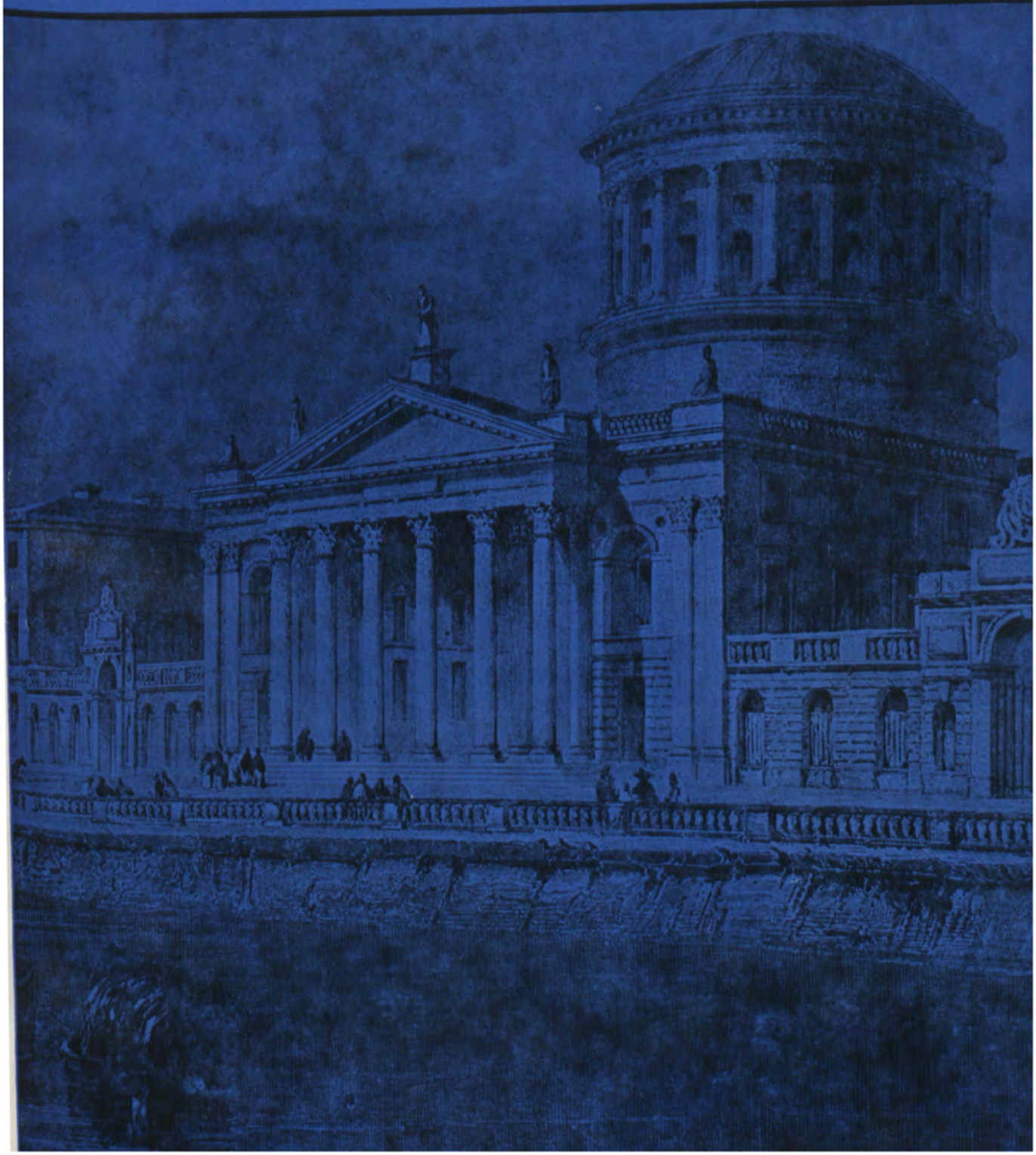
GAZETTE

THE INCORPORATED
LAW SOCIETY
OF IRELAND

January — February, 1975

Vol. 69

No. 1



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THE GAZETTE OF THE INCORPORATED LAW SOCIETY OF IRELAND

January - February, 1975
Vol. 69 No. 1

Contents

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Advertisements to :
Advertising Manager,
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The Editor welcomes articles, letters and other contributions for publication in the Gazette.

Opinions and comments in contributed articles and reviews are not published as the views of the Council unless expressly so described.
Likewise the opinions expressed in the Editorial are those of the Editor and do not necessarily represent the views of the Council.

The Gazette is published during the third week of each month; material for publication should be in the Editor's hands before the 15th of the previous month if it is intended that it should appear in the following issue. Acceptance of material for publication is not a guarantee that it will in fact be included in any particular issue since this must depend on the space available.

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Annual General Meeting

The President, Mr. Peter Prentice, took the Chair at 2.30 p.m. on Thursday, 28th November, 1974 in the Library of Solicitors Buildings, Four Courts.

The notice convening the meeting and the minutes of the ordinary general meeting held in Ennis in May, 1974 were read, and they were subsequently signed.

The President then requested that the accounts and balance sheets for 1973-74 be adopted. The motion "That the accounts be adopted" was formally proposed by Mr. Gerald Hickey and seconded by Mr. Nash. In reply to Mr. Crivon, the President stated that they had not taken any conveyance of the Blackhall Place premises. Originally, the Vendors, the King's Hospital were a chartered body with perpetual succession who had no powers to convey, but this was remedied in the Charities Act 1973. In any event, they would eventually acquire squatter's rights by remaining in possession for 12 years.

Mr. John Carrigan then proposed, and Mr. Joseph Dundon seconded the motion that Messrs. Cooper & Lybrand be appointed Auditors for the coming year.

BALLOT FOR THE COUNCIL 1974/75 REPORT OF THE SCRUTINEERS

A meeting of the scrutineers appointed at the Ordinary General Meeting of the Society held in May, 1974 together with the ex-officio scrutineers was held in October, 1974 at 1 o'clock. Nominations for ordinary membership of the Council were received from 40 candidates all of which were declared valid and the scrutineers directed that their names be placed on the ballot paper.

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

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

A meeting of the scrutineers was held on Thursday, 21st November, 1974 at ?? o'clock. The poll was conducted from 10 a.m. until 4 p.m. and the scrutiny was subsequently held. The result of the ballot was as follows:-

775 envelopes containing ballot papers were received from members.

The valid poll was 773.

The following candidates received the number of votes placed after their name and were elected:

Mrs. Moya Quinlan 530; Patrick C. Moore 526, William A. Osborne 524, John Carrigan 515, Walter Beatty 511, Anthony Collins 511, Peter D. M. Prentice 505, Bruce St. J. Blake 505, Patrick Noonan 505, Francis J. Lanigan 489, John Maher 473, Thomas D. Shaw 468, Joseph L. Dundon 456, Brendan McGrath 451, Peter E. O'Connell 449, Patrick F. O'Donnell 445, John J. Nash 439, William B. Allen 435, Robert McD. Taylor 430, Gerald Hickey 430, Laurence Cullen 426, Michael P. Houlihan 425, Maurice Curran 413, James W. O'Donovan 403, Gerard M. Doyle 400, Thomas V. O'Connor 389, Ralph J. Walker 387, Ernest J. Margetson 381, John B. Jermyn 377, David R. Pigot 365, William D. McEvoy 359.

The foregoing candidates were returned as ordinary members of the Council for the year 1974/75. The following members also received the number of votes placed after their names:- Raymond T. Monaghan, 332; Edward P. King, 307; Richard J. Black, 293; Brian J. O'Connor, 262; Patrick J. Bergin, 250; Patrick H. O'Doherty, 247; Nathaniel Lacy, nomination withdrawn; Raymond V. H. Downey, 189; James F. Kent, 159. The President declared the result of the ballot in accordance with the Scrutineer's Report.

Report of the Council

The President stated that they had digressed from previous reports, and had decided to publish it in the Gazette. The cost of printing a separate Annual Report would have been £400. This year each Report had been prepared by the Chairman of the Committee instead of by the Secretary, as formerly. As regards his own Report, the President wished to add that he had been entertained by the Young Solicitors Society at their Autumn Seminar in Waterford, and that, for the first time, he was invited, as President, with his English and Scottish colleagues, to the Annual Dinner of the Incorporated Law Society of Northern Ireland; he had also attended the Annual General Meeting and a Council Meeting of that Society and had met Sir Robert Lowry, the Lord Chief Justice.

The motion "That the Report of the Council for 1973/74 be adopted" was moved by the President and seconded by Mr. William A. Osborne.

The report of each Committee was then considered separately. The adpotion of the Report of the **Registrar's Committee** was proposed by Mr. Gerard Doyle and seconded by Mr. James F. Kent. Mr. Doyle stated that his Committee had to take decisions of serious import, but that nevertheless an opportunity was given to defaulting solicitors to seek help and put forward their difficulties. The lack of staff in smaller firms occasionally led to dire results. The Report was duly passed.

The adoption of the Report of the **Compensation Fund** which was said to be in a healthy state, was moved by Mr. Gerard Doyle, seconded by Mr. John F. Buckley and adopted unanimously.

The adoption of the Report of the **Privileges Committee** was moved by Mr. Michael Houlihan, and seconded by Mr. John Carrigan. Mr. Houlihan stressed that in general, members did not realise the essential import of undertakings given by them, and that they would have to be reminded from time to time about this in the Gazette. Normally insufficient information was given when problems were presented.

Mr. Quentin Crivon asked whether there was any prospect of Professional Indemnity Insurance being made compulsory. The Director General stated that an investigation had been undertaken, but that the insurance market was not interested in this proposal.

It followed that unfortunately many members were not insured against this contingency at the moment. Even though the English Law Society has already power to take steps to make this compulsory, it is still considering the position. The President asked how, even if this proposal of Professional Indemnity Insurance were adopted, it would be enforced. The proposals relating to this matter are not statutory, whereas those relating to Solicitors' Accounts are. As a result of discussions with the Minister for Justice, he was satisfied that an amending Solicitors Bill, even if it were to provide for this, would not be introduced by the Government for at least two years. The Accountants' Profession themselves had great difficulty in obtaining insurance to cover this contingency.

Mr. Desmond Moran stated that the question of compulsory insurance was one of great anxiety as it could lead to disaster.

Mr. James O'Donovan asked about information about the number of claims to be met.

Mr. Bruce St. John Blake stated that the rating for professional negligence insurance was high, as it was based on the totality of the professions covered.

Mr. Jermyn pointed out that as solicitors, we were in fact separated from other professions which should give us an opportunity to build up a fund of our own.

As against **Mr. T. C. G. O'Mahony's** suggestion that this Report be considered by a Sub-Committee, the President's proposal, that the Report be referred back to the Council for further consideration, was accepted. The Report was then passed.

The adoption of the Report of the **Parliamentary Committee** was proposed by Mr. John J. Nash and seconded by Mr. John Jermyn. It was pointed out that the views of the Society on impending legislation could be referred to the Government, with occasional favourable results. The report was passed.

The adoption of the Report of the **Finance Committee** was proposed by Md. Gerard Hickey, seconded by Mr. Ernest Margetson and passed unanimously.

The adoption of the Report of the **Court Offices Committee,** in the absence of its Chairman, Mr. Peter O'Connell was proposed by Miss Felicity Foley and seconded by Mr. Christopher Hogan.

Mr. Crivon asked whether there was any prospect of any increase in Schedule 2 costs.

The President stated that the question of a Special Costs Committee had to be considered by the Prices Advisory Commission. The Minister for Justice was endeavouring to ask the Minister for Industry and Commerce whether he would transfer the powers in relation to legal costs to a special Prices Committee to be established under the Ministry of Justice. The President stated that the Council were looking closely at the matter.

Mr. Crivon emphasised that the present scales were unremunerative. The Report was passed.

The adoption of the Report of the **Court of Examiners** was proposed by Mr. William Dundon and seconded by Mr. John Buckley. Mr. Buckley stated that a Sub-Committee had been appointed to advise on the new educational arrangements and that the 11 members of this Sub-Committee, most of them not on the Council, deserved commendation for their work.

Mr. Crivon was worried that no proper statistics for education had been produced. He stated that whereas formerly about 50 new solicitors qualified per year, this figure had now risen to 100, most of whom would not receive employment. If, at Universities, candidates could not secure enough points for the discipline which they intended to choose, they inevitably turned to law, on account of the low standard of points involved. Rigorous steps should be taken to raise standards, in order to produce competent solicitors.

The Director General stated that admittedly 120 solicitors had qualified last year, and that no less than 400 apprentices had been accepted at the moment. The exact position in relation to employment would be inquired into within the next two months.

The President stated that, as from October 1975, the profession would become post-graduate, and the Universities would furthermore be imposing strict quotas in the Law Faculties then. The Minister for Justice wanted to allow apprentices into the profession without any control, and, if we had not done so, by facilitating apprenticeship, the Minister could by pressure have opposed the closed shop, and brought in legislation to open the door to extend apprenticeship facilities.

Mr. Crivon pointed out that a qualified solicitor is bound by the regulations, and that a surfeit of solicitors will keep the Disciplinary Committee busy.

Mr. Desmond Moran asked for an explanation as to how candidates had to undergo undue delays in obtaining examination results.

The Director General stated that under the regulations all results had to be sanctioned by the Council, and that for the Summer 1974 results, a special meeting of the Council had to be summoned, at which it was difficult to obtain a quorum. Although examiners were given a dead-line, they often sent results late, as this was only a part-time activity. If the results were late, they could not be properly checked. He deplored the fact that the results of the September Law Examinations had in some respects been inaccurate, and that in two cases, candidates who were at first informed that they had passed, had subsequently failed.

Mr. Dundon, in reply to a question as to whether it was possible to review an examination paper, stated that no general review was possible, but that discretion could be exercised in particular cases. The report was passed.

The adoption of the **Public Relations Committee** was proposed by Mr. Walter Beatty and seconded by Mr. John Carrigan.

Mr. T. C. G. O'Mahony commended the Committee for making use of the Communications Media. The report was passed.

The adoption of the Report of the **Blackhall Place Committee** was moved by Mrs. Moya Quinlan, and seconded by Mr. John Maher.

Mrs. Quinlan emphasised that the Council, at its last meeting, had passed a resolution to move by gradual steps into Blackhall Place, as and when conditions warranted it. A draft scheme was in course of preparation to use the ground floor premises mainly for educational purposes.

Mr. Gerald Hickey said he had misgivings about the gradual development of these premises, as the cost

would be astronomic. While an architect had been retained to draw plans for the ground floor, it seemed to him that it would be necessary to know the cost of maintenance for the whole building.

Mr. Crivon said that it appeared that no costs were being incurred by the profession to operate Blackhall Place. The profession did not have much say in the matter, and it was only equitable that members should be given particulars of the full costs incurred. **The Director General** said that for the past 4 months, the Council had had close discussions with the Department of Justice and with the Board of Works as to the future of the premises, but no decisions had been taken. A surplus to the Society's funds has accrued from the management of investments and from the excessive number of apprentices; these latter funds will be allotted to Blackhall Place. During the law terms, there is a heavy demand for Conference Rooms which cannot be met, and which ensures a great scope for developing the present building.

Mr. Crivon asked that, in view of the cost of alterations to the new building which were estimated to cost £700,000, the members should receive an undertaking that they would be fully informed about further developments.

The President referred to the recent resolution of the Council and stated expressly that further resolutions on this subject would be reserved exclusively to the Council. It was essential for the Society to provide a suitable building to meet the new educational requirements.

Mr. J. F. Kent expressed apprehension at the cost of putting the premises in structural order.

The President stated that the overdraft for the purchase of the premises had now been paid off, and that, in respect of future expenditure, they did not intend to mulct the members unreasonably. The report was then passed.

The adoption of the Report of the **E.E.C. Committee** was moved by Mr. John Jermyn, and seconded by Mr. John Buckley. Mr. Jermyn congratulated the members of the Committee, and in particular Mr. John Fish, for the time they spent in drafting Reports. He regretted that the Superior Court Rules Committee had not adopted any procedure under Art. 177 of the Treaty of Rome, by which a case stated from a decision of an Irish Court to the European Court in Luxembourg could be provided.

Mr. T. C. G. O'Mahony complained of the maze of European Community legislation which would produce a headache for private practitioners. The Report was adopted.

The adoption of the Report of the **Company Law Committee** was proposed by Mr. Anthony Collins, seconded by Mr. Joseph Dundon and adopted. No discussion was held in degard to the Reports of the Library, Publications and Law Clerks. The Report of the Council was then adopted unanimously.

A Resolution was then moved by Mr. William Osborne and seconded by Mr. Gerald Hickey to the following effect:-

1. That bye law 3 of the Society be revoked and that the following bye law be substituted:—

"That annual membership subscription shall be £10 for a member who has been admitted to the roll of solicitors for three years or upwards and £5 for all others or such sum as the Council may from time to time determine, and shall be payable in advance on 6th January in each year or on acceptance as a member provided that a new member accepted and joining the Society for the first time after 1st July in any year shall be required to pay only half the appropriate subscription to the following January 5th and such new member shall be entitled to vote at the then ensuing election for the Council provided that he shall have been a member at least one week before the date of the election."

Mr. Crivon, criticising the wording said that he thought that Membership Fees should be fixed by the members at the Annual General Meeting. The President said he would put forward such an amendment, but emphasised that it was difficult to change the bye-laws often.

The following amendment, proposed by Mr. Quentin Crivon, and seconded by Mr. Anthony Collins, was passed unanimously:- "That the words — 'as the members at the Annual General Meeting may determine' be substituted for the words 'as the Council may determine' and that the preceding resolution be amended accordingly". The amended resolution was then adopted.

A resolution to the following effect was proposed by Mr. Michael Houlihan and seconded by Mr. John Nash:—

2. That a new bye law 38A be adopted as follows:—

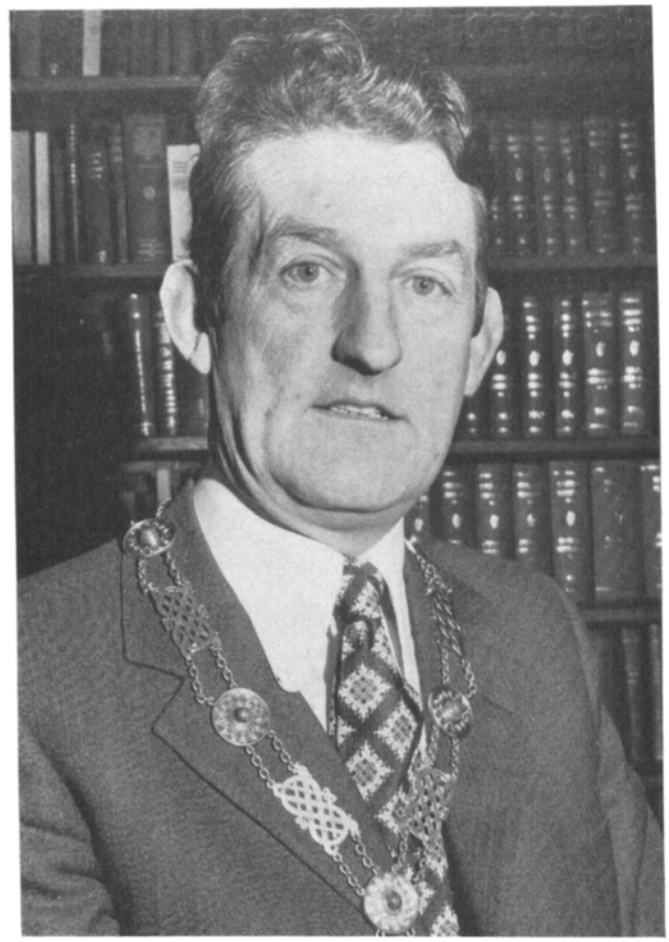
"38A. Reasonable travelling and out of pocket expenses to be fixed by Council shall be paid out of the funds of the Society to the members of Council and of the Council's committees and Committees of the Society when attending meetings of the Council or Committees or otherwise engaged on the Socety's busness."

Mr. Houlihan pointed out that country members had to absent themselves from essential office work, and spend at least two or three days every month in Dublin. Mr. Crivon considered it reasonable that country members should be re-imbursed their expenses. Mr. Nash said that the total expenditure under this head would appear on the Balance Sheet as a separate heading of expenditure. The Resolution was adopted unanimously.

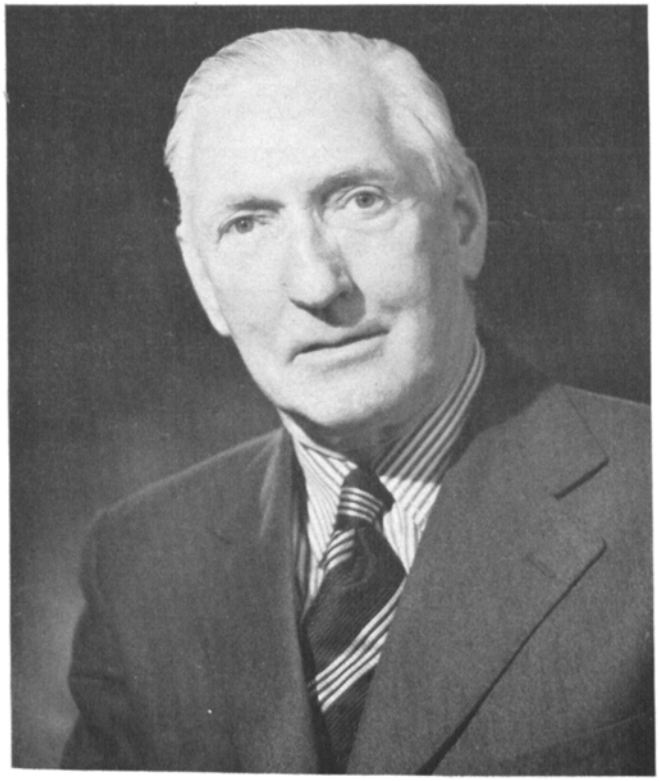
The date of the next Annual General Meeting was fixed for Thursday, 27 November, 1975. The Director General then spoke about the system of Criminal Legal Aid, and stated that the Dublin members had met the Department of Justice, and made certain suggestions for improvement. Some confidential counter-proposals have emerged from the Department and are under discussion.

Mr. Crivon proposed that Mr. Osborne, Senior Vice-President, take the Chair. Mr. Crivon then thanked Mr. Prentice, the President, for the valuable services which he had rendered the Society during the year, and a resolution to this effect was passed by all with acclamation.

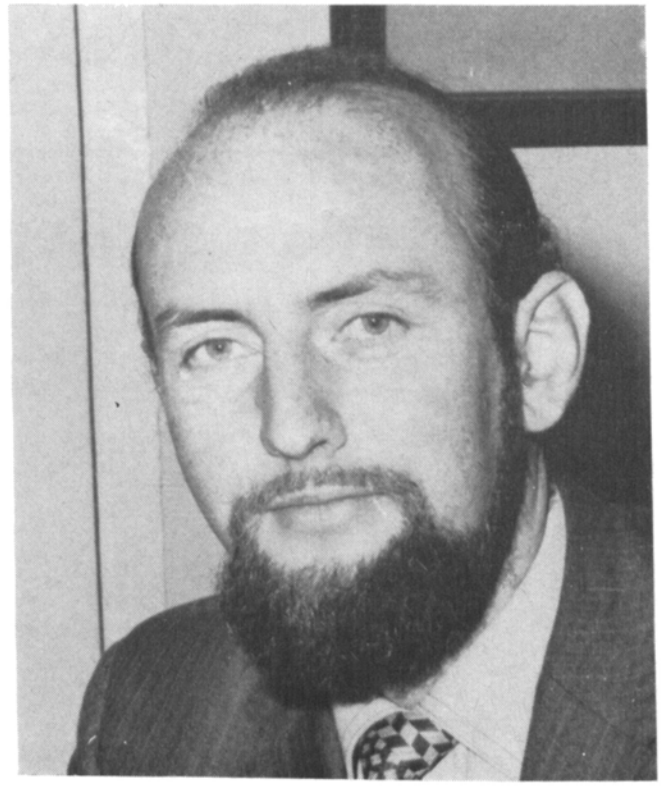
The meeting then terminated at 4.20 p.m.



Mr. William Anthony Osborne, Senior Partner of the firm, Messrs. Brown & McCann, Solicitors, Naas, Co. Kildare, has been elected President of the Society for 1974-75.



Mr. Patrick Christopher Moore, proprietor of the firm of Messrs. P. C. Moore & Co., Solicitors, 17, South Great George's Street, Dublin 2, has been elected Senior Vice President.



Mr. Joseph L. Dundon, of the firm of Messrs. O'Donnell, Dundon & Co., Solicitors, 101, O'Connell Street, Limerick, has been elected Junior Vice President of the Society.

Committees of the Council 1975

1 and 2 Registrar's and Compensation Fund
P. F. O'Donnell, Chairman; G. M. Doyle, W. Beatty, M. R. Curran, A. E. Collins, L. Cullen, E. J. Margetson, T. M. D. Shaw, D. R. Pigot.

3. Finance
G. Hickey, Chairman; W. Beatty, J. J. Nash, P. D. M. Prentice.

4. Parliamentary
P. D. M. Prentice, Chairman; J. J. Nash, W. B. Allen, J. B. Jermyn, F. J. Lanigan, P. Noonan, P. E. O'Connell, R. McD. Taylor, B. St. J. Blake, J. W. O'Donovan.

5. Privileges
M. P. Houlihan, Chairman; W. B. Allen, J. B. Jermyn, *Ulster Co-option, J. Maher, R. O'Connor, B. Russell, T. M. D. Shaw, L. Cullen.

6. Court Offices and Costs
E. J. Margetson, Chairman; P. E. O'Connell, Miss F. Foley, C. Hogan, N. Hughes, P. J. McEllin, W. D. McEvoy, D. G. O'Donovan, J. A. O'Mara, R. McD. Taylor, F. Lanigan.

7. Public Relations
W. Beatty, Chairman; B. St. J. Blake, M. Curran, T. Shaw, W. D. McEvoy, M. P. Houlihan, B. A. McGrath, R. F. O'Donnell, G. M. Doyle, Mrs. M. Quinlan.

8. Blackhall Place
Mrs. M. Quinlan, Chairman; T. Jackson, E. J. Margetson, B. St. J. Blake, P. D. M. Prentice, P. F. O'Donnell, M. D. McEvoy, J. Carrigan.

9. E.E.C.
A. E. Collins, Chairman; J. G. Maloney, J. B. Jermyn, J. Buckley, J. G. Fish, B. A. McGrath, P. D. M. Prentice.

10. Policy
J. Carrigan, P. D. M. Prentice, F. Lanigan, J. Maher, B. A. McGrath, J. J. Nash, P. Noonan, J. W. O'Donovan, R. McD. Taylor, A. Osborne, J. L. Dundon, P. C. Moore; plus Chairmen of Standing Committees.

11. Court of Examiners
J. Buckley, Chairman; M. Quinlan, J. W. O'Donovan, M. Curran, D. R. Pigot.

Joint Consultative Committee with Bar Council
P. D. M. Prentice, B. Allen, D. R. Pigot.

Superior Court Rules Committee
Michael P. Houlihan in lieu of Mr. R. Walker resigned.

Company Law Committee
P. D. M. Prentice, B. O'Connor, P. Kilroy, W. Beatty, M. G. Dickson, J. G. Ronan (N. Comyn alternate), D. J. Bergin, L. Shields, A. Fry, A. Collins; plus two co-options of suitable young solicitors who research and act as Hon. Secs. of Sub. Committees.

Presentation of Certificates

The President, Mr. Prentice delivered a short address to the following new solicitors who were presented with Certificates in the Library of Solicitors' Buildings, 6th December, 1974. The following received Certificates:—

Catherine Bergin, 12 Orwell Park, Rathgar, Dublin 6.
Denis P.M. Boland, B.C.L., (N.U.I.), 1 McElwaine Terrace, Newbridge, Co. Kildare.
Timothy P. W. Bouchier-Hayes, B.C.L. (N.U.I.), 43 Leeson Place, Dublin 2.
Patrick J. Butler, "Belveleen", Ryston, Newbridge, Co. Kildare.
Eamonn B. Byrne, "Barnaree", 5 Butterfield Avenue, Rathfarnham, Co. Dublin.
John J. Carlos, B.C.L. (N.U.I.), Bawn Street, Stokestown, Co. Roscommon.
Raymond Carroll, B.C.L. (N.U.I.), 51, Clarinda Park East, Dun Laoghaire, Co. Dublin.
Peter O'Neill Crowley, Ardvarna, Taylor's Hill, Galway.
Anne M. Delaney, B.C.L. (N.U.I.), Moorefield Lodge, Newbridge, Co. Kildare.
Philomena M. Devins, B.C.L. (N.U.I.), "Fatima", Pearse Road, Sligo.
James M. Devlin, B.A. (N.U.I.), Sunnyside, Glenageary Hill, Dunlaoghaire, Co. Dublin.
John G. Dillon-Leetch, B.C.L. (N.U.I.), Ballyhaunis, Co. Mayo.
Mary C. Dolan, Brackenlea, Baily, Co. Dublin.
John D. Dunne, B.C.L. (N.U.I.), Newgrange Road, Blackrock, Co. Dublin.
Ivan J. Durcan, B.C.L. (N.U.I.), 57 Dartmouth Square, Dublin 6.
Orlean Dyar, Liberty Hollow, Castlerea, Co. Roscommon.
David Ellis, B.A., 56A Albert Road, Glenageary, Co. Dublin.
Anthony H. Ensor, B.C.L. (N.U.I.), St. Gerards, Limerick Road, Naas, Co. Kildare.
Paul A. Ferris, Little Rath, Sallins, Co. Kildare.
Kevin J. Gaffney, "Ardeevin", Clones Road, Cavan.

William J. B. Garvan, B.Sch., H.Dip. in Ed., 37 Sycamore Road, Mount Merrion, Co. Dublin.
Mary G. A. Gaughan, B.C.L. (N.U.I.), 27 Whitebeam Avenue, Clonskeagh, Dublin 14.
John Gaynor, Baylin, Athlone, Co. Westmeath.
John M. M. Griffin, B.C.L. (N.U.I.), The Newtown, Moate, Co. Westmeath.
Stephen C. Hamilton, B.A., LL.B., 27 St. Catherine's Park, Glenageary, Co. Dublin.
Mary F. Hutchinson, B.C.L., "Elba", Portarlington, Co. Offaly.
Colin O. Keane, B.A., (Mod.), 98, Coliemore Road, Dalkey, Co. Dublin.
Charles Kelly, B.A., "Jalna", Auburn Road, Mullingar, Co. Westmeath.
Jean Kelly, "Greentrees", Pearse Road, Sligo.
Patrick T. Kennedy, Shirley House, Carrickmacross, Co. Monaghan.
Alan J. King, B. Comm., The Mall, Westport, Co. Mayo.
Richard Liddy, B.A., Arklow House, Newtown Park, Bliackrock, Co. Dublin.
Hugh F. Ludlow, "Waterpark", Dunmanway, Co. Cork.
Ronald J. M. Lynam, "Woodbine", Killiney, Co. Dublin.
Justin J. G. MacCarthy, B.A. (T.C.D.), Sallywood, Delgany, Co. Wicklow.
Kevin Matthews, B.Comm., "Glencree" Demesne Road, Dundalk. Co. Louth.
Patrick J. Minogue, 112, Hillside, Dalkey, Co. Dublin.
Brendan T. Muldowney, Bernacoola, Carrick-on-Shannon, Co. Leitrim.
Desmond Mullaney, 343, Sutton Park, Sutton, Co. Dublin.
Brian McAllister, B.C.L. (N.U.I.), Auburn Road, Mullingar, Co. Westmeath.
Roderick V. McCrann, B.C.L. (N.U.I.), "Mayfield", Circular Road, Roscommon.
Rory G. McEntee, B.C.L. (N.U.I.), Newmarket Street, Kells, Co. Meath.
Mrs. Esther McGahon, Knockalegan, Chapel Pass, Blackrock, Co. Louth.
George C. M. P. McGrath, "Ard-na-Chree", Kerrymount Avenue, Foxrock, Co. Dublin.
Fiona McGuire, B.C.L. (N.U.I.), Larkhill Road, Sligo.
Peter V. McLaughlin, 7 Orwell Park, Rathgar, Dublin 6.
David F. McMahon, B.C.L. (N.U.I.), 25 Castle Avenue, Clontarf, Dublin 3.
David C. O'Brien, 30 Roselawn Estate, Castleknock, Co. Dublin.
Eimear O'Brien-Kelly, "Yewfort", Patrickswell, Limerick.
Patrick O'Connor, B.C.L. (N.U.I.), Swinford, Co. Mayo.
Carroll O'Daly, B.A. (N.U.I.), 30 John Street, Waterford.
Hugh O'Donnell, B.C.L. (N.U.I.), The Ward, Co. Dublin.
John M. O'Dwyer, "Slieve Bloom", Clongour, Thurles, Co. Tipperary.
Mrs. Leonie M. M. O'Grady, B.C.L., LL.B., Farney Street, Carrickmacross, Co. Monaghan.
Donal O'hUadhaigh, 18 Alma Road, Monkstown, Co. Dublin.
Margaret M. O'Kane, B.A. Hons. H.Dip. in Ed., Greenhills, Drogheda, Co. Louth.
Michael J. O'Malley, B.C.L. (N.U.I.), "Dromineer", Castletroy, Co. Limerick.
Anne P. O'Regan, B.C.L., 23 Western Road, Clonakilty, Co. Cork.
Brian P. O'Reilly, B.C.L. (N.U.I.), Solicitors' Buildings, Four Courts, Dublin 7.
Eugene O'Sullivan, B.A., 6 Upper Fitzwilliam Street, Dublin 2.
Michael T. Quigley, B.C.L. (N.U.I.), 75 Carrick Court, Portmarnock, Co. Dublin.
Thomas P. Quinn, B.C.L. (N.U.I.), 2 Offington Drive, Sutton, Co. Dublin.
Peter J. Redmond, 14 Coillinne, Gorey, Co. Wexford.
Anne M. Regan, B.C.L. (N.U.I.), 30 Mather Road, Mount Merrion, Co. Dublin.
John C. Reidy, B.C.L. (N.U.I.), "DunMuire", Tipper Road, Naas, Co. Kildare.
Patrick D. Rowan, B.A., M.A., Cu na Mara, 266 Seapark, Malahide, Co. Dublin.
Rosemary A. Ryan, B.C.L. (N.U.I.), 7 Mayfield Road, South Circular Road, Dublin 8.
Linda M. Scales, B.C.L. (N.U.I.), "Headfort", Harbour Crescent, Dalkey, Co. Dublin.
Bryan C. Sheridan, "Knockalla", Upper Kilmacud Road, Co. Dublin.
Michael Sherry, B.C.L., Lord Edward Street, Kilmallock, Co. Limerick.
Vincent M. Shields, B.C.L. (N.U.I.), Knockanima, Loughrea, Co. Galway.
Thomas J. Stafford, B.C.L., Richardstown, Newbridge, Co. Kildare.
Ambrose J. Steen, Brews Hill, Navan, Co. Meath.
Roger Sweetman, Kilmurray, Clane, Co. Kildare.
Michael C. Treacy, 30, Lavarna Road, Terenure, Dublin 6.
Michael P. Walsh, B.A., "Valmar", 2, Herbert Road, Ballsbridge, Dublin 4.

THE STATUS OF THE PROFESSIONS WITHIN THE E.E.C.

A Conference on the Professions within the European Economic Community organised by the **Irish Council of the European Movement** was held in the Shelbourne Hotel, Dublin, on Saturday, 14th December, 1974. About 20 professions were represented by 3 delegates each; these included the Irish Veterinary Association, the Irish Medical Association, the Royal Institute of Architects, the Irish Dental Association, the U.C.D. Staff Association, the Institute of Chartered Accountants, the Pharmaceutical Society, the Institute of Quantity Surveyors, and the Institute of Engineers. Some senior Civil Servants from the relevant departments were also present. Mr. Brendan McGrath, Mr. John Fish and Mr. Gavan Duffy represented the Law Society.

The Conference was opened by Dr. Thomas Murphy, U.C.D. The first lecture was given by Mr. Alan Bath of the European Commission in Brussels. It seems that by 1972, out of 40 draft directives on the Commission 12 referred to the liberal professions but none of these had been adopted by 1973. The draft directives covered the professions of doctor, lawyers, etc., and some of them give details as to daily hours of study and as to years of study. In the first instance the Commission held discussions with the doctors.

In March 1974, the Commission proposed to the Council of Ministers a set of new guidedines, by which the professions were urged to adopt comparative methods to promote information in similar fields. It was essential however that these rules should not be too rigid, but that there should be continuous consultation through advisory councils. The REYNERS and BINSBERGEN cases were then mentioned. The Commission had undertaken to have a fresh look at each directive affecting the professions, and more particularly the doctors. Draft Committees were to be set up which would contain members of each practising professions. The Dossier on Architects, which was first published in 1967, is still under active discussion, particularly in relation to the question how far engineers could practise as architects; as the technical questions involved were complicated, only transitional measures were considered in the first instance.

The Dossier relating to the provision of services for lawyers was drafted in a very limited form, and, until the Reyners decision, Art. 55 seemed to restrict it further. The Commission will now have to consider how the BINSBERGEN and WALLRATH-KOCH decisions affect the issue.

It is possible for national legislation to extend professional qualifications. Art. 48 does not apply to civil servants or employees of local authorities or of State subsidised bodies. The mutual recognition of academic qualifications should encourage teachers to move from one member State to another. Senator Alexis Fitzgerald presided at this lecture.

Dr. Farrelly presided at the second lecture which was given by **Mr. William Lyons** of the Department of Education. The lecturer referred to the resolution of the Council given in Luxembourg on 6th June, 1974 as to the future of academic degrees and diplomas; this contained flexible guidelines. The final qualifications in each Member State should be established. Lawyers in the Depts. of Justice and Foreign Affairs exercise a co-ordinating role in such matters as the draft directives on doctors and on architects. There have also been two medical directives: (1) on the mutual recognition of educational qualifications and co-ordination of minimum standards, and (2) on the range of knowledge required to be admitted as a doctor or an architect. The first of these directives was temporarily withdrawn for amendment, but there is no sign of agreement yet. As regards the mutual recognition of Architectural Diplomas, it was difficult to define precisely the profession of architect; various conditions of admission apply, and in Italy only university graduates are accepted. In the various member States, there is a wide variation between the length of the various architectural courses; the longest are in Belgium and Ireland, where 5 years are prescribed for obtaining the qualifications, plus 2 additional years practical experience.

Dr. James O'Neill pointed out that the present medical representation before the European Community was unacceptable to the Irish Medical Union, as mutual confidence was lacking. **Professor Murphy,** President of University College, Dublin, said that the medical profession in Ireland was too much influenced by the medical profession in England but there were signs of change. The fear expressed elsewhere that bureaucrats would plant their own men without proper consultation with the profession had not occurred here, and the representative recommended by the Irish Medical Council had been appointed by the Government. **Dr. Farrelly** pointed out that there was complete unanimity and trust between the Veterinary Councils of the 9 Member States, and that they had agreed there should be a basic minimum standard for training for all concerned, as well as suitable regulations co-ordinating the profession. **Mr. Bath,** in thanking all concerned, pointed out that the Reyners case does not advance the principle of mutual recognition.

Mr. W. A. Osborne, President of the Incosporated Law Society, presided at the next lecture. Mr. Osborne pointed out the difficulties with regard to freedom of establishment for lawyers, as some countries like France and the Netherlands interpreted the regulations in a liberal spirit while others like Belgium and Germany adopted a strictly restrictive attitude. The number of

students applying for admission to the legal professions had increased to such an extent that it was posing a serious problem. **Mr. Gerald Fitzgerald,** solicitor, Brussels, stated that there was not much material available as to the conditions of the professions in the Member States, and this created difficulties in harmonising regulations. Normally directives relating to professions were published in 3 parts:- (1) Professional basic rights, (2) Mutual recognition of the profession amongst Membed States and (3) co-ordination of the legislation and the regulations relating to the profession amongst the Member States. Provision was being made to eliminate all difficulties relating to access to social security amongst recipients in Member States.

As regards practising as a solicitor in Belgium, he was not recognised as a qualified Belgian lawyer, and had to avail of the services of a Belgian **avocat** in any matter relating to Belgian law. Even though he was only entitled to be a **conseiller juridique,** the Belgian authorities insisted upon obtaining the prior authorisation of the Irish authorities before he could open an office, which is under the disciplinary control of the local Brussels Bar.

The **Reyners** case decided that Article 52 was directly applicable to Member States. In other words, national regulations relating to the professions which are too onerous are no longer enforceable. Undoubtedly the co-ordination of legal education will take place more rapidly than is anticipated. **Mr. Osborne** said he did not think many Irish legal practitioners would wish to practise in Europe. However it was up to each profession to look after its own interests. **Mr. Fitzgerald** mentioned that there were various academic courses in European Law available. On the whole, there had not been much progress with lawyers in regard to the problem of freedom of establishment. However any university law teachers who had a right of audience in their national Courts would be heard in the European Court.

In answer to a question whether the Government concerned would nominate all professional members to discuss directives, **Mr. Bath** stated that in general there was no indication as to how such members would be nominated. All nominations on an advisory level would be made by the National Government, but many nominations will come directly from the professions in the Member States; it would be for the Council of Ministers to make the appointments.

In Belgium, there were many Bars in different provincial centres, and it was possible to set oneself up as a legal adviser without legal qualifications, provided one did not attempt to practise in the Courts. Mr. Bath also pointed out that in the case of **Van Duyn v. Home Office** (The Times, 5th December, 1974), the European Court, although affirming the freedom of religious practice, had found the tenets of scientology as a religion objectionable, and consequently the Home Office were justified in refusing to allow the plaintiff to live in England. Mr. Fitzgerald pointed out that the tenets of scientology contravened the restrictions on public order.

Mr. Brendan McGrath, a former President of the Society ,suggested that we were concentrating too much on the right of access and establishment, and on Community Law in general, instead of studying the principles of private commercial International Law in the European Countries. It was essential to be in a position to solve problems of the business community rapidly. He personally had to decide on the validity of a contract worth £2½ million without having an opportunity of referring to books. It is also essential to determine, in the case of a contract under private international law, which law is the most advantageous to be applied in the particular case.

Mr. Dermot Devine stated that the Commission had devised two Conventions (1) A Convention relating to Judgments signed by the six original Member States, (2) A Convention on Private International Law which was never ratified. At the Convention of the Ministers of Justice in Brussels in November, 1974, Britain was alone in objecting to signing it.

Mr. Bath, in reply to a question, stated that regulations concerning engineers were of a double dimensional complexity. It would not be possible at this stage to evolve a regulation for the engineers profession. In relation to any regulation, the Council of Ministers was entitled to consult the European Parliament as well as the Economic and Social Council. The dossier for the architects' profession had for instance undergone many changes through the years.

Mr. Roger Hussey, President of the Institute of Chartered Accountants, presided at the next lecture, which was delivered by **Mr. Dermot Devine,** a Director in the Competition Section of the Commission in Brussels. It was emphasised that one of the main objectives of the Treaty of Rome was the promotion of mobility of persons. In pursuance of the idea of a characteristic economic non-wage earning activity, the principle of establishment must be continuous or recurrent. Nevertheless a free offer of services must not be connected with public authority. A right had been established, not to be discriminated against on the basis of nationality. This right was confirmed by the **Reyners** and **Binsbergen** cases. While an Irish pharmacist who wishes to establish himself in France as a pharmacist must conform in all respects with the French regulations, nevertheless all nationals of each Member State have a right of establishment in another Member State.

With regard to establishment, a distinction must be made between (1) regulated and (2) unregulated economic activities. Unregulated economic activities comprise wholesale and retail, whereas strict qualifications are laid down in the case of regulated economic activities. Any discrimination relating to nationality has now disappeared in dealings with unregulated economic activities.

It is important to realise that one cannot claim a right of establishment **per se** but that in every case national qualifications are also essential. However the more ambitious the co-ordination, the greater the mobility. Less ambitious projects are easier to achieve, as they promote lesser mobility, which can, if need be, be amplified.

In relation to the professions, the term "ambitious" would include a mutual recognition of qualifications and a guarantee of minimum standards. The term "less ambitious" would apply to qualifications topped by practical experience. The period would in any event

be specified. The aim is that, if one is qualified in a profession in a Member State, and has also practical professional experience, one may be trusted to perform one's duty.

A project relating to the Accountants' profession has been prepared by the Commission. It does not apply to the free movement of that profession, which will be tied by the Fourth Directive on Company Law. The project further only applies to the accountants who are regulated by statute. Transitional measures relating to them, and also to tax advisers, are now before the Council of Ministers.

The Pharmaceutical Profession has been helped by the passing of a Second Directive relating to the free movement of pharmaceutical products. Minimum qualifications have been laid down at national level for manufacturing pharmaceutical products; here provision is made for the free movement of goods and not of persons. The negotiations are at a very delicate stage and might be accepted by the Council of Ministers. Altogether nine directives relating to pharmacy were proposed; four of these were withdrawn in 1974, but five still subsist.

Mr. John Cooke, Barrister-at-Law, said that on the whole the professions had made little progress as regards adopting directives relating to their liberalisation. More than 40 directives had been issued, but few dealt with the liberalisation of the professions. Politicians, who have to protect their livelihood, acquire entrenched sensibilities and it is thus preferable that officials of the Commission should deal with the professions. There are many individual professionals who are genuinely concerned with the expansion of exceptions to the right of establishment. In France for instance, qualified veterinary sunrgeons cannot practise without obtaining an official **"Mandat sanitaire"** from the Ministry of Agriculture. He then described in detail the decisions in the **Reyners** and **Binsbergen** cases.

A most modest draft directive on the legal profession has been produced. It may be just possible to liberalise the proceedings in Court, as written procedure is paramount on the Continent. The problem of consultation with local lawyers of another Member State is most important.

If, as in the **Reyners** case, you were lulled into a false sense of security, and caught napping, it would be all the worse for you. It is therefore essential that all the professions should have close connections with the civil servants of the Department which deal with them. It is unfortunate that the relations of the legal professions with the Department of Justice have not been as happy as they might be, but, after the **Reyners** case, it is hoped that matters will improve, and that a final and definite procedure relating to the liberalisation of the legal profession will emerge.

Mr. Devine, an answer to questions, emphasised that the notion of **"establishment"** implies physical presence, whereas that of **"services"** does not. It was difficult to state whether an exclusion clause could be applied in the case of an organisation, which, while not having a monopoly, yet insists on compulsory membership. The Directives as such are always directed to the Member Government, whose function it is to ensure that the various professions will admit qualified members without restrictions on nationality. The expression "the **competent authority**" usually meant the Government, but the Government could delegate its functions to someone else.

Senator Michael O'Higgins presided at the next lecture which was given by **Mr. Franklin O'Sullivan,** solicitor, President of the Federation of Professional Associations. It was stated that there is in fact no direct representations for the profession within the European Community. The politicians are unwilling to give the professions too much scope, as they are afraid that the unions would become too powerful. By setting up the **Economic and Social Committee,** there was supposed to be only one institutionalised institution which was to consist allegedly of producers, farmers, workers and professional occupations. It was to be noted how Governments persistently refused to nominate representatives of the professions to this Committee. No proper reason had been advanced by these self-seeking politicians for adopting this narrow attitude, but if the politicians wanted the professions to advance their ideas of the European Community, it was essential for them to get rid of their unwarranted bias and to give full representation to the professions. Irish civil servants were generally happy to consult with professions concerned, but some departments, like Industry & Commerce and Transport & Power, lacked legal expertise. We must note that the professions were deliberately being left in a backwater, and that, although in theory the Commission was prepared to talk to anyone, this was nothing more than a backdoor access.

Dr. Whelan, Deputy Secretary of the Department of the Public Service, then stressed that there was an essential need for an effective dialogue between the Government and the professions. The word **"dialogue"** does not relate to pressure groups, but objective professional groups. The professions must objectively have a real interest in the good of the Community. Ireland's efforts in helping the professions will depend on how far the professions can supply useful sources of information to Irish civil servants to counteract arguments by the Community bureaucracy. A weakness is that the professions are scattered, and it was essential for each of them to respond to any representations made by the revelant Ministries. The principle of Community dialogue affecting the European Community was essential. On a political dimension, one had to distinguish between the institutional dialogue of Government Departments and the inter-personal dialogue of the professions.

In the Community decision process, while political decisions were made behind closed doors, it was essential that dialogue should take place on purely technical questions and in political decisions where administrative problems were involved. There was no use expecting dialogue if the professions themselves did not display professionalism which at all times was being kept up to date. It was also essential that the input from the professions must concentrate upon the most essential areas at national level. Government Department must not be bogged down by such **munutiae** that they have not time to consider professional representations properly; they must have enough professionals themselves to deal adequately with the professions.

The main obstacle in dialogue within the Civil Service itself is that Professional Civil Servants are looked at askance by less well educated Administrators; professionals merely give advice but do not make policy decisions. As regards direct contact, the professions should seek institutional development with the approval of their Government. The national professional committees are ultimately concerned with the ultimate political decision-making, and the fact that Ireland is assuming the Presidency of the Council of Ministers for the first six months of 1975 will ultimately bear fruit. In conclusion the professions should take a flexible long-term look at the situation. There should be a change in the dual structure of the Civil Servants by which professional civil servants will be given a greater role in the formulation of policy; this will naturally encourage dialogue. Unfortunately, as a result of lack of funds, no proper research had been undertaken in the Universities with regard to professional education. Academics can undoubtedly play a vital role, as the two Dublin colleges were constantly advising Government Departments. It was unfortunate that some Civil Servants were loth to part with information that should be freely available.

In reply to a question as to whether it would be advisable to set up Parliamentary Committees to deal with the professions, as so many administrators were difficult to approach, Dr. Whelan said professional groups should have more opportunities of having direet consultations with the Minister concerned, despite tht fact that much dialogue had taken place with senior civil servants. **Senator O'Higgins** said that the voters often had a choice to elect professional people, and, if they were not elected, the choice was not exercised properly. **Mr. O'Sullivan** said it was absolutely vital that Parliamentary Committees should be established in the Technological, Planning and Industrial fields.

Senator Fitzgerald then thanked the organisers and those who attended. This Seminar had been most useful.

English Cases on Community Law

Application Des Gaz S.A. v. Falks Veritas Ltd. ——— Before Lord Denning M.R., Stamp and Roskill LJJ. [1972 A. No. 1755]

The plaintiffs, a French company, were manufacturers and suppliers of camping equipment, including a blue tin can filled with liquid gas. The defendants, an English company, for some years manufactured and supplied, under licence from the plaintiffs, a similar tin of a slightly different shape and paid royalties for the licence. In 1970 the defendants began to make and market tins of the same shape as those of the plaintiffs, save that they were coloured orange. The plaintiffs objected, and in April 1972 issued a writ in an action in England for alleged infringement of their copyright in a drawing of the tin; and they claimed delivery up, damages for conversion, and an injunction. The defence, delivered in June 1972, denied the copyright claim and pleaded acquiescence and estoppel and counterclaimed for damages for breach of an implied term of their contract.

Before the action came to trial, the United Kingdom by the European Communities Act, 1972, which came into force on 1 January 1973, became a member of the European Economic Community; and under Section 2 (1) of the Act the Treaty Establishing the European Economic Community, known as "the Treaty of Rome", was made part of the law of the United Kingdom.

In July 1973 the defendants applied for leave to amend their defence and counterclaim to allege "concerted practices" and "abuse of dominant position" by the plaintiffs, contrary to Articles 85 and 86 of the Treaty; and the proposed amendments set out the respects in which the plaintiffs were alleged to have acted in contravention of the articles of the Treaty, and claimed in particular that in view of the alleged breaches of those articles the grant of relief by injunction would not be justified. Whitford J. granted the defendants leave to amend.

On appeal by the plaintiffs:

Held, dismissing the appeal, that where plaintiffs claimed relief in the form of an injunction the question whether it should be granted had to be determined by reference to the state of the law at the date when it fell to be decided and not at the date when the writ was issued and, therefore, if the facts alleged in the amendments were proved and it were shown that the effect of the Treaty was, on those facts, to afford a good defence such as to inhibit the Court from granting the plaintiffs an injunction, the amendments should be considered in accordance with the usual practice of the English Courts and should in the present case be allowed even though it might lead to additional delay and expense and a much longer trial.

Observations on European community law and procedure.

Decision of Whitford J. affirmed.

Before the infringement action had come to trial the United Kingdom joined the European Economic Community when on 1 January 1973 the European Communities Act, 1972, came into force.

The defendants thereupon applied to Whitford J. for leave to amend the defence and counterclaim by serving on the plaintiffs an amended defence and counterclaim containing the following additional paragraphs:

"6. The plaintiffs herein alone or in association with their concessionaires have and at all material times

have had a dominant position in the manufacture and supply of camping gas equipment in all countries of the European Economic Community and since January 1. 1973, in association with their sole United Kingdom concessionaires P.T.C.-Langdon Ltd. have had a dominant position in the United Kingdom in the manufacture and supply of camping gas equipment.

"7. Since about July 1971 the plaintiffs in association with the said P.T.C.-Langdon Ltd. have abused the plaintiffs' dominant position in the market in camping gas equipment by refusing to supply any of the plaintiffs' goods to wholesalers who continued to distribute the defendant's *Nomad* range of gas burners, cylinders and appliances. The said wholesalers were thus intimidated into entering into written agreements with P.T.C.-Langdon Ltd. and in furtherance of the said intimidation the plaintiffs started this action against the defendant. The defendant will contend that this action has been brought by the plaintiffs as a concerted practice with P.T.C.-Langdon Ltd. with a view to enforcing the plaintiffs' dominant position in the market, in that the defendant's wholesalers now face the double threat that by handling the defendant's goods they risk having supplies of the plaintiffs' goods cut off and being liable to the plaintiffs for damages in conversion if it should be held that the alleged copyright is infringed. Until discovery herein the defendant is unable to give particulars of the terms of or all the parties to the said written agreements.

"8. As a consequence of the plaintiffs abuse of their dominant position in the United Kingdom market the defendant's competitive position in the United Kingdom and the European Common Market has been seriously adversely affected.

Whitford J. on 19 November 1973 made an order that the defendant be at liberty to amend its defence as set out in paragraphs 6 to 11; but he granted the plaintiffs leave to appeal.

The plaintiffs appealed on the grounds that the judge was wrong in giving leave to the defendant to amend its defence (1) by adding thereto additional matter which at the date of the defence did not and could not either afford a defence to the action or act as a bar to the plaintiffs' right to any of the relief claimed; and (2) by introducing new matter which did not disclose any reasonable defence to the plaintiffs' cause of action.

The judgments were delivered on 22 May, 1974 — (1974) A All ER 51.

A Judge need not refer a preliminary question to the European Court if he does not consider it necessary

H. P. Bulmer Ltd. and Another v. J. Bollinger S.A. and Others

Before Lord Denning M.R., Stamp and Stephenson LJJ.

[1970 H. No. 9347]

In 1970 two English companies which had manufactured beverages described over many years as "champagne cider" and "champagne perry" began an action against two representative French champagne houses, asking for declarations that they were entitled to use those expressions in relation to their products. The French producers delivered a defence and counterclaim within the scope of an English passing off action; but after the United Kingdom became a Member State of the European Economic Community on 1 January 1973 and the Treaty of Rome became part of English law, they amended their defence and counterclaim to add a claim and ask for a declaration that the use of the word "champagne" in connection with any beverage other than the wine produced in the Champagne district of France would contravene Community law. They also applied to Whitford J. asking that he should refer to the European Court of Justice under Article 177 of the Treaty two questions for preliminary rulings: (a) whether on the true interpretation of specified Community regulations relating to wine and other relevant provisions of Community law the use of the word "champagne" for beverages other than their champagne would contravene Community law; and (b) whether on the true interpretation of Article 177 a national Court of a Member State should, where there was no earlier decision of the Court of Justice on such a question as (a), refer such a question to that Court, even though Article 177 did not compel the national Court to do so. Whitford J. held that at that stage of the English proceedings it was not "necessary" for him to obtain a ruling on question (a) and that it was not "necessary" to refer question (b) at all.

On appeal by the defendants:

Held, dismissing the appeal, (1) that the Judge was entitled to refuse to refer question (a) to the European Court of Justice at the stage when the reference was requested if he then considered, as he did, that a decision on the question was not "necessary" to enable him to give judgment at the end of the case, for though question (a) was one of Community law within Article 177 (1) (b) on which the European Court of Justice had jurisdiction to give a preliminary ruling, nevertheless the power given by Article 177 (2) to the national Court of a Member State (short of the final Court of that State) to refer or refuse to refer such a question was wholly discretionary. If a national Court considered that it could decide a dispute without a ruling or could itself determine the question of law, it need not and should not trouble the European Court.

(2) That question (b) was wholly outside the ambit of Article 177 and could never become a question for the European Court. It was an attempt to get a ruling from that Court on the circumstances and manner in which a national Court should exercise its discretion to refer. The way in which a national Court should exercise the discretion was a matter for the national Court alone and should not be fettered by guidelines from the European Court.

Per curiam. The jurisdiction of appellate Courts is affected by Article 177 to the extent that where a decision on a question of Community law is considered "necessary" to enable the final Court of a Member State "against whose decision there is no judicial remedy under national law" to give judgment, the mandatory terms of paragraph (3) impose on that Court a duty to obtain a ruling from the European Court of Justice.

Decision of Whitford J. affirmed.

Appeal from Whitford J.

The plaintiffs, H. P. Bulmer Ltd., and Showerings Ltd., issued a writ in October 1970 claiming against two French champagne houses, J. Bollinger S.A. and Champagne Lanson Pere et Fils (1) a declaration that they were entitled to use the expressions "champagne cider" and "champagne cyder" on and in relation to cider provided that such use was not contrary to any government regulation that was in

force at the relevant time; and (2) a declaration that they were entitled to use the expression "champagne perry" on and in relation to perry, provided that such use was not contrary to any government regulation in force at the relevant time. A statement of claim and an amended statement of claim were served in November 1970 and July 1971. By their original defence and counterclaim the defendants denied that the plaintiffs were entitled to the declarations asked for, claiming that in the United Kingdom "champagne" meant the naturally sparkling wine produced in the Champagne district of France by the defendants and those whom they represented, and no other wine; and that the use of the word "champagne" in connection with any beverage other than champagne was likely to lead to the belief that such beverage was a substitute for or had the character of champagne; and they claimed injunctions restraining the plaintiffs from using in the course of trade the word "champagne" in connection with any beverage not being a wine produced in the Champagne district of France in such manner as to be likely to lead to the belief that such beverage was connected with champagne.

On 26 March 1973 after the United Kingdom had become a member of the European Economic Community and, under the European Communities Act, 1972, which came into force on 1 January 1973, the Treaty establishing the European Economic Community (known as the Treaty of Rome) became part of English law, the defendants amended their defence to add by paragraph 9a the claim:

> "following the adherence of the United Kingdom to the European Economic Community the use of the word 'champagne' in connection with any beverage other than champagne will contravene European Community law"

and stated that they would rely on the provisions of European Community law viz. (i) Regulation (EEC) No. 816/70 (dated 28 April 1970) of the Council of European Communities—Article 30; and (ii) Regulation (EEC) No. 817/70 (dated 28 April 1970) of the Council of European Communities—Articles 12 and 13. By a further amendment they counterclaimed for a declaration that the use by the plaintiffs of the expressions "champagne cider" and "champagne perry" in relation to beverages other than wine produced in the Champagne district of France was contrary to Community law.

In November 1973 the defendants gave notice of motion in the Chancery Division asking for an order that the question (a):

> "Whether upon the true interpretation of the regulations particularised or any other relevant provisions of European Community law the use of the word 'champagne' in connection with any beverage other than champagne is a contravention of the said regulations or other provisions of European community law"

should be referred for a preliminary ruling in accordance with Article 177 of the Treaty establishing the European Economic Community to the Court of Justice of the European Communities at Luxembourg and that all further proceedings in the action be stayed until the Court of Justice had given its ruling on the question or until further order; and by a further notice of motion then asked that question (b):

> "Whether on the true interpretation of Article 177 of the Treaty a national Court of a Member State should, where there is no earlier decision of the Court of Justice of the European Communities, refer to the Court of Justice such a question as has been raised herein, even though the national Court is not compelled to do so under the said article"

should also be referred.

Whitford J. on 14 December 1973 declined to refer question (a) at the then stage of the proceedings, being unconvinced that it was a question which could only be answered in the light of a ruling given by the European Court; and so far as question (b) was concerned the judge did not consider it necessary to refer the question at all for the purpose of enabling him to give a judgment.

The defendants appealed on the grounds that the Judge had misdirected himself in the exercise of his discretion under Article 177 of the Treaty and R.S.C., Ord. 114, and that such part of his judgment was wrong and ought to be set aside.

Judgment was delivered in the Court of Appeal on 22 May, 1974 — (1974) 2 All ER 276.

THE HALF-YEARLY MEETING

OF THE LAW SOCIETY

will be held in

WESTPORT, CO. MAYO

from

9th - 11th May, 1975

Programme of Lectures will be anounced subsequently.

Recent Irish Cases

Fogarty Advertising Ltd. awarded £21,700 damages against former employees for total loss of business

On November 26, 1973, Mr. Justice Gibson, in the High Court in Belfast, awarded £21,700 to the Belfast subsidiary of the Dublin-based Fogarty Advertising Ltd., against three of the subsiary's former employees. These employees had left the company, taking the clients with them, to form their own advertising agency in Belfast. The judgment will be of considerable interest, not only to the advertising industry, in which formation of new companies that attract the clients of their founders' previous employers is not uncommon; but also to all other business where employees may leave to start competition with their former employers.

Giving his judgment, Justice Gibson said: The plaintiff company is now a mere shell having enjoyed a brief year of very profitable trading after its incorporation. It is the extinction of its active life which has occasioned these proceedings.

The origins of the company are that in 1967 Fogarty Advertising Ltd., a company incorporated in the Republic of Ireland, opened a branch in Belfast to carry on its business in Northern Ireland as an advertising and marketing agency. The first defendant, Miss Ralston, was employed from the outset as the local manager and each year the scope of operations and profitability of the branch increased. This entailed the employment of additional staff from time to time including Mr. Mitchell, the second defendant, who was engaged in 1970 or 1971.

By 1972 the business of the branch had grown to such a size that it was decided to float a separate company. On 27 June 1972 a meeting was held between the parties.

It was unanimously agreed that a private company to be called "A.F. Associates Ltd." should be formed to take over the control and operation of the Northern Ireland branch of Fogarty Advertising Ltd. including all its assets and liabilities and that it should be put into operation as from 1 July 1972. On July 1 a service agreement was executed purportedly between A.F. Associates Ltd. and Miss Ralston, but in fact the company was not incorporated until July 5.

In the course of its trading after incorporation there arose from time to time differences between Mr. Fogarty, who had the controlling interest in the company, and Miss Ralston and Mr. Mitchell as to their remuneration and conditions of employment, but these were not sufficient to deter Mr. Mitchell from entering into a service agreement with the company on 28 November 1972 and a general increase in salary was negotiated in December, which included both these defendants. In February 1973 Mr. Bingham, the third defendant, also joined the company, but he did not enter into any service contract.

Business Boom due to defendants

There is no doubt that the boom in the business which the company enjoyed and the increasing profits which it and the earlier branch earned were due almost entirely to the energy and enterprise of the defendants and particularly Miss Ralston and they felt increasingly that they should receive a greater share of the fruits of their labour. I think there was some justification for their sense of grievance, but they had no detailed knowledge of the financial side of the business.

They did not, perhaps, appreciate that Mr. Fogarty also was receiving less than one might regard as his reasonable entitlement. He had invested £20,000 capital in the business and had received no interest in return on it. The rapid expansion of the business had each year produced an equivalent growth in the credit which had to be extended to customers so that the business, though flourishing, was always in a situation of current financial stringency. The growing discontent of the defendants was not, however, fully communicated to Mr. Fogarty, whose visits to Belfast gradually decreased in frequency as his confidence in the ability of the local management increased.

On 26 July 1973 Mr. Fogarty paid one of his routine visits to Belfast. Miss Ralston had prepared for his consideration a list of salary increases for virtually the entire staff of the company. Those he accepted in full and it was further arranged that the increases should become operative on August 3.

Defendants hoped to buy business by means of credit facilities

Meantime, unknown to him, the defendants had been investigating an alternative way of bettering their position. With a view to buying control of the company or its business and goodwill they sought financial backing and had been able to obtain credit facilities to the extent of £20,000. Immediately following the meeting with Mr. Fogarty, Miss Ralston, speaking on behalf of all three defendants, informed the staff that the defendants were thinking of leaving the company, that they hoped to buy the business, but if this failed that they proposed to resign and start their own agency.

They offered to take over the entire staff at the increased wages just negotiated. To allay fears or resolve doubts, the proposal was later put in writing in the form of a letter dated July 31, addressed to each member of the staff and signed by Miss Ralston, but headed "R.M.B. Advertising" (these being the initials of the defendants — Ralston, Mitchell and Bingham.

Its terms also are illuminating and are as follows :

"R.M.B. Advertising,
(Registered Office)
8 Donegall Square North,
Belfast 1.
July 31st, 1973.

Dear ——,

Due to our policy disagreements with the shareholders of A.F. Associates Limited, Mr. Bingham, Mr. Mitchell and myself have decided to resign from the company. It is our intention to offer our resignations on Wednesday, August 1st, to Mr. Aubrey Fogarty.

We intend to form a new advertising agency called R.M.B. Advertising and details of the shareholding and capitalisation have been explained to you.

We must stress that your present employment is with A.F. Associates Limited and while the effective management of the company in Belfast has been conducted by myself as managing director and Mike Mitchell as director, the company is, in fact, owned by Mr. Aubrey

Fogarty. The new agency, R.M.B., would like to take this opportunity to offer you a position as———— at a salary of————. We must stress that the choice to remain either with A.F. Associates or to accept this offer is entirely your own decision and I would welcome the opportunity to discuss any doubts which may occur to you.

Yours sincerely,

Audrey Ralston."

Defendant's ultimatum to purchase refused

Having secured an understanding as to the mind of the staff Miss Ralston on the same day 'phoned Mr. Fogarty in Dublin and requested an interview with him on the following morning. She vouchsafed to him no advance warning of what was proposed. On the next day she attended with the other two defendants. I have no hesitation in accepting as substantially true the version given by Mr. Fogarty and his witness Mr. O'Boyle, a former managing director of the Ulster Bank whom Mr. Fogarty called into the discussion as an adviser.

In brief, Miss Ralston explained that the defendants wished to be on their own and offered £20,000 for the business payable on August 3. Mr. Fogarty was naturally taken aback by this unexpected offer. He had never had occasion to direct his mind to the value of the accounts by the company had not been prepared. Moreover, he was by no means clear exactly what the defendants were proposing to purchase: whether the entire shareholding or his interest in the company or merely the goodwill on the goodwill and the business premises subject to the mortgage.

He was given a short time to be advised and at a later meeting at lunch-time Mr. O'Boyle sought without much enlightenment to discover how the figure offered was arrived at and what it was for except that it was for the business. His observation that the defendants seemed unaware of the normal conventions of a take-over was confirmed when at 1.40 p.m. the defendants said that the offer had to be accepted by 2.00 p.m. or they would resign on the spot.

Though Mr. O'Boyle asked how many years purchase of the net profits was intended to be reflected in the offer this was obviously a question beyond the comprehension or the capacity of the defendants to answer. It now transpires that the offer of £20,000 was made because it was the limit of the finance they had raised.

As Mr. Fogarty not unreasonably felt that a gun was being put to his head, lacking any satisfactory explanation as to why the matter could not be pursued in a more reasonable and ordered way and having been advised that the offer was inadequate, he refused the offer and the defendants immediately resigned as employees of the company from that moment.

Plaintiff loses clients to defendants' new company

As the letter of July 31 to the staff indicates the defendants had already, notionally at least, formed their partnership and were resolved one way or the other to terminate their connections with the company and with Mr. Fogarty on August 1. They had also secured the services of the entire staff as appears from the fact that when Mr. Fogarty rushed to Belfast on the afternoon of August 1 all work had stopped in the office and the entire staff walked out and started the next day with the defendants in their new enterprise.

Mr. Fogarty immediately set about phoning the clients of the company to discover what part of the business could be salvaged. The response was an almost unanimous indication that they were transferring their business to R.M.B.

I have no doubt that before August I the defendants had ensured that if they took the leap they would carry with them the bulk if not all of their former connections. On August 2, Stewart's Supermarkets, the biggest client of the company, wrote terminating its association with the company and printed literature distributed at a press reception held by R.M.B. on August 6 reported that the other largest clients had already, by the time of printing, gone over to them. By the end of the first week of August the entire business of the company had disappeared except for two small accounts. In every case the business had been transferred directly to R.M.B.

The efficient operation of an advertising business depends upon the keeping of certain records relating to the jobs in hand. One important record is a traffic sheet which sets out in respect of each job the dates when the various stages of the work are required to be performed. Other essential documents are media sheets or schedules which set out the pre-planning of advertising campaigns as regards the media to be used. After Mr. Fogarty's arrival in Belfast on August 1 he searched through all the company's files and records at its office. He found them in a state of considerable disorder and a number, including media sheets and the traffic sheet, were missing.

The defendants deny that they took them or were responsible for their abstraction, but a photostat of the traffic sheet of the company has been produced by the defendants as having been in their possession. I am satisfied that the original was taken deliberately by or with the authority of the defendants in order to enable them to service the existing contracts of the company for all the clients whom they had taken over and that without this appropriation the work could not have been done as readily or as efficiently.

Documents of plaintiff's company taken and misused

I have also no doubt that other documents, including media sheets, which were considered as likely to help the defendants in dealing with former clients of the company or generally in their business were taken and used by them or their prospective staff for their advantage. A striking example of the misuse of the company's documents occurs in the case of a document of the company entitled "Recruitment Advertising Presentation by A.F. Associates, Ltd." This was a form of prospectus or plug by the company of its virtues and capabilities and was used presumably to induce prospective clients to avail themselves of the unparalleled facilities provided by the company. The defendants only took a copy of this document but literally transcribed it word for word with the substitution only of "R.M.B. Advertising" for "A.F. Associates Ltd." and any necessary or consequential changes.

Plaintiff claims damages for irretrieveable loss

In a word, the defendants took the entire staff of the company, almost its entire business and whatever documents of the company were considered to be of value to them. During August the company recognised that the loss was irretrievable and sold off the office building, fittings and contents and came to an agreement with another advertising company to take over

the two remaining small clients

The issue in this action is as to what relief, if any, the company is entitled in respect of its loss. The claim is for an injunction or alternatively damages. Having regard to the fact that the company has ceased to carry on any business an injunction to restrain the defendants from carrying on their business is clearly inappropriate regardless of whether the company's rights have been infringed. Whether an action for damages lies and if so the measure of damages must depend on what breaches of contract or torts have been committed.

Miss Ralston's contract considered

There is no difficulty in determining what are the contracts of Mr. Mitchell and Mr. Bingham because Mr. Mitchell had a written contract and Mr. Bingham's position depends on the common law. Miss Ralston, however, as I have already indicated, entered into a written agreement allegedly with the company five days before its incorporation. The contract was therefore in law a nullity and incapable of ratification or adoption by the company when it came into existence. If the contract had any efficacy thereafter it could only be because the parties contracted after incorporation on the terms of the abortive agreement or otherwise contractually agreed to be bound by its terms.

Whether they did so is a question of fact but to decide that they did requires proof of circumstances pointing clearly to such a new contract. I do not regard such joint and several applications as pointing to a new contract between the company and Miss Ralston incorporating all or any of the terms of the abortive agreement, especially as these requests failed to secure any agreement.

Nor does the fact that Miss Ralston has apparently throughout considered that she was bound by terms of service corresponding to those in the pre-incorporation agreement provide evidence of a subsequent contract.

If a company after incorporation agrees to modify a void agreement made on its behalf before incorporation it may be possible to enter a new contract incorporating all the terms so far as not varied, see *Howard v. Patent Ivory Manufacturing Company 28 Ch.D. 156,* but Miss Ralston's salary after incorporation was the same as she had enjoyed when in the employment of the branch of Fogarty Advertising Ltd. and any increase agreed without express reference to the pre-incorporation contract with the company could not reasonably breathe life into that still-born body.

Miss Ralston employed under a general contract

I take the view, therefore, that Miss Ralston, on 1 August 1973 was employed by the company under a contract the terms and conditions of which (other than that relating to remuneration) depended on the general law and not on any specific agreement.

By their act of repudiating their contracts of service on August 1 and walking out without notice, each of the defendants was in deliberate breach of contract. That repudiation did not in the absence of any evidence of agreed reccision abrogate the contracts of service. It was not challenged that, lacking any express contract, Miss Ralston's service required three months' notice to terminate, Mr. Mitchell's contract provided for one month's notice and having regard to Mr. Bingham's status, a similar notice was requisite in his case.

It is a fundamental and elementary principle arising from the relationship of master and servant that until that relationship has been determined, the servant must act in the interest of his master and may not seek to advance his own interests to the detriment of his master's.

I am satisfied that the defendants intended that there should be no break in the continuity of business. If Mr. Fogarty agreed to an immediate sale, well and good. If not, the intention was to set up in opposition at once and arrangements had been made for alternative office accommodation.

I am, therefore, satisfied that before the defendants went to Dublin they put to the rest of the staff a proposition which, if accepted, necessarily involved a walk-out without any notice. The practical alternatives which were available to the staff as Miss Ralston recognised were to break their contracts with the company and go over to the defendants or to be jobless because there would be no work left to the company.

Defendants conspired to induce a breach of contract

The defendants therefore induced breaches of contract by all the staff and conspired together to achieve that end. Quite apart from any question of conspiracy or inducement of breaches of contract, each of the defendants was in clear breach of the implied duty of good faith owed to the company as their employer. At a time when both the defendants and the other mem bers of the staff were servants of the company the defendants offered to take the others into their own employment, thereby subordinating their duty to advance the company's interests to their own self-interest.

So to act was undoubtedly unlawful and indeed would have been so according to the authority of *Sanders v. Parry* (1967) 1 W.L.R. 753 at 764 even though the offer of employment was to have taken effect only after both the defendants and the staff had lawfully terminated their various contracts of employment which, of course, was not the present case.

Plaintiff's loss of business due to defendant's conduct

The almost total loss of business by the company arises from a combination of circumstances. First it had been built up almost entirely by the defendants and its maintenance depended upon the continuance of personal contact and confidence. Secondly, it is positively established and, indeed, largely admitted that the defendants simultaneously with their negotiations with the staff and certainly before August 1 were also in communication with the company's clients elplaining to them their proposals for starting business on their own and securing assurances of a continuance of custom to the new enterprise.

It was because of such assurances that the defendants were able to put to the staff the proposition that they accept the offer of employment with R.M.B. "or take a week's notice as no jobs would be available in A.F. Associates Ltd. as there would be no clients to service." I quote paragraph 13 of Mr. Fogarty's affidavit sworn on 18 September 1973.

To canvass the customers of one's master during the subsistence of a contract of service even though it be to secure a transfer to their custom only after the contract of service has determined is a breach of the ordinary implied obligation of a servant not to use his master's time in furthering his own interests, to quote Greer L. J. in **Wessed Dairies Limited v. Smith** (1935) 2 K.B. 80 p. 84. Even if the soliciting of clients had only occurred after August 1 but before the proper period of notice would have expired the position would in my opinion have been no different. Long before August had expired, all substantial clients had transferred to the defendants and the company as a com-

mercial unit was dead.

Breaches of contract by defendants enumerated

These are the important breaches of contract from which the damage flowed. The abstraction of the company's documents and the taking of copies of some, as well as the representation to outsiders that R.M.B. was the successor of the company or merely the company under a different name, are all breaches of contract and the latter is also a tort but they are subordinate to the main activity of the defendants in seeking to achieve a smooth and effective transfer of business and staff to themselves

Damages claimed on total loss of business

The net profit of the company before tax in the first year of its trading to 30 June 1973 was £15,263. This figure which appears in the company's audited accounts is calculated on the basis that the company is now defunct and that with the loss of staff there may be considerable difficulty collecting many debts which otherwise would have been readily recoverable. Adjusting the figure for bad debts to what it would have been had there been no breach of contract the year's profit would be £18,314.

In the month of July, 1973, the rate of profit had increased to just over £2,000 per month. Taking the company and the Belfast branch of Fogarty Advertising Ltd. as one business there had been a rapid rise in annual profits over the years. Overnight that business has gone. That disappearance is due entirely to the defendants' wrongful acts.

The company claim damages on the basis of the total loss of its business and Mr. Wilson, a partner in the firm of accountants who are the company's auditors, calculated that the true net annual profit after tax based on last year's accounts but assuming no artificial increase in bad debts was £8,757. He considered that a fair value to put on the company's goodwill as at 30 June 1973 was five year's purchase of that figure or £43,785, which is about half the number of years' purchase represented by the stock market quotations of public companies engaged in a similar type of business.

In **Sanders v. Parry** the employee could have terminated his employment by one month's notice and yet the damages were calculated as the loss of profits for one year.

I think one must start from the proposition that the loss whatever its measure may be has resulted directly from the defendants' breaches of contract. It is true that the defendants, had they been less precipitate, and had they acted on legal advice, might have determined their contracts without breach and perhaps also might have set up in opposition quite legitimately

But who is to say what would have happened had they tendered their resignations in a proper way and had, during the currency of their notices, been scrupulous to make no overtures to either staff or clients? In the time permitted Mr. Fogarty might well have negotiated satisfactory contracts entitling the defendants to be paid more generously and so preserved their services and the business, or he might have been able to establish the personal contacts with the clients, who after all were very few in number, which would have preserved some of their connections; or he might have arranged to sell the company as a going concern or merged with another company.

If one applies the principle adopted in **Sanders v. Perry** one must at least compensate the company for the loss of the chance of retaining its business. A statement of principle more favourable to the company if it is applicable is provided by the **Mihalis Angeles** (1971) 1 Q.B. 164 where in the case of an anticipatory breach of contract which was accepted as a repudiation of the contract it was held that if the rights lost could within the terms of the contract be rendered less valuable and if it could be shown that at the time of the repudiation the events producing that reduction in the loss were predestined to happen or were inevitable then the damages recoverable must be related to that unavoidable future situation.

This principle would seem to be no less applicable where a repudiation has not been accepted as a rescision. As I have indicated there was no certainty as to what course events would have taken had the contract not been repudiated in the present case, that decision provides no basis for reducing the damages below the measure of actual loss resulting from the breaches of contract.

Taking into account that there was no long-term contract with any of the defendants, and that only Mr. Mitchell was contractually restricted from setting up in competition with the company after termination of his contract, and bearing in mind the personal character of the relationship with the clients, I consider that five years' purchase of the value of the goodwill of the business overestimates the value of the chance which the company had of retaining its business.

Miss Ralston in evidence said that her offer in her mind represented £6,000 for tangible assets and £14,000 for goodwill, which, she said, could be related to one year's profits, though she seemed to be thinking in terms of profits before tax as against Mr. Wilson's calculations based on porfits after tax; and Mr. O'Boyle who is obviously very experienced in business affairs had explained to Miss Ralston on August 1 that in such a case the proper value of such a business was "a number of times the net profit". I have little guidance from the evidence beyond the facts stated but I consider that two and a half years' purchase of the profits for the company's first year of trading after tax is a reasonable estimate of the loss.

Accepting Mr. Wilson's figure of £8,757 and allowing for the trivial value of the business retained I award £21,700 on the claim. As there is no relevant distinction between the defendants who have in this matter acted together and for their mutual benefit the judgment will be against all three defendants jointly and severally for that amount. I consider that this is a case in which I ought to award interest to the company on the amount found due to it as claimed in the writ of summons. I therefore award interest from 1 August 1973 to the date of judgment on £21,700 and having regard to current interest rates I award it at the rate of £8 per cent. per annum.

Miss Ralston also counter-claims for £2,303 the price which she has paid or will have paid when she has discharged all hire-purchase instalments on a motor-car which the company agreed to provide for her. This sum is agreed and I award £2,303 to Miss Ralston against the company. Her counter-claim does not include a claim for interest and in any event this item is not one where interest should be allowed as the instalments on the hire-purchase agreement are payable over a period of two and a half years of which a considerable part still lies in the future.

I award the costs of the action to the company against all three defendants and make no order as to the costs of the counter-claim.—[Fogarty Advertising Ltd. v. Ralston and Mitchell—Northern Ireland High Court (Gibson J.)—unreported—26th November, 1973]

Nullity decree granted on ground of duress

The wife sues for nullity of a marriage which took place in August, 1970. Both parties are Catholics, and there are no children. The ground of the petition is that the wife was put in such fear of the husband that she was compelled to marry him. In the first instance marriage is a solemn contract which is deemed to be valid. In this case the wife has already obtained a decree of nullity from the ecclesiastical authorities. When duress is pleaded, it must be a question of fact.

The wife is 30 years old, and the husband, 37 years old; they first met nearly 8 years ago in November, 1965. They were both from Co. Clare, and they were both national school teachers working in Dundalk, but there appears to have been little affection between them. From 1965 until the marriage in 1970, the parties associated with each other. The husband, before the marriage, used the wife's car continuously, and borrowed more than £1,000 from her to pay his gambling debts; he also drank heavily. The judge is satisfied, despite his denial, that he does owe the wife £1,000. There is no doubt that the relationship lacked any real feelings of affection.

Two days before the marriage in 1970, the wife told her mother and sister that, although she did not wish to go through with the ceremony, the husband was forcing her to get married in Dublin. The following day, the husband and wife travelled together from Ennis to Dublin. The wedding was suddenly changed from 11.00 a.m. to 7.00 a.m. without notice to the wife, so that none of the wife's relatives could attend. From the evidence it appears that he husband was arrogant and domineering, and that he cut the wife off from her friends; he is very forceful and disinclined to take "No" for an answer. This fact and the exercise of his influence largely contributed to the marriage taking place, and this amounted to duress. Any marital relations subsequent to the marriage also amounted to duress. A decree for nullity is accordingly granted.

[B. v. D.—Murnaghan J.—unreported—20th June, 1973.]

Liquidator, who makes a loss unlawfully, must repay the sum into the Liquidation Account

Murphy Bros. (Cork) Ltd. (hereinafter called "The Company") was incorporated in October, 1940. The issued share capital (15,000 shares of £1 each) was £15,000, of which Patrick Murphy owned 6,000 shares, William Murphy, 6,000 shares and Jeremiah Murphy, 3,000 shares. By special resolution of March, 1958, confirmed in April, 1958, it was resolved that the company be wound up voluntarily. As this resolution was passed before 1963, this liquidation is governed by the Companies Act, 1908. The defendant was appointed liquidator of the company. Between 1958 and 1966 the liquidator advanced sums totalling £100,000 at different times to Patrick Murphy. The powers of a liquidator are strictly defined in S. 151 of the 1908 Act, and do not include a power to make loans. Furthermore the sums were advanced in part to purchase the shares of Mr. William Murphy, which would have been a criminal offence under the Act of 1959.

In September, 1969, Mr. Patrick Murphy, by deed, assigned to the plaintiff Bank all the monies which were or would be payable to him in any capacity whatsoever. It was arranged that the receipt of the manager of the Cork office would be an adequate discharge. When the defendant was informed of this, he asked to be discharged from his office as liquidator, but no steps were taken. In May, 1970, the plaintiff Bank asked for a statement as to the liquidation, and then discovered that a loan of £100,000 had been made to Mr. Patrick Murphy. The assets of the company, including the loan, were estimated at £210,000, and the liabilities are about £70,000, leaving a surplus of about £140,000. The liquidator, by collecting the £100,000 improperly lent, could make a substantial interim distribution to the shareholders.

In February, 1972, the Bank's solicitor pointed out that the Bank as assignees of Patrick Murphy's interest were entitled to the £100,000, and requested the defendant to demand immediate repayment of £100,000 from Mr. Patrick Murphy. The defendant replied six weeks later that it was for the Bank to take whatever steps they deemed necessary. The plaintiff Bank, being dissatisfied, issued a summons in June, 1973, by which they claimed a declaration that the defendant had acted in breach of duty in paying £100,000 to Mr. Patrick Murphy; they requested that this sum be paid back into the liquidation account, and that the defendant as liquidator pay all monies due by Mr. Patrick Murphy to the plaintiffs. The reason for not paying this sum would appear to be that in a liquidation, the sum payable to the Bank under the assignment would be substantially reduced.

There is little doubt but that the plaintiffs are entitled to be paid all sums of money in the liquidation in respect of the shares owned by Mr. Patrick Murphy; accordingly the plaintiffs are entitled to require the defendant to recover the loan of £100,000. Accordingly the order requiring the defendant to recall the loan of £100,000 will be made, which is to be paid into the liquidation account.

[Provincial Bank of Ireland Ltd. v. O'Connor—Kenny J.—unreported—23rd July, 1974.]

£49,580 damages awarded in Co. Cork hotel action

In a reserved judgment delivered in the High Court, Dublin, Mr. Justice Hamilton awarded £49,590 damages and costs to John J. Lynch, of The Green, Midleton, Co. Cork, in his action arising out of the partial collapse of his hotel, the Tara Hotel, Midleton, 19 months after it had been opened.

Mr. Lynch had brought his action claiming £150,000 damages, against the architect, the builders, and the firm which supplied the beams for the building.

The defendants were: Charles Beale, an architect, of Cork; Patrick J. Murphy Ltd., building contractor, of Carrigtwohill, Co. Cork (a firm which has since gone into voluntary liquidation), and O'Reagan Precast Ltd., Cork.

Mr. Justice Hamilton apportioned the damages as to one third against the architect and two thirds against the builder and Precast Ltd. He gave judgment for £16,526 against the architect and for £33,053 against the other defendants. He also granted a stay of execution.

Mr. Justice Hamilton, in his judgment, said the evidence established to the satisfaction of the court that Mr. Lynch, in 1966, purchased the site of the old Fever Hospital, at Midleton, with the intention of building a guest house. It was the intention of Mr. Lynch to apply for a grant from Bord Failte Eireann. In accordance with their usual practices Bord Failte appointed Mr. Robert Creedon as their consultant architect for the purpose of considering the project and plans and advising thereon.

In view of the defence made by the architect, the judge said it was necessary that Court should declare its finding of fact that Mr. Credon acted at all times as the consultant architect for Bord Failte and that any suggestions made by him were made for the purpose of informing Mr. Lynch and Mr. Beale as to what would be required by Bord Failte to enable Mr. Lynch to qualify for a grant. The plaintiff and Mr. Beale were free to reject these suggestions. At no time was Mr. Beale relieved of his obligations as the plaintiff's architect and at no time was he controlled by, and subject to, the directions of the consultant architect to Bord Failte.

The Court had no doubt that it was the intention of Mr. Lynch that the hotel would be constructed in such a way that if necessary a second storey could be added and that Mr. Beale so provided in his main drawings. The Court was satisfied that it was at all times the intention of Mr. Lynch, the architect, and Mr. Murphy, that the roof of the building would be a concrete one and that at no time did they indicate otherwise to the managing director of Precast Ltd., Mr. O'Driscoll, or any employer of that firm.

Mr. Justice Hamilton said the evidence clearly established that there were two major causes of the structural defects in the building: foundation failure with consequent serious settlement at the back or north-east corner of the building; the failure of the prestressed concrete beams at first-floor level which were inadequate to carry the loads imposed on them.

The Court was satisfied that in July, 1969, the building was in such a condition that remedial work was so risky and dangerous that nobody would do it.

On the question of negligence the Judge said it was clear from Mr. Beale's evidence that, because of the fact the hotel was being built on a site on which had stood for many years as a substantial building, he did not carry out any investigation of the sub-soil other than a look at the excavations while they were being dug by the contractor's workmen. Having regard to the duty imposed by law on an architect, and to the evidence of Mr. Kelliher and Mr. McCarthy, he considered that a reasonable architect, even in the circumstances of the case and this site, would at the very least, when the excavations were opened, have carried out the usual probing to establish the nature of the sub-soil. Mr. Beale was negligent in failing to do so.

Having regard to his general duty to supervise the construction of the building, it was the view of the Court that he was under a duty to ensure that Messrs. O'Reagan Precast Limited, whom he had recommended to the builder, and whom he knew were going to manufacture the beams, would have sufficient information at their disposal to enable them to calculate the load the beams would be required to carry.

The Court was also satisfied that Mr. O'Driscoll did not seek any information about the nature of the roof and relied on his interpretation of the plans submitted to him and this led to his mistaken assumption that the entire of the roof was to be of wood. The beams were designed and manufactured by Messrs. O'Regan Precast Ltd., and delivered to the site where they were installed under the direction of Mr. Gerry Callaghan, an employee of the company.

The work on the hotel progressed and was completed in November, 1967, and possession was handed over to Mr. Lynch. At some stage prior to the completion, and contrary to the wishes of Mr. Beale, two 600-gallon water tanks were placed on the roof of the hotel in the vicinity of the north-east corner. It was alleged by the architect, and Precast Ltd., that this contributed substantially to the trouble which subsequently developed. The hotel was opened on December 4th, 1967, and Mr. Lynch carried on busi-

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ness until July 19th, 1969. From the beginning difficulties arose and defects became apparent. There had been no dispute as to the existence of the defects and their unfortunate consequences.

Mr. Justice Hamilton said the defendants were extremely unfortunate in this case because the structural defects which led to the collapse of the building were due to two separate causes either of which were capable of being remedied. Due to the combination of the two separate causes, remedial work was impossible prior to the collapse of the building.

He held that all the defendants were in breach of duty, either contractually or otherwise, the builder being liable in law by the breach of duty of its sub-contractor, Precast Ltd. He was satisfied from the evidence that the greatest degree of fault must rest with Precast Ltd. and through it in the builder.

[Lynch v. Beale, Murphy Ltd. and Precast Ltd.—Hamilton J.—unreported—30th November 1974.]

Defective Judgment Mortgage Affidavit, which did not correctly describe occupation, rejected.

In March, 1971, the plaintiffs got judgment in the Circuit Court against A, a third party, for £421 and £16 costs. In April, 1971, the plaintiffs lodged a copy of the Circuit Court affidavit in the Registry of Deeds to convert the judgment into a judgment mortgage. The affidavit mentioned the Barony and County, but not the Townland. The third party, A, subsequently agreed to sell the lands to the defendant. In the conveyance to A, made in October, 1966 and in a mortgage made on the same day, the townland of Balbradagh was mentioned; the mortgage was duly released to A, discharged from all monies secured on 4th October, 1971.

The solicitors for the purchaser had a hand search made in the Registry of Deeds against lands "in the Townland of Balbradagh, in the Barony of Upper Navan and in the County of Meath". This search disclosed the mortgage, but not the judgment mortgage. On 5th October, 1971, A conveyed the said lands to the purchaser.

The plaintiffs now seek a declaration claiming that the judgment mortgage of 29th April, 1971 is well charged on the purchaser's interest in the lands. It was contended on behalf of the purchaser that the affidavit did not create a valid judgment mortgage, because it did not describe the lands to be charged with sufficient detail, and because A was not a farmer, though described as such, but was in fact a mechanic.

In considering whether Bobinstown is a "town" within the Judgment Mortgage Act, 1850, Kenny J. cited the case law on the subject, and came to the conclusion that Robinstown was a village. The Act of 1850 does not require the townland to be stated in the affidavit — accordingly the description of the lands in the judgment mortgage affidavit was sufficient. The next issue is whether the misdecription of A as a farmer invalidates the affidavit. The case law on this subject proves that it does, for in *Murphy v. Lacey* 31 I.L.T.R. 42, Porter M.R. held that where an agricultural labourer was described as a farmer, the affidavit was invalid. Accordingly an affidavit which describes a mechanic, who had never been a farmer, as a farmer, is also invalid. Therefore the plaintiff's judgment mortgage was not effective to create a mortgage, and a declaration to that effect will be refused. If the village has not the same name as the townland in which it is situated, it is essential to search in the Registry of Deeds against the name of the village as well as that of the townland.

[Dardis and Dunns Seeds Ltd. v. Hickey—Kenny J. —unreported—11th July, 1974.]

The Society is about to establish panels of persons who would be available to examine and comment to the Society on Parliamentary Bills and draft EEC Directives and Conventions, according as they become available. If you are interested in helping the Society in this way, please write to the Director General, indicating your area of special interest.

IRISH SOCIETY FOR THE STUDY AND PRACTICE OF EUROPEAN LAW

The Society's next meeting will be on the 28th February in the Solicitors' Buildings at 8 p.m. when Mr. Vincent Grogan, Director in the Directorate General for Competition of the E.E.C. will talk on "Competition Policy in the E.E.C." Non members of the Society are welcome.

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Computers Can and Do Help Lawyers

Over the weekend 27th-29th September, 1974, the Society held its first Conference on Computers and the Law at Oxford. The Conference may fairly be described as international, since its 156 delegates came from 16 different countries. Over half were lawyers.

The Conference dealt with matters of direct practical importance to lawyers, such as Land Charges and Accounting systems; but it also allowed delegates a glimpse of the future in information retrieval. The topics covered by papers and discussion were backed by practical demonstrations of working systems, the theme throughout the Conference being, not merely that computers are able to aid lawyers, but that they are already doing so.

The Conference opened with a champagne reception in the Colonnade of Magdalen College, followed by an introductory talk on computers by Mr. Norman Price of the U.K. Atomic Energy Authority. On the Saturday morning, Mr. Colin Tapper gave the history of information retrieval by computer, paying particular attention to the systems demonstrated at the Conference — LEXIS, STATUS, IBM's STAIRS package, and Queen's University, Belfast's QUOBIRD system which was demonstrated live with help from International Computers Limited. Mr. Tapper pointed out that the first two were primarily designed for legal materials and the last two were adapted for the law. Mr. Tapper also discussed the Italian Court of Cassation system, designed by Univac, who staged an excellent audio-visual presentation at the Conference. Mr. Tapper described the respective merits of recording a full text as against the provision merely of an index to information, maintaining that the one system did not necessarily exclude the other.

This talk was followed by detailed discussions of information retrieval systems. Mr. Jerome Rubin, President of Mead Data Central, Inc., described how LEXIS, a system originally developed for the Ohio Bar, and now available elsewhere in America, allows lawyers in their offices and judges in court to retrieve federal and state statutes and court decisions. This system was demonstrated by satellite from America. Dr. B. Niblett of the University of Kent, Canterbury, discussed the STATUS system of the U.K. Atomic Energy Authority, of which he is a pioneer. This provides techniques for searching and browsing through statutes and statutory instruments. Professor F. J. Smith of Belfast discussed QUOBIRD and M. André Wallemacq spoke about the Belgian CREDOC system, which provides quick documentation for the legal profession in Belgium and is largely financed by that profession.

Saturday afternoon was devoted to a different area of computer applications for lawyers — legislative and Government systems. Mr. Stephen Skelly, Jurimetrics Adviser to the Department of Justice of the Government of Canada, spoke of the advantages and difficulties of using a computer for legislative drafting. In the discussion that followed, Mr. Francis Bennion, a British Parliamentary Counsel, described an experiment he is about to start in this field. The Canadian experience in providing assistance via the computer seems to show distinct advantages in the British context.

Following this talk, the Chief Land Registrar, Mr. T. B. F. Ruoff, spoke of his system for Land Charges searching, which had gone live earlier in the same month, and is now being used by English and Welsh solicitors on a daily basis. Then Mr. R. A. Leylands of Leeds Corporation described the LAMIS project (Local Authority Management Information Systems) which Leeds in pioneering with help from International Computers Limited. This system is based on the property in an authority's area and (inter alia) is designed to provide relevant information needed by purchasers and developers for whom its interest lies in the possibility of a dramatic improvement in searching for local Land Charges and making Supplementary enquiries.

On the Sunday, Mr. Richard Morgan of the Solicitors' Law Stationery Society, Limited, spoke of Office Management Applications — legal accounting, trust accounts, time recording and drafting, with a glance at litigation support. He emphasised the importance of having a terminal for these systems fully compatible with systems for information retrieval. He described the systems demonstrated or displayed at the Conference including the Dataplex drafting and accounts system, Browne Time Sharing's Word One drafting system, the Law Society's Time Recording System marketed by Centre-File, and the Solicitors' Law Stationery Society's on-line accounts system and batch (off-line) accounts and time recording systems.

Mr. Nicolas Bellord ,an English Solicitor, who has written his own on-line accounts and time recording systems, (both demonstrated at the Conference), raised a number of practical points, particularly stressing the importance of using a computer on those aspects of a lawyer's work that took so much of his time.

The last session consisted of brief reports from a number of distinguished overseas visitors from Sweden, Norway, and West Germany. This was followed by a general discussion which concerned itself largely with a proportion of time a lawyer spends on a search. The closing paper was given by Mr. Alan Woods, Chairman of the Society.

Presidential Address (27 November 1974)

MEDICO LEGAL SOCIETY
"TILL DEATH US DO PART"

by RAYMOND V. DOWNEY, SOLICITOR

The vale systems which have shaped our lives for centuries are changing fundamentally. Wherever we look we find ourselves caught in an upsurge of development which bears little relationship to the familiar ideologies of the recent past. This has been extremely disturbing because the foundations of our beliefs, secular and religious, are being questioned radically. We have come to realise that there is need for change and this is a painful moment. There are those who are bidding us to return to the fold and follow obediently the teaching of authority, and there are those who are inviting us to overthrow the shackles of the past and become free. It is no longer possible to push to one side the problems around us. There is for example the necessity to give women the fulness of equality and opportunity that men have had for thousands of years, which must include pressing for the innumerable changes in law to protect womens rights. Her right to reside in the family home should be beyond argument so that it cannot be sold against her will and there should be a power of attachment of a husband's earnings where Maintenance Orders against him have been made. We must also consider the newer developments to give the child increased protection in utero, arising from the thalidomide tragedy and further protection from cruel parents which can cause even death as in the Maria Colwell case in England. In order to understand clearly the position it is vital to appreciate the change that is occurring in the nature of marriage. Both secular and Christian marriage has been based on the idea of a legal contract in which a man and a women undertake certain obligations towards each other, from which flow certain rights and privileges.

What is now advocated is to see marriage primarily as a personal relationship with social, emotional and physical integrity in which will be found its viability. In such a relationship the emphasis is no longer on just fulfilling roles or meeting external criteria of children, fidelity and indissolubility, but on the quality of the personal relationship.

Under the Marriages Act 1972 the Minister for Justice was given power to decide when certain sections would become operative, and I am very pleased that on 1st January next the minimum age at which a boy or girl can marry has been raised to 16. It will also be necessary for a minor between that age and 21 to obtain the consent of **both** parents. A further section of the Act coming into effect on the same date provides that if the father and mother refuse their consent, the minor can apply to the President of the High Court **in camera** for permission to marry.

An interesting survey of broken marriages in Dublin was carried out earlier this year by Kathleen O'Higgins of the Economic and Social Research Institute and published under the title of "Marital Desertion in Dublin". She found that the majority of husbands who leave their wives work in skilled or semi skilled occupations, marry in the 20/24 age bracket and desert in the 25/34 age group. The most common reason for the break up of marriages is lack of communication, followed by problems relating to drink, sex, irresponsibility and adultery. It was rather surprising to see that 41% of the women interviewed would like to remarry if they could.

About **a third** of the women said things had begun to go wrong from the beginning of the marriage. Over half that number had courted for long periods and later found marriage a disappointment as their husbands became completely different persons.

Slightly over a third of the women reported sexual excesses on the part of the husband and the general impression was that the persons interviewed regarded sex as part of the overall relationship and not to be engaged in or enjoyed otherwise, or of using it as a bargaining weapon to persuade their husbands, for example, to stop drinking. How far removed from what it should be. The body with its powerful sensuous messages becomes the source of communication, of acknowledgement, acceptance, appreciation of each other. It is a communication that acknowledges deficiencies but aims to receive each other unconditionally. And in the process spouses give to each other the fulness of meaning of their identity. The sexual act is in fact the most powerful and recurrent act of affirmative love, because minds, bodies, and feelings unite to cement the ongoing process of nurturing, healing and growth. However, it is an unfortunate fact that quite a high proportion of marriages do not realise their potential.

Living in a Christian Country we have been brought up to realise that divorce is an evil. It certainly is but not perhaps in the way we have been brought up to believe. The evil has very little to do with the badness and responsibility of the spouses who were made to bear the personal and social guilt of this action. The evil lies in the actual suffering and consequences of the breakdown of human bonds between husband and wife, parents and children. How is it that two people who start a relationship with every intention of maintaining it, who honestly believe that this relationship is the best thing in the world for them find themselves a few weeks, months, years later in disarray, convinced that their partner is a failure, imprisoning them in a life sentence of misery?

It is often said that liberal divorce laws are responsible for divorce. Whilst there is some truth in this, it is certainly not the real explanation. The real explanation is that men and women are raising the minimum levels of personal expectations and when these are not fulfilled the relationship comes to an end. Divorce laws simply register these changes in the raising of minimum standards of human integrity.

Until 1858 neither in England or Ireland could Divorce be granted by the ordinary Courts. It could, however, be granted by private Act of Parliament.

The procedure though Parliamentary was substantially judicial, the allegations were investigated and if substantiated, the relief sought was granted as a matter of right and justice. In short, Parliament was the tribunal for such cases and was resorted to as a matter of recognised procedure by those who sought relief on good grounds and could afford to pay for it. By the Matrimonial Causes Act 1857 the procedure for Divorce was **in England** given to a regular Divorce Court which could pronounce a final decdee. The Act did not apply to Ireland, and the old procedure of petitioning for a private bill to the Imperial Parliament remained the only method available. **The position remained unaltered until the passing of the Constitution of Ireland in 1922 followed by a further Constitution of Ireland in December 1937.** Under Article 41 of the latter it was provided that:-

"The State guarantees to protect the **Family** in its Constitution and authority as the necessary basis of social order and as indispensable to the welfare of the Nations and the State.

The State pledges itself to guard with special care the **institution of Marriage,** on which the family is founded, and to protect it against attack.

No law shall be enacted providing for the grant of a dissolution of marriage.

No person whose marriage has been dissolved under the civil law of any other State but is a subsisting valid marriage under the law for the time being in force within the jurisdiction of the Government and Parliament established by this Constitution, shall be capable of contracting a valid marriage within that jurisdiction during the lifetime of the other party to the marriage so dissolved."

What then is the position here? In a nut-shell there is no divorce which entitles the parties to remarry — only Divorce a mensa et thoro — a legal Separation.

What legal steps are open to parties in this Country wishing to live apart:-

(1) Proceedings in the District Court by wife for Maintenance (up to £15) + £5 for each child.

(2) Deed of Separation.

(3) Judicial Separation by the Court i.e. a Decree a mensa et thoro. (Must prove either Cruelty, Desertion or Adultery).

What is the position regarding English and foreign Divorce Decrees?

An entirely different question is the recognition which will be afforded **by our Courts** to the decrees of dissolution of marriage granted by English and foreign Courts to persons **domiciled** within the jurisdiction of those Courts.

Different Communities have different views and laws respecting matrimonial obligations, and a different estimate of the causes which justify divorce. It is realised here as elsewhere that it would be ridiculous to have a situation where a man and woman could be held to be man and wife in one Country and strangers in another.

This whole question was dealt with in an English Court Decision of **Breen v. Breen** (1961) 3 All E.R. 225.

Mr. Breen had been divorced (in England) and married his second wife in the Registry Office Dublin in 1953. In 1961 Mrs. Breen (the second) sued for nullity of the marriage in England on the grounds that her husband's English divorce decree would not be recognised in Ireland and therefore her marriage was bigamous. This argument was based on Article 41 of the Irish Constitution referred to earlier.

Mr. Justice Karminski held that it was highly unlikely that the Constitution of Ireland intended, without clear words, to reverse a practically universal rule of private international law. He therefore found that **the Law of Ireland** recognised the validity of the decree of dissolution pronounced by the English High Court, dissolving the marriage between the husband and his first wife, and also recognised the validity of the marriage celebrated in Dublin between him and the second wife. He approved the Judgment of Mr. Justice Kingsmill Moore in an Irish Case of Mayo Perrott v. Mayo Perrott and came to the same construction and for the same reasons as the Irish Judge.

Up to the present time **this Country recognises the validity of a divorce granted in the Country of domicile of the parties.** The State grants authority to marry persons who have English or certain foreign divorce decrees provided the parties were **domiciled** in the Country where the divorce was obtained. A contrary view would lead to strange results, e.g. if persons domiciled in England were divorced and remarried the remarriage would be valid in England and the children legitimate but if the remarried persons came to Ireland they would be prosecuted for bigamy and their children would be illegitimate.

But we must now consider the well known Irish case of Mayo Perrott v. Mayo Perrott (1958 IR 336). The Plaintiff who had been the successful Petitioner in the High Court in London **for dissolution of her marriage,** sued in the High Court here for the unpaid balance of **costs** awarded to her in the suit. It was held by Mr. Justice Murnaghan at first instance and affirmed by the Supreme Court on Appeal that the order for costs could not be severed from the substantive order for divorce **and could not be enforced here,** being repugnant to our policy as declared in the Constitution. On appeal to the Supreme Court two of the Judges, the then Chief Justice Maguire and Mr. Justice Kingsmill Moore considered the question whether or not the English decree of divorce would be recognised by the Irish Courts as valid to dissolve the marriage, and their views differed completely. The Chief Justice stated that Article 41 subsection 3 of the Constitution said as plainly as possible that a marriage dissolved under the law of another State remained in the eyes of the law here a subsisting valid marriage. On the other hand Mr. Justice Kingsmill Moore in his judgment expressed the opposite view. "I cannot find, he said, anything in Article 31 (3) to suggest that the Courts (in the absence of further legislation) are entitled to do otherwise than regard as valid and effectual a divorce a vinculo granted at the time of the suit **were domiciled in that Country,**" but later in his judgment added, "the general policy of Article 41 (3) seems to me clear. The Constitution does not honour dissolution of marriage. No laws can be enacted to provide for a grant of dissolution of marriage in this Country. No persons whose divorced status is not recognised by the law of this Country for the

time being can contract in this Country a valid second marriage. But it does not purport to interfere with the present law that dissolution of marriage by **foreign Courts, where the parties are domiciled within the jurisdiction of those Courts**, will be recognised as effective here. Nor does it in any way invalidate the remarriage of such persons".

After the Mayo Perrott case there was no further Irish authority on the problem until the case of the **Bank of Ireland v. Caffin** (1971) IR 123, a Testator had divorced his wife in England in 1956, both then being domiciled there. Later he remarried in the Registry Office in Dublin, his new wife being domiciled in Ireland. He died in 1970 and on a claim under the Succession Act 1965 Judge Kenny had to decide if his **Irish** wife (i.e. the second) had **become his lawful spouse**, i.e. did the Irish Courts recognise the divorce in England in 1956. He agreed with what Judge Kingsmill Moore had said in the Mayo Perrott case and held that the English decree of divorce should be recognised. The Testator was therefore free to remarry in Dublin although he had been divorced, and his second wife was entitled to her share under the Succession Act. (Intestate = Spouse $\frac{2}{3}$; Children $\frac{1}{3}$. Testate = If Children $\frac{1}{3}$ to Spouse; If no Children, $\frac{1}{2}$ to Spouse.

Let us now turn to the question as to whether Irish Citizens can be divorced abroad?

The answer is in the affirmative but there are difficulties so far as England is concerned, although it is easier in some foreign Countries such as Santo Domingo.

Divorce was obtainable in England for parties domiciled there on three main grounds:- (1) **Adultery;** (2) **Desertion;** (3) **Incurable Unsoundness of Mind.**

These grounds are now being widened by allowing consent of the parties, and agreement to separate for two years if the Respondent does not object, otherwise five years.

The main difficulty so far as Irish Citizens are concerned is the question of **jurisdiction** but since 1st January 1974 one years "habitual residence" in England is now sufficient.

Conclusion:

So much for Divorce and Separation. I would like to finish by quoting from a book by Dr. Mary Macaulay who was not only a medical doctor in England but a Magistrate. The boik is entitled "Marriage for the Married" and in it she says "The first necessary adjustment in a happy marriage is to learn how to work in double harness, so that instead of finding the closeness of the partnership irksome, husband and wife discover that the old saying really is true, that troubles are halved and joys increased when they are shared. Happy marriage is never found ready made, it is the result of loving consideration and hard work on the part of two people who are determined to make it a success."

Association of Irish Jurists

A meeting was held on Monday, 25th November, 1974 in order to re-organise the Association which had been moribund since 1969. Mr. Hugh O'Flaherty, B.L. presided and was eventually appointed Acting Chairman, Miss Barbara Hussey, Vice-Chairman and Mr. Colum Kenny, B.L., as Secretary and Treasurer. Amongst the solicitors elected to the acting Committee in order to draft a revised Constitution were the incoming President, Mr. Osborne, the incoming Senior Vice-President, Mr. P. C. Moore, and Mr. Maurice Kenny. It was decided to set up two Sub-Committees on some aspect of Family Law, and on some aspect of the Law of Evidence, which would eventually produce Reports. It was thought that no useful purpose could be served by lectures unless they were given by distinguished foreigners. Mr. Sean MacBride, S.C., former Secretary-General of the International Commission of Jurists, and now United Nations Commissioner for Namibia, was to be notified of the revival of the Association.

Dublin Solicitors' Bar Association

The Annual Dinner of the Society was held in the Library of Solicitors' Buildings on Saturday, 7th December, 1974. Amongst the guests were the President of the High Court (Mr. Justice O'Keeffe), the President of the Circuit Court (Judge Conroy), Judge Ryan, Judge Barrett, Judge Sheehy, Judge Clarke, the President of the District Court (Justice O'Flynn) and some of the District Justices attached to the Dublin area. The toast of "Our Guests" was proposed by the President of the Association, Mr. Patrick Golden, and responded to by Judge Gerard Clarke. The toast of "The Association" was proposed by Commdt. James Liddy, Deputy Judge Advocate-General, and responded to by Mr. Rory O'Donnell. In accordance with custome, Mr. Rory O'Connor arranged the musical programme which was enjoyed by all.

Acts of the Oireachtas 1974

No.	Title of Public Act	Signed by President and Enrolled
1.	Transport Act, 1974	19 February
2.	National Building Agency Ltd (Amendmen) Act, 1974	1 March
3.	Exchequer and Local Financial Years Act, 1974	1 March
4.	Restrictive Practices (Confirmation of Orders) Act, 1974	29 March
5.	Control of Exports (Temporary Provisions) Act, 1956 (Continuance) Act, 1974	29 March
6.	Local Government (Roads and Motorways) Act, 1974	3 April
7.	Electoral (Amendment) Act, 1974	8 May
*8.	Local Elections (Petitions and Disqualifications) Act, 1974	16 May
9.	Building Societies Act, 1974	22 May
10.	Prisons Act, 1974	4 June
11.	Food Standard Act, 1974	14 June
12.	Social Welfare Act, 1974	14 June
13.	Gaeltacht Industries (Amendment) Act, 1974	14 June
14.	Social Welfare (No. 2) Act, 1974	2 July
15.	Anti-Discrimination (Pay) Act, 1974	3 July
16.	Maintenance Order Act, 1974	10 July
17.	Finance (Taxation of Profits on Certain Mines) Act, 1974	16 July
18.	Export Promotion (Amendment) Act, 1974	16 July
19.	Electricity (Supply) (Amendment) Act, 1974	16 July
20.	Industrial Credit (Amendment) Act, 1974	17 July
21.	Shannon Free Airport Development Co. Ltd. (Amendment) Act, 1974	17 July
22.	Prosecution of Offences Act, 1974	24 July
23.	Agricultural (Amendment) Act, 1974	25 July
24.	Adoption Act, 1974	30 July
25.	Fisheries (Amendment) Act, 1974	1 August
26.	Exchange Control (Continuance) Act, 1974	1 August
27.	Finance Act, 1974	7 August
*28.	Local Loans Fund (Amendment) Act, 1974	12 December
29.	Rates on Agricultural Land (Relief) Act, 1974	30 December
30.	Sea Fisheries (Amendment) Act, 1974	30 December
31.	Social Welfare (No. 3) Act, 1974	30 December
32.	Health Contributions (Amendment) Act, 1974	30 December
33.	Broadcasting Authority (Amendment) Act, 1974	30 December
34.	Transport (No. 2) Act, 1974	30 December
35.	Appropriation Act, 1974	30 December

PRIVATE ACT

1.	Leopardstown Hospital (Trust Deed Amendment) Act, 1974	15 March

*Act signed by Presidential Commission under Art. 14

Statutory Instruments

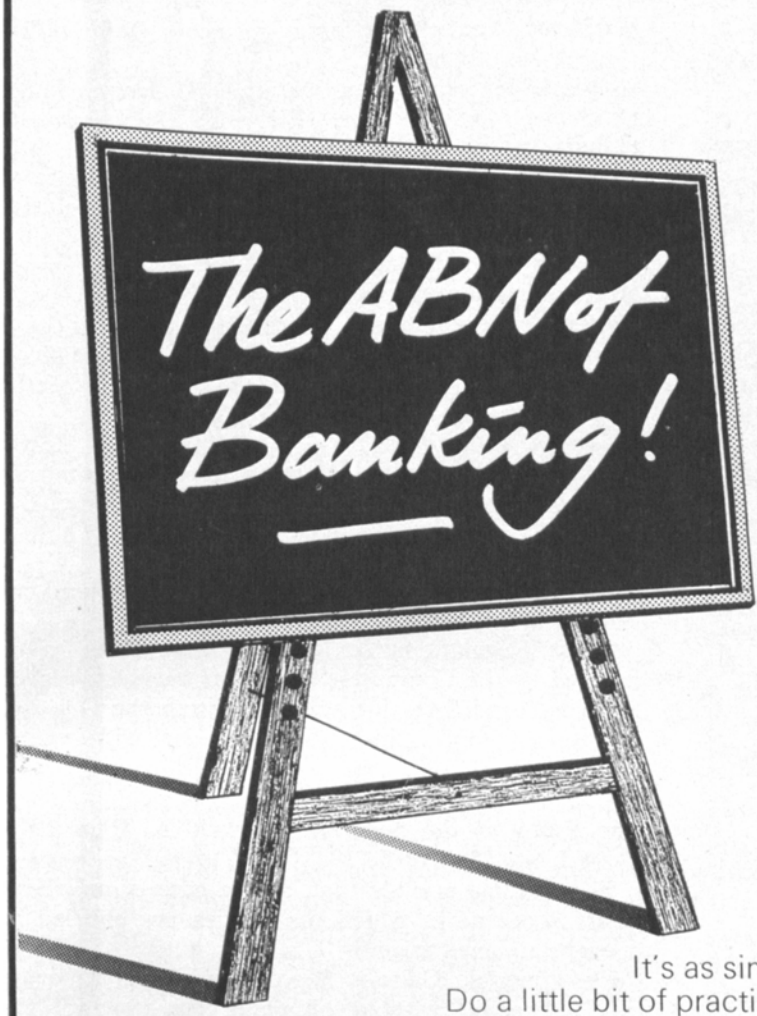
Income Tax (Undistributed Income of Certain Companies) Regulations, 1974. S.I. No. 329 of 1974.

Under the Finance Act, 1974, sur-tax was abolished with effect from 1974-75 (section 10) and replaced by higher rates of income tax (section 3(2)).

Consequently, regulations referring to sur-tax are no longer appropriate. Such regulations existed in relation to section 530 of, and Schedule 16 to, the Income Tax, 1967, which were designed to prevent the avoidance of sur-tax by the withholding from distribution of income of certain companies. The present Regulations, which deal with the serving of notices for the purpose of these provisions, take account of the replacement of sur-tax by the higher rates of income tax.

European Communities (Minimum Stocks of Petroleum Oils) Regulations, 1974. S.I. No. 325 of 1974.

These Regulations give effect to Council Directive of the European Communities of 23rd December, 1968 (68/414/EEC). The Regulations require oil importers and oil consumers of a specific category to maintain 55 days oil reserves in respect of the categories of petroleum products to which the Directive applies. The Regulations provide for the notification by oil importers and large oil consumers of certain particulars regarding their stocks, sales and consumpition. There is also provision for the appointment of an inspectorate to ensure the accuracy of any information provided.



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Statutory Instruments

Offences Against The Person Act, 1861 (Section 9), Adaptation Order, 1973. S.I. No. 356 of 1973.

The Government, in exercise of the powers conferred on them by Section 12 of the Adaptation of Enactments Act, 1922 (No. 2 of 1922) (as adapted in consequence of the enactment of the Constitution), and Section 5 of the Constitution (Consequential Provisions) Act, 1937 (No. 40 of 1937), hereby order as follows:

(1) This order may be cited as the Offences against the Person Act, 1861 (Section 9), Adaptation Order, 1973.

(2) The Interpretation Act, 1937 (No. 38 of 1937), applies to this order.

(3) Section 9 of the Offences against the Person Act, 1861, shall be construed and have effect as if:

(a) the reference to land out of the United Kingdom, whether within the Queen's dominions or without, were a reference to land outside the area of application of the laws of the State,

(b) the reference to a subject of Her Majesty were a reference to a citizen of Ireland and the reference to any subject of Her Majesty were a reference to any citizen of Ireland, and

(c) the first reference to England and Ireland were a reference to the area of application of the laws of the State.

Given under the official seal of the Government, this 20th day of December, 1973.

Liam Cosgrave (Taoiseach)

Explanatory Note—

To enable Section 9 of the Offences against the Person Act, 1861 (which applies in the State), to have full force and effect, this order adapts certain expressions in the section.

Section 9 of the Offences against the Person Act, 1861, provides that where any murder is committed by any subject of Her Majesty on land out of the United Kingdom, whether within the Queen's dominions or without, and whether the person killed is the subject of Her Majesty or not, then the offence may be dealt with in all respects as if it had been committed in England in any county or place where the suspected person is apprehended or is in custody.

Notice of the making of this Statutory Instrument was published in *Iris Oifigiúil* on 4th January 1974.

Social Welfare (Contributions) (Amendment) Regulations, 1974. S.I. No. 300 of 1974.

Increased rates of social insurance contributions came into effect from 1 July, 1974. These Regulations determine the amounts of the increased contributions paid in respect of retirement pension to be returned to a person who entered insurance after the age of fifty-five years and who was not insured before that age under the former National Health Insurance Act. The Regulations also determine the amounts paid in respect of old age (contributory) pension to be returned to a person who had not similarly entered insurance before the age of sixty years.

Marriages Act, 1972 (Commencement) Order, 1974. S.I. No. 324 of 1974.

This Order brings into operation Sections 1, 7 and 18 of the Marriages Act, 1972, with effect from 1st January, 1975.

Section 1 prohibits the marriage of either males or females under 16 years of age, save with the exclusive consent *in camera* of the President of the High Court.

Section 7 prohibits the marriage of either males or females under 21 years of age save with the joint consent of the parents, or the sole consent of a guardian. If a guardian does not exist, or is difficult to trace, then the consent of the President of the High Court *in camera* is required.

Section 18 provides that the Minister for Health may by regulations substitute a lower age than 21 years in respect of a marriage in which consent is required.

Prosecution of Offences Act, (Section 2) Regulations, 1974. S.I. No. 304 of 1974.

These Regulations set out the procedures to be adopted by the Committee which has been established to select candidates for appointment to the Office of Director of Public Prosecutions and deal with related matters.

The Rules of the Superior Courts (No. 1) of 1975. S.I. No. 15 of 1975.

These Rules provide that, in the case of any High Court proceedings which the parties are entitled as of right to have tried with a jury, notice of trial at Cork, Limerick, Galway, Sligo, Dundalk or Kilkenny may be served without obtaining the leave of the Court, if both parties so consent.

Rathfarnham Courthouse condemned

The Rathfarnham courthouse's over-crowded conditions were condemned as an absolute disgrace on 13th May 1974 by **District Justice T. P. O'Reilly** and he said: "The people responsible for it should attend to it or get out of office."

He added that it was absolutely deplorable that in the year 1974, over 50 years after we have gained independence, that people had to stand at adjoining toilets waiting for the cases to be called.

The court house, he said, was always overcrowded. The windows needed to be open for ventilation, but these were situated right beside the traffic. Solicitors had to consult their clients on the footpath outside, and Gardai were forced to stand on the roadway waiting for cases to be called.

Rathfarnham court house had no consulting rooms, no waiting rooms and inadequate parking space. The court clerk worked under very bad conditions and he should take the matter up with his Department, said the justice.

He added: "Someone should take note of what goes for the dispensation of justice in Rathfarnham." People who stood waiting in the courthouse were serving their sentences before they were ever dealt with by the court."

Book Reviews

Then and Now—1799-1974; commemorating 175 years of Law Bookselling and Publishing (Sweet & Maxwell). 25cm., xii, 219p. London: Sweet & Maxwell, 1974; £7.

It was a happy thought that inspired Messrs. Sweet & Maxwell, the well known law publishers to give an account of the numerous changes that have occurred in 175 years not only in their own publishing business but also in the broader general principles and practice of law.

Professor Hood Phillips has, in the first chapter, given a brilliant synopsis of legal authors since 1800 from Bentham and Austin to Berriedale Keith, Jennings, Lauterpacht, Holdsworth and Dicey. Dr. Schmitthoff, with his customary clarity has dealt with Company Law authors, particularly Palmer and Charlesworth. Professor Simpson, in dealing with the Common Law, has stressed the rise of importance of legislation as a source of law, the development of academic law in the universities, and the decline of the jury in England in civil trials.

Professor Mitchell, in dealing with Constitutional Law has brilliantly underlined how the patchwork character of the administrative state has gradually undermined the democratic process. One of the indirect results of deferring to the democratic process led to the establishment of many non-legal tribunals. He also deals with the problem of devolution particularly in relation to Scotland and Wales; the idea that an unwarranted reliance on pragmatism and an over-reliance on constitutional change through politicians instead of through the Courts is noted. Professor Mitchell's list of obstacles working against the individual citizen — excessive centralisation, and excessive secrecy — are only too apparent. Finally, in dealing with the European Community Law, it is pointed out that the individual of a member State who has been affected by a provision of the Treaty of Rome, has remedies either in his national Court or in the European Community Court.

Professor Hogan has succeeded in summarising Criminal Law in ten pages — a great achievement. Perhaps the most interesting chapter is that by Mr. Maxwell on the Development of Law Publishing. In 1822, the Associated Law Booksellers, including Sweet, Maxwell and Stevens was formed; the merger of Sweet & Maxwell Ltd. took place in 1889. Shaw & Sons purchased Butterworths in 1895, but the latter became a separate firm in 1905.

Two experts on the subject, John Burke and Peter Allsop, deal with "Law Publishing To-day". Amongst the numerous periodicals mentioned are "The Law Quraterly Review" and "The Modern Law Review". The publication of "Current Law" from 1947 has rightly been an outstanding success. All well known legal textbooks are mentioned. Sir Desmond Heap, a former President of the English Law Society, has summarised admirably the law of Local Government, while Master Jacob has dealt expertly with the intricacies of Civil Procedure. Mr. Tom Harper, former editor of the Law Society Gazette, has described the solicitors and barristers's profession. Finally, Mr. George, Joint Editor of "The Conveyancer" has written about some problems relating to Law and Equity such as Registration of Title and Modern Conveyancing Practice. It will be seen that this interesting volume has not omitted any important part of legal history in the 19th century and will be an invaluable reference book.

E. G. Bowman and E. L. G. Tyler — The Elements of Conveyancing; 444 pages, index 445-456. London: Sweet & Maxwell, 1972; paperback, £4.00.

This book is aimed at students primarily for the English Law Society's examinations and although the usual warning as to the inapplicability of references to the 1925 Legislation has to be made the book is in fact quite useful for Irish students. Although it does not reach the high standard of Farand: Contract and Conveyance, it does aim at a more comprehensive treatment of the field of Conveyancing and is quite successful in this. Irish students should not proceed past the end of chapter 9 in the book, though Practitioners may well find some of the succeeding chapters of considerable assistance as long as they bear the warning about the 1925 Legislation in mind.

J.F.B.

E. L. G. Tyler — Cases and Statutes on Land Law; 255 pages; London: Sweet and Maxwell; paperback £2.50.

This book, clearly aimed at the English Student of Property, presents the usual difficulty for Irish readers in that many of cases arise out of the provisions of the 1925 Law of Poverty Act or Land Registration Act, and indeed there are so many of these cases summarised in the book that it is difficult to recommend it at all to students in the Republic of Ireland. On the other hand Practitioners looking for helpful summaries of leading cases may well find it useful and regard the modest investment of £2.50 as reasonable.

J.F.B.

Why we need a Common Market Library and Conference Centre

The foremost obstacle has been the shortage of manpower and of resources. National experience indicates the need to provide adequate research and back-up facilities on a comprehensive basis for those who represent Irish interests within the European Communities. There is an urgent need for a central library devoted to the specialist areas of study of the Common Market. If this library is not soon provided, various interested parties (such as the legal professions, the public service, Parliamentarians and members of the Economic and Social Committee) will be obliged to establish their own inadequate information and research facilities. This latter course is a real possibility, as is shown by the failure of the Irish interests in Brussels to establish a common headquarters with appropriate facilities.

We need a library which meets the following specifications :

(1) It is a repository of official Community documents.
(2) It contains a selection of books, journals and papers on Community and allied topics.
(3) It possesses an effective staff of researchers and translators.

It is important, in my view, that this library be provided by the Government, in order to expedite establishment and in order to conserve the slender resources of the various bodies. The library should have a central city location, with a close proximity to Iveagh House, Leinster House, and the proposed Institute for International Relations. Newman House, in St. Stephen's Green, would be an ideal centre for the library.

Dublin must be one of the few Community capitals which does not possess an official conference centre, with facilities for both Committee and Parliamentary meetings. There is an urgent need for such a conference centre. In 1975 Ireland will chair all E.E.C. Committees; presumably some sessions of these Committees will be held in Dublin. The Council of Ireland will, in time, hold some of its meetings in Dublin.

An official conference centre requires, *inter alia,* the following :

(1) A number of committee rooms, with facilities for interpreters.
(2) A chamber for meetings of a parliamentary nature.
(3) Catering facilities and administrative offices.

Again, the location of this conference centre is important. It should be in the city centre area with easy access to the Oireachtas, Government departments, hotels, universities and diplomatic missions.

Two possible locations spring to mind : (1) the College of Science in Merrion Street, (2) the old Parliament House in College Green.

(1) The College of Science has immediate proximity to Leinster House and to Government buildings. However, this very proximity might be undesirable for political and security reasons : it could be inappropriate for a body (such as the Council of Ministers) which exercises authority over the national Parliament to sit in the same building.

(2) The Bank of Ireland has removed its administrative headquarters to Baggot Street; it could relocate its banking business elsewhere in College Green and Dame Street, without too much difficulty. For historical reasons, the oldest Parliament House in Europe would be a fitting location for an official conference centre—it is my ambition to see the Council of Ireland sitting in the old House of Lords.

Action is urgently needed to establish both a European Community library and an official conference centre. With the use of flair and imagination (and with a little help from the Minister for Finance) institutions which are responsive to our needs and which add to our national dignity could be established.

Buying and Selling a House

The Irish Auctioneers and Valuers Institute have commented to the Society that wording in the Society's leaflet suggests that Solicitors hold themselves out as valuers. The Institute points out that the art of valuing is a specialised field with many variations that can only be dealt with adequately by experienced wholetime valuers.

The Committee which issued the leaflet agrees with the Institute. The leaflet was intended to suggest that a Solicitor ordinarily, among other matter, could give preliminary expressions of value of property but was not intended to suggested that valuing is in the province of a Solicitor.

Most solicitors try to avoid expressions of value and the Committee would not like to feel that the leaflet would encourage Solicitors further into this sphere of action.

Correspondence

The Editor of the Gazette.

Re Leave of Absence of Apprentices for Study

Dear Mr. Gavan Duffy,

The Court of Examiners has recently received representations from the Apprentices to the effect that some Masters were reluctant to allow Apprentices sufficient leave of absence from the office to enable them to study for the Society's examinations. While the Court of Examiners is surprised that this situation should arise and is confident that the criticisms apply to a very small number of Masters it has asked me to write to you so that the attention of Masters may be drawn to the matter.

The relationship of Master and Apprentice is a bilateral one and while the Apprentice is obliged to serve his Master faithfully and diligently so equally is the Master obliged to do his best to ensure that the Apprentice has a resonable opportunity of learning the practice of the law and passing the Society's examinations. The standards of these examinations are maintained at a high level and the Court of Examiners is satisfied that an Apprentice requires a reasonable period of whole time study in preparation for these examinations in order to be sure of passing them. The Court of Examiners has no wish to have to prescribe minimum periods of leave of absence from the office in such cases and feels that once the matter has been brought to the attention of Masters in this way that reasonable leave of absence will be given to Apprentices to study for the Society's examinations and also for such other examinations as are required of an Apprentice.

Yours sincerely,
J. F. Buckley.

Accountant's Office,
The High Court,
Dublin.
19th December 1974.

James J. Ivers, Esq.,
Director General,

Dear Mr. Ivers,

I am in receipt of your letter of the 17th inst., regarding the issue of payments from this office and the closure of my books for the annual balance.

The position regarding payments is that, since my appointment as Accountant in June 1973, schedules to Court Order directing payments and requests for payments authorised by Rules of Court are put in hand in this office either on the day they are received or on the following day. When the cash is to credit payment is to be made out of the proceeds of sale and when the request is in order, the payment draft is signed by me within two or three days of the receipt of schedule or request and frequently earlier. When of stock, of encashment of bonds or of withdrawal from deposit the draft is signed by me on the day on which I am notified by the Bank that the cash has come to credit. This has been the routine procedure during the past year and a half; and I have received no complaint during that time from any Solicitor regarding a payment delayed in this Office.

If you are aware of any specific instance I should be obliged if you would let me know. I would be only too glad to investigate the matter immediately to ensure that the system in operation in this office does not fail in any particular case.

Regarding the closure of my books at the end of the Long Vacation for the purpose of an annual balance, the practice is that a date is fixed in the third week in August by which date schedules to Court Orders made up to the end of Term and requests for payments under the Rules are required to be lodged in this office. All such schedules, requests, etc., received are dealt with immediately. The effect of this arrangement is to expedite payments and to provide a period of three or four weeks during which ledger transactions are reduced in number as much as possible and the accounts can be balanced as of the 30th September. This balance is essential to the safe and accurate keeping of the accounts; and a period of three to four weeks is the minimum required for the work. I have some 6,700 accounts in my books. In some 5,800 of these there are holdings of stock as well as cash and there are several transactions in all these accounts every year. The annual balance entails ascertaining the stock and cash balance in every account, extracting these balances and proving the totals against the control figures. The end of the Long Vacation, when all Court Orders have been dealt with in so far as they refer to funds in Court, provides the time necessary and the conditions suitable for this work which could not be done with the same facility at any other time of the year.

This office is, of course, open to other business during the whole of the Long Vacation. All lodgments and deposits are accepted and brought to credit. Privities and certificates are issued and correspondence is dealt with. The public office is open to deal with enquiries and to issue drafts which have already gone through the ledgers. During the months of August and September this year 639 payments amounting to £435,406-28 were issued by me.

The only case where a delay in payment can occur is when the necessary schedule or request is not lodged by the end of third week in August. The number of such cases must be very small considering the large numbers of schedules and requests received by me in August.

I would add that when the order directing closure is made by the President some weeks before the end of term a copy is prominently displayed in this office. The attention of Solicitors and their clerks is drawn to the Order and they are requested, if they wish to have payments made without delay, to lodge the necessary schedules and requests before the date fixed for closure of this office to the lodgment of such documents.

If you wish to discuss any of these matters further I should be glad to see you at any time.

Yours faithfully,
M. RONAN,
Accountant of the Courts of Justice.

(Office of the Minister for Finance),
(Dublin 2).
24th December, 1974.

Mr. James J. Ivers,
Director General.

Re Capital Gains Tax

Dear Mr. Ivers,

I have your letter and enclosures of 6 November concerning capital taxation. I am happy to be able to send you a copy of the Capital Gains Tax Bill published on 20 December which should clarify some of the queries raised in the enclosures to your letter. I would draw your attention to Section 14 which deals with inheritances and settled property. You will see that personal representatives of deceased persons would be liable to capital gains tax in respect of gains on the disposal of chargeable assets by them which are attributable to any period between their acquision of the property or 6 April 1974 as appropriate and the date of distribution of the estate. However, the transfer of the assets of the estate to the beneficiaries would not be regarded as a disposal and no charge to capital gains tax would arise. As regards clearance certificates you will note from paragraph 11, Schedule 5 of the Bill that this requirement will apply only to sales of certain property by non-residents where the consideration exceeds £50,000.

In relation to the queries raised on Capital Acquisitions Tax, the White Paper (para. 99) distinguished between gifts and inheritances. Gifts cover property passing at any time during the lifetime of a donor while inheritances cover property passing on his death. The commencement date for the gift tax element of the capital acquisitions tax is 28 February 1974 and the commencement date for the inheritance tax element is 1 April 1975. Accordingly inheritance tax will affect inheritances received from persons who die on or after 1 April 1975. Up to that date the present death duties will apply.

Yours sincerely,
Richie Ryan (Minister for Finance)

7940 Jefferson Highway, Apt. 209,
Baton Rouge, Louisiana 70809.
October 17, 1974.

The Incorporated Law Society of Ireland,
Dublin 7, Ireland.

Re Temporary Legal Appointment

Dear Sir/Madam,

My wife and I are interested in living in Ireland for a year or more, and I hoped you might be able to advise me about any possible legal employment I might secure. I was admitted to the Louisiana Bar on October 2, 1974. Because of the unusual nature of our state's law (it is based on the Napoleonic Code) I have studied both civil and common laws. In addition, because of my years spent living in Iran I have also studied the Koranic law. Presently I am corordinator of an $85,000 grant through the Louisiana Commission on Law Enforcement which is designed to evaluate the corrections and court systems through public hearings held throughout the state. My work also entails research, public relations, publicity, and the supervising of a staff of eight members.

One reason we particularly desire to live in your country is that Betty has completed her master's thesis on the Irish theatre and she especially wishes to continue her research.

Thank you for your assistance. I look forward to your reply. My particulars are enclosed.

Sincerely,
Jeffrey Curtis.

Jeffrey Curtis, Esq.,
Baton Rouge.

8th November 1974.

Dear Sir,

I acknowledge receipt of your letter of October 17th 1974 and I regret to inform you that I am not in a position to assist you obtaining employment in this country.

If you require to qualify as a solicitor in Ireland you would take at least three years apprenticeship study.

If you would like to advertise for an appointment in a Solicitor's office in this country, we should be glad to assist you by inserting an advertisement in the Solicitor's Gazette.

Yours faithfully,
Patrick Cafferky,
Assistant Secretary.

Office of the Revenue Commissioners,
Dublin Castle,
Dublin 2.

31st December, 1974.

Dear Sir,

I am directed by the Revenue Commissioners to refer to the recent discussions with representatives of your Society in relation to a proposed arrangement in respect of returns to be made by solicitors under the

provisions of Section 176 of the Income Tax Act, 1967.

Arising out of the discussions and in accordance with the points of agreement reached, the following is the proposed arrangement.

1. The Commissioners will supply special forms for completion by solicitors. (Draft copies enclosed).
2. The forms will be contained in a book, four forms to each page, with blank sheets interleaved.
3. Carbon sheets will be supplied with each book so that entries will be recorded in duplicate — the blank sheets providing a record for the solicitors' purposes.
4. The forms will be completed for all payments by solicitors to clients in respect of money or value, or of profits or gains, arising from any of the sources mentioned in the Income Tax Acts, paid without deduction of tax.
5. One form will be completed for each payment.
6. In any case of an especially delicate nature where disclosure could have adverse social consequences (such as a secret maintenance payment) the payment may be withheld from the form if the solicitor concerned consults with the President of the Society and through him with the Commissioners at this Office.
7. Where surplus deposit interest arising on client accounts is appropriated and transferred to the solicitor's accounts, the transfer will be treated as payment and a form will be completed in respect thereof.
8. The books of forms will be in the hands of solicitors before the end of March, 1975, so that forms can be completed in respect of all payments made as on and from April 6, 1975.
9. After the end of the year 1975/76, and after the end of each subsequent year, the inspector of taxes will issue to each solicitor or firm a request on form 8-2 for the return to him of all the completed forms.
10. The completed forms will be detached from the book and forwarded to the inspector together with the completed form 8-2. (If no payments had been made in the particular year, it will be sufficient to complete the form 8-2 showing thereon that no payments had been made and forward it to the inspector).

As requested by the Society's representatives in the discussions, the Commissioners will arrange that queries arising out of the completed forms will initially not be directed to the solicitors. Any such queries kill be referred by the inspectors of taxes in the first instance to this office for examination. The Commissioners will then consult with your Society as to the procedures to be adopted.

As part of the arrangement the Commissioners would not institute proceedings against any solicitor complying with the arrangement, in respect of the penalties provided by law for failure to make the requisite returns under the aforesaid Section 176 for the year 1974/75 or earlier years.

It is understood that Council of your Society has accepted the proposed arrangement in principle and that final acceptance thereof is subject to confirmation by the Council on receipt of this letter. I am to request you to advise the Commissioners as soon as possible of final acceptance of the arrangement in the terms outlined.

Yours faithfully,
G. A. Walsh.

James J. Ivers, Esq.,
Director General.

Forms 8-2 (Solicitor)

1. This book contains copies of forms 8-2 (Solicitor) —4 forms to each page—interleaved with blank sheets.
2. The forms are to be completed for all payments made by solicitors to their clients in respect of money or value or of profits or gains araising from from any of the sources mentioned in the Income Tax Acts.
3. One form should be completed for each payment.
4. The name and address of the payee should be given in each case.
5. Where surplus deposit interest is transferred from a client account to the Solicitor's/Firm's account, the transfer should be treated as a payment to the Solicitor/Firm and a form completed in respect thereof.
6. By using the carbon paper supplied the blank sheets will provide for the solicitor's own uses a record of all payments.
7. After the end of the income tax year the inspector of taxes will request (on form 8-2) the return to him of all completed forms 8-2 (Solicitor) in respect of that year.
8. The completed forms should be detached and returned to the inspector together with the completed form 8-2. (If no payments had been made in the year this should be recorded on the form 8-2 which should then be returned to the inspector).
9. Further copies of this book may be had on request from the inspector of taxes.

Solicitors' Fees

Extract from National Prices Commission Monthly Report, January 1975

294. On 24 July 1974, the Incorporated Law Society of Ireland submitted an application to the Minister for Justice for increases (ranging from 43% to 308%) in the fees payable to solicitors under the Criminal Justice (Legal Aid) Regulations 1965 as amended in 1970. The free legal aid scheme is administered by the Minister for Justice under the Criminal Justice (Legal Aid) Act 1962. Regulations made by the Minister set out the procedures relating to the Scheme and prescribe scales of fees and legal expenses with the consent of the Minister for Finance. Under the Scheme a person charged with an offence may apply for a certificate of free legal aid. Each court has a panel of solicitors who are willing to act in such cases. A certificate will be granted if the court considers that a person's means are insufficient to enable him to obtain legal aid. One of these solicitors will then be assigned to the case.

295. The application of 24 July 1974 from the Incorporated Law Society of Ireland was based on the following considerations:

(a) The main volume of work was handled by about 20 solicitors, and several of them are contemplating resignation from the Panel.

(b) There was an extreme dissatisfaction with the fees at present payable. The Scheme of Criminal Legal Aid was introduced on an experimental basis, and pending experience it was agreed by the profession that the fees payable would be on a charity basis and therefore, lower than those obtaining normally. Despite the significant fall in the value of money in the meantime, no adjustment had been made in this low scale of fees since 1970. Given that the Scheme is now of a permanent nature, the participating practitioners consider that the fees payable should be on a par with those payable in private practice.

(c) Solicitors and District Court Clerks alike experience difficulty in operating the regulations and, in particular, in having claims certified and processed.

(d) For a solicitor engaging in a significant amount of Criminal Legal Aid work, the present delay in payment presented severe cash flow problems.

(e) Any attendance at a District Court in Dublin represented a morning or afternoon out of practice and would have to be paid for accordingly.

(f) No allowance was made for the increasing problem of being called out at very short notice to advise a prisoner in Mountjoy, St. Patrick's, the Curragh or in Portlaois. Failure on the part of the solicitor to attend such calls, no matter how unreasonable, leads to criticism at Court and adverse comment from the Bench.

296. The Department of Justice passed the Society's application to Prices Division for consideration on 6 December 1974. The Department of Justice stated that most of the solicitors on the legal aid panel in the Dublin area had resigned from the panel due to the low level of fees. The Department of Justice pointed out that the Consumer Price Index has risen by about 55% since fees were last fixed in 1970, that the fees fixed in 1970 were not excessive, and than an increase in fees was justified, more especially as it appeared that fees relating to certain cases in the Court of Criminal Appeal, the High Court and the Supreme Court should be increased by a higher than average amount, due to the difficulties and volume of work involved in these cases.

297. The Department of Justice did not make any specific recommendation, because it had been hoped that the actual increase in fees to be allowed, would have been recommended by the National Prices Commission acting in the role of arbitrator. This proposal had been made to the solicitors concerned, on the basis that the Commission's findings would be accepted by the Ministers for Finance and Justice and that the solicitors could present their case as they thought fit. The solicitors declined to adopt this procedure, but did not object to the Commission considering the case in the normal way.

298. The Department of Justice also pointed out that some parts of a solicitor's business (such as defending persons accused of crime) were not profitable work (such as conveyancing, probate, etc.). Accordingly, the principle applied by successive Ministers for Justice, when dealing with scales of fees for the more profitable work, had been to allow a certain amount of charging "what the market would bear" in the cases of fees for such work, provided the solicitors concerned were also engaged on a proportion of less profitable work. The introduction and expansion of the Criminal Legal Aid Scheme, and the likely introduction at some date in the future of a scheme of civil legal aid and advice (which would relate to a certain amount of work in the unfitable category) raised the question as to whether this type of approach to solicitors' fees should continue.

299. Since the present application related to unremunerative work, the Department of Justice requested that the Commission should indicate if whatever increased fees that they might recommend, on the basis of the present application, could be considered as adequate in themselves, without reference to any more profitable work a solicitor might have. The Department of Justice was not in a position to indicate how many of the solicitors participating in the legal aid scheme had practices that included a substantial amount of the more profitable business, but it was understood that a small number of those in the Dublin area concentrated almost exclusively on free legal aid work.

300. We considered this application from the

Incorporated Law Society at our meetings on 17 and 23 December 1974. We note the statement by the Department of Justice that it had been hoped that "the actual increases to be allowed would have been fixed by the Commission acting more or less in the role of arbitrator". Our function is to make recommendations on applications for increases in prices, charges, or fees that are referred to us and not in any circumstances to act as an arbitrator.

301. The comments by the Department of Justice make it clear that the fees paid under the free legal aid scheme cannot be determined without reference to the general scales of solicitors' fees for all the work they do. We have, therefore, decided that a detailed investigation of solicitors' fees is necessary. We will give the Incorporated Law Society the opportunity of commenting on the draft terms of reference for this study. Since the fees paid under the free legal aid scheme have not been increased since 1970, we recommend that an interim increase of not more than 66⅔% should be granted on each of the fees now payable under the Scheme. In addition, the following new fees should be introduced into the Scheme:

(a) Hearing of bail applications and cases stated:

One day hearing	£28.00
Each additional day	£14.00

(b) Each visit to Mountjoy, St. Patrick's or other Penal Establishment: £9.00 plus travelling expenses as appropriate.

We will review these interim increases when the general examination of solicitors' fees has been completed.

Changes in Membership of Council

Mr. Ralph Walker, a past President of the Society, after having been re-elected to Council, resigned on the ground of ill-health, on 12th December, 1974.

Mr. John Buckley was appointed by the Council to replace Mr. Walker as an Ordinary Member of the Council.

Mr. Rory O'Donnell was appointed by the Council to replace Mr. Buckley as a representative of the Dublin Solicitors' Bar Association.

Mr. Thomas Valentine O'Connor, a past President of the Society resigned from the Council on the 16th January, 1975. **Mr. Patrick T. Monahan,** Solicitor, Steven Street, Sligo has been co-opted to the Council to replace Mr. O'Connor.

Mr. Peter Murphy, solicitor, Ballybofey, Co. Donegal, has been co-opted to the Council as Ulster Representative.

Appointments

Mr. Eamonn Barnes, Barrister-at-Law, former Legal Assistant in the Attorney General's Office, has been appointed to the post of Director of Public Prosecutions created under an Act of 1974. His main function will be to decide whether a criminal prosecution should be instituted in specified circumstances.

Mr. Graham Golding, M.A., LL.B. (T.C.D.) Dip. Eur. Law (U.C.D.), solicitor, has been appointed a Lecturer in Business Administration in the Faculty of Commerce, U.C.D., Belfield.

The Register

REGISTRATION OF TITLE ACT, 1964
Issue of New Land Certificate

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

Dated this 15th day of February, 1975.

D. L. McALLISTER,
Registrar of Titles

Schedule

(1) Registered Owner: Edward J. Quinn; Folio No.: 18216; Lands: Athlone; Area: 0a. 0r. 16p.; County: Westmeath.

(2) Registered Owner: Gebhard Betz; Folio No.: 17801; Lands: Ardcavan; Area: 2a. 3r. 9p.; County: Wexford.

(3) Registered Owner: Arthur Allen; Folio No.: 6168; Lands: Ballydonarea; Area: 1a. 1r. 18p.; County: Wicklow.

(4) Registered Owners: Roland Shannon and Hilda Shannon; Folio No.: 15115; Lands: (a) Leaffony, (b) Owenykeevan or Tawnamaddoo, (c) Owenykeevan or Tawnamaddoo, (d) Owenykeevan or Tawnamaddoo; Area: (a) 59a. 3r. 14p., (b) 1a. 1r. 19p., (c) 2a. 3r. 20p., (d) 1a. 1r. 34p.; County: Sligo.

(5) Registered Owner: Thomas Kelly; Folio No.: 9487; Lands: (1) Coldwood or Foorkill, (2) Coldwood or Foorkill (one undivided 19th part of other part of the lands of Coldwood or Foorkill aforesaid containing 48a. 2r. 13p.; Area: (1) 40a. 3r. 3p., (2) 48a. 2r. 13p.; County: Galway.

(6) Registered Owner: John Whelan; Folio No.: 4218; Lands: Barmoney; Area: 123a. 1r. 21p.; County: Wexford.

(7) Registered Owner: Mary Margaret Cooney is full owner as tenant in common of an undivided third share of the property; Folio No.: 14973; Lands: (1) Glooria (E.D. Tumna South), (2) Cloongreaghan; Area: (1) 33a. 0r. 6p., (2) 0a. 3r. 35p.; County: Roscommon.

(8) Registered Owner: Denis P. Mullane; Folio No.: 46924; Lands: Kilnaglery; Area: 0a. 2r. 8p.; County: Cork.

(9) Registered Owner: Con Furey; Folio No.: 9411R; Lands: Carnbeagh North; Area: 6a. 1r. 15p.; County: Donegal.

(10) Registered Owner: Frederick S. Davis; Folio No.: 7610; Lands: Glascarn (part); Area: 175a. 1r. 30p.; County: Westmeath.

(11) Registered Owner: Thomas W. Leybourne; Folio No.: 1419; Lands: Tullowphelim; Area: 112a. 1r. 24p.; County: Carlow.

(12) Registered Owner: John P. Slattery; Folio No.: 1284L; Lands: The leasehold interest in the property situate in the townland and Barony of Clane; Area: 0a. 0r. 12p.; County: Kildare.

(13) Registered Owner: Michael Fitzgibbon; Folio No.: 2313; Lands: Newtown (Parish of Kilmurry); Area: 30a. 1r. 37p.; County: Limerick.

(14) Registered Owner: Irish Commercials Limited; Folio No.: 2301; Lands: Ward Upper (Part); Area: 8a. 3r. 13p.; County: Dublin.

Notices

FOR SALE

(1) Halsbury's Laws of England, First Edition, on thin paper. £14.00 plus packing and postage.

(2) Second Edition consisting of 20 volumes of the Encyclopaedia of Forms and Precedents with two cumulative supplements £30.00 plus packing and postage.

Replies to Box 111.

Second edition of the Encyclopaedia of Forms and Precedents, thin paper edition complete. Offers to Box 112.

LOST WILLS

Lucy Fitzpatrick, deceased, late of Kildangan, Co. Kildare, Spinster.
Would any person having knowledge of a Will of the above named deceased kindly contact George D. Fottrell & Sons, Solicitors, 15 Upper Fitzwilliam Street, Dublin 2.

John O'Reilly, deceased, late of 28, Warren Street, South Circular Road, Dublin and formerly of Ballymurrin, Enniscorthy, and lately employed by American Express, Travel Division, Dublin.
Any person knowing the whereabouts of the last Will and Testament of the above named deceased should communicate at once with the undersigned Solicitor: Henry J. Frizelle, Solicitor, Enniscorthy, Co. Wexford. Tel.: 054-2547.

Final Year Business Studies Student, graduating in July, seeks Master. Willing to work full time. Replies to Box 113.

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Book-Keeping Examination

At the Book-Keeping Examination held on 30th September, 1974, the following candidates passed:

James J. Binchy, Ursula Bowman, David B. Browne, Eoghan P. Clear, Marie C. Collins, Eugene Cush, Philomena M. Deving, B.C.L., Mary C. Dolan, Anthony H. Ensor, B.C.L., Edward C. Hughes, Philip M. Joyce, Dermot MacDermot, B.C.L.

Derek Mathews, Kevin Matthews, B.Comm., Michael Mooney, B.A., John Morahan, B.C.L., Anthony J. Murray, B.C.L., LL.B., Esther McGahon, Dermot Neilan, John M. O'Dwyer, Leonie O'Grady, B.C.L., LL.B., Peter J. Redmond, John C. Reidy, B.C.L., Vincent Shields, B.C.L.

39 candidates attended; 24 candidates passed.

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THE GAZETTE OF
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FREEDOM OF ESTABLISHMENT AND FREEDOM TO PROVIDE SERVICES IN THE E.E.C. AS ILLUSTRATED BY TWO RECENT JUDGEMENTS OF THE COURT OF JUSTICE

by
GERALD FITZGERALD, SOLICITOR, BRUSSELS

Part I

Introduction

The EEC Treaty, reduced to its bare bones, is based on four fundamental freedoms, namely the free movement of goods, of persons, of services and of capital. It also provides for the establishment of a common agricultural policy, a common transport policy and a common commercial policy, and of rules to ensure that competition is not distorted within the Common Market.

The Court of Justice of the European Communities recently delivered two Judgements which dealt with two of the fundamental freedoms referred to above, namely free movement of persons (specifically, the freedom of the establishment) and the freedom to provide services. Although the conclusions of the Court were predictable enough, the Judgements have clarified a number of points and should give some stimulus to the detailed implementation of these freedoms, particularly in relation to the liberal professions.

The Reyners Case—Freedom of Establishment

The first Judgment, which dealt with freedom of establishment, was delivered on 21st June 1974 in **Case 2/74 Reyners v. Belgium (1974 E.C.R. 631).**

The right of establishment, with which Articles 52-58 of the EEC Treaty are concerned, may be briefly defined as the right of a national of one Member State to work as a self-employed person in any other Member State on the same terms as nationals of that Member State. The concept of establishment, as opposed to the provision of services on a temporary basis, implies an intention of setting up business in the host Member State on a long-term, though not necessarily, permanent, basis. The right also extends to companies as defined in Article 58 of the Treaty, but since only natural persons were involved in the case under consideration, the implications of the right for companies will not be considered here.

The first sentence of Article 52, which sets out the basic right, reads as follows:

> "Within the framework of the provisions set out below, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be abolished by progressive stages in the course of the transitional period."

The transitional period ended on 31st December, 1969.

The details of the measures to be adopted for the abolition of restrictions in accordance with Article 52 are set out in Articles 54 and 57.

Article 54 requires the Council of Ministers, after consultation with the Economic and Social Committee and the European Parliament, to draw up a General Programme for the progressive abolition of such restrictions. This Programme, which was drawn up in December 1961, specified, in general terms, the beneficiaries of the right, the restrictions to be removed, and in detail, the stages during the transitional period by which specified activities were to be liberalised. Article 54 further provides that the General Programme should be implemented by means of Council Directives.

Article 57 requires the Council to issue directives for the mutual recognition of qualifications and for "the co-ordination of the provisions laid down by law, regulation or administrative action in the Member States concerning the taking up and pursuit of activities as self-employed persons". The provisions of this Article are particularly relevant for the liberal professions, for which effective freedom of establishment can be achieved only through the co-ordination of qualification requirements in the different Member States and the mutual recognition of such qualifications.

Articles 55 and 56 contain exemption provisions. The first, which was particularly relevant in the **Reyners Case,** states that the provisions relating to the right of establishment

> "shall not apply, so far as any given Member State is concerned, to activities which in that State are connected, even occasionally, with the exercise of official authority."

Article 56 allows Member States to deny the right of establishment to nationals of other Member States on the grounds of public policy, public security or public health, and provides for the co-ordination of national measures relating to these matters.

The facts of the Reyners Case have already been set out in the Gazette (June 1974 p. 164) and therefore do not require repetition here.

The official translation of the questions posed by the Belgian Conseil d'Etat reads:

> "1) What is to be understood by "activities which in that State are connected, even occasionally, with the exercise of official authority" within

the meaning of Article 55 of the Treaty of Rome

Must this Article be interpreted in such a way that, within a profession like that of Avocat, only activities which are connected with the exercise of official authority are excluded . . . or as meaning that this profession itself is to be excluded . . . ?

2) Is Article 52 of the Treaty of Rome, since the end of the transitional period, a "directly applicable provision", despite, in particular, the absence of Directives as prescribed by Articles 54 (2) and 57 (1) of the said Treaty?"

For the purpose of this Article, it is more logical to consider the questions in the reverse order.

1. The Direct Applicability of Article 52

The concept of direct applicability in Community law is one of the most original and important developed by the jurisprudence of the Court of Justice. It consists in the recognition that certain Articles of the EEC Treaty in contrast to those of most international treaties, "produce direct effects and create individual rights which municipal courts must recognise and enforce". The significance of the description "direct" is that an Article having such an effect has the force of law in all Member States automatically without any need for specific implementing national legislation. Consequently, any national legislation inconsistent with directly applicable provisions of the Treaty is unenforceable. The basis for the Court's approach is the assumption that EEC represents a new legal order in international law, for whose benefit the Member States have limited their sovereign rights, and whose subjects are not only the Member States but individuals as well.

It is clear from the Court's Case law that a Treaty provision produces direct effects in legal relations between the Member States and persons under their jurisdiction, and creates individual rights recognised by the Natonal Courts if the provisions is "complete and legally perfect." To be so considered, the provision must be clear and unconditional, and must not be subject to the need for further legislative intervention by either the Community or the Member States to give it effect. In the Reyners Case, the parties represented (who included the Irish Government) divided on this last point. Some felt that Article 52 merely created a principle, albeit fundamental, which was dependent on the adoption of subsequent implementing measures required by Articles 54 and 57, and could not therefore be considered directly applicable. Othere argued that, even if this were true in relation to the abolition of certain restrictions, the Article should be considered directly applicable as far as restriction based on nationality were concerned.

The Court analysed the implementation measures required by Articles 54 and 57 as having two functions, the first being to eliminate, during the transitional period, obstacles to the freedom of establishment, and the second being to cor-ordinate national measures so as to facilitate the effective exercise of this freedom. It concluded that the expiry of the transitional period on 31st December 1969 rendered superfluous the directives eliminating obstacles. The right guaranteed by Article 52 could in no sense be considered "dependent" upon the adoption of such directives and the Article there fore took direct effect at the end of the transitional period, thereby creating individual rights which national courts must recognise. The Court emphasised however that, where freedom of establishment for any activity had not yet been implemented, directives would still be required to fulfil their second function, namely the facilitation of the effective exercise of the freedom.

In reaching its decision, the Court demonstrated once again its concern that private individuals should enjoy rights under the Treaty in as direct and extensive a manner as possible, and that the Member States should not be allowed to interfere with the individual's enjoyment and enforcements of these rights.

2. The Extent of the Exception contained in Article 55

The question as to whether the whole legal profession should be exempted from the provisions of the Treaty relating to freedom of establishment has been a source of considerable controvery both during the drafting of the Treaty and since it came into force. The settlement of the issue by the Court is therefore very welcome. The fact that, *in toto*, the party's submissions on this question were almost twice as long as those on the question of the direct applicability of Article 52 is an indication of the importance attached to the problem.

