Secretary.

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THE INCORPORATED LAW SOCIETY OF IRELAND
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LIBRARY

THE GAZETTE

of the

INCORPORATED LAW SOCIETY OF IRELAND

President JOHN CARRIGAN
Vice-Presidents JOHN R. HALPIN, FRANCIS J. LANIGAN
Secretary ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

MEETINGS OF THE COUNCIL

MAY 8TH: The President in the Chair. Also present: Messrs. John R. Halpin, Niall S. Gaffney, Derrick M. Martin, Dermot P. Shaw, Ralph J. Walker, Robert McD. Taylor, James J. O'Connor, Cornelius J. Daly, Patrick R. Boyd, Arthur Cox, George G. Overend, John J, Nash, William J. V. Comerford, Bryan Murphy, Joseph P. Tyrrell, John B. Jermyn, Peter E. O'Connell, John Maher, James W. O'Donovan, Charles J. Downing, James R. Quirke, Francis J. Lanigan, Desmond J. Collins, Patrick O'Donnell, Thomas A. O'Reilly, George A. Nolan, Patrick Noonan, Terence de Vere White.

The following was among the business transacted:

Solicitors sharing Auctioneers' Commission

A CIRCULAR recently issued by a firm of auctioneers offering to share commission with solicitors introducing business, was brought to the attention of the Council. The Secretary stated that he was advised by counsel that the retention of such commission without disclosure to the client, might be in contravention of the Prevention of Corruption Act, 1906. It was decided to issue a circular to members drawing attention to this fact.

Legal Representation at International Arbitrations

A COMMITTEE reported that the International Bar Association had drawn the attention of the Society to the following clause in a comparative survey of the rules and statutes of institutions active in the field of international arbitration appearing in a document prepared for transmission through Governments to the various arbitral institutions concerned.

> It is suggested that although there will probably not be too great difficulty in obtaining agreement on a provision designed to secure the representation of the parties, it would be perhaps be desirable were such a provision to exclude representation by barristers, solicitors, or other professional representatives unless both parties and the arbitrators consent to the representation.

It was decided that representations should be made to the various Government Departments concerned with this matter, strongly opposing the suggestion that legal representation should be excluded.

Change of Solicitor. Payment of Counsel

MEMBERS acted for a plaintiff in High Court proceedings for whom another solicitor had been on record. The last-mentioned solicitor terminated his own retainer for what seemed to him to be good and sufficient reasons. This solicitor holds the papers and claims a lien for his costs. Members inquired whether they would be acting properly in making a copy of the proceedings from the High Court file and paying to counsel direct, the fees for work already done in the action on the instructions of the first solicitor. The Council, on a report from a Committee, stated that where a solicitor discharges his own retainer the client or his new solicitor is entitled to a summary order, not merely for inspection or production, but for delivery of papers on an undertaking to hold them without prejudice to the former solicitor's lien, and if necessary subject to an undertaking to prosecute the action. They further stated that in their opinion there was no objection to the course suggested by members, but that, before paying counsel his fees direct, they ought to notify the first solicitor and give him an opportunity of receiving the money on an undertaking to pay the fees.

Liquor Licence in Solicitor's name

A MEMBER enquired whether he would be entitled to take out a liquor licence in his name for a client who is the owner of a hotel. There is at present no permanent manager. The Council, on a report from a Committee, stated that there would be no objection in the special circumstances to member's obtaining a licence in his name until the next licensing sessions. If, for any special reason, he wished to renew the licence in his name, a further application should be made to the Society.

Caveat. Greater part of estate in England

A MEMBER wrote asking for guidance in the following circumstances :

AB died domiciled in Ireland, but leaving assets consisting entirely of British securities. The solicitor for the executor applied for and obtained representation in England and duly administered the estate. It then transpired that the solicitor for BC, one of the next-of-kin, had entered a caveat in the Dublin Probate Registry of which the solicitor for the personal representative had no knowledge. Member asks whether, (1) the personal representative of AB was under any legal liability to BC ; (2) BC's solicitor was under any legal liability to BC in an action for negligence. It was pointed out that the same position could arise where the estate of the deceased consisted of a small amount of assets in Ireland with the greater part of the estate in Britain. The Council, on a report from the Committee, stated that the questions submitted by member were questions of law, and that the Council was not in a position to answer them. They stated, however, that they were aware that for reasons of convenience the will of a testator who dies domiciled in Ireland is sometimes proved first in London. The Council were of the opinion that if a solicitor instructed to oppose probate has reason to believe that the deceased left assets in England or elsewhere, it would be prudent to enter a caveat in any place where there are substantial assets, as well as in Ireland.

Rates assessed on premises occupied by charities

CORRESPONDENCE was published in the issues of the *Gazette* for July, August-September, and November, 1957 on the subject of the hardship imposed on landlords who are in receipt of small rents from premises occupied by charities from the assessment of rates on the half-rent. This is particularly severe if the property is sold to a charity many years after the date of the lease. It could have been avoided by careful drafting of the covenants in the lease in the first instance but in many cases the covenants are not sufficiently comprehensive. Acting on a report from a Committee it was decided that the Society should take the matter up with the Department of Local Government, and that Mr. P. A. O'Donnell, T.D., a member of the Council should be asked to make representations to the appropriate Minister. The Committee recommended that legislation should be sought abolishing assessment of rates on the half-rent where premises are occupied for public or charitable purposes. The grounds for this view are the hardship imposed on the owners of rents mentioned in the circumstances stated in correspondence which has already appeared in the *Gazette*, and, furthermore, that the amendment of the law in the manner suggested would not result in any serious loss of revenue to local authorities.

Solicitors' Accounts Regulations.

THE attention of members is drawn to the fact that all the provisions of the regulations will be in operation from 1st July, 1958.

ORDINARY GENERAL MEETING.

A GENERAL meeting of the Society was held in the library onThursday, 8th May, 1958. The President, Mr. John Carrigan, took the Chair. The notice convening the meeting was, by permission, taken as read.

The minutes of the Ordinary General Meeting held on 21st November, 1958, were read, confirmed

and signed by the chairman. The chairman announced that he nominated the following members of the Society to act as scrutineers of the ballot for the election of the Council to be held on 20th November, 1958 :—John R. McC. Blakeney, James R. Green, Thomas Jackson, Brendan P. McCormack and Roderick J. Tierney.

The President, addressing the meeting, said :——

LADIES AND GENTLEMEN,

Since our last meeting in November I have to record with regret the death of the following members :—

James Malseed, Co. Donegal ; Peter P. Taaffe, Co. Kildare ; Thomas J. Dowdall, Mullingar ; James T. Liston, Co. Cork ; Aloysius J. Reddy, Dublin ; Cecil G. Vanston, Dublin ; Martin J. Crotty, Kilkenny ; Patrick J. Connellan, Longford ; and my father, John Pierce Carrigan, Thurles, who was a mamber of the Council of the Society from the year 1940 to 1949, and was Vice-President for the year 1942–43.

On behalf of the members of the Council and myself I would like to express deep sympathy to their relatives and friends.

MEMBERSHIP.

There are in Ireland 1,369 solicitors who are practising, and of these 1,132 are members of the Incorporated Law Society. This means that there are still 237 solicitors who are not members. I must urge every practising solicitor in Ireland to become a member of the Society. The Society regulates matters within the profession itself and the dealings of the profession with the public. It is the rock upon which our profession stands. It will generally be agreed that in the world to-day standards of conduct, decency and honesty have, in every walk of life without exception, sadly fallen from what they were. The example of the nations of the world in their search for power and profit and self-interest are hardly calculated to inspire the common man to maintain a standard of any kind. It is more necessary than ever that our Society should cling to and enforce the high standards which were set for it in the past by the great lawyers who have gone before us and that it should see that those who do not subscribe to those standards are admonished accordingly.

BAR ASSOCIATIONS.

And in this connection the Bar Associations were never more necessary than they are to-day. I have always been convinced that the Bar Associations are the sheet-anchor of our profession. These have their being and their influence in areas which quite obviously cannot come under the direct influence of the Council of this Society. They are very often able to deal with certain difficulties arising between their members in a more satisfactory way than the Council of the Law Society could, and their influence in every case without exception does nothing but good.

There ought to be a Bar Association in every County in Ireland and every solicitor in that County should be a member of that particular Bar Association. I make no apology whatsoever for saying that there must be something very wrong indeed with an area which has not got a Bar Association. It may be due only to apathy, but whatever may be the cause there is no excuse. I hope to see the day when every County is served by a Bar Association and indeed apart from one or two exceptions that day has almost arrived.

If there is anything that the Council or I can do to assist any existing Bar Association or any group of solicitors in founding a Bar Association, we have only to be asked and we will gladly give any help we can.

DISCIPLINARY JURISDICTION.

As you know, since the last general meeting of the Society the Supreme Court has delivered judgment on the constitutional issues raised by the appeals taken by two solicitors against orders of the Disciplinary Committee made under Section 18 of the Solicitors Act 1954, whereby the Committee directed that their names should be struck off the roll. The Court was not concerned with any question other than the constitutional validity of the sections of the statute which were challenged by the appellants.

The Chief Justice had decided that the statute was validly enacted and affirmed this Order of the Committee. The Attorney-General was joined as respondent with the Society.

The short point involved in the appeal was whether the Disciplinary Committee, set up by the Solicitors Act 1954 had been given powers and functions the exercise of which involved the "administration of justice" and which could not properly be regarded as falling within the saving provisions of Article 37 of the Constitution.

The Supreme Court held that the Solicitors Act 1954 purported to delegate the constitutional judicial authority of the Courts to the Disciplinary Committee in certain cases, and that the exercise of such assigned powers and functions, being calculated ordinarily to affect in the most profound and far-reaching way the lives, liberties, fortunes or reputations of those against whom they might be

exercised, could not properly be described as limited within the means of Article 37.

The Court decided that the powers and functions assigned the Disciplinary Committee were not "limited powers and functions", that the Committee was administering justice, and that "such a tribunal unless composed of Judges is unconstitutional." The Court held that the two appellants were not validly struck off the roll of solicitors. The position, therefore, is now that the Incorporated Law Society has a Disciplinary Committee which has no powers of any kind whatsoever. It cannot investigate complaints brought before it, it cannot suspend a solicitor from practice, it cannot fine him, it cannot strike his name from the roll of solicitors, nor, lastly, can it order a solicitor to make restitution or satisfaction to any aggrieved party. This state of affairs is so serious and so gravely affects the profession and the public that it cannot be allowed to continue. And, furthermore, I understand that this decision not only affects the solicitors' profession, but also may well affect in like manner other professions than ours who must equally be seriously disturbed.

The decision of the Supreme Court in this case is in my view the most far-reaching interpretation of the Constitution which has yet been given by our Courts. It has, I think, been generally thought down to the present that Article 37 of the Constitution, which deals with limited powers of a judicial nature, authorised the Oireachtas to set up vocational bodies for various professions with disciplinary jurisdiction including power to exclude practitioners for proved misconduct, subject to an appeal to the Courts. That view is no longer correct if the effect of the assigned disciplinary powers is to affect profoundly those against whom they are exercised in their property, fortunes or reputation. When the Society accepted the obligation to establish the Compensation Fund and to provide full indemnity for clients from 1960 onwards, it was thought essential in the interests of the financial stability of the Fund to secure the powers which have now been held to be invalid. The necessary counterpart of the Compensation Fund is a fair, effective and speedy disciplinary procedure. It is also necessary that the Society should have effective powers to forestall and prevent defalcations. Without such protection the Council cannot ensure that the Fund will be solvent. It is now the immediate duty of the Council to seek powers which will be both effective and constitutional so that the public and the profession may not continue to suffer serious injury from the actions of a small number of dishonest practitioners.

As soon as the judgment of the Supreme Court was pronounced, the Council of the Society sought an interview with the Minister for Justice to ask for amending legislation to establish a new disciplinary system. The Minister for Justice and the officers of his Department met our deputation most sympathetically and gave us an assurance that such legislation would be brought forward immediately. The Council have already submitted to the Department a memorandum dealing with the matter and they have been in constant touch with the Department of Justice since then. I hope and believe that we shall have new legislation passed through the Dáil and Seanad before the Summer recess. It will be realised that this is a most difficult and complicated matter and must be approached with the greatest care and in the greatest detail, and I can assure you that the Council will spare no effort whatsoever to recover the necessary disciplinary powers which are so essential to the proper rule and supervision of our profession.

Solicitors' Accounts Regulation.

The Solicitors Account Regulations were settled and passed some years ago and by now every member of our profession knows the tenor or these regulations and what they contain. Shortly it may be said that they provide that every solicitor shall keep his clients' money separately from his own and that he shall keep his clients' money in a client account at a bank. Clients' moneys may be dealt with only in the manner provided by these Regulations; and in addition a solicitor shall at all times keep properly written-up such books and accounts as may be necessary to show all his dealings with and particulars of, and information as to clients' moneys, and may be required to submit his accounts at any time to the Council for scrutiny..

By an Order dated the 5th December, 1957, signed by me as President by direction of the Council and by the Chief Justice, the regulations dealing with the keeping of proper books of account were brought into operation on the 1st January, 1958, and they have been in operation since that date. By the same Order it was provided that the remainder of the Solicitors' Accounts Regulations shall come into operation on the 1st July next, and after that date every solicitor practising in Ireland will be bound by these regulations and must carry out their requirements in accurate detail. From the 1st July next every solicitor must open and keep a client account at a bank and into this account he must pay all moneys which he receives on behalf of his client as provided in Part II of the Regulations nor can he withdraw any clients' money from a client account except as therein set out.

Lest there may be any doubt in the mind of any person regarding the introduction of these regulations let me make it quite clear here that the Solicitors Act 1954 was initiated by the solicitors' profession, and that Act gave power to the Council to make the Solicitors' Accounts Regulations. Legislation of this kind is not an innovation; it has for several years past been in force in many other countries. These regulations were made, not as a reflection on the profession itself but as a recognition by solicitors of their special responsibility as custodians of the very large amounts of clients' money which have been paid to them in the ordinary course of business.

There are some further short remarks which I wish to make about these regulations, but I propose to leave them to a later period during this meeting.

Trustee Investments.

During the year the Council have considered proposed new legislation and have submitted observations thereof to the Government, and in particular amongst other legislation, the Council dealt with the Trustee (Authorised Investments) Bill, 1957. The Council considered that this Bill was a most important enactment and they were in communication with the Department on a number of occasions in the year 1957 and also more recently in 1958. The Council submitted a number of amendments dealing with various sections in the Bill, and particularly with regard to Section 3. The Council felt that Section 3 which deals with money under the control or subject to the order of the Courts was too restrictive and the Council submitted that the Courts should have wider powers and that it was manifestly wrong to limit the jurisdiction of the Court in directing the investments of funds under its control. I am glad to say that the representations made by this Society were successful and were very fairly met by the Minister for Finance, and that in the Bill now passed by the Dáil the Courts have wide powers of investment which extend beyond the ordinary trustee investments in the acquisition, use or management of any land or business or any share in any business. The amendment protects a family business and property which, had the Council suggestion not been agreed to, would have had to be sold or otherwise realised as the Bill then stood.

Retirement Benefits and Income Tax.

During the past year the Council has been considering the question of retirement benefits for the profession. You will have seen a memorandum on this subject which was submitted to the Minister for Finance. It was printed at page 36 of the Annual Report for 1957. Shortly, the suggestion was that professional men and self-employed persons should be exempted from income tax on amounts set aside by them out of current income for the provision of pensions on retirement provided that the amounts were so set aside in accordance with a scheme to be approved by the Revenue Commissioners. Since then the Council has sent a deputation to the Minister for Finance, and this was a joint deputation composed of representatives of our Society and representatives of the Institute of Chartered Accountants. The matter was fully discussed with the Minister.

To-day is the day of the Welfare State, and we are living in times when the State, at enormous and crippling cost, had decided to spoonfeed its citizens from the cradle to the grave. There is scarcely a scheme which one can think of—from free medical treatment in hospitals built and equipped at enormous cost, to grants for building a fence—that are not available to every citizen of the State—with one glaring exception, and that is the self-employed man. The members of the professions to-day—and I do not speak only of the legal profession—are the hardest hit of all. They are bedevilled like everybody else by the rising cost of living, but unlike the employed person they receive almost no assistance of any kind from the State. While the State not only expects, but insists, that he shall subscribe to insurance schemes for the benefit of others. And since the end of the war perhaps the hardest hit of all has been the solicitors' profession. A solicitor has seen a steady rise in overhead expenses of every kind—rates, rent, wages, taxes, office requisites and Court fees, and these have been so great as to make it almost impossible for any member of our profession to put anything aside for retirement and old age. Indeed, many of the younger members of our profession are hard put to it to make enough to live and many of them have to depend on the generosity of their parents for many years. It must be remembered that the professional man depends for his livelihood only on himself. Unlike others, when he is ill and unable to work, he is unable to earn. If he has any savings, a short illness very often absorbs them completely and most professional men, and by far the greatest number of them, must look forward to their later years with the greatest of anxiety. It is only common justice that a self-employed man should be permitted to make some provision for retirement from his earliest years: In England and Northern Ireland tax remissions are allowed on contributions paid by solicitors to schemes for retirement benefits. And these tax remissions being permitted, schemes have been set up in those countries with the assistance of the insurance companies whereby a contributor's pension depends

upon the number of units paid up during his contribution period. He can vary the amount of his contribution from year to year, depending on the amount of his business profits or other circumstances and he will be credited with a certain number of units on retirement. This flexibility is, of course, of the greatest advantage to solicitors and members of those other professions whose profits fluctuate from year to year and there is no reason why the self-employed professional man should not be entitled to the benefits of a similar scheme in Ireland. I trust that we may shortly see this country falling into line and redressing this serious injustice to the professions. I gather from the recent Budget Speech that the new Finance Bill will, in fact, make some provisions towards this end, but what these may be I cannot yet say as the Council have not yet had the opportunity of examing the Bill.

Solicitors' Benevolent Association.

I should like now to recommend to you the Solicitors' Benevolent Association, of which I am a member. This Association, as you all know, has as its object the relief of those solicitors and their families who are for one reason or another unable to provide for themselves. The Solicitors' Benevolent Association should be close to the heart of every member of this Society. Those members of our profession and their families who through no fault of their own have fallen on evil days and cannot, some of them, afford to buy the necessaries of life are helped by the Association. None of us should ever forget that but for the grace of God, any one of us might be in the same position and yet it is a matter for astonishment to realise that out of almost eighteen hundred practising solicitors in Ireland only eight hundred and eleven are members. This, I believe, is due to the fact that the members of our profession do not realise either the benefits and assistance given by the Association or the enormous help that the members of our profession could give to the Association by subscribing. The annual subscription is only £1 1s., or about 5d. a week. If every solicitor in Ireland were to subscribe the Directors of the Association would happily be able to increase the annuities and grants. And I appeal to all members of the profession to join this association now.

Before I end this report I should like to express my deep appreciation of the help and assistance given to me by my two Vice-Presidents, Mr. Halpin and Mr. Lanigan. I have never asked them to do anything yet that they did not do cheerfully and willingly, and I am most grateful. I must also thank the members of the Council for the help and the guidance which they have given to me during the past extremely difficult six months. It is right that you should know that in my opinion this present Council has been the hardest worked and the most willing to do hard work that I have seen during my time of service. Each individual member has at all times put the affairs of the profession a long way before his own.

Finally I must thank Eric Plunkett, my secretary;—without him to assist and guide me it would have been manifestly impossible for me to carry out my duties. It has been the custom now for many years at these General Meetings to thank him publicly for his work for our profession, but I want to make it clear now that this is no casual praise. Every member of the Council will agree with me when I say that he is the guide and friend of every member of the profession and one of the most stalwart guardians of the profession itself.

And lastly, I must not forget to thank the Society's staff who are always so willing and so helpful to me, and the members of the Council in assisting us in the performance of our duties.

Dublin Solicitors' Bar Association.

The following motion was proposed by Mr. Arthur Cox and seconded by Mr. John J. Nash: "That the Council be authorised to seek legislation giving the Dublin Solicitors' Bar Association the right to nominate three extraordinary members of the Council, and that the charters be amended accordingly with such terms and provisions relating thereto, as the Council may think fit." Messrs. McLoughlin, Gilmore and McGarry spoke to the motion. The motion was put to the meeting and carried without dissent.

The Press retired and the house went into private business.

When the representatives of the Press had left the meeting, the President added the following remarks:

Relations with the Banks.

You will remember that at the last half-yearly General Meeting of this Society it was debated as to when the Solicitors' Accounts Regulations shall be brought into force and there was considerable opposition to them by some members on the grounds that once the regulations came into force the set-off allowed by time-honoured custom by the banks to solicitors who had large credits in their clients' account and an overdraft in their own account would no longer be permitted.

You will all by now have received a circular from the Society setting out what has been achieved by the Council since the last meeting.

Feeling that we were unable to obtain any concession from the Joint Banks Standing Committee at that time, the Council decided that the individual banks should be approached and accordingly deputations were arranged and took place. We were able, in meeting the directors of these banks informally to put our point of view before them and to explain exactly what it was we wanted, and I can say that we were met in every case with friendliness and with sympathy—but of course it was made clear to us that no individual bank would step out of line.

And then, before we could complete our visits to all the banks we understood that the Joint Banks Standing Committee would welcome a further approach. Accordingly, we went to see them and they made the offer of which you have recently been told: that a set-off will be allowed as between the client account and the office account, but not against the personal account of a solicitor.

The Council feels that this offer covers all that was asked for, and it has been accepted and it is now a matter for each individual solicitor to deal with his own bank manager accordingly. I should like to thank the members of the deputations who came with me to interview the Bank Directors, and in particular I would like to thank Messrs. Gerard Sweetman, Thomas Jackson, and Ignatius Houlihan, who though not members of the Council, attended on some of the deputations and willingly gave up their time to do so.

I have referred to the foregoing matter separately from my general report to-day for the reason that while it is of interest to the profession that they should know what has happened it is nevertheless a domestic matter, and of no concern to the public whatsoever.

Mr. D. B. Gilmore proposed a vote of thanks to the President which was carried with acclamation. The President replied and the proceedings then terminated.

BAR ASSOCIATIONS

Mayo Solicitors' Bar Association

A SPECIAL General Meeting and the Annual General Meeting were recently held in the Bar Room, Castlebar.

At the former, resolutions of sympathy with Mr. Henry Charles Bourke of Ballina, on the death of his wife, and to Mr. Patrick J. Rooney of Belmullet, on the death of his mother were passed. The resolutions were proposed by Mr. Alfred V. G. Thornton, and seconded by Mr. Lorcan Gill.

Mr. Henry Charles Bourke is the only surviving founder-member of the Association, and was the first Honorary Secretary at the meeting held on 18th April, 1906, when the late Alfred B. Kelly was elected President, and the other members, John Garvey, J. P. Mannion, M. V. Coolican, Thomas Dillon-Leetch, Patrick O'Connor, T. F. Kirwan, Edmund Barry, J. C. Garvey, E. P. O'Flanagan P. J. O'Rorke, J. C. Robertson, M. Verdon and H. McGonigal formed the Association under the name of the "Mayo Sessional Bar."

At the Annual Meeting there was a record attendance of 20 members when the following officers were elected for 1958–59:—

President: Patrick J. Mulligan; Vice-President: Edmund A. Corr; Hon. Treasurer: Bea. Hynes; Hon. Secretary: William Dillon-Leetch; Council: Patrick J. Durcan, Lorcan Gill, Douglas Kelly, Patrick J. McEllin and Patrick U. Murphy.

The several items discussed included extension of Circuit Court Sittings, representations to have Folio Number inserted on Receivable Order, and opposition to a further move by Mayo County Council to close courthouses. Once again all members were urged to join the Solicitors' Benevolent Association.

County Tipperary and Offaly (Birr Division) Sessional Bar Association

THE following officers and Council were elected for the year 1958–59 at the Annual General Meeting of the above Association held in April:—

President: Francis Murphy, Clonmel; Hon. Secretary: John Carrigan, Thurles; Hon. Treasurer: Martin T. Butler, Thurles. Committee: Michael G. Black, Nenagh; Michael O'Meara, Nenagh; Patrick F. Treacy, Nenagh; Henry Hayes, Nenagh; John J. Nash, Thurles; Michael McGrath, Nenagh; Henry Shannon, Clonmel; James A. Binchy, Clonmel; Gerard O'Donnell, Clonmel; Thomas Reilly, Clonmel; Robert A. Frewen, Tipperary; John J. Timoney, Tipperary.

Dublin Solicitors' Bar Association

A MEETING of the Council was held on Wednesday, 14th May, 1958.

The Council being dissatisfied as to the accessibility of Court No. 9, Chancery Place, has requested the Minister for Justice to receive a deputation.

A welcome improvement in the standard of cleanliness of certain Courtrooms was noted, and the co-operation of the Office of Public Works and the Establishment Officer, Four Courts, was appreciated. The possibility of bringing about improvements in the public restaurant at the Four Courts was further considered.

Members are recommended to consider the desirability of insuring documents sent through the post, the replacement of which may be expensive, because of the stamps they bear, or of the cost of re-writing.

A Sub-committee was appointed to consider the Administration of Estates Bill, 1957. It has been suggested to the Revenue Commissioners that £5 Land Registry Stamps should be issued, and made available at the Four Courts Stamp Office, as it has been found that a higher denomination than the existing £1 stamp is desirable.

A Sub-committee has been appointed to interview the County Registrar relative to the appointment of Civil Bill Officers for the District Court, and their duties.

The Council noted with gratification the passing of a resolution at the last half-yearly meeting of the Law Society recommending that the Association should be able to nominate extraordinary members to the Council of that body.

Other matters having been reported on, the next meeting of the Council was fixed for Wednesday, 4th June, 1958.

STATUTORY NOTICE TO CREDITORS

ENQUIRIES are sometimes received from members as to the statutory requirements in publishing the notice to creditors. The method of publication is laid down by 22 and 23 Vic. Cap. 35, section 29. The statute provides that where an executor or administrator shall have given or the like notice as in the opinion of the Court would have been given by the Court of Chancery in an administration suit for creditors and others to send in their claims against the estate, such executor or administrator shall, at the expiration of the time named in the said notice, be at liberty to distribute the assets having regard only to the claims of which he shall have received notice. According to the latest information received from the Examiners' Department of the High Court of Justice the present practice with regard to notification of creditors in administration matters is as follows :—An advertisement for creditors in the form of No. 3 of appendix L of the 1905 rules is directed to be published in two newspapers, twice in each paper allowing an interval of a week between publications. If the deceased person resided in Dublin, two Dublin dailies are selected ; if in the provinces, one Dublin dailly and one provincial newspaper circulating in the district of the residence of deceased. Claims are required to be sent to the solicitor for the personal representative on or before a date at least two weeks after the date of the last publication.

FIRST LAW EXAMINATION

MEMBERS are asked to bring to the notice of their apprentices that at the first law examination to be held on the 1st and 2nd September the questions on real and personal property may include questions on leasehold interests, including the Landlord and Tenant (Ireland) Act, 1860, but will not include questions on (1) the Rent Restrictions Acts, (2) the Landlord and Tenant Acts, 1931–1958, (3) registration of titles, (4) conveyancing, or (5) Registration of Deeds.

EXAMINATION DATES

Examination	*Date*	*Last day for Notice*
First and second Irish	July 4th and 5th	June 13th
	Sept. 19th and 20th	August 29th
Final	Sept. 1st, 2nd and 3rd	August 11th
First Law	Sept. 1st and 2nd	August 11th
Preliminary	Sept. 2nd and 3rd	August 12th
Book-keeping	Sept. 3rd	August 13th

DECISIONS OF PROFESSIONAL INTEREST

Purchaser entitled to rescission of contract if particulars in a sale by auction of a reversion on the death of an annuitant contain an innocent misrepresentation made by vendor's solicitors.

The sale particulars prepared for the vendor of an absolute reversion in a trust fund on the death of an annuitant contained the statement that the annuitant was "believed to have no aggregable estate." The vendor was selling as the trustee in bankruptcy of the beneficial owner. The name of the (well-known) firm of solicitors who had prepared the particulars was printed in bold type. In fact, the statement in question was made by a litigation clerk who was dabbling in conveyancing and who, it was found, had no inkling of the meaning or the materiality of the statement. No sufficient inquiries as to the probable size of the annuitant's estate had in fact been made. The purchaser sought rescission. Upjohn, J., acquitted the defendant vendor and his agents and representatives of dishonesty, but he held that the purchaser was entitled to relief on the basis of an innocent material misrepresentation on which he had acted. The defendant appealed.

Lord Evershed, M.R., in dismissing the appeal, said that to succeed on the sole ground now remaining, that of innocent misrepresentation, the plaintiff had to establish that there was are presentation of a material fact which was untrue, and that the plaintiff in entering into the statement of belief

that the annuitant had no aggregable estate was a statement of opinion, but such a statement often involves a statement of a material fact. For that possibility to arise one party had to be better equipped with information or the means of information than the other. Each case depended on its facts and in this instance the principle applied. The statement obviously and vitally affected the subject-matter being offered for sale and anyone experienced in dealing with such interests would be very much alive to that. The statement was made by a well-known firm of solicitors of standing and repute. The language used would be intended to be understood as implying and carried with it the representation that persons who knew the significance of the matter and who were experienced and competent to look into it were expressing a belief founded on substantial and reasonable grounds. On the facts the vendor's knowledge or means of knowledge were far superior to those of the purchaser. It was plain on the facts that the inquiries made formed no basis whatever on which a responsible person could put forward that view as an inducement to come and buy the reversion. Counsel for the defendant had submitted that even if that were so as far as the solicitors were concerned, it was not unreasonable for the vendor, relying on his advisers, to believe that the annuitant had no aggregable estate. That could not be right. The defendant had asserted the belief, and he had to abide by the consequences. Finally, it was clear that the purchaser had relied on the representation.

Romer, L.J., and Ormerod, L.J., agreed.

(Brown *v.* Raphael [1958] 2 All E.R. 79, and (1958) 2. W.L.R. 647.)

A solicitor, who persistently refuses to deliver accounts relating to the property of his client, subsequently adjudicated a bankrupt, to the official receiver as trustee in bankruptcy of the client's property, may be ordered by summons to do so by the Court under the Bankruptcy Acts.

On 12th June, 1947, S., a solicitor, entered into two contracts for the purchase of land as attorney for a debtor. S. acted as attorney to and solicitor of the debtor between 12th March, 1947 and 29th November, 1947, after which the debtor revoked S.'s power of attorney and determined his retainer as solicitor. Later in 1947 the debtor issued a summons under R.S.C., Ord. 52, r. 25, against S. as his former solicitor for an account, bills of costs, and delivery of documents, and on 13th December, 1948, the Master made an order therefor. S. purported to comply with the order, but maintained that he had received no money on behalf of the debtor in respect of the two contracts, and that the debtor was not entitled to further information about them. On 18th September, 1950, a receiving order was made against the debtor; on 24th October, 1950, the debtor was adjudicated bankrupt, and in due course the official receiver became his trustee in bankruptcy. At that time there were no funds available in the bankruptcy sufficient to enable the trustee to proceed in the matter, but as soon as there were funds he obtained his substitution for the debtor in the proceedings against S., and gave notice of intention to proceed and to press for compliance with the order of 13th December, 1948. On 15th October, 1954, the trustee applied under R.S.C., Ord. 52, r. 25, for a further order as to accounts, etc., and a twenty-one day order for an account to be verified by affidavit was made by the master on 22nd October, 1954. On 29th October, 1954, the judge, on an appeal by S., extended the time for delivery of the account. After further extensions, S. delivered an account which contained no details of the transactions about the land, and the judge then made no order, save as to costs, on S.'s appeal. On 29th June, 1956, the trustee took out a summons for directions, on which he asked for leave to cross-examine S. and to surcharge and falsify the account if so advised, but the Master, on 10th April, 1957, made no order, save as to costs, on the summons. The trustee then obtained a summons under s. 25 (1) of the Bankruptcy Act, 1914, directed to S., as a person capable of giving information respecting the debtor's dealings or property, to appear before the court for examination. S. applied to set the summons aside, contending (*a*) that the matter was *res judicata* by the decisions under R.S.C., Ord. 52, r. 25; (*b*) that the summons was an abuse of the process of the court and was oppressive in that it covered the same ground as the proceedings under R.S.C., Ord. 52, r. 25; and (*c*) that the trustee had been guilty of inordinate delay, had been remiss in not appealing against the order of 10th April, 1957, and in not insisting on an order for the cross-examination of S. under R.S.C., Ord. 37, r. 20, and so should not be allowed to use the inquisitorial machinery of s. 25 against S.

The Court of Appeal (Jenkins, Romer and Ormerod, JJ.) held that the summons should not be set aside because:

(i) There was a wide difference between the proceedings under R.S.C., Ord. 52, r. 25, and those under s. 25 of the Bankruptcy Act, 1914; and, though a claim for information about the transactions of 12th June, 1947, had been raised in the proceedings, under R.S.C., Ord. 52, r. 25, it had not been adjudicated and therefore the matter was not *res judicata*.

(ii) There was no abuse of the process of the

court and no oppression, for S., as former solicitor and attorney of the debtor, was under a duty to give the information sought, which was material to the debtor's affairs, but had consistently denied the right to the information.

(iii) Though the transactions in question took place more than ten years ago the lapse of time was no bar to the application as the respondent thereto, S., was responsible for the delay.

Appeal from order of Registrar dismissed.

Per Jenkins, L.J. :—There is a wide difference between the two forms of proceeding with which we are here concerned both as to their subject-matter and as to their effect. R.S.C., Ord. 52, r: 25, deals with cases where the relationship of solicitor and client exists or has existed and where the client seeks an account from his solicitor or former solicitor The whole object and scope of it is directed to providing a summary means of causing solicitors to account for cash and securities in their hands and the like. Section 25 of the Bankruptcy Act, 1914, is by no means confined to persons who are accountable to the trustee through their relationship with the debtor. The section is couched in wide language and it covers cases in which it appears that the person proposed to be examined is in a position to give information which is material for the purpose of getting in the debtor's estate and winding it us. The two forms of proceeding are widely different, and it would be very difficult to hold that refusal of a claim against a solicitor for an account based on the relationship of solicitor and client which existed between a debtor and the solicitor concerned would necessarily and in all circumstances preclude the trustee from having recourse to the provisions of s. 25 of the Bankruptcy Act, 1914, with respect to the same individual if the court had solid ground for the opinion that that individual was in a position to provide material information in regard to the bankrupt's affairs.

Next, as to the proceedings under s. 25 being an abuse of the process of the court, in my view there is no substance at all in that contention. Recourse to s. 25 of the Bankruptcy Act, 1914, was necessitated by the appellant's consistent refusal to give any information about the Denham property in the proceedings under R.S.C., Ord. 52, r. 25. It seems to me that the trustee was, in effect, faced with the alternatives of abandoning his attempt to get information about the Denham property altogether or of applying under s. 25. If the appellant dislikes the idea of facing proceedings under s. 25., he has only himself to thank : a quite short and simple explanation in an affidavit would have completely averted the necessity. The appellant alleges that with respect to the land at Denham, the sale was in fact completed by conveyance to somebody else in such a way that no money became due to the debtor, and, as I understand it, no money of the debtor's was expended. He says that he furnished a completion statement to the debtor's former solicitors showing that that was so. But, even if he did, that statement is not available to the trustee, who has not been able to get a sight of it, and I see no reason why the appellant should not simply have stated his account of that matter in an affidavit. That could have been quite shortly and simply done.

Then there is the allegation of oppression. For similar reasons it seems to me that there is really no substance in that. The appellant from first to last knew what was expected of him, and, indeed, ought to have known that, as the former solicitor and attorney of the debtor, he was under a duty to give the information sought, and he chose not to give it, and so he now finds himself faced with the prospect of an examination under s. 25 which, if he carried out his plain duty, would have been averted.

Finally, there is the matter of delay. I confess that when this case was first opened I was impressed by the great lapse of time which has occurred since the events now sought to be investigated ; but counsel for the trustee took us through the history of the matter, and he has succeeded in satisfying me that over the whole period the delay was really caused more by the Fabian tactics of the appellant in his determination to avoid giving any information if he could help it than by any remissness on the part of the trustee. In the earlier part of the period the trustee was in the difficulty that he could not move in the matter without funds, and that accounts for a certain amount of initial delay ; but when once he was fully seized of the matter and possessed of funds it does not seem to me that he can really be saddled with any great part of the responsibility for the delay which, for my part, I think was mainly due to the appellant.

(In re a Debtor—ex parte Swirsky (1958) 1 All E.R. 581.

Notice sent by registered post to a man's home not "served" on him if not received.

The Lord Chief Justice, Mr. Justice Hilbery, and Mr. Justice Donovan dismissed this appeal by the prosecutor from a decision of Mr. R. H. Blundell, metropolitan magistrate sitting at Bow Street, dismissing an information preferred against Mr. George Robert Davies, omnibus driver alleging careless driving on 10th June, 1957. The prosecutor contended that notice of the intended prosecution had been "served on or sent by registered post to" the defendant within 14 days of the accident ; but the magistrate held that it had not, and that section 21

of the Road Traffic Act, 1930, had accordingly not been complied with.

The Lord Chief Justice said that after a not very serious accident the commissioner decided to prosecute the defendant for careless driving and a notice was sent of intended prosecution on 20th June, 10 days after the accident, by registered post to the address which he had given to the police officer who investigated the accident at the time. On 27th June the notice and its envelope was returned to the police by the Post Office. The defendant did not in fact receive the notice because he was away from his home so that no registered post could be taken in. The prosecutor made no inquiries as to the whereabouts of the defendant nor did he consult the London Passenger Transport Executive who, to his knowledge, were his employers. On 2nd July a police officer saw the defendant at his home and personally served on him a second notice and explained what had happened to the original notice.

The question was whether the first notice had been "served" or not. In Regina *v.* County of London Quarter Sessions Appeals Committee, ex parte Rossi ((1956 2 W.L.R. 800) the Court of Appeal decided that where a notice was served or purported to be served by registered post it was not enough to prove that it was correctly directed, stamped, and posted. It could be shown that the letter was never delivered, and, if so, there had not been service. They had reversed the decision of the Divisional Court which had held that there had been service. It might be that one could go to court and ask for leave to serve.

They were bound to decide that there had not been service. The magistrate's decision was right and the appeal must be dismissed. Mr. Justice Hilbery and Mr. Justice Donovan agreed.

(Beer *v.* Davies [1958] 2. All E.R. 255.)

Note.—Sect. 55 (2) of the Road Traffic Act, 1933 does not prescribe that a notice of intended prosecution must be served personally by the Garda, although it has been customary to do so.

Solicitors held liable for proportion of costs on ground of no reasonable prospects of success after order of discovery.

Mr. Justice Sachs, affirming the Registrar's report, made an order making the firm of solicitors who had acted for Mrs. Edwards, of Kew Gardens, Surrey, in an application for an order against her husband, Mr. Fielding Edwards, on the ground that he had wilfully neglected to provide her with reasonable maintenance under section 23 of the Matrimonial Causes Act, 1950, which had been dismissed on 21st October, 1957, personally liable for the costs incurred in the application after August, 1957, at which date, his Lordship said, they should have come to the conclusion that the application had no reasonable prospects of success.

Mr. Justice Sachs said that he felt bound to reiterate that if the wife's advisers had acted reasonably in accepting certain figures relevant to the husband's financial position, and in advising the wife to disclose certain figures relevant to the husband's financial position, and in advising the wife to disclose certain charges she had been making on the husband's accounts at certain stores, the hearing of her application could have been disposed of in one day whereas it had taken two . .

At the conclusion of the hearing and after the wife's application had been dismissed, counsel for the husband had made an application that the wife's solicitors should be made personally liable for the costs of the proceedings, or for the costs incurred therein after discovery had taken place, or for the costs of copying unnecessary documents. His Lordship had thereupon directed that the matter should be referred to a registrar for a report *inter alia* on the extent to which the husband's solicitors had conducted the case on her behalf, and that report was now before him and was to be adopted.

The application of the solicitors for the husband raised matters of serious importance. The basis of the Court's jurisdiction to make solicitors personally liable for costs had been explained in Myers *v.* Elman ((1940) A.C. 282), as the duty of solicitors as officers of the Supreme Court to conduct litigation with due propriety. The conduct complained of must be such as to involve a failure on the part of the solicitor concerned to promote the cause of justice. Its purpose was not to punish but to protect a completely innocent party. The mere fact that the litigation failed or that there was an error of judgment or mere negligence was not sufficient; there must be something which amounted to a serious dereliction of duty and which was gross.

It was not normally necessary to establish *mala fides* and no imputation whatsoever had been made against the honesty of the solicitor having the conduct of the wife's case, in the present matter. The class of act concerned were those in which there was an abuse of the process of the Court or oppressive conduct generally, and since that conduct had been established the matter was still one of discretion, to be exercised carefully and with regard to the repercussions of such an order being made.

The first issue was whether the wife's solicitors were in such grave fault in their conduct of the case as to make it right that they should bear the costs. It had to be borne in mind that an application under section 23 of the Act of 1950 had special features. The wife, by swearing an affidavit of optimistic

belief, and putting the husband to proof of his income and assets, could put a husband into considerable peril since it was usual for a husband to have to pay his costs in the application and he could be ordered even to pay the costs of an unsuccessful wife. It was, therefore, right that those who put such procedure in motion should be under a duty to use proper caution, and it was the normal practice, especially where the wife was in possession of the matrimonial home and receiving some maintenance, for the husband or his solicitors to be asked as a preliminary step to supply information, thus eliminating the possibility of proceedings which were unnecessary and oppressive.

