscommon.
 Richard O'Brien, Tipperary.
 Edward A. Doherty, Killarney.
 Thomas F. O'Keefe, Mitchelstown.
 Michael J. O'N. Quirk, Carrick-on-Suir.
 Patrick A. Roache, Mitchelstown.
 William A. F. Sandys, Galway.
 James Smith, Arva.
 Thomas F. Twomey, Kilrush.
 Henry C. Woodcock, 28 Molesworth Street, Dublin.

ADMISSIONS AS SOLICITORS OF EIRE.

From 26th June, 1944 to 21st June, 1945.

| <i>Name :—</i> | <i>Served Apprenticeship to :—</i> |
|---|--|
| Ahern, Daniel Monagea, Newcastle West. | Patrick Liston, Rathkeale. |
| Binchy, James Charleville. | Owen Binchy, Charleville. |
| Byrne, Thomas P. Knock, Claremorris. | Gerald Maguire, Claremorris. |
| Concannon, James P. McD. 13 Finglas Road, Dublin. | ex-Barrister-at-Law. |
| Daly, Thomas V. Drogheda. | T. F. McKeever, 16 College Green, Dublin. |
| Dwane, Thomas B. Cavan. | Philip N. Smith, Cavan. |
| Egan, Anna E. Tuam. | W. J. V. Comerford, Tuam. |
| FitzGibbon, Thomas K. 135 Castle Avenue, Clontarf. | M. J. Dunne, 18 Summer Street, N.C.R., Dublin. |
| Gallagher, Philip A. E. Tubbercurry. | M. J. Howley, Sligo. |
| Gill, Michael N. Dromineer, Nenagh. | W. L. Hodgins, Nenagh. |
| Hanefey, Thomas J. 14 Nth Circular Road, Dublin. | Hugh J. O'H. Ward, 62 Dawson Street, Dublin. |
| Huggard, Mary O'R. Bandon. | James Neville, Bandon. |

| <i>Name :—</i> | <i>Served Apprenticeship to :—</i> |
|---|---|
| Jones, Patrick C. Glenbeigh, Co. Kerry. | J. J. O'Donnell, 4 Denny Street, Tralee. |
| Kelly, Michael O'B. North Liberty, Co. Limerick. | Thomas O'B. Kelly, Limerick. . |
| Kelly, Simon, T. T. New Ross. | Thos. J. Kelly, New Ross. |
| Kettle, Leslie S. St. Margaret's, Co. Dublin. | Michael J. Dunne, 14 Ely Place, Dublin. |
| Liston, Patrick T. Bulgaden, Co. Limerick. | James T. Liston, Charleville. . |
| McCourt, Philip E. Castlebellingham. | James McCourt, Dundalk. |
| MacMahon, Arthur E. Cootehill. | Peter Fitzpatrick, Cootehill. |
| Malone, William B. 142 Griffith Avenue, Dublin. | C. McGonagle, 34 Upr. O'Connell Street, Dublin. . |
| Mason, William H. C. 61 Lower Baggot Street, Dublin. | ex-Barrister-at-Law. |
| Miley, Daniel O'C. Killiney. | Valentine W. Miley, 12 Sth. Frederick Street, Dublin |
| Millett, Thomas F. Borris, Co. Carlow. | John Foley, Bagenalstown. |
| Mushatt, Beatrice 8 Dufferin Avenue, Dublin. | Andrew J. O'Flynn, Gort. |
| O'Beirn, Michael G. Galway. | F. O'Beirn, Galway and M. J. Conroy, Galway. |
| O'Braonain, Tadh R. Athy. | P. J. O'Neill, Athy. |
| O'Byrne, Donal H. Ballymun Road, Dublin. | D. J. O'Connor, 42 St. Stephen's Green, Dublin. |
| O'Reilly, Thomas F. Ennis. | P. F. Molony, Ennis. |
| O'Reilly, Thomas P. Belturbet. | P. J. F. McDwyer, Belturbet. |
| Ní Uadhaigh, Meahbh, Dalkey. | Seán Ó hUadhaigh, 12 Dawson Street, Dublin. |
| Pettit, Patrick I. Ballygar, Co. Galway. | W. J. V. Comerford, Tuam. |
| Power, Maurice M. Kilmallock. | John J. Power, Kilmallock. |
| Prentice, Cecil E. Blackrock, Co. Dublin. | A. E. Prentice, 16 Lr. O'Connell Street, Dublin. |
| Purcell, Noel M. J. A. Donnybrook, Dublin. | Noel M. Purcell, 16 Dawson Street, Dublin. |
| Quinn, John D. Belturbet. | Joseph P. Black, Clones. . . |
| Ryan, Donal T. Cashel. | T. G. Quirke, 15 Sth. Frederick Street, Dublin. |
| Shaw, Samuel J. Celbridge | Chas. J. Robinson, 86 Merrion Square, Dublin. |
| Sweeney, Neary T. J. Oughterard. | H. MacDermott, Galway. |
| Tarlo Hyman 125 Leinster Road, Rathmines. | W. J. M. Coulter, 30 Upper Merrion Street, and Desmond M. McCracken, 94 Grafton St., Dublin. |
| Woulfe, Patrick, 26 Pembroke Road, Dublin. | P. J. Walsh, 17 D'Olier Street, Dublin. |

THE REGISTRY.

(1) Entries will be accepted from solicitors for the Registry under the following headings:—Section A.—Practices for sale, partnerships and assistantships vacant; Section B.—Practices, partnerships and assistantships sought; Section C.—Miscellaneous information required, books, office equipment, etc., wanted or for sale. (2) Each entry accepted will be made in the appropriate section of the register which is open for inspection at the Society's offices during business hours. Each entry accepted will also be published once in the Society's *Gazette*. If the advertiser wishes the entry and advertisement in the *Gazette* may be over a box number. (3) Charges for each entry in

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SECTION B.

YOUNG Solicitor, at present employed in Dublin, seeks Assistantship to Dublin Solicitor or arrangement with a view to Partnership. Good experience of all branches of Practice. Box No. B.108.

SECTION C.

FOR SALE: L. C. Smith "Super Speed" Brief Size Typewriter 14" Carriage; purchased (new) about three years ago: absolutely latest model available: excellent condition: would sell for £35 or nearest, or exchange (with cash) for new "Royal" Brief size typewriter. Apply:—Fletcher, Sheedy & Co., Solicitors, Mountrath, Leix.

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M. W. O'REILLY, P.C., F.C.I.I., Managing Director

Vol. 39
No. 4

August
1945



THE GAZETTE

of the

INCORPORATED LAW SOCIETY OF IRELAND

President:
PATRICK F. O'REILLY

Vice-Presidents:
WILLIAM S. HUGGARD
HUGH P. O'DONNELL

Secretary:
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

MEETINGS OF THE COUNCIL.

27th JUNE. The President in the Chair: Also present: Messrs. W. S. Hayes, E. M. FitzGerald, D. O'Connell, G. A. Overend, J. R. Quirke, C. G. Stapleton, H. P. Mayne, J. J. Bolger, H. St. J. Blake, A. Cox, J. B. Hamill, P. R. Boyd, L. E. O'Dea.

The Council dealt with the results of the First and Second Irish Examinations and the Intermediate Examination held in June 1945, and also with a number of applications by apprentices, and routine matters.

20th JULY, 1945: The President in the Chair: Also present: Messrs. Hugh O'Donnell, Vice-President; Roger Greene, P. R. Boyd, A. Cox, J. P. Carrigan, J. R. Quirke, F. J. W. Darley, D. O'Connell, W. J. Norman, W. S. Hayes, W. L. Duggan, P. O'Connor, J. B. Hamill, H. St. J. Blake, Seán Ó hUadhaigh, L. E. O'Dea, G. A. Overend, E. M. FitzGerald, M. E. Knight, R. A. Macaulay.

The following was among the business transacted:—

Local Authorities' use of Printed Letting Agreements.

MR. O'DONNELL, Vice-President, reported that during the hearing of a case by Mr. O'Shea, District Justice at the Carlow District Court, the Justice had commented adversely on the use by the Carlow Urban District Council of a printed form of tenancy agreement which was signed by the tenants in the office of a clerk of the Council without the intervention of any solicitor and stated that he considered this practice an infringement of the rights of the solicitors' profession. Mr. O'Donnell reported that he had communicated with the Secretary who had brought the matter before a Committee of the Council and subsequently instructed him to appear at the adjourned hearing of the case by the District Justice on 16th July, and to state that the Council fully supported what the Justice had said and that they considered it improper that Local Authorities should adopt the practice on which the Justice

had passed adverse comment. He had represented the Society at the adjourned hearing and informed the Justice of the Council's views. The Vice-President's report was adopted by the Council.

Unqualified Persons Preparing Agreements.

THE Secretary reported that he had received a copy of a circular issued by a firm of Auctioneers' and Estate Agents in Dublin offering to undertake the work of preparing agreements and conditions of sale at nominal rates. It was ordered that the Secretary should write to the Auctioneers pointing out the penalties which may be imposed upon unqualified persons who undertake solicitors' work, and warning them against acting in the manner suggested by their circular.

Land Commission Delays.

THE President reported that he had attended with the Secretary to interview the Secretary of the Irish Land Commission on the subject of delays which have recently occurred and that he was hopeful that as a result of representations which had been made there would be a considerable improvement in the position. He stated that the Secretary of the Land Commission had informed him that complaints accompanied by full particulars directed to him personally will be fully and confidentially investigated.

APPLICATIONS FOR COSTS IN DEBT COLLECTING LETTERS.

THE Council has recently considered the practice of including demands for costs in solicitors' letters applying for payment of debts before the institution of proceedings. The Council expressed the opinion that the practice should, in so far as it now exists, be discontinued. The opinion of the Council is limited to applications for immediate payment of liquidated debts. A contributed article on the position of solicitors in this matter is printed below.

LETTER BEFORE ACTION.

SOLICITORS will recall having seen the press reports some years ago of adverse comments by the Recorder of Belfast on solicitors' letters applying for payment of debts due to clients demanding payment by the debtors of a specified sum for the costs of the letter.

The prominence which was given in the Press to the Recorder's remarks attracted the attention not only of members of the profession but of the general public. In several instances solicitors who

had obtained payment on behalf of creditors of small debts together with the costs of the letter of application, before the institution of proceedings, have since received demands from the erstwhile debtors for a refund of the amount of the costs on the grounds that they were not legally recoverable and should not have been demanded. It is therefore of importance to the members of the profession who are entrusted with the work of debt collection to enquire (a) as to the propriety in the interests of justice of writing the usual warning letter before the institution of proceedings and the consequences of instituting proceedings without at least one such letter, and (b) the propriety and wisdom of the admittedly long standing custom of issuing applications for payment of a debt, accompanied by a request for payment of a sum for costs, and an intimation that proceedings will be instituted failing payment either of the amount of the debt and costs or of the debt alone.

In regard to the first question it will generally be conceded that a solicitor as an officer of the Court has to consider not merely the interests of his client and his personal interests but also the interests of justice, and it has always been the practice of the profession to give the debtor a final opportunity of discharging his obligations or compromising with his creditor before instituting proceedings. In *Rinder v. Deacon* (11 Ir. Jur. N.S. 414) Pigot, C. B., stated: "I hesitate about giving costs in favour of the plaintiff's attorney, for I think this motion indicates that it is the practice prevailing too much at present that an attorney instructed to collect the debts of an English client makes the summons and plaint the medium of his demand. The attorney's duty to the community at large and to his client was not to make the summons and plaint the first means of collecting his clients' debts, but to apply by letter in the first instance to the defendant." Although there appears to be no absolute legal obligation on a solicitor to write the usual preliminary letter of warning before instituting proceedings, the rule of conduct laid down by Pigot, C. B., in 1866, only indicated what was then, and has continued to be, the general practice of the profession. The costs of such a letter will tax as between party and party, and, where the party and party costs are regulated by scale, the scale usually includes provision for such a letter. Even if solicitors had to write such letters gratuitously in all cases, most would prefer to do so rather than to institute proceedings without warning.

The topic of the propriety of including applications for costs in preliminary letters is not new, and is the subject of old and conflicting judicial

dicta. In *Williams v. Barnett* (16 L.T. N.S. 672) Blackburn, J., said "His (the attorney's) position would have been better if he had only asked 2/- which we understand (after consulting with the Master) is always allowed for a letter before writ when the debt is under £20. Here he charges 5/- or 150 per cent. more. However, it seems he was entitled to something." In *Caine v. Coulson* (7 L.T.N.S. 636) Martin, B., said "It was not unreasonable that an attorney should demand some remuneration for his trouble in applying for a debt; but he had no legal claim for it from the person to whom he applied. Most respectable attorneys did so apply and no blame attached for requesting such costs to be paid or in so writing. Such is however no debt." The judicial dicta cited above denied the legal obligation of a debtor to pay anything on foot of costs, provided that the debt is tendered or paid before the institution of proceedings, but recognised the right of solicitors to apply for the costs of the preliminary letter in ease of their clients, the creditors. However, in 1873 the question was raised in the Irish Courts in the case of *Allen v. O'Callaghan* (10 I.L.T.R. 131) and the judges in the course of the argument expressed the emphatic opinion that such applications for costs should not be made. The following is an extract from the report. "Dowse, B. 'Suppose an attorney writes a letter to a debtor asking him to pay an account claimed to be due, can he also make the debtor pay the costs of that letter?' Johnston, Q. C. (for plaintiff) 'In that case the debtor might perhaps put him at arm's length but the custom has been to pay the costs.' Palles, C. B. 'If these costs cannot legally be demanded it becomes a serious question whether attorneys, who are officers of the Court, should continue habitually to make a demand for a sum of money that the Court has decided could not be demanded. If there were a solemn decision of the Court that these sums were not a legal demand the officers of the Court should follow that decision and not be asking persons who are not aware of how the law stands to pay this demand for the costs of letters before action brought.' Dowse, B. 'I agree entirely with my Lord Chief Baron. I have continually seen instances mentioned in the newspapers of poor people, debtors and others, having demands for 10/- and 15/- made upon them in this way, and paying these demands rather than being dragged into law. If the demand is not legal the attorney should not be allowed to levy what he might consider "benevolence" from these parties. It should be understood that attorneys have no right to make this demand for costs when merely

applying for a debt.' Palles, C. B. 'Costs are recoverable by an attorney only after action brought.'

If it were not for the emphatic opinions expressed by the eminent judges in *Allen v. O'Callaghan*, it would appear that the right of solicitors to apply for such costs could not be questioned either on ethical or legal grounds, any more than the right to apply on a client's instructions for payment of a statute barred debt. Solicitors cannot be expected to conduct their business on "principles of pure benevolence," and are paid in such cases either by their clients the creditors, or by the debtors. The question seems to have been regarded as if solicitors stand to make a personal profit from such applications which is not the case. The question is merely whether such costs shall be charged as between party and party or as between solicitor and client. It may be more convenient for a solicitor to recover his costs from the debtor together with the debt rather than from his client, particularly in the case of small debts, but in the abstract the matter is of concern to the public rather than the profession. It would seem, therefore, that the strictures expressed or implied in the reported dicta of some of the judges failed to take account of the actual position of solicitors in this matter. Furthermore, the debtor who objects to paying such costs has often availed of various devices to delay payment and, having put his creditor to the expense of employing a solicitor, can claim no sympathy himself on equitable grounds. Whatever opinions, however, may be held as to the injustice of onerating creditors with costs incurred through the recalcitrance of their debtors, it is the duty of solicitors as officers of the Court to respect and follow the law as it exists, and to act in accordance with the authoritative opinions of the judges of the Irish Court in the case of *Allen v. O'Callaghan* cited above. The gravamen of the criticism of such letters is the expressed or implied threat of proceedings to induce payment of a sum of money which is not legally due. A letter demanding payment of the debt in such terms as to lead the debtor to believe that the costs also are legally due would be open to the same objection. In order to avoid the objection the fact that the amount of the debt alone is legally due would have to be so clearly expressed that the letter would be ineffective in so far as the costs are concerned, and in this regard not worth writing.

It is, however, clear that it is not improper on the part of a solicitor for a creditor to make it a condition precedent on the acceptance of payment of a debt by instalments that the debtor shall indemnify the creditor against his costs.

Neither could there be criticism of applications for costs in letters demanding the discontinuance of unlawful interference with proprietary rights, such as patent or copyright, and intimating that proceedings will be stayed on an undertaking by the trespasser to discontinue the interference and to indemnify the aggrieved party against costs. The judicial dicta in *Allen v. O'Callaghan* were limited to cases of simple applications for immediate payment of liquidated debts and have no application to cases where a stay of proceedings is the consideration for a fresh contract between the parties.

Finally, it is of interest to note that the trend of professional opinion elsewhere is in accordance with the opinions expressed by Chief Baron Palles and Baron Dowse in 1873. In 1898 the Council of the English Law Society expressed the opinion that the practice of applying for a small sum for the costs of a debt collecting letter was common and not unprofessional. In 1930, after reconsidering the matter, the Council of the Law Society withdrew the opinion of 1898 and published a notice deprecating the practice of demanding such costs and urging solicitors to abandon it. The Council of the Incorporated Law Society of Northern Ireland recently published an opinion to the same effect.

LAND REGISTRATION FEE ORDER 1944.

As members were informed in previous issues of the *GAZETTE*, the Minister for Justice, following upon the representations which were made by the Council as to the injurious effect of the above Fee Order, appointed a Committee under the Chairmanship of Mr. H. B. O'Hanlon, Taxing Master of the High Court to investigate and report to him upon the effects of the Order and as to whether any changes in the new scales are called for. The representatives of the Council on the Committee were the President and Mr. John B. Hamill: the other representatives being Civil Servants.