Most of the intervening parties argued that the exception should be restricted to activities within the professions which are closely connected with the exercise of official authority, and should not extend to every activity of professions which involve the occasional exercise of official authority. Others, perhaps more enamoured of restrictive practices, felt that, in relation to the legal profession, lawyers' activities cannot be clearly separated into those which involve the exercise of official authority and those which do not.

The Court decided that, given the spirit and objective of the Treaty, the exception in Article 55 must be interpreted in a restrictive sense. Its purpose, the exclusion of non-nationals from exercising official authority, is fully satisfied when the exclusion is limited to activities involving "a direct and specific connection with the exercise of official authority". The exclusion of non-nationals from a whole profession would be possible only if the activities connected with the exercise of official authority are so inseparable from the professional activity in question that non-nationals could not otherwise be prevented from exercising such authority. In relation to the legal profession, the Court specified that activities such as consultation and representation in court cannot be considered to involve the exercise of official authority.

In other words, no Member State may refuse nationals of other Member States admission to the legal profession the basis of Article 55.

An important point made by a number of the parties

was that it obviously cannot be left to Member States to determine themselves the nature and scope of the exemption given in Article 55 and thus alter as they please the scope of the right of establishment. A Community definition of the concept of the exercise of official authority is necessary. The Commission suggested that this should be defined as:

> "The exercise of prerogatives outside the general law, powers of constraint with regard to persons and possessions, which ordinary citizens do not have and which enable him on whom they are conferred to act independently of the consent or even against the will of the other person."

The Court did not adopt the Commission's definition, although it might have been preferable had it done so. It merely stated, rather vaguely, that in the application of the exception in the different Member States "the Community character of the limits imposed by Article 55 on the exceptions permitted" must be taken into account "in order to avoid the effectiveness of the Treaty being defeated by unilateral provisions of Member States."

(Part II will deal with the Van Binsbergen and Wallrath Koch cases.)

Proceedings of the Court of Justice of the European Communities

On 3 December 1974, the Court of Justice of the European Communities accepted the solemn declaration of Mr. Guido Brunner, the new Member of the Commission of the Eureopean Communities for the period from 12 November 1974 to 5 January 1977, nominated to replace Mr. Ralf Dahrendorf. who has taken up the duties of Principal of the London School of Economics.

Case 33/74 — Van Binsbergen v Board of Trade of the Engineering Industry in the Hague.

In the Netherlands, the profession of legal adviser is not subject to any rules or regulations and is not dependent on any sort of qualification or professional discipline.

The appellant in the main action had authorized Mr. X, who exercises this profession of legal agent, to represent him before the Netherlands Appeal Court of Social Security.

During the course of the proceedings, Mr. X, who is a Dutch national, transferred his habitual residence from the Netherlands to Belgium. The Registry of the Social Security Court then informed him that he was no longer entitled to act as an authorized legal representative or adviser, since the rules of procedure of Dutch social tribunals prescribe that only persons established in the Netherlands are entitled to exercise those functions. These facts led the Social Security Court to refer two preliminary questions to the Court of Justice of the European Communities on the interpretation of the provisions of the Treaty of Rome relating to freedom to provide services within the Community. In its reply the Court ruled that the provisions of the Treaty must be interpreted as meaning that the national law of a Member State cannot, by requiring habitual residence with that State, make impossible the provision of services by persons established in another Member State, when the provision of services is not subject to any special condition by the National Law applicable. The Court also confirmed the direct effect of Articles 59 and 60 of the Treaty, at least in so far as they seek to abolish any discrimination on grounds of nationality or residence within any State of the Community.

Case 41/74—Van Duyn v the Home Office (Preliminary ruling) 4.12.74

This is a "first" for the Court of Justice of the European Communities, being the first time that the Court has had to reply to a preliminary question referred by a British court, in this case the Chancery Division of the High Court, and the first time in its case-law that the problem concerning the proviso of public policy in relation to freedom of movement for workers has arisen. The facts are straightforward. A woman of Dutch nationality arrived in Great Britain to take up employment as a secretary with the Church of Scientology, of which she is a practising member. She was refused leave to enter the United Kingdom on the grounds that the Government considers the activities of the said organization to be harmful and to constitute a social danger.

The plaintiff, who was sent back to the Netherlands, brought an action against the Home Office in which she invokes Article 48 of the EEC Treaty, which guarantees freedom of movement for workers, and, in particular, a Council Directive providing that measures taken on grounds of public policy shall be based exclusively on the personal conduct of the individual concerned (which tends to limit the discretionary

power attributed to the authorities responsible in matters of entry and deportation of foreign nationals).

The High Court, before which the case was brought, requested the Court of Justice to give a preliminary ruling on the following three questions:

—Is the provision of the EEC Treaty relating to freedom of movement for workers, entailing the abolition of any discrimination based on nationality but including a proviso in respect of limitations justified on grounds of public policy, public security or public health, directly applicable?

—Is the Council Directive prescribing that measures taken on grounds of public policy shall be based exclusively on the personal conduct of the person concerned, directly applicable?

—Does association with a group or organization in itself constitute personal conduct?

It is appropriate to observe at this point that the right to freedom of establishment under the Treaty has been somewhat restricted by a Council Directive authorizing Member States to continue to exercise their power to exclude foreign nationals on grounds of public policy, public security or public health. This Directive subjects the decision of the Member State to the criterion of the personal conduct of the person concerned.

Can it be said that a person's association with a particular organization allows a judgment to be made of that individual's personal conduct? The Court confirmed in its judgment the direct applicability of the Community rules on free movement of persons. The Court also said that **although past association cannot be considered a criterion of conduct, active and avowed association may constitute such a criterion. Moreover, Member States may declare that activities which they consider to be socially harmful or undesirable are contrary to public policy,** even if they have not gone so far as to make them unlawful. Finally, recalling the principle of international law according to which a State cannot refuse entry to its own nationals, the Court emphasized that non-nationals cannot rely on this same principle.

At a formal hearing on 12 December 1974 the Court of Justice of the European Communities took leave of Cearbhall Ó Dálaigh, President of Chamber, who had been elected President of the Republic of Ireland. At the same hearing Judge O'Keeffe, who had been appointed judge at the Court of Justice in place of Judge Ó Dálaigh, took the oath.

Case 36/74—Walgrave and Koch v Association Union Cycliste Internationale. (Prelim. ruling) 12.12.74

It was not a marathon with which the Court of Justice of the European Communities finished 1974, but a case concerned with the rules of the Union Cycliste Internationale (UCI). How did the cycling sport enter Community case-law? The plaintiffs in the main action, both of whom are Dutch, are pacemakers for medium-distance cycle races. That is to say that the cyclist (stayer) cycles in the lee of their motor cycle and thus reaches greater speeds. They take part, **inter alia**, in world championships, the rules of which, laid down by the UCL, provide that "as from 1973 the pacemaker must be of the same nationality as the stayer".

The plaintiffs in the main action considered that this provision was incompatible with the rules of the Treaty of Rome relating to the prohibition of any discrimination on grounds of nationality and with those containing the principle of the free provision of services within the Community, and brought an action against the UCI for the purpose of having this rule declared a nullity. The District Court, Utrecht, before whom the case came, referred the case to the Court of Justice of European Communities for a preliminary ruling on the interpretation of the above-mentioned principles of Community law from the special aspect of their application to rules of sport. The Court has just ruled that:

—Having regard to the objectives of the Community, the practice of sport is subject to Community law only in so far as it constitutes an economic activity within the meaning of Article 2 of the Treaty.

—The prohibition on discrimination based on nationality does not affect the composition of sports teams, in particular national teams, which is a question which has nothing to do with **economic** activity.

—Prohibition on discrimination based on nationality applies not only to the action of public authorities **but extends likewise to the rules of any other nature aimed at collectively regulating gainful employment and provision of services.**

—The rule on non-discrimination is relevant in judging all legal relationships in so far as these relationships by reason either of the place where they are entered into or the place where they take effect, can be located with the territory of the Community.

—**The first paragraph of Article 59 creates individual right which national courts must protect.** The Court thus confirms the principle of the direct applicability of the provisions of the Treaty of Rome with regard to freedom to provide services.

Recent Irish Cases

Claim by cemetery to be exempted from rates rejected

Claim by plaintiffs and three rate collectors against defendant, owners of Glasnevin Cemetery for rates from April, 1964, to March, 1971. The defendants claim exemption from rating for the reason that the land is used as a burial ground. The plaintiffs were unsuccessful in making a similar case in 1897 — reported (1897) 2 I.R. 156; it was then unsuccessfully claimed that the lands were used for charitable purposes under S. 2 of the Valuation Act, 1854. The present application is made under S. 63 of the Poor Relief (Ireland) Act, 1838, which states that "No .... burial ground or cemetery .... used exclusively for charitable purposes, shall be rateable, except where any private profit or use is derived therefrom".

From the cases of **McGahan v. Commissioner for Valuation**—(1934) I.R. 736—and **Barringtons Hospital, Limerick v. Commissioner for Valuation**—(1957) I.R. 299 it is clear that burial grounds and cemeteries are not to be rated at all unless private profit is derived from it. Evidence was produced that, from audited accounts, the cemetery had been run at a loss from 1964 to 1971, and consequently during that period was not a source of private profit. However, as long as the defendants remained rated in respect of an assumed annual profit, the plaintiffs were entitled to claim for rates. It was for the defendants to seek to have the valuation lists revised, which they have not done. The plaintiffs are accordingly entitled to recover the amount claimed.

Dublin Corporation v. Dublin Cemeteries Committee—O'Keeffe P.—unreported—9th July, 1974.

Architect's claim for fees substantially reduced

The Plaintiff, an architect, claims £3,110 due for fees in respect of work done by the Defendants. The plaintiff pleaded that the contract between the parties was contained (1) partly verbally, and (2) partly in two letters from the plaintiff to the defendant dated 29 June, and 1 July, 1971, and a reply from the defendant to the plaintiff dated 8 July, 1971. The defendant pleaded that there were at the times and places stated vague and uncertain arrangements in regard to the proposed developments of the land in question, and that at no time were any proposed works the subject of a written agreement; they also pleaded that there was never a valid and binding agreement between the parties. The letters referred to did purport to set out the terms upon which the plaintiff was to be employed in connection with a proposed scheme of development of lands at Rossnowlagh, Co. Donegal. In the letter of 29 June, 1971, the plaintiff suggested that the scheme should be presented as a complex of Fishing and Shooting Lodges with ancillary residential club facilities planned on an amusement parkland. The plaintiff stated that he expected to be sole architect of the shooting lodges as well as receiving the usual 6% fee on the Residential Club, plus hotel and travelling evpenses. In the letter of 1 July, 1971, the plaintiff stated that, if the scheme of the letting of the shooting lodges was successful, he would collect his full R.I.A.I. scale fees from the individual purchasers concerned, who would be tied to him as sole architect of the project. The defendant in his reply of 8 July, 1971, dealt with the approval of the site by the Co. Engineer, but did not mention the question of remuneration; it must therefore be assumed that he agreed to the plaintiff's terms.

As none of the situations arose, in which the R.I.A.I. charges were to apply, the plaintiff's claim must be confined to **"quantum meruit"**. The only part of the scheme for which full planning permission had been granted, was for Lodge No. 1, to be occupied by the defendants. Originally the lodge was a four-bedroom house, but it eventually became a six bedroom house, which is now a registered guest house; the plaintiff estimated the cost at £17,500 and this was not disputed. Apart from the preparation of detailed plans, and the supervision of the work, involving a number of visits to Co. Donegal, the architect had to sort out the difficulties which arose by reason of the fact that the Engineer employed by the dependants parted company with him in February, 1972, The account furnished by the plaintiff, totalling £3,109, covered the period from June, 1971, to June, 1972. He had also submitted in May, 1972, an additional bill of £1,050 for survey design and planning in view of the enlargement of the original plans, procurement of materials being 6% of £17,500.

The plaintiff admits that, except for a sum of £24 which will be allowed all proper travelling and hotel expenses had been paid. Having considered all the circumstances, Pringle J. held that a reasonable claim would be 4% on the total cost, i.e. £700 plus £10 for printing; this is to include the earlier sketch plan, as well as all the supervision. A charge of £7 per hour is reduced to £4, and the total amount allowed in respect of individual items is £520. If this sum of £520 is to be added to £710 already allowed, the total amount of the claim allowed is £1,230.

(Devaney v. Reidy—Pringle J.—unreported—10 May, 1974.)

If a general meeting ratifies unlimited borrowings of a company, a debenture with a bank is valid, and all amounts due by the company under the debenture must be paid.

The Company concerned was incorporated in February, 1953, in order to take on as a going concern the business of building contractors carried on by the two person named in the company. There was a special clause (m) in the Memorandum relating to the borrowing of money. Except for special terms relating to borrowing, Table A of the Companies Act, 1908 applied to this Company. The share capital of the

Company was £12,000, of which £11,500 had been issued. At the first ordinary General Meeting of the Company in March, 1954, it was agreed that the company should be allowed to borrow without limit. The Company negotiated for an overdraft with the Provincial Bank, who insisted that the Company should give a Debenture charging all its assets. This Debenture was to rank as a first charge on the property; as regards the Company's freehold and leasehold premises, it was to be regarded as a fixed charge, but, as regards all other present or future property, it was to be regarded as a floating security. The terms of the Debenture are set out in the Judgment. The amounts due by the Company to the Bank were as follows: (a) January 1956—£14,570; (b) January 1966—£13,081; (c) January 1971—£60,260. On 15th September, 1971, the Bank appointed the applicant as receiver of the assets of the company. The receiver has applied to the Court to determine (1) whether the debenture was valid; (2) whether it secures £11,500 only or the total sum now due—£98,000. At the general meeting of 1954, the company gave its consent to the directors to borrow more than the issued share capital of the company; it follows that the amount secured by the debenture is not limited to £11,500, but that the whole amount is due.

The balance sheets and accounts for many years since 1954 were accepted and signed at the general meeting of the company. The accounts, prepared by auditors, would have shown the amount borrowed by the company. On the authority of **Grant v. U.K. Switchbank Railway Co.** — (1888) 40 Ch.D. 135 — approval of the Company in general meeting of the accounts, would have been a ratification of the actions of the directors in borrowing more than the issued share capital of the company. The Court accordingly ruled that the debenture of February, 1954, given by the Company to the Provincial Bank was a valid and effective Debenture, which created a valid charge against the assets of the company in respect of monies due to the Bank in excess of £11,500. Thus the Bank and other creditors are entitled to claim the total amount due to them.

(Re Burke, Clancy & Co. Ltd.—Application of John Fitzgeral, Receiver—Kenny J.—unreported—23 May, 1974.)

Custody of two boys transferred from father to mother, due to father's misconduct.

On 9 October, 1974, Kenny J. ordered that the Canadian wife be granted custody of her infant children, and that they should be handed over by the husband on her undertaking not to take them outside the jurisdiction. The husband appealed. (For full previous facts, see Gazette, May, 1972, p.147). The custody of the two boys, aged 9 and 12, had been awarded to the father on 27 April, 1972. Since then, the Judge was satisfied that improper relations had taken place between the husband and two other women; one of these liaisons had taken place at a time when the children were in the house. The Judge considered that in such circumstances misconduct would have a devastating effect on the moral standards of the boys who are now aged 11 and 14. The husband tried to state that the lady in question was a neighbour, who merely looked after the children, but that no misconduct had taken place; this lady declined to give evidence. The Judge in those circumstances was satisfied that the boys, who were of an impressionable age, should be removed from the father's custody. **Butler v. Butler** established that the parent who loses the custody still retains rights of guardianship. The Supreme Court has interviewed the two boys, trying to canvass their views. In the prevailing circumstances, as the boys should have constant access to both parents who do not live far away from one another, they should be in the custody of their mother during the shool week, but the father should have access to them at weekends to bring them to sports. Special arrangements will be made for vacations. These boys may not be removed out of the jurisdiction of the Court by either parent without leave.

(Waters v. Waters—Supreme Court (Walsh, Henchy and Griffin JJ.)—Separate judgments by each Judge—unreported—8 December, 1974).

£12,000 award for wife enticement

An award of £12,000 was made by a Cork jury in the High Court on 17 January 1975 in an action brought by a former resident in the Bishopstown area who alleged that his wife had been enticed and debauched by a neighbour.

The plaintiff in the action before Mr. Justice Gannon alleged that criminal conversation had taken place with his wife and he claimed damages from the defendant. The issue before the jury was one of assessment, and their members were told by the Judge at the conclusion of his direction to them that "there is no rule of thumb in matters like this. There is no element of reward for the plaintiff or of punishment for the defendant. Please bring out a reasonable figure."

The plaintiff told the court that he and his wife married in 1960 and there were no children of the marriage but they had adopted two children. Their marriage had been a happy one for many years. He did not know the defendant, who lived nearby, until the defendant's wife died about 1970. They then became friendly to some extent, and he noticed after a while that there seemed to be some sort of relationship between his wife and the defendant, but he did not think it was a close relationship at first.

In the summer of 1972, his wife went to Dublin by herself saying she wanted to see her sister. He did not want her to go but she went anyway, and overstayed her visit by a few days.

Later that year his wife told him she had been invited to a christening party given by a relative of the defendant's and that he had not been invited. He told her then that he did not want her to go to the party, but she insisted on going.

"I waited until the early hours of the morning for her to return and then I heard her arriving in the defendant's van. I had the front door locked at that time but she got in through a window. I let her in through the window and then pushed her out of the

house' through the main door. I did not close it properly. She came back into the hall and when I was trying to get her out again, the defendant came into the hall and he beat me around the face."

Sold his house when wife left him

The plaintiff went on to relate in distressed tones that when he came home on the following Friday, his wife, their children and the furniture were gone from the house. His wife lived with the defendant and as a result had a child by the defendant. He had sold his house. He was in physical fear of the defendant.

He had nothing to live for. He was humiliated. He was a very happily married man and they had a nice home.

The wife left the house next day and he did not know where she went to for some time until he discovered she had a flat on Wellington Road, where he visited her and a later date spent four days there, leaving when he could not stick any more of it.

He had not given her money because he was not working. He attributed the change in her attitude towards him to the defendant's intervention. When he tried to resume married life with her at the flat, she did not respond, telling him instead of the things the defendant had promised her, including a house and her own car.

The wife began her evidence by saying that the defendant had five children of his own. When defendant's wife died, she went across to give a helping hand with the housework and after a while the defendant paid her for her work in the house. Then closer relations between them developed and she found herself pregnant. She did not tell her husband.

After the row over the Saturday night party, her husband left the house on the Sunday and she left it on the Monday, first living with the defendant's sister, later getting the flat where, when her husband visited her, she tried to make it up with him. She told him then of her pregnancy. Her husband first told her he would take her back and would accept the child, but soon left, and did not give her any money. "I had no more money to pay for the flat so I went to the defendant who took me in and I have stayed with him since. I am prepared to go back to my husband if he will take me."

The wife confirmed that she and the defendant had stayed together in a hotel during her Dublin visit.

To make amends

Answering his counsel, the defendant said he very much regretted what he had done and would like to see the plaintiff's family re-united, having on one occasion taken her to where the plaintiff was living. He was prepared to make what amends he could.

He and the wife had relations both in Cork and on their trip to Dublin regardless of the consequences to the wife's marriage. He and the wife were now living as man and wife.

In charging the jury, the Judge said they were not to consider the rights and wrongs as between the plaintiff and his wife nor to consider whether the defendant was a good or bad person. Their function was to say how much was to be paid to the plaintiff to make up for what he had lost and the injury he had sustained. The plaintiff had been deprived for the rest of his life of the love and affection that a wife could give to her husband and for that he had to be compensated, but they of the jury were not being asked to do anything that would punish the defendant for his wrong-doing. The defendant's regrets did not matter either.

After the jury had brought in their verdict, the Judge granted a defence request for a 21-day stay of execution. He awarded costs to the plaintiff.

(Keating v. O'Driscoll—High Court—Gannon J.—unreported—17 January, 1975).

New trial awarded in criminal conversation action, when £15,000 damages considered excessive, and various irregularities in Judge's charge condemned.

Plaintiff claims damages against the defendant for criminal conversation. Upon the hearing before Murnaghan J. and a jury in Cork in July, 1973, the jury awarded the plaintiff £15,000. The husband, plaintiff, and his wife were married in 1957, and first lived at Bruree, Co. Limerick, where the plaintiff carried on a grocery and business. Two children were born, a daughter in May, 1958, and a son in November, 1960. The plaintiff began to drink to excess, and he had to sell his business in Bruree, and to acquire a similar business in Castletownroche, Co. Cork. Here two more children were born, one in 1962 and the other in 1965. Unfortunately the drink problem persisted, and he had to occasionally undergo treatment in hospital for alcoholism. Finally it was decided that he would not continue in the business in Castletownroche but would start a new career in London. Early in 1966 he went to London, where he obtained work, and eventually set up an office cleaning business of his own. The wife remained in Castletownroche with the children, running the bar and grocery. The defendant was a substantial farmer in the area who patronised the plaintiff's bar. The wife and the defendant gradually became friendly, and the friendliness developed into an illicit intimacy, which persisted from 1970 to 1972. In September, 1972, the defendant inherited two farms from uncles who had died. The wife wanted the defendant to fulfil an alleged promise that he should leave his own wife, and go away with her as soon as circumstances permitted. This the defendant refused to do, and thus the full sordid story was made public. The plaintiff brought the proceedings in September, 1972.

At this time, despite the intimacy between the wife and the defendant, the wife continued to run the bar and grocery on behalf of the husband. The wrong done to the husband therefore consisted of the invasion of the privacy of his marriage and of the insult to his honour. There was no question of the loss of his wife's services.

The action of "Criminal Conversation" is based on Common Law in both England, until 1857, and Ireland until today. The whole history of criminal conversation

in England was fully considered by McCardie J. in **Butterworth v. Butterworth**—L.R. (1920) Probate 126. The following principles, laid down in that judgment apply to Ireland.

(1) Since the action was not historically one for trespass, but an action on the case, mere proof of adultery did not entitle the husband to damages — actual loss and injury had to be shown.

(2) Punitive or exemplary damages could not be awarded, and damages were restricted to what could be regarded as compensatory in respect of the loss and injury suffered.

(3) In awarding compensatory damages, regard should be had to (a) the actual value of the wife to the husband, and (b) the proper compensation to the husband for the injury to his feelings, the blow to his marital honour and the hurt to his matrimonial and family life.

(4) As to the value of the wife, this in turn can be considered on two aspects (a) the pecuniary aspect in relation to which her fortune and her assistance in her husband's business and such allied matters are relevant, and (b) the **consortium** aspect in relation to which the wife's general qualities as a wife and mother and her conduct and general character are relevant.

(5) With respect to damages for the injured feeling of the husband, moderation, rather than undue severity, should be the principle. The conduct of the defendant can be of the greatest importance. Any feature of treachery, any grossness of betrayal, any wantonness of insult, may deeply add to the husband's sense of injury and wrong, and therefore call for a larger award, not as exemplary damages, but as appropriate compensation.

(6) The character and conduct of the husband is as fully in issue as the character and conduct of the wife.

If punitive damages are ruled out, in what manner should the Court consider the award of £15,000 in this case? There was no pecuniary loss, nor was there loss of **consortium**, since, at the time of the adultery, the plaintiff and his wife were living apart. From the evidence the husband accepted news of his wife's infidelity rather philosophically. Since September, 1972, the husband returned to Ireland to live with his wife, and has lived with her ever since. The award of £15,000 is consequently grossly punitive and excessive.

With regard to the Judge's charge, the defence of condonation was never opened to the jury, had been abandoned at the trial, and should not have been brought to the notice of the jury by the Judge. The Judge in his charge suggested that the wife could have had intimate relations with two other men in the district. Without proof, this was quite inadmissible, as questions directed to a wife with a view to establishing her misconduct are essentially matters in issue. For these and other minor reasons, the trial must be set aside and a new trial ordered.

(Maher v. Collins — Full Supreme Court per O'Higgins C.J.—unreported—4 December, 1974.)

Correspondence

Office of the Revenue Commissioners,
Dublin Castle,
Dublin 2.

5 March, 1975.

James J. Ivers, Esq.,
Director General.

Dear Sir,

I am directed by the Revenue Commissioners to refer to your recent enquiry regarding the types of payments to be included in the recently designed Forms 8-2 (Solicitor) and to state that the payments to be included are payments such as those listed below:—

(i) Interest or dividends on National Loans, Exchequer Bonds, National Savings Bonds, National Development Loan, and Exchequer Stock.
Interest on Bank Accounts or Deposits.
Interest from any Local Authority, where paid without deduction of tax;
Interest from the Agricultural Credit Corporation, Ltd., the Electricity Supply Board, Coras Iompair Eireann or Bord na Mona where paid without deduction of tax;
Interest on dividends on British War Loans or other British and Northern Ireland Government Securities and Savings Certificates;
Interest on shares or on deposits in Building Societies in Great Britain and Northern Ireland;
Income from Securities, Stock, Shares, Rents or any other possessions outside the State;
Discounts on Exchequer Bills or British Treasury Bills;
Other Interest, Annuities, Annual Payments, etc., not subject to Irish Income Tax at source.

(ii) Sums of which the Solicitor is in receipt, which are paid under his authority to bankers or other persons acting on his behalf, should, unless taxed by deduction to Irish Income Tax, be included in the Form 8-2 (Solicitor).

Yours faithfully,
G. McStravick.

SUPREME COURT OF JUDICATURE OF NORTHERN IRELAND

Solicitor suspended for four years for not keeping proper accounts

In the matter of Hubert J. O'Neill, a Solicitor.
[Lowry, LCJ. July 23, 1974.]

It is unnecessary for present purposes to take this matter back beyond 19th September, 1973, when in a letter from the Secretary of the Law Society certain matters were put to Mr. Hubert O'Neill, whom I shall refer to as "the solicitor", in respect of his accounts. A correspondence ensued. The solicitor was invited to appoint an Accountant to audit and produce his books. He did not do so by 5th October, the date mentioned in the letter from the Law Society, and the Law Society, though they had been willing to approve of the Accountant proposed by the solicitor, which accountant felt unable to audit his books at that time, then, in accordance with the Accounts Regulations made under 2.33 of the Solicitors Act (Northern Ireland) 1938, which I shall call "the Act", appointed Messrs. Atkinson and Boyd. The accounts were produced, so far as they could be, to that firm of accountants by the solicitor and they made a report. This matter was made the subject of complaints and put before the Disciplinary Committee of the Law Society which met on 1st May. As well as that it appears that a number of complaints had been received by the Law Society from different clients of the solicitor and on 7th March, 1972, the Secretary of the Law Society drew these matters to the attention of the solicitor and asked for his explanations. Another subject of complaint is that the solicitor failed to deal with those enquiries expeditiously and that I shall return to in due course.

When the Disciplinary Committee met on 1st May, the solicitor had intimated the previous day his inability to attend and the Disciplinary Committee went ahead with the hearing, which was in accordance with the rules made for that purpose. Having considered the applications which were made by the Secretary of the Law Society in relation to the alleged defaults of the solicitor, the Committee on 1st May found as follows:—

(1) That the respondent (which in this context means the solicitor) had failed to keep proper books and accounts as required by regulation 1 of the Solicitors' Accounts Rules, 1939;
(2) That the respondent had failed to prepare proper Balance Sheets and Statements as required by regulation 2 of the Solicitor's Accounts Rules, 1939;
(3) That the respondent had made a false declaration for the purpose of obtaining a practising certificate for the year ended 5th January, 1972. The Committee noted that they were satisfied that paragraphs 1 and 2 of the declaration were false;
(4) That the respondent had failed to obtain practising certificates for the years ended 5th January, 1973, and 5th January, 1974, while holding himself out as being entitled to practise during those years;
(5) That the respondent had failed in a reasonable time to make proper answer to the Society regarding matters on which he was required to report.

The matter came before me under section 19(6) of the Act and it is my duty to deal with it in accordance with section 21 which provides as follows:—

"(1) The Lord Chief Justice after hearing a report by the Committee under section 19 of this Act or an appeal from a decision of the Committee under section 20 of this Act may
(a) cause the name of the solicitor to whom the or the appeal relates to be struck off the roll; or
(b) suspend the said solicitor from practising for such time as the Lord Chief Justice may determine; or
(c) censure the said solicitor or censure him and impose a fine upon him;
and the Lord Chief Justice may also find the said solicitor liable in any costs and expenses which may be involved in the proceedings before him or in the investigation of the said solicitor's conduct by the Committee and may make any order in relation to the case which he may see fit.
(2) Before making an order under this section the Lord Chief Justice shall hear the parties or give them an opportunity of being heard on the report by the Committee, or on the appeal to the Lord Chief Justice from a decision of the Committee, as the case may be."

The case has been clearly presented by Mr. Sheil and Mr. Mooney has said everything which could properly be said for the solicitor concerned. The solicitor has not attended and appears content to rely on his affidavits, the correspondence and the submissions now made by Counsel. I am satisfied, and Counsel agrees, that my duty of hearing the parties or giving them an opportunity of being heard has been performed.

In regard to the keeping of accounts, the Society relies on section 33 of the Act and regulations 1 and 2 of the accounts regulations and on section 34. Section 33 gives power to the Society to make regulations and I refer to the first two which are—

"1. Every solicitor shall keep such books and account as may be necessary to show in connection with his practice all moneys received from or on account of and all moneys paid to or on account of each of his clients;
2. Every solicitor shall at least once in each year prepare such Balance Sheet and Statement in connection with his practice as will show in summary form all moneys held for or on account of his clients and where and how at the date of such Balance Sheet and Statement he holds said moneys in safe-keeping and available for payment."

Section 34 provides that if any solicitor fails or neglects to observe or comply with any of the regulations made under the last preceding section the Society or any person may make a complaint in respect of that failure or neglect to the Committee, meaning the Disciplinary Committee.

Another complaint concerned the false declaration allegedly made by the solicitor in order to obtain a practising certificate for the year ending 5th January, 1972. To make such a declaration wilfully has been held to be unbefitting conduct in England and is covered by section 19 of our Act generally. Failure to obtain a practising certificate and holding oneself out thereafter as a practising solicitor is covered specifically by section 38 and section 39 of the Act.

In looking at these charges I am conscious that they must be proved beyond reasonable doubt since they affect a solicitor in a criminal or quasi-criminal way and are of great moment to him professionally. I find all the charges to have been proved. Looking at the first charge it is obvious that no proper accounts were kept and, so far as the second charge is concerned, it is quite clear that there has been no proper Balance Sheet and Statement as required by regulation 2. One can see that quite easily from looking at the correspondence, with notice of which the solicitor was affected because he was told of its contents, and by looking at the report of Messrs. Atkinson and Boyd, which was similarly brought to his notice. These are serious matters and one can appreciate that from the fact that the Legislature has applied the provisions of Part II of the Act (of which section 21 is a part) to complaints in relation to section 34.

The third charge is connected with making a false declaration, viz. that proper accounts had been kept, which is a necessary declaration to make in order to obtain a practising certificate. I am satisfied that the false declaration was wilfully made and not inadvertently. It may be that the solicitor did not appreciate the gravity of the false declaration but I am quite clear that he did appreciate its falsity. I do not accept his explanation, the lameness of which only serves to show that it is not true.

As to the fourth charge of holding himself out as a solicitor when he had no practising certificate, it is clear to me that a man of the experience of this solicitor was doing this deliberately and that he could not have produced the accounts in good faith which would have properly led him to be granted a practising certificate for the years ending 5th January, 1973 and 1974.

I come now to the fifth charge which is one of failing to reply to the Law Society's queries. This again has been held to be unbefitting conduct in England and is undoubtedly covered by section 19 of our Act. I hasten to add that I am not concerned here with an alleged breach of duty to the solicitor's clients, although in fact the Law Society's queries originated from complaints made by the clients of the solicitor which mainly concerned his alleged delays in dealing with their affairs. I am not, however, to-day concerned with this and I appreciate that complaints of this kind may be well-grounded or otherwise in different circumstances. It is not important for that reason, and that reason only, for me to comment on the relationship between a solicitor and his client for the purpose of this hearing.

Having found all these charges proved, I have to consider the appropriate step to take under section 21. I do not think that a fine is the appropriate remedy. That solution may sometimes be used, as may censure, to act as a sharp reminder to a solicitor who has erred but who may safely be permitted to continue in practice when one has marked the occasion of is default. The choice here is between suspension and directing the striking off of the name of this solicitor from the rolls. In making that choice I bear in mind that on the evidence before me no turpitude involving clients has been shown. There is no evidence of repetition in the face of previous warnings or previous punishments. I take into consideration the bomb damage to this solicitor's office. It does not provide an excuse, but it is a strong ground of sympathy with him. I digress to say that about a year ago I ordered the suspension until further order of another solicitor from Londonderry, a Mr. Thompson. The circumstances were somewhat different in that the complaint did not come to me as a result of a hearing in front of the Disciplinary Committee but directly based on section 39, which dealt with holding himself out as a solicitor without having a practising certificate. The order was made to suspend that solicitor until further order because he was so practising and required to be stopped from doing so. Therefore there is no real parallel to be drawn, but at the time there is a relative standard of justice which appeals to the ordinary man and which militates against my striking the name of this solicitor off the rolls when I consider that all that I was asked to do under section 39 in the circumstances of Mr. Thompson's case was to suspend him from practice.

This solicitor has evinced the inability to carry out the ordinary routine of a solicitor's practice. It may be partly or largely due to the performance of his duties as a coroner but, whatever may be the reason, there is a danger to the public in allowing a solicitor who has reached that stage to continue to hold himself out as a practising solicitor. One has to deal here with an accumulation of serious breaches of a solicitor's duty and serious defaults which indicate that he is not in a position to carry out his duties to the public in an adequate manner and

therefore I direct that he be suspended from practice for a period of four years. I give liberty to either side to apply. I do not consider on the whole that it is an appropriate case in which to order this solicitor to pay the costs of the Society or the Disciplinary Committee and therefore I make no order as to costs. The Order which I have made is entirely without prejudice to any action which may be taken based on different facts if there are any facts justifying such action. But there are no facts before me which in my opinion necessitated the taking of any step beyond the comparatively lengthy suspension which I have seen fit to impose.

Solicitor's appeal against striking off on the ground of lack of independent advice dismissed

The appellant and B, both solicitors, entered into partnership in 1932 and bought the existing practice of a firm of solicitors. Among the clients of that firm whom the appellant and B took over were two ladies, Marie and Jane, whose family had had a long association with the firm. Marie had a forceful personality and was versed in business matters. Jane was less capable of looking after her own affairs. In 1948 Marie summoned B to see her. At the meeting she indicated to B that she wished to make a will and that, after certain pecuniary legacies had been made, she wished the remainder of her estate to go to Jane for life and then to be distributed as to one moiety to B's son and as to the other moiety to the appellant's daughters. B drew up a will for her on those lines, and it was duly executed by her. She received no independent legal advice in regard to the making of it and the detailed attendance note made by B of the meeting did not contain any reference to the question of independent legal advice being discussed. B acquainted the appellant with the contents of the will; the appellant had the impression that it had been suggested to Marie that she should obtain independent advice in respect of the will but had refused to do so. Early in 1949 Jane made a will leaving the bulk of her estate to Marie. In 1955 Marie executed a codicil to her will in which she specifically confirmed the gift of residue made under the will. In 1963 Jane, who was in poor health, instructed B to make a new will for her. Under it, inter alia, the residue was to be held on trust for W for life and then to be divided equally between B and the appellant. Jane did not receive any independent advice before she made that will, but the appellant had the impression that it had been suggested to her that she should seek such advice. In 1966 Marie died and under her will Jane became entitled to the residue of Marie's estate. The appellant was then concerned to devise a scheme which wouldl avoid or mitigate esate duty claims on Jane's death. He took counsel's opinion and as a result procured the drafting of a deed of release by Jane of her life interest in Marie's estate. He did not suggest that she should be separately advised and she was not. Jane died in 1969. Claims were made that the gifts to B, the appellant and their respective families could not stand and as a result B and the appellant had to refund all the money which they recived from either estate. A complaint was made to the Law Society that B and the appellant had been guilty of professional misconduct in that they had prepared documents under which they had benefited to a substantial extent without observing the appropriate rules as to ensuring that their client received independent advice before committing herself to them. The Disciplinary Committee of the Law Saciety held (i) that a solicitor in whose favour a client wished to make a will, was bound to tell her that she must be separately advised and if she refused to go to another solicitor, it was his duty to forego the benefit; (ii) as B and the appellant had failed to comply with that standard of conduct they were guilty of the offence and would be struck off the Roll of Solicitors. The appellant appealed contending that the Disciplinary Committee had imposed too strict a standard and that the penalty was too severe.

Held—(i) A decision as to what was professional misconduct was primarily a matter for the profession expressed through its own channels and the Court would not, and should not, question what a properly constituted Disciplinary Committee considered was the standard of conduct required of its profession.

(ii) The committee, in considering the penalty to be imposed on a person guilty of professional misconduct, had to have regard to the extent to which the existence of the standard was known and accepted within the profession at the time when the alleged default occurred; and the Court could and would alter the penalty imposed if it found that there were extenuating circumstances affecting the accused which would make it proper to say that his failure to comply with the rule laid down by the Committee did not merit the penalty imposed, i.e. because he did not know of the rule he was breaking. There were no grounds for reducing the penalty imposed on the appellant for (a) he must have known that Marie and, more especially, Jane should have been offered indpendent advice in respect of their respective wills and that he was himself under a personal obligation to see that each was separately advised before he accepted her gift; (b) in respect of the deed of release he knew that Jane had never been separately advised or invited to have separate advice and yet he had proceeded with the matter regardless of his obligations to her as a solicitor. The appeal would accordingly be dismissed.

[In Re a Solicitor—Queen's Bench Division (Lord Widgery CJ, Milmo and Ackner JJ—8 October 1974 —1974) 3. All E.R. 853]

DAIL QUESTIONS — 5 FEBRUARY 1975

IRISH STAFF FOR EEC

Mr. Lemass: Is it intended to fill the Secretary's post in Luxembourg?

Dr. FitzGerald: Yes, I hope to be able to fill it over the coming months. Because of our current Presidency of the European Community we have had to deploy staff on a temporary basis and quite a number of our missions abroad are understaffed for that reason at this time. That position will be mitigated, although not perhaps completely remedied, at the end of the present session.

Mr. Lemass: Is the Minister experiencing difficulty in recruiting suitable staff for his Department.

Dr. FitzGerald: This year I think we have had more successful applications than ever before, but of course our needs are greater than ever before.

Chairmen of EEC Committees

4. **Mr. O'Kennedy** asked the Minister for Foreign Affairs the number, if any, of the chairmen of the committees and working groups of the Council of Ministers of the European Community to be provided by Ireland from January to June, 1975, who are not members of the public service.

Dr. FitzGerald: All chairmen of committees and working groups of the Council to be provided by Ireland in the period from January to June, 1975, are members of the public service. Ireland is providing 98 chairmen for some 189 committees and working groups. Eighty-four chairmen are from Government Departments and offices, including one retired civil servant who is being employed on a fee basis. The remaining 14 chairmen are drawn from the following bodies:

Body	Number of Chairmen
An Foras Taiúntais	2
Córas Tráchtála	2
Industrial Development Authority ...	4
Institute for Industrial Research and Standards	3
National Science Council	1
Restrictive Practices Commission ...	2

Mr. O'Kennedy: In view of the fact that the Minister has told us that there are approximately 200 sub-committees, does the Minister not think it would be appropriate to have appointed to the chairmanship of some of these working committees some people who have special skill and special expertise in various areas? You have special committees for lawyers, for the paper industry and for the various professions. Would the Minister not think it would be entirely desirable, if not necessary, that there should be special provision for chairmanship from outside the public service or semi-State bodies?

Dr. FitzGerald: We have to distinguish here between committees of working groups which are concerned with questions of government policy, in the context of the Community, and with putting forward the views of the Irish Government on matters, and other informal groupings that exist where the interests of different sectors of the Community are represented — the Economic and Social Committee and many other working parties; I do not know what exact title one gives them — and where expert advice is given by the representatives of different interests to those concerned with decision making. The bodies with which I am concerned here are the committees and working groups of the Council of Ministers which represents Governments.

Mr. O'Kennedy: I take it from what the Minister has said that in fact there is no binding regulation which precludes the Government from nominating chairmen to these committees, in view of the fact that there are people there who were not in the public service. In view of that might I suggest that in some areas — in the area of the paper industry, insurance lawyers or any others — it would be more appropriate to have the profession or business organisation represented by chairmen for a number of reasons which must be obvious to the Minister.

Dr. FitzGerald: I do not think it is as simple as that. It is very important that the views of these interests should be represented through their own commitees which are providing advice to the Council and the Commission. We are talking here of committees which represent governments and putting forward Government policy. As far as that is concerned there is a danger in having somebody who represents a sectional interest putting forward a view for that sectional interest which may not be in consonance with government policy as a whole, so there is a practical difficulty there.

Mr. O'Kennedy: Take, for example, the question of the legal professions. I do not know what would be the attitude of the Government to the right of establishment of lawyers under the European Community but surely it is not beyond the bounds of possibility that a responsible and representative lawyer could in fact express, after consultation, the Government view, as chairman?

Dr. FitzGerald: I would not rule that out a priori.

Mr. O'Kennedy: If the Minister would not rule it out would the Minister not then consider that, in view of the lawyer's qualifications in the area, it would be desirable to have a person who has such a skill.

Dr. FitzGerald: It could be if we did not have an adequately qualified person available in or attached to the Government service.

Mr. O'Kennedy: Is the Minister satisfied that he has within the public service adequately qualified people to chair all of these 200 sub-committees?

Dr. FitzGerald: Yes, to represent government policy on them; certainly not people with the expert knowledge to provide the detailed view of the profession concerned, which is provided by that profession through the

consultative organs that exist within the Communi for that purpose.

Seanad Eireann — 20 December 1974

Trustee (Authorised Investments) Order, 1974: Motion.

Mr. M. J. O'Higgins: I move:

That Seanad Eireann approves the following Order in draft:

Trustee (Authorised Investments) Order, 1974, a copy of which Order in draft has been laid before the House.

Minister for Finance (Mr. R. Ryan): The Trustee (Authorised Investments) Act, 1958, defines the investments in which trustees may invest trust funds unless expressly forbidden by the instrument, if any, creating the trust.

The Minister for Finance may vary the authorised investments by order. The primary qualification for trustee investments is that they should be secure, and, subject, to this, that they should give a favourable income to the life tenant.

The purpose of the order before the House for approval, is to add Bank of Ireland loan stoc 1991-96 to the list of Trustee Authorised Investments. The loan stock was issued to raise additional capital to provide for the future growth of the bank. It will be repayable at par between 31st March, 1991, and 31st March, 1996. In addition to interest at 10 per cent per annum, it carries subscription rights to capital stock of the Bank of Ireland. The capital stock of the bank has been a Trustee Security here and in Britain for more than a century and the 7 per cent loan stock 1986-91 issued by the bank in 1966 was added to the list of Trustee Investments by the Trustee (Authorised Investments) Order, 1967 (S.I. No. 285 of 1967). The new loan stock is quoted on the stock exchange and I am satisfied that it is a suitable stock for addition to the authorised trustee investments in this country.

The Minister for Finance is obliged under the Act to consult with the following persons in regard to the terms of any order he proposes to make to vary the list of authorised investments — a judge of the High Court nominated by the Chief Justice, the Governor of the Central Bank, the Public Trustee, the Chairman of the Irish Banks' Standing Committee, the President of the Incorporated Law Society of Ireland and the President of the Stock Exchange (Irish Section). I have consulted these persons and they have welcomed the proposal and raised no objections to the proposed order.

I am considering some further widening of the investment powers of Trustees. I have indicated to the Irish Building Societies' Association the financial and management requirements that I would regard as appropriate for the granting of Trustee Status to the societies and these are at present being examined by the Association. I hope to reach agreement on suitable conditions in the near future. The other main area where change is desirable concerns Banks authorised to accept trust funds on deposit. Since the 1958 Act was passed there has been a considerable increase in the number of Banking Institutions operating here. There is now in force a comprehensive system of bank licensing and supervision under the aegis of the Central Bank. I am satisfied that, in principle, the list of Banks should be widened subject to a suitable arrangement being worked out to take account of the position of the Central Bank as the banking supervisory authority.

It is my intention also to have a more wide-ranging review of the operation of the 1958 Act to see if there is a need for amending legislation. The Act, in the main, restricts Trustee Investment to fixed interest securities, unless the trust deed provides otherwise. Charity trusts are also governed by separate legislation, the Charities Acts. Gilt-edged securities are less attractive now than in the past due to the erosion of capital values by continuing inflation. As a result the cult of the equity developed, with its prospects of capital appreciation. The sharp fall in share prices on the stock exchange and the difficulties encountered by some well-known firms shows that such investment is not necessarily the solution to a trustee's problem. In fact holders of Government securities are probably in a somewhat better position than holders of ordinary shares at present.

The problem is to find an investment formula that strikes a balance between the need to ensure the security of the trust fund and the provision of a reasonable income to the beneficiary. I am not certain that there is any really satisfactory solution in present economic circumstances. It is a complex subject, which will require close study and there is clearly every reason for proceeding with great caution.

I am satisfied that the Bank of Ireland loan stock is a suitable security to be added to the list of authorised investments and that it is desirable that Trustees should have power to invest trust funds in it.

Question put and agreed to.

RENT REVIEWS

PROFESSIONAL VALUATION and NEGOTIATION SERVICE

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Questions on Office Transfers from Estate Duty Office

Mr. Colley asked the Minister for Finance whether any staff were transferred, permanently or temporarily, from the Estate Duty Office for work in connection with the Capital Taxation proposals; and, if so, the number of persons and the grades involved.

Mr. R. Ryan: In the Office of the Revenue Commissioners work on taxation proposals is, as a matter of practice, allocated to the branch whose existing functions have the closest affinity to the proposals. In fixing staffing complement for each branch regard is had to the necessity for dealing with taxation proposals as well as administering existing taxes.

Because of the Estate Duty staff was already experienced in the technicalities of Capital Taxation the new proposals in that field were allocated to them. No officers were transferred from the Estate Duty branch; on the contrary, at critical times, assistance was provided to the officers in it from other areas in the Revenue administration. Since no officers were transferred from the branch, the second part of the question does not arise.

Mr. Colley: Were any officers transferred from their ordinary Estate Duty Office work to work in connection with the capital taxation proposals?

Mr. R. Ryan: In the ordinary course of the business of the public services officers who have experience in particular areas of administration are necessarily involved in the drafting of any changes in legislation affecting their area of administration and, of course, that happened in the Estate Duty Office as anywhere else.

Mr. Colley: May I ask the Minister whether, as a result of the carrying out of work on the capital taxation proposals by members of the Estate Duty Office staff, the work of the Estate Duty Office went into further arrear than that in which it was?

Mr. R. Ryan: No. I can categorically assert that this is not a fact. I would point out to Deputy Colley that when I was in Opposition I addressed questions from the Opposition benches about the delays in the Estate Duty Office. When I assumed responsibility in the Department of Finance I took steps to ensure that many of the previous delays would be eliminated. One of those steps was making arrangements as and from August, 1973 whereby all new inland revenue affidavits would be assessed provisionally on receipt. Consequently, many of the delays which previously arose and which could easily have been avoided have since been prevented. If the Deputy is referring to some recent printed complaints, at least some of those are in respect of the administration of estates where the Estate Duty Office are awaiting information from the people who are making complaints. Until such time as the corrective affidavits are filed, the finalisation of the estates in question cannot be arranged. The fault does not lie with the Estate Duty Office because the public are now getting a speedier service there than they used to receive.

Mr. Colley: Are we to take it from the Minister has said that he is satisfied there is no shortage of staff to deal with the work?

Mr. Ryan: I am never satisfied if there is any delay on the part of the public service which could be eliminated. I am satisfied that the steps which we took to eliminate previous delays and to anticipate any pressures which might arise on the staff of the Estate Duty Office in dealing with the reform of the whole taxation code ensured that the situation would not get worse. In fact, it has improved a great deal I am glad to say over the last 18 months.

Mr. Colley: Is the staff at full strength?

Mr. R. Ryan: There have unfortunately, been a number of illnesses and unforeseen retirements and resignations ahead of the normal period but the strength has nonetheless been maintained. Now that we are about to get rid of death duties the whole administration of this office will be under far less strain and difficulty than it has been in the past.

Mr. Davern: What does the Minister consider a reasonable time for the Estate Duty Office to complete its work on any particular case?

Mr. Ryan: The Estate Duty Office completes its work usually within a matter of weeks after receipt of affidavits. Where queries arise which require replies from the person who lodged the affidavits, obviously the length of time taken to deal with the matter will depend on the length of time taken by the people to reply to the queries which are presented to them. Many of the complaints that have recently been voiced in public have been made by people who themselves are in default. There is no loss to any individual as a consequence of delays in the Estate Duty Office because interest does not run as long as the handling of a particular administration is in the hands of the Estate Duty Office. It is only when it has left the Estate Duty Office and work requires to be done by others that interest runs.

Mr. Davern: I feel that two and three years on a simple, straightforward case of, say, a £16,000 estate where there is only a widow left is too long.

Mr. R. Ryan: The Deputy will appreciate that I speak with experience from both sides of the fence. There can be ordinary human delays but the complexity of the death duty laws and the difficulties of valuation and so on can often lead to a situation where you have those lengthy periods of administration. I share with the Deputy a desire to eliminate those. This is one of the reasons why we are eliminating death duties because of the delays and inconveniences and difficulties which are inevitable as long as we retain the old form of estate duty.

Estate Duty

Mr. Colley asked the Minister for Finance if his attention has been drawn to a newspaper article (details suplied) concerning the principal value of property passing on death; and if he will make a statement on the matter.

Mr. R. Ryan: The main point made in the article is that difficulties can arise when share values fall between the date of a person's death and the date of payment of estate duty. The difficulties referred to are, of course, not new. As the Deputy will appreciate they could on a rising market operate in the opposite direction so far as the Exchequer is con-

terned. I do not accept that delays in the Estate Duty Branch are responsible for, or contribute in any significant way to, the problem. Since August, 1973 a new system was introduced whereby Inland Revenue affidavits are assessed provisionally on presentation. I am, however, having all aspects of the matter examined as sympathetically as possible to see how cases of undoubted hardship can best be dealt with. I might add that the replacement of Death Duties with other forms of Capital Taxation will lessen the possibility of the difficulties referred to in the future.

Mr. Colley: The Minister will presumably appreciate that the elimination of Death Duties will not affect the hardships which have arisen in cases already or that may arise up to April next. Since he appears to me to have accepted that there have been cases of hardship and I know that there have been cases of extreme hardship, could the Minister be a little bit more specific as to what he proposes to do having regard to the fact that it would appear on the face of it that to do anything about it might require some statutory change?

Mr. R. Ryan: I cannot be any more specific than to say that we are going to get rid of the whole wretched system of Death Duties that has given rise to these complaints, hardships and delays, Nothing could be more effective or of greater relief to people than to get rid of this iniquitous system which ought to have been got rid of long ago.

Mr. Colley: I should like to point out to the Minister that the cases to which I am referring arise under the Estate Duty system so to talk about abolition of Estate Duty does not answer the question. Is the Minister aware that the real difficulty has arisen because of what has happened the economic situation and the catastrophic fall in the value of property, particularly shares, and that is why the position has become so acute? Is the Minister saying that he will do something about the cases that have arisen under the Estate Duty system? If so, what doe he propose to do?

Mr. R. Ryan: What I propose to do is to get rid of all the hardship that was caused. The difficulty to which Deputy Colley has drawn attention would not have arisen if Death Duties were abolished, as they ought to have been long ago. Furthermore, I should like to point out that, notwithstanding the falling stockmarket, people who have certain Government securities are in the position to surrender those at par and so receive in payment of Estate Duty concessions and arrangements which are far above the value of the stock on the day on which the person died.

APPRENTICESHIP

The Society has received a number of enquiries as to the possibility of apprenticeship. Solicitors prepared to take an apprentice are asked to contact Miss M. Byrne at the Society's office.

PRESENTATION OF CERTIFICATES

The next Presentation of Parchments will take place on Thursday, 5th June, 1975, at 4 p.m.

Apprentices whose indentures have expired and have passed all the Society's examinations and who wish to receive their parchments should lodge with the Society on or before May, 21st, their full name and address in Irish and English together with a Form AE 5 completed by the apprentice and the master and £30 admission fee.

Please note that no applications will be accepted after 21st May, 1975.

DAIL EIREANN—20 February 1975

Land Registry Application

Mr. Crinion asked the Minister for Justice if he will state men first registration will be made in respect of an application which was made in 1973, in view of the fact that the delay in dealing with it is holding up a local authority programme.

Mr. Cooney: It is expected that first registration will be completed in about ten days. I regret the delay in this case. Delays in the Land Registry have been a cause of concern for some time and investigations to achieve a fundamental reorganisation of the work system have been in progress now for some years and are still in progress.

Mr. Crinion: I appreciate the Minister's reply but we are having continuous trouble with long delays and most solicitors have found the same.

Mr. Cooney: I am well aware of the irritation the delays in the Land Registry cause. These delays are not the fault of the staff in the Land Registry; they are the fault of the system, which is essentially the same system as was devised in 1891 when registrationstarted. It is not capable of dealing with modern demands on it. We are having a fundamental reorganisation carried out. I am glad to say I gave a direction last week for radical changes in regard to the mapping procedures, because it often happens that these procedures are the reasons for the delays. I hope that fundamental change, plus some other changes which are presently under consideration, will bring the Land Registry up to date.

Mr. J. Ryan: Would the Minister agree that the decentralisation of the Land Registry to suit the different constituencies would help to eliminate the long delays?

Mr. Cooney: It is a possible solution and I am not saying that it is one that has been ruled out or accepted. It is one of the factors that is under consideration to see if some devolution of function to district registries might be feasible.

Society of Young Solicitors —Autumn Seminar

WATERFORD, NOVEMBER, 1974

About 200 members attended the 19th Seminar of the Young Solicitors Society which was held in the Ard Ri Hotel, Waterford, on Saturday, 16th and Sunday, 17th November, 1974. The first lecture was delivered by the Chairman of the Bar Council, **Mr. Ronan Keane**, S.C., on **"Modern Developments in Conveyancing Contracts"**. The Chairman of the Society, Miss Maeve O'Donoghue, presided. The lecturer first said that, although the classic conveyancing text books could not be ignored, their layout was not helpful. Farrand is written by an imaginative and speculative writer to give the practical aspect of the subject. If a contract for the sale of land is to be valid, all the ingredients of an ordinary contract must be present — i.e. offer and acceptance, consideration and agreement to approve the terms. When Estate Agents receive an offer which they communicate to their Principals, who instruct them to communicate acceptance of the offer to a third party, the language actually used by Estate Agents on these occasions will often determine whether a contract has in fact been concluded between the parties. If the offer is only accepted **"subject to contract"**, the liability of the parties only arises when the contract is signed.

If there is a clause which provides that the contract is conditional on the purchasers obtaining planning permission for a development, although Kenny J. held in **Healy v. Healy** (unreported., 3 December 1973) that such conditions are normally exclusively for the benefit of the purchaser, nevertheless there could be circumstances in which the conditions as to the grant of a planning permission and the other conditions of the contract were so mutually dependent on each other that they could not be segregated, as shown in **Heron Garage Properties v. Moss** (1974) 1 All E.R. 421.

The contract may be conditional upon vendor or purchaser obtaining a statutory consent. For instance, if the purchaser is not an Irish citizen, the consent of the Land Commission would be required, and this will also apply to sub-division. As shown by **McGillicuddy v. Joy—(1959)I.R. 189,** if such a consent is required, the party in a position to do so must take all necessary steps to obtain such consents.

As regards Section 2 of the Irish Statute of Frauds, 1695, one must consider (1) whether the documents relied upon do in fact constitute a sufficient note or memorandum for the purposes of the action, and (2) whether the documents in fact are signed by the person to be charged or his agent. If the agreement is conditional upon the signature of a formal contract, the correspondence will only constitute a sufficient contract in relation to the Statute if the parties agree as to the material terms of the contract, such as the names of the parties, the description of the lands, and the nature of the consideration; sometimes the terms as to the payment of a deposit may be material.

As regards an auctioneer, if he has been expressly authorised by his Principal to accept an offer for the land, he is thereby automatically authorised to enter into an open contract for the sale of the land. **Godley v. Power** 95 ILTR 135, establishes that if a solicitor with the express authority of his client acknowledges in correspondence the existence of an agreement for the sale of land by his client, this will constitute a sufficient Memorandum within the Statute. A solicitor who signs a contract for the sale of land "in trust" for an undisclosed client is normally personally liable, at least to the stage of the payment of the deposit at an auction. It seems that the liability shifts to the purchaser's client after that.

In order to rescind a Contract, a vendor may do so (1) by express power in the contract, or (2) because the purchaser has repudiated the contract. The express power, which must be exercised reasonably and in good faith and within a reasonable time, entitles the vendor to rescind, where the purchaser insists on any requisition or objection which the vendor is unwilling on the grounds of difficulty, delay or expense to comply with. If it is alleged that the purchaser has repudiated the contract, mere inaction will not suffice, and the mere fact that the completion date has passed even after a substantial period, will not of itself be treated as a repudiation, as normally the date for completion is not of the essence of the contract. Normally in most cases a reasonable time would be four weeks. The purchaser may at any time waive the requirement that time is of the essence of the contract, in which case it will not be enforced.

There are special difficulties for a vendor to try to enforce an action of specific performance of the contract, because: (1) The remedy is at the discretion of the Judge; (2) This action may only be commenced by a plenary summons; (3) The purchaser is entitled to have the Vendor's Title referred to a Chancery Examiner, a procedure which may be lengthy; and (4) The purchaser cannot complete the transactions more often for lack of money than unwillingness to accept the title. The Vendor is clearly entitled to damages if the purchaser refused to complete, and the measure of the damages is the injury sustained by the vendors. As regards deposits, the principle appears to be that a deposit paid by the purchaser can be retained by the vendor, where the purchaser abandons the contract. If the vendor lawfully rescinds, the deposit can be retained, whether the vendor has suffered actual loss or not.

If the vendor fails to perform something which goes to the root of the contract, such as failing to prove a good title, the purchaser is entitled to rescind; the same rule applies where the property which the vendor conveys is not substantially the

same as that contracted to be sold. Subject to the usual limitations imposed by the Court, the purchaser has a right to specific performance, but this may be limited by undue delay on his part, or if the Court considers that performance would involve great hardship. The purchaser may theoretically be entitled to damages for the failure of the vendor to complete, but, under the rule in **Flureau v. Thomhill** the damages are in general limited to the expenses actually incurred. The principle is that if a Vendor, who has not undertaken to provide a good title, provided he acts in good faith and without breach of trust, is unable to make a title, the purchaser cannot recover any damages for loss of his bargain.

The second lecture, entitled "The Solicitors of Today" was delivered by Mr. **Gerald Moloney,** Solicitor, Cork. This was a very wide-ranging talk, and among the subjects covered were:—

1. The changes that have occurred in solicitors' offices for the last 20 years and the current use of modern aids, such as dictating machines, electric and automatic typewriters, mechanical accounting machines and Telex. The pressures are also much greater today.
2. As members of the Common Market, we will have to deal constantly with foreign lawyers who have a different concept of law. It may hence be possible to plead a provision of the Treaty of Rome as superseding domestic law. The important case of **Van Zuylen v. Hag,** about the marking of a similar trade mark by both plaintiff and defendant, was decided on 3 July, 1974 in the European Court in Luxembourg; it only took eight weeks for the reference to be determined by the European Court, which shows the speed with which the Court expects to proceed.
3. Gradually new forms of action are being introduced such as damage to children affected by thalidomide, and property rights in relation to mines and oilfields. Don't think that, because someone comes in with a claim on a basis that you never heard of before, he is automatically without a remedy.
4. As solicitors we now have a right of audience in all Courts. Advocacy is a specialised subject, but those who practise in the Courts constantly must not only speak well but think on their feet. Many solicitors are in fact more able than barristers in this field. A good solicitor will not run to Counsel for advice on every conceivable occasion. Solicitors will normally find precedents for drafting documents, but, even if they do not, good solicitors should find the words clearly and unambiguously to express their client's intention.
5. As regards costs, it is vital to explain to the client beforehand the likely maximum charge, and then he will be unlikely subsequently to complain of an overcharge. It is not only the question of how much is charged, but how satisfied the client is with the work done. It is also advisable to tell the client from the beginning what may go wrong. If you are able ultimately to charge him less, he will be delighted.
6. The main complaints of clients are: (1) An unexpectedly bad result; (2) Delay; (3) Expense. If delay is due to the solicitor's own fault, he should admit it openly to the client, and try his best to remedy it. If delay is due to **laches** in government offices, the solicitor should warn the client beforehand that this is likely to occur. Solicitors should adopt some system whereby they do not forget about a case that is not current.
7. Sooner or later scale fees will be investigated on behalf of the public. Solicitors should actively support the Law Society's Questionaire on Time Costing; only 10% of the profession have replied so far. It need hardly be stressed that the answers will be confidential. Scale fees no longer apply in England, and there are guidelines as to what constitutes a fair and economic fee. It is obvious that a substantial measure of civil legal aid will have to be introduced. The system of time costing will assist us to ascertain the approximate cost of a particular job. Until civil legal aid is fully available it is our duty to make our services freely available to those who cannot afford it; when civil legal aid is available, the present high scale of conveyancing fees will be hard to justify. Remedies will have to be found to improve the present system of conveyancing on a building estate with a similar single title, whereby each purchaser is bound to investigate the title and pay a statutory scale fee.
8. It is up to us to improve our efficiency and to catch up on our arrears and to make sure that all our work is up to date. If a solicitor spends time in estimating in detail costs and the work in progress, it will be well worth his while. An efficient accounting and filing system is essential. It seems best to keep the correspondence on a brass tag in a manilla cover to be placed in a hanging container in a cabinet together with an envelope containing all the documents in the case. It is also essential to have a loose-leaf Index of all documents kept in the strong room alphabetically under the client's name. Account must also be taken of the inevitable increasing overheads. It is unwise to give too much credit to clients, as recovery may sometimes be difficult.
9. We should make ouselves acquainted with new fields of law such as EEC Law or Tax avoidance.

Mr. **Martin Rafferty,** of Belvedere Trust Ltd. delivered the next lecture on "Profit Motive". Internationalism of business is becoming more powerful. International Corporations want to cut back and there is a gradual growth of international unions. Capitalism is beginning to be exploited. There is a growing influence of the media. Trading blocks, such as EEC currencies, tend to be used beyond national boundaries. In the U.K. and the U.S., the growth of companies having as their primary aim the stripping of assets, without regard to the body of workers affected or to the shareholders was seen by John Bentley in the middle and late '60s. This exploitation (even though in a minority of companies) brought business into disrepute.

●*Continued from previous page*

All nations (except Germany) have chronic deficits due to oil prices. In Tokio and New York, Stock Exchange prices fell 50-80%; they have since picked up somewhat. Inflation at the rate of 20% rise in commodity prices means a 100-300% rise in cost of working capital. The problem of the need of capital for stock and debts, of the rise in the cost of the raw material and of labour and of the need of additional finance due to these factors are paramount. In the event of a stringent price control, delay in granting such an increase in price would be a heavy burden on a company. This would result in a falling--off in demand and a recession could move into a slump.

In Ireland the agricultural community has relief in guaranteed beef prices for 6 months. In 1976 there could be a shortage of beef, so the price then could be exorbitant. Even so there is a better prospect for investment, discounting the finds of natural resources (as in Scotland and Norway, due to oil finds). In rural Ireland, when a factory is set up, lack of discipline creates real problems.

The greatest strength here would be the improvement of the industrial and agricultural background, but there will inevitably be great unemployment here in early Spring. Beyond that, the strength in the agricultural Sector is the basis of our economy. The manufacturing outlet has increased 9% this year. We must try to provide 15,000 new jobs. The construction industry is hard hit here as in every country. Many firms here are very small and have no capital reserves. Irrespective of dialogue the next 5 or 10 years will depend on either the spread of Communism or spur of profitability. Business can expand on the talent of the people in it and the money, either generated internally or from outside, is the final way in which profits and borrowings are interwoven. It is not possible to get one without the other. The difficulty is to provide jobs and money in order to get a minimum growth level, which for this year will be nearer 1% and 2%, although 5% had wrongly been forecast. It is a question of trying to adapt the profit motive to the present day operation of business.

In view of great uncertainty, it is best to remain as liquid as possible. It may be possible for an international monetary fund to obtain Arab money. The bulk of Arab funds are in 3 places — London money market, Frankfurt and New York, and mostly invested in Gilt-edged securities in banks. They will not come here, except through an international monetary agency and they prefer hard currency. The Eastern countries, under a managed economy have minimised inflation, because dictation is accepted. We will inevitably have to lower our standard of living here. Banks have tremendous investments in industry in Germany where there are less public companies today, than there were in 1919.

The final lecture was given on Sunday morning by Mr. **Brendan O'Brien,** Chartered Accountant, on the involved subject of "Farm Taxation and the Finance Act, 1974". As it is not possible to summarise this complicated subject, anyone interested should obtain this lecture, No. 84, from Mr. Spendlove.

Statutory Instruments

Diplomatic and Consular Fees (Amendment) Regulations, 1974. S.I. No. 334 of 1974.

The purpose of these Regulations is to increase as from 1 January, 1975, fees chargeable for services rendered under the Commissioners for Oaths (Diplomatic and Consular) Act, 1931 (No. 9 of 1931) and the Diplomatic and Consular Fees Act, 1939 (No. 31 of 1939).

European Communities (Ancillary Equipment for Liquid Meters) Regulations, 1975. S.I. No. 32 of 1975.

These regulations are made to give effect, so far as necessary, to Council Directive No. 71/348/EEC on the approximation of the laws of Member States relating to meteorological control of ancillary equipment for meters for liquids other than water.

●*Continued from page 57*

While such a Council would have overall responsibility for education, the individual societies would retain their autonomy in regard to their academic degree courses.

Mr. Hanratty concluded by saying that as 60% of those students who studied through King's Inns did not go on to practice at the Bar, a three-year course should be sufficient for them. For those who wished to practice at the Bar, a further two years' course of study at King's Inns and in the Law Library would be desirable.

ORDINARY GENERAL MEETING

This meeting and other Lectures and functions will be held in Westport, Co. Mayo, from Friday, 9th May to Sunday 11th May, 1795.

Law Students Debating Society Inaugural

((19 February, 1975)

Mr. P. Cocney, T.D., Minister for Justice, in the course of proposing a vote of thanks to Mr. Paul Hanratty, the Auditor of the Kings Inns Students Debating Society, for his paper on legal education congratulated him on picking this subject of fundamental importance to the future of the legal profession and avoiding the temptation to be with it by delivering a paper on some of the in subjects such as family law or so-called repressive law. The Minister continued.

"The legal profession is in a privileged position in our Society in that it has a monopoly of financially lucrative business. If that monopoly is to be justified and continued the profession must give to the public a really professional service. It is my belief a service of this standard cannot be provided unless new entrants to the profession are fully and adequately trained to carry out their jobs. This has not been the position up to now."

The Minister reviewed the submissions made to his Department on the subject of legal education. The first of these was as far back as 1961. There has been consistent pressure from the Incorporated Law Society for reform in the education of their apprentices. The Minister said he was glad to have been able to co-operate with the Society in bringing about a new educational régime for intending Solicitors commencing next academic year. He thanked the Society for their attitude to this important subject and felt sure that the new regime involving academic study leading to a degree followed by a period of instruction by the Society in the practical and commercial application of academic legal knowledge would well fit our new Solicitors to offer a proper service to the public from the very start of their careers. "The efficiency of a new Solicitor up to now depended on how thorough an apprenticeship he had and in my experience many apprenticeships were in name only. I have indicated to the Society and they accept my point of view that no student having taken a law degree should be deprived entry to the profession for want of a master and that the practice of charging premiums to apprentices should be discontinued."

The Minister continued by saying that he hoped the Benchers of Kings Inn would shortly follow the example of the Incorporated Law Society by introducing a course of studies which would involve both the academic and the practical subjects. He stated that the present practice whereby a qulified barrister had to learn his trade by devilling to an established man was an amateurish approach where a hard professionalism was required.

"I am not in favour of the fusion of the two branches of the Society but each will have to justify its separate existence by a high standard of professional performance. The Solicitors branch has commenced reforms to ensure just this. If the other branch fails to follow suit, I would fear such pressure for fusion between the branches that even I, an opponent of fusion, would find it hard to resist."

The Minister continued to say that he would like to see as soon as possible a system whereby law students would commence their studies by taking a degree and at that stage they would opt to become barristers or solicitors and enter on the practical course of study provided by the professional body of their choice. At the moment a teenager leaving school has to decide at that relatively immature stage which particular branch of the profession he will join and the Minister remarked that he thought a more mature choice could be made at the degree stage.

Mr. Justice Kenny suggested that the whole system of legal education should be confined to the universities, instead of being split between the Universities, the King's Inns and the Incorporated Law Society. Seven of the nine E.E.C. countries trained their law students totally within universities, and the break in the law student's training in Ireland was indefensible.

Mr. Patrick Hanratty echoed the point on fragmentation. A professional student who wished to take an academic degree found that he had to take separate examinations in the same subject in separate institutions, usually in separate years.

This arose through a lack of liaison and co-operation between the various institutions. No real progress could be made in solving the basic problems of legal education until this primary problem had been overcome, he added.

Mr. Hanratty said that the emphasis was on lecturing, almost to the exclusion of other forms of instruction. Dialogue between teacher and student was impossible in overcrowded classrooms. Practical exercises in the application of the rules learned at lectures were almost non-existent and, in many cases, visits to the courts were not even encouraged.

"In this respect not alone is law studied without adequate reference to its social context, but also without adequate reference to its practical legal context. The student's concept of justice and appreciation of the way the law works is lost in a tangled mass of equitable easements, memoranda and, if he can't stand the pace, tranquilisers."

Because a long-term solution could not be found without greater liaison between the various institutions, Mr. Hanratty suggested the establishment of a Council for Legal Education.

The council would consist of representatives from the Benchers of the King's Inns, the Council of the Law Society, the Law Departments of the Universities and the legal professions.

Apart from eliminating fragmentation in the education system, the Council of Legal Education could deal in a rational and unified manner with the problems affecting all branches of the legal education.

Book Reviews

Barnard (David) — The Criminal Court in Action. London: Butterworths, 1974. xiv, 182p. 25 cms. (Paperback), £3.00.

The author is Lecturer in Criminal Procedure to the Council of Legal Education in London, and the aim is to provide a practical explanation of the working of the Criminal Courts in England. For greater realism, fictional examples have been taken, and the volume starts off with "The case of William Sikes", who is alleged to have stolen a gramophone record from a supermarket; the full evidence, in the form of question and answer, of all the witnesses is given. He is finally convicted, placed on probation, and ordered to pay £60 towards the costs of prosecution. Undoubtedly the best way to learn how the Courts work is to go and watch them, particularly in relation to criminal procedure.

In considering the detailed rules of criminal procedure, the author has dealt with (1) the investigation of crime, including search warrants and the Judge's Rules, and identification parades; (2) Proceedings before Magistrates, including Information and Summonses; (3) Committal Proceedings; (4) Trial at the Crown Court, including Indictments, Arraignments, Juries, and the detailed course of the trial; (5) Summary Trial before Magistdates including Juvenile Court Proceedings; (6) Appeals from Magistrate's Courts to Crown Court, including Certioraris, or appeals to the High Court on points of law; (7) Appeals from the Crown Court to the Criminal Division of the Court of Appeal; (8) Bail.

The next part relates to sentencing, and includes (1) The process of sentencing; (2) Imprisonment; (3) Suspended sentences and probation; (4) Young People who can be sentenced to borstal or detention. The Appendix contains modern English Statutes. This is undoubtedly a useful book for those who are uninitiated in criminal procedure.

Calvert (Harry) — Social Security Law. London: Sweet & Maxwell, 1974. xxxviii, 318p. 22 cms. (Paperback), £3.60.

It will be recalled that the Irish Social Welfare Act, 1973 has extended Social Welfare to all without any financial limit. Consequently the broad principles of this work would apply to the Irish Social Security Code, although details as to amounts payable and as to amounts paid in the event of unemployment and sickness would be different. Professor Calvert is well-known to our members as the author of "The Constitutional Law of Northern Ireland" and the learned author has expounded his views with the same clarity and precision as in that work; he has successfully brought order to this complicated subject, which has so far not been attempted. The decisions of the British National Insurance Commissioners, save on a point of law, are normally final, and a surfeit of jurisprudence has been built up around them. This does not apply to the decisions of the Irish appeals officers, and very few decisions of the High Court in Ireland on this subject are reported. The general grounds of disqualification are absence from Britain and imprisonment, although some Member States of the European Community have made reciprocal arrangements. Unemployment Benefit is only payable in respect of each full day of employment; half days do not count. There are very involved provisions relating to trade disputes. Other benefits such as those relating to sickness, widows, maternity, death and supplementary benefits are fully dealt with. — A most useful book.

THE SPIRIT OF THE NATION

Cynics will, to a greater or lesser extent, agree with some of the following critical observations in a book on Ireland, published by an Irish-American, Mr. Thomas J. O'Hanlon, editor of Fortune Magazine, recently:-

(1) An anonymous public person made a fortune by land speculation. His profits were tax free, and he used them to further real estate speculation in Northern Ireland, where land values dropped on account of the bombings.

(2) Political corruption is far worse in Ireland than Tammary Hall in its hey day. As there are no laws compelling politicians to disclose their conflict of interest, they act unscrupulously as they wish. Corruption is condoned because pull is everything, and the larger benefits are subject to it.

(3) There is an atmosphere of free-booting financial deals. Multi-national corporations are swarming all over the place to get a foot in the Common Market.

(4) The laws on censorship, birth control, divorce and adoption remain apparently immutable. Although only a handful of clerics have ever visited the festering slums of Dublin, the Hierarchy, too frequently consulted by politicians, allegedly keep secret files on public figures.

(5) Ireland is a poor country, and it crucifies the poor. Mental illness is the highest in Europe. There is a high consumption of tranquilising drugs in Dublin. 11% of disposable income is spent in the consumption of alcohol.

(6) All brands of I.R.A. nationalism are attacked — Old, New, Provisional and Official.

(7) Examples are given of irregularities in administrative appointments. The personnel of some Government Commissions is exposed as consisting of stooge Government supporters, while experts are consistently ignored.

Planning Control Lecture

Address by Mr. Gordon Hyde of Enfield, Middlesex and Chairman of the Standing Committee of The Law Society on Town and Country Planning.

The talk this evening is on the topical subject of 'Public Participation in Town and Country Planning'. Local Planning Authorities in England (and in your country) who have the power of deciding on planning applications for planning permission have to make such decisions within the terms prescribed by the Acts of Parliament creating the power. The powers of such Authorities in planning matters include the power (in fact the duty) to prepare plans covering their areas showing proposals for development. The plans, which ultimately require sanction from the Secretary of State for the Department of the Environment, are known as Development Plans. Development Plans generally relate to the area of the Local Authority responsible for their preparation but they are based on regional and national strategies. Such strategies are formulated and promulgated by Central Government.

The Town and Country Planning Acts require that applications for planning permission have to be decided by reference to the provisions of the Development Plan and any other material consideration. It follows that the powers of Local Planning Authorities in deciding such applications are limited in the way described. This means that in applying their minds to a planning application members of a local Planning Authority cannot decide the application by taking into account matters irrelevant to the Authority's function as a Planning Authority. A recent example of this is the English case of the *R. v. the London Borough of Hillingdon ex parte Royco Homes Limited* — (1974) 2 All. E. R. 643 which has caused a certain amount of excitement to constitutional and planning lawyers. It appears that the Council of the London Borough of Hillingdon, as local Planning Authority, granted planning permission for residential development of land owned by private developers but in doing so attached conditions to the planning consent which were designed to restrict the usefulness of the permission to local Authority type houses and to ensure that the houses could only be occupied by Local Authority tenants. On an application to the High Court instigated by the developers the offending conditions were held to be ultra vires and the planning permission was quashed. The Lord Chief Justice said the decision "was a fundamental departure from the rights of ownership and it was so unreasonable that no Local Authority, appreciating its duty and properly applying itself to the facts, could have reached it".

That case is an example of the way that the Courts will interfere with a Planning Authority that exceeds its powers. In the more usual case, where the decision is within the prescribed powers of the Planning Authority, the applicant does have a right of appeal against a decision. Such an appeal lies to the Secretary of State for the Department of the Environment. It carries with it the right to be heard before a person appointed by the Secretary of State which means, as we shall see, a local — and public — Inquiry.

Decisions on planning applications are based on Development Plans and these, although prepared by Local Planning Authorities, owe their origin from regional strategy formulated by Central Government. As the ultimate right of appeal also lies to Central Government it looks as if Town and Country Planning in England begins and ends in Whitehall. This is of course far removed from the concept of planning being a locally administered function.

Dealing with the question of whether planning decisions are effectively made locally I think the answer is that they are. Whether or not, however, such decisions are made by the local representatives of the people is a different matter. The decision on a planning application must be given within the now familiar limits specified in the Act i.e. in accordance with the provisions of the Development Plan or other material considerations.

Planning Proposals must conform with the Development Plan

In deciding a planning application the Lay Councillor will need the guidance of the professionally qualified employees of the Authority who, apart from anything else, will have prepared the plan on which decisions are given. The Councillor will be told whether in the opinion of the officials a particular proposal passes the first test of being in accordance with the pdovisions of the Development Plan and should therefore be acceptable in principle. In most cases that it not a difficult decision if it merely means checking the Development Plan and the zoning of the area. I was involved in a case of a plan for a complete residential development of an undeveloped site which was zoned on the Town Map as being available for that purpose. The plan finally submitted to the Planning Committee had been the subject of detailed and tedious negotiations with the officials for rather more than six months until finally a scheme had been produced which was considered satisfactory. By satisfactory I mean that it had passed the various tests applied to it by the different experts who considered it. This covered such matters as garage accommodation, design, size of gardens, density of development and proximity to the nearby trunk road. When the result of all this activity came before the Planning Committee accompanied by a recommendation, not surprising in view of the history, by the officials for approval the application was in fact rejected. The Planning Committee met in public and on the following day the local press reported that members of the Committee had looked aghast at this comprehensive plan and described some of the proposed houses as looking more like rabbit hutches than houses. The developer came to seek my advice. He said that he had commissioned his Architects to leave no stone unturned to ensure a scheme which had the approval of all the officials so that there would be no delay arising from a planning refusal and subsequent appeal

to Central Government. In the event his strategy had gone completely awry. It had taken six months to hammer out a plan which satisfied all the officials, only to find that the elected representatives felt deprived in some way because they recognised the plan as a fait accompli and thought they were merely being asked to rubber stamp it. They demonstrated their independence by throwing out the application. At that time planning appeals to the Minister of Housing and Local Government were taking about a year to decide. The developer could not wait that long as he had paid a great deal of money for the land.

Although the case of *Royco and the Hillingdon Borough Council* had not then been decided there was already some authority for the belief that an unreasonable decision made without authority would be quashed in the High Court. Accordingly I wrote to the Town Clerk of the Planning Authority and told him I was considering the institution of legal proceedings against the Council. I also reminded him that in the event of the proceedings being successful and costs being awarded against the Authority some of the members of the Committee could finish up by being personally liable for the legal costs. I offered to attend a Council meeting and address the Council or the Planning Committee. This offer was accepted and in fact I attended a full meeting of the Council and explained why I thought their decision was a wrong one. With the background of consultation by the appellants' advisers with officers of the Local Authority and carefully prepared plans by professional architects the members should not have refused the application in the way they did. Understandably they were reluctant to go along with this line of argument. To say the least such a proposition was unpleasing to the ears of Councillors who valued the importance of their position.

They eventually asked me to leave them while they considered what I had said and to my intense relief they finally decided to change their minds and give consent. If they had called my bluff I do not know whether I could have confidently advised an approach to the High Court. If we had gone to appeal I am reasonably confident that the Minister would have allowed the appeal but that would have meant a very expensive delay. I quote that example to demonstrate the fact that some planning decisions although given locally by the elected representatives are greatly influenced by the paid professional and technical officers.

In considering the question of the participation of local people in the decision making process itself it is necessary to look beyond the comparatively simple and well tried process of administration through local councils and committees consisting of elected representatives. For some time there has been pressure from a number of quarters to allow and to encourage direct public participation at all levels of the decision making process. Mr. Jim Ivers, the Director General of the Incorporated Law Society of Ireland has been kind enough to send me a number of newspaper reports about activities in this country which demonstrate the point I have in mind very clearly. In England there are a number of types of planning applications, some of which are commonly known as "bad neighbour" activities which have to be advertised in the local newspaper and on the site. The list of such activities is not specified in the Town and Country Planning Act itself but by statutory instrument. The list started in a modest way but the latest edition (1973) contains nine separate classes of development and is quite far reaching.

Local Planning Inquiries Procedure and Pressure Groups

In the cases so specified the Local Planning Authority are required, when determining any application, to take into account any representations relating to that application. It must follow that public reaction to a proposal may have a marked effect on the ultimate decision. Matters for example of great economic significance could be frustrated by a wave of local protest. Sometimes local protests are marshalled by enthusiastic opponents of a proposed development who virtually ensure that a planning refusal is issued. In a democratic society where the decision makers depend on local votes for their positions of power it is not surprising that they are extra sensitive to organised protests of local people. One of the consequences must be a tendency to issue refusals in such cases more or less as a safety measure. This results in more planning appeals with more local inquiries. It also increases the number of cases where decisions are not taken locally at all but by the Secretary of State. On an appeal against a planning refusal the Local Planning Authority or the appellants can ask for a hearing which normally takes the form of a local inquiry. If the matter is one of interest in the neighbourhood the local inquiry gives a splendid opportunity for public participation. Action groups, Rate-payers Associations and similar bodies either spring up overnight or spring to life after a period of inactivity. Very often they have a marked influence on the decision finally reached. Whether such influence is for good is another matter. There are a number of very important areas like city centres all over England which have lain derelict for years, partly as a result of the activities of such groups. Whilst it is difficult to produce an ideal plan, suitable for all tastes, for dealing with an important redevelopment area it is comparatively easy to mount a devastatingly destructive criticism of any scheme produced. A powerful civic society supported by historians, architects and lawyers can be expected to have a fair chance of success if they determine to frustrate a proposal for development of an area which is in the public eye. I have mentioned sites like city centres but other examples are proposed airfields, fuel depots or sites for building oil rigs in remote rural places. Public participation at inquiries into this sort of development often includes earnest and undoubtedly sincere groups of citizens collectively describing themselves as Preservation Societies. The majority of such societies are dominated not, as one would expect, by natives of the area who depend on it for their livelihood, but people who live in distant towns or even in another country but who may have holiday homes or some less tangible interest in the area threatened by the proposed development.

Consultative Committees in Architectural Areas

Another example of the opportunity being given to the public to involve itself in the planning process is the establishment of committees with whom planning authorities consult. Such Consultative Committees are generally to be found where there is an area of special architecture or historic interest or great natural beauty. The influence of such committees (not themselves composed of elected representatives) on the Planning Authority can be considerable. Frequently local Preservation or Civic Societies are given a specific right to appoint representatives to such committees. It is I think arguable that in some cases the persuasion of consultative committees has a restrictive effect on development proposals. Generally such effects are detrimental in urban areas. In rural areas, even if economically misguided, the effect of a Consultative Committee is to protect countryside from development. Whether, however, they act for the benefit of local people is another matter. Some time ago I was talking to the ex-Chairman of a Planning Committee of one of the former Welsh counties and asked him what he thought of the Council for the Preservation of Rural Wales. "Oh" he said "You mean the Council for the persecution of Rural Wales". He added that during his time with the County Council the Planning Committee which originally conducted all its business in Welsh had to switch over to English because the representatives appointed by the Council for the Preservation of Rural Wales could not speak Welsh.

From all I have said I suppose the conclusion to this address should be a plea for an end to public participation in the planning process. This is not so. Public participation should be encouraged by publicity but the planning machine should be redesigned to cope with the resultant exclusions of energy without allowing itself to get out of control. My suggestions are:-

1. The Planning Authorities should be periodically reminded of the extent and the limitations of their duty and powers.

2. The public should be encouraged to express their views through their elected representatives. Occasionally they should be permitted to express their views directly to the Planning Authority but only at the discretion of that Authority.

3. Rights of appearance at Local Inquiries should be limited to persons having a defined interest. This would normally be by reason of ownership or occupation of land affected by planning proposals.

4. Decisions on appeals should be made by, or on behalf of, an independent body instead of the Secretary of State.

5. As a preliminary to important highway proposals and other defined types of development affecting the public, consultation with the public should take place. This could include exhibitions at local centres with invitations to the public to make representations within a specified period. It could also include the preparation of a printed form of questionnaire to enable the Planning Authority to make an assessment of public views on a particular proposal, on public participation in planning.

"The Income Tax Acts"

THE EIGHTH SUPPLEMENT to the loose-leaf volume "The Income Tax Acts" has now been published. The Supplement embodies the amendments made by The Finance Act, 1974, and is available with a new Binder (Vol. II).

PRICE £4.00.

Available from the Government Publications Sale Office, G.P.O. Arcade, Dublin 1. (Postage 35p extra).

Mr. John O'Loughlin Kennedy, Director of An Taisce, congratulated the Incorporated Law Society in its initiative in coming to grips with the problem of Planning Legislation at this time when a new Planning Bill is being debated at Committee Stage in Dail Eireann. "Never was intervention by Lawyers so needed if workable legislation on planning is to emerge, and I would direct your attention in particular to three areas".

1. Ireland, unlike England, lacks National or Regional Planning strategies. Planning is based at local level on the Development Plan and each of the 87 Planning Authorities is bound to pursue the objectives of its own Development Plan, limiting its considerations to the proper planning and development of its own area. Appeals in Ireland are dealt with by the Minister for Local Government.

While the number of applications for planning permission tends to fluctuate in proportion to the general level of economic activity, in Ireland the number of appeals has in fact continued to grow at an alarming rate, and so has the cost of dealing with them. As lawyers you will readily understand this if I draw an analogy with the work of the Courts. If the Higher Courts were to work on different criteria than the Lower or were permitted to give capricious decisions without assigning reasons, one could expect every decision to give rise to an appeal. Likewise, if two-thirds of those convicted by the Lower Courts were declared innocent on appeal, then one would appeal in every case. Yet this is more or less precisely the position which obtains with the "quasi-judicial" proceedings. known as Planning Appeals. One wonders that you, gentlemen, as lawyers do not rise up and object to the use of the term "quasi-judicial" in this context. Has the Incorporated Law Society addressed itself to the question of whether its members should brief Counsel to plead at such "quasi-judicial" hearings, where the "quasi-judge" does not attend, is not permitted to accept recommendations from his representative, and is not bound to relate his decision to the Development Plan or to the evidence presented? It does the term of "judicial" no honour that such proceedings should be described as "quasi-judicial".

2. The concept of planning under which the community, and members of the community, have a right to influence the use an owner can make of his property arises from new attitudes to private property, new attitudes to society and an emerging understanding of individual and collective responsibility towards future generations. The resultant modification of absolute ownership is widely accepted by the body politic to-day. It tends, however, to be at variance with Irish Case Law and indeed with the attitude to Property enshrined in Article 43 of our Constitution less than forty years ago. We must look to the members of the Incorporated Law Society to help find a legislative way out of the immediate problem which this poses or alternatively to propose Constitutiona Amendments to resolve the dichotomy in the longer term.

3. The Planning Bill currently before the Dail continues to enshrine the principle of public participation in planning but Section 17 as currently drafted will have the effect, in practice, of precluding the public from participating. If Section 17 is adopted in its present form, every appellant will be faced with the possibility of an open-ended award against him, not alone of the legal costs of other parties but of any figures the Appeal Board chooses to state as its own costs plus any "other expenses occasioned to another party in relation to the appeal". This last could include the loss of profits suffered by a developer during the period taken by the Appeal Board to consider the matter.

The inclusion of the right of the Board at its absolute discretion to award itself costs is contrary to the best traditions of Irish Law and will almost certainly give rise to unnecessary costly litigation.

The capacity to award the other expenses is in fact discriminatory. Section 17 as it is drafted is loaded heavily against the community and its environment. Developers, who stand to gain by successful appeals, can afford the risk of having to pay the environmentalists' costs on the occasions when they lose. There is no possibility of a financial gain for those who appeal with the interests of the environment at heart, although there is the possibility that. on occasion, they may have their costs awarded to them. The concept of the Board "not acceding the substance to the appellants grounds of appeal" is also loaded against the conservationists. For the developer the decision will tend to be an open and shut one. Either he gets his permission or he doesn't. For those whose objective is to defendd the environment even a minor change in conditions may well be of great importance. While the conservationist can only hope to claim his costs, the developer can, as the Bill is drafted, claim his costs "or other expenses occasioned to him in relation to the appeal".

As the Bill is worded a third party group, "even if it be a prescribed body" can only be awarded its costs or expenses when it is opposing the Planning Authority's decision. It cannot be awarded costs or expenses when it is supporting the Planning Authority. This is surely not a desirable situation.

I have been told by Departmental Officials that this is not what is intended, and that only the costs directly related to the conduct of the appeal will be awarded. If this is what is intended, then surely this is what the legislation should say!

It has been argued that the Bill merely transfers to a Planning Appeals Board the authority previously vested in the Minister and that the situation has not proven unsatisfactory in the past. There are however three vital differences. 1. The Bill gives the Planning Board powers not previously vested in the Minister. 2. The Minister had to answer to the Dail and ultimately to the electorate for the way in which he used his discretionary powers. The Planning Appeals Board will not be thus answerable. 3. The Planning Board will have entirely new and adequate provisions for dealing with vexatious or ill-founded appeals under Section 16 of the Act. This gives the Board an alternative solution to a potential problem which was not available to the Minister in the past—thus sharply reducing the need for the proposed provisions of Section 17.

In view of the serious erosion of individual rights which Section 17 involves and in view of its obvious divergence from the better tradition of Irish Law, An Taisce would urge the Incorporated Law Society to consider Section 17 of the Bill and make representations to the Ministers for Justice and for Local Government with a view to having it omitted or very drastically amended.

How the Scots view the Legal Profession

When the Public Relations Committee of the Law Society of Scotland felt that their work might benefit from a study of the attitudes of the public towards the legal profession a research project was commissioned and funds were made available by the Society. The full report occupies 251 pages of text and 119 of appendices. In this summary an attempt is made to give points which may be of interest to the profession in this country.

With slight variation between urban and rural areas just over 4 per cent of all people in Scotland of 18 years of age and over have been to a lawyer for advice at some time of another; only 10 per cent of the people who have been to a solicitor, however, have been more than half-a-dozen times in the past five years.

Choosing a solicitor

About 61 per cent of people chose the solicitor on the basis of some close personal recommendation or because they already knew him. Just under 20 per cent indicated that they had a "family lawyer" and that went to him; 23 per cent went to a solicitor they already knew, and 19 per cent on a recommendation by a friend or relative. Only 7 per cent went to a solicitor because of his general reputation or because they knew he specialised in the work they wanted done. The solicitor was selected by 2 per cent on the basis of recommendation by the Law Society of Scotland; a total of 15 per cent ended up with a solicitor entirely by chance—either by walking in off the street or just by using the same lawyer as another party in a mutual transaction.

65 per cent of clients indicated their own solicitor seemed fairly modern and 20 per cent admitted to his being a bit old-fashioned. Offices in which the lawyers worked were seen as a bit old-fashioned by 4 per cent and fairly modern by 41 per cent. The offices seemed efficiently run by 90 per cent of clients.

Good relationships

Nearly all users of solicitors (96 per cent) thought their lawyer was friendly and easy to talk to; 82 per cent said their work was completed as quickly as they had expected.

About 67 per cent said the fees charged were about what they expected; 64 per cent thought the fees charged were reasonable.

The vast majority, over 92 per cent, said they were satisfied with the way lawyers conducted their business.

Asked how they would rate lawyers as a body in comparison with other professional groups 23 per cent said they would rate lawyers among the highest, 49 per cent rated them as good, and 26 per cent about average.

The things people disliked about solicitors in order of importance were: arrogance; a bit too clever or sharp; self-centredness; charging of high fees; something in the legal system; miscellaneous. None of these categories had even as many as 5 per cent of respondents in them.

Most people thought that neither television nor newspapers gave a good idea of what solicitors are like and distrust of the media was most pronounced amongst the higher-income groups.

About 60 per cent of people consulted expressed preference for their solicitor to be a man; of the remainder only 3 per cent would prefer a woman; the rest said it would make no difference to them. Of those who would opt for a woman solicitor nearly 9 out of ten were themselves women.

Views on earnings

In estimating what they thought an average solicitor earned, 20 per cent of users said between £1,000 and £3,000; 34 per cent, £3,000 to £5,000; 27 per cent, £5,000 to £7,000; and 19 per cent, £7,000 and over. The researchers (Messrs C. M. Campbell and R. J. Wilson) found that the average income that people in their sample—both users and non-users of solicitors—gave for the yearly earnings of a solicitor was about £2,836.

The public's view of the legal profession as a rather passive and unknown body emerged clearly and many indicated that, in a series of six hypothetical situations, they would welcome a solicitor contacting them to give advice. The very high proportion of people who would welcome the solicitors initiating contact brings into serious question commonly-held assumptions about the correct stance for members of the profession. Taken with the data on the low level of public knowledge on the solicitors' services there is an emphatic call for a more active and positive legal profession. About one-half of the respondents would welcome a solicitor's contact, less than 2 per cent would resent it.

Dealing with the replies to questions put to members of the profession the research report shows that the average income for solicitors in Scotland, which could not be calculated with absolute precision, would be just over £4,294 per annum. Of solicitors working on their own 35 per cent earn less than about £3,000 per annum; 72 per cent of those in single man firms earn less than £5,000.

Information service needed

Four out of five solicitors felt that the profession did not do enough to let the public know the range of services it could provide but the proportions were reversed when the question of advertising by individual firms was broached.

Overall, Scottish solicitors estimated that more than four out of five of clients (83 per cent) were satisfied with the way their solicitor handled their business.

As to the major obstacle to good solicitor/client relationships, 17 per cent identified some inadequacy on the part of the client; 13 per cent shortage of time; 11 per cent prior conceptions about the legal profession (lawyers are too self-centred, always out for their pound of flesh, pompous); 8 per cent fees; 7 per cent delay outside one's control; 3 per cent fear or distrust of legal processes; 2 per cent "client thinks he knows it all"!

(Summarised for the "Gazette" by Maxwell Sweeney)

NO FAULT ON THE ROADS—SIEGHART (CHAIRMAN)—1974

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

1. This Report is confined to the consideration of compensation for damage suffered in aicidents resulting from the use of vehicles on roads (para. 8).

2. The compensation of road traffic victims in the United Kingdom still depends on "fault" to a far more significant extent than compensation for any other kind of accident (para. 8).

3. The giving of mutual help in adversity is axiomatic in all human societies. The function of compensation for personal injury is to make good to the victim, so far as is possible, what he has lost or suffered, by distributing his loss among those who are better able to bear it because it is diluted by being widely spread (paras. 16-19).

4. Any system of compensation designed to avoid the injustices of the present one should allow for the award of compensation regardless of whether any person other than the victim is considered to have been at fault (paras. 21-38 and 105).

5. A No-fault system of Compensation would avoid the delays, anomalies, capriciousness and high cost that too often produce injustice under the existing system, but would not introduce any additional problems of its own (paras. 4, 21, 23, 26, and 28-38).

6. The most effective deterrent to carelessness is the individual's fear of personal injury to himself. The threat of criminal proceedings and the cost of insurance are further deterrents (para. 106).

7. Only if the victim's own fault amounts to gross or wilful misconduct, established in the course of a criminal prosecution, should his compensation be reduced (paras. 106-114).

8. Subject to that, all those who have suffered the direct consequences of a personal injury resulting from any accident involving the use of any vehicle on any road should be eligible for compensation: this includes the actual dependants of victims (para. 115).

9. In principle, the victim of an accident should be compensated in accordance with the existing common law basis of awarding damages, *i.e.* loss of earnings and other monetary benefits as a result of incapacity; expenditure incurred by reason of the injury; shock, pain, suffering, inconvenience and discomfort; loss of function and amenity and abbreviation of life (paras. 87 and 116).

10. Compensation for economic loss should be paid periodically so long as the loss continues, and subject to review in the light of the victim's condition and changes in the value of money. Lump-sum payments should only be made exceptionally, and only if desirable in the interests of the victim. In the case of non-economic loss, the fund should have discretion to pay compensation either periodically or in the one or more lump sums (paras. 119-21).

11. Compensation should be earnings-related, and equivalent to 85-90 per cent. of actual earnings (paras. 126-7).

12. Economic loss other than loss of earnings should be compensated (para. 131).

13. All Social Security benefits received as a consequence of the injury should be deducted from the global figure for compensation (paras. 132 and 158), but benefits from private insurance schemes should not be taken into account (para. 133).

14. Compensation for non-economic loss presents much greater difficulties. We favour *ad hoc* adjudication in each case (paras. 140 and 143).

15. In the case of those kept alive in a state of permanent unconsciousness there should be no compensation for loss of function or amenity. Nor should compensation be given for "abbreviation of life" where a victim has died of injuries (para. 141).

16. The assessment of compensation should be entrusted to a tribunal from which there would be an appeal to the courts on a point of law (paras. 145-147).

17. The **no-fault scheme would replace the present action in tort** save to the extent that any heads of claim were excluded from the scheme (para. 148).

18. Under the no-fault system there are potentially more claims than under the existing system; but the experience of other countries suggests that dramatic savings can be achieved by the adoption of no-fault schemes (paras. 39-75 and para. 153).

19. We recommend "floors" for all claims; this could be achieved automatically by the victim giving credit for the full amount of Social Security benefits he receives as a result of the injury. All compensation for loss of earnings should be paid after deduction of notional tax at the rate appropriate to the victim's notional earnings. The fund should not be obliged to account to the Exchequer for the tax so deducted (paras. 159 and 160-1).

20. The imposition of a "ceiling" on claims raises difficult questions. There should be no ceiling on non-economic loss unless compelling evidence be found that its absence would render a no-fault scheme wholly uneconomic (para. 165).

21. **Both the State and the motoring community should contribute to the compensation fund.** The contribution of the latter should come from:

(a) vehicle owners and operators (collected with the road fund licence fee),
(b) vehicle users (collected with the motor fuel tax) and
(c) drivers (collected with driving licence fees) (para. 167).

22. **There appear to be merits in the method adopted in New Zealand,** where the no-fault compensation scheme is administered by the insurance industry as agent of the state (para. 169).

23. It is desirable that the body created to administer or supervise the national compensation fund should also have overall responsibility for supervising accident prevention and rehabilitation schemes for victims (para. 106).

24. The justification for introducing a scheme now to compensate victims of road traffic accidents and not victims of other accidents is that:

(a) the adoption of the scheme should produce significant remedies at no greater cost to the community than the existing system;
(b) of the three classes of accident that claim the largest number of victims annually, only in the case of road traffic accidents can substantial new benefits be obtained quickly at little cost;
(c) partial reform is better than no reform at all.

We hope that the introduction of a no-fault insurance system of compensating road accident victims will stimulate a more positive interest in devising improved methods of compensating victims of other calamities (paras. 170-172).

IBA FORMS SECTION ON GENERAL PRACTICE

The inaugural meeting of the Section on General Practice was held during the International Bar Association's Fifteenth Biennial Conference in Vancouver, British Columbia attended by 1,400 lawyers from 50 nations. The IBA itself is a non-political organisation formed in 1947 to "promote the administration of justice under Law among the peoples of the world". It now has 73 member Bar Associations and 3,500 individual lawyers as Patrons or Associate Members.

The aims of the new Section are to promote exchanges of information and views as to the laws, practices and procedures affecting the general practice of law throughout the world (as distinct from the business, financial and commercial practices of lawyers); and upon all other matters affecting the legal profession, its development or the improvement of legal services to the public. The Section has its own officers and Council and it is intended that in time it will organise its own Conferences and publish its own journal and a Directory of its members.

The Chairman of the Section is Sir Desmond Heap (England) and the members of its Council are:

Dr. Giselher Hochstrasser (Switzerland), Secretary; Mlle. Genevieve Augendre (France); Mr. George Cook (South Africa); Sr. Manuel Escobedo (Mexico); Mr. G. Starforth-Hill (Singapore); Mr. Jack Kennedy (Canada); Mr. Georg Lous (Norway); Mr. Stanley W. W. Tong (New Zealand); Mr. Ed. Wright (USA).

The Section Council have decided that initially the Section should have thirteen Committees each of which would cover a fairly wide field of professional interest as follows:

Committee 1. Real Property
(Sales and Purchases of Real Estate, Building Agreements, Landlord and Tenant problems and Mortgages).

Committee 2. Town and Country Planning
(Land development and Expropriation of Land).

Committee 3. Wills and Administration of Foreign Estates, Trusts and Trusteeships
(Wills, drafting and approving, Intestacies, International Aspect of Wills and Estates, Trusts and Trusteeships).

Committee 4. Family Law
(Marriage Contracts (pre-nuptial and post-nuptial settlements), divorce, separation, alimony and maintenance, adoption, international marriages and property problems, Paternity, Affiliation and custody of children and hire purchase of goods).

Committee 5. Estate Duty and Tax Planning
(Family tax planning, death duties, Hereditary Tax, Inheritance Tax and Super Tax).

Committee 6. Criminal Law
(Trial procedures, Penology, Treatment of Offenders, Rehabilitation of Offenders, Extradition, Forensic Sciences, International Crimes, Alcohol and Drug Habituation and Juvenile delinquency).

Committee 7. General Administrative Law
(Road Traffic Control, Police, Social Insurance, Consumer Protection, Pollution, Civil Liberties, Ombudsmen, Ad hoc Tribunals).

Committee 8. Legal Education and Continuing Legal Education ... .
(Standards for admission to the Profession, Continuing Education ,Lawyer and Student Exchange Programmes, Student Welfare).

Committee 9. Organisation and Development of the Legal Profession
(Professional conduct and ethics, Indemnity and Compensation Funds, Negligence or Mal-practice Insurance, Pension Provisions, Rights of Practice Abroad. Programmes for extending International expertise and law practice, Professional Fees, Legal Research, Legal Aid and Practice of the Law by Non-Lawyers).

Committee 10. Law Office Management and Technology
(Economics of a law practice, Office Organisation, Management and Staff Training, Computers and Modern Office Equipment).

Committee 11. Corporate Law Departments ... ...
(Rights and obligations of lawyers employed in the public sector, Lawyers full-time employed by other lawyers, Terms and Conditions of Service, Relationship with Board and Management and with Bar Associations and the Courts).

Committee 12. Civil Procedures
(Civil procedures around the world, comparative study).

Committee 13. "No Fault" Insurance
Some thoughts on the Maintenance of Trust

Obituary

Mr. John Henry Sides died suddenly in Dublin on 28th February, 1975. Mr. Sides was admitted in Easter Term, 1936, and was senior partner in the firm of Messrs. McMahon & Tweedy, 13, Hume Street, Dublin. Mr. Sides was an expert in Taxation and Revenue Law and had often assisted the Society in these matters. Mr. Sides was also a Commissioner of Charitable Donations and Bequests.

Mr. Francis Conway died in Galway Regional Hospital on the 9th March, 1975. Mr. Conway was admitted in Hilary Term, 1936, and practised under the style of Messrs. Emerson & Conway, at St. Francis Street, Galway.

SOLICITORS FIGHT 'TAX SNOOPING'

A number of English solicitors have decided to defy the proposed "Snoopers' Charter" in the Finance Bill, requiring them to inform the Inland Revenue when a client makes a settlement that could incur Capital Transfer Tax — the new "gifts tax".

Solicitors in Birmingham, Manchester and Newcastle upon Tyne are already known to have taken this stand, and the action could spread.

A Birmingham solicitor said: "If this provision goes through, a law-abiding client will be treated worse than a criminal, whose discussions with his lawyer enjoy absolute confidentiality.

"We have written to the Law Society asking if refusal to inform the Inland Revenue would constitute professional misconduct".

Capital Transfer Tax 'death knell' of Private Companies

"But it is our intention that we will under no circumstances give this information. I know of six to eight other solicitors, all in different firms, who are taking this position, and if I set out to canvass support I am sure I could find three or four times that number.

If this iniquitous piece of legislation is passed, I shall inform the Inland Revenue that they can legislate as they like, but I will not disclose this information. The idea that the Revenue can get passed any legislation they like and expect us to conform to it is an impertinence.

The solicitor said the general public did not seem to realise that the Capital Transfer Tax was quite literally the death knell of the private company. "I act for a fair number of private companies, and I have seen some of them broken up by Estate Duty.

"To a certain extent that was their own fault for not taking appropriate measures. But it will be impossible to avoid the new tax, or produce the cash to meet it without selling up.

"If the Treasury now have a policy that no company should remain in the same hands for more than a generation and a half, or that all companies should be public companies, they should declare it. The concessions made so far will only benefit the smallest firms: something worth only £250,000 is a very modest concern indeed.

"I act for one company, worth at least £1 million, which has been in the same family since it was founded in 1825 and is extremely dynamic and efficient. Private companies are no less efficient than public ones.

"If the Treasury have this policy, my clients might as well sell up right away and go abroad. Professional advisers are likely to advise people not to make settlements any more, but to provide for their children in cash and die bankrupt.

"The Bill could also mean the end of the private investor; people are likely to put their money into insurance policies instead of shares, which would have the unfortunate effect of putting still more power into the hands of the institutions.

Accountants protest

"I don't know whether even the Chancellor realises the full implications of this Bill. The politicians are only the front men used to put through legislation devised by the Revenue.

Accountants are equally incensed by the requirement to tell the Revenue when arranging settlements for clients. The Institute of Chartered Accountants has already protested to the Treasury.

Second Irish Examination

At the examination held on 25th July, 1974, the following candidates passed:

Robert H. D. Agnew, B.A. (Mod.), Henry J. Arigho, Cornelius D. Brosnan, B.C.L., Eamonn B. Byrne, B.A. (Mod.), Mary Cantrell, John R. Carroll, B.C.L., Margaret M. Carter, Therese Clarke, Aidan D. Collins, B.C.L., Frances Cooke, John G. Dillon-Leetch, Anthony J. Doherty, M.A., LL.B., Hugh M. Fitzpatrick, Timothy Bouchier-Hayes, B.C.L., John W. Gaynor.

Margaret M. A. Gleeson, Veronica M. Huggard, Liam Hipwell, Caroline Keane, Gillian Kiersey, Peter McLaughlin, Noel Malone, Patrick J. Minogue, Deirdre Morris, B.C.L., John T. Mulvihill, Dermot J. Neilan, Carrol O'Daly, B.A., Adrian P. O'Gorman, B.C.L., Celine M. O'Meara.

Michael T. Quigley, Thomas P. Quinn, Peter J. Redmond, Graham C. Richards, B.A. (Mod.), D. J. Rochford, Rosemary A. Ryan, B.C.L., Linda Scales, William J. J. Smith, Roger Sweetman, Vincent O. G. Toher, Rosaleen Tyndall, Gerard H. Walsh, Roderick St. John Walsh, Richard R. Whelehan, B.A., H. Dip in Ed.

46 candidates attended; 43 candidates passed.

Goodman Lashes 'Fat, Greedy Lawyers'

'Only interested in money' — The blessed Arnold Goodman today hit out at "a tiny minority among his fellow-members of the legal profession", who, he claimed, "are only interested in making enormous piles of money".

Lord Goodman spoke with passion of "hugely corpulent, heavy-jowled figures sitting in plush offices off the Strand and terrifying their clients by sending gigantic bills which bear no relation to the services rendered."

Lord Goodman is 94 stone.

APR/RRI
E. Strobes, Esq.,
Gnome House,
London W1.

4 Little Essex Street,
London WC2.
22 October 1974.

In account with

GOODMAN DERRICK & CO.

Re: Damage to bumper of vehicle reg. no. ARG 001N

		Charges and disbursements
September 19th 1974	*To professional services* in relation to the above matter, viz: listening to your telephone call describing an alleged incident in Tesco Road, Neasden, on October 1st 1961; to making notes on same; to forgetting matter entirely for three weeks; to listening to your further instructions enquiring why the hell I had done nothing about the matter; to making feeble excuses during the course of said conversation, to passing whole matter on to articled clerk, viz Michael Tharg; to said M. Tharg writing a professional letter to you requesting further and better particulars of the said matter; to having said letter typed by professionally qualified person, viz Miss Janice Brocklebank Fowler; to folding, sealing, and stamping of letter; to consulting London Telephone Directory to ascertain your full and proper place of abode; to the taking of the aforementioned letter down three flights of stairs, and along street to a proper place of despatch as ordained by the Postmaster General, viz a pillar box; to waiting four days for receipt of your reply; to full and due perusal of the contents thereof, and in particular your suggestion that ourselves had shown "gross incompetence and idleness" in pursuing this matter, and in noting your instruction to us all severally and collectively to take a running jump into a duly specified place, viz one lake. We herewith take pleasure in rendering our full and final account in the sum of	£8,984.68 +V.A.T. £726.42
September 20th 1974	P.S. Further to the above, we beg to render the following additional account in respect of this matter, viz to typing of above bill, to perusal of same, to correction of typing errors with Rubinstein's Patent Eraser, to licking of stamp on envelope, and to rubbing of hands at the thought of enormous cheque in the post.	£461.34
October 20th 1974	P.P.S. We beg to inform you that owing to the incidence of inflation since we began the compilation of the above bill, the total liability now amounts to	£25,468.00
	N.B. We further beg to inform you that failure to render settlement in full within 24 hours will result in our placing the matter in the hands of our legal advisers, Messrs. Goodman, Derrick & Co.	
	"MONEY IS OUR BUSINESS"	

A bill of the type to which it is believed Lord Goodman strongly objects.

The Register

REGISTRATION OF TITLE ACT, 1964

Issue of New Land Certificate

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

Dated this 31st day of March, 1975.

D. L. McALLISTER, Registrar of Titles,
Central Office, Land Registry,
Chancery Street, Dublin 7.

Schedule

(1) Registered Owner: James Callaghan; Folio No.: 140; Lands: Part of the lands of Knocknaclogher situate in the Parish of Ardfert and Barony of Trughanacmy and County of Kerry; Area: 65a. 2r. 5p.; County: Kerry.

(2) Registered Owner: Stephen Sullivan (Stephen T. Sullivan); Folio No.: 42521; Lands: (1) Mountgabriel, (2) Mountgabriel, (4 undivided 48th parts), (3) Glan; Area: (1) 104a. 0r. 15p., (2) 353a. 3r. 2p., (3) 9a. 1r. 20p.; County: Cork.

(3) Registered Owner: Catherine Kerr; Folio No.: 2180L; Lands: The leasehold estate in the dwellinghouse and premises known as No. 30 Herberton Road situate on the east side of the said road in the South Central District, Parish of St. James and City of Dublin; County: City of Dublin.

(4) Registered Owner: Mary Murphy; Folio No.: 481; Lands: Parts of the lands of Cahergal situate in the Barony of Clare and County of Galway; Area: 8a. 0r. 16p. (or thereabouts); County: Galway.

(5) Registered Owner: Patrick Joseph McMahon; Folio No.: 1500; Lands: Annaghkilly; Area: 5a. 3r. 0p.; County: Monaghan.

(6) Registered: Francis Carragher; Follio No.: 4012; Lands: Drumcreeghan; Area: 9a. 2r. 22p.; County: Monaghan.

(7) Registered Owner: Dominick McDonagh; Folio No.: 10467; Lands: Kiltymaine; Area: 14a. 1r. 10p.; County: Roscommon.

(8) Registered Owner: Timothy O'Connor and Mary O'Connor; Folio No.: 41241; Lands: (1) Ballymaquirk, (2) Crinnaloo South; Area: (1) 29a. 1r. 26p., (2) 1a. 2r. 9p.; County: Cork. (The Land Certificate on the land of folio 292 County Cork now forming the property No. 1 on Folio 41241).

9. Registered Owner: James O'Donovan; Folio No.: 1030L; Lands: The leasehold interest in the property situate in part of the townland of Grange and Barony of Cork; Area: 0a. 0r. 10p.; County: Cork.

(10) Registered Owner: John Martin Kavanagh; Folio No.: 43166; Lands: (1) Frenchbrook South (2) Brownisland; Area: (1) 39a. 2 r. 30p., (2) 3a. 0r. 22p.; County: Mayo.

(11) Registered Owner: Jeremiah Riordan; Folio No.: 11935; Lands: Vicarstown; Area: 7a. 0r. 17p.; County: Cork.

(12) Registered Owner: Cornelius Callan; Folio No.: 938. Lands: Balleelaghan; Area: 12a. 1r. 22p.; County: Donegal.

13. Registered Owner: Francis Rutledge; Folio No.: 5942R; Lands: Mong; Area: 17a. 2r. 10p.; County: Leitrim.

(14) Registered Owner: William Kelly; Folio No.: 6132; Lands: Camaross; Area: 9a. 2r. 2p.; County: Wexford.

(15) Registered Owner: Patrick O'Donnell; Folio No.: 9344; Lands: Lyreen; Area: 34a. 2r. 30p.; County: Cork.

(16) Registered Owner: William J. Cassell; Folio No.: 10547; Lands: Kilbride; Area: 25a. 1r. 0p.; County: Wicklow.

(17) Registered Owner: George Storey; Folio No.: 2749; Lands: Bolragree; Area: 67a. 0r. 5p.; County: Queen's.

(18) Registered Owner: Josephine Kellegher; Folio No.: 305L; Lands: The leasehold estate in the dwellinghouse and premises known as 351, Griffith Avenue situate on the north side of the said Avenue in Drumcondra Parish of Clonturk and city of Dublin; County: City of Dublin.

Notices

Dublin Solicitor's Practice for sale, with Branch Office—Celbridge, Co. Kildare. Full accounts available. Please reply to Box 114.

First Year Legal Science (T.C.D.) Student seeks Master. Replies to Box 115.

DISSOLUTION OF PARTNERSHIP

Notice is hereby given that the Partnership heretofore subsisting between Hubert Arthur John Fetherstonhaugh and James Edward Boylan Skelly carrying on Business at Mountmellick in the County of Laois under the Style or Firm of Fetherstonhaugh and Skelly, Solicitors, has been dissolved as and from the 3rd day of March, 1975.

Dated this 21st day of February, 1975.

Signed: Hubert A. J. Fetherstonhaugh.

LOST WILL

John M. Esler, deceased, 5th February, 1975, 1, Corbawn Lane, Shankill, Co. Dublin. We have reason to believe that the above named, who was formerly Manager of the Northern Bank Ltd., Bailievorough, Co. Cavan, deposited his Will for safe keeping with a Dublin solicitor around 1963. Should any solicitor have this Will or have any information that might help locate same, kindly contact the Manager, Northern Bank Ltd., Bray, Co. Wicklow.

LAW CLERKS' JOINT LABOUR COMMITTEE

The Law Clerks' Joint Labour Committee has published an Order setting out a revised scale of salaries applicable to Managing Clerks, Conveyancing Clerks, Costs Clerks and General Male and Female Law Clerks and Female Shorthand Typists and Book-keepers. This scale represents a 10% increase on basic wages, and comes into force on 17th March, 1975. The order may be inspected in the Society's Library.

THE GAZETTE OF
THE INCORPORATED
LAW SOCIETY
OF IRELAND

April, 1975
Vol. 69 No. 3

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Joseph L. Dundon

Director General
James J. Ivers, M.Econ.Sc., M.B.A.

Assistant Secretaries
Martin P. Healy, B.Comm. (N.U.I.)
Patrick Cafferky, B.C.L., LL.B.

Librarian & Editor of the Gazette
Colum Gavan Duffy, M.A., LL.B. (N.U.I.)

Legal Assistant
Basil Doyle, Solicitor.

Officer Hours
Monday to Friday, 9 a.m.—1 p.m.; 2.20 p.m.—5.30 p.m.
Public, 9.30 a.m.—1 p.m.; 2.30 p.m.—4.30 p.m.

Library Hours
9 a.m.—1.45 p.m.; 2.30 p.m.—5.30 p.m.

Telephone
784533

Advertisements to :
Advertising Manager,
Incorporated Law Society,
Four Courts, Dublin 7.

The Editor welcomes articles, letters and other contributions for publication in the Gazette.

Opinions and comments in contributed articles and reviews are not published as the views of the Council unless expressly so described.
Likewise the opinions expressed in the Editorial are those of the Editor and do not necessarily represent the views of the Council.

The Gazette is published during the third week of each month: material for publication should be in the Editor's hands before the 15th of the previous month if it is intended that it should appear in the following issue. Acceptance of material for publication is not a guarantee that it will in fact be included in any particular issue since this must depend on the space available.

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PROCEEDINGS of the COUNCIL

12th DECEMBER, 1974

The President, Mr. Prentice, presided, also present were Mrs. M. Quinlan, Messrs. W. B. Allen, W. Beatty, B. St. J. Blake, J. Buckley, J. Carrigan, A. E. Collins, L. Cullen, M. R. Curran, G. M. Doyle, J. L. Dundon, C. Hogan, M. P. Houlihan, T. Jackson, J. B. Jermyn, John Maher, E. J. Margetson, Gerald J. Moloney, P. C. Moore, P. J. McEllin, W. D. McEvoy, B. A. McGrathy, John J. Nash, Patrick Noonan, Peter E. O'Connell, Patrick F. O'Donnell, Dermot G. O'Donovan, James W. O'Donovan, Rory O'Connor, T. V. O'Connor, William A. Osborne, David R. Pigot, Thomas D. Shaw, R. McD. Taylor. The Director General, Mr. Ivers, was in attendance.

Guaranteed Cheques

The Council agreed that a letter should issue to all solicitors commenting on the use of guaranteed cheques, and at the same time advising that the Bank Draft should be made payable to the solicitor.

Society Inquiries

The Council agreed that greater pressure should be exerted on solicitor to deal with Society inquiries more promptly.

The President and Vice Presidents

Mr. W. A. Osborne was duly elected as incoming President for 1974-75 and Messrs. P. C. Moore and J. Dundon were duly elected as incoming Vice Presidents.

Leaflets

It had been decided to release some of the leaflets relating to the profession at a Press Conference on 22nd November.

Seminar Papers

These could be released to non-participants at a minimum charge of £2.00.

Solicitor's Liability to Counsel

A solicitor is not liable to pay Counsel a Brief fee if a case is settled before the brief is furnished, but he may be liable for a retainer fee.

Section 90 of the Housing Act 1966

A complaint was made that, despite agreement to the contrary, a Transfer Order under Section 90 was drawn up by Local Government Officials and not by a solicitor. The Committee decided that the Society would prosecute any Town Clerk should evidence be furnished to the Society by members.

16th JANUARY, 1975

The President, Mr. W. A. Osborne, presided and also present were Mrs. M. Quinlan and Messrs. W. B. Allen, W. Beatty, John F. Buckley, John Carrigan, Anthony E. Collins, Laurence Cullen, Maurice R. Curran, Gerard M. Doyle, Joseph L. Dundon, Christopher Hogan, Michael P. Houlihan, Thomas Jackson, John B. Jermyn, Francis J. Lanigan, John Maher, Ernest J. Margetson, Patrick C. Moore, Peter Murphy, Brendan A. McGrath, John J. Nash, Patrick Noonan, Peter E. O'Connell, Patrick F. O'Donnell, Rory O'Donnell, James W. O'Donovan, Rory O'Connor, David R. Pigot, Brian W. Russell, Thomas Shaw, R. Mc.D. Taylor. The Director General, Mr. Ivers, was in attendance.

Estate Duty — Securities sold within a year of death

Section 45 of the English Finance Act 1973 provides that such securities, if sold within a year of death, will be re-assessed for Estate Duty at their value on the date of sale; and an appropriate refund of Estate Duty will be made. Despite the recent large falls in securities, there is no corresponding provision in Irish Law. The Society decided to support the member who wished to have the law reformed and not be liable for full duty.

Resignation of Mr. P. Cafferky

The resignation of Mr. P. Cafferky as Assistant Secretary was accepted with regret. It was decided that the post be advertised, and that interim arrangements be made to retain Mr. Cafferky's services for as long as possible.

Solicitors joining Dublin Chamber of Commerce

There is no objection to this.

27th FEBRUARY, 1975

The President, Mr. W. A. Osborne, presided and also present were Mrs. M. Quinlan and and Mrs. F. Foley, Messrs. Beatty, Blake, Buckley, Cullen, Curran, Doyle, Dundon, Hickey, Hogan, Houlihan, Jermyn, Lanigan, Maher, Monahan, Margetson, Moloney, Moore, Murphy, McEvoy, McGrath, Nash, Noonan, O'Connell, P. F. O'Donnell, J. W. O'Donovan, R. O'Connor, D. R. Pigot, P. D. M. Prentice, B. W. Russell, T. Shaw, and R. McD. Taylor. Mr. J. Ivers, Director General, was in attendance.

Pension Scheme

It was hoped to have the requisite material ready by 18th March.

Revenue Commissioners

Arising out of the Capital Gains Tax Bill, 1975, the Wealth Tax Bill, 1975, and the Capital Acquisitions Tax Bill, 1975, the Society agreed to formulate a statement which might be published widely on the whole question of Capital Taxation.

Assistant Secretary

As a result of interviews held, it was agreed to recommend Miss Margaret Casey, solicitor, Dublin, to replace Mr. Cafferky.

Accountant

It was agreed that the Society should employ an additional Accountant in view of the increase in the volume of work in this Department.

Premiums paid by Apprentices

Despite strong recommendations to the contrary, it was reported that some solicitors still charged premiums to apprentices. It was agreed that the Court of Examiners would draft definite recommendations about this.

Criminal Legal Aid

Tribute was paid to the Bar Council for the excellence of its Report.

Civil Legal Aid

The Council had submitted recommendations on behalf of the Society to the Committee on Civil Legal Aid and Advice.

Non-acceptance of affidavits from English solicitors as to English Law

The President of the High Court had ordered that the Probate Office should only accept affidavits from English barristers as to English Law and not from English solicitors, although affidavits from Northern Ireland solicitors as to Northern Ireland Law are acceptable; furthermore an Irish solicitor's evidence of Irish law is acceptable in England. The President was requested to write to the President of the High Court to rectify this.

Duty to insure property

A solicitor is under a duty to advise his client to insure, and he would be negligent if he did not do so.

WOMAN ADMITS SWINDLING HANDICAPPED SOLICTOR

Mrs. Sheila Fidler, 40, a book-keeper, confessed at Teesside Crown Court that she had swindled the handicapped solicitor who trusted her with his financial affairs.

Mrs. Fidler, who earned £10 a week and lived in a manor house on the stolen money, changed her plea to guilty on 15 sample charges of theft and false accounting.

She had been accused of 33 counts involving a £20,000 fraud on Mr. David Haslam, 42, a multiple sclerosis victim.

Mrs. Fidler, of Exelby, North Yorkshire, was sentenced by Judge George Milner, who ordered that 18 not guilty plea charges remain on the file.

'Bled white'

Mr. Brian Walsh, prosecuting, said that by her admissions Mrs. Fidler agreed that she drew excess wages for herself from the practice in Middlesbrough during 1970.

She also admitted falsifying the firm's accounts, paying her own household bills with company money, and transferring funds direct from the firm's accounts to hers. Mr. Haslam, now seriously ill in hospital, and his father Mr. Harry Haslam, 70, a retired company director, were forced to sell their homes to keep the firm going when they were "bled white" by Mrs. Fidler.

Mrs. Haslam, 39, who lives in a council house in North Yorkshire, told the jury yesterday that her husband trusted Mrs. Fidler implicitly.

Mrs. Fidler and her husband Brian, 45, then a £24-a-week factory worker, are thought to have an extensive antique collection at their five-bedroom manor house, with its stables and paddock.

Mr. Haslam was a keen rugby player and skier and climbed the Matterhorn before the onset of his illness in 1965. His firm collapsed in 1971, four years after Mrs. Fidler joined it as cashier and book-keeper for two days a week.

ESTATE TAX NOT TO BE PUBLISHED

The amount of Capital Transfer Tax paid on estates left by people who die after March 12 this year will no longer be published by the Probate Registry at Somerset House.

The tax statement will be kept privately at the Estate Duty Office and it will now be up to individual executors to disclose how much an estate has been penalised.

The dropping of the tax figure from the probabte document is the result of this year's Finance Act which became law on March 12. It repeated the Customs and Indian Revenue Act of 1881 which required gross and net values of estates and death duty paid to be published on every probate grant.

It was felt that figures under Capital Transfer Tax which has replaced Estate Duty would be rather misleading and would not have as much relevance as the old duty because there are provisions for postponement of the liability.

Lifetime gifts

For instance no Capital Transfer Tax is paid on property left between husband and wife so that a man leaving £500,000 all to his wife would have no tax shown against his estate. C.T.T. covers lifetime gifts which may have to be calculated.

The publication of gross and net valuations for estates could also be dropped because of the repeal by the 1975 Finance Act, but the head of the Family Division, Sir George Baker, has decided that they should continue to be shown.

The publication of wills is not affected. This comes under the Supreme Court of Judicature (Consolidation) Act of 1925, which says that wills should be open for inspection at a fee.

Recent Irish Cases

A childless spouse, who, though entitled to do so, does not take his legal right of a half-share under the Succession Act, 1965, is not liable for Estate Duty in respect of that half share

Mrs. Kathleen Urquhart died on 4th May, 1969. She was survived by her husband, Douglas Urquhart, who died on the following day, 5th May, 1969. They were both domiciled in Ireland. Mr. Urquhart died childless, unaware of his wife's death, and was unconscious at the time.

Mrs. Kathleen Urquhart made a will on 6th April, 1967, whereby she made certain provisions if her husband survived her one month. If he survived for a lesser period, her estate worth £95,000, was to be disposed of to a number of relatives. On the same date, in April, 1967, the husband, Douglas Urquhart, made a will in similar terms relating to his wife. Arising out of Douglas's death, the Revenue Commissioners have unconvincingly tried to contend that nothing vested in Douglas by reason of the death of his wife, and that no property passed on his death under that head. His executors, the Provincial Bank, contend that under S.111(1) of the Succession Act, 1965, Douglas was entitled as of right to a half share in his deceased's wife's estate. The Revenue Commissioners put forward the tall proposition that under S. 118 of the Act, the half share of the wife's estate should bear its due proportion of Estate Duty paid on the wife's estate. The executors contended that Douglas had never had an opportunity to elect to take the wife's estate under S. 115 of the Act and therefore was not entitled to any share of the estate; they also contend that, as ,under the will, he did not survive his wife by a month, the gift to him under the will lapsed. The Revenue contend that the right conferred by S. 111 of the Act was a vested right which took effect immediately, and would continue to be effective unless divested by the election provided for under S. 115 (4). As there had been no election, it followed that Estate Duty should be payable on the half share of his wife's estate as part of estate after his death.

The Succession Act, 1965, brought about a revolutionary change in the law of succession. Previously this had been determined by the Irish State of Distribution 1695 and the Intestate Estate Act 1954. Briefly a person who died testate after 1965 could deal with his property as he thought fit. Part II of the Succession Act, 1965, comprising Sections 10 to 15, went a long distance in abolishing the difference between real and personal estate. Section III of the Succession Act operates in respect of both real and personal estate, which is reminiscent of the Custom of Ireland abolished by Section 10 of the Act of 1695. The net point is **whether, under S. 111, a spouse can claim as of right one half of the estate, or whether the spouse has merely a right to claim one half of the estate.** S. 111 (1) says clearly that the surviving spouse has a right to one half of the estate. S. 115 states that the personal representative must notify the surviving spouse in writing of his right to elect to take either a devise or bequest under the will, or the share to which he is entitled as a legal right; if there is no election normally within six months, the spouse shall be entitled to take under the will. S. 114 provides for the case where a testamentary gift to a spouse is expressed to be **in addition** to the legal share, and may be so devised or bequeathed. The whole of the structure of these sections is based on an **implicit assumption that a legal right arises on the moment of the death of the testator. When a testator makes a devise or bequest in his will to a spouse,** and it is not expressed to be in addition to the share as a legal right, then **the spouse has a statutory right to take the share as a legal right, but the share does not vest until he takes it.**

The right to take the legal share requires a "taking" to vest the share in the spouse. This may be an **actual taking by express election,** or **a constructive taking,** by dealing with the legal share in an inconsistent manner. If **the death of the spouse takes place before an election is made,** then **the legal share does not form part of the spouse's estate,** because the spouse before death had done nothing to take the share as a legal right. Under S. 115, the surviving spouse is entitled to take the share as a legal right, but it must be taken. Where there is no "taking" of the property, there is no competence to dispose of it. **Penrose's** case — (1933) 1 Ch. 793 — is no authority for the proposition that, if at the time of death, the deceased possessed the ability to make property his own by exercising an option or an election, then, whatever his wishes or action in the matter, the property must be deemed to pass on his death. The Finance Act 1894 never contemplated that Estate Duty would be payable in respect of property which a person could obtain by exercising an election—and nevertheless foregoing a testamentary disposition in respect of the property not passing by the will, where in fact no such election was ever made. It follows that at the date of his death, Douglas was entitled to take the half share of his wife's estate as a legal right, but, as he did not in fact do so before his death, this was not property which he was competent to dispose of for the Estate Duty purposes. Kenny J.'s decision is accordingly reversed, and the appeal allowed.

(The Revenue Commissioners v. Provincial Bank of Ireland—re Douglas Urquhart Decd.—Supreme Court —Majority judgments by Fitzgerald C. J. and Walsh J. — Dissenting judgment by Henchy J. — Separate judgments by each Judge — unreported 30th July, 1974.)

New trial ordered where plaintiff infant trespasser gravely injured by electric conductor was awarded £40,000 general damages..

The accident occurred in July, 1965, when the plaintiff was 11 years old. The action for personal injuries was heard before Butler J. and a jury in February, 1972. The jury held the defendant company alone negligent, and assessed damages for £74,770. Judgment was accordingly entered for the plaintiff.

The plaintiff's injuries were sustained when he came into contact with electricity conductors of 10,000 volts at a sub-station at Garryowen, Limerick. A new housing estate was erected in the area between 1960 and 1964 around the sub-station. This sub-station had already been damaged by children throwing stones and breaking glass; they also played near the sub-station. The plaintiff's experts alleged that the fence erected to prevent children from trespassing was quite unsuitable for keeping persons out; as the fence posts were loose and the barbed wire was slack. The children had constantly been told to go away from this fence. The plaintiff alleged he had often played cowboys and Indians there and gone across the wire; he had taken no notice of the warning notice posted around the fence.

On the day of the accident, the plaintiff climbed over the fence with his younger brother on to a flat roof. When coming down, he accidentally grasped an electric conductor, and was very severely injured. In answer to set questions, the jury stated that the defendants were aware that children were liable to trespass through the fence, that they should have foreseen the risk of injury to children, and that they were negligent in failing to provide proper fencing. The defendants contend that, as the plaintiff was a trespasser, they owed no duty of care towards him; this contention was rejected by Butler J., as in **Purtill v. Athlone U.D.C.** — (1968) I.R. 205 — the Supreme Court laid down that an occupier of premises could not claim exemption from liability on the ground that the person injured was a trespasser, when the occupier's act was not done with the deliberate intention of doing harm to the trespasser, or done with reckless disregard of the presence of the trespasser. In this case, in erecting the sub-station with the exposed conductors carrying high voltages, the defendants created something in respect of which the likelihood of danger to parties coming in contact with it was foreseeable. Undoubtedly it was reasonably foreseeable to the defendants that children might enter the premises unless steps were taken to keep them out, and furthermore these steps were not reasonable as they did not ensure that the children would not enter the danger area. The statements of Lavery J. and of Kingsmill-Moore J. in **Donovan v. Landys Ltd.** — (1963) I.R. 441 — that the only duty owed in law to a trespasser was a duty not to act with reckless disregard of his presence or safety is incorrect. The test to be applied is that of O'Byrne J. in **Fleming v. Kerry Co. Council** — (1955-56) Ir. Jur. 71 — that it is for the jury to determine whether the boy fell short of the standard which might be reasonably expected from him, having regard to his age and development. In this case the jury was entitled to accept that the plaintiff did not actually know the danger, and that the defendants had not discharged the onus of prooving that the plaintiff was negligent.

The damages of £74,770 were divided up as follows: (1) £9,910 for supplying artificial limbs; (2) £25,060 for loss of future earnings, and (3) £40,000 for general damages. But for the accident the plaintiff intended to become a chef. The jury were entitled to conclude that the boy would have no earning capacity of any significance for the rest of his life, and consequently the sum of £25,000 for loss of future until 65 years of age on actuarial evidence was reasonable. The sum of £40,000 for general damages, represented damages for past and future pain and suffering, loss of pleasure in life, and mental anguish. In **Doherty v. Bowater,** the Supreme Court held £34,000 excessive in the case of a man of 33 who had permanent quadraplegia ten years ago, and directed a new trial; this case is not comparable to a condition of permanent quadriplegia despite the intervening fall in the value of money. Consequently there will be a new trial confined to the issue of general damages. So held by **Walsh J.,** (Budd J. concurring). **Henchy J.** stated that the principle laid down in **Addie v. Dumbreck** — (1929) A.C. 358 — that the occupier owes no duty to care for the protection of a trespasser, or even to protect him from a concealed danger, as the trespasser comes on to the premises at his own risk, — unless the wilful act is done with the deliberate intention of doing harm to the trespasser or some act done with reckless disregard of the trespasser, which had been followed in **O'Leary v. Wood** — (1964) I.R. 269 — had created palpable injustices. In Ireland, the Court has to choose between the **Addie principle** and the "neighbour principle" stated by Lord Atkin in **Donoghue v. Stevenson** — (1932) A.C. 580 — "You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour". Trespassers do not normally come within this principle, unless the following rules apply: (1) That the injury was caused by a hidden or unexpected danger; (ii) that such danger was created and maintained by the occupier; (iii) that the circumstances would not entitle a reasonable occupier to disregard the risk of injury to trespassers; (iv) that, in relation to the expense or impracticability of eliminating the danger, the occupier should have done his utmost in the interests of safety; and (v) that the occupier's failure to take due precaution contributed to the accident. The direction of Butler J. that it was for the jury to decide the defendant's negligence was correct.

There was ample evidence to support the case that a boy like the plaintiff could without difficulty surmount the fence and get on to the flat roof. The defendants were maintaining inside the wire fence an unguarded, live, high-voltage conductor capable of causing serious injury. The defendants maintained an inadequate fence and merely put up warning notices. The jury were entitled to find them negligent.

Henchy J. also held that in the circumstances pre-

vailing in this case the jury were not justified in holding that the plaintiff did not contribute to the accident by want of reasonable care, as he had culpably failed to read the warning notices. In his view, the plaintiff was guilty of contributory negligence.

As regards the damages, the jury were clearly entitled to award the plaintiff substantial compensation for the physical and psychological trauma he suffered. As the accident ultimately resulted in the amputation of both arms, a fact so rare as to be almost unique, there is no proper yardstick to measure the correctness of the jury's award. Despite his suffering, the plaintiff is not in as bad a condition as a paraplegic who will have to live out his life helplessly in a wheelchair. Consequently the sum of £40,000 for general damages is unreasonable. Henchy J. consequently held that "there should be a new trial on the same issues as those considered by the jury in the trial in the High Court".

Griffin J. said that, by reason of the harshness of the **Addie** rule, the Courts found means to circumvent it. Child trespassers were frequently converted into licensees. Dixon C.J. in **Commissioner for Railways for New South Wales v. Cardie** has stated the modern principle thus: "In principle a duty of care should rest on a man to safeguard others from a grave danger of serious harm if knowingly he has created the danger or is responsible for its continued existence and is aware of the likelihood of others coming into proximity of the danger and has the means of preventing it or of averting the danger or of bringing it to their knowledge".

In **Videan v. British Transport Commission**—(1963) 2Q.B. 650 — the Court of Appeal decided that the duty of an occupier of land towards trespassers was the duty to take care not to injure trespassers whose presence was foreseeable. In **Herrington v. British Railways Board** — (1972) A.C. 877 — Lord Pearson said that **Addie's** case had been rendered obsolete by changes in physical and social conditions. There is now less playing space for children and a greater temptation to trespass. There are also more dangers by reason of the advance of technology. Griffin J. agreed, and said that **Addie** no longer could reasonably have foreseen that child trespassers were likely to climb fences at their sub-station. There was enough evidence for the jury to find that there was negligence by the defendants, but the jury should have also found contributory negligence on the part of the plaintiffs. As regards damages, the plaintiff sustained severe burns to both arms and the left side of his chest; it was eventually necessary to amputate both arms; he might get employment as a bookkeeper. As the serious injuries of the plaintiff do not compare with those of a paraplegic, the £40,000 awarded for general damages is excessive. Accordingly Griffin J., with whom Fitzgerald C.J. concurred, would direct a re-trial on all isues.The appeal was allowed.

(McNamara v. Electricity Supply Board — Full Supreme Court — Separate judgments by Walsh, Henchy and Griffin JJ.—unreported—30 July, 1974).

Application that questions of law be tried on a preliminary issue before trial refused.

This was an application under Order 34, Rule 2, by the defendant Minister that certain questions of law be tried before any evidence is given in the action. In order that Order 34, Rule 2, should come into operation, the following conditions should exist:

(1) The Court in any action may require a question of law for its opinion normally to be "special case".

(2) A question of law must be identified amongst the questions in issue.

(3) This question of law should be of such importance that it must be decided before any evidence is given.

(4) If special facts have to be provided, or if facts are in dispute, the rule does not apply.

(5) This procedure is very rarely availed of.

Five specific questions relating to the construction of the Minerals Development Act, 1940, has been pressed by the defendant Minister for preliminary decision. Kenny J. refused the application, and his decision was affirmed unanimously by the Supreme Court.

(Tara Exploration and Mining Co. v Minister for Industry & Commerce — Full Supreme Court per O'Higgins C.J.—unreported—4 February, 1975.)

Plaintiff's injunction to restrain defendant from dumping manure on part of his lands dismissed.

The plaintiff claims to be the owner of lands at Forth Mountain, Co. Wexford, containing less than two acres. He sues for an injunction to restrain the defendant from dumping manure on the said lands. The defendant denies that the plaintiff is owner of the lands, and counterclaims for a declaration that he has acquired an easement over them, in order to spread lime and manure. The lands in question are not arable and are common lands. The plaintiff obtained a conveyance in fee simple to the lands in June, 1973, but the vendor had been a squatter who had no documents of title. The vendor was an unsatisfactory witness who took little interest in these lands and never went there. The lands owned by the defendant were duly conveyed to him in 1966. Satisfactory evidence established that the defendant's predecessors in title had already deposited large quantities of manure on the plaintiff's land, particularly as the defendant's farm covered 65 acres, and the defendant continued to do so. The area used for the dumping of manure was half an acre, and an easement undoubtedly existed for this purpose alone. The defendant is entitled to £60 for loss of manure. The plaintiff's claim for an injunction is dismissed. The defendant's counterclaim for a declaration that he has acquired an easement over the specific half acre is allowed.

(Redmond v. Hayes—Kenny J.,—unreported—7th October, 1974).

FREEDOM OF ESTABLISHMENT AND FREEDOM TO PROVIDE SERVICES IN THE E.E.C. AS ILLUSTRATED BY TWO RECENT JUDGEMENTS OF THE COURT OF JUSTICE

by

GERALD FITZGERALD, SOLICITOR, BRUSSELS

Part 2

The Van Binsbergen Case — Freedom to Provide Services

The second Judgment, with which this article is concerned, which dealt with the freedom to provide services, was delivered on 3rd December 1974 in **Case 33/74 Van Binsbergen v. Het Bestuur van de Bedrifsverenining voor de Metaalnijverheid** (Board of Trade Association of the Engineering Industry).

The freedom to provide services, which is covered by Article 59 to 66 of the EEC Treaty, is the right of a person (or company as defined by Article 58 established in one Member State to provide services to persons resident in any other Member State. The service which the beneficiary of the right is entitled to provide, is the same economic activity which he carries on as a self-employed person in the country in which he is established. The provision of the service may involve the movement of either the provider or the recipient of the service from his State to that of the other. On the other hand, it may involve no physical movement by either party (as for example, where the service is provided by correspondence). While the freedom to provide services is obviously an extension of the right of establishment, the distinction between the two consists in the cross-frontier element which always exists in the provision of services. The distinction can have important practical consequences, most obviously in relation to the control by the receiving Member State of activities carried on by someone established in another Member State.

The provisions of the Treaty relating to the freedom to provide services are similar to those governing the right of establishment.

Article 59 provides that "restrictions on freedom to provide services within the Community shall be progressively abolished during the transitional period in respect of nationals of Member States who are established in a State of the Community other than that of the person for whom the services are intended."

Article 60 defines "services" and states that the term is intended in particular to include activities of an industrial or commercial character, activites of craftsmen and activities of the professions.

Article 63 is similar to Article 54, and also provides for a General Programme (adopted by the Council in December 1961) and for the implementation of the General Programme by Council Directives.

Article 66 provides that Articles 55 to 58 of the Treaty shall apply to the freedom to provide services. Thus, the co-ordination and mutual recognition provisions of Article 57 are as relevant to the freedom to provide services as they are to the right of establishment and the exemption provisions of Articles 55 and 56 apply equally to the provision of services.

The facts of the **Van Binsbergen Case** were simple.

In July 1972, Mr. Van Binsbergen, a Dutch national, instructed a Mr. Kortmann, a Dutch legal adviser resident in the Netherlands, to represent him before the Dutch Social Security Appeal Tribunal in an appeal concerning unemployment insurance.

After lodgment of the appeal, Mr. Kortmann moved his residence to Belgium and wrote to the Tribunal seeking documents which he required in order to draft the pleadings.

In November 1973 the Registry of the Tribunal informed him that he was unable to comply with his request, since the relevant Dutch law restricted the right of representation before the Tribunal to persons established in the Kingdom of the Netherlands.

Mr. Kortmann argue that such a provision constituted a restriction on the freedom to provide services and was therefore in conflict with Articles 59 and 60 of the EEC Treaty, which were directly applicable since the end of the transitional period.

In April 1974, the Tribunal applied to the Court of Justice under Article 177 of the Treaty for replies to the following questions:

> "1. Are Articles 59 and 60 of the EEC Treaty directly applicable and do they create, for the beneficiaries, individual rights which national tribunals must protect?
> 2. If the answer to the first question is affirmative, what is the meaning of these Articles, in particular, the last sentence of Article 60?"*

* Official translation.

(The last sentence of Article 60 reads: "Without prejudice to the provisions of the Chapter relating to the right of establishment, the person providing a service may, in order to do so, temporarily pursue his activity in the State where the service is provided, under the same conditions as are imposed by that State on its own nationals.")

1. The Direct Applicability of Articles 59 and 60

Representations on this question were submitted by Mr. Kortmann, the Governments of Germany,

Ireland, and the UK and the Commission. With the sole and curious exception of Ireland, all these parties argued that these Articles must be considered directly applicable. The Irish Government, surprisingly in view of the **Reyners Decision**, argued against the direct applicability of the be narrowly confined to the prohibtion on restrictions based on nationality or residence—the abolition of other restrictions should be dealt with by directives. This appears to have been the solution adopted by the Court.

The Court dealt briefly with the question. It decided that the prohibitions on restrictions contained in Articles 59 and 60 are clear and unconditional provisions of the Treaty, and that the directives eliminating such restrictions required by Article 63 became superfluous at the end of the transitional period. It concluded that the Articles are directly applicable—at least insofar as discrimination based on the nationality or residence of the provider of services are concerned. Once again however, it emphasised that the directives required to implement the **effective exercise** of the freedom remained important, particularly in relation to the control of the activities of the provider of services in the State in which the services are provided.

In the operative part of the Judgment, the Court held that "Articles 59, first sentence, and 60, third sentence, have a direct effect and may henceforth be relied on before National Courts, at least ("en tout cas") in so far as they seek to abolish any discrimination against a person providing a service by reason of his nationality or of the fact that he resides in a Member State other than that in which the service is to be provided."*

While it is clear from this that restrictions based on nationality or residence are no longer enforceable, the wording is unfortunately ambiguous on the question of the validity of other restrictions on the provision of services. The explanation probably lies in the fact that restrictions required to protect the public against abusive exercise of the freedom remain justifiable.

* Official translation.

2. Meaning of Article 60 (3)

In its reply to this question, the Court spelt out the practical meaning of Articles 59 and 60 in unambiguous language.

It held that these Articles prohibit all restrictions on the provision of services which are not equally applicable to persons established in the host State. In more general terms, it condemned all restrictions which interfere with the free provision of services across frontiers, and specifically cited restrictions based on nationality or restrictions requiring the provider of services to maintain a residence in the host State. Such restrictions would render Article 59 quite meaningless in practice.

The Court acknowledged however that obligations imposed on the provider designed to ensure the observance of professional rules in the public interest were justifiable, provided they also applied to everyone established in the State in which the service is provided. Thus, it considered the requirement that legal advisers should have an office (un établissement professionel stable") **within the jurisdiction of a given court** as justifiable if the obligation is necessary in order to guarantee the observance of professional rules.

It concluded that, where no professional qualification is required in order to pursue a given activity and that activity is not subject to any disciplinary organisation (as is the case for legal advisers — as opposed to **Advocaaten** — in the Netherlands), then the requirement that a provider of such services should have a residence in the host Member State is incompatible woth Articles 59 and 60.

The operative part of paragraph 1 of the Judgement reads:

> "The first paragraph of Article 59 and the third paragraph of Article 60 of the EEC Treaty must be interpreted as meaning that the national law of a Member State cannot, by imposing a requirement as to habitual residence within that State, deny persons established in another Member the right to provide services, where the provision of services is not subject to any special condition under the national law applicable.*

* Official translation.

Implications of the Reyners and Van Binsbergen Cases

The direct legal consequences of the direct applicability of Articles 52, 59 and 60 are simply stated. Where establishment is involved, any restrictions in the law or administrative regulations of any Member State which discriminate against nationals or other Member States on the grounds of their nationality are unenforceable. Where the provision of services is concerned, restrictions related to the fact that the provider of services resides in another Member State, as well as restrictions based on nationality, are uneforceable.

The practical implications are not quite as simply stated.

The significance of the **Reyners decision** in any given Member State will depend upon the extent to which its legislation or administrative practices have in the past restricted the right of establishment of non-nationals. Ireland's policy in this field has not been particulaly restrictive, but well known restrictions have existed in the Insurance Act 1936, the licensing requirements of the Central Bank and the Land Act 1965. The Government's Fourth Report on Developments in the European Communities, published in January 1975, states that the implications of the **Reyners decision** are under examination in the various Government Departments. The Report was written before the Binsbergen Judgment was delivered.

An example of the practical relevance of the **van Binsbergen decision** has already arisen in an even more recent case before the Court of Justice, in which judgment was delivered on 12th December 1974, the facts of which were not such as one might at first

sight expect to involve points of Community law: **(Case 36/74, Walrave and Koch v. Association Union Cyclistes Internationale and others,** unreported).

Messrs. Walrave and Koch, Dutch nationals, are professional pacemakers whose function in a certain type of cycle race is to precede on motorbikes cyclists (called "stayers") who, by travelling in the lee of the pacemakers, are able to achieve much greater speed than would otherwise be possible. Messrs. Walrave and Koch are seemingly among the best pacemakers in the world and their services are therefore in considerable demand. In November 1970, the UCI altered its rules to provide that "as from 1973 the pacemaker must be of the same nationality as the stayer". The plaintiffs considered this provision to be incompatible with the prohibition in the EEC Treaty against discrimination on the grounds of nationality and, in particular, the prohibition contained in Article 59.

The Court pointed out that the practice of sport is subject to the provisions of Community law only insofar as it constitutes an economic activity within the meaning of Article 2 of the Treaty. It also stressed that the prohibition against discrimination on the grounds of nationality is obviously not intended to affect the formation of sports teams, in particular national teams. (To reach this conclusion, the English Advocate General suggested to the Court that the well-known "test of the officious bystander" should be applied in interpreting the Treaty — a small example of how the Common Law can influence the development of Community Law). Thus, if the pacemaker and stayer constitute a team, the provisions of the Treaty are irrelevant and the UCI rule can be enforced. On the other hand, if the real competitors in the sport are the individual cyclists, the pacemakers merely hiring out their services on a professional basis in the same way as professional managers or masseurs, then the prohibition in Article 59 would be relevant. The decision as to whether or not the pacemaker and stayer constitute a team is a matter for the national judge who referred the case to the Court.

One of the more interesting points decided by the Court in the **Walrave case** was that the prohibition against discrimination on the grounds of nationality applies not only to the actions of public authorities but also to rules of any other nature collectively regulating employment and the provision of services. It is thus clear that discriminatory provisions in the rules of private associations such as professional or trade union organisations are equally affected by the prohibition on discrimination contained in Article 59 (or Articles 52 or 48 for that matter).

Although the **Reyners and van Binsbergen** decisions are welcome for their clarification of the law, and for the impetus towards the effective implementation of the freedom of establishment and the free provision of services which must result from them, the situation now existing is not entirely satisfactory.

As was pointed out by the Belgian Government in its submissions in the **Reyners case,** the result of the Court's decision that Article 52 is directly applicable, insofar as the prohibition on restrictions based on nationality is concerned, is the creation of "a hybrid right of establishment, in which the other restrictions are maintained, thus creating a discriminatory system from State to State". For example, the Court's decision leaves unanswered the question of the validity of the other restrictions imposed by Belgium on nationals of other Member States seeking admission as Avocats, namely the requirement of residence in Belgium for six years prior to the application and the prohibition on membership of a foreign Bar. The burden of such restrictions would seem to lie much more heavily on foreigners than on Belgians, so that they probably constitute disguised discriminations against non-nationals, which are, of course, as incompatible with Article 52 as open discrimination. These are the sort of matters which should be clarified by directives rather than by further litigation.

Another practical consequence may be a **tendency for people wishing to pursue a certain activity to do so in a Member State where the entry requirements are low** or non-existent rather than in one where the entry requirements are severe. Such a tendency can only be corrected through the co-ordination, also by means of directives, of minimum qualification standards throughout the Community.

Another difficult problem which remains unsolved is how a receiving Member State is to ensure that a provider of services, who is of course established in another Member State, is to be made answerable for his activities on its territory. The requirement that a person providing services merely on a temporary and occasional basis should belong to the relevant professional organisation in the receiving Member State as well as in his own Member State, is more than is strictly necessary to achieve the required degree of control, and is therefore an unwarranted restriction on the freedom to provide services. The solution to this problem again can only be achieved by means of co-ordination directives. There are a number of ways in which control can be achieved in an unrestrictive way. The lawyers' draft directive on the provision of services suggested that it should be done by requiring the lawyer providing services to produce evidence of membership of his own Bar, and obliging him to use only the form of title used in the country in which he is established. The relevant doctors' directive obliges doctors who visit another Member State temporarily to inform the competent authority in that Member State so that it can ensure the observance of the rules of professional discipline of that country.

As far as most economic activities are concerned, the decisions are of little practical significance, since restrictions on freedom of establishment or the freedom of establishment or the freedom to provide services in the spheres of virtually all industrial, commercial and craft activities have already been abolished by means of Council Directives implementing the General Programme.

On the other hand, the decisions are of considerable significance for activities in respect of which directives have not yet been adopted, particularly such activities as may be carried on any given Member State free of controls such as minimum qualification requirements or other licensing conditions. Since the decisions mean that no Member State may now apply to nationals of other Member States conditions more onerous than

those applied to their own nationals, it is clear that such uncontrolled activities in a given Member State may be carried on freely by a national of any other Member State. The only discretion left to Member States in relation to the right of entry and residence of such persons is that based on grounds of public order, public security and public health, and even that discretion is governed by general co-ordinating provisions laid down in Directive 64/221.

The sector of economic activity in respect of which least progress has been made is that of the professions. Apart from the directives approved in February 1975 to facilitate the freedom of establishment of doctors, no other directives affecting the professional activities have yet been adopted. Although directives have been proposed by the Commission to implement the freedoms for a considerable number of professions —notably , for dentists, architects, accountants, engineers and lawyers (services only) — all these were withdrawn for revision after the **Reyners decision.** This was because the provisions of these directives relating to the elimination of restrictions based on nationality were rendered superfluous by that decision. Their other provisions, relating notably to the co-ordination of national regulations governing the exercise of the professions (such as minimum training periods, evidence of good repute, the titles to be used etc.) and the mutual recognition of qualifications, will still be required, and until they are adopted the effective exercise of the right of establishment by members of the different professions will be impossible.

As far as the legal profession is concerned, the decisions are of particular relevance, at least in theory. In most Member States, the giving of legal advice, as opposed to pleading or the drafting of certain documents, requires neither formal legal qualifications nor membership of any professional organisation. Since the **Reyners** and **Van Binsbergen** decisions, a Member State which does not impose such control on its own nationals, obviously cannot restrict nationals of other Member States from establishing themselves as legal advisers on its territory or providing legal advice on a temporary basis to persons resident there. This freedom is somewhat precarious however. For example, there would seem to be no rule preventing qualified lawyers in a given Member State from refusing to deal with such unqualified advisers, a difficulty which might render much of their work impossible in practice. Also, in some Member States qualified lawyers already have a monopoly of legal consultation, and there is nothing to prevent a Member State passing legislation restricting the right to give legal advice to qualified lawyers. This is a typical example of the "hybrid" right of establishment, varying from State to State, which the Belgian Government thought undesirable.

The **Reyners decision** was of course also very important for lawyers, in that it settled the long controversy as to whether the exception in Article 55 applied to the whole profession or merely to certain activities carried on by lawyers.

Given the difficulties involved in any meaningful mutual recognition of legal qualifications, the legal profession is probably less amenable to the full and effective implementation of the freedom of establishment than any other. However, a certain amount of progress has already been made by means of **bilateral conventions between the Benelux countries and the Brussels, Paris and Rome Bars.** The terms of these are similar to those contained in the proposed lawyers' draft directive on freedom to provide services, namely the freedom of legal consultation and the right to plead in conjunction with a local lawyer. The draft directive itself will have to be revised both in the light of the Reyners and van Binsbergen decisions and also to deal with the problems arising from the accession of the three new Member States, particularly the UK and Ireland where the legal systems and professions are of course very different from those in the Six.

The Consultative Committee of the Bars of the Countries of the European Communities adopted a resolution in October 1974 which, inter alia, resolved that an incoming lawyer "should not advise on the law of the host country unless he has first obtained the assistance or advice of a lawyer of the host country, or has obtained the consent of the Bar of the host country, or does so in conformity with existing customs and practices." It is obvious therefore that lawyers in the Community already recognise the need to deal with problems arising from the tendency for lawyers from different Member States to establish themselves in other Member States to advise not only on their national law or international law, but also the law of the Member State in which they are established. This tendency has been most obvious in some countries where the increase in international commercial business has created a demand for a type of specialised legal service complementary to that provided by local lawyers, and will no doubt grow as the integration of the Common Market continues.

However difficult its achievement may be, the desirability of effective freedom of establishment for lawyers throughout the Community, particularly where matters of international commercial law are involved, can hardly be doubted. The raison d'être for such freedom of establishment was well expressed by Advocate General Mayras in his Opinion delivered in the **Reyners case:**

> "With economic integration must obviously come the development of legal relations, that is, the growth and diversification of the services which individuals and undertakings need for purposes of consultation and dispute. They must further be able to have free recourse to these services and to choose, without consideration of language or nationality, the lawyers whom they consider the best qualified to advise them and to defend their interests."

ORGANISATION OF THE FRENCH LEGAL PROFESSION

BY COLM MANNIN, SOLICITOR, PARIS

Despite reforms which came into effect in September 1972, the structure of the legal profession in France remains considerably fragmented by Common Law standards of practice. Although further reforms are presently being considered, it seems unlikely that any significant changes will take place before the end of the present decade.

In the interim, the foreign-based practitioner involved in French legal matters will require a clear understanding of the relative functions of each branch of the profession in France. This can be of considerably importance in relation to particular areas of practice, as the functions of each branch of the profession over-lop in such fields as Company Administration, Tax Law, Succession Law, and Commercial Law. Moreover, certain branches of the profession are better equipped than others to handle particular areas of practice. For example, a *conseil juridique* is more likely to be consulted than an *avocat* in relation to many aspects of business law.

This duplication of functions, the explanation for which is purely historical, was one of the main reasons for the 1972 reforms. However, as is evident from the preceeding paragraph, little has as yet been achieved in limiting the practice.

In an attempt to assist readers in understanding the functioning of the French legal network, the following outline compares, where possible, the functions of the various members of the legal profession in France with those of the Irish or British Solicitor and Barrister.