Mr. Small had agreed that this was the usual practice of his firm, but had offered no explanation as to why he had failed to take that course in the present case, and this was particularly noteworthy as he had notice of the existence of a mortgage and an overdraft which were liabilities of the husband. If proper inquiries of this nature had been made it would have been extremely difficult to take the view that the proceedings would be successful and it followed that he had been unreasonable in not making such inquiries.

There was, however, no previous authority as to section 23 proceedings, and the propriety of making inquiries might not have been appreciated in its true light. He (His Lordship) was therefore not prepared to hold that the solicitor's conduct at that stage was such as to require him to be personally liable for the costs of the whole proceedings.

In May, 1957, discovery had taken place and it was one of the best known duties of solicitors to examine closely the documents discovered to ensure that the chances of success in the action had not been materially affected thereby. The present case was a classic example of the change of the face of an action on discovery. The matter cried aloud for a careful analysis of the documents, and in his Lordship's view if that analysis had been made it would have appeared clearly that the wife's application could not succeed. The appropriate analysis had, however, never been made nor was counsel's opinion sought at that stage. The fact that counsel had advised favourably in February, 1957, was of no avail in May, 1957. In May, 1957, Mr. Small went to the area committee in an angry mood and chose to form, in that angry mood, a strong opinion that he had a good case. That opinion was wrong, but it was worse in that it was an opinion which a solicitor who had carefully examined the material then available could not reasonably have reached.

After February, 1957, no opinion was sought from counsel until shortly before the hearing and he had not then been provided with a proper analysis on which to base his view because no such analysis had been made. Counsel, faced with such a position, was in a predicament and this was not the way in which to get the most beneficial opinion. He had advised favourably on the wife's prospects, but he was in the position of having to give a snap opinion and without having the advantage of an analysis. There was no reason why Mr. Small should not have furnished counsel with full instructions and obtained counsel's opinion by 1st August, 1957. The fact that counsel had subsequently advised favourably in the circumstances referred to could not produce any cover for the past.

The wife's solicitor was determined to carry on the litigation on the basis of his own opinion which had become incapable of being objective. That could not justify aggressive procedure running the husband into ever-increasing cost and it was conduct within the rule in Myers *v.* Elman *supra*. The husband should be indemnified for his costs on a party and party basis as from 1st August, 1957.

(Edwards *v.* Edwards—(1958) 2. All E.R. 179.)

OBITUARY

Mr. James H. Murphy, solicitor, died on 29th April, 1958, at a Dublin nursing home. Mr. Murphy served his apprenticeship with the late Mr. Alexander Garthan, Newry, Co. Down, was admitted Hilary Sittings, 1900, and practised at Dundalk, Co. Louth, as senior partner in the firm of Messrs. James J. Murphy and Son.

Mr. Alexander E. Donnelly, solicitor, died on 9th May, 1958, at Tyrone County Hospital. Mr. Donnelly served his apprenticeship with the late Mr. Francis Shields, Omagh, Co. Tyrone; was admitted Trinity Sittings, 1905, and practised at Omagh as senior partner in the firm of Messrs. Donnelly and O'Doherty.

Mr. Raymond Hickey, solicitor, died on 18th May, 1958, at the Mater Private Hospital. Mr. Hickey served his apprenticeship with Mr. Valentine Miley, 12 South Frederick Street, Dublin; was admitted Hilary Sittings, 1942, and practised at 42 St. Stephen's Green, Dublin, as a member of the firm of Arthur Cox and Co.

REGISTRATION OF TITLE ACTS, 1891 AND 1942—ISSUE OF DUPLICATE LAND CERTIFICATES

Applications have been received from the registered owners mentioned in the Schedule annexed hereto, for the issue of Certificates of Title in substi-

tution for the original Certificates issued in respect of the lands specified in he said Schedule, which original Certificates, it is alleged, have been lost or inadvertently destroyed.

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

Dated the 29th day of May, 1958.

JOSEPH O'BYRNE,
Registrar of Titles.

Central Office,
Land Registry,
Chancery Street,
DUBLIN.

SCHEDULE.

1. Registered Owner, Patrick Burke. Folio Number, 1073, County Clare. Lands of Drumaan East, in the Barony of Leitrim containing 184a. 2r. 36p.

2. Registered Owner, Margaret Tumulty, Folio Number, 15287, County Roscommon. Lands of Rooskagh in the Barony of Athlone South, containing 62a. or. 3p.

3. Registered Owner, William Robert Rathwell. Folio Numbers, 3658 and 4499, County Wexford. Lands of Ballinclare (Parish of Ballycanew) containing 24a. 2r. 0p., being the lands comprised in Folio 3658 and the lands of Ballinadrummin containing 73a. 1r. 10p., being the lands comprised in Folio 4499 both situate in the Barony of Gorey.

THE SOLICITORS' BENEVOLENT ASSOCIATION

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

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

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

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

Address :

SECRETARY,
SOLICITORS' BENEVOLENT ASSOCIATION,
18, HUME STREET,
DUBLIN.

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JUNE,
1958

THE GAZETTE

of the

INCORPORATED LAW SOCIETY OF IRELAND

President
JOHN CARRIGAN

Vice-Presidents
JOHN R. HALPIN,
FRANCIS J. LANIGAN

Secretary
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

MEETINGS OF THE COUNCIL

MAY 29TH: The President in the Chair. Also present: Messrs. John R. Halpin, Desmond J. Mayne, Ralph J. Walker, Thomas A. O'Reilly, Patrick Noonan, James J. O'Connor, G. G. Overend, William Dillon-Leetch, Dermot P. Shaw, Terence de Vere White, James R. Quirke, Reginald J. Nolan, R. McD. Taylor, Eunan McCarron, Peter E. O'Connell, Joseph P. Tyrrell, John Maher, Francis X. Burke, Francis J. Lanigan, John J. Nash, Desmond J. Collins, Patrick O'Donnell, Patrick R. Boyd, James W. O'Donovan.

The following was among the business transacted:

Lecturer and Examiner in Book-keeping.

MR. Thomas J. Donaghy, B. Comm., D.P.A., was appointed as lecturer and examiner in place of Mr. L. W. Jewell, who resigned owing to ill-health.

Society's Dinner-Dance

IT was decided to hold the function in the Shelbourne Hotel, Dublin, on Thursday, 20th November.

Finance Bill, 1958: Income-tax remission in respect of pension annuities.

ON a report from a Committee the Council decided to instruct insurance brokers to explore the market with a view to obtaining quotations from various insurance companies to reinsure a trust scheme instituted by the Society for the benefit of members. The effect of such a scheme would be that members would contribute to pensions payable on reaching a certain age and would be entitled to deduct the annual contributions for the purpose of income tax.

JUNE 12TH: The President in the Chair. Also present: Messrs. Desmond Mayne, John J. Nash, Eunan McCarron, William J. Comerford, J. R. Quirke, John R. Halpin, Derrick M. Martin, John J. Sheil, Patrick O'Donnell, Arthur Cox, George A. Nolan, Reginald J. Nolan, James J. O'Connor, Thomas A. O'Reilly, G. G. Overend, Ralph J. Walker, John Maher, Charles J. Downing, Peter E. O'Connell, Francis J. Lanigan, Patrick Noonan, Patrick R. Boyd.

The following was among the business transacted:

University Law Lectures.

THE Council approved in principle a suggestion made by the Solicitors' Apprentices Debating Society that the Society's lecture terms should coincide with the Universities' academic years

instead of with the Law Sittings as at present. The Committee of the Debating Society were asked to draw up a scheme.

Unqualified person.
It was decided to institute proceedings under Section 58 (1) (*b*) of the Solicitors Act, 1954 against an unqualified person for procuring or attempting to procure the execution by an Irish citizen of a document relating to property situate abroad for or in expectation of fee or reward.

Court Fees.
The Council considered a report from a Committee on the subject of the Court fees charged in the High Court and the Circuit and District Courts. It was decided to make further representations to the Department of Justice on the subject.

LAND COMMISSION COSTS IN PRICE APPEALS TO THE JUDICIAL COMMISSIONER

The Society have been negotiating for a considerable time with the Irish Land Commission for a revision in the present scales of charges which are altogether inadequate. Among the claims put forward by the Society was a request that instead of the present measured costs in price appeals, owners should receive costs as agreed or certified by the Taxing Master on the basis of full indemnity. The following is an extract from a letter received from the Irish Land Commission on the subject of this claim :—

> As regards the claim in paragraph 4 of the memorandum, that instead of the present measured costs in price appeals owners should receive costs as agreed or certified by the Taxing Master on the basis of full indemnity, I have to refer to rules 1 and 2 of Order XLVII of the provisional rules of 5th February, 1924, which gives the Court discretionary powers in this matter. While the Judicial Commissioner is sympathetic to this claim, he considers that, having regard to the rules, it would be improper for him to decide this matter generally as in effect that course would be tantamount to abrogating the discretion given to the Court by the rules. The Judicial Commissioner will be prepared, however, to consider any application that may be made to him in Court in relation to any price appeal coming before the Appeal Tribunal.

The Council have been informed that this statement has the authority of the Judicial Commissioner.

DUBLIN SOLICITORS' BAR ASSOCIATION

A meeting of the Council was held on Wednesday, 4th June, 1958.

A deputation from the Council has been received at the Department of Justice about the inaccessibility of Court Number 9, Chancery Place, for Enforcement of Court Orders Acts business. The Council feel that their views on the necessity of an Enforcement Court being readily accessible have been registered with the Minister. It remains to be seen what improvements can be made under existing circumstances.

Discussions have been initiated with the Commissioners of Public Works with the object of improving the Public Restaurant at the Four Courts.

The Administration of Estates Bill 1957 has been considered by a special Sub-committee and suggestions have been made to the Minister for Justice.

Other matters were reported on, and the next meeting of the Council was fixed for Wednesday, 2nd July, 1958.

SOLICITORS' GOLFING SOCIETY

Summer meeting, Thurles Golf Club, 31st May, 1958—Captain's Prize Day.

List of Prizewinners.

1. Golfing Society's Challenge Cup, and Captain's Prize—*Winner :* John Carr (Muskerry) (14), 2-up ; *Runner-up Prize :* Eddie Dillon (Delgany) (18), 1-up.

2. Veterans' Challenge Cup and Prize—*Winner :* Dermot Shaw (Mullingar) (10), All-square ; *Runner-up Prize :* Desmond Collins (Foxrock) (10), 2 down.

3. St. Patrick's Plate and Prize—*Winner :* Basil Doyle (Foxrock) (10), 1 down ; *Runner-up Prize :* John Bolger (Heath) (10), 2 down.

4. Best Score (First Nine Holes)—W. J. Ryan (Abbeyleix) (14), 1 up.

5. Best Score (Second Nine Holes)—R. D. Kennedy (Thurles) (21), All-square.

6. Best Score, by Competitor resident more than 30 miles from Thurles—T. J. Hegarty (Little Island) (13), 2 down.

7. Best Score of three cards drawn by lot—James J. O'Connor (Thurles).

EXAMINATION RESULTS

Preliminary Examination

At the Preliminary Examination for intending apprentices to Solicitors, held on the 28th and 29th May, the following passed the examination :—

Thomas D. Durcan, George W. McCormick.

3 candidates attended ; 2 passed.

Book-keeping Examination

At the Book-keeping Examination for apprentices to Solicitors, held on 29th May, the following passed the examination :—

Passed with Merit.

John K. Temple-Lang.

Passed.

Thomas C. Buckley, Michael J. Fitzsimons, Valentine J. D. Kirwan, John Morrissey, Dominic Mockler, Patrick G. McMahon, Thomas D. Shaw, Daire Walsh.

11 candidates attended; 9 passed.

LIABILITY FOR PROFESSIONAL FEES.

Counsel's Opinion.

SENIOR COUNSEL gave these replies to the following questions addressed to him on behalf of the Society in which he was asked for an advisory opinion :—

(1) (*a*) FEES FOR MEDICAL AND HOSPITAL TREATMENT BEFORE LITIGATION—included in the amount of a settlement or verdict. Counsel advises that this does not of itself impose upon the solicitor any legal obligation to ensure that the claim of the hospital or doctor where particulars have been obtained is discharged unless the solicitor gives an undertaking, express or implied, to do so.

(*b*) If the solicitor receives the amount of the damages as a result of the assessment of damages by the jury and that the damages include hospital or medical expenses incurred before litigation, here Counsel advises that the solicitor will receive the money as the agent for and with the authority of the client, and that as no trust arises in favour of either the hospital or the doctor, if the client requires the money, it must usually be paid to him. Where there is an agreed settlement of the client's claim, the defendant's solicitor sometimes requires an undertaking arising out of Section 174 of the Road Traffic Act 1933. The plaintiff's solicitor who agrees to give such undertaking, is personally liable for carrying it out.

(2) MEDICAL REPORTS—Where a solicitor acting for a named client requests a doctor to make an examination and report, Counsel advises that the solicitor will not be personally liable for the doctor's fee, unless, in addition to making the request, he undertakes a personal liability either expressly or by implication.

(3) ATTENDANCE OF DOCTORS IN COURT AS WITNESSES :—Counsel advises that as a result of the cases of *Lee* v. *Everest* (2 H. & N. 285), and *Robins* v. *Bridge* (3, M. & W. 114), a solicitor acting for a named client is not liable as an agent to a doctor for his medical fee for attending Court, whether the solicitor has caused the doctor to be served with a subpoena, or not, unless he undertakes personal liability expressly or by implication.

(4) SOLICITORS' UNDERTAKING TO PAY WITNESSES' FEES :—If a solicitor has become personally liable to witnesses for payment of their fees (e.g., where he has given a personal undertaking or held himself out as the principal), he must, following *Miller* v. *Appleton* (50 Sol. J. 184) pay whatever fee was agreed upon whether it is allowed on taxation or if some of the claim is disallowed. If no fee has been agreed upon, the witness is entitled to reasonable remuneration, and what this will amount to in any given case must be decided by the Court on a *quantum meruit* basis if the amount claimed is considered excessive.

(5) PERSONAL UNDERTAKINGS BY SOLICITORS :—These undertakings may in certain cases be enforced summarily against a solicitor upon application to the Court. Such an undertaking may be enforced whether given to a client or to a third person or to the Court, but it is enforceable only if given by the solicitor in his professional capacity and not as an individual (*United Mining and Finance Corporation* v. *Becher* (1910) 2, K.B. 296).

A solicitor might also be held responsible if a custom can be proved that he should be so held, and it is for the Court to decide whether such a custom was proved. But a solicitor was held not personally liable to a photographer for ordering photos to be supplied for a trial, on the ground that he was an agent for a named principal (*Wakefield* v. *Duckworth* (1950), 1 K.B. 218). On the other hand a solicitor is personally responsible by custom for the charges of a shorthand writer employed to take a note of evidence in litigation and for the costs of another solicitor who does business for him, and it is therefore incumbent on him to give express notice if he wishes the business to be done on the client's credit.

Counsel's opinion is a statement of the legal position. The Council stated in the Society's *Gazette*, May, 1956, that the solicitor's professional duty is coextensive with his legal liability although he may voluntarily accept wider obligations. In this connection reference was made to the statement published in the Society's *Gazette*, November, 1954

(page 39). The Council there stated that in any case in which damages are assessed and paid on the basis of specific claims for hospital, medical or other professional fees, it is not unprofessional for the solicitor for a successful claimant to pay these amounts at his own risk as to legal liability towards the client if the claim is disputed.

DECISIONS OF PROFESSIONAL INTEREST

Extension of time to appeal allowed where parties agree on it.

The Master of the Rolls and Lord Justice Ormerod granted this application by defendants for extension of time in which to appeal from a judgment of Judge Robson at Kettering County Court on 20th March, 1958.

Mr. H. B. Forbes, for the defendants, said that the case raised a number of highly complicated points. Judgment was reserved and delivered on 20th March. A copy of the written judgment did not become available immediately and the defendants' solicitors then desired the opinion of counsel, who was away during the Easter Vacation. They had been under the impression that time for an appeal could be extended as between solicitors, but he now understood that there was no such power for parties to make such an extension and that application had to be made to the Court.

The Master of the Rolls said that where for any reason a party found that he was not going to be able to serve notice of appeal in time and notified the other side, and the other side's solicitors stated that they did not desire to object to some reasonable extension, then, if his Lordship were informed through the usual channels that that was so, and if the information were supported by the solicitors' letters, he would continue the practice which he had followed in the past of giving the necessary leave informally without putting the parties to the expense of briefing counsel for the purpose.

(United Dominions Trust (Commercial) Ltd. *v.* Corby U.D.C.—*The Times*, 29th April, 1958.)

In non-contentious business a client is entitled to an itemised Bill of Costs unless there is a written agreement to the contrary.

A solicitor who acted for a client on the grant of a lease and in connection with a proposed mortgage agreed with the client for a lump sum charge of 150 guineas for so acting. In writing to the client, when negotiating this agreement, the solicitor stated that his charges would, under Schedule II to the Solicitors' Remuneration Order, 1883 to 1953, be based on work actually done, and not a scale charge under Schedule I. It was conceded that the solicitor, not having complied with paragraph 6 of the order of 1883 as amended by the order of 1953, was not in fact entitled to make a higher charge under that schedule on the basis of work actually done. In this action the solicitor claimed by specially endorsed writ to recover the sum of £150 as money paid to the client under a mistake of fact to balance due. The client sought to defend the action on the ground that he was entitled, notwithstanding the agreement, under section 57 (1) of the Solicitors Act, 1957, to an itemised bill in respect of the transaction. Havers, J., held that he was so entitled. The solicitor appealed.

Lord Evershed, M.R., said that in his view on the true construction of section 57 (1) of the Solicitors Act, 1957, a client who had made an agreement with his solicitor for the payment of a lump sum for non-contentious business, had not an unqualified right to ask for an itemised bill, but that his right to require a bill was limited to cases where he could show, on the facts of the particular case to the satisfaction of the court, that there was something which as a matter of general principle or private right, or both, ought to be looked into. He (his Lordship) turned accordingly to the question whether it was here established, the onus being clearly on the client, that there was good ground for saying that an itemised bill ought to be delivered and referred to the taxing master so that the court could see whether the agreement was in the circumstances unreasonable or unfair. His Lordship examined the evidence and concluded that, having regard to the error in stating to the client that the solicitor was entitled to charge on the higher scale of Schedule II to the Solicitors' Remuneration Orders, 1883 to 1953, when he was not so entitled, and having regard to the fact that a solicitor's charges should not only be right, but manifestly be shown to be right, an order for delivery of an itemised bill should be made. Accordingly the appeal would be dismissed.

Parker and Sellers, L.J.J., agreed. Appeal dismissed.

(Rutter *v.* Sheridan-Young—(1958) 2, All E.R. 13.)

Crown Office not told that jury case had been dismissed.—solicitors to pay costs.

Mr. Justice Devlin ordered that the solicitors for the third defendant, Mr. Sam Burns, boxing promoter, in this action, which the plaintiff took against the British Boxing Board of Control, and Mr. Burns, should pay personally the costs thrown away by leaving in the list a case which had ceased to be effective, since all the defendants had obtained orders dismissing the action for want of prosecution.

His Lordship ordered on Tuesday, 15th April, that the case should be put into the Daily Cause List again so that he might determine what order should be made.

Mr. Justice Devlin said that this was the second case in the current list in which the Crown Office had not been notified of some order made in chambers which had affected the course of an action. In Kloss *v.* Curtis (*The Times*, 18th April), it had been an order made by a Master taking the case out of the term's list; and in the present case it was an order under which the only remaining defendant had got an order by which the action against him had to be dismissed, for want of prosecution, under Order 31, rule 21. In each case the Crown Office was not given the necessary information to enable the cases to be taken out of the list; and in this case, as in the last, the solicitors had blamed each other, each saying that it was the duty of the other to take the necessary steps to inform the Crown Office.

The overriding rule in this matter was Order 36, rule 29 (6), which made it abundantly plain that it was the duty of both solicitors to take the necessary steps. If solicitors wanted to be safe the proper course was for each of them to make sure that the Crown Office was notified.

What his Lordship had done to-day was to investigate where the responsibility lay, for while it was the duty of both, it might be that the degree of responsibility and blame might fall more heavily on one rather than the other.

In this case his Lordship thought that it fell on the solicitors for the third defendant. It was they who obtained the order dismissing the action. They had argued that all that they had to do was to send a copy of that order to the plaintiff and leave it to him to bring to the attention of the Crown Office. His Lordship did not accept that view at all. It was the duty of the solicitors who obtained the order in the first place to see that the action was removed from the list. It might be that a plaintiff in person might not have appeared at all or that time might be extremely short. The burden lay much more heavily on the solicitors to the third defendant, and in this case lay entirely on them.

Accordingly his Lordship would order that they should pay personally the costs thrown away; those costs would include bringing twelve gentlemen of the jury to Court, for their time had been entirely wasted, the costs of application, and the costs of the proceedings when the case came into the list—since the plaintiff very properly in the circumstances, thought it right to be represented by counsel so that the position might be explained to his Lordship.

(Williamson *v.* British Boxing Board of Control and others—(1958), 2 All E.R. 228.)

Plaintiff's claim to be entitled to a share of deceased's estate on an intestary against defendant solicitor, who was an executor and plea of undue influence rejected.

Lord Justice Hodson and Lord Justice Morris in reserved judgments, Lord Justice Sellers dissenting, dismissed this appeal by Lieutenant-Colonel Wintle, of Wrotham, Kent, from a judgment of Mr. Justice Barnard and a verdict of a jury on 20th May, 1957 (*The Times*, 21st May), in favour of the defendant, Mr. Frederick Nye, solicitor, of Brighton, on the plaintiff's claim to be entitled as on an intestacy to a share in the estate of the late Miss Kathleen Helen Wells, who died on 6th December, 1947, leaving an estate of gross value of some £115,000.

The Court granted Colonel Wintle leave to appeal to the House of Lords.

Lord Justice Hodson said that the burden lay on the defendant, the deceased's solicitor, to establish his case that the deceased knew and approved of the contents of the will; in particular the bequests to him had been vigorously contested. He drew up the will and was the principal beneficiary under it. There was no rule of law that he could not benefit. The sole ground of appeal relied on was misdirection of the jury by the Judge.

The Judge directed the jury correctly so far as the law was concerned. He had reminded them of the fact that it was for them to consider whether they were able to accept Mr. Nye's testimony, and that it was for him to remove the suspicion that attached to the document.

The effect of the will was that one-third of the estate should be used for beneficiaries named by the testatrix who were to take after her sister Millie's death—Millie was to have an annuity of £500 a year one-third was to provide for duties, and one-third was to go to Mr. Nye, who was also to have the residue remaining in the first two parts.

It was true that time was taken up in attacking Colonel Wintle, whose attitude throughout had been that he was determined to bring Mr. Nye and what he regarded as an iniquitous will into Court. But his interest in this matter and his motive in bringing the action so as to force the will into Court were wholly irrelevant, and the Judge, though referring in unfavourable terms to some of Colonel Wintle's activities in his campaign against Mr. Nye, had pointed out in no uncertain terms that Colonel Wintle's motive was irrelevant. If the evidence of Mr. Nye was on a proper direction accepted by the jury it was not open to this court to interfere with the verdict.

Lord Justice Morris, concurring, said that there could be no doubt that the circumstances of this case were such as to excite the suspicion of the Court,

and there was therefore a necessity to be vigilant and jealous in examining the evidence in support of the will. On the questions left to the jury they could have found for the will and validated the gifts to relatives and charities while defeating the entitlement of Mr. Nye to the residue. The jury, after being repeatedly told that it was for them to decide whether they believed Mr. Nye, came to the conclusion that Miss Wells did know of and approved of the contents of the will and codicil, including what was given to Mr. Nye.

It was not within the Court's competence to set aside their verdict. Though the case had certain features which could not fail to cause concern, his Lordship had reached the conclusion that they were not warranted in displacing the verdicts of the jury.

Lord Justice Sellers, in a dissenting judgment, said that he would allow the appeal, disturbing as it was to contemplate that this dispute fell to be determined 10 years after the testatrix's death.

The main issue raised on the appeal was fundamentally a question of law. The question was whether, having stated the law and the issues accurately and clearly, the Judge had complied with the approach to the investigation which the law required. Whether it was regarded as a whole or analysed in detail the summing-up provided and encouraged in the minds of the jury a benevolent and sympathetic consideration of Mr. Nye's evidence and in no way led the jury to a critical or hostile approach to what he said in his evidence and to what he would appear to have done. In a trial of the present character there was an extraordinary burden of investigation. *The approach to the evidence which was challenged should be suspicious and critical. The approach should be an unreadiness but not an unwillingness to believe it after close scrutiny and careful consideration.*

The summing-up, far from applying the approach required by law leaned throughout strongly in favour of Mr. Nye, with scarcely a word of criticism or possible distrust for the jury's consideration. It was a striking and unusual feature that neither in respect of the will which was said to be discussed over many months nor in respect of the later codicil was there any independent evidence to support Mr. Nye's version except the signature of the testatrix to the two documents. There was no document of a testamentary character in the handwriting of the testatrix. There was no supporting witness to show the testatrix's knowledge of the extent of her estate or the size of her residue or her wish to benefit Mr. Nye substantially or at all.

There were some points in Mr. Nye's version where one might have expected a corroborative document; for instance, *one might have expected him to have asked the testatrix to sign a statement to the effect that she did not wish to comply with his suggestion that there should be an independent solicitor.* It was sufficient to recognise that his evidence on all material matters stood alone, unsupported, uncorroborated.

But that really was not the sting of the matter. In December Mr. Nye said that his discretion was to be exercised "if funds permit" and in June, 1948, "if I thought it could be done." In those words the writer gave some evidence, perhaps the nearest evidence of the mind of the testatrix. Mr. Nye had drawn up the figures which he said were put before the testatrix showing an estate of £50,000. He had been managing the estate for her and knew the properties and their revenue. He must have known that on any reasonable view there could be no doubt of the sufficiency of the revenue for this relatively small purpose. If he did not know how could the testatrix know? Those two matters called for careful review by the Judge to the jury and by the jury themselves. Properly and fully considered they might well have produced a different result.

There had also been some misunderstanding over the position of Miss Marjorie Wintle, and it seemed to have been left somewhat obscure at the trial. Miss Marjorie was Colonel Wintle's sister and was an obvious person to receive benefit from the testatrix. It was true that the jury could not put Marjorie back into the will, but his Lordship did not understand, in view of the arangements which had been made, that Marjorie would get nothing if the will were not established. He would have allowed the appeal and ordered a new trial, unless the parties otherwise agreed.

Their Lordships dismissed the appeal with costs but granted Colonel Wintle leave to appeal to the House of Lords.

(In re Wells, decd.: Wintle *v.* Nye—*The Times*, 17th December, 1957.)

A successful plaintiff, who is deprived of costs, cannot obtain them on appeal, as costs are in the discretion of the trial judge.

The Judicature Act, 1925, provides by section 31 (1):—"No appeal shall lie— . . . (*b*) without the leave of the court or judge making the order, from an order of the High Court or any judge thereof . . . as to costs only which by law are left to the discretion of the court." The plaintiff company brought an action against the defendant, a former employee, to recover £1,253, said to be a debt due on a running account. The defendant alleged that repayment of the debt was to be contingent on the receipt by him of a sum claimed in respect of certain expropriated assets abroad, and counter-claimed a sum of £1,083 said to be due to him as arrears of a

salary of £500 a year. At the trial the principal witness for the plaintiff company was one P, who controlled the company though he was not a director. McNair, J., rejected much of the evidence given by P but gave judgment for the plaintiff company on the claim and counter-claim on the ground that the defendant had not made out his case on either issue. McNair, J., stated that he attached little weight or credibility to the evidence of either P or the defendant; he refused to make any order as to costs in view of the impression he had formed of P's evidence, and refused leave to appeal on that issue. The plaintiff company appealed.

Jenkins, L.J., said that there were certain statutory difficulties in the way of the appeal. Section 50 (1) of the Act of 1925 and Ord. 65, r. 1, made the award of costs subject to the discretion of the Judge, and Section 31 (1) made such an award unappealable without leave. The plaintiffs contended that, on the authorities, an appeal would lie without leave if the judge had taken into account wholly irrelevant matters, or exercised his discretion without proper material. In particular, it was said that both P and the defendant had given false evidence; they cancelled each other out and so costs ought to follow the event. That was an unimpressive argument: once it was conceded that the credibility and conduct of the parties were relevant to the exercise of discretion, it followed that the trial judge was in the best position to decide the question. The plaintiffs had relied on Hudsons, Ltd. *v.* De Halpert (1913), 108 L.T. 416, and Hong *v.* A. & R. Brown, Ltd. (1948) 1 K.B., 515; but if the first case meant that a company could not be penalised in costs for misstatements by its representatives in evidence, it was wrong; and in the second case the observations of Lord Green, M.R., could not be taken to go beyond the observations of Lord Cave in Donald Campbell and Co. Ltd. *v.* Pollak (1927) A.C. 732, at p. 811, which showed that where the judge had limited the matters taken into account to those concerned with the litigation, the statute prohibited the entertainment of an appeal. That case had cut down a certain latitude which the Court of Appeal had previously permitted themselves. The court could not entertain such an appeal without leave unless it could be said that the judge did not in truth exercise his discretion at all. That meant that the case must be one of the type to which Lord Cave had referred, where the judge's discretion had been based on some misconduct wholly unconnected with the cause of action, or on some wholly irrelevant consideration. In the present case the judge had exercised his discretion on matters which were wholly relevant to the action, and having regard to the statutory provisions the appeal could not be entertained.

Parker and Pearce, L.JJ., agreed. Appeal dismissed.

(Bayliss-Baxter *v.* Sabath—(1958) 2 All E.R. 209.)

Note.—Section 52 of the Judicature Act (Ireland) 1877, corresponds to Section 31 (1) of the Judicature Act, 1925.

OBITUARY.

Mr. John J. A. O'Hare, solicitor, died on the 18th June, 1958, at his residence, 29 Castlerwood Avenue, Rathmines, Dublin.

Mr. O'Hare served his apprenticeship with the late Mr. James Tanham, 13 Westmoreland Street, Dublin; was admitted in Easter Sittings 1934, and practised at 25 Bachelor's Walk, Dublin.

REGISTRATION OF TITLE ACTS, 1891 and 1942.

Notice.

Folio 13698, County Tipperary.
Registered Owner: Patrick Tierney.

The Registered Owner has applied for a Duplicate of the Certificate of Title specified in the Schedule hereto which is stated to have been lost or inadvertently destroyed.

A Certificate will be issued for all the lands in Folio 29036, County Tipperary, in which the above described lands are now comprised unless notification is received in this Registry within 28 days from the date of this Notice that the said Certificate of Title is in the custody of a person not the Registered Owner. Such notification should state the grounds on which the Certificate is retained.

Dated this 28th day of June, 1958.

Joseph O'Byrne,
Registrar of Titles.

Schedule.

Land Certificate of Patrick Tierney to 6a. 1r. 33p. of the lands of Bellevue situate in the Barony of Ormond Lower and County of Tipperary, being the lands comprised in said Folio.

1. Registered Owner, James Ryan. Folio Number, 10200, County Tipperary, Lands of Lisheen in the Barony of Eligarty containing 12a. or. op.

2. Registered Owner, Edward Lysaght. Folio Number 4042, County Limerick. Lands of Thomond Row in the Barony of City of Limerick and County of Limerick, containing a small plot situate on the west side of a road leading south from Thomond Row being the lands comprised in the said Schedule.

THE REGISTRY.

REGISTER A.

Solicitor required to manage practice of deceased solicitor. Town in Lienster. Box No. A177.

REGISTER B.

Lady Solicitor, presently employed desires change, preferably Dublin. Box No. B225.

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JULY,
1958

THE GAZETTE

of the

INCORPORATED LAW SOCIETY OF IRELAND

President
JOHN CARRIGAN

Vice-Presidents
JOHN R. HALPIN,
FRANCIS J. LANIGAN

Secretary
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

MEETINGS OF THE COUNCIL

JULY 3RD: The President in the Chair. Also present: Messrs. Desmond J. Mayne, William J. Comerford, James J. O'Connor, R. McD. Taylor, Peter E. O'Connell, Francis J. Lanigan, Reginald J. Nolan, G. G. Overend, N. S. Gaffney, George A. Nolan, John J. Shiel, Dermot P. Shaw, Ralph J. Walker, John R. Halpin, J. R. Quirke, P. R. Boyd, Thomas A. O'Reilly, A. Cox.

The following was among the business transacted:

Land Commission, Receivable Orders

ON representations received from the Provincial Solicitors' Association it was decided to ask the Land Commission to include particulars of the relevant folio number on the receivable order.

Client's privilege against disclosure

MEMBERS acted for a client who left the country and subsequently wrote to members giving them his address confidentially with instructions not to disclose it. Proceedings were subsequently taken against the client by his wife and members were asked to accept service of proceedings and on their refusal the solicitors of the wife notified them that they would apply to the Court for liberty to substitute service on members. Members asked for the guidance of the Council as to whether they would be obliged to disclose their client's residence. The Council stated that the client's name or address should not be disclosed except on an order of the Court.

Seanad Electoral Law Commission

THE Council received a communication from the Commission asking them to submit evidence within the terms of reference of the commission, which broadly speaking are to make proposals for a new method of election to the Council within the framework of the Constitution of the Republic. The Council appointed a special Committee to deal with the matter.

"Without prejudice" settlement with insurance company

MEMBERS submitted correspondence with an insurance company concerning a case in which they acted for the claimant and in which the insurance company agreed in correspondence marked "without prejudice" on both sides to pay a sum in full settlement of the claim and costs without admission of liability. The claimants' solicitors accepted the offer in a letter marked "without prejudice." The insurance company subsequently

wrote stating that their insured intended to take proceedings against the claimant and that in the circumstances the offer in settlement must be withdrawn. Members submitted that the matter raised a general issue affecting solicitors dealing with insurance companies. It was decided to take the matter up with the insurance company and to ask for their views.

Sale of ground or head rent. Certificate of discharge of income tax

MEMBERS raised a question which arose between the vendor and purchaser as to the right of the purchaser to receive from the vendor a certificate of discharge of income tax under section 6, of the Finance Act, 1928 in the following circumstances. A purchased a ground rent from B who applied to the Inspector of Taxes for the certificate. The inspector wrote on June 18th that the proposed sale was the sale of a ground rent and that as B was not, and that the prospective purchaser A, will not be charged a tax by *direct* assessment under schedules A and B the certificate was unnecessary. The inspector stated that section 6 was designed to safeguard purchasers of property against claims on them for tax charged or chargeable on the vendor of such property by direct assessment. The following statement is taken from Mr. Grogan's book on Income Tax:

> Tax under schedules A and B may be collected, recovered and levied by the collector by distress from the persons charged or from the occupier of the property charged or upon the premises in respect of which the assessment is made and all goods and chattels to whomsoever the same belong found upon any such premises may be distraint and sold for the recovery of any such tax. Tax under schedule A may also be collected, recovered and levied by the collector, from the landlord or immediate lessor of the premises charged, whether he is named in assessment or not. But where the assessment has been made on the tenant or occupier, the landlord or immediate lessor is only liable in default of payment by the person assessed and for so much only of the tax as is chargeable in respect of the rent payable yearly to him for the premises (Income Tax, 1918 section 199). If any person, whether named in the assessment or not, liable for schedule A tax default in payment of tax leviable on him, the collector may issue a certificate to the under-Sheriff empowering him to seize any goods, etc., belonging to the defaulter which he finds upon the property in respect of which tax is charged. It would appear that this section includes the right to seize leasehold property. The danger of the generality of those provisions created for landlords and purchasers has been remedied, partially at any rate, by the Finance Act, 1928 section 6 which provided that a lessor or an immediate lessor or the purchaser of any property chargeable under schedules A or B is entitled on application to the Inspector of Taxes to a certificate that all income tax charged under the schedules for all years prior to 6th April preceding the application has been paid. Where such certificate has been obtained, the occupier of the property or the purchaser for valuable consideration without notice of fraud, etc., is protected against distraint.

The Council were of the opinion that the query submitted by members raised a general question of conveyancing practice. Section 6 appears to impose a liability on the Inspector of Taxes to give the certificate if requested by the landlord or the immediate lessor or occupier of the property. It is difficult to see how the owner of a head or ground rent would have any property on the premises subject to tax which could be subject to distraint unless he subsequently bought in the lessee's interest and occupied the property himself. As regards the facts of the particular case submitted by members the Council were of the opinion that as neither vendor nor purchaser is liable for direct assessment, and as the Inspector in a letter dated June 18th so stated, there appears to be no practical necessity for the certificate except in the unlikely event of the purchaser's expecting to have property of his on the premises out of which the rent is payable, which property might be subject to distraint for any arrears of schedule A tax. The Council however pointed out that the question is one on which members must satisfy themselves.

DINNER DANCE

A DINNER-DANCE for members and their friends will be held in the Ballroom, the Shelbourne Hotel on Thursday, 20th November the date of the Ordinary General Meeting. Further particulars will be published in the August issue of the Society's *Gazette*. Applications from members will be dealt with in order of receipt. Members may apply for tickets for friends. The price of tickets will be one guinea each to include dinner and dance.

INDUSTRIAL AND COMMERCIAL PROPERTY (PROTECTION) (AMENDMENT) ACT, 1958

THE following are the main provisions:—

(1) Section 154 of the Act of 1927 as amended by section 8 of the (Amendment) Act, 1957 which

relates to the definition of "copyright" is to include the sole right to produce, reproduce, perform or publish any translation of the work. (2) Where, before the commencement of this Act, the sole right to produce, reproduce, perform or publish any translation of a work into the Irish language ceased to exist by virtue of the operation of subsection (2) of section 154 of the Act of 1927 that sole right shall, as from such commencement again subsist as part of the copyright in that work for the remainder of the term for which such copyright subsists, i.e., until the end of the year following the 50th anniversary of the author's death.

(3) Where the sole right to produce, reproduce, perform or publish any translation of a work into the Irish language had, by virtue of the operation of subsection (2) of section 154 of the Act of 1927, ceased to exist before the commencement of this Act and the work was, before such commencement, translated into the Irish language, then, whether or not there has been publication of the translation before such commencement, publication thereof after such commencement shall not constitute an infringement of copyright in the work, unless the first publication of the translation occurs after a period of at least three years has elapsed since this Act came into force.

Section 155 of the Act of 1927 relating to the exceptions to an infringement of copyright in fair dealing with the work for the purpose of criticism, review or study, is hereby amended by the addition of the following words: (*a*) provides that, in the case of such criticism, review or newspaper summary, if any quotation from the work is made, the source of the quotation is acknowledged and the name of the author of the work, if it appears thereon, is given; (*b*) in the case of a publication of a collection of prose or poetry intended for schools provided that the sources from which the passages are taken are acknowledged and that the name of the author of any work from which such passages are taken, if it appears thereon, is given.

Rules of court may be made for the purposes of the Act, in cases where an appeal is prescribed to the High Court.

This Act shall come into operation on such day as the Minister for Industry and Commerce appoints by order.

REPORT OF THE COMPANY LAW REFORM COMMITTEE—1958

THE report of the Company Law Reform Committee 1958, under the initial chairmanship of the late Mr. H. Vaughan Wilson, S.C., and subsequently under the chairmanship of Mr. Arthur Cox, has recommended that a new Companies (Consolidation) Bill should be drafted, incorporating various changes to the Companies (Consolidation) Act, 1908, *inter alia* the following:—

(1) A Company should have power by special resolution to alter its objects.

(2) An up-to-date Table A is appended as a Schedule to the Report.

(3) Subject to safeguards, companies should be given power to issue at a discount shares of a class already issued.

(4) Companies should be permitted to create and issue shares of no par value.

(5) The requirements in the issue of a prospectus should be tightened.

(6) Private Companies should by law appoint at least two directors and a secretary.

(7) In every case in which instances of fraud, fraudulent trading or breaches of the Companies Acts come to the attention of any Court, the Judge or Justice should be obliged to send a report to the Attorney General for consideration by him and indictable offences under the Act should be prosecuted in the Central Criminal Court. The minimum penalty should be a substantial minimum fine.

(8) A special resolution should require one meeting only, and at that meeting a majority of three-fourths of the members entitled to vote who are present in person or by proxy and vote should be sufficient. Proxies could henceforth be appointed to attend and vote at meetings.

(9) Any member should have the right to insist that shareholders should vote on the election of each director individually, unless there is unanimous agreement by the shareholders agreeing to an omnibus resolution for the the appointment of directors.

(10) The payment of directors' remuneration free of income tax or calculated by reference to income tax should be prohibited.

(11) Directors who are in any way interested in a contract or transaction with the company must disclose the nature of their interest at a meeting of the Board.

(12) Directors must disclose to the Board their holdings of and dealings in the shares and debentures of the Company and of its subsidiaries and parent company, including shares held in trust by their wives, or of which they have a right to become a holder; all this information should be entered in a "Register of Director's Shareholding."

(13) Every company should be obliged to keep such books of account and records as are reasonably necessary to give a true and fair view of the state of the Company's affairs and to explain its transactions.

(14) Directors should submit a balance sheet and a profit and loss account at the general meeting of the company every year. The minimum requirements of an adequate balance sheet and of an adequate profit and loss account are listed.