The Committee met on a number of occasions and eventually submitted a majority and a minority report to the Minister. The minority report was signed by the representatives of the Council. The Council has received notification that the Minister has decided to adopt the views expressed in the majority report and that no change in the scale of fees imposed by the Land Registration Fees Order, 1944, will be made. The matter will be placed on the Agenda for the next meeting of the Council which will be held on October 5th.

LAND REGISTRY.

THE following statement is published at the request of the Registrar of Titles :—

(1) **Missing Documents** :—It has been brought to the notice of the Registrar that in a number of applications for first registration and for cancellation of notice of equities, a document of title, which is stated by the applicant to have been lost, is subsequently traced in reply to a requisition by the Registry requiring evidence of the efforts made to locate the missing document and suggesting possible lines of inquiry.

This suggests that some solicitors do not make adequate inquiries for missing documents before lodging applications. Such an omission results in unnecessary correspondence and consequential delay in completion of registration.

It is not the function of the Examiner in the Registry to detail the steps to be taken by solicitors to trace missing documents.

Exhaustive inquiries, such as inquiries at Banks and at Offices of former Solicitors who acted for the owners should be made before applications are lodged; and the inquiries made to trace the missing documents and the results thereof, should be stated in the application or in a separate affidavit filed with the application.

Inspection of the purchase agreement in the Land Commission or of the Memorial in the Registry of Deeds (where the lost Deed was registered therein) will often show the name of the solicitor who acted for the parties at the time and who may have knowledge of the probable whereabouts of the missing document.

If the solicitor who acted for the owner when the purchase agreement was signed or the deed registered is dead or has retired from business, enquiries should be made from the solicitor who subsequently acquired his practice and documents.

By observing the procedure indicated above, solicitors will obviate the issuing of Rulings which should not be necessary and which cause delay in the completion of the transaction.

(2) **Rejection of Dealings** :—The Registrar desires to call the attention of Practitioners to the fact that notwithstanding the "Memorandum on Practice" issued by the Registry in May, 1944, a number of Dealings have still to be rejected on the preliminary examination through some defect in the documents presented for registration. A close attention to the instructions in the Memorandum and reference to the appropriate provisions of Land Registration Rules 1937 and 1944 would obviate most of the defects disclosed and prevent the delay and inconvenience of rejection.

Besides such delay and inconvenience both to solicitors and the Registry officials, such rejections may involve practitioners in serious liability to their clients, inasmuch as, in the interval between the rejection of the Dealing and its re-lodgment in proper form, their clients may lose priority on the Register, or be obliged to take land subject to a new charge or burden owing to the lodgment and registration of another dealing creating such charge or burden before the relodgment of the rejected Dealing when perfected.

Practitioners are accordingly requested to have regard to the several instructions in the Memorandum and to the appropriate Statutory Rules when preparing documents for registration.

DISTRICT COURT RULES

(No. 1) 1945.

THE attention of solicitors is directed to the above rules which were made on 22nd June, 1945. The new rules enable District Justices to order that service of civil processes may be effected either by registered or ordinary prepaid post, if satisfied that none of the modes of service prescribed by Rule 74 of the District Court Rules, 1926, is reasonably practicable.

RESTRICTIONS OF RENTS AMENDMENT ORDER

By Emergency Powers (No. 318) Order, 1944 (Amendment) Order, 1945, the Government has amended the Emergency Powers (No. 318) Order, 1944, which came into operation on 8th February, 1944, and brought under control premises not already controlled by the Increase of Rent Acts. Copies of the amending Order are not yet available but it is understood that they will be on sale at an early date at the Government Publications Office, College Street, Dublin.

FUNDS IN COURT.

THE Registrar of Wards in Court has published a notice directing the attention of Committees of estates of Wards of Court and Guardians of Fortunes of Minors to the necessity of revising the lists of investments in which their Wards are interested. The notice directs particular attention to short-dated trustee stocks which at present stand above par. In the case of such stocks it is reasonable to expect a loss of capital and income based on present values at the redemption dates.

OBITUARY.

MR. MICHAEL C. BURKE, Solicitor, died at Milford House, Limerick, on 26th March, 1945.

Mr. Burke, who was formerly a Barrister, was admitted a Solicitor in Trinity Sittings, 1921, and practised at Limerick under the style of Kenny & Burke.

MR. PATRICK CAMPBELL, Solicitor, died at his residence, Brampton, Sutton, Co. Dublin, on 21st June, 1945.

Mr. Campbell served his apprenticeship with the late Mr. Thomas J. S. Harbison, Cookstown, was admitted in Trinity Sittings, 1908, and practised at 33 Upper Ormond Quay, Dublin, up to the year 1933, when he retired.

MR. JAMES J. DUDLEY, Solicitor, died at his residence, "Garland," Mallow, on 3rd July, 1945.

Mr. Dudley served his apprenticeship with the late Mr. Edward O'Connor, Mallow, was admitted in Michaelmas Sittings, 1893, and practised at Mallow, under the style of O'Connor & Dudley.

MR. CHARLES W. RUSSELL, Solicitor, died at his residence, 44 Wellington Road, Dublin, on 18th July, 1945.

Mr. Russell served his apprenticeship with the late Mr. William Houghton Russell, Dublin, was admitted in Michaelmas Sittings, 1895, and practised at 19 Upper Ormond Quay, Dublin, as senior partner in the firm of Messrs. W. J. Shannon & Co. up to the year 1943, when he retired.

MR. GEORGE CROWLEY, Solicitor, died at his residence, The Cottage, Willbrook Road, Rathfarnham, Dublin.

Mr. Crowley served his apprenticeship with Mr. John Cusack, Dublin, was admitted in Easter Sittings, 1927, and practised at 8 Lower O'Connell Street, Dublin, as a partner in the firm of Messrs. Crowley, Bolger & Cusack.

MR. JOHN J. BEATTY, Solicitor, died at his residence, Tullyvin, Merrion Road, Dublin, on 29th July, 1945.

Mr. Beatty served his apprenticeship to the late Mr. John Ruckley of Dublin, was admitted in Michaelmas Sittings, 1891, and practised as senior partner in the firm of Messrs. Vincent & Beatty, at 62 and 63 Dame Street, Dublin.

**THE FOLLOWING NOTICE APPEARED
IN THE LEGAL DIARY OF 31st JULY,
1945.**

MICHAELMAS SITTINGS, 1945.

JURY AND NON-JURY ACTIONS.

NOTICE.

Actions set down for Trial for any date after Friday, 2nd November, will not be listed for trial during the Michaelmas Sittings unless leave shall have been granted by the Court.

Jury Actions will be listed for hearing on Tuesday, 6th November.

COUNTY KERRY LAW SOCIETY.

The Annual General Meeting of the County Kerry Law Society was held at Tralee, on the 21st July, when Mr. D. J. O'Neill, Honorary Secretary reported a highly Satisfactory state of affairs. Subsequently the Annual Dinner of the Society was held at The Grand Hotel where His Honour, Judge Barra O'Briain, Members of the Bar, The Medical Referee and Officers of The Gardai in the County were guests of The Society.

THE REGISTRY.

(1) Entries will be accepted from solicitors for the Registry under the following headings:—Section A.—Practices for sale, partnerships and assistantships vacant; Section B.—Practices, partnerships and assistantships sought; Section C.—Miscellaneous information required, books, office equipment, etc., wanted or for sale. (2) Each entry accepted will be made in the appropriate section of the register which is open for inspection at the Society's offices during business hours. Each entry accepted will also be published once in the Society's *Gazette*. If the advertiser wishes the entry and advertisement in the *Gazette* may be over a box number. (3) Charges for each entry in

the Register (including one publication in the Society's *Gazette*): members of the Society 3/- for 30 words or less and 1d. for each additional word over 30. Other solicitors double the rate for members of the Society. (4) Replies to entries in the Register and advertisements will not be forwarded by the Society unless postage is prepaid. (5) Replies to advertisements should be marked with the appropriate Box No. and addressed to the Society. (6) The use of the Registry by solicitors is subject to general conditions, copies of which may be obtained from the Secretary.

SECTION C.

In view of the many enquiries which have been made Mr. Leopold J. Jameson, Solicitor, wishes it to be known that he has not entered into partnership with any other solicitor but continues to practise alone at 16-17 Lr. O'Connell Street, Dublin. Telephone Number 74658.

ALL Communications connected with THE GAZETTE should be addressed to the Secretary of the Society Solicitors' Buildings, Four Courts, Dublin. Telephone: 73092.

ADVERTISEMENTS

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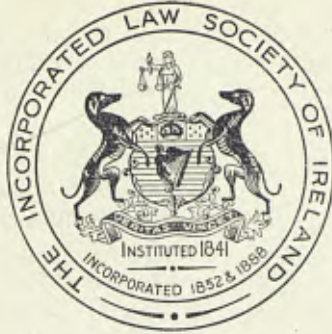
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M. W. O'REILLY, P.C., F.C.I.I., Managing Director

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November

1945

THE GAZETTE

of the

INCORPORATED LAW SOCIETY OF IRELAND

President :

PATRICK F. O'REILLY

Vice-Presidents :

WILLIAM S. HUGGARD

HUGH P. O'DONNELL

Secretary :

ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

MEETING OF THE COUNCIL.

OCTOBER 5th. The President in the chair. Present: Messrs. Hugh O'Donnell, Vice-President; P. R. Boyd, C. G. Stapleton, D. O'Connell, J. R. Quirke, W. J. Norman, E. M. FitzGerald, J. S. O'Connor, R. Greene, A. Cox, S. O hUadhaigh, J. T. Wolfe, J. J. Smyth, J. P. Carrigan, W. S. Hayes, H. P. Mayne, J. B. Hamill, J. J. Lynch.

Mr. A. E. Bradley, decd.

THE Council passed in silence a vote of condolence with the relatives of the late Mr. Arthur E. Bradley who was a member of the Council from 1905 to 1921 and a former President of the Society.

Costs Query.

THE Council considered a report from a Committee on the following query: "Acting for an unsuccessful Plaintiff in a Circuit Court action we were duly summoned to attend before the County Registrar to oppose the taxation of the Defendant's costs. The County Registrar, as Taxing Master, allowed

us a fee and same was added to Defendant's bill and the bill then certified by the County Registrar. Defendant's solicitor contends that he will only pay our fee on payment of his bill of costs by our client. We maintain that our fee for opposing the Defendant's costs should have been discharged before the bill had been certified as is the case on the taxation of costs in the High Court." The Committee reported that it is not the ordinary practice of the Taxing Master of the High Court, on party and party Taxations, to add to the bill of costs being taxed, the opposing solicitor's fee for attending the taxation. In the opinion of the Committee, on the facts before it, in the absence of an undertaking by the solicitor taxing the costs that he would pay the opposing solicitor's fee in any event there was no obligation on him to pay this fee until he should have received the amount of the certified costs from the unsuccessful plaintiff. The Council adopted the report.

Irish Legal Terms Act, 1945.

THE Secretary read a letter from the Department

of Justice requesting the Council to nominate a member of the Irish Legal Terms Advisory Committee constituted under the provisions of the above-mentioned Act. The Council nominated Mr. Seán Ó hUadhaigh as their representative on the Committee.

Land Registration Fee Order, 1944.

THE Secretary reported that following the publication of the Land Registration Fee Order, 1944, of which the Council had not received any previous notification, a deputation had interviewed the Minister for Justice in order to point out the exorbitant increases in the Land Registry fees imposed by the Order and to press for its revocation or drastic amendment. A reasoned statement of the case for the revocation of the order had also been prepared in the form of a memorandum, which was submitted on behalf of the Council to the Minister for Justice. Following the receipt of this memorandum from the Council, the Minister for Justice had appointed a Committee under the chairmanship of Mr. H. B. O'Hanlon, Taxing Master of the High Court, to investigate and report to him upon the effects of the Order and as to whether any changes in the new scale of fees should be made. A copy of the Council's memorandum had been circulated to the members of the Committee. The Council had been invited to nominate two members of the Committee and appointed the President and Mr. John B. Hamill. In addition to the chairman there were three other members of the Committee, all of whom were Civil Servants. The Committee had met on a number of occasions and eventually submitted a majority and a minority report to the Minister. The minority report was signed by the representatives of the Council, while the majority report was signed by the other members of the Committee and the Chairman. The Minister, after considering the reports had notified the Society that he had decided to adopt the views expressed in the Majority Report and that no changes would be made in the scale of fees authorised by the Land Registration Fee Order, 1944. It was ordered that the matter should be placed on the agenda of the Half-Yearly General Meeting of the Society to be held on November 26th.

Petrol for Solicitors.

THE Secretary reported that since the end of the war he had again written to the Department of Supplies requesting the Minister to consider the granting of a basic petrol allowance to country solicitors and pointed out the difficulties under which they had to carry on business owing to the

absence of travelling facilities. He had recently received a reply from the Department stating that the petrol position had not improved and that the Minister was, therefore, unable to grant the facilities requested at the present time.

CURRENT TOPICS.

Solicitor's Lien where acting for both Mortgagor and Mortgagee.

IN a case which was recently heard by the English Chancery Division the Court decided a point of interest to the profession which has been the subject of a number of conflicting decisions. The plaintiff was a mortgagor in an action to redeem his mortgage and the defendants were the legal personal representatives of the deceased mortgagee. One of the defendants was also the solicitor who had drawn up the mortgage, having acted on that occasion for both mortgagor and mortgagee. The solicitor-defendant retained the title deeds in his possession and continued so to retain them after the death of the mortgagee, of whose will he was an acting executor. He therefore stood at various times in the capacities of (a) solicitor for mortgagor and mortgagee severally (b) solicitor for both of them and (c) one of the executors of the deceased mortgagee. He claimed to hold a retaining lien against the mortgagor over the documents of title for the costs of the mortgage transaction and other monies due by the mortgagor, all of which had become statute barred. The Court held that once the solicitor became an executor of the deceased mortgagee he ceased to hold the title deeds as solicitor, and thereafter held them as executor jointly with his co-defendants. A solicitor connotes a client and a man cannot be solicitor for himself. The Court further expressed the view that even if the mortgagee had survived, or if the solicitor-defendant had not been one of his executors, his lien would have been lost by reason of his having acted in the capacity of solicitor for both mortgagor and mortgagee, even though the title deeds never left his office. (*Barratt v. Gough—Thomas and others* 61 T.L.R.534).

Documents and Pictures (Regulation of Export) Act, 1945.

THE short title of the above-mentioned Act which has become law is "An Act to regulate the export of documents and pictures with the object of preserving records of those which are of national, historical, genealogical or literary interest." The word "document" is defined in the Act as including any writing, drawing, map, chart, plan,

photograph, or film, and Section 2 prescribes that (a) any document (other than a document wholly in print) which is over one hundred years old, (b) any painting, and (c) any document so declared by the Minister under Section 2 (a) shall be the articles to which the Act applies. The Act makes it unlawful for any person to export an article to which it applies without obtaining an export licence therefor. Solicitors will need to remember that muniments of title over one hundred years old are documents within the meaning of the Act which may not be exported from Éire either to Northern Ireland or England except under licence. The Minister is required by Section 4 of the Act to grant an Export Licence on application, subject to obtaining from the applicant such facilities as the Minister may consider necessary for making within a reasonable time photographic copies of the article. Where the applicant for an export licence in respect of an article to which the Act applies affords facilities for the making of photographic copies of the article the Minister has the right to publish or use such copies in any manner which he thinks proper.

Solicitor and Property of Bankrupt Client.

A solicitor acting for an undischarged bankrupt may find himself in a dilemma in respect of property of his bankrupt client coming into his possession. Is he bound to hold the property for the assignees in bankruptcy as after required property irrespective of the wishes of his client, and to refuse to surrender the property even to his client, or can he obtain a good discharge for the property by dealing with it in accordance with his client's instructions? A careful solicitor in Ireland will hesitate before dealing with the property even on his client's instructions without permission from the assignees, having regard to Section 237 of the Irish Bankrupt and Insolvent Act, 1857. The responsibility of English solicitors has been made lighter by the decision of the High Court, affirmed by the Court of Appeal, in *In re Samuel—ex parte the Trustee v. Kerman* (61 T.L.R.581). In that case the solicitors for an undischarged bankrupt had on their client's instructions, and on her behalf, accepted delivery of certain jewellery from her husband's solicitors. On their client's instructions they held the jewellery for a short time, and then delivered it to another agent of the bankrupt, whom she had instructed to sell the jewellery with a view to the application of the proceeds of sale for the education of her son. The solicitors delivered the jewellery to their client's agent as instructed,

being aware of the purpose for which she intended to apply it. They did not at any stage notify the trustee in bankruptcy of these transactions. Ultimately the trustee in bankruptcy called upon the bankrupt's solicitors either to deliver to him the articles of jewellery, or to pay him their value, which they declined to do. On proceedings being instituted by the trustee against the solicitors it was held that it had not been established that they had converted the property, and furthermore that as solicitors for the bankrupt they had dealt with the property only in a ministerial capacity, and were not under any duty to withhold from their client property to which they had no claim as solicitors, even although the client had expressed an intention of dealing with it in a manner which would infringe the Bankruptcy Act, 1914. According to Mr. Justice Evershed, to hold that a solicitor as an officer of the Court was under a duty to withhold property from his client because he knew that she was an undischarged bankrupt, and would probably deal with it in a manner contrary to law, would place solicitors under an impossible burden, which would be contrary to the interests of justice, and would be an unwarranted interference with the position subsisting between solicitor and client. The decision seems to be an admirable one, but in applying it to Ireland consideration must be given to the provisions of the Irish Bankrupt and Insolvent Act, 1857, which seem more far reaching than the corresponding provisions of the English statute.

APPOINTMENTS.

New Dublin Sheriff.