Avocats

The requirements for admission to the profession of *Avocat* are that the applicant must hold a university law degree (*licence en droit*) and must have obtained a *Certificate d'Aptitude à la profession d'Avocat* (CAPA) for which the candidate will have passed Bar exams subsequent to obtaining his degree. He will usually have spent four years in obtaining the licence and a further year in prepering the "CAPA" exam. On admission, he must undertake a training period (*stage*) of three years with an experienced *Avocat*. This is much the same as the system of devilling at the Irish Bar.

Until 1974, French nationality was a prerequisite to becoming an *Avocat*. However, the French Bar abolished this requirement since the decision of the European Court in the case of *Jean Reyners v The Belgian State*, (The Times, European Law Report, 21.6.74)

An *Avocat* becomes a member of one of the 153 local Bars (*Barreaux*) which has administrative as well as disciplinary functions. He is not however restricted in his practice to the Court to which his local Bar is attached. On the other hand there is no Circuit system as in Ireland. Thus, a prominent practitioner can and invariably does plead all over the country. However, the preparation of pleadings (*postulation*) can only be done by an *Avocat* attached to the Court district in which the case is to be heard. Apart from this restriction, the *Avocat* can plead the case, attend consultations and generally advise on conduct of proceedings wherever they are heard.

Like the Bar in Ireland or Great Britain, the Avocat has traditionally confined his activities to those of consultancy and advocacy, differing from his cross-Channel colleagues in this connection only by virtue of his direct contact with the clients. This right existed even before the recent reforms, although in practice the *Avocat* often received instructions on contentious matters from an *Avoué*, who fulfilled almost exactly the same role as an Irish Solicitor in litigation matters.

In addition to retaining his virtual monopoly of the right of audience in civil and criminal proceedings, the avocat has also cultivated his role in non-contentious matters. He has therefore become more involved than previously at administrative level on legal matters. However, in practice, the avocat prefers to retain his traditional role of consultant and advocate. It is expected nonetheless that the role of the profession will gradually come to resemble that of the American attorney for two reasons. The *avocats* are increasingly concerned by the extent to which the *conseils juridiques* (discussed later) have usurped so many lucrative areas of business law. Secondly, the notions of partnership and of chambers have become increasingly accepted by members of the profession as a means of improving the quality of the service they can offer clients. As a result, chambers — *cabinets groupés* or *bureaux communs* — are increasing in number, especially in the large cities.

The *Cabinets groupés* are in fact very similar to the UK system of Chambers. No more than five avocats (including "stagiaires") can form a "*groupement*". Each member practices in his individual capacity and fee-sharing is forbidden. A *groupement* is established by a written agreement of which a copy must be lodged with the local Bar President (Bâtonnier).

A partnership ("*Association*") among *avocats* is naturally subject to more strict rules than those applicable to *Cabinets groupés*. The number of *associés* is restricted to five as in the case of *Cabinets groupés*. Profits and losses are shared in equal proportions. A partnership name is permitted. A written partnership agreement must be drawn up, as in the case of a *groupement* a copy being lodged with the *Bâtonnies*.

One of the interesting aspects of a partnership between *avocats* results from the fact that inevitably, each member continues to act for his own clients. As a a result, the problem of possible conflicts of interests is avoided by the fact that no partner can accept a case if any of his co-partners are opposed thereto.

Referring to the question of fees, *avocats*, like barristers, do not charge on a scale rate. In fact, their fees are normally calculated in a manner similar to the schedule 2 costs system for Irish solicitors. In practice, fees are assessed in relation to the time involved, usually at an hourly rate which is rarely less than 250 Frs. and often considerably more. There is a practice of paying a deposit on account of costs and outlays at instructions stage. While this is a matter of course with *avocats*, the practice is also widely used by other branches of the profession. No system of taxation of fees exists although clients have a right of recourse to the local *Bâtonnier*.

All payments received by an *avocat* from a client to cover outlays can be paid into a special bank operated by the profession, known as the *Caisse des réglements pécuniaires effectués par les Avocats à la Cour de Paris* (C.A.R.P.A.) The right to avail of this account is open to any *avocat* who obtains an insurance policy covering his liability (for overdrawing the account). The object of the system, established in 1954, is to enable necessary outlays to be expended in respect of Court proceedings without having to refer back to a client for each such payment. It is believed that this substantially minimise delays in such proceedings. It also enables an *avocat* to collect funds on behalf of a client without resort to an intermediary such as, for example, a *huissier* (bailiff) when obtaining payment on foot of a judgment.

This brief outline of the function of an *avocat* in France will indicate to the Irish practitioner that contrary to what is often assumed, the *avocat's* practice is not the direct equivalent of that of an Irish or UK barrister. Rather, it is a combination of the functions of both solicitor and barrister in a Civil Law context. Moreover, as already remarked, the *avocat* is becoming less restricted to the field of advocacy and more involved in administration, at least among the younger members of the profession. To this end, he has been putting his house in order in preparation for undertaking this new role. The establishment of the *avocats* own special welfare system, compulsory insurance against professional negligence, the setting up of an office known as the *Bureau Commun des Avocats* staffed by law clerks, messengers and secretariat to undertake much of the *avocat's* administrative work — are all recent reforms initiated by the profession itself. It is evident therefore that this branch of the French legal profession has embarked on a process of rapid transformation and seems likely to acquire a very dominant influence in future French legal practice.

Notaire

The Notaire occupies an extremely important place in the French legal profession. Although he is essentially a conveyancing and probate specialist, these are by no means the limits of his activities. Indeed, in provincial districts, his role is very much on a par with that of the family solicitor in the Common Law system.

It is impossible to describe the full extent of his activities without reference to the nature of his function in the French legal system. A law of 1803 defines this as follows:

"*Notaires* are public officials appointed to receive all documents to which the parties thereto are legally obliged or desire to accord thereto the character of authenticity attaching to documents of public record and to record the date of such documents, to record the location of the originals thereof and to enable deliveries of copies thereof certified and common, to be made".

It is evident therefore that the nature of the *Notaire's* role broadly resembles that of the notary public though the scope of his activities are considerably wider than those of the former.

Although public officers, *notaires* are not in any sense civil servants. Nonetheless, the public functions they undertake invest them with considerable importance. As a result, their numbers are limited and their activities strictly regulated.

The enormous scope of the *notaire's* sphere of activity is apparent from the definition of the nature of his office. His right of certifying the authenticity of documents and right of performing, quite literally, the function of a public records office assure him of an important place in a great many areas of French legal procedure. Not only, is he a Land Registry and a Probate Office in his own right, his services are also engaged in matrimonial settlements (not uncommon in France where the law automatically regulates the marriage under the system of community of property unless the couple select the system of separation of goods by establishing a marriage settlement before a *Notaire*) in company formations (a declaration of compliance on the promotion of a *Société Anonyme*, broadly the French equivalent of a public company, must be signed before a Notaire), in commercial transactions, notobly in relation to protested bills where the *Notaire* does much the same as a Notary Public.

With few exceptions, the originals of documents, including deeds transferring title to immovable property must be kept in the archives of the *Notaire* before whom the document has been signed. Certified copies *(grosses)* are given to the parties having an interest in the transaction.

The originals, referred to as "*minutes*", must be retained by the *Notaire* and his successors for 125 years, whence they are delivered up to the national or regional archives offices. It follows that *minutes* are usually kept in chronological order. A check list or "*répertoire*" is also maintained in chronological form. This is delivered up to the registration authorities from time to time for the purpose of ensuring that registration formalities and stamp duty requirements have been respected.

It is evident from the above that the administration of a *Notaire's practice* is far more complex than that of a conveyancing or probate Solicitor. A *Notaire* will invariably employ at least one *clerc principal*, several Junior *clercs* and a number of secretaries. Indeed, the national ratio of practising *Notaires* to notarial staff is presently one to six. However these proportions are usually greater in large cities (a staff of fifteen would not be unusual for a Parisien *Notaire* while the largest *Etudes* are staffed by up to 200 or more employees) and smaller in depressed areas of France. It is not surprising therefore that the notariat is the largest legal service in France, although the number of practising

notaires (6,260 in 1973) is actually less than that of Avocats (7,600 in 1973).

As he is invested with the characteristics of a local *registrat*, a *Notaire* cannot for obvious reasons, authenticate a document outside his own district. This follows from the rule that only the *Notaire* attached to the district in which the document is passed can authenticate it. Thus, unlike the *Avocat*, in respect of his essential function of pleading, the **Notaire in his principal function of authenticating documents, has a monopoly in his own district and a total restriction outside it.** However, he can receive, anywhere in France and indeed all over the world, a document valid as an ordinary private deed (*Acte sous seing privé*) and therefore having no authentic character or executory force. If the parties then wish the document to be made an *Acte authentique*, they will usually give powers of attorney (*pouvoirs*) to the Notaire's *clercs*, enabling the latter to sign on their behalf the *acté authentique* which the *Notaire* will then draw and have passed at his office (*Etude*). This chiefly occurs where the *Notaire* attends the closing of a sale outside his own district.

If one compares the administration of a *Notaire's* practice with that of a Solicitor, some interesting differences arise in relation to the handling of client monies, the compensation fund and the obligation to ensure against profession negligence.

Notaires are not obliged to maintain separate client and office accounts, though in practice, the internal bookkeeping system will naturally differentiate between funds received from a client for the benefit of the *Notaire* and those held on behalf of a client for his own benefit. It follows that the control of funds held by a *Notaire* is more intense than the system in Ireland of furnishing an accountant's certificate. The *Notaire's* accounts are examined annually by inspectors attached to the local Bar (*Conseil Régional du Notariat*). Moreover occasional spot checks are carried out in cases where such intervention is necessary. This has the important effect that the local Bar can intervene, through its own duly appointed officers, at least once a year and at any other time to examine the financial affairs of any practising *notaire*.

The *Notaire* is also controlled in his choice of bankers i.e. can use only certain semi-state banks, namely the *Caisse des Dépots et des Consignations, Crédit Agricole*, and *Comptes Postaux*. Funds deposited in these institutions are used by the State, notably for state loan transactions.

The *Notaire's* compensation *fund* — la *Caisse de Garantie* — was inaugurated in 1934 and reformed in 1955, due mainly to defects in the original system, notably costly administrative expenses and an accumulative of enormous funds out of proportion to the numbers of claims settled from the compensation fund. The 1955 legislation established a Caisse (Fund) in each region of France under the control of the local Bar in addition to a Central Caisse under the control of the Supreme Council of the Notarial profession (*Conseil supérieur du Notariat*). This structure replaces the multitude of local caisses which existed hitherto.

Each regional *Caisse* receives its funds in the form of annual contributions from *Notaires* practising in the particular region. The regional Caisse must settle all claims arising within its territory. It must give 75% of its funds to the *Central Caisse* thereby eliminating the earlier problem of local funds reaching disproportionate levels.

In addition, to the last mentioned source of income the central Caisse has a second source of finance, namely, a capital payment made by each Notaire on qualifying. The funds of the central Caisse are used for basically two purposes, an emergency fund for any regional Caisse not having sufficient funds to meet a particular claim and secondly, a loan fund available to those seeking to enter the profession, enabling them to undertake their studies and ultimately to purchase a practice.

Apart from being obliged to contribute to the compensation fund, the *Notaire* is also compelled to take professional negligence insurance. The professional negligence policy covers the *Notaire's* civil liability while the compensation fund covers his penal (delictual) liability. The public, as clients of the *Notaire*, are thus completely protected in their dealings with the members of the profession.

The *Notaires* were not affected by the reform of 1972, which, it will be called, comprised a modest fusion of various branches of the legal profession. The exemption of the Notaires from these reforms is indicative of the extent to which their position in the French framework is so firmly established and well defined. It is likely that any future reforms affecting *Notaires* will be made entirely independent of the other branches of the legal profession. No major reforms are contemplated at the moment.

Avoués and Agréés

The *Avoués* and *Agréés* have been the two branches of the profession most affected by the 1972 reforms. The Agréé, who had a monopoly of advocacy before the Commercial Courts, has been completely fused into the profession of Avocat.

The Avoué, who is principally concerned with the procedural aspects of litigation, has retained his previous status in so far as Appeal Courts are concerned. For all other purposes, the *Avoué* has been merged into the profession of *Avocat*. Thus, in the present state of French litigation, the case will normally be conducted by a single Avocat up to the hearing in the Court of first instance. If an appeal is lodged, the *Avocat* is obliged to instruct an *Avoué* to act in conjunction with him for the purposes of the appeal hearing. This is clearly an unsatisfacory situation. It runs contrary to several of the main objectives behind the 1972 reforms, particularly the intended saving in litigation costs. Of course, the latter problem can be avoided if the original *Avocat* instructed was previously an *Avoué*. In practice, however, litigants rarely have regard to this consideration.

As might be expected in the event of a fusion in Ireland or Great Britain, one of the immediate effects in France was a rush on the part of the Avocats to assimilate former Avoués into their Cabinets, particularly in the case of firms having a large litigation practice.

This tendency and the overall effects of the fusion

have considerably streamlined litigation practice. It is generally acknowledged that delays and expenses have, to some extent, been reduced. Many members of both branches of the profession claim to have a closer working relationship as a result of the reforms, an encouraging result in the context of any proposed fusion in Ireland or Great Britain at least at the level of litigation.

Huissiers

A *huissier* is basically a Summons server, sheriff's officer, bailiff and is engaged for recording evidence, mainly for litigation purposes. Like the *Notaire*, the *Hussier* is an officer of the State and by virtue of status is also limited to the territory in which he has his practice.

In order to be admitted to practice he must be of French Nationality, pass the professional examinations and serve an appren iceship period.

The *Huissier's* principal activities involve drawing certain procedural documents (notably simple debtor's summonses), serving summonses, judgments and execution orders and recording evidence in the form of "*constats*" (affidavi s of fact recognised by the Courts as an almost uncontestable statement of the fac's as recited therein). Debt collection also forms an important part of their practice.

The "constant" service is of inestimable value in many areas of practice, notably in recording the state of a premises before letting or its condition following a fire or damage through flooding, e'c., in proving adultery for forthcoming divorce proceedings (the huissier has a right of entry at any hour of the day or night) and generally in recording statements made and actions undertaken in any field, commercial, civil, political, social or otherwise.

Conseils Juridiques

One of the main targets of the 1972 reforms was the *Conceil Juridique* (legal advisor), otherwise referred to as an *homme d'affaires* (literally, a business man). Until 1972, this was not even a profession but merely a collective term used to describe a very varied collection of people who dispensed legal advice, often without any academic or professional training whatsoever.

The origin of this peculiar sector of the French legal framework is relatively recent. The *conseil juridique* emerged as a matter of necessity to fill a gap caused by the reluctance of the *Avocat* to become a business lawyer particularly at administrative level. At the same time, the business community required advice and guidance on the increasing volume of complex commercial legislation. The *conseil Juridique* thus managed to cultivate a dominant position in a highly lucrative area of legal practice. Indeed, he is still regarded as being more competent than *Avocats* to deal with mat ers relating to tax, fiscal legislation, corporate law and commercial matters generally.

It is quite obvious from this outline that Irish legal practice knows, happily, no equivalent of the Conseil Juridique. However, there is perhaps a lesson to be learned from the French experience, in so far as the increasing usurpation by the accountancy profession in Ireland of the role of legal advisor on fiscal and tax matters indicates how easily the legal profession, particularly that of Solicitor, can gradually lose a vital hold on the business community.

The reasons for the reforms of the status of Conseil Juridique and the effect of the reforms will be discussed in a succeeding article as they are of considerable importance to the status and functions of foreign lawyers practising in France, the latter being the principal topic of the next article.

JUSTICE RICHARD D. JOHNSON – an appreciation

As a young student I attended Justice Johnson's court in a town in south Kerry. There was a trespass dispute which was entering its third generation. I was impressed by the vehemence with which a new bride swore up on behalf of her recently-acquired in-laws. The litigation seemed secure for many years to come. The Justice looked fearsome: like a character out of Fielding. He wore the cloth headgear which only a few of his contemporary colleagues ever wore and which, I think, is now worn no more. I expected a wrathful judgment from this man who embodied the majesty of the law. But he spoke to the parties more as a father than as a judge; he offered to visit the lands — not for the first time — and gave as his opinion that only a re-distribution of the parties' lands would restore peace.

Dick Johnson was one of the original band of D.J.s appointed when the State was set up. The new district justices in the words of Mr. Justice Gavan Duffy, were not merely successors to the old Justices of the Peace: they were of a different calibre with "far greater dignity and authority". He served for over 40 years in Kerry and won the respect and affection of all. Wrongdoers knew that they would be up "before Johnson" but they probably felt more truant than criminal. I think he was a great healing influence at the end of a time of great trauma in the deep south.

In private life, in his book-filled home in Blenerville, he loved controversy and debates were conducted with great ferocity. No one's feelings were spared and I think he expected to get as good as he gave. Secretly, he loved to see a young person make a good point and and to score at his expense. He had a great liking for all kinds of sport and the stage. Etymology of at least four languages — Irish, English, French and Greek — was an abiding passion and he knew every stone of his district and adopted county of Kerry.

Maurice Walsh had a description of a magistrate: "that his justice might sometimes be questioned but never his equity". This would certainly apply to Dick Johnson though his law was as sound as his equity. He served his country and his profession well. If St. Patrick is granted his wish to judge the Irish and if on occasions of special difficulty he summons a divisional court I hope that Dick Johnson is on it.

— H. O'F.

SLIGO SEMINAR on E.E.C. LAW—OCTOBER 1974

THE E.E.C. AND THE ORDINARY SOLICITOR—SOME RELEVANT CASES

By JOHN F. BUCKLEY, Solicitor

Part I

Very few of us have come to terms with the fact that Ireland is now a member of the Community in so far as our legal practices are concerned. We have from time to time made efforts, greater or lesser, to try to get some insight into the operations of the Community and how it may affect our Clients and ourselves. When I say that I believe that these efforts have largely failed I do not intend this as a criticism either of ourselves, in that our efforts may not have been as wholehearted as some might wish, or as a criticism of those who have endeavoured to enlighten us by allowing us to share in the fruits of their experience and researches. There have been a number of reasons why we have not succeeded in coming to terms with the law and practice of the E.E.C. and there is no doubt that language has been a major stumbling block. Not many of us have the level of competence in any of the languages of the original Community to have become familiar with the jurisprudence of the Community, and even fewer of us will have kept in touch with the sort of practitioners guide to the law that we are apt to use in our own jurisdiction. As the approach of E.E.C. membership drew nigh we endeavoured to acquire some basic knowledge of the Community and its workings and a number of seminars and other meetings were held, all of which did give us some reasonable appreciation of the operation of the Community. Unfortunately we have been relying on a limited number of academic writers and the occasional visiting foreign Lawyer to point ourselves in the right direction. I think it is fair comment to say that in spite of the erudition and experience of these people most of us still feel that the legal aspects of the Community are not such as are likely to concern us in our ordinary practice.

I believe that this impression is quite a wrong one and I would offer the view that in this country at any rate it may very well be that there will be as much opportunity from the ordinary local Solicitor to become involved in European law as it will be for the large Dublin office. I have therefore chosen not to deal in an abstract way with the operation of the European Court, or its relationship with National Courts, but to go through the Case Law of the Courts, both Community and National, giving examples from various aspects of the legal system of the Community to show that not all he cases are concerned with the great concentrations of economic power and that there is a possibility, perhaps even a likelihood, that the average Irish city or country Practitioner may become involved in the field of European Law.

The EEC essentially a legal structure

The first illusion I want to shatter is that European Law is something that is practised in a Court in Luxembourg. It is nothing of the kind, it is law that is practised in all the Courts of the Member States of the Community from the level of our District Court upwards. Indeed I shall be mentioning a number of cases later on which first saw the light of day in the equivalent of our District Court. Because most of what we have heard so far about the Community has been to emphasise the purely economic aspects of it, you will be surprised to find that the area covered by E.E.C. Law is wide indeed, ranging from a decision as to what constitutes a sausage and whether an Italian widow is entitled to the benefit of reductions on French railways for families with numerous children, with a recent excursion into the world of international cycle racing. It has frequently been stressed that the E.E.C. is essentially a legal structure. In its early days emphasis was placed on the fact that the administration and operation of the Community was carried out by means of legally enforceable instruments, principally regulations, directives and decisions, all of which had to a greater or lesser extent the binding force of law in the Community. The considerable volume of case law which has now emerged in the Community Courts and the Courts of the various Member States have made this emphasis on the legal structure even more obvious. Cases have now arisen on almost all of the important aspects of the Treaty and there have been numerous decisions on the interpretation of Regulations on the force of Directives and appeals against decisions of the Community.

In dealing with the present topic I propose to go through the various parts of the treaty commenting on the operation of parts hereof by reference, largely to cases which have arisen, but it is necessary to offer a few introductory words to set the operation of the Treaty in context. It is important to recall that the main purpose of the Treaty is economic, the aim being to create one big market area by primarily abolishing customs barriers and quantitative restrictions; Secondly by the abolition of restrictions which effect trading itself, such as the free movement and establishment of persons in the Community or the provision of services across the borders; finally the elimination of distortions of trade which involves control of monopolies, restrictive trade practices, and finally co-ordination of policies in the field of agriculture, commerce, finance, taxation, social legislation and patents and trademarks. You will see therefore that what is defined as economic does in fact spread a rather wider net than what one might otherwise expect.

The first seven articles of the treaty contain the general principles on which the Community is based and only one of them, namely article 7 appears to provide any ground on which a case might be brought, in providing that, within the scope of application of the treaty, any discrimination on grounds of nationality shall be prohibited, the possibility of proceedings where

such discrimination exists is predicted. In practice the latter articles of the Treaty prescribe in detail how discrimination is to be avoided. No cases have in fact been brought under this article alone. It must therefore be doubtful whether this article can be used in the absence of any more detailed provision in the Treaty as a basis for an action.

Free Movement of Goods — Abolition of Customs Duties

In the original six Members of the Community, Customs Duties between the respective members have been abolished, and while the position with regard to the three new members is that there is a progressive reduction of these duties taking place over the period of the transition period, complete abolition will not take place until 1978. Accordingly the cases which I mention now are not of immediate direct applicability but they are examples of the operation of the system. In three cases—Case 24/1968. **The Commission v The Italian Republic,** case 8/70, again **The Commission v The Italian Republic,** and Case 34/73, **The Variola Case,** the Court of Justice has held successively that statistical duties, administrative duties and disembarkation charges which are imposed on goods which have been the subject of some customs checking at the point of entry to the particular country are void because they are considered to be customs duties under another guise. A similar decision was reached in the **Rewe Case,** Case No. 39/1973 where Hygiene Control Tax imposed by the Chamber of Agriculture in a German province was held to be a charge having equivalent effect to a customs duty.

A common Customs Tariff has been established within the Community and the cases arising on this have largely been of a technical nature. The points at issue normally have been whether the goods in question fall into one or other category in the classification, which is known as the Brussels Nomenclature. **The Bakels Case** No. 14/1970, dealt with a baking emulsifier called Voltem. The question at issue was whether the product should be regarded as a chemical or as a food preparation. The importance of the decision is not so much which category the product fell into but the holding by the Court that **explanatory notes** and tariff notices prescribed in the Brussels Nomenclature are **to be regarded as an authoritative source of information** for interpreting the tariff headings under the appropriate E.E.C. Regulations No. 950/1968, and that Member States are not permitted to make provisions affecting the scope of that regulation. Those of us who ever defended prosecutions for inadequate milk fat content in Milk will be interested to note that milk fat has in fact reached the Court of Justice, in Case 49/73, **The Fleischer Case,** where the Court had to decide whether a product which had too high a milk fat content could be classified as bulk caramel.

Elimination of Quantitative Restrictions

Articles 30 and 31 of the Treaty provide for the prohibition of quantitative restrictions on imports and a restriction on the introduction of new quantitative restrictions. Most of the cases arose early in the period of operation of the Treaty. It may therefore be that after 1978 there will be a similar number of cases affecting the new members. Of the more recent cases the **Salgoil Cases** heard before the European Court as Case 13/1968 and before the Court of Appeal in Rome as **Salgoil v The Ministry for Foreign Trade** decided that articles 31 and 32 were directly effective and could be relied on by individuals before their National Courts and that the **Legal nature of a Community rule could not be altered by the particular features of the National Law of a Member State.** The Italian Foreign Trade Ministry had argued that the Rome Court of Appeal could not ask the Court to ascertain the extent of judicial protection accorded to private individuals under the treaty because this was a question of interpretation of Italian Internal Law.

Restriction on Export Taxes

The European Court has on three occasions had to consider the effect of an Italian Law of 1939 which imposed a tax on the export of objects of artistic, historical, archaeological or ethnographic interest. The first case, **The Commission v Italy, Export Tax on Art Treasures** No. 7/68 (1969) C.M.L.R. 1, the Court held that the provisions of Article 36 of the Treaty which permitted prohibitions or restrictions on the export of goods justified on the grounds of the protection of National Treasures did not justify the charging of an export tax. In the second case, **Di Porro v The Italian Minister for Education,** Case 18/1971 (1972) C.M.L.R. 4, The Court held on a reference from a Turin Court that Article 16 of the Treaty which required the abolition of Customs Duies on exports between Member States was then immediately applicable and conferred a subjective right on a citizen against the Italian State which the Italian State should enforce. The third case, **Export Tax and Art Treasures No. 2. The Commission v Italy,** Case 48/1971 (1972) C.M.L.R. 699, the Court held on an application from the Commission that Italy had infringed Article 171 of the Treaty by failing to comply with a judgment of the Court.

On the other hand a German Court has held in a case called **"The Special Turnover Tax Case"** (1973) C.M.L.R. 687, that this special tax imposed on all exports and intended not to be a revenue measure but a means of economic control is a violation of Article 12 of the Treaty in so far as it applies to exports to other Member States but is not prohibited by the Treaty as regards exports to non Member States.

Agriculture

The area of agriculture is of course one of the most important in the Community and one in which the most complex measures have been introduced by the Community in an attempt to regulate the agricultural market in accordance with the terms of the Treaty. There is a vast amount of legislation in the agricultural area and it is far from surprising that a great many cases have arisen. The Community has adopted a number of different measures aimed at implementing the

Common Agricultural Policy which vary from restrictions on imports through levies on imports, through restrictions on exports, and conversely refunds paid on exports through schemes operated by the various National Governments, with the assistance of the European Agricultural Guidance and Guarantee Fund (Feoga). Cases have arisen on almost all of the measures taken by the Community.

Many of the schemes put into effect by the Community in the Agricultural area have involved the National Government in participating in certain measures and on a number of occasions the failure of the National Government to take the necessary steps has led to litigation before the European Court.

In the case of **Leonesio v Italian Ministry of Agriculture,** Case 93/71 (1973) C.M.L.R. 343, the Community had introduced by regulations a scheme whereby farmers were to be encouraged to reduce the stock of dairy cows by slaughtering. A premium was to be paid to cattle owners who undertook to give up milk production completely and to have all milch cows slaughtered by a certain date. Signora Leonesio was a widow who farmed in the province of Brescia who owned five dairy cows and applied to take advantage of the scheme. Provisional authorisation for slaughter issued, the premium was agreed, the slaughter was carried out, and the prescribed proof submitted to the Provincial Agriculture Inspectorate. Half of the premium was to be financed from Community funds, the other half to be paid by the Government of Italy, but it turned out that the Italian Government had not arranged for the adoption of a statute to provide the necessary funds, for paying such premiums. Signora Leonesio went to the District Court in Lonato who, faced with this, referred the matter to the European Court for a ruling as to whether once all the prescribed formalities had been compiled with by a farmer, a right to payment had been created which could not be effected by the omission of the Government to arrange for the passing of the necessary legislation. In due course the European Court held that the right of payment could not be subjected at the National level to implementation provisions differing from those laid down by the regulations and that Signora Leonesio's payment was due once she complied with the regulations.

Subsequently the Commision took **proceedings against Italy** in Case No. 39/72 (1975) C.M.L.R. 439 and the Court not merely followed it's decision in the **Leonesio case,** but also indicated that delay by a Member State in introducing systems of premiums where precise time limits had been provided for in the regulations was in itself a default in the Government's obligations.

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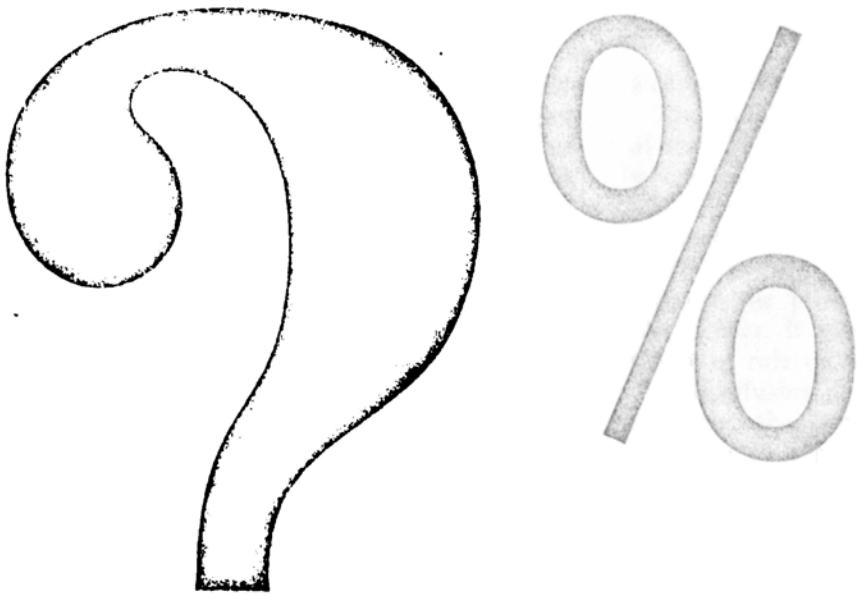

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GOLDER CASE—HUMAN RIGHTS COURT BLAMES HOME SECRETARY

Home Office refusal to allow a Parkhurst prisoner to consult a solicitor over a libel action he wanted to bring against a prison officer was a breach of the European Convention on Human Rights, the European Human Rights Court in Strasbourg ruled.

In the first case to be brought against the British Government in the Court since its creation in 1959, the Court held that the refusal in 1970 by a former Labour Home Secretary, Mr. Callaghan, was an infringement of two articles of the Convention.

By a majority of nine to three, the judges decided that the British Government had broken Article Six of the Convention which protects a person's right to a "fair and public hearing" of his civil claims and which, the Court held, included a right of free access to the Courts.

The 12 judges ruled unanimously that, by refusing to allow the prisoner to write to his solicitor, there had been a breach of Article Eight, which protects a person's right to "respect for his correspondence."

Prison riot

The claim had been brought against the British Government by Mr. Sidney Golder, 51, who was released on parole in 1972 after serving seven years of a 12-year sentence for armed robbery.

He alleged that he had been wrongly accused by a prison officer of assaulting him during the prison riot in Parkhurst Jail in October, 1969.

When he sought leave from the Home Secretary under the Prison Rules to consult a lawyer about bringing a defamation suit against the officer, he was refused permission and it was made clear to him that if he tried to write to his lawyer his letters would be stopped by the Prison Authorities.

While the Court was careful not to declare that the current Prison Rules requiring prisoners to obtain the Home Secretary's approval before contacting the lawyer were in breach of the European Human Rights Convention, the judgment will obviously embarrass the British Government.

The Government is faced with having either to modify the rules to give prisoners the right to contact or to write to lawyers in similar cases or to ensure that the Home Secretary's approval in future is not refused.

Otherwise it faces a series of time-consuming and costly cases brought against it before the European Commission of Human Rights and the Court by prisoners.

Mr. Golder and his lawyer were not in Court in Strasbourg when the judgement was read at a 45-minute hearing by Italian president of the court, Signor Balladore Pallieri.

He said that a right of access to the Courts was not absolute, but it was not the function of the Court in this case to elaborate a general theory of the limitations admissable in the case of convicted prisoners or to rule on the compatability of the British Prison Rules with the Convention.

The Court had only to decide whether in the present case application of those Rules violated the Convention to the prejudice of Mr. Golder.

Kept in solitary confinement

Mr. Golder had been seeking to exculpate himself of the charge made against him by the prison officer which had led to "unpleasant consequences" for him, which included being kept for a period of solitary confinement.

"It was not for the Home Secretary himself to appraise the prospect of the action contemplated by Mr. Golder. It was for an independent and impartial Court to rule on any claims that might be brought."

In refusing permission for Mr. Golder to consult a lawyer, the Home Secretary had failed to respect the right of a person to go before a court that was guaranteed in Article Six.

The fair public and expeditious character of judicial proceedings were of no value at all if there were no judicial proceedings.

Impeding someone from initiating correspondence constituted "the most far reaching form of interference with the exercise of the right to respect for correspondence" and the Court unanimously reached the conclusion that there had been a violation of this article of the Convention, he added.

Mr. Golder, who had been granted legal aid by the European Commission to pursue his claim before the Commission and the Court, had not asked for damages from the British Government and the Court ruled that its finding that there had been a violation of the Convention was an "adequate, just satisfaction" for him.

Political pressure

The British Government has no right of appeal against the judgment and it will be for the Council of Ministers to decide whether any political pressure should be put on the British Government to amend the Prison Rules to avoid further breaches of the convention.

Officials at the Commission and the Court could give no estimate of how much the claim by Mr. Golder, first submitted to the commission in 1969, had cost.

THE TAXATION REVOLUTION

By JOSEPH L. DUNDON, Vice-President

We are all far too busy with our day to day concerns to take sufficient note of the revolutionary changes in our system of taxation which are at present taking place.

I wish to draw the attention of the Profession to these changes, and to underline both the challenge and the opportunity which they present. Very briefly, the changes are:—

(1) The extension of income tax to farming profits.
(2) The introduction of Capital Gains tax.
(3) The abolition of Estate Duty, and its replacement by Wealth Tax, and Capital Acquisitions Tax.
(4) A new system of Company Taxation.

No such radical change in taxation has taken place in this country since the foundation of the State in 1922 and indeed the introduction of Estate Duty in its present form in 1894 only covered a segment of the area covered by the legislation now being enacted. The reaction of the public here to these changes has been fairly muted, principally because the vast majority of the population consider that they will not be affected by these taxes. Whether this is so will depend on Government Policy in the future, but it is clear that, from past experience, tax systems once introduced tend to be self-perpetuating, and it is likely that, with inflation, more and more people will be affected by these taxes, even if the thresholds are not varied.

Apart from this the lack of publicity in regard to the Capital Gains Tax Bill arises from the fact that the Committee stage of the Bill is being dealt with more or less by the experts in the Dail and is therefore not receiving any publicity in the daily newspapers.

Over many years our Profession has tended to opt out of most taxation matters with the exception of Estate Duty, but if we were to adopt this attitude in regard to these present changes, we would be doing a great disservice both to our clients, and to ourselves.

In many cases a Solicitor is the first Adviser to be consulted, particularly by members of the farming community, who in the past have not been involved with keeping accounts. To take one practical example, Solicitors have often endeavoured to secure agreement for low values on the transfer of farm land from father to son, with a view to reducing liability to stamp duty. To continue to do so may result, in particular circumstances, in the transferee of a farm having to pay an amount of capital gains tax on the sale of all or part of the lands at some future date, far in excess of the amount of stamp duty which can be saved by keeping down the value of the lands on the Transfer. There are many other such practical examples of occasions when a working knowledge of capital gains tax is of primary importance to every Solicitor.

Wealth Tax and Capital Acquisitions Tax will, between them, replace Death Duties. The Wealth Tax Bill is at the time of writing having its second reading before Dail Eireann, and the Capital Acquisitions Tax has not yet been published. Each one of us would be well advised to obtain copies of the Bills as soon as they are available. Even at the expense of having to plough through some fairly turgid prose, we should try to become familiar with the basic changes envisaged.

The Incorporated Law Society hopes to organise Seminars on these matters in June. The Institute of Taxation of which some members of the Profession are members, have already held the first part of a two part Seminar on Capital Gains tax, and the second part will be held on April 14th. Further information can be obtained from the Secretary of the Institute at 3, Fitzwilliam Place, Dublin 2. I understand that the Institute plan to hold further Seminars on Wealth Tax and Capital Acquisitions tax later in the year.

There is a great temptation to the busy Practitioner to throw his hands in the air and say that he cannot afford the time to study these changes, but in my view, he does so at his peril.

The only consolation I can offer is that his brethren in the Accountancy Profession will have to go back to school also, and this presents our Profession with a golden opportunity to recover a great deal of ground lost over the years due to lack of familiarity with all aspects of taxation.

PUBLIC RECORD OFFICE OF IRELAND

The Deputy Keeper would appreciate the co-operation of solicitors having space problems in regard to pre-1922 documents in their custody. He would ask them to consider depositing documents in the Office and to write or telephone:—

The Public Record Office of Ireland,

Four Courts, Dublin 7.

Tel. 778092 (Ext. 153)

"FOR EVIL TO FLOURISH, IT IS SUFFICIENT THAT GOOD MEN DO NOTHING"

Reflections on the Wealth Tax Bill

The Wealth Tax Bill has certain sections which I believe are repugnant to our way of life and indeed should be declared unconstitutional if they become law.

Section 14(5) gives the Revenue Commissioners power to obtain information from "an accountable person and **any other person** in possession of information relevant to the taxable wealth of an assessable person" under penalty of £1,000 plus a further penalty of £50 for each day the **"offence"** continues.

"Any other person" means you, your family, your clergy, your bank manager, solicitor, bookmaker, stockbroker and your mistress should you happen to have one.

Are we to become a nation of spies, snoopers and informers?

Section 24 (4) provides that an appeal against an assessment shall not be entertained by the Appeal Commissioners unles 75% of the amount assessed is first paid by you (should you be unlucky enough to receive a notice of assessment for say £25,000.) You may not be worth £25,000 or £5,000 but there is nothing to prevent your friendly Revenue Commissioner from "accidentally" and/or through a "typist's error" sending you a notice of assessment. It might even reach you because of computer teething problems. No matter, you have received it together with the minor problem of raising the cash before you can appeal and prove that the inspector has made a most unfortunate and regrettable error. Unfortunate and regrettable for you.

The taxman can also authorise any person to inspect your property. The penalty for obstruction is £1,000. So much for the adage that a man's home is his castle.

It appears to me that the liberty of the individual and his privacy is seriously being threatened by our present Government in this proposed legislation which is likely to become law in a matter of weeks. The price of liberty is eternal vigilance but unless sufficient people protest, what amendments are the Government likely to make?

Legislation such as this will eventually sow the seeds of destruction of Society as we know it. For a married couple who are liable to this wealth tax, it would pay them to get a separation order and continue living together. The other side of this coin is for those contemplating marriage (who would have a liability to wealth tax.)? DON'T. It will save not only Wealth Tax but also the cost of a wedding reception trousseau. (Retrospectively they can thank the Minister for Finance for this saving.)

The Tax proposed is small and will bring little to the Exchequer but next year the rate can be raised from 1% to 10%. Why not 100%? This Government know best how to spend your money.

Why not join the Civil Service? The pay is good (with a likely increase this year of over 25%). It has a permanent source of income — you, the taxpayer.

Correspondence

8 Munchen 2
Sendlinger Strasse 89
Telefon 089/2 60 88 08
February 27th, 1975

The Law Society,
Dublin 2.

Sirs — As a lawyer and a member of the German Lawyers' Society (Deutscher Anwaltsvercin) I beg you to be so kind and to inform your honourable members of the following:

My sister, who does environmental studies at the agricultural faculty of the Technical University in Munich wants to polish up and improve her knowledge of the English language, as this is essential in her field of studies, in which she will soon get her diploma.

I think it would be a good idea for her to stay with a family either as a paying guest or "au pair" with the opportunity to attend language courses as her main occupation. My sister has a basic knowledge of the English language; her age is 23.

If any of your members are interested in having a guest for three weeks in September or part of early October, would you please ask him to write to me.

Yours faithfully,
Reinhart Birnstiel.

EQUAL PAY FOR WOMEN

A consideration of the Anti-Discrimination (Pay) Act, 1974

By GRAHAM M. GOLDING, Solicitor

In the United Nations' Declaration of Human rights, which may be said to have had its legal origin in the United Nations' Declaration of Human Rights Rights in 1949, was concerned, **inter alia**, with the realisation of equality of the sexes. At Common Law, it need hardly be mentioned, an employer is at liberty to treat workers unequally either by the bestowal of favours or by the imposition of burdens. This conflicts with the ILO Convention Concerning Discrimination in Respect of Employment and Occupation, 1958 (No. 111), which required those ratifying the Convention to take measures against "any distinction, exclusion or preference made on the basis of . . . sex" **(inter alia)** "which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation." (It might be added for the sake of completeness that the European Social Charter and the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) enumerate a number of human rights secured on similar grounds, but do not appear to include equality of the sexes as a fundamental human right).

As part of the social policy of the EEC, Article 119 of the Treaty of Rome (1957) provides: "Each Member State shall in the course of the first stage ensure and subsequently maintain the application of the principle of equal remuneration for equal work as between men and women workers." This remained unimplemented by the Member States of the EEC until recently. Indeed, in many of the Member States women have gone on strike for equal pay, the most celebrated case being at the Belgian national armaments factory in 1966.

Almost on the eve of International Women's Year, on 17th December, 1974, the Council of Ministers for Social Affairs met in Brussels and adopted a Directive on harmonising the application of equal pay for men and women throughout the European Community. Understandably, this has been a contentious issue since the Community was founded; and pursuant to Article 119, the Member States were given four years, later extended to six, to implement that Artic'e. Finally, as no satisfactory progress had been made, more than a year ago the Commission of the EEC put forward a proposed Directive on the matter (O.J. No. C 114/46, 27.12.73), which, as stated, has now been adopted.

Directive on Equal Rights for Women

The Directive commences by reciting that it is first of all the responsibility of Member States to ensure the implementation of Article 119, but in spite of the adoption by the Conference of Member States of a Resolution intended to implement harmoniously the principlle of equal pay, nevertheless "considerable differences may be observed in the national provisions." Therefore, the Directive continues, it is necessary to remove these differences and to approximate the national provisions. Also, the Directive points out, even in those States with the most advanced legislation, doubts remain with regard to the practical application of the principles of equality; and, in order that the growing number of female workers may benefit from the harmonisation of workers' living and working conditions as part of the balanced socio-economic development of the Community, it is necessary to improve and harmonise such provisions. (In Ireland, the Trade Union movement estimates that the average hourly wage paid to women is only 70% of that paid to men. Women comprise 26% of Ireland's labour force. In large to medium size firms, however, women comprise only 1 to 2% of the management).

The Directive decrees that Member States shall introduce into their municipal legal systems such measures as are necessary to enable persons who consider themselves aggrieved by the non-application of the principle of equal pay to enforce their claims before the courts.

All discrimination between the sexes shall be abolished which arises from laws or administrative provisions implementing the Directive are to be punished. The provisions implementing the Directive are to be brought to the notice of workers and the laws of Member States are to be amended in accordance with the Directive within six months from the date of notification of the Directive to the Member States. Such amended laws are to take effect not later than 31st December, 1975.

In the meantime the United Kingdom has passed legislation along these lines: Equal Pay Act, 1970 (c. 41). It is not within the scope of this short review to study it in detail; suffice it to observe that it is becoming effective in stages, to be fully in force on 29th December, 1975 (rather an odd date). It appears that the British Act was, in part, a response to the claim for equal pay made by the TUC since 1888 and, in part, the result of international pressure on successive U.K. governments to ratify the ILO Convention of 1951 on Equal Pay (No. 100). The Report of the European Community for January/February, 1974, on **Britain in Europe 1973** stated, "Britain's proposed anti-discrimination law, which will be the first of its kind in the EEC, will not go far enough."

Turning to Ireland, the Anti-Discrimination (Pay)

Bill was introduced in 1974 (having originally been mapped out by the Commission on the Status of Women)' passed through both Houses before the Christmas recess and was promulgated in the second week of January, 1975.

The Irish Anti-Discrimination (Pay) Act 1974

An examination of the provisions of the Act reveals that it apparently complies with most of the minimum terms of the EEC Directive (with some notable exceptions) -- and this seems to have been the obvious intention of the Legislature. Unlike the British Act, it does not aim to achieve equal treatment in other terms and conditions of employment such as holidays, hours, provision of clothes and sick-pay, but only in respect of pay. It may well be that holidays provided for under the Holidays (Employees) Act, 1973 and hours under the Minimum Notice and Terms of Employment Act, 1973 will bring our law into harmony with the U.K. Act in some of these respects. As the Opposition put it in the Dail, "We have had to have three Bills to do the work of one." Against this, the U.K. may have to look again at its Equal Pay Act in the light of the EEC Directive.

The essence of the new Irish Act is to be found in Section 2. Where a woman is employed by the same employer on like work with that of a man in the same place of employment, she will be entitled to equal pay. However, different rates of remuneration may be paid to employees in the same place of employment on like work on grounds other than sex, e.g. where service pay, incremental scales and soforth, apply.

A crucial question arises regarding the area of comparison which a woman may draw with men's jobs. She may only compare her job with those of men employed in the same place and by the same employer if both are employed on **like work** (section 2(1)). Suppose the employer has three establishments, A, B and C. The same job is carried out in all three places by men and women. The men at A and B are employed at the same rate but the women at A, B and C and the men at C are paid at a lower rate. The women at A and B are entitled to equal pay with the men at A and B; but neither the women at C nor the men at C are entitled to be paid the same as the men and women at A and B. (The same defect is to be found in the British Act: Hepple & O'Higgins, Individual Employment Law, Sweet & Maxwell, 1971, p.99). Likewise, an employer could maintain two distinct places of employment, employing solely men at one place and solely women at the other; in such case the women would not enjoy the right to equal pay with that of the men.

Neither does the Act entitle women to equal treatment with men in respect of so-called **"ex gratia"** (or "discretionary") bonuses. (Such may be legally enforceable: **Edwards v. Skyways Ltd.**—(1964) 1 All E.R. 494).

What is more serious is that an applicant for a job can be turned down lawfully on grounds of sex, and promotion may lawfully be refused on grounds of sex, unless there is a contractual right to upgrading. However, during the debates in the Dail, the Minister for Labour indicated that he intends introducing proposals for further legislation dealing with discrim ination in the areas of access to employment, promotion and training.

The consequences of employing men on "women's" work, or women on "men's" work, may lead some employers to maintain a strict segregation. For it is only if men are doing "like work" of a "similar nature" that women will be able to establish a claim to equal pay. It follows that the Act is unlikely to expand women's job opportunities, particularly in areas of traditional segregation such as office work.

All these criticisms may similarly be made of the British Act.

Section 3 defines **"like work".** Two persons are to be regarded as being employed on "like work" where:

(1) both perform the same work under the same or similar conditions or where each is fully interchangeable with the other in relation to the work; or
(2) the work performed by one is of a similar nature to that performed by the other and any differences between the work performed occur only infrequently or are of small importance in relation to the work as a whole; or, finally,
(3) the work performed by one is equal to that performed by the other in terms of the demands it makes on each person.

Under section 4, in the absence of a term of a woman's contract of employment or otherwise entitling her to equal pay, the terms and conditions of her employment shall include an implied term to that effect; and this implied statutory term is to prevail over an express term to the contrary: there can be no "contracting out" of the Act.

Terms of employment which include unequal pay provisions under a collective agreement, an employment regulation order made pursuant to the Industrial Relations Act, 1946, Part IV, an employment agreement registered under Part III of the latter Act and an order made by the Agricultural Wages Board under section 17 of the Agricultural Wages Act, 1936, shall be "null and void" if made after the commencement of the Act. Those made before the operative date of the Act are not affected for the purely pragmatic reason that there are so many of them that it would be unrealistic to expect them all to be renegotiated before the operative date. Obviously, each will eventually fall due for review and the Act will then apply to the new agreements, regulations or orders.

Equal Pay Officers

Then come the "teeth" of the Act — or rather, the guardians of it, in the form of "Equal Pal Officers". They are to be appointed by the Minister for Labour after consultation with the Labour Court and with the consent of the Minister for the Public Service, who will determine the terms of employment and remuneration of the equal pay officers.

Their powers are wide. ((Section 6). In particular, section 6(3) is obscure and open to "**détournement de pouvoir**", to borrow a phrase from the civil law: "An equal pay officer may provide for the regulation of proceedings before him in relation to an investigation by him under this Act." The Long Tale in Alice's adventures at once springs to mind --- "I'll be judge, I'll be jury," said cunning old Fury: "I'll try the whole cause and condemn you to death."

Even if the whole gamut of the principles of administrative law and of natural justice — and the Constitution -- are implicit in section 6(3), it can only be regretted that the Legislature did not take the trouble to spell out regulations for the procedure before the equal pay officer, or at least provide for making of such regulations by way of delegated legislation (instead of wasting many valuable hours in the Dail **debating the short Title of the Act!).** One can envisage that each Equal Pay Officer will make his own set of regulations, and vary them for every case. That, at least, the Act, as it stands, authorises them to do.

The specific powers of the Equal Pay Officers fall into two categories, here termed "investigatory" powers and "referral" powers.

The investigatory powers include:

(i) power to enter premises at all reasonable times,

(ii) power to require the production of records, documents and soforth,

(iii) power to inspect and take extracts from any such records,

(iv) power to inspect work in progress.

Section 6(4)(b) sets out the sanction: a fine not exceeding £100; or on conviction on indictment, a fine not exceeding £1.000, the offence being the obstruction of an Equal Pay Officer in the exercise of his statutory powers, or failure to comply with his requirements as shortly described at (ii) above. However, an investigation by an Equal Pay Officer is to be conducted in private.

His referral powers come into operation (under section 7(1)) when a party to a dispute between the employer and employee refers the dispute to the Equal Pay Officer for investigation and recommendation. The investigation must be in accordance with the Act and not under any existing provision or arrangement.

The Minister (for Labour) is also empowered to deal with a situation which appears to him to be an infringement of the equal pay provisions of the Act, where there is no dispute or it is unreasonable to expect the employee concerned to refer the matter to an Equal Pay Officer (section 7(2)). The Minister is to deal with such matter as if it were a reference of a dispute by an employee, i.e. refer it to an equal pay officer.

The Equal Pay Officer is to make a recommendation which shall be conveyed to the parties, to the Labour Court, and, when the Minister has made the referral, to him also.

Appeal lies against the recommendation in the first instance to the Labour Court either against the recommendation or for a determination that the recommendation has not been implemented. Such appeal must be lodged in the Court not later than 42 days after Equal Pay Officer's recommendation.

The hearing in the Labour Court is to be held in private, and sections 14 and 21 of the Industrial Relations Act, 1946 apply (which provide for the appointment of technical assessors and the summoning of witnesses by the Labour Court).

Any information obtained by an Equal Pay Officer or by the Labour Court in the course of an investigation is not to be included in any recommendation or determination without the consent of the persons concerned. A party to a dispute determined by the Labour Court may appeal to the High Court on a point of law only.

Powers of the Labour Court

The Labour Court is empowered to order the employer concerned to comply with its determination: failure to comply with the order carries a fine on summary conviction not exceeding £100 and, in the case of a continuing offence, a further fine not exceeding **£10 per diem in diem** (section 8(4)(b)).

In any proceedings brought under the Act a person will not be awarded more than three years' arrears of the remuneration to which such person (quaintly described as "he") is entitled under the Act.

Section 9(1) makes provision for the case of dismissal because of an equal pay claim. It will be an offence for an employer to dismiss a woman for the sole or principal reason that she sought equal pay. One can envisage a body of case law growing up around the "reason" for the dismissal. Numerous Trade Union cases on picketing have hinged on just such a point (i.e. whether or not a "trade dispute" exists). For example, in **Silver Tassie Ltd. v. Cleary & ors.** (1958) 92 ILTR 7, the managing director of the Silver Tassie licensed premises dismissed an assistant because he wanted to do his work himself. The assistant's Union then placed a picket on the premises and contended that **there was no adequate reason for the dismissal** and, the Union believed, it was the first step on the part of the management in a plan to turn the premises into a non-union house. Dixon, J. held that, even though the fears of the Union might never come to pass, the very fact that the belief existed and was **bona fide,** brought the dispute within the Trade Disputes Act, 1906. There might well be a perfect parallel under section 9 of the Anti-Discrimination (Pay) Act; an employer might well want to dismiss a woman employee on the grounds of assuming her work himself (or herself) with the same result as in the **Silver Tassie** case, with this vital distinction, as will be seen, that under the new Act the onus of proof will be on the employer.

Section 9(2) actually reverses the burden of proof that the dismissal was not on the grounds of sex, and lays it on the employer. The offence is a serious one—carrying a fine not exceeding £100 on summary conviction, £1,000 for conviction on indictment. Surely "he who asserts must prove" — the maxim **ei incumbit probatio qui dicit, non qui negat** — is fundamental to the basic principles of the criminal law. The employer, it appears, under this section is presumed guilty of the offence and must prove his

innocence. However important it is to protect workers' rights, it is a sad day for our legal system when its fundamental democratic principles can so easily be trampled upon by ruffled female ex-employees.

Quite apart from the principle of Criminal Law involved, it is recognised that a "negative does not admit of the simple and direct proof of which an affirmative is capable" (Taylor on Evidence, 12th ed., Vol. I, p.252). So the Legislature has relieved the so-called weaker sex of the burden of "simple and direct" proof and laid the heavy alternative onus on her employer.

The Dail debate on this point was, to say the least, feeble. In the Upper House, Senator Yeats clearly saw the danger and made a valiant effort to have this provision amended. Contemporaneously, a similar provision was being debated in the Dail in connection with the Food Standards Bill, and the Minister gave this same simplistic reply to the Senate: there are isolated statutory precedents for such a reversal of the burden of proof, e.g. The Health Act, 1947, section 64(2)(c). Mr. D. O'Malley, T.D., in the Dail debate on the Food Standards Bill did not let the matter pass him by, but he did not appear to see the danger in the Anti-Discrimination (Pay) Act. At any rate, there was a division in the Senate and of course the majority was for the Government's provision. The really disturbing factor is, not that a statutory precedent carried the day, but that similar provisions appear to be favoured by the Government in further legislation, as witness the Food Standards Bill: a definite pattern seems to be emerging.

In addition to the conviction under section 9 (1), section 9(3)(a) provides that, on such conviction, where the Court is satisfied that the employee would be entitled to recover in such civil action. The latter is to be paid to the employee, and will be a good defence to any subsequent civil action for such arrears.

Direct complaint to Labour Court

Section 10 grants a female employee the right to complain direct to the Labour Court of her dismissal solely or mainly because she had claimed from her employer equal pay. In such case the Labour Court is to investigate the complaint, hear the interested parties as in the case of an appeal from the recommendation of an 'equal pay officer, and may order payment to the employee of the remuneration she would have received to date of the order of the Court if she had not been dismissed, but not more than 104 weeks' remuneration, and may recommend her reinstatement. Penalties are provided for such case as under section 8(4)(b). Where there is such a conviction, the Court may impose a fine of arrears of remuneration, as under section 9(3)(a), payable to the employee. Notwithstanding section 17 of the Industrial Relations Act, 1946 which bars appeals from the Labour Court to a court of law) appeal against the order lies to the Circuit Court (in whose Circuit the employer carries on business). Appeal against the amount of the fine may be made by the plaintiff to the High Court, or the Circuit Court.

There is a confusing variety of methods of enforcement.

Misogynists will be pleased to learn that section 11 enacts that the equal pay provisions are to be applied "to a man in relation to his remuneration relative to that of a woman."

As regards the EEC Directive, the Act goes beyond its requirements by providing a remedy for women by utilising the Labour Court for its purposes without any cost to the litigants.

However, it fails to comply with the Directive's requirements that the equal pay provisions be posted up in every place of work. Also, the Directive requires provisions for enforcement of equal pay "at the level of the undertaking"; and the equal pay officers cannot operate at that level.

It now only remains for the Oireachtas to lay to rest forever De Lolme's proverbial assertion "that Parliament can do everything but make a woman a man, and a man a woman."

SOCIETY OF YOUNG SOLICITORS

TRANSACRIPTS SERVICE

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The following transacripts from the Kinsale Seminar are now available:—

Lecture 87. Damages, 50p; by post, 59p.

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The draft scripts for the Lectures on Advocacy and Injunction are out for approval, estimated availablity for these will be early June.

The 1974 Waterford scripts available are:—

No. 84. Farm Taxation & Finance Act 1974. £1.00; by post, £1.09.

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Due to high postage approximately £75.00 and other costs including 1,500 envelopes and 9 reams of paper plus labour charges, general circulation of price lists has been discontinued. Members can assist in avoiding unnecessary expenses by either asking for lists when ordering transcripts and returning these lists or by sending stamped addressed envelope when list only required.

THE GENERAL COUNCIL OF THE BAR OF IRELAND

REPORT ON CRIMINAL LEGAL AID

PART I

Article 6 of the European Convention on Human Rights (which was signed on behalf of the people of Ireland on the 4th November 1950 and ratified by the Oireachtas on the 25th February 1953) provides as follows:-

Article 6

1. In the determination of . . . any charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

(a. to be informed promptly and in language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing **or, if he has not sufficient means to pay for legal assistance, to be given it free where the interests of justice so require;**

(d) to examine and have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in Court.

At the date of ratification the domestic law of Ireland appeared to secure all of the foregoing minimum rights with the exception of those set out at 3(c) and underlined and 3(d) of Article 6 above set out.

The Criminal Justice (Legal Aid) Act 1962

For the purpose of supplying the deficiency and bringing the domestic law of Ireland into accord with our treaty obligations the Criminal Justice (Legal Aid) Act 1962 was enacted by the Oireachtas.

The Act was brought into operation by Statutory Instrument no. 13 of 1965 and a scale of fees and system of regulation was provided by Statutory Instrument no. 12 of 1965. The system of Legal Aid in Criminal Cases came into operation as and from the 1st April 1965. The regulations and scale of fees were amended by Statutory Instrument no. 240 of 1970.

There are indications that in drafting the legislation which became the Act of 1967 the Department of Justice was more concerned to have on the statute book an Act which could be pointed to as a compliance with the European Convention than to establish a system of Legal Aid which was best calculated to fulfil the needs of those likely to be compelled to avail of it, or to facilitate legal practitioners charged with implementing the scheme for the protection of the needy charged with criminal offences.

As far as we have been able to ascertain no prior consultations were held with any of the likely interested parties or their representatives. There is no indication that either the prison welfare services, social workers or any other party who might have been able to speak on behalf of the needy were consulted and it is certain that neither branch of the profession was given an opportunity to express views on the proposed legislation or regulations. Indeed at the commencement of the scheme it appears that no appropriation had been made to meet it's cost. In the first years of its operation at least, it was proposed by the Department of Justice to finance the operation of the scheme out of the residues of funds voted by the Dail to the Departmen' of Justice for totally other purposes.

In these circumstances the two branches of the profession were asked by the then Minister for Justice, Mr. Lenihan to implement the scheme for a limited experimental period. There was a clear undertaking by the then Minister that the working of the scheme and in particular remuneration of the profession under it would be reviewed after a specified period. There is disagreement between the Minister's advisers and the representatives of the Bar as to whether the experimental period was to be of two or four years. However, the profession agreed to attempt to work the scheme and the 'experimental' period began.

Since the commencement of the scheme there have been occasional meetings between delegations from the Bar Council and successive Ministers for Justice, concerned exclusively, it appears, with improving the remuneration of barristers attempting to work the scheme. Minor increases in fees were conceded in 1970, not, regrettably, as a result of any meaningful negotiations or understanding of the difficulties being experienced by the profession in attempting to work the scheme but on a 'take-it-or-leave-it' basis predetermined by the Minister and his advisers.

In early December 1974 the Bar Council decided that after an 'experimental' period of approximately eight and a half years the time was overdue for an examination in some depth of the Legal Aid scheme and the system and scale of payment in the light of experience to date. A delegation from the Bar Council was received by the present Minister for Justice, Mr. Cooney, in November 1974. At that meeting the members of the delegation indicated to the Minister

that, in their view, there were major defects in the system of a basic and serious nature. The Minister invited the Council to submit to him a memorandum setting out their views on these areas of substantial defect and invited suggestions for improvement. The present memorandum is an attempt to meet that invitation.

We have attempted before formulating our views to canvass the views of barristers working in the area of criminal law and have had very many helpful suggestions. It is clear from our inquiries that all barristers working within the scheme have grave and apparently well-founded misgivings about its operation.

We wish to record that it is our belief that both branches of the profession have made a serious endeavour to implement the scheme to the best of their ability for the benefit of needy persons who have become involved in the criminal process in our Courts.

Criminal Legal Aid

We are of opinion that a sound approach to the appraisal of the working of any legal aid system is, initially, to ask the following two questions:-

(i) What, in practical terms, is the legal assistance which a needy person charged or about to be charged, with a criminal offence is entitled to be afforded so as to secure and vindicate his minimal legal and constitutional rights?

(ii) What, again in practical terms, are the obligations upon a member of the legal profession who undertakes the duty of assisting a needy person in securing and vindicating those rights under such a scheme?

Having established these criteria we can then avail of legal assistance which a needy person seeking to avail of them must be afforded if his rights are to be adequately protected:-

(a) To have access at the earliest time permitted by law to a solicitor equipped by experience to deal with criminal matters and to a solicitor of the client's choosing where such is available and willing to act.

(b) To have such access in private and for such periods as a reasonably prudent solicitor would deem necessary.

(c) To be advised promptly by his solicitor or (where the solicitor deems it necessary) by Counsel as to his right to bail.

(d) To be advised promptly by his solicitor or (again where the solicitor deems it necessary) by Counsel as to his right to have his liberty secured by way of Habeas Corpus.

(e) To be advised in relation to and attended upon the making of any statement in relation to the charges or proposed charges.

(f) To be advised in relation to any proposed identification parade and (where the solicitor deems it necessary) to be attended at such parade.

(g) To have all reasonable steps taken to secure his release on bail or by way of Habeas Corpus.

(h) To be represented by his solicitor and (where his solicitor deems it prudent) by Counsel at each and every appearance before a Court.

i) To have his defence properly prepared and presented.

(j) To be advised in relation to appeal in the event of a conviction.

(k) To have all necessary steps taken to initiate, prepare and present such appeal.

(l) To be advised as to any other State Side remedy which may be available in the course of the criminal process and to have any such remedy pursued.

(m) To be advised as to the constitutionality or legality of any statute, instrument or step bearing on the constitutionality or legality of any such statute the charge made against him or proposed and to have instrument or step tested where such action is reasonable.

(n) To have reasonable access at all times to his legal advisers.

Having set out the above services in list form we consider it important to emphasise that **each claim enumerated is a component of the Accused's constitutional right to be dealt with in accordance with law.** Where any one of the enumerated claims arises and is not met, there is danger that the general and fundamental right may be jeopardised.

In sum, we believe (in relation to the first question) that a person who has insufficient means to enable him to obtain legal assistance must be entitled to each and every one of the services enumerated above (insofar as they arise in any given case) if that person's minimal legal and constitutional rights are to be safeguarded and vindicated.

Concommitently we believe that it is the duty of the State to provide such service and of the legal profession to implement such service to the best of its professional skill and ability.

RENT
REVIEWS

PROFESSIONAL VALUATION
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IRISH SCHEME OF COMPENSATION FOR PERSONAL INJURIES CRIMINALLY INFLICTED

General

(1) The Criminal Injuries Compensation Tribunal established under paragraph 17 of the Scheme may pay *ex gratia* compensation in accordance with this Scheme in respect of personal injury where the injury is directly attributable to a crime of violence, or, as provided for in paragraph 4, to circumstances arising from the action of the victim in assisting or attempting to assist the prevention of crime or the saving of human life. The injury must have been sustained within the State or aboard an Irish ship or aircraft on or after the 1st of October 1972. Arson and poisoning will be regarded as coming within the scope of the expression "crime of violence" and, in determining whether any act is a crime for the purposes of the Scheme, the Tribunal will not take account of any legal immunity which the person who inflicted the injury may have by reason of his mental health, his youth or otherwise. The word "injury", as used in the Scheme, includes a fatal injury.

(2) The Tribunal will be entirely responsible for deciding in any particular case whether compensation is payable under the Scheme, and, if so, the amount. **There will be no appeal against or review of a final decision of the Tribunal.**

Persons who may claim compensation under this Scheme

(3) The Tribunal will consider claims for compensation made by or on behalf of :

(a) the person who sustained the injury (the victim);
(b) any person responsible for the maintenance of the victim who has suffered pecuniary loss or incurred any expenses as a result of the victim's injury;
(c) where the victim has died as a result of the injury, any dependant of the victim or, if he has no dependant, any person who incurred expenses as a result of his death;
(d) where the victim has died otherwise than as a result of the injury, any dependant of the victim.

(4) The Tribunal will also consider claims in respect of injury received in the following circumstances :

(a) because of, or in the course of, the victim's coming to the assistance of a member of the Garda Siochana
  (i) because of an unlawful attack upon the member, or
  (ii) because the member was attempting to prevent a crime or to take a person into custody, or
  (iii) in the course of a riot, or a disturbance or threatened disturbance of the peace, or
  (iv) in the course of an attempt to rescue a person in custody, or
  (v) because the member was engaged in saving a human life;
(b) because of, or in the course of, attempting to prevent a crime in a public place;
(c) because of, or in the course of, attempting to prevent, in a public place, the escape of a person who had committed a crime, or the rescue of a person in custody;
(d) because of, or in the course of, attempting to save human life.

(5) If injury is inflicted in the circumstances set out in the Scheme and any person would be entitled to claim compensation (whether statutory or non-statutory) otherwise than under the Scheme for the injury, he will not be prohibited from also claiming compensation under the Scheme but the Tribunal will decide the claim on the basis that no payment under the Scheme should result in compensation being duplicated and may accordingly decide either to make no award or to make a reduced award and may, moreover, decide that an award will be subject to conditions as to its repayment in whole or in part in the event of compensation being subsequently received from another source.

Nature and extent of compensation

(6) Subject to the limitations and restrictions contained elsewhere in this Scheme, the compensation to be awarded by the Tribunal will be on the basis of damages awarded under the Civil Liability Acts except that compensation will not be payable

(a) by way of exemplary, vindictive or aggravated damages;
(b) in respect of the maintenance of any child born to any victim of a sexual offence;
(c) in respect of loss or diminution of expectation of life, or
(d) where the victim has died, for the benefit of the victim's estate.

(7) Where the victim has died otherwise than as a result of the injury the Tribunal may award compensation in respect of loss of earnings, expenses and liabilities incurred before the death but only to a dependant who would, in the opinion of the Tribunal, otherwise suffer hardship.

(8) **Compensation will be by way of a lump sum payment,** rather than a periodical pension, but it will be open to the Tribunal to make an interim award and to postpone making a final award in a case in which a final medical assessment of the injury is delayed.

Limitation and restriction of compensation

(9) No compensation will be payable unless the Tribunal is satisfied that the injury is such that compensation of not less than £50 should be awarded.

(10) No compensation will be payable where the offender and the victim were living together as members of the same household at the time the injuries were inflicted.

(11) No compensation will be payable to an applicant who has not, in the opinion of the Tribunal, given the Tribunal all reasonable assistance, in relation to any medical report that it may require, and otherwise.

(12) **No compensation will be payable in respect of injuries inflicted in a traffic offence** except in a case where there has been, in the opinion of the Tribunal, a deliberate attempt to run down the victim.

(13) No compensation will be payable where the Tribunal is satisfied that the victim was responsible, either because of provocation or otherwise, for the offence giving rise to his injuries and the Tribunal may reduce the amount of an award where, in its opinion, the victim has been partially responsible for the offence.

(14) No compensation will be payable where the Tribunal is satisfied that the conduct of the victim, his character or his way of life make it inappropriate that he should be granted an award and the Tribunal may

reduce the amount of an award where, in its opinion, it is appropriate to do so having regard to the conduct, character or way of life of the victim.

(15) Compensation will be reduced by the value of the entitlement of the victim or claimant to social welfare benefits payable as a result of the injury and will be reduced, to the extent determined by the Tribunal, in respect of the entitlement of the victim to receive, under his conditions of employment, wages or salary while on sick leave.

(16) The Tribunal will deduct from the amount of an award under this Scheme any sums paid to or for the benefit of the victim or his dependants by way of compensation or damages from the offender or any person on the offender's behalf following the injury.

Finance and administration

(17) The Scheme will be administered by the Criminal Injury Compensation Tribunal, the members of which will be appointed by the Minister for Justice. **It will consist of a chairman and six ordinary members. The Chairman and each member will be either a practising barrister or a practising solicitor.** The members of the Tribunal will act on a part-time basis but they will be paid fees for work done on a basis to be determined by the Minister for the Public Service.

(18) Compensation will be payable out of funds made available to the Tribunal out of moneys provided by the Oireachtas.

(19) The Tribunal will submit annually to the Minister for Justice a full report on the operation of the Scheme together with their accounts. The report and accounts will be laid before both Houses of the Oireachtas. In addition, the Tribunal may, in connection with its annual report or otherwise, publish such information concerning the Scheme and decisions in individual cases as may, in its opinion, assist intending applicants for compensation.

Procedure, etc.

(20) The Tribunal will be free to draw up and publish any instructions it considers necessary regarding the procedure for administering the Scheme. However, these instructions will be consistent with the provisions of the Scheme and with the general intention that the **administration of the Scheme and, in particular, proceedings before the Tribunal, should be informal.**

(21) Applications should be made as soon as possible but, except in circumstances determined by the Tribunal to justify exceptional treatment, not later than three months after the event giving rise to the injury. In the case of an injury arising out of an event which took place before the commencement of the Scheme, the application must be made not later than three months from the date of the commencement (subject, also, to the foregoing exception).

(22) Applications should be made on the Tribunal's application form. This will be obtainable from the Secretary to the Tribunal.

(23) To qualify for compensation it will be necessary to indicate to the Tribunal that the offence giving rise to injury has been the subject of criminal proceedings or that it was reported to the Garda without delay. However, the Tribunal will have discretion to dispense with this requirement in the case of injuries resulting from offences committed before the commencement of the Scheme, and in other cases where they are satisfied that all reasonable efforts were made by or on behalf of the claimant to notify the Garda Siochana of the offence and to co-operate with them.

(24) The Tribunal's staff will process applications in the first instance and may seek all relevant information as to the circumstances of the injury either from the applicant or otherwise.

(25) A decision by the Tribunal on a claim may, in the first instance, be taken by a duly authorised officer of the Tribunal where the amount claimed does not exceed £250. Where the claim is for a greater sum than £250 or where the claimant is not satisfied with a decision by that officer, the decision will normally be taken by one member of the Tribunal. The Tribunal will have discretion to hear any claim at a hearing before three members of the Tribunal and a person who is dissatisfied with a decision given by one member may also have his claim so heard. In the latter case the member who gives the initial decision will not be one of the three members of the Tribunal present at the hearing. Apart from an appeal by an applicant against a decision of a duly authorised officer or against a decision of one member, there will be no appeal against a decision of the Tribunal.

(26) The proceedings at the hearing of the Tribunal will be by way of a presentation of his case by the applicant who will be entitled to call, examine and cross-examine witnesses. It will be for the claimant to establish his case. A member of the Tribunal's staff may make submission to the Tribunal on the case and will also be entitled to call, examine and cross-examine witnesses. All information before the Tribunal will be available to the applicant.

(27) An applicant may be accompanied by his legal adviser or another person but the Tribunal will not pay the costs of legal representation.

(28) The Tribunal may, at its discretion, pay the necessary and reasonable expenses of witnesses.

(29) **Hearings will be in private.**

(30) The standard of proof which the Tribunal will apply to a determination of any claim will be the balance of probabilities.

(31) The Tribunal will be entitled to make any arrangements which it considers desirable for the administration of money it awards as compensation.

STATUTORY INSTRUMENT

S.I. No. 66 of 1975

SOLICITORS' ACTS, 1954 and 1960 (APPRENTICESHIP AND EDUCATION) REGULATIONS, 1975

The Incorporated Law Society of Ireland in exercise of the powers conferred on them by Sections 4, 5, 25 and 40 of the Solicitors' Act, 1954, and of every other power thereunto enabling them hereby make the following Regulations:—

1. These Regulations may be cited as the Solicitors' Acts, 1954 and 1960 (Apprenticeship and Education) Regulations, 1975, and shall be read with the Regulations cited in the Schedule hereto.

2. Subject to the transitional arrangements in Regulation 32 hereof, these Regulations shall come into operation on 1st October, 1975, and shall in so far as they are inconsistent with the Regulations cited in the Schedule hereto be deemed to amend such Regulations on from that date.

3. In these Regulations the expression
"the Act" means the Solicitors' Act 1954;
"the Society" means The Incorporated Law Society of Ireland;
"the Council" means the Council of the Society;
"the Committee" means the Education Committee appointed under Regulation 5;
"the Registrar" means the Registrar for the time being of the Society;
"an apprentice" means a person whose name has been entered in the Register of Apprentices;
"recognised university" means any of the universities of Ireland, England, Scotland or Wales;
"the Preliminary Examination" and "the Final Examination" have the meanings assigned to them in these Regulations;
"prescribed form" means the form or forms adopted by the Committee from time to time for use in complying with these Regulations.

Other expressions used in these Regulations shall have the same meanings as they have in the Act unless such meaning is inconsistent with the context in which they are used.

4. The Interpretation Act, 1937 shall apply for the purpose of the interpretation of the Regulations as it applies for the purpose of the interpretation of an Act of the Oireachtas, except in so far as it may be inconsistent with the Act or these Regulations.

EDUCATION COMMITTEE

Constitution

5. (i) At the first meeting of the Council to be held after the Annual General Meeting of the Society each year the Council shall appoint an Education Committee in these Regulations called "the Committee", consisting of nine members including the President, the Senior Vice-President and immediate past President respectively of the Society and six members of the Council.

Tenure of Office

(ii) The members of the Committee shall take office immediately upon appointment and shall hold office until the appointment of their successors. Outgoing members shall be eligible for re-appointment. Three members of the Committee shall form a quorum.

Vacancies

(iii) A vacancy arising on the Committee may be filled by the Council at any time and a member appointed to fill the vacancy shall hold office until the next meeting of the Council at which the Committee shall be appointed.

Powers and Duties

6. The Committee shall have such powers and duties, in addition to those conferred or imposed upon it by these Regulations, as may be delegated to it by the Council from time to time.

7. The Committee shall prescribe the courses of study to be followed by apprentices and lay down the standards to be attained at the Society's examinations. The Committee shall also consider and adudicate upon the reports of the Examiners.

ADVISORY COMMITTEE

8. (i) For the better discharge of its duties, the Committee shall at its first meeting after its appointment appoint an advisory committee in these Regulations called "The Advisory Committee" comprising not more than nine persons of whom not more than five shall be members of either the Committee or the Council and of whom at least one may be an Examiner.

(ii) A vacancy arising on the Advisory Committee may be filled by the Committee at any time and a person appointed to fill a vacancy shall hold office as a member of the Advisory Committee until the next meeting of the Committee at which an Advisory Committee may be appointed under these Regulations.

Lecturers and Examiners

9. The Committee may appoint such persons as it may see fit to be lecturers or examiners or both to the Society upon such terms and conditions and with such remuneration as the Council may approve, and the Committee may at any time remove any person so appointed.

APPRENTICESHIP

Conditions to be satisfied before Apprenticeship

10. (i) No person shall enter into Indentures of Apprenticeship unless he:—

(a) Holds a Degree (other than an Honorary Degree) of Bachelor of Arts or Bachelor of Law of a recognised university, or

(b) holds a University Degree (not being an Honorary Degree) or other qualification, which Degree or qualification in the opinion of the Committee in the particular case is equivalent to a Degree (not being an Hororary Degree) of Bachelor of Arts or Bachelor Law of a recognised university, or

(c) has passed the Preliminary Examination established by Regulation 15 (iii) hereof, or

(d) has been exempted from the Preliminary Examination established by Regulation 15 (iii) hereof under any provision of the Act or of these Regulations.

For the purpose of this sub-paragraph an examination for a Degree or qualification referred to at (a) and (b) above shall be equivalent to the Preliminary Examination.

(ii) A person who satisfies the requirements of sub-paragraph 10(i) hereof on desiring to be registered as an apprentice shall lodge with the Registrar the following documents:—

(a) an official Certificate of his birth;

(b) a Certificate of such Degree, qualification (or evidence to the satisfaction of the Committee, of entitlement thereto) or a certificate of having passed the Preliminary Examination or of having been exempted therefrom;

(c) a Certificate of character in the prescribed form;

(d) an Application in the prescribed form supported by a statement of fitness from his intended Master.

(iii) The Committee may require an applicant or his intended Master, or both of them, to attend for interview prior to the registration of the applicant's name in the Register of Apprentices. No Applicant shall enter upon his apprenticeship until he has been informed in writing by the Registrar that his application has been accepted.

Procedure on Apprenticeship

11. An applicant who has been notified by the Registrar that his application has been accepted shall within six months from the date of such notification lodge with the Registrar:—

(a) A Deed of Apprenticeship in the prescribed form executed by the applicant and his Master.

(b) If requested, a Statutory Declaration by the Master of other evidence of due execution.

(c) The prescribed fee payable to the Society.

Upon the receipt of the foregoing the Registrar shall enrol the Deed of Apprenticeship and enter the name of the applicant on the Register of Apprentices.

Transfer of Indentures or Supplemental Indentures

12. Before the execution of the transfer of indentures or supplemental indentures under Section 32 of the Act, the apprentice shall obtain the permission in writing of the Committee and shall lodge with the Registrar an Application supported by a Statement of Fitness from the intended new Master. If such application is approved by the Committee the Registrar shall enter particulars of such Transfer in the Register of Apprentices.

EXAMINATIONS AND LAW SCHOOL

First and Second Examinations in the Irish Language

13. To comply with the provision of Section 40 (3) of the Act:—

(i) (a) an Examination described as "a First Examination in the Irish Language" shall be held at least once in every year at such time as the Committee may appoint for persons seeking to be registered as apprentices;

(b) an intending Apprentice who was born on or after 2nd October 1914 shall pass a first examination in the Irish Language before entering into indentures of apprenticeship.

(ii) (a) an Examination described as a "a Second Examination in the Irish Language" shall be held at least once in every year at such time as the Committee may appoint for persons seeking to be admitted as solicitors;

(b) such Examination shall be so conducted and be of such a nature as to secure that persons who pass it have a competent knowledge of the Irish Language, that is to say, such a degree of oral and written proficiency in the use of the language as is sufficient to enable a solicitor efficiently to receive instructions, to advise clients, to examine witnesses and to follow proceedings in the Irish Language;

(c) Every apprentice or person seeking admission as a Solicitor, who was born on or after 2nd October 1914, shall pass a second examination in the Irish Language within two years before the expiration of the term of apprenticeship or within two years before admission as a solicitor.

Examinations of the Society

14. The Society shall hold a Preliminary Examination for persons seeking to be bound under Indentures of apprentices and a Final Examination (which may be divided into two or more parts) for persons seeking to be admitted as solicitors.

Preliminary Examinations

15 (i) A Preliminary Examination shall be held once in each year at such time as the Committee may appoint;

(ii) a person seeking permission to sit for the Preliminary Examination shall have attained the age of 21 years at the date of such examination;

(iii) the Preliminary Examination shall comprise—

(a) an essay in the English Language;

(b) a paper on English literature;

(c) a paper on General Knowledge;

(d) such other subect or subjects as the Committee may from time to time prescribe;

(e) an interview to assess the suitability of the candidate for registration as an apprentice.

(iv) the Committee may in its discretion exempt from the Preliminary Examination a person to whom paragraph 5 of the Second Schedule to the Act applies.

Final Examination—First Part

16 (i) An examination entitled "Final Examination —First Part" shall be held by the Society at least once in every year at such time or times as the Committee may appoint.

(ii) The subjects of this examination shall be prescribed by the Committee and contained in a syllabus published annually by the Society. At the date of these Regulations the subjects shall comprise

(a) Law of Property

(b) Law of Torts

(c) Law of Contracts

(d) Constitutional Law and

(e) Company Law and

(f) One other legal subject taught in a recognised university in Ireland.

The Committee may without reducing the number thereof, vary the subjects from time to time but shall give not less than one year's notice in so doing.

(iii) An apprentice, other than an apprentice to whom paragraph 5 of the Second Schedule to the Act applies, shall not be entitled to sit for this Examination until he shall have completed one year's service under his indentures of apprenticeship except with the prior consent of the Committee.

Exemptions from Final Examination—First Part

17. An apprentice who:—

(i) holds or is entitled to hold a Degree in Law of a recognised university in Ireland or such other degree or qualification as may be recognised by the Committee in the particular case as equivalent to a Degree in Law, or,

(ii) produces to the Society Certificates from a recognised University in the State that he has passed such university's examinations in the subjects specified in Regulation 16 (ii) of these Regulations—may be exempted at the discretion of the Committee in whole or in part from the Final Examination—First Part.

LAW SCHOOL

Admission to the Society's Law School

18 (i) For the purpose of Section 40 (I) of the Act, a law school to be known as "the Law School" shall be established and maintained by the Society.

(ii) An Apprentice who has passed or has been exempted from the Final Examination — First Part shall be entitled to admission to the Law School.

(iii) The Committee shall provide or arrange for the provision of courses in the subjects specified in Appendix I and Appendix II hereof.

Attendance at Law School

19. An apprentice who has been admitted to the Law School shall be required to follow for one year the prescribed course of studies in the subjects specified in Appendix I hereof.

Final Examination — Second Part

20 (i) An Examination entitled Final Examination —Second Part (which may be in one or more sections) shall be held by the Society at least once in every year at such time or times as the Committee may appoint.

(ii) The subjects of this Examination shall be prescribed by the Committee from among the subjects specified in Appendix I hereof and contained in a Syllabus to be published annually by the Society.

APPRENTICESHIP

Service under Indentures of Apprenticeship

21 (i) Subject as next hereinafter provided every Apprentice while serving under indentures of apprenticeship shall, after completing the course of studies prescribed in Regulation 19 hereof, attend at the office of his master on a continuous and wholetime basis over a period of 18 months at least for the purpose of receiving instruction in the practice and profession of a solicitor.

(ii) An Apprentice with the approval of his Master and with the prior consent in writing of the Committee may during the period of 18 months referred to in sub-clause (i) of this Regulation be allowed to hold for a period not exceeding in any case six months, an office or engage in employment in Ireland or abroad which in the opinion of the Committee would be advantageous to him in the futherance of his legal studies or his preparation for the profession of a solicitor.

FURTHER ATTENDANCE AT LAW SCHOOL

22 (i) An Apprentice who has passed the Final Examination—Second Part and who produces to the Society declarations in the prescribed form by his Master and himself and otherwise satisfies the Committee as to his service under indentures, shall be admitted to the Law School for a further term. Thereupon he shall be required to follow for a period of not more than four months the prescribed course of studies in the subjects specified in Appendix II hereof.

(ii) An Apprentice seeking admission to the Law School to attend the course prescribed under this Regulation shall at least four weeks before the commencement of such course lodge with the Committee declarations in the prescribed form by himself and his master as to his service under indentures.

(iii) An Apprentce or his master or both of them may be requested to attend before the Committee for the purpose of explaining any matter arising out of his service under indentures and on being so requested shall attend in person.

(iv) Subject as hereinafter excepted in sub-clause (v) of this Regulation, an apprentice shall not be

permitted to enter the Law School for the purposes of the course described in this Regulation if he has not complied with the provisions of Regulation 21 hereof in regard to his service under Indentures.

(v) Where the Committee is satisfied that the failure of an Apprentice to give due service under Indentures for the prescribed period has been occasioned by the illness of the apprentice or by some other excusable cause the Committee may admit the apprentice to the Law School for the purposes of the course prescribed in this Regulation and direct that the apprentice complete the outstanding period under his indentures immediately after the completion of such course.

(vi) If, as a result of enquiries which it has made or of information which has been furnished to it by an apprentice or his master, the Committee is not satisfied as to the due service of the Apprentice under Indentures, the Committee (except in the case where the service of the apprentice was interrupted by serious illness or other excusable cause) may require the Apprentice to serve a further period in the office of his Master or of some other approved Solicitor.

Final Examination—Third Part

23 (i) An examination entitled Final Examination—Third Part (which may be held in one or more sections) shall be held by the Society at least once in every year at such time or times as the Committee may appoint.

(ii) The subjects of this examination shall be prescribed by the Committee from among the subjects specified in Appendix II hereof and contained in a Syllabus to be published annually by the Society.

Discipline and Control of Apprentices

24. Should the Committee at any time during the service of an Apprentice under Indentures or prior to his admission as a Solicitor receive a report from the Registrar alleging improper conduct on the part of the Apprentice, the Committee shall consider such report and may investigate the allegation of improper conduct therein contained. For the purpose of any such investigation the Committee may make such enquiries and interview such persons as it considers appropriate; and should it find the allegations well founded the Committee shall be empowered to adopt all or any of the following courses namely—

(i) Report to the President of The High Court that the apprentice is not, in its opinion and for the reasons to be given, a fit and proper person to be admitted as a Solicitor;

(ii) Refuse its permission to the apprentice to take any of the prescribed examinations of the Society either at all or for such period as it shall think fit in the circumstances of the case;

(iii) Suspend the apprentice from attendance at the Law School for such period as it shall think fit in the circumstances of the case:

Provided that an apprentice aggrieved by a decision of the Committee under this Regulation may apply to the President of The High Court to have such decision reviewed by him.

REQUIREMENTS FOR ADMISSION AS A SOLICITOR

25. Subject to the provisions of the Act and to these Regulations, no apprentice shall be admitted as a solicitor unless he has passed the Final Examination prescribed by these Regulations, completed his due service under indentures and otherwise satisfies the Committee that he is a fit and proper person to be admitted as a solicitor.

EXEMPTION OF BARRISTERS-AT-LAW

26 (i) A person to whom paragraph 4 of the Second Schedule to the Act applies and who before becoming bound as an apprentice has complied with the provisions thereof shall be exempt from the Preliminary Examination and from the Final Examination—First Part.

(ii) A practising Barrister-at-Law seeking admission under Section 43 of the Act shall be exempt from passing the Final Examination—First Part.

ENTRY FOR EXAMINATIONS

27. An intending candidate for any Examination shall at least three weeks before the date thereof lodge with the Society a notice in the prescribed form with the appropriate fees.

DECLARATION OF RESULTS OF EXAMINATIONS AND STANDARDS

28 (i) The Committee on being satisfied as to the proficiency of a candidate at any Examination shall declare him to have passed such Examination.

(ii) The names of the candidates declared to have passed any of the Society's examinations shall be published in such order and manner and with such distinctions as the Committee shall determine.

(iii) The standards required for passing examinations and for the award of distinctions shall be determined by the Committee.

SOLICITORS IN WHOLETIME EMPLOYMENT

29. A solicitor who is in wholetime employment shall not take an apprentice without the permission of the Committee and such permission, if granted, may be granted either unconditionally or subject to conditions.

EXEMPTIONS

30. Notwithstanding anything in these Regulations, the Committee shall have power in their discretion in any case:—

(a) to exempt an Apprentice from attendance at specified lectures,

(b) to excuse an Apprentice for non-attendance at lectures,

(c) to permit an Apprentice to attend and examination,

(d) to shorten the time required for giving any notice,

(e) to authorise the acceptance of any form or notice notwithstanding that it may not comply in all respects with the prescribed form.

DELEGATION TO THE REGISTRAR

31. The Committee may delegate all or any of its powers under Regulation 30 hereof to the Registrar or to the person for time being carrying out the duties and functions of the Registrar provided however that any person aggrieved by any decision of the Registrar or of the person for the time being carrying out his duties and functions shall be entitled to have the decision reviewed by the Committee.

TRANSITIONAL ARRANGEMENTS

32 (i) The Final Examination—First Part will first be held at such time not later than the year 1978 as the Committee shall appoint.

The prescribed course of studies referred to in Regulation 19 shall first be held not later than the academic year 1978/79 and shall commence on such date as the Committee shall appoint.

The final Examination—Second Part will first be held not later than the academic year 1978/79.

The prescribed course referred to in Regulation 22 will first be held not later than the year 1981.

The Final Examination—Third Part will first be held not later than the year 1981.

(ii) For the benefit of all persons who have entered into indentures of apprenticeship before 1st October, 1975:—

(a) the First Law Examination under the Solicitors' Act, 1954 (Apprenticeship and Education) Regulations 1955-74 (hereinafter called "the Old Regulations") shall continue to be held up to and including the year 1979.

(b) The Socond Law Examination under the Old Regulations shall continue to be held up to and including the year 1981.

(c) The Book-keeping Examination under the Old Regulations shall continue to be held up to and including the year 1981.

(d) The Third Law Examination under the Old Regulations shall continue to be held up to and including the year 1982.

(iii) Apprentices who enter into Indentures after the 1st October, 1975 and before the 1st September 1978 may take the courses and examinations prescribed under the Old Regulations.

Such apprentices if they qualify under Regulation 17 (i) or (ii) of these Regulations may at the discretion of the Committee be exempted from the First Law Examination under the Old Regulations.

INTERPRETATION OF REGULATIONS

33. Notwithstanding anything to the contrary in these Regulations, if any difficulty or doubt shall arise as to the interpretation of these Regulations or as to their application in any case or as to the lectures or examinations to be taken by an apprentice, the matter shall be referred to the Committee whose decision shall be final.

REPEALS

34. The Solicitors' Act, 1954 (Apprenticeship and Education) (Amendment) No. 1 Regulations 1974 (S.I. No. 138 of 1974) are hereby revoked.

Dated this 27th day of March, 1975.
Signed on behalf of the Incorporated Law Society of Ireland:

W. A. OSBORNE,
President of the Incorporated La Society of Ireland.

THE LAW SOCIETY OF IRELAND LIBRARY

SCHEDULE

of

APPRENTICESHIP AND EDUCATION

REGULATIONS REFERRED TO IN

REGULATION I

The Solicitors Act 1954 (Apprenticeship and Education) Regulations 1955 (S.I. No. 217 of 1955), the Solicitors Act, 1954 (Apprenticeship and Education (Amendment) Regulations 1956 (S.I. No. 307 of 1956), the Solicitors Act 1954 (Apprenticeship and Education (Amendment) Regulations 1960 (S.I. No. 94 of 1960), the Solicitors' Act 1954 (Apprenticeship and Education) (Amendment) Regulations 1965 (S.I. No. 201 of 1965), the Solicitors' Act 1954 (Apprenticeship and Education) (Amendment)Regulations 1966 (S.I. No. 230 of 1966), the Solicitors' Act 1954 (Apprenticeship and Education) (Amendment) Regulations 1968 (S.I. No. 17 of 1968), the Solicitors' Act, 1954 (Apprenticeship and Education) (Amendment) Regulations 1969 (S.I. No. 110 of 1969) the Solicitors' Act 1954 (Apprenticeship and Education) (Amendment) Regulations 1970 (S.I. No. 108 of 1970), the Solicitors Act 1954 (Apprenticeship and Education) (Amendment) Regulations 1971 (S.I. No. 218 of 1971), The Solicitors' Act 1954 (Apprenticeship and Education) (Amendment) Regulations 1972 (S.I. No. 49 of 1972) the Solicitors' Act 1954 (Apprenticeship and Education) (Amendment) Regulations 1973 (S.I. No. 47 of 1973) and the Solicitors' Act, 1954 (Apprenticeship and Education) (Amendment) Regulations 1973 (S.I. No. 333 of 1973).

APPENDIX I

CONTENT OF VOCATIONAL COURSES AT THE LAW SCHOOL

(First Session—Regulation 19)

A. **Practice and Procedure:**
1. Civil Litigation in all Courts.
2. Criminal Litigation in all Courts.
3. Administrative Tribunals.
4. Practical Instructions in the drawing of pleadings, preparation of cases for advice and opinions.
5. Advocacy in both civil criminal proceedings.
6. Legal Aid.
7. Family Law.

B. **Business Law Course:**
1. Accountancy.
2. Commercial Law.
3. Applied Company Law and Partnership Law.
4. Bankruptcy, Liquidation and Receiverships.

C. **Conveyancing:**
1. Practical Conveyancing including the drafting of documents.
2. Land Registry Practice.
3. Applied Landlord and Tenant Law.
4. Land Commission Practice.

D. **Taxation and Estate Planning:**
1. Taxation.
2. Probate and Administration of Estates.
3. Wills and Settlements including the drafting thereof.

NOTE: References to EEC Law will be included where applicable.

APPENDIX II

CONTENT OF VOCATIONAL COURSE AT LAW SCHOOL

(Second Session—Regulation 22)

(a) Office administration including staff assessment, management and training.
(b) Cost drawing, including time costing, computer application to office practice.
(c) Ethics and Professional conduct.

At least two of the following:
1. CONVEYANCING
2. COURT PRACTICE AND PROCEDURE
3. CONSUMER AND WELFARE LAW
4. LABOUR LAW.
5. TAX PLANNING.
6. COMPANY LAW.
7. EEC LAW

EXPLANATORY NOTE

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

BACKGROUND TO THE INSTRUMENT

1. The instrument puts into effect the proposals for changes in the system of legal education for Solicitors foreshadowed in the explanatory note to Statutory Instrument No. S.I. 138/1974 the effect of which will be to make the taking of a University Degree the normal pre-requisite for entry upon Apprenticeship and for the establishment of a full-time vocational course in training by the Law Society and the improvement of the Apprenticeship system.

(1) Regulation 1 provides for the method of citing of the Regulations.
(2) Regulation 2 prescribes the date on which the Regulations will come into force.
(3) Regulation 3 defines certain terms used in the Regulations.
(4) Regulation 4 provides for the application of the Interpretation Act 1937 to the Regulations.
(5) Regulation 5 provides for the establishment of an Education Committee, which will replace the existing Court of Examiners of the Incorporated Law Society with an increased membership.
(6) Regulations 6 and 7 set out the powers and duties of the Committee.
(7) Regulation 8 provides for the establishment of an Advisory Committee to assist the Education Committee.

The Incorporated Law Society is precluded from delegating its functions under the Solicitors Act to a Committee which is not formed exclusively of members of the Council of the Incorporated Law Society and accordingly such functions must be exercised by the Education Committee. It is felt that an Advisory Committee, partly composed of persons who are not members of the Council of the Law Society, would be in a position to render considerable assistance to the Education Committee.

(8) Regulation 9 provides for the appointment of Lecturers and Examiners to the Society.
(9) Regulation 10 provides that only persons who hold Arts or Law Degrees of a University in Ireland, England, Scotland of Wales, or a University Degree or other qualification which in the opinion of the Education Committee is equivalent to a Degree of a University in Ireland, England, Scotland or Wales, or a person who has passed or been exempted from the preliminary examination of the Incorporated Law Society will be admitted to Apprenticeship. The Regulation goes on to provide for the other requirements which a prospective Apprentice must comply with.
(10) Regulation 11 provides for the enrolling of the Deed of Apprenticeship with the Law Society after its execution.
(11) Regulation 12 contains the provisions governing the transfer of Indentures.

(12) Regulation 13 sets out the provisions of the Legal Practitioners (Qualification) Act 1929 in so far as they apply to Solicitors Apprentices.

(13) Regulation 14 provides for the holding of a Preliminary Examination and the Final Examination which may be divided into several parts.

(14) Regulation 15 contains the provisions for the holding of the Preliminary Examination and the subjects of such examination.

(15) Regulation 16 provides for the holding of the Final Examination (first part) which is primarily intended for persons who do not hold Law Degrees from an Irish University. The purpose of the examination is to ensure that candidates entering the Society's Law School for the Vocational course have sufficient grounding in academic law subjects to enable them to take the Vocational Course.

(16) Regulation 17 provides for the exemption of persons with certain qualifications from the Final Examination, first part.

(17) Regulation 18 provides for the establishment of the Society's Law School which is to be open to Apprentices who have passed or being exempted from the Final Examination, first part.

(18) Regulation 19 provides for the length of the course of studies, the subjects of which are specified in the appendix to the instrument.

(19) Regulation 20 provides for the holding of the Final Examination, second part, which will be based on the subjects covered in the Law Society's Vocational Courses.

(20) Regulation 21 prescribes full and whole time attendance at the office of the Master by the Apprentice for a period of 18 months subject to a saver that with the consent of the Master and the Incorporated Law Society the Apprentice may be permitted to spend a period not exceeding 6 months of the 18 months Apprenticeship period in an office or employment other than that of the Master.

(21) Regulation 22 provides for the attendance of the Apprentice at a second course in the Incorporated Law Society's Law School for a period of not more than four months and following the course provided as specified in appendix 2 of the Regulation.

An Apprentice will not be permitted to enter the Law School for the second course unless the Society is satisfied about the service of the Apprentice under Indentures and Regulation 22 contains provisions for enquiry into the nature and extent of such service.

(22) Regulation 23 provides for the holding of a Final Examination, third part, a course for which will be the second course in the Law School.

(23) Regulation 24 provides for the exercise by the Committee of Disciplinary powers over Apprentices.

(24) Regulation 25 prescribes that no person is to be admitted until he has passed all the required examinations.

(25) Regulation 26 provides for exemptions of Barristers-at-Law from certain examinations in accordance with the terms of the Solicitors Acts.

(26) Regulation 28 empowers the Education Committee to adjudicate on the results of examinations and to publish the results.

(27) Regulation 29 restricts Solicitors in whole time employment from taking Apprentices without permission of the Education Committee.

(28) Regulation 30 provides for the exercise of certain discretionary powers by the Education Committee.

(29) Regulation 31 provides for the delegation of certain of the discretionary powers under Regulation 29 to the Registrar of the Incorporated Law Society.

(30) Regulation 32 contains the transitional arrangements for the changeover from the old system to the new and for the dates on which the first courses under the new system and first examinations will be held. It also provides for the phasing out of the old examination systems and allows Apprentices qualifying under the old system until 1982 to complete their courses under that system.

(31) Regulation 33 provides for the interpretation of the Education Committee.

(32) Regulation provides for the repeal of Statutory Instrument No. 138/1974 whose provisions are in fact re-enacted in this Statutory Instrument.

The Register

REGISTRATION OF TITLE ACT, 1964

Issue of New Land Certificate

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

Dated this 30th day of April, 1975.

D. L. McALLISTER, Registrar of Titles,
Central Office, Land Registry,
Chancery Street, Dublin 7.

Schedule

(1) Registered Owner: Pierce Ryan; Folio No: 260F; Lands: (1) Cormackstown, (2) Cormackstown; Area: (1) 83a. 0r. 3p., (2) 11a. 1r. 0p.; The Land Certificate of Folio 3202 County Tipperary now forming the lands No. 1 on Folio 260F County Tipperary; County: Tipperary.

(2) Registered Owner: Thomas Blake; Folio No: 6605; Lands: (1) Donaghmore, (2) Ballyhubbock Lower; Area: (1) 24a. 2r. 20p., (2) 9a. 0r. 0p.; The Land Certificate on Folio 2116 County Wicklow now forming the lands No. 1 on Folio 6605 County Wicklow; County: Wicklow.

(3) Registered Owner: Thomas McCormack; Folio No: 26327; Lands: (1) Mickanstown, (2) Scatternagh; Area: (1) 2a. 3r. 36p., (2) 29a. 1r. 14p.; The Land Certificate in Folio 11850 County Meath now forming the lands No. 1 on folio 26327 County Meath. County: Meath.

(4) Registered Owner: Thomas Woods (Junior); Folio No: 57834; Lands: (1) Lisgoold North, (2) Lisgoold North, (3) Lisgoold North, (4) Lisgoold North. Area: (1) 40a. 2r. 25p., (2) 36a. 0r. 15p., (3) 19a. 0r. 22p., (4) 1a. 0r. 0p.; County: Cork.

(5) Registered Owner: Francis Butler; Folio No: 479; Lands: (1) Kilnagross, (2) Annaghkeenty; Area: (1) 7a. 1r. 27p., (2) 13a. 3p. 8p.; County: Leitrim.

(6) Registered Owner: Patrick Keegan; Folio No: 8679; Lands: Rathnapish; Area: 0a. 2r. 12p; County: Carlow.

(7) Registered Owner: John Grogan; Folio No: 13458; Lands: Ballyforan; Area: 8a. 1r. 39p.; County: Roscommon.

(8) Registered Owner: Peter Murphy; Folio No: 10291; Lands: Haggardstown; Area: 0a. 1r. 18p.; County: Louth.

(9) Registered Owners: Thomas Hickey, John Michael Cronin, Arthur Joseph O'Brien; Folio No: 4139; Lands: Ballyonan; Area: 3a. 3r. 10p.; County: Louth.

(10) Registered Owner: Michael Reilly; Folio No: 2924; Lands: Knockbrack (Parts); Area: 76a. 1r. 4p.; County: Dublin.

(11) Registered Owner: Michael Reilly; Folio No: 672; Lands: Belgee; Area: 2a. 0r. 24p.; County: Dublin.

(12) Registered Owner: Patrick Murtagh; Folio No: 308F; Lands: (1) Ballyroddy, (2) Ballyroddy, (3) Edenan and Kinclare, (4) Ballyroddy; Area: (1) 9a. 2r. 36p., (2) 18a. 0r. 26p., (3) 1a. 0r. 5p., (4) 8a. 2r. 0p.; The Land Certificate on the lands in folio 23592 County Roscommon now forming the lands Nos. 1, 2 and 3 on Folio 308F County Roscommon. County: Roscommon.

Notices

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Old established city firm. Enquiries to Butler, Chance & Co., 33, Lower Baggot Street, Dublin 2.

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Secretary,

Local Appointments Commission,

45 Upper O'Connell Street, Dublin 1.

Latest date for receiving completed application forms: **12th June. 1975**

THE GAZETTE OF
THE INCORPORATED
LAW SOCIETY
OF IRELAND

May, 1975
Vol. 69 No. 4

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Opinions and comments in contributed articles and reviews are not published as the views of the Council unless expressly so described.
Likewise the opinions expressed in the Editorial are those of the Editor and do not necessarily represent the views of the Council.

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Recent Irish Cases

Practice—In a libel action, plaintiffs will not normally be required to furnish particulars of the persons to whom the libel was allegedly published.

The defendants brought a motion in the High Court seeking an order that the plaintiffs furnish particulars of the names and addesses of the persons to whom they allege the libel complained of was published; Gannon J. granted the order. It is well established that plaintiffs will not be compelled to furnish particulars of the persons to whom publication was made save in special circumstances, as the defendant is in a better position than anybody to know to whom he published the alleged libel. There are no special circumstances in this case which would warrant a departure here from established practice. The appeal is accordingly allowed.

[**Fanning & Co. v. Surgical Distributors Ltd.** — Supreme Court (Walsh, Henchy and Griffin JJ.) per Walsh J. — unreported — 27th February, 1975.]

In jury action for personal injuries, the sum of £5,658 for general damages reasonable, but 63% apportionment against defendant unreasonable in view of plaintiff's contributory negligence.

In respect of his injuries, the plaintiff obtained £2,342 agreed damages for out of pocket expenses, and £5,658 for general damages. Having regard to the severe injuries suffered by the plaintiff, the fact that it took 14 months before he was fit to return to work, and the degree of permanent weakness in his leg, the sum of £5,648 for general damages is not excessive, and the appeal on this point is dismissed.

As to the accident, the jury were entitled to find the defendant negligent if they found that, as a careful driver, he should have been able to see the plaintiff in time and thereby avoid the collision. But the jury could not acquit the plaintiff of negligence, in that, as a cyclist on a minor road with a vision of 300 yards, he had failed to see the defendant's motor car, and cycled into its path. Consequently the jury's apportionment of 63% on the defendant for his part in the accident was perverse. The appeal on this point is allowed, and there will be a new trial on the issues of liability and apportionment.

Per Budd J.: This case exemplifies the desirability of posing the question of damages in the issue paper in such a way as to concentrate the jury's mind on the different heads of damage—(1) Out of pocket expenses to date of trial; (2) Pain and suffering to date of trial; (3) Pain and suffering in the future, etc.

[**Hanley v. Morrissey** — Supreme Court (Budd, Henchy and Griffin JJ. per Budd J.) — unreported — 20th December, 1974.]

Practice—In an application by a local authority under the Planning Act for compulsory acquisition of land, it is not necessary to join the Minister as defendant if he has granted planning permission in respect of such land.

Appeal against a decision of Kenny J., in which he has allowed the Minister for Local Government to be joined with the Housing Authority as a defendant in a Special Summons brought under Order 92 to enforce a claim against a Compulsory Order under S. 78 (2) of the Housing Act, 1966. The point to be determined is whether the County Council, having already granted planning permission in respect of the property compulsorily acquired, are estopped or debarred from acquiring it compulsorily, so that the Compulsory Purchase Order, confirmed by the Minister, is invalid. This issue essentially only involves the powers of the County Council. The Minister sees no reason why he should be defendant. The test is whether the presence in the proceedings of the Minister as a defendant is justifiable by the plaintiff as necessary for the proper prosecution of his claim. It seems that the presence of the Minister would in fact be a redundancy, and his participation is unnecessary. The appeal accordingly is allowed.

[**Fuller and Holiday Motor Inns Ltd. v. Dublin County Council and Minister for Local Government**—Supreme Court (Walsh, Henchy and Griffin JJ.) per Henchy J.—unreported—28th February, 1975.]

In a winding-up, a salaried director is entitled to accrued holiday remuneration.

A company was unable to pay its debts and passed a resolution for voluntary winding up. The plaintiff as liquidator asks the Court whether the defendant's claim for accrued holiday remuneration should be treated as a debt ranking in priority under S. 285 of the Companies Act 1963. The defendant held 3,000 shares of £1 each, and was a director of the company which had an issued capital of £6,450. Though not managing director, he was responsible for the day to day running of the business. He was paid £225 per month which he regarded as a salary. His employment was terminated by the liquidator in July, 1974, and the defendant claimed accrued holiday remuneration. If the defendant was a director, and also a salaried employee, he is entitled to priority under S. 285 for salary and accrued holiday remuneration. Having reviewed numerous authorities, Kenny J. came to the conclusion that the defendant's claim was justified. Accordingly Kenny J. directed the plaintiff to pay to the defendant in priority in the winding-up his claim for accrued holiday remuneration, as the money he received was a salary.

[**Re Dairy Lee Ltd.—Stakelum v. Canning,**—Kenny J.—unreported—24th February, 1975.

Bank negligent in mistakenly finding overdraft due and returning cheque.

1. On 26th March, 1974, Palgrave Murphy Ltd. drew a cheque on their account of the O'Connell Bridge Branch of the Bank of Ireland payable to the plaintiffs for £18,130. The plaintiffs duly lodged this cheque *inter alia* to their account in the College Green Branch of the Bank of Ireland on 7th April, 1970, and the amount of the cheque was credited to plaintiff's current account. On the 14th April, 1970, the plaintiff received from the College Green Branch a statement verifying this.
2. From 2nd March, 1970, the members of the Irish Bank Officials Association gave notice that they would be working restricted hours in all banks of the Republic. The Irish Banks Standing Committee notified customers that it might not be possible for Banks to clear cheques in the usual way. As a result of the industrial action of the bank employees, serious arrears in the clearance of cheques accumulated in March and April, 1970. Finally notice was given that all banks would be closed as from 1st May, 1970. Consequently the cheque issued by plaintiff had not been cleared through the Central Clearing House and forwarded to his own Branch, the O'Connell Bridge Branch. Work was only resumed in the Banks on 21st October, 1970.
3. Between 8th May, 1970, and 17th July, 1970, the plaintiff accepted cheques from Messrs. Palgrave Murphy in the sum of £130,582 in respect of services rendered.
4. On 1st May, 1970, there was standing to the credit of Palgrave Murphy in the O'Connell Bridge Bank, a sum of £143,900. Because of the accumulation of arrears inside the banking system, amounting to 2 million items, agreement was reached between the Banks that 1st May, 1970 would be the day for presentation and payment of all these items. When eventually the factual position of each customer's account would be ascertained, the manager of the paying Bank would make the decision as to which cheques would be paid out and which cheques would be returned at his discretion. When eventually all the cheques drawn upon Palgrave Murphy were posted to the account and the factual position ascertained, it was found that, although Palgrave Murphy had no authorised overdraft, their account was in fact overdrawn to the extent of £93,983. In fact an error had been made, and Messrs. Palgrave Murphy's account was £118,406 in credit.
5. Notwithstanding this credit, the local Manager and the General Manager of the Eastern Bureau of the Bank of Ireland took it upon themselves to decide that, as Palgrave Murphy had no alleged overdraft, cheques to the value of £93,983, representing their supposed overdraft, would have to be dishonoured and returned unpaid. Amongst the cheques picked for dishonour and return was that for £18,130 payable to the plaintiff.
6. The cheque for £18,130 was stamped "Refer to Drawer" and branded "Paid in error". It was then returned to the College Green Branch of the Bank of Ireland. This fact was notified to the plaintiff by letter of 16th November, 1970.
7. As a result the plaintiff took proceedings seeking (1) a declaration that the defendants had wrongfully and negligently debited the plaintiff's account with the said sum of £18,130 on 16th November, 1970; (2) an order directing the defendants to credit the plaintiff's account with said sum of £18,130 with effect from 16th November, 1970; and (3) damages for negligence and breach of contract.

Hamilton J. held:

(1) that the mere furnishing by the defendant to the plaintiff of an account on 14th April, 1970, in which this cheque is shown as having been credited to plaintiff's account did not, in view of the notices then prevailing, amount to a representation that the cheque had in fact been paid;
(2) That the cheque for £18,130 drawn upon Palgrave Murphy at O'Connell Bridge Branch of the Bank of Ireland dated 26th March, 1970, payable to the plaintiff was never in fact paid by the said Bank;
(3) That the O'Connell Bridge Branch and the College Green Branch must be treated for this action as separate and distinct entities;
(4) That the College Green Branch as Collecting Banker owed a duty to the plaintiff to use reasonable skill, care and diligence in presenting payment of the cheque and planning the proceeds thereof of the customer's account;
(5) that the O'Connell Bridge Branch as paying banker had no privity of contract with the plaintiff;
(6) Nevertheless the ordinary Law of Negligence applies to Banks whether as Collecting Agents or paying Agents. Their duty to use reasonable care and skill extends beyond their actual customers;
(7) As the cheques received by the Central Clearing House prior to closure had been segregated in daily batches from the remitting Banks and branches, the normal practice of posting to the customer's account cheques in the order of presentation was not followed. Instead, payment of cheques was held in abeyance until the final position of the account had been ascertained. The defendants acquiesced and acted upon this decision;
(8) The nature of the duty owed by the defendants to the plaintiff was to exercise reasonable skill, care and diligence in securing payment of the cheque; this they negligently failed to do by giving wide discretion to the Manager of the paying Bank. The Manager decided that the cheques to be returned should be selected at random and this was done. His action in so picking the cheques for return cannot be regarded as the exercise of reasonable care. Consequently the Paying Banker acted negligently and in breach of duty towards the plaintiff. The Court will direct an inquiry as to the damage sustained by the plaintiff and will order payment of the amount due.

[Dublin Port and Docks Board v. Bank of Ireland —Hamilton J.—unreported—18th December, 1974.]

Northern Ireland Cases

Three men accused of murdering policemen acquitted by direction because inadmissible statements were obtained by degrading treatment.

On the evening of 10th May, 1974, Constables Ross and Bell, R.U.C., stationed at Dunmurry, were on duty in uniform at Finaghy crossroads. A Morris Marina car was stolen in Anderstown and proceeded towards Finaghy. At the crossroads, a number of men got out of the car, attacked the constables with pistols, and shot them at point blank range. The two constables were dead upon reaching hospital. An inquiry team of R.U.C. constables stationed at Dunmurry brought a number of suspects, including the present six accused, to Dunmurry Police Station between 16th and 18th May. The trial has occupied 34 days so far. The vital issue is whether written statements signed by the accused, and the accounts of the police witnesses of question and answer interviews with them should be admitted as part of the case for the prosecution, or rejected on the ground that the accused had been subjected to force, threats of force and other oppressive treatment with the object of inducing them to confess their guilt.

Section 6 of the Northern Ireland (Emergency Powers) Act, 1973 provides as follows:—

"(1) In any criminal proceedings for a scheduled offence a statement made by the accused may be given in evidence by the prosecution in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the Court in pursuance of subsection (2) below.

(2) If, in any such proceedings where the prosecution proposes to give in evidence a statement made by the accused, *prima facie* evidence is adduced that the accused was subjected to torture or to inhuman or degrading treatment in order to induce him to make the statement, the Court shall, unless the prosecution satisfies them that the statement was not so obtained, exclude the statement or, if it has been received in evidence, shall either continue the trial disregarding the statement or direct that the trial shall be restarted before a differently constituted Court (before whom the statement in question shall be inadmissible)".

The only evidence against the accused consists of their alleged statements, both oral and written. *Prima facie* evidence has been given that each of the accused was subjected to torture or inhuman treatment or degrading treatment. Evidence of the case of any one these forms of treatment casts the burden of proof upon the prosecution to satisfy the Court that the statement was not obtained by any of these means. This burden has to be discharged not on a balance of probalities but beyond all reasonable doubt. The reasons for this are:—

(1) The context of section 6 is that of a criminal trial and the prosecution's standard of proof of issues in such a trial (even when they must first be raised by the defence) is proof beyond reasonable doubt;

(2) The use of the word "satisfied" in section 2(4) must imply proof beyond reasonable doubt;

(3) At Common Law, with a view to the admission or rejection of statement evidence, the issue for the trial judge is one of voluntariness, the proof must be beyond reasonable doubt;

(4) A State, particularly where it abridges the rights of an accused, must in case of ambiguity be construed so as to alter the law as little as possible consistently with the language used.

It is therefore for the prosecution to prove that the accused were not subjected to any such treatment or that the statement taken was not obtained as a result of any such treatment.

The two doctors for the defence testified that it was possible to inflict pain in such a way that there would not be visible traces of it. Degrading treatment would however appear to include treatment which does not include torture or inhuman treatment, and there is no doubt that this method of inflicting pain was degrading treatment. Any decision under S. 6 (2) of the 1973 Act must be based solely on how the statement is proved to have been obtained, and not on whether it was true.

A second point was concerned with the question and answer notes of the interviews to which various detectives testified. This was relevant to test the credibility to the same witnesses who were denying ill-treatment. The following facts emerged:—

(1) There were a number of documents which were suspect by reason of their composition or appearance, for example exhibit 29, a question and answer note relating to Dougan;

(2) Other documents were difficult to understand in context, such as the question and answer interview with Hetherington at 8.10 p.m. on 16th May after he had made comprehensive admissions in his written statements, which were exhibits 9 and 10;

(3) It was hard in many instances, no matter how many allowances one made, to relate the number and length of the questions and answers to the time devoted to the interview at which they were asked and given;

(4) There were many examples of wholly innocuous question and answer sessions leading nowhere at a time when more useful material was available to the interviewers;

(5) There was almost universal ignorance on the part of those about to take up the running with with a suspect concerning what had gone before;

(6) The fifth point was noticeable even in relation to those who were sent in to take important written statements;
(7) The interviewers and statement takers found themselves detailed for the work by chance and did not, on the whole, appear to be briefed or to brief themselves for the task;
(8) Many of the interviews, including those directly preceding the taking of statements, seem to have ended on an inconclusive note, or arbitrarily when a breakthrough had been achieved, and in the later instances, as well as the former, not only one but both of the interviewers if more than one) were changed.

The Court finds that the prosecution are left with a substantial number of points which call in vain for a rational explanation. Even though much of the evidence of physical ill-treatment does not seem to be supported, nevertheless the prosecution cannot discharge an onus through a possible failure of the defence to prove as much as is alleged.

As colleagues of the murdered men, the investigators believed, probably on substantial grounds, that they were investigating the right men. But the criminal law demands that not only the evidence, but the means of obtaining it, shall be above suspicion.

On the facts of this case the Court is not satisfied that the prosecution has proved beyond reasonable doubt, in relation to the accused Hetherington, McCune and Dougan, that he was not subjected to degrading treatment in order to obtain the statements relied on, or that the statements were not so obtained. The statements are therefore rejected, and, since there is no other evidence against the accused they must be acquitted on all counts.

[R. v. Hetherington, Dougan, McGrogan, Young, Farrelly and McCune — Belfast City Commission — Lowry L.C.J.—unreported—13th March, 1975.]

Accused young boys who plead guilty to throwing petrol bombs have prison sentences suspended.

Judgment delivered on 28th February, 1975, by O'Donnell J.

In this case the defendants have pleaded guilty to conspiracy to intimidate, and to throw petrol bombs at Roman Catholic homes in the Antrim area.

I have taken some time to consider the appropriate punishment, and since my decision may appear unduly lenient, I set out the consideration which motivated me, and the principle which I have applied in dealling with these young people.

More and more young people both Republican and Loyalist are appearing before the Courts. It must be recognised that all these are part of our future. It must further be recognised that many of these young people become involved in violence because of associations with their fellows or community pressures or because of genuinely held beliefs or fears, and that most if not all would never have appeared in Court had it not been for the present turmoil in our community. While the Court must be concerned to ensure that the public are protected, and wrongdoers punished, it has in my view an equal duty to the community to try and ensure that its future in the form of its youth, recognise that hatred, fear, and violence have brought our community to its present state, and to try and turn them to a more constructive attitude to our problems.

The easy option for a Court is to sentence to long terms of imprisonment or detention anyone however young who has become involved in violence. But if a Court can see a real possibility of a young person forsaking violence, and violent associations, then whether he be Republican or Loyalist, whether he recognises or does not recognise the Court, the calculated risk of leniency in my opinion should be taken.

Imprisonment in most cases will simply confine the young people with and subject them to, the influences which have brought them before the Court in the first place. On release they will have become more hardened and more convinced, and readier to continue in violence.

It is of course obvious that each case must be examined carefully on its own facts, and there will be cases where leniency cannot be extended. In this case, I have seen and heard all these young boys and their parents and I think that I am justified in taking the calculated risk of not sending them to prison or borstal.

I propose to pass sentences on all counts of 2 years' imprisonment to run concurrently, but to suspend these sentences for a period of 2 years.

I also fine £100 in each case. I allow 3 months to pay. In default 6 months imprisonment.

I propose to place the parent of each boy under rule of bail in the sum of £250.

[Belfast City Commission — **The Queen v. Cameron McIntyre, Brian Nesbitt, Norman Moffett, and 9 others.]**

Notices

LOST WILLS

Patrick Cullinan, deceased, late of 69, Anne Devlin Park, Ballyroan, Dublin 14.
Any solicitor or person having knowledge of a will made by the deceased who died on 27th November, 1974, please communicate with Porter, Morris & Company, 10, Clare Street, Dublin 2. Solicitors for the next of kin.

Hugh O'Neill Lennox, deceased, late of 43 St. Fintan's Road, Sutton and formerly of 41 Stiles Road, Clontarf Dublin. Would any solicitor having knowledge of a Will for the above-named deceased who died recently kindly get in touch with Arthur Cox & Co., Solicitors, 42/43, St. Stephen's Green, Dublin 2.

Michael Carty, late of Loughrea, Co. Galway, former Parliamentary Secretary and T.D. Any person having a Will of the above deceased who died on the 23rd of April 1975, would they please contact the undersigned solicitor for the next of kin.
Florence G. MacCarthy, Solicitor, Loughrea, Co. Galway.
Telephone—Loughrea : 58:

Solicitor's Office anxious to build up a comprehensive library, wish to purchase law books, reports, statutes and periodicals. Willing to purchase entire library or small quantities of books. Condition not important. Replies to Box 117.

Typing work done at home. 8½ years legal experience. Replies to Box 118.

SLIGO SEMINAR on E.E.C. LAW—OCTOBER 1974

THE E.E.C. AND THE ORDINARY SOLICITOR—SOME RELEVANT CASES

By JOHN F. BUCKLEY, Solicitor

Part II

In two other cases Italy has been similarly found wanting by the Court. In the *National Vineyards Register* Case No. 33/1969 (1970) C.M.L.R. 466, the Court made a declaration that Italy had failed to comply with its obligations to establish a Register of Vineyards as required by a regulation requiring such a Register to be established within a particular time limit, and in the *Forestry Reproductive Material Case* 79/1972 (1973) C.M.L.R. 773, the Court held that a **Member State which failed to implement a directive within the time limit set down in the directive was in breach of its obligations** and that delay in Parliamentary legislative process resulting from a political crisis and dissolution of Parliament was not a good excuse for the failure. The political crisis had occurred three years after the expiry of the relevant time limit.

In dealing with the application of the regulation governing export subsidies a German Court and the European Court have each had to consider questions involving the composition of sausages. In a case delightfully entitled *"Re Rotten Sausages"* (1972) C.M.L.R. 488, the Hamburg Fiscal Court decided that an export subsidy under the appropriate regulation could only be granted for food stuffs if they were fit for human consumption. In the case in question the appropriate Department of the Hamburg Customs had doubts about the quality of certain sausages being exported and referred them to the Veterinary Department who decided that the product could not be described as raw sausage. The Hamburg Court decided not only that this disqualified the product from a subsidy but also that the applicant for the subsidy would have to be responsible for the fees of the Veterinary Examiner.

More recently the European Court has had to consider a more technical question in the *Muras Case* No. 12/1973, (not yet reported). It decided that a subsidy would not be payable for a sausage which was not of such quality as would permit it to be sold on the home customs territory.

A further example of the strict construction applied to regulations is to be found in the *Brunner Case* No. 9/1972 (1972) C.M.L.R. 931, where the European Court decided that the term "coming from" in an E.E.C. Regulation which referred to imports into the Community was to be construed with the meaning that goods "coming from" Poland were goods which up to the time of their delivery into the Community were within the power of disposal and under the immediate control of the Vendor.

In the case, the Polish State Bureau for External Trade, had sold slaughtered duck to an Austrian firm which had refuseed to take them because of a late delivery and subsequently they had apparently come into the hands of a Swiss firm who had sold them to Mr. Brunner in Munich and they had arrived with a customs declaration indicating that they had come from Poland.

In a further case, *Rheinmuhlen*, No. 6/1971, the Court decided that a Member State could require an applicant for an export subsidy to satisfy the member state that the goods concerned had at least been put into free circulation in a non member country and could also require proof that the goods were used, consumed, treated or processed in a non member country. The particular case was a particularly flagrant one because Rheinmuhlen had declared that barley and wheat had been exported by it to Portugal, Switzerland and Yugoslavia, whereas in fact the wheat had been put into circulation and consumed in Luxembourg. Rheinmuhlen's case was based on the absence of any claim for a levy applicable to intra-Community Imports and that the absence of such claim raised a presumption that the goods had been exported to a non-member state.

The Hamburg Fiscal Court gave another strict interpretation of the regulations when it held in a Case called *"Export Subsidies on Pork"* (1971) C.M.L.R. 95, that the date governing a qualification for an export subsidy was the date on which the customs officer accepted its declaration of intent to export, even where the customs office had been encouraging exporters to submit certificates each month for all dispatches during that month. In an appeal from the Hamburg Fiscal Court the Federal Fiscal Court of Germany had held in a case called *"Revocation of Export Refunds"* (1971) C.M.L.R. 51, that the mere movement of goods into a free port was not sufficient to qualify it for the export subsidy, even where there was verifiable evidence that the goods were intended to be transported to the specified non-member state.

The European Court has even held that the making of a distinction between the methods of calculation of imports levies for imports from Non-member States being carried out in a different manner than the calculations of levies for inter Community trade was something which the Council was entitled to do. It has also held that the doctrine of Force Majeure could not be applied to imports in inter Community trade because the levies were not fixed in advance, but could be applied to imports from Non-member States where the import duties were fixed in advance. This was in the *Oehlmann*

Case No. 73/1969 (1970) C.M.L.R. 409

The last curious case arising indirectly out of the Agriculture Controls introduces us to the field of Criminal Law. In the case of *Peeters v The Minister for Finance* (1973) C.M.L.R. 190, the Belgian Court of Cassation held that fraudulent export of butter from Holland under Dutch Law designed to protect Dutch Society was intrinsically different from the fraudulent import of the same butter by the self-same act into Belgium under Belgian Laws designed to protect Belgian Society. Acquittal by the Dutch Courts of the Dutch offence would not therefore prevent prosecution before Belgian Courts for the Belgian offence, as the abolition of customs duties by E.E.C. regulations did not *ipso facto* abolish National procedural requirements such as import licences consequently the failure to produce such a licence may lawfully justify prosecution under the national Criminal Law.

Freedom of Movement
Workers

The Section of the treaty dealing with free movement of persons, services and capital is divided into four chapters. The first relating to workers, the second to the right of establishment, the third to the supply of services, and the fourth to the movement of capital. There have not been many cases on the free circulation of workers in itself, but there have been quite a number on a necessary corollary to free movement of workers dealt with in Article 51 of the Treaty, namely their right to social security within the Community. Of the cases where a State has endeavoured to restrict a National of another member State from taking up residence, usually on the grounds of public order, the cases have generally taken the line that one isolated minor offence does not constitute sufficient cause for the State to invoke the public order exemption. An interesting case has been referred by the English Courts to the European Court for a decision as to whether the British Home Secretary is entitled to refuse admission to a Dutch Scientologist who wishes to work at the Headquarters of the Church of Scientology in England. The case is called "*Van Duyn v The Home Office*", and involves a claim for a Declaration by a Dutch citizen who wishes to come and work in the College of Scientology in England, and who has been refused admission by British Immigration Authorities, that he is entitled to a Declaration of his entitlement to come to work in Britain— Case 41/74 now reported in (1975) C.M.L.R. 1.

On 4 December 1974, the Court rejected the application on the following grounds:—

The Court, interpreting Article 48 (3) EEC and Article 3 (1) of Directive 64/221, held (1) that Article 48 is self-executing, (2) that Article 3 (1) of the directive is self-excuting, (3) that current membership of and participation in the activities of a frowned-upon organisation may amount to 'personal conduct' within the meaning of the directive, and (4) that such conduct does not have to be tainted with illegality before a Member-State may exercise its discretion under Article 48 (3) and refuse a Community national entry into the country.

Social Security

The general provisions of the Treaty and regulations are that a worker is entitled to have taken into account all contributions that he has made in any of the member States but not to be entitled to accumulate benefits from several systems of compulsory insurance relating to the same period of insurance. This latter restriction is to be found in the 1972 regulation and may affect an earlier decision in the case of *Old Age Pensions Board of Parisian Salaried Workers v Duffy*, No. 34/1969 (1971) C.M.L.R. 391.

Madame Duffy had lived and worked in Belgium before her marriage and therefore had become entitled to an old age pension from Belgium. She had married Pierre Duffy who was a French National who had lived and worked solely in France and therefore became entitled to an old age pension in France. When he died in 1965 she applied for a "reversionary" pension and the French Insurance Fund declined to pay her a full pension but only paid her the difference between her Belgian old age pension and what the reversionary pension would have been. The Court held that in the particular circumstances she was entitled to both pensions if entitlement o the benefits had been acquired independently of the E.E.C. regulation 3 which has now been replaced by regulation 1408/71.

In the *Sotgiu* case, 153/73, not yet reported, the Court held that an Italian worker who received a separation allowance because he was obliged to work at a place which was not his place of residence was entitled to the same separation allowance as a German worker who had to work at a place which was not his place of residence. On the other hand in the *Kunz* case, 35/73 not yet reported, the Court has held that a person entitled to a pension under the legislation of several Member States and who was resident within one of those States has no right to benefit in kind from the State within which he is resident when the legislaion of that State does not provide for such benefits. (Holland does not have a social security system which provides free medical or dental services. Workers normally make voluntary contributions to a mutual sickness insurance organization). In the *Manpower* Case, 35/1970, (1971) C.M.L.R. 222, the Court held that a French worker engaged by Manpower to work in Germany for three days in August of 1969 was entitled to the benefit of the regulations of the Community and that the French Social Security Office should reimburse his medical expenses to Manpower

In a similar case, *Nourrisson* (1973) C.M.L.R. 30, the French Court of Cassation held that where a certificate of detachment which a French worker required when he was sent to work in Belgium in order to maintain his cover under the French Social Security system was obtained by his employer but later cancelled because of an irregularity in the application, the worker could not lose his benefit, unless such cancellation has been notified to him, In the *Fiorini* Case (1974) C.M.L.R. 300, an Italian widow whose husband had lived and worked in France, who had four children, the last two of whom had been born in France, was held not to be entitled to the reduced rates on French Railways allowed to large families under the Act of 1924. The French Court

held that the Act had been intended to encourage French citizens to have large families and was not linked to the worker status of the persons involved.

Right of Establishment

Cases on the right of establishment have been extremely rare. Until recently the only case of particular interest has been *Diedrichs* (1973) C.M.L.R. 509, where a Dutch Court held that while previous criminal convictions in themselves were not a justifiable reason for the refusal of a residence permit, regard should be had to the number and nature of the offences committed and the sentences imposed, but very recently the European Court has put the cat among the pigeons in the field of the professions in a case called "*Reyners*" 2/74 reported in (1974) E.C.R. 631. It had been generally assumed that although Article 52 provided for the abolition of restrictions on the freedom of establishment by progressive stages in the course of the transitional period and such abolition had not in fact taken place, that it would take place in accordance with the programme established under article 54. But the Court has now held that article 52 is directly applicable, notwithstanding that directives called for under article 54 and 57 have not been enacted. Jean Reyners was born of Dutch parents in Brussels and although he had lived in Belgium for many years had retained Dutch nationality. He obtained a Belgian Doctorate of Law in 1957 but had not been admitted to the Belgian Bar on the grounds of nationality as prescribed by law particularly by a Royal Decree of August 24th 1970. The decision of the European Court emphasises that the Belgian Court to which Mr. Reyners had made his application for a rescision of the Royal Decree has little alternative but to accede to his request. The confusion which the Courts decision has caused in the field of freedom of establishment in the professions is considerable.

Freedom of Establishment for Workers—Professional Sportsmen

The Court has recently had to consider whether certain restrictions imposed by the International Cydlists Union in its Bye Laws for the World Cycling Championships could constitute a breach of Article 7, 48 & 59 of the Treaty and Regulation No. 1612/1968. The case *Walrave and Koch -v- I.C.U.* and others (London Times 23rd December 1974) involved two Dutch Nationals who were employed as motor cycle pacemakers in certain cycle races. They worked for individual cyclists, for Cyclists Associations and for commercial sponsors and were affected by a Bye Law of the International Cyclists Union which provided that from 1973 onwards the pacemaker had to be of the same nationality as the cyclist for whom he worked. The Dutch District Court at Utrecht referred the case to the E.E.C. Court to consider whether the I.C.U. Bye Law ran counter to the principle of non discrimination between Nationals of Member States and as to whether the rule of non-discrimination should apply to legal contracts established within the framework of a world wide federation of games or sports and also as to whether the situation might be different according as to whether the competition took place within the Community or in third countries and finally as to whether Article 59 (1) and Article 7 (1) of the Treaty were directly applicable in Member States. The European Court in its answers indicated that the Rule of the I.C.U. could offend against the principle of non discrimination if it did not come within an exception which would permit national teams to be composed solely of nationals. The District Court was asked to decide whether pacemaker and the cyclist constituted a national team before invoking the Treaty. The Court answered the other two questions by confirming that the non discrimination rule applied to all legal contracts whenever they could be said to exist within the Community and most important of all held that Article 59 was directly applicable having created as from the end of the transitional period rights for the private citizen which National Courts had to protect.

(To be concluded — End of Part II)

Obituary

Mr. Patrick F. O'Reilly of "Santos", The Coppins, Foxrock, Co. Dublin, died suddenly in St. Vincent's Hospital, Elm Park, Dublin, on 6th May, 1975. Mr. O'Reilly was admitted in Easter Term, 1924, and practised with his late wife Mrs. O'Reilly, under the style of "Patrick F. O'Reilly & Co." at 8, South Great George's Street, Dublin 2, until 1957, when he was appointed a Taxing Master in the High Court. His son, Mr. Finbarr O'Reilly, became a partner in the firm in 1951. Mr. O'Reilly was Senior Vice-President of the Society in 1943-44, and President in 1944-45.

Mr. Patrick Treacy of 30 Lavarna Road, Terenure died in the Richmond Hospital, Dublin, on 10th May, 1975. Mr. Tracey was admitted in Michaelmas Term, 1956, and had been solicitor to the Industrial Credit Corporation in 26, Merrion Square, Dublin 2.

Additional appointments to land registry

Mr. Nevin M. Griffith, B.A., Barrister, to be Deputy Registrar;

Mr. F. Kehily, Barrister, to be Examiner of Titles.

Mr. S. McGrath, Barrister, to be Senior Legal Assistant.

ORGANISATION OF THE FRENCH LEGAL PROFESSION

by COLM MANNIN, Solicitor, Paris

Part II

THE CONSEIL JURIDIQUES AND THE FOREIGN PRACTITIONER IN FRANCE

Conseils Juridques

The preceding article mentioned briefly the position of the Conseil Juridiques — the hitherto unqualified, unregistered and entirely autonomous legal adviser, whose position in France has now been formalised by the Law n° 71-1130 which became effective in 1972.

The background to the overhaul of the Conseil Juridique's position presents a bizarre story without parallel in any modern legal system. It would be sufficient for the reader to visualise a situation in which the Solicitors' profession in Ireland ceased to exist, while the Bar continued on exactly as before, to understand the chaos that would result for the business community. This broadly conforms to the circumstance in which the Conseils Juridiques emerged in France. The Avocats retained their traditional functions of consultant and advocate, leaving an enormous gap in legal service to be filled by a varied array of "legal advisers", not being members of any regimented profession, often not even possessing legal qualifications at all. There was even a case of a bankrupt butcher who found new life happily specialising in liquidations of small private companies!

It is not surprising that the numbers of Conseils Juridiques grew to a proportion that alarmed the rest of the legal profession. Moreover, complete autonomy resulted inevitably in abusive methods offensive to any standard of legal ethics. Advertising tactics included paid canvassers, newspaper announcements and even neon signs. Several firms enjoyed the benefit of limited liability. Professional negligence insurance was the exception rather than the rule. Standards of practice were so undisciplined that property negotiation methods knew no rules, commercial speculation in clients affairs was quite common and highly suspect standards of practice including "get tough" tactics on debt colection issues were all well known to the public as well as legal practitioners generally.

Pressure for reform was such that it was originally intended to abolish the activities of Conseils Juridiques and to incorporate existing practitioners into the profession of Avocat. This proved too ambitious due to the wide divergence in standards of practice of the Conseils Juridiques compared with those of the highly disciplined Avocats. In the end the changes which were made in 1972 came to be rather unjustly referred to as a "mini reform".

In fact, from the point of view of the Conseils Juridiques, the law of the 31st December 1971 is of major significance. The second Chapter of the law constitutes the first charter of the Conseils Juridiques, now recognised as a "Profession Libérale" (Learned profession).

Conditions of Registration

Article 54 provides that persons who hitherto dispensed legal advice or service without being practising members of one of the recognised professions are now obliged to register on a list of Conseils Juridiques to be drawn up by the Procureur de la République. Moreover, three conditions are required to qualify for registration on the list.

(1) The applicant must hold a law degree or diplomas recognised as the equivalent.
(2) He must have professional experience.
(3) He must advance the same proofs of good character as are required for admission to the profession of Avocat.

Persons who could not satisfy condition (1) could nevertheless apply for enrollment on the list if they had practised for at least 5 years prior to the passing of the law.

Article 55 was of particular interest to foreign lawyers practising in France in so far as it provides legislative recognition of their role and status. Foreign lawyers are by the new law entitled to give legal advice and draw up documents in France provided:

(1) Their service relate principally to "foreign laws" and international law and
(2) that for this purpose, they register on the list of Conseils Juridiques established by Article 54.

Nonetheless, lawyers from Member States of the E.E.C. are exempt from the obligation to register as Conseils Juridiques. Similarly, lawyers of any non-member state of the EEC are exempt if French lawyers are allowed to practise as such in that state. As this reciprocity is not accorded by the United States, American lawyers in France will be particularly affected by Article 55 except those who were already in practice in France on the date of passing of the 1971 Law.

Article 56 abolishes the phenomenon of the part-time Conseils Juridique. Practitioners are now forbidden to engage in any other remunerative activity, particularly, commercial. This puts an end to the "all rounder" who apart from dispensing legal advice, also acted as estate agent, unqualified accountant, commission agent, etc. These services were all rendered under the umbrella of the Conseil Juridique and often at package deal rates.

Moreover, partnerships among Conseils Juridiques

can no longer avail of limited liability and sleeping partners are penalised by being obliged to charge V.A.T. on their fees. Limited company partnerships which existed at the date of passing of the law of 1971 are permitted exceptionally to enrol on the list of Conseils Juridiques subject to certain conditions relating to control of capital and transfer of shares.

The extraordinary anomaly of the right to advertise has now been radically curtailed. The Conseil Juridique may only mention his particular legal qualifications in addition to any field in which he claims to be a specialist. The latter right is in turn limited to one of three defined specialities namely fiscal law, company law and social welfare law. Moreover, an application must be made for authorisation to mention a particular specialist field and the applicant must prove that he is properly qualified to practise in that field. In all other respects, the right to advertise has now been effectively abolished.

The other reforms affecting Conseils Juridiques are broadly aimed at establishing rules of conduct and standards of practice designed to bring the profession into line with that of the Avocats. Professional negligence insurance as well as insurance against loss or misappropriation of client's funds is compulsory. Regulations prescribing accounting methods require that clients' monies be deposited in a separate bank account. It is provided incidentally that Conseils Juridiques have withdrawn from practice as a result of the reform. The part timers in particular have given up, as have those whose qualifications were insufficient to enable them be admitted to the roll. Public confidence in the profession has to some extent improved though it is too early to ascertain the extent to which the regulations affecting Conseils Juridiques will be imposed.

Foreign Lawyers

There has always been a relatively high number of foreign lawyers practising in France. Their presence was originally required to meet the needs of the large foreign population in France. More recently, they have become active in the commercial field as a result of the post war development of the French economy in the context of world trade. Indeed the numbers of foreign lawyers in France, the nature of their practice and the type of clientele for which they cater have been more or less constantly determined by the varied international circumstances affecting French life both at the economic and social level over the last century and a half. These changes are reflected in the history of some of the older firms whose practices were set up in the last century to act as family lawyers for wealthy clients having secondary or principal residences in France. These firms were called upon to deal with most matters of legal consequence in the lives of their foreign clients — marriage, divorce, property, acquisition, succession, tax, etc.

However, as already mentioned, over the last two decades, a very sharp increase in the intake of commercial clients and the handling of commercial matters generally has been experienced by most foreign practitioners in France, particularly American and European law firms.

In general the foreign firms are to be found only where they are needed in France. The vast majority are located in Paris while the remaining handful are scattered around the Southern Mediterranean where there is a large foreign population in retirement or temporary residence. There are practically no foreign lawyers elsewhere in France although it is possible that over the next decade this situation will change as the larger French cities develop. Indeed the efforts of the French government to decentralise industry from the Paris region in favour of the larger cities are being increasingly applied to foreign companies setting up in France.

It is therefore evident that the foreign lawyer is there to serve a particular clientele whose needs cannot normally be met by the members of the French legal profession themselves. This however is an over simplification and is reflected in the various misleading titles applied to foreign lawyers in France — "Juristes Etrangers" (Foreign Legal Adviser), "Avocat Etranger" (Foreign lawyer) and "Avocat International" (International lawyer). In fact, the most appropriate description appears to be "Avocat inscrit à un Barreau Etranger" — a lawyer attached to a foreign Bar. This in fact is the term now officially acknowledged as the correct description of foreign practitioners in France. It is a minor result of the 1972 reforms during which the French Ministry of Justice consulted quite regularly with the foreign practitioners in France. Incidentally, there is a tradition in French legal practice whereby a foreign lawyer may plead his national law before a French Court provided he obtains the consent of the President of the Court and that he is assisted by a French Avocat. This, to some extent, justifies the description of "International Lawyer".

The foreign lawyer is basically required to advise on his own national law, to assist clients in the administration of French law and to resolve problems resulting from the conflict of French law with that of his national law.

The major portion of the average foreign firm's clientele is non-French, the source of which is generally the country having closest connection with the particular firm. For example, a British client will invariably tend to consult one of the British law firms in France. The same is true for the Americans. English speaking clients of other nationalities notably Orientals, Scandinavians, Dutch, Germans and citizens of the Commonwealth countries divide their loyalties among the English speaking firms in fairly haphazard ways, determined by introductions from abroad, reputation, convenience, whim, or whatever.

It is significant that the vast majority of the foreign firms and even the few individual practitioners in France tend to be connected in some way to firms in their own countries. Many are simply French branches of very large firms from abroad, some of which possess branch offices in various other countries as well as France. These connections invariably account for a large proportion of a French office's clientele.

As the clientele is invariably non-French, it follows that foreign practitioners are heavily involved in

providing advice and service in relation to French law itself. This practice is understandably resented by the French legal profession which forbids its members to enter into partnership or full time employment with any foreign practitioner. As a result, the foreign firms invariably employ non practising Avocats or law clerks holding legal qualifications and experience for most day to day work. The services of outside Avocats are engaged only for specialised opinions or litigation itself. This practice is therefore similar to that existng between Solcitors and Barristers in Great Britain or Ireland.

There is a strong likelihood that the French Bar will relax its embargo on association with foreign lawyers. Two instances illustrate this loosening of attitudes. The most significant is the recent decision of the Conseil de l'Ordre permitting any Avocat of seven years' practice to enter into a limited form of association with a foreign lawyer practising in France provided that any such link-up is notified to and approved by the Conseil de l'Ordre. This is seen as a first step towards "Cabinet Groupés" among French Avocats and their foreign counterparts.

Proposed Convention for Practice Rules

The second development has taken the form of discussions between the Conseil de l'Ordre, the Bar Council of Great Britain and the Law Society with a view to establishing a Convention aimed at fixing practice rules ensuring that members of one professional body do not usurp the functions of the other at the level of international practice. It is widely admitted that the French Bar has most to gain from such a Convention because of the heavy competition from British firms in France in respect of British clients. Moreover, the small number of French Avocats in Britain, most of whom are sole practitioners, present no serious challenge to either British barristers or solicitors. It is not surprising therefore that this Convention has yet to be enforced although various drafts have from time to time been approved and then amended. Notwithstanding the absence of such a Convention, overseas practice rules do exist for members of all three professional bodies, some of which are the results of agreements between the three bodies concerned.

Incidentally, it is interesting to note from the point of view of Irish legal practice that the existence of two separate professions in Great Britain has proved quite a hindrance to the development of satisfactory overseas practice rules and proper working relationships with the French Bar. Should a British Barrister practising abroad be entitled to hold client monies? Must a French Avocat use the intermediary of a Solicitor in order to consult a Barrister practising in Britain?

These problems may ultimately be resolved by the numerical strength of British Solicitors practising in France. They far outnumber British Barristers in France or, as mentioned above, French Avocats in Great Britain. The main reason for the dominance of Solicitors is the cost factor. A one man firm having a secretary and two-roomed office in central Paris currently costs approximately £25,000 per annum. The clientele required to finance such an investment comes mainly from Great Britain direct. It follows that only a large Solicitors firm or at least a consortium of medium sized offices can provide the funds and clientele to support a practice in France.

Setting up Practice in France

It is now proposed to outline how a foreign firm establishes a practice in France, the nature of the work it handles and the internal organisation of the firm. The main factor influencing the setting up of an office in France is that the firm's clientele at home has become increasingly involved in trading with France. **It is essential therefore that the principal office should have a very large commercial practice.** Some British and American firms have suffered heavy financial loss by setting up offices in France merely on the strength of a handful of commercial clients, hoping unsuccessfully to pick up the remainder from French residents of English mother tongue.

Once it has been decided that the French office appears ultimately capable of paying for itself, a decision as to profit sharing should then be made. It is usually preferable to resolve that profits remain in France.

While naturally subject to French income tax in respect of the portion distributed to resident members of the firm in France, no other taxes will be payable for as long as the profits are not repatriated. It follows that the French office must be treated as a separate entity and not just a branch. The initial cost of the investment can be advanced as a loan though only interest charged thereon is subject to French withholding tax.

If on the other hand, profits are to be repatriated, the non resident partners will be subject to French income tax, withholding tax and income tax in their own country on the balance after allowing credit for the two former taxes.

The formalities for opening an office are minimal. As the French Registries of Commerce deal only with commercial partnerships and companies, there is therefore no business names registry for professional firms. Declarations must, of course, be made to the income tax, Social Security and indirect tax authorities. The latter relates mainly to a business tax known as Patente to which a firm may or may not be subject depending on its size and the area in which it carries on business.

The Société Civile

It is of course possible to form a separate French partnership known at a "Société Civile Professionnelle". Although regarded as a corporate entity, a Société Civile has fiscal transparency and to all intents and purposes is the equivalent of a Common Law partnership. Requirements for establishing a Société Civile are minimal, the partnership coming into existence on the signing of its Articles (Statuts) by members thereof. There is nothing to prevent the French partnership having the same firm name as its principal office at home although it is preferable to distinguish the French resident partners from those

of the principal office in the Statuts, on headed notepaper and in Law Directories, etc.

Assuming that the resident partners do not register as Conseils Juridiques, they remain principally subject to the professional regulations of the Bar to which they are attached in their home country. There is also a loose understanding among foreign practitioners and the French Bar that the former should not indulge in standards of practice offensive to those of the French Bar. For example, as Avocats are not permitted to handle cases on a contingency fee basis, theoretically therefore foreign practitioners in France would be bound by the same rule. In practice however this arrangement is at best a gentleman's agreement. In cases of conflict it is usually ignored. For example, American lawyers, as is well known, apply the contingency fee basis to many areas of litigation. Indeed, many of their clients would not entrust a case to a lawyer on any other basis. It is unlikely that in such instances the French Bar would intervene unless the particular arrangement had directly prejudiced a member of their own profession.

The French partners of the foreign firm may become members of the *Association des Avocats inscrits à un Barreau Etranger*. Membership of this organisation in no way conflicts with continued membership of the foreign Bar to which the resident partners are attached. On the contrary, the requirements for membership of the Association are that the applicant is a practising member of a foreign Bar and is still subject to the professional regulations of his own Bar. It is usually necessary to produce proof of having been in practice for five years in France or alternatively to posses a French law degree of Licence en Droit before being eligible for membership of the Association. However, this rule can be relaxed in individual cases. In this connection, it is worth noting that the Association is at present desirous of increasing its membership which currently numbers 44 foreign lawyers from 14 different countries.

The Association does not have any disciplinary powers over its members. Its sole purpose is to represent the interests of foreign practioners in France. In this connection, it played a very useful role during the passing of the 1972 reforms. The present activities of the Association are generally felt to be inadequate. Its potential sphere of activity however is considerable not only in defending the interests of its members but also in helping to improve the quality of the service offered by foreign lawyers in France.

As already mentioned, in the initial stages, the bulk of the firms' clientele should come from the principal office in the home country. Later, the reputation of the firm itself will bring work in from independent sources. These are invariably the correspondents in other countries of the principal office, announcements in law directories and the personal contacts of the resident partners with possible sources of clientele in France including of course their membership of professional and other associations.

Apart from the work obtained from sources in France and the home country, there remains a great reservoir of possible clientele in other countries trading with France. Needless to say, foreign lawyers in France invariably cultivate connections with such countries either by appointing correspondents and agents there or, exceptionally, going as far as opening a branch office.

The reader will note in this connection how changes in economic and political circumstances affect the foreign lawyers sources of clientele as mentioned earlier. A current illustration is the tendency for many British firms in France to seek connections with non British based sources of clientele, notably the Middle East and certain Commonwealth countries. This move has needless to say been prompted by the present difficulties of the British economy and uncertainty at Britain's future in Europe.

Knowledge of French commercial law essential

As a commercial practice is invariably the most solid basis on which to establish a French office, it follows that the resident partners will encounter all aspects of French commercial law. These include company formation and administration, labour law, customs and exchange control regulations, complicated French and international tax matters, patents and trade mark law and of course litigation in France and abroad.

The other areas of practice are as varied as the size of the firm, the scope of its clientele and of course the policy of the firm itself in matters of specialisation. If the firm has a litigation practice, it may be involved in arbitration suits before the Court of the International Chamber of Commerce in Paris, usually applying French law. It may have a debt collection department. Inevitably, it will from time to time act as instructing Solicitor on behalf of French clients in respect of litigation in its own country, the matter usually being handled by its principal office there.

A commercial practice will invariably undertake a certain amount of international corporate financing, industrial conveyancing (in liaison with a Notaire) and advice on EEC regulations affecting trading agreements.

A private clientele will usually involve succession, matrimonial and divorce matters plus a certain amount of residential property work.

Finally, every foreign lawyer is regularly called upon by his French colleagues to deliver Affidavits of law (Certificat de Coutume) stating the law of his own country on particular matters.

Foreign practice in France expensive

It will be evident from this outline that the internal organisation of a foreign practice in France is relatively complex and expensive. Bilingual staff at all levels, legal staff versed in at least two systems of law with appropriate library facilities and the most up to date communication systems to maintain contact with non resident clients are all essential elements in the organisation of any foreign law practice. A great deal of travelling is required and

as every lawyer knows, this can result in considerable upsets in the day to day handling of clients' affairs. Some foreign practitioners overcome this problem by ensuring that at least the most important cases are handled in collaboration with another member of the firm. Others just work longer hours.

The nature of a foreign law practice requires various systems of checks and controls on inflow of clients to avoid conflicts of interest. It will be readily understood that for example a large and reputable American or British firm based in Paris is likely (from time to time) to receive instructions from both parties to a contract or a litigation suit.

In addition, internal conferences, practice notes, precedents, memos and reports are regularly used to ensure that lawyers are briefed on important aspects of existing or proposed changes in French law and the laws of their own country.

The fact that most clients are non resident has induced many foreign lawyers to adopt the Avocats practice of obtaining security for costs at instructions stage and to furnish interim bills throughout the conduct of a case. These measures, as much as the burden of high overheads in running a foreign practice, necessitate efficient accounting, billing and time recording methods.

There is no doubt that foreign law practice in France is likely to increase in the foreseeable future. As a result, interesting initiatives may be expected to be taken in relations affecting foreign lawyers and their French colleagues. It may well be that full partnership between French and foreign lawyers may ultimately be necessary though at the moment the idea would be offensive to many. Nonetheless, legal practice at international level has ceased to be a twentieth century phenomenon and the foreign lawyer has become recognised as indispensible in the administration of the legal affairs of clients in different countries.

Correspondence

Collis & Ward, Solicitors,
1 Lower Merrion Street,
Dublin 2.
7th April, 1975.

J. J. Ivers, Esq.,
Incorporated Law Society.

Re Understamped Correspondence

Dear Mr. Ivers,

It has just come to my knowledge that a firm of solicitors refused to accept delivery of a letter because it was under-stamped. The letter, in fact, contained a document with a time limit. There was considerable delay before it went back to the sender.

Fortunately for all concerned the time was, in fact, being extended.

It does occur to me that it is very "unwise" for a solicitor to refuse to accept a letter because it is understamped, because he might thereby prejudice the interests of his client and find himself in a very awkward position.

I recently accepted delivery of a postal packet and paid 64p excess postage (which my professional colleague immediately refunded).

I would suggest that a note in the Law Society Gazette stressing the desirability of solicitors accepting letters and paying excess postage, rather than run the risk of possibly prejudicing a client, would be desirable.

Yours truly,
R. Morton Wilson.

Dail Debate

DAIL EIREANN—19 MARCH, 1975

LAND BOND BILL 1975
(Second Stage)

Mr. T. Fitzpatrick (Minister for Lands):—

It would appear from the figures produced by Deputy Lalor today that the Land Commission, when paying in bonds, actually pay more than the market price because Deputy Lalor had figures which showed —indeed, correctly—that the price per acre in land bonds is, percentagewise, quite a bit more than the price per acre in cash. When the appeal tribunal are adjudicating on price they do bear in mind the fact that payment is being made in land bonds and these bonds are at a discount.

The bonds have been criticised on a number of grounds. It was stated that there is no redemption date for land bonds and it is in the nature of a lottery as to whether one ever gets paid at par. That is not so. The Land Bond Act, 1934, provided that the Minister for Finance might redeem bonds on the expiration of 30 years from the date of the passing of the Act, making 23rd March, 1964, the date on which land bonds could be redeemed. In 1957, however, a Fianna Fáil Minister for Finance amended the 1934 Act and extended the period by providing that the optional date for redemption would be 50 years from 1934, thereby providing that land bonds could not be redeemed before 1984.

Appointments

Mr. Alfred J. O'Dwyer, B.A., Barrister-at-Law, formerly Deputy Registrar, hs been appointed Registrar of Titles in the Land Registry and Registrar of Deeds in the Registry of Deeds, as from 28th April, 1975, when Mr. Desmond McAllister retired.

Mr. Peter D. M. Prentice, senior partner of Messrs. Matheson, Ormsby and Prentice, Dublin, and former President of the Society, has been appointed a Commissioner of Charitable Donations and Bequests, in succession to the late Mr. John Sides.

THE GENERAL COUNCIL OF THE BAR OF IRELAND

REPORT ON CRIMINAL LEGAL AID

Part II (reprinted by kind permission)

'Where no Counsel is the people fall: But in multitude of Counsellors there is safety'. Proverbs xi.14.

Lawyers Accepting Instructions in a Criminal Case

In approaching the first question from the point of view of the client we have in summary answered the second question. However, we consider that it is desirable to examine in greater detail the practical implications for a solicitor or barrister of what may, and frequently will, be entailed in accepting instructions in a criminal case. Since. under the Constitution all citizens are guaranteed equality before the law identical considerations must apply to legal aid and non-legal aid work.

Having embarked on an examination of the workings of the legal aid system we make no apology for examining what is, or should be, entailed for solicitors as well as barristers working under the scheme. We believe that the functions of solicitor and counsel in criminal (as in most other professional) matters are complementary and that each has his separate and necessary sphere of activity and duty.

It would appear to us to follow that, since the State has undertaken under the Act to provide legal assistance for the needy, it must provide the services of a solicitor where solicitors special functions are required, and the services of a barrister where his special functions are required. In seeking to implement the scheme, both solicitor and barrister are entitled to expect, and client to require, that the appropriate service be provided under the Act.

We understand by the duty to 'provide' legal aid imposed on the State by the Act, and to 'give legal assistance free' under the Convention, a duty to make that assistance available **and** to pay for it.

The following then are, in our view, the obligations upon a member of the legal profession who undertakes the duty of assisting a needy person (or for that matter any other person) in connection with a criminal matter:-

(i) A solicitor must make himself available for consultation with his client as soon as he reasonably can having regard to all the circumstances of the case. Depending on the urgency of the case and many other factors this may entail cancelling other appointments, travelling to and attending at a Garda station, prison, or Court. making himself available out of normal office hours or during the night and substantial disruption of office routine. More than one such attendance may, on occasion, be necessary.

Solicitor's Advice as to statement, identification parades, fingerprints, bail and detention.

(ii) Arising from the preliminary consultation a solicitor may have to advise his client on the advisability of making a statement to the Gardai, advise upon the contents of any such statement and, on occasion, attend with his client whilst a statement is made.

(iii) A solicitor may have to advise his client in relation to whether or not he should go upon an identification parade. He may have to attend upon his client at the holding of such parade. This will frequently entail a separate attendance upon his client at a Garda Station at some time convenient to the Gardai with attendant disruption to his practice, domestic affairs or on occasion sleep. It may also entail travelling and sustenance expenses for him. Barristers are precluded by a ruling of the Bar from attending identification parades.

(iv) A solicitor may at this stage have to advise his client with regard to giving fingerprints.

(v) If the client is in custody it is the clear duty of his solicitor to take instructions and make all necessary inquiries and investigations with regard to the question of bail. Should he form the opinion that there is a reasonable case to be made for the admission of his client to bail it is his duty to take all such steps as are necessary to make the necessary application. On occasion this will entail an application to the High Court and may necessitate the retention of Counsel, drafting and having engrossed and sworn affidavits, communicating with and interviewing proposed bailsmen, attending Court on the hearing of the application and, from time to time pursuing an appeal.

(vi) Again where the client is in custody his solicitor will be under a duty to consider the legality and constitutionality of his detention and advise accordingly. Should he form the opinion that there is a reasonably stateable case for contesting the legality of his client's custody it is his duty to take such steps promptly as are necessary to bring an application for Habeas Corpus to the High Court. Again this may and generally will entail retaining and instructing Counsel and will invariably mean disruption of office routine, other commitments and not infrequently an application to a Judge at his home. Again the application will generally entail several appearances in Court and sometimes an

appeal, occasionally as a matter of urgency, to the Supreme Court.

(vii) A solicitor has a duty to attend Court on each occasion upon which his client is required to appear there, unless the appearance is in respect only of an adjournment by consent. The law and rules of Court in relation to remands are designed in the main for the protection of the liberty of an Accused person and to allow the Courts to prevent unnecessary delays. It is the clear duty of a solicitor to attend so as to ensure that his client's interests in these regards are adequately protected. It should also be borne in mind that not infrequently charges are added or substituted on an appearance to remand, depositions may be requested by the prosecution and changes in the client's health may become apparent, or the attitude of the prosecuting authority to a particular charge or charges effecting venue may be indicated. All or any of the foregoing may be matters requiring the urgent attention of the solicitor.