Copies of this report, which contains 125 pages, can be obtained from the Government Publications Sale Office, G.P.O. Arcade, Henry Street, Dublin. *Price 4s. or 4s. 6d. by post.*

Library—Vacation Arrangements

The Library will be closed from Monday 18th August to Wednesday 17th September, both days inclusive, and will re-open on Thursday 18th September, 1958 at 10 a.m. Members who require books urgently when the library is closed should apply to the office.

DUBLIN SOLICITORS BAR ASSOCIATION

A Meeting of the Council was held on Wednesday, the 2nd of July, 1958.

A vote of sympathy was passed with Mr. Desmond Moran on his recent bereavement.

A report was received from the Sub-Committee which had recently had an interview with the County Registrar on the method of appointing District Court Civil Bill Officers, and the qualifications necessary for persons appointed. The Secretary was directed to write to the County Registrar expressing dissatisfaction with the working of present arrangements.

The date for the Annual General Meeting was provisionally fixed for Wednesday, the 8th of October.

The next meeting of the Council was fixed for Wednesday, the 24th of September, 1958.

COUNTY KERRY LAW SOCIETY

At the recent Annual General Meeting of the County Kerry Law Society the following officers and Committee were elected for the year 1958-59 :

President : Gerald Baily.

Vice-President : Thomas O'Neill.

Chairman : Charles J. Downing.

Secretary and Treasurer : J. J. Grace.

Committee : M. L. O'Connell, J. J. O'Donnell, J. D. O'Connell, D. E. Browne, J. S. O'Reilly, D. F. O'Shea, H. J. Downing, W. A. Crowley and D. Twomey.

EXAMINATION RESULTS

Final Examination.

At the Final Examination for apprentices to Solicitors held on the 27th, 28th and 29th days of May the following passed the examination :—

Passed with Merit.

Richard M. Neville, B.A., LL.B., LL.M. ; Mary P. Read, B.A., LL.B., H.Dip. in Ed. ; Franklin J. O'Sullivan, B.C.L.

Passed :

John P. A. Hooper, B.C.L., James K. Martin, Clive Hunter Murphy, Kevin C. McGilligan, B.C.L., Joseph M. McGowan, John D. Nugent, Michael B. O'Cleirigh, William A. Young, B.A., LL.B.

25 candidates attended ; 11 passed.

The Council have awarded a Silver Medal to Richard M. Neville and Mary P. Read. A Special Certificate was awarded to Franklin J. O'Sullivan.

The following passed in Part I or Part II Final Examination :—

Part I.

Richard J. Branigan, (A) ; Timothy H. Crowley ; Robert B. Haythornthwaite, B.A., LL.B. ; Thomas B. Jellett, (A) ; Michael I. Moore, (A) ; Maurice A. Neville ; James P. G. O'Connor, (A) ; Francis C. Quinn, (A) ; John P. Redmond, (A).

23 candidates attended ; 9 passed.

Part II.

Michael J. Bowman ; James E. Cahill, B.A. ; Francis X. Downes, (B) ; John L. F. Hayes, (B) ; Patrick Joseph O'Brien ; Thomas P. O'Connor ; Eugene T. O'Shea.

12 candidates attended ; 7 passed.

"(A)" denotes having already passed Part II.

"(B)" ,, ,, ,, ,, ,, I.

First Law Examination.

At the First Law Examination for apprentices to solicitors held on the 30th and 31st days of May, the following passed the examination :—

Passed with Merit : Michael G. Cody, Oliver J. Conlon.

Passed : Peter F. Houlihan, Patrick J. Madigan, John A. O'Dwyer, James G. Orange, Richard R. Pierse, Jeremiah A. Reidy, James I. Sexton.

31 candidates attended ; 9 passed.

The Centenary Prize was awarded to Michael G. Cody.

SOLICITORS GOLFING SOCIETY

Interprovincial–Enterprise Trophy—at Newcastle Golf Club, County Down, Saturday 13th September, 1958. Please notify the Secretary now of intention

to compete as hotel bookings must be made immediately.

Autumn Meeting and President's Prize on Thursday, 2nd October 1958, at Royal Dublin Golf Club, Dollymount, Dublin.

HOUSING (AMENDMENT) ACT, 1958

General.

The Act proposes to encourage private enterprise in the conservation and improvement of the existing stock of dwellings by amending and extending the legislation governing the purchase, reconstruction, repair and improvement of previously occupied houses and the conversion of the larger houses into separate dwellings of adequate standards. Provision is also made with a view to raising the standards of housing in rural areas.

The Act aims to stimulate the slum-clearance operations of housing authorities by equating the rate of financial assistance available to rural housing authorities to that available in urban and county borough areas and facilitating the acquisition of land for housing purposes and the demolition or repair of unfit houses.

Grants.

New and Reconstructed Houses :

It is proposed

(*a*) to extend from 1st April, 1958, to 1st April, 1960, the time in which a house must be completed to qualify for grants to private persons and public utility societies (section 6) ;

(*b*) to increase by £25 the grant for a new serviced house commenced on or after 30th June, 1958, in an area where a public piped water supply and sewerage scheme are not available or are not being provided, thus making the grant for a serviced house greater by £75 than the grant for an unserviced house in such an area (section 8) ;

(*c*) to increase by £20 the rate of grant for reconstruction works, commenced on or after 30th June, 1958, i.e., from £80, £100 and £120 for a 3, 4 or 5 or more roomed house to £100, £120 and £140 for such houses (section 8).

Provision of Water and Sewerage Facilities in Private Houses :

It is proposed to increase by £15, i.e., from £60 to £75, the grant for the provision and installation of private water supply and sewerage system commenced on or after 30th June, 1958 (section 12).

Repair and Improvement Works :

It is proposed

(*a*) to increase by £20 the rate of grant for each separate dwelling provided by works commencing on or after 30th June, 1958, i.e., from £80, £100 and £120, to £100, £120 and £140 for dwelling up to 3 rooms, of 4 rooms and of 5 or more rooms ;

(*b*) to simplify administration of these grants and to extend their scope by

(i) deleting the requirement that the house to be repaired or improved must be occupied by or suitable for occupation by persons of the working classes or agricultural labourers, and

(ii) providing that payment of the grant may be made only if the Minister is satisfied that the works to be carried out are essential for the purpose of providing suitable housing accommodation (section 11).

The effect of these proposals would be that eligibility for repair and improvement grants would be tested by the type of works to be carried out and not by the suitability of the house for a limited class of occupants.

Housing authorities carrying out repair works in default of house owners following service of compulsory repairs notices would qualify for grants of similar amounts (section 10).

Supplementary Grants by Housing Authorities :

It is proposed that housing authorities be enabled to pay supplementary grants equal to the State grants for reconstruction works (section 8) and for the provision and installation of private water supply and sewerage services (section 12) where the works or installation, as the case may be, commenced on or after 30th June, 1958.

This provision would replace the present scale of supplementary grants which is graded according to the applicant's income or the rateable valuation of his holding.

Loans.

It is proposed that housing authorities be enabled to make loans for the carrying out of works of repair or improvement provided the works are essential for the purpose of providing suitable housing accommodation (section 13).

Under this provision, persons proposing to execute repair or improvement works to a house to be used either for their own occupation or for letting as a separate dwelling or in self-contained flats, could apply to the housing authority for a loan on the security of the property to be repaired.

Statutory authority exists under the Small Dwellings Acquisition Acts but is not operated at present, empowering housing authorities to make

loans for the purchase of previously occupied houses. It is proposed to enable housing authorities to exercise these powers in relation to the lower income groups and provision is included in the Act for re-defining the market value of such houses so as to include for the purposes of calculating a loan, costs such as stamp duties and legal fees incidental to the acquisition of the ownership of a previously occupied house (section 30). It is also proposed that the loans for repair and improvement works may be associated with loans for purchase under the Small Dwellings Acquisition Acts (section 13). The effect of the latter procedure would be that

(*a*) a person who is in occupation of a house which is the subject of a Small Dwellings loan may obtain a further advance for repair and improvement works and the advance would be repayable with the Small Dwellings loan;

(*b*) a person who purchases the interest in a house which is already the subject of a Small Dwellings loan may similarly obtain an advance and the advance would be repayable with the Small Dwellings loan;

(*c*) a person who proposes to purchase and repair a previously occupied house may apply for a Small Dwellings loan for the purchase transaction and may obtain a further advance for repair and improvement works, which would be repayable with the Small Dwellings loan.

Rates Remission.

At present, the valuation for rating purposes of new houses which qualify for grants is reduced by two-thirds for a period of seven years. It is proposed to replace this system for future houses by a graduated scale of rates remission (section 31).

Under this provision, the valuation of a new grant house would in the first year be reduced by nine-tenths, in the second year by eight-tenths, and so on until full valuation is reached.

Subsidies for Housing Authorities.

Application of current urban subsidy system to rural areas.

The annual subsidy at present payable in respect of new rural housing is 60 per cent. of loan charges subject to fixed cost maxima. Payment of the subsidy is not conditional on operations in such as clearance of unfit dwellings, the relief of overcrowding, or other factors which determine the rate of subsidy payable in urban areas. It is proposed to apply the urban scale of subsidies to future cottages in rural areas so that the annual subsidy will be 66⅔ per cent. of loan charges subject to the fixed cost maxima where, for example, overcrowding has been relieved or unfit dwellings have been replaced or repaired or any other statutory operation is carried out by the housing authority (section 14). The differential rate of urban subsidy, 33⅓ per cent. of loan charges, will be available for other rural housing, i.e., housing not related to slum-clearance or overcrowding relief or other statutory operations. In association with this proposal, it will become mandatory on rural housing authorities, as it is on urban authorities, to adopt Bye-laws for the prevention of overcrowding (section 19).

Labourers Acts.

The housing code comprehensively referred to as the Labourers Acts is due to expire in 1960. This code will ultimately be incorporated with the Housing of the Working Classes Acts into a single housing code. It is proposed, therefore, to make a general provision continuing the Labourers Acts in force until they are replaced or repealed (section 26).

Provision is made in the Act confirming the power of housing authorities to provide flats under the Labourers Acts but making it clear that such flats are not to be regarded as coming within the scope of the purchase scheme provisions of the Labourers Act, 1936 (section 27).

Housing of the Working Classes.

It is proposed that owners of premises which are the subject of Demolition Orders should be required when the Order becomes operative, to secure the premises against further occupation (section 22). The purpose of the provision is to prevent a recurrence of the past experience of housing authorities who, having rehoused a family from an unfit house, found that the house had been reoccupied, thus hindering enforcement of the Demolition Order.

It is proposed that where land to be acquired by a housing authority by means of a compulsory purchase order includes dwelling-houses which are unfit for human habitation and are incapable at a reasonable cost of being made fit, the compensation payable in respect of the unfit dwelling-houses, if the Minister confirms the Order, shall be site value less the cost of clearance. The Minister would have power, if he were not satisfied that a particular dwelling-house were unfit for human habitation and incapable at reasonable cost of being made fit, to exclude the premises from the "unfit" category, but to confirm the acquisition so that the compensation would be related to the market value. It is proposed that "dwelling-house" should be defined as a building used wholly or principally for human habitation (section 24).

Provision is made in section 23 widening the power which a housing authority has to close any part of a house *let* for human habitation so as to bring within this power any part of a house *used* for human habitation, whether or not the occupation is a letting.

The term " market value " as defined by section 32 (*b*) of the Housing Act 1950 is extended to mean that in the case of a house not occupied for the first time—the amount, which, in the opinion of the local authority, the house if sold in the open market might reasonably be expected to realise, together with so much, if any, of the *amount* of the *legal* and other expenses incidental to the acquisition of the ownership of the house, as the local authority may consider proper (section 30).

DECISIONS OF PROFESSIONAL INTEREST

Practice Note. Costs of Pleadings in High Court.

In Gregory *v.* Minister for Finance, a High Court jury action heard in Hilary Term, 1958, the jury found for the plaintiff, but awarded only £350 damages, the injuries which the plaintiff had sustained having turned out to be considerably less serious than was expected when proceedings were instituted. The trial Judge (Murnaghan J.) did not grant a special certificate for costs under s. 12 (1) of the Courts of Justice Act, 1936. Counsel for the plaintiff applied *ex parte* to his Lordship for a special certificate for the costs of instructions for pleadings, and of the plenary summons, statement of claim and reply, such costs to be taxed on the Circuit Court scale. Murnaghan J., after observing that, without such a certificate, all the plaintiff's solicitor could recover were the costs of a Circuit Court Civil bill and of instructions therefor, granted the plaintiff the special certificate sought, limited to the plenary summons and the statement of claim and the costs of instructions therefor.

(92 I.L.T. & S.J. 183.)

Contents of Land Commission Report must be disclosed to the objector who must be given an opportunity of refuting it.

When hearing an objection to which s. 32, sub-s. 3 of the Land Act, 1933, applies it was held by the Supreme Court (Maguire C. J., Lavery, Kingsmill Moore, and O'Daly J. J.) that the Lay Commissioners may not determine any question raised in the objection on information contained in a report from an official of the Land Commission, when the contents of the report are not disclosed to the objector and when he has not had the opportunity of refuting the contents of the report.

Kingsmill Moore J., in his judgment stated that he agreed that the determination of the Lay Commissioners could not stand and that the appeal must be allowed. In his opinion, objections must be heard upon oral evidence given before the Commissioners, or, in case leave were given to use an affidavit, with a right reserved to the objector to require the attendance for cross-examination of any person who had made an affidavit. It was not open to the Commissioners to determine any question raised in an objection on information contained in a report which was not disclosed to the objector and which he had no opportunity of refuting. Any matters which had or might have any bearing on the questions at issue or which might influence the decision of the Commissioners must be brought before them in open court so that the objector might know of them, might be able to test them on cross-examination, and might meet them, if he thought fit, by evidence given in support of his objection.

(Re Roscrea Meat Products Ltd.—92 I.L.T.R. 100).

Meaning of " without prejudice " in letter.

On the night of 31st December, 1954, and 1st January, 1955, the plaintiff was injured whilst in the defendants' employment. She elected to sue the defendants in negligence in the High Court and the jury having disagreed was discharged without a verdict. The defendant company appealed to the Supreme Court on the ground that there was no evidence of negligence to go to the jury and the jury should have been directed to find for the defendants at the close of the plaintiff's case. The appeal of the defendants was allowed with costs. The plaintiff thereupon asked the Supreme Court under the Workmen's Compensation Act, 1934, section 60 to have compensation assessed under that Act by the Supreme Court under sub-section (3) or to have the question of assessment remitted to the Circuit Court under sub-section (4) thereof. The defendant company objected on the ground that the plaintiff's action for negligence had not been instituted until more than six months had elapsed from the date of the accident.

It was held by the Supreme Court that the mere existence of two letters marked " without prejudice " passing some ten weeks before the termination of the six months period without any other evidence of negotiations for a settlement was not sufficient to raise the presumption that those letters were concerned with an attempt at settlement, and even if they were, it would not be proper to conclude that such attempts persisted to a date so near the expiration of the six months as to provide reasonable

cause for not instituting proceedings within that period. (Marron *v.* Louth County Council, 72 I.L.T.R. 101 explained and distinguished.)

Per Kingsmill Moore J.:—But what was the evidence? Counsel for the plaintiff sought to rely on the existence of a letter from the insurers of the company to the plaintiff's solicitor dated 15th April, 1955, and an answer dated 19th April, 1955. The letter of April 15th was marked "without prejudice" and counsel said correctly that the answer would also be assumed to be without prejudice. Although the defendant on whose behalf the letter of April 15th was written, desired to waive any question of prejudice and have this letter read, counsel for the plaintiff would not agree to that. His contention was that from the mere existence of a letter marked "without prejudice," followed by an answer, the Court should conclude, first that negotiations for settlement were commenced, and secondly that they continued to exist from April 15th to July 21st, when the six months expired. Counsel for the company, on the other hand, was anxious to read the letters and to give evidence of subsequent telephone conversations in order to show that the letters had nothing whatsoever to say to any negotiations for settlement.

In Marron's Case there was independent evidence of negotiations for settlement and when those efforts were followed by a series of letters headed "without prejudice" it was a probable assumption that those letters were a continuation of the negotiations. If so, as the interchange of letters continued beyond the expiration of the six months, reasonable cause could be found. In the present case there was no evidence, apart from the "without prejudice" heading to two letters, that any thoughts of settlement were entertained; and the two letters passed some ten weeks before the termination of the six months period. Counsel was forced to contend first that the introduction of the words "without prejudice" created a probable inference that the letters opened up negotiations for settlement and, secondly, that although there were no further letters so marked, the negotiations continued till the six months had expired. It may be conceded that the most apt and most proper use of the words "without prejudice", is to protect negotiations for settlement, but it would be to close one's eyes to all experience of the way correspondence is conducted between solicitors to suggest that all or even the majority of letters so headed have to do with attempts at settlement of the case. *The use of those words has unfortunately become quite indiscriminate in legal correspondence.* Hardly a case comes before the Courts in which there is not a series of letters unconnected with settlements but bearing this heading. With some solicitors the introduction of the phrase seems to be an automatic reaction. Whilst his Lordship did not desire to encourage such an abuse, he was not prepared to punish it by making an assumption against a litigant that appeared to him quite unwarranted.

"Moreover," his Lordship continued, "the words may quite properly be used in correspondence which has nothing to do with a settlement of the action but with an agreement on minor points, to facilitate the conduct of the action or save expenses."

(Christie *v.* Odeon Ltd.—92 I.L.T.R. 107.)

Lien of solicitor on papers upon change of solicitor not upheld.

The general rule that a solicitor, who is discharged by his client during an action can retain any papers in the cause in his possession until his costs have been paid, does not apply to a petition for divorce since divorce affects the status not merely of the petitioner, but of one or more other parties. Further, there is an overriding public interest in a full and complete investigation of the facts of any divorce case and the assertion of an absolute right to refuse to deliver up material papers must be calculated to embarrass that full investigation which the public interest requires in divorce proceedings.

A husband petitioner discharged his original solicitor and instructed a second solicitor who obtained the papers on his undertaking to respect the original solicitor's lien for costs. The petitioner again changed his solicitor, and, on his application the registrar ordered the second solicitor to deliver up the papers on the undertaking of the present solicitor to respect the liens of the first two. Against that order the second solicitor appealed, contending that he had a lien on the papers for his costs which he was entitled to assert without qualification. Held by Wrangham J. dismissing the appeal, that the second solicitor did not possess the absolute lien which he claimed.

Hughes *v.* Hughes (1958) 2 W.L.R. 934; (1958) 2 All E.R. 366.

Note.—This decision was reversed on appeal by the Court of Appeal.

Vendor's charge for purchase of house arises the moment the contract is executed and solicitor's costs for completing unpaid purchase must be borne by 'testatrix' residuary estate.

The testatrix by her will dated Sept. 8th, 1952, bequeathed her residuary estate to charities. By a codicil dated Jan. 2, 1953, she bequeathed £10,000 to K. On Mar. 31, 1953, the testatrix agreed to buy a freehold dwellinghouse in Brighton for £3,500

and paid a deposit of £350. The contract incorporated cl. 32 (1)—(9) of the Law Society's Conditions of Sale which provided for a vendor re-selling after notice on the purchaser's default. On Apr. 10th, 1953, the testatrix, replying to an inquiry from her solicitors made before the contract was signed, informed them by letter that she would like to leave the house to K. as well as the £10,000. On Apr. 17, 1953, the testatrix executed a second codicil which stated, "Whereas I have entered into a contract for the purchase of (the house), I hereby give the said property free of all duties to my daughter" K. On Apr. 21, 1953, which was before the date fixed for completion of the contract, the testatrix died. By s. 35 (1) of the Administration of Estates Act, 1925, where a person dies entitled to an interest in property charged with the payment of money, including a lien for unpaid purchase money, the charge would primarily be payable out of the interest charged, if the deceased had not by will or other document signified a contrary intention.

Held: (1) K. took the dwelling-house subject to a charge for the unpaid balance of the purchase money, because the vendor's lien for unpaid purchase money arose at the moment when the contract was signed (cl. 32 (1)–(3) of the conditions of sale not preventing the lien arising) and accordingly s. 35 of the Administration of Estates Act, 1925, applied, as a contrary intention excluding it was not signified either by the testatrix' letter or by her second codicil.

(2) The solicitors' costs of completing the purchase must be borne by the testatrix' residuary estate, the solicitors not having at her death possession of any title deeds to the property and having no lien thereon.

Per Upjohn J.:—It is submitted by counsel for the specific devisee that, as the date of the death of the testatrix was before the date fixed for completion, the vendor had no lien on the estate for the balance of the unpaid purchase money. A vendor's lien he says only arises at the date fixed for completion. He submits that the executors, in paying the balance of the purchase money shortly after the date of the testatrix' death, were not discharging a charge in any way, but were performing a contract.

Counsel for the residuary legatees submits that the vendor's charge for the purchase money arises the moment that the contract is signed. The remedies available to enforce that charge may vary according to the state of the transaction, i.e., until the date fixed for completion, the vendor cannot actively enforce his lien by action, but he has the right (subject always to the express terms of the contract) to remain in possession and to refuse to execute a conveyance until the purchase money is paid. After the date fixed for completion he has a right to enforce the charge or lien by appropriate proceedings in these courts. Counsel submits the statement of Sir George Jessel, M.R., shows that throughout, from the moment the contract was executed, the vendor has a charge for his unpaid purchase money. I think that that argument is quite correct.

At first sight it seemed to me that the testatrix had expressed or had signified a contrary intention, because it seemed illusory to make a codicil giving the property to her daughter if indeed all she was giving was the property subject to payment of the unpaid purchase price, especially as she considered apparently that the gift would be substantial, for she directed that it was to be free of all duties. Having heard full argument, however, I am unable to come to that conclusion. She gives the property which she has contracted to purchase. That is no doubt the property referred to in the contract she had just signed, but it says nothing, either expressly or by implication, as to the application of s. 35, and I see nothing which can exclude the operation of that section.

The last matter is with regard to the solicitors' costs incurred in completing the purchase. The scale fee seems to have been some £56, added to which there are search fees and petty disbursements, and so on. The residuary legatees can only establish a case for throwing those costs on the property if they can show that those costs were in some way equitably charged on it. No doubt had the conveyance been completed in the lifetime of the testatrix, the solicitors would have received the deeds in the normal course and would have had an equitable lien or those deeds for any costs remaining unpaid; but what was the position at the relevant time, i.e., at the date of the testatrix' death? They were then doing work. No bill of costs had been rendered. Nothing at that time was due from the testatrix to her solicitors. Furthermore they could have no lien on anything for they had no deeds in their possession. It was somehow suggested they had some form of lien on the contract. I do not follow that. It was their duty to carry through the contract to completion. I cannot see that at the relevant date this inchoate claim to costs was charged on anything. Accordingly, those costs must be borne by residue.

Note.—Section 35 of the Administration of Estates Act replaces in England Locke King's Acts of 1854, 1867 and 1877. (Re Birmingham Decd.—Savage *v.* Stannard (1958) 2. All E.R. 397).

Transfer of settlement shares by donor liable to ad valorem stamp duty on the consideration given by her son's reversionary interest in the shares.

On June 18, 1956, O.'s son, being absolutely entitled to shares subject to O.'s life interest under a settlement, made an oral agreement with O. to exchange his reversionary interest in these settlement shares for other shares to the intent that O.'s life interest in the settlement shares should be enlarged into absolute ownership. On June 26, 1956, O. transferred to nominees for her son the shares that she had agreed to exchange, the trustees of the settlement executed a transfer of the settlement shares to her (her son not being a party to this deed) and the trustees, O. and her son executed a deed of release to the trustees in respect of the settlement trusts. The deed of release recited that on June 18, 1956, O.'s son and O. had agreed that they would exchange on June 26 the reversionary interest of the former for the shares of the latter "to the intent that" O.'s life interest in the settlement shares "should be enlarged into absolute ownership thereof." The deed of release continued "The trust fund . . . is now held by the trustees in trust for O. absolutely . . . and it is intended that the same shall forthwith be transferred to O. The operative part began: "Now in consideration of the premises and of the transfer to be made as aforesaid," and this was followed by the release and discharge to the trustees. On appeal from a decision that the transfer of the settlement shares by the trustees did not attract *ad valorem* stamp duty under s. 54 of the Stamp Act, 1891, as O.'s son's beneficial interest in the settlement shares had passed by the oral contract of June 18, 1956, writing not being necessary for this purpose by reason of s. 53 (2) of the Law of Property Act, 1925.

Held by the Court of Appeal (Lord Evershed M.R., Morris and Ormerod, L.J., reversing Upjohn J., that the transfer of the settlement shares to O. was liable to *ad valorem* stamp duty (at a rate appropriate to a conveyance on sale) on the consideration given by her for her son's reversionary interest in the settlement shares, notwithstanding that he was not a party to the deed transferring them, because (i) O. had not acquired the whole beneficial interest in the settlement shares before the three deeds of June 26, 1956, were executed and (ii), the three deeds of June 26 being contemporaneous, the deed of transfer of the settlement shares was the completion of the oral contract of exchange of June 18, the true view of the contemporaneous deeds (deduced particularly from the terms of the deed of release) being that the trustees were enabled to transfer the shares with all rights to them to O.

Note.—Though the question of the effect of s. 53 (2) of the Law of Property Act, 1925, did not arise for decision by the Court of Appeal, the court expressly declined to accept the decision in the court below on that question. On the further question whether the contract of June 18, 1956, would have been ineffective to transfer the son's equitable reversionary interest in the shares on the ground that it was an oral contract the present case should be compared with Grey *v.* Inland Revenue Commissioners.

(Oughtred *v.* Inland Revenue Commissioners—(1958) 2 All. E.R. 443).

Stamp duties on voluntary dispositions—duty payable.

On Feb. 1, 1955, H. transferred eighteen thousand shares in a company to trustees to hold to his order, and on Feb. 18, 1955, he orally and irrevocably directed the trustees to divide the shares into six groups of three thousand shares each and to hold one such group on the trusts contained in each of six settlements made by him in 1949 and 1950 in favour of his grandchildren. The directions were given to the intent that they should result in the entire exclusion of H. from all future right, title and benefit to or in the shares. On Mar. 25, 1955, the trustees, who were also the trustees of the six settlements, executed six deeds, called declarations of trust, each of which recited H.'s directions as Feb. 18, 1955, and the trustees' acceptance of them. In each case the trustees declared that they had been holding the shares since Feb. 18 and were then holding them on the trusts of the relevant settlement of 1949 or of 1950. H. also executed each deed to testify the nature of the directions that he had previously given. The six deeds were charged with *ad valorem* stamp duty as voluntary dispositions within s. 74 of the Finance (1909–10) Act, 1910.

Held by the Court of Appeal (Morris and Ormerod L.J., Lord Evershed, M.R., dissenting), reversing Upjohn J. that H.'s oral direction to the trustees on Feb. 18, 1955, though not a direct assignment or transfer of his equitable interest in the shares, was a purported disposition of that interest, within the meaning of the word "disposition" in s. 205 (1) (ii) and s. 53 (1) (*c*) of the Law of Property Act, 1925, and, being oral, was rendered ineffective by s. 53 (1) (*c*); the deeds of Mar. 25, 1955, operated, in the circumstances, as effective declarations of trust and attracted *ad valorem* stamp duty. Dictum of Sargant, J., in Re Chrimes ((1917) 1 Ch. at pp. 36, 37) considered.

Note.—All members of the Court of Appeal agreed that the directions given on Feb. 18, 1955, did not constitute an assignment of a subsisting

equitable interest; and Morris, L.J., as well as Lord Evershed, M.R., held that the directions were not a declaration of trust of a subsisting equitable interest.

Lord Evershed took the view that a declaration creating new trusts (such as the direction of Feb. 18 were expressed to be) did not become a "disposition" of a subsisting equitable interest merely because the subsisting equitable interest was determined by the creation of new trusts. It seems, therefore, that if a man, being both legally and beneficially entitled to personalty, declares a trust of it, writing is not necessary but, if he is entitled only in equity, a declaration of new trusts, which in effect replace his beneficial interest, must be in writing. Section 53 (1) of the English Law of Property Act 1925 replaces the Statute of Frauds and specifies the transactions that are required to be in writing in order to be valid.

OBITUARY

Mr. Robert Heuston, Solicitor, died at a Dublin Hospital on the 13th June, 1958.

Mr. Heuston served his apprenticeship with the late Mr. Thomas O'Meara, 14 Fleet Street and Mr. David J. O'Meara, Mallow, Co. Cork, was admitted in Trinity Sittings, 1904 and practised at Tipperary up to his retirement in 1949.

Mr. Roger O'Sullivan, Solicitor, died at his residence "Yewfort," Patrickswell, Co. Limerick on the 7th July, 1958.

Mr. O'Sullivan served his apprenticeship with the late Mr. Philip J. O'Sullivan, Limerick, was admitted in Michaelmas Sittings 1931, and practised at Limerick under the style of Philip J. O'Sullivan & Son.

Mr. James C. Taylor, Solicitor died on the 7th July, 1958.

Mr. Taylor served his apprenticeship with the late Mr. Robert Parsons, Belfast, was admitted in Trinity Sittings, 1904 and practised at Scottish Provident Buildings, Belfast as senior partner in the firm of Messrs. J. C. Taylor & Co. He was an extraordinary member of the Council of the Society from 1931 to the date of his death.

Mr. Richard J. McDonnell, Solicitor, died at a Dublin Nursing Home on the 15th July, 1958.

Mr. McDonnell served his apprenticeship with the late Mr. William H. Spence, 37 Westmoreland Street, Dublin, was admitted in Hilary Sittings, 1916 and practised at 4 Templemore Avenue, Rathgar, Dublin.

Mr. Hutchinson Eric Davidson, Solicitor, died at his residence "Rus-in-Urbe," Ballinasloe, Co. Galway on the 22nd July, 1958.

Mr. Davidson served his apprenticeship with the late Mr. Hutchinson Davidson, Ballinasloe, was admitted in Trinity Sittings, 1921 and practised at Ballinasloe under the style of Messrs. Hutchinson Davidson & Son.

Mr. Joseph McCartney, Solicitor died at a Dublin Hospital on the 24th July, 1958.

Mr. McCartney served his apprenticeship with the late Mr. Patrick J. Hannan, Longford, was admitted in Trinity Sittings, 1938 and practised at Dún Laoghaire, Co. Dublin.

THE REGISTRY

Register B

Solicitor seeks Assistantship late September or October. Preferably Dublin or good Provincial Town near Dublin. Box No. B 226.

Solicitor presently in practice desires partnership in well established firm in good provincial town preferably Leinster. Box No. B 227.

Young man who passed Final Examination with merit and who is to be admitted in October seeks position as qualified assistant to firm of solicitors in city or country. Box No. B 228.

REGISTRATION OF TITLE ACTS, 1891 and 1942

Issue of Duplicate Land Certificate

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

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

Dated the 28th day of July, 1958.

Joseph O'Byrne,
Registrar of Titles.

Central Office,
Land Registry,
Chancery Street,
Dublin.

SCHEDULE.

1. Registered Owner, Bernard Murphy. Folio Number, 579, County Wexford. Lands of Battlestown, in the Barony of Shelbourne, containing 90a. 3r. 5½p.

2. Registered Owner, Mary E. Cornyn. Folio Number, 23224, County Galway. 3a. 2r. 3p. of the lands of Clonbur and 33a. 2r. 0p. of the lands of Cloonsheen, both situate in the Barony of Dunmore.

3. Registered limited owners, Thomas Whitney and Henrietta Whitney. Folio Number, 55, County Wexford. Lands of Ballinacoola situate in the Barony of Gorey, containing 102a. 3r. 12p.

4. Registered Owner, Michael Magner. Folio Number, 43, County Clare. Lands of Tullaroe, in the Barony of Moyarta, containing 7a. 2r. 2p.

5. Registered Owner, Thomas Cooney. Folios Number, 2618 and 2710, County Galway. Lands of Ballinastack, in the Barony of Ballymoe, containing 22a. 2r. 26p. and 1a. 1r. 0p.

THE SOLICITORS' BENEVOLENT ASSOCIATION

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

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

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

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

Address :

SECRETARY,

SOLICITORS' BENEVOLENT ASSOCIATION,

18, HUME STREET,

DUBLIN.

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AUG.–SEPT.
1958

THE GAZETTE

of the

INCORPORATED LAW SOCIETY OF IRELAND

President
JOHN CARRIGAN

Vice-Presidents
JOHN R. HALPIN,
FRANCIS J. LANIGAN

Secretary
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

MEETING OF THE COUNCIL

JULY 17TH: The President in the Chair. Also present Arthur Cox, Ralph J. Walker, John J. Sheil, R. McD Taylor, John Maher, Eunan McCarron, F. X. Burke, James J. O'Connor, P. R. Boyd, George A. Nolan, Thomas A. O'Reilly, Francis J. Lanigan, Desmond J. Collins.

The following was among the business transacted:

Examination Results

THE Council adopted a report submitted by the Court of Examiners on the results of the first and second Irish examinations held in July.

EXAMINATION RESULTS

AT the examinations held on the 4th day of July, 1958 under the Solicitors' Act, 1954 the following passed the examinations.

First Examination in Irish

William Sydney Barrett; Charles J. Bergin; Michael A. Buckley; Malachy Francis Concannon; Joseph L. Dundon; Laurence A. Farrell; Bartholomew Flynn; Charles Edwin Gavin; James A. Harte; Joseph N. Hughes (Jnr.); William Edward Leahy; Neil Mathews; James J. Murtagh; Brian M. McLaughlin; James R. O'Donnell; Patrick John O'Shea; Peter John Woods.

17 candidates attended; 17 passed.

Second Examination in Irish

Richard J. Branigan; Michael M. Davern; Thomas Finbarr O'Connell; Anthony J. O'Reilly; Donald O. Stuart; Diarmuid Teevan.

7 candidates attended; 6 passed.

PENSION ANNUITY SCHEME FOR SOLICITORS

Following the enactment of part V of the Finance Act, 1958, which was introduced on the suggestion of the Society, the Council have asked a firm of experts to draw up proposals for a pension annuity scheme which will enable solicitors to make contributions to pensions payable on reaching 65 or 70 years of age. The pension benefits assured by such schemes can usually be arranged on the basis of the number of units contributed by the solicitor during the contribution period. There is no fixed annual premium and the contributor may decide for himself how much he will pay into the fund during any year. Contributions may be deducted from earned income liable to income tax and surtax. A further statement will be published in due course.

SOLICITOR'S APPRENTICE,S DEBATING SOCIETY

THE following are the names of the officers and committee, for the session 1958–59:

Auditor: Richard M. Neville; *Acting Treasurer:* Michael J. Hogan; *Correspondence Secretary:* Miss Maura Berkery; *Record Secretary:* Vacant; *Committee:* Miss Maureen Timoney, Denis M. Murnaghan, Richard R. Pierse; *Ex-Auditor (ex officio member):* Laurence F. Branigan.

The following are the awards for the session 1958–59:

ORATORY

Incorporated Law Society's Gold Medal .. .. Richard M. Neville.
Society's Silver Medal .. Dominic Mockler.
Special Certificate .. Dermot Bouchier-Hayes.

LEGAL DEBATE

President's Gold Medal .. James Ian Sexton.
Society's Silver Medal .. Dominic Mockler.

IMPROMPTU SPEECHES

Vice-President's Gold Medal Michael J. Hogan.
Vice-President's Silver Medal .. .. .. John Morrissey.

IRISH DEBATE

Society's Gold Medal .. Miss Ailin Gibbons.
Society's Silver Medal .. Miss Maura Berkery.

FIRST YEAR SPEAKERS

Society's Silver Medal .. Miss Maura Berkery.

DINNER DANCE

FORMS of application for tickets are issued with this number of the GAZETTE. The Dance will be held in the Shelbourne Hotel, Dublin on Thursday, 20th November, the date of the Ordinary General Meeting. Tickets will cost one guinea each.

LECTURES MICHAELMAS SITTINGS

Course A.—Company Law and Administration of Estates, Mondays and Thursdays, 2.15 p.m., commencing Monday, October 13th.

Course B.—Conveyancing Law and Practice and Land Law. Tuesdays and Fridays, 2.15 p.m., commencing Tuesday, October 14th.

Course C.—The Procedure and Practice of the Courts. Tuesdays and Saturdays at 9 a.m., commencing Tuesday, October 14th.

Course D.—Taxation including death duties. Mondays at 9 a.m. and Saturdays at 10 a.m., commencing Monday, October 13th.

Course E.—Book-keeping. Mondays and Thursdays at 5 p.m., commencing Monday, October 13th.

Course F.—The rights duties and responsibilities of solicitors two lectures. The dates on which the lectures will be held will be announced at a later date.

Fee £8 8s. for each course except Course E for which the fee is £6 6s. and Course F for which there is no fee.

HIGH COURT RULES 1958 (S.I. No. 159/1958)

THE attention of members is drawn to the above-mentioned Instrument which may be purchased at the Government Publications Sales Office, price 9d. plus postage. Rule 2 provides for the procedure in certain actions under the Hire Purchase Act 1946. Rule 3 deals with appeals to the High Court from the Circuit Court and provides for a uniform practice throughout the country in the case of taxation of costs and the issue of execution orders. Rule 4 provides that residence of a plaintiff in Northern Ireland shall not of itself entitle a defendant to security for costs. Rule 5 is consequential on the recent decision to alter the months in which the High Court goes on circuit from March and July to March and October, and is designed to facilitate the setting down of original High Court actions for hearing outside Dublin. It provides that in proceedings to which the rule applies, pleadings may be delivered or amended in the long vacation. The rule applies to proceedings in respect of which any party shall deliver or shall have delivered to the other party, or parties certificate of his solicitor that he intends to apply to the vacation Judge for an order for the trial of such proceedings at the next succeeding sittings of the High Court elsewhere than in Dublin. A copy of such certificate shall within two days after the same shall have been delivered, be left with, and filed by the proper officer in the Central Office.

ADMISSIONS AS SOLICITORS

1st August, 1957 to 31st July, 1958.

Name	*Service with*
BOWLER, SUSANNA, 87 Swords Road, Whitehall, Dublin.	THOMAS M. COSTELLOE, 5 Upper O'Connell Street, Dublin.
BRANIGAN, RICHARD JOSEPH, 16 William Street, Drogheda, Co. Louth.	LAURENCE F. BRANIGAN and MALACHY S. MATTHEWS, Drogheda, Co. Louth.
CHARLTON, GERARD, B.A., Irvinstown, Co. Fermanagh.	FRANK THORNTON, Kells, Co. Meath.
CLAFFEY, BRIAN J., B.A., Clonfert Avenue, Portumna, Co. Galway.	EDWARD WALSH, Emmet Street, Birr. Co. Offaly.

Name	*Service with*
Downes, Francis X., 486 Collins Avenue, Whitehall, Dublin.	Patrick J. Murray, 16 Molesworth Street, Dublin.
Ellis, Donal J., B.A., 96 Bushy Park Road, Terenure, Dublin.	Arthur R. J. McDonald, 116 Grafton Street, Dublin.
Fagan Patrick, 23 Fitzwilliam Place, Dublin.	Bernard J. Seales, 20 Wicklow Street, Dublin.
Hayes, John L. F., Mortgage, Meanus, Kilmallock, Co. Limerick.	Michael O'B. Kelly, 98 O'Connell Street, Limerick.
Jellett, Thomas Barrington, Coolmine, Clonsilla, Co. Dublin.	Hewett B. Jellett, 10 Ely Place, and John H. Sides, 13 Hume Street, Dublin.
Kealy, John F., "Mount Pleasant," Dublin Road, Drogheda, Co. Louth.	John L. Kealy and Robert McD. Taylor, Drogheda, Co. Louth.
Keane, Michael P., Society Street, Ballinasloe, Co. Galway.	Brendan M. Glynn, Ballinasloe, Co. Galway.
Lynch, Gregory A., "Brunnhilde," Dungriffan Road, Howth, Co. Dublin.	Marcus A. Lynch, 12 Lower Ormond Quay, Dublin.
McKnight, John, B.A., LL.B., "Moninna," Dublin Road, Newry, Co. Down.	Francis A. J. O'Hare, 11 Lower Ormond Quay, Dublin.
Mackey, Desmond J., 81 Upper George's Street, Dun Laoghaire, Co. Dublin.	Patrck B. McCarthy, 59 Dame Street, Dublin; Louis V. Nolan, 3 Lincoln Place, Dublin, and Dominic M. Dowling, 37 St Stephen's Green, Dublin.
Marren, Martin E., B.A., LL.B., Killasser, Swinford, Co. Mayo.	James A. Kelly, 3 Lower O'Connell Street, Dublin.
Martin, James Kevin, Kilbride, Trim, Co. Meath.	Anthony J. Malone, Trim, Co. Meath.
Moylan, Peter F., B.A., Main Street, Loughrea, Co. Galway.	Vincent P. Shields, Loughrea, Co. Galway.
Murphy, Gerard A., "Stella Maris," Blackrock, Co. Louth.	James H. Murphy, Dundalk Co. Louth.
Nugent, John Dillon, Modeshill, The Grove, Stillorgan, Co. Dublin.	Patrick F. O'Reilly and T. Finbarr O'Reilly, 8 South Great George's Street, Dublin.
O'Cleirigh, Michael Brendan, 7 Oaklands Drive, Rathgar, Dublin.	Patrick M. O'Dwyer, Ballyhaunis, Co. Mayo.
O'Donoghue, Michael N. M., B.A., Parkmore, Tuam, Co. Galway.	Thomas A. O'Donoghue, Tuam, Co. Galway.
Powell, Patrick Collins, Woodfield, Shanakiel, Co. Cork.	Michael Powell, 48 Grand Parade, Cork.
Quinlan, Peter H., B.A., Corduff, Blanchardstown, Co. Dublin.	James O'Brien, Nenagh, Co. Tipperary.
Redmond, John P. 475 North Circular Road, Dublin.	John J. Walker, 31 Westmoreland Street, Dublin.
Rigney, Alban B., B.A., 177 Templeogue Road, Templeogue, Co. Dublin.	Denis H. O'Riordan, 9 Westmoreland Street, Dublin.
Smyth, Andrew F., 95 Kincora Road, Clontarf, Dublin.	Moya Quinlan, 15 Parnell Square, Dublin.
Taaffe, Fergus P., 18 New Ireland Road, Rialto, Dublin.	William B. Malone, 3 Lower O'Connell Street, Dublin.
Tanham, James N., 58 Kincora Road, Clontarf, Dublin.	Alexander W. Hughes, 3 Lower Merrion Street, Dublin, and Thomas K. Fitzgibbon, 18 Summer Street, Dublin.
Twomey, Thomas A., B.A., Newtown House, Maynooth, Co. Kildare.	Gerard Sweetman, 30 Lower Baggot Street, Dublin.
Wynne, Henry J., Main Street, Boyle, Co. Roscommon.	Patrick J. Connellan, Longford.