THE Government have accepted the resignation of Mr. Séamus Ó Conchubhair from the office of County Registrar for Dublin. They have appointed him to be Sheriff of the County Borough of Dublin with effect from 17th September, 1945.

Dublin County Registrar.

Mr. Micheál Ó Cléirigh, T.D., Solicitor, has been appointed County Registrar for Dublin.

Mr. Ó Cléirigh was admitted in Michaelmas Sittings, 1935, and practised at Ballyhannis.

LAND REGISTRY.

1st August, 1945.

FEE ON TRANSMISSIONS ON THE DEATH OF A REGISTERED OWNER.

THE Registrar has directed that as from this date no fees are to be charged on any transmission on

the death of a registered owner, except :—

- (a) The transmission is effected by an ASSENT of the personal representative (when full fees are to be charged).
- (b) On the registration of a personal representative for the purpose of administration, with the prescribed inhibition, under Rule 88 of the Land Registration Rules, 1937, as amended by Rules 28 and 29 of the Land Registration Rules, 1944, when the fee prescribed at Item 5 Part II of the Schedule to the Fee Order of 1944 is to be charged.
- (c) A transfer *on sale* by the personal representative of a deceased registered owner.

NOTE :—Transmissions by way of assent are effective only in cases where the registered owner dies *testate*.

SOLICITORS' GOLFING SOCIETY.

THE Autumn Meeting of the Society was held at Milltown Golf Club on Thursday, the 20th September, when thirty members competed for the Incorporated Law Society's Challenge Cup, the President's Prize and the Ryan Challenge Cup. In addition, there was a putting competition for a prize presented by the Captain, the proceeds going to the funds of the Solicitors' Benevolent Association. The following were the winners :—

| | |
|---------------------------|----------------|
| President's Prize | W. Norman |
| Ryan Cup | W. J. O'Reilly |
| Best Gross | D. Lynch |
| Putting | W. A. Menton |

The annual dinner of the society was held in the Clubhouse at 7 p.m. when in the unavoidable absence of the President of the Incorporated Law Society (Patrick F. O'Reilly) the chair was taken by the Captain (William C. M. Corrigan). In proposing the toast of "The President of the Society" J. J. Hickey referred to Mr. O'Reilly's illness, and read a letter from him wishing the Society a pleasant outing. The best thanks of the Society were accorded to the President for his untiring interest in the Society during his year of office, and for the very handsome prize which he presented to go with the Law Society's Challenge Cup.

The Officers and Committee of the Society were very gratified at the number of country members who attended this outing, Baltray, Longford, Monaghan, Mullingar and Wicklow, being represented. In welcoming these members, Mr. Michael Corrigan referred to some of the very memorable outings of the Society which had been held in the country, and said that as soon as travel

facilities had been restored, the Society proposed holding one of its annual outings at a country venue.

Will Solicitors who wish to become members of the Society kindly communicate with the Hon. Secretary, A. Marshall, 119 Stephen's Green, Dublin, who will supply all necessary information.

OBITUARY.

MR. CHARLES W. NEILL, Solicitor, died at his residence, Lurgan, Co. Armagh, in August, 1945. Mr. Neill served his apprenticeship with the late Mr. James Ussher, Lurgan, was admitted in Trinity Sittings, 1896, and practised at Lurgan. He was appointed Town Solicitor for Lurgan in 1927.

MR. BERNARD FINEGAN, Solicitor, died at his residence, 99 Donore Terrace, South Circular Road, Dublin, on 15th August, 1945. Mr. Finegan served his apprenticeship with Mr. Valentine E. Kirwan, Dublin, was admitted in Hilary Sittings, 1931, and practised at 13 Lower Ormond Quay, Dublin.

MR. WILLIAM P. DUNDON, Solicitor, died at Edmonton, Alberta, Canada, on 12th September, 1945. Mr. Dundon served his apprenticeship with the late Mr. John Dundon, Limerick, was admitted in Hilary Sittings, 1908, and practised in Limerick up to the year 1911, when he went to Canada.

MR. ARTHUR E. BRADLEY, Solicitor, died at Sandycove, on 15th September, 1945. Mr. Bradley served his apprenticeship with his father, the late Mr. William George Bradley of Dublin, was admitted in Easter Sittings, 1888, and practised as senior partner in the firm of W. G. Bradley & Son at 11 Lower Ormond Quay, Dublin. Mr. Bradley was a member of the Council from 1905 to 1921. He was Vice-President of the Society in the year 1910-1911 and was President for the year 1914-1915. Mr. Bradley was a Director of the Solicitors' Benevolent Association.

MRS. MARY NUGENT (née Neilan), Solicitor, died in a private nursing home, in Dublin, on 28th September, 1945. Mrs. Nugent served her apprenticeship with her father, Mr. Patrick J. Neilan, Roscommon, was admitted in Michaelmas Sittings, 1931, and practised in Roscommon up to the year 1934.

MR. DANIEL X. KEENAN, Solicitor, died in Dublin, on 8th October, 1945. Mr. Keenan served his apprenticeship with the late Mr. William Gallagher, Armagh, was admitted in Michaelmas Sittings, 1895, and practised in Monaghan.

MR. HENRY G. DONNELLY, Solicitor, died in Dublin on 10th October, 1945. Mr. Donnelly, who was formerly a Barrister, was admitted a Solicitor in Hilary Sittings, 1918, and practised at Athy, Baltinglass and Dunlavin.

THE REGISTRY.

(1) Entries will be accepted from solicitors for the Registry under the following headings:—Section A.—Practices for sale, partnerships and assistantships vacant; Section B.—Practices, partnerships and assistantships sought; Section C.—Miscellaneous information required, books, office equipment, etc., wanted or for sale. (2) Each entry accepted will be made in the appropriate section of the register which is open for inspection at the Society's offices during business hours. Each entry accepted will also be published once in the Society's *Gazette*. If the advertiser wishes the entry and advertisement in the *Gazette* may be over a box number. (3) Charges for each entry in

SECTION A.

QUALIFIED ASSISTANT wanted by City Firm. Reply to Box No. A.102.

the Register (including one publication in the Society's *Gazette*): members of the Society 3/- for 30 words or less and 1d. for each additional word over 30. Other solicitors double the rate for members of the Society. (4) Replies to entries in the Register and advertisements will not be forwarded by the Society unless postage is prepaid. (5) Replies to advertisements should be marked with the appropriate Box No. and addressed to the Society. (6) The use of the Registry by solicitors is subject to general conditions, copies of which may be obtained from the Secretary.

SECTION B.

OLD ESTABLISHED SOLICITORS would acquire first class Dublin practice or would consider amalgamation. Replies in strict confidence. Box No. B.109.

SECTION C.

TO DUBLIN SOLICITORS:—'Tis believed that MICHAEL ENGLISH, Tullamore, Merchant, within the past 5 years made his Will in a Dublin solicitor's office where, presumably, the document is. Appeal is made on behalf of Testator's widow for its discovery. Please communicate with:

ROGERS & Co., Solicitors, Tullamore.

MR. MICHAEL J. FITZMAURICE, 2, Lower Ormond Quay, Dublin is no longer acting as agent for Mr. JOHN B. LAVALLE.

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 £1,300 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 10/6 if admitted less than 3 years) a year. £10 10s. 0d. life membership.

Address:

THE SECRETARY,
SOLICITORS' BENEVOLENT ASSOCIATION,
22 NASSAU STREET, DUBLIN.

ALL Communications connected with THE GAZETTE should be addressed to the Secretary of the Society, Solicitors' Buildings, Four Courts, Dublin. Telephone: 73092.

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| Total Income for the year | | | | £705,426 |
| Total Premium Income for the year | | | | £638,227 |
| Showing an increase of | | | | £114,747 |
| Total Claims Paid for the year | | | | £211,427 |
| Total Claims paid to date | | | | £2,433,302 |

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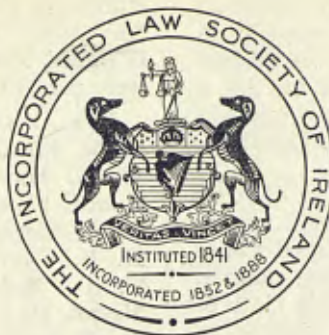
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LIFE • ENDOWMENT • ANNUITIES • HOUSE PURCHASE

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December
1945



THE GAZETTE

of the

INCORPORATED LAW SOCIETY OF IRELAND

President:
DANIEL O'CONNELL

Vice-Presidents:
MATTHEW G. R. LARDNER
ROGER GREENE

Secretary:
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

MEETINGS OF THE COUNCIL.

OCTOBER 26th. The President in the chair. Also present : Mr. W. S. Huggard, Vice-President ; Messrs. A. Cox, J. B. Hamill, H. St. J. Blake, R. Greene, P. R. Boyd, C. G. Stapleton, D. O'Connell, J. R. Quirke, W. S. Hayes, H. P. Mayne, W. J. Norman, J. J. Lynch, M. E. Knight, J. J. Bolger, J. S. O'Connor, G. A. Overend, J. J. Smyth, R. A. Macaulay, J. P. Carrigan, W. L. Duggan, P. O'Connor, L. E. O'Dea, E. M. FitzGerald.

Rent Restrictions Bill, 1945.

THE Council considered the provisions of the Bill and referred it to the Legislation and Privileges Committee. As the Bill was in course of passage through Dáil Éireann the Committee was authorised to make representations to the Minister on behalf of the Society with a view to having any desired amendments made in the Bill before it becomes law.

Library.

THE Secretary was authorised to purchase the back volumes of the All England Reports which

were first published in 1936 and it was decided to take these law reports in future in addition to the reports for which the Society already subscribes.

Annual Report of the Council.

THE Draft Annual Report was adopted.

NOVEMBER 16th. The President in the chair. Also present : Mr. W. S. Huggard, Vice-President ; Messrs. H. St. J. Blake, J. T. Wolfe, S. Ó. hUadh-aigh, A. S. Merrick, J. Gillespie, J. J. Lynch, C. G. Stapleton, D. O'Connell, W. S. Hayes, J. R. Quirke, W. J. Norman, L. E. O'Dea, A. Cox, J. J. Bolger, J. C. Taylor, G. Murnaghan.

Rent Restrictions Bill, 1945.

THE Secretary reported that the Legislation and Privileges Committee had considered this Bill and made representations to the Department of Justice which resulted in the following amendments being made in the provisions of the Bill :—

1. SECTION 22 : This Section enables the tenant or sanitary authority to apply to the Court for an

order reducing the rent of controlled premises on the ground that they are not in all respects in good and tenable repair. On the suggestion of the Council this section was amended by a provision to make it clear that such an application can only be made on notice to the Landlord.

2. SECTION 28 provides for the fixing of rents of small premises on personal application by the tenant or his agent at the District Court Office for a provisional order. The Committee pointed out that in recent years an undesirable class of "rent tout" has appeared in the poor districts of Dublin to the disadvantage of the tenants and that this class of person might seek to make a business out of Part III of the Act. It was suggested that the section should be amended by making it an offence for any person, other than a solicitor, to act as an agent for the purpose of Section 28 for or in expectation of fee, gain or reward. The Minister accepted this suggestion and proposed an amendment substantially to the effect of that suggested by the Committee.

3. SECTION 31 : On the suggestion of the Committee the Minister proposed an amendment to the Bill, which was carried, extending the time within which the Landlord may appeal against a provisional order, from one month to three months.

Several reports from the Court and Offices Committee on questions of costs submitted by members were considered and adopted.

A number of apprentices' applications and applications under Section 47 were dealt with.

A number of matters were referred to Committees of the Council for consideration.

THE PRESIDENT.

Mr. Daniel O'Connell of Dundalk has been elected President of the Society for the coming year.

THE VICE-PRESIDENTS.

Mr. Matthew G. R. Lardner of Monaghan and Mr. Roger Greene of Dublin have been elected Vice-Presidents of the Society for the coming year.

HALF-YEARLY GENERAL MEETING.

The Half-Yearly General Meeting of the Society was held in the Hall of the Society, Solicitors'

Buildings, Four Courts, Dublin, on Monday, 26th November, 1945. The President, Mr. Patrick F. O'Reilly, was in the chair. The following members were present :—

P. F. O'Reilly, President ; J. J. Bolger, A. Cox, E. M. FitzGerald, Roger Greene, J. B. Hamill, W. S. Hayes, W. J. Norman, D. O'Connell, Seán Ó hUadhaigh, G. A. Overend, J. R. Quirke, J. J. Smyth, C. G. Stapleton, J. P. Tyrrell, D. B. Gilmore, P. C. Moore, Dermod Rosney, T. D. McLoughlin, Thos. Maguire, Desmond Moran, H. E. M. Woulfe Flanagan, R. J. Tierney, A. J. Dudley, James McCourt, Hector Ryan, R. French, A. E. Walker, Samuel Hayes, T. F. O'Reilly, Rory O'Connor, W. R. McFerran, J. P. L. Murphy, F. M. Purcell, D. D. MacDonald, A. E. Prentice, Plunkett McCormack, F. X. Burke, J. F. Donovan, D. J. Hughes, J. J. Hickey, C. J. Gore Grimes, S. Millington, T. J. Kirwan, Brendan Walsh, M. A. Smyth, Eugene Collins, R. V. H. Downey, John J. Walker, Kevin Burke, Mrs. Dorothea M. O'Reilly, Oliver Fry, G. E. Grove-White, Leonard Webb, K. M. Meares, J. P. O'Connell, A. Ross, P. J. Walsh, W. H. Watson, C. Gavan Duffy, Maurice Kenny, A. J. McDonald, H. D. Draper, A. Cullen.

By permission of the meeting the notice convening the meeting was taken as read. The minutes of the Half-Yearly General Meeting held on May 16th were read, confirmed and signed by the Chairman.

The audited accounts of the Society for the year ending 30th April, 1945, were adopted and with the consent of the meeting were signed by the Chairman. Messrs. Kevans & Son, Auditors and Accountants were, re-appointed Auditors for the year to end 30th April, 1946.

The Secretary read the report of the Scrutinizers of the Ballot for the Council for the year to end 26th November, 1946, which stated that the following had been returned unopposed as Provincial Delegates : Ulster, John Gillespie ; Munster, A. J. Blood-Smyth ; Leinster, William L. Duggan ; Connaught, Christopher E. Callan ; and that the following had been elected as the thirty-one ordinary members of the Council, having received the number of votes placed after their respective names :—Arthur Cox 458, H. St. J. Blake 412, P. F. O'Reilly 408, W. S. Hayes 381, L. E. O'Dea 377, Edward M. FitzGerald 377, J. T. Wolfe 374, W. J. Norman 371, J. P. Carrigan 371, P. R. Boyd 370, Seán Ó hUadhaigh 368, G. Acheson Overend 367, Daniel O'Connell 367, J. B. Hamill 363, H. P. Mayne 362, W. S. Huggard 361, J. S. O'Connor 359, P. O'Connor 358,

J. J. Lynch 339, H. O'Donnell 327, J. J. Bolger 322, J. R. Quirke 319, M. G. R. Lardner 316, J. J. Dunne 313, R. A. Macaulay 313, J. J. Smyth 303, Roger Greene 299, C. G. Stapleton 282, F. J. W. Darley 279, J. J. Dundon 276, J. P. Tyrrell 258, with the following as the supplemental list in case of vacancies: Joseph Barrett, 249, P. C. Moore 245, D. R. Pigot 226.

The President, in moving the adoption of the Annual Report said:—

Ladies and Gentlemen,

I am pleased to have this opportunity of again addressing you and I am very glad to see you here to-day. Your presence shows that you take an active interest in the affairs of the Society, and the members of the Council are more than pleased that you should take this interest.

Since our last Half-Yearly Meeting, in May last, the Council has continued to actively look after the interests of our profession, and has been very busy in that direction.

During the past six months, death has taken a large number of our profession. These include Mr. Goodlett Hamill, Mr. Gore-Grimes, Mr. M. C. Burke, Mr. James J. Dudley, Mr. Charles W. Russell, Mr. George Crowley, Mr. John J. Beatty, Mr. Arthur E. Bradley, a former President of this Society, and a Member of the Council for many years; Mr. Charles S. Quinlan, Mrs. Mary Nugent, Mr. Michael Dorgan, Mr. Francis P. Long, Mr. Timothy D. McCoy, Mr. George B. Caruth and Mr. Albert J. O'Donoghue. We deeply regret their passing; and to their relatives we offer our sympathy.

During the past year, following the active efforts of your Council, 126 new members have joined the Society. This is very satisfactory, but even yet, our membership is not what it should be. We should have as members of the Society, every practising Solicitor, and I look forward to the day when we shall have this. I ask the members here to-day, each of them, to do his and her share to get new members.

As you will see from the Report of the Council, we have been very busy with matters affecting the profession and the public. During the year, we have held seventeen Meetings of the Council, and about forty Meetings of Committees of the Council; and the Statutory Committee has held twelve meetings. All these have been well attended by most of the Council Members, despite existing travelling inconveniences. We can hope for improved attendances, with less transport difficulties.

I told you in May last of our efforts to secure at least a modification of the increased Fees payable under the Land Registration Fee Order of 1944. We have been completely unsuccessful in this. The Committee appointed by the Minister for Justice to consider the Order, made two reports to the Minister. The minority report was signed by Mr. John B. Hamill and myself. This Report, on reasoned grounds, suggested various modifications of the fees, but the Minister refused to accept our views and adopted the report of the majority of the members of the Committee appointed, so that the considerably increased Land Registry Fees are payable. It is surprising that the Minister did not give more consideration to the views expressed by Mr. Hamill and myself. I am still unconvinced that there was any justification for the steep increases in Fees imposed—and the increased Fees are an imposition—by the 1944 Order. However, I have no doubt that you will wish to have this matter discussed further later on.