(viii) The solicitor is under a duty to take the instructions of his client with regard to his defence and to implement these instructions insofar as they are reasonable. It is not the right or duty of either solicitor or Counsel to adjudicate upon the truthfulness of his client or the weight or wisdom of his instructions. Unless they are manifestly unreasonable it is the duty of a solicitor to initiate and follow up such lines of inquiry as he believes or is advised will provide a defence to his client. This may entail many hours seeking out witnesses, attending on them to take statements and making inquiries and investigations.

In this regard it must be borne in mind that the Court of Criminal Appeal will admit on the hearing of an appeal only such new evidence as could not have been made available at the trial by the exercise of reasonable diligence on the part of the Accused or his advisers.

Detailed procedure for indictable offences

(ix) In the case of indictable offences a solicitor must arrange to get the book of evidence from the Accused promptly after service. This will frequently entail the attendance of at least a clerk at a prison. The book will usually have to be copied, paginated and indexed. The solicitor will then have to acquaint himself with the contents of same, and attend upon his client either alone or with Counsel wherever he may be, satisfy himself that his client understands the contents of the book and its implications and take his instructions thereon.

(x) Where the book contains a list of exhibits it is the duty of the solicitor to make arrangements with the Chief State Solicitor to inspect these and attend either alone or with Counsel to do so. As a result of the inspection a further interview with his client may be necessary. If expert assistance (e.g. hand-writing, finger prints, fire arms, poison etc.) is required the same will have to be arranged and reports obtained and their implications explained to the client and his consequent instructions taken.

(xi) Equipped with the foregoing information or as much of it as is required by the particular case a solicitor will then either himself or in consultation with Counsel and having taken his client's instructions, have to consider what course should be adopted with regard to the preliminary investigation. A decision will also have to be taken as to whether the defence requires that evidence be taken on deposition. The solicitor may deem it prudent to have Counsel advise proofs for the District Court preliminary investigation in which event he will prepare a Case for Counsel to Advise Proofs. submit it to Counsel and implement his advices.

(xii) The solicitor will attend either himself or with Counsel at the taking of depositions whether required by the prosecution or defence and also at the preliminary investigation. The taking of depositions may take several days and may not occur on the same occasion as the preliminary investigation.

(xiii) The solicitor should take instructions prior to the preliminary investigation with regard to the changed bail situation which may arise on return for trial and take such steps as are necessary to implement such instructions.

(xiv) After the return for trial the solicitor should satisfy himself that the Order returning his client is in order and, in the event of irregularity, he should take such steps by way of application for an Order of Certiorari or Prohibition as may be necessary.

(xv) Immediately after the return the indictment and appropriate jury panel should be bespoken and arrangements made for the solicitor to be notified when the same are available. On notification they should immediately be taken up.

(xvi) In appropriate cases the Court file should be inspected and a copy of any Order under Section 62 of the Courts of Justice Act 1936 or any certificate of the Attorney General under the Offences against the State Act or the Explosive Substances Act obtained.

(xvii) If Counsel is to be detained for the trial he should be briefed with all relevant material as hereinbefore indicated together with a statement of the facts of the case and client's instructions by the solicitor.

(xviii) If any Notice of Additional Evidence or exhibits is served, the client's instructions must be taken thereon and such instructions briefed to Counsel. A further examination of the original exhibits may be necessitated either with or without Counsel or expert adviser.

(xix) Counsel having been retained and briefed it is his duty to study his brief at an early stage and satisfy himself that all necessary material for his client's defence has been made available to him. He will ordinarily advise and direct proofs for the trial.

(xx) Counsel should at this stage consider the advisability of applying for separate trials and advise accordingly. He should also consider and advise as to whether any plea in bar appears to lie and in appropriate cases the question of the fitness of the Accused to plead to the indictment. Such steps by way of motion to the Court or otherwise required to implement Counsel's advice should be taken after the client's instructions have been sought and obtained.

(xxi) A consultation with the client will normally be necessary and on occasion a separate consultation with witnesses and with experts who are to be witnesses or advisers.

(xxii) Where an application for separate trials is to be made it is frequently prudent and necessary to make arrangements to have this heard at a time or place other than that for which the jurors are summoned. Counsel and solicitor should attend on any such application.

xxiii) Prior to trial, client's instructions with regard to character witnesses should be taken, the desired witnesses communicated with and a proof of their proposed evidence taken by the solicitor and briefed to Counsel.

(xxiv) It is the duty of the solicitor or his clerk and of all Counsel briefed to attend at the trial and throughout it.

(xxv) At the conclusion of the trial Counsel should apply for leave to appeal where in his view there are stateable grounds for so doing. He should state his grounds to the Court.

(xxvi) After the conclusion of the trial the solicitor either alone or with Counsel should attend on the client for the purpose of advising him and taking his instructions on the question of appeal.

(xxvii) Counsel should advise upon the question of appeal and where so instructed draft the notice of appeal including the grounds thereof. This should be completed as soon as possible after the conclusion of the trial.

(xxviii) The Solicitor should lodge the Notice of Appeal in the appropriate Court office within the time limited by the Rules of Court.

(xxix) Where leave to appeal is granted by the Court of trial the solicitor should take his client's instructions on the question of bail pending the appeal and take such steps as are necessary to implement these instructions.

(xxx) The solicitor should bespeak a transcript of the trial and where necessary make application to the Court of Criminal Appeal for a free transcript. He should attend on the hearing of any such application.

(xxxi) The client's instructions should be taken with regard to any evidence which may have come to hand since the trial and which may be tenderable.

(xxxii) If there be such evidence available application should be drafted for leave to introduce same at the hearing of the appeal.

(xxxiii) Counsel should be briefed by the solicitor for the hearing of the appeal. If new Counsel is retained for the appeal he will normally require the material which was available to Counsel at the trial, the transcript, notice of appeal, proof of any new evidence and notice to admit same together with the solicitors instruction for the appeal.

(xxxiv) Counsel attended by the solicitor or his clerk should attend at the hearing of the appeal.

(xxxv) Where an appeal fails but a certificate of leave to appeal to the Supreme Court is granted client's instructions should be taken, the necessary books of appeal should be lodged, notice of appeal drafted, settled by Counsel, and lodged, and Counsel briefed for the further hearing.

(xxxvi) Counsel, attended as before, should attend at the hearing of the appeal.

(xxxv) After an appeal to the Supreme Court a possible appeal to the European Commission of Human Rights will have to be considered in the rare appropriate case.

(xxxvi) Throughout the process it is the duty of the solicitor to make sure that all necessary legal aid forms are completed and filed. This again may entail attending upon his client wherever he may happen to be.

(xxxvii) If in the course of a case or appeal it appears that there is a statable appeal by way of Case Stated to any other Court it will be the duty of solicitor and Counsel to take such steps as are necessary to pursue same to conclusion.

(xxxviii) Similarly where in the course of a case or appeal it appears that the Constitutionality of a statute or the legality or constitutionality of a statutory instrument affecting the outcome of the case to the detriment of the client are in doubt and that there is a statable case for impugning such, it is the duty of solicitor and Counsel to take such steps as are necessary to protect his client's interests in this respect by pursuing such proceedings as may be necessary to have the constutionality or legality of the Act or instrument tested.

It is not, of course, contended that any one case is likely to present all of the complications outlined above. Nonetheless it is our opinion that it is the duty of a member of the profession undertaking a criminal case whether on legal aid or otherwise to take such of the steps above listed as are appropriate to the particular case. Unless solicitor and Counsel are in a position so to do, we believe that the minimal rights of persons charged with crime or about to be charged with crime cannot be secured or vindicated.

We have used above the model of the trial of an indictable offence. Similar if somewhat more limited considerations arise in respect of the trial of summary offences. In respect of summary offences the availability of State Side remedies, particularly certiorari, is, in our view, even more fundamental and important.

Defects of Present Legal Aid System

Having regard to the rights and duties which we have above enumerated we are forced to the conclusion that the **present legal aid system is not adequate to secure the needy client's minimal rights** or to permit of fulfillment by solicitor or barrister of their respective professional duties.

We believe that the system at present in operation is fundamentally and seriously defective in several regards. We set out hereunder what we believe to be the most serious and fundamental defects:-

1. **The stage at which legal aid can now be granted is unnecessarily late in the criminal process and so late as to deprive many persons of assistance at the stage of the process when it is frequently most needed.**

We express no view as to whether or not a person should have legal assistance before interrogation or before being invited to make a statement. We take the view that the Irish law in this regard is not settled. The question we believe to be of urgent importance but outside the scope of the present memorandum.

We consider that a legal aid system to be effective must be such as to afford legal assistance to a person seeking it at the latest at the point of time when it

is decided to prefer charges against him. At this stage we believe that a person about to be charged should be informed of his right to legal assistance in clear and unambiguous terms; he should further be informed that if he is unable from his own means to provide such assistance he is entitled to have it provided for him by the State. He should be supplied with a list of solicitors willing and equipped to act on Legal Aid and should be given an opportunity to communicate with a solicitor either from the list or otherwise. Should he choose a Legal Aid Solicitor and should that solicitor attend to assist him the latter should be paid a fee for his service even if legal aid is not subsequently continued on a later application. There appears to us to be no reason why a person who avails of free legal aid under these circumstances and is subsequently found not to have been entitled to it should not be required to indemnify the State against the cost involved. We believe that the cost involved would be more than made up for by the benefit to the prisoner and to the administration of justice of having assistance available at this very vital stage in the process.

A corollary to this right in the Accused person would appear to be the **duty on the solicitors on the panel to make arrangements between themselves to have at least one solicitor available at all times.** Such a system is taken for granted by doctors and by others convinced that they are providing essential services.

It would also appear to follow, if the right to choose his solicitor is to be honoured, that a solicitor so summoned (altrough entitled to payment for the services actually rendered by him) would not necessarily be the solicitor who would ultimately conduct any proceedings which might follow.

2. **We believe that any system of legal aid which does not make provision for Habeas Corpus, Certiorari, Prohibition, and bail applications is fundamentally lacking.**

Similarily we can see no basis of principle upon which citizens of means can test the constitutionality of penal statutes invoked against them or cause cases to be stated for the determination of Superior Courts on points of law arising in the course of penal proceedings whilst the poor are debarred from having assistance in mounting and pursuing such proceedings solely because of their poverty.

3. **We consider that the terms of "gravity of the charge" and "exceptional circumstances" in Section 2 of the 1962 Act and "serious nature of the offence" in Sections 4, 5 and 6 of the Act are inadequately defined.** Indeed whilst the commonly accepted canons of statutory interpretation would lead one to expect that the different words indicate different meanings we are at a loss to understand what distinctions it is sought to make.

We would suggest that any criminal charge liable to attract a sentence of imprisonment for any term or liable to result in the loss of livelihood should automatically entitle a needy person to legal aid. In addition a discretion should be left with the Court to award legal aid in any other case where the Court is of opinion that the interests of justice so require and in case of doubt such doubt should be resolved in favour of the Applicant.

4. **We consider that the absence of any appeal from a refusal of legal aid is so harsh as to constitute a fundamental defect in the system.** Such absence of appeal has resulted in very considerable unevenness of application of the Act throughout the country and from Court to Court. We believe that the right to renew an application in an Appeal Court is not an adequate safeguard in this regard. Whilst we appreciate that decisions on whether or not to grant legal aid must frequently be made as a matter of urgency we consider that an appeal against a refusal should lie preferably to a single Judge or a single judge of the Circuit and each of the Superior Courts. We believe that such a right of appeal would in time even out the unequal application of the Act now being experienced.

Again it is suggested that in the case of an appeal being lodged legal aid should be granted pro tempore and in the event of its being ultimately refused the money expended should be recovered from the appellant.

5. **We consider that the basis upon which the** Remuneration at present is upon the basis of a pre**at under the present system is arbitrary and totally unsatisfactory both from the point of view of the Accused person and of the profession.**

Remuneration at present is upon tre basis of a predordained fixed fee irrespective of the gravity, perplexity or difficulty of the case or any other consideration. (The only deviation from this norm is the provision for a slightly higher level of taxation in murder cases). We believe that this inflexibility lies at the root of most of the difficulties bearing on the present system.

We believe that, if a legal aid scheme is to work so as to afford the poor equality before the law, **the basis of remuneration must be that of reasonable payment,** of a standard which would be paid to a solicitor or barrister doing comparable work outside the scheme, for work reasonably and necessarily done. We further believe that the appropriate person to decide in the first place what work should be done is the person answerable for it — the solicitor and barrister in their respective spheres. We accept that whether any given work was reasonable and necessarily done requires adjudication and we see no reason why the ordinary provisions for taxation should not apply. The Taxing Master has long since had power to tax bills of costs in criminal cases — whether in cases where the Court of Criminal Appeal quashed a conviction and awarded costs of the trial or under the jurisdiction to award costs in criminal cases declared by the Supreme Court in the **People (A.G.) v. Bell** — (1969) I.R.24. Similarly taxation in State Side applications has long since been carried out by the Taxing Master. There is well established case law governing such taxations, and the right of appeal to the Court. We cannot see any basis of principle upon which such well established procedures available to all others should be denied to the poor in favour of a set of arbitrary payments bearing no relationship to the realities of any human situation.

We believe that all disbursements made by a solicitor on behalf of his client in a legally aided criminal basis stated by Gannon, J. in his judgment should be recoverable by him on taxation as laid down in **Dunne**

v. O'Neill (1974) IR 180.

Whilst strongly maintaining that a taxation system related to payments ordinarily recoverable by solicitors and Counsel working outside the system for comparable work must be the basis for remuneration we are impressed by the system of payment in force in Northern Ireland.

There a scale of fees is in force applicable to various crimes arranged in six categories grouped by seriousness of offence. After a trial the scale fee is immediately payable **but** where in a particular case there have been special factors affecting the work of Counsel or solicitor a bill for the additional fees attributable to those factors may be taxed and recovered in addition to the scale fee. We believe that the Northern Ireland system has the advantage of combining the principle of taxation with a system wrich permits of prompt payment of at least part of the fees. We also surmise that it cuts down on administration costs since neither solicitor or Counsel is likely to be disposed to go to taxation where the difference between the scale and the additional fees is trivial.

6. **The level of fees is inadequate.**

We do not consider that this aspect of the matter requires expatiation. The fees payable to a barrister going to, say, Sligo, to defend a prisoner, were sufficient to defray his travelling expenses at ordinary civil service rates, as far as Ballisodare before the increase in petrol prices.

A barrister conducting a case in Green Street Court House for two days and taking judgment on the third day is entitled to less in fees than is paid to a junior member of the Garda Siochana who stands in the back of that Court House on the same three days, provided the Garda is being paid, as he will ordinarily be, at overtime rates.

Difficulties in this area also would be overcome by adopting the modified taxation system suggested.

7. **The provision whereby a trial Court may certify for a fee not to exceed ten guineas for written advices is unworkable.** It is no part of a judge's function, duty, or right, to read, explore or inquire into any advice written or otherwise given by Counsel to his client. The document is the property of the client. Accordingly, this provision if it is to be implemented entails inviting a Judge to exceed his functions or to authorise a payment on a speculative basis. At least one Judge of the High Court has expressed dissatisfaction with the provision which is universally distasteful to Counsel. Similar objections are found to the mode of remunerating Counsel where a number of persons are jointly tried.

8. It is our experience and the experience of those we have consulted both inside and outside the profession that the **existence of a free legal aid service** (such as it is) **is unknown to a great percentage of those clearly entitled to it,** and frequently badly in need of it. Even those who know of it's existence find it mysterious and inaccessible.

We suggest that a **standard mandatory procedure should be established for informing all accused persons of their possible rights to receive free legal aid.** We recommend that all accused persons should be given a document stating in simple terms the brief facts about the legal aid to which Defendants are entitled.

This document should include information about the method of application and of obtaining a solicitor;

It should be handed to the accused by the person charging him on the occasion of the charge being put; and the recipient should sign a receipt for it and for the copy of the charge or charges which he is entitled to be given also;

In the case of a summons, the document giving details of the legal aid facilities should be served with the summons. This information should be repeated when and if necessary;

It should ultimately be the duty of the Clerk or Registrar of the appropriate Court to inquire if, and ascertain that, the Defendant has the legal aid he requires and is entitled to;

This inquiry should be repeated at the end of proceedings involving committal for trial or sentence.

A Notice containing the information suggested should be prominently displayed in all Garda stations in a place where they are most likely to be seen by accused persons and in all Court Houses.

Accordingly, we are forced to the conclusion that the present system of legal aid does not operate to secure or vindicate the legal and constitutional rights of poor persons involved in the criminal process. Neither does it permit of either branch of the profession fulfilling it's professional duties to its clients.

We believe that to be workable the Act and regulations require fundamental overhaul. Fresh and basically rethought legislation is clearly indicated.

The changes which we have indicated as being in our view essential would undoubtedly cost somewhat more than the present system — but the present system is incapable of functioning and is undoubtedly having a baneful effect on both branches of the profession and on the development of the rule of law at a time when the rule of law must be carefully nurtured. We consider that the cost of an effective system would not be great and would be money well spent. We believe that the country can neither afford to continue to present system or be without a proper one.

'God blessed be, the amending Hand'.

—Coke (being the final word of the Institutes.

Federation of Professional Associations

TEXT OF PRESIDENTIAL ADDRESS TO THE ANNUAL GENERAL MEETING OF THE FEDERATION

Held at 22 Clyde Road, Dublin 4, on Thursday, 24th April, 1975.

By Outgoing President, FRANKLIN O'SULLIVAN, LL.B., Solicitor

1. The close of the twentieth century:

As we enter over the last quarter of the Twentieth Century a large question looms over the nature of the progress claimed by mankind.

The Industrial Revolution has resulted in an unprecedented increase in the number of Professionals and the growth of Professionalism, so much so, that one expert has claimed "an industrialising society is a Professionalising society". To this extent the Professions are at once the beneficiaries and the creators of the increasing level of education and expertise now manifest in man's evolutionary development. The surprising aspect of our economic growth since the opening of the Century is not its radical change but the fact that its towering economic achievements are the direct product of the foundations laid by the Victorian and Edwardian generations.

The preceding three-quarters of this century, in economic terms, has been an age of continuity but of the future, states Peter Drucker "the one thing that is certain so far, is that it will be a period of change — in technology and in economic policy, in industrial structures and in economic theory, in the knowledge needed to govern and to manage, and in economic issues.

2. The hidden pitfalls:

The destructive power of the atomic bomb, the permanent menace to our material environment from pollution and refuse, and social illness of "Future Shock" emerging from the roaring torrent of change we have now entered are seen and understood as obvious diminishments of the great scientific and technological progress of our era. Faith, however, in the scientific ability to overcome these perils springs eternal and we continue on our hopeful way.

But what of those dangers that are not so easily recognised? Indeed they are not recognisable because in scientific and technological terms they are not quantifiable or subject to laboratory observation.

There is available a range of literature dealing with the hidden and non-quantifiable pitfalls in our age of progress but the message appears to have been ignored, for all practical purposes. Its 'Authors range from drop-out hippies, new-Left Philosophers, through a number of managerial and communication experts, to the head of the Catholic Church. The Papal letter published on the eightieth anniversary of Rerum Novarum puts the problem in this context, "In this world dominated by scientific and technological change, which threatens to drag it towards a new positivism, a new more fundamental doubt is raised. Having subdued nature by using his reason, man now finds that he himself is as it were, imprisoned within his own rationality; he in turn becomes the object of science".

The popular works of Vance Packard have made the public in general aware of the hidden power of the persuaders in the communications media and the waste makers in the multi-National Corporations. But not all of us are aware of the seductive totalitarian threat to mans' freedom and his conscience which the present consumer society contains. This is spelt out in a small but difficult work entitled "One Dimensional Man" by Herbert Marcuse and may be gleaned from the following quotation; "In this (industrial) society the productive apparatus tends to become totalitarian to the extent to which it determines not only the socially needed occupations, skills and attitudes, but also individual needs and aspirations. It thus obliterates the opposition between the private and public existence, between individual and social needs". Later he adds in terms that any Christian can understand; "The extent to which this civilisation transforms the object world into an extension of man's mind and the body makes the very notion of alienation questionable. The people recognise themselves in their commodities; they find their soul in their automobile, hi-fi set, split-level home, kitchen equipment. The very mechanism which ties the individual to his society has changed and social control is anchored in the new needs which it has produced".

In effect the zone of man's inner freedom has been invaded and whittled down by the technological reality and the pleasure-seeking no-exit world of Sartre is upon us.

3. The failure of traditional institutions:

The immediate reflex response to the foregoing is to say that it exaggerates and that in any event religion will take care of man's inner freedom and conscience. But will it? Already we speak of religionless Christianity and the "Grave of God". It is not too daring to say that everywhere there is disenchantment with the contradictions in the religious message and there is revolt against all 'power concentrations' whether secular or religious. There is disenchantment with Government and there is revolt within the traditional institutions, including the Catholic

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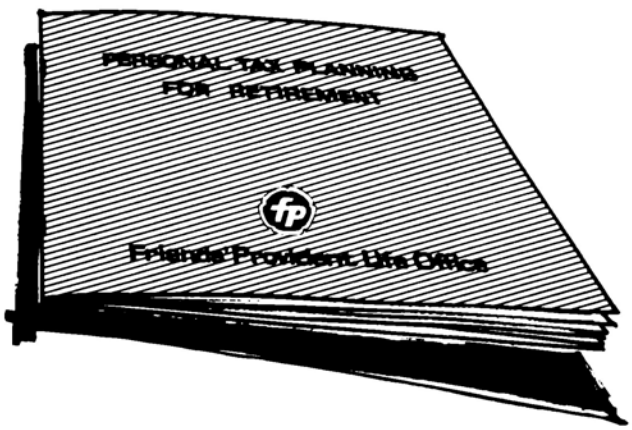

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Church. It is all too apparent to be cloaked or wished away.

The Churches are caught in the trap-gate of public structure and private function. The hidden ideology of the present age cannot allow them to challenge the system but in order to cope with man's hidden fears and to prevent a breakdown from stress, the clerical profession is allowed to function in the private sphere, in the area of man's deepest uncertainty: those relating to death, suffering, disease and misery. But it was Dietrich Bonhoeffer, the Lutheran theologian, who was executed in the last war in a German concentration camp, who first expressed concern for the relevance of a Church which functioned exclusively within the sphere of human suffering, weakness and uncertainty.

4. The challenge to the Professions

The Professions, as knowledge workers, cannot shrug off their responsibilities to man by calling on Institutions or the Professional Priest to deal with the victims of a system within which they earn a reasonable living. They, all of us, must now ask if ethical considerations demand that we question our role as "hired guns" in making smooth the path of the machine by furnishing drugs for the casualties and imposing uniform and bureaucratic rationality on the obstructive irrationalities of Nation, Culture and Community. If it is legal, is it right? The question need only be asked to remind us of Nazi Germany and to receive the ready answer.

In the world of growing organisation which the contemporary industrial civilisation has ushered in, freedom can no longer be adequately defined in the traditional terms of economic, political and intellectual liberties. To-day we are face-to-face with the age-old question of individual meaning, individual purpose and individual freedom. In a free society it can be said the individual must have the right to opt out but this is not sufficient. The individual to-day has a greater responsibility in freedom: he must take responsibility for his society and its institutions. There are great opportunities and great perils but the responsibility cannot be passed to somebody else, priest, politician or bureaucrat. If the Professions collectively do not assume the responsibility which this challenge imposes, individualsof heroic dimension must be willing to do so. The machine temporarily has been slowed down by the will of Allah and the followers of Mohammed. The shock has been salutary and opportune for Western man. We have been given time to draw our breath and think; to ask where the machine is leading us and having thought and asked, to re-programme the computer so that it too will understand and respond in a qualitative and essential mode to the first and final question — What is Man, and What is his Goal?

Book Reviews

Scarman (Leslie) — English Law—The New Dimension (Hamlyn Lecture, 26th Series). London: Stevens, 1974. 19cms., xi, 88p.; £1.50.

Lord Justice Scarman has given us some interesting views in this new series of Hamlyn Lectures. The learned author has considered in detail the question whether English Law was capable of further growth within the narrow confines of the Common Law system. This is essentially a system of lawyer's law, conceived, developed and adjusted by the judges and by the legal profession; its home-made principles, concepts and classifications, dominate the thinking of the profession in England, and they are preserved by a strict system of precedent. It is an independent form of customary law, and its professionalism depends on oral argument, but it is resistant to change. The first limited challenge is the right of an individual to petition the Commission of the European Court of Human Rights; the current case about Northern Ireland involving "disturbing practices of interrogation" will undoubtedly lead to an international finding that English law fails to provide a remedy. The author is more than justified in stating, in relation to Community Law, that the power of the British Parliament to make whatever law it likes, and the power of the Judges to declare what laws are in those areas bound by statutory interpretation, are undoubtedly contrary to British international obligations; he rightly criticizes the "command theory" which has dominated statute law. The social challenge consists in the theory that we are all entitled to the active protection of the State against the ills of poverty, disease and old age; in this respect the law has had to be flexible to meet different social conditions. The main principle is that the right to the national insurance benefits depends upon a person's contribution record, but it is absurd that the justice of the decision cannot be reviewed by the Court subject to its being sufficiently flexible to meet the challenge. The manner is which family law cases have been administered is an example of the flexibility of the Common Law.

There is of course in England a Council of Tribunals, whose function is to supervise tribunals in enacting the principles of Natural Justice; there is no such protection in Ireland; But the principle that the participation of the legal profession is desirable to meet the difficulties the citizen experiences in the securing of his right before tribunals is undeniable. The Court should also avail frequently of its discretionary remedy to make binding declarations of right. The outworn theory that the role of the Courts is to be confined to the interpretation of statutes is rightfully rejected as splitting the Common Law wide apart. The weakness of the English Common Law is that it is a legal system at the mercy of the Legislature and ultimately of the Executive; it is therefore essential to promote in England a Bill of Rights which cannot be amended or repealed, as there is no written Constitution; we are fortunately much better protected in our Fundamental Rights clauses. The English Welfare State is challenging the relevance of the Common Law because fault, property and even marriage are insecure bases for the development of a modern law suited to present needs; the administrative tribunals are bound to assume more and more importance. It seems that lawyers will be left to handle the criminal law and the private disputes between citizens. The universality of the law will be discarded; for our rights and liberties would no longer be subject to the rule of Law administered by the ordinary Courts, but to administrative and political controls beyond the reach of the law. This is the frightful prospect of the future, and, in the event of a new Irish Constitution being propounded, we must see that our Fundamental Rights are not diminished by one iota.

Meaghen (P. J.)—Local Government in Ireland; fifth edition revised by D. Roche. Dublin: Institute of Public Administration, 1975. 32p., 22cm.; £0.50.

Mr. Meaghen, late County Manager of Limerick, who died in 1971, edited the first three editions of this booklet, and Mr. Desmond Roche has brought the material on Irish Local Government up to date in this latest edition. Mr. Meaghen had already explained the subject with such clarity that Mr. Roche had only to fill in the *lacunae* to bring the material up to date. This he has most successfully accomplished.

Russell-Clarke (J.)—Copyright in Industrial Designs; Fifth Edition by Michael Fysh. London: Sweet & Maxwell, 1974; xxiii, 314p., 25cm.; £10.50.

This is the first edition of this well known work not published by the original author, who had published successive editions in 1930, 1951, 1960 and 1968. The broad substance and clarity of the chapters of the work has not been altered, save that the more up to date English case law and legislation has been included, and particularly the Design Copyright Act 1968. The 1968 Act now accords "artistic copyright" to registrable industrial designs for a limited time, whether registered or not. The detailed rules as to the nature of a design are fully set out in Chapter 2, while subsequent chapters deal with novelty and originality, and with publication. Then follow such matters as correction and rectification of the register, infringement of copyright in registered design, and the detailed steps to be taken in an action for infringement of registered design. If the owner of a design which is invalid, and which does not cover the articles complained of, can cause his rival in trade much damage by the use of groundless threats of legal proceedings, anyone who is aggrieved by such unwarranted threats has the right to institute proceedings to restrain their continuance. There are complicated rules relating to the overlap between the

Copyright Acts and the Design Acts which are fully explored. The nature of copyright in artistic works, particularly in relation to originality, ownership and infringement is fully considered. The effect of Articles 85 and 86 of the Treaty of Rome in relation to industrial design receives full treatment. The Registered Designs Act, 1949, and the Copright Act, 1956, with the Rules relating thereto, have been fully set out in Appendices.

In **Amp Inc. v. Utilux Property Ltd.**—(1972) R.P.C. the definition of "design" in S. 1 (3) in the Registered Designs Act 1949 was stated 'not to include any method of construction, or features of shape or configuration which are dictated solely by the function which the article to be made in that shape has to perform'. It was unsuccessfully contended in the House of Lords that this exclusion only applies in cases where the designer has no option but to design an article in a particular shape because of the function it has to perform; this related to electrical terminals for washing machines. In **Hensher Ltd. v. Restawile Upholstery Ltd.** (1974 2 All E.R. 420, the House of Lords stated that, in the phrase "work of artistic craftmanship", the word "artistic" is well understood and needs no interpretation. It was a matter of evidence in each case whether a work was "artistic". In this case a three piece drawing room named Diner was not protected by copyright because it had no originality. Those are the two principal new cases since the last edition. The publishers are to be congratulated upon the setting and type, and lawyers specialising in this subject will find this work of paramount importance.

Delany (V. T. H.) — The Administration of Justice in Ireland; fourth edition by Charles Lysaght. Dublin: Institue of Public Administartion, 1975. vii, 105p., 22cm.; £1.80.

When Professor Vincent Delany first published this volume in 1962, it received wide commendations. In subsequent editions, in 1965 and in 1970, as a result of the learned author's premature death, Mr. Vincent Grogan undertook to revise the work, and this has now been successfully accomplished by Mr. Lysaght. The first five chapters are unchanged; they deal respectively with "The Sources of Irish Law", "The Background of the Irish Judicial System", "The System of Courts in Ireland from 1800 to 1921", "The Constitutional Changes from 1921 to 1924" and "The Courts since 1922". In dealing with the Criminal Jurisdiction of the Courts, Mr. Lysaght has clearly set out the functions of the new Director of Public Prosecutions under the 1974 Act, and also the revised criminal jurisdiction of the District Court, the revised personnel of the Special Criminal Court, and the proposals of the Committee on Court Practice and Procedure to abolish the Court of Criminal Appeal. The learned editor, in relation to civil jurisdiction had dealt very fully with appeals to the European Court of Justice under Article 177 of the Treaty of Rome, as well as under the European Convention of Human Rights, including the Irish complaint about violations of the Convention by Britain in Northern Ireland.

The current civil jurisdictions of the Circuit Court and of the District Court as well as the salaries of Judges since March, 1975, are fully explained. In discussing solicitors, it is unfortunate that the fact that the profession will only be open to graduates from October next is omitted. In discussing costs, it is satisfactory that emphasis has been placed upon civil legal aid. Mr. Lysaght has cautiously and accurately brought the main work up to date, but it would have been infinitely more interesting if he had enlightened us with his own views on many of the subjects covered.

Paul O'Higgins — First Supplement to a Bibliography of Periodical Literature relating to Irish Law. Belfast: Northern Ireland Legal Quarterly, 1975. 149p., 24cm.; paperback; £2.95.

Dr. Paul O'Higgins, a graduate of Trinity College, Dublin, and well known for his works on Labour Law and scholarly contributions to learned journals, is to be congratulated on producing the first Supplement to his "Bibliography of Periodical Literature relating to Irish Law". The objects of the Supplement are to bring together a list of the most important articles on Irish law, or published in Irish periodicals on legal topics from 1966 to 1972; and to include similar material omitted from the main work; for example, the many important legal articles which appeared in the **Dublin University Magazine** from 1833 to 1877. The industry of the learned author is shown by the fact that the Supplement includes over 1,600 entries from more than 100 periodicals.

Dr. O'Higgins, in his Preface, notes that the study of Irish legal history has begun to gather momentum under the leadership of such distinguished scholars as Professor Newark of Queen's University, and Professor Hand of University College, Dublin. It is to be regretted, however, that Dr. O'Higgins found no relevant material in the **Law Quarterly Review.** This appears to be a sad reflection on the state of legal scholarship in Ireland.

It is perhaps expecting too much of the compiler to have exhausted every possible resource. Those working in the Irish field of academic law have had their burden considerably eased by Dr. O'Higgins's toil, and owe him a profound debt of gratitude.

This Supplement, like the main work, is superbly cross-indexed. It is hoped that this Supplement will be the first of a series issued over the next decade or so, and the learned author is to be congratulated for his continuing interest in Irish law.

One cannot but help experiencing a twinge of jealousy that the **Northern Ireland Legal Quarterly** should be able to produce such a meritorious work, among several others, while in the Republic there is a dearth of this kind of publication. Is it that we lack academic lawyers of sufficient staying-power and ability, or is it, as one is led to suspect, that they cannot find a publisher?

G. M. Golding.

Library Acquisitions to 1 May 1975

Aldridge, T. M.—Boundaries, Walls and Fences. 3rd ed., 1974 (Oyez Practice Notes, No. 46).
Armitage—Report of the Committee on Legal Education in Northern Ireland, 1973.
Banks, M.—Using a Law Library, 2nd ed., 1974.
Barclaytrust Guide to Unified Tax—1973.
Barnard D.—The Criminal Court in Action, 1974.
Bromley, P. M.—Family Law, 4th ed., 1971.
Butterworth—Matrimonial Law Statutes, 1971.
Calvert, H.—Social Security Law, 1974.
Chubb, B.—Cabinet Government in Ireland, 1974.
Chubb, B.—The Government and Politics of Ireland, 1974.
Cross, R.—Evidence; 4th Ed., 1974.
Current Law Citator—1947-1973.
Dail Eireann—Standing Orders relating to Public Business, 1974.
Delaney, V. T. H.—The Administration of Justice in Ireland; 4th ed. by Charles Lysaght, 1975.
Directory of State Services in Ireland—1974.
Elliott, W. and Wood—Casebook of Criminal Law; 3rd ed., 1974.
English and Empire Digest—Replacement Vol. 8, 1974. Part 1—Carriers, Charities. Part 2—Choses in Action, Civil Aviation, Clubs, Commonwealth.
European Glossary of Legal and Administrative Terminology —Law of Establishment—German—English Glossary.
Farrar, J. H.—Law Reform and the Law Commission, 1974. (Modern Legal Studies).
Garner, J. F.—Administrative Law; 4th ed., 1974.
Gatley, J. C.—Libel and Slander; 7th ed. by Sir Robert McEwen and Philip Lewis, 1974. (Common Law Library, No. 8).
Gill, W. H.—The Law of Arbitration; 2nd ed., 1975. (Concise College Texts).
Gorman, L.—Managers in Ireland by Liam Gorman, Ruth Handy, Tony Moynihan and Roderick Murphy, 1974.
Graveson, R. H.—Conflict of Laws; 7th ed., 1974.
Greig, D. W.—Sale of Goods, 1974.
Halsbury of St. Marylebone (Lord) editor: The Laws of England, 4th ed. Volume 8: Compulsory Acquisition of Land, Conflict of Laws and Constitutional Law, 1974. Volume 9: Contempt of Court, Contract, Copyright, Coroners and Corporations, 1974. Volume 10: County Courts, Courts, Cremation and Burial, 1975.
Harris, B—The Crminal Jurisdiction of Magistrates; 4th ed., 1974.
Harris, J. W.—Variation of Trusts, 1975. (Modern Legal Studies Series).
Heuston, R. F. V.—Essays in Constitutional Law; 2nd ed., 1964.
Institute of Public Administration—Administration Yearbook and Diary, 1975.
Institute of Public Administration—European Community Directory and Diary, 1975.
Ireland—Bankruptcy Law Committee Report, July, 1973.
Ireland—National Prices Commission Paper No. 9—Consumer Protection Law on America, Canada and Europe by Michael Whinaip, 1975.
Irish Catholic Directory—1974.
Josling, J. F.—Summary Judgment in the High Court; 4th ed., 1974 (Oyez Practice Notes, Nqtes, No. 16).
Kapteyn, P. J. and P. Verloren Van Themaat—Introduction to the Law of the European Communities, 1974.
Keatinge, P.—The formulation of Irish Foreign Policy, (1974).
Keeton, G. W.—English Law: The Judicial Contribution (1974).
Law List—1974.
Le Gall, J.—French Company Law, 1974. (Oyez European Commercial Law Library No. 1).
Meghen, P. J.—Local Government in Ireland; 5th ed., by D. Roche, 1975.
Moeran, E.—Practical Conveyancing; 6th ed., 1974. (Oyez Practice Notes, No. 44).
Nealon, T.—Ireland—A Parliamentary Directory, 1973-74.
New Directions in the Law of the Sea ed. by S. Houston Lay, Robin Churchill and Myron Nordquist. Vols. I and II—Documents; Vol. III—Collected Papers; Vol. IV—Documents. London: British Institute of International and Comparative Law, 1973-75.
O'Donnell, J.—How Ireland is governed; 5th ed., 1974.
O'Donnell, J. and John Fanning, Eds.—Communications Directory and Yearbook,, 1974-75.
O'Higgins, P.—Bibliography of Periodical Literature relating to Irish Law—First Supplement, 1973.
Ormerod (Justice)—Report of the Committee on Legal Education, 1971.
Parker, D. and A. Mellows—The Modern Law of Trusts; 3rd ed., 1975.
Pennington, R.—Company Law, 3rd ed., 1973.
Redmond—P. W. Mercantile Law; 4th ed., 1974.
Riddall, J. G.—Introduction to Land Law, 1974.
Russell-Clarke, J.—Copyright in Industrial Designs; 5th Ed. by Michael Fysh, 1974.
Scarman, Sir Leslie—English Law: The New Dimension, 1974. (Hamlyn Lecture, No. 26).
Shaw, Sir Sebag and Dennis Smith—The Law of Meetings; 4th ed., 1974.
Simon—Tax Cases, 1974.
Smyth, J. McG.—The Houses of the Oireachtas; 3rd ed., 1973.
Sweet & Maxwell—Then and Now: 1799-1974; commemorating 175 years of Law Publishing.
Taylor, J. L.—The Doctor and the Law, 1970.
Thom's Commercial Directory—1974
Thom's Dublin Street Directory—1974.
Topham, J. and E. R. Ivamy—Company Law; 15th ed., 1974.
Whittaker's Almanack—1975.
Wortley, B. A., ed.—The Law of the Common Market, 1974.
Wright, M.—Labour Law, 1974. (M. & E. Handbooks).
Yearbook of World Affairs—1975.
Zander, M.—Social Workers; their Clients and the Law, 1974.

DONATIONS AND EXCHANGES

Bruel, E.—International Straits: A treatise on International Law. 2 Vols., 1947.
Dublin University (Trinity College) Calendar, 1974-75.
Edinburgh University Calendar, 1974-75.
Europa Yearbook, 1972. 2 Vols.
International Bar Association—Directory of Members, 1973.
London University Calendar, 1974-75.
Manchester University Calendar, 1974-75.
Moulin, L.—Leaders for the Europe of tomorrow (Semaine de Bruges, 1966).
National University of Ireland Calendar, 1974-75.
Paklons, L.—European Bibliography, 1964.
Public Enterprises and Competition—Articles 90 and 37 of the EEC Treaty and their bearing on Competition. (Semaine de Bruges, 1968).
Queen's University of Ireland Calendar, 1974-75.
University and Society—Towards a European Policy of Higher Education. (Semaine de Bruges, 1973).
University College, Cork Calendar, 1974-75.
University College, Dublin Calendar, 1974-75.
University College, Galway Calendar, 1974-75.
World of Learning, 1971-72. 2 Vols.
Waltjen, D.—Die Stellung des Uberlebenden Ehegatten in Irischen Erbrecht. (Dissertation in Kiel University, 1971).
International Bar Association—Directory of Members, 1975.

Solicitors' Golfing Society—Outings 1975

President's (W. A. Osborne) Prize — at Curragh Golf Club, Friday, 4th July, 1975.

Captain's (D. Lynch) Prize — at Portmarnock Golf Club, Friday, 3rd October, 1975.

Non-members of the Society may obtain particulars from Henry N. Robinson, 94 Merrion Square, Dublin 2.

FALSE WITNESS

HUNTER REPORT ON PERJURY (1973) FOR "JUSTICE"

SUMMARY OF RECOMMENDATIONS

Substantive law

1. For the purposes of the Perjury Act, or any amendment to it, judicial proceedings should include proceedings before an administrative tribunal (paras. 24-27).
2. Materiality should cease to be a constituent element of the offence of perjury, but should be a factor to be taken into account in a decision to prosecute and in the sentencing process (paras. 28-31).
3. The *mens rea* of perjury should require the making of a false statement with the intention that it be taken as true, and this requirement should be satisfied by recklessness (paras. 32-34).
4. The requirement of corroboration should be retained for prosecution for perjury in judicial proceedings and it should take the form of independent evidence (paras. 38-42).
5. Corroboration should not be required in relation to offences committed outside judicial proceedings (para. 37).
6. Self-contradiction should constitute perjury, but not necessarily where a witness had corrected his earlier false evidence ((paras. 43-47).
7. The defence of duress to a charge of perjury should be made more flexible (paras. 50 and 51).
8. A corporation, through a director, secretary or other official responsible for the policy of the company, should be capable of committing perjury (paras. 52-55).
9. Consideration should be given to the possibility of devising sanctions against the person who wilfully provides false information knowing that it is to be used in a sworn affidavit in judicial proceedings (paras. 56-61).

Prevention and discouragement

10. The oath or affirmation should be administered by the judge or chairman of the Bench who should satisfy himself that the witness understands its implications (para. 71).
11. Consideration should be given to other ways of impressing on witnesses the importance of the oath (para. 72).
12. The existing oath, affirmation and statutory declaration should all be abolished and replaced by one simple non-religious promise or declaration, which should include a statement by the witness that he is aware that he is liable to be prosecuted if he does not tell the truth or wilfully misleads the Court (para. 77).
13. Within the limits of the adversary procedure, Courts should do everything in their power to see that witnesses provide all the relevant and admissible evidence within their knowledge paras. 73-76)).
14. Solicitors and counsel must in all cases accept that they have an overriding duty to try to ensure that the witnesses they call shall not knowingly and deliberately give false evidence to the Court (para. 83).
15. Prosecuting counsel should be under a legal obligation to disclose to the defence statements taken from witnesses which are helpful to the defence (para. 84).
16. Judges and magistrates should be more vigilant than they are to note and call attention to false evidence given in the course of trial proceedings and to send the papers to the Director of Public Prosecutions (para. 85-87).
17. The right of private individuals to bring private prosecutions for perjury should be retained (para. 89).

Remedies

18. In criminal trials by jury, on the recommendations of solicitor and counsel, an independent investigation into allegations of perjury by police witnesses not rebuttable during the trial should be carried out before an appeal, and the report made available to the prosecution, the defence and the Court (paras. 101 and 102).
19. In cases of alleged perjury by other prosecution witnesses an appeal aid certificate should be granted at the request of solicitor and counsel (para. 103).
20. After the conviction for perjury of any witness in a criminal trial, any convicted defendant in that trial should have an unfettered right of appeal, irrespective of whether a previous appeal or application had been refused or abandoned, or he had not appealed.

ASPECTS OF LEGAL AID AND ADVICE

On December 14th, 1974, the Free Legal Advice Centre held a Seminar in the Burlington Hotel. Its purpose was twofold. Firstly to acquaint those involved in the Irish law system with the problems encountered in the English legal aid scheme and secondly to generate discussion among interested parties on the submission of the Free Legal Advice Centres to the Pringle Committee on Civil Legal Aid in the Republic of Ireland.

To these ends three persons were invited to speak from Britain; Mr. James Ritchie of Brent Community Law Centre, Mr. David Offenbach and Mr. Clive Morrick of the Legal Action Group. Mr. John Finlay, then chairman of FLAC was the last of the formal speakers.

A wide range of persons and organisations were represented at the Seminar not least being members of the Judiary and legal professions.

Mr. James Ritchie (Brent Community Law Centre) opened the seminar with an outline of the role of his law centre and the problems extant in the area of operation. Brent he characterised as "inner city stress area" with the attendant difficulties — bad housing, unemployment, poor schooling, a large immigrant population and a general ignorance of legal rights allied with little community organisation.

The law centre is sponsored by the local Authority and has two lawyers presently employed. The first major problem apparent was the landslide of practical casework which militated against the delineation of a rational and coherent policy.

Bearing this in mind liaison with local groups such as Tenants Associations was established and such groups encouraged to publicise widely the rights and duties relevant thereto. The taking of test cases was an important feature of the activity of the centre and this served to highlight the abuses of rights that exist in a deprived area. Thus the community law Centre was not merely a "free solicitor" in an office, but a dynamic organisation to push forward and guarantee the rights of the particular area.

In conclusion Mr. Ritchie pointed out that the particular wish of the Centre was to inform people of their rights in order that they might be enforced. He itemised three ways in which this could be done:—

A) by advertising statutory and voluntary agencies of their legal right and duties
B) by issuing leaflets and advice sheets to the general public concerning their rights and
C) by urging people to organise for the purpose of gaining adequate recognition of their rights and

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Mr. David Offenbach in his speech concentrated mainly upon the nature and defects of the English Legal Aid System founded between 1946 and 1949.

His first criticism was that there still remained a large area of unmet legal needs, particularly in the tribunal area — an area which has gained a large jurisdiction in the decisions affecting people and in particular those areas covering the more impoverished members of society.

The present system was also attacked for its ludicrously complicated administartive structure. It had had the effect of dissuading community groups from pursuing test cases or group cases and had also not radically altered the role, image and education of solicitors. This he felt was anathema to the true purpose of having a free legal aid system.

Despite efforts by the Law Society the defects of the system were still manifold, undue delay being one which discourage entitled persons from using the system. The means tests and the contribution system were also criticised for being unrealistic and harsh in a time of high living costs and mounting inflation. To remedy this Mr. Offenbach suggested a radical rethink of the institutions at present involved and the introduction of a more realistic and dynamic system. The need for a new kind of Legal Education and approach to the role of the lawyer in society was put forward — an idea which itself is being debated at present in the Republic.

Mr. Clive Morrick of the Legal Action Group concluded the guest speakers with a resumé of the Legal Action Group's function. Primarily this group are a central agency for the dispersal of information to practitioner and worker in the areas of law relevant to deprived persons. The fields of Labour, Landlord and Tenant, Social Welfare and Town and Country Planning Law were all covered in their brochures. The emergence of lawyers practising in the areas of "poverty law" was therefore further encouraged by general and easy access to clear and accurate reports of law relevant to these fields.

Mr. John Finlay, the last formal speaker of the seminar concluded by outlining the FLAC proposals for a legal service system in Ireland.

Having described the need for a publicly financed system of legal services he went on to mention the extent of the needs. That statistics were not available was clear, but FLAC had over 5½ years accumulated a case load exceeding 8,000, a small figure in view of the limited scope of FLAC's operation.

Aside from the more financial disability, Mr. Finlay outlined several factors serving to dissuade people from taking legal advice.

i) the geographical location of solicitors offices and their office hours
ii) the ignorance of people that they may have a legal right

iii) many problems cannot adequately be dealt with on a case by case basis
iv) few lawers have a detailed knowledge of areas of law affecting the poor.

The corrollary of such facts must be a Free Legal Service System, and in his address Mr. Finlay outlined FLAC's proposals to the Pringle Committee. The system of legal services must have the characteristics of accessibility as a right, flexibility and co-ordination.

Proposing that a Legal Services Act should be put on the statute book, Mr. Finlay said this should set up a Board to perform the tasks of

a) establishing and administering a panel system of Legal Aid and Advice
b) establishing and supervising Community Law Centre
c) to conduct research and periodic review into the legal service system and any improvements necessary.

The panel system would be divided into four categories, covering the areas of Family Law, Criminal Law, Tribunal Law and all other problems normally dealt with by a solicitor.

A meants test was felt to be a necessary evil but it was urged that the necessary adjunct of bureaucracy be kept to a minimum.

It was felt that Community Law Centres filled the gaps in the panel system and offered a more readily available service. Their foundation would also lead to a growth of lawyers with the necessary knowledge of law affecting the poor.

FLAC had just founded the first Community Law Centre in the Republic, situated in Coolock, and it is hoped that its success will stimulate the government to action and prove the viability of the concept.

Concluding his speech, Mr. Finlay said the Council felt there was nothing unrealistic or utopian about the FLAC proposals. That such services would cost money was not denied, but the duty of the Government to provide such a system could not be avoided.

There was considerable discussion during the seminar and it was indicative of the seriousness of the people concerned that recognition of free legal services was so well received.

The Council of FLAC, meeting after the seminar felt that the expense and effort of organising the seminar were worth while and contributed to the debate on the necessity, viability and structure of a free legal service system. The Treasurer would also like to remind readers that the seminar incurred a large financial deficit. All contributions will be gratefully received. The address to send such contributions is c/o Alan Shatter, 14 Crannagh Park, Dublin 14.

Council Dinner

The Annual Dinner of the Council of the Society was held in the Library of Solicitors' Buildings on Thursday, 24th April, 1975.

The President, Mr. W. A. Osborne, who had just returned from Australia and New Zealand, received the guests. The guests included the Minister for Finance (Mr. R. Ryan, T.D.), the Minister for Lands (Mr. T. Fitzpatrick, T.D.), the Chief Justice (The Hon. T. F. O'Higgins), the President of the High Court (The Hon. T. Finlay), the Attorney-General (Mr. D. Costello S.C.), the Judges of the Supreme Court, Mr. Justice Kenny, Mr. Justice Butler, Mr. Justice Hamilton, Mr. Justice Gannon and Mr. Justice Doyle, the President of the Circuit Court, the President of the Special Criminal Court (Mr. Justice Pringle), the President of the District Court, and the President and Secretary of the Incorporated Law Society of Northern Ireland.

The toast of "Our Guests" was proposed by Mr. Joseph Dundon, Vice-President, and responded to by the Chief Justice. The toast of "The Society" was proposed by Mr. Justice Doyle, and responded to by the President.

CAPITAL TAXATION SEMINARS

Seminars will be held by the Society in

CORK, 11th-12th July, 1975

and

DUBLIN, 18th-19th July, 1975

Further details will be announced later

RIGHTS OF THE WRONGED

(Reprinted from Law Society Gazette Editorial—
23 April, 1975)

Neither the existence of the Council on Tribunals nor that of the Parliamentary Commissioner — two recently created institutions superimposed upon more traditional protectors of the citizen in this country — really begin to resolve the problem of redressing the grievances of those who suffer serious disadvantage as a result of the unfair exercise of executive discretion. This is borne out by an incident which is recounted in the Annual Report of the Council on Tribunals (HMSO, 45p) which was published last week. The incident was widely publicised at the time of the events in question, but deserves retelling for the sake of its wider implications.

Oxford County Council and Reading County Borough Council agreed that no development should be permitted on land abutting a main road in an expanding district on the outskirts of Reading, but that the land in question, to a depth of 50 feet from the edge of the existing road should be earmarked for road-widening purposes. However, the County Council subsequently gave permission for the building of a new Supermarket, up to the very edge of the existing carriageway, so that the land allocated for road-widening purposes was swallowed up. By the time this mistake was discovered, the foundations of the Supermarket were already laid, and if the County Council had then required the developers to move the foundations back to the agreed building line, they would have had to pay them £50,000 in compensation. At any rate, the County Council rejected representations to the effect that the course should nevertheless be followed, from both the Borough Council and local residents whose properties adjoined the road on the opposite side from the Supermarket and whose interest in the matter was of course that this development was 50 feet nearer their homes than it ought to have been.

The objectors — the Borough Council and the local residents —then requested the Secretary of State for the Environment to make a default order under S. 207 of the Town and Country Planning Act 1962, directing the County Council to remedy their error and to have the Supermarket foundations moved back to the agreed building line. The Minister set up a public local inquiry, on the rather curious ground that — according to the Annual Report of the Council on Tribunals — 'the views of the two councils were irreconcilable'. The question was of course which was right, and on that there was little to enquire into. At any rate, the **result of the Public Inquiry was wholly in the objectors' favour.** The Minister indicated to them that he accepted the inquiry inspector's recommendation in principle, which meant that the Supermarket would have to be re-sited. However, these were, he said, one or two points of detail he wished to consider. Nothing more was heard until, several months later, without any further approach to the objectors, and ignoring their approaches to him, the Minister announced, after he had had extensive 'private consultations' with the County Council, that the Supermarket would stay where it was.

The Council on Tribunals (like the Parliamentary Commissioner, who had already gone into the affair) are **critical of the Minister for his failure to allow the objectors to make further representations once he had it in mind to reverse his original conclusion and to reject after all, the recommendation of the public local inquiry.** However, had the Minister given the objectors the opportunity of making further representations, that would not have done them justice in the circumstances of the case (for reasons we will return to shortly) if, in the event, he had allowed the Supermarket development to proceed on its existing site. At the inquiry, the objectors had — at considerable cost to themselves — successfully argued that the Supermarket should be re-sited, and when the Parliamentary Commissioner came to review the case, he concluded that they were entitled to have their costs reimbursed. The Minister agreed. Since however they had been successful at the inquiry at which the costs were incurred, that can hardly be regarded as much by way of 'redress'.

The building of the Supermarket on a level with the existing carriageway had not been permitted under the original planning proposals for the very good reason that widening of the adjoining main roadway was essential. It remained essential of course after the Minister decided that the Supermarket foundations could stay where they were. And it is at this point in the saga that the objectors' real grievance arises, for in the event, as the Parliamentary Commissioner pointed out very clearly, they not only suffered also a serious loss of land. For **when the land set aside for road-widening on the Supermarket side was no longer available, the only alternative was to take part of the objectors' properties for the purpose.** There is of course nothing unusual in the taking of private land for roadworks and other public purposes, but this is justifiable only on the basis that there is no feasible alternative. In this case, there was no feasible alternative, at the stage at which the Minister intervened, only because a very feasible alternative had been eliminated as a result of the County Council's mistake.

People have to suffer the consequences of other people's mistakes in all kinds of contexts. There is no reason why they should be expected to do so, if the consequences are preventable. Faced with two alternatives, one bearing heavily on the objectors, the Minister chose to put the burden on the latter, lest the County Council should have to bear the cost. The essential inequity in this is however that the situation in which such a choice had to be made at all only arose because of the County Council's mistake, and was in no way attributable to any action on the part of the objectors. If we had an effective system of remedying serious disadvantages to individuals

arising from administrative action, the objectors would have had a right to substantial compensation, over and above the compulsory purchase compensation, they would have been entitled to in an ordinary case for the loss of their land. Certainly they would have had such a right had they suffered comparable losses through the mistake of a private individual or corporation, and it is putting public authorities in an indefensively privileged position when the balance is always tipped in their favour, even by the weight of their own errors. The Reading Supermarket should have been moved back and the County Council should have paid the price.

Summary of Recent English Decisions

Common Law

To establish liability to a trespassing child there must be shown knowledge of facts which would fairly lead a humane and sensible man to infer the likelihood of a serious accident: *Penny v. Northamption Borough Council*, (1974) L.G.R. 733 C.A.

It is contrary to natural justice that a magistrate should hear a case in which he has such an interest that there is a real likelihood of bias: *R. Altrincham Justices, ex p. Pennington.*

Company and Commercial Law

In an action for allegedly unlawful withholding of supplies, interlocutary injunctions will not be granted against the defendant suppliers if they make out a prima facie case that they had reasonable cause to believe their goods to have been used as loss leaders: *J.J.B. (Sports) v. Milbro Sports*, (1975) I.C.R. 73.

Conveyancing and Property Law

A landlord is not bound to accept tender of rent from a third party: *Richards v. De Freitas*, 29 Prop. E.C.R. (1974).

A demand for rent in the knowledge of the right to forfeiture of the lease constitutes a waiver of that right: *Welch v. Birrane*, 29 Prop. E.C.R. 102.

A juror leaving the jury room after the jury has retired to consider its verdict constitutes a material irregularity calling for the discharge of the jury and a re-trial: *R. v. Goodson*, (1975) 1 All E.R. 760, C.A.

Criminal Law

Acts or words emanating from a person other than the victim are capable of amounting to provocation as a defence to a murder charge: *R. v. Davies (Peter)*, (1975) 1 All E.R. 760, C.A.

There is no equity about a tax: *per* ROWLATT J. (1921)

Divorce and Family Law

An adult child of 19 years who assaults his mother can be excluded from his parents' home by injunction in very grave circumstances: *Egan v. Egan*, (1975) 2 W.L.R. 503.

Practice

The majority decision of the Court of Appeal in the *Schorsch Meier* case that English courts have jurisdiction to give judgement in foreign currencies was not made per incuriam: *Miliangos v. George Frank (Textiles)*, (1975) 1 All E.R. 1076 C.A.

It is a serious piece of maladministration for a clerk to issue summonses without the information being laid before a justice: *R. v. Brentford Justices, ex p. Catlin*, (1975) 2 W.L.R. 506 Q.C.

Once a competent tribunal of fact has properly considered the question of fact whether the relationship of master and servant exist between a driver and the defendant, superior tribunals will not reconsider the question on their own behalf: *Howard v. G. T. Jones & Co.*, (1975) R.T.R. 150.

The courts have no jurisdiction to interfere with findings of fact of the Price Commission unless such findings appear to be based upon any misunderstanding of the law or bad faith or are unsupported by the evidence: *General Electric Co. v. Price Commission*, (1975) I.C.R.

Road Traffic

In general, once a person takes a vehicle onto the public road he remains in charge of it until he has taken it off the road again: *Woodage v. Jones (No. 2)*, (1975) R.T.R. 156.

It is not settled law that the person steering a towed vehicle is the driver, and a jury should not be directed to convict of an offence on that basis: *R. v. Shaw (Kenneth)*, (1975) R.T.R. 160.

There is no duty on the driver of a car who is driving at a reasonable speed to slow down or sound his horn when passing a vehicle parked on his nearside: *Moore (An Infant) v. Poyner*, (1975) R.T.R. 127.

Wills

Where the essential object of a trust is to promote by education the grantor's own political ideals, the trust is political rather than educational and is accordingly not charitable: *Re Bushnell (decd.); Lloyds Bank v. Murray*, (975) 1 All E.R. 721.

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EXAMINATION RESULTS

FIRST LAW EXAMINATION

At the First Law Examination held from 17th-21st February, 1975 the following candidates passed:-

Aidan Barrow, Marian Baynes, B.A.; Monica Becker, Michael A. Bolger, Kevin M. Bourke, B.A.; Connell M. Boyce, Aidan R. Brosnan, B.C.L.; Jarlath A. Canney, B.C.L.; Eugene Carey, Laura Casey.

Cyril M. Cawley, B.A.; John K. Collins, B.C.L., LL.B.; Kevin E. M. Comiskey, B.C.L.; Michael M. Condon, Catherine M. Craig, Bryan F. Curtin, Andrew J. L. Davidson, Heather K. Debeir, Paul F. Diamond, Ian A. Dodd.

Kevin A. Doherty, David B. Doyle, Paul G. Ebrill, Gerard J. Ellis, John M. Farrell, Hope D. Fawsitt, B.C.L.; Gerard Fogarty, B.C.L.; Avril Gallagher, B.C.L.; Gerard Gallagher, John Garahy.

Emmet Halley, Timothy G. Hallissey, B.C.L.; Stephen W. Haughey, Richard M. Hogan, Kevin M. Houlihan, Brendan Hyland, B.A.; Marcus K. Jones, Karen Jordan, Patricia J. Keenan, Ellen M. Kehoe.

Olann Kelleher, B.C.L.; Owen Kennedy, Laurence M. Levine, James V. Long, B.C.L.; Michael L. P. MacGuidhir, David Martin, Roger Morley, James P. Murphy, Joseph T. G. Murphy, Patrick McCarthy.

Edward McEllin, Denis A. McMahon, Brigid B. McNamara, Ann M. Nolan, Ronan O'Brien, Owen O'Connell, Kevin O'Connor, Irene A. O'Donovan, John K. O'Driscoll, B.A.; Orlagh O'Farrell.

Terence G. O'Keeffe, Mona O'Leary, B.A.; Anthony O'Malley, B.Comm., H.Dip. Ed.; Gregory F. O'Neill, John J. O'Neill, B.C.L.; William O'Reilly, Irene O'Sullivan, B.C.L.; Patrick P. O'Sullivan, Barbara A. Robinson, B.C.L.

Oliver Ryan-Purcell, Mandy Scales, Colman D. Shanley, B.C.L.; Ambrose A. Sharpe, Mairead Toale, Deirdre M. Townley, Mary A. Twomey, Pat Wallace, Ann C. Walsh, B.C.L.

165 Candidates Attended: 78 Candidates Passed.

SECOND LAW EXAMINATION

At the Second Law Examination held from 14th-24 h February, 1975 the following candidates passed:-

Passed with merit

(1) Dermot V. Hewson.
(2) Thomas V. O'Connor, B.C.L.

Passed

Bernard F. Armstrong, B.C.L.; Sheena Beale, B.C.L.; David M. Bergin, B.C.L.; Marian N. Brazil, B.C.L.; Eithne Breathnach, B.C.L.; Michael G. M. Brennan, B.C.L.; Anthony O. F. Burke, B.A. (Mod.); Brian D. Therese Clarke, B.C.L.; Aidan Collins.

Helen M. Collins, John F. Condon, Patrick Crilly, B.C.L.; Thomas Dowl, B.C.L.; Dominic M. Dowling, Patrick J. Farrell, Paul Fleming, Sean Gallagher, B.C.L.; Margaret M. Gleeson, Patrick G. Goold, B.C.L.

Padraig E. S. Halpenny, Alice B. J. Hanahoe, B.C.L.; Eileen-Marian Howell, Veronica Huggard, B.C.L.; Joseph M. Jordan, B.C.L.; Catriona Kelleher, Patrick JJ A. Kelly, Martin Lennon, John R. Lynch, B.C.L.; Sheila F. Lynch, B.C.L.

Edward M. MacBride, B.A.; Cathal MacCarthy, Aedin Meagher, B.C.L.; Fiona Muldoon, Patrick McCafferty, B.A.; Gerard A. McCanny, Gerard McCarthy, Lorna J. McCarthy, Michele McEvoy, Raymond P. McGovern, B.A.

Patrick E. McMullin, Elizabeth A. Nagle, B.A.; Susan H. Nolan, B.C.L.; Sylvia O'Connor, Catherine O'Doherty, Niall K. O'Doherty, Michael J. O'Donnell, B.C.L.; Hugh V. O'Donoghue, B.C.L.; Stephen O'Dwyer, B.C.L.; Donal P. O'Hagan.

John B. O'Herlihy, B.C.L.; Constantine G. O'Leary, B.C.L.; Pol O Murchu, Anne O'Reilly, Francis O'Riordan, Brian O'Sullivan, B.C.L.; Mary C. O'Sullivan, B.C.L.; Francis O'Toole, B.C.L.; Michael Patwell.

Hilary J. Prentice, B.A. (Mod.); Alan Shatter, B.A. (Mod.); Joanne Sheehan, Peter J. Smith, Adrian Stokes, B.C.L.; Vincent Toher; David N. N. Tomkin, B.A., B.Phil. (Oxen); Anne R. Walsh, B.C.L.; Gerard H. Walsh, Walsh, B.A., (Mod.); Mary T. P. Ward, John Weston.

THIRD LAW EXAMINATION

At the Third Law Examination held from 14th-24th February, 1975 the following candidates passed:-

Passed with merit

(1) Roderick Buckley, M.A.
(2) Kieran J. O'Callaghan, B.C.L., LL.B.
(3) Hugh M. Fitzpatrick, B.C.L.

Passed

John P. Brophy, Cornelius D. Brosnan, B.C.L.; David B. Browne, B.C.L.; George P. Bruen, B.C.L.; Nicholas A. Butler, B.C.L.; Niamh F. Casey, B.C.L.; Joseph Caulfield, B.Comm.; Eoghan P. Clear, B.C.L.; Terence W. Coghlan, B.A. (Mod.), LL.B.

Marie C. Collins, Frances Cooke, B.C.L.; James P. Courtney, Donogh J. M. Crowley, B.C.L.; Randal Doherty, Roderic Dolan, B.C.L.; Elizabeth Farquharson, B.C.L., B.L.; Denis J. Finn, B.C.L.; Sheila (Julia M.) Gillan, Alan G. Graham, B.A. (Mod.).

Ita M. Harvey, B.C.L.; John J. Hayes, B.C.L.; Henry N. M. Healy, Declan Hegarty, B.A.; Seamus F. Hughes, Philip Joyce, Niall D. Kennedy, B.A.; Gillian Kiersey, B.C.L.; Francis J. Lowney, B.C.L.; Helen Lucey, B.C.L.

Margaret Lucey, B.C.L.; Michael L. P. Mac Guidhin, Noel Malone, John V. Morahan, B.C.L.; Joseph B. Morton, B.C.L.; Michael J. K. McCarthy, B.C.L.; Alan D. McCrea, B.A. (Mod.); Thomas A. Nally, B.C.L.; Bernard J. O'Beirne, B.C.L.

Ross A. O Cathain, B.C.L.; John V. O'Dwyer, B.C.L.; Adrian P. O'Gorman, B.C.L.; Thomas V. O'Sullivan, B.C.L.; Francis J. O'Toole, B.C.L., B.L.; Brian P. Redden, B.C.L.; Graham C. Richards, B.A. (Mod.); Terence D. Sweeney, B.C.L.; Brian F. Swift, B.C.L.

63 Candidates Attended: 50 Candidates Passed.

CRIMINAL JUSTICE (LEGAL AID) (AMENDMENT) REGULATIONS 1975 S.I. No. 100/1975

I, PATRICK COONEY, Minister for Justice, in exercise of the powers conferred on me by section 10 of the Criminal Justice (Legal Aid) Act, 1962 (No. 12 of 1962), and, in so far as these regulations are in relation to rates or scales of payment of fees, costs or expenses payable out of moneys provided by the Oireachtas pursuant to certificates for free legal aid, with the consent of the Minister for Finance, hereby make the following regulations:

1. These Regulations may be cited as the Criminal Justice (Legal Aid) (Amendment) Regulations, 1975.

2. In these Regulations:—

"the Act" means the Criminal Justice (Legal Aid) Act, 1962 (No. 12 of 1962);

"the Principal Regulations" means the Criminal Justice (Legal Aid) Regulations, 1965 (S.I. No.12 of 1965);

"the 1970 Regulations" means the Criminal Justice (Legal Aid) (Amendment) Regulations, 1970 (S.I. No. 240 of 1970).

3. Regulation 7(2) of the Principal Regulations is hereby amended by the substitution for "the defence or appeal, as the case may be," of "his case" and the said Regulation 7(2), as so amended, is set out in the Table to this paragraph.

TABLE

(2) The Court granting a Certificate (other than a Legal Aid (District Court) Certificate) for free legal aid may, if the person to whom it is granted is charged with murder or the case concerning him appears to present exceptional difficulty and is of opinion that his case cannot be conducted adequately without the assistance of two counsel, direct that two Counsel be assigned to the person to act for him in the preparation and conduct of his case.

4. The Principal Regulations are hereby amended by the substitution for Regulation 10 (as amended by Regulation 4(1) of the 1970 Regulations) of the following Regulation:—

"10 (1) Subject to paragraphs (4), (6) aand (7) of this Regulation, the fees (payable under the Act) of a solicitor assigned in relation to any particular case in pursuance of a certificate for free legal aid shall be those specified in Column (2) of the First Schedule to these Regulations opposite the mention of the particular case in column (1) of the said Schedule, together with, if the case lasts for more than one day, the fees specified in column (3) of the said Schedule opposite the mention of the particular case in the said column (1) for each day or part of a day after the first for which the case lasts.

(2) Subject to paragraphs (4), (5), (7) and (8) of this Regulation, where one Counsel only is assigned in relation to any particular case in pursuance of a Certificate for Free Legal Aid, the fees (payable under the Act) of the Counsel so assigned shall be those specified in column (4) of the First Schedule to those Regulations opposite the mention of the particular case in column (1) of the said Schedule, together with, if the case lasts for more than one day, the fees specified in column (5) of the said Schedule opposite the mention of the particular case in the said column (1) for each day oprart of a day after the first for which the case lasts.

(3) Subject to paragraphs (4), (5), (7) and (8) of this Regulation, where two Counsel are assigned in relation to any particular case in pursuance of a certificate for free legal aid, the fees (payable under the Act) of the first counsel so assigned shall be those specified in column (4) of the First Schedule to these Regulations opposite the mention of the particular case in column (1) of the said Schedule together with, if the case lasts for more than one day, the fees specified in column (5) of the said Schedule opposite the mention of the particular case in the said column (1) for each day or part of a day after the first for which the case lasts and the fees (payable under the Act) of the second counsel so assigned shall be two-thirds of each of the fees aforesaid rounded up to the nearest pound.

(4) Where, on any day, the hearing of a case in relation to which a solicitor or a solicitor and counsel is or are assigned in pursuance of a Certificate for Free Legal Aid consists of one or more of the following, that is to say, the delivery of a reserved judgment, consideration of the penalty (if any) to be imposed on conviction of an offence and the imposition or non-imposition of a penalty or an application for an adjournment or a remand:—

(a) a fee of £5.25 shall be paid under the Act to the solicitor, if the solicitor attends the hearing, and

(b) if counsel is or are assigned in pursuance of the certificate, a fee of £4.20 shall be paid under the Act to one counsel, if he attends the hearing (other than a hearing consisting only of an application for an adjournment);

Provided that, where a person has been sent forward for sentence under section 13(2) of the Criminal Procedure Act, 1967 (No. 12 of 1967), the hearing at which he appears or is brought before the court for sentence shall not, for the purpose of this paragraph, be treated as consisting only of the consideration of the penalty (if any) to be imposed on conviction of an offence and the imposition or non-imposition of a penalty.

(5) No fee shall be paid under the Act to counsel assigned in relation to any particular case in pursuance of a Certificate for Free Legal Aid in respect of any day on which the hearing consists only of an application in relation to Bail.

(6) No fee shall be paid under the Act to a solicitor assigned in relation to any particular case in pursuance of a Certificate for Free Legal Aid in respect of any day on which the hearing of the case consists only of an application in relation to Bail other than an application in relation to Bail to the High Court or Supreme Court in respect of which:—

a) if the hearing lasts for one day only, a fee of £28 shall be paid, and,

(b) if the hearing lasts for more than one day, a fee of £28 shall be paid for the first day and a fee of £14 shall be paid for each day of part of a day after the first for which the case lasts.

(7) The fees (payable under the Act) of a person, being either a solicitor or counsel, assigned pursuant to Certificate for Free Legal Aid on behalf of two or more persons whose cases are being heard together, shall be those to which the person would have been entitled under the Act if he had been assigned pursuant to a certificate for free legal aid on behalf of one person only increased by such amount (if any) as the Court may think proper not exceeding:—

(a) in case the assignments are on behalf of two persons only, 40% of such fees, and

(b) in case the assignments are on behalf of three or more persons, 40% of such fees in respect of two of the persons and 20% of such fees in respect of the other person or each of the other persons, as the case may be.

(8) Where one of two Counsel are assigned in relation to any particular case in pursuance of a Certificate for Free Legal Aid and, in the opinion of the Court hearing the case, it was necessary for the person to whom the certificate was granted to obtain preliminary advice or advices from counsel in writing in relation to the case, a single fee shall be paid under the Act in respect of the advice or advices and it shall be of such amount, not exceeding £10.50, as the Court hearing the case considers proper and certifies".

5. Regulation 11 of the Principal Regulations (as amended by Regulation 5 of the 1970 Regulations) is hereby amended by:—

(a) the substitution in paragraphs (2) and (3) for "1s per mile" of "8p per mile", and

(b) the substitution in paragraph (4) for "one or more of the following, that is to say an application for a remand or in relation to bail" of "an application in relation to bail other than an application in relation to bail to the High Court or Supreme Court", and the paragraphs, as so amended, are set out in the Table to this Regulation.

TABLE

(2) (2) Subject to paragraphs (4) and (5) of this Regulation, the travelling expenses actually and necessarily incurred by a solicitor in attending sittings of the Circuit or District Court on any day in any place (other than the County or County Borough of Dublin) in connection with a case in relation to which he has been assigned to a Certificate for Free Legal Aid shall be payable under the Act as follows:—

(a) in case the solicitor makes the whole journey in his own motor-car, a sum calculated at the rate of 8p per mile of the journey shall be paid, and

(b) in any other case, a sum equal to the lesser of the following shall be paid, namely:

(i) the actual cost of the journey,

(ii) the cost of the journey by public transport and (to the extent (if any) that public transport is not available) hired car, or if no public transport is available for the journey, hired car.

(3) Subject to paragraphs (4) and (5) of this Regulation, the travelling and subsistence expenses actually and necessarily incurred by a solicitor practising elsewhere than in the County or County Borough of Dublin in attending sittings of a court (other than the Circuit or District Court) in connection with a case in relation to which he has been assigned pursuant to a Certificate for Free Legal Aid and travelling and subsistence expenses actually and necessarily incurred by a solicitor in travelling to and from any place visited for the purpose of the case shall be payable under the Act as follows:—

(a) in the case of travelling expenses:—

(i) in case the solicitor makes the whole journey in his own motor-car, a sum calculated at the rate of 8p per mile of the journey shall be paid, and

(ii) in any other case, a sum equal to the lesser of the following shall be paid:—

(i) the actual cost of the journey,

(ii) the cost of the journey by public transport and (to the extent (if any) that public transport is not available) hired car, or if no public transport is available for the journey, hired car, and

(b) in the case of subsistence allowance, on a scale corresponding to the scale for the time being at which the subsistence expenses of civil servants of the highest grade are paid.

(4) No travelling or subsistence expenses shall be paid under the Act to a solicitor assigned in relation to any particular case in pursuance of a Certificate for Free Legal Aid in respect of any day on which the hearing of the case consists only of an application in relation to Bail other than an application in relation to bail to the High Court or Supreme Court.

6. Regulation 3 of the 1970 Regulations is hereby amended by the substitution of "£3.50" for "£2.2.0d", and the said Regulation, as so amended, is set out in the Table to this Regulation.

TABLE

3. Where, in connection with a case which involves a charge of murder, manslaughter or dangerous driving of a vehicle causing death or serious bodily harm to another person and in relation to which a solicitor and one or two counsel are assigned in pursuance of a Certificate for Free Legal Aid, a Consultation or consultations is or are held, a single fee of £3.15 shall be paid under the Act to the counsel or each of the counsel, as the case may be, involved and a single fee of £3.50 shall be paid to the solicitor involved.

7. Where, in connection with a case or cases in relation to which a solicitor has been assigned pursuant to a Certificate or Certificates for Free Legal Aid, it is essential for a solicitor to visit a prison or other custodian centre (other than a Garda Station) there shall be paid under the Act a fee of £9 in respect of each such visit together with travelling expenses actually and necessarily incurred as follows:—

(a) in case the solicitor makes the whole journey in his own motor-car, a sum calculated at the rate of 8p per mile of the journey, and

(b) in any other case, a sum equal to whichever of

the following is the lesser:—

(i) the actual cost of the journey, or

(ii) the cost of the journey by public transport and (to the extent (if any) that public transport is not available) hired car, or if no public transport is available for the journey, hired car.

8. The First Schedule to the Principal Regulations is hereby amended by:—

(a) the insertica after Form B(i) of the Form set out in Part I of the Second Schedule to these Regulations, and

(b) the insertion after Form C(i) of the Form set out in Part II of the Second Schedule to these Regulations.

9. The Third Schedule to the Principal Regulations (as amended by Regulation 8 of the 1970 Regulations) is hereby amended by the substitution for the Table therein of the Table set out in the First Schedule to these Regulations.

FIRST SCHEDULE

SOLICITOR'S AND COUNSEL'S FEES

Case	Fees to be allowed to solicitor		Fees to be allowed to counsel	
(1)	One-day hearing (2)	Each additional day (3)	One-day hearing (4)	Each additional day (5)
	£	£	£	£
District Court hearing in relation to a charge:				
(1) other than murder	17.50	14.00		
(2) of murder			10.50	8.40
Circuit or Central Criminal Court hearing in relation to a charge:				
(1) other than murder in which:				
(a) 1 counsel only is assigned	28.00	14.00	16.80	11.55
(b) 2 counsel are assigned			25.20	16.80
(2) of murder in which:				
(a) 1 counsel only is assigned	70.00	24.50	42.00	19.95
(b) 2 counsel are assigned	84.00	24.50	50.40	30.45
Appeals from District Court	17.50	14.00		
Court of Criminal Appeal hearing in relation to a charge:				
(1) other than murder in which:				
(a) 1 counsel is assigned	33.25	14.00	16.80	11.55
(b) 2 counsel are assigned			25.20	16.80
(2) of murder in which:				
(a) 1 counsel only is assigned	70.00	19.25	42.00	19.95
(b) 2 counsel are assigned	84.00	19.25	50.40	30.45
High Court hearing of case stated by District Court in which:				
(a) 1 counsel only is assigned	28.00	14.00	16.80	11.55
(b) 2 counsel are assigned			25.20	16.80
Supreme Court hearing of case stated by Circuit Court in which:				
(a) 1 counsel only is assigned	28.00	14.00	16.80	11.55
(b) 2 counsel are assigned			25.20	16.80
Supreme Court hearing of appeal from determination of High Court in case stated by District Court in which:				
(a) 1 counsel only is assigned	28.00	14.00	16.80	11.55
(b) 2 counsel are assigned			25.20	16.80
Supreme Court hearing of appeal from Court of Criminal Appeal in relation to a charge:				
(1) other than murder in which:				
(a) 1 counsel only is assigned	33.25	14.00	16.80	11.55
(b) 2 counsel are assigned			25.20	16.80
(2) of murder in which:				
(a) 1 counsel only is assigned	56.00	19.25	42.00	19.95
(b) 2 counsel are assigned	70.00	19.25	50.40	30.45

Given under my official seal this 19th day of May, 1975
PATRICK COONEY, Minister for Justice.

The Register

REGISTRATION OF TITLE ACT, 1964

Issue of New Land Certificate

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

Dated this 31st day of May, 1975.

ALFRED J. O'DWYER, Registrar of Titles.

Schedule

(1) Registered Owner : John McKenna; Folio No. : 7871; Lands : (1) Drummully, (2) Drumconelly; Area : (1) 11a. 3r. 0p., (2) 1a. 0r. 20p.; County : Monaghan.

(2) Registered Owner : Elizabeth Brady; Folio No. : 3074; Lands : Milltown; Area : 3a. 0r. 20p.; County : Cavan.

(3) Registered Owner : Bernard John McKenna; Folio No. : 589; Lands : Derryhee; Area : 7a. 2r. 35p.; County : Monaghan.

(4) Registered Owner : Aidan Patrick O'Carroll; Folio No. : 3711; Lands : Dunlavin Upper (parts); Area : 2a. 2r. 2p.; County : Wicklow.

(5) Registered Owner : Patrick McEntee; Folio No. : 17015; Lands : Part of the land of Rathmanoo containing 1a. 0r. 0p. with the cottage thereon situate in the Barony of Kells Lower; Area : 1a. 0r. 0p.; County : Meath.

(6) Registered Owner : Samuel Bradley; Folio No. : 7743; Lands : Ardough or Huntspark; Area : 22a. 3r. 17p.; County : Queen's.

(7) Registered Owner : James O'Grady; Folio No. : 10424; Lands : Part of the land of Listobit with the cottage thereon situate in the Barony of Shrule; County : Longford.

(8) Registered Owner : Mary Mitchell; Folio No. : 24884; Lands : Balfeddock; Area : 4a. 1r. 36p.; County : Meath.

(9) Registered Owner : Irish Nurseries Limited; Folio No. : 6212; Lands : (1) Daars South, (2) Daars North; Area : (1) 31a. 0r. 30p., (p) 17a. 0r. 32p.; County : Kildare.

(10) Registered Owner : The National Building Agency Limited; Folio No. : 16469; Lands : Srah; Area : 0a. 2r. 4p.; County : King's.

(11) Registered Owner : John Malone; Folio No. : 5399; Lands : Rathnapish; Area : 0a. 1r. 1p.; County : Carlow.

(12) Registered Owner : James Dunne; Folio No. : 4824; Lands : Cherryvalley; Area : 24a. 2r. 16p.; County : Meath.

(13) Registered Owner : Patrick Kelly; Folio No. : 3964; Lands : Carrowlagan; Area : 2a. 1r. 0p.; County : Clare.

14) Registered Owner : Denis Gleeson; Folio No. : 17747; Lands : (1) Cranahurt (part), (2) Cooleen (part); Area : (1) 16a. 0r. 37p., (2) 7a. 2r. 4p.; County : Tipperary.

(15) Registered Owner : John O'Brien; Folio No. : 4624; Lands : Esker South; Area : 19a. 1r. 30p.; County : Longford.

(16) Registered Owner : Patrick Glody; Folio No. : 1965; Lands : Coxtown East; Area : 13a. 0r. 30p.; County : Waterford.

(17) Registered Owners : Most Reverend James McNamee, Bishop of the Diocese of Ardagh and Clonmacnoise; Very Reverend James Earley, P.P. and Reverend Patrick Masterson C.C.; Folio No : 14460; Lands : Knocknahorna; Area : 1a. 0r. 3p.; County : King's.

(18) Registered Owner : Eugene O'Neill Clarke and Margaret Cecila Clarke; Folio No. : 29644; Lands : Part of the land of Dromkeal situate in the Barony of Bantry; Area : 1a. 2r: 0p.; County : Cork.

(19) Registered Owner : John McDermott; Folio No. : 5917; Lands : Petitswood; Area : 9a. 1r. 3p.; County : Westmeath.

(20) Registered Owner : John McDermott; Folio No. : 4289; Lands : Marlinstown; Area : 40a. 3r. 29p.; County : Westmeath.

(21) Registered Owner : The Guardian of the Poor of the Enniscorthy Union; Folio No. : 3720; Lands : Carrigunane; Area : 2a. 0r. 0p.; County : Wexford.

(22) Registered Owner : Daniel Joseph Holland; Folio No. : 13731; Lands : Garraneragh; Area : 92a. 0r. 23p.; County : Cork.

English Solicitors to Visit European Court of Justice

The solicitors' European Group, The Law Society, London, has arranged a visit to the European Court of Justice of the European Communities, the European Investment Bank and the European Parliament as well as joint discussions with Luxembourg Bar. Business sessions and a full social programme have been arranged. The flight departs on Wednesday evening, 18th June and returns on Sunday, 22nd June.

The committee would like to allocate a few places to members of both branches of the legal profession in the United Kingdom, Ireland and Northern Ireland, who are not eligible to register for the conference as members of the solicitors European Group.

Estimated total cost is £125. For full information write to Mrs. Margaret Chapman, Conference Officer, The Law Society, 113, Chancery Lane, London WC2 1PL.

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Assistant Solicitor : Candidates must have been admitted and be enrolled as Solicitors in the State and be under 30 years of age.

Closing Date : 19th June, 1975

For application forms and further details send a post-card to : The Secretary, Civil Service Commission, 45 Upper O'Connell Street, Dublin 1.

THE GAZETTE OF THE INCORPORATED LAW SOCIETY OF IRELAND

June, 1975
Vol. 69 No. 5

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The Editor welcomes articles, letters and other contributions for publication in the Gazette.

Opinions and comments in contributed articles and reviews are not published as the views of the Council unless expressly so described.
Likewise the opinions expressed in the Editorial are those of the Editor and do not necessarily represent the views of the Council.

The Gazette is published during the third week of each month; material for publication should be in the Editor's hands before the 15th of the previous month if it is intended that it should appear in the following issue. Acceptance of material will in fact be included in any particular for publication is not a guarantee that it issue since this must depend on the space available.

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PRELIMINARY NOTICE

The next issue of the July-August Gazette will be published about 20th August next. Limited material for this issue should be received at latest by 25th July next. The following issue will be that for September. Material for that issue should reach the Editor at latest by 20th August next.

ORDINARY GENERAL MEETING

The President, Mr. W. A. Osborne, took the Chair at the Ordinary General Meeting of the Society which was held in Jury's Hotel, Westport,. Co Mayo, on Saturday, 9th May, 1975. The notice convening the Meeting, and the Minutes of the last Ordinary General Meeting held in Ennis, Co. Clare in May, 1974, were taken as read and duly signed. Mr. Michael Egan of Castlebar, President of the Mayo Solicitors' Bar Association, welcomed the delegates to the first General Meeting to be held in Co. Mayo.

Mr. P. C. Moore proposed, and Mr. Michael Houlihan seconded the resolution that Messrs. Richard Branigan, Brendan McCormack, Roderick Tierney, Alexander McDonald and Eunan McCarron be appointed Scrutineers of the Ballot in respect of the election for the Council for 1975-76.

This resolution was passed unanimously.

The President then addressed the meeting as follows:

This year, I am in the happy position of being able to report substantial progress in several areas of the Society's activities.

This is particularly the case in the field of Education and in the training of future members of the profession. I am glad to say that the regulations providing for a University Degree as a condition of entry to the profession, as from 1st October, 1975, have now been made. Concurrent with a higher standard of entry to the profession, the Society has in hand the improvement and enlargement of its training course in practical subjects. This will take some time to implement fully, but as and from October next, apprentices will be required to undergo training in the field of Taxation and in the practical aspects of Conveyancing. The range of such additional courses will be augmented as quickly as possible. Before leaving his area of activity, I must pay tribute to the practical help and continuing support which the Society has received from the Universities and from Mr. Cooney, Minister for Justice. Without that help, it would not have been possible to make these changes. The Minister recently acknowledged the value of the work done by the Society by saying how appreciative he was of the Society's work in concluding this matter.

Tribute is also due to the members of our Committee whose long and arduous hours of hard work over the past six months, has resulted in the introduction of the new regulations. It follows that in future, apprentices will be University Graduates undergoing post graduate practical training. In these circumstances, the Council of the Society considers that the charging of apprenticeship premiums are inappropriate in the future. Consequently, I am authorised to inform our members that as and from the 1st October next, the Council will not approve of the charging of premiums to apprentices under the new system. I will seek the co-operation of all of our members in implementing this new policy.

In this rapid changing world there is need for constant updating and of revision of practices and procedure, so as to meet fully and adequately the needs of a changing society. This need applies also to members of our profession, as well as to persons in other walks of life. We in the Council are conscious of this need. In this respect, your Council has in hand projects providing for improvement in Conveyancing procedures, including those dealing with the sale of flats, which has been a very difficult problem, not only for the profession, but also for the public, particularly in the field of borrowing on the security of this type of property. The updating and reprinting of the Society's Handbook, and of the opinions of the Council, (2) the presentation of the new taxation measures in understandable and digestible form, (3) the review of our costs system, (4) the establishment of a suitable course for the training of legal executives, (5) a Communications Training Centre, as well as courses for profession and students, and (6) a back up service in the accountancy area of office management are all contemplated. Two courses in taxation are being arranged for Dublin and Cork. Recently as you know, a Superannuation Scheme has been successfully introduced, which the Society hopes will be for the benefit of its members. The involvement of the younger members of our profession and our students in the Free Legal Aid scheme and their arrangements of Seminars on legal and other subjects are evidence of a sincere commitment in the social field. Mr. John Connolly has been appointed Accountant to the Society from 1st June 1975.

Since our last meeting, the Society has discussed fully with the Minister for Finance and the Revenue Commissioners the involved subject of existing and proposed taxation legislation. While these discussions have been most amicable and while our members have always and will, subject to the Constitution, have regard to the law as it is enacted, nevertheless, **we deprecate the continuing and increasing intrusion into the confidential affairs of our clients.** So far it has been possible to reach an accommodation with the Revenue Commissioners, but the position

Summer Meeting, Westport, May, 1975

(From left) Robert F. Laurie, Secretary, Scottish Law Society, J. D. Wheelans, M.B.E., President, Scottish Law Society, W. A. Osborne, President, Incorporated Law Society of Ireland, Leslie H. Boyd, President, Incorporated Law Society of Northern Ireland, Sydney Lomas, Secretary, Incorporated Law Society of Northern Ireland.

is now being reached where, as a profession of lawyers, we may be obliged to cry halt. It would be a tragic situation if we reached a stage where the people of Ireland were unable to consult with their professional advisers, because they feared than an all powerful State would demand that the confidence so divulged be disclosed to it and to the clients detriment. Hopefully that situation will not be reached. The confidences of a client must be rigidly preserved in full. That is our clear duty.

We are also very concerned about the criticism which has been levelled at the profession in recent months. Unfortunately the justifiable annoyance of clients, caused by inefficiencies and the delays of what in effect is from three to four per cent of our members, becomes inflated by publicity and consequently reflects on the entire profession. We accept without hesitation constructive criticism, but we are entitled to object to criticism which tends to be destructive and which lowers the standard of our integrity in the public eye. Without hesitation I say that 96% to 97% of our members are men and women of the highest integrity, who are providing an excellent service to the public of which they may be proud. A solicitor's relationship with his own client is a general rule, as fine a relationship as one can find anywhere. Some of the discontent which exists and results in complaints, is due to the lack of understanding by the public of the diffi-

culties which we encounter in our work. A client is naturally concerned about the progress of his case, he does not know of the delays inherent in the present staffing of the Land Registry and in other public offices, the back log in some of our Courts and the other areas in which delays can occur and hence of course the solicitor becomes the target for the understandable irritation and frustration felt by clients. **Forewarning clients of probable delays would forestall some of the irritations and frustrations which ultimately lead to many of the complaints which we receive.** Brief progress reports, where there will be delay, will assist by keeping the client informed as to the problem area. The Society as I have said, is fully conscious of the public need, and processes all legitimate complaints from the public through its Registrars and Disciplinary Committees. Complaints are investigated by our staff which has been augmented in recent months to speed the resolution of these problems in the public interest. The reputation of our profession is high and it must be safeguarded. Hence, the few members of our profession whose conduct brings that reputation into question in the slightest degree, must accept the consequences, in fairness to all. Protection and service for the public is our vital role. It goes without saying, that it is the duty of every solicitor and of our Society, to ensure that protection and service is given and also clearly seen to be given.

From time to time there is much comment in relation to solicitors' fees and earnings. Quite an amount of the comment appears to be based on a lack of understanding of the functions and services provided by a solicitor and of the cost of providing that service. It is absolutely true to say that **there has been no real or worthwhile increase in the earnings of the members of our profession during the past ten years.** This in turn has created part of our existing problem, in that there are some members of our profession at present who for financial considerations, are unable to engage the expert assistance which is essential at this time in providing for the public an adequate and acceptable service. Many of the law clerks and legal assistants who were available to practitioneers, have over the years gone into the public service, by reason of the fact that our profession financially was unable to compete with the terms offered to non-qualified legal personnel. Many of our members work hours in excess of, and some far in excess of, a forty hour week. All one need do in general is to compare even the witnesses' expenses demand by and paid to ordinary and expert witnesses who attend Court, to the fee paid to a solicitor for attending in the same Court. An increase of 66⅔% in the fees payable in relation to the Criminal Legal Aid Scheme was granted earlier this year and will soon be in force. This increase which is still inadequate, shows how far these fees had lagged behind in reasonableness over the years. One need only compare the fees charged by businesses which are involved in the provision of an adequate office administration and structure similar to what is required in our profession with our fees, to see how wide the gap is and how low our fees and remuneration the by comparison.

The Council has recently applied to the Court Committees for increases in costs. A questionnaire has been sent to all members, but the response is unsatisfactory. A far better response should be made. I must emphasise that all information disclosed is confidential. Without this information, there is no prospect of getting the Prices Commission to consider our application properly.

Amendments to Bye Laws

Mr. Peter Prentice, in proposing the amendments of various Bye-Laws of the Society, pointed out that these amendments were proposed for the assistance of members and the efficient running of the Council of the Society.

1. Amendment No. 1 was then read as follows:—
That Bye-law 13 be an and it is amended as follows:—

That the words "twenty-one" be substituted for the word "fourteen" on the fifth line thereof, and that the word "fourteen" be substituted for the words "one week" on the 7th line thereof and for the word "three" on the 9th line thereof.

The effect of the amendment is that Twenty One days notice, instead of Fourteen as formerly, is henceforth necessary, in order to deal with any special business connected with the Society. This Notice must be posted in the Society's premises at least fourteen days beforehand, instead of seven days as previously. Notice of such Special Business is to be sent to the Director General at least 14 days, instead of 3 days as formerly, before it is discussed.

2. Amendment 2 introduces a new Bye-Law as follows:—

"24a. No resolution shall be binding on the Society until it has been adopted by the Council, or has been confirmed at the next General Meeting, and it shall be the duty of the Council, if they do not adopt the resolution, to bring the same before the next General Meeting accordingly. Provided that this Bye-law shall not apply in the case of:—

(a) the repeal or alteration of a Bye-law; or
(b) the enactment of a new bye-law; or
(c) a resolution proposed by the Council and carried at the meeting at which it shall have been proposed; or
(d) a resolution confirming, rescinding or varying the period of suspension of a member from membership of the Society; or
(e) a resolution passed in pursuance of Rule 48 or Rule 49; or

(f) a resolution altering the amount of the annual subscription."

Broadly no resolution whatsoever shall be binding on the Society unless it has been adopted at the Council and confirmed at the next General Meeting. The following resolutions do not require to be confirmed at a General Meeting, and may be adopted as valid if made exclusively by the Council:—

(a) the alteration or repeal of any of the Society's Bye-Laws,

(b) The enactment of any new bye-law,

(c) A resolution proposed at a Council Meeting which shall have been carried at such meeting,

(d) A resolution proposed at a Council Meeting which shall have been carried at such meeting,

e) Bye-law 47 states that, provided 20 members of the Council are present, and 15 vote in favour of the resolution, that a resolution can be passed suspending a member of the Council. Bye-law 48 provides that, if such resolution of suspension is passed, the Council shall convene a Special Meeting of the Society to be held within 21 days; this Special Meeting shall have power to remove from office the member so suspended, or act as they think fit. Henceforth the Council can act in this matter, without summoning a Special General Meeting.

(f) Rule 49 provides that the Council may if necessary suspend any Member of the Society from membership or expel him from the hall during such period as it may decide, provided that such period shall not extend beyond the next General Meeting. 20 Members of the Council must be present when such suspension or expulsion is proposed, and at least 15 members must vote for it. Henceforth the resolution of the Council alone, if passed, will be sufficient to expel or suspend a Member.

(g) A resolution altering the amount of the Annual Subscription may henceforth be passed by a majority vote of the Council.

3. That an addition to Bye-law 34 be made as follows:—

"Where only one candidate is validly nominated in respect of any Province Scrutineers of the Ballot shall be empowered to return such candidate for election without the necessity of printing or issuing of voting papers in respect thereof."

This refers to the fact that, in the event of one candidate alone being validly nominated to a vacancy as Provincial Delegate, the Scrutineers are entitled to declare such candidate elected without printing or issuing any voting papers in respect thereof.

2. That a new Bye-law 36A be inserted as follows:—

"Where the number of valid nominations equals the number of places vacant, the Scrutineers of the Ballot shall be empowered to return such candidates for election under Bye-Law 37 without the necessity of printing or of issuing of voting papers in respect thereof. In such circumstances, the seniority as between persons elected at the Council for the first time shall be determined by lot".

The effect of this is that if, in an election to the Council, the number of valid nominations equals the number of places vacant, the scrutineers are entitled to declare such candidates elected without printing or issuing any voting papers in respect thereof.

5. That a new Bye-law 41 be enacted as follows:—

"41. The Council shall appoint the Director General, (who may also act as Secretary and Registrar of the Society) and all other officers and servants of the Society and the Council shall have control over all the officers and servants of the Society, and shall have power to grant superannuations to these or any of them, and may from time to time remove or dismiss any of such officers or servants, and appoint others in their places. The Council shall have power to delegate some or all of its functions in relation to the Society's officers and servants to the Director General.

This new Bye-law is on the same lines as the former Bye-law 41, and provides that the Council may:—

(1) appoint the Director General and all other officers and servants of the Society,

(2) arrange to have control over all such officers and servants,

(3) grant superannuations to any of them,

(4) remove or dismiss any such officers or servants and appoint others in their places,

(5) delegate all or any of its functions in relation to officers and servants to the Director General.

6. That a new Bye-law 43 relating to the making of regulations be enacted as follows:—

"43. The Council may from time to time make Regulations for any of the following objects, and may altar or rescind any Regulation so made, provided that no such Regulation may be altered or rescinded by a subsequent Council, unless with the express consent of a majority of the Ordinary Members of such Council:—

(a) The manner of admitting Members of the Society, and of conducting the proceedings of the Meetings of the Council.

(b) The Management of all premises of the Society and for the conduct of business and functions in any such premises.

(c) The amounts and payments of all salaries, wages and other allowances to all officers and servants of the Society.

This provides that the Council may make regulations providing for:—

(a) The manner of admitting members of the Society and of conducting Meetings of the Council.

(b) The amounts and payments of all salaries and other allowances to all officers and servants of the Society.

7. That Bye-law 50 be revoked

This provides for the revocation of Bye-law 50, which stated that presses could be rented to Members at 25p per annum.

8. That a new Bye-law 51 be adopted:—

"The Society will not be responsible for any loss or damage that may happen to property of members in any of the premises of the Society from any cause whatever".

9. That a new Bye-law 51a be and it is hereby adopted as follows:—

"51a. That wherever in these bye laws the term Secretary is used it shall be construed as meaning the Director General or other Officer designated by the Council for the purpose."

The proposal to amend all these bye-laws was made by Mr. John Carrigan seconded by Mr. John Jermyn and duly passed.

The President then mentioned the difficulties connected with the law fees previously presented in the *Criminal Legal Aid Scheme.* He stated that the Council had accepted the invitation of the Minister of Justice to discuss the matter. It had also been arranged that solicitors in the Dublin area who had refused to carry out the Criminal Legal Aid Scheme would resume their services as from Monday, 13th May.

Mr. Gerald Hickey, Chairman of the Finance Committee, then mentioned that there had been a good response to the proposed *Superannuation Scheme* for solicitors. The sum of £70,000 had been collected, and brochures were available if required. An annual report on the position would be presented.

As regards *taxation,* with regard to Section 176 of the Income Tax Act 1967, relating to disclosure of information, any person required to do so by an Inspector must deliver a list of assets belonging to any person, together with his name and address. An arrangement had been reached with the Revenue Commissioner whereby such returns would only be made by solicitors in defined limited situations.

Mr. Brian O'Connor feared the effects of the Wealth Bill 1975 which briefly provided that the Revenue Commissioners may demand from anybody without limit, information, documents and records relevant to the taxable wealth of another person. It would seem that the fundamental person right of privacy is dead.

Mr. T. C. O'Mahony was sceptical about the alleged protection afforded by the Treaty of Rome, and stated that, in the event of conflict with the Revenue Authorities, we would probably have to rely on the constitutional issue.

Mr. Brian O'Connor, referring to the Capital Gains Tax Bill 1975, stated that, in sales of land exceeding £50,000 to non-residents, a solicitor could be liable personally for the tax. He was pressing strongly for the exclusion of this provision.

Mr. Prentice replied that the Society would make representations to the Minister for Finance which he had no doubt the Minister would consider.

Education

A letter which Mr. J. F. Buckley had written to all apprentices about the new Education Regulations was circulated.

The effect of this letter is:—

(1) That the present First Law Examination will continue to be held as at present until September 1979.

(2) That the present Second Law and Book-keeping Examinations will continue to be held until September 1981.

(3) That the present Third Law Examinations will continue to be held until September 1982.

(4) Anyone apprenticed between 1st October 1975 and 31st August 1978 may still qualify under the old system.

(5) The new vocational courses under the new system will only come into force in October 1975.

(6) A Graduate in Law of any Irish University who had taken Contracts, Torts and Real Property for his degree will be exempted from the First Law Examination.

(7) The former February Examinations will henceforth as from 1976 be held at Easter, either before or after Easter, depending on the date of Easter.

(8) In future only candidates who obtain 50% on all the papers in a particular examination will pass it. It will not be sufficient to have a mere average of 50%.

(9) It is hoped as from October 1975 to expand the lecture course in Conveyancing — and in the Rights and Duties of Solicitors.

(10) It is proposed to extend the lecture course in taxation by a further 25 lectures as from October 1975, and to introduce two separate papers in Tax Law as from September 1976.

The terms of Mr. Buckley's letter were duly noted.

Solicitors Acting for Both Parties

The English Solicitors Practice Rules 1972, which came into operation on January 1973 provide that it is not professionally proper for a solicitor or a firm of solicitors to act for for both Vendor and Purchaser or for both Landlord and Tenant in transactions at arm's length and for value. This rule shall not apply if:—

(1) The parties are associated companies

(2) The parties are related by blood, adoption or marriage.

(3) Both parties are established clients of the same solicitors.

(4) If, on a sale of land, the consideration is less than £1,000.

(5) If due to distance it would not be reasonable for the client to consult another solicitor.

These exemptions shall not apply if the vendor is a builder or developer. Mr. Walter Beatty and Mr. John Carrigan spoke strongly in support of these Rules. The position in England as to this matter was duly noted. The matter was referred to the next meeting of Presidents and Secretaris of Bar Association for further consideration.

Blackhall Place

With regard to the former King's Hospital School acquired by the Society in *Blackhall Place,* it was stated by Mr. Peter Prentice, deputising for the Chairman of that Committee, Mrs. Quinlan, that the original acquisition price for the premises of £100,000 had been paid in full. It was intended for the time

being to maintain the consultation rooms in the Four Courts premises, which were remunerative. Six years ago, the investments of the society were £100,000. At the present time, the society owned all its premises, and thanks to the foresight of Mr. Healy, the investments of the Society were now worth £180,000.

As regards the King's Hospital, we had at the momentan open-ended commitment, and it was not possible to give details. However, overdraft accommodation of £250,000 had been secured from a bank for this project. The first problem was to rehabilitate the central portion of the building in order to convent it into the office of the Society. No tenders were being sought yet, but it was intended to install central heating and a lift into the building. Later on it was intended to rehabilitate the wing of the building, and turn it into a suitable law school. There had been no less than 300 candidates for the examinations held last February, so the problem was becoming urgent. It was proposed that the South Wing should be fitted out as a lecture hall, conference rooms for Seminars and Library available to both members and apprentices.

Mr. Gerard Hickey stated that the Society had been in credit for years, but we would be gradually moving into a deficit of £125,000, in order to meet the expenses of conversion of Blackhall Place. It would appear that there will be a deficit this year of £20,000 which almost represents a levy of £20 per head on every member. Eventually, it was proposed to borrow a total of £250,000. The repayments would be over a 7 year term, with a 2 year moratorium; this meant that from 1977 to 1982 inclusive, a sum of £50,000 per annum would have to be repaid in each year.

Mr. T. C. O'Mahony asked whether sale of interest payable under the loan.
vestments had been considered, as he thought that the income from investments would be less than the

The President stated that the Finance Committee had given very careful consideration to all aspects of the matter.

Mr. M. B. O'Maoileoin stated that he had been on a tour of the King's Hospital which was a most gracious Georgian building. He considered that solicitors should consider the payment of this building on a broad basis, and most of them could easily afford £1.00 a week towards such payment. The building should be planned under proper supervision, and no lump contract should be given.

Mr. Michael Houlihan stated that the Finance Committte appeared to be understimating the support which it would receive from the members.

The President emphasised that the Society was in a happy financial position, and that it was hoped in the future that part of the Blackhall Place premises would be available as a club for country members.

At the formal dinner, the President proposed the Toast of "Our Guests", which was responded to by the President of the Law Society of Scotland, Mr. Whelans.

REGISTRATION OF

APPRENTICESHIP INDENTURES

Intending Masters are advised that Deeds of Indenture should be forwarded to the Society for registration as soon as they are executed. Admission to places in the Universities is determined according to the date of registration of the indenures by the Society.

Recent Irish Cases

Defendant Bank's appeal attempting to show words "Refer to drawer" are not malicious fails. Plaintiff's verdict for libel upheld.

Appeal in libel action against verdict of Pringle J. and jury in favour of plaintiff in March, 1972. The plaintiff brought the action against the defendant Bank in respect of their refusal to pay certain cheques drawn by him on them as his bankers, which cheques were marked "Refer to drawer". The defendants admitted that they had refused to pay the cheques to the plaintiff customer, and had marked them "Refer to drawer"; but contended that these words were not defamatory. The defendants falsely alleged that at the time each cheque was presented, the plaintiff did not have funds in his account sufficient to meet the same. The following were the facts:—

(1) The plaintiff was a building contractor, and in 1970, a bank strike had stopped all banking operations in the State, but not in Northern Ireland. The plaintiff as an employer was very concerned with the payment of his employee's wages; he had an account in the Belfast branch of the Bank of Ireland. His brother, who was in the business, had his banking account with the defendants who were not involved in the strike. The plaintiff drew a cheque for £600 on the Bank of Ireland, Belfast, in favour of his brother, for the purpose of paying wages.

(2) Owing to some mistake in the operations between the two Banks, the cheque was transmitted from Belfast to Dublin "to wait collection by the plaintiff's brother", instead of annulling it. On 21 August 1970, the plaintiff went personally to defendant's Bank, and agreed to all the formalities in order to open an account there, and made an initial deposit of £3,000. Then the Manager mistook the plaintiff for his brother, and handed him £600 in cash.

(3) In accordance with banking practice, the plaintiff made many lodgements and withdrawals, and on 6th November, 1970 he received a "Statement of Verification" from the defendant showing that £1,776 was outstanding to his credit.

(4) In November, the inspectors of the defendant's Bank discovered that £600 was still missing from the Cheques Remitted Account, and, as the result of exhausive inquiries which went on until the end of January, 1971, the defendants discovered that they had paid the plaintiff £600 in August, 1970.

(5) The defendants felt that they were entitled to recover the £600 from the plaintiff, but at that time, the plaintiff had not sufficient funds in the Bank to meet this sum. The manager tried in vain to telephone him on 28 January but could not do so, as he was ex-directory. The manager there and then decided to dishonour the plaintiff's cheques and to have them marked "Refer to drawer".

(6) The plaintiff was contacted by another person, who alleged that plaintiff's cheque had been dishonoured. The plaintiff went with his accountant to defendant's Bank, and had a stormy interview with the manager. The plaintiff produced a Bank statement, which showed he had a credit. The manager foolishly referred to the £600 which had to be debited to his account, but the plaintiff would not agree to this, and said he would settle directly with his brother; the manager suggested he had offered to facilitate the plaintiff.

(7) At the trial, plaintiff's counsel maintained that, if the plaintiff had received the £600 in August, this was an occasion of qualified privilege, and consequently the plaintiff had to show that the defendants were actuated by a malicious improper motive, which was to punish the plaintiff for the trouble and anxiety he had caused to all concerned; furthermore the defendants never attempted to write to the plaintiff, nor did they apologise for their drastic action.

(8) The jury, in answer to questions, stated:—

(a) that the plaintiff did receive £600 from the defendants on August, 1970.

(b) That the defendants were actuated by gross malice in returning to the payees the cheque marked "Refer to drawer".

(c) That the words "Refer to drawer" were defamatory of the plaintiff.

They accordingly assessed total damages at £2,159.

(9) Defendants' counsel has attempted to submit an appeal that the burden of establishing malice lay on the plaintiff, and, as a proposition of law plaintiff's counsel agreed. Defendant's counsel then said that the findings by the jury of malice were unreasonable and perverse; he said it was not open to the jury to consider this. however he failed to follow the well-established rule that a Court of Appeal will not entertain an objection to the question put to the jury at the trial, if the objection was not taken at the trial. Although counsel for the defendants had agreed, as shown by the transcript, that the question of malice could be introduced and left to the jury, they are not in a position on appeal to deny this. The appeal is accordingly unanimously dismissed.

(Grealy v Bank of Nova Scotia—Supreme Court (O'Higgins, C. J., Budd and Henchy J. J.) per the Chief Justice — unreported — 11 April, 1975.

The jury must be satisfied beyond reasonable doubt of the guilt of the accused. The term "satisfied" by itself is not the same thing as "satisfied beyond reasonable doubt".

The accused were tried in the Central Criminal Court before Murnaghan J. and a jury; they were charged that in August 1970, they caused grievous bodily harm; and that they maliciously inflicted bodily harm on Patrick Rhatigan; they were convicted on the second count.

When the accused entered Rhatigan's flat, he was so frightened that he jumped through a window, and

fell 33 feet to the ground and was severely injured. In his charge to the jury, Murnaghan J. told them that they had to be satisfied of the guilt of the accused, and he equated "satisfied" with "beyond reasonable doubt".

Until 1949, judges in criminal trials invariably had told the jury for 150 years that the prosecution had to prove the guilt of the accused beyond reasonable doubt. Since then, there have been many judgments in England that are difficult to reconcile, and subtle distinctions have been made of being "sure" or "satisfied" of the prisoner's guilt. The Court considers that the departure from the time honoured formula was unfortunate. Having considered many precedents on the subject including *Lawrence v R.* — (1933) A.C. — *Woolmington* — (1935) A.C., and *Mancini* (1941) 3 All E.R. 272 and the High Court of Australia decisions in *Thomas v R.* — (1960) 102 C.L.R. 584 — and *Dawson v R.* — (1961) 106 C.L.R.I. — the Court said that the correct charge to a jury is that they must be satisfied beyond reasonable doubt of the guilt of the accused. It is also essential that the jury should be told that the accused should be entitled to the benefit of the doubt. When two views on any part of the case are possible on the evidence, they should adopt that which is favourable to the accused unless the State has established another beyond reasonable doubt. It is not correct to state that being satisfied means the same thing as beyond a reasonable doubt. No attempt was made to explain this distinction. As the error related to a vital matter, the conviction will be set aside, and a new trial ordered.

The People (A.—G.) v Byrne, McGregor and O'Callaghan — Court of Criminal Appeal (Fitzgerald C. J., Kenny and Butler JJ.) per Kenny J. — unreported — 21st November, 1973.

Due to fraudulent divorce, first wife is entitled to the succession of her husband's estate, to the exclusion of the second wife.

The facts in this case have been fully set out in the March 1974 Gazette at p.55. It will be recalled that Kenny J., in June 1973 allowed the application of the first wife, Alice to succeed to her husband's estate in preference to the second wife, Lydia, as the second marriage was not valid, because the first wife had fraudulently divorced her husband as a result of duress. The real point of the second wife's appeal is that the evidence tendered by and on behalf of Alice in support of the claim that Alice and her husband were not at any time domiciled in England at the time of the alleged divorce proceedings in 1958 should not have been received by Kenny J. on the ground that the plaintiff was estopped from giving evidence. The basis was that, having obtained a dissolution of marriage, she should not now be heard to say that this dissolution was invalid for want of jurisdiction in the English Court that granted it.

Per **Walsh J.**:— In this State, there is no judicial process available to dissolve marriage. The net question is whether the marriage between Alice and her husband was a valid subsisting marriage in Irish law when he died in Spain in April, 1972. There is a principle of Private International Law by which Irish courts would recognise decrees of dissolution of marriage granted by the Courts of another country wheere the parties were domiciled there at the time; this principle is still part of the Common Law in Ireland. Art. 41 (3) (3) of the Constitution appears to mean that the Oireachtas would have power by legislation to define what foreign judicial decrees of dissolution of marriage shall or shall not be recognised in our Courts as legally changing the status of the parties. Our law contains a great deal more than Statute Law, as well as of the doctrines of the Common Law, which were created by Judges, and in due course come to be modified, if not entirely abandoned, by Judges. The Common Law exists independently of Statute Law, save to the extent to which it is modified by Statute, nor can the Common law modify or dilute any provision of the Constitution.

There is no dispute in this case but that the domicile of the husband was at all times Irish, which he never abandoned as far as Alice was concerned. During the subsistence of a marriage, a wife's domicile remains the same as that of her husband. In Ireland, certain Constitutional Rights may accrue to a woman by virtue of her position of being a wife. The matter cannot therefore by any rules of evidence be left in a position of doubt, nor could the Courts countenance a doctrine of estoppel if existing, that a person should be estopped from saying that he or she is the husband or wife as the case may be, when in law the person making that claim has that status. It is beyond doubt that Alice was the wife of Henry Gaffney at his death, as the English Court would not have granted the decree of divorce if it had known the true facts. Consequently the purported dissolution of marriage was made without jurisdiction and is of no effect in Irish law.

Per Henchy J.:—The defendant, Lydia did contend that the evidence heard *de bene esse* at the trial before Kenny J as to the circumstances of the divorce in England were inadmissable. The argument against the reception of the evidence is that, as Alice was the moving party as the petitioner for the divorce, she is estopped by the record from impugning the correctness of what she put on record in getting the divorce decree — i.e that she and her husband were domiciled in England. This was a falsehood that misled the English Court into assuming a divorce jurisdiction, which the absence of residence or domicile withheld from it. If it is shown that the Court had no jurisdictional competence to make the order, such an order is anullity, and is incapable of supporting an estoppel of record. The Comity of Courts under Private International Law does not require or permit recognition of decisions given, intentionally or unintentionally, in disregard of jurisdictional competence. It is impossible to hold that Alice approbated the divorce decree when the act of approbation relied on was not her free voluntary act.

Per Griffin J.:—The question then arises as to whether in the absence of proceedings to set aside the divorce judgment in England, the Irish Court should investigate whether the English Court had jurisdiction

to grant a decree of divorce *a vinculo*, and whether the decree will be recognised by the Irish Courts. It has long been established that our Courts will investigate foreign judgements where the same were decided without jurisdiction. In this case, the English Court had no jurisdiction over Alice and her husband, consequently the Irish Courts cannot treat the decree of divorce *a vinculo* as other than invalid, as the decree was obtained by duress and fraud. As this decree was granted without jurisdiction, our Courts will and must treat the decree as invalid. Alice, is accordingly the person entitled to claim as wife under the Succession Act, 1965.

The appeal is consequently unanimously dismissed by the Supreme Court.

Re: Henry Gaffney, decd.—Alice Gaffney v Lydia Gaffney, Supreme Court (O'Higgins C. J., Walsh, Henchy, Griffin and Parke J. J.) — Separate judgements by Walsh J., Henchy J. and Griffin J. — unreported — 11 April 1975.

A potential beneficiary, under a discretionary trust is entitled, as of right, at his own expense to be furnished with copies of trust accounts and details of the investment of the trust fund.

By a settlement of March, 1956 made between the Settlor and 3 Trustees of the settlement, the settlor paid £40,000 to the Trustees to hold and invest at their discretion, and to pay such part of the income and capital as they shall think fit for the support, maintenance and education of any future husband or children of Sophia Pain (daughter of the settlor Augustus Alexander Chaine Nickson) and any wife and children of Augustus Terence Chaine Nickson (the plaintiff). The defined members of the family were — Rachel Halley Chaine Nickson (the settlor's wife), the plaintiff (his son), Horace Pain (his son-in-law), and his grand-daughters, Audrey Kate Paine and Jennifer Jaye Pain. Another clause provided that the Trustees could receive an annual remuneration of £300 or 10% of the gross annual income of the trust, whichever was the greater. The settlement was duly declared an Irish settlement. As the Rule against Perpetuities had been overlooked, a supplemental deed in accordance with it was made in April, 1961. In 1963, Rachel Nickson retired as trustee, and the Bank of Ireland were appointed substitute trustees.

In March, 1973 the plaintiff's solicitor asked the Bank for copies of the accounts of the Trust for 3 years. The Bank stated that it was not the Bank's practice to submit a copy of the Trust Accounts to any of the persons entitled to benefit under a Discretionary Trust. The Trust Fund is invested in a private unlimited company called Muckmore Investments which does not distribute any of its surplus income by way of dividends. The Company has purchased property worth £81,000 and holds marketable securities to the value of £176,000. In view of the Bank's persistent refusal to provide copies of the Accounts, the plaintiff has asked the Court to determine what information as a potential Beneficiary under the Settlement he is entitled to. Plaintiff's counsel contends that his client is entitled as of right o he information as to the Investments held by Muckmore Investments and as to Remuneration paid to the trustees.

It is beyond question, as the textbooks proclaim, that when a Beneficiary has a vested interest in a Trust Fund so that he has a right to the payment of income, the Trustees must at all times give him full and accurate information as to the amount and state of the Trust Property, and permit him or his solicitor to inspect the Accounts and vouchers relating to the Trust, and provide copies subject to his paying the customary fees. The Defendant Trustees tried to contend that, as they had complete discretion, unless there were an allegation of misconduct, the plaintiff had no right to any information. This is contrary to the basic concept of a Trustee being accountable for the management of the trust fund. In this case the beneficiaries have a clear interest in getting informaion as to how the Trust Fund has been invested.

Accordingly a potential Beneficiary under a Discretionary Trust is entitled, at his own expense to be furnished with copies of the Trust Account and to details of the Investments in the Trust Fund and to the balance sheet and profit and loss account of Muckmore Investments Ltd. A declaration will be made accordingly.

(Chaine Nickson v Bank of Ireland, Brett and Lewis Crosby — Kenny J. — unreported — 24 April, 1975).

A forgeiture of a lease is not effected, unless the denial of the landlord's title affects the whole land demised, and not part of it.

In 1971, the Irish Sisters of Charity put up for sale the complex of buildings constituting St. Vincent's Hospital in St. Stephen's Green, Dublin These buildings became vacant when the hospital moved to new premises in Elm Park, Merrion Road, It was decided that the sale should be by tender, and a brochure was sent by courtesy to the plaintiff, who owned the fee simple estate in 60, St. Stephen's Green. It is to be noted that it was the leasehold interest that was being sold. The leasehold interest of the Sisters in No. 60 arises from a lease of 29th August, 1946, by which the plaintiff demised to the named nuns the premises for a term of 30 years at the yearly rent of £295. The present defendant is the sole survivor. The defendant nuns claimed that they owned a plot at the back of No. 60 under a lease of July, 1933 from the Earl of Pembroke for 10,000 years. This the plaintiff contested, and it resulted in an acriminious and unyielding correspondence. The basis of the claim, which Butler J. conceded, was that the defendant nun had worked a forfeiture by disclaiming the landlord's title to the disputed piece of ground.

The defendant has repeatedly contended that the plaintiff erroneously included the disputed area in the 1946 lease. The net question is:—Where a tenant for a term of years asserts in writing that the landlord

erroneously included a particular area in the property demised, does such denial of the landlord's title in effect work a forfeiture of the lease? From the evidence submitted, the Court held that, even if the defendant's conduct amounted to a disclaimer of the lessor's title, it would not have worked a forfeiture of the lease, as there is no provision in the lease to support this contention. Obviously in such a case a tenant is estopped from disclaiming his landlord's title. If the relationship of landlord and tenant is repudiated, then the tenant cannot insist on the necessity for a notice to quit. In any event the disclaimer, if any, must be of the landlord's whole title *as landlord*. Here there was in fact an affirmation of that relationship, coupled with a proviso as to an error in the area demised. It is clear from the authorities that, if the defendant's conduct had in fact produced a forfeiture, it would have been a forfeiture of the lease in toto. Many of these authorities were not cited in the High Court. The defendant's appeal is accordingly allowed by the Supreme Court.

(O'Reilly v Gleeson — Supreme Court (O'Higgins C. J., Henchy and Griffin JJ.) per Henchy J. — unreported — 20 January, 1975.)

Tenant, who, having signed new business lease, cannot be put into occupation by the landlord, is entitled to full damages for loss of profits. Damages are not restricted to costs of investigating title. The question whether tax is to be deducted is reserved.

Negotiations relating to a new lease of the Gaiety Theatre premises took place between representatives of the plaintiffs and the defendants in March 1972. At the time the defendants had the theatre leased to Eamonn Andrews Productions for 3 years to expire on 23rd September 1972.

On I June, Andrews Productions applied to the Circuit Court for a new tenancy of the theatre, under the Landlord and Tenant Act 1931; this was duly granted on 12 July 1972, and affirmed on appeal by the High Court on 26 April 1973.

The result of this application by Andrews Productions was that the tenancy granted to the plaintiff had never been able to come into effect. As a lease was actually granted, the plaintiff's cause of action arises from a breach of the covenants in the lease, which, if observed, would have provided for the plaintiff's quiet enjoyment of the premises.

When the lease was granted to plaintiffs in March 1972, the defendants were the freehold owners, and no legal question could arise as to their granting this lease upon the expiration of the Andrews lease. It was not due to a defect in title that the defendants could not honour this lease, but to the orders of the Circuit Court and of the High Court granting a new tenancy of the theatre to Andrews Productions.

Mayne and McGregor on Damages, 12th Edn., p.422 states "Breaches of contract by a lessor, fall into two categories corresponding to the division of the transaction into two categories relating to the agreement of lease and the execution of the lease. Thus, breach by failure to execute the lease and breach by delay in doing so, fall within the first category, while into the second fall breaches of the covenants in the lease as executed. The distinction has great practical as well as analytical importance, since solely to the first category".

It follows that the Rule in *Bain v Fothergill*, (1874) by which damages are alleged to be restricted to the cost of investigating title and preparing the lease, does not apply to this case.

The normal measure of damages where a tenant fails to get possession, is the value of the unexpired term. This does not mean however that, in a proper case, consequential losses cannot be recovered. In appropriate circumstances, a tenant might recover loss of profits in a business which the landlord knew he was to carry on upon the premises. This sum has already been determined to amount to £29,500, and the profits lost by the breach are clearly recoverable as part of the damage.

The question whether in awarding this sum, account should be taken of income tax or of Corporation Tax was raised. It was contended that the plaintiff earned the estimated profits included in the damages. Reliance was placed on *British Transport Commission v Gourley* — 1956 Ac. which decided this in England, and which Kenny J. approved of in *Glover v BLN* (No. 2)—(1973 IR 432 but its application to this case has been adjourned for further discussion.

Irish Leisure Industries Ltd., v Gaiety Theatre Enterprises Ltd., — High Court (O'Higgins J.) unreported — 12th February 1975.

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Sentence on Newry man suspended provided he enters bond to keep peace for five years.

After a 41-year-old Newry (Co. Down) man gave an undertaking that he would not have any association, active or otherwise, with any illegal organisation in the future, the Court of Criminal Appeal substituted a sentence of five years' penal servitude, imposed on him by the Special Criminal Court on July 31st, 1974, with one of four years' imprisonment, and suspended it on his agreeing to enter into a bond to keep the peace for five years.

Noel Murphy, the father of six children, aged from four to 15, has been convicted and sentenced for having in his possession at Dundalk, on July 11th last, two cylinder bombs, a fuse wire, a battery and detonators, contrary to Section 4 of the Explosive Substances' Act, under such circumstances as to give rise to a reasonable suspicion that they were not for a lawful purpose. He was also convicted of causing an explosion, contrary to Section 2 of the Act.

Chief Justice O'Higgins, delivering the judgment of the Court, said that having heard the argument put forward on behalf of Mr. Murphy the Court was of opinion that the conviction had been justified and that the grounds urged were not sufficient to upset the conviction. The Court had considered with sympathy the question of sentence, and viewing the case in the light of the undertaking given by Mr. Murphy as to his state of mind and his intentions in the future, they were prepared to deal with the case in a particular way. "This is not in any way to suggest the Court does not regard the offence of which he was convicted as being very serious. The Court takes a very serious view of the gravity of such an offence. At the same time in looks with approval on the action of anyone, no matter how involved or concerned they may have been in the past, who has the courage to stand up now and stand apart, and to realise that mistakes have been made and are being made, and on that basis that he is prepared to enter into a bond to carry out the intentions he has expressed".

On entering into the bond, in his own surety of £500 and one independent surety of £2,000, Mr. Murphy was released. Accepted as surety was Miss Annette Greene, of Drogheda.

Mr. Murphy undertook during the next five years to keep the peace and in particular, not to commit any offence, contrary to the Firearms' Act, 1925; the Explosive Substances' Act, 1883 or the Offences Against the State Act, 1939.

Asked by Counsel if he had ever been a member of an illegal organisation, Mr. Murphy replied: "No, never". He added that he was prepared to bind himself publicly on oath not to become a member of any illegal organisation.

Counsel — Nor to have any association active or otherwise, with any illegal organisation?— That is right. "From now on my wife and family are my only concern".

Mrs. Eleanor Murphy, wife, said in evidence that since her husband had been in prison she had suffered in health and had been under medical care. She was not a member of any illegal organisation and had no intention of ever having any such association.

The People (A—G) v Noel Murphy — Court of Criminal Appeal (O'Higgins C. J., Murnaghan and Gannon J. J.) per Chief Justice — 12 December 1974.

Northern Ireland Case

BELFAST MAN SENTENCED FOR MURDER AS PRINCIPAL IN SECOND DEGREE WINS NEW TRIAL ON GROUND OF DURESS

House of Lords (Lord Morris, Lord Wilberforce, Lord Simon of Glaisdale, Lord Kilbrandon, and Lord Edmund Davies)

A man who claimed he was forced by I.R.A. threats to take part in the killing of an off-duty policeman in Northern Ireland was entitled to have his defence of duress put to a jury, the House of Lords ruled on March 12 last.

By a majority of three to two (Lords Morris, Wilberforce and Davies) the Law Lords held for the first time that duress could be a defence for a person who aids and abets murder. They left unanswered the question whether it could ever be a defence for a person who actually kills.

In laying down this historic ruling on the scope of duress as a defence to murder, the Law Lords by the same three to two majority allowed an appeal by Joseph Lynch, 33, who was convicted of murder and sentenced to life imprisonment at the Belfast City Commission in June, 1972.

But they directed that he should continue to stay in prison pending a new trial which will be ordered by the Court of Criminal Appeal in Northern Ireland, and which Lynch' defence of alleged duress can be put to the jury.

At his trial before Gibson J. and a jury in June, 1972, Lynch said he firmly believed he would have been shot if he had ignored instructions from Sean Meehan, a well-known and ruthless I.R.A. gunman to drive a hi-jacked car with the accused Bates and Whelan who shot Pc Norman Carroll in Oldpark Road, Belfast, in January, 1972. Bates and Lynch were convicted — Lynch as principal in the second degree — and were sentenced to life imprisonment.

Meehan, brother of Martin Meehan, the former Provisional battalion commander, now in the Maze Prison under a detention order, has been named by the police as the man who fired the shots that killed Pc Carroll. He is believed to have escaped to the Republic, and has never been brought to trial.

At Lynch's trial, Gibson J. ruled that duress could not be a defence to murder, and his view was upheld by the Court of Criminal Appeal for Northern Ireland.

(Lowry C. J., Curran L. J. and O'Donnel, J.).

While Lord Morris of Borth-y-Gest, Lord Wilberforce and Lord Edmund Davies agreed in the House of Lords that duress could be a defence for aiders and abettors of murder, dissenting opinions were entered by Lord Simon of Glaisdale and Lord Kilbrandon.

In his judgment, Lord Morris said the jury's verdict showed they were satisfied that Lynch participated actively in the enterprise with the knowledge that death or serious injury was intended by those he accompanied. The question was whether the issue of duress should have been left to the jury.

Duress, he said, must never be allowed to be the easy answer of those who could devise no other explanation for their conduct, of those who could have readily avoided the dominance of others, nor of those who allowed themselves to be at the disposal or under the sway of some gangster tyrant.

The law had to take the "commonsense view" and had recognised that there could be situations when duress could be put forward as a defence.

Self-preservation recognised

"If someone is forced at gunpoint either to be inactive or to do something positive — must the law not remember that the instinct and perhaps the duty of self-preservation is powerful and natural? I think it must.

"A man who is attacked is allowed within reason to take necessary steps to defend himself. The law would be censorious and inhumane which did not recognise the appalling plight of a person who perhaps suddenly finds his life in jeopardy unless he submits and obeys."

He thought a distinction could be made between duress as a defence for the aider and abettor of murder, and duress as a defence for the actual killer.

If to save his own life a person drove a car or carried a gun, he might do so in the hope that a killing might still somehow be averted. But if a person was being forced to pull the trigger or otherwise do the killing, Lord Morris thought that before allowing duress as a defence, "It may be that the law will have to call a halt."

General reasoning and requirements of justice led him to the conclusion, however, that duress should be a defence for a person charged with aiding and abetting murder.

Agreeing, Lord Wilberforce said that if duress was not available as a defence in these circumstances, it meant that a person taken from his home at gunpoint and made to drive armed men on a criminal enterprise, with the certainty of being shot if he tried to assist or escape, was liable to be convicted of murder.

"The same would apply to a bystander in a street, or the owner of a car, similarly conscripted, once it is shown that he or she, new the nature of the enterprise."

Such examples of the possible involvement of persons whom the normal man would regard as without guilt, under threat of death or violence, in violent enterprises were unfortunately far from fanciful at this time.

Did the law require these people to be charged with murder and call for their conviction?

Dissenters say law can be changed with sanction of Parliament

Concurring, Lord Edmund Davies said he found himself unable to accept that any ground in law, logic, morals or public policy had been established to justify withholding the plea of duress in the present case.

In a dissenting judgment, Lord Simon questioned how an arbitrary line drawn between duress as a defence for aider and abbettors of murder but not for the actual killer could be justified.

Lord Simon suggested that the House could be "inscribing a charter for terrorists, gang-leaders and kidnappers." Both he and Lord Kilbrandon agreed that any such fundamental change in the law should be left to Parliament.

This branch of the law was closely bound up with matters of policy relating to public safety, and these were more fitly weighed in Parliament on the advice of the Executive than developed in courts of law.

Lord Kilbrandon, who also dissented, said he was convinced that the grounds on which the majority proposed to quash the conviction involved changes in the law that were outside the proper functions of the Law Lords.

Like Lord Simon, Lord Kilbrandon suggested that if the solution ultimately found was that duress or necessity should only go as defences towards mitigating penalties for crimes, it would be perfectly reasonable to make duress or necessity grounds for declaring diminishing responsibility in murder charges. This would mean that where the defence was established in murder charges, a verdict of manslaughter would be returned, and the penalty left at large instead of the court having to impose a mandatory life sentence as it now must for murder.

In a working paper last year on which it sought criticism and comment, the Law Commission suggested that duress should be a possible defence to all crimes, including murder.

But it would not be available if the defendant had joined an association or conspiracy which was of such a character that he was aware he might be compelled to participate in an offence of the type with which he was charged.

[Lynch v. Director of Public Prosecutions of Northern Ireland — House of Lords — (1975) 1, All E.R. 913.]

SLIGO SEMINAR on E.E.C. LAW—OCTOBER 1974

THE E.E.C. AND THE ORDINARY SOLICITOR—SOME RELEVANT CASES

By JOHN F. BUCKLEY, Solicitor

Part III

Transport

The provisions of the Treaty relating to Transport provide for the drafting of a common policy on transport and also make provisions for the abolition of restrictions which have the effect of limiting competition. Very few cases have in fact come before the Courts arising out of the provisions of this portion of the Treaty but a trio of cases heard together are worthy of note. They are the *Grad Lesage and Haselhorst* cases being Number 9, 20 and 23 of 1970 (1971) C.M.L.R. 1 which decided that an obligation under Article 4 (2) of a Council decision of 13th May 1965 as completed by Article 1 of the First Directive on turntax of 11th April 1967 was unconditional and sufficiently clear and precise. It was consequently capable of creating direct effects anl legal relations between the Member States and individuals and so could be invoked by individuals in litigation. It also provided that a tax on freight where the criterion was the mere fact of transportation and the basis of assessment was the load to which the roads were exposed did not correspond to a usual form of Turnover Tax. There is a fairly recent transport case, *Commission v French Republic* 167/1973, (1974) ECR 359 which held that France was in default in not complying with Regulation No. 1612/68 dealing with the freedom of movement for workers by not amending a French Law which provided that such proportion of the crew of a ship as is laid down by order of the Minister for the Merchant Fleet must be French Nationals. There were orders that, subject to special exemptions, employments on the bridge, in the engine room, and in the wireless service, on French vessels was limited to persons of French Nationality and general employment on ships was limited in the ratio of three French to one non French.

Competition Policy

Article 85 and 86 of the Treaty which govern Restrictive Trade Practices and Monopoly situations are among the most diligently litigated of the entire Treaty. Article 85 provides for the prohibition of all agreements, decisions and concerted practices which may affect trade between Member States and which have, as their object or effect, prevention, restriction or distortion of competition. This has been implemented by Regulation 17 of 1962 which provided for the notification of agreements to the Commission and for block exemptions to be given for certain categories of agreements. It is unfortunate that the question of the status of an agreement which has been notified to the Commission but which has not been adjusted on by the Commission, although already the subject of numerous cases, is still not entirely clear, particularly in relation to the new Member States but there have been a number of cases which have had to clarify the interpretation of Article 85 and Regulation 17 in general.

The *Five v Mertons* (No. 2) case, (1963) C.M.L.R. 329, was decided by the Amsterdam District Court which held there was no breach of Article 5 of Regulation 17 where (1) there was no proof that any undertaking other than those resident in the territory of a Member State had participated in a Restrictive Practices Agreement; (2) the product originated from a Manufacturer resident within the territory of a Member State and (3) the Restrictive Practices Agreement was wholly domestic in character and did not regulate imports or exports as between Member States.

A particular and familiar kind of Restrictive Practices Agreement came before the Turin Appeal Court in the *Lagattolla* case, (1964) C.M.L.R. 84, where it was held that an agreement entered into between a Company and a former employee under which the latter undertook not to compete with the Company for a period of five years after the termination of his employment, in a golden handshake situation, did not contravene Article 85.

The *Cadillon* case (No. 1 of 1971) (1971) C.M.L.R. 420 gave the European Court an opportunity to consider the same area as had been dealt with in the *Five* case and it held (1) that an agreement was capable of affecting trade within Member States if, looked at on the basis of a whole pattern of legal and factual elements, it appeared with a sufficient degree of probability that it could exercise an influence direct or indirect, actual or potential, on the trade patterns between Member States so as to hinder the realization of the objectives of a single market and (2) an Exclusive Dealing Agreement could escape the prohibitions of Article 85 if, in view of the weak position of the parties on the market in the products and the area in question it was not capable of hindering the realization of the objectives of a single market even when it established an absolute territorial protection.

The *de Haecht* case No. 23 of 1967 (1968) C.M.L.R. 26 held that an exclusive dealing agreement was not necessarily incompatible with the Common Market and void as such **but it could be void if it was capable of affecting trade between Member States and had as its object or effect the prevention, restriction or distortion of competition.** The de Haecht case is of interest because it was not, as most

of the cases in this area, are concerned with exclusive dealing arrangements on a national scale but applied exclusively to an agreement made between the Haecht brewery and the family Wilken Jansens. The brewery advanced a sum of money to the Wilken Jansens and in return they agreed to take all their supplies of beer, drinks and lemonade from the brewery for a period of two years after the repayment of the loan. The Wilken Jansens broke their agreement and the brewery brought an Action against them, whereupon the Wilken Jansens pleaded that the agreement was void under Article 85. Unfortunately no decision on the question of whether the agreement in fact affected trade between Member States has been given because the brewery after the first decision by the European Court, notified to the Commission a standard form Contract, which contained the same clauses as there were in the Contract in issue, then submitted to the Court that because of this notification, the Contracts in issue were provisionally valid and the result of this was to cause the Belgian Court to submit a further case to the European Court which appears as de *Haecht and Wilken Number 2 case* 48 of 1972 (1973) C.M.L.R. 287 the effects of which are still being argued by the writers but the net effect of which unfortunately had been that the Belgian Court has not yet got around to making a decision on the point

The *Deuteche Gramofon Gesellschaft* case (No. 78 of 1970) (1971) C.M.L.R. 631 is an important decision which straddles Articles 85 and 86. The case decided that there was a conflict with provisions regarding the free movement of goods if a manufacturer exercised an exclusive right granted to him by the legislation of a Member State to market the protected articles so as to prohibit the marketing in that State of products sold by him in another Member State solely because the markeing had not occured in the first Member State and (2) that, by exercising an Exclusive Distribution Right, a manufacturer did not have a Dominant Position within the meaning of Article 86 but that if he could prevent defective competition in a considerable part of the market, that would alter the situation. What happened in that case was that the D.G.G. German record producer distributed records in Germany under a distribution agreement containing a Retail Price Maintenance Arrangement. The retailer had to undertake that records acquired from third parties or imported from abroad had to be subject to the same system and permission which D.G.G. obtained. D.G.G. marketed the same records in France through a subsidiary which was licenced to exploit D.G.G. records and had exclusive rights for France. A Company called Metro of Hamburg had refused to sign retailers agreement with D.G.G. in Germany and later acquired records from the French subsidiary of D.G.G. through a Swiss concern and sold them below the retail price fixed in Germany. D.G.G. got an injunction prohibiting Metro from selling or distributing particular records and the German Appeal Court asked the European Court to decide whether the German National Law which allowed the prohibition to the marketing conflicted with Article 85 of the Treaty and secondly whether the exercise of the distribution rights could be regarded as abusive and the European Court answered both questions in the affirmative.

Trade Marks and Patents

It has been held by the European Court in the *Parke Davis* case No. 24 of 1967 (1968) C.M.L.R. 47 that the grant of a patent right did not contravene Articles 85 or 86 nor did the exercise of a patent right fall under the prohibition of Article 85 unless there was a prohibited agreement decision or concerted practice and that of Article 86 unless it was the subject of an abuse of dominant position. However, subsequently in the *Sirena* case No. 40 of 1970 (1971) C.M.L.R. 260, the European Court held that, before an agreement relating to a trade mark would be affected by Article 85, it would have to prejudice trade between Member States to an appreciable amount and restrict competition in the Common Market. Also ownership of a trade mark did not automatically place the owner in a dominant position for the purposes of Article 86. That Article would not apply merely because the owner could prohibit Third Parties from marketing products bearing the same mark in the territory of a Member State but that, in addition, the trade mark owner would have to have power to prevent the maintenance of effective competition in a considerable part of the market in question, before Article 86 would apply.

Dominant Position

Article 86 deals with the abuse by one or more undertakings of a Dominant Position within the Common Market or in a substantial part of it. Just what constitutes a substantial part of it does not appear to have been satisfactorily decided but the *Scheldt Tugs* case of 1964 suggests that the substantial part is not quite as substantial as one might have thought. In that case three tugboat Companies operating on the Scheldt and harbour of Antwerp formed a Union to combine their services and to establish a monopoly position. Another Company set up in opposition to them and the Union offered rebates to customers who would enter into binding contracts for fixed periods. When the new Company published its conditions of service the Union commenced proceedings calling on them to cease circulating these conditions. The Antwerp Commercial Court held that the Union occupied a monopoly position and were abusing their dominant position. In addition apparently they were also commiting a wrongful act of unfair competition under Belgian Law.

In the *Brinhof case* (1970) C.M.L.R. 264 the Utrecht District Court held that the Dutch National Railways had a dominant position in the market for transport by rail and that their declining to continue certain arrangements which they had with Brinkhof was an abuse of their dominant position. The question of exclusive distributorship agreements was dealt with at length in a case of *Grundig-Consten*, Cases 56 and 58/1964 (1966) C.M.L.R. 418, Grundig appointed Consten exclusive distributors in France of Grundig

Radios, Televisions and similar equipment and Consten undertook not to sell competing products directly or indirectly outside France. Grundig undertook not to deliver products directly or indirectly to anyone in France except Consten. Grundig assigned to Consten a trademark which enabled Consten to sue any third party importing Grundig products for infringement of the trademark. Grundig had also imposed on all its other concessionaires outside France an obligation not to deliver directly or indirectly outside their respective contract territories. The Commission held that this was an agreement restricting competition within the meaninging of Article 85 (1) because Consten was free of competition from other distributors of Grundig products in France. The Court subsequently held that the Commission did not have to consider the whole market for Radios, Televisions, and related products in France in which Grundig products faced fierce competition from other brands, but that it was sufficient that the agreement in question had the object of restricting competition, and that, where the agreement in question prevented other distributors on a national market from obtaining supplies of well known branded goods, Article 85 (1) applied.

In a significant English case, *Application Des Gaz S.A. v Falks Veritas* (1974) C.M.L.R. 75, the English Court of Appeal has held that Articles 85 and 86 create new torts in English Law, being undue restriction of competition and abuse of dominant position, and that these are infringements which are to be dealt with by an English Court. The Plaintiffs had copyright in the design of a gas container and had made an arrangement with an English firm to manufacture containers under licence. The Defendants had commenced to manufacture a container of the same shape and the Plaintiffs had taken an action to restrain them from so doing. A Defence along the usual lines had been put in, but, before the reply was filed by the Plaintiffs, Britain joined the Community and the Defendants applied to have their Defence amended so as to plead that the Agreement between Gaz and its English concessionaire infringed Article 85 and that the attempt to restrain the Defendant from marketing their container was an abuse of a dominant position under Article 86. The Court held that it was entitled to so amend its Defence.

Taxation

While the importance of the cases arose under Article 95 to 99 of the Treaty, those which deal with tax provisions, has been diminished by the introduction of a uniform system of Turnover Tax, it is certainly possible that further cases will arise under Article 95 in particular. This Article restricting a Member State from imposing any internal taxation on the products of other Member States in excess of that imposed directly or indirectly on similar domestic products.

At an earlier stage when Germany had a cascade type of Turnover Tax it introduced a Turnover Equalisating Tax which was intended to have the effect of equalising the price of imported goods with domestic products in order to compensate for the Value Added Tax paid on the domestic product, but this gave rise to difficulties. In the *Distilling Wine Case* (1971) C.M.L.R. 435, a German Court held that where there was an Equalisation Tax of 4% charged on import of goods but the Export Refund given on precisely similiar goods was only 0.5% there was very strong evidence that the internal tax on the similar domestic products was only 0.5% and that the equalisation tax was therefore in breach of Article 95.

A major group of cases heard together and usually referred to by the name of the first of the cases, *Molkerei-Zentrale Westfalen/Lippe* Case (1968) C.M.L.R. 187,, held that a tax imposed within the framework of Turnover Tax designed to put all types of products in the same fiscal position was an Internal Tax within the meaning of Article 95, and that, if the tax levied on a particular type of important exceed the total amount of direct and indirect charges on the equivalent domestic product, it would infringe Article 95 and 97. The Court went on to hold that it would not be a tax of equivalent effect to a customs duty and also held that **Article 95 did not prohibit a Member State from imposing internal taxation on products imported from other Member States where there were no similar domestic product.**

Conclusion

The remaining Articles of the Treaty have not given rise to cases which are likely to involve the ordinary citizen, save in so far as the Articles relating to the jurisdiction of the Court are concerned which I do not need to consider. It is clear that there are areas in which the Solicitor in private practice who does not act for Multi National Corporations or Institutions of major economic power will find himself involved in cases involving E.E.C. Law.

One of the major difficulties which presents all of us in coming to terms with E.E.C. legiclation and case law is the problem of trying to familiarise ourselves with the existing legislation and to keep up to date.

We in Ireland have become used to a situation where in the absence of an adequate supply of text books, reports and commentaries on the law, we have learned to operate as best we can, frequently, so far as case law is concerned, relying on the grapevine system. The situation with regard to E.E.C. Law is precisely the reverse. The amount of material that emerges from the Community is totally indigestible principally because of its bulk. The Official Journal of the Community which is divided into two parts, one of which deals solely with Legislation and the rest with the remainder of the official activities of the Commission and the Court, including Notes, not merely of cases that have been decided but of cases which have been instituted in the Court, emerges not merely five days a week but frequently with three or four issues on a particular day. The possibility of any person dealing with this amount of material, other than on a whole time basis, seems to me to be totally remote. I would suggest that the average practitioner might confine himself to two publications, one being the Bulletin of the

Communities which is issued ten times a year, and the other is Information on the Court of Justice of the European Communities which issues at somewhat irregular intervals. The Bulletin contains a list of all the items that have been included in the Official Journal for the previous month so that it forms a sort of Index to the Official Journal, and the Information on the Court of Justice contains summaries of the Decisions of the Court of Justice and sometimes of other Courts in Europe on E.E.C. matters.

Development of the European Communities: Fourth Report of Oireachtas Committee

The Development of the European Communities

1.1 It is now two years since the enlargement of the European Community. In that period the Community has had to face serious internal and external threats to its functioning arising in particular out of the world economic, monetary and energy crisis. Problems have also been posed by the uncertainty about the position of the U.K. in the Community and by the increased range of divergent interests which enlargement has brought. Ireland has pressed for a collective and co-ordinated response to these problems; unilateral action could prove detrimental to the weaker member States and thus to the Community as a whole. Ireland has therefore sought the adoption and extension of economic, social and regional policies which will maintain and improve the level of economic growth and of employment and contrbute to the distribution of the Community's wealth to those areas most in need.

1.2 The principal aim of Irish policy is the preservation of the Community and the strengthening of its unity. In the belief that the Community as a unit can better respond to the present economic crisis than the individual member States the Government has advocated the strengthening and democratisation of the Community and has supported moves towards a democratically controlled European Union. The Government is concerned that policies should operate to the advantage of all the peoples of the Community irrespective of how far they are from the developed centres of economic growth. In particular Ireland has sought to maintain the basic principles and mechanisms of the Common Agricultural Policy (CAP), to promote the Community's Industrial Policy and the Social Action Programme, to extend the scope of the European Social Fund and to reach agreement with the other member States on a Regional Policy. In some areas, notably Regional Policy, progress was disappointingly slow and the objectives set by the Paris and Copenhagen Summits were not all achieved within the timescales envisaged. However the outcome of the meeting of Heads of Government of the member States on 9-10 December 1974 and in particular the agreement on the establishment of a regional fund have given a new impetus to progress on Community policies.

1.3 The Government believes that membership of the Community has been and is beneficial for Ireland. It has extended the range of Ireland's participation in international economic and political affairs; we participate on an equal footing with the other member States in the running and development of the Economic Community and within the framework of political co-operation we take part in the co-ordination of the Nine's foreign policies. Membership has also contributed to our economic development; besides the transfer of funds from the Community to Ireland by means of grants, subsidies and loans it has encouraged overseas investment in Ireland and has provided new marketing opportunities for our industrial and agricultural exports.

Meetings of Heads of Government

1.4 At the invitation of the President of France, Mr. Giscard d'Estaing, the Heads of Government of the member States of the European Communities met informally in Paris on 14 September 1974 to discuss the state of European integration and the issues facing the Community. The Heads of Government agreed that the Foreign Ministers should meet to consider the desirability of holding a formal meeting of Heads of Government later in the year. The Taoiseach indicated that if such a meeting was to be held it would have to be adequately prepared.

1.6 Ireland indicated that its attitude to the holding of a formal meeting of Heads of Government would be governed by whether or not it could be established beforehand that there was a basis for firm progress on questions of substance. Ireland particularly emphasised the need for progress on regional policy which is an essential element in any further economic integration of the Community. After the meeting on 2 December 1974 it was clear that sufficient progress had been made, especially on the establishment of the regional fund, to enable the proposed meting to take place; Ireland could therefore agree to the holding of the meeting.

Court of Justice of the European Communities

2.16 A Conference of representatives of the Governments of the member States of the Community meeting at Brussels on 10 December 1974 appointed the Hon. Mr. Justice Aindrias O Caoimh to replace Judge Cearbhall O Dálaigh as a Judge of the Court of Justice of the European Communities. Judge O Caoimh was

formally sworn in on 12 December 1974 at the Court of Justice in Luxembourg. His term of office will continue until 6 October 1979.

New Rules of Procedure

2.17 Article 142 of the Accession Treaty requires the Court of Justice to make amendments to its Rules of Procedure as may be necessitated by the accession to the Community of the three new member States; such amendments require the approval of the Council. The Court's proposed amendments to its Rules of Procedure were discussed for some time in COREPER. On 24 September 1974 agreement was reached between the Council and the Court on the proposed amendments. The Council of Ministers for Justice on 26 November 1974 adopted the Court's new Rules of Procedure which incorporated the amendments.

Right of Establishment and Freedom to provide Services

6.2 On 21 June 1974 at the request of the Conseil d'Etat of Belgium the Court of Justice gave a preliminary ruling under Article 177 of the EEC Treaty on the interpretation of Articles 52 and 55 of the Treaty. The ruling *Reyners* has important implications for the application of right of establishment in the member States and for the draft directives concerning right of establishment and freedom to provide services which the Commission has submitted to the Council.

Articles 52 of the EEC Treaty

6.3 Article 52 of the EEC Treaty provides that restrictions on the freedom of establishment of nationals of a member State in the territory of another member State should be abolished before the end of the transitional period (i.e. before 31 December 1969). Freedom of establishment includes the right to take up and pursue activities as self-employed persons and to set up and manage undertakings under the conditions laid down for its own nationals by the law of the country where such establishment is effected. The Council was empowered to issue Directives for the removal by member States of their discriminatory restrictions against nationals or firms of other member States in the various branches of activity. The Council has issued Directives requiring the removal of discriminatory measures for a number of activities and the Commission has submitted draft directives for others.

6.4 In the Reyners case the Court ruled than since the end of the transitional period Article 52 of the EEC Treaty is directly applicable in all the member States despite the absence of Council Directives for any particular activity. The main consequences of the Court's ruling are that

(a) restrictions imposed on the basis of nationality may no longer be maintained in any member State against nationals of any other member State even if national legislation provides otherwise.

(b) the provisions of Directives already adopted by the Council which postponed the lifting of restrictions on certain activities are without effect; this also applies to any timetables laid down in these Directives for their implementation and to provisions which link the abolition of restrictions with measures to co-ordinate national provisions and the mutual recognition of diplomas and

(c) Directives for the abolition of discrimination on grounds of nationality need no longer be adopted by the Council.

6.5 The Court's judgement in the Reyner's case relates only to right of establishment. However, a Dutch Court has asked the Court of Justice for a similar ruling for Article 59 of the EEC Treaty which deals with freedom to provide services (case 33/74; Van Binsbergen.) A judgement has been delivered in December 1974.

6.6 As a result of the Court's ruling the Commission has decided to withdraw draft directives on

(a) the abolition of restrictions on freedom of establishment and

(b) the abolition of restrictions on freedom of establishment and freedom to provide services.

Lawyers

6.17 A working group of officials of the member States is continuing its examination of a draft directive on the provision of services by lawyers (OJ No. C78, 26 June 1969).

6.18 The workng group held a meeting in October 1974. The meeting was principally concerned with the implications for the draft directive of the judgement in the Reyners case and in particular of the Court's interpretation of Article 55 of the EEC Treaty which, by virtue of Article 66, applies to the provision of services as well as to right of establishment (paragraph 6.9). As the Court's pudgement in the van Binsbergen case (paragraph 6.5) will also directly affect this draft directive it was decided to await the outcome of that case before considering the matter further. Such further consideration will be undertaken following the submission by the Commission to the Council of a comprehensive report on the situation created by the judgements in these two cases.

COMPANY LAW

10.1 Regulations entitled the European Communities (Companies) Regulations 1973 were made by the Minister for Industry and Commerce to give effect to the First Directive on Company Law (Directive 68/141 of 9 March 1968 (OJ No. L65, 14 March 1968)). The Joint Committee of the Houses of the Oireachtas on the Secondary Legislation of the European Communities has examined the regulations and has reported thereon to both Houses (paragraphs 10.3 to 10.5 Third Report)* Steps are being taken to amend the regulations in the

light of the observations of the Joint Committee and of the Commission.

10.2 The Council Resolution of 17 December 1973 on Industrial Policy (OJ No. C117, 31 December 1973) provides that the Council will act

(a) by 1 January 1975 on the draft Second Directive which deals with the formation of public limited liability companies and with the maintenance and operation of their capital

(b) by 1 July 1975 on the draft Third Directive concerning mergers between public limited liability companies and

(c) by 1 January 1976 on the draft Fourth Directive which deals with the annual accounts of limited liability companies.

10.3 A working group of the Council has been examining the draft Second Directive. The draft contains measures to maintain the integrity of company capital in the interests of shareholders and third parties. It also contains provisions requiring companies to which the draft applies to maintain a minimum subscribed capital. There are still substantial differences of opinion between the Member States on the draft; these are mainly of a technical nature. It now seems unlikely that the draft directive will be adopted by 1 January 1975 as provided for in the Council Resolution.

10.4 The draft Third Directive deals with Mergers by "fusion", as distinct from Take-overs, between public limited liability companies in the same member State. The purpose of the draft is to make certain information about proposed mergers available to shareholders and employees. The adoption of the draft directive is a necessary prerequisite to the harmonisation of legislation on mergers across frontiers which will be dealt with by a Community Convention under Article 220 of the EEC Treaty (paragraph 10.3 Second Report). Work in the Council on the draft directive has been suspended until the Council of Ministers has examined the draft second directive.

10.5 On 26 February 1974 the Commission submitted to the Council a revised draft Fourth Directive on company law. The draft deals with the formal content of the published accounts of limited companies. The revised draft takes into account comments made by the new member States on the original draft and the opinion of the European Parliament. A working group of the Council resumed examination of the draft in November 1974.

10.6 The Resolution on Industrial Policy provides that examination of the draft Fifth Directive which deals with the structure of public limited liability companies will begin as soon as the opinions of the European Parliament and of the Economic and Social Committee are given. The Economic and Social Committee has delivered its opinion on the draft Fifth Directive. The draft proposes a three tier structure comprising a Supervisory Board, a Management Board and a General meeting of shareholders. Under the draft the Supervisory Board will have power to appoint and dismiss the Management Board, to approve contracts and decisions concerning the location and organisation of companies and to approve the annual report and accounts. The draft also provides for worker representation in companies with more than 50 employees and suggests models for such representation. As the European Parliament has not given its opinion examination of the proposal has not yet commenced at working group level.

10.7 The Council's Resolution on Industrial Policy also provides that the Council will begin its examination of the Draft Statute for a European Company as soon as the Commission has submitted its revised proposal which will take into account the opinion of the European Parliament and of the Economic and Social Committee. The draft provides for the creation of companies under a law common to the member States of the Community. It also provides for worker participation. The European Parliament and the Economic and Social Committee have both delivered their opinions on the draft; the Commission will submit a new proposal by May 1975 which will take account of these opinions.

Draft Directive on Guarantees

11.32 The Committee of Experts from the Member States which is examining the Draft Directive on the Harmonisation of the Laws of the Member States relating to guarantees expects to complete its work at its meeting which has been tentatively fixed for January 1975. The purpose of the Draft Directive is to achieve rules in regard to contracts of Guarantee which would apply throughout the whole Community in order to facilitate the movement of capital which is envisaged in Article 67 of the EEC Treaty. Legal, academic and interested commercial bodies are being consulted on the implications of the proposals for Ireland.

Economic Penal Law

11.33 A series of meetings has been held between experts from the Member States and the Commission to consider co-operation in suppressing infringements of European Economic Law. This follows a Council Decision in June 1961 to study the problems posed in relation to the prevention and punishment of breaches of Community Regulations, Directives and Decisions. The co-operation is aimed at the suppression of frauds by any person which involves breaches of Community Legislation in the fields of Taxation, Customs, Agriculture, Industry and Transport. The Conference of Ministers for Justice on 26 November 1974 took formal note of a report by the Commission on progress in this area. The report concluded that the Commission together with the national experts had evolved certain fundamental guidelines which would form the basis of a system of co-operation. The Commission was invited to continue with its work in order to submit a Draft Convention to the Council in 1975.

EDUCATION POLICY

Co-operation in the field of Education

18.1 In order to define the action required in education the Council decided to establish an Education Committee composed of reprenentatives of the member States and of the Commissission (OJ No. C98, 20 August 1974). The Committee was requested to report to the Council before the end of June 1975.

18.2 The Education Committee held its first meeting on 18 October 1974 at which it was agreed that each member State would prepare material on the following areas *inter alia*.

(a) promotion of closer relations between educational systems in Europe

(b) compilation of up-to-date documentation and statictics on Education.

(c) increased co-operation between Institutes of Higher Education.

(d) improved possibilities for academic recognition of diplomas and periods of study

(e) encouragement of the freedom of movement and mobility of teachers, students and research workers in particular by the removal of administrative and social obstacles to the free movement of such persons and by the improved teaching of foreign languages.

The Committee will meet each month until its report is completed.

Mutual Recognition of Academic Qualifications

18.3 The Council on 6 June 1974 also adopted a Resolution concerning the promotion of work on the mutual recognition of academic qualifications (paragraph 18.4 Third Report).

18.4 The Draft Directives on the Mutual Recognition of Degrees and Diplomas which are at present before the Council were discussed at a meeting in Dublin in November 1974. The meeting was attended by representatives from Government Departments and from the Committee representing the Universities and other appropriate Institutional Interests in Ireland (paragraph 18.5 Third Report).