GERMAN EXTERNAL DEBTS TIME LIMITS

The Society have received from the Department of External Affairs a translation of the law concerning time limits in respect of German External debts and similar debts adopted by the Bundestag. Members who may be interested in the matter on behalf of clients may refer to the text of the translation at the Society's office. (G/1/58)

LAND COMMISSION COSTS IN RESUMPTION PROCEEDINGS

It frequently happens that following an Order of the Lay Commissioners for resumption of a holding, the owner has to obtain one or more grants of probate or administration for the purpose of making title for the Land Commission. The form of Order customarily made by the Lay Commissioners gives the owner the costs of *showing* title, and this has been held not to include the costs of work such as taking out a grant. Members who are concerned in resumption proceedings are advised to ascertain the state of the title before the application is heard, and to bring to the notice of the Lay Commissioners the additional costs which will be incurred in extracting grants or probate or letters of administration. In such cases, counsel or solicitor for the owner should apply for an Order directing the Land Commission to pay the costs of *making* title in a form which will include the additional costs necessarily incurred.

LIST OF NEW MEMBERS FROM 1st AUGUST, 1957, TO 31st JULY, 1958

Ann M. A. Burke, 63 Upper O'Connell Street, Dublin.
John P. Clifford, Cahirciveen, Co. Kerry.
Gerald J. Crehan, 27 Lower Ormond Quay, Dublin.
Ann M. B. Derham, 26 South Mall, Cork.
Dermot J. Devine, Athlone, Co. Westmeath.
William J. B. Fallon, Wicklow.
John F. Garavan, Castlebar, Co. Mayo.
Patrick J. Gearty, Longford.
Alphonsus Grogan, 6 Clare Street, Dublin.
Dermot Hegarty, 22 Bachelor's Walk, Dublin.
William D. J. Hodgins, Nenagh, Co. Tipperary.
Brian V. Hoey, Drogheda, Co. Louth.
Denis H. Johnston, Mullingar, Co. Westmeath.
John F. Kealy, Drogheda, Co. Louth.
Robert S. Kieran, 12 Clare Street, Dublin.
John B. Kirby, Main Street, Blackrock, Co. Dublin.
Martin J. Lavan, Dungarvan, Co. Waterford.
Patrick Liston, Rathkeale, Co. Limerick.
John R. Macken, Mullingar, Co. Westmeath.
Bryan Maguire, Fermoy, Co. Cork.
Bryan J. Murphy, 27 South Mall, Cork.
Mary M. Murray, 176 Merrion Road, Ballsbridge, Dublin.
Edwin R. McCloughan, Letterkenny, Co. Donegal.
Mairead McNally, 16 Molesworth Street, Dublin.
Michael A. O'Carroll, Athlone, Co. Westmeath.
Brian J. O'Connor, 7 Suffolk Street, Dublin.
Gerard O'Malley, 62 Dawson Street, Dublin.
James V. C. Phillips, Millstreet, Co. Cork.
Joseph Plunkett, 7/8 Lower Abbey Street, Dublin.
Michael P. O. Purcell, 16 Bellevue Park, Blackrock, Co. Dublin.
John P. Redmond, 31 Westmoreland Street, Dublin.
Michael A. Regan, Trim, Co. Meath.
Denis Ronan, 3 Lincoln Place, Dublin.
Brian W. Russell, 58 South Mall, Cork.
Sean Cormac Rynne, 14 Anglesea Avenue, Blackrock, Co. Dublin.
Patrick J. Sweeney, Dungloe, Co. Donegal.
Patrick E. Thornton, Enniscorthy, Co. Wexford.
Thomas A. Twomey, 30 Lower Baggot Street, Dublin.
Patrick P. Ward, 18 Lower Baggot Street, Dublin.
George A. Williams, 40 Mount Street, Dublin.

SOLICITORS' GOLFING SOCIETY

President's Prize (Mr. John Carrigan) at Royal Dublin Golf Club, Dollymount, Dublin, on 2nd October, 1958, Ryan Challenge Cup (for handicap of 13 and upwards), also other prizes. Annual General Meeting and Dinner afterwards in Clubhouse.

Enquiries to :— Gerard M. Doyle, Hon. Secretary, 50 Lower O'Connell Street, Dublin.

MEDICO-LEGAL SOCIETY

The Third Session of the Medico-Legal Society of Ireland will start next October. The following meetings have been arranged by the Council to take place in the Royal Hibernian Hotel, Dublin, in October and November :—

(1) Thursday, 30th October, 1958 at 8 p.m.— Showing of films, "Doctor Defendant", "Witness in Court", and "The Expert Witness" followed by a discussion.
(2) Thursday, 28th November, 1958—Paper on "Toxicology."

Meetings will also be held on Thursdays, 29th January, 1959, 26th February, 1959, and 19th March, 1959. The Annual Dinner of the Society will be held in the Royal Hibernian Hotel on Saturday, 25th October, 1958.

Further particulars regarding the Society's forthcoming dinner and meetings may be obtained from Mr. M. J. Leech, Hon. Secretary, 4 Chancery Place, Dublin.

FINANCE ACT 1958

This Act is a comprehensive measure containing 68 Sections and 4 Schedules.

Section 8 re-enacts existing law by providing that income of a wife who is living with her husband shall be deemed to be his income and that tax in respect thereof shall be assessable on him (subject to the right of either spouse to claim separate assessment).

Section 9 prescribes the method of division of personal reliefs between husband and wife where separate assessment is claimed. It is mainly a repetition of Section 25 of the Finance Act 1920.

Section 10 which is a new provision enables the Revenue for 1958–59 or any subsequent year to recover from a wife income tax or sur-tax assessed on her husband and not paid by him in so far as it is attributable to her income.

Section 11 likewise a new provision empowers a husband to serve on his deceased wife's personal representatives and on the inspector of taxes a notice disclaiming responsibility for unpaid tax in respect of his deceased wife's income whereupon the Revenue will exercise their powers of recovery under the previous section as against the wife's estate.

Section 12 defines the circumstances in which a married woman is not to be treated for tax purposes as living with her husband if separated under an

order of the Court or by a deed of separation or one of them is not resident in the State during the year of assessment.

Parv IV—Expenses Allowances and Benefits in Kind: Section 23 makes chargeable to income tax including surtax, expenses payments not already so chargeable, made to directors of trading companies and to certain higher paid employees as defined in Section 26 of the Act.

Section 24 provides, subject to certain exceptions, for the taxation of benefits in kind made available to directors and higher paid employees, including living accommodation entertainment and domestic services, unless used solely in performance of his duties.

Section 25 lays down the methods to be used for valuing certain benefits in kind including living accommodation placed at the disposal of a director or employee and other assets which may be provided for his use.

Section 26 is concerned with definitions. It defines among other things the employments as distinct from directorships, to which this Part of the Bill applies. These are employments the emoluments of which, including benefits in kind but without any deduction for allowable expenses are £1,500 or more in the material year.

Section 30 applies the provisions of this Part of the Act relating primarily to trading and investment companies, subject to necessary modifications, to persons employed by unincorporated societies and other bodies and to employees of partnerships or individuals engaged in a trade, profession or vocation.

Part 5 Retirement and other benefits for directors and employees.

Part 5 will not take effect until 6th April 1959 and is primarily designed to prevent avoidance of tax by means of certain arrangements made by companies and other bodies for the provision for their directors and employees, of retirement benefits which are not *bona fide* superannuation. Section 32 provides that generally provisions for retirement or other benefits to directors and employees of bodies corporate are liable to tax unless under Section 33 (a) payments are made to a superannuation fund approved by the Revenue Commissioners or (b) payments were made by way of premium to a retirement benefit scheme before the 24th April 1958 if the benefits thereunder are secured by premiums payable by the body corporate with or without contributions by the directors or employees under a life or endowment policy. Section 34 specifies the detailed conditions under which the Revenue Commissioners will approve of a retirement benefit scheme. In case a director or employee makes a contribution from his income towards a retirement benefit scheme the tax on such amount shall be deductable from the gross amount of tax payable provided that this contribution shall not exceed 15% of the total remuneration (Section 38).

Part VII—Retirement Annuities: Income Tax and Surtax. This part introduces a new form of tax relief for self-employed persons and non-pensionable employees. It provides for relief from income tax and surtax in respect of certain payments made by such persons to secure annuities for themselves in their old age. It also provides that income arising from the investment of such payments will be exempted from tax and that the annuities purchased by them will be treated as earned income for tax purposes.

Section 40 defines the person entitled to the new relief as those engaged in a trade or profession either on their own account or in partnership or in non-pensionable employment. It also links the relief to the payment of a "qualifying premium", i.e., a payment made by way of premium under an approved trust scheme established by a trade or professional organisation. Approval of a contract or scheme will be conditional on certain conditions being satisfied.

Where the contributions under an approved scheme are accumulated in a fund, the income arising will be exempted from tax.

The annuities purchased will qualify for earned income relief in so far as they are attributable to premiums or contributions in respect of which relief is given to the payers.

Section 41 provides that the payment of a "qualifying premium" will be treated as reducing the payer's "relevant earnings" a term which means his earned income exclusive of any pension or remuneration from a pensionable employment. The amount which may be so treated however may not exceed £500 or one tenth of the person's net "relevant earnings" for the year concerned (i.e., his "relevant earnings" reduced by certain deductions allowable in computing total income for tax purposes). Both these limits are varied in certain circumstances by the First Schedule.

Section 42 exempts from tax the investment income of the part of the annuity fund of an assurance company which relates to contracts made by the self-employed, etc., and approved under Section 40 of the Act; contracts made by the trustees of trust schemes so approved and contracts made by the trustees of superannuation funds for employees approved under Section 32 of the Finance Act 1921. Provision is made however for taxation of the profit derived by the company from such business and accordingly the exemption extends only to so much

of the income as is applied for the benefit of annuities under the contracts and schemes mentioned.

Section 43 contains a number of machinery provisions. It prescribes the manner in which relief in respect of a qualifying premium is to be claimed and gives the taxpayer a right of appeal if his claim is not admitted. It also enables the Revenue Commissioners to make regulations as regards certain matters of procedure and provides a penalty for false claims to relief.

Section 54 is intended broadly to bring the position in the High Court as to recovery of tax into line with that existing in the Circuit and District Courts under Section 11 of the Finance Act 1924 and Section 39 of the Finance Act 1926. It authorises, without prejudice to existing methods of recovery, High Court proceedings to be taken in the name of an officer of the Revenue Commissioners, and prescribes a simplified mode of prima facie proof.

Section 58 exempts from Stamp Duty receipts issued by the Land Commission for certain payments made to them in their capacity as successors to the Commissioners of Church Temporalities in Ireland.

Section 59 exempts from Stamp Duty any instruments where the amount of duty chargeable thereon would have to be stamped solely out of moneys provided by the Oireachtas.

Section 60 repeals the Stamp Duty at present chargeable on bonds required for Customs and Excise purposes. These bonds relate mainly to the temporary importation of motor vehicles, the importation of goods for further manufacture, the payment of Entertainments Duty on the basis of certified returns, etc.

First Schedule of the Act—Retirement Annuities (Adjustments of Limit on Qualifying Premiums). The First Schedule modifies the limits of relief in respect of "qualifying premiums" specified in Section 41 of the Act in certain cases.

Part I of the Schedule provides for a reduction in the £500 limit in the case of a person whose earnings include remuneration from a pensionable employment. Part II increases both the £500 limit and the percentage limit on a sliding scale according to age in the case of persons who had attained the age of 40 years before the 1st January last.

EXECUTION OF DOCUMENTS IN U.S.A.

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

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

As an alternative to the above arrangement the Department points out that under the Commissioners for Oaths (Diplomatic and Consular) Act, 1931, Irish diplomatic and consular officers are authorised to do notarial acts and it is accordingly open to any solicitor desiring to have a document authenticated abroad to arrange for its direct authentication by the nearest Irish diplomatic or consular officer. The fees charged for such services are prescribed by the Diplomatic and Consular Fees Regulations, 1956—(S.I. No. 263 of 1956). (See *Gazette*, November 1956, page 45.)

With regard to the many States in which there are no Irish Consulates, it would appear that the most convenient and least expensive method of having the seal of a notary public authenticated would be to have the notary's seal certified in the first instance by the Local County Clerk, and then to have the document forwarded to the Irish Consul within whose Consular jurisdiction the State in question lies for authentication of the County Clerk's signature and seal.

A list of the States which lie within the Consular jurisdiction of the Irish Diplomatic and Consular Offices in the United States is appended.

Consular Districts.

New York: New York, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, West Virginia, Virginia, North Carolina, South Carolina, Georgia, Florida.

Boston: Maine, New Hampshire, Vermont, Massachusetts, Rhode Island.

Chicago: North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, Texas, Minnesota, Iowa, Missouri, Arkansas, Louisiana, Mississippi, Alabama, Tennessee, Kentucky, Illinois, Indiana, Ohio, Michigan, Wisconsin.

SAN FRANCISCO : Washington, Oregon, California, Nevada, Arizona, Utah, Idaho, Montana, Wyoming, Colorado, New Mexico, and Alaska.
WASHINGTON : Washington D.C.

DECISIONS OF PROFESSIONAL INTEREST

Solicitor's lien on papers upon change of solicitor upheld on appeal.

THE facts of this case were reported in the *Gazette* of July, 1958, page 30.

On 29th July, 1958, the Court of Appeal (Hodson, Morris and Sellers, L.JJ.) reversed Wrangham, J., and held that the solicitor concerned was entitled to a lien on the papers until his costs had been paid.

Hodson, L. H., delivering the judgment of the Court said that there was no doubt that a solicitor who was discharged by his client during an action otherwise than for misconduct could retain any papers in the cause in his possession until his costs had been paid (In re Rapid Road Transit Co., 119091, 1 Ch. 96).

The Judge (in the Court below), however, while recognizing the rule as being unqualified where no other parties were interested held that divorce proceedings were in the same catagory as actions in which third parties were interested having regard to the public interest involved and therefore disregarded the lien.

It was true, as he said, that divorce affected status and the public interest was involved, but the fact remained that divorce proceedings *inter partes* were still litigation and their Lordships could not see any compelling reason why the rights of solicitors should in such cases differ from their rights in other cases. The litigant need not change his solicitor without good cause. It would be odd if he were in effect able to get solicitors' work done for nothing by the simple expedient of changing his solicitor as often as he chose, leaving a trail of unpaid costs in his wake and demanding the papers without payment when he had no just cause to complain of the conduct of the solicitors instructed and discarded.

If he was hampered in the presentation of his case to his own disadvantage by having changed his solicitors without good cause the public interest did not require that a litigant who sought to put away his wife should be in a better position to obtain documents over which the solicitor had a lien than a litigant in any other civil proceedings. This lien should be preserved in the public interest in order that litigation might be properly conducted with due regard to the interest not only of litigants but also of the officers of the Court who serve those interests. (Hughes *v.* Hughes, *The Times*, 30th July, 1958.)

In damages for loss of earnings tax position should be taken into account.

The plaintiff was injured by reason of the negligence of the defendants. The trial judge awarded him £37,720 damages in respect of loss of earnings actual and prospective, paying no regard to the income tax and surtax he would have had to pay on the amount of such earnings had he not been injured. The judge alternatively assessed these damages at £6,695 taking such hypothetical tax into account. It was agreed that the plaintiff would incur no tax liability on the £37,720 or £6,695 : ..

Held by the House of Lords (Earl Jowitt, Lord Goddard, Lord Reid, Lord Radcliffe, Lord Tucker and Lord Somervell, Lord Keith of Avonholm dissenting), reversing the Court of Appeal (Somervell, Birkett and Romer, L.JJ.) and the High Court (Pearce, J.), that the judge ought to have taken the tax position into account and that the award in respect of loss of earnings should be reduced to £6,695.

Per Lord Goddard (Lord Radcliffe and Lord Somervell of Harrow agreeing) : Such damages are awarded as compensation, not restitution, and must be decided by the application of reasonable commonsense, taking all matters which might have affected the plaintiff's tax liability into account. The same principles would be applicable in wrongful dismissal actions.

Per Earl Jowitt : There may well be a difference between actions for personal injuries and actions for wrongful dismissal in regard to the obligation of the plaintiff to pay tax on the amount of damages received and cases on the one topic may therefore be a dangerous guide to follow on the other.

Per Lord Tucker : Expenditure which, although not actually a charge on earnings, is imposed by law as a necessary consequence of their receipt is relevant to the ascertainment of the loss suffered by the party injured.

Note.—As a result of this decision, the Lord Chancellor asked the Law Reform Committee to report on its effect. This Committee of 15, representing Judges, barristers and academic lawyers, has just issued its report, and as it cannot agree, it does not in effect recommend any consequential change.

Nine members of this Committee (including Lord Justice Jenkins, Lord Justice Parker, Lord Justice Pearce, Mr. Justice Diplock, Professor Goodhart and Mr. Megarry) took the view that the decision in this case gives full effect to the well-settled principle that damages for tort or for breach of contract are intended to compensate the injured party for the loss that he has suffered, and ordinarily do no more than this.

Three members of the Committee (including Mr. Justice Donovan and Professor Wade) are opposed in principle to the present law, because damages should, so far as any monetary reward can do so, restore the plaintiff to the position in which he would have stood but for the defendant's wrong-doing. Tax is not a charge on income before it is received and there is no more reason for taking it into account than rates, mortgage interest and any other liabilities which the plaintiff may have to meet.

Three other members of the Committee (Mr. Foster, Mr. Gerald Gardiner and Sir David Parry) held that the law should be the same as it was before the decision in this case, except that the damages should be taxable in plaintiff's hands.

(British Transport Commission *v.* Gourley—(1956), A.C. 185.)

COMPARATIVE ASPECTS OF IRISH LAW—A REVIEW

Some Comparative Aspects of Irish Law by Alfred Gaston Donaldson. Dux 8vo, pp. xii, 293. Duke U.P., Durham, North Carolina, U.S.A. (1957). 45*s*.

The learned author, who is a Parliamentary Draftsman in Stormont, has given us the benefit of his personal views on many intricate problems of Irish Constitutional Law and legal history. Dr. Donaldson delivered some lectures at Duke University in 1955, which have now been reprinted and brought up to date. In this work which deals with such topics as "Constitutional History," "Ireland and the Commonwealth" — "Constitutional Developments since 1920," "Administrative Law," and "Land Law."

Dr. Donaldson has not only demonstrated his wide grasp of facts and learned scholarship, but appears to have assimilated every case from North and South bearing on his subject which he can summarise succinctly in a few lines. This book is indispensable for the student of constitutional law, particularly as the author has succeeded admirably in giving the different view-points dispassionately and without prejudice. Even the practitioner will discover in this book many cases which will greatly assist him in dealing with problems of administrative law, now so widespread. Apart from the learning and industry displayed by the author, he has also the advantage of an easy-flowing style which makes the book a pleasure to read. Anyone who reads it will learn a lot of law without undue effort.

C.G.D.

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published since February, 1958

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THE REGISTRY

Register B

SOLICITOR seeks assistantship late September or October. Preferably Dublin or good provincial town near Dublin. Box No. B226.

REGISTRATION OF TITLE ACTS, 1891 AND 1942.

NOTICE

Folio 3599, County Limerick.
Registered Owner (Ltd.): John Daly.

The Registered Owner has applied for a Duplicate of the Certificate of Title specified in the Schedule hereto which is stated to have been lost or inadvertently destroyed.

The Duplicate will be issued unless notification is received in this Registry within 28 days from the date of this Notice that the said Certificate of Title is in the custody of a person not the Registered Owner. Such notification should state the grounds on which the Certificate is retained.

Dated this 28th day of August, 1958.

Joseph O'Byrne,
Registrar of Titles.

Schedule.

Land Certificate of John Daly to 55a. 3r. 18p. of the lands of Ballyvulhane situate in the Barony of Coshma and County of Limerick being the lands comprised in said Folio.

REGISTRATION OF TITLE ACTS, 1891 AND 1942—ISSUE OF DUPLICATE LAND CERTIFICATE

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

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

Dated the 28th day of August, 1958.

Joseph O'Byrne,
Registrar of Titles.

Central Office,
Land Registry,
Chancery Street,
Dublin.

Schedule.

1. Registered Owner: Kennedy O'Brien & Co., Ltd.
   Folio number 698. County Kildare.
   Lands of Kildare in the Barony of East Offaly containing 0a. 2r. 23p.

2. Registered Owner: Joseph Clyne, County Westmeath.
   Lands of Moyleroe Big formerly comprised in Folio 928 and now the lands in No. 1 Folio 12736 situate in the Barony of Delvin containing 40a. 2r. 0p.

3. Registered Owner: Patrick J. Kehoe.
   Folio number 1605. County Wexford.
   Lands of Clonhasten in the Barony of Ballaghkeen South containing 27a. 2r. 30p.

4. Registered Owners: The Provost Fellows and Scholars of Trinity College.
   Folio number 1302. County Louth.
   Lands of Touwley Hall in the Barony of Ferrard containing 853a. 2r. 0p.

OBITUARY

Mr. William S. Barrett, solicitor, died on 10th August, 1958, at a Dublin hospital.

Mr. Barrett served his apprenticeship with the late Mr. William B. Herdman, 14 Molesworth Street, Dublin, was admitted in Trinity Sittings, 1919, and practised at 15 South Frederick Street, Dublin, as partner in the firm of Messrs. Barrett and MacNeice.

Mr. David O'Flaherty, Solicitor, died on the 22nd August at his residence, Court-na-Farraga Hotel, Killiney.

Mr. O'Flaherty served his apprenticeship with the late Mr. Michael C. O'Meara, 22 Upper Ormond Quay, Dublin, was admitted in Trinity Sittings 1903 and practised at the Chief State Solicitor's office, Dublin Castle, up to his retirement in 1936.

Mr Peter C. Furlong, Solicitor, died on the 30th August at a Dublin nursing home.

Mr. Furlong served his apprenticeship with the late Mr. Bernard J. O'Flaherty, Enniscorthy, Co. Wexford, was admitted in Hilary Sittings, 1911 and practised at 7 Suffolk Street up to his retirement some months ago.

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No. 5

NOVEMBER,
1958

THE GAZETTE

of the

INCORPORATED LAW SOCIETY OF IRELAND

President
JOHN CARRIGAN

Vice-Presidents
JOHN R. HALPIN,
FRANCIS J. LANIGAN

Secretary
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

MEETINGS OF THE COUNCIL

SEPTEMBER 18th: The President in the chair. Also present: Messrs. John R. Halpin, W. J. Comerford, Desmond J. Collins, James J. O'Connor, Ralph J. Walker, Eunan McCarron, John Maher, R. McD. Taylor, Peter E. O'Connell, Derrick M. Martin, John J. Sheil, Niall S. Gaffney, G. G. Overend, Cornelius J. Daly, Joseph P. Tyrrell, C. J. Downing, Francis J. Lanigan, John J. Nash, Arthur Cox, Thomas A. O'Reilly.

The following was among the business transacted:—

Dublin Solicitors' Bar Association

IT was decided to request the Minister for Justice to include provision in the Solicitors' (Amendment) Bill, 1958, for the amendment of the Society's charters to enable the Dublin Solicitors' Bar Association to be represented on the Council by three extraordinary members.

Solicitors' Accounts Regulations

NEW regulations were made amending the provisions of the Solicitors (Accounts) Regulations, 1955. The new Regulations are printed at page 50 in this issue.

Unqualified Persons

IT was reported that proceedings had been instituted in the name of the Society against a civil servant who had contravened the provisions of section 58 of the Solicitors Act, 1954, by procuring the execution by an Irish citizen of a document related to real or personal property situated in the United States. It was reported that the defendant had given an undertaking not to repeat the offence, and had indemnified the Society against costs, and that the proceedings had been withdrawn.

OCTOBER 9TH: The President in the chair. Also present: Messrs. John J. Nash, John Maher, Eunan McCarron, R. McD. Taylor, J. P. Tyrrell, Francis J. Lanigan, W. J. Comerford, Ralph J. Walker, James J. O'Connor, Thomas A. O'Reilly, Desmond J. Collins, Cornelius J. Daly, Patrick Noonan, Edward Treacy, Derrick M. Martin, John J. Sheil, Dermot P. Shaw, G. G. Overend, Arthur Cox, John R. Halpin, J. R. Quirke.

The following was among the business transacted:—

Death of His Holiness Pope Pius XII

THE following resolution was passed: "The President and Council of the Incorporated Law

Society of Ireland wish respectfully to offer their sympathy to His Excellency the Papal Nuncio, and to record their sorrow on the occasion of the death of His Holiness Pope Pius XII."

The Council requested the President and Secretary to call at the Nunciature, Phoenix Park, to express their sympathy.

Restaurant in Four Courts

It was decided that the Secretary would make representations to the Commissioners of Public Works on the subject of the inconvenience caused to members of the profession by the absence of restaurant facilities in the Four Courts during term.

"Without Prejudice" Settlement with Insurance Company

The Council considered a further report from a committee on this matter, to which reference was made in the Society's *Gazette* July 1958. On the facts as given to the Council an insurance company refused to carry out the terms of a settlement made in correspondence marked "Without prejudice" on each side, on the ground that their insured intended to take proceedings against the claimant, and that in the circumstances the offer in settlement must be withdrawn. The Committee having further considered the matter reported that in their opinion the settlement, although expressed to be made without prejudice, may be legally enforceable, and might be proved without reference to the correspondence. Members were advised to consider taking proceedings on foot of the settlement against the company or their insured. It was directed that a letter should be written to the company informing them of the advice given to members.

Duty of solicitor acting for accused on a criminal charge

Member appeared for an accused man who was convicted in the Circuit Court on a charge of assault and robbery and sentenced to imprisonment for nine months. Member's costs including counsel's fees were paid. Member subsequently received a letter from the County Registrar stating that he had received notice of appeal from the accused direct from Mountjoy Prison. The accused had not consulted member or sought his advice as to an appeal. Member asked for the guidance of the Council as to whether he is obliged to act for the accused man in the event of an appeal if no provision is made for his costs. The Council adopted a report from a committee which stated that in their opinion on the facts given member is under no obligation to act for the accused man in connection with the appeal unless he is properly instructed, and unless provision is made for his costs and disbursements.

Ordnance Survey Maps

A Committee reported that the Ordnance Survey Department will give permission to solicitors to make copies of Ordnance Survey maps for an annual royalty of 5s. It was decided to request the Department to give similar permission for reproduction by photo-copying methods on the same terms.

Sale of property by transfer of share capital of a limited company

Members enquired whether the commission scale fee should be charged for the purchase of certain property belonging to a company carried out by a transfer of the entire share capital. A committee to which the matter was referred reported that in dealing with this matter the difference in terminology between the Irish and English general orders should be noted. In the English S.R. Order, 1883, the commission scale fee is broken down into charges for (i) negotiating a sale of *property*, (ii) conducting a sale of *property* by public auction, (iii) deducing title to *freehold, copyhold, or leasehold property* (iv) negotiating a sale of *property*, (v) investigating title to *freehold, copyhold or leasehold property*, and separate fees are prescribed under items (i) to (v). In our S.R.G.O., 1884 and 1947, there are only two fees: one to the vendor's solicitor for all charges, including negotiating, connected with the sale of *property* by private contract or by auction, and the other for all charges connected with the purchase of *property* by private contract or public auction. In England, the conducting and negotiating scales refer to all descriptions of property including stocks, money, and personal property, but the scales for deducing title and perusing and completing conveyance and investigating title and preparing and completing conveyance, apply only to freehold, copyhold or leasehold property. The committee referred to the statement in Gill on Costs, page 194, where the author apparently followed the English decisions, that the commission scale fee does not apply to a sale of personal property. On the same page it is stated that the scale fee was allowed by Master MacNamara on the sale of a ship by public auction no appeal being taken. The Committee referred to opinion 83, of the Council of the Society (1958 Calendar, page 459), in which it is stated that the scale of charges fixed by Schedule I, Part I, S.R.G.O., is not confined to sales, purchases and

mortgages of land, but is applicable *inter alia* to mortgages and other security deeds affecting Government Stock and railway shares or stock. The Committee stated that, in their opinion, members would be entitled to charge the commission scale fee calculated on the value of the freehold or leasehold property of the company, apportioned if necessary, if the following conditions are satisfied: (i) The title to the property comprised in the sale must be deduced and investigated pursuant to the contract for sale and purchase, (ii) There must be a price on which the commission scale fee can be calculated, (iii) There must be an assurance of the property the subject of the contract perused and completed by the vendor and completed and registered by the purchaser.

OCTOBER 16TH: The President in the chair. Also present: Messrs. Desmond J. Mayne, James J. O'Connor, G. G. Overend, Desmond J. Collins, R. McD. Taylor, Ralph J. Walker, Eunan McCarron, J. R. Quirke, Terence De Vere White, John Maher.

The following was among the business transacted:—

Examination Results

THE Council considered a report from the Court of Examiners. The results of the examinations are printed on page) of this issue.

Application Under Section 32

AN application by a solicitor for permission to take a second apprentice was, in special circumstances disclosed, granted.

OCTOBER 29TH: The President in the chair. Also present: Desmond J. Mayne, John Maher, John J. Nash, Peter E. O'Connell, R. McD. Taylor, Francis J. Lanigan, James J. O'Connor, Ralph J. Walker, Thomas A. O'Reilly, Edward Treacy, William Dillon-Leetch, George A. Nolan, John R. Halpin, J. P. Tyrrell, Arthur Cox, Eunan McCarron, W. J. Comerford, J. R. Quirke, Cornelius J. Daly, C. J. Downing, Patrick Noonan, Desmond J. Collins, John J. Sheil, Niall S. Gaffney, G. G. Overend, Dermot P. Shaw.

The following was among the business transacted:—

Professional Negligence Indemnity

It was decided that the Secretary would make enquiries as to the insurance companies which are prepared to undertake professional negligence indemnity insurance for members of the profession.

Special committee on professional policy and development

The following motion was passed on the proposal of Mr. Shaw, seconded by Mr. Lanigan:—

> That a special committee of the Council be set up to examine the question of a public relations programme for the solicitors' profession and to consider a long-term policy programme for the Society, and to make recommendations to the Council on any activities which ought to be undertaken by the Society in the interests of the profession and in order to maintain and if possible increase the influence and standing of the profession in the community.

SON OR NEAR RELATIVE, PRACTISING BEFORE DISTRICT JUSTICE

THE Council on a report from a committee stated that it is undesirable in a country district that a son or an immediate relative of a District Justice should practise in the Court of that Justice.

WORKMEN'S COMPENSATION ACTS—COSTS OF APPLICATIONS FOR REDEMPTION

A COMMITTEE of the Council reported drawing attention to the inadequate scale of costs applicable to the redemption of a weekly payment under the Workmen's Compensation Acts. The scale in question is scale 8, in the 1942 rules as increased by 50 per cent. under the 1954 rules, which is also applicable to a summons to review or redeem. It was stated that it is now quite common to have redemptions in the neighbourhood of £2,000, and that it is obvious that the scale of costs mentioned was never intended to apply to such cases and that a new scale should be provided. This view is supported by remarks under scale 8, as apparently the scale envisages a summons to redeem by the employer whereas under the 1955 Act such a summons is brought by the workman.

The matter was raised by representatives of the Council on the Circuit Court Rules Committee. The Council wish to draw the attention of members to the fact that the matter can be dealt with by the Court under the discretionary power to award an additional fee not exceeding £25, under order 40, rule 6 of the Circuit Court Rules, 1950, as amended by the Circuit Court Rules, 1954 (S.I. No. 212 of 1954). Members are advised in proper cases to make an application to the Court for additional remuneration under this rule.

S.I. No. 193 of 1958

THE SOLICITORS' ACCOUNTS (AMENDMENT REGULATIONS, 1958

THE Incorporated Law Society of Ireland, in exercise of the powers conferred on them by sections 4, 5, 66 and 71 of the Solicitors Act 1954, and of every other power thereunto them enabling, and with the concurrence of the Chief Justice, hereby make the following regulations.

1. These regulations may be cited as the Solicitors' Accounts (Amendment) Regulations 1958, and shall come into operation on the 18th day of September, 1958.

2. The Interpretation Act 1937 applies to these regulations in the same manner as it applies to an Act of the Oireachtas except in so far as it may be inconsistent with the Act or these regulations.

3. These regulations shall be read together with the Solicitors' Accounts Regulations 1955 (S.I. No. 218 of 1955), the Solicitors' Accounts Regulations 1956 (S.I. No. 308 of 1956), and the Solicitors' Accounts Regulations 1957 (S.I. No. 252 of 1957), and shall in so far as they are inconsistent therewith alter and amend the same.

4. Clause (ii) in regulation 5 of the Solicitors' Accounts Regulations 1955 shall be deleted and the following clause shall be substituted therefor :—

(ii) a transfer to a bank account in the name of the solicitor.

5. Regulation 12 of the Solicitors' Accounts Regulations 1955 shall be deleted and the following regulation shall be substituted therefor :—

12 (1) Every solicitor practising on his own account and every firm of solicitors and every solicitor-trustee shall, whenever required by the Council, prepare or cause to be prepared and shall submit to the Council within such time, not being less than seven days, as the Council shall require by notice in writing, such accounting statement as will show in summary form the true balances of all moneys received and due in respect of all clients and trusts, or, if so required, in respect of any particular client or trust, and where and how at the date of such statement such balances are held in safe keeping and available for payment.

(2) If any sum is due by a client or trust to such solicitor or firm of solicitors or such solicitor-trustee in respect of costs which have not been taxed or otherwise ascertained, the sum to be included in the accounting statement shall be the gross amount received by the solicitor, firm of solicitors or solicitor-trustee for or on behalf of such client or trust (less any credits which may have been agreed or ascertained), and a note shall be appended stating that costs are due and stating the estimated amount thereof without prejudice to the taxation of any bill of costs in the absence of agreement.

(3) Without prejudice to its generality, the term "moneys" in this regulation includes bearer bonds, securities passing by delivery and all other types of negotiable securities.

6. Regulation 14 of the Solicitors' Accounts Regulations 1935 shall be deleted and the following regulation shall be substituted therefor :—

14 (i) In order to ascertain whether these regulations have been complied with, the Council, acting either on their own motion or on a written complaint lodged with them, may require any solicitor to produce at a time and place to be fixed by the Council his books of account, bank statements or pass books, statements of account, vouchers and any other necessary documents, including accounting statements prepared under regulation 12 hereof, for the inspection of an accountant who shall be nominated by the solicitor within seven days from receipt of notice of such requirement, and if approved by the Council appointed by them or, in default of such nomination and approval, of an accountant appointed by the Council, and such accountant shall prepare for the information of the Council a report on the result of such inspection. The Council may at any time terminate the authority of an accountant and appoint another to carry out or complete an inspection and report.

(ii) Upon being required so to do a solicitor shall produce such books of account, bank pass books, statements of account, vouchers and other documents at the time and place fixed and shall afford to such accountant all other facilities which may be necessary for completing his inspection and report.

(iii) Before instituting an inspection on a written complaint, the Council may

require the payment by the person lodging the complaint of a reasonable sum to be fixed by the Council to cover the costs and expenses of the inspection and of the solicitor against whom the complaint is made. The Council may deal with any sum so paid in such manner as they think fit.

(iv) In this regulation the term "accountant" includes a firm of accountants and any representative of the accountant or firm.

Signed on behalf of the Incorporated Law Society of Ireland.

This 18th day of September 1958.

JOHN CARRIGAN,

President of the Incorporated Law Society of Ireland.

I concur in the making of the foregoing regulations.

CONCHUBHAIR A. MAGUIDHIR,
Chief Justice.

(Pr. 4751)

EXPLANATORY NOTE

(*This note is not part of the instrument and does not purport to be a legal interpretation thereof.*)

The amendment made by regulation 4 of these regulations is a drafting amendment only. By regulations 5 and 6 new regulations are substituted for regulations 12 and 14 of the Solicitors' Accounts Regulations 1955 with the object of making the powers of inspection of The Incorporated Law Society of Ireland more effective.

STATUTORY NOTICE TO CREDITORS

ENQUIRIES are sometimes received from members as to the statutory requirements in publishing the notice to creditors. The method of publication is laid down by 22 and 23 Vic. Cap. 35, Section 29. The statute provides that where an executor or an administrator shall have given such or the like notice as in the opinion of the court would have been given by the court of chancery in an administration suit for creditors and others to send in their claims against the estate, such executor or administrator shall, at the expiration of the time named in said notice, be at liberty to distribute the assets having regard only to the claims of which he shall have received notice. According to the latest information received from the Examiners' Department, of the High Court of Justice, the present practice with regard to notification of creditors in administration matters is as follows. An advertisment is approved and signed by the Examiner and published in such newspapers as may be directed. In normal cases the advertisement is directed to be published in two newspapers twice in each, at intervals of one week e.g. publication in two different newspapers on say 2nd and 9th inst. Claims are to be sent in within one month from the likely date of first publication and adjudication on claims is fixed at about five weeks after such date. Order 55, Rule 51, is a general directive and allows the fixing of times and the amount of publication to be governed by circumstances. As to the circumstances taken into account in fixing such times and the amount of publication see Stewart v Babbington (27.L.R.Ir. 551). Under Order LV., Rule 48, claimants who do not come in within the time so fixed shall be excluded. The language of this rule is *In terrorem* only (Browne v Browne 1919 1 Ir.251).

This note is in substitution for the note which appeared in the Society's Gazette, May, 1958, page 8.

FREE LEGAL AID IN ENGLAND

HAVING regard to the fact that a large number of Irish citizens are working in England it is important for Irish solicitors to appreciate that the right of such persons to obtain free legal aid for civil proceedings does not necessarily terminate on their return to this country. Irish solicitors advising such persons as to their rights of action accrued while resident in Great Britian should investigate this aspect of the matter with a view to applying to the appropriate legal aid committee for a certificate where proceedings are to be instituted in the British courts.

TRANSFER BETWEEN PARENT COMPANY AND SUBSIDIARY

THE attention of members is drawn to the statutory position in this country which differs from that in England. Section 19 of the Finance Act, 1952, provides for stamp duty not exceeding 10/- in the case of certain transactions. The section applies to every instrument which is chargeable with stamp duty under or by reference to the heading "Conveyance or Transfer on Sale" in the first schedule to the Stamp Act 1891, and which is made for the purpose of or in connection with the conveyance or transfer of property from one body corporate to another corporated. The limited rate of stamp duty applies only to transfers from the parent body to the subsidiary company. Under the law at present in force in this country *ad valorem* duty is pay-

able on instruments conveying or transferring property from a subsidiary to a parent company.

ATTORNEYS' COSTS IN THE U.S.A. NEW YORK STATE

THE Society on behalf of a member had occasion recently to make enquiries as to the procedure for taxation of Attorney's costs in uncontested probate matters in the State of New York. The following information obtained as a result of the enquiries is published as being of interest to members. Section 231-a of the Surrogate's Court Act provides as follows :

At any time during the administration of an estate, and irrespective of the pendency of a particular proceeding, the Surrogate shall have power to hear an application for and to fix and determine the compensation of an attorney for services rendered to an estate or to its representative, or to a devisee, legatee, distributee or any person interested therein; or of an attorney who has rendered legal services in connection with his official duties as an executor, administrator, testamentary, trustee, or guardian; or in proceedings to compel the delivery of papers or funds in the hands of such attorney.

Such proceedings shall be instituted by petition of a representative of the estate, or a person interested, or an attorney who has rendered services.

Notice of the application shall be given in such manner as the Surrogate may direct. The Surrogate may direct payment therefor from the estate generally or from the funds in the hands of the representative belonging to any legatee, devisee, distributee or person interested therein.

In the event that any such attorney has already received or been paid a sum in excess of the fair value of his services as thus determined, the Surrogate shall have power to direct him to refund such excess.