Early in this year, the then Minister for Finance met a Deputation from the Council to discuss complaints by us on the inadequate salaries offered to solicitors appointed to certain State Departments. Whilst our interview was to some extent successful, we find that the same scale of salary has been offered for a post which recently became vacant. The Minister was communicated with, and we have been informed that there can be no upward revision of the salary scale whilst the present—one-sided—stand-still policy exists. This, we regard as most unsatisfactory, and I take this opportunity to protest against the inadequacy of the salary offered, and the distinction in salary made by the Minister between men and women solicitors. A lower salary is offered to women solicitors. Why this should be, I am at a loss to understand. I am perfectly satisfied that ladies competent enough to be appointed, should not be penalised because of their sex. Indeed, I think that, by general consent and approval, we have long since passed the age when any such distinction should be made. The Department wants to obtain the services of young men of good qualifications and ability, but it cannot hope to retain them, or in future, to obtain suitable solicitors, unless they will be adequately remunerated. Perhaps, here, I might be permitted to say that the policy of the Minister for Finance as to salaries for such appointments, is in strange contrast with the policy of the Minister for Justice in regard to Fees payable by the public to the Land Registry, which fees have been “upwardly revised.”

The Minister for Justice some time ago appointed a Committee to inquire into the matter of fees payable in the High Court. The Council is represented on this Committee by two members. We look forward, with some misgiving, to the setting up of this Committee, having regard to the policy of the Minister in regard to Land Registry Fees. Let us hope that the setting up of the Committee by the Minister does not indicate another upward revision of the fees payable in the High Court. There is no reason why they should be increased. Even from the point of view of the Department, you will agree, the fees payable at present are, indeed, reasonable. However, the members of the Council will consider very fully all matters brought before this Committee.

With the coming of peace, and the urgent necessity for provision of housing, particularly in City and Town areas, we may expect that there will be extensive compulsory acquisition of property. Recently, his Lordship, the Lord Mayor of Dublin, who takes such a keen interest in civic affairs and in the well-being of our citizens, stated that the Dublin Corporation has prepared a scheme which will involve the expenditure of £11,000,000 for housing and street widening. This, doubtless, will necessitate the acquisition of property on a large scale. It is to be hoped that the Legislature will take steps to assure that in all cases of such acquisition, adequate compensation will be awarded to the property owner. The full market price of the property should be paid and the owner, who has his property taken from him, should, at least, be put into the position that his income is not decreased by reason of the acquisition of his property. As the law stands, the local authority may acquire property compulsorily, almost when, and, within certain limits, where it wishes. Undoubtedly, the Minister for Local Government and Public Health directs an inquiry as to the confirmation of the Acquisition Order, but in most cases, in our experience, the Order is confirmed. Then there is an arbitration to assess the amount of compensation payable to the owners. There is no appeal on the amount of the compensation, from the decision of the arbitrator. Frequently, the amount of compensation awarded—and I have now in mind particularly the property owner whose sole income was from the acquired property—is so small, that a very grievous hardship is caused. The full market value of the property should be paid; and, in addition, where property is taken from an owner, regardless of his wish to keep it, his expenses in connection with the matter

should be paid to him. Frequently, in cases of acquisition, an owner is put to very considerable expense, and this expense is not reimbursed to him. A measured sum is sometimes awarded, which in nine cases out of ten, would not cover the owner's outlay, and it is left to the owner to pay the balance. His costs of making title to the property are paid when the property has been acquired by the local authority. There should be a right of appeal in every case as to the amount of the compensation awarded by the arbitrator; and this appeal, should be to the High Court of Justice. As the law stands at present, the position is unfair and unsatisfactory to property owners.

The Commission on Vocational Organisation presented to the Government in 1943 a most exhaustive and useful Report. This Report is a matter of interest and importance to all citizens, and the Council appointed a Committee to consider the Report, in so far as it affects our profession. I do not know if the Government intends to give any effect to this Report, but I feel now that a Committee of the Oireachtas has been set up to inquire into the method of election to Seanad Eireann that careful perusal of this Report by members of that Committee would be very helpful in their deliberations. It seems to me that the Senate could be filled—to a major part at any rate—by representation on a vocational basis, and I hope that this view will be taken by the Oireachtas Committee. In my opinion, the public generally is very interested that the method of election to the Senate is under consideration. The present method has caused uneasiness in the public mind.

At the last General Meeting, I told you that the Solicitors' Bill would shortly receive the attention of the Executive Council. This has, so far, not been done, because the Department of Justice, owing to great pressure of work, was unable to complete its consideration of the Bill. It had, we are satisfied, other very urgent matters to attend to. However, I believe that the Bill will be considered by the Executive Council at a very early date. This Council has impressed on the Minister for Justice what the views of the Society on the Bill are. It is hoped that in the near future we shall have the Government's views on this most important Bill.

The Council, during the Emergency, endeavoured so far as they could, but without success, to obtain petrol for country practitioners. Now, that petrol is available to the public, it is hoped that additional allowances will be made available to solicitors having regard to the amount of

travelling they must do. We are taking up this matter with the Department of Industry and Commerce, and we shall do what we can to obtain these allowances.

My term of office as President is coming to an end. I express my deep gratitude to the members of the Council for the help they have given me. They have throughout the year given me all the assistance which I required. To the members of the Society in general too, I am indebted, and, in particular, to its young members, and its new members. May I say that we, on the Council, much appreciate their co-operation with us.

To our Secretary, Mr. Plunkett, I am much indebted. He has been ever ready and willing to assist, and were it not for his material help, the work of your President would have been heavy. I am afraid that, at times, I overburdened him. I thank him very much for his great assistance.

I now move the adoption of the Annual Report.

Mr. W. S. Hayes seconded the adoption of the Report.

The following members of the Society addressed the meeting on the Annual Report: Messrs. T. D. McLoughlin, Noel Purcell, Thomas Maguire and Brendan T. Walsh.

The President replied to the points raised by members and the motion for the adoption of the Report was put to the meeting and carried.

Mr. Brendan T. Walsh then proposed and Mr. Noel Purcell seconded a motion deploring the failure of the Minister for Justice to act on the considered submissions of the profession in regard to the new scale of Land Registry fees and calling on him to reconsider his attitude. The following amendment to the motion having been proposed by Mr. James McCourt and seconded by Mr. Desmond Moran was, by permission of the meeting, accepted by the proposer of the substantive motion who withdrew his motion in favour of the amendment: "That the matter be referred back to the Council to summon a meeting of all solicitors in Ireland (to which the general public will be admitted) so that the effects of the Order may be made public," Messrs. McCourt, Purcell and O hUadhaigh spoke to the amendment and stated that the profession as a whole were dissatisfied with the new Fee Order and considered it harsh and unjust in its effects. The President summed up. The amendment was then put to the meeting as a motion and declared lost.

Mr. A. E. Walker then proposed and Mr. G. A.

Overend seconded that the best thanks of the Society be given to the President for his great services to the profession during his year of office and for his Presidential address. The motion was carried with acclamation. The President thanked the meeting and the proceedings terminated.

SOLICITORS' APPRENTICES' DEBATING SOCIETY.

THE Inaugural Meeting of the Solicitors' Apprentices' Debating Society of Ireland was held on October 26th, when the Auditor, Mr. Sean M. Flanagan, B.A., delivered an address on "International Ireland." The Chair was taken by Mr. Patrick F. O'Reilly, President of the Incorporated Law Society of Ireland. The speakers were: An Tanaiste, Mr. Sean F. Lemass, T.D., Minister for Industry and Commerce; Mr. James M. Dillon, Barrister-at-Law, T.D.; Senator F. M. Summerfield, P.C.; Mr. Carroll O'Daly, S.C. The following medals were presented by Mr. O'Reilly:—Oratory, Incorporated Law Society's Gold Medal: F. Martin; Society's Silver Medal: S. O Cuinnagain. Special Certificate: K. Lynch. Legal Debate: President's Gold Medal: S. M. Flanagan. Society's Silver Medal: F. Martin. Impromptu speeches: Vice-President's Gold Medal: Miss M. Maye. Vice-President's Silver Medal: S. M. Flanagan. Irish Debate: Society's Medal: H. J. Flattery. Society's Silver Medal: M. McNally. Ex-Auditor's Silver Medal: Miss J. McGuinness. First Year Speeches, Society's Silver Medal: G. J. Colley. Composition, Incorporated Law Society's Gold Medal: B. J. Daly.

LEGAL APPOINTMENT.

Mr. Patrick D. Jordan, Solicitor, Enniscorthy, has been appointed County Registrar for Wexford, in room of Mr. Michael J. Dwyer, on Mr. Dwyer's appointment as County Registrar of Wicklow.

DISTRICT COURT DISTRICTS (DUBLIN) ORDER, 1945.

THE above Order (S. R. & O., 1945, No. 279) is now on sale at the Government Publications Office, 3-4 College Street. The effect of the Order is to extend the limits of the Dublin Metropolitan area. The new area is shown on a section of the ordnance map which is printed as part of the order.

EXAMINATIONS RESULTS.

[October, 1945]

Preliminary Examination.

At the Preliminary Examination for intending apprentices to solicitors held on the 8th and 9th October, the following passed the examination and their names are arranged in order of merit :—

1. Timothy J. Casey } equal.
- Vincent Walsh }
3. Thomas M. L. Coyle.
4. Joseph J. Hughes.
5. Thomas L. Callan.
6. Mary P. G. Hamill.

Eleven candidates attended ; six passed ; five were postponed.

The Council has awarded Silver Medals to Timothy J. Casey, Vincent Walsh and Thomas M. L. Coyle.

At Examinations held on the 5th and 6th October under the Legal Practitioners' (Qualification) Act, 1929, the following passed the examinations.

FIRST EXAMINATION IN IRISH.

Denis J. Bergin (Junnr.)
John F. Bowers.
Thomas L. Callan.
Timothy J. Casey.
Thomas M. L. Coyle.
Diarmuid M. Gleeson (Junnr.)
Edward M. Greene.
Margaret E. Hayes.
Joseph J. Hughes.
Thelma King.
Catherine Lenehan.
Charles J. Markey.
Cornelius J. Noonan.
Una Mary O'Higgins.
Joseph C. Réedy.
Philip Sheil.
Michael M. Smyth.
Vincent Walsh.
John P. Ward.

Twenty-six candidates attended ; nineteen passed ; seven were postponed.

SECOND EXAMINATION IN IRISH.

Mary Barry.
Bernard J. Carroll.
Richard J. Crotty.
Eoin C. J. Daly.
Moya Dixon.
Louis Goldberg.
Daniel Healy.
Patrick A. Healy.
James D. Kiernan.
Henry Lynch.
William T. Mahony.
Thomas A. Morrow.
Patrick J. Murray.
Michael A. Nestor.
Patrick J. O'Doherty.
Cormac B. J. O'Hare.
Josephine M. E. O'Keefe.
Walter Rhatigan.
Henry C. Sexton.

Twenty-five candidates attended ; nineteen passed ; six were postponed.

INTERMEDIATE EXAMINATION.

At the Intermediate Examination for apprentices to solicitors, held on the 3rd October, the following passed the Examination :—

Passed with merit :
1. Michael O hAodha.
2. Maurice L. Clifford.

Passed :
James C. Brennan.
Michael J. Buggy.
Samuel F. Charters.
Michael P. Dinneen.
C. H. Doyle.
Gerald Hickey.
Frederick M. Kelly.
Daniel G. McCarthy.
Annie J. McGuinness.
Mary Matthews.
Oliver P. Morahan.
Richard Moylan.
Hubert O'Dwyer.
Domhnall B. O'Sullivan.
Brigid P. Power.
Theodore H. E. Shera.
Myles P. Shevlin.
Francis M. Thompson.

Twenty-two candidates attended ; twenty passed ; two were postponed.

FINAL EXAMINATION.

At the Final Examination for apprentices to solicitors held on the 1st and 2nd October, the following passed the Examination and their names are arranged in order of merit :

1. Ignatius K. Lynch.
2. John A. Thornton.
3. John R. Gibney.
4. David Twomey.
5. Timothy J. O'Donoghue.
6. Michael M. Phelan.
7. Donald V. Goulding.
8. Kieran W. A. McAnally.
9. John M. Gilvarry.
10. William F. O'Connell.
11. John B. Jermyn.
12. John D. Hutchison.
13. Michael D. Carlos.
14. Toirdhealbhadh de Valera.

Nineteen candidates attended ; fourteen passed ; five were postponed.

The council has awarded a Special Certificate to Ignatius K. Lynch.

SCHOLARSHIPS, 1945.

THE Findlater Scholarship was awarded to Hyman Tarlo, B.A.T.C.D., who served his apprenticeship with the late Mr. William J. M. Coulter, of 30 Upper Merrion Street, Dublin and Mr. Desmond M. McCracken of 94 Grafton Street, Dublin.

The Overend Final Scholarship (Real Property and Conveyancing) was awarded to Ignatius K. Lynch, who served his apprenticeship with Mr. Thomas A. Lynch of Ennis.

The Overend Preliminary Examination Scholarship was awarded to Timothy J. Casey and Vincent Walsh in equal shares.

EXAMINATIONS, 1946.

| Examination | Date | Last date for lodging notice |
|------------------|--------------------|------------------------------|
| First and Second | | |
| Irish | .. Feb. 1 and 2 | January 11. |
| Final .. | .. April 8 and 9 | March 18. |
| Preliminary | .. April 10 and 11 | March 19. |
| Intermediate | .. June 3 | May 18. |
| First and Second | | |
| Irish .. | .. June 7 and 8 | May 18. |
| Final .. | .. October 1 and 2 | Sept. 10. |
| Intermediate | .. October 3 | September 12. |
| First and Second | | |
| Irish .. | .. Oct. 4 and 5 | Sept. 13. |
| Preliminary | .. Oct. 7 and 8 | September 16. |

LECTURES HILARY SITTINGS.

Junior Class lectures will commence on Monday, January 14th, at 2.15 p.m.

Senior class lectures will commence on Friday, January 11th, at 2.15 p.m.

EXAMINATION PAPERS.

The booklet of examination papers set in 1945 is now on sale. Price 2/-, post free 2/4d.

OBITUARY.

MR. FRANCIS P. LONG, Solicitor, died at his residence, 31 Upper Baggot Street, Dublin, on the 20th October, 1945.

Mr. Long served his apprenticeship to the late Mr. James Goff, Dublin, was admitted in Hilary Sittings, 1898, and practised under the style of J. H. Walsh & Co., at 1 Lower Ormond Quay, Dublin.

MR. TIMOTHY D. MCCOY, Solicitor, died at his residence, "Duncaha House," Ardagh, on the 25th October, 1945.

Mr. McCoy was admitted in Hilary Sittings, 1892, and practised at Newcastle West.

MR. CHARLES S. QUINLAN, Solicitor, died at a Dublin Nursing Home on 13th November, 1945.

Mr. Quinlan served his apprenticeship with the late Mr. Patrick R. Buggy, Waterford, was admitted in Trinity Sittings, 1924, and practised at Waterford.

MR. ALBERT J. O'DONOGHUE, Solicitor, died at Rathgar Road, Dublin, on 14th November, 1945.

Mr. O'Donoghue served his apprenticeship with Mr. Francis J. Little, Dublin, was admitted in Easter Sittings, 1917, and practised at 31 Exchequer Street, Dublin.

MR. GEORGE B. CARUTH, Solicitor, died at Ballymena on 15th November, 1945.

Mr. Caruth served his apprenticeship with the late Mr. James Caruth, Ballymena, and practised at Ballymena as senior partner in the firm of Messrs. Caruth & Bamber. He was for many years Coroner of Mid. Antrim.

MR. MICHAEL DORGAN, Solicitor, died at Cork on 18th November, 1945.

Mr. Dorgan served his apprenticeship with Mr. Frederick H. Hall, Cork, was admitted in Hilary Sittings, 1919, and practised at Cork as a partner in the firm of Messrs. Frederick Hall & Son.

THE REGISTRY.

(1) Entries will be accepted from solicitors for the Registry, under the following headings:—Section A.—Practices for sale, partnerships and assistantships vacant; Section B.—Practices, partnerships and assistantships sought; Section C.—Miscellaneous information required, books, office equipment, etc., wanted or for sale. (2) Each entry accepted will be made in the appropriate section of the register which is open for inspection at the Society's offices during business hours. Each entry accepted will also be published once in the Society's *Gazette*. If the advertiser wishes the entry and advertisement in the *Gazette* may be over a box number. (3) Charges for each entry in

the Register (including one publication in the Society's *Gazette*): members of the Society 3/- for 30 words or less and 1d. for each additional word over 30. Other solicitors double the rate for members of the Society. (4) Replies to entries in the Register and advertisements will not be forwarded by the Society unless postage is prepaid. (5) Replies to advertisements should be marked with the appropriate Box No. and addressed to the Society. (6) The use of the Registry by solicitors is subject to general conditions, copies of which may be obtained from the Secretary.

SECTION A.

SOLICITORS REQUIRE CLERK (Dublin) with good knowledge Chancery, Wards of Court, Land Commission, Probate and some knowledge Costs. Reply with full particulars, copies references and state salary expected. Box No. A.103.

SECTION B.

ASSISTANT SOLICITOR, practising independently in Dublin, would undertake Probate and Estate Duty work for other Solicitors. Careful worker. Highest references. Box No. B.110.

SOLICITOR, young and experienced, seeks an appointment in City or provincial office. Box No. B.111.

SECTION C.

FOR SALE. "The Irish Justice of the Peace," by James O'Connor, 1911 edition, Excellent condition. Box No. C.103.