The European University Institute, Florence

18.6 At the Council on 6 June 1974 the Ministers for Education expressed their satisfaction with a report by the Chairman of the Preparatory Committee on the progress of work on the establishment of the Institute and on the tasks to be accomplished before its opening. It is expected that the first eight academic appointments to the staff of the Institute will be made early in 1975 and that they might commence their work in Florence in October 1975 so as to have courses etc. prepared for the entry of the first students in 1976.

18.7 The Irish Government has taken the steps necessary to adhere to the Convention. This will be effected as soon as the proceess of ratification has been completed by the six original member States which will probably be in early 1975. It will then be possible for the High Council of the Institute to hold its first meeting.

Proceedings of the Court of Justice of the European Committees

(Week of 24 to 28 February 1975) No. 5/75

Case 67/74 Bonsignore (preliminary ruling)
26 February 1975.

Mr. Bonsignore, the plaintiff in the main action, a chemical worker of Italian nationality, has worked in Germany since 1968.

While handing a pistol which he had in his possession illegally he fatally injured his younger brother.

He was sentenced to a fine for an offence against the Firearms Law and found guilty of causing death by negligence, although no punishment was imposed on him on this account, in view of the accidental nature of the incident and the mental distress suffered by him. Following his conviction the Aliens Authority ordered that Mr. Bonsignore be deported pursuant to German law.

The Administrative Court of Cologne, before whom an appeal was brought against this decision, held that by reason of the special circumstances of the case the measure adopted could be justified only on the basis of "General Prevention", that is to say the deterrent effect which would supposedly be created in the immigrant community by the deportation of a foreigner in illegal possession of a firearm.

In order to ensure that German law should be applied in conformity with the requirements of Community law, the Administrative Court referred the following preliminary question to the European Court: Is the Council Directive of 25 February 1964 on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health, to be interpreted as excluding the deportation of a national of a Member State by the national authorities of another Member State for *reasons of a general preventive nature?*

The Directive states that: "Measures taken on grounds of public policy or of public security shall be based exclusively on the *personal* conduct of the individual concerned". The Court of Justice reaffirmed (cf. Case 41/74, *van Duyn*, 4 December 1974) that this is an exception which must be strictly construed so as to reconcile the application of this measure with the fundamental principle of freedom of movement of persons within the Community and the abolition of all discrimination between nationals of one Member State and those of others. The Court ruled that Community rules exclude the deportation of a national of a Member State if such a measure is adopted for the purpose of deterring other foreigners.

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Law Reform Commission Bill 1975

All stages of this Bill were taken in the Seanad on 10th April, 1975. The **Attorney General (Mr. Declan Costello, S.C.)** in introducing the second stage, made the following points:—

(1) He was glad that Standing Orders had been amended to enable the Attorney-General to speak in the Seanad.

(2) The Law Reform Commission contemplated by this bill will be a permanent independent body which will prepare from time to time programmes of Law Reform and will arrange to carry out the necessary research; it may also consider specific points of law which may be referred to it from time to time. It will have freedom to regulate its own procedures, and will probably establish working parties to prepare reports, and will circulate consultative documents. This consultation process will help to ensure wide and rapid acceptance of its procedures, and the inclusion of draft Bills in its reports will aleviate unnecessary delays. Unlike other Commissions established by various Governments, this permanent Commission will ensure that measures of Law Reform will be enacted in the shortest possible time.

(3) Many aspects of our law relating to the Family, to Landlord and Tenant, to the relationship of Master and Employee, the law of Torts and to the Criminal Law require urgent reform. This Commission is similar to those established by the English Act of 1965, the Canadian Act of 1971 and the Australian Act of 1973. It is hoped that persons with special knowledge and experience will serve on Committees. Law reform entails not only updating or amending laws but also modifications and consolidation. This Act will by order be established as soon as the Government have appointed the 5 Commissioners. To be appointed a Commississioner, a person must normally be an experienced Judge, barrister, solicitor or academic lawyer. If he can be of assistance, a non-lawyer can be appointed. If a Judge is appointed a Commissioner he does not thereby cease to be a Judge, but, while he is a Law Commissioner a qualified person may be appointed as Judge in his place. Normally the Commission will be appointed for 5 years, but the detailed length of appointment and the terms and conditions of appointment are not set out but have to be approved by the Minister for the Public Service.

(4) The Commission has the general responsibility of keeping the law under review, which ensures a systematic approach to law reform, and in particular which priorities are necessary. Programmes are to be drawn up in consultation with the Attorney-General as the Law Officer of the Government. The grants to be paid every year to the Commission will be such amounts as the Minister for Finance, on the recommendation of the Attorney General, may consider necessary. The staff of the Commission, including part-time, will be appointed directly by it. The superannuation provisions of the members of the Commission are the customary ones attached to such posts, and Section 13 specifically forbids a member of the Commission from being a member of the Oireachtas. Service as a Commissioner will be deemed practice at the Bar or practice as a solicitor for the purpose of judicial appointment.

Senator Eoin Ryan welcomed the Bill and said: He was pleased that the maximum consultation with all who could help including academics would take place with those interested in Law Reform. He was glad that Consolidation was playing an important part in law reform; its values cannot be overstressed. If, as a result of a Supreme Court decision or Community legislation, the law required to be amended, he hoped it would be undertaken quickly. He hoped that rules in regard to the way in which the drafting of bills would be introduced would be adhered to. It would be useful at the end of Acts to set out a Schedule of Acts which have been amended or repealed by the new legislation.

Senator Alexis Fitzgerald in welcoming the Bill said: Our record with regard to Law Reform was deplorable. For instance the 1972 Report and Draft Bill of the Bankruptcy Law Committee, which took 10 years to complete, has not yet been implemented. The Committee on Court Practice and Procedure has presented 19 Reports, of which only 3 have been adopted. Such matters as the service of court documents by post, a sweeping re-organisation of the District and Circuit Courts, an extension of on-the-spot fines, etc., have been put on the long finger. Apart from that, there is the Kennedy Report on Juvenile Offenders and the National Consumer Advisory Council Report. Different Ministers for Justice as Ministers of the Interior have been too fully engrossed with security problems to bother about Law Reform. Because the Community was dealing with Harmonisation of Bankruptcy Law, the reform of Bankruptcy law has been unnecessarily delayed. The Attorney General is to be commended for seeking the aid of sociologists, psychologists and economists, as well as lawyers. The law should be amended to enable a person, who only knows he is injured after the limitation period has expired, to sue.

Senator Brian Lenehan in welcoming the Bill said: There are many reports on aspects of Law Reform in the archives of the Department of Justice which he hoped would be transferred to the Commission. He hoped that most of the Reports of the Committee on Court Practice and Procedure could be put into effect rapidly. Before embarking on new measures of law reform, the Commission should endeavour to have enacted the draft measures that are already available. He hoped the Commission would publish with their recommendations uncontroversial draft bills which could be rapidly enacted into law.

Senator Professor Mary Robinson in welcoming the bill said: She blamed not only the lawyers for the little interest they had taken in Law Reform but also the University Law Schools. She commended the comprehensive analysis of law reform contained in Farrar's "Law Reform and the Law Comission", recently published. She commended the Commission for having power to draw up programmes of Law Reform, and

hoped it would be extensively availed; the Bar Council and the Law Society should help them. We have allowed the problem of illegitimacy to remain on the statute book without any concern for its reform. Lord Justice Scarman in his recent Hamlyn lecture has shown, that, because the English Social Welfare code developed as an administrative means, it has become a technical area of administration which is of no concern to lawyers. In consequence what is termed "lawyer's laws" has become very narrow, rigid and unresponsive to modern developments. For instance the Law of Property is too concerned with feudal notions, and not enough with planning and the social implications of law. She wonders whether the amendment of parts of the Constitution relating for instance to Trade Union Law and to Education could be considered by the Commission. Another example would be the urgent reform of the Larceny Act 1916, and of the jury system under the 1927 Act. She hoped that the reform of Family Law, which had recently been allocated to the Committee of Court Practice and Procedure, would be re-allocated to the Commission when it was established, but in view of past delays, the Commission would have to consider it as a top priority. It is essential to give this Commission a full mandate and a full staff.

Senator Dr. Noel Browne in welcoming the bill said: It is necessary to broaden the approach to Criminal Law, which is usually considered purely punitive. The Commissioners should understand the origins of aberrant behaviour by men in society, due to broken or drunken homes, etc. The McNaghten rules in relation to criminal responsibility should be modernised, and the law relating to suicide brought up to date. There is nothing abnormal in being a homosexual if you happen to be born that way; they should not be treated as outcast, and it is time to debate this subject. Extremists are the products of our society, yet all we do is repress them.

The Attorney General in replying to the debate thanked the Senators for the welcome they had given the Bill. Consultation with other appropriate persons and bodies was most important. The views of psychologists and of psychiatrists would be carefully considered in reforming the Criminal Law. One of the reasons for not implementing the excellent reports of the Committee on Court Practice and Procedure was the lack of legal expertise in the Department concerned. The Commission will first have the onerous job of deciding where first to give priorities, bearing in mind the limitation of personnel. The Commission would hope to set up a Standing Committee with a professional research team available and with the collaboration of outside experts, who will be able to draw up reports more speedily. The final decision whether to introduce the measure will rest with the Government of the day. If the homework is done, it is essential that it be implemented rapidly, Law Reform is not merely a reform of "lawyers laws", but definitely also a concern of social reform. The Commissions will have power to consider Constitutional amendments if they impinge on Law Reform. The Commission may decide to refer a point of Law Reform to an existing commission already dealing with it, or refer Consolidation to the existing consolidation office. In Criminal Law the emphasis should be definitely on rehabilitation.

The **Committee Stage** was then taken. The Attorney General made the following points in reply to questions:—

(1) He hoped to establish the Commission as soon as possible.

(2) The Commission will have to be a working Commission which will produce results. A policy discussion of the Government will have to be taken as to whether the Bankruptcy Law Commission Report is to be implemented — it will not be referred to the new Commission. If a vacancy occurs, the terms and conditions of the new appointee would be decided by the Government. In the preparation of draft bills by the Commission it is hoped that the assistance of the Parliamentary Draftsman's Office and of the Office of Statute Law Reform and Consolidation, would be available.

(3) It is hoped that the Commission will publish preliminary working papers and it is also hoped to appoint a non-lawyer to the Commission because, as Senator Robinson stated, the background of many senior members of the legal profession is narrow. If the Government reject proposals submitted on a preliminary working paper, they will doubtless have to give reasons in the statutory Annual Report to be published. There is a duty cast upon the Commission to bring in a substantial report.

(4) The moneys to be available to the Commission should be such as will allow them to perform their functions fully, and this should be made known to the Minister for Finance. It is vital that he should not adopt a parsimonious attitude in relation to the Commission. The Commission is to consist of a President and 4 other members. It is hoped that the Commissioners will be appointed full-time, but this will not necessariliy be so.

The First Bayside Village Development Society Limited Residents Association

Secretary,
Law Society of Ireland,
Dublin 7.

42 Sutton Downs,
Sutton, Co. Dublin.
Tel. 324422
26th June 1975

Dear Sir,

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

It has come to our notice that a number of sales in this Estate conveyanced by your Members have failed to comply with this Item and we view this failure by your Members in a very serious light, as it is the custom of this Society to ensure that all monies owing to it are paid before any transfer is approved.

Any queries regarding outstanding debts can be sent to me at 42 Sutton Downs, Sutton.

Yours faithfully
Deirdre Spendlove (Mrs.)
Secretary.

The Solicitors Apprentices Debating Society of Ireland

S.A.D.S.I. INAUGURAL

The 91st Inaugural Meeting of the Solicitors' Debating Society of Ireland was held in the Library of Solicitors' Buildings on Friday, 7th March, 1975. When the President, Mr. Osborne, took the Chair, the Record Secretary, Mr. Niall Sheridan, read a personal, humourous and somewhat defamatory account of the previous meeting. The President then presented Medals as follows:-

Oratory: Incorporated Law Society's Gold Medal, Brian O'Reilly; Incorporated Law Society's Silver Medal, Paula Scully and David Leon.

Legal Debate: President's Gold Medal, Brian O'Reilly; President's Silver Medal, Paula Scully.

Impromptu Speeches: Vice-President's Gold Medal, Sheila Lynch; Vice-President's Silver Medal, Owen O'Connell.

Irish Debate: Society's Parchment, Ciaran McCarthy.

First Year Speeches: Society's Silver Medal, Ciaran O'Mara.

Replica of Auditorial Insignia: Michael Staines.

The Auditor, Mr. Brian O'Reilly, B.C.L., then read his Inaugural Address entitled "Out of the Mouths of Lawyers".

The rifle is to the soldier as the scalpel is to the surgeon and the drawing board to the architect or the engineer as the mouth is to the the lawyer. The mouth of the lawyer is a means of achieving his livelihood, yet let me not be accused of the admission that the lawyer has no brains with which to work. The brain commands the mouth and it is my intention to prove here tonight that both work efficiently together.

The main task of the lawyer be he solicitor or barrister is that of persuasion. The solicitor will, in his professional days be required to convince judges, juries, arbitrators, unwilling clients, company members and directors and indeed other solicitors.

Thus we see that advocacy in the broadest sense of the word extends far beyond the mere spoken word. Advocacy for the Lawyer includes all acts from the first meeting of the Solicitor with the client, through briefing Counsel for an opinion, as well as drafting, settling and issuing proceedings, and negotiations for a settlement, preparation for proofs, interviewing witnesses and ultimately the presentation of the case in Court. Thus we are presented with two parts—the preparation stage and the presentation stage. Which is the more important? With the biographies of the great advocates of the past we are left with a clear impression that the ultimate success rested wholly upon their consumate skill and eloquence. Impressive witnesses were broken in the witness box by no more than a series of brilliantly contrived questions.

To these great advocates of the past and indeed to many of the present subscribers to the Bar Library presentation is considered the, more important. However, consider, if you will, the sight and indeed the plight of an advocate addressing a tribunal without proper information at his disposal. We always envisage the great advocate as a silver tongued hero counfounding the evil minded perjurer under cross-examination as he crumbles before a barage of confusing yet highly decisive questions. However, ask yourselves could our advocate hero put as much as one question in cross-examination if he had few facts on which to rely.

David Napley gives us a series of powerful examples of this and I refer particularly to the Rhyl Mummy case in 1960. The facts are as follows:-

The mumified body of Mrs. Knight was found in the closet of the Defendant's home with a stocking tied tightly around her neck, so tightly in fact that it had caused a 2 cm. groove in her neck. It seemed prima facie that the Defendant had applied a ligature to the victim thereby choking her and hid the body in the closet. Her Solicitor and doctor were tireless in their investigations to prove their client's innocence. Eventually they introduced evidence to show that the so called victim was in the last stages of disseminated sclerosis and that an old custom existed in that area of tying a stocking around the neck when ill as a matter of achieving relief from sore throats and colds. Expert evidence was introduced to show that what in fact happened was that the body gases reacted after death to cause the neck to swell thus causing the groove in the neck. The Defendant testified as having found Mrs. Knight dead, and she put her in a closet so as to collect her old age pension. On the fifth day of the trial the prosecution withdrew its allegation of murder. This is only one example of the importance of preparation.

Efficient preparation which manifests itself at the presentation stage will, win the admiration of the tribunal. Lack of preparation particularly in the lower courts will be clearly evident as soon as the advocate arrives in the court. There will be a great flurry of documents as the advocate attempts to put the briefs in order. It is at this moment that they disappear onto the floor as the advocate sweeps his hands around the table. It is hardly likely to endear him to the tribunal if the first view, the advocate presents of himself is a rather shiny patch on the back of a pair of well worn trousers.

Anyone who has never arranged Proofs for a Court hearing will appreciate the importance of the preparation stage in a case. Preparation marks the dividing line between the pedestrian lawyer and the exceptionally talented one. The ideal combination in any case is to have a brilliant Solicitor who would prepare his briefs and proofs with untiring endeavours and a clear minded barrister who can, when preparing opinions, settling documents, and advising on proofs, see the whole case unfolding as far as the presentation stage

The Solicitor should not need advice on proofs to arrange his proofs. He should in fact have all his

proofs in order when the advice comes back. The Solicitor of this calibre will gain great advantages when the presentation stage arrives. Similarly the Solicitor should not need Counsel to settle proceedings. I am not however suggesting that there is no need for barristers and that the two professions should be merged because not all solicitors are brilliant and consequently do require the services of counsel. Similarly not all barristers have such expertise as to be able to almost look at the blank file cover and immediately pour forth the required opinion. Such barristers require a detailed brief, stating in very simple terms what the facts are and what legal principles are involved. But there is a more powerful argument against such merger. Here I draw on the analogy of the medical profession, seen in the general practitioner and specialist. I agree that there is a need for specialists in the legal profession. Even the best solicitor will meet cases in which there is in his mind a sufficient doubt that would render it unsafe to proceed. Indeed from my limited experience of practice, I have come to appreciate that certainty in a case is practically unobainable. Only in the field of debt collecting and of hire purchase does one find real certainty in liability and quantum.

In referring to presentation, in presenting the case in Court, be it the District Court or High Court it is vital to consider the following points: (1) Clarity; (2) Simplicity; (3) Putting points succinctly; (4) Developing them in an interesting way; (5) Presenting them with integrity; (6) Doing so without any trace of pomposity. It is not that the members of the tribunal are stupid, dense or simple minded, but it is a cardinal rule in practice and procedure that simplicity and clarity of pleadings are both essential in order to avoid undue confusion. The notion is that it is better to be long winded, simple and clear than to be brief and confusing. To be confusing would invite disaster in choking the Court with colateral side issues and clog up the trial. If there are any dangers of complications, they will be more easily dealt with if one pursues the simple line. Similarly submissions made by an advocate in a case made with simplicity and clarity, will attract the admiration and appreciation of the tribunal more readily.

To develop points in an interesting way is not as easy as one might think. It requires a good speaking voice and the ability to think ahead as one speaks. It is this area which highlights the vital importance of preparation.

Integrity in presentation of points is also vital. This too is linked with the presentation of points without pomposity. It is a psychological fact, particularly in Ireland, that no one likes an aggressor. Thus if the advocate appears agrressive or appears to be trying to convince the tribunal of a point which does not appear to the tribunal to be genuine, it may incur the conscious or unconscious displeasure of the tribunal.

David Napley has observations on human psychology. How many lawyers pause to consider the simple fact that dislike of an individual will often extend to dislike of his opinions? Yet there are still fools who believe it clever to behave in an aggressive and even offensive fashion towards the opposing party, witnesses under cross-examination, and even the opposing lawyer. Some even have the brazen effrontery to adopt the same attitude with the Court which they are addressing. This involves more than lack of courtesy, it reflects on an absence of appreciation of the first essentials of simple psychology. Man, we are told includes amongst his basic wants and needs the desire to be appreciated and applauded by his fellows; he is gratified by the recognition of his own skill and ability, and judges are still human. Thus most experienced advocates are mindful of the advantages to be gained by insinuating into the mind of a judge some point which assists their case, under conditions which he satisfies his own ego in the belief that the point was one which he had alone discovered, which is decisive and which everyone else had overlooked.

I witnessed recently such a classic example of this lack of appreciation of the first essentials of simple psychology in the Circuit Ciurt. Counsel A for the plaintiff adhered rigidly to the rules of advocacy, attempting to present the facts with such integrity, efficiency and expertise that he seemed to have been surrounded by an aura of justice. Counsel B on the other hand, badgered witnesses under cross-examination, particularly a poor innocent book-keeper who clearly had no interest in distorting the facts: yet Counsel B treated him as if he were a notorious perjurer. The Judge did his best to keep an open mind but the very fact that he had to make a conscious effort to keep such an open mind was a huge disadvantage for Counsel B. Clearly Counsel A was engaging in a battle of wits with an unarmed man.

Similarly in Rathfarnham District Court I witnessed a display of a prosecuting Garda Superintendent who would not take no for an answer. The Superintendent tried to make the decisions on behalf of the District Justice. Whenever an argument arose between the defence counsel and himself, he would foolishly end the exchange by sayng "the situation is this and that's that!" He did not have a very good day prosecuting.

Some advocates do not know where to stop when extracting an apology from a Judge. In the Paudrigh Haughey trial, I was fortunate to hear the most interesting conversation between Senior Defence Counsel and a member of the panel of Judges. A point in dispute was being discussed, concerning the purchase of certain airline tickets. The learned Judge failed to grasp one point, but the aforementioned Senior Counsel rectified this. In the process of clarifying the point, the Judge was, what one might best describe as gruff with the learned Senior. He then apologised for not seeing the point, but did Senior leave it at this: No! He asked the Judge "Does his Lordship now see this point?" Judge: "Yes". Counsel: "And your lordship was wrong?" Judge: "Yes". Counsel: "That is to say, my Lord, you were wrong, and I was right?" Judge: "Yes".

Contempt is not an uncommon feature of Court life:

In a certain District Court, Plaintiff was being cross-examined by an extremely persistent barrister. The barrister seemed to forget some of the answers given previously, and kept asking the same questions again.

Finally witness turned to the barrister and very politely asked "wig, where did you get the idiot?" The justice would have held the witness in contempt had he been able to stop his own hysterical laughter. Never do we witness contempt by the judge himself for obvious reasons.

Plaintiff approached the bench as it appeared that he was not receiving the attention he felt his case deserved. The Justice asked him why he was here, to which he replied, "I came here to see Justice done." Quick as a flash the grey-haired old devil replied: "Justice Dunne, shur he's away on holidays and won't be back until next week!"

Of course many books have been written on famous legal submissions and addresses, one particularly amusing address I came across in my research, went like this: Counsel began: "It is my intention to prove to this Jury that my client was not present when the killing took place that it was not his intention to injure the woman when, he struck her with an iron bar and held her head under the stream, and finally that she richly deserved her fate at the hands of this man."

You have heard, how to do it, and how not to do it, but most of us learn this by experience. Would it then not be earier, for the young barrister or young solicitor on his first appearance in Court, at his first interview between Solicitor and Client? The Solicitors Apprentices Debating Society of Ireland and other debating societies try to make up for what the educational bodies have not provided. The Societies provide the hard school of experience without the serious consequences of the advocate making a blunder to the detriment of his client, but this is not enough. Students need advice from experienced advocates, to show the method and to teach them how to persuade.

I would strongly urge the Incorporated Law Society of Ireland to include in its new curriculum, a course of lectures in advocacy:- It would not only be invaluable to the young Solicitor's confidence, in starting practice, but it would also save him the trouble and dangers of those first few appearances in Court.

Remember the mouth of the lawyer together with proper anticipated legal research is one of the tools with which it plies its trade—and there is a motto which would serve us well to remember:- "Please engage brain before putting mouth into motion".—It might well be the motto of some future advocacy class.

The Resolution that the best thanks of the Society be given to the Auditor for his address, was proposed by the Hon. *Mr. Justice Conroy*, President of the Circuit Court, and seconded by *Mr. Thomas C. Smyth*, barrister, and passed unanimously.

The Resolution that the Debating Society is worthy of the support of Solicitors' Apprentices, the Council of the Society and of the Solicitors' profession, was proposed by Mr. Andrew F. Smyth, solicitor, and passed unanimously.

The President, having thanked the speakers, then adjourned the meeting.

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2 DAY SEMINAR ON CAPITAL TAXATION

CORK, 11-12 JULY, DUBLIN, 18-19 JULY,

DAY 1

9.00 a.m. : Registration.
9.30/10.30: Capital Gains Tax: Principles and Computations and Exemptions. *Speaker: Norman Bale, Tax Consultant.*
10.30: Morning Coffee.
11.30/12.00: Capital Gains Tax: Transitional and anti Avoidance Provisions. *Speaker: Norman Bale, Tax Consultant.*
12.00/12.45: Capital Gains Tax and Probate and Trusts: *Speaker: Houghton Fry, Solicitor.*
12.45/2.15: Lunch.
215/3.00: Capital Gains Tax and Conveyancing: *Speaker: Joseph Dundon, Solicitor.*
3.00//3.45 Capital Gains Tax and Companies: *Speaker: Houghton Fry, Solicitor.*
3.45 Afternoon Tea.
4.15/5.30: Panel: Discussion and Questions.

DAY 2

9.30/10.30: The Weatly Tax: *Speaker: Robert Johnston, Solicitor.*
10.30: Morning Coffee.
11.00/12.00: Capital Acquisition Tax: Principles Gifts and Inheritances Computations and Returns. *Speaker: Joseph O'Broin, Chartered Accountant.*
12.00/1.00: Capital Acquisitions Tax: Valuations Trusts Appeals. *Speaker: Colin Chapman, Solicitor.*
1.00/2.30: Lunch.
2.30/3.30: Capital Acquisitions Tax' Exemptions Interaction with Capital Transfer Tax Practical Problems. *Speaker: William B. Somerville, Solicitor.*
3.30: Afternoon Tea.
4.00/5.15: Panel: Discussion and Questions.

NOTE:—Lecture Scripts in respect of the Capital Gains Tax lectures will be sent on or before 4th July 1975 to each participant at the address set out opposite. All other scripts will be circularised at the seminar. Scripts and copies of the Bills or Acts should be brought to the Seminar by each participant. Please note copies or Acts will not be supplied at the Seminar.

The Sheriff's Part in Debt Collection

By T. G. CROTTY, County Registrar, Kilkenny

The office of "shire-reeve" dates back to Norman times. He was chief officer of the Crown in each county. Incidentally, as such, he still takes precedence over every other person in the county, and in cities takes second place only to the Mayor. On formal occasions, his proper dress is "court dress".

Interestingly, like his colleague in the American West, the Sheriff has the right—which may amount to a duty—to call out the posse—(posse comitatus = the power of the county). Originally this was a power to summon all good men and true to horse, to ride out and assist the sheriff in the execution of his duty. To-day, the power of the county lies in the police force. When the sheriff nowadays requires a protection escort the requisition he sends to the Garda Superintendent is still known as a "Posse Notice."

The execution of the orders of the King's Courts was always one of the primary functions of the sheriff. Originally this covered criminal as well as civil orders —for example the pursuit of outlaws, the execution of sentence of death, etc. However, these powers were gradually eroded following on the establishment of regular police forces, culminating in the abolition of the powers of arrest, attachment and committal by the Enforcement of Court Orders Act, 1926 and the vesting of these and all other executive powers of a criminal nature in the Garda Siochana. All that is now left is the enforcement of civil orders, i.e. money judgment, orders for possession and the like.

Another effect of the Court Officers Acts was to abolish the former distinction between high sheriffs, and under-sheriffs, and apart from the special cases of Dublin and Cork, to transfer the duties, obligations, rights and privileges of the former sheriffs, as they died off or retired, to the County Registrars. They are whole-time court officers, primarily responsible to the Courts they serve as registrars, but carried on the staff of the Department of Justice for purposes of pay and establishment. Presumably it was felt that in Dublin and Cork the combined work-load would be too much for one man, so separate sheriffs have been retained there; these are part-time officers with a small retaining salary, who derive their income mainly from the poundage and fees they charge on the execution of court orders.

Up to about 10 or 12 years ago, the County Registrar was separately remunerated for his sheriff duties by an allowance which was apart from his general salary; these allowances averaged about 10% of his salary and county registrars naturally inclined to treat their sheriff responsibilities in a like proportion—i.e. as calling for not more than 10% of their time and energies! Although these allowances have since been consolidated and the amounts were not increased, consequently. The attitude tends to persist.

Let us suppose you, as solicitor, have obtained judgment on behalf of a client for the payment of a debt, and there is no stay of execution or provision for payment by instalments. You then take out a decree (District Court) or an Execution Order (Circuit Court) or a Writ of Fieri Faccas, commonly called Fi. Fa. (High Court) and lodge it in the Sheriff's Office for the county where the Defendant resides or carries on Business. Each County Registrar still maintains a separate branch, usually with its own staff and quarters, which is still known as the Sheriff's Office. On lodging you are charged a nominal fee, depending on the amount of the judgment—the maximum is 35p. A note of the orders is then entered in the sheriff's "Execution Book" and takes priority according to the order of entry. An alphabetical index to this book is kept in the order of debtors' surnames.

Let us refer to all such court orders by the general term of "Decree". It directs the Sheriff to levy the amount due for debt and costs by seizure and sale of the debtor's goods. On the face of it, it contemplates no other intermediate steps and in theory the sheriff ould be justified to seeking out his Court Messenger (formerly known as bailiff) forthwith, with a van or truck and order him to take possession of enough of the debtors goods to satisfy the decree.

In practice, of course, this does not happen. Times have changed and the present day sheriffs are not the domineering minions of the Crown and the Landlord class that they were in the past. In any event social thinking today would not tolerate such brute force being exercised without good warning. So the the Sheriff sends out formal notice that the decree has been lodged and demanding payment, threatening seizure in default. Several such notices may be sent out, and if there is no response the Court Messenger will usually be directed to make a warning call, trying at the same time to find out why the debtor is not paying, and whether he can afford to, and also trying to ascertain what goods he has that could be seized. In my experience, this process succeeds in extracting payment in well over 50% in all cases without need for any more drastic action.

Sometimes, of course, the debtor asks for time to pay or makes an offer of weekly or monthly instalment, or disputes the liability altogether. Here is where the Sheriff's local knowledge and that of his Court Messenger come into play—they must judge whether or not to take such approaches at their face value or not. If the sheriff thinks they are genuine, he will telephone or write to the solicitor who lodged the Decree, informing him of the debtor's attitude and usually adding his own comments as to whether or not he thinks an offer should be accepted or a disputed liability is genuine—and he will then await the creditor's instructions before taking any further action.

Sometimes, if the delay is not unreasonable, or the instalments offered are big enough to clear off the debt in a fairly short time, the Sheriff, realising that easiest ways are best, will accept the offer off his own bat without seeking instructions. Normally, however,

he will not accept payment by a lengthy series of small instalments. His book-keeping system is not geared to this and instead he will invite the solicitor to take up the Decree and accept payment direct, subject to the provision that the Decree can always be re-lodged if default is made in paying the instalments.

Apart from outright defiance, one meets the most extraordinary attitude from debtors.

In a proportion of cases the sheriff will be all too well aware from past experience that the debtor is a complete "dead beat" with no goods or tangible assets which could be seized. You can't squeeze blood from a turnip or water from a stone. In such cases, after one formal notice, he will usually return "Nulla Bona" without further ado.

But sheriffs, can err. If you, as a practitioner got back a return of "Nulla Bona" and you suspect that the Sheriff was mistaken or misled, or the circumstances of the debtor have changed for the better you can always query this return. You will not be popular for doing so but it is your right and if you can indicate where goods of the debtor are to be found, so much the better. You can even sue the Sheriff for a false return—but I do not recommend this.

There will always be the small proportion of cases where the debtor could but won't pay and the full register of the law has to be invoked. But the sheriff law is highly technical and involved. Let me indicate just a few of the complications. In the first place, only goods can be seized—though this term does extend to the debtor's interest in a lease or tenancy, if it has any saleable value. Freeholds are not seizable, nor is an equity of redemption. Neither is money, so the Sheriff cannot catch a debtor by the heels and shake him and then pick up whatever coins or notes that fall out. Nor can money on deposit in a bank be seized by a sheriff, nor a policy of insurance.

Necessary wearing apparel, bedding and the tools of the debtor's trade to a value of £15 are exempt from seizure. Nowadays, this tends to be given a fairly liberal interpretation and the sheriff's estimate of value is never questioned. For one thing, such articles have a very dubious saleable value, and for another, public opinion would be very opposed to depriving an average citizen of his purely personal belongings, or leaving him and his family in utter hardship.

The aspect of saleability is one which the sheriff must take into account. There is no point whatever, especially in these days of high transport costs, in seizing articles of little value which would not even realise the expenses of seizure, transport, advertising and sale, not to mention sheriff's fees. To do so would merely be punitive to the debtor while yielding no advantage whatever to the creditor. The law on sheriffs sales is delightfully vague, and he is forbidden to sell at a gross undervalue, but in between these extremes there is a very grey area in which he can duly use his own discretion and commonsense.

The transport of seized goods and their safe keeping until sale raises yet another problem. The sheriff is obliged to hold the goods for at least 48 hours before putting them up for sale, in order, presumably, to give the debtor the opportunity of redeeming them by paying up the full amount due. They are at his risk for this time and until sold. Both transport and storage present difficulties. The average haulier does not relish working for the sheriff, as it seems to carry some sort of stigma. Therefore, in most instances, he has to rely on C.I.E.

Again, very often, secure and suitable pounds are not available, due to the apparent unenforceability of the statutory obligations on local authorities to provide them. Dry goods, drapery etc. can sometimes be held in the Courthouse, but this is not legally a pound and has certain disadvantages e.g. in regard to insurance, forcible rescue of seized goods etc.

The sheriff also has to ensure, as best he can, that any goods he does seize are in fact the property of the debtor. If he is a householder and farmer, then goods found at his home are prima facie likely to be his. But very often in this era of hire purchase, the more valuable items of consumer durables may not be his property at all. If on H.P., as 75% of cars, trucks and the larger household appliances are said to be, then, as you know, the property in them does not rest in the hirers until the last instalment has been paid—until then they belong to the finance house concerned. Many other items in the apparent possession of the debtor may not be his property for other reasons—his T.V. is probably rented, his car may in fact be the property of his firm, his livestock may be the subject of a floating chattel mortgage to the A.C.C. All these factors inhibit seizure. The goods may even genuinely be the property of another private individual, on loan to the debtor, and woe betide the sheriff if he wrongfully seizes goods the property of a third party, because he is personally liable in damages.

Claims to ownership by a parent, child or spouse of the debtor, however, are unavailing against seizure provided they are found on property of which the debtor is the occupier. This is some help, especially as it is not known to the lay public—or even to some solicitors, I have several times been threatened by solicitors, or faced with very professionally drawn assignments of chattels or affidavits as to ownership when a husband sought to evade seizure by alleging the goods were his wife's property. The citation of Section 13 of the Enforcement of Court Orders Act, 1926, quickly disposes of this.

In the case of seemingly genuine claims and counter claims to ownership of goods taken into seizure, the Sheriff has some protection. He can use the procedure known as Interpleader and, disclaiming any personal interest in the goods, leave it to the rival claimants to fight out the dispute in Court. However, this is rather technical, and, as the sheriff continues to hold the goods as a stakeholder, it is not very satisfactory if they consist of livestock or are of a wasting nature.

Apart altogether from questions of value, the actual saleability of the goods can often be an issue to which thought has to be given. In the anonymity of a large city, with a profusion of sales rooms and auctioneers, the disposal of furniture and dry goods generally is no great problem. But it is often otherwise in the country, where everyone knows every one else's business and bad news spreads like wildfire. Usually, the provincial sheriff has to act as his own auctioneer

and negotiate sales as best he can. He does not, as you can well imagine, relish the thought of having goods left on his own hands indefinitely because a sale is boycotted, especially if the seizure is of livestock which require constant attention, feeding, working and perhaps even milking.

I will spare you a recital of the other hazards run by the sheriff if he over-seizes or trespasses mistakenly in the search for seizable goods. The whole law relating to sheriffs is bristling with technicalities, and pitfalls—the implications of the possible bankruptcy of the debtor being yet another one of them.

After all this, you may begin to appreciate why you do not always get the service from your friendly local sheriff that you feel entitled to expect. The fact of the matter is that the machinery available to him is totally antiquated and creaking at the joints. The system was devised for an era when wealth was measured in property and tangible assets, whereas today, wealth is largely in the form of income—income which the sheriff has no power to attack. Put another way, it was devised for an era when virtually all trading was for cash or barter amongst the generality of the population and when hire-purchase was unthought of and credit-trading restricted to the monied and credit-worthy few. The sheriff system probably worked quite efficiently then, but it just cannot work efficiently in the altered circumstances of today. The only extant Irish authority on sheriff law is "Dixon & Gilliland", published in 1887 and never thought worth republishing.

In practice, therefore, if a sheriff is active and even moderately successful in enforcing judgment debts in Ireland today, it is largely by a process of bluff. He does this by moral pressure and by threatening seizure sufficiently convincingly and menacingly to lead people to believe that he will take measures which he very seldom could carry out, if put to the point. Of course, to sustain this bluff, he must now and again go the whole hog, by carrying out a few outright seizures every year. For this, he will, if he has sense, pick his cases carefully, choosing only those where he knows the debtor could pay and has goods readily available for seizure which are also readily saleable. And if possible he will choose those cases which will attract a good deal of local publicity, while at the same time, for the good of his own skin, will attract the minimum of sympathy for the victim. The bluff must be backed up by the occasional action or it will be seen through for what it is.

Properly applied, this method can bring fairly satisfactory results without causing undue hardship. It is the method I use and an analysis of the Decrees lodged with me over the past few years that any "Nulla Bona" returns amount to as little as only 17½% of all decrees lodged. This is probably rather better than average, and I can only attribute it to the fact that I have always paid good deal of attention to the Sheriff function, that I am blessed with good staff, and perhaps gifted with a "poker face" to facilitate the bluffing.

As I had occasion to say to the Irish Credit Managers' Association at their Seminar some months ago, there is my view an utter recklessness, amounting often to prodigality, in the manner in which credit has been extended in this country in modern times. Allied with this is the failure of business and finance houses to set up any realistic and worthwhile machinery for assessing credit worthiness. This must be so because, after 20 years experience I see the same defaulters cropping up time and again in my Execution Book. In the past 12 months alone, I have counted fifteen names each of which has cropped up four, five or more times as defaulters. I have one man on my books who has defaulted two banks and five H.P. firms, as well as several private creditors to my certain knowledge—and in quite a big way too. How did he get all that credit?

One available device which I can never recollect H.P. Companies or the Credit Managers of business firms making use of is the "Sheriff's Office Search." For a fee of 35p this will show up any decrees, all currently held against any named individual or firm in the county. Admittely it has the defect that it only shows those currently held, and not how many have been lodged in the past or what has happened to them. But at least it is some protection and at 35p very cheaply bought. In my experience this device is utilised almost exclusively by the A.C.C. and the Building Societies, and very occasionally by the Banks. Merchants never use it. Do their solicitors ever think of advising them to do so? Hire Purchase Companies, who form close on 25% of all default judgement creditors in my county very rarely do. On the other hand, if I unadvertently seize a car or a washing machine in which they have an interest, they are apt to squeal very loudly indeed and to threaten me with all sorts of dire measures.

Before attaching too much blame to the sheriffs therefore, credit managers and controllers and their legal advisers should examine their own consciences. If they continue to extend virtually unlimited credit to people who have not the means to repay, they cannot reasonably blame the Sheriff if he fails to enforce their decrees.

No matter how diligent sheriffs may be— and some are undoubtedly more diligent than others—they cannot improve on the machinery, they can only use it to the best of their abilities.

I have taken the trouble to study at first hand the new Enforcement of Judgements system in Northern Ireland which certainly represents a very considerable advance on the former system there —but then that was even more primitive and antiquated than ours, as at least our 1926 legislation achieved a certain advance. The Minister for Justice has lately spoken on the subject to the Credit Managers Association and I recommend any of you who are interested to study his speech on that occasion (31st October 1974) which was extensively reported in the papers.

Ultimately any improvement in the enforcement system is a matter for Government and Legislation, not for the sheriffs. It is also a matter for people like you, who are free to lobby and bring pressure to bear.

BOOK REVIEWS

Pettit (Philip H.) — Equity and the Law of Trusts — Third Edition; Pp. cxxiii, 565. London: Butterworth, 1974; (limp) £6.20.

The fact that in 8 years there have been three editions of this learned work speaks for itself. Professor Pettit extended the text of the first edition published in 1966, by 48 pages in the second edition in 1970 and by 75 pages in the present edition. The author has wisely omitted Mortgages and Restrictive Covenants as pertaining to Land Law, and Administration of Assets as pertaining to the Law of Succession. As a result he has been able to treat the law of Trusts and Trustees in great detail, devoting not less than 13 out of the 17 chapters in the book to this subject. Although the amount of research into English Reports has been most painstaking, it is quite surprising in mentioning the Commonwealth decisions, that the better known Irish cases such as **"Knox — Barclay's Bank (Channel Islands) v. Revenue Commissioners"** — (1963) IR, **Saul's Trust**—(1951) Ir. Jur. Rep., re Election —and in **Re Elwood—Fitzpatrick v. Maynooth Mission,** (1944) IR, re marshalling of charitable assets, and **Walsh v. Walsh**—(1942) re presumption of advancement, appear to have been omitted. Fortunately Mr. Wylie's forthcoming book on Irish Land Law will bring many of these Irish decisions to the notice of English practitioners. Apart from that, Professor Pettit has brought to our attention in the most enlightened way all the important decisions relating to the English Law of Trusts, and has made many appropriate citations. Chancery practitioners will benefit immensely, if they can master the contents of this book, which has been so well brought out.

Thornton, C. E. and J. P. McBrien—Buiding Society Law; Cases and Materials; Second Edition. London: Sweet & Maxwell, 1975; xx, 174p.; paperback, £2.50.

It is well known that, apart, from Wurtzburg, there has not been any textbook of note on the intricate subject of Building Society Law, and the work of the two learned solicitor authors, published under the auspices of the Building Societies Institute, when it first appeared in 1970, received great commendation. Its excellence may be gauged by the fact that a second edition has been called for in this specialised subject, within 5 years. The first chapter headings are wisely split up according to subject, such as Objects, Membership, Rules, Directors, Meetings. The second chapter is financial, and deals with such matters as Investments, Rights and Liability of Investors, Withdrawals, Interest, Pass Books and Deposits. The third chapter deals with mortgages and also *inter alia* with Advances by Societies, Capacity of the Borrower, Creation of a Mortgage, Rights of a mortgagee to enforce Mortgages, Interest, the Borrowers' Covenant, Consolidation and Marchalling. Chapter 4 deals mainly with the Registrar of Friendly Societies, Amalgamations and Office Premises. In respect of every item mentioned, case law is quoted in support of particular propositions. In relation to mortgages, such up to date cases as **Lloyds Bank v. Marcan** — (1973) 1.W.L.R. — where the mortgagees were granted possession because the mortgagor granted a fraudulent lease to his wife with intent to defraud creditors, and **Cushmere Brick Co. v. Mutual Finance Ltd.** (1971) Ch.D. in which a mortgagee, in exercising a power of sale, had not taken reasonable precautions to ascertain the true value of the property, and was thus refused possession, are listed. Those who wish to learn their Building Society Law in a relatively simple way could not do better than study this book.

Harris, J. W.—Variation of Trusts; xv, 118p. London: Sweet & Maxwell, 1975; £1.25. (Modern Legal Studies).

The modern English legislation called the Variation of Trusts Act, 1958, owes its origins to the decision of the House of Lords in **Chapman v. Chapman**—(1954) A.C. which decided broadly that the Court had no inherent jurisdiction to override the Settlor's express intentions on behalf of persons under incapacity; it laid down that unless there were a genuine dispute amongst the Beneficiaries about their respective rights under the Settlement, the Court had no jurisdiction to agree to a compromise on behalf of persons under incapacity or unascertained beneficiaries. Up to then it had been thought that the "Compromise jurisdiction" was much wider. The English Law Reform Committee published a 6th Report in 1957 on "The Court's Power to sanction Variation of Trusts," and the proposals contained in the Report were largely adopted in the 1958 Act; there is now equivalent legislation in Scotland, Northern Ireland, Canada, Australia, and New Zealand. There are four distinct jurisdictions under the Act: (1) **The Conversion Jurisdiction** by which the Court may authorise a conversion from land to money or *vice versa*, in the case of trust property even though the trust confers no power of conversion upon the Trustees; (2) **The Salvage or Emergency Jurisdiction** recognises that the Court had inherent jurisdiction to authorise the Trustees to go beyond the administrative provisions of the settlement in exceptional cases where this was essential to preserve the trust; the leading case is **In Re New**—(1901) 2 Ch.D; (3) **The Maintenance Jurisdiction** by which the Court has inherent jurisdiction to authorise trustees to appropriate income which the settlor has directed to be accumulated or to be used for the payment of debts, and to use it instead for the maintenance of beneficiaries who have not yet attained vested interests in the property; (4) **The Compromise Jurisdiction** previously explained. Section 57 of the English Trustee Act, 1925, by granting wide powers to the Court, ensured that trust property should be managed as advantageously as possible in the interest of the beneficiaries, and is now largely superseeded by the 1958 Act. Dr. Harris, a learned solicitor, has succeeded admirably in summarising in a few succinct and clear words the most intricate decision of the 1958 Act—a remarkable feat considering the difficulties

in construing an Act dealing with the Law of Equity. Presumably the forthcoming Law Reform Commission in Ireland will also adapt this most useful Act. Chancery practitioners should find this little volume of inestimable value.

Stround, E.—Judicial Dictionary—Vol. 5—SZ—4th edition by John James London: Sweet & Maxwell, 1974, £10.50.

We are already indebted to Mr. James, one of the directors of Sweet & Maxwell, for producing four volumes of the fourth edition of Stroud. This is the final volume, which, in fact, was published in April, 1975. It need hardly be said that this volume more than lives up to the high standard of its predecessors. although the learned author has tended too rigorously to stick to English legal pronouncements. For instance 3 meanings are assigned to the word "Transfer", but the main meaning in Irish law, namely the transfer of registered land from one person to another under the Irish Registration of Title Act, 1964, is omitted. While the expression "unreasonably withheld" appears under "unreasonably". *Schlegel v Corcoran* — (1942) I. R. 19 is omitted. In discussing "wholly and exclusively laid out for the purpose of trade" under "Wholly", the important case of *Davis v M.* (1947) I. R., 145, does not appear. It is important to realise that, in respect of some words, Irish decisions are vital. In all other respects, we congratulate Mr. James upon a labour which entailed erudite learning and deep research, and which has been successfully accomplished.

The Yearbook of World Affairs 1975. London: Stevens, 1975, £6.60.

Unlike the series "Current Legal Problems", this yearbook deals more with current political rather than legal problems. As it is published under the auspices of the London Institute of World Affairs, the standing of the various authors can be guaranteed. The Federal German Chancellor, Mr. Schmidt, has for instance dealt with "New Tasks for the Atlantic Alliance in which he announces that a real balance of power is an important and effective instrument or preserving peace. Armed conflict which is fraught with the risk of self-destruction should be avoided. Balance in the strategic field is a prerequisite for an effective nuclear deterrent. Professor Ferns gives a short summary of economic developments in Argentina since 1930, while Professor Hutchinson treats of the consequence of the military coup in Chile. Mr. Midgley in considering Natural Law, has concluded that in this modern world, it is Natural Law alone which can prescribe for that moral malaise which the modern ideological doctors have variously sought to cure. There are other interesting articles on "The World Council of Churches and Racism", The Andean Common Market", The Soviet Concept of Socialist International Law", "The International Law Commission", and others. Many of the papers are written in a deep philosophical style, but those who persist in reading them will gain enormous knowledge.

Sweet & Maxwell — European Community Treaties—AdvisoryEditor—K. R. Simmons, Second edition—London: Sweet & Maxwell, 1975, £3.25 Paperback.

Professor Simmonds has learnedly supervised the legal editorial staff of Messrs. Sweet & Maxwell who prepared this volume. This Second Edition contains for the first time the *Official* English language texts of the Treaties, issued by the Official Publications Office in Luxembourg. The texts include the Paris Treaty of 18 April, 1951 establishing the European Coal and Steel Community, the Treaty of Rome of 25 March, 1957, establishing the European Economic Community and the Treaty of Rome of the same date establishing the European Atomic Energy Community. The lists of the protocols include the Statute of the Court of Justice, and that on Privileges and Immunities of the Communities. Finally the full text of the Treaty of Accession of Britain, Ireland and Denmark to the Community dated the 22 January 1972 is set out. This is a most useful book for rapid consultation of the texts.

APPOINTMENTS IN COURT OFFICES

Mr. Patrick J. Dunphy has retired as Senior Registrar of the High Court, and his term as Assistant Master of the High Court has been extended.

Mr. John Delahunty, Senior Clerk in the Supreme Court Office, has been appointed an Assistant Registrar in the High Court.

PUBLIC RELATIONS BEGINS AT . . .

Whenever a solicitor errs in any way, whether through neglect or carelessness or for some other reason, his conduct reflects on the whole profession.

It was regrettable, therefore, to find — quoted from Department of Labour statistics — that £3,850 was collected from solicitors for law clerks by Department of Labour inspectors in 1974. Two prosecutions for non-compliance with Employment Regulation Orders were brought against solicitors.

Underpayments were detected by inspectors in 9.2% of the solicitors' practices checked.

In 1973 arrears collected from solicitors (£3,438) were the highest for any category of employer; the highest sum in 1974 (£4,965) was from hoteliers.

The sums are not significant, but the public reaction does not improve the image of the profession.

Correspondence

McCann Fitzgerald Roche & Dudley
Rue de Namur, 82
1000 Bruxelles
15th May, 1975.

Dear Mr. Gavan Duffy,

I should be grateful if you would publish a correction to some errors and omissions in my discussion of of the Van Binsbergen case published in the April 1975 Gazette.

Some printer's gremlin inserted the words "sole and curious" in the first full sentence on page 76. Although it was surprising that the Irish Government argued in that case that Artcles 59 and 60 should not be directly applicable since the Court had already held, in the Reyners case, that the comparable Article of the Treaty relating to freedom of establishment was directly applicable, nonetheless, the Irish Government produced respectable arguments in favour of its view. Indeed the Court adopted the compromise solution which Ireland proposed. I feel therefore that the insertion exaggerates the peculiarity of Ireland's position.

Some lines were omitted from the following sentence which should have read:

"The Irish Government, surprisingly in view of the **Reyners** Decision, argued aganst the direct applicability of the Articles, but stated that, if the Articles were found to be directly applicable, their direct applicability should be confined to the prohibition on restrictions based on nationality or residence—the abolition of other restrictions should be dealt with by directives."

Yours sincerely,
Gerald Fitzgerald.

W. G. Bradley & Sons,
11 Lower Ormond Quay,
Dublin 1.
19th May, 1975.

FEES FOR SUMMONS SERVERS IN THE DISTRICT COURT

Dear Mr. Ivers,

The National Prices Commission has authorised an increase in the fee to be paid to a Summons Server for the service of any Summons, Civil Process or other originating document or any other document, to be the sum of 70p, payable upon proof of each separate Service effected. The Increase as mentioned shall come into effect as from 2nd June, 1975.

This refers exclusively to the Service of documents in the District Court, and perhaps you would kindly arrange for publication of this, in the Gazette.

Yours sincerely,
R. Knight.

Office of the Minister for Social Welfare
Dublin 1.
30th May, 1975.

Dear Mr. Ivers,

With further reference to your letter regarding delays arising in the distribution of Estates after Grant of Probate, I find that the type of case you refer to, namely those in which solicitors are warned of the possible liability of certain Estates for repayment of overpaid old age pensions, is of relatively small incidence. These warning letters as you are aware are based on the outcome of the due process of adjudication as to the pensioner's entitlement.

I also find that frequently such delays as come to notice have their origin in factors outside the involvement of my Department such as a delayed response, on the part of a personal representative of the deceased pensioner, or his solicitor, to necessary Departmental enquiries.

I am of course anxious to co-operate in eliminating the kind of delay in question and if you are good enough to send me specific examples of the type of case you have in mind I will have these examined in depth.

Yours sincerely
Brendan Corish

Mr. J. J. Ivers,
Director General.

Valuation Office,
6, Ely Place,
Dublin 2.
13 June, 1975.

Dear Mr. Ivers,

I am very appreciative of the congratulations and good wishes conveyed in your letter dated 4th instant.

We can arrange to meet and talk about the problem of delays as soon as possible.

I have already taken action in this matter since my appointment. With mutual co-operation between your members and the Valuation Office, I have high hopes of dealing expeditiously with this problem.

If you could let me have the reference numbers of any particular cases that are causing difficulties (we identify by Serial number) before you come in to see me, I will have them investigated to find the cause of delay.

I would like to point out that faulty identification by a Solicitor can cause considerable delay. Where the client does not give your member sufficient information, a photo-copy of the rate demand note could make all the difference in identifying the property and speeding up the work.

Yours sincerely
D. F. Ryan

The Register

REGISTRATION OF TITLE ACT 1964

Issue of New Land Certificate

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

Dated this 31st day of July, 1975.

A. J. O'DWYER, Registrar of Titles,
Central Office, Land Registry,
Chancery Street, Dublin 7.

Schedule

(1) Registered Owners: Timothy Crowley and Julia Crowley; Folio No.: 18405; Lands: Buddrimeen; Area: 24a. 1r. 20p. County: Cork.

(2) Registered Owner: Desmond McDonagh; Folio No.: 13479; Lands: Mannin Beg; Area: Oa. 2r. 2p.; County: Galway.

(3) Registered Owner: Patrick Carey; Folio No.: 33258; Lands: (1) Tinderry, (2) Rockforest; Area: (1) 1a. 2r. 15p., (2) 7a. 3r. 15p.; County: Tipperary.

(4) Registered Owner: James Malone; Folio No.: 6232; Lands: Knockanure; Area: 25a 1r. 25p.; County: Wexford.

(5) Registered Owner: Harriet Ellen Bredin; Folio No.: 8815 R; Lands: Manorhamilton; Area: 10a. 1r. 3p.; County: Leitrim.

(6) Registered Owner: Joseph Patterson; Folio No.: 21245; Lands: (1) Enniskeen, (2) Lisanisky; Area: (1) 44a. Or. 8p., (2) 11a. 3r. 10p.; County: Cavan. (The Land Certificate in Folio 1718 County Cavan now forming the Land No. 1 on Folio 21245 County Cavan).

(7) Registered Owner: James Connolly; Folio No.: 28697; Lands: Carrick West; Area: 17a 2r. 9p. County: Donegal.

(8) Registered Owner: Annie Savage; Folio No.: 503 L; Lands: The leasehold Estate in the dwellinghouse and premises known as 282 Griffith Avenue situate on the south side of the said Avenue in Drumcondra.; City of Dublin.

(9) Registered Owner: John D. Kennedy; Folio No.: 29818; Lands: Part of the land of Acres in the Barony of Galway; Area: Oa. Or. 27p.; County: Galway.

(10) Registered Owner: Edward Whelehan; Folio No.: 12598; Lands: (1) Corcloon, (2) Drumman; Area: (1) 13a. Or. Op., (2) 2a. 1r. 17p. County: Westmeath.

(11) Registered Owner: John P. Browne; Folio No.: 4830; Lands: Knockduff Upper; Area: Oa. 1r. 12p. County: Cork.

(12) Registered Owner: Patrick J. Munnelly; Folio No. 20855; Lands: Killacorraun; Area: 67a. 3r. Op. County: Mayo.

(13) Registered Owner: John Young; Folio No.: 16075; Lands: Lackenroe; Area: 73a. 2r. 13p. County: Cork.

(14) Registered Owner: Mary Ellen Levins; Folio No.: 1106L; Lands: The leasehold estate in the dwellinghouse and premises known as No. 2 Parnell Avenue situate on the west side of the said Avenue in the District of Rathmines Parish of St. Catherine and City of Dublin; City of Dublin.

(15) Registered Owner: Fintan Devin; Folio No.: 10342; Lands: (1) Grange, (2) Grange; Area: (1) 1a. 2r. 36p., (2) Oa. 1r. 8p.; County: Louth.

(16) Registered Owner: Patrick Joseph Downey; Folio No.: 11324; Lands: Santry (E. D. Drumcondra Rural); Area: Oa. Or. 10p.; County: Dublin.

Notices

The Society has received the following enquiries from interested practitioners:—

(1) A small but busy city practice would be interested in amalgamating with a practice dealing mainly in the company law and commercial area.

(2) A substantial practice in a north eastern town would like to recruit an experienced Assistant. Given the right person, a partnership could follow.

Enquiries in confidence to Mr. James J. Ivers, Director General. Envelopes should be marked 'PERSONAL'.

Country Practice for sale. Replies to Box No. 119.

Leaving Certificate Student seeks Master. Excellent references available. Replies to James Nash, Glandree, Feakle, Co. Clare.

3rd year B.C.L. (U.C.D.) Student (27) seeks Master, preferably in Dublin area. Joseph P. Davis, 'Glandore', 13, North Avenue, Mount Merrion, Co. Dublin.

3rd Arts Student (T.C.D.) seeks Master for October, 1976. Replies to Pauline McHenry, 31 Raphoe Road, Crumlin, Dublin 12.

Translations: French and Spanish, fast accurate service by experienced legal translator. Mrs. Felicity McNab, Bellareena, Sandycove Avenue East, Sandycove, Co. Dublin. Telephone 801580.

LOST WILLS

BRIDGET VERONICA CULLEN, deceased, late of 1, Hardebeck Avenue, Walkinstown, Dublin. Will any solicitor or person knowing the whereabouts of any Will or Codicil or Testament Document made by the above deceased please communicate with John P. Redmond and Co., solicitors, 17, Kildare Street, Dublin 2.

MICHAEL COLLINS, deceased, late of Newtown, Clarina, Co. Limerick. Would any solicitor having knowledge of a will for the above deceased who died recently, kindly get in touch with David Punch & Co., Solicitors, 89 O'Connell Street, Limerick. Telephone: (061) 49144.

If ever the Cortina becomes Ireland's best seller, we'll have mixed feelings.

The Ford Cortina is a truly remarkable motor car.

For starters, it brings you *Total* Motoring Economy. The Cortina costs less to put on the road. Costs less to keep on the road. And even costs less when it's off the road. Let's look and see:

Purchase Cost: £ for £, the Cortina costs less than other cars in its class. And that price includes, as standard equipment, such valuable features as front disc brakes, dual-line brakes, electric screen washer, glove box, alternator, anti-theft steering lock, adjustable rake seats, two-speed wipers and, of course, our famous 'Aeroflow' ventilation system. In fact, the Cortina makes other cars look as if they are suffering from hyper-inflation. And, when it comes to re-sale price, the Cortina is also undisputed leader.

On-the-Road Costs: The Cortina gives you a touring MPG of 36.2*. And no comparable car offers better warranty terms than our 12 months or 12,000 miles guarantee, or our 6,000 miles service intervals. Add in Cortina comfort, style and zippiness and you've got an all-round value for money motoring package.

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Family-sized Comfort: The Cortina is family-sized – one of the few genuine family-size cars there are. Not too big outside and certainly not too small and cramped inside. The Cortina gives you motoring comfort and motoring style – in exactly the right proportions.

So why isn't it Number 1? Despite all the pros and plusses, despite Total Motoring Economy, despite the fact that the Cortina is a beautiful car to drive, we have to confess one thing: we're still quite happy for the Ford Cortina to stay at Number 2 in the best seller lists.

So long, of course, as the Ford Escort stays at Number 1.

* 1300cc Manual Transmission.

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THE GAZETTE OF
THE INCORPORATED
LAW SOCIETY
OF IRELAND

July-August, 1975
Vol. 69 No. 6

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The Editor welcomes articles, letters and other contributions for publication in the Gazette.

Opinions and comments in contributed articles and reviews are not published as the views of the Council unless expressly so described.
Likewise the opinions expressed in the Editorial are those of the Editor and do not necessarily represent the views of the Council.

The Gazette is published during the third week of each month; material for publication should be in the Editor's hands before the 15th of the previous month if it is intended that it should appear in the following issue. Acceptance that material will in fact be included in any particular issue for publication is not a guarantee that it will be published then since this must depend on the space available.

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Recent Irish Cases

Vendor and Purchaser — Deposit forfeited as a result of delay in completion.

By an agreement of 1 June 1973 between plaintiffs and defendants, the defendants agreed to purchase "Brooklawn", Kimmage Road West, Dublin for £235,000, of which £23,500 was to be paid as a deposit, and the balance on completion. The sale was subject to special conditions and in particular to full planning permission being granted before 31 December 1973, the closing to take place within 21 days after that. If full planning permission was not obtained before the end of 1973, the period of completion was to be extended by six months, provided the defendant purchasers agreed to pay interest at 3% above Bank interest rate until actual date of completion.

Planning permission was eventually granted subject to conditions on 5 February 1974, and a letter was sent by plaintiff's solicitor to defendants' solicitors informing them of this on 8 February, which was acknowledged on the 11th. On the 12th February, the plaintiffs' solicitor rashly informed defendants' solicitors that they wished to have a reply by return. On 8 March the plaintiff company solicitors informed defendant company solicitors that the 21 days had expired on 27 February; they pointed out that at this stage they considered time to be of the essence of the contract and stated that they would deem the final closing date to be 15 March. On 13 March, the defendant's solicitors wrote to plaintiff's solicitors stating that their clients were entitled to rely on the 6 months extension, and that time was not of the essence of the contract. On 14 March plaintiff's solicitors reiterated their previous position. On 20 March, defendant's solicitors wrote that they disagreed with this reiteration, but would obtain client's instructions.

On 10 June, plaintiff's solicitors informed defendant's solicitors that the time limit for furnishing requisitions had expired, and asked that the draft deed should be sent to them for approval; on 12 June, defendant's solicitors replied that they were obtaining their client's instructions. On 25 June, plaintiff's solicitors wrote stating that their clients insisted that the sale be closed on 1 July. On 27 June, defendant's solicitors rejected this and stated that a formal notice would be required if time was to be made the essence of the contract.

As the sale was not closed, on 2 July plaintiff's solicitors said their clients regarded the deposit paid as forfeited, and would proceed to deal with the property as owners. On 3 July defendant's solicitors rejected this contention, and said they would not release the deposit receipt without client's instructions.

On 5 July, proceedings were instituted by plaintiff claiming:—

(1) A declaration that it was agreed that the sale would be closed 21 days after plaintiff obtaining planning permission.

(2) That defendant has persistently refused and neglected to close the sale, and consequently the contract is no longer binding.

(3) That plaintiff is fully entitled to deal with the property and forfeit the deposit.

The Statement of claim was delivered on 31 July. In the Defence of 18 November, the defendant denies that full planning permission for building 62 houses had been obtained, and that time was at any time of the essence of the contract. The defence alleged that the plaintiff had wrongfully repudiated the contract. They made a counterclaim declaration that the agreement terminated at latest on 30 June, or in the alternative that it had been discharged by breach of contract.

The plaintiffs submit that they were ready, willing and anxious to complete at the proper time, and the Judge accepts this.

It is clear from the correspondance that both parties or their solicitors interpreted the contract differently. The Court is satisfied that the closing date specified is 21 days after planning permission has been obtained. However, there was a genuine dispute between the parties as to interpretation. The conduct of a party is not necessarily improper because it was based on a misinterpretation of the contract, but in this case the delay by the defendant was not due to any misinterpretation. The apparent ambiguity with regard to the closing date was deliberately being used by defendants to delay completion, even after planning permission had been obtained. In the circumstances the plaintiffs were fully justified in serving notice that henceforth time was deemed to be of the essence of the contract. No evidence was adduced by the defendants that there were any difficulties in the title, or in the preparation of the conveyance, or in the raising of the money.

As the contract in this case was not performed, the plaintiffs are entitled to forfeit the deposit.

International Securities Ltd. v Portmarnock Estates Ltd. — Hamilton J. — unreported — 9 April, 1975.

Order of Mandamus to repair Waterford Courthouse made absolute.

Application to make absolute a conditional order of Mandamus granted by Finlay, J. in July 1973. That order commanded the Minister for Justice to exercise the statutory duties imposed on him by Section 6 (1) of the Courthouses (Provisions and Maintenance) Act 1935. This Section provides that the Minister may direct the Commissioners of Public Works to execute such reports as may be necessary to put the Court accommodation in Waterford into proper repair and condition.

The Waterford Courthouse is a notable architectural building in Waterford. However the cumulative effects of age, neglect and inadequate repair progressed to the stage where the building became structurally unsound and dangerous. Since October 1970, different High Court Judges on Circuit had refused to sit in Waterford Courthouse. Since November 1972 an order has been made excluding Waterford City from the sittings of the South Eastern Circuit. The Waterford Law Society (hereinafter called the Society), consisting of the solicitors of Waterford city and county, expressed concern at the state of the Courthouse, and a lengthy correspondance ensued. Eventually the Society requested the Misister for Justice to exercise his statutory powers under the Courthouse Act 1935.

On 20 January 1972, the Minister reminded Waterford Corporation of their duty, under Section 3 of the 1935 Act, of providing proper courthouse accommodation and expressed serious concern that adequate courthouse accommodation had not yet been provided. As a temporary expedient the Corporation decided to acquire and adopt as a courthouse the Quaker's Hall in O'Connell Street. The District Court resumed its sittings in that building in October 1973, and the Circuit Court has sat there since July 1974. 10 local solicitors gave evidence that the courthouse accommodation at Quaker's Hall is quite inadequate and unsuitable as the courtroom is small and ill-ventilated. There is hardly any accommodation for litigants wotnesses, jurors and practitioners. Facilities for consultation were nonexistant.

In **Byrne v Ireland**-(1972) I. R. 241-the old British theory of Crown Immunity had been disguarded, and it was thus not possible to contend, as had been done in the Courts before 1972, that the writ of mandamus did not lie against a Minister. Accordingly the prosecutors are entitled to have their order of *mandamus* made absolute. The operation of repairing the courthouse will however be suspended for three months.

The State (King and Goff) v The Minister for Justice — Doyle J. — unreported, May, 1975.

If owners of an unseaworthy boat, who are aware of this condition, take it out to sea with passengers, and the passengers are subsequently drowned, they alone, and not the manufacturers of the boat, are deemed negligent.

The facts of this case have been fully set out in the April 1973 Gazette at page 88. It will be recalled that Pringle J. on 2 October, 1972 held that the effective cause of the accident at New Quay in June 1969, in which an overloaded boat sank, was precisely because it was overloaded, and not from any defect in the construction of the boat. The English Company, Fairways Fabrication, had built the boat, and the first defendants appealed on the grounds that Fairways were held not to be bound to make any indemnity or contribution, as they were not deemed to be "concurrent wrongdoers" under the Civil Liability Act 1961. Earlier that day, the vessel had put to sea for the fifth time, and, in the course of the trial, water had poured on the decks. The owner of the ship, one of the first defendants, had forbidden the ship to be taken out. Despite this, within an hour, one of the ship's officers agreed to take some 50 local boys and girls out for a trip; the boat was then dangerously overloaded, and, when the children panicked, the boat capsized and many of them were drowned. If Fairways were negligent in sending forth an unseaworthy boat, the negligence must be such as to have caused an unknown and hidden defect. In the aforementioned circumstances, the defendants, by proceeding to sea with passengers, when they knew the boat was unseaworthy, decided to supplant Fairway as tortfeasor in the Court of an accident. The direct and proximate cause of this accident was the decision of the first defendants to put to sea with passengers, when they had a clear warning that the boat was unfit for the task. The appeal is accordingly unanimously dismissed by the Supreme Court.

Conole v (1) Redbank Oyster Co. and Stassen; (2) Fairways Fabrication Ltd.; and (3) Bord Iascaigh Mhara — Supreme Court (Walsh, Budd and Henchy, J. J.) per Henchy J.—unreported—7 May, 1975.

Exclusion of priest-teachers from receiving credit for service abroad held to be unconstitutional discrimination.

The facts of this case were stated in the May 1974 Gazette at page 118. Butler J. had held to be unconstitutional a Department rule which excluded religious teachers from receiving credit for teaching service in undeveloped countries. By the Rules for Payment of saleries to Secondary Teachers 1958, it was agreed that "approved teaching service" would include credit for teaching service given by a lay secondary teacher in specified underdeveloped countries. Father Mulloy, having taught in a secondary school in Nigeria from 1960 to 1965, returned to Ireland, and since 1968, has been a teacher in Templeogue College.

In May 1971, the plaintiff's solicitor wrote to the Department claiming to be entitled to an incremental salary for his service in Africa, pointing out that it would be an obvious unconstitutional discrimination not to grant it. In July 1971 the Department blandly "did not accept as valid" this vital constitutional issue. Furthermore in February 1972, the Chief State Solicitor purported to construe the Constitution by stating that "the scheme does not extend to religious missionaries".

Although the plaintiff had issued proceedings claiming that the defendants had acted in breach of Art 40 (1) and Art. 40 (3) of the Constitution, this was not pursued at the appeal. The plaintiff relied entirely on Art 44 (2) (3) of the Constitution which reads as follows:— "The State shall not impose any disabilities or make any discrimination on the grounds of religious belief, profession or status". As religious profession or belief does not arise here, the question of religious status must be considered. *Quinn's Supermarket* case— (1972) I. R. 1 — is not relevant here as it was decided on different grounds. The reference to religious status ensures that no matter what one's religious profession or belief or status, the State shall not impose

any disabilities upon or make any discrimination between persons because one happens to be a clergyman or a nun or a brother whether or not they profess any religion belief, save where it is necessary to do so to implement the guarantee of freedom of religion and conscience. Consequently the scheme in question was undoubtedly repugnant to the Constitution as being in disregard of Article 44 (2) (3) in that it created a discrimination based on religious status.

The Supreme Court consequently unanimously dismissed the Appeal.

Molloy v Minister for Education and Attorney General — Full Supreme Court per Walsh J. — unreported — 19 June 1975.

A husband who buys property in the name of his wife and converts it into luxury flats is presumed to have given it to her as an absolute gift.

The plaintiff wife married the defendant husband in August, 1956. After the marriage, they lived for some years in North Circular Road, Dublin, which had been purchased by the husband in his name for £2,300.

The wife owned a grocery business in Thurles, which she sold in 1956 for £3.105. The wife gave the husband this sum of £3,105 plus a sum for arrears of rents plus £1,130 received on the sale of the builder, these sums were lodged in her name in the Educational Building Society. Between 1958 and 1961, she took out three endowment policies on her life, and when they matured, she paid the £1,173 which she received to the husband. She also eventually obtained £402 from savings certificates which she also gave to her husband. The wife was also the owner of a one seventh interest in a cinema in Thurles which yielded an annual income of £550 which she gave to him each year until 1968. From 1956 to 1968, the husband gave the wife a generous housekeeping allowance, paid all household bills, and the expenses of the education of the children. He opened a joint account and both husband and wife drew from it.

In 1957, the husband bought two houses in Haddington Road in his name and converted them into flats. In 1959, he bought a house in Northumberland Road in his name for £2,450 and converted it into flats. The house in North Circular Road, which had been bought for £2,300, was sold in 1959 for £7,500, and instead he bought a house in Merrion Road for £5,000, and spent about £12,000 in altering and decorating it. The family then went to reside there.

In July, 1967, he purchased another house in Northumberland Road for £15,500 and had it conveyed to the wife in her name. Most of the purchase money came from the joint account. At the time, the premises were let in 3 undecorated flats with a letting value of £20 per week. In an affidavit of April 1974, the husband stated that it never occurred to him that the wife would claim the premises, or any rent from it. The total cost of purchasing the house, including auctioneers and solicitors fees, was £16,900. The cost of converting the premises into luxury flatlets was a further £16,560, financed by a bank overdraft to the husband, who had a very prosperous fruit importing business; in order to obtain accommodation he had to deliver to the Bank of Ireland title deeds of the houses in Haddington Road and of the first house in Northumberland Road. By April, 1972, this account was overdrawn by £19,580. As a result of the decisions of the banks to convert overdrafts into term loans, this overdraft became a term loan of £17,000 at interest of 16%. The annual gross income of the converted rents rose from £6,380 in 1969 to £6,750 in 1970.

In 1972, the wife brought proceedings for a judicial separation and for the custody of the children; this was granted by the Judge, on account of the husband's cruelty, and alimony was fixed at £75 per week. The wife also claimed that she was the owner of all 4 houses which the husband had bought. The Judge found that the wife was entitled to all the interest in the second house in Northumberland Road with its luxury flatlets, but that the husband was the owner of all the other premises; an order to this effect was made in May 1973. The husband however was restrained from selling the house in Merrion Road until he provided suitable alternative accommodation to be sanctioned by the Court for the wife. The wife subsequently applied for an account of the rates and profits derived from the house in Northumberland Road between July 1967 and May 1973, and, by instruction the Examiner made up a Certificate in June 1974, from which it appeared he had received rents and profits during the prescribed period of £30,500 of which £7,470 had been paid on account, leaving a balance of £23,030. In October 1973, the husband still owed the Bank £7,385. Throughout the proceedings, the husband appeared in person.

The Judge said that it was a presumption of law that when a person makes a purchase of property in the name of his wife alone, it is intended as a gift to her at once and there is no resulting trust. The same principle applies when a husband expends his own money on the property of his wife, even if the property has been transferred by him to her. As long as they are living happily together, husband and wife do not contemplate disputes and all arrangements about domestic expenditure and dealings in property are informal. In the absence of a proved contract, the question whether a husband has a claim for improvements carried out to his wife's property should be solved by the concept of resulting or constructive trust. Generally speaking, a husband has no claim to be repaid the amount spent on such property. The position however appears to be here that the husband is entitled to credit against the rents which he collected for the amount, to be ascertained by the Examiner, which he owes to the Bank of Ireland in connection with the purchase and conversion of the premises, together with the probable amount of interest payable. On the best estimate that can be made of the interest, the total for interest appears to be £8,176, and, when this is added to the principal, the total amount is £15,560, which will be credited to the husband.

The wife is now receiving £75 alimony per week, and has a right to live in Merrion Road free of rent. She receives about £7,000 in rents from the premises in Northumberland Road. Accordingly the alimony will be reduced to £10 per week.

(Heavey v Heavey — Kenny J. — unreported — 20 December, 1974).

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Payments made by wife towards purchase of a house or repayment of a mortgage are on the same basis as a trust, and she is entitled to a share in the house as a trust beneficiary according to her contributions, even though the house is nominally in the husband's name.

The defendant husband, Brendan Conway, and the plaintiff wife, Winifred Brady, were married in April, 1961. They lived at first in a flat in Rathgar, but in October, 1963, purchased a house in Killester for £2,200. The husband was then a barman earning £7 a week, and had no savings; he paid a deposit of £220.

The wife had inherited £242 on the death of her father, and her mother provided her with more money. She gave these sums to her husband so that he could pay the deposit. The husband had also obtained an advance of £2,005 from the Irish Permanent Building Society, and this enabled him to close the sale and take possession. Despite the financial advances made by the wife, the documents of title were entered in the name of the husband only.

This mortgage of £2005 was repayable over 30 years by monthly instalments of £13.65. The husband was unable to pay the instalments regularly but, on seven different occasions, the plaintiff obtained £100 from her mother and brother, who were living in England iin order to pay these instalments. The total amount contributed by the wife towards the purchase of the house was £1,027.

There were 5 children of the marriage — 4 daughters and 1 son — born between 1961 and 1971; the eldest daughter died in 1970 at the age of 9. The husband remained a barman until 1968, when he began to work as a self-employed electrician earning £35 per week. From February, 1972, he was employed by a company until May, 1974, as an electrician, earning £39 per week and expenses. In the evenings, he worked as a part-time barman in Ballsbridge, and earned £1,306 between May, 1973 and November, 1974. From June to November, 1974, he registered for unemployment benefit and obtained £30.85 per week.

The marriage was reasonably happy until 1967, when the husband used to often come home late drunk. In 1971, conditions were so bad that the wife went to reside with her mother in Yorkshire for 10 months. The husband promised to give up drink, if the wife returned, and conducted himself reasonably for a short time. But then he began to drink again, and would only give his wife £13 per week out of the £50 he earned. From 1973, he locked the largest room in the house, turned off the electricity, and disconnected the telephone. He then used to play a guitar very loudly with his sister in the locked room while they both drank. There were many assaults and quarrels and Guards were sent for numerous times. From October, 1974, the husband left the house, and went to live elsewhere. The wife is now drawing home assistance, and has ceased to pay the instalments on the house.

In July, 1973, the wife brought proceedings under the Married Women's Status Act 1957, claiming that she was entitled to possession of the house in equal shares with her husband. She also brought proceedings claiming custody of the children and payment for their maintenance. Ultimately the two cases were heard together in November, 1974.

The correct approach to this case is to apply the concept of a Trust to the legal relationship which arises when a wife makes payment towards the purchase of a house or the repayment of a mortgage instalments when the house is in the sole name of the husband. When this is done, the husband becomes a trustee for the wife for a share of the house, which depends on the amount of contributions the wife has made towards the purchase of the house or the repayment of the mortgage. As the cost of the house in 1961 was £2,200, and as the wife paid £1,027 in 1962, it was held that a declaration would be made, that the husband holds the premises as to one half of the beneficial interest therein in trust for his wife. As there is ample evidence that the children are frightened of the husband, their custody is awarded to the wife. Special detailed arrangements as to the payments to be made by the husband were set out. As the husband has made no application for access to the children, this will not be granted until he renews his application later.

Winifred Conway v Brendan Conway — Kenny J. — unreported — 3 June, 1975.

A planning application in the press must state the purpose unambiguously and accurately, otherwise the County Council are entitled to be referred to the Minister as to whether the application is a development.

Before 1969, James McGurk owned a site on Newtown Park, Blackrock, where he owned a plant for making concrete blocks and some readymix concrete. By a written agreement of 4th June, 1969, the plaintiffs acquired an option to purchase the area. On 28th June there was a planning notice in the press on behalf of McGurk which sought for replacement of this concrete plant, and an application for planning permission was also made at that time. The existing plant erected 30 years previously consisted mainly of a concrete mixer with cement pits, and was 15 feet from the main road. It was proposed to remove the old plant, and to erect instead a modern plant 120 feet from the road. The planning application of McGurk had in fact been drafted by an engineer, McNurney, and the plans involved the sites of the proposed new structures. Planning permission was eventually granted by the defendant County Council on 29th August 1969, subject to replacement of existing concrete plant. Mr. McGurk received notification of this permission on 9 October 1969. Later the plaintiffs purchased the land, and the site was conveyed to them on 12 December 1969.

As a result of two letters written by the plaintiffs to the defendant Council in January 1970, the planning authority notified the plaintiffs that the operations described constituted a change of use in development, and consequently they requested the Minister to decide whether the proposed change was deemed to be "development" or "exempted development". In January, the Minister confirmed by letter that the matter had been referred to him.

The plaintiffs then issued a plenary summons against the Council and the Minister claiming declarations that the permission of October, 1969, was a valid and subsisting permission and the Council was not entitled to derogate from it. The Minister in his defence stated that he was lawfully entitled to decide the matter. The plaintiffs contend that any change in the structure does not amount to "development". Pringle J. decided in favour of the plaintiff, because the grant of permission did not specify the purpose for which the structures were granted, therefore the plaintiffs could use them for the purpose for which they were designed.

In the application, what was clearly meant was that the one plant was to be demolished because of dilapidation, and that a new modern plant was to be erected in its place. The intention was to grant permission for a replacement of the existing plant for the carrying out of the production of concrete blocks but in a modernised fashion; this did not mean the substitution of an entirely new plant, and for the new process of manufacturing readymix concrete. "Development" means the carrying out of any work on or under land, or the making of any material change inthe structure of the land. Here a question has to be answered as to whether or not the new structures are or are not "development", and the matter must be referred to the Minister. **FitzGerald C. J. and Budd J. would accordingly allow the appeal, and dismiss the plaintiff's claim.**

Griffin J. concurred in allowing the appeal. He said there were certain additional facts which were material. 6 years before the sale, James McGurk opened another plant in a site of 16 acres at Baldonnell. From the time the bulk of his business was done in Baldonnell, and some days there was no work at Blackrock, he was prepared to sell it for £20,000 for a valuable site. The business carried on by McGurk was that of a conventional concrete plant. All the processes of manufacture were at that time completed on the site. However the process intended to be carried on by the plaintiffs was completely different. The new plant has a large output, and the cement is delivered to the site in large bulk containers of 20 tons each; in fact a large truck moves into or out of the site every 10 minutes for 10 hours a day. The usetowhich the land had been put was in fact a material change in the use of the land which has been properly referred to the Minister.

When any development is proposed, it is essential that the proposal should be brought in unambigious terms to the residents of the neighbourhood. Any person can then inspect the document, and, if dissatisfied, appeal to the Minister. The press notice in this case did not give adequate notice of the extent and nature of the development required, as the words "readymix plant" are carefully omitted. The County Council had not the proper particulars on which to act. The grant of permission specified the purpose for which the structures were to be used as the existing ones of a concrete plant and not of a readymix plant. The question whether the plaintiffs have made a change in the use of the structures of the land is essentially one that was properly referred to the Minister.

Henchy J. and Walsh J. would have dismissed the appeal. When McGurk made his application for permission to modernise the plant he was making concrete blocks and bricks. It was not stated that McGurk had executed an agreement with the plaintiffs granting them an option to purchase the premises for £20,000. The intention was that, as soon as development permission was granted the plaintiffs would exercise their option to purchase, and would then become free to use the development permission for the distribution by lorry from the site of "readymix" concrete. Thus McGurk was in fact only an ostensible applicant. The plaintiffs then took up their option, and the property was conveyed to them. They then carried out the permitted modernisaton and distributed readymix concrete. Neighbouring occupiers complained that the use of the site for this purpose was not within the scope of the permission granted. In an effort to resolve the disput, the defendant Council referred the matter to the Minister.

There is no doubt but that the "replacement plant" in the application came within the definition of "development" and so required Ministerial permission. In this case, as the permission incorporated by reference also the plans, the decision of the County Council must also be notified by reference to the plans. Every notified permission has to be entered on an official Register, and anyone who acts on the basis of the correctness of the Register is entitled to do so. Since the permission is a public document, it must be construed objectively. The submission by the Council that this permission is to be construed as having the meaning given to it by the Council, is rejected, as this would not be objective. The use for which the structure is here designed must be determined by an ordinary reading of the application, plans, etc. The permission duly specified a purpose for which the structure was to be used, i.e. the production of concrete. In other words the permission did specify a purpose. The ultimate use by the plaintiffs of the plant for the production of readymix concrete is within the permission granted.

In this case permission has been granted by the planning authority to an extent not intended by them. Pertinent enquiries by the Council here would have brought to light the specific use to which the structures were to be put. This type of non-disclosure is easily avoidable by planning authorities.

Finally it is desirable that a permission should be clear and specific in its terms, and as far as possible self-contained, so as not to incorporate unnecessary documents.

Accordingly the majority of the Supreme Court held that the appeal should be allowed and the injunction granted by Pringle J. should be disallowed.

(Readymix (Eire) Ltd. v Dublin County Council and Minister for Local Government — Supreme Court — **separate judgments by Budd J. and Griffin J., and dissenting judgment by Henchy J.** — **unreported** — **30 July, 1974).**

Proceedings of the Court of Justice of the European Communities

On 13 and 14 May 1975 the Court of Justice was visited by 85 J udges of Superior Courts of the Member States. Two study days were devoted to problems of Community law and case-law.

1. Judgments

Joined Cases 19 and 20/74. Kali und Salz Kali-Chemie v Commission (14.5.75

The undertakings Kali und Salz and Kali-Chemie AG are the only two German producers of potash.

In 1973 Kali und Salz, a member of the B.A.S.F. group, accounted for 88.9% of the German production and Kali-Chemie, a member of the Deutsche Solvay Werke group, accounted for 11.1%.

In 1970 the two companies concluded an agreement under which Kali-Chemi, which specializes in the manufacture of a compound potash fertilizer, Rhe-Kha-Phos, sold its excess straight potash to Kali und Salz for marketing by that company.

By a decision of 1973 the Commission ocndemned the agreement as constituting an infringement of the rules of competition. According to the Commission's decision the agreement between the applicants encompassed practically the total supply of straight potash fertilizers in the Federal Republic of Germany and therefore restricted competition on the market in this product and affected trade between Member States. The applicant companies challenged the Commission's decision, demonstrating that Kali-Chemie decision in which it held that this clause of the agreement constituted an infringement of Article 85. An action brought by the applicants for the annulment of the Commission's decision was dismissed by the Court of Justice of the European Communities.

Some of the formal and substantive arguments adduced by the parties may briefly be stated: the applicants claimed that the Commission had stated its objections in an inadequate manner; they pointed out that since 1961 the Commission had made use of the Netherlands auctions for the purpose of fixing reference prices for fruit and vegetables, which would make it difficult for it not to recognize their legality. The Commission replied that there was nothing to prevent it from making use of information provided by the auctions.

The applicants also objected that the Commission had not conformed to the objectives of the common agricultural policy, to which the Commission replied that the fruit in issue in this case was imported from third countries.

The applicants also unsuccessfully claimed that the Commission's decision wrongly stated that the agreement in question restricted competition within the Common Market.

On Monday 16th June, the President of the Republic of Ireland paid an official visit to the Court of Justice. Mr. Cearbhall O Dalaigh was appointed President of the Republic of Ireland in December 1974 when he was a Judge of the Court of Justice of the European Communities.

Case 7/75. F v Belgian State (preliminary ruling) 17. 6. 75.

Mr. and Mrs. F, of Italian nationality, have been resident in Belgium, where Mr. F is employed, since 1947. Their son, who was born in 1959, has been handicapped from birth, and apparently suffers from a 100% invalidity.

In 1973 Mr. and Mrs. F submitted a claim for a handicapped person's grant under a Belgium law allowing this grant to be made to Belgian citizens of at least 14 years of age suffering from a permanent disability of at least 30% who are in financial difficulties. This claim was rejected on the ground that the boy, who did not have Belgian nationality, did not satify the requirements as to residence in Belgium necessary for benefit under the law. The Tribunal du Travail of Nivelles, before which the case was brought by Mr. and Mrs. F, referred various questions for a preliminary ruling to the Court of Justice on the interpretation of Community regulations on freedom of movement for workers within the Community and on the application of social security schemes to employed persons and their families moving within the Community, in relation to the Belgian law on grants for handicapped persons.

The Tribunal of Nivelles also asked whether minors who are entitled to benefit by reason of the fact that their parents fulfilled the necessary conditions remain entitled to benefit at the various stages of attainment of their majority, without at that time having personally to fulfil the conditions as to residence required up to that time of their parents.

The European Court, in accordance with the guiding principle of its previous case-law, namely equality of treatment, ruled that the Community provisions (Regulation No. 1408/71) are to be interpreted as including a scheme under national law laying down a legally-protected right to grants in respect of handicapped persons. It also ruled that in the application of such a scheme the handicapped child of a worker cannot be put at a disadvantages in relation to the nationals of the State in which he is resident and that such equality of treatment cannot come to an end with the attainment of majority if the child, by reason of his handicap, is himself prevented from attaining the status of worker.

Finance Bill, 1975—Committee Stage.
April 22 and 23, 1975.

Mr. Colley: I move amendment No. 18:

"34—Section 59 (1) of the Finance Act, 1974 is hereby amended by the substitution of 'reasonably require' for 'think necessary'."

This amendment relates to the Finance Act, 1974. Subsection (1) to which this relates is as follows:—

The Revenue Commissioners may by notice in writing require any person to furnish them within such time as they may direct (not being less than twenty-eight days) with such particulars as they think necessary for the purposes of section 57, 58 and 60.

My amendment proposed to enable the Revenue Commissioners to serve a notice in writing requiring any person to furnish them within such time as they direct, not being less than 28 days, with such particulars as they reasonably require for the purpose of sections 57, 58 and 60. The practical effect for many people of this amendment might be nil but for other people it could be of extreme importance because the section as drafted enables the Revenue Commissioners or any officer they may appoint to seek such information as they think, or as he thinks, necessary for the purposes of the sections I have referred to.

On the face of it, that would appear to apply no limitation on the particulars which may be sought other than some connection which, in some cases might be very tenuous, with the matters dealt with in sections 57, 58 and 60. On the other hand, acceptance of the amendment would not inhibit the Revenue Commissioners from obtaining any information that would be required for the purpose of carrying out their work. There is a significance in the phrase "reasonably require" as against "think necessary" because the information and the particulars sought by the Revenue Commissioners must be such as they reasonably require for the purposes of these other sections there is built in some criteria whereas the section as drafted has no such criteria. This means that in a very unreasonable case where the Revenue Commissioners or an officer appointed by them acted very unreasonably, it would be possible for an aggrieved taxpayer to have a remedy by applying to the Court and establishing that the information sought was not reasonably required. If it were reasonably required the taxpayer, by definition, would be bound to furnish it but unless this amendment was expected there would appear to be virtually no limitation on the information which may be sought. That is wrong in principle as well as in practice. Therefore, the Minister should not have any difficulty in accepting the amendment, an amendment to the same effect as one tabled to the Bill that was before the House last year but which was not reached.

Mr. R. Ryan: This matter was discussed at some length in the other House. I pointed out there that the Revenue Commissioners, like any other arm of the State, must act reasonably at all times and that if they fail to act reasonably they are amenable to the Courts. The mere fact that they can be challenged in the Courts is ample protection for the citizen.

It might be worthwhile to put on the record of the House what the British Court said. Incidentally, I should observe that the legislation in Britain deals with requiring certain certain people to make disclosures about the transfer of moneys abroad for tax avoidance purposes was introduced in 1936. It is simply providing an absolutely necessary weapon to counter tax avoidance by the transfer of assets abroad. Those who endeavour to avoid tax by transferring assets abroad are not simple people; they will go to any lengths to conceal their activities from the Revenue Commissioners and if they succeed it is not merely the

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Revenue Commissioners or the Exchequer that is the victim but the general body of taxpayers who because of the avoidance action of the well-to-do are left carrying a larger burden themselves. The State has a clear obligation to counter tax avoidance activities.

It is the case of *Clinch v the Inland Revenue Commissioners*, 1973. *All England Reports, Page* 977. the plaintiff asked the Court to rule that a notice served on him was invalid and one of the questions addressed to itself by the Court was: Has the plaintiff established that the Commissioners have exercised their discretion unreasonably? The Inland Revenue contended that the notice could only be attacked for unreasonableness if the degree of unreasonableness was such that no reasonable person could consider the notice necessary for the purposes of the Act. The plaintiff contended that the Court was entitled to interfere if it could be shown that, viewed objectively, the authority were acting unreasonably, albeit that they were acting within the four corners of the authority conferred on them. In the course of the judgment, the Judge said: "The particulars are sought of the intermediary in order that he may be used as a stepping stone towards obtaining the more detailed information required by the Commissioners to enable them to decide whether or not, in their opinion, tax has been unlawfully evaded. The information which they require is such as to give them a shrewd idea of the relationship between a taxpayer and a foreign company, partnership, trust or settlement. Accordingly, if the particulars sought went substantially beyond that which was required for this purpose so that they could be properly described as unduly oppressive or burdensome, I have no doubt that a Court would be entitled to intervene and declare the notice invalid. One of the vital functions of the Courts is to protect the individual from any abuse of power by the executive."

In the event, the judge held in favour of the Inland Revenue. This would be similar to the kind of instance that could arise if the Revenue Commissioners used the powers given to them under the 1974 Act. Those powers may only be reasonably used and if a taxpayer, or a person to whom the notice is addressed, is of opinion that they are being unreasonably used, then a right exists to take the matter before the Courts to see if the Courts would have a different view. It is, therefore, clear that the Revenue Commissioners in acting under this section and in looking for the information will do so when they think it necessary. I have no reason to anticipate that the Revenue Commissioners will act unreasonably. In fact, the law assumes that the State and its agents will act in a reasonable way in using any powers given to them. One does not need to use the words that Deputy Colley suggests in his amendment in order to ensure that reasonableness will at all times prevail so far as the conduct of this State is concerned.

Mr. Colley: May I ask the Minister in regard to the case he quoted whether the relevant portion of the English Act was similar to this? Does it contain the phrase: "such particulars as they think necessary"? That was the phrase in question.

Mr. R. Ryan: Yes.

Mr. Colley: What the Minister has said in regard to a requirement that the Revenue Commissioners would not act unreasonably in general, is true With all due respect, that, is not really the point of this amendment which is that if you have the phrase: "such particulars as they think necessary" and if the Court is asked to interpret whether the Commissioners acted reasonably or not, the Court will establish a certain level of responsibility which I suggest would be different from what would be established if the section were to read: "such particulars as they reasonably require". There is a slight difference in the meaning and I think there would be a difference in the interpretation by the Courts arising out of these words. Therefore, he should not have any difficulty in agreeing that the phrase "they reasonably require" be inserted. If I understood him correctly earlier he was saying in effect that it does not make any difference whether you put in "reasonably require" or "they think necessary", that you get the same standards applied by the Courts.

That does not inhibit the Revenue Commissioners in any way in carrying out their duties under this part of the Act. It should meet the requirements of anybody in the House that the Courts would not interpret it in a way that would hinder the Revenue Commissioners but it does establish some criterion, some level on which an aggrieved taxpayer can stand and can apply to the Court and get a greater degree of protection than is implied in replying on the general obligation of the Revenue Commissioners to act reasonably and within reason. On the other hand, if his argument is that it makes no difference, I suggest he might accept it anyway because he is not losing anything.

— Debate adjourned —

(continued on page 191)

Appointments

The Hon. Mr. Justice Walsh has been nominated as President of the Law Commission for a period of 5 years from 1st August, 1975. The other members of the Law Commission are:— **Mr. Justice Charles Conroy,** President of the Circuit Court, **Professor Robert F. Heuston,** Dean of the Faculty of Law, Trinity College, **Mr. Martin Marren,** solicitor, and **Mrs. Helen Burke,** Department of Social Science, UCD.

Mr. John O. Sweetman, Barrister-at-law, has been nominated to the Land Registration Rules Committee by the Bar Council in place of Miss Agnes B. Cassidy, who has become a District Justice.

"Some reflections on Personal Liberty and the Constitution"

Auditorial address by Ciaran Lawlor

This paper comments upon some of the provisions of the Constitution which, either directly or indirectly, affect the liberty of the individual. One is concerned with what might be considered an improper use of a particular article of the Constitution to establish a Court or tribunal where such a Court or tribunal could be established by virtue of another article of the Constitution, only upon specified conditions. The possibility has also been considered of internment being declared unconstitutional.

The Constitution of Ireland provides in Art. 38(3) for the establishment by law of Special Courts which may try people summarily provided that it is determined in accordance with the law establishing such Courts that the ordinary Courts are inadequate to secure the effective administration of justice and the preservation of public peace and order. It is contended that it is not necessary that it be proved that these conditions should apply in fact—the only requirement is that it should be stated in the preamble of legislation establishing the Special Court that these conditions in fact apply. The Constitution, powers, jurisdiction and procedure of such special Courts are to be prescribed by law according to Art. 38(3) subsection 2; this could be availed of to set up a Court comprised of people with little or no conception of justice of Military Officers with no legal training.

Art. 38(4)

Art. 38(4) on the other hand provides for the establishment of military tribunals. Such military tribunals could take the following forms under the Defence Act 1954.

(i) A tribunal established by law for the trial of offences against Military Law alleged to have been committed by persons while subject to military law e.g. an army officer.

ii) a tribunal established by law, which tribunal is to deal with a state of war or armed rebellion.

(iii) an *ad hoc* tribunal established to deal with a state of war or armed rebellion.

It is contended that, with the exception of (i) above a military tribunal may not be established under Art. 55 (4) to try non members of the Defence Force unless a war or armed rebellion is actually raging within the jurisdiction.

In *R v Allen* (1921). 2-IR. 241 Molony C. J. accepted an affirmation made on affidavit by General Macready, who was the Commanding Officer of the British Forces in Ireland from 1918 to 1920, that war was raging in certain counties in Munster which were under martial law, even though the ordinary courts were still functioning.

In the case of R (*Garde and others*1 *v Strickland and others* (1921) I. R. 317, Molony C. J. rejected the contention that the Court was not competent to decide whether or not war was raging within the jurisdiction.

Although these are pre-1937 decisions they may not necessarily be devoid of our fundamental law authority now, despite the enactment of the Constitution of 1937.

We may reasonably conclude that a military tribunal has not so far been established under Act (38)4 to deal with a state of war or armed rebellion.

A military Tribunal or Court may also be set up by virtue of the provisions of Art 28(3) sub. 3. This Article could be used to circumvent the provision in Art 38 (4) set out above. A Court or Tribunal which is in fact a military one under Art 28 subsection 3 may be established once the law establishing such Court or Tribunal is expressed to be for the purpose of securing the public safety and the preservation of the State in time of war or armed rebellion.

Art. 28(3)(3)

In fact Art 28(3) 3 was availed of to establish precisely such a Court or Tribunal. It has been argued that the state of war or armed rebellion referred to in Art. 28(3) (3) is substantially different from that referred to in Art. 38(4) because of an artificial meaning which has been given to the phrase "a state of war or armed rebellion" in Art. 28(3)(3). The Constitutional definition of "Time of War and armed rebellion contained n Art. 28(3) (3) is fully set out.

On 3rd September 1939, in view of the outbreak of the Second World War, both Houses of the Oireachtas resolved that a National Emergency existed affecting the vital interests of the State. That National Emergency is stiill in existence to this day. By virtue of the fact that this "state of emergency" is still in existence, no article of the Constitution can be invoked to invalidate any law enacted by the Oireachtas, which is expressed to be for the purpose of securing the public safety and the preservation of the state in time of war or armed rebellion, or to nullify any act done or purporting to be done in time of war or armed rebellion in pursuance of such law. If the Oireachtas were to enact an unlikely law providing for the killing of every child aged between 1 and 2 years on a certain date, such a law might possibly be constitutional, provided, of course, that it was enacted in accordance with Art. 28(3) (3), and, that the necessary manner and form of enactment were observed.

Admittedly it would seem to be most unlikely that the members of the House of the Oireachtas would pass such a law, or that the President would sign it

when submitted to him. However, the possibility that the Oireachtas could abuse the powers, conferred on it by Art. 28(3) (3), does exist. The Government could try try to avail of Art 28(3) (3) to establish a military tribunal, and thus avoid the requirement of Art. 38(4), that a state of war or armed rebellion must in actual fact exist, before a military tribunal may be established under Art. 38(4) for the trial of non-military people.

The Emergency Powers Acts

Let us consider legislation which was enacted in accordance with the requirements of Art. 28(3) (3). The legislation in question is the Emergency Powers Acts of 1939 and 1940. Section 3 of the Emergency Powers (Amendment) (No. 2) Act 1940, provided that the Government could, by an order under Section 2 of the Emergency Powers Act, 1939, make provision for the trial in a summary manner, by commissioned officers of the Defence Forces, of any person alleged to have committed any offence specified in such Order. In case of conviction of such person of such offence S.2 provided for the imposition and carrying out of the sentence of death. Section 3 further provided that no appeal could lie in respect such conviction or sentence. This draconian Act of 1940 was enacted at a dangerous period of the war when the Germans occupied France.

The case of Re *McGrath and Harte* (1941) I.R.68 was concerned with 2 persons who were convicted of murder before a Court Martial set up under the Emergency Powers Acts 1939 and 1940. Both of them were sentenced to death. The validity of this Court Martial was challenged unsuccessfully before the High Court, and, on appeal, before the Supreme Court. Both Courts held that since the Acts were expressed in their long titles to be for the purpose of securing the public safety and preservation of the State in time of war, it was not necessary that this purpose should be stated in the enacting portion of the Acts. The Courts also held that since the Acts had been passed in accordance with the provisions of Art. 28(3) (3), no further articles of the Constitution could be invoked to invalidate them. The application of the two accused for an order of *Habees Corpus* failed, and they were subsequently executed.

It has been argued that the Court Martial set up by the Emergency Powers Acts of 1939 and 1940 could have been declared unconstitutional by the Supreme Court, if the Emergency Powers Bills had been referred to the Supreme Court by the President after consultation with the Council of State, but President Hyde, a non lawyer, was unlikely to accede to this.

The Court Martial was not a Special Court under Art. 38(3), because it was not determined in accordance with the law establishing it that "the ordinary Courts were inadequate to secure the effective administration of justice and the preservation of peace and order".

Nor was it a military tribunal under Art. 38(4), because a military tribunal may try a civilian only when it is established to deal with a "state of war or armed rebellion". As has already been pointed out "a state of war or armed rebellion" has never been held to have existed since the enactment of the Constitution in 1937, although the conditions existing during the Emergency from 1939 tot 1945 were somewhat similar to this.

It has accordingly been suggested that McGrath and Harte and the other persons (totalling 13 in all) who were tried by the Court Martial established under the Emergency Powers Acts were dealt with under legislative provisions which ran directly counter to the express terms of the Constitution.

Surely it is clear to us that one of the possible ways in which abuse by the Government of Art. 28 (3) (3) can be avoided, is the reference by the President of Bills, to which Art. 28. 3. 3 applies, to the Supreme Court, under the provisions of Art. 26.

Art. 26 does not apply to a Bill, the time for the consideration of which by Seanad Eireann has been abridged under Art. 24 of the Constitution. A Government could try to prevent the President from availing of the power conferred on him by Art. 26, by having the time for the consideration of the Bill by Seanad Eireann, abridged. However, the time for consideration of the Bill by the Seanad can be abridged only with the concurrence of the President. It would be unreasonable to suppose that a President, who intends to refer a Bill to the Supreme Court, would consent to the abridgement of the time for consideration of the Bill by the Seanad, and thus deprive himself of the power to refer that Bill to the Supreme Court under Art. 26. In fact Article 24 has never been used in practice.

Reference by President as to Constitutionality

Art. 28(3) (3) could be abused by the Government, and, under present circumstances, it would be open to the President to refer a Bill containing the so-called 'magic formula' of Art. 28(3) (3) to the Supreme Court. There is always a possibility that the President would not refer such a Bill to the Supreme Court because of his allegiance to a particular political party, which could well be in power at the time of the passing of the Bill.

Let us now dwell for a moment on the manner in which the Supreme Court could treat a Bill containing the words prescribed by Art. 28(3) (3), where such a Bill has been referred to it by the President under Art. 26. The Supreme Court could say that they must consider the Bill as if it were an Act, and, because of that approach, the Bill could not be declared unconstitutional, because, if it were an Act, no provisions in the Constitution could be invoked to invalidote it. By availing of that line of argument, the Supreme Court could in effect emasculate the power conferred on the President by Art. 26, so far as Bills containing the Art. 28 (3) (3) formula are concerned. Admittedly, it is unlikely that the Supreme Court would adopt such a line of argument because by doing so, it would be decreasing it's own powers and increasing those of the Oireachtas. Far be it from me to suggest that judges would be swayed by their own political persuasions but it is conceivable that they might be adversely influenced because of a sense of party loyalty. One need only cite the example of how the American Supreme Court treated the New Deal Legislation in the 1930's.

Lapse of Emergency

Considering these relevant factors, would it not be reasonable to seek an amendment to the Constitution, to the effect that a Bill, which contains the words prescribed by Art. 28(3) (3), when promulgated as law, shall have effect for a specified period, and lapse unless re-enacted. Such amendments would certainly lessen the possibility of abuse of Art. 28(3) (3) by the Oireachtas. In the absence of an amendment to that effect, the Government could avail of Art. 28(3) (3) to derogate from the rights of the citizen and to establish military tribunals which are not authorised by that Art. of the Constitution. The Constitution provides for the establishment of Supreme Courts and Military Tribunals under certain circumstances. To allow the establishment of another type of military tribunal would be to go against the express terms of the Constitution. This Amendment to Art. 28(3) (3) was in fact suggested by the Oireachtas Constitution Committee of 1967, which would have reduced the emergency to 3 years in its first instance.

In 1939, shortly before the outbreak of the Second World War, and apparently because of the resumption of illegal activity by the I.R.A., the Oireachtas passed the comprehensive Offences against the State Act which repealed and replaced the Public Safety (Emergency Powers) Act 1926. Part VI of the Offences against the State Act, 1939, dealt with "Powers of Internment", and section 55 of the Act empowered a Minister of State (after that part VI of the Act had been brought into force in accordance with section 54) to order the arrest and indefinite detention of a person, where the Minister was "satisfied" that such person was "engaged in activities calculated to prejudice the preservation of the peace, order or security of the State".

The validity of the interment provisions in Part VI of the Offences against the State Act 1939, was challenged successfully in the well-known case of the *State (Burke v Lennon*, 1940 I.R. 136. Mr. Justice Gavan Duffy held that the administration of Justice from it's essential nature, did not fall within the executive power and was not properly incidental to the performance of the appropriate functions of the Executive. Consequently, a law, endowing a Minister of State, any Minister, with these powers, as section 55 did, was an invasion of the judicial domain, and as such was repugnant to the Constitution. Mr. Justice Gavin Duffy then went on to point out that the Constitution, with it's impressive Preamble, was the Charter of the Irish People and he would not whittle it away. Therefore, Gavan Duffy J. made absolute the conditional order of *habeas corpus* which the brother of the interned person had obtained on his behalf.

The State appealed against this decision, but the Supreme Court held that no appeal lay against the granting of an order of *habeas corpus*. In consequence of this, the Government had no option but to release James Burke, together with over 50 other prisoners likewise interned under a Minister's warrant.

As a result of a raid by dissidents on the Magazine Fort, Phoenix Park, when much ammunition was stolen and later recovered, the Offences against the State (Amendment) Bill, 1940, was passed by both Houses of the Oireachtas and was referred to the Supreme Court by the President under Art. 26, presumably because the Bill was substantially the same as

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Part VI of the Offences against the State Act 1939. A bare majority of the Supreme Court held that the Bill did not confer power to administer justice; that the detention of persons envisaged by the Bill, was not in the nature of punishment, but of preventive justice; and that the Bill did not take away the right to *habeas corpus*. The Court accordingly advised the President that the Bill was not repugnant to the Constitution. The President signed the Bill and it became law.

The Constitution provides since the 1941 Amendment in Art. 34(3) (3), that no Court whatever shall have jurisdiction to question the validity of any law, or any provision of a law, the Bill for which shall have been referred to the Supreme Court by the President, under Art. 26. This would appear to mean that interment can never again be challenged on the grounds of unconstitutionlity because of Art. 34(3) (3).

It can undoubtedly be submitted that the Court which considered the Offences against the State Amendment Bill, 1940, had no authority to do so, because the Courts mentioned in the Constitution were not established until 1961. In the *State (Quinn) v Ryan* (1965) I. R. 70 the Supreme Court declared unconstitutional a statutory provision which was held to be valid in The *State (Duggan) v Tapsley* (1952) I. R. 62; in taking this course it relied on the fact that it was technically a "*new Court* and might therefore lay down new principles for itself. A few months later in *A. G. and Minister for Defence v Ryans Car Hire Ltd.* (1965) I. R. 642 Kingsmill Moore J. said that the Court was a new Court set up by the Courts (Establishment and Constitution) Act 1961, pursuant to the Constitution, and that it seemed clear that there could be no legal obligation on the Court to accept *stare decisis* as a rule binding upon it, just because the House of Lords accepted it as a rule binding on their Lordships' House. He went on to say that the decision of the "old" Supreme Court could only have bound that Court and was not necessarily binding on the "new" Supreme Court.

The effect of both of these cases reported in 1965 Irish Reports, may perhaps be open to doubt. Art. 50, one of the transitory Articles of he Constitution provides, inter alia, that on and after the coming into operation of the Constitution, and until otherwise determined by law, the Supreme Court, the High Court, the Circuit Court and the District Court in existence immediately before the coming into operation of the Constitution, i.e. 29 December 1937, shall, subject to the provisions of the Constitution relating to the determination of questions as to the validity of any law, evercise the same jurisdictions respectively as theretofore.

The interpretation of Art. 58 of the Constitution was considered by O'Byrne J. in delivering the unanimous judgment of the Supreme Court in *Sullivan v Robinson* 1954 I. R. O'Byrne J. pointed out that the effect of Art. 58 was to carry over the existing Courts with their pre-existing jurisdictions, subject (and subject only) to the provisions of the Constitution relating to the determination of questions as the validity of any pre-existing law.

Under the Constitution of 1922 the jurisdiction of the High Court extended in a limited way to the question of the validity of any law having regard to the provisions of that Constitution.

It was provided by Art. 34(4) (4) of the present Constitution, that no law should be enacted excepting any such case from the appellate jurisdiction of the Supreme Court. A New power is conferred on the Supreme Court by Art. 26 of the 1937 Constitution. Under that Article the President may, after consultation with the Council of State, refer any Bill to which the Article applies, to the Supreme Court for a decision on the question as to whether such Bill or any specific provision thereof is or are repugnant to the Constitution or to any provisions thereof. Article 26 then sets out detailed provisions as to what is to be done when such reference has been made, and Art. 34(3) (3) provides that no Court shall have jurisdiction to question the validity of a law, or any provision of a law, the Bill for which shall have been referred to the Supreme Court by the President under Art. 26. It is to be noted in a space of 38 years, references of Bill by the President have only been made five times.

O'Byrne J. pointed out, and rightly so, that (1) the power of the Courts to determine the validity of a law having regard to the provisions of the Constitution, was supplanted, the jurisdiction of the Supreme Court to determine the provisions of the Constitution, and (3) the jurisdiction of the Supreme Court with reference to a bill referred to it by the President under Article 26, are quite separate and distinct. However, he then states that, although they are separate and are distinct, they are, nevertheless, intimately connected, and that the Courts are of the opinion that they are both included in the qualifying clause in Article 58, "subject to the provisions of this Constitution relating to the validity of any law".

The point is made by O'Bryne J. that a Constitution is to be liberally construed, so as to carry into effect the intentions of the people as embodied therein. Rulings under Article 26 seemed to O'Byrne J. to be a provision of the Constitution relating to the determination of questions as to the validity of a law, and to come within the *verba ipsissima* of the executive clause of Article 58. It follows, according to the view of O'Byrne J., that the reference of Bills to the Supreme Court was contemplated as something that might be done during the transition period, before Courts were set up under the Constitution. It must be remembered that on the whole O'Byrne J. was a conservative lawyer. The effect of the judgment of O'Byrne J. is that both "laws" and "bills" are included in the word "law" in Art. 58. I do not believe they are.

The drafters of the Constitution could, if they had so wished, provided in Article 58, that the Supreme Court which existed prior to the enactment of the Constitution, and which continued in existence until the Courts contemplated by the Constitution were established in 1961, was to have jurisdiction to consider any provision or provisions of a Bill referred to it by the President under Article 26. The drafters of the Constitution did not so provide, and it might be unreasonable to assume that the definition of the word "law" in Article 58 encompasses both Bills and Laws.

If my submission should prove acceptable to the

Supreme Court, and I am aware that this is not unknown in judicial circles, the result would be that the Supreme Court which considered the Offences against the State (Amendment)) Bill 1940 had no jurisdiction to do so, and, consequently, it would be open to the present Supreme Court to decide anew whether or not to declare the Offences against the State (Amendment) Act 1940 unconstitutional.

Article 40(4) (1) of the Constitution, states that "no citizen shall be deprived of his personal liberty save in accordance with law". The effect of In re *Art. 26 and the Offences against the State (Amendment) Bill* 1940, 1940 I. R. 470, in which it was declared that the Offences against the State (Amendment) Bill 1940, which provided for the internment of people without trial, was constitutional, was to equate the phrase "in accordance with law" with "in accordance with an act of the Oireachtas", thus not taking into consideration that the Constitution is the fundamental law of the land.

An attempt was made in 1940 to show the repugnance of the Bill in question with reference to Art. 40(3) (1) which proclaims that "the State guarantees in it's laws to respect and as far as practicable by its laws to defend and vindicate the personal rights of the citizen", but the Court strangely held that the duty of determining the extent to which the rights of any particular citizen, or class of citizen, can properly be harmonised with the rights of the citizens as a whole seems to be a matter which is peculiarly within the province of the Oireachtas in the exercise of this function. Consequently any attempt by this Court to control the Oireachtas would be a usurpation of it's authority, thus completely ignoring the principles of Natural Law.

Professor Kelly in his book "Fundamental Rights" points out that the position might thus seem to have been reached that the liberty of the citizen was at the mercy of the Oireachtas. He further points out that if this was so, the Irish citizen, despite his written Constitution, would enjoy no better constitutional protection against legislative encroachment on his personal liberty, than does the subject of the British Crown.

Since 1940 there have been two decisions which, even though neither is concerned with public order, provide some sign that the virtual equation of "law" in Art. 40(4) (1) with simple legislation, may not commend itself to the Irish Courts in future. In the first of these, *In Re Philip Clarke*, I, R. 235 (1950), section 165 of the Mental Treatment Act 1945, was attacked on the grounds that its powers of placing physical restraint on mentally infirm persons represented an infringement of the personal rights of a citizen guaranteed by Art. 40 (3) (1). The Supreme Court expressly repudiated that proposition that the part of the Court's judgement in *the Offences against the State Bill (Amendment)* (1940) quoted above meant that "the Court could not consider that a guarantee containel in the Constitution has been infringed by an Act of the Oireachtas", and went on to test section 165 in the light of Art. 40(3) (1), thus impliedly (though not expressly) departing from the notion that any Art. of the Oireachtas could, as much suffice to reduce the area of the citizen's personal liberty.

More recently, the vitally important case of *Ryan v* A-G (1965) I. R. 294 has reinforced the status of Art. 40 (3) (1) as a general standard for the testing of legislation, so that, although there has not yet been a judical declaration in so many words that "in accordance with law" in Art. 40 (4) (1) does not give the Oireachtas a free hand to abridge personal liberty, it seems that the principle observed in In re Art. 26 and the Offences against the State (Amendment) Bill 1940 has been effectively undermined.

Therefore we can see that a Supreme Court, if it so wishes, may express disatisfaction with the judgement of O'Byrne J. in *Sullivan v Robinson* and declare that the Supreme Court, which decided in 1940 that the Offences against the State (Amendment) Bill 1940 was not unconstitutional, had no jurisdiction to do. Legislation providing for interment could accordingly be declared unconstitutional.

Surely it is clear that a re-appraisal of the provisions of the Constitution, could result in dramatic changes in what has hitherto been regarded as the proper evaluation of the constitutional personal liberty of the individual. Art. 28(3) (3) could be abused by the Oireachtas and such possibility of abuse should be guarded against, even by amendment to the Constitution if necessary. Bearing in mind what appear to be the political realities it would possibly be more expedient to enact a new Constitution with the proper safeguards against possible abuse rather than to attempt to amend the present Constitution. In any event it would probably be foolish to consider the provisions of the Constitution relating to the establishment of Special Courts and Military Tribunals in vacuo. The attitudes and opinions of judges do, presumably, change; and this change could well be mirrored in the way in which they interpret a Constitution and deal with the individual's fundamental right to personal

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liberty. A reinterpretation of Art. 58 would be of great importance so far as the law providing for interment is concerned. Whether or not the decision to introduce interment should be left entirely to the Legislature is outside the consideration of this paper. It seems very doubtful whether the Transitory provisions of the Constitution have any effect now as they are no longer published in the current text of the Constitution.

Senator Mary T. W. Robinson is seconding the vote of thanks to the Auditor said:—

The greatest safeguard to personal liberty in a country is the consciousness on the part of its citizens of the value of liberty and their awareness of the danger of unnecessary inroads being made on it. In Ireland, unfortunately, we tolerate substantial interference with the constitutional guarantee of personal liberty through an unjustified extension of the state of national emergency proclaimed by the resolution possed by the Oireachtas on 3 September 1939 which has never been rescinded.

Whatever problems and difficulties may beset this country at present, have nothing to do with the national emergency declared because of the outbreak of the Second World War. It is time we admitted this honestly, and put an end to 36½ years of suspension of the full guarantee of civil rights in this country. We should also learn our lesson: that any future constitutional provision of this sort must contain within itself a strict time limit, when it will lapse automatically unless renewed for a further specified period.

The Oireachtas appears reluctant to put an end to this absurd 40-year emergency. A motion to that effect which I had tabled with the support of Senator John Horgan lay on the Order Paper of the Senate for two years without being taken. Recently, the Taoiseach expressly refused to consider such a motion in the Dail. The only possible course would be an action before the High Court for a declaration that the national emergency has ended — despite the fact that no motions to this effect have been passed by both Houses — because there is no substance to that national emergency as proclaimed in 1939 and its continued existence abridges the scope of the fundamental rights clauses of the Constitution. Under Art. 40.3 (1): "The State guarantees in its laws to respect, and, as far as possible, by its laws to defend and vindicate the personal rights of the citizen." To maintain an artificial state of emergency when the cause of it has long since disappeared is to dilute the concept of personal liberty and thereby to fail to defend and vindicate the personal rights of the citizen.

In any case, if the formal protection of personal liberty under the Constitution is to become a reality for all citizens, it will be necessary for the Courts to interpret in a more creative and dynamic way the provisions of the *Criminal Justice* (*Legal* Aidı *Act* 1962. The District Court is *empowered* to grant a certificate of free legal aid in appropriate circumstances on application being made to it. However, the Court itself should go further and inform any person coming before it on a criminal charge who appears likely to fall within the provisions of the Act of his *right* to apply for such a certificate.

The atmosphere and procedure before a court are intimidating and confusing to the lay person; and surveys have shown that the person represented by a solicitor or counsel is much more likely to avail of his right to bail etc. In principle, in order to ensure the reality of the guarantee of personal liberty, no person should be interrogated at a Garda station or brought before a Court without having a professional lawyer present to represent him who understands the rules of natural and constitutional justice, the procedures which must be adopted and the rights of the citizen in the circumstances. At present, the greatest inequality before the law is that between the citizen represented by his lawyer and the citizen who has to cope with the Court system on his own.

The Chief Justice, the Hon. T. F. O'Higgins, had proposed this vote of thanks. The Chair was taken by Professor Hand, Dean of the Faculty of Law.

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NOTICE

As the issues of the Gazette for March 1975 and April 1975 are scarce, will any members who do not require their copy please return them to the Editor.

FINANCE BILL, 1975 : COMMITTEE STAGE (RESUMED)

Continued from page 184

Mr. R. Ryan: As I indicated last night, I am satisfied both from rulings of Irish Courts and rulings of Courts elsewhere, that the legal position is that this power may only be used by the Revenue Commissioners in a reasonable way. If they act unreasonably the Courts will condemn their action. If they use the power to acquire information they may use it only to the extent necessary to obtain the information for the purpose of stopping tax avoidance. If they extend it beyond that then the Courts will block the action they want to take.

The wording of the 1974 Act ensures that the Revenue Commissioners will act reasonably and it is not, therefore, necessary to dress up the words in what Deputy Colley regards as softer and milder language in order to ensure that the power is exercised in a reasonable way. The amendment achieves nothing that the statute and the interpretation of the statute by the Court achieves.

Mr.Colley: *I* will tell the Minister the kind of people I know who are concerned. They are those who are concerned with the rights and protection of citizens and they are not prepared to say that unlimited powers may be given to the Revenue Commissioners to enable the Revenue Commissioners to deal adequately, in their view, with people who are avoiding tax liability by acting within the law.

The Minister should be under no illusions about this. If one is prepared to grant unreasonable powers to the Revenue Commissioners—for instance, to get after the most blatant avoiders of tax—then it is only a short step until exactly the same powers will apply against all citizens, whether or not they are trying to avoid tax.

Mr. R. Ryan: I believe all taxpayers should receive equal treatment under the law in so far as it is possible to ensure that. The overwhelming mass of people are affected by section 178 of the 1967 Income Tax Act, under which all details of an employee's income must be furnished by an employer to the Revenue Commissioners. It is as simple as that. It must be done.

Section 59 of the 1974 Act says that the Revenue Commissioners may by notice in writing require a person to furnish the information which they think necessary for the purpose of preventing the avoidance by individuals of tax liability by transfer of assets. If the Legislature in its wisdom considers it necessary that employees do not avoid their tax liability and imposes on their employers the obligation of revealing full details of the employee's incomes, surely it is not unreasonable to require people who have information about the transfer of assets abroad for the purpose of tax avoidance to be under a similar obligation?

Mr. Colley: Section 178 sets out precisely the information that can be sought. This section does not. Surely the Minister can see the difference between a section which sets out precisely the information which the Revenue Commissioners can seek and, on the other hand, a section like this which says they can seek whatever information is necessary? There is an enormous difference.

Mr. R. Ryan: I would like to point out to Deputy Colley that section 59 (3) sets out the information which the Revenue Commissioners may obtain. They cannot go beyond what this section gives them power to do. He says his only objective is to ensure that the Revenue Commissioners act reasonably I am saying that under the law they cannot but act reasonably. If they depart from that the Courts can condemn them for it. If we were to replace the words "think necessary" by the words "may reasonably require" the same test would be applied by the Courts. It would be no more and no less than that.

Of course, from time immemorial, since tax was first imposed, there has been a battle of wits going on between taxpayers and tax collectors. If that battle is won by a person who is liable to tax, then the burden on other taxpayers becomes so much greater. If the Legislature accepts its obligation to maintain equity, if it accepts it has an obligation to spread the load evenly, then it must strengthen the hands of the Revenue Commissioners to prevent tax avoidance.

Major de Valera: The Minister never misses a chance of trying to knock one section with the plea that the employee or the poor ordinary taxpayer will be caught anyway. I want to leave that kind of specious, political approach out of the matter as we are on the Committee Stage of a serious Bill.

What would a judge ask for it he had to deal with this? The protagonists in this have legal experience. What are the judicial interpretations in this? The Minister has only mentioned one. There have been cases and there have been interpretations. What is the relevant state of the law from the point of view of interpretation in regard to this matter? Those Bills are coming so fast that it takes a lot of time to pursue such a point. The question of interpretation may cause trouble for all those Finance Bills which are before the House.

I, like many others of the community, was too prone to adopt the point of view that the Revenue Commissioners were unrealistic publicans and tax gatherers in the gospel sense and that they should be anathema and defrauded and defeated at all points because they were grabbers. I was appointed by the House to the Committee that reviewed the various Finance Acts and then I realised the truth—that we had in this organisation a very responsible and fair-minded organisation which did its duty to the State, carried out its responsibility and respected the rights of the citizens as best and as fully as it could. I am able to make this state-

actual problems the Revenue Commissioners had to us in confidence without identification, were the ment because in the course of the discussion, revealed face.

I come now to the second matter, that Ministers for Finance under any Government always appeared to be rubber stamps for the Revenue Commissioners. Then I realised that the truth was that it was an unfair charge against Ministers for Finance. I realise that, with the information they had and the problems of the Revenue Commissioners, all the provisions whether introduced by Deputy Colley or his predecessors or by the present Minister, had good reason and good ground. I realised that the real reason was that it was compelling. That is the background and we should not pervert that background by having undue suspicions.

The first principle for us should be to restrain the possibility for arbitrariness because there can be a slippery slope. That can be said without the least reflection on the Government or the Revenue Commisioners. I emphasise this because it is a bad approach on our part if we give the impression that it is a reflection on the integrity of either in a matter of this sort. In the public interest we should be careful about this **On good legal and legislative principle we should delegate as little arbitrary power as possible from this House.** I believe that the public service who have the responsibility of executing the law would be glad to accept that principle. Arbitrary power is a responsibility that responsible and thinking people do not like to have.

On the other hand, the Revenue Commissioners have got to have the power to do their job fairly. In my view the Revenue Commissioners do the job to the best of any human ability. Where we have to make provisions of this sort the approach of Deputy Colley to err on the constrictive side and then to be prepared to meet the case where that is not sufficient is the better approach for this House. It may be a bit irksome to the officer who has to execute it, but it is the safer approach. For a short time in the public service I carried some responsibility that had arbitrary powers attached to it and I realised the temptation of a manager or an executive to get a job done. That is one of the balances which on the constitutional scene is carried out by the Courts.

I am putting this on a matter of principle. On the actual wording the Minister should be able to give a reasoned answer to the amendment from the point of view of legal interpretation. Deputy Colley is entitled to say that the safer form should be used on the principles I have outlined. I agree that the powers are probably necessary. I have no reason to doubt that, if I had all the information, I would not agree that the powers are necessary. Our Acts are now complicated by all this both from the point of view of the interpretation to be taken by the Revenue Commissioners for implementation, for understanding by the taxpayer and by Members but, above all for speedy administration.

If this is the position why not face the problem now and introduce a general provision? The Minister should take the safer course, safer from the constitutional and legal point of view rather than from the executive point of view, and accept Deputy Colley's amendment. It could be accepted conditionally on the basis that the question of the powers of the Revenue Commissioners would be examined in an effort to find a general format. The Revenue Commissioners can be trusted and we should remember that our Constitution is a control. This is not necessarily the complete abdication it might appear to be on the surface because our Constitution provides for the judicial function. The guardians of the judicial function, the judges and the Courts, are jealous enough of their prerogatives and duties in this area and they would be quick enough to apply their correction if there was on overswing to the Executive side from the judicial side.

One of the arguments against the Minister's provision is that the multiplicity of these decisions will provoke or invoke legal action. I imagine there is more on the Revenue Commissioners' files of legal difficulties and points and the solution of legal cases by settlement or agreement than ever appear in the Courts, but that fact should not delude us. It should not prevent us seeing that the fact arises fundamentally from the position where the Courts stand in this. With the multiplicity of these provisions and the fine distinctions the administrative process is greatly complicated. Therefore, I shall be bold enough to say here: why not consider what general powers can be given to the Revenue Commissioners in a simple way realising that those powers, when they step beyond the administrative level, trespass the judicial province and, accordingly, will be corrected? Were it my function to appeal to our Judiciary, to our Supreme Court in a matter of this nature I would say that their duty would be to apply the principles and the matter might be solved.

Would the Minister not at this stage accept Deputy Colley's amendment as being the safer course, pending a broad examination of the situation from the point of view of the overall powers of the Revenue Commissioners under all these Acts, in the matter of getting information, of surmounting obstacles of evasion These must be divided into two parts, first, the obtaining of information and, secondly, the use of technical devices to evade a provision? If one can work out a simple formula which will work, a great deal of heartache, and unnecessary energy expended on the files would be obviated and there would result a broader system of equity. In other words, one would control tax evasion more surely and avoid the danger of trapping the honest. There would also be a better understanding between the Judiciary and the Executive in these matters.

Mr. R. Ryan: *I* have no objection to a great deal of what Deputy de Valera said. Of course, one does not wish the administration of tax to be oppressive or burdensome. There is little evidence that, in fact, the administration of tax law here operates in that way.

Certainly, I would be as anxious as is the Deputy to keep a careful watch on the situation. If occasion should arise which would indicate that its operation had acted oppressively, I would be only too anxious to invite the Oireachtas to change the laws.

We are at present being asked to consider amend-

ing a section of the Finance Act, 1974 which was introduced for the purpose of ensuring that, as we were taking steps to stop tax avoidance by transfer of assets abroad, we would give the Revenue Commissioners sufficient powers to ensure compliance with the law. It would be pointless for Parliament to enact a law and not give anybody the power to enforce that law. What we have done is no more than is necessary to enforce it. I can go back to 1938. I have a whole brief on the matter here. In fact, I can go back to 1936, because the section in our 1974 Act is not dissimilar to what was introduced in Britain in 1936. The wonder is that we took so long to move against tax avoidance by the transfer of assets abroad. This is a practice which is engaged in by such people as have wealth surplus to their immediate requirements. I saw quite recently where a journal read by financial people in Dublin carried large advertisments for a special magazine which gives people advice as to where they can get the best return in 37 tax havens in the world. There has to be a perpetual surveillance by Parliament of actions taken by people with the intention of frustrating Parliament's intention. Every Finance Bill, almost without exception, includes provisions to close off loopholes which have been identified. This perpetual competition is an aspect of life that will always be with us.

Major de Valera: It will always be there as long as there are accountants and lawyers.

Mr. R. Ryan: As long as they have clients with an appetite sufficient to try to avaid paying tax. Of course, at the same time, nobody is under any obligation to pay any more tax than the law requires. But, because of the need to ensure that avoidance and evasion do not reach unacceptable limits, the Legislature must strengthen the hands of the Revenue Commissioners. It could well be that in exercise of the powers under section 59 of the Finance Act, 1974, the Commissioners might get information which would not disclose a taxable liability. Nevertheless, if they have reason to believe that assets have been transferred abroad, surely it is proper that the Revenue Commissioners should take details of such assets because such essets, if trnsferred abroad and yielding an income, are liable to tax. The Revenue Commissioners must ensure that there is a proper return in that situation, just as they have to ensure that there is a proper return of income from activities or assets within the State. We have said that there should be no difference between them. I think that is the correct attitude.

I accept that there is no difference of principle between us. There is a request that the language be softened so that it might appear better. But I am saying that section 59 of the 1974 Finance Act may be used by the Revenue Commissioners in a reasonable way only. Before the Legislature agrees to make an amendment in the 1974 Act we would want to have evidence that section 59 was being used in a way which was oppressive or burdensome. That evidence does not exist and case law is against the possibility of the section being used in an oppressive or burdensome way. I think that is the best way in which to leave it and not to be introducing language which, because it has not yet been tested, may cause more complications than we would wish.

Major de Valera: I must say the Minister's latter arguments are more compelling than were his first ones. In this context I would like to refer to two points he made. He used the word "burdensome". I agree that the ordinary honest, straightforward taxpayer has not any real complaint. It should be borne in mind that the system is terribly burdensome to all of us.

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But, as I said, the increased burden of a provision like this is on the Revenue Commissioners. The second point is about disclosing information. I know confidentiality which exists and the greater the risk of information slipping out in an unwarranted way. This is a greater risk in modern life in the business world.

I came across reams of computer material—it had nothing to do with State business but belonged to a private company—that had fallen out of a car which contained a great deal of information, including names. Naturally, I returned the papers as quickly as possible to their sourceI . could not help thinking that if I had been in that line of business—which I was not—there were a few interesting items in these papers. As I said, the bigger the organisation, the bigger its ramifications, the more its administrative problems are itemised by legislation and so forth, the greater the difficulties in that regard. In a nutshell, Deputy Colley's amendment is preferable to what is in this section. I earnestly urge the Minister to consider the proposition I have outlined in order to avoid amendments and provisions of this nature as far as possible in the future.

The Minister suggested that unless there was evidence that the section as it exists is being abused we should not amend it. I suggest that that is a wrong approach. Our objective ought to be to ensure as far as we can that it cannot and will not be abused. To do that I am suggesting this amendment. The Minister says it will make no difference. I believe it will make some difference. I am satisfied, and so is the Minister, that it will not in any way inhibit the Revenue Commissioners in the exercise of their duties under this and previous legislation.

The general proposition that the Revenue Commissioners may not act unreasonably is one thing but the proposition that they must, in relation to these particular sections, "reasonably require information" is different from "information which they think necessary". It may be a slight difference but there is a difference. There is a level laid down which enables an aggrieved citizen to get some protection from the Courts, in my view, a greater degree of protection than would be available to him if the section is at it is and at the same time, without inhibiting the Revenue Commissioners in the exercise of their functions in any way. I, therefore, suggest that the Minister ought to accept the amendment.

Mr. R. Ryan: As a lawyer, I am impressed by precedent. I would prefer to use the language that is tried and tested than to embark upon a sea of novel language. Briefly, I would like to draw attention to case law so that any person who wanted to pursue this matter further will see where the support for my argument lies. They will also see that I am not engaged in something which is radical and dangerous. I refer to the case of *Howard de Walden v the Commissioners of Inland Revenue*, 25 *T.C.* 121 (*year* 1941). There Lord Greene said:

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For years the battle of manoeuvre has been waged between the Legislature and those who are minded to throw the burden of taxation off their own shoulders onto those of their fellow subjects. In that battle the Legislature has often been worsted by the skill, determination and resourcefullness of its opponents, of whom the present Appellant has not been the least successful. It would not shock us in the least to find that the Legislature has determined to put an end to the struggle by imposing the severest of penalties. It scarcely lies in the mouth of the taxpayer who plays with fire to complain of gurnt figers.

The point of this quotation is to illustrate the judicial view that Parliament is justified in taking action to prevent tax avoidance and tax evasion.

What was being contested in the cases in question was the powers used by the Revenue Commissioners to stop tax avoidance and tax evasion. There were objections expressed that the actions expressed that the actions were unreasonable, but the Courts took the view that the Legislature was doing no more than discharging its necessary obligations to confer appropriate powers on the Commissioners of the Inland Revenue to ensure that the law is enforced.

Major de Valera: The Minister has made Deputy Colley's case completely. The Minister has told us two things: first that on the word "reasonable" the Courts are decidely in favour of equity and therefore lean towards the honest discharge of their duty by the tax collecting authority, that the Revenue Commissioners can rely on the sympathy of the Courts, and, secondly, that the sympathy can be invoked fully and absolutely by the word "reasonable". The word "reasonable" was recurring there is it recurrs in all these things. If the Revenue Commissioners can rely in the Courts' sympathy in this matter and not only the Courts but the vast bulk of the public, and if the most of the legislation and interpretations are based on the word "reasonable", then surely that is the word to use and not the phrose "think necessary", whether that formula has been tried out or not.

The Revenue Commissioners and their legal advisers need have no fear but that in this context of tax evasion and tax avoidance the word "reasonably" will be interpreted very favourably towards them. Is there not a danger that by using words like "think necessary" a Court might be tempted to interpret it more narrowly against the Revenue Commissioners than they would otherwise. In the case that the Minister has cited, the sympathy of the Courts is towards the tax collecting authority when the word "reasonable" is applied to their powers. The Courts might consider the words "think necessary" unduly restrictive and the Revenue Commissioners might be better off with Deputy Colley's formula.

Mr. R. Ryan: Maybe there is something to be said for both sides.

Deputy de Valera did accept the merits of using language which has stood the test of time.

Major de Valera: Of course, and the word "reasonable" is at the base of all that language.

Mr. R. Ryan: At the base of all legislation there is an assumption that the Executive will act reasonably.

Major de Valera: I do not know whether the words "think necessary" have been judically interpreted. If the Minister can convince me of that, that modifies my opinion.

Amendment by leave withdrawn.

END OF PART ONE

The President's Address - 5 June 1975

Presentation of Certificates

This evening it is my good fortune to act as host to many happy people. It is my pleasant duty to congratulate our many students who will later receive their Certificates of Qualification as Solicitors, to welcome them to our profession and at the same time to congratulate their parents and friends who may be justifiable proud of their achievements.

Since you are about to enter your new profession, it is appropriate to reflect for a few moments on a recent television programme on solicitors. We can learn something new and of value from every experience. During the programme we heard some harsh views expressed about our profession not only harsh, but extreme at times and exaggerated. Nonetheless some points of value emerge and so some lessons can be learned.

During the past few years we have engaged in what has been called "public relations" I was glad, therefore, to hear a lady on the panel comment on the need for a more positive approach, by the Society, to the public and a more informed and practical relationship with the public. The Society is most conscious of this need and we have in the course of preparation further pamphlets which we will make available to the public and to the many organisations in our public life who deal with community matters, designed not to advertise our services, but rather to inform the public on various practical matters which we hope will be of value. They will be short and we hope informative and helpful.

It is important to keep our clients continually informed as to the progress of matters which are entrusted to our care and in particular to keep them informed of probable delays and where there will be delay. A positive approach is essential and can easily be achieved by having typed a second copy, to send

to your client, of many of the letters which we are obliged to write from time to time to expedite matters, which have inevitably become bogged down.

By now the public may be tired of hearing the word "delay" used in relation to the legal system and in particular to our profession. I felt obliged in Westport to comment on the delays inherent in the present staffing of the Land Registry, a matter which was also raised by way of a question in the Dail in February, the delays in other public offices which have become notorious, this is not essentially due to any fault of the staff engaged in these offices, but rather by reason of the inherent problems which exist in the Departments in question. I am glad to say that there are continuous meetings between the representatives of our Society and the Departments involved, all with a view to improving the position, and in an endeavour to solve the existing problems. We feel however that it is unfair that the entire blame in this regard, should, by reason of the understandable irritation and frustration of the public, be placed on our shoulders. Delay begets delay and nothing causes greater irritation and frustration to the public in general, than an apparent inability in the system, to carry out the work which they entrust to the legal profession to be performed quickly and to their satisfaction. The increases in complaints which the Society have received over the past two years results from the apparent breakdown in the Land Registry system and the very long delays which have existed and continued to exist in the Estate Duty Office and the officials of the Revenue Commissioners and of Valuation. Some time ago I felt obliged to comment on delays which are occurring in some of our Courts. The pressure on our Courts will, I am certain, increase in the next few days and unless the system is prepared to provide sufficient Judges and Court accommodation, to enable an efficient and business-like dispatch of the work to be carried out the system will fall into greater disrepute with the public generally. Until these problems are dealt with, I am afraid it is inevitable that we will continue to receive in the Society a large number of complaints not caused by us and which would be remedied if there were a greater measure of speed and efficiency in the public areas referred to. There appears to be an urgent need for the appointment of at least one further Judge to the Circuit Court in Dublin.

On the question of costs and remuneration, our profession is reaching a point where the cost of providing a service for all members of the community is out of reach of a large section of the community at present. People who are unable to afford the cost of the service provided by the legal profession, understandably complain about what they refer to as "unreasonable or excessive charges". They concentrate on specific areas of our remuneration to indicate that our remuneration is too high, but some of the critics in this respect do not appear to have spent any time in costing work involved on the basis of reasonable remuneration. The Society has been surveying this area very thoroughly during the past year or two on a time costing basis which is the only true basis on which the reasonable cost of any service can be ascertained. Generally we have been seeking a review of the costs system. In 1968 and prior to that time we had long discussions with the Department of Justice with a view to establishing a Central Cost Committee. The discussions in this respect were of course overtaken by an enlargement of the powers of the National Prices Commission. We would indeed welcome a review of our fees in general, if for no reason other than, to allay the apparent public concern which seems unfounded and is based on general comment rather than on any true analysis of the reasonableness or otherwise of our remuneration.

Part of the service which we offer may well be out of the reach of many people. It follows that a system of legal aid in civil and criminal matters is absolutely essential if our services are to be made available to all people in the community. As a matter of tradition our profession has provided for years a full service to all members of the community, often at the expense of the individual practitioner, but the stage is being reached where, as it is unremunerative our profession are finding it dfficult to carry this burden and this has inevitably left our profession open to criticism.

May I remind you that our profession always will be held, in high regard by the public in general. Nonetheless we must all in our own way, do all we can to honour the public trust which is placed in our profession, to the best of our respective abilities and to keep

As new members I would exhort you to play your part in the field of criminal work, particularly work coming within the ambit of the criminal legal aid scheme. To obtain experience on the criminal side of District Court work is an essential part of your training and the experience gained in the District Court in both criminal and civil cases will lay a solid foundation for your future progress in the profession. I feel that a greater committment from all members of our profession is required in relation to the criminal legal aid scheme. I hope that when the problems which have existed are ironed out that the scheme will be availed of more freely and fully by the public and that we will provide for them the service which they are entitled to obtain. The Minister for Justice has agreed to set up a Committee to examine the present scheme and we would hope that this examination would commence shortly so that any problems which exist can be cleared up quickly.

It is essential also that you take part in the activities of our Society in becoming members of a Bar Association and not only becoming members, but playing an active role in the work of a Bar Association. It is important that you express your views on all matters of interest to the Society, that you take part in the affairs of the Young Solicitors Society in keeping up their good work, in continuing your involvement in the Free Legal Aid Centres and a general deep interest in the affairs of our Society which will ensure that we are genuinely seen to be conscious of the general public need, but that it should be seen that we are so conscious.

Certificates were then presented to the following 40 solicitors:—

John G. Brady, 21 Moatfield Avenue, Dublin.
Nicholas A. Butler, B.C.L. "Casa Mia", Cannon Rock, Howth, Co. Dublin.
Patrick A. Butler, 11 Priory Street, New Ross, Co. Wexford.
Terence F. Casey, 18 High Street, Killarney, Co. Kerry.
Eoghan P. Clear, 2 Taney Crescent, Dundrum, Co. Dublin.
Marie C. Collins, 126 Seafield Road, Clontarf, Dublin.
Frances Cooke, 9 Whitebeam Avenue, Clonskeagh, Dublin.
James P. Courtney, B.C.L. 23 Summerhill, Nenagh, Co. Tipperary.
Donough Crowley, B.C.L. Windrush, Knocksinna, Howth, Co. Dublin.
James M. Daly, 5 Wyattville Hill, Ballybrack, Co. Dublin.
Vivian M. Emerson, B.A. 1 The Crescent, Galway.
Hugh M. Fitzpatrick, B.C.L. "Hazelhurst", 63 Ailesbury Road, Dublin.
Michael J. Hanrahan, Ballinacourty, Dungarvan, Co. Waterford.
Thomas Hayes, B.C.L. Maywood Crescent, Raheny, Dublin.
Declan Hegarty, B.A. (T.C.D.) "Moygownagh", Strandhill Road, Sligo.
Edward Hughes, B.C.L. Graighnamanagh, Co. Kilkenny.
Anne E. Kennedy, Ballinasloe, Co. Galway.
Gillian K. M. Kiersey, B.C.L. Coolrea, Grange Road, Waterford.
Maurice J. Linehan, B.C.L. Main Street, Millstreet, Cork.
Francis J. Lowney, B.C.L. 61 South Main Street, Wexford.
Margaret Lucey, B.C.L. Sandy Hill, Macroom, Co. Cork.
John B. Lysaght, B.C.L. 88, St. Helen's Road, Booterstown, Co. Dublin.
Dermot M. MacDermot, B.C.L. "Landscape", Castlerea, Co. Roscommon.
Stephen P. Maher, 88 Mt. Prospect Avenue, Clontarf, Dublin.
Noel Malone, 26 Arnott Street, South Circular Road, Dublin.
Arthur D. S. Moran, B.A. 67 Nutley Lane, Dublin 4.
Michael J. K. McCarthy, B.C.L. "Narjeno", Beaumont Lawn, Ballintemple, Cork.
John J. O'Brien, 24 Ormond Road, Rathmines, Dublin.
Ross A. O'Cathain, B.C.L. 13 Brendan Road, Donnybrook, Dublin.
Anthony J. O'Doherty, M.A.LL.B., 112 Renmore Park, Galway.
John V. O'Dwyer, B.C.L. Killeen House, Cashel, Co. Tipperary.
William F. O'Keeffe, Abbey House, Ennis, Co. Clare.
Graham Richards, B.A. (Mod.) 1 Sandford Avenue, Dublin.
Michael Staines, B.C.L. 62 Bellevue Road, Glenageary, Dublin.
James D. Sweeney, Athenry, Galway.
Joseph R. Sweeney, Athenry, Galway.
Orlaith M. Traynor, 20 Woodbrook Lawn, Boghall Road, Bray, Co. Wicklow.
Rosaleen Tyndall, 42 Commons Road, Clondalkin, Co. Dublin.
Catriona Walsh, B.A. 142 Howth Road, Dublin.
Richard Whelehan, B.A. H.Dip. Bishipgate Street, Mullingar, Co. Westmeath.

Correspondence

The Secretary,
Incorporated Law Society,
Solicitors Buildings,
Four Courts.

Re: 12th Interim Report of committee on Court practice and procedure

Dear Sirs,

I have been requested by the practitioners practising in the Dun Laoghaire and South Dublin and Bray areas to put forward their views on the above report, in so far as its recommendations affect (a) the public served by us in this area and (b) ourselves as practitioners. These views were consolidated at a meeting held by the practitioners concerned for the purposes of considering the recommendations of the report.

In so far as the effect of the recommendations on the public are concerned, we would be totally opposed to the recommendations of the committee to centralise the District Court in Dublin. The following points appear to us to be extremely relevant in this context:—

(1) There could be no possible benefit to the members of the general public in the areas to which this submission relates in transferring the venue for the hearing of proceedings within the competence of the District Court to the centre of Dublin city.

(2) The trend in commercial life, in so far as Dublin is concerned at the moment, is one of decentralisation. Two examples which readily spring to mind are the Bank of Ireland Computer Centre at Cornelscourt and the Esso Head Offices at Stillorgan. It is well known that traffic parking and other problems directly generated by the increasing volume of traffic in Dublin City centre have become much more acute over the past five years, and are now causing grave problems in the centre of Dublin city. In our opinion the ideal and long term view of the Committee should have been directed towards decentralisation of the Court's functions rather than the reverse.

(3) In the cases of many of the satelite communities such as Ballybrack, Shankill, Tallaght, Blanchardstown and Finglas, middle and lower income litigants, who have to attend the District Court, must

rely heavily on public transport from these satelite communities to the City centre, and, where such public transport does exist, it is slow and inconvenient, and certainly in recent years, expensive.

(4) Again we stress the fact that the tendancy in Dublin City and County is to concentrate communities in self sufficient satelite developments which contain within the development adequate shopping facilities adequate open space and sporting facilities, adequate community facilities such as communal meeting places, parks, etc. thus obviating the necessity for the sub-urban dweller to travel far in pursuit of shopping and other facilities. It is our opinion that it is the duty of the State to ensure that these facilities are provided to the members of the satelite communities in the same way as all the other facilities namely to be availed of in the area where the satelite dweller resides.

It is our opinion that the whole administative area of South County Dublin should be transferred to the part of Dublin Metropolican District of which Dun Laoghaire Court forms a part. We would point out (a) that there are adequate and indeed excellent Court facilities in Dun Laoghaire and (b) there is direct public transport to Dun Laoghaire both by bus and train from all the satelite communities in the area, (c) It is common knowledge that the Bray District Court Lists are very heavily congested and the District Court Office in Bray is grossly overworked. The transfer into the Dun Laoghaire Court of that part of South County Dublin now in the Bray Court area (Shankill) would relieve the Bray Court Lists and the Office. This would give effect to a resolution of the Wicklow Bar association which requested the Minister for Justice to transfer part of South County Dublin now in the Bray Court Area to the Dublin Metropolican District or to a Court Area for South County Dublin. It is also quite clear that there is sure to be a considerable increase in litigation in South County Dublin not alone by virtue of the increase in the jurisdiction of the District Court but also with the growth of a satelite town-land Ballybrack and major development proceedings at the monent at Loughlinstown, Hacketsland and Killiney. Indeed we would go so far as to suggest that a Circuit Court should be held each session in Dun Laoghaire as was formerly the case with the Recorders Court.

Since the meeting, sittings of the District Court have been held twice weekly in Dun Laoghaire and the District Court has now jurisdiction in all matters. This has already demonstrated its usefulness and an examination of the volume of business which has been transacted by the Dun Laoghaire District Court since its jurisdiction has been increased, will bear out our contentions. We would like to avert to the fact that twice weekly sittings of Dun Laoghaire Court with full jurisdiction reverts back to 1934 up to which time Dun Laoghaire District Court sat permanently with full jurisdiction and in fact a Childrens Court sat from 1943 until the establishment of the Childrens Court in Dublin Castle. Another matter which we consider is of great importance to the general public is that where there is a District Court Office full time operational in the Dun Laoghaire areas, members of the general public can more readily seek the advice and assistance of the Court Clerk and his staff in relation to the various different problems which confront the layman when dealing with District Court litigation without the help of a Professional Practitioner. It again is common knowledge that members of the public resorting directly to the District Court Offices whether in Dublin or in any of the other centres receive instruction and assistance on the practice and procedures in the District Court from the Clerk and his staff. To deprive the very large local section of the community of this facility and to make it necessary for them to go into Dublin to make simple enquiries regarding the conduct of litigation in the District Court would be to impose a very great hardship indeed upon them and would probably make it necessary for them to consult local practitioners about matters which could quite easily and simply be explained to them in the District Court Office. While it is not intended to detract from the service which the practitioners provide to members of the general public should have the facility of going to the Local District Court Office with simple enquiries so that they may judge for themselves more readily whether it is necessary for them in any particular case to consult a Solicitor or whether their problems are ones simple of resolution and not necessary to place in the hands of a Legal Practitioner.

From the point of view of the practitioners themselves, we would point out that we are in practice in the South County Dublin area to give service to the large local communities in our area. We can give this service more efficiently and more econmically in so far as District Court litigation is concerned when we are in a position to have a local venue for local District Court matters.

Yours faithfully,

GABRIEL HAUGHTON,

on behalf of practitioners in Dun Laoghaire and South Dublin.

Herr Walter G. Popp,
9 Blumenthalstrasse,
D-85 Nürnberg,
West Germany.

Dear Sirs,

During the course of my so-called "Referendarzeit" (which in some respects amounts to being an articled clerk with an English Law firm) I have the opportunity of spending three months with a foreign solicitor, pending approval of my superiors. My salaries during this period will be paid by my German employer (i.e. the government of Bavaria).

Accordingly, I would like to spend those three months in Dublin with an Irish law firm. Whereas I would find it particularly rewarding to be with a firm specialising in either the law of the European Community or any aspect of "radical Lawering", I am

basically open as to the prospective area of legal activities I might get involved in.

You might be interested to learn something about my current status and qualifications. I finished university education as a lawyer in 1972, spent nine months as an assistant lecturer at the university of Heidelberg, went to Cambridge for a year in order to get some ideas of what the English legal system is like, and spent five months in the U.S. on a research grant by the German Research Foundation in order to look into the law and computer area before I started my "Referendarzeit" this year in February. For all practical purposes, I consider myself being quite fluent in the English language.

I am not at all sure at the moment which procedure I should take in order to bring some structure into my plans with regard to Dublin. This is why I am writing to you, and am asking you for your advice. If you have any ideas about the next steps advisable to undertake I should be most grateful.

Very truly yours,

WALTER POPP.

Note:—Replies should be sent direct to Herr Popp.

MEDICO-LEGAL SOCIETY

Dear Sir,

At the Annual General Meeting of the Medico-Legal Society of Ireland held on Wednesday 4th of June, 1975 the following officers and committee were elected for the session of 1975/76.

Patron: The Chief Justice Thomas F. O'Higgins. President: Dr. Robert Towers. Immediate Past President: Mr. Raymond Downey. Vice-Presidents: Dr. H. Jocelyn Eustace, Dr. F. McLaughlin, Mr. D. O'Donovan, Professor Maurice Hickey, The Hon. Mr. Justice Walsh, The Hon. Mr. Justice Kenny, Professor P. D. Holland, District Justice A. B. Cassidy. Honorary Secretary: Miss Thelma King. Honorary Treasurer: Dr. Declan Gilsenan; Council: Mr. Matthew Russell, Dr. John Harbison, Mr. Brian Murphy, Miss Carmel Killeen, Mr. Leo McCarthy, Mr. Finbar Callanan, Dr. Liam Daly.

THELMA KING

Hon. Secretary.

Re.: **Seminars on Capital Taxation**

Institute of Taxation,
3 Fitzwilliam Place,
Dublin 2.

Dear Mr. Ivers,

We will be holding a seminar on the Wealth Tax on Monday October, 6th at the Burlington Hotel. The brochures for this seminar will be ready early in September. I would be obliged if you could mention this seminar in your Gazette.

Yours sincerely,
Frank McHugh,
Organising Secretary.

Solicitors' Golfing Society

President's (W. A. Osborne) Prize

The Curragh Golf Club — 4th July 1975

President's Prize:

Paul W. Keogh (13) 39 pts.
W. Harnett (9) 37 pts.

Ryan Cup (H'caps 13 and over)

P. Butler (16) 37 pts.
B. Rigney (16) 36 pts.

H'caps 12 and under):

J. C. Reidy (8) 35 pts.
P. Tracey (10) 35 pts.

1st Nine:

G. O'Sullivan (6) 20 pts.

2nd Nine:

E. Bradshaw (13) 19 pts.

From more than 30 miles:

John Maher (13) 35 pts.

Best Score by Lot:

Peter McLaughlin (11) 30 pts.

Next Outing: Captain's (D. Lynch) Prize at Portmarnock on 3rd October, 1975.

LAND REGISTRY DELAYS

QUESTION: To ask the Minister for Justice the reforms he has introduced since March, 1973 to speed the process in the Land Registry.

NOEL DAVERN.

For answer on Tuesday, 17th June, 1975.

ANSWER: Many remedial measures, including the reorganisation of both the legal/clerical and the mapping structure, have been taken in recent years in order to provide a more efficient service in the Land Registry. These arose from the implementation of recommendations made by a study group which was set up in 1968 to review the organisation and procedures of the Registry.

Early in 1974 I reconstituted the study group to continue the work of examining the organisation and procedures of the Land Registry and to furnish recommendations as to changes that should be made so as to enable the Registry to discharge its functions more efficiently. I accepted the group's recommendations to the effect that a new mapping system should be introduced and a special section in the Mapping Branch is now working on the implementation of the new system. One of the main advantages of the new system is that, when it is operative, a registered owner will be able to obtain a copy of a document, known as a filed plan, which will comprise both the folio and the map relating to his holding. Under the existing system, a major source of delay has been the need for copy maps to be drawn by hand, which is a time-consuming process. Under the new system delays in this area will be completly eliminated, as it will be possible to produce copies of the filed plans photographically.

The amount of work involved in the introduction of the new system is considerable but I am hopeful that it can be completed in a reasonable period of time I expect that the study group will let me have, in the very near future, detailed plans showing how the new system can be fully implemented within a reasonble time.

The study group are also examining other areas of difficulty in the Land Registry, notably first registrations, storage of documents and the question of accommodation generally. I expect that the group will furnish early reports on these matters.

Apart from fundamental changes, a number of remedial measures have been taken from time to time in order to reduce delays in the Registry. As a result of these measures, which include the working of overtime and an increase of 15% in staff members since the begining of 1973, the arrears of delaings in registered land, which constitute the main bulk of the work of the Registry, have been reduced by 27% since the begining of 1973, despite the fact that the intake of dealings increased by 35% during the same period.

I am hopeful that the improvement in the arrears position will not only be maintained but greatly accelerated as a result particularly of the changes which are being introduced. I am most anxious that the Land Registry should provide the most efficient service possible and I will continue to do whatever I can to achieve this end. In this context I migth mention that in order to facilitate the public in the lodgment of applications, I made an order in November, 1974, providing that fees could be paid by cash, banker's draft, money order, postal order or cheque as well as by Land Registry stamps (which was previously the only method by which fees could be paid).

Assistant Law Agent

Cork Corporation

Salary : £5,206 - £5,955

The successful applicant may enter the salary scale above the minimum depending on qualifications and experience. Contributory pension and Widows and Orphans pension scheme.

Essential : Admission and enrolment as a Solicitor in the State and three years experience including experience of Court work.

Age limits : 24 - 55 years on 1st September, 1975.

For application forms and further details write to:Secretary, Local Appointments Commission, 1 Lower Grand Canal Street, Dublin 2.

Latest date for receiving completed application forms

4th September, 1975.

JUNE EXAMINATION RESULTS

At the Book-Keeping Examination held on 6th of June, 1975 the following candidates passed:—

Passed with merit:

Michael F. O'Connor. Brian F. O'Sullivan, B.C.L.

Passed:—

Henry J. Arigho. Bernard Armstrong. Diarmuid Barry. Vincent P. Beirne, B.A., B.D. H.Dip. in Ed. David Bergin. Johnny Bourke. Peter J. Boyle. Patrick L. Brady. Marian N. Brazil, B.C.L. Eithne Breathnach. Anthony O. F. Burke, B.A. (Mod). Francis X. Burke. Paul Byrne. James J. Cahill. Hugh Campbell, B.C.L.

Marion E. C. Campbell, B.A. Jarlath A. Canney. Patricia Carroll, Brian D. Casey, B.C.L. Laura M. Casey, B.C.L. Joseph Caulfield, B. Comm. Therese M. Clarke, B.C.L. K. W. Cleary. Helen M. Collins B.C.L. John F. Condon. Evelyn Cooney. Vincent C. Crowley, B.C.L. Patrick M. Crilly, B.C.L. Andrew J. L. Davidson. William B. Devine.

Ian Dodd. Roderic Dolan, B.C.L. Thomas F. Dowd, B.C.L. Dominic M. Dowling. Pauline M. Doyle. Andrew T. Dunne. Cormac D. Dunne. Shaun Elder. Josephine Fair, B.A. Patrick J. Farrell, Michael P. Fitzpatrick. Peter Flanagan. Paul M. Fleming. Sean Gallagher. Sylvia Geraghty.

Julia M. Gillan. William F. Gleeson. Margaret M. A. Gleeson. Patrick Goold, B.C.L. Christopher A. Grogan. Martin P. B. Grogan. Alan G. Graham, B.A. Helen Heffernan. Emmet Halley. Timothy G. Hallissey, B.C.L. Terence Hanahoe. Barbara Hanna. Ita M. Harvey, B.C.L. Dermot V. Hewson, B.A. (Mod). Liam Hipwell.

Kevin M. Houlihan. Eileen-Marian Howell. Veronica Huggard, B.C.L. Seamus Hughes, B.C.L. Brendan F. Hyland, B.A. Andrew B. Jordan. Joseph M. Jordan. James H. Joyce, B.A. Patrick Judge, B.A. Mary M. Kelly. Patrick J. Kelly. Philip J. Kelly. Kevin P. Kilrane. Mary E. Larkin.

Muriel G. Lee. Martin Lennon, B.C.L. Sheila F. Lynch. Sean M. MacBride. Cathal MacCarthy: Aidan Meagher, B.C.L. Caroline Meehan, B.C.L. Michele Mellotte. Denis Molloy. Michael Moran, B.C.L. David Morris. Joseph B. Morton. B.C.L. Thomas K. Mulcahy, B.A. Fiona Muldoon. John Mulvihill, B.C.L.

Fionnuala M. R. Murphy, B.A. James P. Murphy. Joseph T. G. Murphy. Gerard A. McCanney. Lorna J. McCarthy, B.A. David D. S. McCormick, M.A., B.B.S. Michele M. McEvoy, B.C.L. Karen McDowell, B.A. John McGlynn. Raymond McGovern. Denis McMahon, B.C.L. Patrick M. McMullin. Patrick J. McNally. John C. K. Nagle. Matthew J. Nagle.