There is no fee schedule in the Courts in New York. In some cases the local bar association establishes what is called a "Minimum Fee Schedule" which has no binding force, but which will furnish some guidance. For instance, such a schedule has been adopted by the Bar Association in Queen's County, one of the Counties in the City of New York, and also by Nassau County, which is not in the city but an adjoining County. However, these schedules do not cover a contested probate. They do suggest a minimum fee for an uncontested probate which is more or less routine, in which the percentage is roughly 4-5% of the gross estate where the estate is in the $20,000 range. For a contested matter, the usual considerations of time spent, difficulties involved, the nature of the services, amount involved, professional standing, and results obtained are applicable.

PROCEEDINGS AGAINST UNQUALIFIED PERSON ACTING FOR HEIR CHASER

ACTING on evidence supplied by a member on behalf of a client who is a beneficiary in an American estate, the Society instituted proceedings in the Dublin Metropolitan Court against the defendant, who is a civil servant, for a contravention of Section 58 (i) (b), of the Solicitors Act 1954. Under the section it is an offence for an unqualified person, for or in expectation of fee or reward, to procure or to attempt to procure the execution by an Irish citizen, of a document relating to real or personal estate situated outside the State and the United Kingdom or any legal proceeding actual or in contemplation in relation to such property. Under the document executed by the beneficiary at the defendant's request, she undertook to pay one third of the sum received by her to the American heir chaser for his services. Subsequent to the institution of proceedings the defendant admitted the offence and gave an undertaking not to repeat it and the Society allowed the proceedings to be struck out on receiving a full indemnity against the costs.

SOLICITORS' BENEVOLENT ASSOCIATION

RESOLUTION of Metropolitan Directors of Solicitors' Benevolent Association held on 1st October, 1958, at the Solicitors' Buildings, Four Courts.

The following Resolution was proposed by Mr. Dineen B. Gilmore and seconded by Mr. Patrick R. Boyd and duly passed unanimously :

RESOLVED : that the Directors of the Solicitors' Benevolent Association having received with great regret the resignation of their Chairman Mr. Richard A. O'Brien hereby record their appreciation of his conduct of the business of the Association as Chairman and of his untiring efforts during the period of 21 years in office to advance the charitable objects for which the Association was founded.

THE SUPREME COURT

WILLIAM L. DUGGAN, APPELLANT.
THE INCORPORATED LAW SOCIETY OF IRELAND, RESPONDENTS.

On November 14th the Supreme Court delivered judgment allowing the appeal of Mr. William L. Duggan against an order of the Chief Justice by which the Chief Justice refused to discharge a direction from the Society to the Registrar of

Solicitors refusing to issue Mr. Duggan's practising certificate for the practice year 1958/59. The grounds of Mr. Duggan's appeal to the Chief Justice and to the Supreme Court included a ground that section 49 of the Solicitors' Act 1954 is repugnant to the Constitution and also on the general merits. The Chief Justice dismissed the appeal on both grounds. The Supreme Court allowed the appeal from the Chief Justice on the grounds stated on their judgment but the constitutional issue was not argued before them and the decision in the judgment of the Chief Justice on this question therefore stands. Having regard to the inadequate information given in the newspaper summaries of the judgment of the Supreme Court the Council have decided to print for the information of members of the Society the judgments delivered on the appeals and they are set out hereunder with the permission of the Incorporated Council of Law Reporting.

The following judgment was delivered by the Chief Justice on 18th July, 1958.

This is an appeal by William L. Duggan against a direction of the Incorporated Law Society to the Registrar of Solicitors to refuse him a practising certificate for the current year.

I shall deal first of all with the ground of appeal that Section 49 sub-sections (1) and (2) of the Solicitors Act 1954 under which the direction was given are repugnant to the Constitution.

It is submitted by Mr. Costello on behalf of the appellant that the refusal of a practising certificate to a solicitor has the same effect during the period when it is effective as would an order for the removal of his name from the roll of Solicitors. He submits accordingly that the judgment in the recent case (In re James H. Gorman and The Solicitors Act 1954 (unreported)) applies and that I should hold that Section 49 (1) and (2) under which the Society acted in this case are repugnant to the Constitution as involving the administration of Justice.

Mr. McGonigal, in answer to this, points out that the Solicitor's profession is only one of a number of callings in which those who wish to carry on practice require an annual certificate from some authority. The necessity in the public interest so far as possible to ensure the honesty and integrity of the members of the solicitors' profession obviously makes the requirement of such a certificate desirable. Historically it has been the practice to require such a certificate from the Registrar of Solicitors. Section 44 of the Act of 1898 provides that if the Registrar declines to issue a certificate application may be made to the Lord Chancellor who, in the words of the Section, "shall make such Order as seems to him just." It has not been suggested that the provision which allows the Registrar to decline to issue a certificate was inconsistent with either the Constitution of the Irish Free State or with our Constitution. Mr. McGonigal furthermore points out that the provisions as to the procedure to be followed by the Society or the Committee through whether they act in the exercise of their powers to give a direction that a certificate be refused are very different from those provided in relation to the functioning of the Disciplinary Committee. It is not given the wide powers of the Disciplinary Committee. He submits that in effect the Society, through its Committee, merely screens the applications. This construction of sub-sections 1 and 2 is supported by the provisions of sub-section 3 which enable an applicant who is dissatisfied with the direction to refuse him a certificate to procure the immediate issue of a certificate by lodging an appeal to the Chief Justice. This, Mr. McGonigal submits, makes the effective decision that of the Court. It is submitted in answer that the existence of an appeal in the case already cited did not save the Sections which were there held invalid. In my view, however, there is a distinction between that case and this inasmuch as the decision of the Committee to direct a refusal of a certificate is not final in the sense that the decision of the Disciplinary Committee to order the removal of a Solicitor's name from the roll is.

Apart from this the penalty, if such it may be called, imposed upon a solicitor by a direction to refuse him a certificate is very different from the removal of his name from the roll of Solicitors. His name still remains upon the roll. He may renew his application at any time. He is only deprived of the right to practise for the current year.

I am of opinion that the direction of the Society to the Registrar to refuse a practising certificate is not the administration of justice and accordingly hold that Section 49 sub-sections 1 and 2 are not repugnant to the Constitution.

It therefore becomes necessary to consider the other grounds of appeal. These may be summed up as follows :—

(*a*) that the refusal of a practising certificate is too severe a penalty to impose in respect of the complaints against the appellant ;

(*b*) that his explanations to the Society of the matters in respect of which complaints were made against him should have been accepted, and

(*c*) that in view of his continuing discharge of his liabilities he should receive the indulgence of the Court.

It seems to me probable that but for the question raised as to the repugnancy of certain Sections of the Act of 1954 to the Constitution in the cases of Gorman and O'Farrell, the Society would most likely have followed up their action of obtaining an Order under Section 17 of the Fifth Schedule to the Act by moving to strike the appellant's name off the roll of Solicitors. Instead, they have resorted to the provisions of Section 49. In October last they called upon the appellant to give an explanation in reference to three matters. The first of these is a complaint that he failed to account or pay over a sum of £1,300 to a client named Michael Mahon. The second is that judgment was obtained against him for £1,620.8.0 and costs by another client. The third is that in January 1954 he transferred portion of certain trust funds, namely £1,830 3½% Exchequer Bonds, to his own name in the Munster and Leinster Bank to secure a personal overdraft.

The appellant did not deny any of the matters alleged against him, nor did he deny that his conduct was wrong. He offered as an explanation of his actions that he had inherited a very large solicitor's business from his father, that he continued the practice of mixing his clients' moneys with his own and of making advances to clients of large sums of money which it was often difficult and sometimes impossible to recover. He said in evidence before me that his total indebtedness to the Bank at the time when the Order of the High Court was made was £21,000. He estimates his assets, including debts and costs due to him, as £15,000. Since then, despite his being deprived of the services of his bank, he states that he has recovered £15,000. He estimates his indebtedness to clients at about £5,000–£6,000. He claims that there is about the same amount due to him. He pleads that if he is allowed to practise as a solicitor he has reasonable hopes of getting his affairs in order. Despite the fact that he cannot utilise the service of a bank, he says that he still has an extensive practice. He has now paid the sums of money due to Michael Mahon, satisfied the judgment against him at the suit of Michael and Patrick Dwyer and restored the trust moneys improperly transferred by him. It surprised me somewhat that he should not have been more precise than he was when giving evidence before me as to his

present financial position. He dealt only in round figures. He did not distinguish between sums which were due when access to the Bank was denied to him and liabilities incurred since then. When I asked him what he was earning he said that he was drawing only £5 per week out of the office. I took this to mean that he was applying or setting aside the rest of his earnings to meet his obligations.

As I read the position there are still large sums of money owing to clients. Presumably these clients are not pressing because they realise that their only hope is to allow the appellant time to collect moneys due to him or to earn sufficient to enable him to restore to them moneys which have wrongfully been spent.

The Society in their notice of the 30th January give as one ground for their decision to refuse a certificate that they did not regard as sufficient or satisfactory the explanation given in regard to the appellant's dealing with the sum of £1,300 belonging to Michael Mahon. Apparently they took the view that the appellant should have been in a position to pay the money to his client from the time that the money came into his hands in 1946. It seems to me indefensible that because two brothers could not agree on the exact division to be made of the sum of £2,600 which came into his hands that the appellant should have retained under his control the whole of one brother's share for over 10 years. When eventually a division was agreed upon he was unable to pay Michael Mahon's share over. It has now been paid in instalments spread over more than 12 months, the last sums being paid since this appeal was taken. Similarly with regard to the sum due to Michael and Patrick Dwyer. In that case it is not revealed when the moneys came into the appellant's hands. Judgment was obtained against him in August of last year. The amount due on foot of the judgment was not fully paid until 28th January of the present year. The Society express dissatisfaction with the appellant's conduct in this matter on the ground that he "was not at all material times in a position to satisfy his indebtedness to his clients on foot of the moneys."

As regards the third matter of which complaint is made, the appellant has admitted that he did transfer a sum of £1,830 3½% Exchequer Bonds to his bank as security for his personal overdraft. It was only on the intervention of another solicitor that he restored the stock and afterwards there was a long delay, unexplained, before the relevant documents were sent to the solicitor.

I am pressed by Mr. Costello to weigh heavily in the appellant's favour that all these three matters are now cleared up. He urges that if he is allowed to continue to practise the appellant may and probably will straighten out all his affairs whereas if he is unsuccessful in this appeal he will be unable to do so.

In these circumstances what are the considerations which should affect my decision on this appeal? In the first place I must consider whether the Society acted reasonably in refusing to accept as satisfactory the explanations offered to them by the appellant in relation to the matters of which they complain. The Society did not consider that the explanations given by the appellant afford any excuse or justification for his failure to discharge his obvious duty to pay over to his clients their proper moneys when he should have done so, or for his mishandling of trust moneys. The fact that he allowed his affairs to get into such a mess, the confusion of clients' moneys with his own, the obvious fact that he was living beyond his means and doing so at the expense of his clients, these are the things against which the Society must set its face. It is quite impossible for the Society or for me to accept as a reasonable explanation of a solicitor's use of his clients' money that this happened because of bad business methods. Apparently the appellant had handed over to his bank every thing of value including his life insurances. He must, it seems to me, when he did this, which must have been long before the 31st July, 1956, the date of the Order of the High Court, have realised what his position was. However he arranged with regard to his own private financial affairs, he knew that one of his primary duties as a solicitor was to see that his clients' moneys were kept intact and readily available to be paid over promptly, not merely on demand but without demand. It was furthermore a grave dereliction of duty to use trust moneys to support his overdraft. All this is so plain that it should not need to be stated.

Accordingly, I must reject the submission that I should hold that the Society ought to have considered the so-called explanations as satisfactory. I am, however, asked to take the view that to refuse the appellant a practising certificate is too severe a punishment for his conduct. Secondly it is urged in his favour that possession of a practising certificate had enabled him so to retrieve his position that he is within measurable distance of having his affairs in order. I am pressed with the view that to refuse him a certificate will bring these efforts to an end.

I am, I confess, much impressed by the efforts the appellant has made under considerable difficulties, of his own creation, it is true, although I would have preferred that he had produced his books to support his evidence as to figures. I am somewhat at a loss to understand how he was able satisfactorily to handle sums of money amounting, as he says, to over £15,000 received and paid out in two years without the assistance of a bank. I find it difficult to understand how a solicitor's business can be run at all in these circumstances. It is suggested that given a chance he may within a reasonable period discharge all his present obligations. The impression on my mind from his evidence is that he hopes to meet his undischarged obligations to other clients by instalments as he has done in the cases considered by the Society. The only reason why I would be disposed to grant an adjournment would be to enable him to discharge these obligations. If the Society had indicated that it would be permissible to overlook what has happened in order to achieve this end, I would have seriously considered acceding to Mr. Costello's eloquent plea. I am not saying that I would yield to it because I cannot but take a very serious view of the matters which led the Society to take action. In view of the Society's attitude, of which I am not to be taken as complaining, I regret that I cannot see my way to do so.

The following is the judgment of the Supreme Court delivered by the President of the High Court on 14th November, 1958.

Section 49 of the Solicitors Act, 1954, provides that in certain circumstances the Incorporated Law Society may direct its Registrar to refuse to issue a Practising Certificate to a Solicitor. This certificate is essential and without it a solicitor cannot function or carry on his business. The Solicitor in this case Mr. Duggan applied for a certificate for the year 1958 and was refused by the Registrar under the direction of the Society. Against that refusal he appealed, in accordance with the provisions of the Act, to the Chief Justice. The Chief Justice heard his appeal in July last and refused it. From that refusal the Solicitor now appeals to this Court.

The circumstances in which the certificate was refused in the first instance were briefly these. In respect of three matters arising, or rather coming to a head, in the year 1957 the Society had cause for complaint as to the conduct of Mr. Duggan. The first of these in point of time was in relation to two clients Mr. and Mrs. Kane Smith. He acted as their Solicitor and was also sole trustee of their marriage settlement. In October 1956, they instructed Mr. Lanigan, Solicitor, to write to Mr. Duggan requiring him to hand over all their papers and documents. There were moneys due to Mr. Duggan for costs and in respect of other matters, and a

correspondence ensued in the course of which a financial adjustment was arrived at. Mr. Duggan had not, however, handed over the papers by June 3rd 1957 and on that date Mr. Lanigan wrote to the Society enclosing a copy of the correspondence and complaining of the fact that the papers had not been handed over. The correspondence disclosed that portion of the trust funds, viz., £1,830 worth of 3½% Exchequer Bonds, which had stood in the sole name of Mr. Duggan as trustee, had been transferred into the names of his bank's nominees. At the time of Mr. Lanigan's letter these funds had been replaced and the final adjustment of accounts showed that Mr. Duggan was owed a sum of £119.13.6.

The second matter in point of time was in relation to two clients Michael and Patrick Dwyer. On 14th August 1957 they obtained judgment against Mr. Duggan in the High Court for £1,620.8.8 and costs in respect of moneys received by him as their Solicitor. At the time the certificate was refused Mr. Duggan had succeeded in paying £1,473.9.11. By the time the matter came before the Chief Justice the whole amount of the judgment, apart from costs, had been paid.

The third matter in point of time was in respect of a client Michael Mahon. On October 30th 1957 he wrote to the Society complaining that Mr. Duggan had £1,300 belonging to him for a period of over ten years and that he could not get any satisfaction. At the time the Certificate was refused Mahon had been paid sums on account leaving a balance due of £396.12.11., and by the time the matter came before the Chief Justice this balance had been discharged.

Mr. Duggan was, in accordance with the provisions of the Act, asked by the Society for an explanation of his conduct in respect of each of these matters. He offered an explanation by letter in the case of the Dwyers and Mahon and by letter and orally in the case of the Kane Smiths.

In the case of these last mentioned clients his explanation was that he had been requested by his Bank Manager to transfer the Exchequer Bonds to the bank's nominees, apparently by way of security for an overdraft; that he did not think that the bank would use the stock; that he admitted he was wrong in making the transfer; that *prima facie* it appeared to be a conversion by him of trust funds, but that he never had any intention of converting them and did not at the time realise or appreciate that that was what the transaction amounted to; and that the funds had been replaced and any other loss would be made good. He was sending on the Kane Smith documents to Mr. Lanigan and was apologising for the delay. He did so, in fact, on July 1st, 1957.

In the case of Michael and Patrick Dwyer his explanation was that the Society were already aware of the circumstances and that he could add nothing to what he had already told them. He said that the amount due to these clients had been originally greater than the amount of the judgment and had been reduced by him; and that since the judgment he had made further payments and had made arrangements for the discharge of any balance due which were satisfactory to the Dwyers.

In the case of Michael Mahon he explained that in or about September 1956 he had furnished an account to his client shewing a balance due of £1,386 including interest; that he had correspondence with Mahon's Solicitor with regard to payment indicating how and from what source he proposed to make payment; that he had paid £700 on account out of that source—a good debt due to him—and would be able to pay the balance of £686 out of the same source. He said that the fact that the moneys remained so long in his own hands was in no way due to his own default or neglect.

He said that the delay was due to the fact that Mahon and his brother could not agree as to how a large sum to which they were both entitled would be divided between them; that he had offered to put the whole amount into court; and that he had been dissuaded from doing so.

In relation to all three matters, and by way of general explanation he described the circumstances under which his solicitor's business had been acquired by him and carried on. Reference will be made to this matter later on.

The Society considered that these explanations were not satisfactory and, on Mr. Duggan applying for a practising certificate for 1958, they in accordance with the provision of Section 49 of the Act directed the Registrar to refuse it.

We consider that the Society had good cause to complain of the conduct of Mr. Duggan in relation to each of these three matters, and to consider that in each case he had failed to give them an explanation which they could regard as sufficient and satisfactory.

Although the explanations appear to have been candid enough and, in a sense, as satisfactory as the stubborn facts would allow, the Society had, therefore, ample jurisdiction to apply the provisions of Section 49 of the Act and to direct the Registrar to refuse to issue Mr. Duggan with a practising certificate. When considering whether a certificate should or should not be issued the Society should, however, take into account all the relevant circumstances existing at the time the decision has to be made, having due regard to: the interests of the public; the interests of the profession; the interests of the clients of the solicitor in question; and the interests of the solicitor himself. No attempt should be made to lay down a rule which should be applied to all cases irrespective of individual circumstances. We are not suggesting that any such attempt was made by the Society in this case but wish to make plain, what is indeed obvious, that each case must be decided on its own peculiar merits.

It is hardly necessary to add that when the matter has to be considered on appeal the same considerations apply.

In this case Mr. Duggan inherited his solicitor's business from his father. It was an old established country practice run on lines, as regards accountancy matters, that left much to be desired. No separate banking accounts were kept in respect of clients' moneys and the firm's moneys. Advances were made by the firm to clients on account of moneys to become due to them in respect of estates to be administered, sales to be completed, and otherwise. No adequate or proper accounts were kept in the office. Mr. William Duggan carried on apparently in much the same fashion until some years ago matters got into confusion. Clients owed him moneys which he could not immediately collect, while he owed other clients moneys which he could not immediately pay. As a result of something which does not appear in the evidence the Society took action under Clause 17 of the Fifth Schedule to the Act and applied to the High Court for an Order that no banking company should, without leave of the Court, make any payment out of a banking account kept by such company in the name of Duggan or his firm. The application was granted and the Order sought was made on July 31st, 1956. Since then Mr. Duggan has not been able to operate any bank account.

On the hearing of the appeal before the Chief Justice Mr. Duggan gave oral evidence and submitted himself to cross-examination by the Society's Counsel as to his affairs and conduct. He explained that since his bank account was "frozen" he had succeeded in getting in £15,000 of moneys due to him by clients which he had used to discharge his obligations to other clients. He said that there was about £6,000 still due to him and about the same amount due by him to clients; and that he owed the bank about £5,000 over and above the securities they held. He said that he hoped to pay off his outstanding liabilities to clients inside six months. He had a good practice which he was carrying on with the aid of an Assistant and from which he drew only £5 a week for his own use. No attempt was made on cross-examination to challenge his credibility or *bona fides*.

When the Society were faced with the necessity of deciding whether a certificate should be issued to him they suffered from the inevitable disadvantage that they were, in a sense, at one and the same time party and judge in the same cause. Neither the Chief Justice nor this Court suffers from that disadvantage and ought to be free to judge the merits of the matter independently of whatever the Society's view may be. Moreover matters have not been static since the Society decided to refuse a certificate last January, and the position has changed happily for the better. Having regard to all the circumstances and in particular to :—the way in which the business of the Duggan firm was being carried on when William Duggan took it over; the efforts which he has made during the past few years under exceptionally difficult circumstances to straighten matters out and to reduce his affairs to order; the success which in large part has attended these efforts and in particular the fact that in the three cases which gave rise to the present proceedings he has met his obligations in full and that no one is now at any loss; the fact that he says he has determined to make every endeavour to meet all his obligations, the facts that his *bona fides* in this respect has not been challenged, and that we believe that he is sincere in his determination; the fact that if he is not allowed to practise his task of attempting to meet his obligations will be rendered much more difficult; we are of opinion that neither the interests of the public, nor the interests of the profession, require that Mr. Duggan be prevented from practising as a solicitor, and that the interests of his clients and, of course, those of Mr. Duggan himself will be served by allowing him to practise. For these reasons we are of opinion that the appeal in the matter from the decision of the Chief Justice should be allowed; that his order should be discharged; and that the direction of the Society to the Registrar to refuse to issue a practising certificate be discharged.

Having regard to the Court's view and decision of the case on the merits it is unnecessary to decide the constitutional issues raised by the notice of appeal.

The Supreme Court ordered that the appellant should pay the Society's costs of the appeal to the Chief Justice and that the Society should pay the appellant's costs of the appeal to the Supreme Court to be set off *pro tanto*. No costs were given to the Attorney-General.

THE REGISTRY

Register B

SOLICITOR presently in practice seeks partnership in well established firm in good provincial town preferably Leinster. Replies treated in strict confidence. Box B. 229.

SOLICITOR, eight years qualified, general experience in busy practice, seeks assistantship with good firm. Box B. 230.

SOLICITOR seeks partnership in well-established provincial practice. Good working knowledge of all branches of country solicitors' practice. Capital. Box B. 231.

SOLICITOR eleven years experience both country and city, in all branches, excellent references, wishes to purchase practice or partnership. (Country preferred). Box B. 232.

Register C

WILL any person who has possession of a Will of Luke Skeath late of Knockroe, Monaghan, in the County of Monaghan or has any knowledge of the whereabouts of same kindly communicate with the undersigned.

Messrs. Keenan & Son, Solicitors, Monaghan.

FOR SALE. Books dealing with costs in High and Circuit Court, Land Registry, Land Commission and under Solicitors Remuneration Act. Apply John McMahon, Solicitor, Ardee, Co, Louth.

LOST: Enterprise Trophy. Will any person knowing the whereabouts of this trophy (played for at Killarney in 1956) please furnish particulars to the Hon. Secretary, Gerard M. Doyle, 50 Lower O'Connell St., Dublin.

OBITUARY

MR. PATRICK LISTON, Solicitor, died on 3rd September, 1958, at the County Infirmary, Limerick.

Mr. Liston served his apprenticeship with the late Mr. Patrick T. Liston, Rathkeale, Co. Limerick, was admitted in Hilary Sittings, 1923, and practised at Rathkeale, Co. Limerick, as senior partner in the firm of Messrs. Patrick T. Liston and Company.

MR. THOMAS N. LYNAM, Solicitor, died on 17th September, 1958, at the Adelaide Hospital, Dublin.

Mr. Lynam served his apprenticeship with Mr. Robert I. Archer, 12 Upr. Ormond Quay, Dublin, was admitted in Hilary Sittings, 1941, and practised at 32 Lr. Ormond Quay, Dublin.

MR. ROBERT N. KELLER, Solicitor, died on 8th October, 1958, at his residence "Lismorna," Stillorgan Road, Donnybrook, Dublin.

Mr. Keller was admitted in Trinity Sittings, 1898, and practised as senior partner in the firm of Messrs. Whitney, Moore and Keller, at 46 Kildare Street, Dublin.

MR. THOMAS EARLY, Solicitor, died on 19th October, 1958, at his residence, "Kington," Cowper Road, Rathmines, Dublin.

Mr. Early served his apprenticeship with the late Mr. Ignatius J. Rice, and the late Mr. Christopher Friery, both of 52, Rutland Square, Dublin, was admitted in Hilary Sittings, 1899, and practised at 63/64, Upr. O'Connell Street, under the style of Messrs. Thomas Early and Son.

MR. JOHN P. DILLON, Solicitor, died on 23rd November, 1958, at his residence 10 Castle Road, Dundalk, Co. Louth.

Mr. Dillon served his apprenticeship with the late Mr. Thomas McCourt and Mr. Philip E. McCourt, both of Dundalk, Co. Louth, was admitted in Michaelmas Sittings, 1955, and practised at Dundalk, Co. Louth, under the style of Messrs. Cathal McAlester and Co.

MR. JARLATH A. O'CONNELL, Solicitor, died on 26th November, 1958, at the Bon Secours Nursing Home, Tuam, Co. Galway.

Mr. O'Connell served his apprenticeship with Mr. William J. V. Comerford, Solicitor, Tuam, was admitted in Easter Sittings, 1935, and practised at Tuam, Co. Galway.

MR. JAMES NEVILLE, Solicitor, died on 9th November, 1958, at his residence "The Grove," Bandon, Co. Cork.

Mr. Neville served his apprenticeship with the late Mr. Richard Neville, Bandon, Co. Cork, and the late Mr. Henry St. John Blake, Galway, was admitted in Easter Sittings, 1928, and practised at Bandon, Co. Cork, under the style of Messrs. Richard Neville and Co.

REGISTRATION OF TITLE ACTS, 1891 AND 1942

Issue of Duplicate Land Certificates

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

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

Dated the 28th day of November, 1958.

JOSEPH O'BYRNE,
Registrar of Titles.

Central Office,
Land Registry,
Chancery Street,
DUBLIN.

SCHEDULE.

1. Registered Owner, Peter J. Keigher, Folio number 588, County Roscommon. Lands of Ballyroddy in the Barony of Roscommon, containing 29a. or. 35p.

2. Registered Owner, Thomas Kennedy. Folio Number 1003, County Galway. Lands of Knockroe in the Barony of Dunkellin, containing 34a. 3r. 37p.

3. Registered Owner, Patrick Dwyer. Folio Number 21294, County Tipperary. Lands of Whitepark, in the Barony of Ikerrin, containing 1a. 3r. 24p.

4. Registered Owner, Thomas McGarry. Folio Number 19560, County Sligo. (Lands No. 1 formerly in Folio 963, Co. Sligo). Lands of Carrowdurreen; in the Barony of Tireragh, containing 22a. 3r. 35p., being the lands No. 1 comprised in said Folio 19560.

5. Registered Owner, Maria Halligan, Folio number 2329, County Kildare. Lands of Boherhole in the Barony of Ikeathy & Oughterany, containing 30a. 2r. 17p., being the lands comprised in said Folio.

SOLICITORS' APPRENTICES' DEBATING SOCIETY OF IRELAND

ANNUAL DANCE

Last year's Dance was unanimously voted a successful event—despite the change to a date in late January. The traditional date in early November had to be relinquished because of the Incorporated Law Society's Dinner/Dance held later in that month.

This year, our Society (founded in 1844) celebrates its 75th Anniversary. Apart from a special Jubilee Meeting which it is proposed to hold in March next, the Society looks forward to a large attendance of Past and Present members at the Annual Dance on Thursday, January 22nd, 1959, at the Gresham, to make the occasion a truly festive one.

Ticket and table reservation details will be published later.

L. F. BRANIGAN,
Hon. Dance Secretary.

MEDICO-LEGAL SOCIETY

A Dinner-Dance of the Society will take place in the Royal Hibernian Hotel, Dublin, on Thursday the 11th December at 8.00 p.m. Tickets may be obtained from The Hon. Treasurer, Capt. James Kelly, 3/4 Lower O'Connell Street, Dublin, price 21/-.

A meeting of the Society was held on Thursday the 27th November at 8 p.m. in the Royal Hibernian Hotel, when Dr. Maurice D. Hickey, State Pathologist, read a paper on "Proof of death, a suspected drowning."

STATUTE OF LIMITATIONS ACT, 1957

THIS Act which alters and consolidates the various statutes of limitations will come into force on the

1st January next. The principal changes have been set out in articles appearing in the *Irish Law Times* of 11th October, 1958; 18th October, 25th October, 1st November and 8th November, 1958. This act which contains 80 sections may be obtained from the Government Publications Sales Office, G.P.O., Arcade, Henry Street, Dublin.

EXAMINATION RESULTS

At the Preliminary Examination for intending apprentices to Solicitors held on the 2nd and 3rd days of September the following candidate passed the examination:

Timothy F. Hegarty.

2 candidates attended; 1 passed.

At examinations held on the 18th and 19th days of September under the Solicitors' Act, 1954, the following passed the examinations:—

Irish Examinations

First Examination in Irish: Thomas D. Durcan, Brian J. Gardiner, Denis D. Horgan, Mary Houlihan, Patrick J. Kenny, William J. P. Kirwan, John M. W. Lenahan, Robert A. Leon, Bryan F. Lynch, Thomas S. McCann, Michael G. L. O'Connell, Francis J. O'Flynn, James L. O'Keeffe, Philip J. R. O'Sullivan.

17 candidates attended; 14 passed.

Second Examination in Irish: Peter D. Collins, John G. Fish, Eugene T. O'Shea.

4 candidates attended; 3 passed.

Book-keeping Examination

At the Book-keeping Examination for apprentices to Solicitors held on the 3rd day of September the following passed the examination:—

Passed with Merit: Michael G. Cody.

Passed: James J. Devine, John G. Fish, William J. McGuire.

5 candidates attended; 4 passed.

First Law

At the First Law Examination for apprentices to solicitors held on the 1st and 2nd days of September, the following passed the examination:—

Passed with merit: 1. William J. McGuire; 2. Dermot F. Bouchier Hayes; 3. Mary Monica O'Callaghan; 4. Robert E. Blakeney; 5. Malcolm B. Yaffe.

Passed: Robert A. Downes, John B. M. Doyle, Iain R. Farrell, William S. Geraghty, John N. Lavelle, John O. Lee, Maire McHale, Diarmuid Teevan.

33 candidates attended: 13 passed.

The Centenary prize was awarded to Dermot F. Bouchier Hayes.

Final

At the final examination for apprentices to Solicitors held on the 1st, 2nd and 3rd days of September, the following passed the examination:—

Passed with Merit: John K. Temple Lang (B.A. Mod., LL.B.); Valentine J. D. Kirwan (B.A. Mod., LL.B.); John M. O'Donnell.

Passed: Charles E. Coonan (B.A.); Thomas F. Cusack (B.C.L.); Margaret M. Foley; Jill Greensmith; Gordon A. Holmes (B.C.L.); Gillian M. Hussey; Liam MacHale (B.A.); Gertrude Louise O'Connell (B.C.L.); Ronald T. Ringrose; Peter A. Smithwick.

28 candidates attended; 13 passed.

The Council has awarded a Gold Medal to John K. Temple Lang and Silver Medals to Valentine J. D. Kirwan and John M. O'Donnell.

The following passed in Part I or Part 2 Final Examination:

Part I: Michael J. Bowman, "A"; Michael J. Fitzsimons (B.C.L.); Thomas J. D. Lane (B.A., LL.B.); Patrick M. A. MacNamee, "A"; Patrick J. O'Brien, "A"; Thomas P. O'Connor, "A"; Anthony J. O'Reilly, "A".

Part II: Kenneth L. Armstrong; Thomas C. Buckley (B.A.); Timothy H. Crowley, "B"; Fionnbarra Dempsey (B.C.L.); Patrick J. Farrell; Maire N. Gibbons (B.C.L.); Charles B. Kingston (B.A.); Dominic Mockler (B.A., B.C.L.); Maurice A. Neville, "B"; Donald M. Pratt (B.A., LL.B.).

"A" denotes having already passed Part II.
"B" denotes having already passed Part I.

PROGRAMME OF LECTURES, 1958-59

Course A.—Company Law and Administration of Estates. 50 lectures delivered as follows:—
Michaelmas Sittings—18; Hilary Sittings—18; Easter Sittings—14. Minimum attendance for credit is Michaelmas—14; Hilary—14; Easter—10. Lectures each Monday and Thursday at 2.15 o'clock save where otherwise notified.

Course B.—Conveyancing Law and Practice and Land Law, 50 lectures delivered as follows:—
Michaelmas Sittings—18; Hilary Sittings—18; Easter Sittings—14. Minimum attendance

for credit is Michaelmas—14; Hilary—14; Easter—10. Lectures each Tuesday and Friday at 2.15 o'clock save where otherwise notified.

COURSE C.—The Procedure and Practice of the Courts, 50 lectures delivered as follows:—
Michaelmas Sittings—18; Hilary Sittings—18; Easter Sittings—14. Minimum attendance for credit is Michaelmas—14; Hilary—14; Easter—10. Lectures each Tuesday and Saturday at 9 a.m. save where otherwise notified.

COURSE D.—Taxation including death duties, 50 lectures delivered as follows:—
Michaelmas Sittings—18; Hilary Sittings—18; Easter Sittings—14. Minimum attendance for credit is Michaelmas—14; Hilary—14; Easter—10. Lectures each Monday at 9 a.m. and Saturday at 10 a.m. save where otherwise notified.

COURSE E.—Book-keeping, 50 lectures delivered as follows:—
Michaelmas Sittings—18; Hilary Sittings—18; Easter Sittings—14. Minimum attendance for credit is Michaelmas—14; Hilary—14; Easter—10. Lectures each Monday and Thursday at 5 o'clock, save where otherwise notified.

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

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

A written examination will be held at the end of each term's lectures.

Fee—8 guineas for each course except course E for which the fee is £6 6s. and Course F for which there is no fee.

Apprentices are advised to take the first law examination *before* attending any of the above lecture courses.

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

EXAMINATIONS, 1959

Examination	*Date*	*Last Day of Entry*
1st Irish	30th January	9th January
2nd Irish	30th and 31st January	9th January
1st Law	19th and 20th May	27th April
Final	19th, 20th and 21st May	27th April
Prelim	20th and 21st May	28th April
Book-keeping	22nd May	1st May
1st Irish	26th June	5th June
2nd Irish	26th and 27th June	5th June
1st Law	1st and 2nd September	11th Aug.
Final	1st, 2nd and 3rd Sept.	11th Aug.
Preliminary	2nd and 3rd Sept.	12th Aug.
Book-keeping	4th September	14th Aug.
1st Irish	18th September	28th Aug.
2nd Irish	18th and 19th Sept.	28th Aug.

SOLICITORS' GOLFING SOCIETY

RESULT Interprovincial Competition for Enterprise Trophy at Newcastle Co. Down. Winners, Ulster (aggregate best six cards) 4 down. Leinster runners-up.

AUTUMN MEETING AT ROYAL DUBLIN GOLF CLUB, DOLLYMOUNT

On Thursday, 2nd day of October, 1958.

RESULT SHEET

L.L.S.I. Challenge Cup (with Prize presented by the President): W. J. Ryan (14) 41 pts.
Prize for Runner-up presented by Golfing Society: D. P. Shaw (10) 40 pts.
The Ryan Challenge Cup (with Prize presented by the Golfing Society): M. Hanahoe (18) 36 pts.
Prize for Runner-up: T. A. O'Reilly (16) 35 pts.
Best Score—
Best 1st Nine Holes: D. Collins (10) 20 pts.
Best 2nd Nine Holes: E. Dillon (11) 22 pts.
Best Score by Competitor resident more than 30 miles away: Wm. Tormey (9) 37 pts.
Best Score of Three Cards drawn by Lot: F. McKeever (12) 37 pts.
Secret Score: A. O'Donnell (12) 33 pts.
Special Prize: G. M. Doyle (17) 33 pts.

OFFICERS 1958/59.

L. K. BRANIGAN, *Captain.*
JOHN J. O'DWYER, *Hon. Treasurer.*
G. M. DOYLE, *Hon. Secretary.*

DUBLIN SOLICITORS' BAR ASSOCIATION

A MEETING of the Council was held on Thursday, 4th September, 1958, at which it was reported that

difficulties may be encountered in renewing professional indemnity insurance. It was decided to ascertain what Companies would continue with this class of insurance, and to give the names of those Companies to any member who might find difficulty in renewing cover. It was also decided to draw the attention of the Law Society to the problem.

A Meeting of the Council was held on Wednesday, 24th September, 1958.

The President referred to the death of Mr. W. S. Barrett, a member of the Association, and the meeting expressed its deep regret.

Proofs of Administration of Estates Reminders were produced, and referred to the Sub-Committee for final consideration. A report was received from the Hire Purchase Rules Sub-Committee to the effect that no further District Court Rules on the subject appeared to be necessary, and that it is permissible to combine in the District Court claims for arrears and for the return of hired articles unless and until the contrary is fully argued and decided.

The next Meeting of the Council was appointed for Wednesday, the 15th of October, 1958.

At the Annual General Meeting of the Dublin Solicitors' Bar Association held on Wednesday, the 8th of October, 1958, the following Officers and Council were elected, namely President: Leslie Kearon, Vice-President: Eunan McCarron, Hon. Treasurer: R. O'Connor, Hon. Secretary: C. Hyland, Hon. Auditors: P. Glynn and E. Crowley. Council: Messrs. J. A. G. Cullen, E. O. Sheil, S. Millington, K. Burke, E. Byrne, J. M. Farrelly, V. Wolfe, F. Givney, and E. Margetson.

A Meeting of the Council was held on Wednesday, 15th October, 1958.

The Meeting expressed its regrets upon the death of His Holiness Pope Pius XII, and requested the Hon. Secretary to acquaint His Grace The Archbishop of Dublin, and to extend its condolences to him.

Sub-Committees:—The following Sub-Committees were appointed:—A. Court Areas: Messrs. McGarry, Byrne, McCarron and Farrelly. B. Circuit and District Courts: Messrs Byrne, Farrelly, Wolfe, and Sheil. C. Emergency: The President, The Vice-President, and the Hon. Secretary. D. Dinner: Messrs. O'Connor and McCarron.

Solicitors are recommended to communicate with each other when a case appears in the Legal Diary, and so avoid needless adjournments, and inconvenience.

The next Meeting of the Council was fixed for Wednesday, 5th November, 1958.

COUNTY MONAGHAN SOLICITORS' BAR ASSOCIATION

At the Annual Meeting of the above the following Office Bearers were elected for 1958/59:

President: Mr. M. E. Knight (Clones); *Hon. Sec.:* Mr. D. M. Martin (Monaghan); *Hon. Treas.:* Mr. J. B. Murphy (Clones). *Council* 1958/59: Messrs. J. J. Keenan (Monaghan); P. J. McEntee (Monaghan); J. C. Carroll (Carrickmacross); W. J. McWilliam (Monaghan); J. Burns (Castleblayney); J. Corrigan (Castleblayney); P. J. O'Gara (Monaghan).

THE SOLICITORS' BENEVOLENT ASSOCIATION

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

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

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

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

Address:

SECRETARY,

SOLICITORS' BENEVOLENT ASSOCIATION,

18, HUME STREET,

DUBLIN.

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No. 6

DECEMBER,
1958

THE GAZETTE

of the

INCORPORATED LAW SOCIETY OF IRELAND

President
JOHN CARRIGAN

Vice-Presidents
JOHN R. HALPIN,
FRANCIS J. LANIGAN

Secretary
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

PRACTISING CERTIFICATES 1959-60

1. Members are reminded that practising certificates for the year to end 5th January, 1960 should be taken out on or after 6th January, 1959 and not later than 5th February, 1959 in order to take effect as a qualification to practise from January 6th.
2. Under the provisions of the Solicitors' Act, 1954, the declaration to be lodged with the Society on applying for a practising certificate shall be completed and signed by the applicant personally unless the registrar, on the ground of illness or some other sufficient ground, dispenses with personal signature of the declaration. Dublin agents of country solicitors should therefore take up the declarations in good time and forward them for signature to their correspondents.

THE PRESIDENTS AND VICE-PRESIDENTS

Mr. John R. Halpin of Cavan has been elected President of the Society for the coming year. Mr. John J. Nash, of Thurles and Mr. Cornelius J. Daly of Cork have been elected Vice Presidents.

ORDINARY GENERAL MEETING

An ordinary general meeting of the Society was held in the Library, Solicitors' Buildings, Four Courts, Dublin on Thursday 20th November, 1958. The President, Mr. John Carrigan, took the chair.

The notice convening the meeting was taken as read.

The minutes of the ordinary general meeting of the Society held on 8th May, 1958 were read, confirmed and signed. The audited accounts and balance sheet for the year ended 30th April, 1958 were adopted and the Chairman signed the balance sheet.

Messrs. Kevans and Sons were re-appointed as the Society's auditors.

The Secretary read the report of the scrutineers of the ballot for the election of the Council and provincial delegates for the year 1958–59. The report stated that for the office of provincial delegate the following had been returned unopposed :—

Ulster—Derrick M. Martin, *Munster*—Edward Treacy, *Leinster*—Reginald J. Nolan, *Connaught*—Christopher E. Callan.

The foregoing were declared duly elected.