THE practice of the late Mr. Charles S. Quinlan, Solicitor, of Waterford, deceased. Particulars and conditions of sale can be had from: T. R. CHAMBERS, HALLEY & Co., Accountants & Auditors, 14 Barronstrand St., Waterford.

Vol. 39
No. 7



January
1946

THE GAZETTE

of the

INCORPORATED LAW SOCIETY OF IRELAND

President:
DANIEL O'CONNELL

Vice-Presidents:
MATTHEW G. R. LARDNER
RÓGER GREENE

Secretary:
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

MEMBERS ARE REMINDED THAT ANNUAL CERTIFICATES SHOULD BE TAKEN OUT AND DUTY PAID THEREON NOT LATER THAN 5TH FEBRUARY, 1946.

MEETINGS OF THE COUNCIL

NOVEMBER 26th. The President in the chair. Also present: Messrs. W. S. Hayes, A. Cox, J. R. Quirke, G. A. Overend, J. J. Smyth, J. J. Bolger, Roger Greene, J. B. Hamill, P. R. Boyd, Seán Ó hUadhaigh, C. G. Stapleton, H. P. Mayne, D. O'Connell, W. J. Norman, E. M. FitzGerald, J. P. Tyrrell.

New Member of the Council.

THE President welcomed Mr. J. P. Tyrrell, who was elected to the Council at the election held on 21st November, 1945.

Mr. M. E. Knight.

THE Council passed a resolution expressing their regret at the retirement of Mr. M. E. Knight, who did not offer himself for re-election. Mr. Knight

was first elected to the Council in 1925 and served as President of the Society for the year 1935-1936.

A number of routine matters were transacted.

DECEMBER 7th. Mr. O'Reilly and subsequently Mr. O'Connell in the chair. Also present: G. A. Overend, P. R. Boyd, Roger Greene, J. R. Quirke, W. S. Hayes, J. J. Lynch, W. J. Norman, J. J. Bolger, H. P. Mayne, J. P. Tyrrell, C. G. Stapleton, J. B. Hamill, W. L. Duggan, P. O'Connor, A. Cox, J. J. Smyth, J. P. Carrigan, H. St. J. Blake.

Election of President and Vice-Presidents.

THE ballot was held and resulted in the election of Mr. Daniel O'Connell, of Dundalk, as President of the Society, and Mr. M. G. R. Lardner of Monaghan and Mr. Roger Greene of Dublin as Vice-Presidents for the year 1945/46.

Society's Investments.

THE Council considered and adopted a report from the Finance Committee setting out the manner in which the sale of part of the Society's

investments, amounting to £9,927-8s. 7d., had been re-invested.

Extraordinary Members of the Council.

THE Council adopted the election of the following as the extraordinary members of the Council:—Incorporated Law Society of Northern Ireland:—Messrs. R. A. Corscadden, A. S. Merrick, Charles MacLoughlin, George Murnaghan and James C. Taylor. Southern Law Association:—Messrs. J. W. O'Donovan, Edward Emerson, John K. Coakley, J. J. Horgan and Barry M. O'Meara.

DECEMBER 14th. The President in the chair. Also present:—Mr. Roger Greene, Vice-President, Messrs. J. R. Quirke, P. R. Boyd, G. A. Overend, W. S. Hayes, C. G. Stapleton, William L. Duggan, H. St. J. Blake, J. B. Hamill, J. Travers Wolfe, Seán Ó hUadhaigh, Patrick F. O'Reilly, W. J. Norman.

Statutory Committee.

THE Secretary read a letter from the Chief Justice appointing the following seven members of the Council to constitute the Statutory Committee for the year:—H. St. J. Blake, J. B. Hamill, Daniel O'Connell, L. E. O'Dea, P. F. O'Reilly, Seán Ó hUadhaigh, G. A. Overend.

Committees of the Council.

THE following Standing Committees were appointed for the year:—

Court of Examiners:—The President, Daniel O'Connell; the Vice-Presidents, M. G. R. Lardner, Roger Greene; The last President, P. F. O'Reilly; P. R. Boyd, J. B. Hamill, H. P. Mayne, W. J. Norman, G. A. Overend.

Legislation and Privileges Committee:—A. Cox, E. M. FitzGerald, W. S. Hayes, W. J. Norman, L. E. O'Dea, J. S. O'Connor, S. Ó hUadhaigh, J. R. Quirke, J. J. Smyth,

Court and Offices Committee:—H. St. J. Blake, P. R. Boyd, E. M. FitzGerald, J. J. Lynch, R. A. Macaulay, H. P. Mayne, Hugh O'Donnell, C. G. Stapleton.

Finance Committee:—A. Cox, P. R. Boyd, J. P. Carrigan, J. J. Dunne, J. B. Hamill, W. S. Huggard, C. G. Stapleton, J. P. Tyrrell.

Gazette Committee:—J. J. Bolger, F. J. W. Darley, J. J. Dundon, J. S. O'Connor, Peter O'Connor, L. E. O'Dea, J. R. Quirke, J. T. Wolfe.

The President, last President, and the Vice-Presidents are members ex-officio of all committees.

Harbours Bill, 1945.

Local Government Bill, 1945.

THE above mentioned Bills were discussed and the drafting of certain suggested amendments was referred to the President and Secretary.

CALENDAR AND LAW DIRECTORY, 1946

THE Calendar will be on sale on February 6th. After providing for orders already received; a limited number of copies will be available. Orders will now be taken for these copies.

MODERNISATION OF LEGAL CODE EXPECTED

FOLLOWING upon the decision to establish a Law Reform Committee, some very far-reaching developments and improvements in the legal code are expected to be brought about in the near future.

As yet, the establishment of the Law Reform Committee has only been decided upon in principle, but the question of personnel and matters of detail are under active consideration. Consolidation has also been decided upon as an independent matter, and the necessary staff arrangements are under discussion. This process, which may prove long and difficult, will result, it is hoped, in our having our own Statute Book, beginning from 1922, in modern and concise form. Consolidation, it is said, is a sufficient end in itself, and if codifications are ever eventually decided upon, it would be a useful, if not essential step, in that direction.

Bills drafted, or in the course of drafting, and in the nature of legal reforms, include, it is understood, the following:—

A bill dealing with the frequent incidence of infanticide by treating the matter, in appropriate cases, as a distinct statutory offence; a bill putting the defence of insanity on a proper statutory basis, and bringing it and the rules laid down in 1843, in McNaughton's case more in line with modern knowledge and practice; a bill providing for contribution between joint tortfeasors; a bill amending the administration of criminal justice, the main provisions of which were designed to simplify and expedite the taking of depositions in indictable cases, while preserving all the essential safeguards, and also classifying and somewhat extending the jurisdiction of justices to deal summarily with minor indictable

offences; and a bill combining the various statutes relating to the property rights of married women, while relieving a husband from his liability for his wife's torts.

Reference to the new law code was made by Mr. Kevin Dixon, S.C., Attorney-General, when he spoke at the Annual Dinner of the Dublin Solicitors' Bar Association at the Dolphin Hotel, Dublin, on 15th December, 1945. (*Irish Times*)

LANDLORD AND TENANT ACT, 1931 NOTICE OF INTENTION TO CLAIM RELIEF

THE attention of Solicitors is directed to Section 24 of the above Act, which prescribes the time within which may be served Notice of Intention to Claim Relief pursuant to some of the provisions of the Act.

Occasionally it has been found that the notice has not been served in time and tenant clients and their solicitors have found themselves in difficulty. In accordance with Section 45 of the Act, a Circuit Judge may, on application, extend the time for the services of the notice, but the matter is one for the discretion of the Judge and this discretion is only rarely exercised in favour of the Tenant. Accordingly, solicitors acting for Tenants claiming relief under the Act should take steps to ensure that the necessary notice is served in good time to comply with Section 24.

LAND REGISTRY FEES ON TRANSMISSIONS ON DEATH

IN the case of James Sheridan, a registered owner of land-Folio 1311, Co. Dublin, it has been decided by the Supreme Court that the word "transfer" in Section 87 (3) of the Local Registration of Title (Ireland) Act, 1891, which grants exemption from fees on any transfer under the section from a personal representative to a beneficiary, includes both an instrument of transfer and a transfer by way of assent. The effect of this decision appears to be that no Land Registry fees will in future be payable on transmissions on death, unless application is made to have the personal representative registered for the purpose of administration, in which case the appropriate fees (maximum £1 under the 1944 Fee Order) will be payable on that application. The appeal was taken to the Supreme Court with the support of the Council. A fuller note on the effect of the decision will be published in the next issue of the *Gazette*.

SETTLEMENTS ON BEHALF OF MINORS

THE following note which appeared in the *Irish Law Times and Solicitors' Journal* of 5th January, 1946, is of interest to solicitors:—"On December 21st Davitt, J. in the High Court, Éire, said that in an application to have a consent to settlement of an action made a rule of Court where the plaintiff was a minor, the full facts of the case should be set out in the affidavit, so that they might appear on the records of the Court. It was highly desirable that not alone should the usual statement be made that the settlement was in the interest of the infant plaintiff, but that it should also appear on what grounds such statement was made. His Lordship refused to make a consent a rule of Court in a case before him, until a new or supplemental affidavit had been made embodying the full facts of the case.

SEARCH FEES

THE Council have re-considered Opinion No. 90 published in the Calendar for 1945. The enclosed opinion of the Council should be substituted therefor. It has not been possible to make this change in the 1946 Calendar and members may find it useful to paste the enclosed opinion into the 1946 Calendar in substitution for Opinion No. 90 therein.

OBITUARY

MR. WILLIAM J. BARRY, Solicitor, died at his residence, Hazelbrook, Sundays Well, Cork, on 22nd October, 1945.

Mr. Barry served his apprenticeship with the late Frederick W. Wynne, Cork, was admitted a Solicitor in Trinity Sittings, 1909, and practised at Midleton, Co. Cork.

MR. JAMES McAULIFFE, Solicitor, died at his residence, "Roseneath Villas," Military Road, Cork, on 30th November, 1945.

Mr. McAuliffe was admitted a Solicitor in Michaelmas Sittings, 1891, and practised at Cork.

MR. JAMES J. O'SHEE, Solicitor, died at his residence, Lisieux, 17 Pembroke Park, Ballsbridge, Dublin, on 1st January, 1946.

Mr. O'Shee was admitted a Solicitor in Trinity Sittings, 1890, and practised at Clonmel and Carrick-on-Suir under the style of J. J. O'Shee & Co. He was Nationalist M.P. for West Waterford from 1895 until 1918.

MR. AMBROSE STEEN, Solicitor, died at his residence, Johnstown House, Navan, on 7th January, 1946.

Mr. Steen served his apprenticeship with the late Frank Fottrell, Dublin, was admitted a Solicitor in Trinity Sittings, 1911, and practised at Navan. He was State Solicitor for County Meath.

MR. JOHN MINTON, Solicitor, died at his residence, Orlando, Park Avenue, Sydney Parade, Dublin, on 8th January, 1946.

Mr. Minton served his apprenticeship with the late William J. Menton, Roscrea, was admitted a Solicitor in Easter Sittings, 1901, and practised at 1, Clare Street, Dublin, under the style of J. H. Menton & Co.

MR. JOHN J. KENNEDY, Solicitor, died at his residence, Derrinsallow House, Birr, on 9th January, 1946.

Mr. Kennedy served his apprenticeship with the late M. M. Murphy of Kilkenny, was admitted a Solicitor in Hilary Sittings, 1900, and practised at Birr. He was State Solicitor for Offaly.

THE REGISTRY.

(1) Entries will be accepted from solicitors for the Registry under the following headings:—Section A.—Practices for sale, partnerships and assistantships vacant; Section B.—Practices, partnerships and assistantships sought; Section C.—Miscellaneous information required, books, office equipment, etc., wanted or for sale. (2) Each entry accepted will be made in the appropriate section of the register which is open for inspection at the Society's offices during business hours. Each entry accepted will also be published once in the Society's *Gazette*. If the advertiser wishes the entry and advertisement in the *Gazette* may be over a box number. (3) Charges for each entry in

the Register (including one publication in the Society's *Gazette*): members of the Society .3/- for 30 words or less and 1d. for each additional word over 30. Other solicitors double the rate for members of the Society. (4) Replies to entries in the Register and advertisements will not be forwarded by the Society unless postage is prepaid. (5) Replies to advertisements should be marked with the appropriate Box No. and addressed to the Society. (6) The use of the Registry by solicitors is subject to general conditions, copies of which may be obtained from the Secretary.

SECTION A.

WANTED a Solicitor experienced in Circuit and District Court, also Conveyancing etc., to conduct established practice in Midland town. Replies to Box No. A.104

SECTION B.

Solicitor, young, two years' experience. Excellent references, desires change to another City appointment. Box B.112

Solicitor recommends experienced general law clerk (engaged) desiring vacancy in Dublin office. Strict T.T. Excellent references. Box No. B.113

SECTION B—contd.

ASSISTANT Solicitor, admitted 1936, Graduate, T.T., having experience of Local Government work, and capable of taking complete charge, seeks post with a view to eventual partnership or purchase of practice. Box No. B.114

SECTION C.

Mr. William Stewart Collis having retired from practice, Mr. George W. Beaumont has taken into partnership Mr. R. Morton Wilson, LL.B., son of the late Robert Dowse Wilson, a former partner in the firm, and the practice will continue to be carried on under the style of Collis and Ward at 13 Clare Street, Dublin, as heretofore.

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 £1,300 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 10/6 if admitted less than 3 years) a year. £10 10s. 0d. life membership.

Address:

THE SECRETARY,
SOLICITORS' BENEVOLENT ASSOCIATION,
22 NASSAU STREET, DUBLIN.

LIFE • ENDOWMENT • ANNUITIES • HOUSE PURCHASE

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| | | |
|-----------------------------------|-------|------------|
| Total Income for the year | | £705,426 |
| Total Premium Income for the year | | £638,227 |
| Showing an increase of | | £114,747 |
| Total Claims Paid for the year | | £211,427 |
| Total Claims paid to date | | £2,433,302 |

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LIFE • ENDOWMENT • ANNUITIES • HOUSE PURCHASE

Vol. 39
No. 8



February
1946

THE GAZETTE

of the

INCORPORATED LAW SOCIETY OF IRELAND

President:
DANIEL O'CONNELL

Vice-Presidents:
MATTHEW G. R. LARDNER
ROGER GREENE

Secretary:
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

MEETINGS OF THE COUNCIL

JANUARY 10th. The President in the chair; also present, Mr. Roger Greene, Vice-President; Messrs. Stapleton, Boyd, Quirke, Norman, Tyrrell, Hayes, Overend, Lynch, Peter O'Connor, Smyth, Duggan, O'Donnell, O'Reilly, Ó hUadh-aigh, Hamill, J. S. O'Connor, Bolger, Cox.

Proposed New Criminal Courts

THE Council considered a report from a Committee on a letter to the Society from a Government Inter-Departmental Committee which was set up to consider the question of constructing a new block of buildings in the vicinity of the Four Courts in which all the Criminal Courts would be situated with the requisite offices and accommodation. The Committee in its report recommended that the Government should be requested to appoint a member of the Council on the Inter-Departmental Committee. The Council adopted the Committees' report and it

was decided to request the Government to appoint Mr. Patrick F. O'Reilly as the representative of the Council on the Committee.

Land Registry Stamps

THE Council considered a report from a Committee on the subject of difficulties which arise owing to the fact that the Stamp Office in the Four Courts is prohibited by regulation from accepting the return of unused Land Registry stamps. It was resolved that the Secretary should discuss the question with the Registrar of Titles and should suggest that an office for the sale of stamps should be established in the Land Registry.

A number of applications from apprentices were considered and dealt with.

Six applications by solicitors under Section 47 of the Solicitors (Ireland) Act, 1898, were considered and granted, subject to payment of the current licence duty.

JANUARY 31st—The President in the Chair. Also present: Mr. Roger Greene, Vice-President; Messrs. C. G. Stapleton, W. S. Hayes, G. A. Overend, P. R. Boyd, P. F. O'Reilly, A. Cox, J. B. Hamill, J. P. Tyrrell, S. Ó hUadhaigh, J. J. Smyth, L. E. O'Dea, J. J. Lynch, J. R. Quirke, H. P. Mayne, J. P. Carrigan.

Four applications from apprentices were dealt with.

Six applications under S.47 were considered. In two cases the applications were granted subject to payment of the current licence duty. In the remaining cases further affidavits were required from the solicitors concerned.

A number of matters were considered and referred to Committees for reports.

LAND REGISTRY

Transmissions on deaths of registered owners of property subject to Part IV of the Registration of Title (Ireland) Act, 1891.

1. In pursuance of a decision of the Supreme Court given on the 20th December, 1945, in the Matter of James Sheridan, a Registered Owner, Folio No. 1311, County Dublin, no Land Registration Fees are henceforth chargeable in respect of:—

(i) any transmission on death of an owner of property subject to Part IV of the Registration of Title (Ireland) Act, 1891.

or,

(ii) the registration of any burdens or charges created by the Will of such owner,

or,

(iii) the registration of charges or burdens incidental to such transmission and created in satisfaction of the claims of beneficiaries,

whether such transmission is effected by:—

(a) a Deed of Transfer by the personal representative of such owner to the person or persons beneficially entitled thereto as devisees, next-of-kin or their respective successors in title, under Rules 90 and 91 of the Land Registration Rules, 1937.

(b) an Assent by the personal representative of a deceased testate full owner to the registration of the person or persons beneficially entitled as devisees or successors in title to the devisees under the Will of such owner under Rule 89 of said Land Registration Rules, 1937, as amended by Rule 30 of the Land Registration Rules, 1944,

or,

(c) an application under Rule 92 of the Land

Registration Rules, 1937, or Rule 31 of the Land Registration Rules, 1944, by personal representatives solely and beneficially entitled for their registration as full owners, or, (in the event of such personal representatives having been registered for the purposes of administration under Rule 88 of said Land Registration Rules, 1937), for cancellation of the inhibition entered on such registration.