Sheila Neary. Gerard M. Neilan. Susan Nolan, B.C.L. Terry O'Boyle, B.A., H.D.E. Kieran J. O'Callaghan, B.C.L., LL.B. Maurice O'Callaghan, B.C.L. Deirdre O'Connor. Sylvia O'Connor. Thomas V. O'Connor, B.C.L. Catherine O'Doherty. Niall K. O'Doherty. Brian H. O'Donnell, B. A. Michael J. O'Donnell, B.C.L. Thomas E. O'Donnell. Hugh B. O'Donoghue.

Stephen O'Dwyer, B.C.L. Thomas O'Dwyer. Adrian P. Gorman. Anthony O'Gorman, B.C.L. Michael F. O'Gorman, B.C.L. John B. O'Herlihy. Constantine G. O'Leary, B.C.L. Anthony J. O'Malley. Pol O Murchau. John J. O'Neill, B.C.L. Raymond St. John O'Neill. Anne O'Reilly. Francis O'Riordan. Mary C. O'Sullivan, B.C.L. Francis J. O'Toole. Michael Pattwell.

Michael T. Petty. Joseph Philpott. Brian P. Reddin, B.C.L. Patrick E. Rogers. Desmond P. Rooney, B.A. Fergal J. Rooney. Brendan J. Rossitter, B.C.L. Henry E. J. H. Roundtree. Robert V. Shannon. Joanne Sheehan, B.C.L. Ambrose A. Sharpe, B.C.L. Alan Shatter. Charles C. Sherry, B.A. Bryan F. Strahan. Adrian Stokes, B.C.L.

Anne Sweeney, B.C.L. David Tomkin. Brian F. G. Toolon. Deirdre M. Townley. Valentine Turnbull. David M. Turner. Mary A. Twomey. Ann C. Walsh, B.C.L. Gerard H. Walsh. Ronan Walsh, B.A. Mary T. P. Ward, B.C.L. Veronica A. Watchorn. John N. Weston. Brian O. Whelan, B.C.L. Margaret Wren, B.A.

LOCAL AUTHORITIES

SOLICITORS ASSOCIATION

The Third Annual Seminar organised by the Local Authority Solicitors' Association (Wholetime) was held on the 23rd May, 1975 in the Clarence Hotel, Dublin. This year admission was open to all Solicitors engaged in local government practice and there was a very large attendance. The principal guests included the President of the Incorporated Law Society of Ireland, Mr. W. A. Osborne, the Dublin City and County Manager, Mr. M. Macken, the Director-General of the Incorporated Law Society, Mr. J. J. Ivers, the Assistant City and County Managers, Mr. H. Byrne and Mr. P. A. Morrissey and the Librarian to the Incorpored Law Society, Mr. Colm Gavan Duffy.

The following papers were delivered:—

"The Validity of District Court Orders and Convictions". Speaker: M. J. C. Keane, M.A., LL.B. Former Justice of the District Court.

"Some recent decisions of importance in the law on Local Government". Speaker: Ronan Keane S.C.

"A Meeting of a Local Authority". Speaker: Thomas S. Smyth, B.L.

It is hoped to publish the papers in the "Gazette" at a later stage.

The City Manager kindly gave a reception in the City Hall before lunch.

Alfred O'Dwyer

AN APPRECIATION

The sudden death of Alfred O'Dwyer, Registrar of Titles, has caused consternation amongst his friends, to whom he was universally known as Chippy. He was born in Limerick 62 years ago, in 1912, and having attended the Cresent College, Limerick, entered University College, Dublin, in 1930 and graduated with Honours in Legal and Political Science in 1933. He was called to the Bar in 1934, and entered the Land Registry where he was to stay for the rest of his life, as a Legal Assistant. He was promoted successively as Senior Legal Assistant, Examiner of Titles, Deputy Registrar, and became Registrar of Title and of Deeds only in May of this year.

I have known Chippy well for more than 40 years, and met him constantly. He was not only an expert in property and land law, but he had the unusual facility of expounding an involved, difficult, legal problem with an ease which made it sound simple. He was an enthusiastic member of the Officers Training Corps, in U.C.D. and served as an officer in the Local Defence Forces during the emergency. I shared with him a fluent conversational knowledge of French and German and, despite our service in the L.D.F., we were actually taken for spies during the war. I used to particularly enjoy listening to his choice records of classical music in his flat. As a popular member of the Arts Club, Chippy knew many contemporary artists like Fergus Ryan and Lejeune, personally, and had amassed a valuable small collection of origional paintings. But it was mainly when he frankly discussed contemporary events with a humorous twinkle that he was at his most perspicacious; many forecasts of events analysed scientifically, subsequently proven accurate.

There was one quality which we appreciated above all—his loyal and unwavering counsel so firmly and reliably given. This was doubtless due to the rigorous training which he acquired as a gifted horse rider. His friends and the Land Registry have suffered an irreparabel loss by his sudden tragic death and deep sympathy is extended to his sister, Kitty and to his brothers.
C.G.D.

Assistant Law Agent

Dun Laoghaire Corporation

Salary : £5,206 - £5,955

The successful applicant may enter the salary scale above the minimum depending on qualifications and experience. Contributory pension and Widows and Orphans pension scheme.

Essential : Admission and enrolment as a Solicitor in the State and three years experience including experience of Court work.

Age limits : 24-55 years on 1st September, 1975.

For application forms and further details write to : Secretary, Local Appointments Commission, 1 Lower Grand Canal Street, Dublin 2.

Latest date for receiving completed application forms

25th September, 1975

The Register

REGISTRATION OF TITLE ACT 1964

Issue of New Land Certificate

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

Dated this 31st day of August, 1975.

A. J. O'DWYER, Registrar of Titles,

Central Office, Land Registry,

Chancery Street, Dublin 7.

Schedule

(1) Registered Owner: John Brady; Folio No.: 733; Lands: Laghtcausk; Area: 6a. Or. 20p. County: Roscommon.

(2) Registered Owner: Patrick Grogan; Folio No.: 13735; Lands: Monairmore (part); Area: 21a. Or. Op. County Galway.

(3) Registered Owner: Michael Carthy; Folio No.: 88 (revised); Lands: Trien; Area: 17a. Oa 20p. County: Roscommon.

(4) Registered Owner: Patrick O'Toole; Folio No.: 8096; Lands: (1) Kilmalin; (2) Ballybrew; Area: (1) 79a. 2r. 25p; (2) 29a. Or. Op. County: Wicklow.

(5) Registered Owner: The County Council of the County of Leitrim; Folio No.: 3698R; County: Leitrim.

(6) Registered Owner: James Clarke; Folio No.: 5318; Lands: Ballymanagh; Area: 18a 2r. 7p. County: Mayo.

(7) Registered Owner: Thomas Brady; Folio No.: 5619; Lands: (1) Boardee, (2) Boardee (one undivided moiety). Area: (1) 84a. 1r. 20p., (2) Oa. Or. 5p. County:Cork.

(8) Registered Owner: James Ryan; Folio No.: 6190 Lands: part of the lands of Tobertelly; Area: 22a. Or. 7p. County Sligo.

(9) Registered Owner: Siobhan O'Dea; Folio No.: 4532; Lands: Tallaght; Area: 1a. 1r. 30p.County Dublin.

(10) Registered Owner: William Francis Moroney; Folio No.: 467; Lands: Garracloon; Area: 99a. 0r. 22p. County: Clare.

(11) Registered Owner: Elizabeth Lynch; Folio No.: 5345; Lands: The dwellinghouse and premises known as 34 Clare Road situate to the east side of said road in Drumcondra. County: City of Dublin.

Notices

Intending apprentice who has sat the Preliminary Examination seeks Master. Telephone: 288320.

B.C.L. (Honours) Graduate, qualifying as a solicitor in September, willing to work hard, seeks position in Dublin City, Co. Louth or Co. Monaghan. Replies to Box No. 120.

Intending apprentice seeks Master. Please contact John Doran, 26 Crotty Avenue, Dublin 12. Telephone 500212.

Graduate, B.A. (Mod.) LL.B. (T. C. D.), having done the first Irish Examination, seeks Master. Please contact Miss Therese McMullan, Garden Flat, St. Alban's, Albany Avenue, Monkstown, Co. Dublin.

B.A., Legal Science graduate, seeks Master. Anywhere considered. Replies to Clare F. Doyle, Sandy Lane, Portarlington, Co. Laois.

Solicitor (admitted 1967) returned from abroad, seeks position with Dublin firm. Gerard Kirwan, 28 Clontarf Road, Dublin 3.

Old Established country firm require agent. Full particulars will be supplied to Applicants. Replies to Box No. 121.

Michael P. Walsh, B.A., 1st Law, U.C.G. (1st class Hons. in Jurisprudence), seeks Master preferably in the West. Address. Kilvandoney, Hollymount, Co. Mayo.

LOST WILL

Any solicitor having a will of the deceased John McDonagh, whose address at different times was as follows:— Trean, Nuns Walk, Poulduff Road, Cork; 5, Cliften Terrace, Summerhill, Cork; 3, Ardeaven Street, St. Lukes, Cork; Grovesnor Bar,, McCurtain Street, Cork; 3, York Street, Cork; Ardfallon Estate, Douglas Road, Cork; Victoria Hotel, Patrick Street, Cork; Imperial Hotel, Cork; 244, South Circular Road, Dublin; Esker, Athenry, Co. Galway; Gurteen, Ballinasloe, Co. Galway; Corrahulla, Woodlawn, Co. Galway. Would you please communicate with the undersigned solicitor for the next of kin as soon as possible.
Florence G. MacCarthy, solicitor, Loughrea, Co. Galway. Telephone: 58.

How to invest your clients' funds

The most important factor

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

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

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

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

Professional expertise

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

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

Flexibility

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

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

Reciprocality

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

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

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

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17 College Green, Dublin 2. Telex 5205
or Peter Tuite at Cork 54277
67 South Mall, Cork. Telex 8469

THE GAZETTE OF
THE INCORPORATED
LAW SOCIETY
OF IRELAND

September, 1975
Vol. 69 No. 7

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Incorporated Law Society,
Four Courts, Dublin 7.

The Editor welcomes articles, letters and other contributions for publication in the Gazette.

Opinions and comments in contributed articles and reviews are not published as the views of the Council unless expressly so described.
Likewise the opinions expressed in the Editorial are those of the Editor and do not necessarily represent the views of the Council.

The Gazette is published during the third week of each month; material for publication should be in the Editor's hands before the 15th of the previous month if it is intended that it should appear in the following issue. Acceptance that material will in fact be included in any particular issue for publication is not a guarantee that it will be published then since this must depend on the space available.

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Recent Irish Cases

No reference can be made by the Attorney General to the Supreme Court under Section 34 of the Criminal Procedure Act 1967 from a judgment of the Special Criminal Court as no verdict is involved.

The Attorney-General has referred a question of law to the Supreme Court under S.34 of the Criminal Procedure Act 1967. During the trial of the two accused for offences under the Official Secrets Act 1963, the Special Criminal Court ruled that the original documents to which the charges related must be produced in Court, and that secondary evidence of them would not be accepted. The Attorney-General resolutely refused to produce these documents, and consequently, at the end of the prosecution, as the Court took the view that there was no evidence against the accused, acquitted each of them of the offences charged. The question submitted under S.34 of the 1967 Act was whether the Judges of the Special Criminal Court had acted correctly in these submissions.

The Court must first decide whether S.34 can be applied at all to a criminal trial without a jury before the Special Criminal Court. The Section states that "where, on a question of law, a verdict in favour of an accused person is found by direction of the Trial Judge, the Attorney-General may, without prejudice to the verdict in favour of the accused, refer the question of law to the Supreme Court for determination". It follows that, for the section to apply, there must first be a question of law upon which a direction is given by the Trial Judge, in pursuance of which, a verdict is found. A Direction of the Trial Judge presupposes the existence of somebody whom he can direct and whose duty it is to find a verdict—in other words a jury. Accordingly Section 34 does not apply to questions of law arising out of a trial before the Special Criminal Court.

Per *Henchy* J.—S.34 represents an important restriction on the rights of an accused person and an important enlargement in the rights of the Attorney-General in he circumstances contemplated. Before its enactment, the verdict of a jury was final and unimpeachable in every respect, and beyond the reach of further judicial inquiry. Nevertheless it is provided that the decision of the Supreme Court shall be without prejudice to the verdict in favour of the accused. It is to be noted that while the Attorney-General may argue against the direction and while the trial Judge may be consulted beforehand by the Attorney before he settles the statement of the question to be referred, the section gives no say whatever to the person in whose favour the verdict was given in the preparation of the post-conviction proceedings which may lead to a change in the legal basis of the verdict. In England and in Northern Ireland, unlike here— (1) The acquitted person is given the right to present an argument on the hearing of the reference; and (2) if he appears by counsel, it shall be construed strictly. S.34 plainly envisages a trial by jury, and not a Court who must give a single majority decision, and who has tried a case summarily—S.34 limits the Attorney-General's power of reference to a question of law on which the verdict of the jury was directed by the trial judge, and not to prior questions of law, which may have had a bearing, because of their effect on the evidential content of the trial.

The People v Crinnion and Wyman—Supreme Court (O'Higgins C. J., Walsh and Henchy JJ. Separate judgments by each Judge—unreported —14 July, 1975.

Sections 2 and 3 of the Forcible Entry and Occupation Act, 1971 are not unconstitutional.

The plaintiff and 7 others occupied a room in Iveagh House, Dublin, on 30 September, 1971, and remained in occupation thereof for 1½ hours until removed by Gardai. In respect of this sit in, she was prosecuted under Section 3 of the Prohibition of Forcible Entry and Occupation Act, 1971. The defendant obtained an adjournment of the case in the District Court in order to test by declaration the constitutionality of some sections of this Act. This action was heard by O'Keeffe P. who dismissed it. The plaintiff then appealed to the Supreme Court.

The Court held:—

(1) That in S.1 of the 1971 Act, the words "any person having an estate or interest in land" means "having an estate or interest in the land in question".

(2) It is submitted that a landlord, mortgagee or remainderman, although not entitled to immediate occupation, would not be guilty of forcible entry by virtue of the definition of "owner" in Section 1. It is contended that what would be a crime under the Act if done by a person with no estate or interest in the land forcibly entered or occupied would not be a crime under the Act if done by a person not in occupation but who had an estate or interest in the land even though he had no *bona-fide* claim of right. This was alleged to constitute "discrimination" contrary to Article 40(1) of the Constitution. Both the submission and contention are rejected.

(3) From the definition of "forcibly" in S.I, it is contended that the person affected by the forcible entry must have rights, in relation to property capable of being exercised by him, and a mortgagee or reversioner is unlikely to have an immediate right of entry. Here the owner of the land is the person whose immediate right to occupy the land, or to enter upon it by virtue of some estate or interest, has been interfered with. The person will normally be the lawful occupier.

There is not in Section 2 or 3 of the Act any discrimination, unfair or otherwise against what are termed "the landless classes". The mischief against which the Act seeks to provide is the forcible entry upon and remaining in forcible occupation of land.

The only "owner" exempted from prosecution under Sections 2 and 3 of the Act is the person where right and enjoyment to the land has been interfered with. Accordingly Sections 2 and 3 of the 1971 Act are compatible with the Constitution.

(Dooley v Attorney-General — Full Supreme Court — per Griffin J. — unreported — 14 July, 1975).

In an adjourned hearing by the Land Commissioners, the personnel should if possible be identical, if the order is not to be invalid.

Proceedings to acquire these lands were commenced by a Provisional list of August 1969. The lands were certified a being required for the purposes of resale to the persons mentioned in the Land Acts of 1923 and 1950. An objection was entered that the lands were not required for the purposes specified, and that there was no local congestion. The matter came before Lay Commissioners Kelly and Pearce in June 1970 in Galway. The Commissioners announced that the lands were non-productive, but adjourned the proceedings to the Summer of 1972. The adjourned hearing was listed before Commissioners Kelly and O'Sullivan in Galway in June 1972, who maintained the previous decision; they alleged that the lands were not in full production, and that the plaintiff was no more entitled to their use than theretofore.

The plaintiff appealed to the Appeal Tribunal (Butler J.) relying on the contention that the two Commissioners who decided the case must have acted on evidence given at the original hearing, at which Commissioner O'Sullivan did not sit. Butler J. accepted this submission, and allowed the appeal. The Land Commission have now appealed to the Supreme Court. It was *held* that, when the adjourned hearing came on before a differently constituted Tribunal, it was the duty of this Tribunal, before they could disallow any objection, to hold (a) that the lands were required for the relief of congestion, and (b) that the objections put forward had not been sustained. Neither of these findings could have been made without recourse to the evidence given at the first hearing, which had not been heard by one of the Commissioners at the second hearing. Accordingly Butler J. was correct in holding that the Commissioner's order was not valid, and the appeal must be dismissed.

[**Estate of Michael Moran Decd.**—Hession v. Irish Land Commission—Supreme Court (Walsh, Henchy and Griffin J.J.) per Henchy J.—unreported—16 June, 1975.]

A holding of 40 acres held to be uneconomic

The Lay Commissioners of the Land Commission certified that the whole holding of 51 acres 1 rood and 10 perches was required for relieving congestion. The plaintiff appealed to the Lay Commissioners, who were inclined to the view that the Commission should only acquire 10 acres 1 rood, leaving the objector with 40 acres 2 roods. The objector appealed to the Appeal Tribunal (Butler J.) on the ground that the remainding holding was uneconomic. The Appeal Tribunal upholding the appeal, held that there was nothing in the evidence to show that this holding was anything other than uneconomic. Accordingly the owner may retain his original holding of 51 acres.

Re Estate of Ole Anderson—O'Brien v Irish Land Commission—Supreme Court (Budd, Henchy and Griffin JJ. per Henchy J.)—unreported—3 June, 1975.

Award of £13,000 for injuries sustained during drilling operation in mine reasonable, and finding that defendants were guilty of a breach of statutory duty upheld.

The plaintiff was a miner in Silvermines mine near Nenagh owned by the defendants. In January 1971, when the plaintiff was engaged in drilling operations in a tunnel in the mine, there was a fall of rock from the roof of the tunnel causing injury to the plaintiff. The plaintiff claimed that his injuries were caused by breach of statutory duty and by negligence; the defendants claimed the plaintiff was guilty of contributory negligence. The case came before O'Keeffe P. and a jury in January 1974, and resulted in a net award being made to the plaintiff in the sum of £10,370 damages. The jury had in fact awarded £13,700; but they had apportioned fault as to 80% to the defendants, and as to 20% to the plaintiff. Judgment was accordingly awarded for £10,370, the President having also deducted a sum of £590 paid under the Social Welfare (Occupational Injuries) Act 1966. The defendants have appealed on the ground that the damages were excessive, and that the apportionment was perverse; they have also appealed against the President's ruling in directing the jury to find them guilty of a breach of statutory duty under Section 49 of the Mines and Quarries Act 1965, to keep the working place safe and secure. The President ruled that the duties imposed by Section 49 was an absolute duty. After considering in great detail the differences between Section 49 of the Coalmines Act 1911 and Section 49 of the 1966 Act, and having considered in detail the effect of the decisions in *Doherty v Bowaters Irish Walboard Mills Ltd.*—(1968) IR and *Brown v National Coal Board* —(1962) AC, *Walsh J.* delivering the judgment of the Court, held that, where the working place or road is not secure, and where it could have been secured by a sufficient degree of control or support, there has been a failure to provide the necessary degree of control or support; this statutory duty is absolute. Consequently the ruling that the defendants were guilty of a breach of statutory duty should be affirmed.

In considering the plaintiff's contributory negligence, which was apportioned at 20%, it must be borne in mind that the plaintiff had been in the mine for nearly two years, and would be expected to know that there was always a danger of falling rock in the course of

drilling. A Scaling bar would enable him to discover if there was any loose rock likely to fall. He had been examined by the safety officer as to the safety rules in the mine, but apparently had no scealing bar on the day of the accident. The jury's findings of negligence appears to indicate that they thought he had been negligent in not furnishing himself with a scaling bar. The failure to have the mine properly timbered, as the plaintiff alleged within the conditions in the mine was a failure in an area where very serious injury could result, and in respect of a duty which was absolute. Consequently the apportionment was correct.

The next question was whether the jury could find that the defendants failed in their common law duty to provide a safe place of work for the plaintiff. The Court held the jury could have so found.

The final ground was the damages were excessive. The Court, having found that, of the £13,700 awarded, £4,525 was in respect of special damages, examined the medical evidence in detail, and stated plaintiff was 26 years old at time of accident, and went to live in Burtonport in West Donegal, where few hospital facilities were available. The jury awarded £9,000 for general damages, of which £3,000 was for distress and hospital expenses. The damage amounts to a limitation of the movement in the damaged right arm which is not so serious for a left-handed person. The arthritis which plaintiff sustained at the time of the accident is unlikely to disappear, and will probably increase. In the corcumstances, the sum of £6,000 is not excessive.

The defendant's appeal is consequently dismissed.

Gallagher v Mogul of Ireland Ltd.—Supreme Court (Walsh, Budd and Griffin JJ.) per Walsh J.—unreported—30 July, 1975.

If an infant plaintiff spills tea over herself, the defendant grandmother, who provided the hospitality, is prima facie negligent, as the daughter who left the teapot in the room, was in the de facto service of her mother.

The infant plaintiff was 4 years old when the present accident occurred. The defendant was the owner of the house in Victoria Road, Cork, where the accident occurred, and was the paternal grandmother of the infant. The defendant resided in the house with her two adult daughters Anne and Marie, who were in employment in Cork. The father and mother of the plaintiff, as well as the plaintiff, had lived abroad, and came back to reside in Cork with plaintiff's maternal grandmother. On the date of the accident, the plaintiff and her parents were invited to defendant's house for an evening meal. Before tea was served, plaintiff's father left, plaintiff's mother was washing dishes in the kitchen, and the defendant drying them. Anne was upstairs, while Marie prepared the tea, which she eventually brought to the breakfast room, where infant plaintiff was. At that moment, the telephone rang in the hall, and Marie went to answer it. The infant plaintiff was thus left alone in the breakfast room; she them succeeded in pulling down the teapot, which was on the table, on top of herself, causing most serious burns to the body. Thereupon Murnaghan J. withdrew the case from the jury, on the ground that there was no evidence upon which a jury could hold defendant liable. The infant plaintiff appealed. *Walsh J.*, with whom O'Higgins C. J. concurred, in delivering the majority judgment, held that if a jury found that Marie had put a teapot within easy reach of the infant, they might find her negligent. The next question to be considered was whether, in said corcumstances, the relationship between the mother and the daughter Marie was such as to make the mother vicariously liable for the negligence of Marie. The negligence attributed to Marie was not the usual negligence of a fellow guest, but may be regarded as the negligence of a person engaged in one of the duties of her brother carried out in the course of hospitality extended by her mother. The nature and limits of this hospitality were completely under the control of the mother, and in this case Marie was standing in the shoes of her mother, and carrying out a task which would have been primarily that of her mother. Marie's performance was a gratuitous service for her mother. The person requested to assist in the service, but who was not hired for the purpose is in the *de facto* service of her mother in these circumstances. As the mother could in law have been held to be vicariously liable for the negligence of her daughter Marie, Murnaghan J. should not have withdrawn the case from the jury. The appeal is accordingly allowed, and there will be a direction for a new trial.

Henchy J. delivered a dissenting pudgment.

Patricia Moynihan v Mary Moynihan—Supreme Court (O'Higgins C. J., Walsh and Henchy JJ.—Separate judgments by Walsh J. and Henchy J.—unreported—29 July, 1975.

Despite the absence of a building programme, a housing authority can make a compulsory purchase order to purchase lands for its housing needs.

The main plaintiffs own 22 acres near Cobh. In June, 1973, Cobh U.D.C. made an order that this land should be compulsorily acquired under the Housing Act 1966, and the order was confirmed by the Minister in May, 1974. This confirmation was preceded by a public inquiry held by an inspector in Cobh in January, 1974. The Inspector expressed an opinion that the lands were suitable for housing purposes.

The plaintiffs issued a special summons in the High Court on 31 May 1974, seeking to quash the Minister's Compulsory Purchase Order. The matter was heard before Parke J. in February, 1975, who made an order quashing the Minister's order. Parke J. had held that, as Cobh U.D.C. had no building programme which Section 55 of the Housing Act 1966 obliges them to prepare, they could not validly exercise the powers conferred by Sections 76 and 77 of the Act, which they had purported to do here. Although Cobh U.D.C: had no building programme, it had housing needs. If a housing authority already holds lands, it may em-

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ploy or use it for the purposes of the Housing Act 1966 either immediately or in the future. There is nothing in the Act which prevents a statutory housing authority like Cobh U.D.C. from using the land which they already hold, notwithstanding a failure on their part to prepare a building programme.

The needs of housing authorities must necessarity vary from authority to authority, depending on local circumstances. The Minister has an overall supervisory function in the matter. There is not in the Housing Act anything which restricts a housing authority from carrying out the purposes of the Act unless and until they have already drawn up a building programme. Here there is simple evidence upon which the Minister could hold that the land sought to be acquired was being acquired for the purposes of the Act. The Minister would not be entitled to turn down an application only because there was no building programme in existence. There was no reason to criticise the Inspector for allegedly not following the rules of Natural Justice as he was not aware of the effect of the judgments in *Killiney Development Association* and in *Geraghty v the Minister* (No. 2). The appeal is accordingly allowed.

Russell and Another v Minister for Local Government and Cobh Nrban District Council—Supreme Court (O'Higgins, C. J., Walsh and Griffin JJ. per Walsh J.—unreported—31 July, 1975).

Injunction granted on ground of deception in passing-off action.

The plaintiffs are an unlimited English company, and an unlimited Irish subsidiary company. The first defendants are a limited Irish company and two subscribers to that company. The second defendants are an Irish limited company, and the same two subscribers. None of the defendants gave evidence.

C. & A. Modes carries on business as retailers of mens, womens and childrens superstores in 64 locations in Britain, and one in Belfast. The first named plaintiff does not own any retail shop in Ireland, and the second-named plaintiff has not traded since its incorporation. The manager of the Belfast C & A Store proved that up to 1969 a very substantial and regular custom from the Republic was enjoyed by this store, particularly on the Thursday excursions. A site was purchased in Mary Street, Dublin, in 1972, with a possible view to opening a store there. From photographs submitted, it is evident that C & A (Waterford) Ltd. carry the same symbol on their premises as C & A Modes Ltd. in Belfast. There was correspondence between the plaintiffs and the defendants in March and April, 1973, indicating that the registration of the defendant companies would inevitably give rise to confusion, and asking them to change their name. Defendant's solicitor replied on 27 April that the companies were not similar, as the plaintiffs were unlimited companies and the defendants limited ones. It was held that the defendants used the symbols C & A in the hope that people would inevitably cause confusion.

The fundamental ingredients of the action for passing-off are that the plaintiff has a name applicable to his goods or business which is known to the public in the area in which the defendant seeks to carry on his business to an extent that the name, brand or mark proposed to be used or being used by the defendant is likely to deceive and cause confusion. It is not necessary to imply the recognition of territorial boundaries. Finlay P. is satisfied that the fact that there is no retail outlet or agency within the Republic owned or operated by the plaintiff, is no bar to their action for passing-off. Finlay P. is also satisfied that there was a probability that the lettering used by the defendants on their van is likely to cause confusion with the business of the plaintiffs, and that there was an intention by the defendants to deceive by associating their business in the minds of the people with the business of the plaintiffs. The plaintiffs are therefore entitled to the appropriate injunctions to prevent any continuation or repetition of the acts of passing-off, but they are not entitled to any damages.

(C & A Modes and C & A Finance Ltd. v C & A (Waterford Ltd., O'Toole and McClure—Finlay P.—unreported—9 June, 1975).

Appointments

Mr. Nevin Griffith, Barrister-at-Law, has been appointed Registrar of Titles and of Deeds in succession to the late Mr. A. J. O'Dwyer.

Mr. Brendan Kiernan has been appointed as the Irish representative of the European Commission of Human Rights in Strasbourg.

Mr. Michael Murphy has been appointed Legal Adviser to the Department of Local Government in succession to Mr. Kiernan.

Developments in the European Communities

Fifth Report—August 1975

Ireland's Presidency of the Council and of European Political Co-operation.

1.23 The Treaties establishing the European Communities provide that the office of President of the Council of the European Communities is held for a term of six months by each of the member States in turn in the following order: Belgium, Denmark, Germany, France, Ireland, Italy, Luxembourg, the Netherlands and the UK. The same rotation applies to European political co-operation. In accordance with these arrangements Ireland occupied the Presidency of the Council and of European political co-operation in the period from 1 January 1975 to 30 June 1975. A description of the role of the Presidency in the framework of European political co-operation and of the issues which arose during the six months is given in Part II of this Chapter.

1.24 The major organisational implications of the Presidency of the Council for Ireland were:

Arranging and chairing meetings of the Council.
Charing committees and working groups coming within the aegis of the Council
Chairing consultation meetings of the Member States before and during meetings of International Organisations and conferences.
Chairing regular consultations of Diplomatic Representatives of the Member States in capitals of non-member countries and
Preparing the Council's work programme for the period.

1.25 During the first six months of 1975 Irish Ministers chaired twenty-seven meetings of the Council in its various formations (paragraph 2.21) and Ireland provided chairmen for some 190 Council committees and working groups. Irish representatives played an active part in arranging and chairing consultation meetings to co-ordinate the positions of the member States before and during meetings of International Organisations such as the United Nations (UN), the Organisation for Economic Co-operation and Development (OECD) and the Economic Commission for Europe (ECE) and of Conferences such as CSCE and the Law of the Sea Conference. Irish representatives in non-member countries also chaired meetings of Diplomatic Representatives to discuss in particular matters relating to European political co-operation, information questions, and trade, commercial and economic matters. In countries where Ireland did not have resident diplomatic representation Italy as the next member State in the order of rotation usually acted for the Presidency.

1.26 In February 1974 the Council had agreed that the country occupying the Presidency should submit to the Council at the beginning of each six month period a programme of work together with a timetable for its implementation. The work programme for the Irish Presidency of the Council was drawn up towards the end of 1974 and was discussed by the Minister for Foreign Affairs with the full Commission in December. These discussions covered the order of priorities for the period, the timescale and how best to deal with the problems which were likely to arise. This was an important step in the organisation of Ireland's Presidency and one which indicated the closer relationship between the Council and the Commission which it was Ireland's intention to encourage.

1.27 One of the principal objectives of the Irish Presidency was to strengthen he working relationship between the Council and the European Parliament. In pursuance of this the Minister for Foreign Affairs as President of the Council attended all seven part-sessions of the Parliament held during the six months to report on the outcome of Ministerial meetings, to answer questions and to take part in debates. Other Ministers, as appropriate, also attended part-sessions of the Parliament. In addressing the Parliament at the end of the Presidency the Minister for Foreign Affairs expressed his conviction that further progress towards European integration could not be made except through the evolution of Parliament and through a parrallel development in the powers of Parliament and in its method of election (paragraphs 2.2 to 2.12). Other significant institutional developments during the Irish Presidency were

The organisation of the first European Council paragraph 1.2 to 1.6)
The movement towards the greater use of majority voting in the Council (paragraphs 2.18 to 2.20)
The institution of procedures to enable Parliament to address questions on political co-operation to the President-in-Office (paragraph 1.40) and
The development of the practice of the Communitiy's speaking with one voice at major international meetings through a representative of the Presidency and a representative of the Commission, in particular at the Euro-Arab dialogue (paragraph 1.44) and the preparatory meeting for the International Energy Conference (paragraphs 19.3 and 19.24 to 19.27).

1.28 In the economic area the major developments during Ireland's Presidency were the conclusion of the negotiations with the African, Caribbean and Pacific (ACP) countries on trade and development co-operation, the successful completion of the renegotiation of the UK's membership of the Community, the preparatory meeting for the International Energy Conference, the agreement on right of establishment and freedom to provide services of doctors and the response of the Community to developments in Portugal. These and other matters which arose during Ireland's Presidency are covered in the relevant Chapters of this Report.

1.29 The six months of the Irish Presidency were a period of considerable activity in the field of European political co-operation. Discussions of political co-operation questions at Ministerial level took place more frequently than had normally been the case up to then. The new dimension given to relations between political co-operation and the European Parliament through the establishment of a questions procedure was an important step forward.

1.30 The success achieved in advancing the difficult negotiations in the context of the Euro-Arab dialogue leading to the first meeting of European and Arab experts in Cairo from 10 to 14 June 1975 marked the beginning of a new advance in relations between Europe and the Arab world. There was a very full programme of meetings among the Nine at expert level during the Presidency to discuss and consult on a wide range of international issues, thus helping to continue and intensify the process of contacts and exchange of information between the Foreign Ministers which is an essential element of political co-operation. Progress was also made in laying the ground-work for more intensive consultation and co-ordination among the Nine on questions arising at the UN. Finally, the Irish Presidency devoted close attention to the exchange of information and contacts between the Nine and third countries including, in particular, the US.

Right of Establishment and Freedom to Provide Services.

6.1 Articles 52 to 66 of the EEC Treaty provide for the abolition of restrictions on

(a) the freedom of establishment of nationals of one member State in the territory of another Member State and

(b) the freedom to provide services within the Community by nationals of Member States who are established in a Member State other that that of the person for whom the services are intended.

Freedom of establishment covers the setting up of enterprises, companies, branches, subsidiaries, etc, the carrying on of non wageearning activities, including professions, and the purchase and exploitation of land and buildings. Services are defined as activities normally provided for remuneration other than those governed by the provisions relating to the free movement of goods, persons and capital. They include activities of an industrial or commercial character, artisan activities and activities of the professions. Companies formed under the law of a Member State and having their registered head office within the Community are treated in the same way as individual nationals of Member States.

6.2 The EEC Treaty empowers the Council to issue Directives to ensure that restrictions in Member States are abolished. As a consequence of the judgements of the Court of Justice of the European Communities in the Reyners and Van Binsbergen cases (paragraphs 6.3 to 6.5) such Directives will relate principally to

The mutual recognition of diplomas, certificates and other evidence of formal qualifications and

The co-ordination of provisions laid down by law, regulation or administrative action in member States concerning the taking up and pursuit of activities.

Work on Draft Directives has been in progress for many years in the Community and a number of Directives, concerning mainly industrial and craft activities, have been adopted by the Council. Much less progress has been made on Draft Directives affecting the liberal professions largely because of difficulties arising from the mutual recognition of qualifications. However, recent Directives on Doctors (paragraph 6.6 to 6.14) are viewed as setting a pattern for establishing freedom of establishment and freedom to provide services for other liberal professions.

Judgments in the Reyners and Van Binsbergen Cases.

6.3 The judgment of the Court of Justice in the case Reyners v the Belgian State (case 2/74; OJ No. C114, 27 September 1974) is described in paragraphs 6.2 to 6.10 of the Fourth Report. In this case the Court ruled that Article 52 of the EEC Treaty, which prohibits restrictions on freedom of establishment, is directly applicable in all Member States. The implications of the judgement are under examination at Community level in a number of Council working groups dealing with right of establishment matters. An appraisal of the implications of the Reyners judgment for Irish legislation is being carried out by Government Departments in consultation with the Attorney General's Office.

6.4 The Court's judgement in the Reyners case related to right of establishment only. However, a Dutch Court asked the Court of Justice for a similar ruling on the interpretation of Articles 59 and 60 of the EEC Treaty, which deal with freedom to provide services (case 33/74; Van Binsbergen v Board of the Trade Association of the Engineering Industry). Article 59 of the EEC Treaty provides that restrictions on freedom to provide services within the Community will be progressively abolished during the transitional period in respect of nationals of Member States who

are established in a State of the Community other than that of the person for whom the services are intended; Article 60 provides that a person providing a service may temporarily pursue conditions as are imposed by the State on its own nationals. On 3 December 1974 the Court delivered its judgement (OJ No. C52, 5 March 1975) in which it reached conclusions similar to those reached in the Reyners case. The Court ruled that

(a) Articles 59 and 60 of the EEC Treaty are directly applicable in all Member States and

(b) The law of a Member State may not require a person established in another Member State to have a permanent residence in its territory as a precondition for providing services there.

The effect of the judgment is to make illegal any restrictions on the cross-frontier supply of services which are based on grounds of nationality.

6.5 After publication of the judgement in the Reyners case the Commission withdrew draft directives which it had submitted to the Council on the abolition of restrictions on freedom of establishment and freedom to provide services; these are listed in paragraph 6.7 of the Fourth Report. The Commission has indicated that it is clear from the Court's ruling in the Van Binsbergen case that there is no longer any need to issue Directives on the abolition of restrictions relating to the provision of services. The Commission is therefore redrafting a number of proposals on freedom to provide services as well as proposals on right of establishment; in so doing it is omitting provisions which relate exclusively to the aboiltion of restrictions. Some redrafted proposals have already been submitted by the Commission to the Council.

Doctors

6.6 In March 1969 the Commission presented to the Council its proposals on right of establishment of, and freedom to provide servicesby, Doctors (OJ No. C54, 28 April 1969). There were then three draft dicectives concerning

(a) the achievements of freedom of establishment and freedom to provide services for doctors

(b) the mutual recognition of diplomas, certificates and other evidence of formal qualifications in medicine and

(c) the co-ordination of provisions laid down by law, regulation or administrative action in respect of the activities of self-employed doctors.

These drafts were affected by the judgements of the Court of Justice in the Reyners and Van Binsbergen cases. The immediate consequence of the judgements was that the first draft driective, which dealt largely with the removal of nationality restrictions on right of establishment and freedom to provide services, was no longer required; apart from some minor provisions which were transferred to the other two drafts, the draft was withdrawn (paragraph 6.7 Fourth Report).

Nursing

6.15 The drafts set out the nursing qualifications which are to be recognised in all Member States and the type of training which nurses should undergo. They include similar provisions to those contained in the Doctors Directives in regard to evidence of good character, good repute and of physical or mental health of those wishing to practise in another Member State, The draft directives would apply to salaried nurses as well as to self-employed nurses. The drafts are at present under consideration within the Council. It is expected that they will be adopted before the end of 1975.

Lawyers

6.16 A Council working group of officials of the Member States is continuing its examination of a draft directive on the provision of services by Lawyers (OJ No. C78, 20 June 1969).

6.17 The Council of Ministers for Justice at its meeting on 26 November 1974 took note of the progress made on this proposal and requested the Commission to submit to it an amended proposal as soon as judgement had been given by the Court of Justice in the Van Binsbergen case. The Commission duly proceeded to review the draft directive in the light of the judgments of the Court of Justice in the Reyners and Van Binsbergen cases. In connection with this review officials of the Commission had discussions in Dublin in April 1975 with officers of the Department of Justice and with representatives of the Irish legal profession with a view to taking account of the structure of the profession in this country in reviewing and revising the draft. On 10 June 1975 the Commission forwarded to the Council in the form of a working document a provisional revised proposal for a directive. The Council working group met on 12 and 13 June 1975 to discuss the working document and the Commission is at present preparing in the light of the views expressed at that meeting its formal proposal for a revised draft Directive which it is expected to he held sometime in October next. Representatives of the Irish legal profession are being kept fully informed of developments in relation to the draft Directive.

Architects

6.18 In May 1967 the Commission forwarded to the Council proposals on freedom of establishment and freedom to provide services in respect of architects (OJ No. 239, 4 October 1967). During the period under review a working group of the Council has discussed a new version of the draft directives which takes account of the difficulties experienced.

Insurance

Self-employed Insurance Agents and Brokers

6.27 The draft directive laying down detailed rules for transitional measures for self-employed insurance agents and brokers (OJ No. C14, 11 February 1971) was considered by the Council working party on right

of establishment at meetings in March and June 1975. The original proposal was amended to take account of the judgments of the Court of Justice and also to place freedom to provide services within the scope of the draft directive. In its amended form therefore the draft concerns the operations of agents and brokers transacting business either by way of establishment in other member States or by way of services by brokers or agents across frontiers. The question of extension of the scope of the draft Directive to include paid employees is under consideration. Agreement has been reached on the board outline of the draft Directive; the working party is at present engaged in a detailed discussion of its terms.

Supply of Insurance Services across Frontiers

6.28 The Court's judgement in the Van Binsbergen case also affected the provisions of the draft Directive on freedom to supply insurance without the need for the insurance company to have a branch or agency in the Member State in question (paragraph 6.14 Fourth Report). The draft Directive will establish the conditions for the transaction of such Insurance business. It is receiving final consideration within the Commission before being transmitted to the Council.

Co-insurance

6.29 On 15 May 1974 the Commission forwarded to the Council a draft directive (OJ No. C72, 27 June 1974) concerning the liberalisation of co-insurance operations and the co-ordination of laws, regulations and statutory provisions relating to co-insurance (paragraph 6.13 Fourth Report). An amended proposal which takes account of the Van Binsbergen judgement and of the opinions of the European Parliament and the Economic and Social Committee was forwarded by the Commission to the Council on 27 May 1975. Co-insurance is an operation which enables several insurers acting in agreement but without joint and several liability to insure a risk on the conditions and tariffs laid down by one of them who is known as the leading insurer. The draft Directive provides for the participation of insurance undertakings from different Member States in co-insurance. Discussion of the amended draft irective had been postponed pending consideration of revised proposals on freedom to supply insurance services across frontiers, with which co-insurance is linked.

Direct Life Assurance

6.30 The General Programme for the abolition of restrictions on Freedom of Establishment (OJ No. 2, 15 January 1962) provides for the abolition of restrictions in relation to direct life assurance. The former has been achieved in Directive 73/239 of 24 July 1973 (OJ No. 228, 16 August 1973). On 21 January 1974 the Commission forwarded to the Council a draft Directive abolishing restrictions on freedom of establishment in the business of direct life assurance. This draft was amended in November 1974 to take account of the opinion of the European Parliament and the Economic and Social Committee and again in February 1975 to take account of the Reyners judgement.

6.31 The draft directive lays down harmonised conditions under which life assurance companies may operate in the Community, including the operations of branches established in other Member States. At the meetings held this year to date progress has been made towards agreement between Member States on the terms of the Draft Directive.

Winding up of Insurance Companies

6.32 The Commission has prepared a draft directive on the winding up of insurance companies. This is being considered in conjunction with the Community draft Convention on Bankruptcy (paragraph 11.38)

Green Card Insurance

6.33 On 13 December 1974 the Commission adopted Decision 75/23 whereby Member States will cease to carry out frontier and internal checks on the insurance of vehicles normally based in Czechoslovakia, the German Democratic Republic and Hungary. This Decision was made pursuant to Directive 72/66 (OJ No. L103, 2 May 1972) concerning the approximation of the laws of the member States relating to insurance against civil liability in respect of the use of motor vehicles. In its Decision the Commission expresses the hope that these three countries will reciprocate.

6.34 Draft Ministerial Regulations to be made under the European Communities Act 1972 to give effect to certain requirements of Directive 72/166 and Decision 75/23 are being finalised.

Unit Trusts

6.35 The Commission working group dealing with the co-ordination of national legislation relating to collective investment undertakings including Unit Trusts is nearing completion of its examination of the draft Directive (paragraph 6.12 Fourth Report). It is expected that a proposal will be forwarded to the Council in the near future.

Directives on Company Law

10.1 The Council Resolution on Industrial Policy of 17 December 1973 (OJ No. C117, 31 December 1973) provides that the Council will act on

a) a draft Second Directive on the formation of public limited liability companies and the maintenance and operation of their capital (paragraph 10.3 Fourth Report)

(b) a draft Third Directive on mergers between public limited liability companies (paragraph 10.4 Fourth Report)

(c) a draft Fourth Directive on the annual accounts of limited liability companies (paragraph 10.5 Fourth Report) and

(d) a draft fifth directive on the structure of public limited liability companies (paragraph 10.6 Fourth Report).

10.2 At its meeting on 26 November 1974 the Council agreed to ensure that decisive progress should be made in this field in the current year. A Council working group continued its examination of the draft Directives during the period under review. However, as the harmonisation of Company Law is a lengthy and complex task it is unlikely that the drafts will be adopted before the end of the year.

10.3 The Council on 26 November 1974 took note of the Commission's intention to

(a) submit amendments to the draft Fifth Directive and

publish an explanatory memorandum to aid the understanding of the proposal especially as regards Worker Participation in management.

The Commission expects to publish the memorandum in the autumn.

10.4 The Joint Committee of the Houses of the Oireachtas on the Secondary Legislation of the European Communities and the Commission have given their observations on the European Communities (Companies) Regulations 1973 made by the Minister for Industry and Commerce to implement the First Directive on Company Law (Directive 68/151 of 9 March 1968 (OJ No. L65, 14 March 1968); paragraph 10.1 Fourth Report). Consideration is being given to the steps to be taken to amend the Regulations in the light of these opinions.

Statute for a European Company

10.5 In 1970 the Commission forwarded to the Council a draft Statute for a European Company (paragraph 10.7 Fourth Report). The European Parliament and the Economic and Social Committee have since delivered their opinions. In the light of these opinions and of the accession of the three new Member States the Commission prepared a revised draft Statute which was forwarded to the Council as a draft Regulation on 13 May 1975. The purpose of the draft Statute is to permit the formation, side by side with companies governed by national laws, of companies which would be subject only to a specific Community legal framework directly applicable in all member States. Such European Companies would thereby be free from any legal tie to any particular member State. Access to the European Company would be available to

(a) Companies limited by share incorporated under the law of one Member State which merge with, or form holding companies with, firms incorporated under the laws of another Member State .

(b) Companies having legal personality, including co-operative societies, incorporated under the law of a Member State, and other Corporations governed by the public or private law of a Member State, which form a joint subsidiary company, provided that at least two of these companies or corporations are subject to different national laws

(c) a European Company which merges with, forms a holding company with or forms a joint subsidiary with one or more companies or corporations incorporated under the law of a Member State and

(d) a subsidiary of a European Company.

The draft sets out the minimum capital required for the three types of constitution, i.e. merger, holding company and joint subsidiary; this has been lowered considerably in comparison with the earlier draft to take into account the views of the European Parliament.

10.6 The Statute would allow for the development of a European scale company with a well defined structure and having clear obligations in regard to its employees, shareholders and creditors. It would, however, be subject to national rules of taxation as well as to the Directives on Company Taxation. The draft contains provisions regarding the Governing Bodies of the European Company and the distribution of their powers. The company would be managed by a Board of Management. In addition the statute provides for worker participation in the form of

a Supervisory Board and

a Works Council.

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FINANCE BILL 1975—COMMITTEE STAGE

23 APRIL 1975

Part II

Mr. Colley: I move amendment No. 19.

In page 18, to insert a new section before section 34 as follows:

"34—Section 59 (2) (b) of the Finance Act, 1974 is hereby amended by the substitution of 'with respect to which the Revenue Commissioners or of such officer as the Revenue Commissioners may appoint may reasonably require information' for 'which in the opinion of the Revenue Commissioners or of such officer as the Revenue Commissioners may appoint it is proper that they should investigate'."

There is a considerable similarity between this amendment and No. 18 but there is also a difference. Like the previous amendment it was tabled last year but was not discussed because of the guillotine motion used to terminate the debate on the 1974 Act. Section 59, subsection (2) (b) of the 1974 Act reads:

As to transactions which in the opinion of the Revenue Commissioners may appoint it is proper that they investigate for the purpose of sections . .

My amendment proposes to delete the words "which in the opinion of the Revenue Commissioners or of such officer as the Revenue Commissioners may appoint it is proper that should investigate" and to substitute for that "with respect to which the Revenue Commissioners or such officer as the Revenue Commissioners may appoint may reasonably require information." This is slightly different from the last one in that in this case the section refers to that which in the opinion of the Revenue Commissioners or an officer of theirs, it is proper that should investigate, whereas the amendment proposes words to the effect "with respect to which they may reasonably require information." The object here is to try to provide a basis on which the Courts may act in the case of an aggrieved taxpayer.

If the amendment is accepted any officer of the Revenue Commissioners who, perhaps for reasons of excessive zeal or otherwise, may be tempted to go beyond what is proper, would find that he must consider how the Courts would interpret his action. I suggest that he would be less inclined to be concerned with the question of whether the Courts would interfere with his activities under the section as drafted than he would if this amendment were accepted. There is no restriction involved on the legitimate activities of the Revenue Commissioners in their pursuance of the various sections. All I am proposing is the laying down of some criteria to which the Courts could have regard in judging the activities of the Revenue Commissioners in their investigations in cases where taxpayers might complain of their activities and believe that they had gone beyond what was reasonably required for the execution of their duties.

I assume the Minister would agree that the Revenue Commissioners should not go and and are not entitled legally to go beyond what is reasonably required for the execution of their duties. Therefore we ought to set that out clearly.

Mr. R. Ryan: The question is that of the reasonableness of the actions of the Revenue Commissioners. The constraints or the propriety of any investigation are set out in the 1974 Act. The Revenue Commissioners may not investigate anything other than that for which they are given power in sections 57 to 60 of the 1974 Act.

If a person to whom notice is addressed considers himself aggrieved, that the Revenue Commissioners are overstepping their power, he can challenge the propriety of any such notice. Section 59 of the 1974 Act contains a safeguard to ensure the confidentiality of the relationship between solicitor and client. There is even a limit on the amount of information which the Revenue Commissioners may obtain from a solicitor, who is confined to giving the name and address of a client, of a transferee of the person concerned, of a body corporate involved, of a settlor or of some person resident or domiciled outside the State to whom assets are transferred for tax avoidance purposes. The wording of section 59 is taken from the statute of another country and has been well and truly tried for 39 years. Obviously there is merit in using language which has stood the test of time.

There are slight variations in wording. Language used by parliamentary draftsmen must change from generation to generation. There is this continuing change in the use of words but, in effect, the wording we have used here is that which has stood the test of time and which achieves what Deputy Colley attempted to achieve in the amendment.

Mr. Colley: This amendment relates to transactions which, in the opinion of the Revenue Commissioners or an officer they may appoint, it is proper that they should investigate. It is not confined to investigation of activities by solicitors.

The point made by Deputy de Valera on the previous amendment probably has some validity, and the Minister accepts that also: that it is possible that the amendment might result in a more favourable interpretation by the Courts for the Revenue Commissioners. What I am concerned with is that the Legislature

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should lay down clearly for the Courts what the Legislature wants and not depend unduly on decisions, particularly decisions by foreign Courts, on texts which are slightly different from the texts of this Bill. The Minister knows that a slight difference can make all the difference in the interpretation. I believe it is far preferable that we should lay down in the legislation we enact sufficient to indicate without any doubt that we want to ensure that the powers being given to the Revenue Commissioners are exercised reasonably, that the specific powers as in this case to investigate certain transactions, are exercised in such a way as is reasonably necessary for the purpose of carrying out the duties of the Revenue Commissioners under this legisation.

I see no valid objection from the Minister's point of view to this House spelling out clearly that what we want is to give these powers to the Revenue Commissioners but to make it clear that we are not giving absolute power to them. We want to say: "You may investigate anything which you reasonably need to investigate to carry out the duties laid on you by these sections".

Mr. R. Ryan: I cannot add to what I have already said other than that I have now checked the wording of the 1936 British Act and find it is on all fours with the wording to which Deputy Colley takes exception, that is that it requires the opinion of the Board of Inland Revenue and it would relate to matters which an inspector thought it proper that they should investigate.

Ruairi Brugha: It seems there is a distinction between "in the opinion of the Revenue Commissioners or of such officer as the Revenue Commissioners may appoint it is proper they should investigate" and what is proposed in the amendment. It is, of course, a matter of interpretation and lawyers interpret things differently. It seems to be pretty broad. The opinion of the Board of the Revenue Commissioners may be one thing and the opinion of any officer could be something else. It would seem better if the Minister were to require the Commissioners to spell out what they would think necessary. Here, there is a distinction between anything that one might think and Deputy Colley's amendment what may be reasonably thought to be—may reasonably require information. It is a matter of legal interpretation but is is important that the Minister should be reasonable at all times.

Mr. Colley: The Minister has made up his mind that he will not accept the amendment no matter what arguments are put forward and he had his mind so made up before he came in. That being so, there is not much point in prolonging the debate.

Amendment, by leave, withdrawn.

Mr. Colley: I move amendment No. 20.

In page 18, to insert a new section before section 34 as follows:

"34—Section 59 (4) of the Finance Act, 1974 is hereby amended by the deletion of all words after 'business' to the end of the subsection and the substitution of 'nor on a solicitor, barrister or accountant acting in his professional capacity to give any particulars whatever concerning any advice given by him to, or anything done by him on behalf of, a client'."

This also is an amendment which was put down to the Bill last year and which was not reached. It is an amendment to section 59 (4) of the Finance Act, 1974. The effect of the amendment would be that subsection (4) would read as follows:

Nothing in this section shall impose on any bank the obligation to furnish any particulars of any ordinary banking transactions between the bank and a customer carried out in the ordinary course of banking business, nor on a solicitor, barrister or accountant acting in his professional capacity to give any particulars whatever concerning any advice by him on behalf of a client.

The purpose of this amendment is to ensure that the relationship between a solicitor, a barrister or an accountant and the client should not be interfered with in any way; the relationship between a solicitor and client is a matter that has received special legal recognition for many centuries. The Minister may say the information that may be sought from a solicitor, for instance in circumstances such as are envisaged her, is limited and certainly it is limited in a certain way. There are two points: first, such information can be obtained by the Revenue Commissioners in other ways and, secondly, what would be lost if one were to interfere with the relationship of a solicitor and client, would far outweigh anything that could be gained by this section if it is amended..

The effect of interfering with that relationship is not merely what is done in the section. If it is done in this section it is only a matter of time until it is pushed further and further and such a relationship ceases to exist or to have any special meaning, particularly in law. The consequences are that a person will find he cannot consult with his solicitor for advice in regard to certain courses of action because even consulting for advice without taking action ultimately could be something on which the solicitor would be obliged to report.

The development of this kind of law may appear in the short term to benefit the Revenue Commissioners but, in fact, it is doing the exact opposite If the people whom these sections are designed to get after are of the belief that consulting their bank, solicitor, accountant, or a barrister through their solicitor, will mean that information concerning their activities will be given to the Revenue Commissioners by these people, naturally they will not consult them. Any possible advantage that might have been envisaged disappears because such people will ensure that the activities they engage in will be unknown to their solicitor or their bank.

There is a grave danger here. There are a number of trusts which have been set up in this country, whose sole purpose is to ensure that the tax to be derived is paid to the Irish Revenue Commissioners and not to foreign Revenue Commissioners. That is their sole purpose and yet the effect of a proposal before the House will be that they will be closed down and the revenue will go to other countries. What may appear to be something that will aid the Revenue Commissioners may do a great deal more damage than any benefit that might accrue.

The advantage to the Revenue Commissioners involved in the section is, to say the least, minimal. However, the disadvantage to the Revenue Commissioners ultimately will be far more than minimal, it will be very extensive. In the meantime the whole question of the relationship of solicitor and client will have been attacked and undermined and that has implications far outside any Finance Bill or any activity of the Revenue Commissioners. It can extend right across the board to the various activities in which our citizens engage, wheher under the purview of the criminal or the civil law.

The Minister should know a frontal assault on this relationship would be unsuccessful but a small assault on just one section of the relationship can be followed up by an extension of that beachhead further and further until the whole relationship and its position in law is eroded. Therefore, it is our duty to resist any such encroachment, in particular to resist it when the alleged excuse for it—in other words, the benefits that may accrue through the Revenue Commissioners getting certain information—is artificial and fictitious. There is no benefit for the Revenue Commissioners from what is provided here in regard to the information that can be sought. It is fictitious.

Mr. R. Ryan: One would think from what Deputy Colley has said that section 59 of the 1974 Act did not provide special protection for relationship between solicitor and client. Of course it does. It specifically guards that relationship. It could be very interesting to study why it is that emotion seems to spurt out of the mouths of Members of Parliament when seated in Opposition benches and that realism tends to be the order of the day on the part of those in Government benches.

I wish to make clear what the position is in relation to the provisions of the 1974 legislation. The section Deputy Colley is seeking to amend provides for a limitation of the information to be given by solicitors to the Revenue Commissioners. **No professional gentleman is entitled to any privilege whatsoever other than the privilege of his client**—no solicitor may go into court and seek privilege for his own protection. He may claim, and the Court grant, privilege in relation to the protection of his client's interest.

The people against whom this section is directed are those who are believed to be engaging in tax avoidance, who are failing in their statutory obligation to furnish information to the Revenue Commissioners, and it would be totally wrong for Parliament to allow any person who has an obligation to pay tax to shield behind a professional adviser. That would be making a mockery of legislation, it would be creating a pretence of having an efficient tax system which could not be seriously entertained.

Under the existing general law, lawyers, whether solicitors or barristers, are allowed to claim that information supplied to them in the course of consultation enjoys the privilege of confidentiality, and advice given by lawyers is under the general law and under the 1974 Finance Act absolutely privileged: no lawyer can be called on to give details of the advice.

Deputy Colley is seeking to insert the word "advice". The wording of the amendment has been circulated. Advice is not something which the Revenue Commissioners can demand particularly. They may demand in respect of solicitors only the names and addresses of the transferor or transferee associated in certain operations, in other words the names and addresses of persons engaged in tax avoidance practices, so that the Revenue Commissioners may then go after the people themselves in the same way as they would pursue any person who is liable for tax. I use the word "pursue" not in the sense of giving chase but in the sense of contacting people who have an obligation to furnish information.

The only information being sought is that which would identify persons who may be liable. That is all. The professional person need not furnish any information unless and until the person concerned has the authority of his client to do so.

The traditional privilege between banks and their customers in relation to transactions between them is also well established in law. Because of the privilege that obtains between solicitors and their clients and banks and their customers, subsections (3) and (4) were inserted to protect that privileged position. To that extent, therefore, the Deputy's amendment in relation to advice given by a solicitor or barrister is met and is clearly seen to be met. Where, however, a solicitor has acted in connection with the actual transfer or any associated operation, then he must give the particulars I already mentioned, the names and addresses of persons involved.

I mentioned last year in the Seanad that I was disappointed the solicitors' profession did not acknowledge that their position was being protected under the Act. Instead, some solicitors, and Deputy Colley today, have done a public disservice by insinuating that there was improper interference with the confidentiality that should exist between solicitors and clients. Our neighbours in Britain are no less jealous of the confidentiality of relationships between solicitors and clients. There has been no lack of trust in solicitors or barristers in England where the section to which such emotive exception has been taken here has been in operation for 39 years. Both Parliament and courts in England have said that it was a duty of everybody to pay a fair share of tax and that Parliament had a duty to ensure that consultation with professional people did not give a protection which ordinary citizens did not enjoy. The unrealistic nature of the criticism levelled against the provisions of the 1974 Act is illustrated by the fact that whereas Deputy Colley and some others on behalf of the solicitors' profession said that the section is unacceptable, the Institute of Chartered Accountants have sought to have applied to them the very exceptions and privileges which the section confers on solicitors. It would be strange, if it was challenging a confidential relationship, that accountants should seek to enjoy the same privileges as have been conferred on lawyers by the section.

Mr. Colley: Privileges were not conferred. Privileges were taken away by the section. In the case of solicitors the privilege existed and the Minister knows that.

Mr. R. Ryan: Subsection (3) specifically limits the information which can be obtained from solicitors. The legal profession, like every other profession, have a duty to tell their clients what the legal position is and that duty involves informing clients if steps about to be taken by them infringe the tax law. I am sure the

Deputy would not wish to put the integrity of the solicitors' profession in doubt by suggesting that they should facilitate tax evasion.

Mr. Colley: Can the Minister not visualise a situation in which they are advising them as to what the law is and how to comply with it?

Mr. R. Ryan: Yes, I have said that it is the duty of a solicitor to tell the client what the law is and that any action which he intends to take which is against the law is against the law.

Mr. Colley: Or is not against the law, if it is not.

Mr. R. Ryan: Yes. That is a solicitor's professional duty and that is what he is trained to do. Deputy Colley used the word "accountant". The word "accountant" like the word "engineer" covers a multitude of activities. "Solicitor" is defined by law. They are the only profession to be statutorily defined as gentlemen. It has been said that was necessary or it would not be accepted. "Barrister" is also clearly defined by law. "Accountant" is not defined by law and if one includes accountants should one debar tax consultants, tax practitioners, some of whom may not have an accountancy qualification of any kind? The word "accountant" could be extended to book keepers just as "engineer" is a title sometimes assumed by mechanics. It is much too loose a term to use in a statute apart from other reasons why it should not be included at all. The law does not recognise that the same degree of confidentiality exists between accountants and their clients. The legal profession have a privileged position because it is the privilege of the clients which is being protected. That cannot be extended to activities which involve tax evasion and we could not contemplate extending to the accountancy profession a privilege which does not apply to the legal profession nor could we entertain at this stage or in a Finance Act the question of what should be the appropriate area of confidentiality existing between accountants and their clients. If there is to be legislation to counter tax avoidance by means of transfer of assets abroad, the Revenue Commissioners must be empowered to seek information to enable them to establish whether an avoidance operation has taken place. That is axiomatic. I trust nobody in the House would challenge that.

As I said, the information which the Revenue Commissioners will seek under section 59 ought to come from the taxpayer himself. If he employs an accountant or an agent to look after his tax affairs and to deal with the Revenue Commissioners on his behalf, there is no reason why the information, which in the ordinary way would be sought from the taxpayer, should not be sought from and given by his agent. There is no question of the accountant or the agent being required or expected to give the information without the taxpayer's knowledge. If the Revenue Commissioners seek information about tax avoidance operations from an accountant or agent, the accountant or agent will undoubtedly so notify the taxpayer and inform him that there is a legal obligation on him to furnish the information requested.

If a taxpayer sets out to plan a tax avoidance device it would be expected that, in the course of the planning operation, his accountant or agent would advise him that the Revenue Commissioners were likely to look for information about the operation. In the light of the purpose of the legislation, it is difficult to see why the Legislature should set up any barriers or obstacles to the implementation of the legislation by authorising a taxpayer's agent to withhold information or to refuse to give information in relation to avoidance operations.

For these reasons I cannot accept the Deputy's amendment which would simply open the door to avoidance and evasion a year after we took action to close the door. The undesirable possibilities which Deputy Colley has illustrated here have not materialised in Britain in 39 years. I do not expect them to materialise here. Considerable benefits have accrued to the Exchequer and consequently to the general body of taxpayers, because loopholes which facilitated avoidance by transfer of assets abroad were closed and because the information net had a smaller mesh and was cast further. That is what this section in the 1974 Act achieved. It ensures a better supply of information.

No person who is not liable to tax has anything to fear from the powers given to the Revenue Commissioners to collect information. The only person who may be disappointed if the sources of information to the Revenue Commissioners are improved are people who have a liability to pay tax and who avoid it by withholding information which they have a clear statutory obligation to give and, indeed, a moral obligation as well. Democracy has long since asserted that every person should pay his fair share of tax. Democracy requires that the Legislature will provide the means whereby the Revenue Commissioners can ensure that everyone pays a fair share of tax. If we failed to give them that means we would be engaging in a sham and, quite frankly, I am not prepared to do that.

Mr. Colley: The Minister said this amendment would open the door to avoidance and evasion. Evasion is always illegal and nothing in this section or this amendment affects in any way the position in relation to tax evasion. In regard to tax avoidance, when I was proposing this amendment I mentioned that I believed that the information which is being sought here from solicitors is available to the Revenue Commissioners anyway from other sources. Of course, it is perfectly obvious that, in order to be in a position to put a question about a particular taxpayer to a particular solicitor, the Revenue Commissioners must have something to go on. They can put the question to the taxpayer and, if he gives false information, he leaves himself wide open to very serious penalties.

I indicated that I was not particularly tied to the wording of the amendment. I am conscious of the difficulties in regard to the definition of "accountants". The Minister is welcome to any point he wishes to make on that. What the Minister is glossing over very carefully is the fact that this section as a whole, without this amendment or something on these lines, is taking away existing rights, existing privilege in the legal sense. He spoke as though it were granting such. Of course, it is not doing any such thing and the Minister knows that as well as anybody else.

For very good, sound, historical and legal reasons, the relationship of a solicitor and client has a special position in law. It is true, of course, as the Minister says, that a lawyer has no privilege himself beyond the

privilege of his client. That privilege was built up for good reasons over many years.

If someone commits murder and consults with a solicitor and discloses what he has done on the course of his consultation with his solicitor, I assume the Minister does not believe that the solicitor should there and then report the matter to the Garda. The position in this regard has been built up over centuries with the experience of what can happen. The proposition that a solicitor who receives information in the course of his professional duties is obliged to hand over that information to the authorities is a most dangerous proposition.

This is the thin end of the wedge. Without this section the information sought could not be obtained by the Revenue Commissioners. The Minister seeks to justify it on the grounds that we are all against aiding tax avoidance. We are all against a great many other things too and yet the privilege of a client who consults his solicitor is preserved in law, and is jealously preserved.

This section is taking away rights which exist in regard to the relationship of a client to his solicitor. It is taking them away and whittling them down. It will be extended further if this is allowed to go on. The Minister may talk about the position in Britain. The Minister is devising a formula here for the hothouse growth of such kinds of activities in this country. He is driving people into that position. That is precisely what will happen. He will get no information of any value whatever from this section. He will create a situation in which people will not go to their solicitor, or their accountant, or their bank, and the Revenue Commissioners will know far less about what is going on than they do at the moment. They will be far less effective in getting after such people. It will go totally underground with a number of undesirable consequences flowing from it.

The Minister should know of some of the things that have happened in Britain as a result of this kind of legislation. He will have to reconcile himself to the fact that, in this perennial battle between those who are trying to avoid liability for tax and the Revenue Commissioners, there are no final victories. It goes on and on. If the Minister pushes the situation too far, as I believe he is doing here, he is so altering the ground rules that these people are getting out from under the ken of the Revenue Commissioners. If it is not pushed too far the Revenue Commissioners can at least become aware of what is happening and close the loophole. People will open further loopholes, but that is getting more and more difficult. When you try to get information which is of no use to the Revenue Commissioners anyway by undermining the relationship between a client and a solicitor, as is being done here, all you are doing is driving the whole thing completely out of the ken of the Revenue Commissioners. You are losing out on a number of scores, and what have you got to show for it? A section which says the names and addresses of people involved in those transactions are to be given to the Revenue Commissioners by the solicitors concerned. Is this rational? Is this a real approach to this matter?

Is the Minister seriously suggesting that this section will aid in any way the efforts of the Revenue Commissioners to get at people who have indulged in tax avoidance? Does the Minister not know that these provisions are totally ineffective in so far as they relate to people who do not want to be caught? He must know that from his own experience and, if he does not, then if he consults with some of his former professional colleagues, they will tell him very quickly what is happening. This is totally ineffective but there is a price being paid for this ineffective result, a price which could be very high in the future. The price relates to the privilege of a client who consults his solicitor—a privilege which has been preserved over centuries for very good reasons—and if that position is eroded the rights of citizens under the criminal law as well as under the civil law will disappear. To say that it is an exaggeration, may appear to be plausible, but the Minister must know that this section is taking away existing rights and if this is allowed to go unchallenged then it will only be a matter of time until it is carried further. If the justification for taking away these rights can be the duty of everybody to assist in preventing tax avoidance, are there not very many other far more compelling reasons which can be put forward from the point of view of civic duty, far more compelling than that, which would justify further erosion of this position?

I would ask the Minister not to take this step on this slippery slope and not to try to justify it by talking about an obligation to assist in combating tax avoidance because I can give him ten times more compelling reasons for taking away far more rights and we will then end up with no rights at all. A very dangerous precedent is involved in this section. It is one which has been resisted by many solicitors. It is not being resisted by them because they have any privileges. They have no privilege—it is their clients have the privilege—but they know better than anybody else what this kind of step can lead to in the long run. I repeat that the value of this step to the Revenue Commissioners is minimal but the implications of taking it and attempting to justify it are enormous. I do not want it to happen that this House would allow a section like this to pass without clearly enunciating the dangers involved and resisting this encroachment and the implications of the encroachment.

Mr. R. Ryan: I do not share the high moral disposition some people have in regard to differentiating between evasion and avoidance. Many forms of avoidance are no more than operations by the clever to avail of weaknesses in administration or imperfections in the language of the statute to frustrate the clear intention of the Legislature to collect tax arising out of certain profits or capital possessions. I do not think Deputy Colley would deny that. If I am wrong in that contention, why is it that one Finance Minister after another year after year used the Finance Bill to stop avoidance practices? Avoidance is not a transgression of the law but not infrequently it is a brutal bending of the law. It conforms with the law because it slips in between the dot above the "i" and the "i" itself. Many of the practices of avoidance by means of transferring assets abroad are such as to run so close to evasion as to be properly termed evasion. Indeed, since the 1974 Act obliges people to pay tax on income earned from assets

abroad, not to do so is evasion and it is illegal. I will not accept that it is contrary to practice and that there is an encroachment on the necessary confidence which exists between clients and their solicitors. I would equally refuse to accept, speaking as a lawyer as well as a parliamentarian, that lawyers should permit their professional status to be used for the purpose of evading tax. If that were to happen and if it were to encourage or facilitate evasion then the whole standing of the legal profession would come under a cloud.

As far back as 1939 the same arguments Deputy Colley makes were produced in the British House of Commons when similar provisions were being discussed. The Solicitor General replying to the criticisms had this to say:

> ... we are dealing here with an area where we are trying to prevent tax evasion by the transfer of assets abroad, and the Clause is really purely declaratory of the existing law. It suggests that certain particulars must be furnished by persons or by their agents in relation to these transactions so that the transactions may be identified. Subsection (2) to which the Amendment of the hon. Gentlemen applies preserves for solicitors the privilege that they enjoy at present. The only information that the Commissioners may request from solicitors will be information as to names and addresses and nothing else. They are not required to disclose documents or the instructions that they have received. This is a privilege which the profession of solicitors enjoys under the existing law by reason of a long history of case law. The accountants enjoy no such privilege under the law.
>
> The hon. Baronet is asking for a privilege for accountants which no other agent would be permitted to have, and which solicitors only enjoy by reason of the existing law. Privilege is a valuable thing to conserve, but it is a very dangerous thing to extend. Privilege by its very nature means the obstruction of the truth. It is a barrier between the investigation of the truth and the actual arrival at the facts. It is not easy to justify in an area where you are dealing with deliberate evasion, and were it not for the fact that the privilege exists enabling a person to go to his solicitor for advice, and while it might be difficult to justify it, I should find it impossible to stand here and justify its extension to particular kind of agent, who, in many cases, is the very man from whom you want to find out what he knows about the transfer of assets abroad.

I believe those words can be used with as much justification in 1975 as they could be used in 1939. We can also use them with the value of the experience of what has happened in Britain in the intervening years. Confidentiality has been maintained between solicitor and client. The Exchequer, the general body of taxpayers, have not had to bear the enormous costs of some avoidance practices which would have gone unchecked if that power were not there.

If we want to discourage people from running contrary to the spirit of the legislation as well as to the letter of it, then we must ensure that if we are imposing obligations to pay tax we provide the Revenue Commissioners with the means to enforce those obligations. If we fail to do so then we are continuing an unjust system in which the person of small means, who is an employee working for an employer who supplies information about the income would have to pay his or her share of the tax while the clever and the rich, engaging consultants, could shelter behind them and avoid paying their share. That is not a desirable thing to happen. It need not happen as long as the powers conferred in the 1974 Act are not tampered with. The anti-avoidance action of the 1974 Act will ensure that, to a greater extent than was possible before then, the clever and the rich will not avoid their fair share of tax. The battle of the Revenue Commissioners against tax avoiders and evaders will go on forever. There will never be a victor. At most there will be a pyrrhic victory on one side or the other or a short-lived one. As the Courts have said on numerous occasions, people who engage in avoidance practices must accept that as they engage in them they are likely to suffer sooner or later the wrath of the Legislature, which will take action to prevent the continuance of the avoidance.

People who engage in avoidance do so knowing that one of the occupational hazards is that legislation may be introduced to destroy their fun. It has to be introduced, not for the sake of being a kill-joy of the person engaged in avoidance practices, but out of a sense of fair play to the general body of taxpayers who have no opportunities of avoidance, no discretion in the matter and no knowledge or skill which would enable them to avoid paying the full share of tax which the Legislature intended them to pay. The people against whom this section is directed, the people engaged in the transfer of assets abroad, have a liability under the law now to pay tax. This is one of the necessary weapons that must be given to the Revenue Commissioners to ensure that obligation is complied with. Failure to do so would create a sham, as I said earlier, and I could not be a party to that.

Mr. Briscoe: I recognise it is the duty of the Revenue Commissioners to collect as much tax as they can. Pressure is very often put on them to be a little bit harsh.

Mr. R. Ryan: That is not so. The Revenue Commissioners act independently.

Mr. Briscoe: I am left with nothing else but to believe this because of the kind of legislation which is before the House now. The Minister said he morally sees no difference between tax evasion and tax avoidance. In fact the basic difference is that one is illegal and the other is legal.

I do not think there is anything wrong in a person seeking advice on how to make his or her tax return. The Revenue Commissioners can be co-operative but it is not their job to tell people what they can claim relief on. In my view there is nothing whatsoever wrong in a person going to a tax adviser, who very often is a solicitor. If the Minister was out of government tomorrow and back in his practice or decided to give up politics and went back to his practice, would he refuse to act in an advisory capacity on a tax matter with a client? From what he has said here it seems to me he would refuse to talk to any client about how he might avoid a heavy bill for tax because he equates it with tax evasion.

I believe that the Minister will breed a new kind of

shyster lawyer, a person who will not comply with the will of the Legislature in this instance. A number of companies will probably start business because they see a profitable venture in being tax advisers. They may even be outside the country, where clients could go to consult them. Those companies would be authorities on particular tax systems throughout the world.

I believe as earnestly as the Minister does that people should pay their just taxes but I think it is wrong to state that a person is morally wrong if he seeks ways and means of avoiding tax payments. A lot of the big taxpayers wish that the tax system was as simple for them as it is for the PAYE people who get their wages after tax has been deducted and have no worries about income tax later on. It is important to stress here that it is not immoral for anyone to seek advice on tax avoidance. The Minister should give further serious consideration to the situation in which he is putting lawyers. They are honest for the most part. We have the good and the bad in every profession but in the main lawyers serve their clients well and they should be encouraged to do so by not divulging what is primarily a matter between the lawyer and his client.

Ruairi Brugha: On reading subsection (4) of section 59 of the 1974 Act it seems that the Minister is requiring professional organisations or people to provide information.

If the Minister requires this, I believe that organisation will cease to carry out the function. It is correct that the Commissioners have the power to require any person to disclose information regarding tax evasion but the argument here is whether it is right for the Minister to give the power to require professional people to disclose information. Deputy Colley's argument is that that is what is required here. Professional people have to retain the confidence of their clients. How can a solicitor who has traditionally acted on behalf of his client continue to do that if he also must act on behalf of the State? There is a conflict here which has not been resolved by the Minister. He is acknowledging loopholes have to be closed and that he is justified in trying to do that from year to year as his predecessor did but he seems to be admitting also in his argument that in order to close the loopholes he is requiring people in a professional capacity to disclose information which is traditionally confidential. If the Minister is not doing that, I do not see any fundamental argument against Deputy Colley's amendment.

The power is with the Revenue Commissioners at any time to direct an individual or the responsible officer of any corporation to disclose the information they want. Does the Minister not see a difference between a responsible officer or a person who is engaged in activities which the Revenue Commissioners wish to bring to an end and the person who is employed in a professional capacity, a solicitor, accountant or barrister, to advise an organisation, company or an individual?

Mr. Colley: Earlier I suggested to the Minister that he should not equate evasion with avoidance but he went on to explain that that is precisely what it does.

Mr. R. Ryan: I said it was very difficult in some forms to differentiate between evasion and avoidance.

Mr. Colley: I put it to the Minister that that is a most dangerous doctrine and he should disabuse himself of it quickly. If we reached the stage where we do not distinguish between evasion and avoidance, in particular if the Minister for Finance does not, we will have reached a stage where somebody vested with authority by the people is trying to say that something which is a breach of the law is in exactly in the same category as something which is not. If the Minister thinks this is highfaluting theorising I will give him an example which I hope will bring home to him that it is more than that. The Minister recently indicated his intention of taking the EEC Regional Fund and using it in the Exchequer. The Minister may be within the letter of the EEC Directive in doing that but clearly he is in breach of the spirit. I suggest to the Minister that that is a perfect analogy of the Minister engaging in avoidance, not evasion.

If the Minister's theory is to be accepted, he should be treated as being in breach of the EEC Directive because he is engaging in evasion. I hope that example brings home to the Minister the dangers of the doctrine he is advancing; that it is the same whether one breaks the law or not if, in the view of the Minister for Finance, the things one is doing are equally reprehensible. It is true that some avoidance activities are reprehensible. Nevertheless, to try to say that they are to be regarded and treated in the same way as matters which are in breach of the law is a most dangerous doctrine.

I want to put it that if this section did not exist the Revenue Commissioners could not, and would not, seek information from solicitors, for example, which they now seek and obtain under this section. If that statement is true, then this section is not a restatement of the law. As I said earlier, it is an encroachment on the existing privilege, a privilege which is one of the client, not of the solicitor.

Logically, should the privilege not be abolished rather than enable people who are guilty of crimes to be more easily and conveniently convicted by the State? In fact, taking what appears to be the Minister's point of view, the existence of this privilege is unjustified socially in so far as it is a hindrance to the prosecution of offences and in some cases, may indeed assist people in avoiding liability for their offences. That is the logic of what the Minister is saying. The Minister, by training, a lawyer, knows just how important is that privilege to the rights of the citizen and the maintenance of democracy. It extends to a far wider field than this Bill or any matter to do with the collection of taxes and the avoidance or even the evasion of taxes. It is a much more fundamental matter than that.

It is one thing if the Minister says: "Look, what is being done here is of minor importance", but if he tries to justify what is being done on the grounds that everybody has an obligation to assist in tackling avoidance of tax, then we are getting into much deeper water altogether. When the Minister adds to that some forms of avoidance which in his view are exactly the same as evasion and are to be treated similarly, then the matter becomes more serious. The implications of the Minister's thinking are extremely disturbing. This seems to me to represent a total disregard of the rights of citizens. One cannot justify ignoring the rights of citizens by saying: "Look, we are dealing with people who are avoiding liability." We are dealing with people

who are acting in accordance with the law. They may be bending the law. They may be very clever and may have advisers who are very clever assisting them in doing this but, because what they are doing is reprehensible and, in the Minister's view is the equivalent of breaking the law, he is advising the doctrine that everybody has the obligation to get after these people irrespective of what that costs in the way of citizens' rights, in the way of the loss of the privilege attaching to the relationship between solicitor and client built up over centuries for the protection of the individual and the citizen.

The Minister could not have thought out the implications of what he is saying or he would not have said what he did. I want to suggest again that the information, in the case of solicitors, which may be obtained under this section is that available otherwise to the Revenue Commissioners. The actual information being obtained from solicitors under this is virtually useless to the Revenue Commissioners. The point is, if one can justify this encroachment on the grounds put forward by the Minister, then one can justify much greater encroachments. The Minister cannot even justify it on the grounds of the necessity to obtain this information.

Before the Revenue Commissioners would even seek to obtain such information from a particular solicitor they would have to have a particular client in mind about whose activities they wanted information. If they have that, they are going to get no information from the solicitor that is not available to them in other ways. Yet, we have this serious encroachment, serious in its implications, being built into this section for purposes totally ineffective so far as the Revenue Commissioners are concerned. In my view it is completely unjustified.

Mr. O'Malley: I want to support this amendment and what Deputy Colley has said. This amendment, in substance, is almost precisely the amendment which he and I had down to the Finance Bill last year, which in fact was never discussed by the House or taken because the whole second half of the Finance Bill was guillotined through by the Government without any discussion, coming up to the end of July, after there had been an abnormal delay in the publication of the Bill. It illustrates the danger of not discussing Bills of this nature adequately in the House because that section we sought to amend last year got through. Unfortunately this is a Committee Stage of a particularly complicated Finance Bill. It creates no public interest. There are probably one or two pressmen here.

It was recognised for centuries in the Common Law that there were certain people to whom ordinary citizens could go for advice and could open up their hearts about their problems and troubles. The ordinary citizen had confidence that, come what may, whatever he said to his solicitor, barrister, confessor, doctor or anyone else in that position, that confidence would never be broken.

Under a statute of the Oireachtas brought in last year by the Minister for Finance, that confidence and trust can no longer be regarded as being in accordance with the law. If a solicitor, accountant or barrister does not disclose what was told to him privately on a totally privileged and confidential basis by his client, he will break the law. Deputy Colley validly pointed out that this is simply a matter which is sought to be remedied in the eyes of the Minister by section 59 of the Finance Act, 1974. This is simply a matter of tax avoidance. It is regarded by the Minister as so serious from the point of the view of the State that he is prepared to force this House to legislate against the retention of that confidential and privileged relationship.

If the State feels entitled to legislate away this confidentiality and privileged relationship in relation to a comparatively trivial thing like tax avoidance, *'a fortiori* is not the State entitled to legislate it away in more important things, such as the crime of murder? If the police force have reason to suspect a certain individual of having committed a very serious crime, watches him, sees him approach a priest of his religion and discuss privately with the priest some matter, whether in the confessional or a situation that would be akin to it, is there not, on the basis of the Minister's argument, a greater justification for the police being given power to compel that priest to disclose what was said to him than there is under section 59 to compel a solicitor to disclose information because the Revenue Commissioners suspect tax avoidance on the part of his client? Murder is a far more serious matter than tax avoidance.

Can any doctor feel sure that if this Government forced through section 59 of the Finance Act, 1974, that the Minister for Health will not bring in comparable legislation to compel doctors to disclose certain facts which should be confidential between the patient and the doctor? Is there any relationship left, after this principle is established, that can be regarded as safe, as sacred or as privileged? The whole doctrine of a Common Law through the centuries preserved, often at great cost, the sanctity of a privileged relationship. Section 59 of the 1974 Act destroyed that and for the most trivial of reasons.

I can only remind the Minister that when he sat on this side of the House we had long tirades from him about the protection of human rights, not alone in Ireland but in obscure countries all round the world. To the extent that he is in a position to do things and control matters, can he find nothing better to do but to destroy, at the request of the Revenue Commissioners, a privileged, deeply confidential relationship between solicitors and their clients? Let him remember this : he is not doing any great harm to solicitors. All they have to do to comply with the law is to tell the Revenue Commissioners. The people being harmed are their clients and they are not all rich men. Every client of every solicitor is potentially at risk now and not necessarily in relation to tax avoidance.

[**Note:** The final Part III of this debate will be published in the October Gazette.]

MOOT POINTS ON PRIVACY

LAW STUDENTS DEBATE IN U.C.D.

The following is a very summarised version of arguments which emerged in the course of a recent Moot Court held with law students in UCD. The educational value of a moot—a legal problem in the form of an imaginery case—might indeed profitably be discussed as a separate issue. The participants in the moot referred to were: Ann Fitzgerald, Marc MacDonald, Brian Carroll and Brendan Twomey—2BCL; Muriel Lee and Brenda Scully and John Murran—3 BCL.

Privacy as a right or a concept is at present receiving attention in many countries. The British Law Commission (No. 58 HMSO 1975) urged reform of the law on "the disclosure or use of information in breach of confidence". It is interesting to note their recommendations that the *duty of confidence* should be given a statutory basis. Breach of the duty of confidence would be actionable where disclosure of information results in "pecuniary loss" in addition the Commission proposes that there should be redress where breach causes "distress" or even possibly "annoyance or embarrassment". In 1972 the Younger Committee rejected demands for a legal right to privacy and proposed that the protection of privacy as "breach of confidence" should be referred to the Law Commission. To a perhaps regrettable extent the Law Commission was influenced by the unconvincing arguments of the Younger Committee and their proposals do not recognise an unequivocal right to privacy in individuals. (There are indications however on the political front that a right to privacy may yet be recognised in Britain.)

In the United States, a distinct right of privacy is recognised *sui generis* and not as a mere addition to some already existing area of law. There, a true statement publicly made may at the same time be a breach of privacy. At the same time, it can be said that United States laws confer less protection against defamatory statements than does English law. One is naturally interested in Ireland in United States developments and a look at the jurisprudence of some American cases is instructive. Internationally the protection of privacy is growing in importance due to a number of factors, *inter alia,* to increasing technological development. In 1973 for instance, a Resolution was adopted by the Committee of Ministers of the Council of Europe on *Protection of the Privacy of Individuals vis-a-vis Electronic Data Banks in the Private Sector.* (See in general, Robertson : *Privacy and Human Rights,* 1968.)

A general right of privacy would cover many aspects of life and of personal behaviour. For this reason recognition of the right in this country might not be universally welcome. Privacy has not escaped judicial mention here : most notably the right arose in *McGee* v. *The Revenue Commissioners and the A-G* (1973) unreported, Supreme Court. In the wake of *McGee*'s case and in the light of some of the *dicta* in the case—particularly of Budd J. quoted hereafter—there is a logical inference that a general right of privacy exists from whence marital privacy was deduced by the Supreme Court. It is significant to note the following extrajudicial remarks made by Walsh J., who formed part of the majority Supreme Court decision in *McGee*'s case, in *Studies* (Winter 1974, 336) where he offers some comments on an article in the same volume entitled "Anarchy and Utopia" by D. C. Bennett (Department of Social Science, UCD). He refers to "a recognition of the fact that in modern society economic rights and duties are no longer thought to be worthy of more attention than human needs and feelings and an acknowledgment that the basic economic wellbeing of people has achieved a level at which these people feel it is no longer endangered by the concentration of greater attention upon their human needs and feelings. This new awareness is most easily observable in the ever-increasing public concern for the protection of the environment and the protection of personal and family privacy". He goes on to refer to persons who, willing to abandon some of society's material benefits in return for a reduction in those demands, break away from the "super-tribe" and form communities of their own in which they can secure more control over the quality of their lives. "It is but an extension of the assertion, albeit an unconscious assertion in many cases, of the right to privacy—a right so aptly described by Justice Brandeis in his dissenting opinion in *Olmstead* v *The US* as 'the right to be let alone—the most comprehensive of rights and the most valued by civilised man'."

What if an article or a film or a broadcast were to contain statements injurious to some individual but nonetheless true? Might one claim as against the communications media, a constitutional right to be let alone, breach of which in this country would entitle one to damages, following *Meskell* v *CIE* [1973] I.R. 121. The answer is perhaps easier in a country where a written constitution exists to protect individuals against invasion of their rights but no answer is ever straightforward. Considerations beforehand of changes in the law tend to be lacking in Ireland. In relation to this area of privacy against the communications media, some of the issues that could arise for discussion will now be outlined.

The right to freedom from unwanted publicity may be classed with those rights which require a balancing of public and private interests. There are "two potentially conflicting but vital interests : the interest of the individual in the preservation of his privacy, and the interest of the community as a whole in freedom of speech, in particular the freedom of the press and other sections of the communications media to impart infor-

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mation to the public". (Bridge, ed., *Fundamental Rights,* 1973, 44.)

The *purpose* of a right to privacy was described in an influential article on privacy by Warren and Brandeis (1890) in which it was defined as being "... to protect those persons with whose affairs the community has no legitimate concern from being dragged into an undesirable and undesired publicity and to protect all persons, whatsoever their position or station from having matters which they may properly prefer to keep private made public against their will". (4 *Harvard Law Review,* 193, at 214-215).

There are four major areas which call for consideration: (i) where there is an intrusion upon a plaintiff's seclusion or solitude or into his private affairs; (ii) where there is public disclosure of embarrassing private facts about a plaintiff; (iii) where the publication places a plaintiff in a false light in the public eye; (iv) where a plaintiff's name or likeness has been appropriated for a defendant's advantage. (See O'Hannrachain: *Privacy and Broadcasting* 1971 I.L.T. 225).

To an extent the civil law action for Breach of Confidence may protect the plaintiff in one or more of the above situations. In an appropriate case an injunction can be granted to restrain disclosure of information which has originated in a Breach of Confidence. The remedy is half-way between recognition of a right to privacy and no right at all. It is interesting to note the early case of *Prince Albert* v. *Strange* (1849) 2 De G. & Sm. 652, in which the Prince Consort successfully sued for an injunction to prohibit the publication of a catalogue of etchings drawn by the Prince and Queen Victoria for their own private use. The judgment of the old High Court of Chancery might be said to recognise an embyonic right to privacy although subsequent developments at Common Law would disprove this. Some attempts are at present being made to broaden the scope of the Tort of Breach of Confidence. For example, Ungoed-Thomas J. in *Argyll* v *Argyll* (1967) Ch. 302, stated that "An injunction may be granted to restrain the publication of confidential information not only by the person who was party to the confidence but by other persons into whose possession that information has improperly come". In that case, the Duke of Argyll was prohibited from disclosing marital confidences between the Duke and Duchess of Argyll which had taken place during their marriage.

In the United States, "freedom of speech or of the press" is guaranteed in the First Amendment and this constitutional provision has there influenced the development of the right to privacy and the law of defamation. In *Melvin* v *Reid* 112 Cal. App. 285 (1931) a Californian court restrictively interpreted the freedom to encroach upon an individual's private life—although this could not be described as a predominant trend in United States case-law. In the case in question, a woman had in her early years led the life of a prostitute and been, among other things, acquitted in a murder trial. A film was made portraying all this at a time when the plaintiff had "taken her place as a respected and honoured member of society". The facts came as a surprise to many of her friends. The court held for the plaintiff against the film company on the basis that society's interest in rehabilitation of the character outweighed any public curiosity in knowing about the past indiscretions of the rehabilitated. In at least 35 States, a right to Privacy has been recognised either by Statute or at Common Law. At the same time United States case-law tends to the view that while the lives and actions of private individuals should be protected from unwanted interference, nevertheless the public has a right to information about matters and people whose lives and activities are of genuine *public* interest.

The case of *Time Incorporated* v *Hill* (ante) illustrates this point. Hill was a private citizen in no way desirous of attracting public attention who had been held hostage along with his family in his own house by three escaped convicts. At the time the incident had received widescale newscoverage but subsequently Hill had once more sought and managed to maintain the obscurity of private life. Three years after the incident, *Life* magazine published an article about a new play, *The Desperate Hours.* The play portrayed a fictionalised account of a family being held hostage by escaping convicts. The play differed from the real life episode in that it was an exaggerated and sensational revival of the facts. The courts had to determine whether Hill was entitled to damages for breach of the New York privacy statute which allowed a civil action for the unauthorised use of a person's "name, portrait or picture" for "advertising purposes, or for the purpose of trade" without that person's written consent. Although at first instance *Life* were held liable, on appeal the Supreme Court by a majority held that the subject matter of the article, the opening of a new play linked to an actual incident, was a matter of legitimate public interest. As such it was protected by the First Amendment; this protection would not be granted if the publisher knew of the falsity of the material or acted recklessly as to its truth or otherwise. The case is unsatisfactory if one looks for guidelines in it as to what constitutes a matter of legitimate public interest. The dissenting opinion of Fortas J. deserves mention.

PLEA

When writing to your colleague it is not only good business but good manners to quote his reference. The failure to quote references particularly when writing to large firms means that anything from twenty four to forty eight hours can be lost in dealing with the letters through the inability to trace the particular person who is dealing with the case.

Even if you don't quote the reference we would suggest that you should head the letter "Your client—Our client" which helps in most cases.

Solicitors are not the only defaulters in this respect. Banks and Government Offices are also major defaulters. If you want your client's affairs dealt with promptly quote your Colleague's reference so as to make certain that the letter gets to your opposite number and can be dealt with.

He was of the view that the majority of the Court when discussing rights such as freedom of the press had failed to duly consider "great and important values in our society ... which are also fundamental and entitled to this Court's careful respect and protection". Among these was the right to Privacy. Freedom of the Press in his view should not be upheld where Privacy is assaulted "for no purpose except dramatic interest and commercial appeal".

Freedom to speak one's mind, although not always with perfect good taste, on all public matters was described in another United States case as a "prized American privilege" : *Bridges* v *California* 314 US 252 (1941). Again it was said that "The protection of the public requires not merely discussion but information" : *Sweeney* v *Patterson* 128 F 2d 457/8 (1942). Other cases that would deserve discussion if consideration of this right arose in Ireland include *Elmhuist* v *Pearson* 153 F 2d 467 (1946) and *Sidis* v *F-R Publishing Corporation* 113 F 2d 806 (1940).

It was remarked earlier that a further extension of the right to privacy might not be acclaimed by all in this country. United States experience provides the main grounds for hostility towards the right. There the right has been successfully pleaded in cases which struck down as *ultra vires* anti-obscenity laws in Georgia and anti-abortion laws in California. The most familiar "triumph" came in 1973 when the Supreme Court held that a foetus has no right to life and that a mother has a right to privacy which is "broad enough to encompass her decision whether or not to terminate her pregnancy". (*The Jurist* 1973, second issue, is devoted entirely to United States developments in this field between 1965 and 1973.) Fears that Irish judges would so apply the right in appropriate circumstances may be unrealistic although this view would be disputed by some. (For example, Dooley : *Contraception and the Irish Constitution* : *Social Studies* 1974, 286). Possible applications of the right are however distinct from existence of the right itself.

That the right exists in Ireland would seem to be beyond dispute : "While the 'personal rights' are not set out specifically nevertheless in our society the right to privacy including that of marital relationship is universally accepted". (*Per* Budd J. in *McGee*'s case, *ante*.) It is likely that a right to freedom from unwanted publicity could be found as one of the "personal rights" in Article 40.3.1 of the Constitution. Much of the *dicta* in Kenny J.'s judgment in *Ryan* v *A-G* [1965] I.R. 294 could be cited in favour of this right together with the *dicta* of various Supreme Court judges in *McGee*'s case.

Freedom of the press as recognised in Article 40.6. 1(i) must also be considered. Investigative journalism performs a useful democratic service : many recent examples can be drawn to illustrate the point from the United States and Britain. It was recognised by Warren and Brandeis at the end of the last century that a right to privacy would be subordinate to the right to investigate and comment on matters of proper public interest and concern. Freedom of the press does not however confer unlimited freedom. (If it did, it would be Roy Jenkins' "garden without weeds, desirable but unnatural" as he recently described such freedom in *The Listener*.) Possibly it would be unwise to attempt to determine what are matters of proper public interest and concern. There is a general assumption that for example, government ministers, elected representatives of one sort or another, forfeit their claim to privacy. Even in such cases however forfeiture of privacy need not be complete: again it would be unwise to try to draw the boundaries of forfeiture for these categories. Restrictions already exist under Statute and at Common Law in Ireland in relation to the Press. The case of *A-G* v *O'Kelly* (1974) 108 I.L.T.R. 97 is evidence of the fact that journalists do not enjoy privilege and cannot hinder the course of justice by refusing to disclose their sources of information if requested to do so by an appropriate court. Journalists are treated as other human beings for purposes of the law and if, say, policemen are constitutionally restrained from intruding upon one's privacy (Article 40.5) there is no reason why journalists might not likewise be constitutionally fettered.

This is yet another area where the Constitution could affect the civil law in Ireland. Recognition of a right in relation to non-disclosure of private and personal information, where disclosure would not be in the public interest, would alter the law of defamation. It would no longer necessarily be a defence to argue that a published statement, though defamatory, was true. For this to be so in any significant way, it would be essential for Irish judges to interpret in a restrictive way the meaning of matters within the public interest. The result would render more convincing the declaration in Article 40.3.2 that "The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, *good name*, and property rights of every citizen".

Obituary

Mr. Rowland Healy, solicitor, formerly of the Indian Civil Service, and a former High Court Judge in Burma, died on 2 June, 1975, at his residence, Ballymorris, Bray, Co. Wicklow. Mr. Healy was admitted in Easter Term, 1948. He practised under the style of L. J. O'Neill & Co. at 21, Molesworth Street, Dublin, until 1965 when he retired.

Mr. John F. O'Mahony, solicitor, Deputy Supreme Knight of the Knights of St. Columbanus, died in St. Stephen's Hospital, Glanmire, Cork, on 2 September, 1975. Mr. O'Mahony was admitted in Hilary Term, 1942, and practised at 70, South Mall, Cork; he also acquired the firm of J. Hodnett & Son in Youghal.

NEWS LETTER – AUGUST 1975

Capital Gains Tax Act,

The particular attention of members is drawn to requirements contained in paragraph 11 of the Fourth Schedule to the Act. A detailed note on the position and the relevant extract from the Bill (as passed by both Houses of the Oireachtas) should be studied. Also extracts from the relevant Dail Debate should be examined.

The Society hopes to be in a position to publish texts on both the Capital Gains Tax Act, 1975, and on the Wealth Tax Act, 1975, during 1976. In the meantime, copies of the lecture notes issued to participants in the recent Seminars on Capital Taxation are still available at £10 per set.

Solicitors' Remuneration

The National Prices Commission has appointed Professor Dennis Lees, Department of Industrial Economics, The University of Nottingham to carry out its enquiry into Solicitors' remuneration. The Society has yet to be notified of his terms of reference. Professor Lees will be visiting the country in the week commencing 8th September and arrangements have been made whereby during his visit he will meet with as representative a cross section of the profession as possible. Members who wish to make specific points to be drawn to the attention of Professor Lees should submit them to the Director General as soon as possible.

Visits by the President

Following upon his visits to Bar Associations before the summer, the President proposes to visit Bar Associations over the next two months as follows:

12th/13th Sepember: Sligo/Leitrim/Donegal Bar Associations in the Great Southern Hotel, Bundoran.

17th October: Louth (Dundalk and Drogheda)/Meath/Cavan/Monaghan Bar Associations in the Nuremore Hotel, Carrickmacross.

25th October: Southern Law Association/West Cork/Kerry Bar Associations in the Central Hotel, Mallow.

30th October: Waterford/Wexford/Kilkenny Bar Associations in the Five Counties Hotel, New Ross.

31st October: Carlow/Kildare/Laois Bar Associations in the Courthouse, Portlaoise.

All the foregoing meetings will commence at 8.15 p.m. except that in Mallow, which will be held at 3.00 p.m.

Meetings of Presidents and Secretaries of Bar Associations

This will take place on Thursday, 6th November, 1975. Items for inclusion in the agenda should be submitted not later than **24th October.**

Management Course—Time Costing Workshop

Following the interest expressed at the Westport Seminar the Society has tentatively arranged for an initial series of one day Time Costing Workshops to be held on 1st/2nd November, 1975 at a venue to be arranged.

The main objective is to enable solicitors to obtain *practical* assistance in the application of time costing to their own practice. Every practice cannot afford to engage the services of a management consultancy firm. The Society proposes therefore to share the cost of such a service over the participating firms.

A London firm of consultants, Lawyers Management Services Ltd., have indicated their willingness to hold such a course. The team of Consultants would be led by Mr. Richard Owen who proved to be a very popular lecturer at the Westport Seminar.

The fee is £60 exclusive of Hotel accommodation for a very intensive day commencing at 9.00 a.m. sharp and ending at approximately 10.00 p.m. The workshop is also open to solicitors' staff. As it is envisaged that there should be one tutor to every 3/4 participants, bookings will be limited to a first come, first served basis.

Interested parties therefore should complete the enquiry form enclosed and return same immediately to the Director General, Incorporated Law Society of Ireland.

Preliminary and Irish Examination Results

It is hoped to have these results available and published at 4.30 p.m. on Wednesday, 9th September, 1975. Because of the numbers involved and the possibility of error, telephone enquiries as to individual results will not be entertained.

Practice in Locations outside Dublin

The Director General has received enquiries from a number of busy practices in the country as to the possibility of their obtaining the services of Solicitors with 2-3 years of *general* experience. Members interested should communicate with the Director General on a confidential basis.

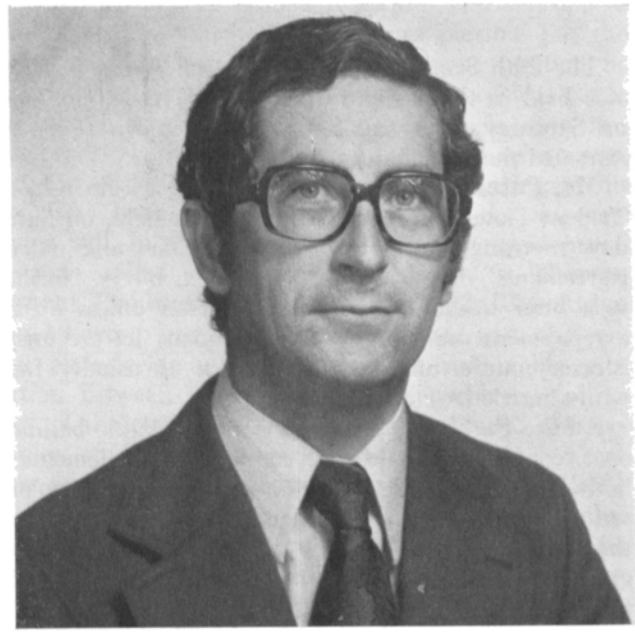
Annual General Meeting

This will be held at 2.30 p.m. on Thursday, 27th November, 1975. The Society's Annual Dinner Dance will be held in the Shelbourne Hotel, Dublin, that night. Please note the date in your appointment Diary *now.*

Blackhall Place Premises

The Council of the Society has now approved of the contract for the restoration of the first stage of the

Appointment of Mr. P. J. Connolly



The Council of the Incorporated Law Society of Ireland have appointed Mr. P. J. Connolly, A.C.A., Director, Finance and Services Division.

Mr. Connolly served articles with Briscoe, Smith & Co., Chartered Accountants, Grafton St., Dublin. Since qualifying as a Chartered Accountant he has had a wide variety of experience with Price Waterhouse & Co., Paris; Nitrigin Eireann Teoranta and other industrial companies.

Since joining the Society's staff Mr. Connolly has worked on a number of consultancy assignments on solicitors practice in the U.K. Besides his normal accountancy work it is envisaged that Mr. Connolly will provide a consultancy service on a repayment basis to members on request.

project and the contract with Messrs. G. & T. Crampton, Dublin, will be formally signed in the premises on 9th September. The opportunity will be used to explain to the press and to the public generally, the Society's aims in relation to the new educational arrangements due to come into force on 1st October, 1975. It is expected that the premises will receive its first graduate students under the new arrangements in October, 1978.

E.E.C. Developments

In recent months the Society has been involved in discussions with the Department of Justice, the Bar Council and the European Commission on a draft directive on the right of lawyers to provide occasional services in other Member States. Discussions have also taken place with representatives of the Law Societies in England, Scotland and Northern Ireland on the topic. Arising out of these discussions, significant amendments have been made in the original draft.

The legal profession in this country will act as host to the half-yearly Meeting of the Commission Consultative Des Barreaux de la Communaute Europeenne which will be held in Dublin from 20th-22nd November, 1975.

Solicitors' Accounts

A determined effort is being made to have all Solicitors' Accountant's Certificates brought up to date. Action has been taken in respect of all Accountant's Certificates outstanding for the accounting year 1972 and earlier. Solicitors whose Certificates in respect of the accounting year 1973 are still outstanding, will be requested to take urgent action in the matter in the near future.

Settling Accounts with Clients

"Solicitors take their time in settling accounts!"

That generalisation is a frequent criticism of the profession because of delays in accounting to clients for funds received upon the completion of a transaction.

The public is becoming more conscious of the value of money and the interest that may be lost because it is in transit, or—worse still—is sitting in their solicitor's office.

To avoid recurrence of the criticisms the following accountancy procedure is suggested :

In any straightforward transaction a solicitor should aim to account to his client the day after the transaction is closed in respect of monies paid to him for that client.

Where an unknown liability may exist the solicitor should account to the client the day after the transaction has been completed, but should point out to the client that he must retain a sum which will more than cover the unknown liability.

If, through the complexity of a particular case, it will take some days for a solicitor to account to the client after completion, as a matter of prudent public relations and communication, he should inform the client of this fact and give the client a reasonably accurate date upon which he will render his account.

James J. Ivers,
Director General

Young Solicitors' Seminar, Kinsale

The 20th Seminar of the Society of Young Solicitors was held in the delightful resort of Kinsale, Co. Cork, on Saturday, 11th and Sunday, 12th April, 1975, and attracted the attendance of 170 solicitors.

Mr. Peter Shanley delivered the first lecture in the Trident Hotel, where all lectures were held, on Saturday morning, on *"Hire-Purchase Law and Hiring Agreements"* mainly insofar as it affects hirers. Normally a hirer would not consult a solicitor unless he has a repayment problem, or that the goods let are unsatisfactory; unfortunately the solicitor is usually faced with a restrictive standard form.

A Hire-Purchase agreement is not a simple bailment or a contract for sale, but combines the elements of both—as in the case of bailment, the terms are prescribed irrespective of condition — and as in the case of sale, the option to purchase gives the the hirer a present right to acquire future title. A *hiring agreement per se* is a simple bailment, and there is no option to purchase. There can be *financial leases*, by which the hirer takes the goods for the estimated working life of the goods at a rental equivalent to the full price together with a financial charge. But in hire purchase transactions, the Finance Company still plays the major role. The standard form defines the hirer's obligations in minute detail, and the owner exempts himself from as many obligations, as possible, such as liability for any loss or damage. The *Contra Proferentem Rule* states that where a contractual provision is ambiguous, it will be very strictly construed against the party who seeks to rely on it; thus conditions would not necessarily include warranties. As regards the *Doctrine of Fundamental Breach*, the **Clayton Love** case (104 ILTR 157) held that an exemption clause could not be relied upon to cover a claim arising from a fundamental breach; the law to be applied will ultimately depend on the Judge who hears the case.

It is a question of construction whether terms, implied or expressed, may be avoided by the use of exemption clauses. If the person letting the goods is described as "the owner", there is an express condition that, at the time of delivery of the goods, the person letting the goods on Hire-Purchase has good title to them. In Ireland a fundamental breach of the condition of title would not in any circumstances be protected by an exemption clause. Where goods are let on hire or hire-purchase by description, there is an implied term that the goods let correspond with that description; if the goods do not correspond to the description, the hirer can either reject them and recover the payments made, or sue for a breach of warranty. There is also an implied condition that the owner of the goods will deliver them subsequently in the same condition as when the agreement was signed.

There is an implied warranty that the hirer shall have and enjoy quiet possession of the goods; a breach of this warrantly should be remedied by repudiating the agreement, and suing on the express condition of title. There is also an implied warranty that the goods shall be free from any incumbrance in favour of a third party when the property is to pass. In many agreements, there is, of course no implied term as to merchantable quality, but in hire-purchase agreements, there is such an implied condition in respect of latent defects. In cases of hire, the owner has a duty to ensure that the goods let on hire are as safe as possible.

In hire-purchaes transactions, the House of Lords decided that in general the dealer is not to be treated as agent for the Finance Company **(Branwhite v Worcester Works)**—(1968) 2 All ER 104. It is therefore safer ofr the hirer to sue both the Finance Company as owner, as well as the dealer. To be enforceable, every Hire-Purchase agreement must be in writing. As a result of revocation of various statutory instruments, there are at present no statutory controls on hiring agreements, and they need not even be in writing. The maximum Court jurisdiction either in relation to the recovery of goods or to enforce payment of a sum under a hire-purchase agreement, is a claim for £250 in the District Court and for £1,000 in the Circuit Court. If the hirer has paid one third of the value of the goods, the owner cannot recover possession of them.

On Saturday afternoon, the **Hon. Mr. Justice Finlay, President of the High Court,** delivered an address on "Advocacy". It has been said of a good advocate that he can win a bad case before a good Judge. The President emphasised that his remarks must be personal, and were based on practising the craft of advocacy. A pleading lawyer must involve himself in one of these 5 tasks:

(1) The outline of the facts which he either intends or hopes to prove.
(2) The direct examination of witnesses.
(3) The cross-examination of witnesses.
(4) The direct examination and cross-examination of experts.
(5) The submissions based on law or on the facts.

In outlining the case, one may assume that the Judge and Jury know nothing of the facts of the case, as modern pleadings are not designed to do so. The material facts should consequently be presented reasonably fully, as well as in chronological and logical sequence. Although this may depend on the eccentricities of the Judge, it is usually possible to prophesize what will form the vital facts of the case. As between understatement and overstatement of a case, it is wiser to understate it. But the flowery and ornate speeches that used to be fashionable have now disappeared. The opening of a case is more significant before a jury than before a Judge.

As to direct examination, many more cases have been lost by a bad or inept direct examination than were ever by a clever cross-examination. Ask the witness first a number of non-contraversial questions, and

only afterwards bring in controversial facts. As far as possible, stick to the language the witness used in his statement to the Guards. The logical and chronological sequence of events should be adhered to. Normally too many questions are asked in direct examination. Repetition should be avoided, and also unnecessary corrobation. Matters of peripheral circumstantial detail should be barred, as they are fodder for cross-examination. It is inadvisable to prepare questions in advance, in order to examine expert witnesses. But the listing of events and facts in advance is beneficial.

As to cross-examination, it is better that it should be short rather than long. If you obtain an admission from a witness in cross-examination, you should not attempt to repeat the question. If you do not know the answer, do not ask the question in cross-examination, as it would help an acute and untruthful witness. Witnesses are normally not prepared to contradict directly what they have already said. If a witness exaggerates a tale, this is often fabricated, and may be discovered in cross-examination. The cross-examination should be started quietly and courteously, though later stern and severe questions may yield results. It is unwise to try to destroy the credit of a witness, unless this can be proved by documents or extraneous circumstances. If a witness is untruthful on main issues, he is likely to be untruthful also on peripheral issues, and cross-examination should elicit this. In cross-examination, you should always cease pursuing the issue, or even the cross examination itself, after you have made a breakthrough. You should never turn a witness, who has become contemptible in the eyes of the Court into an object of sympathy. You can never prepare a good cross-examination in advance, as you must have liberty to change your questions.

As to expert witnesses, every discipline has its own particular terminology. It is therefore essential, if you are examining or cross-examining a professional expert, to understand fully not only what he is saying, but why he is saying it, and you should encourage him to speak the layman's language. Do not denigrate a doctor who is not as eminent as yours. It is dangerous to cross-examine, unless you know the expert evidence thoroughly. But you may ask an expert how he has arrived at his opinion, and if this seems nonsensical, so much the better.

As to submissions of law, you should never quote a section or legal authority on the basis that it generally deals with the point at issue in the case. You must foresee the end and total consequences of any proposition of law or fact you are making to a Court; you must ensure there will be no back-lash from it. You should if possible have two alternative arguments either on law or facts ready to submit to a Court. You should also watch the way a Judge's mind appears to be going, and if he favours one of your minor points, you should earnestly follow it.

Mr. Patrick Connolly, S.C. delivered the lecture on Sunday morning on *"Damages in Tort and in Breach of Contract"*. Damages are a form of pecuniary compensation obtained as a result of a successful action in tort or breach of contract. *Exemplary or punitive damages are* awarded as a *solatium* for insult or outraged feelings; in England, the decision in **Broome v Cassell**—(1972) 2 W.L.R. 645—has effectively abolished exemplary damages at common law. The measure of damages in tort may be termed *Restitutio in Integrum*—a sum of money which will as far as possible put the party who has been injured in the same position he would have been in formerly. In motor accident cases, the injuries are often so serious that this is often impossible. However the damages must not be too remote, and the plaintiff must as far as possible mitigate his loss. The broad principles upon which the Supreme Court will intervene in personal injury accidents is concisely stated by Lavery J. in **Foley v Thermo Cement Products Ltd.—90 I.L.T.R. 92: The Judge** would have to compare his own estimate with the verdict, and decide whether there is a reasonable proportion between the sums. It would not be useful, in view of the change in the value of money, to give examples of awards. In serious cases like total wreck cases, the majority in **Doherty v Bowaters—(1968)** I.R. 277 held per Lavery J. that the sum to be awarded must be such as will liberally provide the plaintiff for all his reasonable needs in his future life. In many personal injuries cases—and notably in **McArdle v McCaughy**(1968) I.R., 47—the Supreme Court have stated that the damages to be awarded should fall under four headings:

(1) Pain and suffering to date of trial; (2) Pain and suffering in the future; (3) Special damages to date of trial and (4) Special damages in the future.

In a long line of cases including **O'Leary v O'Connell**—(1968) I.R. 249—the Supreme Court decided that a plaintiffwhowish es to found a claim for future loss of earnings, must call the evidence of an actuary to capitalise such loss—and he must also adduce evidence of his present earning capacity **(Roche v Kelly —(1969) I.R. 100)**.

As to the measure of damages, in general, the party not in breach is entitled to compensation for loss of his bargain, according to the rule in **Hadley v Baxendale (1854)**.

The test for determining remoteness of damages in tort relates to either liability or to damages. In effect, this test is the same. The **Wagon Mound —** (1961) A.C. 388—decided that in order that compensation for damage should be recovered, the loss should be reasonably foreseeable as following from the wrongdoing. If the rules of strict liability, as **Rylands v Fletcher** apply, then the defendant is probably responsible for the immediate and direct consequences of the harmful event. This foreseeability test has little application to cases under Part IV of the Civil Liability Act 1961, as the right of action is directly given to dependants for pecuniary loss.

The scope of the protection afforded to the injured party is different in breach of contract as against tort; in contract, one must mainly consider what is in contemplation under the contract, and the test is thus narrower **(Victoria Laundry v Newman—(1949)** 2 K.B. 528). But the plaintiff must at all times take all reasonable steps to mitigate his loss.

The text of Mr. David Clarke's lecture on "Equitable Jurisdiction" is not available. The successful Conference Dinner was held on the Saturday night in Acton's Hotel.

BOOK REVIEWS

Ivamy (E. R. Hardy)—General Principles of Insurance Law. Third edition. Pp. 646. London, Butterworth, 1975. £16.00.

Messrs. Butterworth have published a series called "Insurance Library" and Professor Ivamy is such a master of the subject that he has also published the other three volumes in the series, namely "Marine Insurance", "Fire and Motor Insurance", and "Personal Accident, Life and other Insurances". There has been much jurisprudence on this subject in England since 1966, when this work was first published, and the learned author has covered the case law in the various chapters very fully; those who read the Preface carefully, will find the recent cases listed. The volume consists of seven parts—Part I—Introductory (Chapters 1 to 6) contains such matters as Parties, Classification and Nature of a Contract of Insurance. Part II—The Making of a Contract (Chapters 7 to 15) specifies offer, acceptance, non-disclosure and misrepresentation. Part III—The Policy (Chapters 16 to 35) deals with alteration, rectification, renewal and exceptions and conditions attached to policies. In Part IV—The Claim (Chapters 36 to 40), the doctrine of proximate cause, and burden of proof are dealt with. Part V—The Settlement of Claim (Chapters 41 to 48) contains such matters as re-instatement, subrogation and contribution. Part VI—Agency in Insurance Transactions (Chapters 49 to 53) specifies relationships between principal and agents as well as third parties. Finally Part VII—Miscellaneous (Chapters 54 to 55) deals with conflict of laws and the effect of war.

It will thus be seen that this masterly work is fully comprehensive, and absolutely essential for all practitioners specialising in Insurance Law.

Bullen (E.), S. M. Leake, and I. H. Jacob—Precedents of Pleadings in the Queen's Bench Division in the High Court. Twelfth edition by I. H. Jacob. 8vo. Pp. cxc, 1457. (Common Law Library No. 5). London, Sweet & Maxwell, 1975. £25.OO.

This reviewer once heard a lecture on arbitration procedure delivered by Master Jacob, Senior Master of the Supreme Court in England, and he was struck with the ease and clarity which the learned lecturer dealt with the most intricate points of practice which he obviously knew thoroughly. It was only fitting that the task of bringing out a new edition of Bullen & Leake should be entrusted to his capable hands, Lord Denning had pointed out in his foreword, Master Jacob has re-cast the work entirely, brought in all the countless modern developments in the law, and framed new forms of pleading, and it is therefore most appropriate that his name should be added to the title of the work. In the course of a lengthy Preface explaining these new steps Master Jacob has emphasised :

(1) The famous 3rd edition of Bullen & Leake (1868) faithfully mirrored the pre-Judicature Acts system of pleading.
(2) Since the Judicature Acts of 1873 and 1875, pleadings have continued to play the predominant role in the practice and procedure of the Supreme Court. Accurate clear and intelligible pleadings are as essential today as they have ever been.
(3) It would have been easy to follow the previous form and content hallowed by tradition. Such a course would seem to elevate veneration to the point of idolatry. He had therefore decided to replan, refashion and rewrite the whole work.
(4) The former arrangement of the work has been entirely discarded, and replaced by a simpler and more modern arrangement. There are now just Statements of Claims and Defences, without distinguishing between Contract and Tort.
(5) There has been an increase in the number of separate subjects for which a precedent has been provided, such as confidential information, negligent misstatement, and rectification, whereas the titles "Negligence", "Money", and "Carriers" have been subdivided. There are now 111 Sections of Statements of Claim, 115 Sections of Defences and 15 Sections of Subsequent Pleadings.
(6) The valuable explanatory notes have been brought up to date.
(7) As pleadings are of crucial importance in the machinery of justice, a clear, coherent, logical and comprehensive examination of the Systems of Pleadings will be found in Chapter 1.
(8) Precedents are a practical guide or model, and should be used only with care, circumspection and intelligence, and should be varied and adapted as may be necessary.

The Statements of Claim alone cover 700 pages and are arranged alphabetically from "Account" to "Work and Services". The Defences cover more than 400 pages, and are also arranged alphabetically.

In view of the current high prices of printing and binding, it was inevitable that this most masterful book of precedents should be published at a high figure, but practitioners who often have actions in the Superior Courts could not do without it, as it is absolutely indispensable. The publishers are to be congratulated on adding to the Common Law Library a volume of precedents that is infinitely more worthy than its predecessors.

Borrie (J. G.)—Commercial Law. 4th edition; pp. 396. London : Butterworth, 1975; £5.80 (limp).

Those of us who had already advanced our knowledge of Commercial Law under Professor Borrie's expert guidance will not be surprised that the Dean of the Faculty of Law in Birmingham has produced no less than four editions of his learned work since it was first published in 1962. Professor Borrie has wisely concentrated on seven subjects—Agency, Sale of Goods, Hire Purchase and Consumer Credit, Negotiable Instruments, Insurance Law, Contracts of Employment, and Contracts with a Foreign Element—and has stated the essential law. Perhaps the greatest service he has ren-

dered us is the fact that he has given us sufficient detail in cases to make them comprehensible—this is not always the case even in well recognised textbooks. The English Consumer Credit Act 1974, which introduced the reforms rceommended by the Crowther Committee of 1973, is fully covered. Although he could have found some interesting material in Irish and Northern Ireland cases, the author appears to have concentrated on English Cases up to March 1975 but this remains an outstanding work on its subject.

Megarry (Hon. Sir Robert) and H. W. R. Wade—The Law of Real Property. Fourth edition; 8vo, cxvi, 1206p. London: Stevens, 1975; £12.75 net.

This text book has already established itself as the leading one on this complicated and difficult subject, and the eminence of the authors is unquestioned. Mr. Justice Megarry has modestly stated in the Preface that the books derives no added authority from the fact that he is a Judge but its reputation was well established before his elevation to the Bench. The stated purpose of the work, when it was first published in 1957 was to state this law in a form intelligible to students and helpful to practitioners, and this purpose has been admirably maintained. It is of course unfortunate that Irish legislation in Real Property has not kept pace with English legislation, although there is a hope that a revised draft of the new real property legislation prepared in the Sheridan Report may be adopted in the future. Without detracting in any way from the unquestioned excellence of this work, it is necessary to sound a word of caution, in so far as Irish practitioners are concerned, that all legislation and case law since 1925 must be treated with reserve, and should be carefully checked to see whether it applies in Ireland. Subject to that warning, there is no textbook known to this reviewer where the complicated terms of real property law are explained more easily. Even in most difficult subjects—future interests and mortgages—Professor Wade and Mr. Justice Megarry have the knack of making it sound easy. The learned authors are to be congratulated on their industry in producing an up to date edition of the leading textbook on this subject.

Wickenden, C. D.—The Modern Family Solicitor—Guidelines for Practice Today and Tomorrow. 8vo. Pp. x, 237. London: Stevens, 1975. £2.75 (Paperback). £3.25 (Hardback).

The author, a Vice Chairman of the British Legal Association, stresses that the solicitor of today must acquire a sound and comprehensive technical grasp of those fields of law and practice, which he intends to make his own. Its intention is to give some practical tips to a novice who intends to specialise in family practice. The study of legal practice should be accepted as a discipline in its own right. The family solicitor is the firm geared to serve the individual citizen and his domestic and business problems rather than large companies. Of the 27,300 practising certificates issued in England in 1973, only 3,000 were practitioners on their own. There is alleged to be great overlapping in some English areas, and a dearth of legal services elsewhere. Several new ideas in Continental legal procedure should be explored. Now the solicitor no longer receives a premium for the trainee, but the trainee expects to be paid, and office space has to be provided. There are 14 tips on what to look for. The author has summarised rules in relation to the scope of the practice which he had set out in his "Office Procedure Manual". This volume is decidedly readable, as it is somewhat controversial.

Correspondence

Land Registry, Central Office,
Dublin 7.
25th June 1975

Re Transfer of Part of Land on Folio by by Building Societies

Dear Mr. Ivers,

The copy of your correspondents letter dated 10th June 1975 is being retained here. You may inform him that in effect the procedure he mentions is adopted by many solicitors acting for builders and building societies with a consequential saving of time. The fact that there is not in existence any number for the Folio that will come into being as a result of the Transfer of part need not prevent him from sending up the necessary forms for the new Land Certificate and the new Land Registry copy map. The property the subject of the Land Certificate and the new Land Registry copy map can be quite satisfactorily identified by reference to the deed of Transfer of part.

Yours sincerely,

A. J. O'Dwyer, *Registrar*

CAPITAL GAINS
and
WEALTH TAX
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Galway 65261

also at Belfast and London

The Incorporated Law Society of Northern Ireland

The more important developments which have taken place in Northern Ireland in relation to the Solicitors' Branch of the legal profession are summarised below.

1. Remuneration

The Remuneration of Northern Ireland Solicitors in conveyancing matters is mainly regulated by *ad valorem* scales. In the lower Courts remuneration of both Barristers and Solicitors is likewise regulated by scales.

The remuneration of Solicitors in connection with proceedings in the High Court and in connection with the Administration of Estates is regulated partly by fixed fees but predominantly by discretionary fees in the assessment of which regard has to be had to a number of specified factors.

Where scales are used they are on *ad valorem* basis relating to the value of the property being transferred or which is the subject matter of the legal proceedings or claim.

The Society has become concerned at the ever increasing cost of the overheads of running a Solicitors practice but has recognised that the revision of the *ad valorem* scales is complicated by the fact that the values of property and goods have also risen as a result of inflation.

Accordingly the Society has commissioned Professor J. A. Bates, Head of the Department of Business Studies of the Queen's University of Belfast to conduct a survey of Solicitors' remuneration. This survey will comprise two exercises.

The first exercise will be to consider the effect over the last few years on Solicitors' remuneration, where it is governed by *ad valorem* scales, of the fall in the value of money and the rise in the value of property and goods.

The second exercise will comprise a study of the effect over the same period of the remuneration, profit margins and real income of Solicitors from all sources.

A questionnaire, the completion of which it is felt is not unduly onerous, has now been issued to all members of the Society.

In commissioning this survey and formulating the questionnaire it was recognised that the major obstacle to obtaining a satisfactory response with the traditional reluctance of the legal profession to disclose, to anyone other than their Accountant or the Inland Revenue their actual profits or income.

To endeavour to overcome this obstacle Professor Bates has given an undertaking that the confidential information incorporated in the replies to the questionnaire will be maintained by him in the strictest confidence and not made available to any assistant or stored on a computer and that it will be destroyed when the survey has been completed. It has been arranged that the questionnaires may be returned to Professor Bates either by the Solicitor concerned or by his Accountant. If the questionnaire is returned by the Accountant it will only be necessary for the Accountant to indicate to Professor Bates that he is forwarding the questionnaire on behalf of an unnamed Solicitor or firm of Solicitors.

In regard to the fixed fees pertaining to High Court Litigation new Rules of Court have recently been enacted and will come into operation in the middle of September providing for a 35% increase. This is similar to the increase granted in England and Wales a few months ago. Having regard to the time which has elapsed since these fees were last revised this increase is not regarded as adequate but nonetheless it is the most that can be obtained within the terms of present government policy.

2. Monopolies Commission

The investigation by the Monopolies Commission of the restrictions on advertising by the legal profession in Scotland and in England and Wales does not extend to Northern Ireland. Nonetheless the Society has, at the request of the Commission, given an undertaking that the Society will have due regard to the findings of the Commission and will reconsider, in the light of the Commission's findings, the Society's own Regulations.

3. Legal Education

The report of the Committee on Legal Education in Northern Ireland which was presented to Parliament in September 1973 recommended that the system whereby intending Solicitors served a period of three years under Indentures of Apprenticeship should be abandoned and that both Barristers and Solicitors should acquire their academic knowledge at universities and thereafter should undergo a one year full time course of vocational training at a new Institute of Legal Education which would form part of the Queen's University of Belfast.

A Working Party, representing the University, the Barristers profession and the Society has been making arrangements for such a revised system of education to be introduced and considerable progress has been made. It is currently envisaged that the new Institute of Legal Education will be established and commence operation in September 1976.

4. Solicitors' (N.I.) Order 1975

New legislation pertaining to the government of the Solicitors' profession in Northern Ireland has been pending since May 1971 but owing to the changes in legislative arrangements pertaining to Northern Ireland which have occurred over the last few years this legislation has not yet been enacted. However it is presently understood that the legislation will be laid before Parliament at the beginning of the next ses-

sion and will be enacted sometime in Autumn 1975.

This legislation provides for the establishment of a compensation fund, greatly widens the powers of the Society, consolidates existing law relating to Solicitors and, broadly speaking, brings such law into line with that pertaining to Solicitors in England and Wales.

5. Professional Indemnity Insurance

The Solicitors' (N.I.) Order 1975, referred to at 4 above, incorporates powers for the Society to introduce a compulsory scheme of Professional Indemnity Insurance. The possibilities of the compulsory scheme proposed by the Law Society (in regard to Solicitors in England and Wales) being extended to cover N. Ireland Solicitors are currently being investigated.

6. Licensing of Solicitors — Consumer Credit Act 1974

This Society is equally concerned with the matters set out in the memorandum of the Secretary of the Law Society of Scotland. It was originally taken for granted that the Society would apply for Group Licences under the Consumer Credit Act but having regard to the present attitude of the Director General of Fair Trading and the comparatively small number of Solicitors in N. Ireland consideration is now being given to the merits of each Solicitor being required to take out his own individual licences.

7. Legal Aid

The Society has decided to sponsor a Rota Scheme whereby Solicitors will, on a rota basis, attend at Citizens Advice Bureaux and other approved advice centres.

In addition the Society has decided to prepare and publish a Referal List covering all Solicitors in the province and which will indicate the types of case which they are prepared to accept and undertake on reference. This list will be made available for referal to Citizens Advice Bureaux and other approved law centres, Public Welfare Officers, appropriate voluntary organisations and public offices.

It is anticipated that Legal Assistance (in the form of the Green Form or £25 Scheme presently operated both in Scotland and in England and Wales) will be available in N. Ireland by the end of this year.

For some time it has been claimed in certain quarters that there is, particularly in the city of Belfast, an unmet need for legal services which are not being provided by the Private Practitioners. It is currently envisaged that in the near future a Law Centre will be established on a temporary experimental basis with Government funds and approval of the Society. The Centre will employ one or two full time Solicitors, a full time Social Worker and ancillary staff. The Centre will be under the management of an independent management committee. The Solicitor or Solicitors attached to the Centre will operate as "resource Solicitors" and will be authorised to seek out sections of the population who have rights of which they are ignorant and to give advice in regard to the enforcement of such rights. The said Solicitors will also be authorised to undertake, through the Statutory Legal Aid Scheme, the conduct of proceedings which Private Practitioners are not prepared to undertake. The essential basis of the approval given by the Society to this project is that the service to be provided by the Centre will be complementary to and not competitive with private practice.

It is also envisaged that Government funds will be made available for the employment by the Society of a Liaison Officer who will maintain liaison with appropriate voluntary organisations and public welfare bodies, assist with the education of Councillors and other Social Workers, supervise the operation of the Rota Scheme and the Referal List referred to above and seek out the localities and types of work where the service provided by Private Practitioners is inadequate and to explore methods of remedying such inadequacies, if any.

8. Annual Subscriptions

The Annual Membership Subscription payable by each of our members for the current year is £12.50. In addition each practising Solicitor pays a fee for his Annual Practising Certificate of £50.

In future those taking out Practising Certificates will have to pay, in addition, an annual contribution or levy to the Compensation Fund.

National Prices Commission Enquiry

The N.P.C. has appointed Professor Dennis Lees, Department of Industrial Economics, The University of Nottingham to review solicitors' remuneration. His terms of reference are as follows:

(1) to review the total income of solicitors and increases in their total expenses since 1970 and, if practicable, since 1965;
(2) to identify the main classes of business and expense and to trace their behaviour in recent years;
(3) to determine to what extent there is "cross-subsidisation" of one class of business by another;
(4) to consider "delays" in the legal system and particularly those associated with (a) Court Organisation and practice and (b) the Taxation of Costs;
(5) to comment on the scope for increased efficiency among solicitors, for example:
   (a) Amalgamations of Firms;
   (b) the Introduction of Time Costing in preference to scale fees;

(c) the elimination of Restrictive Practices;
(d) improvements in Education and Training;

(6) where practicable, to make comparisons with the U.K.;

(7) in the light of the foregoing, to determine how far the solicitors' present claim for an Increase in Fees would be met.

Already Professor Lees has had the opportunity of meeting a very representative cross-section of the profession in the country and many of the special situations as they obtain in Ireland, have been brought to his notice. Hon. Secretaries of Bar Associations have been asked to convene local meetings for the purpose of preparing memoranda. In the meantime, members of the profession who have particular viewpoints to put forward are asked to submit them to the Society or direct to Professor Lees at Nottingham University.

Professor Lees emphasised to all he met with the importance of completing and returning the Costs Questionnaires to Coopers & Lybrand.

The Register

REGISTRATION OF TITLE ACT 1964

Issue of New Land Certificate

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

Dated this 31st day of October 1975.

N. GRIFFITH, Registrar of Titles,

Central Office, Land Registry,

Chancery Street, Dublin 7.

Schedule

(1) Registered Owner: Elizabeth Lynch. Folio No.: 534L. Lands: The dwellinghouse and premises known as 34 Clare Road situate on the east side of the said road in Drumcondra. City of Dublin.

(2) Registered Owners: Arthur Moore and Mary Moore. Folio No.: 4582. Lands: Derreens (Parts). Area: 60a. 2r. 1p. County: Kildare.

(3) Registered Owner: Michael Oliver Mulcahy. Folio No.: 21662. Lands: Stillimity. Area: 37a. 0r. 16p. County: Tipperary.

(4) Registered Owner: Michael Oliver Mulcahy. Folio No.: 17040. Lands: Graigue (part) (E. D. Graigue). Area: 43a. 1r. 0p. County: Tipperary.

(5) Registered Owner: Michael Sheehan. Folio No.: 4364. Lands: Banteer. Area: 0a. 0r. 22p. County: Cork.

BOOK KEEPING SERVICE

Ex Banker with experience of solicitors' book keeping offers part-time book keeping and financial management service. Terms by arrangement. Contact R. F. Tottenham, St. Heliers, Dalkey, Co. Dublin.

Notices

Graduate, B.A. (Mod.) in Classics, T.C.D., three months experience as filing clerk in solicitor's office in London, seeks similar position in Dublin. Replies to Mr. J. Sutton, 2 Northbrook Road, Ranalagh, Dublin 6.

THE INCORPORATED LAW SOCIETY OF IRELAND

DINNER DANCE

Shelbourne Hotel, Dublin

Thursday, 28th November 1975

Dancing 8.30 p.m. to 2.00 a.m.

Dinner 9.30 p.m.

Tickets on sale at the Bookstall, Shelbourne Hotel

Table Reservations through Hotel Only

THE GAZETTE OF
THE INCORPORATED
LAW SOCIETY
OF IRELAND

October, 1975
Vol. 69 No. 8

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PRESIDENT
William Anthony Osborne

Vice Presidents
Patrick C. Moore
Joseph L. Dundon

Director General
James J. Ivers, M.Econ.Sc., M.B.A.

Librarian & Editor of the Gazette
Colum Gavan Duffy, M.A., LL.B. (N.U.I.)

Officer Hours
Monday to Friday, 9 a.m.—1 p.m.; 2.20 p.m.—5.30 p.m.
Public, 9.30 a.m.—1 p.m.; 2.30 p.m.—4.30 p.m.

Library Hours
9 a.m.—1.45 p.m.; 2.30 p.m.—5.30 p.m.

Telephone
784533

Advertisements to :
Advertising Manager,
Incorporated Law Society,
Four Courts, Dublin 7.

The Editor welcomes articles, letters and other contributions for publication in the Gazette.

Opinions and comments in contributed articles and reviews are not published as the views of the Council unless expressly so described.
Likewise the opinions expressed in the Editorial are those of the Editor and do not necessarily represent the views of the Council.

The Gazette is published during the third week of each month; material for publication should be in the Editor's hands before the 15th of the previous month if it is intended that it should appear in the following issue. Acceptance that material will in fact be included in any particular issue for publication is not a guarantee that it will be published then since this must depend on the space available.

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Annual Report of the Council 1974-75

THE PRESIDENT REPORTS

1.1 In the year under review we have continued the process of change which became evident in recent years. The traditional Annual Report to our members this year follows on the lines of its predecessor by making use of this issue of the *Gazette* to publish the Report and the Reports of its Committees.

1.2 During the year, thanks to the splendid work of the Chairmen and members of the various Committees established by the Society, coupled with the very able assistance rendered by our Director General, Jim Ivers, and his staff, the targets set for 1975 were achieved, notwithstanding the fact that many other important matters arose through the year which required constant attention. I hope it was a year of progress. Undeniably it was in the educational field. The changed educational system will have far reaching effects in the future, will be of immense value to our students and lasting credit is due to the Court of Examiners and to the Education Committee for their sterling work and for their achievements, notwithstanding the many problems which they encountered and which at times appeared to be insurmountable.

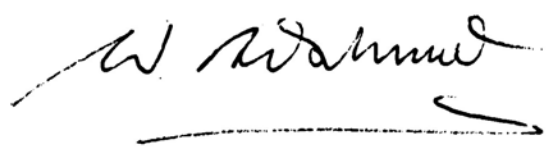
1.3 Community attitudes to professions have changed and hence, we have adopted what I hope is a more progressive approach to the problems which surround us. This approach has resulted in criticism which was perhaps inevitable. On the credit side, from constructive criticism, we can identify areas where improvement in our existing services and where new approaches such as in the field of Public Relations can be beneficial to us and helpful to the public.

1.4 During the year, contact with overseas colleagues was not only renewed, but also established. I had the honour of representing our Society at a meeting in Wellington last April of the New Zealand Law Society and of meeting with many of the Bar Associations in New Zealand and later in Australia as their guest. I was also guest of the French and Belgian lawyers during the year and had great pleasure in attending the 25th Centenary Celebrations of the Law Society of Scotland in Aviemore in May, of enjoying the hospitality of the Law Society on the occasion of their 150th Celebration in London in May and later at their Annual Conference in Eastbourne in October, the Annual Conference of the Incorporated Law Society of Northern Ireland at Gatehouse-of-Fleet in Scotland last May and the hospitality of the Lord Chancellor at the opening of the legal year ceremonies in London in October. I also had the opportunity of meeting many members of our profession through the country as well as the Bar Associations and the representatives of the other professional groups and organisations. I would like to thank them all sincerely for their kindness and support and for the hospitality which they have extended to me.

The President, William A. Osborne

1.5 I am particularly grateful to the many members of our profession, from the young and older generation who, while not members elected to the Council, nonetheless gave of their valuable time to partake in Committee work for the Council, providing invaluable advice, expertise and guidance. The profession is not generally aware of the value of this contribution, nor of the fact that many of the Council's achievements emanate from this source.

1.6 I have received wonderful encouragement and support from every member of the Council and our profession during the year and I am very grateful for it and also to the Society's staff who were continually at either elbow, offering assistance.



President

COUNCIL

William A. Osborne,
President

Patrick C. Moore
Joseph L. Dundon
Vice-Presidents

2.1 The year under review commenced with a Policy Meeting in Galway at which the Director General, Jim Ivers, presented a paper commenting in detail on various activities of the Society. The paper was fully discussed and targets were set for 1975 which included the introduction of a Superannuation Scheme, completing the final regulations and arrangements for the new educational programme, the arranging of suitable Seminars in conjunction with the Young Solicitors' Association, the introduction of revised Bye-Laws in comprehensive form, submission and processing of a claim for a review of costs in Court work and the publication of further leaflets by the Public Relations Committee. I am glad to say that the targets set were achieved, notwithstanding the fact that during the year, further important matters of immediate concern arose which required detailed attention and which were time consuming.

2.2 The Council achieved a substantial volume of work and came to many important decisions, all based on detailed reports and processing by the many Committees established by the Council.

2.3 One of the major tasks was again in the educational field. By reason of a sustained and dedicated approach by the Committee Chairman, Mr. Buckley, and by the Committee established to draft the new educational regulations, it was possible for the Council to adopt the new regulations, at its meeting in March 1975, consequent on which the new programme took effect from the 1st October. Only the Council and the Committee know of the very arduous task which was involved for the Committee and they are to be fully complimented for their achievements.

2.4 Taxation Legislation which was introduced during the year was unprecedented in its intricacy and in the many fundamental and far-reaching changes flowing from it. For the profession three major concerns emerged which were the question of our professional privilege, the problems created for the tax payer and the practical problems involved in the application of the new legislation. A sub-committee was formed and submissions were made to the Minister for Finance and subsequently discussed with the Minister for Finance and with the Revenue Commissioners. Consequent on the discussions which took place, amendments were made in the Capital Gains Tax Bill and in the Wealth Tax Bill. The Committee has still under consideration the Capital Acquisitions Tax Bill and further meetings with the Revenue Commissioners will take place and submissions will be made in relation to the Bill. Meanwhile, meetings with the Revenue Commissioners are continuing in relation to the practical aspects of the operation of the provisions of this new legislation. During the year also, farmers became taxable and the new legislation in that respect was also examined by the Committee and a Seminar was held, which was helpful and useful to the profession. Meetings have taken place with the Inspector of Taxes in relation to the practical problems arising from the taxation of farmers and further meetings will take place to iron out any difficulties or problems which may arise.

2.5 By reason of the importance to the profession of the new taxation legislation, in conjunction with the Young Solicitors' Society, two Seminars were arranged, one in Cork and one in Dublin. The importance of the subject, the reputation and excellence of the lecturers chosen by the sub-committee, reflected itself in the attendance, which was one of the largest attendances by the profession at a Seminar of this nature. The Council and the profession are very grateful to the Chairman, Mr. Curran, and to the Chairman of the Young Solicitors' Association, Mr. Michael Carrigan, for their efforts in successfully staging the Seminar and in their choice of speakers.

2.6 At the Annual General Meeting of the Society in November 1974, a decision was taken by the profession to proceed gradually with the development and refurbishing of Blackhall Place, with the intention of moving into Blackhall Place and thus providing accommodation for the Secretariat and for our students as soon as possible and at the same time, retaining the Solicitors' Buildings as consultation rooms and for other Society purposes. Consequent on that decision, plans were drawn up to deal with the first stage of the development and refurbishing, tenders were sought and a contract has since been signed with the contractors. Work on the first stage has commenced and it is hoped that the result of this work will begin to become apparent in early summer of next year.

2.7 Contact was maintained with the various Government Offices with whom the profession have contact during the year and discussions took place with a view to increasing the staffing and efficiency in the offices in question. The Council have received the full support and co-operation of the Officers in charge of the Departments in question, but the staffing problems still remain and have still to be overcome. One must question the overall loss to the economy arising by reason of inadequate staffing in many of the offices referred to.

2.8 The Council set up a Conveyancing Committee in November 1974 and this Committee has met on many occasions, but by reason of changes in financial legislation, the redrafting of the Council's Contract for Sale and Requisitions on Title have unfortunately been delayed. The new draft contract has been prepared and Counsel's comments have been obtained and it is hoped that the new contract, the amended requisitions and a scheme in relation to multiple flat buildings, will be available for the half yearly meeting in May next.

2.9 The Council's Bye-Laws and Regulations were redrafted during the year, and updated and adopted in new form.

2.10 The impact of the E.E.C. has enormously increased the work of the E.E.C. Committee. There is a continuous flow of draft directives from various Government Departments and the Committee has been very fully occupied in dealing with the drafts, in putting forward proposals and in meeting the Department Officials concerned and in meeting with and discussing the draft Directives with representatives of other Member States. In this respect, there has been full consultation and meetings with our colleagues in the North of Ireland, in England and Scotland and in the E.E.C. countries, with particular reference to the movement of lawyers within the European Community and the provision of service by lawyers in the various Member States.

2.11 As the profession is aware, the National Prices Commission has appointed a Consultant, Professor Dennis Lees, to review our remuneration under wide terms of reference. So that Professor Lees may be fully informed, it is essential that every Bar Association consider in detail the terms of reference and the queries raised by Professor Lees in his letter to the Society and arrange to submit, if they have not already done so, a memorandum containing their comments and submissions. Individual practitioners are invited to do so also. It is absolutely essential to ensure that comments and submissions, where possible, be supported by statistics or factual information which prove the validity of the comments and submissions made. A number of practitioners undertook to assist Professor Lees by furnishing accounts and by making their offices available for inspection. It is equally essential to ensure that all commitments in this respect be honoured immediately and if there is any outstanding commitment by any member of the profession, the individual concerned should immediately contact our Director General.

2.12 During the year, the Council accepted with regret the resignations of Mr. Ralph Walker (Dublin) and Mr. T. V. O'Connor (Swinford, both past Presidents, as well as that of Mr. Peter O'Connell (Dundalk). Mr. John F. Buckley (Dublin) and Mr. Raymond T. Monahan (Sligo) were co-opted to the Council. Mr. Rory O'Donnell (Dublin) was co-opted as the representative of the Dublin Solicitors' Bar Association instead of Mr. Buckley.

REGISTRAR'S COMMITTEE

Patrick F. O'Donnell
Chairman

Walter Beatty
Anthony E. Collins
Maurice R. Curran
Gerard M. Doyle
Ernest J. Margetson
Roderick D. O'Donnell
David R. Pigot
Mrs. Moya Quinlan
Thomas M. D. Shaw

Patrick F. O'Donnell, Chairman

3.1 At the commencement of its year of office, the Registrar's Committee met on a number of occasions, for the specific purpose of considering how best to expedite the handling of complaints against Solicitors, and to expedite the workings of the Committee itself, and the following was decided:

A. The practice hitherto followed of writing three letters to a Solicitor against whom a complaint had been made, would be dropped. In future, one letter only would be written to the Solicitor against whom a complaint was made and if the Solicitor failed to deal with the complaint, before the lapse of seven days, a second letter would be written, requesting him to attend before the Registrar's Committee, and notifying him that failure to attend would result in the matter being referred to the Disciplinary Committee.

B. The Committee would meet each week instead of once every two weeks, to endeavour to clear up the back log and to expedite the ever increasing number of complaints.

3.2 The adverse commentary in the News Media, regarding complaints against Solicitors, and concerning the delays of the Incorporated Law Society, in dealing with these complaints, posed particular problems for the Registrar's Committee. The publicity itself resulted in an acceleration of the number of complaints lodged and resulted in added pressure on both the Secretariat and the Registrar's Committee.

It is a source of great concern to the Committee, that a great number of Solicitors against whom complaints have been made, fail to deal with the complaint in the first instance, and latterly failed, without notice, to appear before the Registrar's Committee, when required to do so. Investigation by the Committee is thus hampered, and delay reflects not only on the individual member of the profession, but on the profession as a whole and the Society in particular. It has therefore proved necessary to be more vigilant and diligent in our handling of these complaints.

3.3 The Committee found it necessary to take a special look at the area of Accountant's Certificates. At one period during the year, there were in excess of one hundred Solicitors who had not filed Accountant's Certificate within the specified period, and some of these dated back as far as 1971. It was therefore decided that these Solicitors would be notified that should their Certificates not be filed within a period of eight weeks, then the Society's Accountant would go to inspect their Books.

It was also decided that a Notice should be published in the *Gazette*, informing Members that where Accountant's Certificates were in arrears, dating back to the year ending December, 1973, that they would be liable to have their Practising Certificate refused for the Practise Year, 1976, until such stage as the Certificates had been brought up to date.

The Committee also considered the actual Certificates filed by Accountants. They made it quite clear that they would not tolerate any deviation from strict adherence to the Solicitors' Accounts Regulations. Certificates filed by Accountants, on behalf of Solicitors, would be subjected to severe scrutiny to ensure that the Accounts' Regulations had in fact been adhered to. The Committee would not hesitate to recommend to the Council refusal to accept a particular Accountant's Certificate in a case where defalcations were discovered.

In the course of its deliberations, it considered the present unsatisfactory state of the Regulations, in so far as a Certificate certifying their adherence does not necessarily ensure the solvency of the Member.

3.4 There have been an increasing number of Applications for Practising Certificates from Solicitors who have not held them for a number of years. These fall under two main classifications:

A. Where a qualified Solicitor has worked solely as an Assistant, or Clerk to a Solicitor, for a number of years, and now applies for a Practising Certificate, then in such case it has been decided that the Solicitor will be required to take out a Practising Certificate for every year dating back to the Practice year, commencing January, 1974.

B. Where a qualified person, has been abroad, for a number of years, and having returned to Ireland, requires a Practising Certificate, then in such a case, he will be given a limited Practising Certificate only; limiting him to working as an Assistant Solicitor.

3.5 The nature of the complaints lodged against Solicitors fall under the traditional headings, and are briefly as follows:

A. Delay is undoubtedly the most consistent grounds for complaint. In our deliberation it would appear that the delay results from a particular Solicitor taking on more work than he can handle. It should however be pointed out that very often a Solicitor is not at fault, but rather some of the Government Services, i.e. the Land Registry, Revenue Commissioners, Probate Office, are the real causes for the delay.

B. Failure to communicate by a Solicitor with his client, results in a frustrated client lodging a complaint. Solicitors, it would appear, all too often, where there is no progress to report, will not communicate with their clients, or respond to their enquiry, and hence the frustrated client resorts to the Incorporated Law Society.

C. Complaints are received in relation to the failure of Solicitors to hand over Title Deeds. Some complaints are lodged in respect of overcharging by Solicitors and where the Committee are satisfied that such overcharging amounts to unprofessional conduct, they will not hesitate, to take the appropriate action.

3.6 The number of complaints referred to the Registrar's Committee since Apirl, 1975, when the new system of referral came into operation, has been one hundred and forty-two. The number of cases referred, by the Registrar's Committee, to the Disciplinary Committee, since April, 1975, has been twenty-five, to date.

The weekly average of complaints since January, 1975, has been twenty-two, and as of October, 1975, there is an approximate average of fifteen to sixteen complaints per week. The Registrar's Committee has met on twenty-three occasions since the 1st day of April, 1975.

3.7 During the year, Mr. Larry Cullen resigned and the Committee were sorry to have lost his service, but were glad that Mrs. Moya Quinlan joined the Committee for the remainder of the year.

The Committee also lost the valuable services and experience of Mr. Patrick Cafferky, who resigned as Assistant Secretary to the Incorporated Law Society.

We were glad however to welcome Miss Margaret Casey, who has been of great assistance to the Committee.

A special word of praise is due to Mr. Basil Doyle, whose unpalatable task it is, to deal with complaints when they are initially lodged. It is he who is the personal contact with members of the public, and whose diplomacy has been responsible, on quite a number of occasions, for defusing what could otherwise be an explosive situation.

All the Members of the Committee, have given of their time most unselfishly, and Mr. Gerry Doyle has acted as Chairman on many occasions.

COMPENSATION FUND COMMITTEE

Patrick F. O'Donnell
Chairman

Walter Beatty
Anthony E. Collins
Maurice R. Curran
Gerard M. Doyle
Ernest J. Margetson
Roderick D. O'Donnell
David R. Pigot
Mrs. Moya Quinlan
Thomas M. D. Shaw

4.1 The profession are obliged by statute to provide full indemnity to members of the public who may suffer loss as a result of defalcation by any practising solicitor. The contribution for the year under review was fixed at £20.

4.2 Payments from the fund in respect of ascertained losses and other expenses during the year amounted to £43,160.

4.3 The book value of the Fund as at 30th April, 1975 was £412,260.

4.4 The report of the Compensation Fund for the year ended 30th April, 1975 is considered satisfactory.

PRIVILEGES COMMITTEE

Michael P. Houlihan,
Chairman

William B. Allen
Bruce St. J. Blake
John B. Carrigan,
Laurence Cullen
Thomas Jackson
John B. Jermyn
John Maher
Peter Murphy
Rory O'Connor
Brian Russell
Thomas M. D. Shaw

5.1 This Committee is charged under the Bye Laws with the duty of protecting the rights of Solicitors and of any difficulties that might interfere with the practitioner in the exercise of these rights. During the past year your Committee have met on eleven occasions on the date of each Council meeting to consider matters circulated to them by the Secretariat as a result of queries raised by colleagues within the preceding month.

5.2 On each occasion, urgent matters are dealt with as they arise, without appearing on the formal agenda, but on many occasions the Committee were hampered in dealing with matters submitted for want of complete information and supporting documentation.

5.3 Among the matters considered by the Committee were the following:

(a) An agreed scheme of co-operation between the Irish Auctioneers and Valuers' Institute, the Institute of Professional Auctioneers and Valuers and Livestock Salesmen and the profession, with a view to establishing a code of conduct between Auctioneers and Solicitors to improve the working relations between both, and to eliminate the problems that had arisen in various parts of the country where Auctioneers had been presenting clients with initial proposals that did not incorporate all the terms that were necessary and did not give the clients the benefit of independent legal advice.

Having considered this matter at a number of meetings, the Society circulated to the profession an agreed code of conduct and agreement.

(b) The question of Professional Indemnity Insurance was considered at numerous meetings by this Committee and arrangements are in hand for the continuance and improvement of the existing scheme.

(c) A number of colleagues submitted to the Committee demand notices issued by various Hire Purchase Companies in the format of summonses designed to have a rather legalistic appearance, and though submitted to date, it did not merit action by the Society but the situation is being kept under review.

(d) The Society considered the application by the Free Legal Aid Committee the establishment of a full time Legal Aid Centre, and monitored the developments in this regard.

(e) Numerous complaints were received of English and Northern Ireland Solicitors practising in the Republic. Appropriate action was taken with the Law Society in England and the Law Society in Northern Ireland.

(f) The Society received numerous complaints of Solicitors advertising property in their own name, this practice being particularly common in the Midlands.

(g) The Committee considered difficulties that had arisen in numerous instances where colleagues had acted for both parties only to find that difficulties resulted. The Society has considered on a number of occasions making a ruling that it would be unprofessional to act for both sides except in a given circumstance. This matter was raised at the half-yearly meeting in Westport and it was decided that a ruling would be adopted if in fact the majority of the profession indicated their support for it.

Michael P. Houlihan,
Chairman

(h) As in previous years the Committee were confronted with numerous difficulties arising out of failure of members of the Profession to comply with undertakings that they had given both to their colleagues and to Banking Institutions, and once again it is necessary to bring to the attention of members of the profession the necessity to monitor all undertakings issued and to ensure that before the undertakings are issued, the Solicitor in question is in a position to fulfil the undertaking, and is not dependent on the action of some third party. Personal undertakings of this nature are all too frequent, and the past year has seen a number of actions before the Courts in which a number of different firms have learnt to their cost the folly of giving such undertakings, without adequate prior scrutiny and consideration.

(i) The Committee considered the problems that had arisen in relation to the operation of the Criminal Legal Aid Scheme and the difficulties relating to the withdrawal of the Members of the Bar from this Scheme and the failure to reach agreement with the Minister for Justice for the fees allowable and the procedures under the Scheme. Members of the Bar have withdrawn from the Legal Aid Scheme pending agreement.

5.4 The Committee considered in conjunction with the Council the difficulties that had arisen by demands of the Revenue Commissioners under Section 176 of the Finance Act 1967 and circulars were issued to each member of the profession in this regard.

5.5 In the past year the Privileges Committee have had to consider in addition numerous disputes that have arisen between Solicitors. On a number of occasions they acted as arbiters between such Solicitors and succeeded on each occasion in resolving the difficulties that had arisen. Instances of this nature were refusal to hand over documents, alleged breach of undertakings, failure to discharge the previous solicitors' costs, allegations with regard to interference by a Trade Union Solicitor without specific client's instructions.

5.6 The Committee repeatedly is faced with complaints from Solicitors about the failure of various members of the Medical Profession to co-operate in furnishing medical reports and in giving evidence on behalf of mutual clients/patients, and similarly complaints have been received from various members of the Medical Profession about failure on the part of Solicitors to discharge their report fees, and where they have retained portion of the damages for medical fees, to discharge such medical fees. Attempts were made to meet with the I.M.A. to resolve these difficulties and to discuss a recognised code of conduct, but unfortunately the Irish Medical Association refused to attend such a meeting which had been previously arranged.

5.7 Solicitors continued to complain of the difficulties created by Banks and lending institutions in requiring members of the profession to complete undertakings which carried personal responsibility, when a request is made for title documents the property of various clients, which are deposited with banks and lending institutions. It is hoped in the forthcoming year to arrange a standard form of authority or undertaking with the various Banks. In the meantime, members of the profession are warned to be very wary of completing without scrutinising all such undertakings and accountable receipts which may carry personal responsibilities.

5.8 Your Committee was also faced with complaints from various members of the profession of the actions of builders and Building Societies in endeavouring to have their own Solicitors involved in acting for purchasers as well as builders and Building Societies. This procedure is presently being looked into by your Committee and the Council with a view to establishing an acceptable code of conduct with both the Builders' Federation and the Irish Building Societies. Your Committee in the past year has directed a prosecution by the Society's Solicitors relating to the formation of limited liability companies by non-qualified persons or companies. Your Committee wishes to acknowledge the assistance afforded to it by Mr. Basil Doyle, Solicitor, the Assistant Secretary, and Miss Anne Kane of the Secretariat, and once again would request members of the profession when submitting matters for consideration, to include all relevant details and supporting documentation, in an effort to avoid the adjournment of matters under consideration.

5.9 Finally, as Chairman, I would like to acknowledge the assistance afforded to me by my colleagues in this Committee who at considerable inconvenience, attend in Dublin once a month, to protect the rights of Solicitors and resolve any difficulties that may have arisen in relation to such rights.

PARLIAMENTARY COMMITTEE

Peter D. M. Prentice, *Chairman*

William B. Allen
Bruce St. J. Blake
John B. Jermyn
Francis J. Lanigan
Raymond T. Monahan
John J. Nash
Patrick Noonan
Patrick E. O'Connell
James W. O'Donovan
Robert McD. Taylor

Peter D. M. Prentice, Chairman

6.1 The function of the Parliamentary Committee is to study the pending legislation coming before the Oireachtas and to make recommendations to the Council. The year just passed has been one of very considerable activity, especially in relation to financial legislation.

6.2 The Committee during the year considered the Criminal Law Jurisdiction Bill 1974 resulting in comments by the Society being sent to the Minister for Justice and the Attorney General. The January 1975 Budget was considered and the implication of the cessation of Death Duties, the Capital Gains Bill, Wealth Tax Bill, and the Capital Acquisition Tax Bill were major items dealt with by the Committee and referred on to the Council and resulted in deputations to the Revenue Commissioners and to the Minister for Finance which resulted in one instance in a modification of the Return to be required by the Revenue Commissioners in respect of Capital Gains.

6.3 Also considered and reported upon during the year were the Mergers Bill 1974, the Town Planning Bill 1974, the question of possible pending Landlord and Tenant legislation and the Wild Life Bill 1975.

6.4 The Committee acknowledges with grateful thanks the able assistance and advice which it received throughout the year, not only from individual members of the Council but from other members of the profession, and your contribution especially in respect of the taxation legislation was especially valuable.

FINANCE COMMITTEE

Gerald Hickey, *Chairman*

Walter Beatty
Peter Murphy
John J. Nash
Peter D. M. Prentice

Gerald Hickey, Chairman

7.1 The audited income and expenditure accounts and balance sheet of the Society for the year ended 30th April, 1975 are now available.

7.2 The book value of the Society's net assets at the balance sheet date was £312,215 an increase of £12,000 on last year. This sum does not include any figure for the premises at the Four Courts or any possible surplus of current value over cost for the property at Blackhall Place.