The result of the ballot for the 31 ordinary members of the Council was as follows :

John Carrigan, 482 ; Dermot P. Shaw, 475 ; Arthur Cox, 460 ; Thomas A. O'Reilly, 432 ; Niall S. Gaffney, 423 ; John R. Halpin, 422 ; Cornelius J. Daly, 422 ; Joseph P. Tyrrell, 421 ; Desmond J. Collins, 419 ; John J. Nash, 417 ; Patrick R. Boyd, 409 ; Robert McD. Taylor, 402 ; Charles J. Downing, 397 ; James J. O'Connor, 392 ; Francis J. Lanigan, 391 ; William J. Comerford, 385 ; Eunan McCarron, 383 ; Patrick O'Donnell, 380 ; George A. Nolan, 376 ; Patrick Noonan, 373 ; Peter O'Connell, 371 ; Ralph J. Walker, 364 ; George G. Overend, 357 ; John J. Sheil, 349 ; Terence de Vere White, 342 ; William Dillon Leetch, 334 ; Sean O'hUadhaigh, 334 ; John Maher, 331 ; Desmond J. Mayne, 329 ; James R. Quirke, 308 ; John Kelly, 300.

The President declared the foregoing members of the Society duly elected to the Council in accordance with the scrutineers' report.

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

Brendan A. McGrath, 241 ; Benedict J. Daly, 228 ; Charles Hyland, 209 ; Francis A. Gibney, 174 ; Elizabeth M. Wright, 121.

The President moving the adoption of the report of the Council said,

Ladies and Gentlemen :

Since our last Meeting it is with great regret that I have to tell you that the following members of this Society have died :

James H. Murphy, Dundalk ; Alexander E. Donnelly, Omagh ; Raymond Hickey, Dublin ; John J. A. O'Hare, Dublin ; Robert Heuston, Tipperary ; Roger O'Sullivan, Limerick ; James C. Taylor, Belfast (Extraordinary Member of Council from 1931 to date of his death) ; Richard J. McDonnell, Dublin ; Hutchinson E. Davidson, Ballinasloe ; Joseph McCartney, Dun Laoghaire ; William S. Barrett, Dublin ; David O'Flaherty, Dublin ; Patrick Liston. Rathkeale ; T. Norman Lynam, Dublin ; Robert N, Keller, Dublin ; Thomas Early, Dublin ; John P. Dillon, Dundalk ; Jarleth A. O'Connell, Tuam ; James Neville, Bandon ; Peter C. Furlong, Dublin.

Mr. James C. Taylor of Belfast was one of the extraordinary members of the Council of this Society appointed by the Council of the Incorporated Law Society of Northern Ireland. He had been an extraordinary member since 1931 and although his duties in Belfast precluded him from attending regularly at our meetings he was always a welcome visitor and a friend of every member of the Council. We deeply regret his loss.

On behalf of the members of the Council and myself I desire to express my deep sympathy to their relations and friends.

Solicitors Act

At the half-yearly general meeting last May I then explained to you the position in which we stood as a result of the decision of the Supreme Court to the effect that the powers exercised by the Disciplinary Committee under the Solicitors Act, 1954 were unconstitutional, and I then told you that the Council of the Society had applied to the Government for amending legislation and it was hoped that this would have been on the statute book by July last. I regret to have to say that our hopes have not, as yet, been fulfilled.

The Council submitted a detailed memorandum of the matter to the Department of Justice which was carefully considered by the Minister and his Officials. The Secretary, Mr. Plunkett, and I have had at least five interviews with the Department, as a result of which a Bill was introduced in the Dail last July. That Bill still awaits consideration, and the Opposition have tabled a number of amendments to it. This is a most difficult and complex matter which needs the greatest care and thought.

We have received very great assistance and consideration from the Minister for Justice and the Secretary of the Department, Mr. Coyne, and I am satisfied that they are doing, and will do, what they can to press the matter through to a conclusion. It is imperative that this should happen as soon as possible, because we are, without amending legislation, in exactly the same position as we were last May. The Report of the Disciplinary Committee is published on page 43 of the annual report which is now in your hands and you will there see what the Committee has done during the past year. They have done and have been able to do nothing. The Disciplinary Committee still has no powers of any kind and the Society is still helpless so far as action against any defaulting solicitor is concerned. Legislation to repair the void caused by the Supreme Courts decision is vitally necessary but as it is clear that this decision effects not only the solicitors' profession but also every other profession as well, the preparation of a new Act is a very difficult business.

The Council are, however, satisfied that the principal object should be to have a Disciplinary Committee exercising generally the functions of the old Statutory Committee established under the Act of 1898. That Committee, under the 1898 Act, was empowered to find facts and to report to the Chief Justice on these facts and whether such facts constituted misconduct or not. It is the opinion of the

Council that this, if re-enacted, would give the Disciplinary Committee ample powers which would not be unconstitutional.

At the present moment therefore the position is that the Department are studying the representations made by the Council and as soon as possible, if necessary, the Council will seek another interview with the Department to press the matter further.

As a result of the lack of disciplinary powers a number of cases extending over the past two and a half years await investigation and decision. The sooner these cases can be dealt with the better. Unfortunately nothing can now be done in any way to deal with these cases and when the Disciplinary Committee obtains new powers there will undoubtedly be some of the heaviest arrears of work to be dealt with that has ever been experienced by this Society.

It must not be thought that every case which comes before the Disciplinary Committee is a bad one and that the solicitor has been guilty of misconduct. It is the experience that in several of the cases investigated there is no case for the solicitor to meet and the proceedings are discharged either on those grounds or for some other reason. In the other cases, however misconduct may be proved and in such cases, the finding of the Committee will be sent forward to the High Court or to the Chief Justice, as the case may be, for consideration. As a result of the delay during the past two and a half years there will, perhaps in the near future, be a number of cases sent forward and I think it my duty to warn the profession and the public that this number, whatever it may be, will be abnormal and will bear no relation whatever to the present state of the profession and will be due solely, as I have said, to the fact that the Disciplinary Committee has been unable to investgate any case since the appeal as to the constitutional validity of the Solicitors Act, 1954 was first taken to the Supreme Court in November, 1956.

Now a matter that has been causing me some thought for some time past is that the profession as a whole does not pay proper attention to its relations with the public. As matters stand at present the acts of one dishonest man can adversely affect the reputations of ninety nine honest men and it is my opinion that this profession should publicise itself properly and fully to the public. It goes without saying that I do not mean that individual solicitors or firms should advertise for business. But I say that we should advertise our profession. We should tell our clients what we do for them and how we do it and why we do it. It is my experience that when a client has business with a solicitor, that client only sees the result. He has little idea of what transpires by and large, between the time he first gives instructions and the time that his business is completed. Nor does he care, provided he gets a result. In my view, that is a very wrong state of affairs. It is precisely because of this state of affairs that clients are not aware of what the profession is doing for the public and how well it is doing it and how much money, time and trouble is being saved thereby. But if the client had explained to him by his solicitor each step and the reason for it, for example, why deeds and releases are drawn in certain ways to avoid unnecessary stamp duty and costs and why distributions are made at certain times and for what reasons, then that client will have a proper appreciation of what is being done and why it is being done in that particular way and how every step affects him. The general public are perhaps to blame in that they do not ask but in my view the profession is equally to blame in not explaining. And it is for this reason and other reasons that I say that our profession does not publicise itself sufficiently. I am getting tired indeed of hearing the whole profession damned because of the dishonesty or incompetence of a few and that is something which I will neither subscribe to nor tolerate. It is time that we took our reputations in hand and dealt with it now once and for all. And I hope that every member of this Society must by now realise that not only is he responsible for his own reputation but that the reputation and good name of his colleagues and his fellows equally and most certainly depend on him.

As evidence of the desire of the profession to see that no member of the public shall lose by the default of any member of the profession, let is be made clear that it was at the suggestion of the profession that the Compensation Fund was set up under the Act of 1954 and that the Solicitors' Accounts Regulations were brought into existence. I emphasise here that these two matters were raised by the profession itself and were pressed forward by the profession and nobody else.

Compensation Fund

The Compensation Fund has been in existence since January, 1955 and to this fund every solicitor practising in Ireland is now bound to subscribe a fixed sum every year. While the making of a grant from the Fund, or the amount of any grant made, is now a discretionary matter there will be a statutory obligation on the Society to provide full indemnity to clients out of the Fund in respect of losses arising on and after 5th January, 1960.

There are two necessary counterparts to the Compensation Fund, firstly adequate disciplinary powers to deal with proved misconduct, and secondly and more important, adequate powers vested in the Society to forestall and prevent defalcations, in order to safeguard the profession and the

public, and to prevent inroads on the fund. The members of the solicitors' profession are under a statutory obligation to put up the money for the establishment and the maintenance of the fund. The profession in effect is insuring clients against defalcations by a minority of dishonest practitioners. It is unreasonable to the great body of reputable practitioners to expect them to insure clients and at the same time to deprive them of the powers which are necessary to prevent or minimise losses.

Nevertheless the Council, having considered the position with regard to the losses by clients at the present time, decided that all claims in respect of which losses had been proved down to the 30th April, 1958 should be paid in full and accordingly cheques have been issued or passed for sums amounting to £10,699.

Other claims are still being investigated and this will take some time. The investigation covers all claims arising since the 5th January, 1955 down to the 28th October, 1958, and during that time claims have been made against thirteen Solicitors, an average of three per year.

Unfortunately the ability of the Council to prevent loss has been dangerously weakened as a result of the decision of the Supreme Court declaring the powers of the Disciplinary Committee to be unconstitutional. As I have said previously there has been no effective disciplinary jurisdiction for over two years and it is absolutely essential that the Society should have power to prevent defalcations and not only to take disciplinary action after the defalcations have occurred.

It is hoped that the Compensation Fund will be an effective indemnity to the public in any case where a Solicitor misappropriates his client's money and the Council must be given proper powers to deal with the matter.

Pensions and Retirement Benefits

As I told you last May the Council have been actively concerned with the question of retirement benefits for the profession. Since then the services of a firm of experts have been engaged to draw up and submit a draft scheme for pensions annuities. The suggestion is that members will be entitled to contribute annually to this pension annuity scheme in such amounts as they think fit or can afford and the pensions payable to each contributor at the end of the contributory period, at probably 65 or 70 years of age, will be in proportion to the amount contributed by him to the scheme during the contributory period. The advantage of this flexibility is that the member is not tied to a fixed premium and he can provide for his pension in a greater or smaller contribution according to his earnings. He may desire to contribute a large sum in one year and nothing at all during the next. And it will be on the sum total of what he has contributed during the contributory period that his pension will be calculated. Furthermore contributions may be deducted from earnings for tax purposes and it is probable, although not certain, that the pensions will be taxable in the hands of the recipient at a lower rate when received. The Council have not yet received the draft Scheme but it is the idea that if and when it is set up the Society will act as Trustee to the Scheme to be established for the benefit of the members and the members will send their contributions to the Society for investment with the Company concerned.

Professional policy and development

The Council has also decided to set up a Committee to consider the position of the profession and its members generally not only with reference to the relation of the profession with the public but also in connection with the internal affairs of the profession itself. The Council feels that there should be a settled policy with regard to the future rather than that matters should be dealt with on a day to day basis. Times are changing fast and it is no longer sufficient to deal with matters as they arrive. It seems to me that as far as possible they should be anticipated well in advance and the profession should be given some guidance as to how it should adapt itself to situations as they may occur. The proposed Committee will have to study and report on every facet of our profession and consider it in detail. It will, I think, have to concern itself with many things. If such a Committee had been in existence in the early 1930's I believe it may have been able possibly to do untold good. For instance, to take only one example, since the year 1926 apprentices were coming into the profession in such considerable numbers that the result is now that the profession is vastly over-crowded and has increased by one-third since 1926, and a Committee of the kind now proposed might have then visualised this difficulty and laid down a policy to deal with it.

Land Commission Costs

During the year a deputation from the Council attended at the Land Commission for the purpose of explaining difficulties experienced by the profession in regard to procedure and solicitors' costs in Land Commission matters. The position is that the greater part of solicitors' costs in Land Commission matters are item costs regulated by the Schedule of Fees appended to the provisional Rules of 1926 and these costs were increased in 1947 by the addition of 25% to the item charges. They are so completely out of line with present day financial and economic conditions that it does not pay any solicitor now to do any business in the Land Commission. I do not propose

here to go into figures and percentages but it is an established fact that a great deal of solicitors' work in the Land Commission is carried out at a loss to the solicitor. It was pointed out by the Council that this situation if it continues must be detrimental to the efficient conduct of business as solicitors will be unable to employ staff to carry it on or to engage in it themselves. Discussions have been held at official level with the Land Commission for over two years past and it has been officially conceded that the Society have a good case but nevertheless we have been unable to make any satisfactory progress towards solution. The position is complicated and worsened by the fact that part of the costs in Land Commission matters is paid in Land Bonds, which stand at less than par, sometimes as low as 75% to 80% of the par value and as a result the client must pay the difference.

This claim was submitted to the Land Commission in May of 1956 and yet after some two and a half years investigation and negotiation no progress has been made except to obtain an admission that the Society have a good case. The Council are still dealing with this matter and intend to press it as hard as they can.

Law Reporting

One matter which has exercised the attention of the Council during the year is the delay in reporting decided cases. The Society has undertaken to pay to the Incorporated Council of Law Reporting a fixed annual sum of £500 and is the largest single contributor to those funds. The delay in reporting decided cases and in bringing out the law reports seems to me to be inexplicable. It is necessary at times to wait for as much as two years for a report of a decided case and I do not understand why these cases which are of such vital importance to both branches of the profession cannot be reported speedily. The Society's representatives on the Incorporated Council of Law Reporting have been asked to bring these matters before it and it is hoped that there will be some improvement in the future.

Education

You will see, beginning at page 16 of the Annual Report the position with regard to education in the Society, the list of the lectures and examinations which must be taken by apprentices. It is all set out there very fully and I do not intend to comment upon it but I want to say this. I am satisfied in these days that masters do not give sufficient attention to the proper education of their apprentices in ethics and standards of conduct. It seems to me that in many cases apprentices are allowed to become solicitors qualified to practise law but with very little idea of how to behave towards the public or their colleagues. In my view it would be far better if they knew less law and more about ethics and I say that it is the bounden duty of every master taking an apprentice to instil into his apprentice a proper code of ethics and conduct. Nobody else can do it. It is the master's duty and I cannot emphasise too solemnly the weight of this duty. If every master taking an apprentice took care to see that that apprentice was taught properly and received a correct ethical outlook and standard of conduct towards his colleagues and the public, the profession and its members would have a good deal less to worry about than it has to-day.

And it is here that the local Bar Associations do so much good to maintain the high standards and the code of honour which are an absolute necessity to our profession. I will not weary you with his because by now you should know what my views are on this subject. I will only repeat that there ought to be a Bar Association in each district and every solicitor in that district should be a member of it. There can be no valid excuse whatever for failure in either of these respects.

International Bar Association

The Society was represented at the Seventh Biennial Congress of the International Bar Association which was held for a week last July at Cologne. Mr. Halpin, Vice-President and I attended as delegates and seven other members attended as conferees. The Society now has a representative on the General Council of the International Bar Association to which I had the honour of being elected. Legal associations from all over the free world were represented—from Australia to Norway. In such company it was essential that we should pull our weight to the full and I want to place it on record here that Mr. Halpin and my colleagues representing the Society at the Congress worked consistently and steadily for the good name not only of the Society but also of Ireland. A country is judged solely by the members of its delegation which may be unfair but is perhaps natural. My colleagues returned from Cologne having given the Society and the Country an enhanced reputation among lawyers and no praise of mine can be too great for their solid hard work and the thanks of the Society is due to all of them in full measure. Nor can I end this note without referring to the kindness and help we received from His Excellency The Honourable William Warnock, our Ambassador at Bonn. Our sincere thanks are due to him and to his staff for their assistance and the manner in which they made themselves responsible for our welfare.

Finally may I express the view that the Council and I would be anxious that country solicitors should attend the half yearly General Meetings of this Society. The country representations at these Meetings has for years past been extremely small. I appreciate that it may be difficult for country members to

come to Dublin for these Meetings but it is important that every member so far as possible should attend so that he may if necessary put his views before the meeting in person. It is only by having a strong and active membership that the Society can hope to prosper and I strongly hold the view that every member should attend the Half Yearly General Meetings so far as possible and not leave the attending to a few. In conclusion I should like to thank my two Vice Presidents, Mr. Halpin and Mr. Lanigan for their help and assistance throughout the year and I would like to place on record the debt which the Society owes not only to them but to every member of the Council. This has been a most difficult year. There has been an abnormal number of Council Meetings and a very large number of Committee Meetings. By far the heavier part of the day to day work is carried out at the Committee meetings and I must tell you that the members of the Council have given the most magnificent services to these Committees and to the Society and I am most grateful to them.

I must also place on record my appreciation and gratitude to Mr. Plunkett and his staff for the help they have given me and the kindness they have shown me during my term of office. I am satisfied that were it not for all that I have stated it would have been impossible for me to carry out my duties.

When the press representatives had left the meeting the President made the following statement.

I want to talk to you now about the Compensation Fund and while you are entitled to have the facts, I have thought it better to give these to you in the absence of the Press for obvious reasons at this time.

The present annual subscription by each member is £5, and this gives an income together with investment income, of approximately £7,300 per year. The amount of the Contributions and Investment Income from 6th January, 1955 to 28th October, 1958 was £28,364.

Up to the 28th October, 1958, claims have been made on the Fund amounting to £52,812.

Of these, claims amounting to £7,318 have been withdrawn, refused or disallowed, £10,699 has been admitted as proved and cheques have been issued for payment, and claims amounting to £34,795 are still under investigation.

Fifty two claims have been made in respect of 13 solicitors the largest being claims amounting in all to £21,891 against one solicitor and the next largest being a claim amounting to £7,812. The claims which amount to £21,891 have come in since March, 1958.

There is no reason to believe that most of the losses claimed will not be proved and it may therefore be estimated that the total losses to be met down to the 28th October last will be in the region of £45,000.

I need not emphasise these figures. They are self evident and they make a sorry showing. It is clear that the stability and the solvency of the Fund cannot be maintained with income as it is at present, if we are to accept as a yardstick the income and loss position over the past four years.

The Council is aware that other losses are in existence which have not yet been reported for one reason or another. It is clear beyond all doubt that if all losses are reported, the total proved losses will exceed by a large margin the estimate of £45,000 to which I have referred.

I therefore feel that it is my duty to warn the profession that in my view, and that of many other colleagues who have given considerable thought to this matter, the annual payment by each member to this Fund will have to be increased in the near future. There is no use in closing our eyes to this issue. The profession as a whole is responsible for the maintenance of this Fund. It is our Fund, maintained by the profession for the stability of our reputation and our good name and maintained it must be. We pay £5 per year and the Compensation Fund, for the reasons I have now given you, may very well become insolvent within a short time. I need hardly say that no increase in the annual contribution, however small, will be made here unless it becomes necessary but upon my honour I cannot see how it is to be avoided.

I need hardly stress the gravity of this situation which is made immeasurably worse by the Supreme Court decision declaring our disciplinary powers unconstitutional. We in our profession have no longer any disciplinary powers worth talking of. We can under section 49 of the 1954 Act, for the reasons therein stated, refuse to issue practising certificates but this is a small thing. We can under Section 17 of the 5th Schedule to that Act obtain an order from the High Court freezing a solicitor's bank account, but this can be done only after dishonesty has occurred, not before. And in both these cases, the solicitor concerned can continue to practise.

The present state of affairs is shocking and the Council are very much alive to the fact that it has no powers whatsoever to prevent this dishonesty occurring or to have it punished when it has occurred. And until we get these powers, the way is open for misappropriation on any scale with increased demand on the Fund, and it follows as surely as I stand here, that public confidence, and not only public confidence but our own confidence in our profession, will be so sapped that regard for the profession is unlikely to recover in the lifetime of any of us here to-day.

The motion for the adoption of the report was seconded by Mr. B. T. Walsh, Messrs. T. D. McLough-

lin, and Leslie Kearon, spoke to the motion which was unanimously carried.

Thursday 26th November, 1959 was appointed as the date of the next annual meeting.

Mr. D. P. Morris addressed the meeting on the subject of communications sent by solicitors acting for building societies to intending borrowers.

On the motion of Mr. Lanigan seconded by Mr. Cox, it was decided that a message be sent expressing the sympathy of the meeting and thanks for the services which they have rendered to the Society to Mr. Sean O'hUadaigh, and Mr. P. R. Boyd, who were prevented by illness from attending the meeting.

Mr. J. B. McGarry then moved that the senior Vice President take the chair. Mr. Halpin took the chair and Mr. McGarry moved a vote of thanks to the President for his distinguished services to the Society and the profession during his year of office. Mr. Cox seconded the motion which was carried with acclamation. The President replied and the proceedings then terminated.

MEETINGS OF THE COUNCIL

NOVEMBER 20TH: The President in the Chair. Also present Messrs. Arthur Cox, John Halpin, James J. O'Connor, James R. Quirke, Robert McD. Taylor, Peter E. O'Connell, George G. Overend, John Nash, Eunan McGarron, Thomas A. O'Reilly, John Kelly, Dermot P. Shaw, Ralph J. Walker, George A. Nolan, John J. Sheil, Derrick M. Martin, Desmond J. Collins, Cornelius J. Daly, Patrick Noonan, William Dillon-Leetch, Desmond J. Mayne, Niall S. Gaffney, John Maher, and Francis J. Lanigan.

The following was among the business transacted:

Committees of the Council

The following committees were appointed:

Registrar's Committee

Francis J. Lanigan, Chairman; Desmond J. Collins, Cornelius J. Daly, John Maher, Eunan McCarron, John J. Nash, George A. Nolan, Peter E. O'Connell, James J. O'Connor, John J. Sheil, Robert McD. Taylor, James R. Quirke.

Compensation Fund Committee

Desmond J. Collins, Chairman; Cornelius J. Daly, Francis J. Lanigan, John Maher, Eunan McCarron, John J. Nash, George A. Nolan, Peter E. O'Connell, James J. O'Connor, John J. Sheil, Robert McD. Taylor, James R. Quirke.

Court of Examiners

Niall S. Gaffney, Chairman; Derrick M. Martin, Cornelius J. Daly, Thomas A. O'Reilly, James R. Quirke, Terence De Vere White with the President, Vice Presidents and immediate Past President for the time being ex-officio.

Finance, Library and Publications

John J. Nash, Chairman; Arthur Cox, Cornelius J. Daly, Charles J. Downing, John Kelly, Thomas A. O'Reilly, James R. Quirke, Dermot P. Shaw, with the President, Vice Presidents and immediate Past President for the time being ex-officio.

Parliamentary

Patrick O'Donnell, T.D., Chairman; Patrick R. Boyd, William J. Comerford, Arthur Cox, John Kelly, Patrick Noonan, Sean O'hUadaigh, Dermot P. Shaw, with the President, Vice Presidents and immediate past President ex-officio.

Privileges Committee

Peter E. O'Connell, Chairman; C. E. Callen, W. J. Comerford, Arthur Cox, W. Dillon-Leetch, N. S. Gaffney, John R. Halpin, John Kelly, F. J. Lanigan, John Maher, Derrick M. Martin, Desmond J. Mayne, Eunan McCarron, John J. Nash, R. J. Nolan, P. Noonan, James J. O'Connor, Patrick O'Donnell, T.D., George G. Overend, John J. Sheil, Edward Tracey, Joseph Tyrrell, Ralph J. Walker, with the President, Vice Presidents and immediate Past President ex-officio.

Court Offices and Costs Committee

John Maher. Chairman; Peter E. O'Connell, Christopher E. Callen, William J. Comerford, Arthur Cox, William Dillon-Leetch, Niall S. Gaffney, John R. Halpin, John Kelly, Francis J. Lanigan, Derrick M. Martin, Desmond J. Mayne, Eunan McCarron, John J. Nash, Reginald J. Nolan, Patrick Noonan, James J. O'Connor, Patrick O'Donnell, T.D., George G. Overend, John J. Sheil, Edward Treacy, Joseph P. Tyrrell, Ralph J. Walker, with the President and Vice Presidents and immediate Past President ex-officio.

Disciplinary Committee

The following members of the Council were appointed to be the Disciplinary Committee for the year 1958–59, and the Secretary was directed to submit their names to the Chief Justice for his approval:

John Carrigan, Charles J. Downing, Niall S. Gaffney, Desmond J. Mayne, Thomas A. O'Reilly, George G. Overend, Dermot P. Shaw, Joseph P. Tyrrell, Ralph J. Walker, Terence De Vere White.

Nominations and ballot for the Council 1959-60

Monday 12th October, 1959 was appointed as the final date for receipt of nominations and Thursday 19th November, 1959 was appointed as the date of the ballot for the election of the Council 1959–60.

Committee on Professional Policy and Development

The President, for the time being, and the past Presidents were appointed as members of this committee with power to co-opt additional members

from time to time ad hoc including members of the Society who are not on the Council.

THE INCORPORATED LAW SOCIETY OF NORTHERN IRELAND

The President of the Society for the year 1958–59, is Mr. James J. Napier, Belfast. The Vice Presidents are Mr. Leonard I. Fox of Belfast and Mr. Robert McD. Coulter of Belfast.

The five extraordinary members of the Council of the Incorporated Law Society are Messrs. James J. Napier, Leonard I. Fox, Robert McD. Coulter, Charles MacLoughlin and Frederick H. Mullan.

SOUTHERN LAW ASSOCIATION

At the Annual General Meeting of the Association in Cork on 5th December, 1958, the following officers were elected for the year 1958–59: The President, Bryan J. Murphy; Vice President, Francis P. Galvin; Hon. Treasurer, Gerald J. Moloney; Hon Secretary, Humphrey P. Kelleher.

The following members were appointed to represent the association as extraordinary members of the Council of the Incorporated Law Society of Ireland: Messrs. Bryan J. Murphy, James W. O'Donovan, John B. Jermyn, Edmund Hayes and Francis P. Galvin.

SOCIETY'S DINNER DANCE

A successful dinner dance held on November 20th, in the Shelbourne Hotel, Dublin. There was an attendance of approximately 276 members and friends.

PRESENTATION OF CERTIFICATES OF ADMISSION

On November 20th, the President at a ceremony in the Society's Library presented certificates of admission to the following solicitors:

Michael J. Bowman, Kanturk, Co. Cork; Richard Joseph Branigan, 16 William Street, Drogheda, Co. Louth; Timothy H. Crowley, Stone House, Stillorgan Road, Dublin; Francis X. Downes, 486 Collins Avenue, Whitehall, Dublin; Margaret M. Foley, Tyrconel, Perrott Avenue, Cork; Gordon A. Holmes, B.C.L., 5 Pery Square, Limerick; John P. A. Hooper, B.C.L., 4 Pakenham Road, Monkstown, Co. Dublin; Gillian M. Hussey, Vailima, 13 Woodbine Avenue, Blackrock, Co. Dublin; Thomas B. Jellett, Coolmine House, Clonsilla, Co. Dublin; Michael P. Keane, Society Street, Ballinasloe, Co. Galway (*1st Place Final Examination September*, 1957, *Silver Medal*); John K. Temple Lang, B.A. (Mod), LL.B., Lismorna, Stillorgan Road, Donnybrook, Dublin (*1st Place Final Examination September*, 1958, *Gold Medal*); Martin E. Marren, B.A., LL.B., Killasser, Swinford Co. Mayo; James Kevin Martin, Kilbride, Trim Co. Meath; Michael I. Moore, Garr House, Rhode, Co. Offaly; Peter F. Moylan, B.A., Main Street, Loughrea, Co. Galway; Joseph M. McGowan, The Square, Balbriggan, Co. Dublin; Liam MacHale, B.A., Kevin Barry Street, Ballina, Co. Mayo; Patrick M. A. MacNamee, Glenview House, Glenroe, Kilmallock, Co. Limerick; John Dillon Nugent, Modeshill, The Grove, Stillorgan, Co. Dublin; Patrick J. O'Brien, 81 Main Street, Cootehill, Co. Cavan; Michael B. O'Cleirigh, 7 Oaklands Drive, Rathgar, Dublin; James P. G. O'Connor, 2 Clyde Road, Ballsbridge, Dublin; Thomas P. O'Connor, Slieve Rua, Lower Kilmacud Road, Stillorgan, Dublin; Michael N. M. O'Donoghue, B.A., LL.B., Parkmore, Tuam, Co. Galway; John M. O'Donnell, 37 Oliver Plunkett St., Mullingar, Co. Westmeath (*3rd Place Final Examination September*, 1958, *Silver Medal*); Franklin J. O'Sullivan, B.C.L., LL.B., Lisheen, Kilminchy, Portlaoise, Co. Laois (*3rd Place Final Examination May*, 1958, *Special Certificate*); Peter H. Quinlan, B.A., Corduff, Blanchardstown, Co. Dublin; Mary P. Read, B.A., LL.B., H.Dip. in Ed., 31 Raglan Road, Ballsbridge, Dublin (*2nd Place Final Examination May*, 1958, *Silver Medal*); John P. Redmond, 475 North Circular Road, Dublin; Fergus P. Taaffe, 18 New Ireland Road, Rialto, Dublin; James N. Tanham, 58 Kincora Road, Clontarf, Dublin; Henry J. Wynne, Main Street, Boyle, Co. Roscommon; William A. Young, B.A., LL.B., 25 John Street, Waterford.

SCHOLARSHIPS

The Findlater Scholarship has been awarded by the Council to Mr. Richard M. Neville, who served his apprenticeship with the late Mr. James Neville, of Bandon, Co. Cork.

The Overend Scholarship has been awarded to Mr. Michael G. Cody, who is serving under indentures of apprenticeship with Mr. James Cody, of Bagenalstown, Co. Carlow.

PRESS NOTICES BY SOLICITORS

The Council have decided to bring to the notice of members the fact that press notices of change of address, etc., must not have the form or appearance of an advertisement. It is permissible to publish such notices, once in each Irish daily or local newspaper, but the use of block letters or layout of an advertising nature is unprofessional.

THE MEDICO-LEGAL SOCIETY OF IRELAND

The Object of the Society is to promote and advance Medico-Legal Knowledge.

Membership is open to members of the Medical and Legal Professions in Ireland and to others interested in Medico-Legal matters.

Annual Subscription .. .. £1 1 0.

Ordinary Meetings are held on the last Thursday of the months of October, November, January, February and March, at The Royal Hibernian Hotel, Dublin, at 8 p.m.

Meetings for Session 1958–1959 have been arranged as follows :

30th October, 1958 ; 27th November, 1958 ; 29th January, 1959 ; 26th February, 1959 ; 19th March, 1959.

Patron : The Chief Justice, The Hon. Mr. Justice Conor A. Maguire.

President : Dr. J. P. Brennan, Coroner for Co. Dublin.

Hon. Vice-Presidents : The Hon. Mr. Justice George D. Murnaghan ; Donough O'Donovan, Esq., Chief State Solicitor ; Professor R. A. Q. O'Meara, M.D., T.C.D. ; Joseph A. McCarthy, Esq., Senior Counsel ; Sean Hooper, Esq., Senior Counsel ; Dr. John F. Falvey, M.D. ; Liam Trant McCarthy, Esq. ; Neil MacDermot, Esq., F.R.C.S.I. ; Dermot P. Shaw, Esq. ; Edward Fahy, Esq., Barrister-at-Law ; Dr. D. A. McErlean, M.D., Barrister-at-Law, Dublin City Coroner ; Dr. J. FitzGerald, M.D.

Hon. Secretary : M. J. Leech, 4 Chancery Place, Dublin, Telephone, 76831 ; *Hon. Treasurer :* Captain James A. Kelly, Ulster Bank Chambers, 3-4 Lr. O'Connell St., Dublin. Telephone, 79129.

Council : Professor P. N. Meenan, M.D., Barrister-at-Law ; Dr. Maurice D. Hickey, M.D., State Pathologist ; Dr. Francis McLaughlin, M.D. ; Brendan A. McGrath, Esq. ; Professor E. Y. Exshaw, Barrister-at-Law ; Dr. John P. Shanley, M.D. ; Herman Good, Esq., LL.B. ; *Editor of Debates :* Dr. John Fleetwood, M.D. ; *Hon. Auditor :* M. B. Daly, Esq., Barrister-at-Law.

Full particulars as to membership, etc., may be obtained from the Hon. Secretary, 4 Chancery Place, Dublin. Telephone, 76831.

The Council of the Society has arranged Ordinary Meetings for *Thursday, 29th January*, 1959 : Paper (illustrated with slides) by Mr. L. K. Nickolls, M.Sc., Director of Police Laboratory, Scotland Yard, "Developments in Forensic Science." *Thursday, 26th February*, 1959 : Paper by Dr. J. A. Wallace, M.B., "Poison and the Doctor." *Thursday, 19th March*, 1959 : Symposium, "Aspects of Punishment."

All Meetings to be held at The Royal Hibernian Hotel, Dublin. Time, 8 p.m.

Members are kindly requested to note the dates, etc., of the above meetings.

DUBLIN SOLICITORS' BAR ASSOCIATION

A Meeting of the Council was held on Wednesday, 5th November, 1958. Permission was given to a non-member employed by a local authority to adapt the Association's form of contract for sale to his purposes. The desirability of reverting to the use of an adhesive stamp on the Request for lodgement of funds with defence at the Bank of Ireland instead of the impressed stamp required by the Supreme Court and High Court (Fees) Order, 1956 was considered, and in view of the inconvenience caused by the use of an impressed stamp on this form, it was decided to make representations to the appropriate quarters.

It was reported that there is now a two months delay for ex parte applications under the Enforcement of Court Orders Acts in the Dublin Metropolitan District, and it was decided to make representations to reduce this delay to what it should be, and what it formerly was, namely a matter of days. The Meeting noted that the schedule of costs under the Enforcement of Court Orders Acts used in the Metropolitan Area is likely to be introduced into the County Area, and welcomed this further step towards uniformity.

The next Meeting of the Council was fixed for Wednesday, 3rd December, 1958.

COUNTY MEATH SOLICITORS' ASSOCIATION

At the Annual General Meeting of the above Association held on the 31st October, 1958 the following officers and members of the committee were elected : President, Alan Donnelly ; Secretary and Treasurer, Mrs. Eileen Leahy ; Committee, Messrs. T. Noonan, P. Noonan, F. O'Reilly, L. Noonan, W. O. Armstrong, and N. Lacy.

COUNTY ROSCOMMON BAR ASSOCIATION

At the Annual General Meeting of the above the following officers and committee were elected : President, P. J. Neilan, Senr., Roscommon ; Chairman, John Kelly, Elphin ; Vice-Chairman, F. X. Burke, Boyle ; Hon. Treasurer, J. J. Sheerin, Boyle ; Hon. Secretary, P. Desmond O'Connor, Ballaghaderreen ; Committee, Messrs. M. D. Carlos, Strokestown ; O. Macklin, Roscommon ; T. J. C. O'Keeffe, Roscommon ; P. J. Neilan, Jnr., Ballaghaderreen ; and A. McCormack, Strokestown.

DECISIONS OF PROFESSIONAL INTEREST

Solicitor attestor of will later became a trustee and was thus precluded from remuneration by Wills Act.

Mr. Justice Wynn Parry held that a solicitor, Mr. George Tildesley, of Staines, who had attested the

will of the late Sir Frederick Henry Royce, Bt., and who, later, after the testator had died and the will had been proved, became a trustee of the will, was precluded by section 15 of the Wills Act, 1837, from taking remuneration for his services as trustee.

Section 15 of the Wills Act, 1837, provides: "... if any person shall attest the execution of any will to whom or to whose wife or husband any beneficial ... interest, gift ... shall be thereby given or made, such ... interest, gift ... shall so far only as concerns such person attesting the execution of such will, or the wife or husband of such person ... be utterly null and void, and such person so attesting shall be admitted as a witness to prove the execution of such will ... notwithstanding such ... interest, gift...."

Mr. Justice Wynn-Parry, giving judgment, said that there was no direct authority on the question with which he had to deal. It arose because the first defendant was an attesting witness to the testator's will and on the death of one of the two trustees named in the will he was appointed to be a trustee of the will. Under clause 16 the testator provided that if so long as his trustees were retaining any part of the trust fund it should be lawful for them to pay themselves out of the income "before dividing the same such a sum as shall equal 5 per cent thereof to be equally divided between them by way of remuneration for their services." Then in clause 17 the testator provided that "any person who may for the time being be an executor or a trustee of my will and who may be a solicitor shall be entitled to charge and shall be paid out of my estate for his services in the same manner as though not being an executor or trustee he had been employed by my executors or trustees to render such services."

Now having regard to the circumstance that the first defendant attested the will, was he on becoming a trustee entitled to receive remuneration under clause 16 and to make professional charges under clause 17, or was the circumstance that he attested the will fatal to his right to receive any benefit under either of those clauses? The question really turned on section 15 of the Wills Act 1837.

It has been held, and the proposition was beyond dispute, that the provision in a will that a solicitor was entitled to charge, was a legacy. In *In re Pooley* ((1888) 40 Ch. D. 1) a testatrix appointed a solicitor as one of the trustees of her will and declared that any trustee of her will who should be a solicitor should be entitled to charge for all business done in relation to the estate. The solicitor was one of the attesting witnesses and it was held by the Court of Appeal that he was not entitled to any profit, costs for business done by him in relation to the estate, for the right to make professional charges could only be claimed under the will and was a beneficial interest under it, from claiming which he, being an attesting witness, was precluded by section 15 of the Wills Act 1837. That was not exactly this case, because in that case the solicitor was named as solicitor and trustee of the will, whereas here the solicitor only became trustee after the death of the testator.

It was perfectly true that the appointment of the first defendant as a trustee had the result of enabling him to take out of the assets of the testator that which the law would not otherwise allow, because there was a charging clause. Against that it had to be borne in mind that it was with the proving of a will that primarily at any rate section 15 of the Wills Act, 1837, was concerned. There then remained the short but difficult question on the language of the section: Has one who attested the will, although not in the class which had any benefit under it either when the will was attested or when the will came to be proved, any right if he afterwards entered a class defined by the will to take the benefits which the provisions of the will seek to confer on that class.

He had come to the conclusion that the only safe view to adopt was that if a man attested a will he should not in any way be enabled to take any benefit under that will, not even if he entered a class intended to be benefited by the will after the will was proved. Other minds might take a different view, because there was a great deal to be said for the argument of counsel for defendant, but (his Lordship) thought that in many cases it might lead to uncertainty and in certain cases to collusion.

(In re Royce's Wills Trusts—Tildesley *v.* Tildesley—(1958) 3 All E. R. 586).

The Court will not interfere with the exercise of his discretion by a Taxing Master, in the allowance of fees to counsel. However, if the Master errs in principle in the fees allowed he will be asked to re-tax the items.

This was an appeal from a decision of Murnaghan J., upholding the decision of a Taxing Master in the taxation of the respondents costs of a case stated from a District Justice to the High Court, to have decided if a member of the Garda Siochana was obliged, if called as a witness, (i) to disclose the nature of the instructions which he had received from a superior officer and (ii) if he was privileged in refusing to produce a written statement made by him. The High Court (Dixon and Teevan J. J., Davitt P. dissenting) decided that the witness was privileged from disclosing the nature of his instructions and in refusing to produce the statement, and directed the respondent to pay the Attorney-General's costs. The respondent appealed to the Supreme Court where it was intimated that an appeal to the High Court, by way of case stated did not lie. This Court allowed

the respondent to amend his notice of appeal from the High Court's decision, to contend that there was no appeal to the High Court from the District Court by way of case stated on a preliminary point. Having heard the appeal on this point the Supreme Court decided, reversing a previous decision of the High Court, that an appeal did not lie in such a case, and allowed the respondent his costs of the appeal.

The respondent's costs were taxed by Master O'Reilly who allowed senior counsel £42 on the brief and refreshers of £26 5s. The respondent in his bill of costs had charged fees of £105 on the brief and refreshers of £42. The respondent appealed to the High Court against the disallowance of counsel's fees, when Murnaghan J. upheld the decision of the Taxing Master.

The respondent appealed against the decision of Murnaghan J., and the Supreme Court (O'Dalaigh and McLoughlin, J. J., Maguire C. J. dissenting) referred the bill back to the Taxing Master to reconsider the allowances of the fees to counsel. O'Dalaigh J., stated that whilst the Master paid due attention to the importance of the case from the respondent's point of view, he did not appear to have looked at the importance of the case from the point of view of the Attorney General for the public and in looking at the case, only having regard to its interest for the respondent, the Master acted erroneously. Further if, as appeared, the Master took into consideration the fact that the case had been argued by the respondent's counsel in the District Court, and for that reason reduced counsel's fees he acted on a wrong principle. (The Attorney-General *v.* Simpson—unreported—judgment given by Supreme Court on 14 October, 1958.)

THE REGISTRY

Register B

SOLICITOR, experienced, seeks assistantship. Munster. Box B.233.

REGISTRATION OF TITLE ACTS, 1891 AND 1942.

NOTICE

FOLIO 104, COUNTY KERRY.
Registered Owner: JAMES CULLOTY.

An Application has been made by the Registered Owner for the issue of a Certificate of Title in substitution for the Certificate specified in the Schedule hereto, which, it is alleged has been lost or inadvertently destroyed.

A Duplicate Certificate will be issued unless a notification is received in this Registry within 28 days from the date of this Notice that the said Certificate of Title is still in existence and in the custody of some person other than the above named registered owner. Any such notification should state the grounds on which the Certificate is being held.

Dated this 28th day of December, 1958.

JOSEPH O'BYRNE,
Registrar of Titles.

Land Registry,
Chancery Street,
DUBLIN.

SCHEDULE.

Land Certificate of James Culloty to 70a. 1r. 4p. of the lands of Garrane situate in the Barony of Trughenackmy and County of Kerry being the lands comprised in said folio.