2. The prescribed Land Registry Fees are payable as heretofore in respect of:—

(a) the registration of the personal representative of a deceased registered owner under Rule 88 of the Land Registration Rules, 1937, as amended by Rule 28 of Land Registration Rules, 1944.

(b) transfer *on sale* by the personal representative of a deceased registered owner.

(c) transmissions on death of registered owners of property not subject to Part IV of Registration of Title (Ireland) Act, 1891.

This Memorandum supersedes the Memorandum published in the *Irish Law Times and Solicitor's Journal* of the 22nd December, 1945, and all previous directions with regard to registration fees payable on transmissions on deaths of registered owners of property subject to Part IV of the Registration of Title (Ireland) Act, 1891.

(Sgd.) Joseph O'Byrne,
Registrar.

Dated 21st December, 1945.

HOUSE OF LORDS

WORKMEN'S COMPENSATION: ALTERNATIVE REMEDIES

YOUNG v. BRISTOL AEROPLANE COMPANY, LIMITED

Before LORD SIMON, LORD RUSSELL of KILLOWEN, LORD MACMILLAN, LORD PORTER, and LORD SIMONDS.

The House dismissed this appeal by the plaintiff from a decision of the Court of Appeal (the Master of the Rolls, Lord Justice Scott, Lord Justice MacKinnon, Lord Justice Luxmore, Lord Justice Goddard, and Lord Justice du Parcq) affirming a decision of Mr. Neville Laski, K.C., sitting as a Commissioner of Assize at Lancaster.

On April 3, 1942, the plaintiff, who was then working for the defendant company in their factory, sustained an injury. He brought an action for damages at common law and the Commissioner

dismissed the claim on the ground that the plaintiff before beginning the action had already received compensation under the Workmen's Compensation Act, 1925, in respect of the accident, which arose out of and in the course of his employment, and that he was therefore barred from recovering in the action damages for the same accident.

The Commissioner considered that he was bound by the decisions of the Court of Appeal in *Perkins v. Hugh Stevenson and Sons, Limited* (55 *The Times* L.R. 1,000; [1940] 1 K.B. 56) and *Selwood v. Townley Coal and Fireclay Company Limited* (56 *The Times* L.R. 6; [1940] 1 K.B. 180) to find against the plaintiff.

The plaintiff's appeal to the Court of Appeal having been dismissed, he appealed to the House of Lords.

Mr. Gilbert J. Paull, K.C., and Mr. Henry Burton for the appellants; Mr. F. A. Sellers, K.C., and Mr. Matabele Davies for the respondents.

JUDGMENT.

LORD SIMON, in the course of his opinion, said that the appeal was, in substance, a submission that the decisions in *Perkins's* case (*supra*) and *Selwood's* case (*supra*) were wrong, or, at any rate, that they were not conclusive against the appellant's claim. The question involved the interpretation and application of section 29 (1) of the Workmen's Compensation Act, which stated:—

When the injury was caused by the personal negligence or wilful act of the employer or of some person for whose act or default the employer is responsible, nothing in this Act shall affect any civil liability of the employer, but in that case the workman may, at his option, either claim compensation under this Act or take proceedings independently of this Act; but the employer shall not be liable to pay compensation for injury to a workman by accident arising out of and in the course of the employment both independently of and also under this Act, and shall not be liable to any proceedings independently of this Act, except in case of such personal negligence or wilful act as aforesaid.

On April 30, 1942, the appellant attended at the respondent's works and received from the respondents' representative, as payments under the Workmen's Compensation Act, the sum of £6 15s., which amount was equal to the compensation under the Act due to the appellant for the first four weeks. Thereafter he attended at the works and was paid week after week the sum of £1 15s. till the following October. On each occasion

there was put before him a pay-sheet which plainly showed that those were payments under the Workmen's Compensation Act, and how they were calculated. On each occasion the appellant signed the pay-sheet "for payments received." The Commissioner found that the appellant read the form and understood it, and accepted those payments knowing them to be made as compensation under the Act, though he did not in the first instance "make a claim for compensation 'as such.'"

On July 24, 1942, the appellant's solicitor wrote on his behalf claiming "compensation under the Workmen's Compensation Act and, alternatively, claiming damages." The respondents replied admitting liability under the Act only, and pointed out that the appellant, "has been in receipt of compensation since his cessation of work following the injuries." Notwithstanding that correspondence in July, the appellant continued to draw his weekly compensation and the Commissioner found

(a) that the appellant between the time of the accident and July "did not know that he had a right under section 29 (1) of the Workmen's Compensation Act to elect as between two alternative remedies, and (b), inferentially, that he *did* know after July 24, but nevertheless went on drawing his compensation money."

His LORDSHIP referred to the facts of *Perkins's* case (*supra*) and *Selwood's* case (*supra*), and said that one difficulty which he felt about the latter decision was that it involved the conclusion that, if an injured workman received one single weekly payment, knowing it was tendered as compensation under the Act, he lost all chance of suing successfully at common law. On that view, he took the first payment, even though he had never asked for it, at his peril; the employers had paid for one week "under this Act" and were liable to pay it, and therefore, it was suggested, they could not thenceforth be liable to any proceedings by the workman "independently of this Act." In *Selwood's* case (*supra*) there was no trace of a suggestion that the workman had effectively exercised an "option"; the decision turned on nothing else than that one or more weekly payments had been offered and accepted.

Having regard to the general scheme of the Act, and to its obvious purpose of preserving remedies apart from the Act if the workman chose to avail himself of the alternative, he (Lord Simon) could not accept that view. *Perkins's* case (*supra*), on its actual facts, seemed to him to be correctly decided. But, with all respect to the members of the Court of Appeal in *Selwood's* case (*supra*),

which was decided three months later, he did not agree that that decision necessarily followed from the principle laid down in Perkins's case, and he thought that the decision in Selwood's case was wrong. Lord Patrick in *Brown v. William Hamilton and Co.* ([1944] S.L.T. 282, at p. 286) developed, with much clearness and cogency, the view which he (Lord Simon) would uphold.

He would adopt Lord Patrick's statement that "when the workman sues at common law, if the sum awarded in the name of damages exceeds the sums already paid to him in the name of workmen's compensation, these sums will form a good set-off, or will have to be taken into account in diminution of damage."

In the present case, he agreed that the appeal must be dismissed on the ground that the appellant, who knew of his "option" in July, nevertheless continued to draw weekly compensation till the following October, and must consequently have deliberately and consciously chosen to claim compensation under the Act instead of proceeding independently of the Act.

As the House has heard a full discussion of the difficulties of construction arising under section 29, he ventured to add the following observations as representing his view of its general effect:—

1. The statutory provisions for workmen's compensation were not to be understood as substituted for remedies against his employer previously available to the workman injured by the personal negligence or wilful act of the employer, or of those for whom the employer was responsible. The previous remedies remained available as an alternative for the cases which they covered.

2. But the two remedies were not to be pursued together. For a workman to issue a writ for damages independently of the Act and also to "claim" compensation under the Act was forbidden. That prohibition of double process applied to the initiation and carrying on of proceedings whether either or both of them would ultimately succeed or not. It was presumably inserted for the protection of the employer, so that he should not be vexed with both demands concurrently. The protection so given him could in proper cases be secured by stay or injunction.

3. There thus being an option between two kinds of proceedings, who was to have the right to exercise the option? The employer could not insist on being called on to pay by one process rather than by the other. It was the workman who opted. It was his "option." That option was not equivalent to equitable election,

and he deprecated the use of the latter word as a substitute for the word in the section. If "election," in the full sense were meant, it would be necessary for the workman to know all that was material to determine his choice.

Here the House was dealing with a statutory "option" in its setting in the section, and he was willing to adopt the view, which had constantly been expressed and enforced, that the workman did not lose his alternative remedy merely because he accepted some payments under the Act, *when the option was unknown to him*. But if the circumstances amounted to this, that he persisted in taking weekly compensation after knowing of the alternative course, he was debarred from changing the nature of his claim. That view was confirmed by the exegetical character of the prohibition against double liability.

He moved that the appeal be dismissed.

The other noble and learned LORDS delivered opinions in which they agreed that the appeal should be dismissed.

Solicitors:—Mr. W. H. Thompson; Messrs. Gregory, Rowcliffe, and Co., for Messrs. John Taylor and Co., Manchester.

N.B.—Section 29 (1) of the English Workmen's Compensation Act, 1925, is similar in terms to section 2 (1) (b) of the Workmen's Compensation Act, 1906, and section 60 (1) and (2) of the Workmen's Compensation Act, 1934. In reading the above report it should be noted that the second general observation of Lord Simon on the subject of the simultaneous pursuance by a workman of alternate remedies is a statement of the law in England which has not been followed by the Supreme Court. See *Beckley v. Scott* (1902 2 I.R. 504) and *Irish Sugar Co. v. Flynn* (1930 64 I.L.T.R. 73).

COURT OF APPEAL

NOTICE TO QUIT "ON OR BEFORE" NAMED DATE : CONSTRUCTION DAGGER v. SHEPHERD

Before LORD JUSTICE SCOTT, LORD JUSTICE
TUCKER, and MR. JUSTICE EVERSHERD.

The COURT allowed the appeal by Mrs. Winifred Ada Mary Dagger from a decision of Judge Cave, K.C., given at Poole County Court. In the action Mrs. Dagger claimed possession of a house called Kenwood at Wimborne, Dorset, from Mr. Frank Alfred Shepherd.

Mrs. Dagger's case was that the house was occupied by Mr. Shepherd under the terms of an agreement of March 25, 1939, which was duly determined by a notice to quit dated December

20, 1944, and expiring "on or before March 25, 1945." The house being within the protection of the Rent Restriction Acts, Mrs. Dagger went on to allege facts, which she contended brought the case within paragraph (h) of the first schedule to the Act of 1933.

Mr. Shepherd, by his defence, put in issue the whole of the matters alleged in the statement of claim.

The county court Judge held that a notice to quit "on or before" a named date was invalid because ambiguous, and accordingly dismissed the action *in limine*, refusing to entertain matters relating to the issue of greater hardship arising under the Rent Restriction Acts.

Mrs. Dagger now appealed.

Mr. Rees-Davies appeared for Mrs. Dagger; Mr. F. W. Beney, K.C. and Mr. E. S. Fay for Mr. Shepherd.

MR. JUSTICE EVERSLED, reading the judgment of the Court, said that the county court Judge, in holding that the phrase "on or before March 25, 1945," rendered an otherwise good notice to quit uncertain and ambiguous, was, so the Court were informed, following previous decisions of his own and of other county court Judges.

A notice to quit, being a unilateral act in exercise of a contractual right to put an end to an existing relation of landlord and tenant, must conform strictly to the legal requirements of the contract. The question for decision was solely one of interpretation: what on its fair and reasonable construction did the notice to quit mean. In the opinion of the Court, apart from authority, the true effect of the document was, first, to notify the tenant that the landlord thereby gave him an irrevocable notice to determine the tenancy on March 25, 1945; and, secondly, to make to the tenant an offer to accept from him a determination of that relationship on any earlier date (of the tenant's choice) on which the tenant should in fact give up possession of the premises.

If that view were correct, it followed that a notice to quit "on or before" a fixed date was, *prima facie*, valid and effective; and the position would be the same if the opinion were merely to give up possession at such an earlier date without any corresponding right in the tenant to treat his obligations as tenant as terminated at that earlier date. The tenant was called on to "quit" on the named date simply because his right to remain would then have ceased. So read, the words "on or before" necessarily imported the offer: "but if you like to quit on any day before that I here and now give my consent."

Having reviewed the authorities, his LORDSHIPS

said that, although having regard to previous decisions and *dicta*, the county court Judge had no alternative to deciding as he did, the appeal would be allowed, and the case remitted to another county court Judge for consideration by him of all the other matters raised by the pleadings.

Solicitors.—Messrs. Hughes, Hooker and Co., for Messrs. Gale and Gale, Poole; Messrs. J. W. Miller and Son, Poole.
(Reported in the *Times* newspaper, 30th November, 1945).

LIBRARY ACQUISITIONS

ADDISON, *Contracts*, 11th edition, 1911. *All England Reports*, ordered, not yet received. Anson, *Contracts*, 1945, not yet received. Blackburne, *Torts*, 1944, ordered, not yet received. Brooks, *Notary*, 9th edition, 1939. Broom, *Legal Maxims*, 10th Edition, 1939. Byles, *Bills*, 20th edition, 1939. Cheshire, *Private International Law*, 2nd edition, 1938. Coghlan, *The Law of Rent Restriction in Éire*, 1944. Collins, *Acts and Orders Relating to Death Duties in Éire, 1922-1940*. Cropper, *Elementary Book-Keeping*, 13th edition, 1942. Deale, *High Court Practice*, 1941. Dicey, *Conflict of Laws*, 5th edition, 1932. Dymond, *Death Duties*, 9th edition, 1942. Dymond, *Consolidated Second Supplement to 9th Edition*, 1945. Elphinstone, *Introduction to Conveyancing*, 5th edition, 1900. Fahy & Grogan, *Irish Income Tax Law Cases, 1922-1937*. Farnsworth, *The Residence and Domicil of Corporations*, 1939. Gavan Duffy (The Hon. Mr. Justice), *Calendar of Statutes, 1922-1943*. Gavan Duffy (Colum), *A Chapter of Accidents*, 1942. Green, *Death Duties, 1st Supplement*, 1945. Grogan, *Irish Income Tax*, 1941. Heywood & Massey, *Lunacy (England)* 6th edition, 1939. Hudson, *Building Contracts*, 6th edition, 1933. Knocker, *Accidents in their Medico-Legal Aspect*, 1912. Konstam, *Income Tax*, 8th edition, 1940. Konstam, *Income Tax*, 9th edition, 1943. Konstam, *Income Tax*, 1945, ordered, not yet received. Langdon, *Excess Profits Duty, Etc.*, 4th edition, 1920. McDunphy, *The President of Ireland*, 1945. Nathan, *Equity Through the Cases, 1939*, ordered, not yet received. Nolan, *Poor Rate*, 1900. O'Neill, *Commercial Who's Who, 1944/45*. O'Sullivan, *The Irish Free State and its Senate*, 1940. Pollock, *Contracts*, 11th edition, 1942. Pollock, *Torts*, 14th edition, 1939. Pollock, *Partnership*, 13th edition, 1937. Powell, *Evidence*, 9th edition, 1910. Rayden, *Divorce*, 4th edition, 1942. Rayden, *Divorce, 1st Supplement*, 1943. Rayden, *Divorce, 2nd Supplement*, 1944. Rayden, *Divorce, 3rd Supplement*, 1945. Robertson, *Civil Proceedings By and Against the Crown*, 1908. Roscoe, *Criminal Evi-*

dence, 15th edition, 1928. Sandes, *Criminal Practice in Éire*, 2nd edition, 1939. Scrutton, *Charterparties*, 14th edition, 1939. Sheehan, *Criminal Law, Ireland*, 1940. Sheehan, *Criminal Law, Ireland*, 2nd edition, 1945. Shillman, *Irish Workmen's Compensation Cases*, Vol. 1, 1934-1938. Shillman, *Licensing Laws*, 1941. Shillman, *Workmen's Compensation*, 2nd edition, 1943. Statutory Rules and Orders, 1922-1938, 24 volumes. *Stock Exchange Year Book*, 1940. *Stones Justices' Manual*, 1943. Tristram & Coote, *Probate*, 18th edition, 1940. Underhill, *Torts*, 14th edition, 1941. Walsh & Cosgrave, *Rent Restrictions Guide*, 1944. Williams, *Learning the Law*, 2nd edition, 1945. Williams, *Liability in Tort for Animals*, 1942, ordered, not yet received. Wills, *Evidence*, 3rd edition, 1938. Wurtzburg, *Building Societies*, 8th edition, 1940.

STATUTES OF THE OIREACHTAS PASSED DURING 1945

- | | |
|--|--------------------------------|
| | <i>Signed by the President</i> |
| 1. Garda Síochána (Compensation) Amendment | 21st February, 1945. |
| 2. Diseases of Animals | 21st February, 1945. |
| 3. Arterial Drainage | 1st March, 1945. |
| 4. Tuberculosis (Establishment of Sanatoria) | 6th March, 1945. |
| 5. Seeds and Fertilisers Supply | 13th March, 1945. |
| 6. Electoral (Dáil Éireann and Local Authorities) | 20th March, 1945. |
| 7. Minerals Company | 20th March, 1945. |
| 8. Local Government (Dublin) | 20th March, 1945. |
| 9. Central Fund | 26th March, 1945. |
| 10. Defence Forces (Temporary Provisions) | 27th March, 1945. |
| 11. Military Service Pensions (Amendment) | 29th March, 1945. |
| 12. Electricity (Supply) (Amendment) | 31st March, 1945. |
| 13. Local Authorities (Cost of Living) (Amendment) | 24th April, 1945. |
| 14. Customs (Temporary Provisions) | 24th April, 1945. |
| 15. Presidential and Local Elections | 1st May, 1945. |
| 16. Racing Board and Racecourses | 5th May, 1945. |
| 17. Garda Síochána | 15th May, 1945. |
| 18. Irish Legal Terms | 22nd May, 1945. |
| 19. Mental Treatment | 22nd May, 1945. |
| 20. Finance | 29th May, 1945. |

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| 21. Minister for Supplies (Transfer of Functions) | 11th July, 1945. |
| 22. King's Inns Library | 11th July, 1945. |
| 23. Unemployment Insurance | 24th July, 1945. |
| 24. Juries | 24th July, 1945. |
| 25. Court Officers | 26th July, 1945. |
| 26. Emergency Powers (Continuance and Amendment) | 29th July, 1945. |
| 27. Appropriation | 2nd August, 1945. |
| 28. Local Government (Remission of Rates) | 4th August, 1945. |
| 29. Documents and Pictures (Regulation of Export) | 4th August, 1945. |
| 30. Local Authorities (Acceptance of Gifts) | 4th August, 1945. |
| 31. National Stud | 4th August, 1945. |
| 32. Agricultural Wages (Amendment) | 4th August, 1945. |
| 33. Johnstown Castle Agricultural College | 17th October, 1945. |
| 34. Military Service Pensions (Amendment) (No. 2) | 20th November, 1945. |
| 35. Finance (Miscellaneous Provisions) | 20th December, 1945. |
| 36. Expiring Laws | 20th December, 1945. |
| 37. Lough Corrib Navigation | 20th December, 1945. |

OBITUARY

MR. DAVID E. FERGUSON, Solicitor, died at Kanturk, on 26th November, 1945.