7.3 The Society had a surplus on income and expenditure account for the year of £18,000 against £48,000 last year but in 1976 will run into deficit, for the first time for many years, mainly due to the expenses of commencing our long term plans for Kings Hospital.

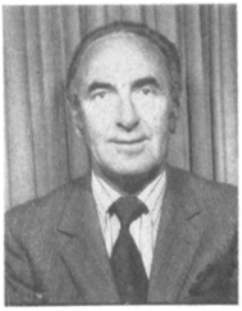
7.4 The Society is, therefore in a healthy financial position at the present but will begin to incur heavy expenditure commencing next year, if it is to maintain the standard of its existing services to members and to improve and extend the range of such services wherever possible and also to carry out its various Statutory and Educational obligations. The Chairman emphasised at the Spring half yearly meeting in Westport that members will almost certainly have to face very much higher subscriptions in the coming years.

7.5 Lastly, the Compensation Fund was in a very satisfactory state at the 30th April, 1975. This fund is, of course, completely separate from the Society's assets and the Society is obliged by statute to maintain it as a separate fund. The fund provides full indemnity to members of the public who suffer loss as a result of defalcation by any practising Solicitor. As at the 30th April, 1975 the fund stood at £412,260 which is a satisfactory figure by any standards. Payments from the fund in respect of ascertained losses and other expenses during the year amounted to £43,160.

COURT OFFICES COMMITTEE

Ernest J. Margetson,
Chairman

Laurence Cullen
Felicity Foley
Christopher Hogan
Nicholas S. Hughes
Francis J. Lanigan
Patrick J. McEllin
William D. McEvoy
Dermot G. O'Donovan
John A. O'Meara
Robert McD. Taylor



Ernest J. Margetson, Chairman

8.1 This Committee met regularly during the past year and considered and reported to the Council on a number of different issues, which were raised by Members throughout the year. The various subjects covered a very wide range and involved the delays in obtaining Local Government Grants; payment of Land Commission costs by Bonds; questions on Stamp Duty; practice of the Probate Office in relation to the acceptance of Affidavit of English law; liability of a Solicitor to insure property; Road Traffic Act Fees; interest on deposits, and numerous other matters.

8.2 A number of Members raised the question with the Committee regarding the Revenue Commissioners' contention that the rate of duty applicable on a sale of leasehold property and chattels should be based on the total value. This matter was referred to Senior Counsel and his opinion is being published in the *Gazette*.

8.3 The question of tendering Government Stocks in payment of Death Duties was considered and Members attention is drawn to the list of such Stocks which appears in the 1975 Directory. Most recent issues of the Stock are not acceptable.

8.4 The old question of inadequacy of notice given by the Legal Diary for the hearing of Circuit Court actions in Dublin was considered. Members attention is again drawn to the system of sending a postcard with the Notice of Trial, and also from enquiries made it is understood that the Circuit Court are hopeful that an extended form of Legal Diary will soon be in operation which will enable more advance notice to be given.

8.5 Once again, the question of increases in the Scale of Costs were raised and referred to the Statutory Committees established for this purpose. Any provision now of course will presumably have to await the outcome of the present investigation of Solicitors charges by the National Prices Commission.

8.6 At the date of preparation of this Report, a meeting has been held with Representatives of the Accident Claims Association in order to negotiate a substantial increase in the present fees paid by Insurance Companies for defence and reports arising out of District Court Dangerous Driving Prosecutions.

8.7 The Committee at all times is available to report to the Council on the administration of Court Offices and all questions of costs and practise.

THE COURT OF EXAMINERS

John F. Buckley,
Chairman
Maurice R. Curran
James W. O'Donovan
David R. Pigot
Mrs. Moya Quinlan

9.1 The year under review included a major turning point in the history of Legal Education and represented the culmination of many years of endeavour by the Society. The new arrangements for entry to the profession, which came into force on the 1st October, will in the normal way require persons seeking to commence apprenticeship to be University Graduates, though the Society has retained its Preliminary Examination which may be attempted by non-Graduates and will also reserve the right to exempt bona fide Law Clerks of seven years standing from the Preliminary Examination.

9.2 While the Court of Examiners has naturally been responsible for the implementation of the new arrangements mostly through the provisions of the new Apprenticeship and Education Regulations (S.I. No. 66/1975) the preparation leading to the new Regulations was largely in the hands of the Education Sub-Committee and the Regulations themselves were in fact drafted for the Sub-Committee. I would like to pay particular tribute to Mr. E. Rory O'Connor and Mr. John N. Ross for their work in drafting the new Regulations. Their task was made difficult because of the necessity of drafting the Regulations within the framework of the Solicitors Act 1954 which did not envisage an Education System of the nature now in force.

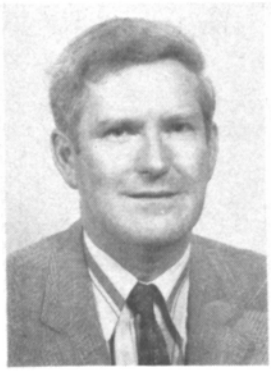
EDUCATION SUB-COMMITTEE

John F. Buckley,
Chairman
Adrian Bourke
Maurice R. Curran
Nicholas Comyn
Joseph L. Dundon
John Hooper
John Mathews
David A. Moloney
E. Rory O'Connor
Maeve O'Donoghue
Brian Overend
John Ross
Laurence K. Shields

9.3 The work of the Sub-Committee is continuing and it will in the immediate future be preparing detailed recommendations on the contents of the new Professional Course which the Law Society will be running in its Law School from the year 1978 onwards. The Sub-Committee will also be considering the establishment of courses for training Legal Executives since it is now clear that there is a demand in the profession for Executives at a level a little below that of the qualified Solicitor and it is also evident that there are persons who wish to make a career in the Law at such a level.

9.4 The Court of Examiners itself, apart from considering and adopting the reports of the Sub-Committee, has dealt with a great number of applications during the last year, many of which arise from the great increase in the number of Apprentices. The Court of Examiners is concerned to try to ensure, as far as possible in the present unsatisfactory circumstances, that all Apprentices are given a proper training by their Masters.

9.5 The Court of Examiners has consulted on a regular basis with the Representatives of the Apprentices throughout the year and these meetings have proved of considerable help to the Court of Examiners in its work.



John F. Buckley, Chairman

9.6 The consultations which the Society has had with the Authorities of Dublin University and the constituent Colleges of the National University of Ireland have continued during the past year and I would wish to take this opportunity of thanking the Authorities concerned for their considerable co-operation with the Society. The Court decided during the year that, in view of the increasing complexity of taxation legislation, it would be necessary to increase the number of lectures on this subject given to Apprentices and accordingly have made arrangements to this end.

9.7 My predecessor, Mr. Joseph L. Dundon, who has been the Junior Vice-President of the Society during the last year, has maintained his great interest in Legal Education and has been of very considerable assistance to the present Court.

PUBLIC RELATIONS COMMITTEE

Walter Beatty, *Chairman*

Bruce St. J. Blake
Maurice R. Curran
Gerard M. Doyle
Michael P. Houlihan
William D. McEvoy
Brendan A. McGrath
Patrick F. O'Donnell
Mrs. M. Quinlan
Thomas M. D. Shaw

10.1 This was a difficult year because we found that many of the efforts which we were making to improve the image of the profession and the Society were eroded by the adverse criticism of Solicitors in national newspapers and on the television screen. Regrettably, in some cases it cannot be denied that the criticism was justified, and sometimes more than justified. Examples were: Clients' letters unanswered, public representatives' letters unanswered, two and three letters from the Secretariat ignored, invitations to attend and explain the delay to the Registrar's Committee ignored. All culminating in a ghastly mess two or three years later, where the public in understandable frustration appealed to the media for redress.

10.2 It is important to stress that a small percentage of Solicitors is involved, but those that are can to some extent undo the constructive efforts that we have been making in recent years.

10.3 It is very true to say that every member of the profession is involved in public relations. Those who do not communicate properly, particularly with their clients, create bad public relations. On the other hand, those who make the effort create goodwill, and, if they persist in their efforts, this goodwill will be renewed and hopefully some day the Dickensian image will be forgotten.

10.4 Leaflets were published during the year and these were distributed to the profession, voluntary bodies, local authorities, and, indeed, to anyone who wrote in and asked for them. The response to these publications was most satisfactory, and as a result of this a further leaflet was published dealing with the new capital taxes. One of the first publications dealt with the Incorporated Law Society and what it can do for the public, and was advisory and helpful to the public in relation to problems which they might have in dealing with the profession.

10.5 For some time the Committee has been planning a Communications Course for interested practitioners, and this commenced on the 21st October and continued through October into November, during which time volunteers were trained in radio discussions, television interviews and question and answer sessions with interviewers. The response to the course has been very encouraging and if the results warrant it, it will be repeated again in the New Year.

10.6 Seminars on the Finance Act 1974, and dealing with debt collection, were organised. An open meeting was held in the Library which dealt with planning legislation. This was well attended and was very ably addressed by Mr. Gordon Hyde, Solicitor, of London, who specialises in this field. The Secretariat, in conjunction with the Society of Young Solicitors, organised a very successful Seminar in Cork, and in Dublin, which dealt, over two days, in a most comprehensive manner with Capital Taxation. The response of the profession and the large attendance at both Seminars proves that, as a profession, we are looking to the future, and that we are prepared to work to ensure it.

Walter Beatty, Chairman

10.7 Direct Communication was established with the Bar Associations throughout the country, when we organised a meeting in the Council Chamber which was held towards the end of last year and which was very well attended by almost all the Secretaries and Presidents of the local Bar Associations. There was a helpful exchange of views between those present; and local Bar Associations will be involved in future in trying to create good public relations for the profession through contacts with the provincial newspapers, local representatives and local T.D.s. This meeting was, to a certain extent, exploratory, but as it proved so successful we believe that it should be repeated every year, or even more frequently.

10.8 This report would not be complete if it did not allude to the President's superb public relations exercise on the Seven Days programme, where against a totally biased media he established the integrity of all of us beyond doubt.

BLACKHALL PLACE COMMITTEE

Moya Quinlan, *Chairman*

Bruce St. J. Blake
John Carrigan
Thomas Jackson
William D. McEvoy
Ernest J. Margetson
Patrick F. O'Donnell
Peter D. M. Prentice

Mrs. M. Quinlan, Chairman

11.1 It was surely fitting that 1975 as European Architectural Heritage Year should be the time at which the Contract for the conversion of the Kings Hospital School into the new Headquarters for the Law Society was signed. This year has been a great step forward in the proposed development of the building for use as administrative Headquarters for the Society and as the new Centre for training the future members of the profession. It is proposed that work on the building will be carried out in three stages.

11.2 The first stage will consist of the ground floor central structure where the Administrative Office will be situated. The second stage will comprise the South Wing of the building where the library, lecture theatre, seminar rooms, students restaurant, members common room, restaurant and other facilities will be. The third stage will be the refurbishing of the North Wing where the chapel, with its unique stained glass window by Evie Hone, now stands. It is proposed that the Chapel shall be converted so as to provide for its use as a small concert hall or theatre, suitable for lectures, concerts or receptions. It is visualized that this wing will be a completely self-contained unit with its own catering facilities, which may be rented by the Society to other organizations and so provide a lucrative source of revenue to the Society.

11.3 Preliminary work has actually commenced on the building. Hopefully the first stage will be completed in about eighteen months, and the final stages by the middle of 1978.

11.4 The Society has been extremely fortunate in securing the services of Mr. Terence Nolan, M.R.I.A.I. and Mr. Thomas D'Arcy, F.R.I.C.S., as Architect and Quantity Surveyor respectively to the project. The Contractors are Messrs. G. & T. Crampton Ltd.

11.5 In addition to dealing with the King's Hospital development, your Committee has been actively concerned during the year in making greater use of the available space in the Solicitors Buildings. As a result of its activity an extra six rooms are now available for use as Consultation and Arbitration rooms.

11.6 It is felt that these facilities will be of great benefit to all members of the Society especially country practitioners for whom it is essential that proper consulting rooms are available for witnesses travelling long distances.

11.7 The members of the Committee have shown a remarkable spirit of dedication and responsibility in bringing the King's Hospital project to its present stage. There was a full attendance at all the many meetings of the Committee during the year with some of the members travelling from the country to be present. Such co-operation has been most encouraging and exemplifies the interest of the profession as a whole in this challenging undertaking.

DISCIPLINARY COMMITTEE

Thomas A. O'Reilly, *Chairman*

Thomas H. Bacon
Bruce St. J. Blake
John Maher
Patrick C. Moore
Patrick Noonan
Robert McD. Taylor
Francis J. Lanigan
Thomas Jackson
Roderick J. O'Connor

Thomas A. O'Reilly, Chairman

12.1 Since 30th September 1974 the Committee met 30 times. The state of the business of the Committee is as follows:

Cases over from previous year	12
New Cases commenced after 30/9/1973	70
	82

OF THE 70 NEW APPLICATIONS

(a) No prima facie case decided ...	3
(b) Prima facie case found	67

OF THE 59 CASES NOW AT HEARING

(a) Liberty to withdraw	8
(b) Postponed/S7 (4)	1
/c) Findings of misconduct	17
(d) Findings of no misconduct	3
(e) At or awaiting hearing	25

12.2 Ten Reports have been presented to the President of the High Court (4 are outstanding). Of these:

(a) One Solicitor was struck off.
(b) One was suspended from practice for twelve months.
(c) Three cases were disposed of on an order of "costs only".
(d) Five cases are before the Court.

12.3 Mr. Ralph Walker resigned on his retirement from the Council.

E.E.C. COMMITTEE

Anthony E. Collins,
Chairman

John F. Buckley
John G. Fish
John B. Jermyn
Brendan A. McGrath
Gerald J. Moloney
Raymond T. Monahan
Peter D. M. Prentice

Anthony E. Collins, Chairman

13 1 The E.E.C. Committee had an extremely active year largely due to the increasing volume of proposed legislation which it is necessary to consider. The Committee has continued its policy of delegating the study of various Directives and Conventions to Groups of two or three people who reported back to the Committee. Directives or Conventions on the following subjects have been considered by the Committee during the year:

(1) Contractual and non-contractual obligations.
(2) Freedom to provide limited services by lawyers
(3) Bankruptcy.
(4) Security over movable goods.
(5) Insurance.
(6) Winding up of insurance companies.
(7) Consumer credit.
(8) Consumer protection.

In particular a considerable amount of time has been spent in connection with the Directive concerning Freedom to Provide Limited Services by Lawyers. One of the aims of the Treaty of Rome is complete freedom for everyone to practise their profession in any country of the community. This Directive is the first tentative step towards that aim in connection with lawyers. It must be tentative because of the difference between the legal systems in different countries. A sub-committee had lengthy discussions with the Department of Justice and a new Draft has now been produced by the Commission which again will be necessary to study in detail. The Committee has continued to work closely with the Department of Justice on proposed legislation.

13.2 There has not yet been much progress with the proposed E.E.C. Central Library but the Committee is hopeful that before long such a Library will be established so that lawyers and others will have full access to all E.E.C. information which they would need.

13.3 During the year we were contacted by the E.E.C. Committee of the Northern Ireland Law Society and a Meeting was held in June for the purpose of exchanging information and seeing how far we could co-operate with regard to E.E.C. matters. The discussion was an extremely informal one and of a tentative nature and apart from general E.E.C. matters the problem of practices on the border was aired. It was agreed that the Committee would establish a sub-committee to liaise with a similar sub-committee from Northern Ireland and that that committee would meet regularly to discuss various matters which would be of concern to both groups. However it was also clear that there would be some areas where the interests of both groups would be completely different and that therefore there was a practical limit to just how close the co-operation could be.

13.4 Members of the Committee continue to attend the meetings of the Commission Consultative and the Union International Du Notariat Latin. These are the two bodies of lawyers throughout Europe which are officially recognised by the E.E.C. Commission. The members attending these meetings report back to the Committee and it is intended that in future a summary of these reports will appear in the *Gazette*. The treatment of publicity with regard to E.E.C. matters was also discussed.

13.5 During the year it was decided that the activities of the Committee would be extended to include other international matters and it is proposed that the name be changed to E.E.C. AND INTERNATIONAL AFFAIRS COMMITTEE.

COMPANY LAW COMMITTEE

Brian O'Connor,
Chairman

Denis J. Bergin
Anthony E. Collins
Michael G. Dickson
Joseph L. Dunden
Mary Finlay
Houghton Fry
Patrick C. Kilroy
Peter D. M. Prentice
J. G. Ronan
L. K. Shields

14.1 The Society's Committee in Company Law has had a busy year and found it necessary to meet at least once a month. The Committee considered that in order to get through their work, it would be desirable to obtain some voluntary assistance. We are glad to record that Mrs. Mary Mathews, the Society's examiner in Contract and Commercial Law of the Law Faculty of University College Dublin and Mr. Graham Golding, Solicitor, of the Business Law Centre of University College, Dublin, kindly agreed to assist the Committee in their work on an analysis of the proposed European Company Statute. The Committee is very grateful for this offer of asistance which will be of real importance in the coming year. During the year, the Committee was privileged to have Mr. Declan Costello, S.C., the Attorney General, as a guest to discuss some of the legal problems relating to changes proposed in Company Law. A meeting was also held with members of the Stock Exchange.

14.2 Submissions to the Minister for Industry and Commerce were prepared for the Council of the Society on the Mergers & Monopolies (Control) Bill which was introduced in the Dail during the year. The Committee believed that the Bill, as drafted, would present the profession with great difficulties in advising clients as to whether certain transactions did amount to mergers or takeovers and thereby requiring ministerial approval or otherwise. Particular concern was expressed in their submissions that the provision in the Bill that a merger or take-

over transaction would have "no effect" if prior ministerial approval was not obtained. The Committee appreciated that where a formal takeover was arranged between two parties, the parties to it would be aware that prior ministerial consent would be necessary. However, cases would arise where a takeover would be "deemed" to take place under the provisions of the Bill (e.g. where the person acquired as little as 25% of the share capital of the company). Some parties to the transaction might not be aware at all that such a "deemed" takeover was taking place for which ministerial approval would have to be obtained in order that the transshould be valid. This could readily occur, for instance, on sales in the Stock Exchange. The Committee also felt that third parties such as purchasers for value or mortgages of shares acquired originally under a transaction which had "no effect" could be adversely affected as they could have no title thereto. Members of the Committee were asked to discuss their submissions with officials of the Department of Industry and Commerce. It may be that as a result of the recommendations made by the Committee and other bodies some changes may appear in the next draft of the Bill.

14.3 The bulk of the time of the Committee has been taken up with dealing with E.E.C. legislation and draft legislation which will affect our Company Law. The Committee has identified no less than twenty-one proposed Directives, Regulations and Conventions which will, in one way or another, be of concern to those advising clients on company matters.

14.4 Members of the Committee have continued to act on a voluntary basis as experts to assist the Department of Industry and Commerce at drafting Sessions in Brussels. The proposed legislation covered in this way included the Draft Conventions on International Mergers, the Draft Convention on Bankruptcy and Liquidation and proposals relating to Takeovers and groups of companies. The Committee consider that it is helpful to ensuring that what emerges from these Sessions is legislation which can readily fit into or be adopted to our own legal framework so far as possible. The E.E.C. programme also includes legislation affecting the interest of employees which would affect the legal relationships between companies and their employees. The Committee considered the recently adopted Directive on Mass Dismissals which is to be incorporated in our legislation shortly. A meeting was arranged with a representative of the Department of Labour on this directive and on draft directives to regulate the position of employees in merger and takeover situations.

Brian O'Connor, Chairman

14.5 The Committee prepared and submitted to the Department of Industry and Commerce a Memorandum on the Second Draft Directive on Company Law which deals with the main tenance and alteration of companies capital. The Committee understands that it is very likely that this Directive will be adopted by the Council of Ministers of the E.E.C. very shortly. If this is so, then it may be implemented in legislation and become part of our Company Law within a short time thereafter. The Committee thought that the application of the Directive to Private Companies could prove unduly burdensome and it seems likely that the final form will not do so. However, it is possible that some new requirements may be introduced to distinguish private companies from public companies and these may include identification in their name as public or private companies as the case may be. The Committee will continue to keep in touch with the Department of Industry and Commerce on this Second Directive and will endeavour to ensure that when it is finally implemented as part of our legislation, it will be readily comprehensible.

LIBRARY

Colum Gavan Duffy Librarian

15.1 Continued progress can be reported in the services provided in the Library. Apart from the loan of textbooks, and the photocopying of law reports and of pages from the rarer Irish textbooks, intricate queries have had to be answered, many of them from abroad, dealing with the tracing of ancestors who were Solicitors.

15.2 During the summer months, Miss Byrne, assisted temporarily by Miss Geraldine D'Arcy, B.A., undertook a thorough stocktaking of the textbooks and recataloguing. The continued supply of unreported High Court and Supreme Court judgments was made available. In view of the fact that the Circuit Court has a civil jurisdiction of £2,500, and that some judgments are interesting and important points of law are made in that Court, it is hoped to approach the new President of the Circuit Court to endeavour to arrange that a supply of written judgments from all Circuit Courts be made available. The long awaited textbook on Irish Land Law by John Wylie, the first for more than fifty years, to be published in November, is eagerly awaited.

15.3 New editions of standard legal textbooks, such as Treitel on Contract, and Megarry & Wade on Real Property, were acquired during the year. These are listed in the June and November *Gazettes*. New books on all practical branches of law, which were deemed worth purchasing, were acquired. Extension of the Reference Section is planned by means of exchanges of the Directory and of the *Gazette*. The first 14 volumes of the Fourth Edition of Halsbury's Laws of England have been received.

15.4 The total amount spent in the purchase of books for the year ending 30th April, 1975, was £1,566.91, and in the purchase of periodicals was £307.47, making a total of £1,878.38. The total amount spent on binding was £310.28. The corresponding amounts last year were in respect of books, £1,665, periodicals, £202, and binding, £334. As it will become more difficult in the future owing to inflation for members to provide themselves with their own copies of law books, it will be essential for the Library to fulfil this need.

Colum Gavan Duffy, Librarian and Editor of the Gazette

15.5 The publications of the European Communities, as already stated in last year's Report, tend to take up much shelf space, consisting of more than 20 large volumes per year. It has therefore been found necessary to shelve the Information Section of the Journal of the Community on the ground floor, leaving the Legislation Section in the Library. The number of copies of students' textbooks has also had to be restricted, due to limited shelf space, but it is hoped that this will be remedied when the Library is ultimately transferred to Blackhall Place in 1978.

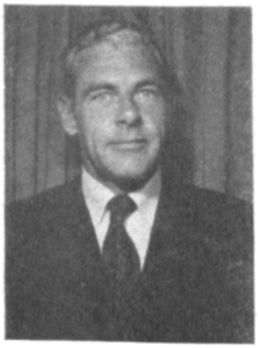
15.6 The number of books borrowed was if anything above the average, being about 20 volumes per week, while more than 40 volumes per week were photocopied in term time. At all times the Director General was most helpful.

15.7 The Librarian attended the Annual Conference of the British and Irish Association of Law Librarians in Nottingham in September, and the Workshop on European Community Law, organised by the International Association of Law Librarians at Bergisch-Gladbach near Cologne, in August.

COSTS COMMITTEE

Gerald J. Moloney,
Chairman

Denis J. Bergin
Thomas Callan
Laurence Cullen
John J. Dockrell
Dominic Kearns
William D. McEvoy
Robert Pierce
John Rochford
Raymond M. Walker



Gerald J. Moloney, Chairman

16.1 This Committee was brought into being in the Autumn of 1974 because of the consciousness of the Council that it was likely that Solicitors' costs would become the subject of an Enquiry instigated by the National Prices Commission and they felt that it was of tremendous importance to be ready to deal with such an Enquiry. Practically contemporaneously with the setting up of the Committee a suggestion was made by the Council to the Minister for Justice that he might under the Provisions of Section 6 of the Prices Amendment Act 1972 seek a transfer to himself of the functions of the Act in relation to legal costs and fees. This request was not, in fact, acceded to and the National Prices Commission appointed a Professor Dennis S. Lees to conduct an Enquiry.

16.2 By the terms of his letter of the 11th of August, 1975, to the National Prices Commission, Professor Lees set out suggested terms of reference which were subsequently approved by the Commission.

16.3 The Costs Committee were not entirely happy with the terms of reference as they stood and having discussed some of the points with Professor Lees proposed submitting a preliminary Memorandum to him on the terms. In the meantime, however, Professor Lees had met not only the Costs Committee but members of the Council and Solicitors' Associations and individual Solicitors throughout a large part of the country and had written to the Bar Associations in the terms of his letter of the 15th of September, 1975. The Committee formed the opinion that the nature and scope of the Enquiry would be sufficiently wide to enable them to put forward a case on the lines they had originally intended.

16.4 In discussing the matter with Professor Lees and in dealing with it themselves the Committee have taken the view that it is facts, figures and statistics, which can be supplied only by the profession itself, which will form the basis of any case they make. They are somewhat disappointed with the reaction of the profession to the questionnaire sent out by Coopers & Lybrand.

16.5 Even prior to the formation of the Costs Committee the Council had been considering costs from various aspects for a considerable time and had taken the initiative with their Accountants, Messrs. Coopers & Lybrand, in considering the best possible form of survey of the profession with particular regard to its financial position and consequently the Costs Committee had had a certain amount of the ground work done for it in this regard. In addition the Council had caused some preliminary experiments to be done in the field of time costing and again the Costs Committee were saved a considerable amount of time in relation to this aspect of costs, although unfortunately due in the main to an absence of enthusiasm in the profession itself the experiments in time costing had not been widely adopted. No really useful result from such an exercise can be achieved in less than 12 months or so.

16.6 Because of the complexity of the field in relation to Solicitor's costs, the anomalies which are to be found therein and the difficulty of settling on any one basis for arriving at the amount of Solicitor's charges the work of the Committee has been of necessity slow. For example if it be accepted that it is difficult to justify scale fees as such (without reference to the level of them) it is impossible to advocate another system of charging to replace them without investigating fully the extent to which scale fees may subsidize other and less remunerative areas of work and without finding both a method of making any cross-subsidization unnecessary and in addition a method or basis to replace the scale fees themselves. At this stage it seems unlikely that the Committee will be able to suggest any major changes in the existing principles of charging costs.

16.7 The Committee have met regularly since it was constituted and not unnaturally the meetings have become both more frequent and of longer duration latterly. It is presently engaged in producing a draft Report for submission to the Council on which the Council may base a case to Professor Lees and the National Prices Commission. It is hoped to have it ready for the Council in November.

LAW SOCIETY REPRESENTATIVES

Bruce St. J. Blake
Francis X. Burke
Laurence Cullen
Gerard M. Doyle
Joseph L. Dundon
P. McEntee
Enda C. Gearty
Gerald J. Moloney
Robert McD. Taylor

LAW CLERKS JOINT LABOUR COMMITTEE

17.1 During the year two meetings of the Law Clerks Joint Labour Committee were held in the offices of the Labour Court, Mespil Road, Dublin.

On 6th June, 1975, a Motion was proposed by P. J. O'Brien of the Workers' representatives: "that the terms of the 1975 National Wage Agreement be implemented". After hearing arguments from both parties the Chairman asked for a vote on the motion. The motion was carried on the casting vote of the independent member.

Objections were lodged and heard on 7th October:

1. It is the stated intention of the proposals to apply to the workers affected "increases provided for in the National Agreement 1975."

2. The proposals also state that "Further increases will operate in accordance with the provisions of the agreement".

3. The Committee has no official cognisance of the document described as "The National Agreement 1975" and has no authority to fix wage rates by reference to such a document.

4. In so far as the document referred to may be recognised as published proposals for Employer-Trade Union National Agreement 1975, the said document was at the date on which the Committee sat and still is under review by the parties thereto in the context of the statement of the Minister for Finance made in Dail Eireann, 25th June, 1975.

5. By purporting to apply to the workers affected wage rates which have been negotiated the Committee has failed to recognise and implement the distinction between such negotiated rates and statutory minimum wage rates enforced under statutory penalties.

6. The wage rates to which increases are proposed to be added are excessive since they were by definition based upon the incorrect assumption that the Committee was legally bound to implement a document known as the Employer-Trade Union National Agreement 1974. (Hereinafter referred to as the 1974 National Agreement.)

7. In particular the wage rates which the current proposals purport to increase are wage rates published by the Labour Court L.C. (N. 36) to come into force 17th March, 1975 solely by reference to the 1974 National Agreement and on the assumption that the Committee was bound to implement the terms of the 1974 National Agreement and without the Committee having met to consider the factors intended to be taken into account in deciding whether and to what extent certain provisions of the said agreement might properly be applied to the workers affected.

8. The Committee did not decide nor agree on any of the Wage rates specified in the proposals published independently of the published proposals for Employer-Trade Union National Agreement 1975.

9. The Committee is therefore requested to revise the wage rates published in the proposals dated 27th June, 1975 taking into consideration the comments in this objection and to fix wage rates which recognise the statutory obligation to implement the wage rates under statutory penalty.

10. The Committee has consistently acted *ultra vires* its powers in fixing minimum rates of wages on the basis that such wages must be in line with negotiated wage rates.

After hearing arguments, the independent member suggested that the National Wage Agreement as amended be approved. A vote was taken and the amended proposal was carried on the vote of the independent member.

17.2 The Law Clerks Joint Labour Committee meetings were considered unsatisfactory by the Employers' representatives as they felt that since they were not a party to National Wage Agreements they should not be bound by them. The function of the Committee was to deal with Statutory Minimum Rates and not negotiate wage rates. Many of the Society members were left with the distinct impression that the Committee was bound by the National Wage Agreement and that the meetings were held merely to rubber stamp such Wage Agreements.

17.3 Subsequently there was a certain amount of publicity in the national newspapers concerning unnamed Solicitors who failed to pay their staff the minimum remuneration as fixed by the Law Clerks Joint Labour Committee. The Council expressed concern that any Solicitor should fail to pay the Statutory Minimum. However, as no specific names had been forwarded to the Law Society and the Department of Labour was not prepared to disclose names of the firms concerned the Council regretted that no useful action could be taken by them. Council was of the opinion that the individual Bar Associations, with the benefit of superior local knowledge, could help to ensure that Solicitors in their area would not pay less than the Statutory Minimum Wage.

17.4 Council warns members that failure to pay the prescribed minimum rate will leave the particular member open to prosecution. It seems clear that whereas in the past, the Department of Labour satisfied itself that the situation had been rectified, in the future it intends to prosecute without further warning in all cases of non-payment of the prescribed minimum rate.

Correspondence

Solicitors' Remuneration

Dear Sir,

The National Prices Commission has published in the National Press an invitation to members of the public to make submissions in respect of a study of the fees and expenses and remuneration of Irish Solicitors to be carried out by a Consultant appointed by it for the purpose.

This study is welcomed by the Solicitors' Profession and the Council of the Incorporated Law Society of Ireland and representatives of the Profession are freely co-operating with the Consultant to furnish information and facts to him.

The Society is aware that the terms of reference agreed by the Consultant with the Commission are seven in number.

In its invitation to the public the Commission has set out what it describes as "the principal terms of reference". In fact they have published six of the seven terms and the one omitted is:—

"(iv) to consider "delays" in the legal system and particularly those associated with
(a) Court organisation and practice and
(b) the taxation of costs".

My Council has directed me to write this letter to draw the attention of the public to this omission.

In the opinion of my Council it is of vital importance that "the delays" under this heading be examined and it is not understood why the public are not invited to make submissions in relation thereto.

Yours faithfully,
W. A. Osborne, *President*

Barristers and Solicitors

are invited to apply for the position of

LEGAL ASSISTANT
Grade IV

in Office of the Director of Public Prosecutions

Essential : Four years experience.
Upper age limit : 40 years.
Salary : **£5,426 - £6,967** (man)
£5,100 - £6,660 (woman)

Entry up to maximum possible.

Closing Date: 4th December 1975

Application forms and further particulars can be obtained from :

The Civil Service Commission,
1, Lower Grand Canal Street, Dublin 2.

PROCEEDINGS OF THE COUNCIL

27th March, 1975

Compulsory Purchase Order — Title by way of Statutory Declaration

The client's title on a compulsory rule to a County Council only required the solicitor to furnish a Statutory Declaration vouching the Title. In the circumstances, the solicitor concerned was entitled to charge the scale under Section I of the Solicitors' Remuneration Act 1881 as amended.

Interest on Deposits — General Instructions to Secretariat

The Secretariat of the Society is to reply to such queries as a rule as follows:—

a) Legally a solicitor who is a shareholder may not be obliged to account for interest earned on the stockholding, (depending upon the terms of his appointment).
b) Professionally, the solicitor is under duty to place clients money in a designated Client Account and to comply with his client's instructions. So if a client gives instruction to have money invested on deposit, clearly a solicitor must be liable if he fails to do so.
c) In the absence of any instructions from the client and where there is a subsequent claim by the client that the solicitor should have placed money on deposit the Society's advice is as follows:—
   i) If the solicitor actually placed the money on deposit he must account to his client for interest earned.
   ii) If, however, the solicitor did not place the money on deposit, it is not a matter for the Society whether he should have done so or not, it is a question of a solicitor's legal duty to his client. Thus it may depend entirely on the facts of the case. In a clear case, it is hard to imagine the High Court absolving a solicitor who fails to place his client's money on deposit where a long delay is indicated and a large sum of money is held.

Solicitor Stakeholder

Such a solicitor, in disposing of the monies held in his hand pending closing of a transaction, must place the money on deposit with an authorised Bank rather than a Merchant Bank, unless he had specific written authority from both vendor and purchaser to deposit it in a Merchant Bank.

Council approves examination results of February, 1975, Examinations

Examination	Candidates	Passed	Exemption	Failed
1st Law	167	78	11	78
2nd Law	121	73	25	23
3rd Law	63	50	6	7

Law Clerks Joint Labour Committee

Mr. Bruce St. J. Blake has been appointed as the Society's Representative on this Committee.

Irish Legal Terms Advisory Committee

Mr. Anthony O'hUadhaigh has been re-appointed as the Society's representative on this Committee.

24th April, 1975

Interest of Vendor or Stakeholder

In a normal case, a Vendor or a stakeholder is entitled to interest unless there is an agreement to the contrary.

No Liability on client to pay a Cost Accountant's Fee

There is no liability on the client to pay a Costs Accountant's fee for drawing a Bill of Costs on Taxation. There may be costs allowed upon the Taxation Bill on a per folio basis.

Solicitor's right to allow access to accountants and auditors when preparing a Solicitor's Certificate under the Solicitors' Accounts Regulations

The contents of a client's file are in general privileged, but there is no objection to the auditor being allowed to see particular items having a direct bearing on payments or receipts that were the subject of the Auditor's Certificate under the Accounts Regulations.

Client withdraws authority to Bank to pay additional monies

As the authority concerned was not an irrevocable authority the client's solicitor was to follow the client's instructions as to the client's monies in his hands.

Solicitor's authority to settle High Court action

A settlement was reached in a High Court action, in which the plaintiff had been awarded £3,750 and costs. Subsequently the plaintiff tried to repudiate the settlement, but finally agreed to accept it subject to non payment of doctors' fees. It was decided that if the solicitor concerned had the requisite authority of his client to settle the action on the terms mentioned, he was entitled to do so. If the solicitor concerned had no such authority, he would have to settle the question at issue with his client.

Irish Examination Results—March Examinations

Examination	Candidates	Passed	Failed
First Irish	307	252	55
Second Irish	122	108	14

Visit by President to Law Society of New Zealand

A copy of the President's Report will appear in the November Gazette.

29th May, 1975

Legal Diary—short notice of listing of case

It was decided that a notice should be inserted in the Gazette with reference to the Dublin Circuit Court stating that the Society had raised the matter officially. The position was that where plaintiff's solicitor served Notice of Trial, if he lodged with the Notice of Trial a stamped addressed postcard to himself, as well as a second stamped postcard addressed to the solicitor for the defendant, adequate warning should be given of the listing of the case. As a result of negotiations, the Legal Diary will be increased in size as from 1, October, 1975, allowing for two extra colums for Circuit Court cases, which would normally result in a seven days warning.

Irish Underwriting Agencies Ltd. — Combined Liabilities Insurance Scheme

As the proposals now submitted differed substantially from former ones submitted in March, 1975, it was decided to set up a Sub-Committee to consider the matter further.

Returns to Revenue Commissioners under S. 176 of the Income Tax Act 1967

The Council decided that only agreed returns should be made.

Fee for Medical Report and for Medical Attention

Members accept liability for payment of £12 for medical report, but object to payment of £50 for medical attention, which they contend was not payable by the client, inasmuch as he was entitled to benefits under the Health Acts. Strong objections were taken to a letter which the Medical Union had sent in the matter. The rejection of the payment of £50 for medical attention was held to be correct. The solicitor concerned should take up the matter with the Regional Health Board, and, if necessary, with the Department of Health. There is an understanding with the Accident Claims Association that the fee for a Medical Report should be about £12.

Solicitors' lien on Bills of Exchange in a defended High Court action

The solicitors concerned were owed by the same client certain sums of money in respect of costs of litigation which they had handled prior to the present proceedings. The solicitors were directed to claim their lien and retain the documents, leaving it to the client if he so wished to seek an order compelling the lodgment of the documents in question.

Belfast Costs Drawers wishing to start practice in the Republic.

There is no objection to this.

Resignation of Mr. Peter O'Connell from the Council

This was accepted with regret.

Presentation to Law Society of England and Law Society of Scotland

It was agreed to make these on the occasion of the 25th Anniversary of the Law Society of Scotland and of the 150th Anniversary of the Law Society of England.

Publication of the opinion of Senior Counsel, on the duty to be charged where the sale price of a property included premises and furniture.

It was agreed to publish this later in the Gazette with Counsel's permission.

26th June, 1975

Meeting of EEC Committee with EEC Committee of Northern Ireland

This joint meeting was held in the Greshem Hotel. It was hoped to set up a small working group drawn from both Societies to examine aspects of Community legislation which would affect the two jurisdictions.

Increase of fees of Summons Servers.

A letter containing particulars of the Order was published in the Gazette.

Claim of Corporation for outlay in connection with renewal of lease to client

The term "Solicitors' Costs" in the Landlord and Tenant Act, 1967, appears to refer to scale fees, therefore outlay properly incurred is the liability of the Tenant.

Counsel may not attend Committee Meetings

As Committees are not deemed to be Courts, solicitors cannot appoint Counsel to represent them at Committee meetings, except Registrar's and Disciplinary Committee meetings.

Returns to be made under S. 176 of Income Tax Act, 1967

The question of what information should be supplied to the Revenue Commissioners would be noted in the Gazette.

Interest on Purchase Money for failure to close on agreed date

A complaint of this nature should not be submitted to the Committee, but the parties should resolve such questions with the assistance of their solicitors, so that the contracts should be freely entered into. See Protective Building Contract in Opinions of the Council on P. 19 of the 1967 Handbook.

Practice of builders of including contractual term whereby disputes are to be referred to the arbitration of the builder's own architect or his nominee

The Committee considered this practice objectionable, but felt it could not intervene directly. It should be pointed out in the Gazette that the purchaser can presumably refuse to execute the contract if this clause is not amended.

Summer Meeting, 1976

It was decided to hold this Meeting in the Brandon Hotel, Tralee, Co. Kerry, from 7th - 9th May, 1976.

Accountant for purposes of Solicitors' Accounts Regulations, 1970

Mr. P. J. Connolly was appointed to this post.

24th July, 1975

Communications Course

Arrangements had been made with the Church of Ireland Divinity Hostel, Dublin, to accommodate 12 - 14 solicitors who had volunteered.

County Council Housing Loans

It was decided that the Society should compile a Register of Waivers. All present and future waivers granted by the Council of the Society should then be recorded in it.

Fee for taxation payable to Revenue Commissioners

The Revenue Commissioners insisted this should be payable by Bank draft. The solicitor concerned should make arrangements with the Revenue Commissioners that his cheque would be acceptable in future.

Solicitor opening a branch office above the office of a Building Society

There would be no objection, provided there was a separate entrance, that there was no internal communication between the two offices, and that there would be no question of sharing staff.

Book-keeping Examination Results

194 candidates had presented themselves for this examination in June, and 157 had passed.

9th September, 1975
National Prices Commission Inquiry

Professor Lees outlined his terms of reference and indicated that Professor M. O'Donoghue, T.C.D., and Professor Bryan Carsberg, Dean of the Faculty of Accountancy, Birmingham University, would be associated with him in the inquiry. He detailed his approach to the inquiry and expressed the hope that he would be able to produce an interim report at least by January, 1976. Professor Lees' terms of reference are as follows:—

(1) to review the total income of solicitors and increases in their total expenses since 1970 and, if practicable, since 1965;
(2) to identify the main classes of business and expense and to trace their behaviour in recent years;
(3) to determine to what extent there is "cross-subsidisation" of one class of business by another;
(4) to consider "delays" in the legal system and particularly those associated with (a) Court Organisation and practice and (b) the Taxation of Costs;
(5) to comment on the scope for increased efficiency among solicitors, for example:
    (a) Amalgamations of Firms;
    (b) the Introduction of Time Costing in preference to scale fees;
    (c) the elimination of Restrictive Practices;
    (d) improvements in Education and Training;
(6) where practicable, to make comparisons with the U.K.;
(7) in the light of the foregoing, to determine how far the solicitors' present claim for an Increase in Fees would be met.

See President's letter *re* Prices Commission on p. 251.

Examination Results:

Examination	Candidates	Passed	Exemptions
First Irish	242	233	
Second Irish	76	73	
Preliminary	177	93	72

Notes and Comments

THE LAW REFORM COMMISSION

It is not surprising that, after the dedication with which **Mr. Justice Brian Walsh** had conducted as Chairman the Committee of Court Practice and Procedure, and had assisted in producing almost twenty reports on various projects of law reform in those subjects, the learned Judge should have been appointed full-time Chairman of the new Law Reform Commission which officially came into force on 20th October. The President of the Circuit Court, **Mr. Justice Charles Conroy**, has surprisingly been appointed a full-time member to this Commission, presumably as an expert in Landlord and Tenant Law which requires widespread changes; he has never endeared himself to the profession as a result of his brusque manners. Professor Heuston,, the Dean of the Faculty of Law of Trinity College, gained a place on the Commission, presumably as an expert writer on English Constitutional Law, and as the Editor of Salmond on Torts. It is more difficult for us to appreciate the academic legal standing of our colleagues, Martin Marren, but presumably his practical experience will be of immense benefit. The inclusion of a non-lawyer, Miss Burke, of the Social Science Department in University College, Dublin, will be controversial, particularly as there were some well-qualified women academic lawyers available. However to give the Attorney-General his due, Mr. Costello had been strongly pressed to make such an appointment in the Seanad Debate on the Bill. Judgment about the work achieved by the Commission will be reserved for one year to see what progress will be made, but the English example of appointing *full time academic lawyers* to the Law Commission should have been adhered to.

JUDICIAL CHANGES

As a result of Mr. Justice Walsh assuming the Chairmanship of the Law Reform Commission, a vacancy arose in the Supreme Court, which has been filled by the promotion of **Mr. Justice Kenny** from the High Court. Mr. Justice Kenny is universally respected as a very eminent Chancery jurist who delves deeply into cases and produces learned and readable judgments. His place on the High Court Bench has been taken by **Mr. James McMahon, S.C.**, who was well known as an excellent lawyer who prepared his cases with exceptional care, particularly those involving deep research, and was an authority on the construction of complicated contracts. As a result of the vacancy created by the retirement of Mr. Justice Conroy, **Judge John Durcan,** former Judge of the Western Circuit, has been appointed President of the Circuit Court. This appointment will be universally welcomed, as Mr. Justice Durcan, as the former Senior Circuit Court Judge, is greatly esteemed for the courtesy and care with which he undertakes his cases.

Judge David Sheehy has now been appointed as additional permanent Judge in the Dublin Circuit, while **Judge Stephen Barrett has been assigned to the Western Circuit.**

Mr. Frank Martin, S.C. who is an expert on insurance law, has been appointed an additional temporary Circuit Judge; as a former colleague, his appointment will also be popular with the profession. The appointment of **Mr. Patrick Lindsay, S.C.** as Master of the High Court is somewhat controversial; this position has been vacant for three years, ever since Master O'Leary retired, and **Mr. Patrick Dunphy** with his expert knowledge of Court practice and procedure has been successfully acting as Deputy Master ever since.

Mr. Patrick J. Dunphy

Mr. Patrick J. Dunphy, Solicitor, has retired as Deputy Master on Friday, 31st October. Mr. Dunphy has an unrivalled knowledge of High Court practice and procedure, having joined the Central Office as a young solicitor in 1938 after having been admitted in 1932. He was a Senior Court Clerk until 1946 when he was appointed Assistant Registrar of the High Court. He was subsequently appointed Registrar in 1950, and in 1958 was appointed under the Courts Acts as the Officer having superintendance and control of the offices attached to the High Court. Owing to his exceptionally competent knowledge of High Court and Supreme Court procedure he was appointed Deputy Master in January, 1972, upon the retirement of Mr. John O'Leary, S.C., Master of the High Court. Mr. Dunphy's exceptionally unrivalled, detailed and competent knowledge of High Court and Supreme Court procedure is a masterful asset which it is expected he would be willing to place at the disposal of any Dublin firm which should be glad to avail of his services. The fact that, after his long service, Mr. Dunphy only received three weeks notice of termination is deplorable.

FINANCE BILL 1975—COMMITTEE STAGE

23 APRIL 1975

Part III

Mr. R. Ryan: We are dealing with tax evasion, an illegal activity. Under the 1974 Act a person who has the benefit of assets which are transferred abroad is obliged to pay tax on them; prior to that, he had not, although it would appear that in any other country that I have had a look at, the Legislature has endeavoured long since to tax income from assets which were placed outside the domestic jurisdiction. However, for some reason we went from decade to decade allowing people to place their money abroad to avoid paying tax here, but since last year they could do that no longer without committing a breach of the law. They would be evading tax. At present any person who now fails to disclose his right to the benefit flowing from assets placed abroad commits an offence.

The obligation on solicitors is to furnish names and addresses. If the people liable to pay the tax, if the people who have transferred assets abroad, discharge their obligations in the first instance by making the proper returns, there will be no question of having to obtain names and addresses from anybody else. If they break the law and if other people have the information which would identify them, I cannot see that there is anything reprehensible or anti-liberal about it. There is no infringement of anybody's rights.

A person who transfers assets abroad and fails to disclose is guilty of evasion.

Mr. Colley: Yes, but there are many who transfer their money abroad and do not fail to disclose.

Mr. R. Ryan: And in such cases the Revenue Commissioners would not be chasing anybody else for the information. It is only when they have reason to believe the information is not being disclosed that they will avail of this power. Nobody has any reason to fear if they are complying with the law. If they are not complying with the law, all we say is that the law should not afford them privileges and protection which are not available to others.

It was suggested that I was saying something radical I would like to quote from an editorial in *The Times* of 1st April, 1938, which states as follows:

> A noble defender of the ethics of tax avoidance comes forward today in the person of the Provost of Eton. No one will attribute to Lord Hugh Cecil an insensitive conscience, but when he writes that if the tax-avoider "acts openly" and above board, and clearly conforms to the law, I can see no reason why he should not do anything the law allows in order to lighten the load of taxes. Law in England is the will of the people as expressed in Parliament; it is also the rules of conduct enforced by the Courts. The two senses should coincide, but in practice they often diverge because Parliament has failed to express itself with sufficient accuracy or completeness. The opportunity for legal tax evasion proceeds solely from this divergence.

There are some areas which so closely resemble evasion as not to deserve the impassioned moral defence that sometimes is advanced in their favour. The fact that many of these practices are not defensible is recognised by the accountancy and legal professions themselves. From time to time they suggest ways of avoiding tax, but they accompany their advice with a warning that a person who engages in a particular practice may well find the Legislature taking a different view of the legitimacy of the practice in which they are advised to engage.

It was suggested today that there was a line that could be very clearly drawn between evasion and avoidance. I have said I cannot share the tremendous moral indignation that some people tend to express at any criticism of tax avoidance.

The Courts are the judges of the law as Parliament has recorded it, but if Members of Parliament experience cases where people are frustrating the wishes of the Legislature, then they have a right, indeed I would consider it a duty, to bring it to the notice of Parliament in order that the necessary amendments should be made in the law.

Mr. Colley: But not to treat them as if they had broken the law before that is done.

Mr. R. Ryan: No, I have not said that. What I am saying is that they are not deserving of the tremendous moral benediction that some people would seek to give them, to make it something that is noble and beyond criticism. When one sees the wishes of the Legislature being frustrated, as a legislator, one must take steps to correct the situation and when one is giving power, as the Dail and Seanad gave last year, to tax the profits on assets that are sent abroad, one must give power also to the Revenue Commissioners to enforce that law.

Major de Valera: I am appalled that a Minister who, like two of his colleagues in this House, should appreciate the importance of what is involved, would take the casual, the amoral and the pragmatic attitude he has taken in this matter. The Minister can hardly fail to appreciate the point I am making. Therefore, in technical terms I must attribute to him, malice aforethought. By a peculiar coincidence the people engaged in this debate so far are members of the legal profession, two of whom are practising. As a barrister, I am a member of the other aspect of the profession although I have not practised for many years. Therefore, I should be absolved from any suspicion that I

might be indulging in special pleading.

As Deputy Colley pointed out, there is a difference between the legitimate evasion of tax and criminal tax avoidance. Secondly the right of the Minister and the State to impose and collect tax rests solely on the statute, outside the legal content of which there is neither crime nor right. That being so, the rest of the right is with the taxpayer and the State has no further right to interfere beyond the taxation rights conferred by statute.

Surely, then, the citizen is entitled to seek legal advice and to try to ascertain his rights. Furthermore, having ascertained his rights, he is entitled to act on them. If a mistake is made—if he has overstepped the boundary where the State is concerned—the State has ample opportunity, much more than has the individual, for dealing with the case. The first principle on which the privilege is grounded is that the citizen must have some protection against being penalised in the ascertaining of his rights and in protecting himself from an unreasonable infringement of his rights. The question is whether a breach of this privilege is less important than the possible disability of the collecting authority of the State to get their facts easily.

Deputy O'Malley has put the situation totally in perspective in this regard. It is the whole tradition of our laws that a man is innocent until proven guilty. The whole spirit of our law is that even the worst criminal is entitled to the best help he can get and there rests the privilege of solicitor and client in criminal matters. Extending that to civil rights, there has been the equal principle that a man as against the State should be in a position to preserve his rights as against the dominating power of the other side. That was the whole spirit of *Magna Carta.* The Minister will probably say that while he agrees with everything I say the position is that, in effect, a solicitor or the person concerned is an agent in the committing of the offence.

I cannot see how you can escape the privilege without implying that the solicitor or the adviser involved is an accomplice. If it is a question of fair enforcement and ascertaining of rights, if there is a doubt and if the solicitor or other adviser is in the clear himself, presumably he will not do anything that is a crime or even unlawful. You can only defend the section by going the whole way logically and what you are saying, in effect, is that the man is an accomplice. If you adhere to the principle that the citizen is entitled to certainty and enforcement of his rights in the law and that the State is only entitled to infringe his rights in law in accordance with the powers given by statute, the principle of privilege follows.

I once took part in a murder defence case and I had some experience of how a matter of privilege could and did arise and the authorities on that occasion behaved with the utmost propriety. But if we begin breaching the privilege that exists, on these grounds, we are opening a flood-gate. If the solicitor is acting *bona fide* professionally or any other professional adviser is acting *bona fide* and doing it in accordance with professional etiquette and presumably is not breaking the law—if a solicitor makes a client commit a crime he is an accomplice—there is no defence for breaching the privilege. Without going into the actual wording, the clauses in subsection (3) here are dangerous. The Minister should really think again on this matter. The fundamental mistake being made is trying to get at the client through the solicitor by breaching privilege when surely it is the business of the Revenue Commissioners, if they find the law against the client to get after the solicitor directly as an accomplice.

The onus of proof is being quietly completely shifted by the Minister in the whole financial code. It is being done also in the Capital Gains Bill where the onus is being shifted from where it should lie—on the people enforcing the statute to ensure that they are within the terms of the statute and within their rights and proving that they are, if necessary—to the other side so that the State can do what it likes and it is up to the citizen to prove that the State is wrong. That is what the Minister is doing, and in another Bill when he makes taxpayers assess themselves, that is what he is doing.

The State is now being put in the position of the big bully and the ordinary taxpayer has to prove that the State is wrong with the whole probability being that the big fellow has all the advantages. This is completely and absolutely foreign to the spirit of our law and I make no apology for being on a normal high horse in regard to this.

I think this gallop will be halted in another way and I hope our Judges will take note of what is developing now. When you breach a principle of such a fundamental nature touching on the rights of the individual in the criminal and civil spheres you are getting very near fundamental rights and thereby coming very near constitutional issues. Up to this, because of the correct

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behaviour of Parliament and the Executive over 50 years, our Supreme Court has always taken a conservative view and as narrow a view as possible of its construction rights. It is likely that in a section like this you are now starting another process—one can thank God one has the Constitution—where the Courts will do what the Supreme Court of the USA did and exercise its wider rights as the Judiciary and ultimately interpret its place in the Constitution as it is meant to be in principle as the guardian of the rights of both State and individual.

This section and particularly this amendment touches an absolutely vital point. Instead of helping law enforcement, instead of avoiding legal action, instead of bringing about harmony and preventing tax evasion, you may very well produce a situation where very restrictive elements may be introduced that may restrict this House as well as the Executive. I hope our Judges take note of their power. Sooner or later a case will be brought and I am glad our Supreme Court has a mind of its own, as we saw in some recent cases. As sure as I am here, a case will arise where new principles will be developed and the Minister and his successors will rue the day that this approach was taken. I thank the Lord we have a Constitution and our Supreme Court to protect principles from amoral attitudes on ministerial benches.

Mr. R. Ryan: I can be as moral as the rest. Perhaps it is because of the moral stand this Government have taken against tax evasion that they have come in for so much abuse.

I shall not endeavour to defend what was wrong by quoting another wrong because two wrongs do not make a right. However, I should like to draw the attention of Deputy de Valera and others to section 176 of the Income Tax Act, 1967. That section incorporated sections from the Acts of 1918, 1958 and 1963. The 1967 Act was a codifying measure and Deputy de Valera was an active and useful member of the committee that prepared that Act for the House.

Section 176 of the 1967 Act does not contain any savers whatever in regard to solicitors' privilege. There are savers in the 1974 Act. I wrote in special provisions which limited the information that could be sought from solicitors and, to that extent, I identified the privilege and respected the need to retain it.

There is no question there of saying the solicitor would only give the name and address of persons to whom money is given. The full value of the money had to be given. It was an anti-avoidance measure to ensure that the Revenue Commissioners obtained particulars of income or money that people received in respect of activities within the State.

Section 59 of the 1974 measure provides that where money is transferred abroad for the purpose of tax evasion or for the purpose of avoiding liability to tax, the name and address of the transferor or transferee be given. It is not a terrible departure from section 176 of the 1967 Act, from section 66 of the 1958 Act or Part III of the 1963 Act except that I provide for limitation to the information that can be sought from solicitors.

Words mentioned in the confessional box and the relationship between doctor and patient have been mentioned in the course of this debate. A certain parallel has been drawn between the criminal law and the tax law. There are many aspects of the tax law that do not conform to the criminal law. For instance, under criminal law every person is deemed innocent until proved guilty but under the tax law everyone is not deemed to be without income until the Revenue Commissioners are in a position to prove he has an income. If that were a principle of tax law the Revenue Commissioners could not issue assessment notices in advance of information received. They would have to wait until they got information and I am sure every Member would be honest and pragmatic enough to admit the tax law would be wholly unworkable if that principle were introduced.

We are simply providing the Revenue Commissioners with the weapon necessary to collect the tax that the Legislature, in its wisdom or otherwise, says should be paid.

Mr. Colley: The Minister is breaching the seal of the confessional in that section.

Mr. R. Ryan: I am not aware that anyone has suggested the confessional box is used for the purpose of transferring money abroad with the intention of avoiding tax liability.

Major de Valera: The Minister has made some interesting points and, for the second time, I have to thank him for giving me my most cogent argument. The section he has accused me of voting for states "... every person in whatever capacity ...". It says nothing about solicitors or clients. It is for the Courts to interpret what the content is. The only intent of Parliament that is taken cognisance of is the Court's interpretation how far it goes. Otherwise we would not have the provisions of this section.

If the Minister is to stand on this section it should be enough for him to do so on his own argument and that he would not need to bring in a specific section to try to capture lawyers and so on. "Every person" should be sufficient. The Courts would be careful to distinguish such socially and legally important principles in the relationship between solicitors and clients. The Minister had to go specifically after the solicitor-client relationship to try to enforce his line of approach here.

In relation to this section, why not have it tested? Sooner or later it will be tested by the Supreme Court. It is a good thing that what we say in Parliament will not be evidence of intent or of the slightest use in the Courts.

I should like the Minister to take all this in the spirit in which it is given. I do not think he or the authorities concerned can complain about our anxiety to assist the Revenue Commissioners in the use of their functions. Deputy Colley, as a predecessor of the Minister, cannot but share his concern to get after tax evasion. However, I do not think this will be of much use in getting after evaders. I would ask the Minister to restore fully the privilege I tried to trace earlier and I suggest there should be a trial before a morass is created in this area because I have a feeling that sooner or later some cases will come before the Courts and there might be very peculiar results. I say that this is a step towards initiating a situation which I should not like to see develop, namely, that

the Legislature in its anxiety to support the Executive would be compelled by the Supreme Court to undo it because of inroads on fundamental himan rights. Any of us who are lawyers, and the Minister himself, will know that the matter of privilege between solicitor and client is not by any means a trivial thing.

Ruairi Brugha: We contend that section 59 requires persons engaged in a professional capacity in advising clients to reveal information concerning clients and thereby to break confidentiality. That is part of the structure of the relationship between solicitors, accountants and their clients.

The Revenue Commissioners have the power to direct any persons engaged in evasion of tax, whether he be a representative of a company or an individual, to provide whatever information the Commissioners require. We contend that a totally different issue is involved here and that is that a person employed in a professional capacity would be required to disclose information about his clients. That seems to be a fundamental issue. The Minister has not yet satisfied me that this section does not require that of persons engaged in a professional capacity. If it does not require it then there is nothing wrong with the amendment. If it does require it, that should be disclosed.

Mr. R. Ryan: This section has only been enacted since last year. I understand that a number of facts have come to light which would warrant the use of this section but it has not yet been used. It took some time also to put into effect section 176 of the 1967 Act. We have, of course, ample experience of how it has been used and challenged unsuccessfully across the water. Deputy de Valera suggested that section 176 of the 1967 Act was unimpeachable because it did not mention solicitors whereas the 1974 Act did mention solicitors. The 1974 Act mentions solicitors only to restrict the information which can be obtained from solicitors. There is no restriction in the 1967 Act but there is a specific limitation on the information which can be obtained in the 1974 Act.

It was not possible in the 1974 Act to spell out the several different types of situations which can be developed to engage in tax avoidance by transferring assets abroad so the information which the Revenue Commissioners are authorised to get is such as they think necessary for the purpose of determining whether or not funds have been sent abroad with a view to avoiding liability to tax. It then puts a limit on the information which a solicitor may be required to give.

The situation has now been fully ventilated. I can express considerable sympathy and understanding with the various views that have been expressed here today. If any person feels aggrieved because of the use of the section if and when it is applied he will have his remedy. I personally would not feel any sense of disappointment if the Courts took a view different from that taken by the Legislature as to the appropriateness and constitutionality of this section. I accept that they are there as defenders of the liberty of the people. I am unable to accept the amendment.

Mr. Colley: The point Deputy de Valera was making was that the 1967 Act phrase is: "Every person who in

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whatever capacity ...". His point was why was that phrase not used in this section if it is one that covers everybody, including solicitors.

Mr. R. Ryan: It says: "any person" and then subsection (3) goes on to say:

> A solicitor shall not be deemed for the purposes of paragraph (c) thereof to have taken part in a transaction by reason only that he has given professional advice to a client in connection with that transaction.

It is a safeguard. I do not think anybody can suggest that: "a person acting in any capacity" excludes solicitors.

Major de Valera: The Court might.

Mr. R. Ryan: It would be tantamount to saying that solicitors are not persons.

Mr. Colley: It seems to me that there is a major distinction between the 1967 Act and this provision in that the 1967 Act is dealing with a case where a person is in receipt of money. That does not arise at all in the section we are dealing with. It seems to me that that constitutes quite a difference in the approach to the matter. If the Minister is contending that this subsection which refers to solicitors was introduced in ease of solicitors, he is implying in that that, if that subsection had not been brought in, a client's privilege in consulting a solicitor would have been totally taken away, and in his giving advice.

Mr. R. Ryan: Not advice, because subsection (3) deliberately excludes the giving of professional advice.

Mr. Colley: I am afraid that is not correct, as I understand it. It provides that a solicitor shall not be deemed for the purposes of paragraph (c) of subsection (2) thereof to have taken part in a transaction by reason only that he has given professional advice. That is the exclusion in relation to professional advice. He is not deemed to have taken part in the transaction. Subsection (3), which is the one we are concerned with here, includes him if he has given advice.

Is the Minister saying that if subsection (3) were not there the privilege of a solicitor and client relationship would have disappeared completely in so far as it related to any transactions, or advice in relation to transactions, which could have been affected by sections 57, 58 and 60?

Mr. R. Ryan: No. Section 59 refers to the purpose and the nature of the notice and the particulars which must be furnished in reply—that and no more. Then there is a further brake as to the information which the solicitor may be required to give.

Mr. Colley: The Minister was representing that subsection as being in ease of the solicitor and client relationship. Does it not follow from that, that if it were not there there would not be any easement of the solicitor and client relationship? In view of all the Minister has been telling us about the obligation and necessity to stamp out this kind of activity, how does he justify preserving the solicitor and client relationship to the extent that he says he has done so under subsection (3)?

Mr. R. Ryan: Because the information which must be furnished is sufficient to identify the persons engaged in avoidance practices. Then the Revenue Commissioners proceed to contact the people who are so engaged. Once information is given which identifies these people, it is possible to proceed after them. If they withhold information, at least they are identifiable and accountable to the law. The opportunity of concealment is frustrated by the section, which was the intention of the Legislature. It was debated on Second Stage. I stayed up all night to afford the Opposition an opportunity to make whatever comments they wished to make.

Mr. Colley: That was because the Minister brought in the Bill too late.

Mr. Ryan: It was debated at length in the other House and the matter was also aired in the newspapers. It has been fully debated last year and this year and, no doubt, we are all the wiser for having heard each other's views.

Mr. B. Desmond: I wish to support the Minister. I would have thought that by now the Fianna Fail Party would have seen how flimsy are the very exclusive and special pleadings they have been making here. I have to declare my income to the Revenue Commissioners. Three-quarters of a million workers have to declare their incomes, wages and salaries to the Revenue Commissioners. We know the all-pervasive powers of the Revenue Commissioners to obtain such information from employers. It strikes a rather hollow note to hear the Fianna Fail Party claiming virtually absolute privilege for the special relationship between the client and solicitor.

Mr. Colley: No, in relation to the State in general. It has existed for centuries. It is for the protection of the citizens. Is he for or against that?

Mr. B. Desmond: I was listening in my room. I read last year's debates. I have read what I would regard in relation to tax avoidance as the rather spurious arguments put forward by Deputy O'Malley last year and this year.

Mr. Colley: Every taxpayer is obliged to declare their income.

Mr. B. Desmond: Except those who get special advice from special people and special solicitors. The people who are handling such transactions, especially property transactions, could now be caught if the Revenue Commissioners wished to exercise their powers. I have no doubt that in future some will be caught. Not so long ago Deputy O'Malley said he would never disclose any client's transaction to the Revenue Commissioners.

I suggest that Deputy Colley would not be very wise in pressing this too publicly because, the more the public become aware of the exigency of this special relationship, particularly in relation to tax avoidance, the more acutely they will become aware of the double standards being applied by Fianna Fail. The Minister is perfectly right in having this in the Bill.

Major de Valera: The point is that the use of the words "any person" is not sufficient to capture it and the Minister is assuming that it is. I say that if the matter were tested that would not be broad enough. The Minister probably realised that possibility and solved this problem by assuming the general phrase removes the privilege and this writes back in three-quarters or most of the privilege and puts in a saver. That is really what happened and that is really what the Minister is basing his case on. As I say, this may

provoke a chain reaction. As well as that, the fundamental assumption that underlines that privilege is not valid.

There is a different approach. Everybody is with the Minister in seeking to have fair tax enforcement and not tax evasion. The question is will the section do what it purports to do, if it is tested? In the last analysis, it is a question as to whether the courts will take one view or the other.

Mr. Colley: The Minister has made it clear that he will not accept this amendment and there is no point, therefore, in delaying the House any further. I hope Deputy Barry Desmond's constituents in Dun Laoghaire/Rathdown will have noted his total opposition to the rights of citizens, in particular the rights of citizens to consult their solicitors without the State moving in to find out precisely what was discussed. His support for the section and opposition to the amendment means that he is supporting the first steps on the slippery slope at the bottom of which no citizen will have the right to consult a solicitor about any matter confidentially without the solicitor being obliged to disclose it to the State. He heard the debate and he attacked the privilege because he thought it was a solicitor's privilege. It is, in fact, the privilege of the client, the privilege of his constituent, and he is trying to take it away. He is welcome to do that if that is what he wants to do. We do not agree with him. We think every citizen is entitled to this protection and we are doing our part to give that protection to him.

Amendment put—the Committee divided: Tá 49; Níl 54. Amendment declared lost.

Correspondence

Office of the Revenue Commissioners,
Dublin Castle,
Dublin 2.

September 18th, 1975.

Dear Mr. Ivers,

Thank you for your letter of September 16, 1975, regarding Capital Gains Tax on gains made on the sale of property.

In general, the position is that subject to certain reliefs provided in the Capital Gains Tax Act, any gains made from the disposal of property are liable to the tax. The exclusion of transactions under £50,000 from the requirement to deduct tax at the time of purchase does not confer exemption on gains made on such transactions.

Your initiative in advising solicitors about the provisions of Schedule 4 is appreciated.

Yours sincerely,

J. C. Duignan, *Chairman*

Land Commission,
Upper Merrion Street,
Dublin 2.

22 October, 1975

Dear Sir,

I am to inform you that under a recent decision of the Minister for Finance by virtue of his powers under the State Property Act, 1954, all properties the subject of Quit Rents have been released from any further payment in respect of such Quit Rents as from 28th September, 1975. Consequent on the decision to terminate these Rents the Quit Rent Office is in course of being wound up and enquiries as to whether property or lands are subject to payment of these charges should no longer be made to this Department. Please notify all your members to this effect.

Yours faithfully,

W. Kilcullen.

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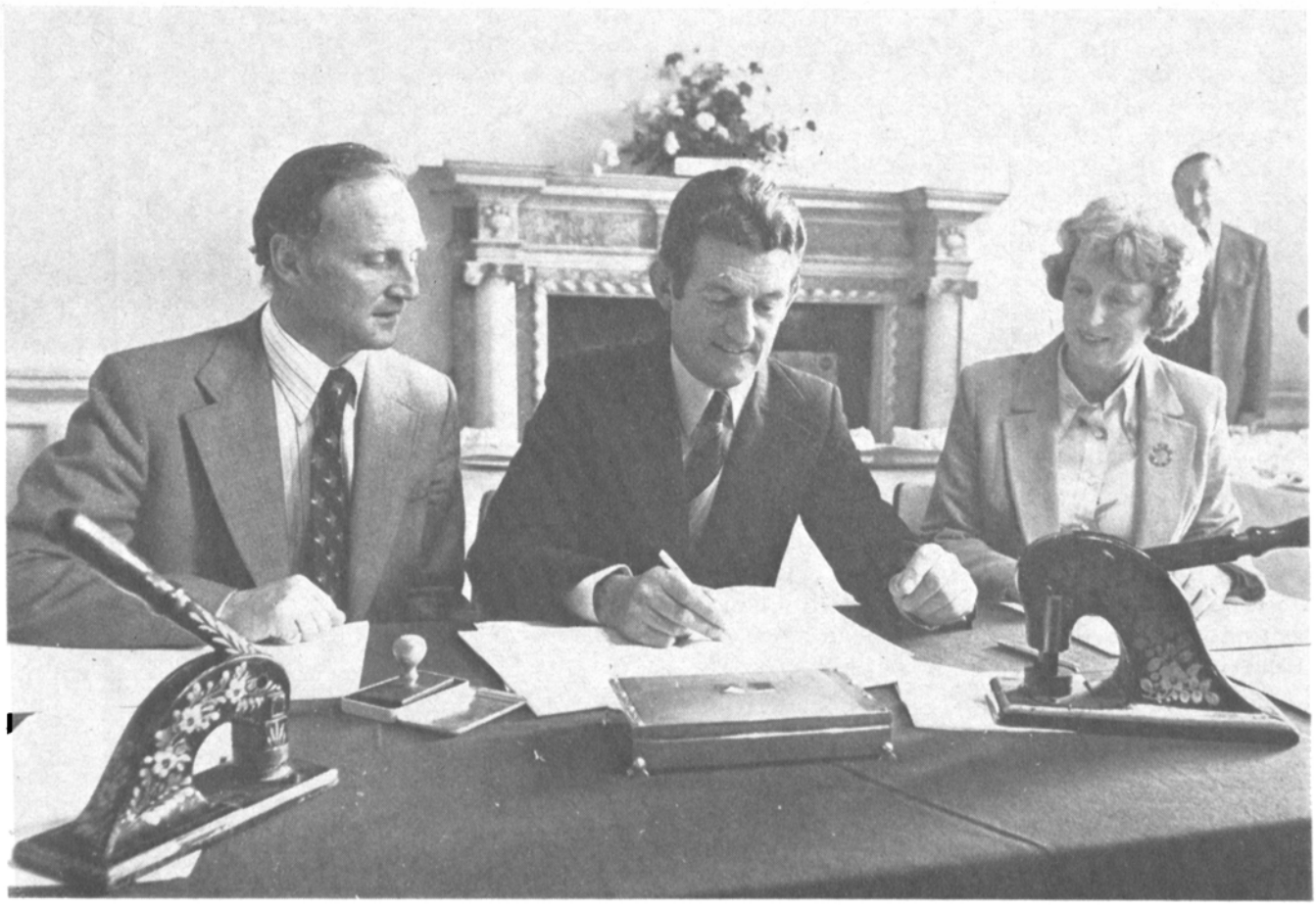

Background information given on the occasion of the signing of the contract on 9th September, 1975.

When the historic King's Hospital School moved out from the city in 1970 to new buildings at Palmerstown it was appropriate that its 200-year-old premises in Blackhall Place, Dublin, should be preserved as an educational centre through its acquisition by the Incorporated Law Society of Ireland.

The School — originally the Hospital and Free-School of King Charles the Second — was founded in 1670, but the distinguished buildings designed by Thomas Ivory were not built on what was then Oxmantown Green until over a century later.

Ivory's original design provided for a tower and cupola but for economy reasons these were omitted; nevertheless, King's Hospital as it stands is a fine building well worth preserving.

The Law Society, with roots almost as deep as the King's Hospital, is the successor of the Law Club founded in 1791 which became, in turn, the Law Society (1830) and the Society of Attorneys and Solicitors (1841) which obtained its first Charter eleven years later. The name, Incorporated Law Society of Ireland was formally adopted in 1888.

Accommodation has been a problem for the Society for many years. In 1874 a 99 year lease was granted to the Society from the Benchers of King's Inns. This provided buildings at the back of the Four Courts. These were destroyed in the burning of the Four Courts (1922) and replaced on a new site by the existing Solicitors' Buildings.

At that time they were adequate, but the necessity for developing the education of apprentices and providing services to the profession has created considerable difficulties in recent years. Lectures have been held under conditions difficult for both students and their tutors. The Blackhall Place premises will eliminate these difficulties for the foreseeable future. The buildings will be used as the profession's educational centre and headquarters. The Chapel Hall will be refurbished to retain its rather unique features for special occupiers within the profession and in association with other professional organisations. Part of the extensive grounds at the rere of the premises will be used in conjunction with the Society's Law School for the purpose of providing adequate recreational facilities for the students.

The Society will retain the Solicitors' Buildings at the Four Courts for part of its services to the public and the legal profession.

Architect for the project is Thomas G. Nolan (Nolan and Quinlan) the building contractors are G. & T. Crampton Ltd., and the Quantity Surveyor is Mr. Thomas D'Arcy, FRICS.

It is anticipated that the premises at Blackhall Place will be ready for full occupation in October 1978.

All the work to be undertaken at the former King's Hospital is within the existing building and the areas will be decorated in a manner suitable to the character of the building.

The Structural Changes

The ground floor will provide a Lecture Hall, Administrative Offices, a lounge area and restaurant for members, cloakrooms, and toilets. In addition the refurnished Chapel Hall with ancillary services will be situated on this floor, as well as the Library for members.

A library and cafeteria for students are main features of the lower floor accommodation.

The first floor will contain the Society's Council Chamber, Committee rooms, and seminar rooms for the students.

The Educational Changes

One of the primary functions of the refurbished building will be to provide facilities for the Law Society's new Vocational Course for Solicitors Apprentices which will come into operation in October, 1978. This course is part of the major reorganisation of education for Solicitors Apprentices which the Law Society has initiated during the past year.

Apprenticeship in the future will normally only be available to University Graduates, though the Society retains the power to make special arrangements for experienced Law Clerks to be admitted to Apprenticeship. Hitherto the prospective Solicitor, on leaving school, has entered into Indentures of Apprenticeship and served under those Indentures while at the same time he may pursue a Degree Course; as from the 1st October, 1975 this will no longer be possible.

The Society has decided to separate the academic and practical training necessary for admission as a Solicitor. In the main the academic training will be in in the hands of the University Law Schools and the practical training will remain with the Society. The practical training will be taken in three stages by the Graduate, commencing with a one year full-time Vocational Course. He will then spend 18 months working whole-time in his Master's office learning the skills and practice of the profession. Following this period the Apprentice will return to the Society's Law School for a second four month course which will include specialisation in advanced courses in two subjects of the Apprentice's choice, as well as training in office management, costing and professional ethics.

By the separation of the practical from the academic training the future Apprentice will be able to learn in a more orderly fashion the subjects and the application of his legal knowdedge. While the length of the combined academic and professional courses will be greater than under the present system, the pressure on students will be lessened, both by reason of the reduction of the number of examinations which an Apprentice will be required to take, and by these examinations being more widely spaced.

High Court Journalists Association

About 15 members of the British High Court Journalists Association, who were visiting Dublin, attended a Reception given by the President, Mr. Osborne, in the Council Chamber on Tuesday, 16th September, 1975, at 5.00 p.m. This is the Diamond Jubilee Year of the Association, which was founded in 1915.

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The Register

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Dated this 30th day of November, 1975.

N. GRIFFITH, Registrar of Titles,

Central Office, Land Registry,

Chancery Street, Dublin 7.

Schedule

(1) Registered Owner: David Donnelly. Folio No.: 30913. Lands: Part of the land of Carhoo in the Barony of Cork. Area: 0a. 0r. 5p. County: Cork.

(2) Registered Owner: Charles Byrne. Folio No.: 11134. Lands: Tinnakilly Upper. Area: 19a. 0r. 29p. County: Wicklow.

(3) Registered Owners: John McGowan and Mary E. McGowan. Folio No.: 21491. Lands: (1) Barnaderg, (2) Barnaderg. Area: (1) 15a. 2r. 0p.; (2) 3a. 2r. 4p. County: Sligo.

(4) Registered Owner: Michael Murphy. Folio No.: 375L. Lands: The leasehold interest in the property situate on the east side of Lakeshore Drive. Area: 0a. 0r. 13p. County: Galway.

(5) Registered Owner: Nora O'Cullinan. Folio No.: 7575. Lands: Ninch (part). Area: 0a. 0r. 20p. County: Meath.

(6) Registered Owner: Michael Cunningham. Folio No.: 31862. Lands: (1) Willsborough, (2) Cloonalough, (3) Cloonalough, (4) Cloonalough, (5) Cloonalough. Area (1) 2a. 3r. 38p.; (2) 2a. 0r. 18p; (3) 10a. 2r. 25p.; (4) 5a. 0r. 10p.; (5) 3a. 2r.35p. The Land Certificate in Folio 31528 County Roscommon now forming the lands Nos. 1, 2, 3 and 4 on Folio 31862. County: Roscommon.

(7) Registered Owner: Valentine Farrell. Folio No.: 3152. Lands: (1) Courtlough, (2) Rathmooney. Area: (1) 29a. 3r. 14p.; (2) 8a. 2r. 26p. County: Dublin.

(8) Registered Owner: Elizabeth Lena O'Halloran. Folio No.: 661. Lands: A plot of ground in Market House Road in the Town of Granard, together with the houses and buildings thereon. Area: 0a. 0r. 16p. County: Longford.

(9) Registered Owner: Patrick Carroll (Junior). Folio No.: 12136. Lands: Ballygorteen. Area: 64a. 3r. 10p. County: Kilkenny.

(10) Registered Owner: Thomas Henry Roberts. Folio No.: 8573. Lands: Brenanstown. Area: 2a. 2r. 18p. County: Dublin.

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THE INCORPORATED
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OF IRELAND

November, 1975
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Opinions and comments in contributed articles and reviews are not published as the views of the Council unless expressly so described.
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The Gazette is published during the third week of each month; material for publication should be in the Editor's hands before the 15th of the previous month if it is intended that it should appear in the following issue. Acceptance that material will in fact be included in any particular issue for publication is not a guarantee that it will be published then since this must depend on the space available.

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Recent Irish Cases

The Court of Criminal Appeal has been properly established in accordance with the Constitution

As a preliminary issue, it was contended that the Court of Criminal Appeal had not been established in accordance with the Constitution. The Chief Justice, in delivering the unanimous opinion of the Court, stated that Article 34 of the Constitution gave authority to the Oireachtas to establish and to disestablish such Courts as it may think fit, subject to the constitutional powers of the High Court and of the Supreme Court not being infringed. Accordingly the Court of Criminal Appeal had been validly established. As the Judges who sit in the Court of Criminal Appeal are Judges appointed in the manner provided by the Constitution, they need not be specifically appointed Judges of that Court. The jurisdiction of the Court of Criminal Appeal to give leave to appeal to the Supreme Court, whether by that Court or by the Attorney-General, is a jurisdiction circumscribed by statute.

The preliminary issue is consequently dismissed.

The People (A.G. v Conmey, (No. 1) — Supreme Court (O'Higgins, C.J., Walsh, Budd, Griffin and Doyle, JJ.)—Judgment of the Chief Justice—unreported—31st July, 1975.

Appeals may be taken directly to the Supreme Court from the Central Criminal Court

The Supreme Court has ruled that appeals may be taken direct to that court from the Central Criminal Court. **Chief Justice O'Higgins said that** the Supreme Court was given by the Constitution full appellate jurisdiction over all determinations and decisions of the Central Criminal Court and this included a jurisdiction to hear and determine an appeal from a verdict of not guilty.

The Court was giving its reasons for a decision announced last July in which it held that the Court of Criminal Appeal was validly established, an issue which had been raised during the hearing of a motion brought by Martin Conmey seeking an order extending the time for the lodging and service of a notice of appeal against a conviction for the manslaughter of Miss Una Lynskey. He had been convicted in the Central Criminal Court in July, 1972, by Henchy, J., and sentenced to three years' penal servitude. Subsequently the Court of Criminal Appeal dismissed his appeal on 31 July, 1973.

Chief Justice O'Higgins, in his judgment, said that in his opinion the Supreme Court was given, by Article 34 (4) (3) of the Constitution, full appellate jurisdiction over all determinations and decisions of the Central Criminal Court and this included a jurisdiction to hear and determine an appeal from a verdict of not guilty, as the High Court exercising Criminal Jurisdiction must consist of a Judge and a jury.

The effect of the statutory provisions was to provide a choice for a person convicted in the Central Criminal Court either to avail of a direct appeal to the Supreme Court or to appeal to the Court of Criminal Appeal. If a such a person appealed to the Court of Criminal Appeal, that was the end of the matter, unless he obtained a certificate under Section 29 of the Courts of Justice Act, 1924 from that Court or from the Attorney-General. But the Constitution only confers on the Supreme Court an exclusive appeal jurisdiction which cannot be dismissed.

Appeal Dismissed by Court of Criminal Appeal

Mr. Justice Walsh, in his judgment, said that at a trial in June, 1972, in the Central Criminal Court, Martin Conmey was tried for murder on 15 July, he was found not guilty of murder but guilty of manslaughter and sentenced to three years' penal servitude. His appeal to the Court of Criminal Appeal was dismissed, and in October, 1974, his solicitor served a notion of motion to the Supreme Court which purported to be in the nature of an appeal to that Court in respect of the proceedings in the Court of Criminal Appeal and in respect of the conviction and order made in the Central Criminal Court. He had not sought permission from that Court to appeal, and consequently that appeal was unsustainable.

The only ground of appeal which arose for consideration in the case was the ground which sought an appeal against the conviction and order of the Central Criminal Court. The case had been mainly concerned with whether such an appeal lay to the Supreme Court or not. As the Notice of Motion was brought more than two years after conviction, the leave of the Supreme Court to bring an appeal had first to be obtained, and an application was made to the Court for an order enlarging the time. The Court decided to hear the arguments and submissions on the question of whether an appeal lay to the Supreme Court in respect of the conviction and sentence imposed by the Central Criminal Court before deciding whether or not to extend the time.

Important issue of Constitutional Law

The case, he said, raised an important issue of Constitutional Law and the submissions to the Court had ranged over a very wide field, including the question of whether there was any distinction in principle between an acquittal and a conviction so far as the question of appeal to the Supreme Court lay.

Mr. Justice Walsh said that Section 2 of the Courts (Supplemental Provisions) Act, 1961, provided that the High Court, exercising its criminal jurisdiction, should be known as the Central Criminal Court. There could, therefore, be no doubt that the Court which tried the appellant was the High Court, duly established—by the Courts (Establishment and Constitution) Act 1961.

Article 34 (4 (3) of the Constitution provided that

the Supreme Court shall, "with such exceptions and subject to such regulations as may be prescribed by law, have appellate jurisdiction over all decisions of the High Court, and shall also have appellate jurisdiction over such decisions of other Courts as may be prescribed by law".

It was abundantly clear that the appellant was tried by the High Court and was sentenced by the High Court sitting as the Central Criminal Court.

Conviction or Acquittal by the High Court

Having referred to the functions of Judges and Juries in trials, Mr. Justice Walsh said in his view it was not correct to describe any prisoner as having been convicted or acquitted by the Jury. A conviction or acquittal is clearly an acquittal or conviction by the High Court and not by a jury.

It appeared to him that an acquittal or a conviction and/or sentence by the High Court was a decision of the High Court which was within the appellate jurisdiction of the Supreme Court unless it has been excepted from the appellate jurisdiction by an Act of the Oireachtas. No express exception had been made by any Act of the Oireachtas in respect of decisions of the High Court in the exercise of its criminal jurisdiction, even in its criminal jurisdiction, the High Court had jurisdiction to decide upon the constitutionality of any law submitted to it.

Implied exception for Court of Criminal Appeal

Continuing, he said it had been submitted on behalf of the Attorney-General that such an exception was to be necessarily implied in the case of decisions which were convictions and/or sentences from the statutory provisions in relation to the jurisdiction of the Court of Criminal Appeal. Any statutory provision which had as its object the excepting of some decisions of the High Court from the appellate jurisdiction of the Supreme Court or any particular provision seeking to confine the scope of such appeals within particular limits, would, of necessity have to be clear and unambiguous.

The appellate jurisdiction of the Supreme Court flowed directly from the Supreme Court, and any diminution of that jurisdiction would be a matter of such great importance that it would have to be shown to fall clearly within the provisions of the Constitution and within the limitations imposed by the Constitution upon any such legislative action.

Having referred at length to the jurisdiction of the Court of Criminal Appeal, Mr. Justice Walsh said it had been submitted on behalf of the appellant that the establishment of the Court of Criminal Appeal was invalid, having regard to the provisions of the Constitution. The main grounds why this submission was advanced were that there was no reference in the Constitution to the establishment of the Court of Criminal Appeal and no provision for the appointment of Judges to it. However, Article 34 (1) provided that justice shall be administered in Courts established by law by Judges appointed in the manner provided in the Constitution.

Oireachtas given powers to establish Courts

In his view Article 34 gave authority to the Oireachtas to establish such Courts as it might think fit and to disestablish them as it thought fit but subject to the mandatory provisions which related to the High Court and to the Supreme Court. He was satisfied that the statutory provisions establishing the Court of Criminal Appeal were not invalid, having regard to the provisions of the Constitution. The Judges who sat on the Court of Criminal Appeal were Judges appointed in the manner provided by the Constitution.

Within the concurrent limited jurisdiction which it excercised, recourse to the Court of Criminal Appeal was capable of completely exhausting the subject matter of the appeal. In such a case its decision was final. The situation was otherwise if it should entertain a case in which it was incapable of exhausting the subject matter. Such a case would be an appeal against a conviction in a case which involved the validity of any law, having regard to the provisions of the Constitution. It was only in cases where it was capable of exhausting the whole decision against which the appeal was taken that its decision could be final. However the Court of Criminal Appeal was clearly not the High Court, but a Statutory Court which could be disestablished.

In the present case the appellant chose to invoke the jurisdiction of the Court of Criminal Appeal in a matter in which it had jurisdiction to adjudicate and in respect of which the appellate jurisdiction of the Supreme Court could be invoked.

In those circumstances there would be no point in granting an extension of time and he would refuse the motion seeking it, he said. **Mr. Justice Doyle** agreed.

Opinion Reserved on Constitutional question

Mr. Justice Griffin, in a judgment with which **Mr. Justice Budd** agreed, said that apart from the submission on behalf of the applicant that the statutory provisions establishing the Court of Criminal Appeal were invalid, having regard to the Constatution (which question had been decided by the Court), argument was addressed to the Court on the questions of whether a convicted person was entitled by Article 33 (4) (3) of the Constitution to appeal direct to the Supreme Court against his conviction and sentence in the High Court (sitting as the Central Criminal Court), and whether in the case of a person acquitted by the Central Criminal Court an appeal against such acquittal lay to the Supreme Court, or whether the provisions of Section 29 of the Courts of Justice Act, 1924, as carried forward by Section 48 of the Courts (Supplemental Provisions) Act, 1961, constituted an exception or a regulation prescribed by law within the meaning of Article 34 (4) (3).

He said that in the events that had happened, and having regard to the course of this litigation, these questions did not call for a decision on the hearing of the present application and he expressly reserved his opinion on these questions as any opinion he might give would be extraneous to what arose for decision on this matter. As the case had been determined by the Court of Criminal Appeal, it was not open to the ap-

plicant to submit that he had an additional constitutional right of appeal from the Central Criminal Court directly to the Supreme Court.

The application for extension of time is unanimously dismissed.

The People (Attorney-General) v Conmey (No. 2)—Supreme Court—Majority judgment on Constitutional issue by O'Higgins C. J., Walsh and Doyle J.J.—Opinion reserved by Budd and Griffin J. J.—Separate judgments by O'Higgins C. J., Walsh J: and Griffin J.—unreported—6 October 1975).

Owing to fraudulent answers given by London solicitor agents in an application to the Land Commission, innocent Irish solicitors, who have not been paid by their clients, cannot recover a substantial deposit in a sale of land.

The plaintiff has claimed specific performance of a written agreement dated 30 January 1974 for the sale to the first defendant, and to the second defendant as his nominee, of registered lands contained in Folio No. 22978 in Co. Limerick for £325,000, and for a mandatory order that the defendants, or one of them, should pay forthwith the sum of £32,500, being 10 per cent of the deposit. The third defendants, a Dublin firm of solicitors (hereinafter called X) signed the agreement as agents for the first defendant. The first two defendants have not entered an appearance or defence. X entered a defence and counterclaim. X pleaded that there was an implied condition that the agreement could not be carried out, unless a consent from the Land Commission, under S. 45 of the Land Act, 1965, had first been obtained, otherwise the sale was to be deemed void. X pleaded that the Land Commission had refused consent to the vesting in this case. X further pleaded that, by direction of the Law Society, they had paid a deposit of £32,500 to plaintiff's solicitors, and in the circumstances they counterclaimed for the return of the deposit. It follows that the only matter to be considered is X's counterclaim for £32,500.

The plaintiff, Mrs. Costelloe, is the owner of a substantial stud farm of 206 acres at Kilpeacon outside Limerick, containing a Georgian mansion. This stud farm was managed by her husband. The first defendant, Mr. Maharaj, inspected the farm, which was for sale, in January 1974, and stated he wished to purchase the lands as a stud farm, and that he had 40 thoroughbred mares boarded out at different studs, with a total value of £1¼ million. He spoke of employing up to 50 stable lads, discussed the expansion of the stables, and asked that if agreement were reached, fodder and farm machinery were to be left behind. After inspection, he agreed to purchase the lands for £325,000. A standard form of the Law Society's agreement for sale for private contract was drawn up, and X signed in trust on behalf of Mr. Maharaj, on 30 January 1974. The Special Conditions of Sale, which were subsequently held not applicable, provided that the sale was subject to the consent of the Land Commission under S. 45, and for the return of the deposit, if such consent was not forthcoming, and giving leave to the vendor at his option to rescind the contract or return of the deposit, if such consent was not made before 1 April 1974. X undertook to pay the deposit of £32,500.

In applying for consent, X, on the instructions of the London solicitors acting for the plaintiff, stated that the premises were a registered stud farm, and that the plaintiff's intention is to develop the property for stud purposes.

On 8 May 1974 the Land Commission submitted to X a further questionnaire, and, as they did not know the replies, they passed it on to the London solicitor. The London solicitors replied on 22 May 1974 to the following effect:

(1) At this stage, the Company has not an interest in Ireland but hopes to undertake land development in Ireland.

(2) Mr. Maharaj's interest in bloodstock in Ireland is limited. We understand he has some brood-mares in the stud and one or two racehorses.

(3) It is *not* the intention of the Company to use Kilpeacon. It is intended to apply for planning permission to develop the land, and, pending the determination of the planning application, it is proposed to let the land on eleven month tenancies to local farmers for grazing purposes.

(4) No direct employment is planned other than such employment as would be given by the building contractors who would be engaged to carry out any redevelopment.

The plaintiff therefore contended that these replies were not *bona fide,* but a *mala fide,* intentional effort to prevent the granting of consent by the Land Commission, which was refused. A solicitor in X stated that consent would have been automatically granted, if the lands were to be used for purposes of a stud farm. The case of **Rooney v. Byrne,** (1933) I.R., was applied; here the plaintiff had been refused an advance by an insurance company in respect of property, and, despite an undertaking, had made no further efforts to obtain advances; the defendant could consequently recover his deposit.

There is undoubtedly an obligation on the purchaser to make a *bona fide* application to the Land Commission for consent. Consequently this application is *mala fide;* this automatically prevents the return of the deposit. The mention of the eleven months lettings was almost certain to produce a refusal, as was the fact that no direct employment was planned.

Despite the fact that firm X had not been refunded by the Company for the amount of the deposit, and that, though acting with complete propriety, they had suffered a substantial loss, nevertheless on the basis of these legal principles, they were not entitled to the return of their deposit of £32,500. The counterclaim must be dismissed.

(**Costelloe v. Maharaj, Krishna Properties (Ireland) Ltd. and X** — Finlay P. — unreported — 10 July 1975.)

Revocation of public service vehicle invalid, as licensee not given opportunity to explain his case.

S. 82 of the Road Traffic Act, 1961, empowers the Minister for Local Government to make regulations for the control and operation of Public Service Vehicles, duly exercised by the Public Service Vehicles (Amendment) Regulations 1963 (S.I. No. 191 of 1963, as amended by the 1970 Regulations—S.I. No. 200 of 1970). These regulations provide for the granting and revocation of public service vehicles, entrusted to the Commissioner of the Garda or one of his authorised officers.

The plaintiff had for some years been the holder of a small public service vehicle, and of a licence to drive

it. In November 1972 he was served with notice of revocation of the licence, on the alleged ground that he was not a fit and proper person, which was equivalent to preventing him from earning his living. The plaintiff appealed in vain to the District Court. At no time was the plaintiff given notice of revocation, or an opportunity to make representations. The plaintiff now seeks a declaration that this revocation was unconstitutional. The defendants, being the Attorney-General, District Justice Kearney, and Superintendant O'Brien, contended that the plaintiff had not availed of the full opportunity he had in the District Court of putting his case. They referred to the judgment of Walsh J. in **East Donegal Co-operative Livestock Mart Ltd. v. The Attorney-General,** (1970) I.R., in which he states that Ministerial power or powers which cast upon the Minister the duty of acting fairly and judicially in accordance with the principles of constitutional justice and they do not give him arbitrary power to grant or refuse at his will. In **Ingle v. O'Brien,** (1975) 109 I.L.T.R. 7, Pringle J. concluded that in similar circumstances, the Commissioner had failed to apply the rule "Audi alteram partem" by not affording to the licensee an opportunity to make representations against the revocation of his licence. It was contended that the plaintiff could have put forward his case in the District Court. However, Megarry J. in **Leary v. National Union of Vehicle Builders,** (1971) Ch.D., held that, as a general rule, a failure of Natural Justice in the trial body cannot be cured by a sufficiency of Natural Justice in an appellate body. A declaration will accordingly be made that the purported revocations of the licences were null and void, as plaintiff had at no time been given an opportunity to state his case.

(**Moran v. Attorney-General and others** — Doyle J. — unreported — 11 July 1975.)

In a Planning Appeal, the Minister, in giving his decision, must act strictly and impartially upon the evidence tendered at the oral hearing before the Inspector, and upon no extraneous matters.

The facts have been summarised in the December 1974 *Gazette* at page 206. **Walsh J.** having referred to **Murphy v. Dublin Corporation,** (1972) I.R., stressed that the Supreme Court had unanimously decided that, if the Inspector's Report takes the form of a document, it must contain an account of all the essentials of the proceedings, and that the Minister alone was the sole deciding authority, and must act judicially, and within the bounds of Constitutional Justice; the Judge had already stated in **McDonald v. Bord na gCon** that the concept of Constitutional Justice entails much more than the normal two precepts of Natural Justice. **Murphy's** case also decided that, if the Minister was influenced in his decisions by the opinions or conclusions of an Inspector, then the Minister's decision would be open to review.

There is an alleged material difference between the functions of the Inspector of a planning appeal under the Planning and Development Act, 1963, and those of an Inspector in an inquiry under the Housing Act, 1966, as in **Murphy's** case; Walsh J. held there was in fact no such difference.

In all these cases, some fundamental principles are unalterable, such as: (1) The Minister is the deciding authority. (2) If the Minister comes to a conclusion not supportable upon the evidence before him, he is acting *ultra vires.* (3) Neither the Minister nor an Inspector can come to a conclusion of fact, unless there is evidence upon which such conclusion can be reached. (4) If the Inspector expresses a conclusion of fact, the Minister is quite free to come to a contrary conclusion, if there is evidence to support it. (5) The Inspector must transmit to the Minister a fair and accurate record of the evidence, and of the arguments for and against the questionnaire. (6) The Minister cannot avail himself of any testimony, expert or otherwise, from his Department or elsewhere without informing the persons concerned, and giving them an opportunity to deal with the evidence.

If there is no formal procedure laid down, as stated in **East Donegal Livestock Mart. v. Attorney-General,** (1970) I.R., the Minister would be bound to obey the dictates of Constitutional Justice by affording the parties affected the opportunity of knowing what evidence he proposed to take an account, and giving them a fair opportunity of making representations.

As Section 82 of the 1963 Act provides for an oral hearing, it follows that all materials and evidence going to the merits of the subject matter of the inquiry should be laid open exclusively at the oral hearing. In this case certain materials which were taken into acount by the Minister, had not been raised at the preceding oral hearing. The Minister's decision was consequently *ultra vires,* because it took account of extraneous matters. The Minister must not only make the final decision, but also decide the valid constituent elements. Consequently, **Walsh J.,** with whom **Budd J.** concurred, would dismiss the appeal.

Henchy J. would also dismiss the appeal. He emphasised that under S. 82 of the 1963 Act, when an oral

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hearing is requested, it must be held. The Inspector is to furnish to the Minister a report **on (not of)** the oral hearing. A report on the oral hearing reports an accurate, but not necessarily exhaustive account of what transpired at the hearing. It is inherent in the scheme that the facts shall be found by the Inspector. It is he who will have seen and heard the witnesses, and consequently the Minister, who learns only of the evidence at secondhand, cannot decide the evidence which might conflict with the person who saw and heard the witnesses. While the Inspector **must** include in his report a fair and accurate summary of the facts, he **may** include observations, submissions and recommendations of what took place.

The Minister must determine the application as if it had been made in the first instance. As a layman, he may not understand technical considerations, so he has a right to inform himself by expert opinion, whether from experts from within or without his Department. But, under the guise of expert advice, the Minister may not allow himself to be informed as to factual matters not in the report. As the Minister is acting in a quasi-judicial capacity, he must not act in disregard of the rules of Natural Justice.

In this case the Inspector's report was merely treated as an inter-departmental memorandum, subject to comment, criticism and correction, rather than as a statutory document. Other officials of the Department also put forward their views. What eventually reached the Minister was not an Inspector's report, but rather a series of memoranda with interpolated comment and suggestions which was not permitted by the Act. The decision was consequently *ultra vires* and invalid. In this case the Inspector and the other officials appear to have misconstrued their roles through inadvertency. The appeal is consequently dismissed.

Gannon J. with whom **Griffin J.** concurred, stated that the function laid upon the Minister in this case is cast on him as a designated person, and is consequently not an executive function. If the Minister is exercising Ministerial functions as he would under S. 23 of the 1963 Act, by giving guidance and general instructions relating to the preparation of a development plan, then the Minister has available to him the technical and expert advice of a specialized planning section of his Department. If the Minister is a designated person, this does not necessarily require the involvement of the planning or any section of the Department.

The oral hearing under S. 82 is a public hearing and the Legislature clearly intends that the Minister should make his determination only on the evidence elicited at such hearing. In relation to designated questions of fact, it would seem that the only person who could make a determination would be the Inspector who heard and observed the witnesses. The expert evidence of officers of the Department may be given in evidence at an oral hearing before an Inspector. The inferences to be drawn from opinions of experts may be taken by the Minister, and not by the Inspector.

Before making his decision, the Minister must consider the evidence and facts reported to him by the Inspector. If necessary, the Minister may consult the High Court on a point of law, and he may also find it necessary to consult a legal or planning adviser in order to obtain technical assistance strictly on the report. If an official has given evidence before the Inspector, he should not be consulted by the Minister. The Minister may not invite the Inspector or anyone else to make the decision required of him. On the facts, the Minister, on the hearing of the appeal did not merely consider the report of the Inspector on the oral hearing, but also a complete departmental file containing much additional irrelevant material. The appeal is dismissed on the grounds stated by **O'Higgins J.** and the plaintiff is entitled to a fresh oral hearing.

(**Susan Geraghty v. Minister for Local Government** (No. 2) — Supreme Court (Walsh, Budd, Henchy, Griffin and Gannon J.J.) — Separate judgments by Walsh J., Henchy J. and Gannon J. — unreported — 30 July 1975.)

Injunction for alleged libel removed when facts granting it were proved false.

Defendant had obtained an injunction from Kenny J. in September against plaintiffs, restraining them from publishing further articles about him, on the alleged ground that they were libellous. Defendant, John Grey, of Thomastown Avenue, Dun Laoghaire, complained that on September 21 an article in the *Sunday World* entitled "Find this evil man", alleged that he lived off the immoral earnings of prostitutes, that he organised prostitution in Dublin, and that he had beaten, threatened and intimidated prostitutes either to pay money or to leave the country. Plaintiffs contended that they had published defamatory statements about defendant, and that they had ample justification to publish more defamatory matter about him. Plaintiffs then produced four affidavits from prostitutes proving physical molestation, dire threats, and intimidation to kill. Having read these affidavits, Kenny J. revoked the injunction, and gave the plaintiffs permission to print the material they had intended.

(**Sunday Newspapers Ltd. and Creation Printing Co. Ltd. v. Grey and Deans** — Kenny J. — unreported — 13 October 1975.)

REFORM OF ITALIAN MATRIMONIAL LAW

Italian men no longer reign supreme, or at least under the law they don't. One of the many reforms contained in the important new *Diritto di Famiglia,* a body of laws concerning the family which came into force late in September, is that the man is no longer officially designated head of the household.

Marriage in Italy is now legally a partnership between equals. The husband no longer decides of right where the family is to live and the wife is not enjoined to 'follow' him—these words have been dropped from the civil marriage ceremony. Husband and wife must work things out between them and, if they cannot, they can take the matter to court. Both must contribute to the maintenance of the family according to their ability. All their property and earnings are to be held in common unless they specifically choose to keep them separate, in which case the decision must be registered with the marriage. The institution of the dowry is abolished. The father no longer enjoys the privilege of *patria potestas* over the children; both parents now have equal rights in all decisions concerning their children's welfare and education. Both are enjoined to consider the specific needs and inclination of each individual child; should they disagree radically they may go to the courts.

The most revolutionary aspect of the new law is the establishment of absolute equality between legitimate and illegitimate offspring. All children are to share equally in the inheritance from their common parent. Under the old law, a married man with children could not legally admit to the parenthood of a child born to a woman who was not his wife. Now men and women are legally entitled to recognise children born outside marriage. This is a startling innovation for Italy. It finally sweeps away a cruel injustice, already partly eliminated by the divorce law, which made it impossible for a married woman separated from her husband to recognise or give her name to a child born to her of another man.

The minimum age for marriage is raised to 18, this being now the age at which Italians get the vote and cease to be minors. In special cases a dispensation can be obtained from the courts to marry younger, but never under 16. This new age limit contrasts with Canon Law which sets the minimum at 14 for boys and 12 for girls. The women's magazines are advising young people who have conceived a child to get married in church and then see if the civil authorities have the nerve to refuse registration. Obviously this is one point which will have to be cleared up when negotiations at last get started for the revision of the 1929 Concordat between the Italian government and the Holy See.

There are other, lesser, changes. A married woman keeps her maiden name, adding her husband's to it, a practice already followed in Italy for the signature of cheques and legal documents. An Italian woman may now keep her nationality when she marries a foreigner. A foreign woman who marries an Italian must bring her property outside Italy into the marriage pool unless the couple opt for separate property.

Clearly Italian habits are not going to be changed overnight; the new laws are ahead of general feeling and practice in the country, particularly in the south. What matters is that the law is now there to appeal to. And experience with the divorce law suggests that Italians will use this right with moderation; it is unlikely that the Courts will be bombarded with appeals to decide where a family should settle or whether the children should go to a State or a Catholic school.

The economic and fiscal effects of the new law are more difficult to assess. The clauses concerning property ownership, management and inheritance take effect automatically but their implications have not been thought out. The reform is the outcome of prolonged political and legal travail—for years the Christian Democrats sought to persuade the other parties to accept the new family law as an alternative to divorce —but in the end it was hurried through without much attention to detail or the imagination to foresee the difficulties of co-ordinating the new measures with existing laws and institutions.

Now lawyers, magistrates and tax officers are panicking at the difficulty of coping with a mass of entirely new problems. There have been numerous meetings of the various experts about what to do. The verdict of a symposium of Appeal Court Judges at Grottaferrata this week was that the family law, as it stands, cannot be implemented. Its application requires the setting up of new machinery, courts and trained personnel, including social workers, to help the judges decide what is best for individual families. There are no signs, as yet, that these will be provided. So it is perhaps as well that most Italian families are so hard-pressed by straightforward economic problems that they have little time for more sophisticated worries.

Proceedings of the Court of Justice of the European Communities

Week of 6 to 10 October (No. 16/75)

At its meeting on 6 October 1975 the Court of Justice of the European Communities elected the following for a period of one year from 7 October 1975 :

Judge R. Monaco to be President of the First Chamber.

Judge H. Kutscher to be President of the Second Chamber.

It elected Mr. H. Mayras to be First Advocate-General for the period ending on 7 October 1976.

The Court is composed as follows :

President : Robert Lecourt.

President of the First Chamber : Riccardo Monaco.

President of the Second Chamber : Hans Kutscher.

First Advocate-General : Henri Mayras.

Judges : André Donner, Josse Mertens de Silmars, Aindrias O'Keeffe (First Chamber). Pierre Pesca-

tore, Max Sorensen, Lord Mackenzie Stuart (Second Chamber).

Advocates-General: Alberto Trabucchi (First Chamber with Mr. Mayras). Jean-Pierre Warner and Gerhard Reischl (Second Chamber).

Registrar: Albert van Houtte.

On 7 and 8 October the Court of Justice was visited by a sizeable delegation from the Tribunal de Grande Instance, Paris.

Case 32/75: Fiorini (née Cristini) and Societe Nationale des Chemins de Fer Francais (preliminary ruling) 20.9.75

A woman of Italian nationality living in France whose husband, also an Italian, worked in France where he died following an accident at work, leaving a widow and four children, was refused by the SNCF a card entitling large families to obtain reductions in railway fares.

The applicant's request was refused on the ground of her nationality, pursuant to the French legal provisions laying down that the card entitling large families to obtain reductions is in principle reserved for French nationals alone and is issued only to foreigners whose State of origin has concluded a reciprocal agreement with France in that particular field, which is not the case with Italy.

The plaintiff in the main action took the SNCF to court and following an appeal against the judgment at first instance the case came before the Cour d'Appel, Paris, which requested the Court of Justice to rule on the question whether the card issued by the SNCF entitling large families to obtain reductions constitutes a "social advantage" for workers of the Member States within the meaning of Article 7 of the Council regulation concerning freedom of movement for workers within the Community. The European Court has ruled that that Article is to be interpreted as meaning that the social advantages covered by that provision include cards granting reductions in fares, issued by a national railway organisation to large families, even where that advantage is requested only after the death of the worker for the benefit of his family which has remained in the same Member State.

Book Reviews

Osborough (Nial)—Borstal in Ireland. *Custodial Provision for the Young Adult Offender 1906-1974.* Published by the Institute of Public Administration, Dublin, 1975. £3.75.

The word "Borstal", no doubt, conjures up for many of us a memory of the late Brendan Behan, or rather Niall Toibin's version of Brendan Behan, slouching across the stage of the Abbey Theatre with all around him the panorama of Behan's life in a Borstal institution. Such a memory will probably be of an amusing nature, but such, you are assured, is not a correct impression of what Mr. Nial Osborough's book is all about.

What is "Borstal"? In the first place, Borstal is a village in Kent, where in 1901 in a part of the convict prison located there, the first experiments were carried out in providing a separate custodial system for young convicted persons in the 16 to 21 age group. As conceived, the system was designed to provide basic education for those who needed it—probably the vast majority—and vocational training in such trades as tailoring, shoemaking, carpentry and gardening, such as would prepare the inmates to return to the outside world rehabilitated and readily employable. The system depended on each Borstal boy being committed to the Borstal institution for a sufficient minimum period as would enable such education and training to be effective. As a result of the Prevention of Crime Act, 1908, and the Criminal Justice Administration Act, 1914, the minimum period of committal by the Courts was one year and the maximum three years, with a right of release on licence after a minimum of six months.

The Borstal system reached Ireland in May 1906 and a Borstal institution was located at Clonmel in an old disused prison. It was only for males and, in fact, there was never a female Borstal in the South. An attempt at establishing one in Armagh Prison between 1954 and 1961 was unsuccessful, because of lack of numbers.

The Borstal system is what Mr. Osborough's book is all about and it must be distinguished from the Reformatory and Industrial Schools systems designed for younger people, whether criminal or non-criminal, which had been introduced into Ireland as early as 1858 and which have in recent years been the subject of considerable public debate and controversy since the publication in 1970 of the Report of the Committee established under the Chairmanship of District Justice Eileen Kennedy.

The Borstal system is also to be distinguished from the sentencing by the Courts of young persons under 21 years to ordinary terms of imprisonment in ordinary prisons.

Mr. Osborough traces the origins of the Borstal system and sets out how the Clonmel Borstal was run as the only institution for all of Ireland, North and South, between 1906 and 1922. He describes the grading system of the inmates, the work they did, discipline, recreation and after-care and in subsequent chapters deals with the system as it operated separately both North and South after partition.

Between 1922 and 1927 in Northern Ireland, any young offender committed to Borstal went to Feltham Borstal in England until, in 1927, part of Malone Prison in Belfast, became a Borstal Institution and remained as such until 1956, when Woburn House at Millisle, County Down, replaced it. Woburn was acquired by the Northern Ireland Government in lieu of £18,000 estate duty. This was the first Borstal institution in Ireland which, at least, had not started out as a prison.

In the South, until 1956, Clonmel remained the sole Borstal institution, with displacement temporarily to other locations during the civil war and to Cork during the Second World War. The Borstal system effectively died in the South in 1956, when the Clonmel institution, by then re-named St. Patrick's Institution (because of the stigma attached to the term "Borstal") moved to a wing at Mountjoy Prison, Dublin, which continues

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to bear the name of our patron saint. This was due to lack of numbers being committed by the Courts to Borstal which resulted in the Minister for Justice transferring to Clonmel young adult prisoners already committed to ordinary prisons. The mixing of the long-terms Borstal detainees and the shorter term ordinary prisoners meant that the original idealistic concept of providing proper educational and vocational training was frustrated. The system, however, still operates in Northern Ireland, at Woburn, and in the United Kingdom.

The legal death of the Borstal system took place with the passing of the Criminal Justice Act, 1960, which abolished once and for all the term "Borstal". The situation in S. Patrick's Institution in Dublin since 1956 and the recent introduction of the more humane "open" institutions at Shanganagh Castle, Shankill, Co. Dublin, and Loughan House, County Cavan, are described in detail by the author.

His concluding chapters, which are the more interesting parts of the book, contain the author's own views and comments on the Borstal system with comparisons between the system in the North and in the South after partition.

An interesting fact that emerges in the comparison between the two systems is that in the North, corporal punishment in Borstal institutions has been permitted since 1930, but it was never allowed in the South or in the United Kingdom, although dietary punishment was permitted in the South. The author quotes one Northern M.P. during the debate on the Bill permitting corporal punishment as saying that: "Two or three licks of the cane or a punch on the nose is a more apt punishment than a starvation diet or a transfer to an ordinary prison."

Borstal in Ireland is a basic book on a subject on which little or nothing has been written to date. It is, therefore, an essential reference book for everyone interested in the penal system, whether lawyers, social workers, legislators, humanitarians, ex-Borstal boys, or simply fans of Brendan Behan. Knowledge of what went before is an essential pre-requisite to anyone seeking to change the law relating to our prison system and to persons convicted of crimes.

Mr. Osborough is to be complimented on his work, as also is the Institute of Public Administration, who published it, and UCD (where Mr. Osborough is Dean of the Faculty of Law), the Arthur Cox Foundation and the Incorporated Law Society of Ireland, who helped financially. The author at times quotes Edmund Burke in his book—Burke, whom someone described as "oft quoted but little read". I hope Mr. Osborough's book will be both "oft" quoted and "oft" read.

Michael M. O'Mahony

Smith (J. C.) and Hogan (Brian)— Criminal Law: Cases and Materials. 8vo. Pp. xxviii, 672. London, Butterworth, 1975. £7.60 limp; £12.00 bound.

This learned voume, written by two expert Professors of Criminal Law, follows the American pattern of considering a law subject by relating it to extracts from cases, from relevant textbooks, and from relevant citations. This system has been developed in English universities relatively recently, and is far more interesting and stimulating than being confined to a dry textbook. In discussing the various crimes, they refer to the pages of their own well-known textbook. Insofar as they have to refer to an extract from a case, it will only be printed once in the text.

In considering the defence of duress, apart from the recent Northern Ireland case of **Lynch,** (1975), the case of **R. v. Hudson & Taylor** — (1971) 2 All E.R. — where two girls deliberately failed to identify a man on a charge of wounding them, on the ground that they would be slashed if they told the truth. The Judge refused to leave the defence of duress to the jury, and they were subsequently convicted of perjury. The Court of Criminal Appeal held that duress should have been put as a defence to the jury, and allowed the appeal. Another case in which the appeal was allowed was that of **Jordan** — (1956) 40 Crim. App. Repts. Jordan stabbed a man in a cafe in Hull on 4 May 1956 and this man died on May 12. The pathologist stated that the cause of death was broncho-pneumonia following penetrating abdominal injury. A successful application was made to the Court of Criminal Appeal to call two eminent doctors to the effect that the wound was not the cause of death. The Privy Council decision of **Edwards** — (1973) 1 All E.R. — deserves mention. The accused followed Dr. Coombes from Australia to Hong Kong intending to blackmail him. There he went to see Coombes in his hotel bedroom, and Coombes attacked him with a knife, inflicting several wounds on him. The accused then wrested the knife from Coombes, and stabbed him severely in a fit of temper. He was convicted of murder in the Hong Kong High Court, as the Chief Justice had directed that the defence of provocation was not available. The Court of Appeal held this was a misdirection, but upheld the conviction on the ground that no miscarriage of justice had occurred. The Privy Council reduced the conviction to manslaughter, because the defences of provocation and self-defence should have been put to the jury, though the defence of self-defence seldom in fact succeeds. The extraordinary case of **Hyam** — (1974) 2 All E.R. — in which a woman set fire to a house, by pouring a tin of petrol into it, in order to kill three children and another woman, who was an alleged rival of her lover, was held by a majority of the House of Lords to be manslaughter, and not murder. A more surprising case is **Shannon** — (1974) 2 All E.R. — where the House of Lords restored a conviction for conspiracy, although the co-conspirator had been acquitted. The House of Lords also reversed the Court of Criminal Appeal in **Dott** — (1973) 3 All E.R.; here the American accused had been convicted of conspiracy to import drugs, but acquitted in the Court of Appeal. In **Haughton v. Smith** — (1973) 3 All E.R. — the House of Lords also restored a conviction of attempting to handle stolen goods dishonestly; the curious circumstance was that policemen were hidden in the van containing the stolen goods, and thus had no trouble in arresting the receivers.

The text is illustrated by ample questions to be answered by students, which greatly enhances its value. The learned authors are to be congratulated upon having selected a most readable material on criminal law.

Kemp (David I.), Turriff (Derrick), Moxom (John M.) and Seymour (Richard W.)—The Quantum of Damages in Personal Injury and Fatal Injury Claims. Two volumes. Fourth edition. Vol. I: Law and Practice in Fatal Accident Awards. 8vo. Pp. xxxiii, 431. Vol. II, Loose Leaf: Awards listed according to type of injury

to body. London, Butterworth, 1975. Price £39 if ordered in 1975; £45 if ordered in 1976 (including all Supplements to end of 1976).

The previous editions of this learned work, from the first edition in 1954 to the third edition in 1967, had been undertaken by Mr. David Kemp and by his wife, Mrs. Sylvia Kemp, who has since died, and consequently, the contents of the two previous volumes have been radically revised. The Preface points out that various suggestions in previous editions have now become law in England, such as that Judges assess awards in the light of previous awards, and that lengthy jury trials for personal injuries were eliminated; it is high time juries should be dispensed with in civil cases in Ireland. In view of the fact that inflation is constantly diminishing the value of money, it is obvious that the amounts made for awards some years ago cannot be relied upon. Consequently the contents of the two previous volumes have been completely revised.

Volume 1 contains four parts as follows: (1) Law and practice common to both Personal Injury and Fatal Accident claims. (2) Law and practice applicable to Personal Injury claims only. (3) Law and practice applicable to Fatal Injury claims only, including classified awards in such claims. (4) Appendices to relevant Texts of English statutes, including specimen pleadings in Fatal Accident claims and the involved question of full pecuniary compensation. Such questions as the incidence of tax and of benefits and of losses of amenities in life in personal injury claims, as well as claims for the death of the various different relatives are fully dealt with. There are numerous examples of awards made by High Court Judges, which were either increased or reduced on appeal, but unfortunately the jury's verdict is normally paramount in Ireland. In the same way as our Supreme Court, the English case of **Mitchell v. Mulholland** — (1972) 1 Q.B. — has stressed the importance of actuarial evidence, but difficulties may arise over actuarial tables.

Volume II—which is loose-leaf, consists of the following parts: (1) Table of Cases; (2) Injuries of the utmost severity such as quadriplegia, paraplegia, very severe brain damage, and permanent unconsciousness; (3) Cases of multiple injuries; (4) Injuries to the head, including epilepsy, face, ear and teeth; (5) Injuries affecting hearing, sight, taste and balance; (6) Injuries affecting the neck and the spine; (7) Injuries affecting internal respiratory, digestive and reproductive organs; (8) Injuries affecting the pelvis and hip; (9) Injuries affecting the arm, hand and fingers; (10) Injuries affecting the legs and foot; (11) Miscellaneous conditions, including osteo-arthritis, traumatic neurosis, and loss of consortium; (12) Cases of complete recovery in the event of pain or shock; and (13) Mathematical awards in fatal accidents.

Each of these sections consists first of Headnotes mostly from unreported English judgments, then a list of unauthenticated awards, and finally the text of full judgments, many of them unreported. Practitioners will appreciate that, for comparative purposes these tables are invaluable, but, of course, they will always have to consider the vagaries of juries in the Irish High Court. These volumes are absolutely indispensable to all practitioners who have to deal constantly with personal injury or fatal accident claims. The authors are to be congratulated upon their industry in collating this material, while the publishers have as usual to be commended for the skilful presentation of the text. The high price is unfortunately inevitable in these days of inflation, when the cost of newsprint and other materials is soaring.

Treitel (G. H.)—The Law of Contract. 4th edition. London, Stevens, 1975. Pp. xlix, 721. 25 cm. £6.80 paperback.

Those of us who have known Mr. Treitel's learned work since the first edition in 1962, had already grasped that the All Souls Reader in English Law (not in English as stated on the cover) was an expert on the law of obligations and contract. The mastery displayed in explaining the most difficult propositions of law relating in particular to Standard Form, Contracts, Mistake, Misrepresentation, Privity and Agency had already placed this textbook in a very special category which mainly honours students appreciated. The learned author had the knack of explaining cases in a way in which they could be easily memorised. This applies all the more to this edition, and particularly to the final chapter on Remedies, where innumerable up-to-date cases are summarised. Presumably there are so many English cases summarised that the learned author did not consider it worth while to mention at least some Irish cases; this attitude is regrettable. Instances of modern cases are: (1) **Harbutt's Plasticine v. Wayne Tank Co.** — (1970) 1 Q.B. — where defendants lost because they carried out negligently a contract to design and install in the plaintiff's factory a particular equipment. (2) **Lewis v. Averay** — (1972) 1 Q.B. 198 — following Phillips v. Brooke (1919) in which a rogue, who purported to be Richard Greene, the well-known actor, induced the plaintiff to sell his car to him, and produced a worthless cheque; he then sold the car to defendant, who bought it in good faith. The plaintiff claimed the car from the defendant, but the claim failed, because the Court held the plaintiff intended to contract with the person physically before him. (3) **Wroth v. Tyler** — (1974) Ch.D. 30 — in which the defendants argued that they should not be liable for the full difference between the contract price and the market price, as they could not have contemplated the exceptionally large rises in house prices that occurred between 1971 and 1973. This was rejected by Megarry J. who held that the plaintiff was entitled to compensation for his loss in not getting a house. These examples of modern jurisprudence in contract are fascinating, and the author has patiently gathered together in a most readable way hundreds of similar cases. This remains the leading readable textbook on Contract, and practitioners are strongly advised to acquire it.

Reception for Mr. John Wylie

A reception to launch Mr. John Wylie's book on Irish Land Law, which has just been published by Professional Books Ltd., Abingdon, Berkshire, England, at £16.50, was held by the President of the Law Society. The attendance included apart from the speakers, Professor Heuston (T.C.D.), Professor Hand (U.C.D.), Mr. Lenehan (U.C.C.), Miss Neylon (King's Inns), Professor Stout (Albany, New York) and members of the Council.

Mr. Walter Beatty, Chairman of the Public Relations Committee, who presided, welcomed all the speakers, and announced that it was hoped to publish a book on Irish Criminal Cases in 1976. **Mr. Justice Kenny** then delivered the following address.

Until 1860 the law of property in land in Ireland was very similar to that in England. In that year Deasy's Act was passed and changed fundamentally the nature of the relationship in Ireland of Landlord and Tenant. Another change came in 1891 when the Registration of Title Act was passed which made registration of title of all lands purchased under the Land Acts compulsory. The greatest change, however, came when, in 1925, the British Parliament passed the Law of Property Act, the Settled Land Act and the Trustee Act. These new Acts did not apply to Northern Ireland. Shortly after they were passed Messrs Strahan and Baxter wrote a book, on Real Property Law in Ireland, but it concentrated on the older aspects of the law and was of little assistance to those who had to teach and those who had to learn modern property law. It went out of print quickly and so Irish practitioners were without a text book on land law.

The Succession Act, 1965, made fundamental changes in the law of the Republic of Ireland relating to the way in which property descends on death; it made all text books almost obsolete in the Republic. Before it was passed practitioners had used Mr. Justice Megarry's "Manual of the Law of Real Property" because in each chapter he dealt with the pre-1925 law and the post-1925 law. Professor Wade and he put us further in their debt by publishing "The Law of Real Property" in which, again, the pre-1925 law and post-1925 law were dealt with. The Succession Act, 1965, has, however, made much of these two books inappropriate to conditions in the Republic.

In 1970 Mr. Wylie, a graduate of Queen's and of Harvard, and now on the staff of University College, Cardiff, approached me for financial assistance from the Arthur Cox Foundation of which I am chairman towards the publication of a book on Irish Land Law which was to deal with the law in the Republic of Ireland and in Northern Ireland. I promised this and, encouraged by his success, he asked me to act as consulting editor for the law of the Republic of Ireland and I agreed to do this.

He then began to write the book. The whole of the first draft was written by him in longhand and typed by his mother who lives in Belfast. When writing it he had two particular aims. The first was to make use of the rich heritage of Irish case law. The late Frank O'Connor said that in the nineteenth century we had turned our backs on our distinctive Irish culture. In the twentieth century lawyers have ignored the rich heritage of cases decided in Ireland on land law. Irish cases decided before 1924 are rarely cited in Court but the judgments of Fitzgibbon, Holmes, Walker and Chatterton are as learned and as well written as those of their contemporaries in England. We have reports of Irish cases extending back to the beginning of the seventeenth century. The second aim was to relate the law of property in land to Irish history. Land law cannot be understood without a knowledge of social and economic history and our law has been shaped by legislation relating to confiscation and acts of attainder.

When he sent me the instalments of the first draft, I was astonished at the width of his reading and his knowledge of decided cases in Ireland. Then we decided that it was impossible to produce the book unless we met and worked through the text. He came to Dublin on seven or eight occasions and together, we worked through the whole book during what other people call the vacations. The perils of co-authorship are notorious. The partnership of Gilbert and Sullivan, which produced "Iolanthe" and "The Gondoliers", ended in the law courts with a silly squabble about a carpet. Although Mr. Wylie and I worked many days and very long hours there was not a sharp word between us and now that the book has been produced, I look back on those days with happiness. There is another aspect of the matter. A book in the process of being written becomes to a man something like what a child is to a mother. What one has written is perfect: it is the result of long hours of hard work and endless polishing of the prose. Although the book was his child, he allowed me to rewrite three sections of it.

He was fortunate to be able to make arrangements with Mr. Kirk of Professional Books Limited for the publication of the book. They have been of enormous assistance in getting the book through the printers. We now have a book which deals with almost the whole law of property in land in Ireland. Some idea of its extent may be got from the fact that about five thousand Irish cases are referred to in the notes.

When the text had been completed, Mr. Wylie cheerfully undertook the enormous and tedious task of preparing an Index of the contents and of the cases cited. This is time-consuming and laborious work. So is the checking of proofs.

It is an indication of the quality of our Irish cases that Professional Books Limited are now doing a reprint of all the decided cases in Ireland. I hope that for the future we will have much more recourse to Irish authorities on the law of property in land than we have had up to now.

Mr. Wylie was one of the working party of four which produced the Survey of the Land Law of Northern Ireland. It is well known that he wrote most of it. Its purpose was not to state what the law was or is but to state what it should be but in order to say what it should be, it is essential to say what it is. I believe that we have dealt with most problems which arise in the day-to-day practice of land law. If there are any which we have omitted, I strongly recommend you to consult the Survey before you turn to English text books.

The book is intended primarily for students in the Republic of Ireland and in Northern Ireland. We hope that it will be of assistance to practitioners and that the numerous references to Irish cases will save them many weary hours of research. It is almost impossible to produce a text book which can be used by students and which is suitable for practitioners. The practitioner

wants as much information about a specific problem as all the law reports provide. To do this a book on land law would have to contain thousands of pages. The student wants a general statement of principles with some illustrations from modern cases as to their application. I think that Mr. Wylie has struck an admirable balance. Another feature of the book is its emphasis on the importance of taxation considerations in dealing with property in land. The earlier text books ignored this : to their authors taxation was beneath contempt. That may have been suitable in Victorian times but today taxation forms such an important part of the law that it affects every legal transaction. However obscure the language of the Finance Acts may be, the law student must learn at an early stage in his training that he must be able to tell his client what effect a transaction will have on his tax liability. We have also included a number of chapters on Equity. We believe that it is impossible to deal with the law of Property in land in isolation from Equity for the two must be taught together.

This publication has been subsidised by the Arthur Cox Foundation. Arthur Cox was a very remarkable man. He was President of the Incorporated Law Society of Ireland in 1952, the year in which the Society celebrated its centenary and he was selected for that high office for that year because of his remarkable linguistic abilities. He spoke and wrote French and German well. He was associated with the foundation of many businesses which have become great enterprises. He was solicitor for and a director of Carrolls and Irish Ropes Limited. He dealt with an enormous amount of work. His day began at 9.15 a.m., when he arrived in his office, and ended at midnight. This is not legend because when I was in practice, I got a number of telephone calls from him at 11.30 p.m. to know if I could possibly call into his office to discuss an urgent problem. When this happened, I drove him to Howth at about three o'clock in the morning. He worked on the mornings and afternoons of Saturdays and went home and read Plato in Greek. He worked the whole of Sunday When he decided to retire from practice a number of his clients and friends decided to establish a fund to subsidise the publication of Irish legal text books. There was a most generous response to our appeal. In conversation with me he frequently lamented the absence of text books on Irish law. I am glad to say that the trustees of the Foundation (Mr. Russell Murphy, F.C.A., the Incorporated Law Society of Ireland and I) have now subsidised three text books. Dr. J. P. Beddy was a trustee for many years and was largely responsible for the decision to put our funds on deposit with banks and hire purchase companies. Thus the Foundation has been spared the heavy capital losses which holders of so called gilt-edged securities have had to endure during the last ten years. When Arthur Cox decided to retire from practice, he studied for the priesthood, was subsequently ordained and went to Zambia to do missionary work. He died there as the result of a motor-car accident.

Happy is the life of a whole-time author. He can give his seven or eight hours a day to his books. The position of anyone who is trying to write a book and who has other commitments is entirely different. Mrs. Wylie has had to endure the absences of her husband from Cardiff while he worked in Dublin. He had his teaching duties in Cardiff as well. At weekends my wife saw me at meal times only and put up with that with apparent cheerfulness. Each of them have contributed to the writing of this book.

I have said that one of our aims was to produce a book which would be suitable for use in the Republic of Ireland and in Northern Ireland. Much of the law of property in land, a subject which used to be called Real Property, is the same in the two States. In any case where it differs we have stated the law in both jurisdictions.

In most European and American States there is one national tradition made up of events in the past in which all citizens take pride. The English national tradition begins with Henry V and the battle of Agincourt, the defeat of the Spanish Armada, the wars against Napoleon and the First and Second World Wars. In Ireland, as in Belgium and in Canada, we have two national traditions. One is Gaelic and Republican and Roman Catholic; the other is lowland Scots and Protestant. Mr. Wylie belongs to one; I belong to the other. Our very happy partnership and the production of this book show that those who on both sides preach that one tradition is better than the other or that one is so morally superior to the other, that those belonging to one cannot work with and have the highest esteem for someone belonging to the other, are preaching nonsense. It is no excuse for the preachers to say that they hold their views sincerely. The guards at Buchenwald and Auschwitz held the view sincerely that it was necessary to have a final solution of the Jewish problem by killing millions of people.

Your attendance this evening is a tribute to Mr. Wylie's colossal industry and to his desire to help students and practitioners in the Republic and in Northern Ireland.

Lastly, the Incorporated Law Society have agreed to act as selling agents for the book without charge. You can help us by buying your copy of the book through

(continued on page 281)

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Examination Results

First Law Examination

At the First Law Examination held in September 1975 the following candidates passed :

James D. Aitken, David W. Alexander, Marcus Beresford, Vivienne M. Bradley, Philomena Brady, Elizabeth Bruton, Jean E. Corrigan, David Dillon, Paul R. Dobbyn, Jane Dudley, Thomas O. Duffy.

Richard Evans, Ann Fitzgerald, Ivor Fitzpatrick, Frank Friel, John Gleeson, Catherine M. Gray, John Grennan, Maurice M. Griffin, Edward J. P. Hanlon, Patricia Harvey, Desmond G. Hickey, Paul Horan.

Paul Kerrigan, Conor M. F. Killeen, Mel Kilrane, Maeve Lynch, Robert Marshall, Gerald G. Meaney, Patrick Monahan, Daniel Morrissey, David M. Murphy, Miriam Murphy, Stan Murphy.

Henry McCourt, Sheila Neary, Michael O'Donovan, Clara O'Driscoll, Yvonne O'Gara, Mary O'Higgins, Timothy O'Mahony, Ciaran A. O'Mara, John Purcell.

John G. Rohan, Kevin Rooney, Kieran A. Ryan, Robert J. Sheehan, Conor Sparks, David J. Synnott, Brian Toolan, Brendan J. Twomey, Roisin Walsh, Ann Patricia Woods.

224 candidates sat First Law Examination and 52 candidates passed.

Second Law Examination

At the Second Law Examination held in September 1975 the following candidates passed :

Aidan Barren, Diarmuid Barry, Marian Baynes, Vincent P. Beirne, Aidan Brosnan, Cornelius D. Brosnan, David B. Browne, Paul Byrne, Marion E. Campbell, Laura Casey, Cyril M. Cawley.

Gerard Commiskey, Cormac Dunne, Anthony J. Durcan, Peter Flanagan, Gerard Fogarty, Josephine Fair, Avril Gallagher, Michael Greene, Timothy G. Hallissey, Denis Jacobson, Andrew B. Jordan, Patrick Judge.

Ellen M. Kehoe, Mary Kelly, Philip Kelly, Kevin P. Kilrane, Mary E. Larkin, Barry E. Manning, John Mulvihill, John G. McBride, John McGlynn, Patrick McNally.

Matthew J. Nagle, Terry O'Boyle, Deirdre O'Connell, Brian H. O'Donnell, John K. O'Driscoll, Anthony O'Gorman, David O'Keeffe, Mona O'Leary, Elizabeth Olliffe, Raymond O'Neill, Vincent O'Beirne.

Peter T. Reilly, Luke Roche, Brendan Rossiter, Henry E. Roundtree, Sharon Scally, Colman Sherry, Jennifer Sowman, John Territt, Deirdre M. Townley, William C. Twohig, Margaret Wren, Valentine Turnbull.

132 candidates sat Second Law Examination, and 52 candidates passed.

Third Law Examination

At the Third Law Examination held in September 1975, the following candidates passed :

Michael G. Ahern, Bernard H. Armstrong, Sheena M. Beale, David M. Bergin, Patrick L. Brady, Marian A. Brazil, Eithne Breathnach, Michael G. M. Brennan, Anthony O. Burke, Frances X. Burke.

Paul Byrne, Beatrice Carton, Brian Casey, Joseph A. Comyn, Patrick T. Crilly, Vincent C. Crowley, William B. Devine, Thomas Dowd, Andrew Dunne, Patrick J. Farrell.

Sean Gallagher, Patrick G. Goold, Michael Greene, Alice B. Hanahoe, Dermot Hewson, Veronica M. Huggard, Patrick J. A. Kelly, Martin Lennon, John R. Lynch, Aedin Meagher.

Thomas K. Mulcahy, Anthony J. Murray, Sarah McAuliffe, Cathal MacCarthy, Jeremiah C. McCarthy, Karen M. McDowell, Gerard M. Neilan, Susan Nolan, Thomas V. O'Connor, Michael J. O'Donnell, John B. O'Herlihy, Constantine O'Leary.

Pol O Murchu, Anne O'Reilly, Brian O'Sullivan, Mary C. O'Sullivan, Michael Pattwell, Hilary J. Prentice, Patrick E. Rogers, Peter J. Smith, Bryan Strahan.

Anne Sweeney, Roderick S. Walshe, Ronan Walsh, Henry J. Ward, Mary T. Ward, Veronica Watchorn, John Weston, Michael D. White.

106 candidates sat Third Law Examination, and 59 candidates passed.

Preliminary Examination

At the Preliminary Examination held in July, 1975 the following candidates passed:—

Baker, Letitia M.; Baldwin, Thomas G. M.; Barrett, Noel C.; Binchy, Frederic J.; Boland, William M.; Bourke, Michael P.; Bradley, Peter; Brady, Brian; Brandon, Liam; Brooks, Kevin J.

Buckley, Neil; Carolan, Ruth; Carton, Katherine; Cody, Peter G.; Coleman, Bernadette; Colley, Henry P.; Collins, Barry; Collins, Michael; Condon, Justin P.; Conroy, Declan.

Conway, Bernadette; Coolican, Carol A.; Copplestone, Grahame; Curran, Barbara; Delaney, Con; Diggin, Denis V. X.; Doolan, Patrick; Doyle, Barbara; Doyle, Finnian; Durcan, Sean F.

Dromey, Helen; Ennis, Gerard; Finnegan, Shane; Galvin, John; Gleeson, Edward; Gregan, Susan; Groarke, Lorna; Heather, Douglas; Hegarty, Michael; Hogan, Felicity.

Hynes, Rose; Jones, Maeve; Joy, John; Keane, William; Kelly, Paul; Larkin, Patrick; Lombard, Niall; Lucey, James; Madden, Declan.

Matthews, Henry; Moore, Nicholas; Moran, James; Murphy, Fionnuale; MacNamara, Anne; McDonagh, Anthony; McGroarty, Laurence; McMorrow, James; McNelis, Neil; McQuaid, Maeve.

McQuinn, Bernadette; Nagle, Lilian; Nash, John; Ni Leighin, Mairead; O'Beirne, David; O'Connor, Anne; O'Connor, Niall; O'Connor, Thomas; O'Doherty, Ann; O'Doherty, Claire.

O'Higgins, Kevin; O'Mahony, Elizabeth; O'Reilly, John J.; O'Reilly, Ronan; O'Shea, Mary; O'Sullivan, Hanna; Owens, Alexander; Power, Una; Quirke, Martin G.; Rice, Ailbhe.

Rice, John; Ringrose, Paul; Rooney, Niall; Ross, Peter; Spelman, Brian; Spencer, John; Spring, Daniel; Sullivan, Clifford G. E.; Swanton, Aidan; Thomas, Joseph.

Toal, Ann; Tormey, Thomas J.

178 attended — 72 candidates passed.

In the matter of William Martin Noyk, a solicitor

THE SOLICITORS ACTS 1954-1960

By order dated the 1st October, 1973, the President of the High Court ordered "that no banking Company should, without leave of the High Court, make any payment out of a banking account in the name of William Martin Noyk, the above-named solicitor, or his firm".

By Order dated the 30th July, 1975, the President of the High Court ordered "that the Order dated the 1st October, 1973 be and the same is hereby discharged and that the Incorporated Law Society be at liberty to notify this day by telephone and also by letter such banking Companies as they may be advised of the making of this order".

Accountants' Certificates in arrears

The Society has decided to withhold the renewal of Practising Certificates for 1976/77 where accountants' certificates are in arrears to such an extent that no returns were made covering the calendar year 1973.

James J. Ivers,
Director General.

Appointments in the Land Registry

Mr. Daniel D. Coughlan, Solicitor, to be Deputy Registrar.

Mr. P. Killeen, Barrister, to be Examiner of Titles.

Mr. L. Doyle, Barrister, to be Senior Legal Assistant.

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With Coyle Hamilton you get the best of both worlds — personal service by expert executives, backed by the resources of a big professional organisation.

English Cases

Save in the exceptional case of public interest, Cabinet documents may normally be published and are not confidential.

Queen's Bench Division; Lord Widgery CJ; 1 October 1975.

Crossman (hereinafter called C) was a Cabinet Minister from 1964 until 1970. Throughout that period C kept diaries which contained details of discussions held in Cabinet and in Cabinet Committees and disclosed the differences between Cabinet Ministers on particular issues. The diaries also contained details of communications made between C and senior Civil Servants together with criticisms of certain Civil Servants. The diaries were kept with the express intention of publication at some future date. The fact that C was keeping such a diary intended for publication was known to C's colleagues in the Cabinet. C died in 1974. After C's death a firm of book publishers proposed to publish C's diaries in a series of volumes entitled "The Diaries of a Cabinet Minister". At that time the existing Cabinet contained a number of individuals who had been C's Cabinet colleagues between 1964 and 1970. A newspaper, acting with the consent of C's literary executors, published serialised extracts from what the book publishers intended to be the first volume of C's diaries. The Attorney-General brought two actions (i) against the book publishers and C's literary executors and (ii) against the newspaper, seeking permanent injunctions restraining them from publishing the diaries or extracts therefrom. In support of his claim the Attorney-General contended that all Cabinet Papers and discussions and proceedings were prima facie confidential and that the Court should restrain any disclosure thereof, if the public interest in concealment outweighed the public interest in the right to free publication. The basis of that contention was that the confidential character of those materials derived from the convention of Joint Cabinet Responsibility whereby any policy decision reached by the Cabinet had to be supported thereafter by all Members of the Cabinet whether they approved of it or not, unless they felt compelled to resign; and that accordingly Cabinet Proceedings could not be referred to outside the Cabinet in such a way as to disclose the attitude of individuals in the argument which had preceded the decision, thereby inhibiting free and open discussion in the Cabinet in future. The Attorney-General also contended that advice tendered to Ministers by Civil Servants and personal observations made by Ministers regarding their capacity and suitability were also confidential and could equally be restrained by the Court.

Held by Lord Widgery, C.J.:

(i) The equitable doctrine that a person should not profit from the wrongful publication of information received in confidence was not confined to commercial or domestic secrets but extended also to public secrets. It followed that where a Cabinet Minister received information in confidence, the improper publication of such information could be restrained by the Court when it was necessary to do so in the public interest.

(ii) The doctrine of joint responsibility was an established feature of the British form of government and therefore matters leading to a Cabinet decision were to be regarded as confidential. The maintenance of that doctrine might be prejudiced by the premature disclosure of the way in which individual Ministers had voted in the Cabinet on particular issues. Accordingly, the Courts had power to restrain the publication of Cabinet material when it could be shown (a) that such publication would be a breach of confidence; (b) that publication would be against the public interest in that it would prejudice the maintenance of the doctrine of Collective Cabinet Responsibility; and (c) that there was no other facet of the public interest in conflict with and more compelling than that relied on.

(iii) In all cases, however, there would come a time when the confidential character of the material, and the duty of the Court to restrain its publication, would lapse on the ground that publication would no longer prejudice the maintenance of the doctrine of Joint Cabinet Responsibility. When that time came would depend on the particular circumstances of each case. The Courts would, however, intervene to restrain publication of confidential Cabinet material only in the clearest of cases, in which it could be demonstrated that the overriding public interest in non-disclosure was still continuing.

(iv) The contents of the first volume of C's diaries were such that their publication, after the lapse of nearly ten years, could not inhibit free discussion in the existing Cabinet and would not, therefore, prejudice the maintenance of the doctrine of Joint Cabinet Responsibility.

(v) Likewise there were no grounds for prohibiting the disclosure in the diaries of advice tendered to Ministers by Civil Servants or of observations made by Ministers concerning the capacity and suitability of individual Civil Servants for neither the Crown nor any individual Civil Servant had an enforceable right to have such advice treated as confidential for all time.

(vi) It followed that there were no grounds for restraining publication of the first volume of C's diaries and the injunctions would therefore be refused.

(**Attorney-General v. Jonathan Cape Ltd. and others; Attorney-General v. Times Newspapers Ltd.** — 1975 — 3 All E.R. 484.)

Bomb Trial Defence Lawyers' Fees Cut

Lawyers whom a judge accused of conducting a "mud-slinging defence" during the Old Bailey Bomb Conspiracy Trial earlier this year have had their fees cut by a third.

A recommendation that the legal aid fees of lawyers representing three of the accused should be reduced was made by Mr. Justice Melford Stevenson after he had imposed 20-year sentences on all eight defendants in the Uxbridge trial last March. The accused were all Irish.

At the time the judge's scathing criticism of three defending Queen's Counsel caused deep concern among many members of the Bar and that has now intensified considerably.

Yesterday, Mr. Stuart Goodman, a principal in the London firm of solicitors, Bowling and Co., said the firm would be appealing against the cut and the judge's "unprecedented" recommendation. "We are determined

to follow all avenues open to us". The three Q.C.s, their juniors, and another firm of solicitors involved, are also expected to appeal.

Police alleged to have planted fingerprint evidence

The judge's attack on the lawyers centred on a defence claim that police had "planted" fingerprint evidence. Aiming his words at the Q.C.s, Mr. John Platts-Mills, Mr. David Turner-Samuels, and Mr. Peter Dow, he said counsel should be more than "mere loud-speakers of a maladjusted set".

Counsel's duty was not discharged by "slavish subservience" to his client's instructions; the client was entitled to the judgment and experience of counsel in conducting the defence. "One would have hoped that that judgement and experience would have spared the police and their witnesses the insulting suggestions made in the case. It has been a mud-slinging defence."

Professional rule that barrister must accept any brief

Immediately, after the judge made his remarks, Mr. Patrick Neill, the Chairman of the Bar Council, issued a statement insisting that it would be a sad day for the Bar when a barrister was deterred from doing his duty by any fear of official displeasure or hope of political advantage.

It was a rule of the profession that a barrister must accept any brief, and it was not the barrister's job to judge the veracity of the brief.

The Judge recommended that the Court Taxing Officer, who assesses what fees on Legal Aid are payable to lawyers, should make cuts in the costs incurred by the defence as a result of its contentious claims. It is reported that the Taxing Officer consulted the Judge before making the cut.

Mr. Goodman says that his firm has lost £2,387. Each Q.C.'s loss is estimated at about £2,000. Although Judges could recommend that lawyers' fees be reduced on account of negligence or some other form of misconduct, Mr. Goodman believed this cut was "unprecedented in a case of this nature".

The firm is likely to initiate its appeal proceedings soon, but the result will not be known until after the appeal of the eight accused of the Uxbridge bombing is hears. Their appeal hearing begins on November 17th.

Defence counsel might be debarred from putting up specific defences

What is concerning many leading barristers now is the danger that if Mr. Justice Melford Stevenson's fee cut recommendation is to be established as a precedent, "a defendant may well be concerned as to how vigorously his defence will be pursued".

The threat of a cut in fees could make some barristers think twice about putting forward a specific line of defence, on which his client has instructed him, in case this might get an unfavourable reaction from the Judge, thus leading to a conflict of interest between the barrister and his client.

The Bar Council's Professional Conduct Committee is understood to have investigated Judge Melford Stevenson's trial remarks but is unlikely to comment on them until after the Uxbridge eight appeal.

The Press Association reports: Nearly 40 Labour M.P.s yesterday attacked Mr. Justice Melford Stevenson in a House of Commons motion accusing him of attempting to intimidate defence lawyers from carrying out their clients' wishes.

The motion "regards with grave concern the attempt by the Judge to intimidate defence lawyers from carrying out the wishes of their clients".

Note—The Professional Conduct Committee of the Bar Council has fully upheld the conduct of Counsel in the case, and stated that they are entitled to their full fees.

THE LAW SOCIETY OF IRELAND
LIBRARY

(continued from page 277)

them or by ordering it direct from Professional Books Limited.

Mr. David Kirk of Professional Books Ltd., Abingdon, Berkshire, said he had had association with Ireland for many years, starting with the publication of Paul O'Higgins' *Bibliography of Irish Law*. He had become aware of the difficulties in obtaining Irish Reports, and was happy to state that he had made arrangements with the Incorporated Council of Law Reporting to publish the Irish Reports until 1974, and that these would be available in 1976. He was convinced that John Wylie's book would serve a most useful purpose, as he and Mr. Justice Kenny had contributed to a work of immense scholarship.

The President, **Mr. W. A. Osborne,** congratulated Mr. Justice Kenny and the Arthur Cox Foundation for having chosen such a splendid author to write on such a difficult subject of law. In view of the fact that the right of ownership was more fostered in Ireland than elsewhere, it had been an ideal of the late Arthur Cox, to help in producing a work on Irish Land Law. There would not be a full realisation of the immense work of erudite compilation and learning involved, which Mr. Justice Kenny's happy partnership with the author had underlined. He was happy that the Law Society would not charge any agency fees for selling the book.

Mr. John Wylie thanked the many persons, too numerous to mention, who had helped him. As consultant editor, Mr. Justice Kenny had volunteered to accept the correctness of all statements of law relating to the Republic of Ireland. He was greatly indebted to Mr. Kirk, who did not hesitate to enlist an enormous amount of capital in the project. He was convinced that the fact that a confirmed academic lawyer like himself had co-operated so closely with a practitioner like Mr. Justice Kenny would greatly enhance the value of the book.

Land Registration Rules, 1975

Statutory Instrument No. 246 of 1975

We, the Registration of Title Rules Committee, constituted pursuant to the provisions of Section 73 of the Courts of Justice Act, 1936, by virtue of the powers conferred upon us by Section 126 of the Registration of Title Act, 1964, with the concurrence of the Minister for Justice, do hereby make the following Rules.

Dated this 16th day of October 1975.

Seán de Butleár (Judge of the High Court)
Francis J. Lanigan
John O. Sweetman
Nevin Griffith

I concur in the making of these Rules.

Dated this 22nd day of October 1975.

Patrick Cooney (Minister for Justice)

(Prl. 4871)

(Notice of the making of this Statutory Instrument was published in Irish Oifigiúil of 28th October 1975.)

Preliminary

Commencement

1. These Rules shall come into operation on the 1st day of November 1975 and may be cited as the Land Registration Rules, 1975.

Interpretation

2. (1) These Rules and the Land Registration Rules, 1972, shall be construed together and Rule 2 of the Land Registration Rules, 1972, shall apply for the purpose of the interpretation of these Rules.

(2) These Rules and the Land Registration Rules, 1972, may be cited together as the Land Registration Rules, 1972 to 1975.

3. (1) Subrules (2), (3) and (4) of Rule 19 of the Land Registration Rules, 1972, are hereby amended by the substitution of "£20,000" for "£8,000" wherever "£8,000"' occurs and the said subrules as so amended are set out in the Table hereto :—

TABLE

(2) Where the market value of the property the subject of the application is shown to the satisfaction of the Registrar not to exceed £20,000 the title to be shown by the applicant may commence

(a) with a disposition of the Property made not less than 20 years prior to the date of the application that would be a good root of title on a sale under a contract limiting only the length of title to be shown or

(b) with a Conveyance or Assignment on sale made not less than 12 years prior to the date of the application that would be a good root of title on a sale under a contract limiting only the length of title to be shown.

(3) On a sale where the purchase money of the property does not exceed £20,000, the Registrar may, if he thinks fit, register a Title as Absolute or good Leasehold on production of a Certificate by a solicitor, at the expense of the applicant in Form 3, adapted as the case may require.

(4) Where property is acquired by a statutory authority and the purchase money or compensation paid therefor does not exceed £20,000

(a) the Registrar may dispense with the official examination of the Title and may register the statutory authority with absolute title or good leasehold title on a certificate of title by the solicitor for such authority in Form 3 adapted as the case may require :

(b) the Application shall be signed by the Solicitor for the statutory authority and shall be accompanied by a Plan of the property drawn on the current largest scale map published by Ordnance Survey.

(2) The caption of Form 3 of the Schedule of Forms to the Land Registration Rules 1972 (which is the form mentioned in Rule 19 (3) and (4) of the said Rules), is hereby amended by the substitution of "£20,000" for "£8,000", and Paragraph 4 of the said Form is hereby amended by the substitution of "£20,000" for "£8,000" and the said paragraph as so amended is set out in the Table hereto :—

TABLE

4. The purchase money of (or, the compensation for) the property did not exceed £20,000. The whole of it has been paid to the person (or, persons) entitled thereto or authorised to give receipts therefor.

4. (1) Subrule (1) of Rule 35 of the Land Registration Rules, 1972, is hereby amended by the substitution of "£20,000" for "£8,000" and the said subrule as so amended is set out in the Table hereto :—

TABLE

Application where property acquired by a statutory authority or on sale and value does not exceed £20,000

35. (1) Where property purchased under the Land Purchase Acts and registered with a Possessory Title has been acquired on sale or by a statutory authority and the purchase money, compensation or value thereof does not exceed £20,000, the Registrar may, on an application by the Solicitor for applicant certifying that he has investigated the Title prior to first registration and that on such investigation no adverse rights, restrictive covenants or incumbrances were disclosed, convert the title into an Absolute Title.

(2) The caption of Form 15 of the Schedule of Forms to the Land Registration Rules, 1972 (which is the form mentioned in Rule 35 of the said Rules), is hereby amended by the substitution of "£20,000" for "£8,000" and Paragraph 3 of the said Form 15 is hereby amended by the substitution of "£20,000" for "£8,000" and the said paragraph as so amended is set out in the Table hereto :—

TABLE

3. I have investigated the title to the tenancy in the property existing prior to its first registration, and I certify that no incumbrances, restrictive covenants or rights adverse to the said applicant exist on or arise in respect of the said tenancy in the property, the fee simple in which was transferred to the applicant by transfer (or, other instrument), dated the day of 19 and for which the purchase money (or, compensation) paid did not exceed £20,000.

Explanatory Note

These Rules, which come into operation on the 1st November, 1975, amend Rules 19 and 35 of the Land Registration Rules, 1972.

International Bar Association: Progress Report 7

(1) Membership

The membership of the Association has risen to 73 Bar Associations and Law Societies from 53 countries and there are over 3150 individual lawyers who are patrons or subscribers.

(2) Individual membership

Following on the successful establishment of the Section on Business Law, the Association has set up a second Section on General Practice with thirteen Committees covering non-business law subjects such as, among others, Real Property, Wills, Administration of Foreign Estates, Trusts, Planning, Family Law, Criminal Law, Legal Education, Organisation of the Profession, Law Office Management, Corporate Law Departments and Civil Procedures.

The Council has subsequently appointed a Committee to report upon ways of increasing the participation of individual lawyers in the activities and governance of the Association.

(3) The Fifteenth I.B.A. Conference

The biennial conference was held in Vancouver, British Columbia, from July 29 to August 2, 1974. Over 1,300 conferees and guests attended. Nearly 100 meetings were held. The full and successful social and ladies programmes were helped by outstanding Canadian hospitality and glorious summer weather.

The November 1974 issue of the *International Bar Journal* is devoted to recording the conference proceedings.

(4) Sixteenth I.B.A. Conference

Preliminary arrangements have been made for the next biennial conference to be held in Stockholm, in Sweden, from August 16 to 21, 1976. Details of the programmes will be published in the *International Bar Journal* for November 1975.

(5) Council meetings

The Council of the IBA met during the year in Cyprus in April and twice in Vancouver on July 28 and August 2. The next meeting has been fixed to be held in Nairobi, Kenya, on May 23 and 24, 1975.

(6) Section on Business Law

All twenty committees of the Section on Business Law have been actively engaged during the year and all except one met in Vancouver. Arrangements have been made for a meeting of the Section Council and Committee Chairmen and Vice-Chairmen to meet in Vienna in April 1975 and for a Section Conference to be held in Paris in October 1975.

(7) Section on General Planning

This Section was set up during the year, its formation meeting being held in Vancouver in July 1974. The officers and members of its Council have been appointed and steps are being taken to appoint the chairmen of its committees and to recruit support for it.

(8) Standing Committees of the Association

(a) A new Committee on Seminars has been appointed to give effect to a decision of the Council to hold a series to provide for continuing legal education to be given by experts in their respective fields on subjects which are so specialised or patently of an international rather than national character that it is unlikely that national Bar Associations would include them in their programmes of continuing legal education. The Committee has decided that the first seminar on "World Energy Laws" will be held in Stavanger, Norway, from May 5 to 8, 1975. Leading experts have been found to talk on the laws regulating the exploration, production and utilisation of atomic energy, electricity, petroleum and gas, coal and miscellaneous energies such as water, wind and solar. National and international laws applying to these energies will be discussed as also the legal problems that have arisen or may arise in these fields. Details of the Seminar may be obtained from the office of the Director-General.

(b) The Professional Ethics Committee discussed in Vancouver a final draft of proposed amendments to the International Code of Legal Ethics, first published by the Association seventeen years ago. The revisions to the Code will be submitted to the Council at their meeting in May 1975.

(c) The Chairman of the United Nations Affairs Committee attended the United Nations World Population Conference in Bucharest in August 1974. After discussion at a meeting of the Joint Committee of the Association and the Union Internationale des Avocats, a Joint Committee has been set up to submit a report to the United Nations on World Population Year 1974, and a similar committee will report to the UN on UN Women's Year 1975.

(d) The newly-formed Ombudsman Committee is making substantial progress in arousing the interest of Ombudsmen in its efforts to coordinate their activities throughout the world. The response has been such that plans are under consideration to convene an Ombudsman Conference during the IBA Conference in 1976 in Stockholm, the birthplace of the office of Ombudsman.

(e) The Practice of the Law by Non-Lawyers. It was decided in Vancouver to disband this committee and to refer the study of this subject to a Joint Committee with the Union Internationale des Avocats.

(9) International Powers of Attorney

A draft treaty to provide for a standard form of Power of Attorney to be used abroad internationally, prepared by a Special Committee of the I.B.A., was finally approved for submission to the United Nations Organisation.

(10) Joint Committees

The subjects of the Right of Establishment Abroad and Legal Education and Continuing Legal Education, both of which were discussed at Vancouver are to be referred to joint committees of the IBA and UIA.

(11) Publications

The Association has continued to publish bi-annually in May and November the *International Bar Journal* and quarterly in January, April, July and October the

(continued on p. 289)

Report of President's Visit to New Zealand

When the New Zealand Law Society invitation was received last November to attend the 16th Triennial Conference in Wellington from 3rd to the 8th April, this seemed a long way off. I wondered, when it was suggested that the invitation should be accepted, whether a trip to New Zealand, would in any way be of benefit to the Society. I must confess that the measure of my interest and enthusiasm for the suggested journey was so great that it outweighed any reservations which I had as to the benefit which would be gained. My acceptance in the end was more than justified. In fact I find it difficult to curb my enthusiasm.

Before arriving in Wellington I was uncertain as to what exactly lay before me. On arrival I found within a very short space of time that my wife and I had the very good fortune to meet people who had a natural ability to extend a very sincere and warm welcome, and we evidenced a friendliness and a concern for our welfare which went far beyond our greatest expectations. The Conference Chairman was Mr. M. O'Brien, Q.C., his Assistants, Mr. John McGrath and Mr. Michael Shanahan. One might assume that they were by reason of bearing such surnames the purveyors of the traditional form of Irish hospitality. It fact it was something more oxtensive than that and was in no way confined to those of Irish ancestry. While many New Zealand Lawyers are of Irish decent, there are equally as many with English, Scottish and Welsh ancestry and all displayed a similar sincere and excellent form of hospitality; it was evident everywhere in all the people we met, and in all the areas we visited from Mr.Lester Castle, President of the New Lealand law Society and his wife, through the whole range of Secretaries and Staff of the New Zealand and District Law Societies. I met Lawyers who attended The International Bar Conference in Dublin in 1968 and they were very anxious and indeed determined to repay in kind the Irish hospitality extended at that time.

The open and friendly approach and the interest displayed in Ireland and in our Society presented a continuous flow of questions which led to two newspaper interviews, many luncheons and dinners and private functions apart from the official functions of Conference. We were hosted, wined and dined by the the Auckland, Christchurch, and Canterbury Societies and on our homeward journey by the Victoria Law Society (Australia). Our Hotel Expenses in New Zealand were paid for by the New Zealand Law Society.