THE SOLICITORS' BENEVOLENT ASSOCIATION

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

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

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

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

Address:
SECRETARY,
SOLICITORS' BENEVOLENT ASSOCIATION,
18, HUME STREET,
DUBLIN.

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JANUARY
1959

THE GAZETTE

of the

INCORPORATED LAW SOCIETY OF IRELAND

President
JOHN CARRIGAN

Vice-Presidents
JOHN R. HALPIN,
FRANCIS J. LANIGAN

Secretary
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

PRACTISING CERTIFICATES 1959-60 IMPORTANT

THE latest date for taking out practising certificates in time was Thursday February 5th. Attention is drawn to the provisions of part V of the Solicitors' Act, 1954 with regard to the issue of practising certificates and sections 54 to 57 with regard to the qualifications for acting as a solicitor and the consequences of practising without a certificate. The form of declaration to be made in order to obtain a practising certificate may be obtained by Dublin solicitors, or by country solicitors through their Dublin agents, on application to the Society's office. Members are advised that practising certificates when issued cannot be sent by post.

MEETINGS OF THE COUNCIL

DECEMBER 11th, Mr. Carrigan and afterwards Mr. Halpin in the chair. Also present, James J. O'Connor, Desmond J. Collins, George A. Nolan, John Sheil, W. Dillon Leetch, Ralph J. Walker, R. McD. Taylor, Cornelius J. Daly, J. R. Quirke, John J. Nash, Eunan McCarron, John Maher, Patrick Noonan, Peter E. O'Connell, Arthur Cox, W. J. Comerford, Francis J. Lanigan, John Kelly, N. S. Gaffney, Dermot P. Shaw, Joseph P. Tyrrell, Thomas A. O'Reilly, Terence de Vere White, C. E. Callan.

The following was among the business transacted :

Valuation Office : delays

Mr. McCarron reported the result of an interview with the Valuation Office. Further consideration was deferred to enable the Secretary to ascertain whether there is any widespread or general cause of complaint on the score of delay and to obtain particulars.

JANUARY 15th : The President in the chair. Also present, Messrs. Arthur Cox, John Maher, Reginald J. Nolan, Cornelius J. Daly, Desmond J. Collins, G. G. Overend, Edward Treacy, John J. Sheil, N. S. Gaffney, John J. Nash, John R. Halpin, James J. O'Connor, John B. Jermyn, James W. O'Donovan, C. J. Downing, J. P. Tyrrell, Eunan McCarron, Patrick Noonan, W. J. Comerford, Thomas A. O'Reilly, J. R. Quirke, Terence de Vere White,

John Carrigan, Ralph J. Walker, R. McD. Taylor, Dermot P. Shaw, Peter E. O'Connell.

The following was among the business transacted :

Final Examination and Scholarships. Transitional Arrangements

On a report from the Court of Examiners it was decided that candidates at the present Final Examination (which will continue until Summer 1960 when the new Second and Third Law Examinations will be substituted) will be exempted from subjects passed at the First Law Examination (i.e., the law of contract property and tort) but that candidates availing of this exemption will not be eligible for scholarship or medal awards. The exemption is in the theory papers only. It does not apply to the questions on conveyancing, landlaw, company law and applications of the law of property and contract.

Application under section 36 (2)

On the report from the Court of Examiners permission to take a second apprentice was granted to a solicitor in special circumstances disclosed.

Client's privilege against disclosure

A member acted for the personal representative (since deceased) of a deceased person and holds monies forming part of the estate in his client's account on the instructions of the personal representative. He received a claim on behalf of a public authority to pay over the money in discharge of the maintenance of the original deceased in a public institution. No further representation has been raised and member has no client to instruct him. He inquired whether any question of privilege arose which would prevent him from complying with the request and asked for guidance from the Council. The Council expressed the opinion that no question of privilege appeared to arise and that member should consider paying the money into Court under the Trustee Acts.

Builders' Advertisements

A committee submitted a report on advertisements appearing in a Dublin evening newspaper on behalf of builders, some of which appeared to suggest that the solicitor for the builder will act also for the purchaser or lessee free of charge. Consideration was postponed and it was decided to send the matter to the Dublin Solicitors' Bar Association for their view.

Professional Negligence Indemnity

On a report from a committee the Council decided to authorise an insurance broker to investigate the possibility of group insurance by members against liability for negligence.

Professional Practice Regulation 6

On a report from a committee a waiver was issued to a solicitor for a bank to enable him to act also as solicitor for a wholly owned subsidiary company.

Road Traffic Acts. Costs of Defending prosecutions

A member wrote drawing attention to the fees paid by insurance companies to solicitors for defending traffic prosecutions and submitting that the fees are inadequate. It was decided to issue a circular to the Bar associations asking for information as to the fees paid and for their views.

Solicitor-executor. Costs of assent to specific devise

A member is sole executor of will which contains a specific devise of certain lands occupied by the devisee. The executor has not yet assented to the devisee and will probably not be in a position to do so for some time. The devisee with the approval of the executor sold a building site on part of the lands and the solicitor executor was asked to execute an assent drawn up by the solicitor acting for the devisee. He enquired whether he would be entitled to charge a fee therefor and whether the fee if payable should be charged against the estate or paid by the devisee. The Council on a report from a committee stated that the assent required appeared to be a special assent dealing only with part of the property devised. Assuming that the will contains the usual clause entitling the solicitor-executor to be paid his costs the committee are of opinion that the costs of approving the assent should be paid by the devisee.

LIABILITY TO RATES OF RENTS PAYABLE OUT OF PREMISES USED FOR PUBLIC OR CHARITABLE PURPOSES

The Society made representations to the Department of Local Government that legislation should be enacted changing the present law whereby a rent issuing out of property used for charitable or public purposes is assessed for rates at half the standard rate, the property itself being exempt. It was stated by the Department that according to the available information relatively few people are adversely affected through the operation of the law as it stands. The Council would be obliged if members who act for clients who are adversely affected by the present law would supply particulars

to the Society which could be used as the basis of a further submission, at the same time giving permission to the Society to cite the actual cases.

STATUTORY NOTICE TO CREDITORS DEBTS DUE TO THE STATE

We are indebted to members of the Society who have forwarded correspondence with the Revenue Commissioners and a copy of counsel's opinion on the question whether a personal representative who publishes a statutory notice to creditors in accordance with Lord St. Leonard's act is protected against personal liability for income tax or any other debt due to the State of which he has not received notice. Letters of administration with will annexed were granted to the personal representative on 15th July, 1957. The statutory notice to creditors was published on October 9th and 16th, 1957, and the estate was finally distributed on 8th March, 1958, among beneficiaries all of whom resided abroad. On 26th March, 1958, the solicitors for the personal representative received a notice from the inspector of taxes claiming a sum due by the deceased in respect of income tax for the year 1956-57. No previous intimation had been received by the personal representative or his solicitors. The inspector of taxes on being asked to supply authority for the demand wrote as follows, "I am directed by the Revenue Commissioners to state that the authority for the proposition that the State is not bound by a notice given under the 29th section of the statute 22 and 23 Vic. cap. 35, is section 35 of the Finance Act 1924. Sub-section (1) thereof provides (inter alia) that every sum due in respect of tax on duty under the care and management of the Revenue Commissioners shall be deemed to be a debt to the Minister for Finance for the benefit of the Central Fund. Sub-section 2 thereof provides that monies due or payable to or for the benefit of the Central Fund shall have, and be deemed always to have had attached to them, all such rights, priority and privileges as theretofore attached to debts due to the Crown. One of the Crown rights of privileges in respect of (inter alia) debts due to it was that it was not bound by any statute unless in the relevant statutory provision it is expressly or by necessary implication referred to. An exhaustive list of the authorities for this long established proposition will be found in the 10th edition of Maxwell on the Interpretation of Statutes at pages 135 et seq."

Members took the opinion of counsel on the question who advised that the State is entitled to the benefit of the perogative of the Crown. Accordingly the State is not bound by statutes passed by its Parliament unless such statutes are expressly applied to it, or it is necessarily implied in the terms of the statute that they were intended to apply to or bind the State (Cork County Council and another v. the Commissioners of Public Works and others, 1945. I.R. 561). Section 29 of Lord St. Leonard's Act provided in effect that if an executor gives the sort of notice to creditors that would have been given under the old form of decree in Chancery, then he is entitled to distribute the estate and is protected from any further claims by creditors of whose claims he has not received notice. Counsel said that the Court of Chancery was originally the court of the Lord Chancellor, The Court of the King's conscience and that it might well be arguable that since the jurisdiction of the Court of Chancery came directly from the King that to suggest that the Crown, or in Ireland the State, is not bound by something which pertains of the nature of an order by the King himself would be untenable. On the the other hand the modern trend of authority seems to suggest that if the application of an act of Parliament to the Crown would divest it of any Crown property or interest or right, the court would not in the absence of express words in the statute make the necessary implication. Here the application of Lord St. Leonard's Act would deprive the Crown of its claim against the executor but not against the beneficiary. Counsel was of the opinion that the chances as to which side the decision would fall are about equal.

DUBLIN SOLICITORS' BAR ASSOCIATION

A Meeting of the Council was held on Wednesday 3rd December, 1958. The method of appointment of Circuit Court Civil Bill Officers and District Court Process Servers and the performance of their duties by these officials were further considered.

The Meeting also considered the suspension of publication of Messrs. Thom's Directory. As that Directory is a valuable source of information which ought to be kept up to date and frequently consulted, members are recommended to write to Messrs. Thom, and obtain, complete, and return to them their questionary. This will help the publishers in deciding on future publication.

The next Meeting of the Council was fixed for Wednesday, 7th January, 1959.

A Meeting of the Council was held on Wednesday 7th January, 1959.

A letter from the Law Society referring to certain builders' advertisements, and to articles in the press, and their tendency towards the exclusion of a solicitor acting for purchasers, was considered. One

such advertisement was found to be objectionable, and a reply to the Society was settled.

The County Registrar has arranged to mark "for mention" cases appearing in the Circuit Court Lists which have been settled. As this will be a considerable facility in enabling solicitors to estimate the weight of the lists, all members are recommended to communicate with the County Registrar when the case has been settled. A letter from the solicitor for each party should be supplied.

A letter from the Law Society relating to fees for defending Road Traffic Act prosecutions was considered, and a reply was sent giving the Council's views as to what fees would be appropriate.

The next Meeting of the Council was fixed for Wednesday, 4th February, 1959.

MIDLAND SOLICITORS' ASSOCIATION

The Annual General Meeting of the Association was held at Moate on the 20th October, 1958, and the following Officers were elected: President, Mr. William A. Tormey, Athlone; Vice-President, Mr. S. N. Mahon, Tullamore; Secretary, D. P. Shaw, Mullingar; Committee, H. Walker and P. Cooney, Athlone; J. B. Farell and J. P. Woods, Tullamore; N. Reidy, Birr; M. Ward, Edenderry; P. J. Shaw and K. P. Wallace, Mullingar.

The following new Rules were adopted:

(*a*) In all sales of registered land, the Land Registry Map and in sales of non-vested holdings, the Land Commission Map shall be furnished by the Vendor's Solicitor at the Vendor's expense.

(*b*) The original Land Certificate shall be handed over by the Vendor at his expense on closing sales of registered land.

The Annual Dinner-Dance of the Association was held at Shamrock Lodge Hotel, Athlone, on December 13th, and was enjoyed by 95 members and guests.

COUNTY LOUTH SESSIONAL BAR ASSOCIATION

At a Meeting on 1st January, the following Officers were elected for the year 1959: President, Mr. Francis P. Johnston; Vice-President, Mr. A. S. Coulter; Secretary, Mr. Philip E. McCourt.

CARLOW BAR ASSOCIATION

The above association has been revived with the following Officers: President, S. Roche; Chairman, H. O'Donnell; Hon. Secretary and Treasurer, D. M. Early; Committee, P. Cody, A. W. Jeffers, F. J. Lanigan.

RECENT LEGISLATION

The Law Reform (Personal Injuries) Act 1958 which has recently become law, has abolished the doctrine of Common Employment which had seriously prejudiced up to then actions by employees against employers for negligence, if that negligence had been due the carelessness of a fellow employee. The Employers Liability Act 1880 is repealed, but legal Proceedings commenced before the 23rd December, 1958 are not affected.

The Social Welfare (Amendment) Act 1958 has the effect of raising the limit of compulsory contributors under the Social Welfare Act 1952 from a salary of £600 per annum to one of £800 per annum. Accordingly all employees earning less than £800 per annum are now liable to make weekly payments under the Social Welfare Act 1952, unless they belong to one of the exceptions defined in the Act.

The Health and Mental Treatment Act 1958 has the effect of supplying the various kinds of treatments authorised by the Health Acts of 1947 and of 1953, and by the Mental Treatment Act 1945, to those who have made contributions under the Social Welfare Act 1952, if their salary is henceforth £800 per annum, instead of £600 as formerly. Furthermore, in applying this Act, the means of a son or daughter of the applicant are to be disregarded up to a maximum of £100, regardless of their income.

CLIENT'S AUTHORITY TO PAY. CIRCUMSTANCES IN WHICH IT AMOUNTS TO AN EQUITABLE ASSIGNMENT.*

Among the letters recently received by the Editor was one from a firm of solicitors which stated that they had suffered loss because they failed to appreciate that an authority given to them by a client as to the payment to a third party out of funds to come into their (the solicitors') hands operated as an equitable assignment. After receiving the first authority to pay to the third party (X), the firm received a further authority from their client to pay the fund to another person (Y) and were instructed that the earlier authority was cancelled. The firm accordingly paid the fund when they received it to Y, and X claimed that the fund should have been paid to him as an earlier assignee of the fund. The firm sought the opinion of counsel who advised that on the form of the document, the contention of X was correct and the firm have had to make the payment to him out of their own moneys.

The firm have in the past dealt with a number of

*Author Mr. E. R. Dew. Printed by permission of the English Law Society.

authorities similar to the one in question. Neither they nor other firms with whom they have discussed the matter appreciated that an authority can in fact amount to an equitable assignment, and it is thought therefore that the point is of sufficient importance to warrant a note in the Gazette.

When a firm of solicitors hold money on behalf of a client, they owe him a debt which is a chose in action capable of assignment by the owner (the client) either at law or in equity. But in the case in question, the fund had not yet come into the hands of the solicitors so that any purported assignment could only have been an equitable assignment and could not have been a legal assignment under s. 136 of the Law of Property Act, 1925.* (See *Joseph v. Lyons* (1884), 15 Q.B.D. 280, and cases therein cited). Again, even if the fund had already been in the hands of the solicitors, any purported assignment of part of the fund could have operated only in equity and not as a legal assignment (*Forster v. Baker* (1910) 2 K.B. 636; *Re Steel Wing Co.* (1921) 1 Ch. 349; *Williams v. Atlantic Assurance Co.* (1933) 1 K.B. 81).

The essentials of an equitable assignment of part of a fund are set out in *Hanbury's Modern Equity* (Seventh edition) at pages 71, *et seq.*, and are:—

(i) There must be a specified fund out of which payment is to be made.

A good example of a case in which a transaction was held not to amount to an equitable assignment for want of this requirement is *Percival v. Dunn* (1885), 29 Ch. D. 128. There A owed money to B and B to C. B handed to C an order signed by himself and addressed to A which read "Please pay C the amount of his account, £42 14s. 6d. for goods supplied." A had notice of the order, but it was held that there was no assignment of any part of the fund owed by A to B, as the order did not specify any fund out of which the payment was to be made. The transaction was described by Bacon, V.-C., as being merely a polite note by B asking A to pay his debt.

It will be noted that in *Percival v. Dunn* the order was given by the first creditor to a third party, or, to equate the parties with the case which prompted the present inquiry, given by the client to the third party. This will be the normal procedure in making assignments. The point, therefore, arises as to whether an order given by the client to the solicitor direct (i.e., by the original creditor to his debtor), telling him to pay a sum to a third party out of the fund held by the solicitor (the debtor) for the client can be an equitable assignment of the fund. The old case of *Morrell v. Wootten* (1852), 16 Beav., shows that it can, as also does *Alexander v. Steinhardt, Walker & Co.* (1903), 2 K.B. 208. Therefore, there is nothing to prevent the transaction from amounting to an assignment, merely because the effective document* is delivered to the debtor instead of as is more usual to the assignee.

(ii) There must be a clear intention on the part of the assignor to assign.

This is a question of construction of the instrument and *Morrell v. Wootten* and *Alexande v. Steinhardt, Walker & Co.* show that this intention may be provided by the order given directly by the creditor to the debtor that the debtor shall pay to a third person the fund or part which the debtor owes to or holds for the creditor.

(iii) Notice of the assignment should be given to the debtor.

The point of notice is that the assignment is complete as between the creditor and the third party once there is the intention expressed to assign the specific fund in whole or in part. The absence of notice to the debtor does not affect the validity of an equitable assignment but notice of the assignment is normally given to the debtor for three reasons—

(*a*) so that the debtor shall pay the assignee and not the original creditor;

(*b*) to prevent the assignee from being subject to equities arising between the debtor and the creditor after the assignment; and

(*c*) to preserve priority.

In the kind of assignment with which we are here concerned, namely, that effected by the creditor giving the order directly to the debtor, there is no question of the debtor not having notice. Further, the client (the creditor) had informed the third party of the transaction. It is clear that once a debtor or fund holder has received notice of an equitable assignment of the debt or fund he must withold payment to the assignor (or persons claiming through him) unless made with the consent of the assignee and if he pays to or for the assignor without such consent, he will have to pay over again to the assignee (*Jones v. Farrell* (1857), 1 de G. & J. 208)

To sum up: if the authority given by the client to the solicitor is a mere mandate to pay as in *Percival v. Dunn*, not specifying any fund out of which payment is to be made and not showing any intention to assign that fund, then it does not amount to an assignment by the creditor, who can countermand his directions and give fresh directions when he pleases. An example of such a mere authority would be: "I hereby authorise you to pay £x to ———." On the other hand, if the so-called authority is a direction to the solicitor to pay a

*Corresponding Irish section is Judicature (Ir.) Act 1877, s. 28 (*b*).

*The instrument appears to attract *ad valorem* duty at 1*s*.

third party some part of or the whole of a specified fund which the solicitor is to hold, or is holding for the client giving the direction, and that direction shows an intention to assign that fund wholly or partly to the third person, then the transaction amounts to an equitable assignment. The result is that the third party at once becomes entitled under that assignment and no subsequent act by the assignor (the client) can take away his rights.

STATUTES OF THE OIREACHTAS—1958

No.	*Signed by President*
1. Agricultural Institute (An Foras Taluntais) Act, 1958	19th February 1958
2. Landlord and Tenant (Reversionary Leases) Act, 1958	19th February 1958
3. Office Premises Act, 1958	19th February, 1958
4. Prices Act, 1958	18th March, 1958
5. Tea (Importation and Distribution) Act, 1956 (Continuance) Act, 1958	19th March, 1958
6. Central Fund Act, 1958	2nd April, 1958
7. Imposition of Duties (Confirmation of Orders) Act, 1958	2nd April, 1958
8. Trustee (Authorised Investments) Act, 1958	2nd April, 1958
9. Local Government Act, 1958	22nd April, 1958
10. Industrial Credit (Amendment) Act, 1958	27th April, 1958
11. Destructive Insects and Pests (Consolidation) Act, 1958	27th May, 1958
12. Greyhound Industry Act, 1958	28th May, 1958
13. Tea (Purchase and Importation) Act, 1958	28th May, 1958
14. Garda Síochána (Women Police) Act, 1958	10th June, 1958
15. Fisheries (Amendment) Act, 1958	1st July, 1958
16. Industrial Development (Encouragement of External Investment) Act, 1958	2nd July, 1958
17. Agriculture (Amendment) Act, 1958	3rd July, 1958
18. Turf Development Act, 1958	16th July, 1958
19. Transport Act, 1958	16th July, 1958
20. Great Northern Railway Act, 1958	16th July, 1958
21. Industrial and Commercial Property Protection (Amendment) Act, 1958	23rd July, 1958
22. International Finance Corporation Act, 1958	23rd July, 1958
23. Savings Banks' Act, 1958	23rd July, 1958
24. Agricultural Produce (Cereals) (Amendment) Act, 1958	29th July, 1958
25. Finance Act, 1958	29th July, 1958
26. Appropriation Act, 1958	30th July, 1958
27. Housing (Amendment) Act, 1958	30th July, 1958
28. Finance (Miscellaneous Provisions) Act, 1958	25th November, 1958
29. Customs-Free Airport (Amendment) Act, 1958	25th November, 1958
30. Exchange Control (Continuance) Act, 1958	25th November, 1958
31. Restrictive Trade Practices (Confirmation of Orders) (Groceries) Act, 1958	25th November, 1958
32. Rent: Restrictions (Continuance and Amendment) Act, 1958	16th December, 1958
33. Control of Exports (Temporary Provisions) Act, 1956 (Continuance) Act, 1958	17th December, 1958
34. Civil Service Regulation (Amendment) Act, 1958	17th December, 1958
35. Electricity Supply (Amendment) Act, 1958	23rd December, 1958
36. Social Welfare (Amendment) Act, 1958	23rd December, 1958
37. Health and Mental Treatment (Amendment) Act, 1958	23rd December, 1958
38. Law Reform (Personal Injuries) Act, 1958	23rd December, 1958
PRIVATE ACT—No. 1 of 1958—Convalescent Home (Stillorgan) Charter Amendment Act, 1958	16th December, 1958

THE REGISTRY

Register B

SOLICITOR presently in practice seeks partnership in well established firm preferably in Leinster. Replies treated in strict confidence. Box B234.

REGISTRATION OF TITLE ACTS, 1891 AND 1942

NOTICE

FOLIO 237, COUNTY SLIGO.
Registered Owner: JAMES BOLAND.

The personal Representative of the Registered Owner has applied for a Duplicate of the Certificate of Title specified in the Schedule hereto which is stated to have been lost or inadvertently destroyed.

The Duplicate will be issued unless notification is received in this Registry within 28 days from the date of this Notice that the said Certificate of Title is in the custody of a person not the Registered Owner. Such notification should state the grounds on which the Certificate is retained.

Dated this 18th day of February, 1959.

D. L. MCALLISTER,
Registrar of Titles.

SCHEDULE.

Land Certificate of James Boland to 21a 2r. 37p. of the lands of Farranyharpy situate in the Barony of Tirevagh and County of Sligo being the lands comprised in the said Folio.

OBITUARY

MR. JOHN K. COOPER, Solicitor, died on the 4th January 1959 at his residence, Birchgrove, Wexford.

Mr. Cooper served his apprenticeship with the late Mr. William J. Shannon, 19 Upper Ormond Quay, Dublin, was admitted in Hilary Sittings 1907 and practised at Wexford.

Mr. Sean O'hUadhaigh, Solicitor, died on the 21st January, 1959, at a Dublin hospital.

Mr. O'hUadhaigh served his apprenticeship with the late Mr. James Moran, 2 Inns Quay, Dublin, was admitted in Trinity Sittings, 1915 and practised at 51 Dawson Street, Dublin as senior partner in the firm of Messrs. Sean O'hUadhaigh & Son.

He was a member of the Council of the Society from 1933 until the date of his death, was Vice-President for the year 1936-37 and President for the year 1947-48.

DECISIONS OF PROFESSIONAL INTEREST

In an action for forfeiture of a lease on the ground that there was a breach of covenant that the premises were not to be used for lodging or dwelling, it was held that the defendant was in breach of covenant in using the premises for residential purposes.

In 1941 the defendant became the tenant of certain premises comprising a ground floor shop and basement described as a lock-up shop, for a term of three years during which he was allowed by the landlords (the plaintiffs) to sleep in an office behind the shop. By a lease dated 5th April, 1944, the plaintiffs let the premises to the defendant for a term of three years from Lady Day, 1944, the defendant covenanting not to use the premises except as a shop for his business of an antique dealer. The defendant continued to carry on business there and to sleep behind the shop and during this period he fitted up the basement rooms for residential purposes. The plaintiffs knew that the defendant slept on the premises from time to time but did not know that the property was his residence. In January 1947, the defendant asked for a new lease and in May the plaintiffs' solicitors sent a draft, clause 2 (9) of which contained a covenant by the lessee: "To use the demised premises as and for showrooms, workrooms and offices only and not to use exercise or carry on (certain specified trades and businesses) . . . and not to permit or suffer the demised premises or any part thereof to be used as a place for lodging dwelling, or sleeping." On 27th October, 1947, the defendant's solicitors returned the draft, having struck out the last part of clause 2 (9), and enclosed a letter saying that the defendant had been sleeping on the premises for some time. There followed correspondence between the solicitors. Meanwhile the plaintiffs' agent told the defendant orally that if he signed the lease the plaintiffs would make no objection to his continuing to reside there; as a result of that the defendant was willing to complete. On 10th February, 1948, the lease and counterpart were exchanged, the lease omitting the words which had been struck out from clause 2 (9) of the draft by the defendant's solicitors. After the execution of the lease the defendant continued to reside and carry on business on the premises. In May, 1956, the defendant asked for a new lease and the plaintiffs' managing director having visited the premises and learned that the defendant was living there wrote giving the defendant notice to quit.

In an action for forfeiture of the lease on the ground of breach of covenant, the defendant denied that he was in breach, and alleged, alternatively, that the plaintiffs had waived the covenant or, alternatively, were stopped from relying on it. He also counterclaimed for rectification of the lease and relief against forfeiture:—

Held by Harman J., (1) that on the question of construction of the covenant it was not permissible for the court to look into the past history of the matter or to rely on the fact that the defendant had been living on the premises to the plaintiffs' knowledge; nor could the fact be called in aid that express words of prohibition as to residence had appeared in the draft but were not in the lease as executed, none of these matters being surrounding circumstances which could be called in aid to construe the language used.

(2) That the nature of the property, however, was a matter to be taken into consideration, and the fact that these particular premises were not suitable for a dwelling-house, taken with the fact of a covenant to use them for showrooms, workrooms and offices only, clearly showed that the defendant was in breach of covenant in using the premises for residential purposes.

(3) That the fact that the plaintiffs knew that the defendant was using the premises to sleep in and were prepared to allow that did not amount to a release by them of the covenant contained in the lease.

(4) That, the defendant having signed the lease because of the promise of the plaintiffs' agent, was entitled to rely on that promise so long as he was in occupation of the shop and the action would be dismissed.

(City and Westminster Properties (1934) Ltd. *v.* Mudd. (1958) 3 W.L.R. 312).

(a) *Bankers should advise on all financial matters and they must advise with reasonable care and skill, or they will be liable for negligence.*

(b) *Solicitors should not merely disclose all relevant documents which a client has in his possession in an affidavit of documents; but they should also carefully go through the documents to make sure that no relevant documents have been omitted.*

At the beginning of May, 1950, J., who was manager of a branch of a bank, in reply to a request by the plaintiff (who had no real business experience) to be his financial adviser, said that the bank would be only too pleased to take care of the plaintiff's financial affairs. On 9th May, 1950, the plaintiff was induced to invest £5,000 in preference shares of B.R. Ltd., in consequence of advice previously given by J., but implicitly repeated on that day, that B.R. Ltd., who were customers of the bank, were financially sound and that the investment was a wise one to make. The plaintiff on that date, in a letter dictated by J., authorised the proceeds of certain investments to be paid to the bank so that they might pay for the shares out of the proceeds and retain the balance to his order. The balance, after the bank had paid for the shares, was put by them to the plaintiff's credit in a suspense account.

On 1st June, 1950, the bank opened a current account for the plaintiff. Relying on further advice by J., the plaintiff subsequently invested a further £6,800 in shares in B.R. Ltd., and made a loan of £3,000 to the company in the form of an unregistered bill of sale. In February, 1952, the plaintiff signed a guarantee of the overdraft of F.A. Ltd. with the bank, relying on advice by J. that F.A. Ltd. were sound financially.

There were no grounds on which J. could reasonably have advised that B.R. Ltd. was in a sound or strong financial position, and still less could the investment in the shares be reasonably recommended as a wise one. Unknown to the plaintiff, B.R. Ltd. had with the bank a considerable overdraft, of which at all material times the district head office of the bank were pressing J. to procure a reduction. Nor was there any reasonable ground for giving the advice in relation to F.A. Ltd.

The plaintiff lost the sum of £14,800 invested in B.R. Ltd., and was called upon to pay £990 3s. under his guarantee for F.A. Ltd., and claimed these sums from the bank and J. A claim based on fraud failed as it was found that J. honestly believed in the advice which he gave, but as to a claim in negligence :—

Held by Salmon J. (1) The limits of a banker's business could not be laid down as a matter of law; the nature of such a business must in each case be a matter of fact, and on the facts it was within the scope of the bank's business to advise on all financial matters, and they owed a duty to the plaintiff to advise him with reasonable care and skill in the transactions referred to.

(2) That from 9th May, 1950, when the bank accepted the plaintiff's instructions the relationship of banker and customer existed between them.

(3) That even if the plaintiff did not become a customer until later, the defendants would still have been under a duty to exercise ordinary skill and care in advising him in relation to the £5,000 transaction on 9th May.

(4) That J. ought never to have advised the plaintiff without making a full disclosure to him of the conflicting interests between the plaintiff and the bank and the bank's other customers concerned.

(5) That as none of the advice was reasonably careful or skilful, and but for it the plaintiff would never have made any of the investments or given the guarantee, he had made out his case in negligence against both defendants.

Certain material documents were not disclosed in the defendant's affidavit of documents, and it should at all times have been obvious to the defendants and their solicitors that such documents existed.

Held by Salmon J. that the solicitors' duty did not stop at explaining to their clients that they must disclose all relevant documents which were or had been in their possession; solicitors owed a duty to the court, as officers of the court, carefully to go through the documents disclosed by their clients to make sure, as far as possible, that no relevant documents had been omitted from their clients' affidavit.

(Woods *v.* Martins Bank Ltd. and Another. (1958) 1 W.L.R. 1018).

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FEBRUARY
1959

THE GAZETTE

of the

INCORPORATED LAW SOCIETY OF IRELAND

President
JOHN R. HALPIN,

Vice-Presidents
JOHN J. NASH
CORNELIUS J. DALY

Secretary
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

MEETINGS OF THE COUNCIL

FEBRUARY 13th, the President in the Chair. Also present, Arthur Cox, Thomas A. O'Reilly, R. McD. Taylor, John J. Sheil, James J. O'Connor, John Kelly, Derrick M. Martin, Eunan McCarron, Francis J. Lanigan. Charles J. Downing, John Maher, Peter E. O'Connell, W. J. Comerford, James R. Quirke, G. G. Overend, Desmond J. Collins, Ralph J. Walker, John J. Sheil, Niall S. Gaffney, Dermot P. Shaw, John Carrigan, John J. Nash, T. de Vere White.

The Council passed the following vote of sympathy on the death of the late Mr. Sean Ó hUadhaigh.

That the Council hereby express their deep regret on the death of Mr. Seán Ó hUadhaigh, the father of the Council, after twenty-five years' service on the Council and its various Committees, and to place on record the affection in which he was held by his colleagues and the esteem and respect which he earned from the profession by his unremitting efforts in their service for so many years.

The following was among the business transacted :

Vacancies on the Council

The Secretary reported that he had received a letter of resignation from Mr. P. R. Boyd. The Council requested the Secretary to write to Mr. Boyd thanking him for his valuable services to the profession since his election to the Council in November, 1935. Mr. Boyd served as President in the year 1948-49. Mr. Dinnen B. Gilmore, Law Agent, Bank of Ireland, and Mr. James R. Green were co-opted as new members of the Council pursuant to bye-law 38. Mr. Green is a member of the firm of Maxwell Weldon, & Co., 19 Lr. Baggot Street, Dublin.

Seán Ó hUadhaigh Memorial award

The Secretary read a letter from the Comhdhail Naisiunta na hEireann offering a money prize of approximately £50 yearly as a memorial to the late Sean O'hUadhaigh with the object of encouraging the knowledge of Irish among solicitors' apprentices. The Council accepted the offer and requested the Secretary to write thanking the donors and appointed a small committee to discuss details.

Notice of Appeal to the High Court

On a report from the Committee it was decided to make an application to the Circuit Court Rules Committee for an amendment to the rules which will provide that service of notice of withdrawal of an appeal will operate at a confirmation of the original order without any formal application to or attendance in the Court, with nominal costs if the notice is lodged within a time to be prescribed, but otherwise with full costs. The object of the proposed amendment is to afford the unsuccessful party and his solicitor and counsel an opportunity of preserving the right of appeal by serving notice while the matter is under consideration without incurring serious costs provided that the appeal is withdrawn within a time to be specified.

Estate Duty. Assessment of unquoted shares in private companies

The Committee considered and approved a memorandum submitted by Mr. Overend following an interview with the Estate Duty Office. The memorandum which has been approved by the Estate Duty Office should be of considerable assistance to practitioners and it is printed at page 83 of this issue.

Sittings of the High Court on Circuit

The Council were informed of a resolution passed by the Bar Council requesting the Judges to discontinue the arrangements recently made to hold sittings of the High Court on Circuit at equal half yearly intervals in March and October and to revert to March and July. It was decided to make representations against this proposal on the grounds of the inconvenience which would be caused to solicitors and their clients in the country.

Undertaking by solicitor

Member acted for an injured workman in a Workman's Compensation claim against an employer. Member on the client's instructions requested the Department of Social Welfare to advance insurance benefit on his undertaking to refund the amount out of any compensation which would be recovered on the client's behalf. Benefit to the amount of £120 was paid by the Department to the workman up to the date of the award. Member received a lump sum which was paid into court in the first instance as the workman was not *sui juris* and subsequently paid out to member. After the award of compensation the Minister for Social Welfare sued the employer for the amount of benefit paid and the action was dismissed. The workman was not represented nor was he a notice party to the proceedings brought by the Minister. Member enquired whether he was absolved from his undertaking as the result of the abortive proceedings by the Minister against the employer. On a report from a committee the Council stated that on the facts before them the solicitor gave an unqualified personal undertaking to the Minister for Social Welfare on the client's instructions and was bound by it.

Client's privilege against disclosure

A member acting for a client was requested to make enquiries concerning the purchase of the tenant's interest in certain property. In the course of the enquiry, member ascertained that there had been litigation between the landlord and the tenant and that the landlord had obtained a decree for possession and had taken possession and that an auctioneer who was endeavouring to sell the client's interest had retaken possession. Member was subsequently requested by the solicitor acting for the landlord to give evidence of these matters which were communicated to him by the auctioneer acting for the tenant in the course of negotiations for the sale of the latter's interest. He enquired whether any question of privilege arose as between himself and his client, the potential purchaser. The Council on a report from a Committee stated that the conversation by member on behalf of his client with the auctioneer was not a communication between solicitor and client which would be the subject of privilege. If the conversation had been between the client and the auctioneer the client could not refuse to disclose it, and the solicitor who was only the client's agent was in no better position than the client.

Legal representation of parties to international arbitrations

The Council were informed by the International Bar Association of a report to be submitted to the committee of Ministers by a sub-committee of the Council of Europe recommending that a suggested uniform code of procedure should contain provisions whereby parties to international arbitrations should not be entitled to be represented by counsel or solicitors except by permission of the arbitrator or by mutual consent of the parties. It was decided that representations should be made to the Department of External Affairs asking that the Government should oppose these provisions.

Interviewing witness summoned by opponent

Members brought to the notice of the Council a case in which a solicitor acting for a party in litigation

sought an interview, for the purpose of obtaining a statement of evidence, with a witness who had been summoned by the other party. The Council, having referred to a statement published in the Society's Gazette in November, 1943, page 25, and February, 1944, page 44, decided to inform member that any party to proceedings is entitled to seek a statement of the evidence of any material witness, including a witness who may have been summoned by an opposing party, and that there is no impropriety in so doing provided that the statement is taken fairly without any attempt to influence the witness. The statements which appeared in the Society's Gazette are reproduced on this page and the next page.

DEATH DUTIES. UNQUOTED SHARES IN PRIVATE COMPANIES

With a view to saving time in reaching agreement as to the value of property for death duty purposes the following procedure has been arranged between the Society and the Estate Duty Office. Members are requested to adopt this procedure.

1. On being instructed and being given particulars of an estate disclosing shares in a private company, the solicitor should write to the Estate Duty Office without waiting for the preparation of the schedule of assets and should indicate in such letter:—
   (*a*) The name of the private company or companies in which the shares are held.
   (*b*) The number and class of such shares.
   (*c*) The value which the executor places on such shares, and the method by which the value is determined.
   (*d*) Particulars of any of such shares passing on the death under any other title, whether under any settlement, gift *inter vivos* etc.

2. The Estate Duty Office will thereupon inform the solicitor whether the offered value is acceptable and, if not, what further information is required.

3. The solicitor should lodge with the Estate Duty Office the information requested.

   On the issue of the Estate Duty Office queries the solicitor should supply all further facts required and to which the Estate Duty Office are entitled.

4. When the Estate Duty Office requirements as to facts have been satisfied and it is apparent that the executor's value is not acceptable it is recommended that the solicitor should seek an interview by appointment with the appropriate examiner at the Estate Duty Office to discuss the valuation.

5. The Estate Duty Office may agree a figure provisionally pending lodgment of the schedule of assets but will not agree a final figure until the schedule has been lodged.

6. If the foregoing procedure is adopted the value of the shares in the private company should be agreed by the time the schedule of assets is ready for assessment.

INTERVIEWING OPPONENT'S WITNESSES

The *Times*, of 15th July last, published an extract from the remarks of Lewis J. in the course of a criminal prosecution before him during which it transpired that a woman, who had been summoned as a witness by the prosecution, went at the request of the solicitor for the accused, to his office, and was taken through her statement by his clerk. The judge was reported as having said that for a solicitor, or for his clerk, when instructed by a prisoner, to interview a witness for the prosecution was most reprehensible, and he proposed to obtain a transcript of the evidence and send it to the Law Society. His Lordship took a serious view of the girl's evidence if true, and if it was not true the solicitor ought to be cleared of such a charge. The case does not appear to have been officially reported and, as published in the *Times*, the judge's remarks were divorced from their context. There may have been circumstances connected with this case not disclosed with the report which were the real basis of the judge's condemnation of the conduct with which he was dealing. If such circumstances were not present many will feel that the prohibition laid down by the judge was too wide. Most solicitors would be surprised to learn of any universal rule whereby merely interviewing any witness, whether already sub-poenaed or not by another party to the proceedings, is regarded as a breach of propriety. Cases will occur in which common sense will suggest that it would be improper to seek to interview a particular witness. There seems, however, to be no valid reason why a solicitor, preparing instructions for counsel for the defence in a criminal prosecution should be obliged to rely upon depositions or proofs of evidence taken down by the police or someone else if he has reason to believe that they may be incomplete or may omit to deal with matters within the knowledge of a witness which he forsees will be important for his client's defence. The popular term "witness for the prosecution," though sanctioned by usage, is really a misnomer. Provided that he scrupulously avoids anything which would constitute an abuse of his privilege the general view of the profession has been that a solicitor is entitled to interview any witness whose evidence may be necessary for the presentation of the facts of his client's case to the court.

(*The Gazette*, November 1943, page 25.)

A member has drawn attention to a judicial pronouncement which should be noted in connection with the paragraph under the above heading in the November *Gazette*. In Attorney General *v.* Fitzgerald (68 I. L. T. R. 249) there was an appeal by Fitzgerald, the accused, against an order of the Circuit Judge refusing bail and remanding him in custody. The accused had been tried on charges on which the jury had disagreed and fresh charges were pending against him. One of the grounds on which the State opposed the granting of bail was the allegation that the accused had interfered with State witnesses. Per Hanna, J. "The next ground was that of interfering with State witnesses. I am not quite clear what 'interference' means as suggested by the affidavit. Both accused and his solicitor, if they so desire, may interview witnesses for the State, so long as they do not suborn them to perjury. The mere fact of talking to or having a drink with a State witness is not of itself sufficient to disentitle the applicant to bail." This dictum of Mr. Justice Hanna should serve to dispel any doubts, if they ever existed in this country, as to solicitors' rights in such cases. (*The Gazette*, February 1944, page 44).

DECEASED SOLICITORS' PRACTICES

INQUIRIES have been received in reference to the following practices of the following deceased solicitors: Samuel R. Lindsay, 14, South Mall, Cork; Henry Noblett, 26, St. Andrew Street, Dublin; Henry Noblett, 74, South Mall, Cork; John Ruckley, 31, South Frederick Street, Dublin; Robert Mercer, 21, Marlborough Street; Thomas Donnelly, 27, Dawson Street, Dublin.

Any member having any information in regard to the above practices and the disposal of client's papers should communicate with the Society.

APPOINTMENTS

MR. Desmond L. MacAllister, Solicitor, has been appointed Registrar of Titles and Deeds.

Prior to this appointment, he was Deputy Registrar and Chief Examiner of Titles in the Land Registry.

Mr. A. J. O'Dwyer, B.A., B.L., has been appointed Deputy Registrar and Chief Examiner of Titles in the Land Registry.

Prior to this appointment, he was an Examiner of Titles in that Office.

Mr. Dermot D. Fanning, Solicitor, has been appointed an Examiner of Titles in the Land Registry.

Prior to this appointment, he was Senior Legal Assistant in that Office.

Mr. William T. Moran, Solicitor, has been appointed Senior Legal Assistant in the Land Registry.

He had been a Legal Assistant in that Office prior to his appointment.

DUBLIN SOLICITORS' BAR ASSOCIATION

A MEETING of the Council was held on Wednesday, 4th February, 1959.