Mr. Ferguson served his apprenticeship with the late Mr. Robert I. Ferguson of Dublin, was admitted in Hilary Sittings 1897, and practised at Kanturk under the style of N. W. Keller and Co.

MR. G. DOUGLAS SCOTT, Solicitor, died at his residence, 3 Foyle Street, Londonderry, on 22nd January, 1946.

Mr. Scott served his apprenticeship with the late Mr. T. E. Julian Miller of Londonderry, was admitted in Hilary Sittings 1907, and practised in Londonderry.

MR. ALEXANDER M. HEALY, Solicitor, died in England, on 27th January, 1946.

Mr. Healy served his apprenticeship with the late Mr. Maurice Healy of Cork, was admitted in Trinity Sittings 1923, and practised at Cork under the style of Maurice Healy and Son, up to the year 1943.

THE REGISTRY.

(1) Entries will be accepted from solicitors for the Registry under the following headings:—Section A.—Practices for sale, partnerships and assistantships vacant; Section B.—Practices, partnerships and assistantships sought; Section C.—Miscellaneous information required, books, office equipment, etc., wanted or for sale. (2) Each entry accepted will be made in the appropriate section of the register which is open for inspection at the Society's offices during business hours. Each entry accepted will also be published once in the Society's *Gazette*. If the advertiser wishes the entry and advertisement in the *Gazette* may be over a box number. (3) Charges for each entry in

the Register (including one publication in the Society's *Gazette*): members of the Society 3/- for 30 words or less and 1d. for each additional word over 30. Other solicitors double the rate for members of the Society. (4) Replies to entries in the Register and advertisements will not be forwarded by the Society unless postage is prepaid. (5) Replies to advertisements should be marked with the appropriate Box No. and addressed to the Society. (6) The use of the Registry by solicitors is subject to general conditions, copies of which may be obtained from the Secretary.

SECTION B.

SOLICITOR, 32, with capital, seeks partnership or paid Assistantship leading thereto after trial period, or would consider temporary post, 8 years first-class experience District and Circuit Courts, Probate, Land Registry, Conveyancing, Workmen's Compensation. Town or country. Replies in confidence to Box No. B.115.

SOCIETY'S CARETAKER AND HALL PORTER

THE above position has become vacant. Any member of the Society knowing of a suitable applicant might please forward particulars to the Society immediately.

THE REGISTER

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SECTION 11

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ADVERTISEMENTS

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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 £1,300 was distributed in relief. Additional subscriptions, donations and bequests are urgently needed to continue and extend the Association's work.

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| Total Claims Paid for the year | | | | £211,427 |
| Total Claims paid to date | | | | £2,433,302 |

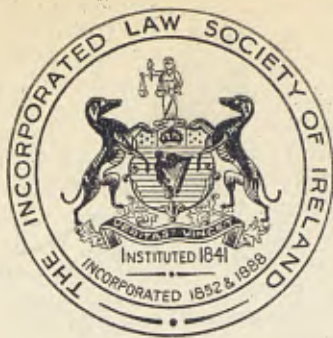
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ROGER GREENE.

Secretary :

ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

MEETING OF THE COUNCIL

FEBRUARY 21st. The President in the chair: Also present: Mr. Roger Greene, Vice-President; Messrs. A. Cox, H. St. J. Blake, J. Travers Wolfe, S. O. hUadhaigh, L. E. O'Dea, W. S. Huggard, P. O'Connor, P. R. Boyd, G. A. Overend, H. P. Mayne, W. S. Hayes, W. J. Norman, J. J. Lynch, J. P. Tyrrell, C. G. Stapleton, H. O'Donnell, J. J. Bolger, J. P. Carrigan, J. R. Quirké, Patrick F. O'Reilly.

The following were among the matters of business transacted.

Land Registry Fees on Transmissions on Death

THE Council considered the position arising out of the decision in the case of James Sheridan as the result of which no Land Registry fees will in future be payable on applications for registration on transmissions on death except where the executor applies to be registered as owner for the purpose of administration. The Council considered correspondence, from which it appeared that the Registrar

of Titles proposes to allow credit for all fees paid on transmissions on death subsequent to 3rd September, 1945, being the date of lodgment of notice of appeal to the Supreme Court against the decision of the High Court. It was indicated that no repayment of fees would be made in cash and that the allowing of credit therefor would be subject to the sanction of the appropriate Government Department. It was resolved that the Secretary should approach the Registrar of Titles and suggest that the fees should be repaid in cash instead of being credited against the fees payable in future dealings as the latter method will cause real embarrassment and inconvenience to solicitors and furthermore that the fees should be repaid as from 1st June, 1945, instead of 3rd September, 1945.

Solicitors' Bill

It was decided that the President and Secretary should seek an interview with the Secretary of the Department of Justice to urge upon him the necessity for the early introduction of the Bill which was submitted in draft to the Department in April, 1943.

Applications under Section 18.

THE Council considered a petition to the Chief Justice by an intending apprentice for exemption from the Preliminary Examination under Section 18 of the Solicitors (Ireland) Act, 1898, and decided to inform the Chief Justice that no opposition would be offered to the granting of the petition.

A number of applications from apprentices were considered and dealt with.

Seven applications from solicitors under Section 47 for liberty to take out their annual practising certificates were considered. Five applications were granted on payment of the current duty; one application was granted on payment of two years' duty and in one case the Council directed that a further affidavit should be filed by the solicitor.

COUNCIL DINNER

ON Thursday, February 21st, the President and members of the Council gave a Dinner in the Members' Hall. The following were present:—The Rt. Hon. the Lord Mayor, The Hon. the President of the High Court, The Hon. Mr. Justice O'Byrne, The Hon. Mr. Justice Martin Maguire, The Hon. Mr. Justice Haugh, The Hon. Mr. Justice Murnaghan, His Hon. Judge Shannon, Master O'Hanlon, Master Kennedy, Mr. O'Cleirigh, County Registrar; Mr. Chance, President, Institution of Civil Engineers; Mr. Pim, President, Institute of Chartered Accountants; Mr. Kelly, President, Royal Institute of Architects; Mr. Walkey, President, Society of Incorporated Accountants in Ireland; Mr. Pearson, President, Association of Certified and Corporate Accountants; Mr. Broughton, Vice-President, Dublin Chamber of Commerce; Mr. Davy, Chairman, Dublin Stock Exchange; Mr. O'Donovan, President, Southern Law Association; Mr. Bergin, President, Insurance Institute of Ireland; Mr. Barrett, President, Dublin Solicitors' Bar Association; The Provost, Trinity College, Dublin; Mr. Bennett, President, Irish Auctioneers' and Estate Agents' Association; Mr. Taylor, Chairman, Surveyors' Institution; Mr. Corrigan, Chief State Solicitor; Mr. Murphy, Finance Solicitor; Mr. Shannon, Revenue Solicitor; Mr. O'Reilly, Solicitor Irish Land Commission; Mr. Connolly, Chairman, Commissioners of Public Works; Mr. McElligott, Commissioner of Valuation; Mr. McElligott, Secretary, Department of Finance; Mr. Murtagh, Examiner of the High Court of Justice; Mr. Curran, Registrar, High Court of Justice; Dr. Webb, Registrar of Wards of Court; Mr. O'Byrne, Registrar of Titles; Mr. Doyle, Official Assignee; Mr. O'Donoghue, S.C.; Mr. Smyllie, Editor, *Irish Times*; Messrs. A. H. S.

Orpen, T. G. Quirke, Basil Thompson, Charles Lavery, Past Presidents of the Society: Mr. E. F. Collins, District Justice Kenny, Mr. Roe, S.C.; Mr. Lavery, S.C.; Mr. P. E. O'Connell and the following members of the Council: The President, Messrs. Roger Greene, Vice-President; G. A. Overend, H. P. Mayne, W. S. Hayes, J. J. Lynch, J. T. Wolfe, L. E. O'Dea, H. St. J. Blake, J. P. Carrigan, Charles MacLaughlin, J. J. Dunne, J. J. Bolger, W. S. Huggard, J. R. Quirke, C. G. Stapleton, P. F. O'Reilly, J. S. O'Connor, W. L. Duggan, W. J. Norman, George Murnaghan, J. C. Taylor, Peter O'Connor, H. P. O'Donnell, J. P. Tyrrell, P. R. Boyd, A. Cox, Sean O hUadhaigh, E. M. FitzGerald, and the Secretary.

The Toast of "Ireland" was given by the President and honoured. The toast of the "Bench and Bar" was proposed by Mr. W. S. Hayes. The Hon. the President of the High Court replied on behalf of the Bench and Mr. Cecil Lavery, S.C., on behalf of the Bar. The toast of "the Guests" was proposed by Mr. Patrick F. O'Reilly. The Rt. Hon. the Lord Mayor and Mr. R. M. Smyllie replied to the toast. The toast of the Society was proposed by His Hon. Judge Shannon, coupling therewith the name of the President. The President replied to the toast. Mr. J. J. Lynch proposed the toast of the Incorporated Law Society of Northern Ireland and the Southern Law Association. Mr. J. C. Taylor replied on behalf of the Incorporated Law Society of Northern Ireland and Mr. J. W. O'Donovan on behalf of the Southern Law Association. During the evening orchestral items were rendered by Messrs. Reidy, Beckett and Kelly and vocal items by Mr. Joseph Flood.

HIGH COURT OF JUSTICE Examiner's Office

Mr. Justice Overend

Applications For Adjournment

SOLICITORS intending, for any reason, to apply for the adjournment of any matter fixed for hearing before the Examiner or Vouching Officer are requested, whenever possible, to give notice of such intention in the Public Office (Room 110) not later than 3 p.m. on the day previous to that fixed for the hearing. The case will then appear in the Legal Diary with (Adj.) added after the title as an indication of such intended application, e.g., *Brown v. Brown* (Adj.). No party other than the applicant need then attend, except to oppose the Application for an adjournment, and no costs will, in any event, be allowed for such attendance. Notice may be either verbal (including by telephone—71311

Extension 26) or in writing. When it is not possible to give notice in time for insertion in the Legal Diary, the other Solicitors concerned should be informed of the intended application at the earliest opportunity.

G. M. B. MURTAGH,
Examiner.

LAND REGISTRY (CENTRAL OFFICE), CHANCERY STREET, DUBLIN

Important Announcement

THE attention of Solicitors is directed to the fact that new Land Registry Rules (supplemental to the existing 1937 and 1944 Rules) came into operation on the 1st March, and legal practitioners are invited to make themselves acquainted with the provisions thereof. The new Rules effect the following two minor amendments of the existing Rules, namely:—

- (a) Rule 34 of the 1937 Rules (as amended by Rule 20 of the 1944 Rules) is rescinded as from the 1st March, 1946. This Rule provides for the cancellation of the notice of equities on a mere affidavit in cases where land was registered for 30 years. The effect of the amendment is that all such cases registered for 30 years will now come within the provisions of Rule 37 under which title must be shown to the former tenancy interest in the lands just as in the case of lands registered less than 30 years ago.
- (b) The application in Form I of the forms attached to the 1944 Rules is now deleted. The effect of this is that in cases where an Order has been made under Section 21 of the Registration of Title Act, 1942, it is only necessary to lodge the usual application in Form 17 with the certified copy Court Order in such cases.

CIRCUIT COURT ORDERS UNDER SECTION 21 OF THE REGISTRATION OF TITLE ACT, 1942.

IN the case of applications under Section 21 of the Registration of Title Act, 1942, for an Order directing the registration of a person entitled in succession

to a deceased registered owner who died having made a Will, it not infrequently happens that Solicitors in preparing the affidavit grounding the application to the High Court omit, through inadvertence, the necessary averments with regard to the existence or discharge of burdens and charges created by such Will. Such burdens and charges (if subsisting) should, of course, be provided for in the Section 21 Order, and the registration should be directed to be made expressly subject to them.

In the case of applications to the High Court under the Section where it is found by the Officer of the Central Office who acts as Registrar to the Court, on examination of the documents prior to the hearing, that such averments have been omitted, he invariably returns them for amendment by including the required averments, so that the Land Judge who deals with the application in the High Court may have all the necessary evidence before him on which to make the Order under Section 21.

The Registrar is, of course, bound to carry out the registration in accordance with the terms of the Order, whether of the High Court or Circuit Court, and cannot query it even though he may have reason to believe that subsisting charges have not been provided for in the Order.

An omission to provide for these charges on the registration directed by the Order seriously prejudices the rights of the persons entitled thereto, and will almost inevitably lead to subsequent litigation in order to rectify the Register by registering them as burdens.

In the absence of Rules of Court Procedure under the Registration of Title Act, 1942, it would be desirable that, subject, of course, to the absolute unfettered discretion of the several Circuit Courts, a uniform procedure in Section 21 cases should, as far as possible, be established so as to obviate the possibility of omissions in these Orders such as are hereinbefore referred to.

Any solicitor interested may obtain on application to the Land Registry, Central Office (a) the heads of an affidavit grounding a motion under Section 21 and (b) specimen form of order made in such cases.

This Memorandum and the heads of affidavit and specimen order are intended as an indication of the procedure adopted in the High Court in the hope that practitioners may find it useful when preparing applications both to the High Court and the Circuit Courts in Section 21 cases. By following the procedure indicated in these cases delay and inconvenience will be obviated.

NOTICE OF CHARITABLE BEQUESTS

THE attention of solicitors is drawn to Section 19 of the Charitable Donations and Bequests Act, 1867, which imposes on personal representatives of a testator whose will contains charitable gifts the duty of giving public notice of such gifts by advertisement. Such advertisement must (a) be published within three months of the granting of probate or letters of administration; (b) appear once in *Iris Oifigiúil* and three times successively in a newspaper circulating in the locality where the gift or the greater part of it is intended to be expended or applied (or if no direction in a Dublin newspaper); (c) contain the names of the testator, of the persons to whom the charitable gift is made, and of the persons appointed by the testator for its management and direction, and the date of the will or codicil. The expenses of the advertisement are payable out of the charitable funds.

Under Section 16 of the Charitable Donations and Bequests Act, 1867, the personal representatives are obliged to furnish to the Commissioner within four months from the date of the grant of probate or administration copies of three successive newspapers (other than *Iris Oifigiúil*) containing the advertisements. The Commissioners have power to grant exemption from the obligation of publishing advertisements under special circumstances, e.g., the smallness of the charitable gift, on application being made to them.

Where the notices are not published and vouched within the statutory period of four months it has been the practice of the Commissioners to write direct to the personal representatives reminding them of their statutory obligations. This practice may cause embarrassment to the solicitors, and the Council has been in communication with the Secretary to the Commissioners with reference thereto. In order to avoid the necessity for such communications to their clients, solicitors acting for the personal representatives of testators whose wills contain charitable gifts are advised to do two things:

- (1) Send the grant of probate or letters of administration to the Secretary to the Commissioners for noting as soon as possible after it has issued and before the expiration of four months from issuing. If this is done the Secretary to the Commissioners will not write direct to the personal representatives without first communicating with their solicitor;
- (2) take steps to publish the statutory notices within the statutory period of three months, unless the Commissioners have waived the necessity of publication.

OLD COPIES OF THE CALENDAR

COPIES of the Calendar are in stock for the following years—1928, 1933, 1934, 1935, 1937, 1938, 1939, 1940, 1941, 1942. They are about to be sold to the waste-paper merchants but if any member requires a copy of the Calendar for any of the above years he can obtain same on application to the Secretary immediately.

EXAMINATION RESULTS

AT Examinations held on the 1st and 2nd February, under the Legal Practitioners' (Qualification) Act, 1929, the following passed the examinations:—

First Examination in Irish.

William L. Carroll, Andrew P. Curneen, Walter P. Maguire, Enda Maher, Patrick U. Murphy, Brendan O. M. O'Reilly, Thomas B. Reynolds, Henry N. Robinson.

Thirteen candidates attended; eight passed; five were postponed; one did not attend.

Second Examination in Irish.

John F. Binchy, Maurice L. Clifford, James P. Gilvarry, Norman Gruson, Gerard Horan, Mary M. McFadden, Mary T. O'Connor, Bernard P. D. O'Kelly, Philip H. Ordman, Reginald G. H. Roper, Martin A. Salmon, Stanley A. Siev, Hubert C. Wine.

Twenty candidates attended; thirteen passed; eight were postponed; one did not attend.

OBITUARY

MR. GEORGE H. PARKES, Solicitor, died at his residence, Corr Bridge, Sutton, Co. Dublin, on 17th February, 1946.

Mr. Parkes served his apprenticeship with the late Sir William Fry of Dublin, was admitted in Hilary Sittings, 1905, and practised at 20 Fleet Street, Dublin, under the style of Edmundson & Parkes until the year 1945, when he retired.