Conference

The papers at the actual Conference and the subsequent discussions dealt with the following matters:—

(1) Private right v Public interest by C. I. Patterson, of the Legislation Committee of the New Zealand Law Society.
(2) The legal problems of Inflation by I. L. McKay, of the Law Revision Committee of New Zealand.
(3) Dangerous Products and the Consumer in New Zealand by Geoffrey W. R. Palmer, a Consultant to the Australian Government and to the Zealand Accident Compensation Committee.
(4) Court Structure and Procedure by A. D. Holland, Council member of the New Zealand Law Society and a past lecturer in Commercial Law in the University of Canterbury.
(5) The Land Transfer System by F. M. Brookfield, Editor of Goodall & Brookfield on Conveyancing.
(6) The Right to Life by The Hon. Mr. Justice Beattie.
(7) Administrative Law — The vanishing Sphinx by the Hon. Mr. Justice Cooke who is a member of the Law Reform Committee, and Chairman of the Commission of Enquiry into Housing.

All of the papers which were read and discussed were of immense interest. My intention is to present the papers to the library and it is hoped that edited editions of some of the papers may be worthy of reporting in the Gazette in due course.

Apart from the official papers read at the Conference, I was invited to, and sat in on, a closed meeting of the New Zealand Law Society, which lasted four hours. It was a most interesting experience. The most notable general feature was that the various problems and matters which came up for discussion were very largely in line with matters which would come up for discussion at any meeting of the profession in this country. Among the topics discussed were the following:—

Taxation legislation and the inroads into the question of privilege;
Need to publicly criticise certain legislation where appropriate;
Consideration of funding a Negligence Insurance Scheme;
A need for more and more practical Seminars;
Public relations and the general image of the profession;
Publicity material;
The progress of a training course for Legal Exectives;
The suggested remoteness of the Council of the New Zealand Law Society from some of the practical problems of members in remote areas.

The New Zealand Legal System

In general it was a valuable exercise in ascertaining the mind of the profession and in having new ideas discussed and talked about.

The New Zealand legal system is based on the Com-

mon Law system and thus is generally similar to ours with one major exception, namely, that they have not a written Constitution or Bill of Rights, and their final Court of Appeal is The Privy Council. Their legal history has been influenced by lawyers of Irish descent and by the legal system of the State of Victoria, Australia. The Torrens system of land law was first created in Victoria by Mr. Torrens in 1859. Mr. Torrens was born in Cork and was later educated at Trinity College, Dublin. He emigrated to Australia and in time created the Torrens system of land registration in Victoria and this system was later introduced to New Zealand. Mr. Justice Callan of the New Zealand Supreme Court, who died some years ago, was cousin of our Librarian Mr. Colm Gavan Duffy, and a former Chief Justice of Australia Sir Frank Gavan Duffy, was an uncle. It is also interesting to note that the Gavan Duffy family still influence the legal system of Victoria. The late Mr. Justice Charles Gavan Duffy was a Judge of the Supreme Court and Mr. Justice John Starke is a present Judge of the Supreme Court — both are cousins of the Editor of our Gazette.

Considerable interest was displayed in our constitutional position. A Bill of Rights was suggested for New Zealand but was not introduced. There now appears to be growing feeling that a Bill of Rights would be helpful in protecting the Common Law System from the in-roads which legislation has been making.

The New Zealand District Law Societies

The New Zealand Law Society in many ways is similar to ours. Since the country is divided into two islands, traditionally they have and still have strong Bar Associations in Auckland, Christchurch, Dunedin, and other centres. The New Zealand Law Society is the over Lord, but the District Law Societies have wide powers and both have statutory recognition. The Distract Law Societies control to a large extent the profession in its area of jurisdiction. The functions of the Zealand Law Society are (1) to promote and encourage proper conduct amongst the members of the legal profession; (2) to supress illegal, dishonourable or improper practices; (3) to preserve and maintain the integrity and status of the legal profession; (4) to provide opportunities for the acquisition and diffusion of legal knowledge; (5) to consider and suggest amendments to the law; (6) to provide means for the amicable settlement of professional differences, and (7) generally to protect the interests of the legal profession and the interests of the public in relation to legal matters, Its President is elected by the Council and the Council comprise four members selected by the Auckland Society, four members by the Wellington Society, four members by the Canterbury Society, and members elected by the other District Societies, in all about 40 members. The District Law Societies functions are similar to those of the New Zealand Law Society but confined to their area of jurisdiction. A District Law Society in relation to a complaint within its district against a member of that Society, may order the offending party to pay to the District Law Society such sum as the District Council thinks fit in respect of costs and expenses incidental to an investigation. Any member of the District Law Society aggrieved by a decision of that Society may appeal against its decision to the Council of the New Zealand Law Society. The New Zealand Law Society in turn has power to refer a complaint made to it, to the District Law Society where the offending person resides for investigation and for a report.

The Disciplinary Committee

The New Zealand Law Society has a Disciplinary Committee with wide powers in relation to the investigation of complaints against all members of the profession. The Disciplinary Committee has power to order (1) that practitioners be struck off the roll, (2) that they be suspended from practice, (3) that they should not practice as solicitors on their own account, (4) order them to pay to the Society a sum by way of penalty, (5) censure them and (6) order them to pay costs and expenses. The Society also has power to grant witnesses' expenses in respect of any witnesses appearing before the Committee. The party complained against, has a right of appeal from the Disciplinary Committee to the Supreme Court, by way of re-hearing.

Costs Procedure

The Statutory provisions in relation to costs include a provision which permits a Solicitor to agree in writing with a client as to the amount and manner of payment of costs for the whole or any part of any past or future services, either by way of gross sum or by commission, percentage, salary or otherwise, with the proviso that, if the agreement appears to the Court to be unfair and unreasonable, the Court may reduce the amount agreed to be payable under the agreement There is also statutory provision whereby any District Law Society may either at the request of a party chargeable or without any such request, refer a Solicitor's Bill of Costs to a Registrar for taxation in the ordinary way.

Extended Powers of Law Society

The Society has wide powers to deal with a Solicitor's affairs and with his practice, where a Solicitor has been struck off, or is unable to practice due to ill health, or has been guilty of some offence or has died. Statutory powers also permit the Law Society to take possession of documents, ledgers, Books of Account and records from a Solicitor's office in certain circumstances, and to appoint persons to investigate the affairs and to examine the Accounts of Solicitors. On the other hand a Solicitor has a statutory power to appoint by way of Power of Attorney, another Solicitor to practice on his behalf during a period when the donor of the power is incapacitated or unable by reason of physical or mental condition to conduct his practice, or during the donor's absence from New Zealand.

Barristers and Solicitors in New Zealand

The profession in New Zealand is constituted by Barristers and Solicitors. A person admitted as a Barrister may at the same time be admitted as a Solicitor and vice versa, and each has the same right to practice

law fully either in offices or Court. The end result is that most offices contain practitioners who are both Barristers and Solicitors but in essence some tend to specialise in Court work, and others in the type of work which ordinarily is carried out by a solicitor in this country. Oddly enough there is still statutory provision for the appointment of Queen's Counsel, and there are some Queen's Counsel. Queen's Counsel are not permitted to operate in or from an office but practice as Senior Counsel from a Law Library. While there is no limitation on a Solicitor or Barrister as to the range of the work which either can carry out, it nonetheless appears that in the larger offices those qualified as Barristers tend to carry out the Court work, while those qualified as Solicitors tend to deal with solicitor's traditional work. There are many one man practices where the practitioner is ordinarily qualified as a Barrister and as a Solicitor.

Qualifications for Admission

Ordinarily a person will be admitted both as a Barrister and as a Solicitor of the Supreme Court of New Zealand if he holds the LL.B. Degree of a University in New Zealand, and has also passed or obtained credits in the subjects prescribed by the Council of Legal Education. New Zealand has six Universities of which four only are Examining Bodies for admission to the legal profession. The Universities offer an LL.B. Degree and provide teaching and conduct examinations in 23 subjects. While the LL.B. courses offered at the universities differ in detail, they are all designed so that an LL.B. candidate can, if he wishes, follow a Degree under which he completes 17 of the 23 subjects required for the professional examinations, namely, those carried out under the Law Regulations of 1966. Having obtained an LL.B. Degree, the candidate must then sit for and pass further examinations in law and practice before being admitted. There is an important statutory provision in the Law Practitioners' Act which prohibits any person from commencing practice as a Solicitor on his own account, whether in partnership or otherwise, unless he has at least 3 years' legal experience in the office of a Barrister or a firm of Solicitors in actice practice or in the legal branch of a Government Department.

The Society also operate a Compensation Fund under Statutory Regulations, and have recently introduced a Superannuation Scheme.

The Society's views on Legislation

Much interest was shown in our approach to new legislation and the fact that we have been making public comment on new legislation, particularly in relation to taxation. New Zealand lawyers have not yet reached the stage where they have made public comment, but they have in recent times made representations to the Government in relation to financial legislation which is being introduced. They are not at all happy about the inroads which taxation legislation has made into the confidential relationship existing between a lawyer and his client.

Recent Seminars arranged by the Society have dealt with (1) the law affecting Trusts and Trust Property, (2) new legislation relating to Superannuation which appears to be an extension of the superannuation welfare schemes which exist in this country; (3) Court Structures; (4) Matrimonial Cases; and (5) Legal Aid and Law Reform Procedures. Intended Seminars will deal with Public Relations, Methods of fixing Costs, Practical post Graduate Training, Partners Protection Insurance and Professional Indemnity Insurance.

Lawyers in New Zealand volunteer for and accept appointment to various Committees to consider legislation which is about to be introduced and have also become involved in a Consumer Rights campaign. The Society is actively engaged in the work of the International Bar Association, with particular reference to Town and Country Planning.

Statistics of Earnings

Statistics relating to the Legal Profession appear to be readily available and it is interesting to note that self employed lawyers earn considerably more than self employed doctors, dentists and public accountants in 1973/74. The average income of lawyers was £12,350 in that year and was more than £1,200 higher than that of doctors. Seventy five per cent of Practising Certificates are held by self employed practitioners and the Table underneath is of interest. The appropriate exchange rate is approximately 170 New Zealand dollers to £100 sterling.

Average incomes of self-employed persons.

	1970-71 $	1971-72 $	1972-73 $	1973-74 $
Medical practitioners	12,700	14,450	16,100	18,900
Dental "	9,400	10,750	12,200	14,300
Legal "	11,950	14,000	17,000	21,000
Public accountants	8,600	9,800	10,950	12,200

Legal Aid and Public Relations

The profession is very concerned about its public image and a Public Relations Committee has issued certain pamphlets to the public on the lines of those which we have issued in recent times.

Their schemes of Legal Aid are far more advanced than our sole scheme relating to Criminal Legal Aid.

The nett points of interest arising and perhaps worthy of consideration in relation to our Society at some future date were:

(a) The closed Conference session which opened up a general discussion on many matters, but was simply a Discussion Forum at which no decisions or resolutions were adopted, but was in the nature of informing the Council of the general feeling, attitude and mind of the profession.

(b) The powers imposed in the New Zealand Law Society and particularly in the District Societies; the fact that the District Societies have a statutory standing and statutory functions to perform and whether this could be operated in our Society on a provincial or grouped County basis.

(c) The right to agree on costs or fees to the extent provided by the New Zealand Statutory Regulations which are a vast improvement on the statutory position existing in relation to our costs; this power, coupled with the right of the Law Society to refer any disputed bill to taxation.

(d) The statutory provision which prohibits a newly qualified solicitor or barrister from commencing practice on his own account, without first having some years experience in an office as an assistant.

W. A. OSBORNE, *President*

When Not to React to Press or Media

Conflict is always welcome by the news media: it is claimed to stimulate reader interest. When a controversy can be initiated and then fed by two or more parties all would appear to be satisfactory from the reader interest angle.

Solicitors, through the errors of dilatoriness of an increasing number of the profession and (more frequently) through the failure of the public to appreciate the legal processes which they—through the governments they elect—have set up to protect themselves, are a frequent target. Every unhappy litigant apparently feels a grievance and is willing to air it on TV, radio or through the Press.

Should the Law Society immediately write an indignant letter to the Editor of the newspaper and thereby stimulate—and prolong—a controversy? The Public Relations Committee thinks it should not; such replies would be a negative reaction, and the needs of the Society is to develop a positive image—a slow process but one to which every member of the profession can really contribute through his handling of clients' affairs.

The most recent airing of grievances—some of them very "airy" indeed—was contained in the "Evening Press" of Friday, October 17. A page was devoted almost entirely to the "misdeeds" of solicitors. Much of the material was based on an interview with Mr. Brian Bell who earlier this year created the Association for Clients of the Legal Profession for which he now claims 300 supporters—surely a modest figure when the total volume of cases and other work handled annually by solicitors is considered. The Law Society's views expressed by the President were accorded modest space. They were factual, non-controversial and non-headline making.

Several of the matters mentioned in the page feature prepared by Liam O Cunaigh could have been cleared up very simply if they had been checked with the Secretariat of the Incorporated Law Society. There was, for example, an allusion to the embezzlement of £329,000 but no reference whatever to the fact that owing to the existence of he Compensation Fund of the Incorporated Law Society the public does not suffer in the case of such a default.

The Public Relations and Services Committee reviewed the publication and because of the obvious half-truths, therefore unanswerable, decided that it deserved no further comment.

When publication of material which is deemed to be actionable—and some appears very close to it—you may take it that immediate steps will be taken to halt abuse of the valued freedom of the Press and the libelling of the legal profession.

The President has made it clear to the Public Press and the Profession that there is awareness in a very small percentage of practitioners but where these cases are brought to the attention of the Society the protection of the client—and the reputation of the profession—will be the primary consideration.

It is worth noting that this feature article appeared on the same page as the excellent "Evening Press" feature "Expert Service" which has on several occasions expressed appreciation of the Law Society for its handling of queries which have been passed to it by the department responsible for the feature.

Irish Capital Gains Tax

Extel Statistical Services Limited have announced the imminent publication of a book containing Base Day prices of quoted securities, for use in calculating Capital Gains Tax liabilities.

Discussions have been held with the Revenue Commissioners, who have given their approval to the prices contained within the book.

The book is priced £10.00, and is available from the publishers Extel Statistical Services Limited, 37/45 Paul Street, London, EC2A 4PB, telephone no. 01-253-3400 or Extel Statistical Services Limited, Arthur House, Chorlton Street, Manchester, MI 3FH, telephone No. 061-236-5802.

Tribute to Mr. Justice Lavery

by FRANK CONNOLLY, Solicitor

Tributes paid in the courts to the work of Chief Justice W. O'B. Fitzgerald on the announcement of his death referred to some similarities in the career of the deceased and the late Mr. Justice Lavery who died in 1966. Though unlike in many ways, each had been exceptionally successful at the Irish Bar. Both had very quick minds, and were advocates of the first order. Each was a member of the highest court in the land at the time of his death.

The essentials of good advocacy in the courts are: plain and orderly presentation of fact stated succinctly and accurately, sagacity and mastery of the rubrics of the law. Contrary to what at first sight might seem necessary, eloquence, though useful, is not essential; indeed, it must be used sparingly, and with great astuteness in legal proceedings; otherwise, it may give the impression that a claim is founded on little more than humbug, and create revulsion. On the other hand, eloquence, if used with moderation and in appropriate cases, may be helpful because by interesting the hearer, it helps to relieve the tedium of listening to long hair-splitting arguments, and it may illuminate in a striking way some facet of an issue worthy of note.

Although Cecil Lavery is rightfully considered to have been one of the greatest exponents of advocacy in Ireland during the last fifty years, he was not an especially attractive speaker. In addressing an audience on non-legal subjects he could experience difficulty in holding their attention; but by constant endeavour, he made himself into a superb polemicist in jurisprudence.

Born in Armagh of a legal family; in person Cecil Lavery was tall and not very strongly built, but until late in life he enjoyed good health. Without any egoism or conceit invariably he was polite and correct in behaviour, except that in the conduct of business he would not tolerate unnecessary repetition or verboseness. In pursuance of his policy of self-restraint, he studiously avoided personal quarrels or angry scenes. This is not to say that there was excessive pliancy in his character: on the contrary, if he thought that he was being badly treated, he would make firm protests; and, if necessary, take salutary action, irrespective of how rancorous he knew the matter might become. Calculation in all things to the utmost degree possible was one of the guiding precepts of his life. Following this rule he gave a great deal of thought to the careful apportionment of his time; he thereby avoided dissipating his energies, and as a result he was able to do his work more thoroughly.

By the time he was approaching the zenith of his career as an advocate, he had to compete with many other talented and well-known counsel, for instance: A. Dickie, K.C., A. Wood, K.C., J. A. Costello, S.C., P. McGilligan, S.C., John M. Fitzgerald, S.C., and Basil McGuckin, S.C.; and he was a match for all of them. Lacking in the seductive charm in address of Basil McGuckin; not as polished an orator as John A. Costello; and without the wide erudition of Patrick McGilligan) nevertheless, Cecil Lavery was endowed with an unusually powerful intelligence, with great penetrating force capable of the nicest subtleties and exactness in argument.

The present writer, while in private practise, had the pleasure of briefing him in Court, and believes that the strongest weapons in his forensic armoury were: a truly amazing power of exposition in addressing any forum; skill as a legal dialectician developed almost to the point of genius; good judgment; and the gift of being able to discern the decisive point in a complex matter. In the course of exposition it was his habit to refer to the salient features in his case in all their aspects, point out the deductions to be made from them, and elaborate on the implications in support of his thesis in such a way as to exercise almost mesmeric power in persuading the forum to accept his submission. If an opponent appeared to have successfully breached his contention, such was the ingenuity of his mind and the fertility of his resources as a result of his immense stores of knowledge of law that he could deploy instantly further arguments equally as good as his initial line of reasoning, buttressed by the citation of numerous precedent court decisions. Notwithstanding that he had an analytical brain and could see many strengths and weaknesses in every case, the logical faculty of his intellect was so acute that his assessment as to the view a Court was likely to take on any question was virtually unerring. In an intricate problem it is frequently hard to pick out the decisive or overriding factor which governs the correct solution of the matter, and this difficulty is well summed up in the old saying of not being able to see the wood for the trees. Cecil Lavery was never puzzled by a test of that kind; for he had the ability to divine the item in a field of inquiry on which everything hung, and which once moved, sets the rest going.

Normally his mode of speech in addressing a tribunal was commonplace and businesslike, notable for its absence of colour, flights of imagination or other embellishment, though now and then containing forceful passages, if the occasion warranted it. He could, however, make use of simile, metaphor or other imagery very effectively to illustrate his arguments. Also, although it was a rare occurrence, he was capable of rising to heights of great eloquence, as anybody who listened to his opening address to the jury in Dan Breen's libel action against the *Evening Mail* will remember.

On the election of the first Inter-Party Government in 1948 headed by Mr. John A. Costello, S.C., Cecil Lavery was appointed Attorney-General, and also continued his private practice at the Bar. He proved to be very competent in his new post; and his advice to the Government and State Departments were extremely valuable.

In 1950, two years later, a vacancy occurred in the Supreme Court, upon the resignation of Mr. Justice Geoghegan, which he was selected to fill. Despite his elevation Mr. Justice Lavery made very little change in his style of utterance; though most of his work thereafter was embodied in written judgments. His written English is not particularly elegant; it contains no subtleties or flashes of imagination; nothing very arresting or striking; and virtually no literary graces of any kind. But it has the good qualities of being clear, uncomplicated, robust and vigorous; displaying great depth of thought and shot through with practical shrewdness. Nevertheless, it cannot compare with that

of Chief Justice Kennedy or of Mr. Justice Gavan Duffy.

The learned Judge recognised that in Ireland on account of the long history of the use of physical force against what were considered to be anti-national laws, it was essential for the well being of the body politic that every effort should be made to cultivate respect for the rule of law. He therefore took care to ensure as far as he could that the scales of justice were evenly held between the duties and rights of citizens. All his judgments display a meticulous balancing of pros and cons in their elucidation of fine shades of meaning; an obvious anxiety that right should be done; and a displeasure with mere technicalities which might defeat justice.

In view of his vast experience, surprisingly occasional complaints were made that, as a Judge, he was inclined to be impatient and to arrive at conclusions without having heard all the desiderata. If there was any justification for these allegations, it was possibly due to the mistaken impression that a casual observation thrown out by him in the early stages of hearing of a Court action that, to his way of thinking, well settled legal principles should not be lightly set aside, and that the Constitution and Statutes which had been enacted for the benefit of the public should, if possible, be made to work, even if there were theoretical flaws in them, was an intimation that a specific verdict had been prematurely reached. No doubt for counsel wrongly to deduce such an indication during the opening of an appeal or other law suit is a douche of cold water almost paralysing in effect. But this conviction, known to have been held by Mr. Justice Lavery, is shared by many other judges and lawyers, not all of whom are extremely conservative in their attitudes; and obviously, it is an aspect which must be seriously reckoned with before embarking on the conduct of litigation. Moreover, the reports of cases in which he was largely responsible for the decisions, show that where there were valid grounds, he was ready to overrule old Court Judgments and legal provisions which were contrary to the good of the community.

This Judge will live long in the memory of those who knew him or saw him at work as one of the ablest Counsel of his generation, and a very capable Judge of the Irish Supreme Court.

International Bar Association: Progress Report 7

(continued from p. 283)

International Business Lawyer, the Journal of the Section on Business Law.

The Directory of IBA members, first published in 1973, is being brought up to date with many amendments and will be published in the Spring of 1975, and the Directory of the Section on Business Law will also be republished later in 1975.

The Section on Business Law has also published a booklet on the Regulation of Trading by Insiders in the U.S.A., England and Germany.

December 1974

Study Visits Abroad by Lawyers from Member States of the Council of Europe

Applications for study visits abroad to be forwarded to the Secretariat of the Council of Europe should be made to the Department of Justice, in principle before the 31st October each year, but later applications will be entertained. They can cover any aspect of law dealt with by the Council of Europe. The applications are open to academic lawyers, civil servants attached to the Department of Justice, judges, and practising barristers and solicitors. The Secretariat will transmit its comments on the applications to the Department of Justice, who have to approve the selected candidates. The length of the visit to legal institutions on the Continent will be at least one month. If the candidates are employed in Ireland, full facilities should be granted to them by their employers. In principle, the State, where the study is being carried out, will not bear any travel costs or subsistence allowances, but applications for financial assistance may be made to the Council of Europe; this will normally cover travelling expenses by air, and a nominal subsistence allowance. Every applicant must send a report of his visit to the Secretariat in Strasbourg, as well as to the Irish Department of Justice

Federal Economic Chamber of Vienna

The Federal Economic Chamber of Vienna has published the Rules of Arbitration and of Conciliation of its Arbitration Centre in English, French and German. These are obtainable from the Secretariat of the Economic Chamber, Stubenring 12, 1010 WIEN, Austria.

Short Notes of English Cases

Negligence—duty of care—doctor failed to diagnose malaria

The defendant, a general practitioner, failed to diagnose malaria in his patient, who had shortly before returned from Uganda. Held, that he was, on the facts, guilty of medical negligence and was liable in damages to the patient's widow: *Langley v Campbell*, "The Times", November 6, 1975, Cusack J. (G.H.)

Negligence—expert valuation of shares

The plaintiff held shares in the private company in which he was employed on terms that if his employment ceased he would sell back the shares at "a fair value" to be determined by the company auditors. On the shares for the purposes of sale and the shares were the termination of his employment the auditors valued sold back. Subsequently the shares were valued for public offer at a sum allegedly six times as large. The plaintiff, inter alia, sought damages against the defendant auditors for a negligent valuation. On appeal from the affirmation by the Court of Appeal of Brightman J.'s order striking out the statement of claim as disclosing no cause of action, held, the statement of claim disclosed a cause of action. The matter should be remitted for trial to determine whether the auditors acted as arbitrators and were entitled to immunity thereby and whether a breach of duty had occurred. *Arenson v Casson, Beckman, Rutled & Co.*, "The Times", November 12, 1975, H.L.

Society of Young Solicitors Galway Seminar, November 1975

The full scripts given at this Seminar are available and are priced as follows:—

Lecture 90: Changes of the Law and Practice Relating to Maintenance proposed in the Family Law—(Maintenance of Spouses and Children) Bill 1975, by *Kevin Keeney*, B.L. Price: £1.00. By post £1.10.

Lecture 91: The Guardianship of Infants Act, 1964, And Recent Decisions in Relation thereto by *The Hon. Mr. Justice Liam Hamilton*, £0. 60p. By post £0. 70p.

Lecture 92: The Effect of Irish Law of Recent Developments in EEC Law of Right of Establishment by *Bryan McMahon, LLM, PhD., Solicitor.* £0.75. By post £0.85.

Lecture 93: The Drafting of Separation Agreements by *Michael V. O'Mahony LL.M., Solicitor.* £1.60. By post £1.70.

Regarding the Kinsale Seminar, the Advocacy Lecture No. 89 is now available, it was not available at the Seminar. The price of the Lectures given at this Seminar are:—

Lecture 87: Damages In Tort and in Breach of Contract by *Patrick Connolly, Senioc Counsel.* £0. 50p. By post £0. 60p.

Lecture 88: Hire Purchase and Hiring Agreements by *Peter Shanley, B.L.* £0. 80p. By post £0. 90p.

Lecture 89: Advocacy *by The Hon. Justice* Finlay, *President of the High Court.* £0. 55p. By post £0. 65.

Unfortunately we have not as yet received the approved draft of the Lecture on Injunctions as the Lecturer has been heavily committed but we are hoping that we may be able to have it available early in the New Year. We are sorry to continue to disappoint the many people who have been asking for this script".

All obtainable from Norman Spendlove, 94 Grafton Street, Dublin 2.

Obituary

Mr. Denzil B. J. O'Donnell, MA, LLB, (TCD), died in Dublin on 13th November, 1975. Mr. O'Donnell was admitted in Trinity Term, 1929, and practised first as a partner in Thomas Gerrard & Co. at 25, Westmorland Street, Dublin, and 31, Kildare Street, Dublin. Since 1968, he has practised as senior partner in the firm of Messrs. Gerrard, Scallan and O'Brien at 69/71, St. Stephen's Green, Dublin 2.

Lost Will

MARY, F. SHERIDAN, DECEASED, who died 24th September 1975, late of 5 Haigh Terrace, Dun Laoghaire, Co. Dublin and formerly of Gubaveeney, Blacklion, Co. Cavan. We have reason to believe that the above-named deceased made a Will and should any Solicitor have this Will or have any information that might help locate same, kindly contact Alphonsus Grogan & Co. Solicitors, 33 Lower Ormond Quay, Dublin 1.

Notice

VACANCY FOR YOUNG SOLICITOR with early partnership potential in busy commercial practice with well-equipped offices. Good commencing salary with bi-annual reviews, depending on ability and experience. Eoin C. Daly & Co., 17 South Mall, Cork.

The Register

REGISTRATION OF TITLE ACT 1964

Issue of new Land Certificate

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

Dated this 31st day of December, 1975.

Schedule

(1) Registered Owner: Nathaniel George W. Stephens. Folio No.: 7424. Lands: Ballinacur. Area: 134a. 0r. 11p. County: Wexford.

(2) Registered Owner: George E. Plant. Folio No.: 735F. Lands: Kilcannon. Area: 1a. 0r. 5p. County: Wexford.

(3) Registered Owner: Patrick J. Farrell. Folio No. :7574. Lands: Ninch (part). Area: 0a. 0r. 20p. County: Meath.

(4) Registered Owner: Kate Lawton. Folio No.: 12331. Lands: (1) Ballyregan; (2) Churchtown. Area: (1) 29a. 2r. 29p; (2) 11a. 2r. 25p. County: Cork.

(5) Registered Owner: Patrick Kelleher. Folio No.: 17591. Lands: Lissarourke. Area: 58a. 1r. 0p. County: Cork.

(6) Registered Owner: William Coogan. Folio No.: 1434. Lands: Crettyard. Area: 2a. 0r. 0p. County: Queen's.

(7) Registered Owner: Michael Reynolds. Folio No.: 2223. Lands: Barcull. Area: 28a. 1r. 35p. County: Mayo.

(8) Registered Owner: John Kenny. Folio No.: 23921. Lands: Knockshigowna. Area: 159a. 1r. 15p. County: Tipperary.

(9) Registered Owner: Mary A. Lynch. Folio No. 19561. Lands: (1) Corglass; (2) Corglass. Area (1) 6a. 0r. 29p.; (2) 8a. 1r. 0p. County: Leitrim.T he Land Certificate of folio 8a. 1r. 0p. County: Leitrim. The Land Certificate of folio 19561.

(10) Registered Owner Matthew Ryall. Folio No. 4891. Lands: Knockanglass. Area: 61a. 0r. 23p. County: Tipperary.

(11) Registered Owner: Joseph Stephen Keane. Folio No.: 5163. Lands: Part of the lands of Rush. Area: 1a. 0r. 10p. County: Dublin.

(12) Registered Owner: Katie Donelon. Folio No.: 14315 (R) Lands: Glennamaddy. Area: 2a. 2r. 18p. County: Galway.

(13) Registered Owner: Liam Farrell. Folio No.: 6982. Lands: Bawn (parts). Area: 28a. 0r. 23p. County: Longford.

(14 Registered Owner: Helen Mary Jackson. Folio No. 57422. Lands: Doorus. Area: 0a. 1r. 24p.County Galway.

(15) Registered Owner: John Daly. Folio No.-: 2021. Lands: Leampreaghane (parts). Area: 75a. 2r. 20p. County: Kerry.

(16) Registered Owner: Daniel O'Connor. Folio No.: 28443. Lands: Part of the land of Tarbert with the cottage thereon situate in the Barony of Iraghtconnor. County: Kerry.

(17) Registered Owner: Peter Roche. Folio No.: 5520. Lands: Yellowbatter. Area: 9a. 0r. 35p. County: Louth.

(18) Registered Owners: John O'Keefe and Peggy O'Keefe. Folio No.: 924. Lands: Cangullia. Area: 70a. 2r. 38p. County: Kerry.

(19) Registered Owner: Bernard Ward. Folio No.: 6230. Lands: Fearglass North. Area: 19a. 0r. 20p. County: Leitrim.

(20) Registered Owner: Eileen D'Arcy. Folio No.: 51761. Lands: Bawnard West. Area: 1a. 2r. 37p. County: Cork.

(21) Registered Owner: Thomas Finn. Folio No.: 733. Lands: Barnahown (Part). Area: 92a. 2r. 38p. County: Tipperary.

(22) Registered Owner: John Knowles. Folio No.: 14413. Lands: (1) Crissard; (2) Crissard. Area: (1) 19a. 2r. 30p.; (2) 24a. 0r. 27p. County: Queen's.

(23) Registered Owner: Mary Walsh, nee Greene. Folio No.: 23059. Lands: (1) Moveen East; (2) Moveen East; (3) Carrowmore South. Area: (1) 37a. 3r. 37p.; (2) 174a. 3r. 6p; (3) 1a. 0r. 38p. County: Clare. The Land Certificate 1450 now forming the Lands Nos. 1 and 2 on Folio 23059.

International Bar Association Sixteenth Conference August 15-21 1976, Stockholm, Sweden

INTERNATIONAL BAR ASSOCIATION

STOCKHOLM CONFERENCE

AUGUST 15—21, 1976

WORKING PROGRAMME

OPENING SESSION

in the presence of
His Majesty King Carl XVI Gustaf of Sweden

Topic 1—**"Professional Privilege (Confidentiality)"**
Presented by the International Association of Young Lawyers

Topic 2—**"Product Liability of the Pharmaceutical Industry"**
Presented by the Swedish Bar Association

Topic 3—**"The Legal Professions' Role in Providing Legal Aid"**
Presented by the International Legal Aid Association

Topic 4—**"Continuing Legal Education"**

Topic 5—**"The Rights of the Individual against Acts of Pollution"**
Presented by the Environmental Law Committee of the Section on Business Law

All the above meetings will have simultaneous interpretation.

General Meeting of Member Organizations
Conference of Presidents and Bâtoniers of Member Organizations
Committee on United Nations Affairs
Committee on European Affairs
Ombudsman Committee
Professional Ethics Committee

SECTION ON BUSINESS LAW

There will be a General Meeting of the Section and the following Committees will hold one or more open Meetings :

A	Maritime and Transport Law
B	Aeronautical Law
C	Antitrust Law and Monopolies
D	Procedures for Settling Disputes
E	Commercial Banking
F	Environmental Law
G	Business Organisations
H	Insurance
I	Investment Companies Funds and Trusts
J	Creditors' Rights, Insolvency, Liquidations and Reorganizations
K	Public Utilities
L	Patents, Trademarks, Copyrights
M	Sales of Goods
N	Taxes
O	Petroleum and Mineral Resources
P	Labour Law
Q	Issues and Trading in Securities
S	Consumer Affairs
T	International Construction Contracts

SECTION ON GENERAL PRACTICE

There will be a General Meeting of the Section and the following Committees will also hold one or more open Meetings :

1.	Real Property
2.	Town and Country Planning
3.	Will and Administration of Foreign Estates, Trusts and Trusteeships
4.	Family Law
5.	Estate Duty and Tax Planning
6.	Criminal Law
7.	General Administrative Law
8.	Legal Education and Continuing Legal Education
9.	Organization and Development of the Legal Profession
10.	Law Office Management and Technology
11.	Corporate Law Departments
12.	Civil Procedures
13.	"No Fault" Insurance
14.	Governmental Finance and Taxation

Conferees are welcome to attend any meetings of the sections' committees whether or not they are members of the section.

THE GAZETTE OF THE INCORPORATED LAW SOCIETY OF IRELAND

December, 1975
Vol. 69 No. 10

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The Editor welcomes articles, letters and other contributions for publication in the Gazette.

Opinions and comments in contributed articles and reviews are not published as the views of the Council unless expressly so described.
Likewise the opinions expressed in the Editorial are those of the Editor and do not necessarily represent the views of the Council.

The Gazette is published during the third week of each month; material for publication should be in the Editor's hands before the 15th of the previous month if it is intended that it should appear in the following issue. Acceptance that material will in fact be included in any particular issue for publication is not a guarantee that it will be published then since this must depend on the space available.

Recent Irish Cases

Women are entitled by the Constitution as of right to serve as jurors, and it is unconstitutional to impose any minimum rating qualification on jurors.

The Supreme Court allowed an appeal by two Dublin women against the dismissal by the High Court of their action in which they had sought declarations that certain provisions of the Juries Act, referring to the exemption of women from jury service and referring to the necessity for a property qualification, were inconsistent with the Constitution.

The Court allowed with costs the appeals brought by Mairin de Burca of Ballsbridge, and Mary Anderson of Sandymount.

The Court granted a declaration that the Juries Act, 1927, to the extent that it provides (a) that a minimum rating qualification is necessary to make a citizen qualified and liable to serve as a juror and (b) that women are to be exempt from jury service but entitled to serve on application, is inconsistent with the Constitution and is of no force or effect.

The two appellants had been sent forward to the Circuit Court for trial on charges of wilfully obstructing a member of the Garda Siochana in the execution of his duty, having pleaded not guilty. They had objected to being tried by a jury selected from the jurors on the panel as they expressed the fear that they would not get a fair trial because 1, no women were included in the panel; and 2, the jury would be confined to property holders and be selected on the basis of property qualification.

The proceedings against them were adjourned (and still stand adjourned) to enable them to take the proceedings now concluded.

Women given right to opt in as jurors

Mr. Justice Walsh, in the course of his judgment, said that the progression of events was that in 1919 all men and women with the requisite property qualification were qualified and liable to serve as jurors, subject to such disabilities resulting from conviction for felonies, et cetera. In 1924 women were given the right to opt out of jury service and, by the 1927 Act, in order to serve on a jury, they had to opt in.

He was of the view that the Constitution did not preclude the Oireachtas from enacting that prospective jurors should have certain minimum standards of ability or personal competence. He was satisfied that the constitutional provisions did not prevent the Oireachtas from validly enacting that certain categories, by virtue of their physical or moral capacity, could properly be excluded from either the obligation or qualification to serve on a jury. He was also satisfied that the Oireachtas may validly legislate to the effect that some persons, by reason of their particular function or role in society, may be relieved, in the interests of the common good, from the obligations of jury service.

Dealing with the property qualification in the Juries Act, 1927, Mr. Justice Walsh posed the question: "Can it seriously be suggested that a person who is not the rated occupier of any property or who is not the rated occupier of property of a certain value is less intelligent or less honest or less impartial than one who is so rated?" The answer could only be in the negative.

Property qualifications cannot be rigidly confined

If a case could be made for having a property qualification it could not reasonably be confined to one particular type of property. It would be just as rational to suggest that jury service should be confined to the owners of motor-cars over a certain horsepower or motor-cars of more than a certain value. The particular type of property qualification totally ignored the realities of wealth. A man may be a most highly qualified person for jury service, and may indeed be a very wealthy man, and not be the rated occupier of any property. On the other hand, the rated occupier of property may be illiterate and poverty-stricken. He may even be a person of unsound mind.

Mr. Justice Walsh said he was, therefore, of the opinion that such discrimination as was created by the distinction between being the rated occupier of property of a certain value and everybody else was one which was inconsistent with and violated Article 40 (1) of the Constitution and was, therefore, a distinction which could not be validly the subject of legislation by the Oireachtas. That being so, it must follow that any legislation to that effect in force at the date of the coming into operation of the Constitution was necessarily inconsistent with it and was not carried over by Article 50 of the Constitution.

Dealing with the complaint based on the provision in the Act exempting women from liability from jury service, Mr. Justice Walsh said it was true that the Constitution in Article 41 in dealing with the family drew attention to and stressed the importance of woman's life within the home and made special provision for the economic protection of mothers who had home duties.

But, of course, women fulfilled many functions in society in addition to or instead of those mentioned in Section 2 of Article 41. There were women engaged in all the professions, in most branches of business, in art and literature and in virtually every human activity. This was scarcely surprising in the light of the fact that women constituted approximately one half of the human race.

Only nine women had applied for jury service

In this State, approximately half the adult population consisted of women and, in urban areas, the most likely source of prospective jurors, there were more women than men.

According to figures provided by the Department of Justice, for the 10 years immediately preceding the hearing of this action the total number of women whose names were inserted in the jury list was the startlingly low figure of nine. The evidence indicated that a very small number of those women who were eligible for jury service had volunteered for jury service or had succeeded in serving where they did volunteer.

Even assuming that the vast majority of women did not wish to serve on juries, that was in itself not a good ground for legislative discrimination in their favour. There could be little doubt that the Oireachtas could validly enact statutory provisions which could, within the provisions of Article 40, have due regard to difference of capacity both physical and moral and of social

function in so far as jury service was concerned.

However, the provision made in the Juries Act was undisguisedly discriminatory on the ground of sex only. It would not be competent for the Oireachtas to legislate on the basis that women, by reason only of their sex, were physically or morally incapable of serving and acting as jurors.

He was of opinion that this discrimination in respect of women, in favour or against women, depending on one's point of view, was not consistent with the Constitution, and was not carried over as part of the law since the coming into force of the Constitution.

Mr. Justice Walsh dismissed the submissions which had been made to the Court concerning the validity of all the verdicts and acts of juries empanelled and acting under the provisions of the 1927 Act. It had been suggested that the verdicts of all such juries could be impugned. If those juries were empanelled in accordance with the Act, however, it meant that nobody served on those juries who was not entitled by law to do so and the acts and verdicts of those juries were those of juries composed of properly qualified jurors.

Mr. Justice Henchy, in the course of his judgment, said that the plaintiffs came before the Court as accused persons, not as would-be jurors. For that reason he thought it proper to deal with their case as one founded on their rights as accused persons awaiting trial by jury, and not on the rights of persons who were not before the Court and were not represented before the Court.

He said that a rating qualification shut the door on all citizens who were not liable to pay rates. Such a jury excluded a range of mental attitudes which, because they would be absent from the jury box and jury room, would leave an accused with no hope of the contribution they might make in the determination of guilt or innocence. This was particularly so in the trial of offences involving damage to property and, more particularly, in the trial of offences involving damage for which ratepayers were liable to make compensation. A jury so selective and exclusionary was not stamped with the genuine community representativeness necessary to classify it as the jury guaranteed by Article 38 (5). It was, therefore, unconstitutional.

All male jury constitutionally unacceptable

There was no doubt that a consequence of the exemption of women, unless they claimed eligibility, was that women hardly ever served on juries. For practical purposes jury service was a male preserve and the plaintiffs were correct in saying that the operation of the statutory exemption of women virtually ensures that the jury before whom they would stand trial would be entirely male. If the all-male jury was constitutionally unacceptable, the statutory exemption of women could not stand.

While the plaintiffs had not shown that their chances of a fair trial would be diminished because the jury would be all male, and while it was not possible to ensure a mixed jury, nevertheless the statutory provisions which operated to make an all-male jury virtually certain could not be reconciled with the choice of jurors necessarily comprehended by Article 38 (5).

Mr. Justice Griffin said that the purpose of a jury was to interpose between the State and the accused person an impartial body of the accused's fellow citizens to try the issue. The jury should, therefore, be a body truly representative of and a fair cross-section of the community.

No longer any justification for exempting women from jury service

He said that at the beginning of the century women's place was generally regarded as being in the home. At that time it was unthinkable to most men and to many women that women should vote or, with rare exceptions, engage in business or industry or join the professions. Nowadays, women were progressively taking their rightful place in the Community and engaging in professions that were regarded until comparatively recently as the sole preserve of men. It seemed to him that, if ever there was, there could no longer be any justification for exempting women from the duty or privilege of jury service.

Mr. Justice Griffin said that, human nature being what it was, and in the light of experience to date, it was to be expected that unless jury service was compulsory for women, no women would, in fact, serve on juries. Juries drawn from a panel which would not include women would not, in his opinion, be truly representative of the community. It must be remembered, however, that the right to a jury did not entitle an accused person to a jury tailored to the circumstances of the particular case. It might very well happen that a jury drawn by lot might include no women. or indeed no men, but that would not invalidate the jury.

He allowed the appeal on both grounds and a short judgment by **Mr. Justice Budd** also allowed the appeal on the same grounds.

The Chief Justice, in his minority judgment, said there was a recognition of the woman's right to serve on a jury but there was also a recognition that in the case of many women, jury service could be a severe

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burden and handicap. The State, therefore, while recognising and safeguarding the right, permitted each woman to decide for herself, in accordance with her own circumstances and special responsibilities, whether service on a jury was a right she ought to exercise or a burden she ought to undertake. He could not see how this could be regarded as an invidious discrimination.

The right to jury trial meant the right to be tried by a jury drawn indiscriminately from those eligible for jury service. This did not entitle an accused person to have a jury of a particular composition or in his or her view of a particular suitability in relation to the offence charged.

In his view the arguments against the validity of the Juries Act, 1927, based on sex discrimination, failed.

The Chief Justice, however, said, in relation to the provisions of the Act which laid down a minimum property qualification, that he would allow the appeal.

Irregularity in confining jurors to ratepayers

With regard to the thousands of criminal trials which in fact had been held since the enactment of the Constitution, the Chief Justice said the fact was that the trial had been trial by jury and no person served on such juries who was not eligible. An irregularity had, in his view, taken place in the manner in which citizens had been called to jury service, in the same way as an irregularity took place in the manner in which the ballot papers were numbered for parliamentary elections up to the decision in *McMahon v. the Attorney-General*—(1972) I.R. In McMahon's case the courts were not asked to entertain any suggestion that such irregularity invalidated previous elections nor could such a submission, in his view, have been successfully made.

The Decision of Pringle J., reported in the July-August Gazette, 1973, at page 164 is accordingly reversed.

Note: The proceedings against the plaintiffs were subsequently not proceeded with.

[**De Burca and Anderson v. the Attorney General**—Full Supreme Court—Separate judgment by each Judge—dissenting judgment as to women jurors by O'Higgins, C.J.—unreported—12 December 1975.]

Prisoners may speak in prison in private with their Solicitor.

Mr. Myles P. Shevlin, solicitor, as a result of a Supreme Court decision is to be allowed to consult with two clients in Mountjoy Prison—out of the hearing of prison officers.

The court of five Judges unanimously dismissed an appeal by the Governor of Portlaoise Prison against a decision of Mr. Justice McMahon in the High Court directing the Governor to make facilities available to enable Mr. Shevlin to consult with his clients, John Vincent Walshe and Brian McGowan, in the sight but not in the hearing of any prison officer.

Mr. Walshe and Mr. McGowan, who had brought the original application for an order of *mandamus* against the Governor, have been remanded in custody by the Special Criminal Court on charges in connection with the kidnapping of Dr. Herrema.

The Chief Justice, Mr. Justice O'Higgins, in his judgment, said the affidavits filed on behalf of the Governor disclosed the reason why Mr. Shevlin was refused the ordinary facility accorded to a legal adviser visiting his clients, that was, to talk to his clients in the sight but not in the hearing of a prison officer.

Allegation

On January 20th, 1975, Mr. Shevlin had been admitted on a professional visit to Portlaoise Prison to see two prisoners, Kevin Mallon and J. B. O'Hagan. It was contended and alleged, on behalf of the Governor, that on this occasion Mr. Shevlin attempted to smuggle out from one of these prisoners, Kevin Mallon, a letter or communication addressed "Marian" and that, on this attempt being discovered, Mr. Shevlin burned the letter or communication concerned in a gas fire.

The Chief Justice said that as a result of this incident, and having considered reports from the officers concerned, the Minister for Justice issued a directive to all prison governors to the effect that the facilities granted as a matter of course to legal advisers visiting prisoners could not be safely granted to Mr. Shevlin, and that each application from him for such facilities should be considered separately from the security point of view, having regard to the prisoners involved.

"In other words, and in no uncertain manner, Mr. Shevlin was to be regarded and treated as a serious security risk," said the Chief Justice.

Prison Rules 30 years old should be amended

It was not possible in these proceedings to determine whether the allegations made against Mr. Shevlin were justified and, in his view, it was not necessary to consider how far and to what extent the facts alleged against him had been controverted or put in issue by him.

Referring to the Government of Prison Rules, 1947, the Chief Justice said that nearly 30 years had passed since the rules were made, and even a casual glance over the topics and subjects dealt with would indicate a need for some revision and amendment. It was, however, for a Court to deal with the law as it was, not as it might be, and he was bound to look at these statutory rules as they were and then to decide to what extent they applied to and resolved the matters in dispute in these proceedings.

He said that in his opinion, the plain meaning of Rule 210 was to give an unqualified right to a prisoner awaiting trial to have access on any weekday, at any reasonable hour, to his legal adviser, and to consult with him in the sight but not in the hearing of a prison officer. No other rule qualified or limited this right.

"As long, therefore, as Mr. Shevlin is a solicitor in practice, and is retained as such by the prosecutors, and acts as such and in no other capacity or for no other purpose, he ought to be admitted to the prison to see his clients who are the prosecutors in this case," said the Chief Justice.

To suggest that the men's rights in this regard could be satisfied by permitting them to see Mr. Shevlin in the sight and hearing of a prison officer was without question a direct contradiction of what the rules provided. He would dismiss the appeal and affirm the High Court decision.

Mr. Justice Henchy said that in his opinion the Governor had no power to attach any condition to a permission for a visit to a legal adviser.

[**The State (Walshe and McGowan) v. The Governor of Portlaoise Prison and the Attorney General**—Full Supreme Court—unreported—12 December 1975.]

Specific performance in sale of land refused due to defective title.

The claim is for specific performance of an agreement made between the plaintiff as receiver of Tractasales (Longford) Ltd., and the defendant for the sale of a large garage and premises of that company contained in Folios 9792 and 12146, Co. Longford, on the Edgeworthstown road near Longford. These premises were in fact registered on three separate Folios, namely, Folio Nos. 9972, 12386 and 12146, all in County Longford. The total area of the three Folios was 2 acres, 2 roods and 6 perches.

On 11 September 1969 by a Debenture issued by Tractasales (Longford) Ltd. to United Dominions Trust (Ireland) Ltd. (hereinafter called U.D.T.), the company charged its undertakings and all its property assets in exchange for a payment of £25,000 to U.D.T. On 1 June 1971 a second debenture on similar terms was made with U.D.T. By deed of 26 July 1971 the plaintiff was appointed by U.D.T. receiver of this property.

The plaintiff as receiver caused the premises to be offered for sale by public auction on 26 February 1974. The defendant attended the auction, and was declared the purchaser, and signed a contract of purchase the same day for £30,500, having duly paid a deposit of £7,625. The standard conditions of sale of the Law Society were used. A special condition bound the vendor to discharge all registered charges before closing, and to pay Land Registry fees for cancellation of the charge. However, the omission of any reference in the conditions of sale to Folio 12386 was a **mutual mistake** between the parties, as they thought they were dealing with all the Folios comprised in the premises. In February 1974, apart from the two charges to U.D.T., there was registered on Folio 9792 two further Judgment Mortgages, one of 23 November 1971 in favour of Doggett, and one of 26 March 1973 in favour of Smith; on the same date in 1973 a further Judgment Mortgage in favour of Smith was registered on Folio 12146 and also on Folio 12386. The closing date of sale was fixed for 28 May 1974.

The solicitors for the vendor sent a copy of the contract and of the debentures to the solicitor for the purchaser on 12 March 1974 and asked for Requisitions on Title. A reminder was sent on May 14 warning the purchaser that if the sale were not closed on May 30 interest would be charged. On May 12 Requistions on Title were sent by the solicitor for the purchaser, and replies were sent, together with a draft transfer approved for engrossment, on May 23. On May 22 Longford Arms Motor Works registered a further Judgment Mortgage against Tractasales for £1,429 in respect of each of the three Folios. This provoked further correspondence, and, on August 28 the solicitor for the purchaser inquired when the sale would be closed. There was a reply on September 24 enclosing a deed drafted by counsel, and expressing the hope that the Judgment Mortgages would be cleared. On 1 July 1974 Foster Finance had registered a further Judgment Mortgage on Folios 12386 and 12146 against Tractasales for £2,250. On October 23 solicitors for the vendor wrote confirming that they would be in a position to close, and that the deed had been duly executed by the plaintiff as receiver, by Tractasales and by U.D.T. As regards the other Judgment Mortgages, arrangements had been made with the parties concerned that their solicitors would attend the closing, and be paid out of the proceeds of sale.

About this time, the defendant decided that, due to changes in his family circumstances, he was not anxious to proceed with the sale, and was seeking advice about the return of his deposit. The defendant was advised he could not avoid the contract, and was reluctantly prepared to close. In November 1974 a preliminary meeting was held between the parties about the closing, and the defendant objected to the registered Judgment Mortgages not being discharged. Negotiations continued about this and a further appointment for closing was made in January 1975. This did not take place, as the defendant raised objections about planning permission for a change of user which had recently occurred in the premises, which had not been satisfactorily answered by the Longford Planning Authority. Shortly afterwards, the defendant, having inspected a Land Registry map, discovered for the first time that the lands included Folio 12386. Upon being informed of the existence of Folio 12386, the solicitor for the vendor obtained the Land Certificate relating to it, and prepared a new engrossed transfer of all three Folios. It was then agreed that the defendant would pay one month's interest. Terms were arranged whereby the moneys would be retained on joint deposit in the names of the two solicitors concerned.

A final appointment was made for closing in the Four Courts on 18 March 1975 and the solicitor for the vendor, and the defendant and his solicitor attended. On the ground that two of the Judgment Mortgages had not been discharged, the defendant refused to complete, as the vendor refused the offer made by the defendant to retain £4,500 pending settlement of outstanding claims. The defendant claims as follows:

(1) That, as Folio 12386 was not mentioned in the contract, the vendor had failed to show title. It was held that this was a genuine mutual mistake between the parties and that the vendor was able and willing to rectify the matter as soon as he became aware of it.

(2) That, as this was a business contract, time must be deemed to be of the essence of the contract. As the defendant did not purport to repudiate the contract on the ground of delay, the vendor's delay was acquiesced in by the defendant.

(3) That the title ultimately offered to the defendant was a doubtful title, and that therefore he was entitled to refuse to complete the contract. As regards the two Judgment Mortgages which were to be discharged six weeks after the completion of the contract, there was a difficulty that, by reason of the fact that Folio 12386 was not included in the contract, and that U.D.T. had not got their debenture charged on the property, consequently the interest of that Judgment Mortgage, which had been registered against Tractasales after the date of the contract and before the date of the transfer, would not be postponed to any interest arising from the subsequent transfer between the parties. It was held with hesitation that the delay period of six weeks after payment of the full purchase money and before the necessary cancellation of these Judgment Mortgages was a concession made by the defendant. The purchaser defendant at the closing on 18 March 1975 was entitled to insist that, upon payment of the whole purchase money, he would get a sufficient good title which he could entrust to a bank. Consequently the plaintiff's claim for specific performance must be dismissed.

(**Tempany v. Hynes** — Finlay P. — unreported — 10 July 1975.)

Name and Arms clause held void for uncertainty.

It had already been held by Dixon J. in **Re Montgomery Decd. — Jellett v. Waddington** — (1953) 89 I.L.T.R. — and by Budd J. in **De Vere Decd. Jellett v. O'Brien** — (1961) I.R. — that a Name and Arms clause was void for uncertainty. However, the English Court of Appeal in **Re Neeld Decd.** — (1962) 2 All E.R. — had reversed all previous decisions and held such a clause valid. The purchaser is buying from the vendors, who are Jesuit Fathers, a substantial area of land in Clontarf which formerly formed part of the Vernon Estate.

Despite these two Irish decisions the purchaser maintains that a Name and Arms clause in a deed of 18 December 1933 is valid and effective and that consequently vendors had not shown proper title. Kenny J. first set out the title in full, and referred to a Settlement of 23 December 1879 and to a Disentailing Deed of 18 December 1933. Apart from the Disentailing Deed, a further Deed was made on the same date between (1) Edward Kingston Vernon, (2) Robert Vernon (Edward's eldest son) and (3) John G. Oulton and Edward W. Davy (trustees), which appointed the lands therein described, subject to the life estate of Edward, to the use of Robert during his life, and, after his death, to each of Robert's sons in remainder according to their seniority, and to their heirs male. If Robert had no issue, then the land was to go to his three sisters, Gwendoline, Elizabeth and Cynthia Vernon, and their heirs, in tail according to their seniority. Every person who becomes entitled to the lands as tenant in tail male or tenant in tail by purchase shall use the surname of Vernon and bear the arms of Vernon within one year after becoming so entitled. In the case of a married daughter, the husband is to assume the name of Vernon and apply for a license to bear the arms of Vernon within one year of the daughter obtaining possession of the lands. If for any reason later the daughter or her husband should disuse such surname, the lands were to devolve upon the person next entitled in remainder. On 15 July 1937, a Supplemental Deed to the one of December 1933 was made between (1) Edward and Robert Vernon, and (2) John Oulton and Edward Davy. By this instrument, Edward and Robert, in exercise of their power of appointment, appointed the lands in default of Robert's issue to Margaret Gwendoline Vernon, Daisy Elizabeth Vernon and Cynthia Mabel Vernon; these daughters were to hold the lands as tenants in common in tail with cross remainders. Robert died on 30 June 1945 unmarried, and thereupon his three sisters became entitled to the lands as tenants in common in tail. Gwendoline had married John Kellett, who would not assume the name of Vernon, and whose interest was thus determined. Elizabeth became Mrs. Shepard, while Cynthia became Mrs. Rann. By a deed of 15 January 1962 between (1) Elizabeth Shepard and Mabel Cynthia Rann, (2) Edward Vernon (their father), and (3) Rupert Willoughby Oulton and Leslie Mellon (trustees), Elizabeth and Cynthia, with the consent of Edward (the protector of the settlement), granted two equal undivided third parts in the lands to hold the same unto the trustees upon trusts therein defined. Edward has since died, and from then, Elizabeth and Cynthia, and probably also Gwendoline Kellett, have all become tenants in tail of the estate. The Jesuit Fathers, who are plaintiffs, purchased the freehold interest in the lands from Gwendoline, Elizabeth and Cynthia.

In the course of investigating the present title, the solicitors for the defendant company made the following Requisition on Title: "Mrs. Gwendoline Kellett does not appear to have complied with the Name and Arms Clause of the Deed of December 1933. Accordingly the purported Conveyance by her of one-third of the property for sale was inoperative, and such one-third is outstanding in the person next entitled as tenant in tail male of her share. A confirming Conveyance from him must be procured." The reply was: "No confirming Conveyance necessary. The Name and Arms Clause is void for uncertainty." The plaintiffs then issued a Vendor and Purchaser Summons seeking a Declaration that all Requisitions had been sufficiently answered. Since the Irish decision in **Re Montgomery Decd.** (1953) and in **De Vere Decd.** (1961), titles to property included in the Vernon and other estates have been accepted on the basis that Names and Arms clauses are void for uncertainty in Ireland; there were at least five decisions of the English Chancery Court to the same effect. *Prima facie* the previous Irish decisions should be followed, particularly as Dixon J's judgment in **Montgomery Decd.** was unanswerable. Vendors claim that the 78 Requisitions on Title were sufficiently answered. This claim is too broad, and accordingly a declaration will be made that the Name and Arms clause is void for uncertainty. Accordingly the requisitions of the defendants in respect of that clause have been sufficiently answered by the plaintiffs.

(**Kearns and McCarron v. Manresa Estates Ltd.** — Kenny J. — unreported — 25 July 1975.)

Appeal in slander action fails—Farmers in Dispute

A slander action arising out of remarks alleged to have been made at public meetings of dairy farmers and milk producers 1970/71 came before Mr. Justice Griffin in the High Court on Circuit in Cork.

The case was originally tried in the Cork Circuit 18 months ago, when the plaintiffs, Timothy Murphy, dairy farmer, and his two sons, Cornelius and Daniel, all of Ballclough, sued Michael Cronin, Rylane, for £2,000 damages for slander.

The Circuit Court Judge dismissed the claim and an appeal was lodged against the decision by Cornelius and Daniel Murphy in the High Court, their father having died in the meantime.

The remarks which form the subject of the action were alleged to have been made at meetings attended by large numbers of dairy farmers and representatives of the Agricultural Organisational Society held in Enniskeane on January 8th, 1970 in Coachford on January 9th, 1970, and in Aghabullogue on December 23rd, 1971.

The plaintiffs claimed that Michael Cronin, the defendant, said and repeated at the later meetings that one producer was completely debarred from taking his milk to Ballyclough, because he added a certain substance to his milk and would not give a guarantee never to do it again.

These words applied to the three plaintiffs and implied that they had acted wrongfully and were fraudulently gaining a reward for themselves. The words were alleged to be slanderous and to hold the plaintiffs up to public ridicule and contempt.

In a general denial the defendant pleaded that if the

words complained of were used they were true in substance and in fact. The defendant also pleaded that the occasion was privileged as he was at the time involved in negotiations in regard to a merger of certain co-operative creameries.

At the conclusion of the case for the plaintiffs, following legal submissions, Mr. Justice Griffin granted a direction in favour of the defendants. He upheld the decision of the Circuit Judge and dismissed the appeal with costs to the Defendants.

(Murphy v Cronin—Cork High Court on Circuit—Griffin J.—unreported).

In a malicious injury claim, where damage to a mine was caused the applicants can only recover the actual damage sustained but cannot recover any consequential damages.

Case Stated by Circuit Judge Fawsitt under S.16 of the Courts of Justice Act 1947 upon the following facts: Early on 3rd July, 1971, six armed men raided the Mogul Mines, near Silvermines, Co. Tipperary, and overpowered security men. The raiders placed explosive charges under the main electrical transformer, and detonated it, causing serious damage and closing the mine for a time. The amount of the damage amounted to £29,218 and there was consequential damage amounting to £220,000. The damage was caused maliciously and the persons who caused it constituted an unlawful assembly. The applicant mining company Mogul (Ireland) Ltd., therefore claimed a total of £249,218. The respondent County Council argued that the consequential damages were not recoverable and a Case was stated for determination by the Supreme Court.

The majority of the Court **(Budd, Henchy and Griffiin JJ. per Henchy J.,** held that these consequential damages were not recoverable. This principle had already been determined by 4 out of 5 Judges of the Supreme Court in **Smith v Cavan and Monaghan County Council**—(1949) I.R.322, in construing S.135 of the Grand Jury (Ireland) Act 1836, hereinafter called the 1836 act, and in that case, James Murnaghan J. had fully reviewed all the preceding authorities. **A decision of the Supreme Court—be it the pre-1961 or the post-1961 Court—given in a fully argued case and on a consideration of all the relevant materials should not normally be overruled, because a later Court inclines to a different conclusion.**

Even if the later Court is already of opinion that an earlier decision is wrong, it may decide in the interests of justice not to overrule it, if it has been inveterate. The applicants have not shown that the decision in **Smith's** case was clearly wrong, and that it required to be overruled. In the alternative, applicants argue that the consequential loss may be recovered under S.I of the Malicious Injuries (Ireland) Act 1853. The Malicious Injuries (Ireland) Act 1848 had extended the 1836 Act to certain cases of damage sustained by means of certain other unlawful, riotous or tumultuous acts therein mentioned, and the 1853 Act is an extension of these cases. The 1848 Act states that all damages sustained under that Act are to be recovered in the same manner as under the 1836 Act for the recovery of compensation for losses or damages. It is clear that the 1853 Act was using the word "compensation" to connote only what was recoverable under S. 135 of the 1836 Act, and "all damages" means damages suffered with out monetary reduction. It follows that the County Council is only liable for payment of the sum of £29,218 to the applicants.

The minority of the Court **(O'Higgins, C. J. and Walsh J. per O'Higgins C. J.,** having considered Mr. Justice Kingsmill Moore's judgment in **Attorney General v Ryan's Car Hire Ltd.** (1965) I.R. 642, in which he stated that the Supreme Court is no longer bound by the principle of "Stare Decisis" felt nevertheless bound to follow the decision of the former Supreme Court in **Smith's** case (1949) that consequential damages were not recoverable under S.135 of the 1836 Act. In considering however the wording under S.1 of the 1853 Act mentioning **"all damages which shall be so sustained by any person or persons by means of any such unlawful acts or offences shall and may be recovered",** there is nothing to qualify or modify the word "all". Consequently there is an intention not merely to cover physical damage to the property involved, but also consequential losses sustained by the injured person. Consequently the applicants could recover consequential loss under the 1853 Act.

(Mogul of Ireland Ltd. v Tipperary North Riding County Council—Full Supreme Court—Separate majority judgment by Henchy J. and minority judgment by O'Higgins C. J.—unreported—14th November, 1975.

The Arbitrator under the Assessment of Compensation Act 1919 had correctly decided the date of the Notice to Treat, and he should have regard to the Inspectors transcript that the Minister could alter a particular zoning from agricultural to residential development.

The Compulsory Purchase Order authorised Dublin Corporation to acquire compulsorily lands belonging to the claimant, Murphy, including 73 acres which the development plan designated for agriculture, and which accordingly could not be used for building, save with the consent of the Minister, under S.26(3) of the Planning and Development Act 1963, The Compulsory Purchase Order was confirmed by the Minister following a public inquiry on 7th January, 1969. On 25th March, 1969, the claimant instituted High Court proceedings to have this Order declared invalid, but on 1st March, 1973, the High Court found the Order valid. Then Dublin Corporation served a Notice to Treat, followed by a Notice of Intention to enter and take possession of the lands. The claimant, having appealed to the Supreme Court, sought an interim Order, restraining the Corporation from entering the lands, but the Corporation gave an undertaking not to enter the lands, meanwhile. In April, 1974, the Supreme

Court dismissed the appeal. The Special Arbitrator, Mr. Owen McCarthy, held an arbitration for an award of compensation, and referred a Special Case Stated for the Court to determine two questions :

(1) Whether the Notice to Treat related to the 12th March, 1973 or 2nd May, 1973.
(2) Whether the Arbitrator should have regard to the transcript of evidence at the public enquiry.

S.78 of the 1963 Act sets out the procedure. When the Minister confirms a Compulsory Purchase Order, the local authority must publish in the Press a Notice setting this out and stating where such Order may be inspected. This Notice must be served on all persons having an interest in the property who objected to the Order. Any person desiring to question the validity of an Order confirmed by the Minister may, within 21 days of publication, make an application to the High Court. In such a case the Court may make an interim Order suspending the operation of the Order. If the Court decides not to quash the Order, the Order will become operative on the date of the determination of the application. It was contended for the claimant that, as the High Court had made the original decision on 1st March, 1973, that this Order was the operative Order, and the Notice to treat issued on 12th March 1973 was the relevant one; this was undoubtedly *the* decision of that Court if there had been no appeal. It was contended for the Corporation that the Order should only become operative when all possibility of judicial review had been removed, as there is a constitutional right of appeal to the Supreme Court. This latter interpretation is undoubtedly the correct one.

In the *Deansrath Investment Case,* (1974) I.R., Pringle J. and the Supreme Court held that the same Arbitrator had been correct in holding that contraryt o the submission of the local authority that he was bound to fix the value of the zoned lands as agricultural land, nevertheless valued them as being potentially suitable for residential purposes. It follows that the value of the lands to be assessed compulsorily is to be assessed as being the market value of the full price of the lands.

The evidence at the Public Inquiry was to the effect that the lands, if acquired by the Corporation, would be used for residential development The confirmation by the Minister of the Compulsory Purchase Order was proof that he approved of this development. It is for the Arbitrator from his knowledge and experience to decide upon the weight to be given to the evidence; and this he had done. The answers to the two questions submitted are :

(1) The time fixed by the Notice to Treat was 2nd May, 1974.
(2) The Arbitrator should have regard to the transcript of the evidence only to the extent that, in relation to a proposal by the Corporation to develop the lands for residential purposes, the Minister could consent to a change of zoning from agricultural to residential development.

In re Poppintree—Balbutcher—Santry Compulsory Purchase Order and **in Re Murphy**—Butler J.—unreported—31st July, 1975.

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Please note that the Society's examinations will commence on the following dates and the Closing Dates are as shown :

Examination	*Date of Commencement*	*Closing Date*
First Irish	Wednesday, 10th March 1976	20th February 1976
Second Irish	Friday, 12th March 1976	20th February 1976
Law Examinations	Friday, 2nd April 1976	19th March 1976
Book-Keeping	Wednesday, 2nd June 1976	19th May 1976

Entries received after 4.00 p.m. on the specified closing date will not be considered.

All Entry Forms should be accompanied by the appropriate fee as specified in the Solicitors Acts 1954 and 1960 (Apprentices Fee) Regulations, 1975, which are as follows :

Examination	*First Entry*	*Repeat Entry*
First Irish	£ 5.00	£ 3.00
Second Irish	£ 5.00	£ 5.00
First Irish	£10.00	£10.00
Second Law	£15.00	£10.00
Third Law	£15.00	£10.00
Book-keeping	£ 5.00	£ 5.00

Applications received without the Entry Fees will not be accepted.

The Education Committee will only consider applications for exemption from sitting the First Law Examination from those who have entered for the examination, paid the prescribed fee and furnished the appropriate evidence of their degree qualification.

Monday, 1st March, 1976, is the Registration Date for the year 1975-76 and all Fees due must be paid on or before that date. Candidates will not be allowed to enter for Examinations unless the appropriate lecture fees have been paid. The fee per course of lectures is £15.00 and per half course (Income Tax) £7.50.

JAMES J. IVERS (Director-General)
16th January 1976

Presentation of Parchments—December 1975

The President, Mr. W. A. Osborne. presided when 56 recently qualified solicitors received their Certificates of Admission in the Library of Solicitors' Buildings, Four Courts, Dublin, on Thursday, December 4, at 4 p.m.

The President, in addressing the new Solicitors said:

I have great pleasure this evening on behalf of our Society of extending a very sincere welcome to our many distinguished guests, many of whom are now the proud parents or friends of a recently qualified Solicitor. On your behalf and on behalf of our Society, may I congratulate them on their success and extend to them every good wish for their future success and prosperity.

It is a happy day and being so, I am rather reluctant to trespass on your time. Nonetheless I ask for your indulgence for a few moments, since I believe there are some matters worth reflecting on.

Defective educational system

We have found in recent years that there has been a very substantial increase in the number of students wishing to study law. Our present law student population is in the region of 1,300 students. The number of Solicitors in practice five years ago was in the region of 1,500, but this number has been increasing rather rapidly and is now reaching 1,700 and will increase substantially when the students, who are presently passing through qualify in the next few years. While we can accommodate in the profession the increasing numbers at present, I feel it is only fair to warn parents and students coming in in future years, that it may not be possible to find room for all the students who may wish to qualify in the next four to six years. I hope I am incorrect, but meanwhile our Society is doing all it can to create greater expertise within the profession and by doing so, to enlarge the scope of our work. We are very conscious of the ever increasing need for the profession to give and to aim to give to the Community the quality and type of service which the Community seeks and is entitled to receive. This requires specialised training and expertise. In that respect, our educational system has changed with the help and co-operation of the Universities, who have been most helpful to us. There has not however been any fundamental change in the system which leads to entry by students into higher education generally. We are only too well aware of the points system, which in effect is a competitive one, whereby students are obliged to cram, to grind and to use every means available to them to consume facts, figures, data and information in an effort to pass examinations in the top 10, 15 or 20, as the case may be. Any parent or onlooker must be horrified and frightened by this system and the pressure which it exerts on young people, many of whom may not have reached full maturity. And what of the end result? Are we simply creating human computers—the best fed and programmed winning through. Does this system provide the best end result? What of the students who fail to gain admission under this system and who may have all the attributes essential to the true and proper performance of the particular discipline in due course. Does the system in fact deprive suitable students of opportunities to qualify for a way of life for which they may be eminently suited. Does it amount to a serious and objectionable form of discrimination and will we as a result, create misplaced persons. I believe these questions need to be considered and answered. It is not the fault of the Universities or of the schools of higher education. All they can do is allocate places in order of merit in accordance with the applications they receive. Basic educational standards are essential, but equally essential is some method, whereby the suitability of a candidate for a particular training can be assessed, be it a training in University or otherwise. Career guidance in itself is helpful, but insufficient in its intensity. Assessment should commence at an early age and should be continuous and might possibly end with an interview by a suitable Board, representing the University or School of Higher Education and a member or members already qualified in the particular discipline, training, art, faculty or profession in which the student wishes to study.

Newly qualified solicitors should not practise on their own

Now that you are about to commence practice there are a few points which may be helpful to you in these changing times. In England, there is at present a Statutory Regulation which prohibits a newly qualified Solicitor from practising on his own for a period of five years from date of qualification. We can all see the merit of this ruling and while we have not a similar statutory ruling here which can be invoked, I would nonetheless suggest that you comply with the rule, which in turn I have no doubt will fit you more fully for practice in due course. Experience in a well organised office is the best basis upon which to practice your profession. In this respect, I would ask you not to forget that we have down through the country very efficient offices. They are not all necessarily in the City of Dublin and country experience, even for a few years, is most beneficial, having regard to the wide range of general practice which one encounters. I understand also that salaries in the country may well be in excess of which are available in the cities.

Communication with clients essential

As I have already said, the main objective of our profession is and must be to provide the best possible service to the public and where necessary, to inform the public of the availability of such service. This can only be achieved by efficient communication of ideas, principles, knowledge, skills and information, both inside and outside the profession. The main communication outside the profession is with clients and the Society recently approved of, in general communication with our clients, on specific items. The new legislation in relation to fiscal matters is of the utmost importance to our clients and they should be informed of the general effect of the changes which have been made. Communication with clients in the carrying out of specific transactions is of the utmost importance, not only to the Solicitor himself, but also to the profession as a whole. The Solicitor's ability to unravel with efficiency and courtesy the problems of a client will make that client an effective spokesman for the profession. The commonest complaint by clients is that they do not know what is happening. To us there is

nothing unusual in waiting 2 or 3, or even 6 months for a reply from the Estate Duty Office, or from the Land Registry, but this can often be forgotten by reason of the pressure of business, during which time our client is completely in the dark. A combination of more effective information to clients of work and time scale of a normal transaction and more efficient reminder systems would be of much help. In addition the practitioner, through his own actions and his position within the community, contributes substantially to the public image of the profession. No amount of organised public relations can take the place of the impression given by the practitioner in his own community and by the part he plays in it Involvement in the work of the Law Society, or indeed in the work of a local Law Society or Bar Association has the great advantage of involving in some degree every Solicitor in the work of the Society and makes one more conscious of the problems which exist and of the work which needs to be done.

PRESENTATION OF PARCHMENTS

The following Solicitors received Certificates of Admission.

Marian Brazil, 12 Landscape Crescent, Churchtown, Dublin 14.
Eithne Breathnach, Newtown, Knockbridge, Dundalk.
Michael G. M. Brennan, Ardmhuire, Killeen, Claremorris.
John P. Brophy, 129 Ardilea Road, Dublin 14.
Daragh Buckley, 43 Finglas Road, Glasnevin, Dublin 9.
Mary Cantrell, 26 Castle Park, Monkstown.
Marie Connellan, Strokestown, Co. Roscommon.
Martin Crilly, Maryville, Avenue Road, Dundalk, Co. Louth.
Vincent Crowley, 7 Castleview Park, Malahide, Co. Dublin.
Anne Cunningham, Knockroe House, Windgap. Co. Kilkenny.
William B. Devine, The Crescent, Boyle, Co. Roscommon.
Roderick Dolan, 56 Lower Nephin Road, Dublin 7.
Thomas Dowd, Nullamore, Dartry Road, Dublin 6.
Jennifer Elliott, Old Bank House, Kinsale, Co. Cork.
Patrick Farrell, 4 Temple Villas, Palmerston Road, Rathmines, Dublin 6.
Denis Finn, Ballinahow Castle, Thurles, Co. Tipperary.
Sean Gallagher, 135 Iveragh Road, Whitehall, Dublin 9.
Sylvia Geraghty, Correal, Roscommon.
Sheila Gillan, Grove Crest, Dublin Road, Drogheda, Co. Louth.
Mary Griffin, Copplecurragh House, Charlestown, Co. Mayo.
Bernadette Hanahoe, 19 Beechwood Road, Ranelagh, Dublin 6.
Henry N. Healy, 3 Selskar Terrace, Mountpleasant, Dublin 6.
Helen Heffernan, Puddingfield, Co. Tipperary.
Dermot Hewson, Pearse Street, Ballina, Co. Mayo.
Seamus Hughes, Westport, Co. Mayo.
Caroline Keane, 5 Wilfield Park, Ballsbridge, Dublin 4.
Simon Kennedy, Duncannon, New Ross, Wexford.
Martin Lennon, 47 Connaught Street, Athlone, Co. Westmeath.
Doreen Levins, 36 Cabinteely Avenue, Cabinteely, Co. Dublin.
Helen Lucey, "Avalon", Dunmanway, Co. Cork.
John R. Lynch, 53 Rathdown Park, Terenure, Dublin 6.
Sarah MacAuliffe, Ballytrasna, Fermoy, Co. Cork.
David Morris, 9 Lakeside Park, Loughrea, Galway.
Deirdre Morris, Grianaun, Piltown, Kilkenny.
Joseph B. Morton ,Firhouse Road, Tallaght, Co. Dublin.
Thomas Kieran Mulcahy, 20 Sherrington Road, Shankill, Dublin.
Paul Murphy, 61 Mount Prospect Avenue, Clontarf, Dublin.
Dermot Neilan, Main Street, Ballaghadereen, Co. Roscommon.
Susan Nolan, 69 Eglinton Road, Donnybrook, Dublin 4.
Kieran O'Callaghan, Model Farm Road, Cork.
Mary O'Connor, Mount Patrick, Cashel, Co. Tipperary.
Thomas O'Connor, West Park, Swinford, Co. Mayo.
Michael O'Donnell, Brooklands, Tralee, Co. Kerry.
John O'Donovan, 190 Orwell Park, Templeogue, Dublin 6.
Richard O'Hanrahan, New Square, Mitchelstown, Cork.
John B. O'Herlihy, "Dromana", Model Farm Road, Cork.
Kathleen O'Leary, 19 Landscape Crescent, Churchtown, Dublin 14.
Brian O'Sullivan, Perry Street, Edenderry.
Hilary Prentice, Mangerton, Westminster Road, Foxrock, Co. Dublin.
Brian Redden, Knock na Rea, Stillorgan Road, Dublin 4.
Margaret Roche, 2 Ballinteer Park, Dundrum, Dublin 14.
Bryan Strahan, Lisnaskea, Sandford Road, Dublin 6.
William Synnott, 35 Landscape Crescent, Churchtown, Dublin 14.
Ronan Walsh, 142 Howth Road, Clontarf, Dublin 3.
Roderick Walshe, 185 Fortfield Road, Templeogue, Dublin 6.
Mary Ward, "Ashfield", Croboy, Hill of Down, Enfield, Meath.
Michael White, Malin Road, Carndonagh, Co. Donegal.

Obituary

Mr. Edward H. Byrne died at his residence, Abbeyview, Coliemore Road, Dalkey, Co. Dublin, on 27th December, 1975. Mr. Byrne was admitted in Easter Term 1941, and was at first an Assistant Solicitor to his father, Mr. Gerard Byrne, at 7, Lower Ormond Quay, Dublin 2. Subsequently he became the sole owner of the firm of Gerard Byrne & Co. at the same address in 1954. Since 1972, he was partner in the firm of Gerald Byrne, Hardman and Winder at 20, Harcourt Terrace, Dublin 2.

Mr. Albert Myles Smith, B.A., LL.B., died on 16th January, 1976, at his residence, Kevit Castle, Crossdowney, Co. Cavan. Mr. Smith was admitted in Easter Term, 1936, and practised first in Carrick-on-Shannon and subsequently in Cavan. He acquired the practice of the late Mr. Patrick Cusack in Ballyjamesduff some years ago, and has been a partner in the firm of Alfred Myles Smith & Co. in Cavan with his wife, Mrs. Joan Smith.

Directing the Directors

By PATRICK USSHER, Lecturer in Law in the University of Dublin (Trinity College).

Article 80 of Table A contained in the Companies Act 1963 delegates the power of managing a company's business to its directors. Readers may need reminding that Mr. John Temple Lang (*Gazette* 1973, vol. 67, p. 241), brought to the attention of those practitioners who had not already spotted it a slight difference between the wording of article 80 and its predecessor, article 71, of the 1908 Act (faithfully reproduced as article 80 of the British Companies Act 1948). Some of the words which purported to qualify the delegation of the management function to the directors had been covertly excised from the horrible rigmarole of the old article, and substitutes, allegedly of great significance, had been inserted in the new form, so that the qualifying words instead of reading "subject, nevertheless, to any of these regulations, to the provisions of the Act and to such *regulations,* being not inconsistent with the aforesaid regulations or provisions, as may be *prescribed* by the company in general meeting" read instead "subject, nevertheless, to any of these regulations, to the provisions of the Act and to such *directions,* being not inconsistent with the aforesaid regulations or provisions, as may be *given* by the company in general meeting."

On the basis of this alteration, Mr. Temple Lang argued that "Table A of the 1963 Companies Act totally altered the balance of power between shareholders and directors in relation to the management of a company . . ."; he says "it is quite clear that for companies which have adopted it, the shareholders in general meeting may, by a 51% majority, give orders to the directors"; indeed, his conclusion is that the majority in general meeting have a right "to give instructions to the directors as to how the business of the company should be run."

I venture to throw some doubt on these conclusions. Whilst it is theoretically possible for a Company's Constitution to provide that the Directors shall obey the General Meeting in matters of Management, the new article 80 when construed in the context of the whole of Table A cannot conclusively be said to have done that. Though the new article 80 makes better sense than its predecessor when viewed in isolation, it exists uneasily in relation to the rest of Table A, and stands as an illustration of the danger, familiar to practitioners, of seeking to "improve" one clause of someone else's draft without thinking through all the possible consequences of one's alteration throughout the remainder of the document.

The essential point to be grasped in construing the new article 80 is that directions given thereunder are expressly required not to be "inconsistent with" any of the other Articles of Table A. In other words, the other Articles, if inconsistent with a purported direction by the General Meeting, will be dominant over and thereby negative that direction. The question at once arises: what (if any) *other* articles of Table A give an exclusive function to the directors such that any purported interference by the General Meeting under article 80 would be merely an ineffective attempt at trespass?

One such category of cases might be found in the type of article which uses imperative language to cast a certain function upon the directors. For example, article 116 says "the company in general meeting may declare dividends, but no dividend *shall* exceed the amount recommended by the directors." Or take article 5 which states that unissued shares "*shall* be at the disposal of the directors". Where such language is used, it would seem that the directors are being given an *exclusive* function to be exercised without interference from a majority in general meeting.

Secondly, there are those articles giving powers to the directors to be exercised by reference to *their own* state of mind, in such terms that unless the directors possess the requisite mental state the power cannot be properly exercised at all. Article 117 is a case in point: the directors may pay "such interim dividends *as appear to the directors* to be justified by the profits of the company." No amount of direction from the general meeting can force the directors to exercise this power if they themselves remain unconvinced. Those articles which confer on the directors a power to be exercised "in their absolute discretion" probably fall into this category as well, the example being article 3 of Part II of Table A which empowers directors of a private company "in their absolute discretion, and without assigning any reason therefor" to decline to register the transfer of any share therein.

The third possible category is an extension of the second, and is, perhaps, the most important. These are the numerous instances found throughout Table A where the directors are simply given a power, i.e. an article stating that they "may" do something. As with every unadorned power, the holder has a discretion whether or not to exercise it. Such discretions are usually personal to the holder of the power with the result that no one else can tell him to exercise it. For an example drawn from trust law, see *Re Brockbank* [1948] Ch. 206 where a trustee possessing a power was held justified in refusing to heed the unanimous clamourings of the beneficiaries that he should exercise it. Conclusions such as this would seem to follow from the juridical nature of a mere power; there should not be any requirement that the power be fiduciary, though it usually will be. Even if there were such a requirement, it is trite knowledge that powers given by the articles to directors do possess fiduciary characteristics: for an Irish example, see **Nash** v. **Lancegaye Safety Glass (Ireland) Ltd.** (1958) 92 I.L.T.R. 11. So, on the basis of the foregoing, it would seem that discretions given to the directors by articles other than article 80 are personal to the directors and are exclusively theirs with the result that any purported interference by the general meeting with those discretions by way of direction under article 80 would be ineffective as "inconsistent with" the other article in question. One could arrive at the same conclusion by a somewhat shorter route, namely by construing article 80 directions as applying *only* to those matters which have not been delegated to the directors by the other articles, the rationale being that it would be "inconsistent with" those other articles if article 80 were to cut down their apparent effect in any way. But whatever the route, the admission of this third category of articles inconsistent with article 80 has far-reaching consequences, and is perhaps the

reef upon which the shareholders' democracy envisaged by Mr. Temple Lang finally founders. Many business decisions at first sight within the ambit of an article 80 direction would in fact fall outside it by reason of the operation of other articles. Say for example the general meeting wants to direct the directors to do something involving the expenditure of the company's resources, e.g. to diversify its operations or spend more on advertising or whatever. Money for the pet project has to come from somewhere, and whether the source be allocation of reserves of profit, borrowing, or the raising of fresh share capital, one finds that control is given by other articles to the directors with the result that the direction will necessarily interfere with the discretions so given.

Perhaps the general meeting may direct the directors in some areas without trespassing upon their preserves. Directing the destination of newly raised capital and its product might be a case in point. But any distinctions between valid and invalid directions is, as Table A stands, merely arbitrary, not being based on any consistent principle. This is undesirable and was obviously unforseen by the draftsman.

In view of the doubts surrounding the present article 80 and the possibility that such doubts might in an appropriate case have to be expensively resolved by litigation, it would be advisable for persons concerned with the formation of companies who desire both relative certainty and the merits of the bulk of Table A to avoid it. They can adopt either the old form which notwithstanding inelegancies in its draftsmanship has the advantage of the Courts having clearly worked out the division of functions under it, or, better still, the present form with the latter part covering "directions" excised. Anyone who wants a shareholder democracy had better devise a whole new Table A.

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European Section

THE ROLE AND FUNCTION OF THE EUROPEAN COURT OF JUSTICE

Notes on a talk given by **Advocate-General Warner** in Luxembourg on 20 June 1975.

By a Participant

The full name of the European Court of Justice is "the Court of Justice of the European Communities". Of course many of us like to think of a single European Community comprising the nine Member States. But in fact there are three Communities, The European Coal and Steel Community, The European Economic Community, and the European Atomic Energy Community. Each of the nine Member States belongs to each of the three.

The first, and the oldest, of the Communities is the *European Coal and Steel Community,* set up in 1952 by the Treaty of Paris. It was this Treaty that actually created the Court, as the Court of Justice of the European Coal and Steel Community, and for the first few years of its existence the only jurisdiction the Court had was the jurisdiction conferred on it by that Treaty. But that was not negligible. Nor indeed is it negligible today. Since becoming a member of the Coal and Steel Community Ireland has not litigated any case under that Treaty, the United Kingdom of Great Britain has however litigated two cases—*Miles Druce & Co. Ltd.* v. *The Commission, Guest, Keen & Nettlefolds Ltd.* (1974) E.C.R. 281, the latter intervening, and they had another since: *Johnson & Firth Brown Ltd.* v. *The Commission, the British Steel Corporation* intervening.

The other two Communities are the *European Economic Community* and the *European Atomic Energy Community* (commonly referred to as E.E.C. & Euratom respectively). People tend to talk about "*the* Treaty of Rome". There are in fact two Treaties of Rome one establishing the European Economic Community and the other Euratom. They both came into force on 1st January 1958, and one of their effects was that, as from that date, what had been the Court of Justice of the European Coal and Steel Community became the Court of Justice of the European Communities

Essential documents

Broadly speaking the instruments that lay down the organization, jurisdiction and procedure of the Court are:

(1) the Articles concerning the Court in the founding Treaties themselves—that is the Treaty of Paris and the two Treaties of Rome;
(2) the Protocols on the Statute of the Court annexed to those Treaties;
(3) the provisions relating to the Court in the various instruments whereby Denmark, Ireland and the UK became members of the Communities—what these mainly do is to amend the relevant Articles of the founding Treaties so as to adapt them to a Community of nine instead of six; and
(4) the Rules and Procedure of the Court.

Anyone conducting litigation before the Court must of course be armed with copies of those instruments, particularly the Treaties, the Protocols on the Statute and the Rules of Procedure. They all exist in the seven official languages of the Communities, Danish, Dutch, English, French, German, Irish and Italian. If you happen to know any of the Community languages other than Irish and English, it is useful to be armed with copies in that or those languages too, because a comparison of the texts in different languages sometimes helps to make clearer what a particular provision means. At present the working language of the Court is French.

Before dealing with the functions of the Court and with its procedure, a word about its composition and its infrastructure.

The Treaties currently provide for the Court to have nine Judges, four Advocates-General and a Registrar. They also provide for the President of the Court to be elected by the Judges from among their number for a term of three years; that he may be re-elected; and for the Court to appoint the Registrar.

There is no provision in the Treaties about what the nationalities of these various people are to be. So far as the Treaties are concerned all fourteen of them could come from one Member State, or indeed from a non-Member State!

In practice there is one Judge from each Member State. The Irish Judge is of course the former President of the High Court, Judge Andreas O'Keeffe.

There is one Advocate-General from each of the four Member States with a population in excess of 50,000,000 people, that is France, Germany, Italy and the United Kingdom of Great Britain and Northern Ireland.

At the moment the President is the French Judge, Monsieur Lecourt. He was re-elected in October 1973 for a third term, which is the first time any President has been re-elected for a third term. What matters in the case of the President is not his nationality. It is the man.

The Registrar is a Belgian, Mr. Albert Van Houtte. He has been the Registrar of the Court ever since its creation as the Court of Justice of the European Coal and Steel Community in 1952. His responsibilities are enormous because he is not only responsible for the Registry, which deals with the judicial paper work, he is also responsible for the administration of the Court. All in all he is the head of a staff of some 240 people. You may wonder why such a large staff. There are two main reasons.

The Staff of the Court

One is that the Court is a self-administering institution. There is no Minister for Justice, no Minister for Finance, no Office of Public Works, or no Civil Service

Department ministering to its needs in the matter of finance, accommodation, equipment, staff or ancillary services. The Court is a self-administering institution, within the limits of a budget approved by the European Parliament and the Council of Ministers.

Secondly, there is the linguistic problem. Because the Court has to cope with up to seven languages it must have a fairly large staff of translators, with, of course, attendant clerical staff. The translation department alone employs over 80 people; though it is fair to say that at the moment while the Irish language section is non existant, the English and Danish sections are temporarily rather larger than they would normally be because they are busy not only with the current work of the Court but also with the Translation into Danish and English of the back volumes of the Official Reports of the Court's decisions. The Irish Government have resolved not to have copies of any documents available in Irish other than the Treaties and documents concerning the accession of 1973. This was formally stated by the government at paragraph 30, page 83, of the White Paper of January 1972, published prior to The Accession of Ireland to the European Communities.

Coming back to the judicial side of things, I do not suppose that there is much need to explain to you what a Judge is. But I have no doubt an Irish Solicitor will ask what an Advocate-General is. This is hardly surprising, since he is a Judicial figure quite unknown to the Irish judicial system. Mark you, in this we are not unique. He is equally unknown in some of the other Member States, and it seems that, even in those States that have Advocates-General in their systems, the status and role of these are, in most of their Courts, different from those of an Advocate-General at the Communities Court.

The Advocate-General

I will start by stating what an Advocate-General is not.

First and foremost, despite the label he wears, he is not an Advocate for anybody.

Secondly, it is inaccurate to liken his function to that of a Judge-Advocate at a Court Martial or of an *amicus curiae*.

In a way the nearest analogy in our system to the relationship between the Advocate-General and the Judge of the European Court is the relationship between a High Court Judge and the Supreme Court. The Advocate-General is the member of the Court who has the first go at saying how he thinks a case ought to be decided. His opinion looks and reads for all the world like an Irish High Court Judge's reserved judgment, except that it culminates in an expression of view as to how the case should be decided instead of in an order. After it has been delivered, the Judges gather together and decide whether that view is right or wrong or partly right and partly wrong.

There are four main differences between an Advocate-General and an Irish Judge of the High Court. The first is that the Advocate-General hears a case at the same time as the Judges, instead of hearing it alone first. The second is that his opinion is never decisive: it is as though, in Ireland, every case automatically went to the Supreme Court. The third is that his opinion can never be commented on by the parties. And the fourth is that he delivers it standing up instead of sitting down.

After that, you may well ask: why have Advocates-General? Why cannot the Judges just get on with the business of judging, as soon as the lawyers have expressed their views upon the case without having to wait for this odd functionary to express his views on the case?

When I asked that question I received a variety of answers—some historical—for instance the rather obvious one that, of the six States who were parties to the founding Treaties, most had Advocates-General, by one name or another, in their highest Courts, so that it would have seemed odd to them not to have Advocates-General at this Court. I have also heard practical answers of one sort and another, some of them quite pertinent.

But the real answer, I think, though it may be an *ex post facto* rationalisation, is that this is a Court at the same time of first instance and of last instance. There is no appeal from it. Yet it has to make some decisions of far-reaching importance. So it is right that its procedure should provide for a two stage process of decision. The Advocate-General's opinion is the first stage. It is akin therefore to having two hearings rolled up in one avoiding the necessity of having an appeal to another Court.

The same thought is at the root of the fact that our Supreme Court never likes to decide a point that has not been dealt with by the Courts below.

Let us now consider the jurisdiction of the Court. This is, on paper, immensely varied, as you have observed from reading the Treaties and some subsequent Conventions. In practice it covers three main categories of cases:

(i) References for preliminary rulings
(ii) Direct actions, and
(iii) Staff cases.

Staff cases are far less important than the other two

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categories of cases, except that they have served, over the years, as occasions for the Court to develop its case law about the extent to which, and the ways in which, it can review administrative decisions of other Community Institutions.

Staff Cases

In essence staff cases exist because on the Continent, unlike Ireland, the terms and conditions of service of civil servants are governed by law—it is a branch of administrative law, known in French as the "droit de la fonction publique". So the Regulations that govern the terms and conditions of service of the members of the staffs of the Community Institutions give them a right of appeal to the Court against any decision affecting them by which they feel aggrieved.

This was all very well in the early days of the Court, when business was fairly slack. But it is now becoming a burden, even though staff cases are heard, not by the full Court, but by divisions consisting of three Judges and an Advocate-General. These divisions are referred to in the authentic English text of the Treaties as "Chambers". This is one of the many mistranslations in the authentic English texts of the Treaties that although inaccurate we now have learnt to live with. It is fair to say that the English translations were carried out and had to be done very quickly, by people none of whom was a practising anglophone lawyer, and with no bilingual tradition as in Ireland. Because of the lack of such a tradition and technical expertise it is a wonder that the translations are not worse than they are. Indeed some parts are excellent.

There is a move afoot to create a lower Community Court to deal with staff cases, from which there would be a right to appeal on limited grounds to the Community Court. I think that it may take some time to come to fruition.

References for preliminary rulings

More important than staff cases are *References for preliminary rulings.*

The Treaty of Paris provides that the European Court of Justice is to have, in the context of the Coal and Steel Community, sole jurisdiction to rule on the validity of any act of any Institution of the Community where the validity of that act is an issue in proceedings in any Court or Tribunal of a Member State. This means that, if the validity of, for instance, a decision of the Commission purportedly made under the Treaty of Paris is called into question in any Irish Court, that Court is bound to refer the matter to the Community Court.

So far as the Economic Community (the EEC) and Euratom are concerned, the Treaties of Rome have created a system that is at once wider in scope and more flexible. It is wider in scope because it is not just the question of the validity of an act of a Community Institution that can be referred, but any question of interpretation relating to such an act, or indeed, any question of interpretation of the Treaties themselves. It is more flexible because it is only Courts of final appeal, or Courts from which there is no appeal, that are bound to refer. Other Courts are merely empowered to do so. The following are the underlying ideas of the Treaties of Rome: (1) That the administration of Community law is primarily a matter for the ordinary Courts of Member States; (2) that nonetheless the European Court of Justice has exclusive jurisdiction to rule definitively on a question of Community law and, (3) that, therefore, whilst a National Court from which there can be an appeal need not refer, a National Court whose decision is final must do so. In practice it is usually best for the first Court before which a case comes to refer, and to do so as early as possible.

An order for reference is a kind of cross between a case stated and an order for the trial of a preliminary point of law. It can be made at any stage of any proceedings by any National Court or tribunal.

The topics that references made to the Court have covered have been very varied. The largest number have raised questions as to the validity or interpretation of Regulations applying to the Common Agricultural Policy. The topics next in importance are social security, customs duties and the common customs tariff, internal taxation, restrictive trade practices and monopolies (known in Community law jargon as "dominant positions"), industrial property rights—and so on.

Direct actions are of two main kinds, (1) those against Member States, for failure to comply with a Treaty, and (2) those against the Council or the Commission for a declaration that some act of theirs—a Regulation, a Directive or a Decision—is void, or that a failure by the Council or by the Commission to act in particular circumstances is an infringement of a Treaty, or for damages for breach of a non-contractural obligation by the defendant Institution or its servants. In the case of contractual obligations, jurisdiction over Community Institutions lies, in general, with the ordinary Courts of Member States.

Actions against Member States

According to the Treaties, an action against a Member State can be brought either by another Member State or by the Commission. In general the Member States do not bring actions against each other: they leave the enforcement of the Treaties to the Commission, though in the recent dispute between France and Italy about wine Italy got very near to bringing an action against France.

So far there have been 23 successful actions by the Commission against Member States, 14 of them against Italy, 3 against Belgium, 3 against France, 2 against Luxembourg and 1 against Germany.

No member State has ever been known not to comply with an order made against it by the Court, though in some cases it has taken a little time. It can be said that, **within the scope of the Treaties, the Member States accept unquestioningly the rule of law.**

Direct actions against the Commission or the Council are much more numerous than those against Member States. An action against either Institution may be brought by the other, or by a Member State, or by any individual or corporation directly affected by the act or omission he or it complains of.

In practice most direct actions are brought by trading companies against the Commission. There are occasional actions by Member States against the Commission or the Council, and there have been three actions brought by the Commission against the Council. As far as I know there has never been an action by the Council against the Commission. The Irish Government took action against the Commission on the question of "Compensatory amounts" provided for in Article 65 and 66 of the Act of Accession in relation to Irish Tomatoes and now reported at page 429 of Vol. 1 Common Market Law Reports [1974].

Turning to the procedure of the Court, the Treaties

provide for Rules of Procedure to be adopted by the Court subject to the approval of the Council. The Accession of the three new Member States naturally made it necessary for the Court to adopt new Rules of Procedure. But for most practical purposes the new Rules, which are dated 4th December 1974, do not differ materially from the old Pre-accession rules, subject to obvious adaptations such as the use of Irish English or Danish as official languages, and subject also to minor modifications introduced at the British behest such as the direct examination of witnesses by lawyers.

Time limits rigid

In general, the procedure of the Court is much more flexible than that of an Irish Court. In some respects, it is almost informal. But I must warn you that there is one respect in which it is more rigid and that is in the matter of time limits for lodging pleadings and so forth. You just cannot let the date for lodging a pleading go by and then apply for an extension of time. And it is very difficult to get an adjournment of a hearing. The Court is hostile to any sort of threat of delay.

It is a tradition at the Court for any practitioner in any Member State who is in a fix, or even in doubt, on a question of procedure to ring up, or write to, the Legal Secretary to the Judge of his nationality and ask for help. So any Irish Solicitor is free at any time to get in touch either with Judge Andreas O'Keeffe's Legal Secretary, who incidentally is French; he has also an Irish assistant at his office.

The requisite Law Reports

One of the important tools of the trade is the E.C.R., the *European Court Reports.* This is the version in English of the Official Reports of cases heard by the Court. Before accession these official reports were published in the four original official languages of the Communities, Dutch, French, German and Italian. Now they are being published in English and Danish as well. No Irish version will appear. As regards post-accession cases, that is cases decided in and after 1973, Irish practitioners are expected to cite the E.C R. They contain the full text of the judgment and of the Advocate-General's opinion in all cases.

For the time being, most pre-accession cases can be cited in English only in one of the unofficial translations appearing in for instance the *Common Market Law Reports.* However, as I have mentioned, the official reports of the years before accession are being translated into English. No Irish version will appear. Back volumes of the E.C.R. are published from time to time. The volumes published so far are those for 1962, 1963, 1964, 1965 and 1966 The next to be published will be those for 1967 to 1972. The translators will then go back to the beginning and produce the volumes for 1954 to 1961. Subscription for the 18 volumes to 1972 if ordered in one lot is £150.00 and if purchased in individual volumes the price is £15.00 each. The subscription for 1973 is £10.00 and for 1974 is £14.20. They are all available from Messrs. Greene & Co., Booksellers, 11 Clare Street, Dublin 2.

Language adopted

Under the rules of Procedure each case is conducted in one of the official languages, which is called the language of the case. In direct actions the language of the case is chosen by the Applicant, except where the defendant is a Member State, when it is the language of that State. In references for a preliminary ruling it is the language of the Court that makes the reference. This of course makes it much easier for practitioners, because it means they can generally conduct a case in their own language. Nonetheless. you may find it necessary at times at a hearing to whip on headphones and listen to the simultaneous translation, particularly if you do not understand French. This is because Members of the Court are entitled, and witnesses may be permitted, to use a language other than the language of the case In practice the President always speaks French and one or two of the other Judges sometimes do, even in cases where the language is English. One point of interest to practitioners appearing before this Court is that unlike the Irish accepted procedure of interjecting and interfering with the run of the evidence the Judges of this Court never question interject or interfere with a practitioner making submissions before them or conducting a case, and would consider it most improper to do so.

The procedure itself is basically simple. It consists of a written part and an oral part. In practice the written part is by far the more important. This is for two reasons. One is the Continental tradition—particularly the Belgian and the German. It happens that in some of the superior Belgian Courts they do not have oral hearings at all and that in many German Courts, the oral hearing is a mere formality.

The second reason is, again, the linguistic problem. This does not arise so much if the language of the case is French or English. But if it is for instance, Dutch, which only two members of the Court understand, it means that, at a hearing, everybody on the Bench, apart from those two, is listening, not to the solicitor,

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but through the headphones, to an interpreter—and of course the quality of the interpretation varies enormously, and, however good it is, it is not like listening to a solicitor directly.

So written pleadings (in direct actions) and written observations (in references for preliminary rulings), dominate, because they can be properly translated at leisure, and one can then read the translations.

The procedure differs slightly as between direct actions and references for preliminary rulings. The procedure in staff cases is the same as in direct actions, except that they are heard by a Chamber instead of by the full Court.

Requisite pleadings

In direct actions there are four pleadings—the Application, the Defence, the Reply and the Rejoinder. The Application is the document that originates the proceedings and at the same time sets out the Defendant's case. The Reply and Rejoinder are optional.

As I have tried to indicate, pleadings in direct actions are not intended to fulfil the same limited purpose that pleadings fulfil in an Irish Court. They are the main vehicle for the parties to present their cases to the Court. Each party sets out in his pleadings not only what he says the facts are, but also his submissions of law, the arguments in support of those submissions and the authorities on which he relies. He annexes to his pleadings any documentary evidence on which he relies, and if he wants any witness to be called, he says so in his pleadings.

Another thing that differentiates proceedings in this Court from proceedings in an Irish Court is that the parties do not in general serve documents on each other, or deliver them to each other. Pleadings are lodged at the Registry of the Court and it is the job of the Registry to serve them on the other party or parties. For this purpose, parties to direct actions are required to have an address for service in Luxembourg. What this means, in practice, for parties represented by Irish Solicitors, is that their Solicitors have to have a Luxembourg agent, who can, so far as the Rules go, be anybody at all with an address in Luxembourg, but is usually an avocat from Luxembourg.

When an Application originating a case arrives at the Registry, the case is given a number e.g. 1/75 for the first case of 1975, and it is at once assigned by the President to one of the Judges, to act as Rapporteur, and to one of the Advocates-General.

At the close of pleadings, the Court decides whether any issue of fact raised in the pleadings needs to be determined by what is called a "preparatory inquiry". The judicial technique here is rather like that of an order for a Chancery inquiry in the High Court. An inquiry may be conducted either by the full Court, or by a Chamber or by the Judge Rapporteur, with, in every case, the Advocate-General. Such an inquiry may involve the personal appearance of one or more of the parties, or the production of further documents or information by the parties, or the examination of witnesses, or experts' reports, or an inspection of the place or thing in question.

But inquiries are rare. Most cases go straight to a hearing.

After the hearing there is an adjournment during which the Advocate-General writes his opinion and it is, so far as necessary, translated. About three weeks later he delivers it. Then, after another adjournment, the judgment is delivered.

In references for preliminary rulings the procedure is very similar, except initially. The National Court or Tribunal making the reference sends its order for reference direct to the Registry of this Court. It is then translated into all the other Community languages and served by the Registry on the parties, on the Member States, on the Commission, and on the Council if an act of the Council is in issue. Within two months, any of these may submit written observations on the question or questions referred. In practice, the Commission always submits observations, the parties normally do so, and Member States sometimes do so. There are usually no preparatory inquiries, as the questions referred are pure questions of law. There is then a hearing which the parties are not obliged to attend, although they usually do and the Commission almost always does. As there is only one round of written observations, the hearing is the only opportunity the parties have of commenting on each other's observations. The hearing is followed in the usual way after an adjournment by the Advocate-General's opinion, and after another adjournment by the ruling of the Court.

The Court, as I have said works fast. A preliminary ruling is normally given within between four and eight months of the receipt of the order for reference at the Registry. Direct actions take rather longer, but seldom more than a year.

Costs awarded by the Court

A reference for a preliminary ruling is considered to be a step in the proceedings before the National Court or Tribunal concerned and the costs therefore to be a matter for that Court or Tribunal, except that the Community Court can grant legal aid to any party out of its own funds. This is a particularly valuable power particularly in social security cases.

In direct actions costs are awarded by the Court on very much the same sort of principles as apply in an Irish Court. The main difference is that detailed taxations are unknown. The parties are expected in general to agree the quantum of costs. If they fail to agree, the quantum is assessed by a Chamber on principles that appear to me to be similar to those of our Schedule II. I should also add that, in direct actions, the Court can also grant legal aid.

One can sum up the role of the Court in the European Communities in the words of Article 164 of the EEC Treaty—(there are Articles in the same terms in the other two founding Treaties). Article 164 says: "The Court of Justice shall ensure that in the interpretation and application of this Treaty the law is observed". There you really have it all. European integration *is founded on the rule of law,* and the Court is the central instrument to ensure that practical effect is given to that ideal.

Book Reviews

Gijlstra (D.J.), Schermers (H.G.), Völker (E.L.M.) and Winter (J.A.)—Leading cases and materials on the Law of the European Communities. 8vo; xxi, 300p. Kluwer, The Netherlands, 1975; paperback, £5.70.

This collection of cases and materials on European Community Law is the most up to date available at present. It is published under the auspices of the Europa Institute of the University of Amsterdam.

The learned editors in their introduction explain that they have prepared "an introductory case-book of moderate size (and moderate price) covering the main topics in all important fields of Community Law, particularly for use in introductory courses in European Law." However, they recommend that the case-book be read in conjunction with one of the following text-books on European Community Law: Kapteyn and Verloren Van Themaat; Parry and Hardy; Mathijsen.

About half the book is devoted to substantive law, the remainder being evenly divided between the Court of Justice, the other Institutions, and the relationship between Community Law and National Law.

The volume is divided into five chapters. Chapter one was arranged by Mr. Völker. It deals with institutional problems. The first extract is an abbreviated version of Emile Noël's slightly dated article (1973) entitled "How the European Community's Institutions Work". Thankfully, references to the following parts of the case-book have been added. The text of the Luxembourg Agreement of 1966 is also included in the first chapter.

The defective functioning of the European Community institutions is becoming more evident over the years. The Council has the most trouble in mastering its problems of functioning. Therefore, some suggestions for improvement in its working methods are made. It is a pity that the learned editor has not included the text of the Draft Convention on the Election of Members of the European Parliament by Direct Universal Suffrage.

Chapter two (written by Professor Schermers), relates to the Court of Justice of the European Communities. It is surprising to note that of the decisions of the Court which are reported in this work the editors include the submissions of the Advocate-General in only one case. There are four Advocates-General in the Court of Justice. Under Article 166 of the EEC Treaty it is the duty of the Advocate-General to make submissions on cases brought before the Court in order to assist the Court in ensuring the observance of the law in the interpretation and the application of the Treaties. He must maintain his independence from the Court. The Advocate-General is of particular interest as he has no direct equivalent in the Irish legal system.

In Chapter three Mr. Winter looks at the relationship between Community Law and National Law. Chapters two and three are based mainly on Brinkhorst and Schermers' *Judicial Remedies in the European Communities: A Casebook,* but some new material has been added.

Chapters four and five were prepared by Mr. Gijlstra. Chapter four deals with the Foundations of the Community. There are cases on those articles of the EEC Treaty which set out the basic principles of the Community. There are also cases on the four freedoms: free movement of goods, of persons, of services, and of capital. Chapter five relates to the policy of the Community including (1) Competition Policy (A. Rules applying to undertakings. B. Dumping. C. State-Aid); (2) Harmonisation of Laws; (3) Economic and Social Policies; (4) Sectorial Policy.

There is a useful and elaborate diagram at the beginning of the book showing the various stages of the decision making procedure followed when important decisions of the Council are involved. The first of the five stages concerns the preparation of proposals. Interest groups give an idea for a proposal and this idea is examined by working conferences of national experts who consult the Commission in depth. At the second stage, the European Commission, if it has adopted the proposal, sends it on to the Council of Ministers. The Council then sends the proposal to the Committee of Permanent Representatives, and to the European Parliament and to the Economic and Social Committee. The third stage is the consultation stage where the European Parliament and the Economic and Social Committee consider the proposal and send in their formal advice. At the fourth stage the Committee of Permanent Representatives refers the proposal to a working party (which often consists of the experts referred to above in the first stage seeing the proposal at a more advanced stage). Then in the fifth and last stage the Council makes its decision. It would seem, therefore, that the legislative process is untidy. Considerable time elapses before decisions are taken in relation to important matters.

Throughout, the material is presented under clear headings, which is essential in a book of this nature. Within the same volume there are included reports of well over a hundred cases of the Court of Justice (and the more important cases are treated at length), useful commentaries on the effect of the cases reported, detailed references to further reading, lists of questions for discussion, and so on. In Chapters four and five there are generous extracts from the First Report on Competition Policy. A helpful introduction to each chapter is provided. The latest judgments reported in this work are those of December 1974. It is unfortunate that *Ireland v. E.C.C.* case (The Tomato case)—157/73—(1974) CMLR 429—21 March 1974—is not reported here.

European Law has been much developed through case law. A case book is an important means of teaching and provides the student with an easier means of approaching and learning this subject.

This collection should become one of the basic books on courses of European Community Law in the Irish Law Schools. Also, it should be found in the libraries of those practitioners who are interested in this area of the law.

Hugh M. Fitzpatrick

Winfield (Sir Percy) and J. A. Jolowicz—The Law of Tort. 10th edition by W. V. H. Rogers. liii, 672p; London: Sweet & Maxwell, 1975; paperback £7.50.

The late Sir Percy Winfield edited the first 5 editions of this work from 1937 to 1950, while Professor Jolo-

wicz assisted by Dr. Ellis-Lewis edited the next 4 editions from 1954 to 1971. Mr. Rogers, Lecturer in Law in Nottingham University, has most ably edited the present edition. There have not been substantial changes to the well known 9th edition of 1971 and the chapter headings are the same. Mr. Rogers assumes that ultimately a system of state insurance for personal injuries, as in New Zealand, will be introduced; this will heavily curtail jury actions. He rightly fears that the cohesion of what is at present called "The Law of Tort" will be affected. It remains to be seen whether the reforms in the law of defamation recommended in England by the Faulks Committee this year, will be adopted here; this would abolish the distinction between libel and slander, and reduce the limitation period in which defamation actions could be started to 3 years. In its 24th Report of 1974, the English Law Reform Committee has recommended various other reforms as to limitation periods. As the decisions of the English Court of Appeal are evenly balanced on the subject, it is difficult to state whether failure to wear a seat belt in a motor accident is contributory negligence or not. One of the newer and more difficult torts is that of interference with contract or business, and this is most lucidly covered in a chapter which considers interference with a subsisting contract, intimidation, interference by unlawful means, and conspiracy. Another modern matter that is fully considered is the position arising as a result of *Hedley Byrne* (1964) in that a special business relationship leads to a duty of full disclosure of the fact, and that, in such an event, the parties making them are liable for negligent misstatements. Space does not permit us to consider more of the interesting problems raised. Suffice it to say that Mr. Rogers has followed worthily in the footsteps of Sir Percy Winfield and Professor Jolowicz, and that this textbook remains with Salmond, the leading one on this seemingly easy but in fact most intricate subject. The publishers are to be congratulated as usual for the format, presentation, and printing. All practitioners and students, who wish to obtain the most up-to-date information on the subject cannot do without it.

Incorporated Council of Law Reporting of Northern Ireland—Index to Cases decided in the Supreme Courts of Northern Ireland and reported during the period 1921 to 1970. xi, 303p; Belfast: Incorporated Council of Law Reporting for Northern Ireland, 1975; £12.50.

Professor Desmond Greer and Mr. Brian Childs of Queen's University, Belfast, as editors of this work, have successfully accomplished a work of industry and thoroughness in compiling this Index. The Index is preceded by a useful list of Judges of the High Court and of the Court of Appeal in Northern Ireland, followed by a comprehensive alphabetical table of reported cases listed under the names of the plaintiff and the defendant respectively. This is followed by the actual Index of subject matter summarising the principal issues in each case, and largely derived from headnotes. There then follows a comprehensive Index of Statutes, Statutory Instruments and Rules of the Supreme Court referred to in the various judgments. The Cases judicially considered are those specifically referred to in the headnotes, while there is also an alphabetical table of words and phrases judicially considered. It is useful to note that a cumulative supplement covering reported cases from 1970 to 1973, as well as the unreported cases in the monthly Bluebooks will be available shortly. This reviewer appreciates the painstaking and careful work entailed in producing an elaborate Index, and commends the learned editors for the patient industry and immense learning displayed by them in producing this volume. This volume will be indispensable to all practitioners, as in many respects the law of Northern Ireland is practically identical to our own law.

McGillivray, E. J. and Michael Parkington—Insurance Law relating to all risks other than marine. London: Sweet & Maxwell, 1975; 6th edition; cxxxiv, 1126p; £35.00.

The first edition of this classic on Insurance Law appeared as long ago as 1912, and the original author, Mr. McGillivray, edited the first four editions up to 1953. Professor Denis Browne edited the last edition in 1961, but the combined total pages of two separate volumes in the 1961 edition did not exceed an extra hundred, as compared with this edition. Mr. Parkington, with the able assistance of his colleagues Anthony O'Dowd, Nicholas Legh-Jones and Andrew Longmore has managed to produce this up to date edition in one volume.

It has been found convenient to change the order of contents, but all the former law in the previous edition, together with up to date English case law and statute law, is there. Each chapter is neatly divided into easily legible numbered paragraphs. The law of insurance is based on contract tinged with equitable principles. Thus, while broadly speaking, the rules of construction of a contract apply, so do the equitable rules of rectification, mortgages and trusts apply equally to a policy of insurance. Regardless of any rigid exemptions imposed, it seems that there is nothing to deter the cost of motor insurance from rising in a prohibitive way. The contractual rules relating to mistake, fraud and representation and non-disclosure are fully covered. It can thus be broadly stated that the practitioner with a good knowledge of the laws of Contract and Equity will have no difficulty in mastering the principles of Insurance Law. The publishers are to be commended for producing their customary high standard of printing and presentation. For specialists, there is even a special chapter on how to place business with Lloyds. This new edition is indispensable to practitioners dealing in Insurance Law, and, as the book contains over 1250 pages, the high price should not deter them unduly.

Anson, Sir William—The Law of Contract. 24th edition by A. G. Guest; Oxford: The Clarendon Press, 1975; £4.50 (Paperback); lii, 683p.

This well-known textbook hardly needs any recommendation, particularly since Professor Guest took charge of it in the 21st edition, and he has since then introduced some well-deserved re-writing. This reviewer has already had occasion to point out that he does not believe that the *ipsissima verba* of a former well-known author should be rigidly adhered to for all time. Professor Guest has managed to contain all the up-to-date cases and English cases within 40 pages in 11 years, in

itself a remarkable achievement. Amongst the more recent cases, *Lewis v. Averay* (1972) 1 Q.B D. is well known, as a rogue obtained a car fraudulently representing himself as the actor Richard Greene; when the rogue sold the car, it was held that the plaintiff could not recover, as the contract was made with the person present. In *Snelling v. Snelling Ltd.* (1973) Q.B.D., one of three partner brothers resigned from the firm as a result of disputes; he unsuccessfully claimed money due to him, as a prior agreement had been made not to refund any such claim. In *Jarvis v. Swan Tours Ltd.* (1973) Q.B.D., the plaintiff solicitor recovered damages from a travel firm for making wild and unsustained statements about non-existent amenities. The customary clarity and precision has been displayed in discussing legal principles and cases. The work is as useful as ever to practitioners.

Hepple (B.A.) and M. H. Matthews—Tort: Cases and Materials. London : Butterworth, 1974; £6.00 Paperback; xxix, 747p.

The learned authors are law lecturers in Oxford and Cambridge respectively, and, like many of their colleagues in other fields of law, they have adopted the American method of introducing related material, such as Reports of the English Law Commission, British Official Committee Reports on various aspects of law reform, and some of the more interesting articles culled from legal periodical literature. They rightly point out, in the Introduction, that, apart from compensation, the law of tort may be used as a vehicle in determining rights, such as in actions for trespass or conversion; they have also stressed the lack of unity in the classification of torts. Negligence as a tort has gradually assumed a preponderant place, because common lawyers are more interested in finding a practical solution than in dogma. Thus the student is inevitably faced with the somewhat contradictory use of concepts, such as "duty", "cause", "damage", "risk" and "reasonable foresight". The modern tendency of the law of tort is to substitute the law as it actually operates in society to the former specialised language of lawyers. The real distinction is between the different interests which the law seeks to protect, and not between the money terms in which these interests are compensated for harm. Professor Tunc would separate the moral or deterrent function of case law based on the fault principle from the compensatory function which arises from human error. These are all questions for the future.

From a practical point of view, the authors have divided their work into three, Torts to physical interests, Torts to Non-physical interests and Loss Distribution. The first part includes all aspects of negligence as well as intentional injuries to the person, trespass, nuisance and damage. The second part includes defamation, malicious prosecution, false statements affecting economic interests, conspiracy, industrial disputes and passing off. The third part includes vicarious liability whether by employers or independent contractors, the liability of joint tortfeasors and the principles of compulsory motor insurance. The New Zealand Accident Compensation Act 1972 which introduced the principle of no fault insurance is fully set out in an appendix.

Apart from the well-known and not so well-known cases on particular aspects of tort, each of the 20 chapters contains, where relevant, the additional material already referred to. Like similar case books, it is invaluable for quick reference to leading judgments, and practitioners cannot do without it.

Jacobs, Francis G.—The European Convention of Human Rights. Oxford : Clarendon Press, 1975; £7.25; xi, 286p.

The learned author, who is Professor of European Law in the University of London, was formerly on the staff of the European Commission of Human Rights in Strasbourg, and has thus acquired an intimate knowledge of this intricate subject. He stresses that the international protection of human rights has been most fully and systematically developed under the European Convention for the Protection of Human Rights and Fundamental Freedoms, to which Ireland was a signatory, in November, 1950. It is not generally realised that, by Article 3, the Member States bound themselves absolutely to accept the principles of the rule of law, and of the enjoyment by all persons within their jurisdiction, of human rights and fundamental freedoms, and Article 8 provides for the eventual expulsion of a member who has breached these Articles. Up to then, Human Rights fell traditionally within the domestic jurisdiction of States. The European Commission sifts stringently individual applications; of the 6,000 applications presented before the end of 1973, only 100 were declared admissible. The grounds of rejection are threefold, either that the complaint is incompatible with the provisions of the Convention, or that the domestic remedies have not been exhausted, or that the complaint is manifestly ill-founded. The Commission sends an opinion as to whether there has been a violation to the Committee of Ministers, and within 3 months, this may be referred to the Court; this is what has happened in the case of Ireland's complaint that the British Army had tortured prisoners in Northern Ireland. There is little doubt but that the provisions of the Treaty should be interpreted objectively, and that the presumption that treaty obligations should be applied restrictively since they derogate from the sovereignty of States does not apply to the Convention.

Part II deals with Rights and examines in detail Article 2 (The Right to life), Article 3 (Inhuman or degrading Treatment), Article 4 (Slavery and forced labour), Article 5 (Liberty of the person, including the conditions authorising arrest and detention), Article 6 (The right to a fair trial), Article 7 (The principle—No punishment without legal sanction), Article 8 (Privacy and family life), Articles 9 to 11 (Freedom of thought, conscience, expression and assembly), Article 12 (The right to marry, and Protocols dealing with property rights, education, free elections, freedom of movement and freedom from discrimination). Part III deals with Restrictions to the Convention such as abuse of power, emergency powers and reservations. Part IV deals with remedies, and sets out in great detail the procedure before the Commission and the Court. The main result is that the individual can now be accepted as a proper subject of International Law.

Great indebtedness must be expressed to Professor Jacobs for the dedication and erudition displayed in this work. The publishers have maintained their usual high standing of printing and presentation, and per-

haps, in view of the specialist nature of this work, the relatively high price was inevitable.

Collins, Lawrence—European Community Law in the United Kingdom. London: Butterworth, 1975; £7.80; xxv, 170p.

The solicitor author is a partner in a large London firm, and also Director of European Community Legal Studies in Cambridge. The main object of this work is to indicate the relationship between Community Law and National Law, and to show how Community Law is to be applied in English Courts. It deals practically on structural and procedural aspects of Community Law within the context of English Law. The first chapter deals with the relationship between Community Law, National Law and International Law. The rules of Community Law derive their force from the Community Treaties. Treaties, according to the Irish Constitution, are not self-executing, and require the consent of the Dail to come into force; in any event, the treaty-making power resides in the Government. The existing rules appear to be: (1) While the European Communities Act, 1972, remains in force, existing directly applicable Community Law will be the law in Ireland, (2) Community Law which is not directly applicable will have no force in Ireland until given effect to by statutory instruments, (3) Directly applicable Community Law enacted subsequent to the Act will normally take effect in Ireland. If an Irish Court does not refer a question of construction to the European Court in Luxembourg, it must interpret the provision according to Community Law, which includes not only the Treaties, but secondary legislation and Court decisions. Any rights created and in accordance with Community treaties must be enforced by National Courts; a provision will have direct effect if (a) it is clear and precise, (b) it is unconditional and unqualified, and (c) must not concern Member States in their relations *inter se*. This applies in different respects to Regulations, Decisions and Directives. In *Schorsch-Meier v. Hennin* (1975) 1 All E.R., the English Court of Appeal held that foreign creditors were entitled to receive payment for their goods in their own currency, i.e. German Marks. It is to be noted that Statutory Instruments relating to Community Law may not (1) provide for the imposition of taxation, (2) be retrospective, (3) confer the power to enact sub-delegated legislation, and (4) create a new criminal offence with a punishment exceeding 2 years imprisonment or £400 fine on indictment. In England, if the terms of the statutory legislation are clear and unambiguous, they must be given effect to, but in Ireland, one must consider primarily whether the statute concerned is constitutional. If the legislation is ambiguous, one must resort to the text of the Treaty.

The aim of Article 177, which prescribes a reference by the National Court to the European Court, is to ensure uniformity of interpretation of the Treaty by the National Court. In theory, any administrative tribunal with judicial powers may refer a question of Community Law to the Court. It is to be noted that the European Court will not interpret National Law nor will it apply its interpretation to the facts of the case. Under the doctrine of the "Acte Clair", it is not necessary to make references to the Court if other cases have already clarified the point. The Court of Appeal pointed out in *Bulmers Ltd. v. Bollinger* (1974) Ch.D., that the way in which a National Court should exercise its discretion was a matter for the National Court alone. The application of Treaty interpretation to specific facts, national legislation and questions of fact must always be left to the National Court.

It will be seen that this is a most practical book in determining the respective circumstances when to apply to the National Courts or to the Community Court. The guidelines in respect of each Court appear to be more or less fixed, and we are very much in Mr. Collins' debt for having given us so many practical examples. This book is indispensable to any practitioner who ever contemplates arguing Community Law before a National Court.

Dublin Solicitors Bar Association

The Annual Dinner of the Association was held in the Library of Solicitors' Buildings on Saturday, 6th December, 1975. Amongst the guests were the Chief Justice (the Hon. T. F. O'Higgins), the President of the High Court (Mr. Justice Finlay), the President of the Circuit Court (Judge Durcan), Judge Ryan, Judge Sheehy, Judge Clarke, Judge Martin, the President of the District Court (Justice O'Flynn) and some Dublin District Justices, including Justice James Kelly. The toast of "Our Guests" was proposed by the President of the Association, Mr. David Pigot, and responded to by the President of the Law Society, Mr. W. A. Osborne. The toast of "The Association" was proposed by Mr. Justice Finlay, President of the High Court, and responded to by Mr. Laurence Shields. Mr. Rory O'Connor arranged the customary musical programme, which included Mr. W. McMahon and Miss Mary Sheridan, and which was enjoyed by all.

Statutory Instruments

S.I. No. 288 of 1975

SOLICITORS ACTS, 1954 and 1960 (FEES) REGULATIONS 1975

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

1. From and after the date of these regulations the fees specified in the schedule hereto shall be paid to the Society by the applicant in respect of the matters therein mentioned.
2. These regulations shall come into operation on 27th day of November, 1975.
3. The Solicitors' Practising Certificate Fees Regulations 1973 (S.I. No. 315 of 1973) are revoked as from the date of operation of these regulations as regards applications for practising certificates for the practice year 1976/77 or any later practice year but shall continue to apply to applications for practising certificates for the practice year 1975/76 or any earlier practice year.
4. These Regulations may be cited as the Solicitors Act 1954 and 1960 (Fees) Regulations 1975.

SCHEDULE

1. On application for a practising certificate for the practice year 1976/77 or any later practice year by a solicitor who practises or carries on his business in the City of Dublin or within three miles therefrom	51.00
On application by a solicitor who has been admitted less than 3 years for 1976/77	46.00
2. On application for a practising certificate by a solicitor who does not practise or carry on his business in the City of Dublin or within three miles therefrom	48.00
On application by a solicitor who has been admitted less than 3 years, for 1976/77	43.00
3. On application under Section 17 of the Solicitors (Amendment) Act 1960 for a copy of an entry on file A or file B	1.00

Dated this 26th day of November, 1975

Signed on behalf of the Incorporated Law Society of Ireland—

WILLIAM A. OSBORNE,

President of the Incorporated Law Society of Ireland

EXPLANATORY NOTE

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

The fee payable by a solicitor on taking out a practising certificate is raised from £41 to £51 in the case of a solicitor practising in Dublin and from £38 to £48 in the case of a solicitor practising elsewhere. The fee payable for a copy of an entry on File A or File B is unchanged.

S.I. No. 308 of 1975

SOLICITORS ACTS 1954 and 1960 (APPRENTICES' FEES) REGULATIONS, 1975

The Incorporated Law Society of Ireland in exercise of the powers conferred on them by sections 4, 5, and 82 of the Solicitors Acts, 1954 and 1960 and of every other power thereunto them enabling, and with the concurrence of the President of the High Court hereby make the following regulations.

1. On and after the date on which these regulations shall come into operation the fees specified in the schedule hereto shall be paid to the Incorporated Law Society of Ireland by the petitioner or applicant in respect of the matters therein mentioned.

2. The Solicitors Act, 1954 (Apprentices' Fees) Regulations, 1962 (S.I. No. 131 of 1962) shall be revoked as from the date of the operation of these regulations.

3. The Interpretation Acts, 1937 shall apply for the purpose of the interpretation of these regulations as it applies for the purpose of the interpretation of an Act of the Oireachtas except in so far as it may be inconsistent with the Solicitors Acts, 1954 and 1960 or with these regulations.

4. These may be cited as the Solicitors Act, 1954 and 1960 or with these regulations.

4. These may be cited as the Solicitors Act, 1954 and 1960 (Apprentices' Fees) Regulations, 1975 and shall come into operation on 18th December, 1975.

SCHEDULE

1. On application for consent of the Society to enter into indentures of apprenticeship (excluding Preliminary Examination)	15.00
1a. Preliminary Examination Fee	15.00
2. On application to attend a First Examination in Irish, or part thereof	5.00
3. On each subsequent application to attend any First Examination in Irish or part thereof	3.00
4. On each application to attend any Preliminary Examination or part thereof after the first	5.00
5. On application for entry by the registrar of Indentures of Apprenticeship, other than supplemental indentures or a transfer of indentures	90.00
6. On application to attend the First Law Examination—	
Old Regulations	10 00
New Regulations	15.00
7. On each subsequent application to attend any First Law Examination or part thereof	10.00
8. On application to attend the Second Examination in Irish	5.00
9. On each subsequent application to attend any Second Examination in Irish or part thereof	5.00

10. On application to attend the final examination—

Second Law Examination	15.00
Third Law Examination	15.00
Book-keeping Examination	5.00

11. On each subsequent application to attend the final examination—

Second Law Examination, or any part thereof	10.00
Third Law Examination, or any part thereof	10.00
Book-keeping Examination, or any part thereof	5.00

12. On each application to attend a course of lectures of the Society other than lectures on the rights, duties and responsibilities of solicitors 15.00
Half course 7.50

13. On application for entry of a name on the roll of solicitors 40.00
14. On application for permission to give late notice of intention to attend any examination or course of lectures ..... 5.00 (or such lesser fee as the Society may accept in special circumstances).

Dated this 16th day of December, 1975.

Signed on behalf of the Incorporated Law Society of Ireland,

PATRICK C. MOORE

President of The Incorporated Law Society of Ireland.

In pursuance of the provisions of section 82 of the Solicitors Act, 1954 as amended by section 25(1) of the Solicitors (Amendment) Act, 1960 I concur in the making of the above regulations.

Signed, THOMAS A. FINLAY,

President of the High Court.

Retirement of Mr. Justice Budd

The Judiciary, Barristers, Solicitors, and Court Officials assembled in the Supreme Court on Thursday, 18th December, 1975, at 12.30 p.m. to pay tribute to Mr. Justice F. G. Budd who was retiring as a Judge of the Supreme Court.

The Judges of the Supreme Court sat in their places, while the Judges of the High Court stood behind them.

The Attorney General, Mr. Declan Costello, S.C., as Leader of the Bar, then rose and said :

It is my privilege to speak to-day on behalf of all the members of the Bar of Ireland on this occasion when your Lordship is sitting for the last time before retirement from the Supreme Court Bench. Whilst sharing with all my colleagues at the Bar a deep sense of regret that the passing years are bringing to a close a brilliant career at the Bar and later on the Bench, I nonetheless welcome the opportunity which to-day affords to record publicly our profound appreciation of your life's work in the law, our deep sense of gratitude which, as practitioners before your Lordship in the High Court and later in the Supreme Court we all share, our affection, our sincere wishes for serene days in retirement.

Your Lordship was called to the Bar in 1927, after an outstanding academic career which resulted firstly in the award of an Honours Degree in History and Political Science by Trinity College, Dublin, and later, the bestowal of the much prized Doctorate in Laws. Within a short time your Lordship became the Leader of the Leinster Bar, a Silk before the age of forty, a Judge of the High Court in 1951, and your Lordship has been a Judge of the Supreme Court since 1966. To chronicle in this way the outstanding milestones of your Lordship's legal career is but barely to hint at how the journey was made and the qualities which you brought to it. You Lordship's outstanding intellectual gifts were, of course, obvious. Allied to them, however, was an immense and painstaking industry and attention to detail which came, I believe, from a deep sense of duty first, as a member of the Bar, to your clients, and later, as a member of the Judiciary, to your high Office. Added to these qualities were your Lordship's patience, politeness and compassion. Thus after a brilliant career at the Bar, Irish society has had for a quarter of a century the benefit of a remarkable and outstanding Judge who not only dispensed justice evenly and fairly between opposing litigants, but by his wise and prudent judgement on difficult and important legal problems contributed to the orderly and humane development of the laws of our State. The Law Reports have recorded this unique contribution in an enduring and permanent form. Your Lordship has, however, left another legacy which takes, perhaps, a more subtle form but which is equally enduring. The high and exacting standards of hard study and serious application which you set yourself, the compassionate understanding which you showed for the problems of litigants and witnesses appearing before you have been an example to all members of the legal profession By setting this example, you have helped to maintain and strengthen traditions for the proper administration of justice in this country which are of immense importance for the preservation of the rule of law in our society.

I have mentioned that I would wish to avail of this occasion to express to your Lordship the thanks of all the members of the Bar for the assistance you have given to us all during your period on the Bench. "An over-speaking Judge is no well-tuned cymbal" is a comment which members of the Bar may, from time to time, quote with particular feeling. The words following this comment are worth briefly recalling here to-day. "It is no grace to a Judge first, to find that which he might have heard in due time from the Bar; or to shew quickness of conceit in cutting off evidence or Counsel too short; or to prevent information by questions though pertinent". This advice given, it will be recalled by a practising member of the Bar, was written over three-and-a-half centuries ago. It could well have been written by your Lordship. It was certainly practised by your Lordship. I know of no instance during your Lordship's twenty-five years on the Bench when a cross word passed between you and Counsel, between

you or a witness; of no instance when Counsel or a witness had been cut short unfairly by your Lordship. Your deep understanding of the problems of the advocate's role in our Court system has made our task an infinitely easier one. Your patience has given confidence even to the most junior practitioner. You have by your unassumed courtesy and mending patience helped us to carry out our responsibilities as barristers. No matter how difficult has been the case it has always been a pleasure for every member of the Bar to appear in your Lordship's Court.

In the nature of things, only a minority now of the practising members of the Bar had the privilege and pleasure of working with you as a colleague. Your Lordship, I think, will know how deep the affection is which is felt by those who knew you personally at the Bar. Your Lordship should, however, also know that this affection is shared by all the members of the Bar, even the most junior. It is my hope that this knowledge may contribute to the happy days of leisure and tranquility which it is all our wish now lie before your Lordship.

Mr. P. C. Moore, President of the Incorporated Law Society, then said :

My Lords and Mr. Justice Budd : on behalf of the Incorporated Law Society as representing the Solicitors' Profession I wish to record our appreciation of the great contribution you have made in your Judicial Office to our Irish Legal System and to the people of the Nation.

Your sterling qualities are well known to us all; your unfailing courtesy, your understanding of the advocates role and in particular your ability to listen—one of the great attributes of the Judicial office—has been universally recognised.

The Irish Law Reports and your unreported Judgments are testimony of your deep insight into our Jurisprudence on the Chancery and Equitable side of our Court's Jurisdiction.

For this contribution the Solicitors' Profession are grateful, as it enables them to advise, help and guide the people who seek their aid with reasonable certainty and assurance towards the solution of their problems.

"Gardiner Budd" as you are affectionately referred to by your colleagues will occupy a special place in the hearts of your many admirers and it is only fitting to refer to the great contribut on you have made in chairing the Commission on the "Law of Bankruptcy" resulting in the creation of that Masterpiece of research, the recent Report on this Topic.

It is our hope that this monumental work will soon find reality by its translation into action as part of our Statutory Law and so necessary in the public interest.

We congratulate you my Lord on this work.

We wish you many happy years in your retirement and thank you for your gracious service and help to us all both as an advocate and in your judicial office.

The Chief Justice, speaking on behalf of the Judiciary, spoke of the deep regret the Judges felt in losing the services of such a valuable colleague as Mr. Justice Budd.

Mr. Justice Budd thanked everybody and said that, having served under three Chief Justices, he valued the co-operation he had always obtained from the other Judges, and the invaluable assistance which solicitors and barristers had given him.

EUROPEAN INVESTMENT BANK

The European Investment Bank was created by the Treaty of Rome which established the European Economic Community. It is an autonomous institution within the Community operating on a non-profit making basis and its essential function is that of providing finance for investments which will help to promote a balanced and steady development within the EEC. Since 1963, the Bank's operations have been extended to certain other countries which receive financial aid from the Community.

The Bank wishes to recruit a

LAWYER

for its team of European legal advisers in Luxembourg. His work will include the preparation and negotiation of contracts relating to loans made by the Bank and to public issues and private placements as well as general advisory duties.

Qualifications :
Barrister or Solicitor aged between 30-35, entitled to practise in the U.K. or in the Republic of Ireland. Candidates should have sound general commercial experience in finance. Professional experience in the Commonwealth desirable. Candidates must be nationals of an E.E.C. member state.

Languages :
English mother tongue with a sound knowledge of French. Knowledge of another European language desirable.

The Bank offers interesting work and attractive remuneration in accordance with qualifications and experience. Children's allowances, a pension scheme and other social benefits are available.

Applications, accompanied by a detailed curriculum vitae and photograph to :

EUROPEAN INVESTMENT BANK
Personnel Department
P.O. Box 2005
LUXEMBOURG

Applications will be treated in strict confidence

Acts Passed by the Oireachtas in 1975

1. Social Welfare Act — 26 March, 1975
2. Defence Forces (Pensions) (Amendment) Act — 2 April, 1975
3. Law Reform Commission Act — 16 April, 1975
4. Trade Union Act — 22 April, 1975
5. Land Bond Act — 5 May, 1975
6. Finance Act — 14 May, 1975
7. Agricultural Workers (Holidays) (Amendment) Act — 21 May, 1975
8. Social Welfare (Pay-related Benefit) Act — 31 May, 1975
9. Air Navigation and Transport Act — 19 June, 1975
10. Restricted Licences Conversion Fund Act ..... — 23 June, 1975
11. Racing Board and Racecourses (Amendment) Act ..... — 24 June, 1975
12. Court of Justice of the European Communities (Perjury) Act — 24 June, 1975
13. Appropriation Act ..... — 9 July, 1975
14. Local Authorities (Traffic Wardens) Act, 1975 — 12 July, 1975
15. Restrictive Practices (Confirmation of Order) Act — 16 July, 1975
16. Industrial Development Act, 1975 — 21 July, 1975
17. Agricultural Credit Act, 1975 — 29 July, 1975
18. Gaeltacht Industries (Amendment) Act, 1975 — 29 July, 1975
19. Finance (No. 2) Act, 1975 — 30 July, 1975
20. Capital Gains Tax Act, 1975 — 5 August, 1975
21. Air Navigation and Transport (No. 2) Act — 5 August, 1975
22. Turf Development Act — 5 August, 1975
23. Employment Premium Act — 6 August, 1975
24. Nitrigin Eireann Teoranta Act — 11 August, 1975
25. Wealth Tax Act, 1975 — 16 August, 1975
26. Tourist Traffic Act, 1975 — 3 December, 1975
27. Regulation of Banks (Remuneration and Conditions of Employment) Act, 1975 — 11 December, 1975

Reception for Mr. J. S. R. Cole, Q.C.

A reception was held by the recently-elected President, Mr. P. C. Moore, on Thursday, 11th December 1975, in the Council Chamber of the Law Society on the occasion of the launching of the book (*Irish*) *Cases on Criminal Law* by Mr. J. S R. Cole, Q.C., Senior Lecturer in Law, Trinity College, Dublin.

Mr. Walter Beatty, Chairman of the Public Relations Committee, introduced the speakers. **District Justice Herman Good** then said :

I was privileged to have been given the opportunity of reading the manuscript of the publication of Professor Cole's book entitled *Cases in Criminal Law*. I read through the lengthy and voluminous pages of the script and I must confess it took me well over a week to digest all the material and cases selected and collated by him.

I was indeed most impressed with the manner in which this formidable task was undertaken and accomplished by him and so well indexed and presented by the Professor that he is therefore in my humble view, to be congratulated on his achievement to which he must have devoted considerably energy, research and meticulous study. Speaking for myself as a Justice of the District Court, and as a former solicitor who practised for nearly forty years in Dublin engaged in literally thousands of criminal cases as an advocate, I have no hesitation in saying that Professor Cole's book is of the highest merit calling for the highest praise. There has been a dearth of legal text books on Criminal Law in recent years and although this book is not a text book —it is a reference book containing carefully and well-selected cases covering a wide field of subjects on the criminal side in all of which important decisions were made in the High and Supreme Courts of this country. For this reason alone, the book must prove to be a valuable contribution to the history of the Criminal Law in the Republic of Ireland.A copy of this book should be on the shelf in the study of every law student whether he be a solicitor's apprentice or Bar student. In fact I go further and say that a copy of this book would be an invaluable addition to libraries of practising solicitors, barristers and even of the members of the judiciary. In my considered opinion, this work is "a job well done" and the Council of the Incorporated Law Society are also to be congratulated on their foresight in sponsoring the publication of this volume of *Cases on Criminal Law* and I express the hope that all those interested in the subject will avail of the opportunity of having a copy in their keeping.

One final observation I would like to make—the author has another object in mind and I wholeheartedly agree with him in that the present-day education theory leans very much towards "case book" teaching and less towards the "text book" technique. If this be the right approach, then works of this kind in other fields of law become more and more important in the legal educational system.

The President, **Mr. Moore,** congratulated Mr. Cole on his wide erudition and research. **Mr. Cole** thanked the Law Society for sponsoring the work and Eagle Press Ltd for printing and publishing the book.

Correspondence

Land Registry, Central Office,
Chancery Street,
Dublin 7.
4th December, 1975.

Re: Delays where Maps are Unsuitable

Dear Mr. Ivers,

There have been many complaints from solicitors regarding delays in notifying them where maps lodged by them in sub-division cases are unsuitable.

Under Rule 56 of the 1972 Land Registration Rules the plan showing the part of the property in a folio the subject of the application should be drawn on the current largest scale map published by the Ordnance Survey. Frequently the map lodged is not on this scale. The point is made by practitioners that they must take the map supplied by their clients surveyor and may not be aware of its unsuitability and that it is onerous on them if it is not pointed out for some considerable time after the sub-division application has been lodged in the Registry. (It is a matter for the surveyor employed to mark the part being transferred clearly and unambiguously on a map that complies with the provisions of Rule 56).

We are arranging that from the 1st January next the map when lodged will be checked to see if it complies with the provisions of Rule 56. If not the practitioner will have the documents returned to him within a few days with a note indicating the reason for its unsuitability. It should be noted however that surveying errors, boundary conflicts and the like will not be detected by this preliminary check.

Many registered holdings are defined on the Registry Map on a lesser scale than the current largest scale Ordnance Map and in such cases a Land Registry Copy Map is usually not suitable for sub-division purposes.

It is to be noted that the Land Commission do not insist on Land Registry Copy Maps for the purpose of applications for their consent to sub-divide.

Yours sincerely,

N. M. Griffith, *Registrar.*

(Implementation of the above has been suspended pending further instructions).

Office of the Revenue Commissioners,
Capital Taxes Branch,
Dublin Castle.
Dublin 2.
December 5, 1975.

Certificate of Discharge under Section 20 Wealth Tax Act 1975

Dear Sir,

I am directed by the Revenue Commissioners to acknowledge receipt of your letter of the 24th ultimo and to refer you to Section 19 of the Wealth Tax Act 1975. This section provides that all wealth tax due by an assessable person shall be a charge on any immovable property comprised in the taxable wealth of that person. Furthermore the immovable property remains charged to that wealth tax in the hands of a purchaser where the consideration for the sale or the consideration for that sale and sales between the same parties over a period of two years exceeds £50,000.

Section 20 makes provision for the issue of a certificate to discharge the property from liability to wealth tax.

To release the property by the issue of a certificate you will appreciate that the Commissioners must be satisfied that the tax has been or will be paid. For that reason in cases where the Wealth Tax has not already been paid a payment on account is normally requested before a certificate is issued.

It should be noted that under section 2 of the Act the charge to wealth tax arises each and every year on and from the 5th April.

Yours faithfully,

B. A. GIBLIN.

James J. Ivers, Esq.
Director General.

Chancellor of the National University of Ireland

From the foundation of the National University of Ireland in 1908, there have been only two Chancellors of the University, and each of them was elected unanimously without opposition. They were Most Rev. Dr. Walsh, Archbishop of Dublin (1908-1921) and Mr. Eamonn De Valera (1921-1975). There will now be a contest for the Chancellorship for the first time and nine candidates have been validly nominated. Theoretically, the 67,000 graduates of the National University are eligible to vote, but many have changed their registered address and will be untraced. The ballot papers will be sent out from December 1975 and have to be returned to the office of the National University of Ireland in 49 Merrion Square, Dublin 2, by the beginning of May 1976. The result will be declared in May 1976.

The most eminent legal candidate amongst the nominated candidates is Mr. Justice Brian Walsh, proposed by the Attorney-General (Mr. Declan Costello, S.C.) and seconded by Professor T. B. Counihan, M.D. Mr. Justice Walsh has not only been an eminent and dedicated member of the Supreme Court since 1961, but, as Chairman of the Committee on Court Practice and Procedure, has been responsible for issuing more than twenty reports on the improvement of Court Procedure. The learned Judge, as Chairman of the recently-appointed Law Commission is having a detailed scheme of Law Reform prepared. The Judge has also experience of university administration, having been nominated by the Government as a member of the Governing Body of University College, Dublin, from 1958 to 1970.

The Building Societies Bill 1975

PART I

by THE PRESIDENT (MR. P. C. MOORE)

This Bill is a comprehensive measure consolidating, amending and extending the Law on Building Societies.

The Statute Law relating to Building Societies is contained in the Building Societies Acts 1874 to 1974 the principal Acts being the 1874 and 1894. Minor amendments were made by the Acts passed in 1875, 1877, 1884, 1936, 1942 and 1974. The proposals in the present Bill are designed to replace the existing code and to amend, extend and up-date the provisions which it contains. The Bill envisages the repeal of all the existing Statute Law subject to the usual transitional and savings provisions and, as already stated, the Bill is a comprehensive measure governing the entire Law applicable to Building Societies, coupled with far-reaching proposals enabling the Minister for Local Government and the Minister for Finance to make Regulations controlling the management, direction and financial affairs of Societies from time to time, as and when it appears expedient in the opinion of the Minister to do so.

A Registered Building Society is a Body corporate (operating under the name contained in its Rules) having perpetual succession and a common seal.

A Building Society is not permitted to build houses or hold land and buildings save for the purpose of providing office or branch office accommodation for the conduct of its business. A "Society" is defined in the Bill as a Building Society established under the Act for the purpose of raising, in accordance with the provisions of the Act, funds (by the subscription of the members, the acceptance of deposits and loans) for making loans to members on security by the Mortgage of freehold or leasehold estate or interest. This is the primary or only object of a Building Societies' Acts.

The members of a Building Society normally consist of two classes :

(1) Investing (or unadvanced) members who subscribe for Shares (receiving Interest or dividends on the amount paid up) and

(2) Borrowing or advanced members who borrow money from the Society on Mortgage.

The rights and liabilities of investing members depend upon the Rules of the Society which must set forth the terms on which its various classes of shares are issued. Those of the borrowing members depend not only on the Rules but also on the Contract of Mortgage into which they have entered. Depositors who are not members of a Society, unless however the Rules specifically so provide,a re bound by their own form of Contract and depositors are entitled to payment in priority to the investing members on a winding-up. Investing members of a Society only have the right to vote.

The Contents of the Bill

The Bill contains 96 Sections and a Schedule of enactments repealed divided into six parts :

Part I : Preliminary and general;
Part II : Establishment, Rules, Powers, etc., of Societies;
Part III : Control of Societies by Registrar;
Part IV : Control by Minister for Finance;
Part V : Management and Administration of Societies;
Part VI : Loans;
Part VII : Miscellaneous.

Schedule—Enactments Repealed

The English Building Societies' Act, 1962 operates in Britain since 1st October 1962, and many of its provisions appear to be incorporated and adapted in the present Bill. Not all of the provisions of the English Act have been adopted because of the powers contemplated in the Irish Bill enabling the Minister and the Minister for Finance to make Regulations from time to time as to the management, control and conduct of Building Societies' affairs. The Minister in the Bill means the Minister for Local Government The English Act of 1962 contains 135 Sections and 10 Schedules. The Act is divided into eight parts, as follows :

Part I : Constitution of Building Societies;
Part II : Advances on Mortgage;
Part III : Borrowing powers, and general provisions as to Investors, and Depositors and other Lenders;
Part IV : Powers of control of Chief Registrar;
Part V : Investment and banking of surplus funds;
Part VI : Management and administration;
Part VII : Winding-up and dissolution;
Part VIII : Miscellaneous and supplementary provisions.

The Schedules to the English Act are as follows :

Schedule 1 : Requirements relating to Founders' and Directors' Shares;
Schedule 2 : Requirements relating to advertising;
Schedule 3 : Permitted Classes of additional security;
Schedule 4 : Guarantees given under continuing arrangements;
Schedule 5 : Permitted Classes of prior Charges;
Schedule 6 : Form of receipt to be endorsed on the Mortgage;
Schedule 7 : Form of Bond for Officers of Building Societies;
Schedule 8 : Modifications of Act in relation to existing Societies;
Schedule 9 : Standard Rules for Meetings of Building Societies;
Schedule 10 : Repeals and revocations.

The English Act is a comprehensive measure and covers all the activities, management and affairs of Building Societies under the control of the Chief Registrar. It would appear that reliance is placed by the Draftsmen of the Irish Bill on the powers vested in the Minister for Finance rather than the Registrar.

Main changes

Stricter Regulations are now envisaged for the establishment of a Building Society as follows :

(A) Ten or more persons must now establish a Society and not three members and the secretary as heretofore (S.8).

(b) The Minister for Local Government after consultation with the Minister for Finance will prescribe the amount of cash that must be paid into the Society by the ten subscribers and this item may be as much as £500.00 each. The Shares must not be issued on more favourable terms than other Shares of a similar class issued by the Society and the Shares may not be repaid or transferred within a period of five years save of course by operation of Law (S.18).

(c) The Society shall not carry on business unless it maintains in the Central Bank a deposit of a minimum sum of £20,000.00 and further must continue to make deposits twice yearly with the Central Bank of such sums representing 5 per cent of the value of the Society's Shares and Deposits until a maximum of £500,000.00 is achieved (S.20).

(d) A Society incorporated after the date of the publication of the Bill, 5th December 1975, or a Society which on that date has assets of less than one million pounds may not advertise or otherwise solicit subscriptions for shares and deposits until it has obtained the written permission of the Registrar (S.19).

(e) The liquidity and other ratios will now be controlled by the Minister for Finance after consultation with the Minister for Local Government and the Central Bank and they must maintain a minimum standard as between its assets and its liabilities. This provision brings Building Societies into line with similar provisions in the Central Bank Act, 1971 (S.37).

(f) The Rules of all Societies must make provision for the items specified in Section 10 of the Bill. The Registrar of Building Societies if satisfied will register the Society and issue a Certificate of Incorporation but the registration of the Rules and the issue of the Certificate of Incorporation do not authorise the Society to commence business unless and until the other provisions of the Bill are implemented to the satisfaction of the Registrar.

General provisions

The Bill contains provisions for bringing the Building Societies into line with certain provisions of the Central Bank Act, 1971, and these provisions are mainly for the protection of Depositors with Building Societies. There are further provisions for loans by one Society to another for a union of Societies and for transfer of and undertaking to fulfil engagements as between Societies, subject of course to compliance with the procedures laid down by the Act and to the approval of the Registrar.

Control of Societies by Registrar

(a) The Registrar on an application in the case of a Society having more than one thousand members by not less than one hundred of those members, and in any other case by not less than one-tenth of the total number of members of the Society, may appoint one or more Inspectors to investigate the affairs of the Society and to report thereon, in such manner as he shall direct.

(b) The Registrar has power vested in him to carry out an investigation of a Society, where he is of opinion that the affairs of the Society call for consideration by a meeting of the members of a Society.

(c) The powers of the Registrar are enlarged by the provisions of Section 30 of the Bill, and in Sub-section (13) it is provided as follows:

> Nothing in this Section shall require disclosure to the Registrar or to an Inspector appointed by him
> (a) By a Solicitor of any privileged communication made to him in that capacity, or
> (b) By bankers of any information as to the affairs of any of their customers other than the Society the affairs of which are being investigated.

In pursuance of Section 30 of the Bill it is the duty of all Officers, Members and Agents of a Society the affairs of which are being investigated to produce to the Inspector all books, accounts, deeds, records or other documents of or relating to the Society which are in their power, possession or procurement and otherwise to give to him all assistance in connection with the investigation as they are reasonably able to give. The Inspector may examine on Oath, the Officers, Members and Agents of the Society, in relation to its business and for this purpose may administer an Oath. If an Agent or Solicitor refuses to comply with this Section his refusal can be referred to the High Court and he may be held to be in contempt of Court for so refusing.

Under Sub-section 14 of Section 30 it is provided that any reference in the Section to Officers or Agents of a Society shall include past as well as present Officers and Agents and, for the purposes of this Section "Agents" shall include the Bankers, Solicitors and Auditors of the Society.

The Registrar has power to suspend the raising of funds by a Society if he is of the opinion that the Society has become, or is likely to become unable to meet its obligations to its Creditors. If he considers it expedient in the interests of its members, or of the ordinary and proper regulation of Building Society business he may direct a Society in writing to be suspended for such period not exceeding two months as therein provided (Section 31).

The Registrar also has in similar circumstances, the right to suspend advertising for funds, and he has also power to inspect and obtain documents, deeds and records in like circumstances.

Societies have a right of appeal to the High Court against any Direction given by the Registrar and such High Court proceedings may be heard in Chambers (see Sections 32, 33 and 34 of the Bill).

As already stated the Minister for Finance has control over the ratios between Assets and Liabilities and the specified ratio may be expressed as a percentage of assets or liabilities concerned.

The Minister can exercise these powers hereinafter specified as to investment after consultation with the Minister for Local Government and the Central Bank. This power brings the Society into conformity with the control provided for in Section 23, Central Bank Act, 1971.

The next Section of the Bill—Section 38—provides for the investment of surplus funds and it is a very important Section from the point of view of Building Societies. Heretofore Building Societies were only allowed or permitted to invest surplus funds in authorised Trustee securities (see Section 25 of the 1874 Act, Sections 16 and 17 of the 1894 Act).

The Minister for Finance, after consultation as aforesaid, enables a Society to keep its funds not immediately required for lending purposes:

(a) On a current account;
(b) On deposit with the Central Bank;
(c) On deposit or current account with a Bank;
(d) In the Post Office Savings Bank, a Trustee Savings Bank certified under the Trustee Savings Banks Acts 1863 to 1965; ...
(e) Agricultural Credit Corporation Limited, and finally
(f) Industrial Credit Company Limited.

Societies are also given the same privileges as licensed Banks to invest in Central Bank Reserve Bonds.

The Minister has been given power to prescribe the limits as to investment in securities or in a specified class of security and also in respect of cash in or on current or deposit account.

[to be concluded]

The Register

REGISTRATION OF TITLE ACT 1964

Issue of new Land Certificate

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

Dated this 31st day of January 1976.

N. M. GRIFFITH, Registrar of Titles,

Central Office, Land Registry,

Chancery Street, Dublin 7.

Schedule

(1) Registered Owner: Andrew O'Dea. Folio No. 45205. Lands: Oldcastletown. Area: 0a. 0r. 4p. County: Cork.

(2) Registered Owner: Joseph Lynch. Folio No.: 14453. Lands: Derry. Area: 27a. 1r. 15p. County: Monaghan.

(3) Registered Owner: John Daly. Folio No.: 2021. Lands: Leampreaghane (Parts). Area: 75a. 2r. 20p. County: Kerry.

(4) Registered Owner: Daniel O'Connor. Folio No.: 28443. Lands: Part of the land of Tarbert with the cottage thereon situate in the Barony of Iraghtconnor. County: Kerry.

(5) Registered Owner: Denis Kearney. Folio No.: 56056. Lands: (1) Garrison, (2) Cloghboola. Area: (1) 21a. 0r. 22p.; (2) 19a 0r. 24p. County: Cork. The Land Certificate in Folio 811 now forming the lands No. 1 on Folio 56056 County Cork.

(6) Registered Owners: Thomas J. Ferris and Ann Bridget Ferris. Folio No.: 22571. Lands: Rathcoursey East (Part). Area: 3a. 3r. 20p. County: Cork.

(7) Registered Owner: Charles Edward Shalvey. Folio No.: 26863. Lands: (1) Dernakesh, (2) Dernakesh. Area: (1) 27a. 3r. 2p; (2) 26a. 2r. 11p. County: Cavan. The Land Certificate in Folio 20064 County Cavan now forming the property No. 1 in Folio 26863 County Cavan.

(8) Registered Owner: Michael Reilly. Folio No. 10202R. Lands: (1) Leitrim, (2) Ballynamona. Area: (1) 8a. 2r. 15p.; (2) 1a. 0r. 27p. County:Cavan.

(9) Registered Owner: John Coyle. Folio No.: 36030. Lands: (1) Aghangaddy Glebe, (2) Rathmelton. Area: (1) 40a. 3r. 1p.; (2) 0a. 1r. 27p. County: Donegal.

(10) Registered Owners: Thomas Doyle and Patrick Doyle. Folio No.: 2993. Lands: Curraghnaveen. Area: 122a. 3r. 30p. County: Roscommon.

(11) Registered Owners: Thomas Doyle and Patrick Doyle. Folio No.: 21062. Lands: Caltragh. Area: 13a. 1r. 30p. County: Roscommon.

NATIONWIDE INVESTIGATIONS

Telephone 989964

Notices

LOST WILL

Annie Frances O'Carroll, 24 Craigford Drive, Artane, Dublin. Retired Book Keeper deceased. Will any solicitor or person having knowledge of a will made by the above who died on 19th December, 1975, please communicate with Messrs. Fitzgerald, McCormick & Kelly, Solicitors, Manorhamilton, Co. Leitrim.

LAW STUDENT seeks Master, preferably in Dublin or Sligo area. Replies to Mary O'Connell, c/o Archway, U.C.G.

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Obituary

Mr. George A. Nolan died at his residence, Annavilla, Newtown, Waterford, on 23rd December, 1975, aged 85 years. Mr. Nolan was admitted as a solicitor in 1914 and practised as senior partner under the style of George A. Nolan & Co. at The Quay, Waterford, and at Fethard, Co. Tipperary. Mr. Nolan had been a member of the Council for several years until 1973.

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

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1. Professor Bates (Q.U.B.) to conduct survey on Solicitors' Remuneration.
2. Society will have regard to the finding of the Monopolies Commission on advertising by the legal profession.
3. New Institute of Legal Education to be established in Queen's University in September 1976.
4. New Solicitor's Order will give extended powers to the Society and establish a Compensation Fund.
5. There is also power to introduce a Compulsory Professional Indemnity Insurance.
6. Each solicitor is required to apply individually for a licence under the Consumer Credit Act 1974.
7. The Society will sponsor a Rota Scheme for Legal Aid throughout Northern Ireland. A Law Centre will be established in Belfast to meet the needs of the situation.
8. The current Annual Membership Subscription is £12.50 and the cost of the Annual Practising Certificate is £50.

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