MR. CHRISTOPHER O'CONNELL FITZSIMON, Solicitor, died at his residence in Abbeyleix on 19th February, 1946.

Mr. FitzSimon was admitted in Hilary Sittings, 1882, and practised at Abbeyleix as senior partner in the firm of FitzSimon & Ryan.

MR. JOHN M. MAXWELL, Solicitor, died at his residence Roxboro, Baily, Co. Dublin, on 20th February, 1946.

Mr. Maxwell served his apprenticeship with his father the late Sir Patrick Maxwell, Dublin, was

admitted in Easter Sittings, 1886, and practised at 15 Eden Quay, Dublin, under the style of Maxwell, Weldon & Co.

MR. DERMOT J. O'ROURKE, Solicitor, died at his residence in Naas on 25th February, 1946.

Mr. O'Rourke served his apprenticeship with the late Peter J. McCann, of Naas, was admitted in Michaelmas Sittings, 1932, and practised as a partner in the firm of Brown & McCann.

MR. JAMES C. PARKE, Solicitor, died at Morwenna, Llandudno, on 1st March, 1946.

Mr. Parke served his apprenticeship to the late William A. Parke, Clones, was admitted a Solicitor in Ireland in Hilary Sittings, 1908, and practised at Clones, Co. Monaghan. He was admitted a Solicitor in England in Michaelmas Sittings, 1922, and practised in Llandudno as a partner in the firm of Chamberlain, Johnson & Parke.

THE REGISTRY

(1) Entries will be accepted from solicitors for the Registry under the following headings:—Section A.—Practices for sale, partnerships and assistantships vacant; Section B.—Practices, partnerships and assistantships sought; Section C.—Miscellaneous information required, books, office equipment, etc., wanted or for sale. (2) Each entry accepted will be made in the appropriate section of the register which is open for inspection at the Society's offices during business hours. Each entry accepted will also be published once in the Society's *Gazette*. If the advertiser wishes the entry and advertisement in the *Gazette* may be over a box number. (3) Charges for each entry in the Register (including one publication in the Society's *Gazette*): members of the Society 3/- for 30 words or less and 1d. for each additional word over 30. Other solicitors double the rate for members of the Society. (4) Replies to entries in the Register and advertisements will not be forwarded by the Society unless postage is prepaid. (5) Replies to advertisements should be marked with the appropriate Box No. and addressed to the Society. (6) The use of the Registry by solicitors is subject to general conditions,

copies of which may be obtained from the Secretary.

Section B.

SOLICITOR, 32, with capital, seeks partnership or paid Assistantship leading thereto after trial period, or would consider temporary post, 8 years first-class experience District and Circuit Courts, Probate, Land Registry, Conveyancing, Workmen's Compensation. Town or County. Replies in confidence to Box No. B.115.

SOLICITOR, qualified in Easter Sittings, 1944, with good knowledge of a country Solicitor's office work and District and Circuit Court practice and procedure desires position as an assistant in solicitor's office. Good reference from well-established solicitor available. Thomas Bowes, Loughrea, Co. Galway.

Section C.

REQUIRED a good copy of "Cherry's Irish Law," third edition, 1903. Box No. C.104.

WANTED bound set of Irish Reports and of Irish Law Times Reports in good condition. Please state price. Box No. C.105.

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 £1,300 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 10/6 if admitted less than 3 years) a year. £10 10s. od. life membership.

Address:

THE SECRETARY,

SOLICITORS' BENEVOLENT ASSOCIATION,

12 NASSAU STREET, DUBLIN.

ALL Communications connected with THE GAZETTE should be addressed to the Secretary of the Society, Solicitors' Buildings, Four Courts, Dublin. Telephone: 73092.

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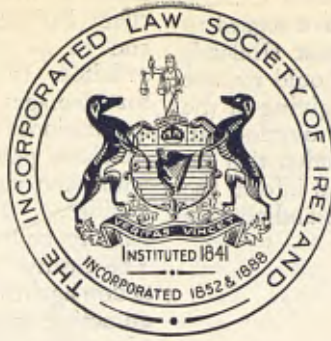
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THE GAZETTE

of the

INCORPORATED LAW SOCIETY OF IRELAND

President :

DANIEL O'CONNELL.

Vice-Presidents :

MATTHEW G. R. LARDNER.
ROGER GREENE.

Secretary :

ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

MEETING OF THE COUNCIL.

MARCH 21st. The President in the chair: Also present: Mr. Roger Greene, Vice-President; Messrs. J. R. Quirke, W. L. Duggan, P. F. O'Reilly, H. P. Mayne, P. R. Boyd, J. P. Carrigan, J. T. Wolfe, Seán Ó hUadhaigh, J. J. Smyth, H. St. J. Blake, J. J. Lynch, W. J. Norman, J. P. Tyrrell, J. B. Hamill.

The following was among the business transacted:

Local Government Bill, 1945

THE Secretary reported that at the request of the Council, Mr. John S. O'Connor, T.D., had moved an amendment on the Committee Stage of the Local Government Bill to Section 40 of the Bill as introduced, with the object of conferring jurisdiction on a District Justice to award costs on the hearing of an application by an owner of land for an order prohibiting an officer or agent of a road authority from entering upon the land. He stated that the

amendment moved by Mr. O'Connor had been accepted by the Minister and adopted by Dáil Éireann.

Nine applications by apprentices for liberty to present themselves for the Intermediate Examination before the expiration of two years from the dates of their indentures of apprenticeship were considered. Eight applications were granted. The remaining application was refused.

Five applications by solicitors under Section 47 for liberty to take out practising certificates were considered. Four applications were granted subject to payment of the current duty. One application was granted subject to payment of three years' arrears of duty.

ASSIGNMENTS OF LEASEHOLDS

We have been requested by a member to remind solicitors that when they have completed sales of leasehold premises, they should, where they have acted for Vendors, notify the lessors or their agents

of the assignments, setting out particulars thereof. In this connection, solicitors should have regard to Section 14 of the Landlord and Tenant (Ireland) Act, 1860. Solicitors for Purchasers should request the Vendors' solicitors to see that the giving of the necessary notice of assignment is not overlooked.

Solicitors for vendors are also reminded that on completing sales of property they should inform the Rate Collector of the sale and the name and address of the new owner of the property.

LLOYD'S SOLICITORS' INDEMNITY POLICY

IN the *Solicitors' Journal* of 19th May last there is an interesting report of an action against Lloyd's underwriters by solicitors claiming indemnity against liability for negligence on foot of the usual policy issued by Lloyd's. The case is entitled *Simon, Haynes, Barlas & Ireland v. Beer*, but does not appear to have been officially reported. As solicitors are aware the standard Lloyd's policy of insurance against liability for negligence by solicitors is an indemnity to the insured party against loss arising from any claim made against the insured during the period of twelve calendar months during which the policy subsists after issue and each renewal. It is a condition precedent to the right to indemnity under the policy that the insured should give immediate written notice to the underwriters of any claim made him in respect of which he claims indemnity. The policy contains a further clause providing that if (a) the insured shall receive written notice from any third party of intention to hold him responsible for the results of any alleged neglect, etc., or (b) if the insured shall become aware of any occurrence which may subsequently give rise to a claim against him, and shall in either case give written notice thereof to the underwriter during the currency of the policy, then any claim subsequently made against him on foot thereof shall be deemed to be a claim made during the currency of the policy. On each annual proposal for renewal of the policy the insured is required to declare that he has no reason to anticipate the making of any claim against him for professional negligence. The plaintiffs in the above action were insured under a policy which was renewed for the period 3rd October, 1938, to 3rd October, 1939. During the year 1935 the junior partner Mr. Kenward had advised a Mr. Cook in connection with advances which the latter made on the security of debentures to a limited company, and as the result of which he afterwards sustained

financial loss. Throughout the transactions the client had acted in a most unbusinesslike fashion and to a large extent against the advice of his solicitor. In 1939 he made a claim against the firm for damages for negligence arising out of the transactions of the preceding three years. The solicitors passed on the claim to the underwriters, who advanced various contentions for avoiding liability. Finally the underwriters repudiated liability under the policy but not the policy itself. The insured on the advice of counsel settled the action against them for £2,750, and then commenced an action against the underwriters claiming indemnity under the policy. The defence of the underwriters to the claim was in the form of a dilemma. Either the insured had been negligent in 1935 or they had not. If they had been negligent there were facts within their knowledge when the policy came up for renewal in 1939 which were unknown to the underwriters and which were material to be known by them before they accepted the proposal for renewal. If the insured had not been negligent they should not have settled the action against them.

Atkinson, J., in delivering judgment stated that in his opinion there was nothing in the transactions of 1935 which Kenward as a reasonable solicitor ought to have disclosed when the policy was renewed in 1939. He based his decision, however, on the fact that for some months after they had been notified of the existence of the claim in 1939, and then knowing everything, the underwriters had allowed the insured to think that the policy was good, and that the insured had in fact changed their position as the result thereof. Judgment was given for the insured.

The nature of a solicitor's business is such that if he is so unfortunate as to place himself in a position where he is liable to a client for negligence, he is unlikely to be aware of the fact before a claim is made against him, perhaps after the lapse of years. If the policy is not in force at the time when the claim is made the solicitor will not necessarily be covered, notwithstanding that he was insured at the time of the alleged negligence which is the subject of the claim. If, however, during the currency of the policy the solicitor becomes aware of the possibility or probability of a claim against him and notifies the insurers thereof before renewal, any claim made afterwards will be deemed to have been made during the currency of the policy even if it is not renewed. In any event, failure to disclose in any proposal for renewal any matter within the knowledge of the proposer which would cause a reasonable solicitor to anticipate the making of a claim against him may afford a defence to the underwriters to a claim for indemnity under the policy.

APPLICATION FOR SERVICE OUT OF THE JURISDICTION

IN *Bloomfield v. Serenyi* (1945, 2 All. E.R. 646), the English Court of Appeal passed some comments on the duty of a solicitor as an officer of the Court in regard to satisfying himself that all material facts have been disclosed in the affidavit grounding an application for service out of the jurisdiction. The action was commenced in England against the defendant Serenyi, who was the director of a Swiss Company, claiming commission on the sale of a patent and other relief. The Swiss company was the real and substantial defendant against which the action was intended to be brought, but the facts of the case were such that in order to institute proceedings against the company in England the plaintiff was driven to rely on the English R.S.C. Order XI r. i (g). This order, which is identical with our Order XI r. i. (b), provides that the Court may allow service of a writ of summons out of the jurisdiction whenever any party out of the jurisdiction is a necessary or proper party to an action properly brought against some other person duly served within the jurisdiction. The plaintiff's solicitor, having issued the writ and had it served on the defendant Serenyi in England, applied to the Master under Order XI r. i. (g) for leave to serve it on the company in Switzerland. The application was based on an affidavit by a clerk of the plaintiff's solicitor which averred, *inter alia*, that the plaintiff had a good cause of action against both defendants and that both of them were jointly indebted to the plaintiff in respect of commission and remuneration. The Master relying on this affidavit granted the application without seeing either the writ of summons or the statement of claim. On an application by the defendant company to set aside the order of the Master the Court of Appeal, affirming the High Court, held that the order for service out of the jurisdiction should not have been made, on the ground that if the affidavit grounding the application had made full disclosure of all material facts the Master would have seen that no action in fact lay against the first named defendant Serenyi, and consequently as there was no necessary or proper party to the action within the jurisdiction, Order XI r. i. (g) did not apply. Per Scott, L.J.: "I cannot help thinking that the deponent must have been erroneously instructed, perhaps quite innocently, by the plaintiff as to what the position was. But I want to say definitely that it is the duty of a solicitor, asked to obtain leave under R.S.C. Order 11 to examine with care the material put before him for the purpose of so acting, and to make sure that he does know the real case that his client

has before he makes or allows a clerk to make an affidavit upon which the Court must necessarily rely."

SOLICITORS' GOLFING SOCIETY.

THE Annual General Meeting of the Society was held in the Solicitors' Building on the 21st March, the Captain (Mr. William C. M. Corrigan) in the chair. The following officers were elected for the year:—

President: Mr. Daniel O'Connell, President I.L.S.

Captain: Mr. James J. Hickey.

Hon. Treasurer: Mr. T. D. McLoughlin.

Hon. Secretary: Mr. A. Marshall.

The President of the I.L.S. was present and was welcomed by the Chairman.

It was decided to hold the Summer Meeting at The Grange Golf Club on the 23rd May, when the following Competitions will be played:—

Society's Challenge Cup—18 holes strokes. Prize to the winner presented by the Captain.

The Veterans' Challenge Cup (presented by the late E. H. Burne), open to all members over 50 years of age—18 holes strokes.

The St. Patrick's Plate (presented by the late Alfred Lane Joynt), limited to handicaps of 12 and under.

The Annual Dinner will be held in the Grange Club House after the meeting. Now that travelling facilities have been extended, it is hoped to increase the membership of the Society, and all solicitors interested are requested to communicate with the Hon. Secretary, 119 Stephen's Green, Dublin.

The Officers are anxious to revive the practice of holding one of the Society's outings at a course outside Dublin, and are planning to hold the Autumn Meeting at one of the country Clubs. It is hoped, however, that country members will support the Summer Meeting in Dublin.

The annual subscription to the Society is 10s. od., which covers the entrance fee to the Competitions at both the Summer Meeting and the Autumn Meeting.

LAW TERMS.

THE Easter Law Sittings will end on the 18th May. The Trinity Law Sittings will begin on the 3rd June and end on the 31st July.

LEGAL APPOINTMENTS.

MR. DESMOND A. HOULIHAN, Solicitor, Birr, has been appointed State Solicitor for Offaly, in succession to Mr. J. J. Kennedy, Birr, deceased.

MR. LAURENCE J. B. STEEN, Solicitor, Navan, has been appointed State Solicitor for Meath, in succession to his father, the late Mr. Ambrose Steen.

OBITUARY.

MR. HENRY LEMASS, Solicitor, died at his residence, Melrose, North Circular Road, Dublin, on 19th March, 1946.

Mr. Lemass served his apprenticeship with the late Mr. Henry Bonass, Dublin, was admitted in Hilary Sittings, 1908, and practised at 8 Parliament Street, Dublin.

MR. PATRICK M. O'LEARY, Solicitor, died at a private nursing home, Dublin, on 25th March, 1946.

Mr. O'Leary served his apprenticeship with the late Mr. John A. McArdrey of Dublin and the late Mr. John Q. Hanrahan of Dublin, was admitted in Hilary Sittings, 1932, and practised at 59 Dame Street, Dublin.

MR. HARRY BRUCE BELL, Solicitor, died at his residence, Victoria Villa, Saul Street, Downpatrick, on 28th March, 1946.

Mr. Bell served his apprenticeship with the late Mr. Francis G. MacSherry of Roscommon and Mr. John W. Bell of Downpatrick, was admitted in Michaelmas Sittings, 1918, and practised in Downpatrick.

THE REGISTRY.

(1) Entries will be accepted from solicitors for the Registry under the following headings:—Section A.—Practices for sale, partnerships and assistantships vacant; Section B.—Practices, partnerships and assistantships sought; Section C.—Miscellaneous information required, books, office equipment, etc., wanted or for sale. (2) Each entry accepted will be made in the appropriate section of the register which is open for inspection at the Society's offices during business hours. Each entry accepted will also be published once in the Society's *Gazette*. If the advertiser wishes the entry and advertisement in the *Gazette* may be over a box number. (3) Charges for each entry in the Register (including one publication in the Society's *Gazette*): members of the Society 3/- for 30 words or less and 1d. for each additional

word over 30. Other solicitors double the rate for members of the Society. (4) Replies to entries in the Register and advertisements will not be forwarded by the Society unless postage is prepaid. (5) Replies to advertisements should be marked with the appropriate Box No. and addressed to the Society. (6) The use of the Registry by solicitors is subject to general conditions, copies of which may be obtained from the Secretary.

Section B

SOLICITOR, 32, with capital, seeks partnership or paid Assistantship leading thereto after trial period, or would consider temporary post, 8 years' first-class experience District and Circuit Courts, Probate, Land Registry, Conveyancing, Workmen's Compensation. Town or Country. Replies in confidence to Box No. B.115.

SOLICITOR, 16 years' first-class experience all branches, town and country, wishes to hear of Country Practice for sale or partnership in country town, view to succession. Pleasant disposition, easy to work with. House near or over office an advantage. South preferred, but not essential. Box No. B.116.

DUBLIN solicitor, six years in practice on his own account, wishes to merge his practice with that of an elderly solicitor or a solicitor about to retire, view to eventual complete ownership of both practices for cash consideration and/or annual payments. Replies treated in strict confidence. Box No. B.117.

ASSISTANTSHIP Wanted:—Army Officer. Qualified April, 1941. Degrees of B.A. and LL.B.; Ex-Auditor, Solicitors' Apprentices' Debating Society, winner of Silver Medal for First Year Debate, dual Gold Medallist for Oratory and Impromptu Debate. Leo Gibson, Brookville, Sallymount Avenue, Ranelagh.

Section C.

For sale, in perfect condition, *Irish Reports, 1928-42*; *Lindley's Companies* latest edition; *Stubb's Irish Digest, 1867-93*; *Abraham and Davies' Factory Acts, 1908*; *Holland's Jurisprudence, 1900*; *Saunders' Justinian*. E. M. Lloyd and P. Tighe. Phone 21540.

SOLICITOR desirous to know of Second-hand Legal Books for sale. All books considered. Would also like to know of filing cabinet. Apply Box No. C. 106

WANTED *Browning and Glover*, 2nd Edition. When replying please quote price. Box. C. 107.

FOR SALE small library of Law Books. For list and particulars apply to Box C. 108.

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