Votes of sympathy were passed with the relatives of the late Mr. Sean O h-Uadhaigh, a former President of the Association, and of the late District Justice Fitzpatrick.

With a view to achieving an improvement in the standard of service rendered by District Court Civil Process Servers, the Sub-Committee dealing with the subject was requested to seek a further interview with the County Registrar to make new suggestions.

The Meeting thanked the Sub-Committee who had devoted much time and trouble to the preparation of Administration of Estate Reminders, and noted that these are now being printed, and will shortly be available. It is expected that they should be of considerable help to practitioners.

Under new arrangements the Metropolitan District Court Office will no longer prepare Attendance and Instalment Orders under the Enforcement of Court Orders Acts. This change in procedure should assist solicitors in controlling the amount of time taken up in these proceedings, provided that there is no delay in the signature of the orders, and their return to the solicitors concerned.

A member wishing to adapt the Association's form of contract for sale applied for consent which was given.

The Association's form of draft letting agreement is being reprinted, and will shortly be available at a price of one shilling per copy from the Honorary Treasurer, Mr. Rory O'Connor.

The next Meeting was fixed for Wednesday, 4th of March, 1959.

PROCEEDINGS AGAINST SOLICITORS

By order made on the 11th day of July, 1958, the Chief Justice directed that the name of Thomas K. Fitzgibbon, who formerly practised at 18, Summer Street, North Circular Road, Dublin, under the name of Michael J. Dunne & Company, be struck off the roll of solicitors on the ground of his conviction on a criminal charge.

By order made on the 31st day of October, 1958, the Chief Justice directed that the name of Peadar Cowan, who formerly practised at 67, Dame Street, Dublin, be struck off the roll of solicitors on the ground of his conviction on a criminal charge.

By order made on the 23rd day of January, 1959, the Chief Justice directed that the name of Alexander W. Hughes, who formerly practised at 3, Lower Merrion Street, Dublin, under the name of William C. Hogan & Sons, be struck off the roll of solicitors on the ground of his conviction on a criminal charge.

DECISIONS OF PROFESSIONAL INTEREST

Solicitor beneficiary of will held not entitled to benefit under it.

THE House of Lords (Viscount Simonds, Lord Reid, Lord Tucker, Lord Keith of Avonholm, and Lord Birkett) unanimously allowed the appeal of Lieutenant-Colonel Alfred Wintle, M.C., from a decision of the Court of Appeal (Lord Justice Hodson, and Lord Justice Morris, Lord Justice Sellers dissenting) (*The Times*, December 17, 1957), dismissing an appeal from the judgment of Mr. Justice Barnard (*The Times*, May 20, 1957) in favour of the respondent Frederick Harry Nye, a solicitor, on the trial of the action in the Probate, Divorce and Admiralty Division.

The appellant's claim was for revocation of a grant of probate of the will of Miss Kathleen Helen Wells, a cousin of the appellant, dated August 4, 1937, and a codicil dated November 13, 1939. The testatrix died on December 6, 1947.

The appellant sued as assignee of the interest in the estate of one of the next-of-kin and claimed that the will and the codicil were not duly executed and that the testatrix did not know or approve the contents thereof. The case for the appellant was that the testatrix was a simple old lady of limited understanding incapable of grasping a long and complex document and that its effect was that, after payment of various legacies, the bulk of her estate of £115,000 was to vest in the respondent, who drafted the will.

Viscount Simonds said that at the trial of this action, the Judge's summing-up was so gravely at fault as to amount to a misdirection. His Lordship agreed with what Lord Justice Sellers said in the Court of Appeal to the effect that it encouraged in the minds of the jury a benevolent and sympathetic consideration of Mr. Nye's evidence and in no way led the jury to a critical approach to what he said or what he would appear to have done.

It was not the law that in no circumstances could a solicitor who prepared a will take a benefit under it. But the fact created a suspicion which must be removed by the person propounding the will. The Court must be vigilant and jealous. In the present case the circumstances were such as to impose on the respondent as heavy a burden as could well be imagined. Here was an elderly lady, unversed in business, having no one to rely on except her solicitor. Here was a will made by him under which he took the bulk of her large estate, a will of a complexity which demanded for its comprehension no common understanding. The will was retained by him and no copy was given to her. No independent advice was received by her. The codicil cut out reversionary legacies, allegedly for the benefit of annuitants, but in fact for the benefit of the reversionary beneficiary. All these circumstances demanded a vigilant and jealous scrutiny by the Judge in his summing up.

The summing-up fell short of what the law required. It was not enough for the Judge to say to the jury that, if they believed the respondent, they could decide in his favour. It was imperative that he should point out the considerations for them to bear in mind in deciding whether or not they should believe him. The Judge encouraged the jury to treat the will and codicil as standing or falling together. That might be unobjectionable if he had then gone on to point out how fraught with suspicion was the codicil. He failed to do so. There were circumstances which created the gravest suspicion that the testatrix had little idea of the extent of the benefit she was conferring on the respondent and that she was unaware that she was giving him a substantial fortune.

There were many examples of the uncritical way in which the Judge displayed the evidence for the consideration of the jury. There was such misdirection that the verdict could not stand.

The case would be remitted to the High Court on the footing that the will was invalid in respect of the beneficial bequests and devises to the respondent, and that the codicil was pronounced against.

The appellant would be paid all his costs out of the estate. The respondent would have his costs in the High Court out of the estate and would bear his own costs in the Court of Appeal and the House of Lords. (Wintle *v.* Nye—*The Times*, December 19, 1958).

The requirement of R.S.C., Ord. 22, r. 1 (2), that a notice of payment into court in satisfaction of several causes of action should specify what sum is paid in respect of each cause of action is directed to cases where the relief claimed is cumulative, not to cases where the two causes of action are alternative methods of claiming the same relief.

The plaintiff appealed against those parts of the judgment of Donovan, J., given on Jan. 17, 1958, which (i) quantified the damages awarded to him for the defendants' negligence and breach of their statutory duty at £760, (ii) ordered him to pay the defendants the costs of the action after the date of payment into court by the defendants of £1,000, and (iii) ordered that any balance of such costs over the plaintiff's costs down to the date of payment in be paid to the defendants out of the £1,000 in court. The Court of Appeal (Lord Somervell, Morris and Pearce, L.JJ.) allowed the appeal on the first point and increased the damages to £1,160: as this was more than the sum paid in, the other two points of Donovan, J.'s decision did not arise, but the Court of Appeal expressed their opinion on the second

point, on which the plaintiff had contended that the defendants should not be awarded any costs as their notice of payment in of the £1,000 merely stated that this sum was "enough to satisfy the plaintiff's claim," and did not specify what sum was paid in respect of common law negligence and what sum in respect of breach of statutory duty. The plaintiff contended that the notice therefore failed to comply with the requirements of R.S.C. Ord, 22, r. 1 (2). The case is reported only on this point.

Per Lord Somervell: On the conclusion to which I have come on the first point as to quantum, this point does not arise because the amount would then be in excess of the amount paid into court; but counsel on each side asked us, if we came to a conclusion on the point to express it; and although normally it is desirable not to decide matters which one does not have to decide, it is right to express the view which I and my brethren hold on this point, which may often arise.

The claim here was a claim, as so often arises in these cases, for negligence, or alternatively for breach of statutory duty; and the point taken was that as the payment into court did not specify the cause or causes of action in respect of which the payment was made, therefore it was a bad payment in, and that leave ought to have been obtained from a court or a judge. One sees, of course, how the point arises on the wording of the rule; but any rule, or indeed any document, falls to be construed in the light of its purpose to be gathered from its terms. The purpose of this rule is to avoid embarrassment in the technical sense, when damages are claimed under two or more independent causes of action in cases where the relief claimed is cumulative. A man is claiming under cause A and cause B, and if he wins on both, he gets X plus Y in damages. If a sum of money is paid into court, it is difficult for him to know what to do if he does not know how much is allocated to cause A and how much to cause B. If £250 is allocated to cause A, he may say: "That is all I hope to get under that, so I will take that sum out, and that will be the end of that." The case will then proceed on cause B. That obviously is the problem with which the rule is intended to deal. In cases such as the present, however, where the relief claimed is not cumulative, and where the two causes of action are alternative methods of claiming the same relief, the embarrassment which the rule is designed to prevent cannot arise, and, moreover, it would be impossible to comply with the rule by allocating part of the sum paid in to one, and part to the other, of the two alternative causes of action. Therefore, the learned judge was right in deciding that there had been no breach of the rule. (Graham *v.* Heinke (1959), 3. All E.R. 650.)

Person arrested in Court for non-compliance with a Court Order cannot claim privilege from arrest.

Lord Parker, Mr. Justice Cassels and Mr. Justice McNair, refusing this application by Mr. Kenneth Hunt, chemist, of Ashford, Middlesex, for a writ of *habeas corpus ad subjiciendume*, held that a litigant's immunity (if any) from arrest while in the precincts of the court was a privilege of the Court to ensure that justice was done. The applicant was committed to Brixton Prison on November 4, 1958, by Mr. Justice Wynn Parry for contempt of court (*The Times*, November 5), and his appeal against Mr. Justice Wynn Parry's order was dismissed by the Court of Appeal on November 27 (*The Times*, November 28).

The Lord Chief Justice, giving judgment, said that Mr. Hunt had raised every conceivable point, but the one which had been developed at greatest length and with which the Court was really concerned was whether he was properly arrested.

There was a motion by the defendants, Allied Bakeries Ltd., before Mr. Justice Wynn Parry, to commit the applicant to prison for contempt of court in failing to attend an appointment before an examiner of the court. The Judge, having heard the case, came to the conclusion that the applicant had no intention of attending any examination that might be fixed, and thereupon ordered his committal. The Tipstaff, who had arrived in court, arrested him and took him to Brixton Prison.

In those circumstances Mr. Hunt said that he was wrongfully arrested, and claimed that he had some privilege from arrest while he was in the court. He took some four or five other points, all of which admittedly had been raised by him on his appeal to the Court of Appeal. His Lordship found it unnecessary to decide that the decision of the Court of Appeal was *res judicata* in these proceedings. Whether it was or not, approaching the matter *de novo* and having heard all the arguments raised by Mr. Hunt, his Lordship saw no reason to come to any other view than that taken by the Court of Appeal and so far as the points other than that relating to privilege were concerned Mr. Hunt failed.

The question regarding privilege was an interesting one and one on which one would expect to find clear authority in the text books. Mr. Hunt said that except in the case of special contempt, by which he meant contempt in the face of the court and criminal contempt, a litigant properly before the court had a complete immunity from arrest while in the precincts of the court.

His Lordship found it unnecessary to go through the history of the matter. It seemed perfectly clear from the authorities and text books that it was a misconception to talk about a litigant or a solicitor

or a witness having immunity from arrest within the precincts of the court. That privilege, if privilege there was, was a privilege of the court to ensure that justice was done in court and for that purpose to prevent anybody properly before the court from being arrested. In so far as it was said to be a privilege of the person attending the court, it was no more than that they were entitled to rely on the Judge of that court seeing that Justice was not interfered with by their being arrested. It was perfectly clear that there was nothing to suggest that a person was privileged from arrest in a court if the arrest was done on the order of that court, and indeed it would be very surprising if that were not so. It had long been the practice for a person properly before the court to be committed by the court and arrested in court not only if he was guilty of a "special" contempt but also in the case of ordinary contempt. Accordingly in his Lordship's judgment the application failed. (In re Hunt–[1959] 2 W.L.R. 95).

Solicitor defendant in person who was reticent about giving explanations before the Disciplinary Committee reprimanded.

The Lord Chief Justice, Mr. Justice Donovan, and Mr. Justice Ashworth on hearing fresh facts, allowed this appeal by a solicitor, Mr. William Ingle, practising at Leeds, from an order of the Disciplinary Committee of the Law Society dated August 14, 1958, suspending him from practice for one year, and substituted a reprimand for the order of suspension.

Mr. Lyons, for the appellant, said that he would not criticise the suspension as improper on the facts before the committee. The appellant, who was somewhat reticent and halting in his speech, was sufficiently unwise to appear before the Law Society unrepresented and had given an inadequate explanation in what was a complicated matter. He was a man of very high, almost Victorian, principles and it was hoped to satisfy the Court that there was a true explanation which put the facts in a different light. The appellant's suspension had received prominent publicity in the Yorkshire Press, so that laymen might have thought that he had been tampering with his clients' money, and the Court was asked to make it clear that there was no question of dishonesty. An unsolicited affidavit had been received from the solicitor who was the complainant before the Law Society, and there was a bundle of 52 affidavits from other solicitors practising in Leeds and Bradford who without exception spoke of the appellant as a man of unusual probity and said that never in any of their dealings with him had he been guilty of any lack of diligence or courtesy.

The Lord Chief Justice, giving judgment, said that the charges against the appellant fell under three heads; first, that he withdrew a sum of £258 6d. in July, 1957, from his clients' account and paid it over to a person who had no such money in the account. That had undoubtedly occurred. It was unnecessary to go into details, but it was quite clear that it was an isolated instance which arose quite innocently in error and, the moment it was pointed out, it was put right. It involved no element of dishonesty whatever and his Lordship did not think that the committee had thought that it had.

The real gravamen of the case against the appellant concerned the second charge—in effect, that he had failed to give proper attention to the affairs of a client. The position arose that he was reported to the Law Society, warned that his practising certificate would not be renewed unless certain matters arising out of this charge were put in order, and yet he continued to practise. The third charge, of practising without a current practising certificate, was a matter arising out of the second charge.

On the face of the findings the appellant had failed to answer letters over a period of three to four years, and those who complained about him to the Law Society were fully justified in doing so. Most unfortunately the appellant completely failed to give any valid explanation to the committee, though he did say that it was because the matter had become, as he put it, repugnant to him. Speaking for himself, his Lordship thought that that was no explanation whatever and as an excuse was one which would rather anger any committee; it was difficult to think that any committee would have come to any other decision but to suspend the appellant.

In the Divisional Court the appeal was by way of rehearing, and although it had not been challenged that there was some failure to give attention to the affairs of a client, the facts had been put against a background which threw a completely new light on what had occurred. It was not a case of a solicitor saying that the matter was repugnant to him and that he was going to shelve it and do nothing about it; his Lordship was satisfied that the appellant had been put in a very difficult position by one of his clients.

The Court had been greatly assisted by the attitude of the Law Society who had accepted the facts now put forward without formal proof and had gone further and said that on those facts there was a strong case for mitigation. His Lordship, while satisfied that the appellant had brought upon himself the order made by the committee, felt that had the full facts been brought out the proper punishment would have been one of reprimand and not suspension. His Lordship would vary the order in that way.

Mrs. Justice Donovan, agreeing, referred to the very proper and generous attitude of the committee now that the full facts had been brought out.
(In *Re* A Solicitor, *The Times*, January 15, 1959.)

Gifts by Solicitor recovered for creditors of Estate.

Mr. Justice Danckwerts, sitting in bankruptcy, approved a compromise between the trustee in bankruptcy of the late Mr. Robert Nathaniel Eichholz, solicitor, who died in 1957, and Mrs. Beryl Clare Jago, of Greenhill Farmhouse, Otham, Kent, under which Mrs. Jago surrendered to the trustee for the benefit of creditors property worth some £30,000 which had been given to her by the deceased.

Mr. Pearlman said that he was exercising his right of audience as a solicitor before his Lordship, and that this was another matter relating to the late Mr. Eichholz which had not been previously before the Court.

Between 1948 and his death in 1957 the deceased paid Mrs. Jago over £85,000 in cash, without any consideration, and also gave her furs, jewellery, objects of art of considerable value, and securities.

The trustee had started proceedings on December 18, 1958, and the Official Solicitor was appointed receiver. On January 13 an order was made in chambers ordering her to hand over to him assets worth some £30,000.

The deceased treated Mrs. Jago as if she were his adopted daughter, although she was never legally adopted. She had stated in her private examination that she regarded the deceased as a father and that he had considered himself in *loco parentis*; she had been completely frank in all the answers that she gave. Under the terms of the order she admitted that the securities and property were conveyed to her by the deceased with intent to defraud the creditors, and that she was under an obligation to transfer them to the trustee, and that if she discovered the existence of any other property acquired by her from moneys provided by the deceased she would inform the trustee and do all acts in her power reasonably necessary to assist him to obtain possession thereof.

His Lordship: It seems to me that she has acted very fairly and very much to her credit. I approve of the terms of the compromise; it seems very satisfactory.
(In *Re* Eichholz, Deceased. *The Times*, February 17, 1959.)

OBITUARY

Sean Ó hUadhaigh.

The death of Sean Ó hUadhaigh on 21st January leaves a gap in the legal profession which it will indeed be hard to fill and a loss to his innumerable friends impossible to replace. He was outstanding as a man and as a lawyer in the high qualities of his character. His name was a synonym not only for integrity but also for personal courage. In the hard years he never hesitated in taking a stand on his principles and for these he was always prepared to jeopardize himself and his career.

He never sough advancement for himself. He never spared himself in the causes which he thought right.

Among the many tributes paid to him since his death not the least has been the recognition by the Gaelic League of the lifelong devotion to the language. The yearly scholarship now founded by the League in his name will keep his memory alive for generations of students. If he had been asked to choose a memorial he would certainly have wished this above all others.

The profession, the Society and the Council will for ever be in his debt. His service to it went far beyond even the brilliant discharge of his duties when President and the ordinary work of the Council for very many years. Whatever difficulty arose, he was always the first to help.

His colleagues mourn him, but will always remember him with pride. May the eternal light shine upon him.

A.C.

Mr. Alexander A. Campbell, Solicitor, died on the 24th August, 1958.

Mr. Campbell served his apprenticeship with the late Mr. William Harper, 84 Donegall Street, Belfast, was admitted in Trinity Sittings, 1896 and practised at 4 Waring Street, Belfast up to his retirement in 1948.

Mr. Charles Thom, Solicitor, died on the 29th October, 1958.

Mr. Thom served his apprenticeship with Mr. William H. Carson, 41 Royal Avenue, Belfast, was admitted in Hilary Sittings, 1909, and practised as partner in the firm of Messrs. Carson, Ballie, Johnston & Thom, 41–51 Royal Avenue, Belfast.

District Justice Fintan Fitzpatrick died on the 9th January, 1959 at a Dublin hospital.

Justice Fitzpatrick served his apprenticeship with the late Mr. Daniel O'C. Miley, 60 Upper Sackville Street, Dublin, was admitted in Hilary Sittings, 1911, and practised at 10, Nassau Street, Dublin up to his being called to the Bar in 1922.

Mr. Daniel J. Browne, Solicitor, died on the 16th January, 1959, at a Dublin hospital.

Mr. Browne served his apprenticeship with the late Mr. Joseph Mangan, Tralee and Mr. John O'Connell, Tralee, was admitted in Trinity Sittings, 1917 and practised at Tralee, Co. Kerry up to his appointment as a Land Commissioner in 1933.

REGISTRATION OF TITLE ACTS, 1891 AND 1942

NOTICE

FOLIOS 3124 AND 3130 COUNTY WEXFORD
REGISTERED OWNER—THOMAS C. SUNDERLAND

THE Registered Owner has applied for a Duplicate of the Certificate of Title specified in the Schedule hereto which is stated to have been lost or inadvertently destroyed.

The Duplicate will be issued unless notification is received in this Registry within 28 days from the date of this Notice that the said Certificate of Title is in the custody of a person not the Registered Owner. Such notification should state the grounds on which the Certificate is retained.

Dated this 27th day of February, 1959.

D. L. MCALLISTER
Registrar of Titles

SCHEDULE

Land Certificates of Thomas C. Sunderland to 73a : 3r : 2p and 19a : 1r : 36p of the Lands of Kilcorral both situate in the Barony of Shelmaliere East and County of Wexford being the Lands comprised in said Folios 3124 and 3130 respectively.

THE REGISTRY

Register B

SOLICITOR seeks vacancy town or country, young adaptable, experienced Court and Office man, special final Certificate, highest references. Box No. B235.

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Register C

SET OF BOOKS on revised costs under High Court, Circuit Court, Land Commission and Land Registration Rules and Solicitors' Remuneration Act Orders. Up to date. Inclusive cost (3 books) post free, 24/-. John McMahon, Solicitor, Ardee.

FOR SALE. Reprint Irish Reports (12 vols.) 1894–1912. Digests 1897–1818 (3 vols.) £2 10s. Postage extra. Box No. C 157.

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South Cork Board of Public Assistance—Health Functions extended under Health and Mental Treatment (Amendment) Act 1958—269/1958.

Waterford Board of Public Assistance—Health Functions extended under Health and Mental Treatment (Amendment) Act 1958—270/1958.

JUSTICE, EXTERNAL AFFAIRS AND DEFENCE

SUBJECT MATTER AND REFERENCE NUMBERS

Ballycullane, Co. Wexford—New Days of Sittings for District Court—175/1958.

District Court (New Areas) Order 1927—Variation No. 175—175/1958; Variation No. 176—25/1959.

Gárda Síochána (Appointments of Women Members) Regulations 1958—176/1958.

Gárda Síochána (Women Members to retire on Marriage) Regulations 1958—177/1958.

Gormanston Aerodrome, Co. Meath—Roads in neighbourhood restricted from 1st May 1959—37/1959.

Kerry and Limerick Co. District Courts—New Days of Sittings fixed—25/1959.

Reformatories and Industrial Schools—Average cost of Maintenance of Youthful Offender in Reformatory fixed at 48/- per week, and of Children in Industrial Schools at 45/- per week—215/1958.

Solicitors' Accounts (Amendment) Regulations 1958—193/1958.

MISCELLANEOUS

SUBJECT MATTER AND REFERENCE NUMBERS

Bakeries—Night Work permitted in Wexford on 31st October 1958 and 6th December 1958—217/1958.

Drapery and Footwear Shops in Ballinasloe, Co. Galway, to remain open until 8.30 p.m. on Christmas Eve.

Greyhound Industry Act 1958—New Constitution of Irish Coursing Club in Schedule in force from 1st January 1959—259/1958.

Greyhound Industry Act 1958—Persons performing Functions of Racing Manager, Handicapper, Judge, Control Steward, Time-keeper or Hare-drawer must hold Permits from Bord na Gcon after 1st February 1959—10/1959.

Greyhound Industry Act 1958—Provisions as regards Holding of Course-Betting Permits by Bookmakers in force from 1st January 1959—226/1958.

Greyhound Industry Act 1958—Provisions as regards Levies on Bookmakers in respect of Course Bets applicable after 1st January 1959—227/1958.

Greyhound Race Tracks—Levy of 2½% on Course Bets payable to Bord na Gcon after 1st January 1959—228/1958.

Greyhound Race Tracks—Licences required from Bord na Gcon to operate same after 1st February 1959—2/1959.

Greyhound Race Tracks—Regulations for Collection of Course Betting Levies payable to Bord na Gcon after 1st January 1959 and for Exemption of Coursing Meetings as regards Levies until 1st September 1960—225/1958.

Industrial and Commercial Property (Protection) (Amendment) Act 1958 relating to Copyright in force from 1st October 1958—182/1958.

International Convention for the Safety of Life at Sea 1948 accepted by Argentina, Brazil, Bulgaria, Czechoslovakia, Ghana, Poland, Turkey and Venezuela, and extended to Dutch and Portuguese Overseas Territories—224/1958.

Motor Vehicle Licences and Trade Licences—Holders may surrender the Licence and apply for Repayment of Duty under certain conditions—198/1958.

Pound-Keepers' Fees increased from 1st April 1959—35/1959.

Road Vehicles (Registration and Licensing) Amendment Regulations 1958—198/1958.

POSTS AND TELEGRAPHS

SUBJECT MATTER AND REFERENCE NUMBERS

Telephone (Amendment) Regulations 1958 to make better provision for the Method of Computing Charges for Trunk Calls by Subscribers of Automatic Exchanges—179/1958.

SOCIAL SERVICES

SUBJECT MATTER AND REFERENCE NUMBERS

Social Welfare (Amendment) Act 1958 in force from 29th December 1958—271/1958.

Social Welfare (Modification of Insurance) (Male Weavers) (Amendment) Regulations 1959—9/1959.

Social Welfare (Unemployment Benefit) (Additional Condition) Regulations 1958—233/1958.

Social Welfare—Reduced Rates of Contributions payable by Women employed as Outworkers or as Servants or in Agriculture to be entitled to all Benefits except Unemployment—233/1958.

Unemployment Assistance—Exclusion of Defined Persons from March to November 1959—38/1959.

TRANSPORT AND TRAFFIC

SUBJECT MATTER AND REFERENCE NUMBERS

Bord na Mona may build Railway Lines in Boora Bog, Co Offaly, under Turf Development Act 1946—214/1958.

Buses owned outside the State and used on Tours not subject to full Restrictions of Imported Cars—253/1958.

Carriage of Wheat in own Vehicles by Licensed Agents of Mills allowed without Licence—180/1958.

Customs-free Airport, Shannon—Limits varied as from 1st January 1959—258/1958.

Great Northern Railway Act 1958—Industrial Engineering Co. Ltd., designated as successor to Dundalk Engineering Works, Ltd.—200/1958.

Lough Corrib Navigation Trustees may abandon University Road Bridge, Galway, and Navigation on Eglinton Canal, Galway—232/1958.

Markets and Fairs—Farmers may carry Livestock from these to Farms for Reward for his Neighbours by means of an Agricultural Tractor or Trailer without Licence—173/1958.

Mercantile Marine Act 1955—Citizens of South Africa, New Zealand and Pakistan, as reciprocating States, are entitled to own Irish Ships—184/1958.

Merchant Shipping Acts—Certificates of Competency as First-Class or Second-Class Engineers granted in Australia shall be recognised for Service on Irish Ships—195/1958.

Motor Cars (Temporary Importation) Regulations 1958—253/1958.

Oil Pollution of the Sea Act 1956—Irish-Registered Ships of under 80 Tons may discharge Oil in prohibited Sea-zones under certain conditions—244/1958.

Road Vehicles (Index Marks) (Amendment) Regulations 1959.
—New Index Marks for Co. Clare—8/1959.
—New Index Marks for Cork Borough—248/1958.

Sligo, Leitrim and Northern Counties Railway—Abandonment Order from Blacklion Border, Co. Cavan, to Collooney Junction, Co. Sligo, made from 24th September 1958—181/1958.

Traffic Signs at present in use, not in accordance with Traffic Signs Regulations 1956, may continue to be used until 31st December 1960—254/1958.

Transport Act 1958—Compensation for Redundancy extended to Re-Organisation of C.I.E. Engineering Dept., Inchicore—249/1958.

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THE GAZETTE

of the

INCORPORATED LAW SOCIETY OF IRELAND

President
JOHN R. HALPIN,

Vice-Presidents
JOHN J. NASH
CORNELIUS J. DALY

Secretary
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

MEETINGS OF THE COUNCIL

MARCH 19th: The President in the chair. Also present Messrs. Green, Overend, Daly, O'Connor, Gilmore, Walker, Lanigan, Martin, Nolan, Tyrrell, Collins, Carrigan, Gaffney, Shaw, De V. White, R.J. Nolan, O'Connell, Quirke, Maher, Comerford, McCarron, Nash, and Noonan.

The following was among the business transacted:

Income Tax Child Allowance in Respect of Solicitor's Apprentice

The Council considered a report from a committee which stated that under the present law a solicitor's apprentice does not by virtue of his apprenticeship qualify for the income tax child allowance unless he is attending a full time course at a University. In some cases allowance has been given in respect of periods spent by the apprentice in Dublin while attending the Society's lectures. The Committee stated that in their opinion this was inequitable and recommended that a memorandum should be submitted to the Minister for Justice for consideration in connection with the next Finance Bill suggesting that the income tax child allowance should be extended to include professional or vocational training as was done in England under the Finance Act 1938. The Committee's report was adopted.

Land Registry

On a report from a committee it was decided that a letter should be written to the Registrar of Title suggesting that the Land Registration Rules should be amended to provide that the issue of a land certificate should be treated as a substantive entry to be made on the folio in the same manner as a change of ownership or burden. The committee in their report stated that several cases had occurred in which land certificates were issued but overlooked by the solicitor concerned owing to the fact that a note on the folio concerning the issue of the certificates was difficult to read and easily overlooked.

Valuation Office Delays

It was decided to refer complaints of delays in country cases to the Provincial Solicitors' Association.

Separation Deed

Proceedings which were instituted on behalf of a wife in the District Court for maintenance were compromised by a cash payment and an agreement to separate. Questions arose as to (*a*) whether the solicitors for the husband or wife should prepare the separation deed (which contains a covenant for payment of the cash sum by instalments) and (*b*) the incidence of the costs. The Council adopted a report from a committee stating that the deed should be drawn by the solicitor for the wife and that the husband should pay the costs.

Court Fees on Lodgement of Money in Court

On a report from a committee it was decided to make representations to the Department of Justice that the fees order should be amended to provide that the fee payable under item (4) part 4 of the First Schedule to the Supreme Court and High Court Fees Order 1956 should be payable by means of an adhesive stamp instead of an impressed stamp.

EXAMINATIONS, MAY, 1959

THE First Law and Final Examinations will commence on Tuesday, May 19th. Notice should be given on or before April 27th. The Preliminary Examination will commence on Wednesday, May 20th. Notice should be given on or before April 28th.

The book-keeping examination will be held on Friday, May 22nd. Notice should be given on or before May 1st.

PAYMENT OF DEATH DUTIES

IN CONNECTION with the statement published in the last issue of the Society's Gazette we have been requested to remind members that remittances for payment of duties should not be sent to the Estate Duty Office. Death duties are payable to the Accountant General (Revenue), Dublin Castle. Remittances sent to the Estate Duty Office will be returned and there will be unnecessary delay and possibly further interest charges.

SOLICITORS' BENEVOLENT ASSOCIATION

THE 95TH Annual General Meeting of the Association was held on Friday, 30th January, 1959, at the Solicitors' Buildings, Four Courts, Dublin. The Chairman, Mr. Dineen B. Gilmore, in the course of his address referred to the resignations of Mr. O'Brien (Chairman), and Mr. Mayne (Deputy-Chairman) towards the end of 1958 and paid tribute to their very notable records of over fifty years as members of the Association. Mr. O'Brien had been Chairman for upwards of 20 years and Mr. Mayne Vice-Chairman for over 15 years.

He announced the appointments of Mr. David R. Pigot, Senior, as Deputy-Chairman, and Mr. Donough O'Donovan (Chief State Solicitor) as Honorary Secretary.

There had been a very welcome increase in Annual and Life subscriptions, and a donation of £1,000 from the estate of a deceased testator. Owing to this increased income it had been found possible to augment grants to a maximum in most cases of £50. During the year a sum slightly over £2,400—the largest amount in the history of the Association had been paid out in grants. Whilst some 160 new annual and life members joined the Association during the year, it was disappointing to find that there are still almost 900 solicitors in all Ireland who are not members. An extensive personal canvass of these by all existing members would, he felt sure, make a very appreciable reduction in that number. The Chairman appealed to the Members of the Association to obtain support for the "Benevolent" and said that he would gladly visit some of the local Bar Associations to plead the cause.

The Chairman in conclusion asked members to bring to the notice of the Association cases of distress or hardship of persons who through feelings of family pride or ignorance of the Association's work did not apply for assistance. In doing so members would help the Association in carrying out—even in a small way—the Divine Commandment "Love your neighbours."

DUBLIN SOLICITORS' BAR ASSOCIATION

A MEETING of the Council was held on Wednesday, 4th March, 1959.

Satisfaction was expressed at the change in the procedure of the Metropolitan District Court in proceedings under the Enforcement of Court Orders Acts. The attention of members was also directed to the desirability of making written enquiries only about the execution of Committal Warrants. If cast in the form of a Query Sheet, it is understood that they will be returned with replies.

The Revenue Commissioners have arranged as a trial to provide a stock of stamped Civil Process and Civil Bill Forms at Ormond Quay Post Office while the Four Courts Stamp Office is closed during the Christmas vacation of 1959.

The following simplified procedure has been arranged by the Director of Savings for the accounts of deceased depositors with the Post Office Savings

Bank. On application for a certificate of the balance in the account for estate duty purposes, the Bank will furnish a notice of withdrawal. That should be signed by the personal representative, and forwarded with the Probate, or Grant of Administration. A warrant will then be issued by the Bank incorporating the statutory form of discharge. When the discharge has been signed by the payee, and returned to the Bank, a cheque will be issued.

The Association's form of draft letting agreement is now available at a price of 1/- per copy from the Honorary Treasurer, Mr. Rory O'Connor.

The next meeting was fixed for Wednesday, 1st April, 1959.

SETTLEMENTS OF HIGH COURT ACTIONS

When considering an application to have a settlement on behalf of a minor plaintiff made a rule of the court recently, Mr. Justice Murnaghan was reported as having said that in future such settlements must be for all in sums and should not be submitted in such a way as to appropriate special amounts for payment of medical and hospital expenses. It has in the past been the practice of a number of solicitors to provide in consents on the settlement of an action that the hospital and medical expenses should be paid to the solicitor acting for the plaintiff on his undertaking to discharge these expenses. This was done by virtue of the provisions of the Road Traffic Acts giving hospitals certain rights against the defendant if the liability is not paid by the injured party. The effect of the new practice laid down by Mr. Justice Murnaghan is that the settlement should provide for an all-in sum to cover general and special damages and the Judge will decide on making the settlement a rule of court what amount, if any, is to be paid to the hospital and the medical practitioners, having regard to all the circumstances including the provisions of the Health Act. The ruling has no application to costs.

SOLICITOR AND CLIENT COSTS IN CIRCUIT COURT MATTERS

The Council have from time to time been asked for guidance by members on the appropriate scale of solicitor and own client costs in Circuit Court proceedings. In order XL, rule 28 of the Circuit Court Rules 1932, it was provided that the solicitor and own client scale of costs in Circuit Court matters should be the same as the party and party costs in one particular case, viz, where the amount sued for or recovered exceeded £100, the appropriate scale of costs being High Court less one third. There was no similar provision in the Circuit Court Rules 1950 or 1954, which are silent on the question of the appropriate scale in such cases. Counsel to whom a case was submitted for advice expressed the opinion that the absence of a scale of costs does not deprive the Taxing Masters of jurisdiction and that in the circumstances their duty is to tax reasonably.

Following the alteration in the jurisdiction of the Circuit Court the Circuit Court Rules 1954 prescribed new party and party scales, viz, (1) the fixed scale in part 1, section (*c*) in the third schedule where the amount involved does not exceed £100; (2) the High Court party and party scale for the time being less one third where the amount involved exceeds £100 but does not exceed £300; (3) The High Court scale for the time being less one fifth where the amount involved exceeds £300 but does not exceed £600. Counsel took the view that the Taxing Masters in the absence of a scale of costs to help them in fixing reasonable charges should look at all the circumstances of the case including the various scales of costs as between party and party, having regard to the express statutory provisions in the rules of 1932, which in effect took the highest scale of costs as between party and party as the proper scale where the costs are to be taxed as between solicitor and client.

It is understood that the current practice in the Taxing Masters, office is as follows. The Taxing Masters in taxing bills of cost as between solicitor and client will act reasonably. Generally they will allow solicitors more than the party and party costs set out in the Circuit Court Rules. They will not necessarily allow costs on the High Court scale less one third or less one fifth. In particular cases they may tax on such a basis but each matter will depend on its own facts and circumstances. On a taxation of costs as between solicitor and client in a Circuit Court matter it might be objected on behalf of the client that the solicitor in claiming say £600 damages when he should have claimed only £200 or £300 should be entitled to tax his costs only on the basis of a claim for the smaller amount if he had not explained to the client that he might incur additional liability for costs by claiming the larger amount in the Civil Bill. In such a case the solicitor might be expected to satisfy the Taxing Master that he is entitled to tax on the basis of a claim for £600. This difficulty will not of course arise in the defence of a civil bill for £600 as the defendant's solicitor has no option in the matter.

DECISIONS OF PROFESSIONAL INTEREST

Certain business done by a liquidator, under a winding-up order of the Court, is "non-contentious" business and should be taxed accordingly.

In October, 1956, the liquidator of a company, which was being wound-up under an order of the

court, instructed solicitors to obtain counsel's opinion (*a*) whether any officer of the company had committed a breach of trust on which misfeasance could be founded, and (*b*) as to the recoverability of the balance of certain deposits paid by the company to a third party. No proceedings were taken in either case. On Nov. 21, 1957, the solicitors delivered a lump sum bill, which was taxed, as non-contentious business, under Sch. 2 to the Solicitors Remuneration Order, 1883 (as amended), in accordance with art. 2 (*c*) of the Order. The liquidator lodged objections to the basis of the taxation on the ground that the costs were in respect of business in an "action," i.e., the winding-up proceedings and, therefore, were excluded from art. 2 of the Order of 1883 by the words "not being business in any action" therein, and should be taxed under R.S.C., Appendix N, in accordance with R.S.C., Ord. 65, r. 8. The objections were disallowed. By s. 86 (1) of the Solicitors Act, 1957, "contentious business" was defined as "business done . . . in or for the purposes of proceedings begun before a court . . ." and "non-contentious" was defined as "any business done as a solicitor which is not contentious business as defined by this sub-section". On a summons by the liquidator for the taxation to be reviewed, the further question arose whether the costs were in respect of contentious business within the definition in s. 86 (1) and thus were excluded from the scope of the Order of 1883 and were taxable under Appendix N to the R.S.C.

Held by Wynn Parry J. that (i) the business was not contentious business within s. 86 (1) of the Solicitors Act, 1957, and accordingly was rightly taxed as non-contentious business under art. 2 (*c*) of and Sch. 2 to the Solicitors' Remuneration Order, 1883, for the following reasons—

(*a*) The scope of the Order of 1883 was now restricted by excluding such conveyancing and other business as was within the definition of contentious business in s. 86 (1), which definition extended to, e.g., conveyancing business in an action,

(*b*) Advising a liquidator in a compulsory winding-up whether an action should be begun by writ was not contentious business unless the action were begun, because the proceedings to which the advice was referable were the action, not the winding-up, and

(*c*) So, also, advising a liquidator in a compulsory winding-up whether a misfeasance summons should be issued was not contentious business unless the summons were issued, notwithstanding that the summons would be entitled in the winding-up and would thus be a proceeding in the winding-up (which itself was a proceeding before the court) within the definition of contentious business in s. 86 (1).

(ii) A petition for compulsory winding-up was not an "action" within s. 225 of the Supreme Court of Judicature (Consolidation) Act, 1925, since the form of proceedings for compulsory winding-up was provided by the Companies Act, 1948, s. 224, not by rules of court.

Per Curiam: all business is now to be regarded as contentious which is done before proceedings are begun, provided that the business is done with a view to the proceedings being begun and that they are in fact begun, and also all business done in the course of the proceedings; all other business is non-contentious.

Note: Power is conferred by s. 56 (2) of the Solicitors Act, 1957, to make orders regulating solicitors' remuneration in non-contentious business, which term is defined in s. 86 (1) as business which is not contentious business as there defined. The Solicitors' Remuneration Order, 1883, as amended, is continued in force by s. 88 (2) for the purposes of s. 56 (2). The definition of contentious business now contained in the Act of 1957, was altered to its present form by the Solicitors (Amendment) Act, 1956, s. 13 (4) (*a*). The decision in the present case proceeds on the basis that this alteration affects the scope of the Order of 1883 as continued in force, and indeed restricts it by excluding conveyancing business done in an action, since such business is now within the definition of contentious business. In this respect, viz., the alteration of the scope of the existing Order of 1883, the decision may be compared with *Re A Solicitor* ((1955) 1 All E.R. 257), which was, however, prior to the amendment of the definition of contentious business by the Act of 1956.

Per Wynn-Parry, J.: In the ordinary course, business consisting of advising whether or not proceedings should be started is non-contentious business, and only becomes contentious business if proceedings are, in fact, started: hence the necessity in defining contentious business to include not only the preposition "in" but also the words "for the purposes of". It will thus be seen that, in the ordinary case, the test whether the business of advising on the question of bringing proceedings is to be regarded as contentious business depends on the course taken subsequently to the advice being given. It must follow from the argument of the applicant that, supposing the business done is advising whether or not a writ of summons should be issued, the nature of that business is not to be tested by posing the question: Were the proceedings in fact begun as a result of the advice? The question is answered, indeed, as soon as the business of advising it undertaken, because it is done "in" existing proceedings. The matter does not rest there. Carried to its logical conclusion the argument of the applicant must cover every type of business

done by a solicitor in a compulsory liquidation, including such essentially non-contentious work as conveyancing.

It appears to me that the definition of contentious business in that Act and the Solicitors Act, 1957, must include conveyancing business done in an action. The scope of the Solicitors' Remuneration Order, 1883, must, therefore, be treated for the future as not extending to conveyancing business done in an action, the phrase "in or for the purposes of proceedings begun before a court" clearly including conveyancing business done in an action. This result, assuming it to be correct, as I hold that it is, may be said to have been achieved in an odd way, but there is this advantage, that there is now a clear and, I should have thought, logical division between contentious and non-contentious business. All business is now to be regarded as contentious which is done with a view to the proceedings being begun, and that they are in fact begun, and also all business done in the course of the proceedings. All other business is non-contentious.

As I have already said, I have found the whole matter one of great difficulty, and I recognise that a different view could well be entertained. Only one thing is certain, and that is that the position is far from clear. Whether or not all costs properly incurred in a winding-up by the High Court should be taxed under Appendix N is a matter of policy, on which it is not for me to pronounce. I would, however, point out that, if it were to be decided that that policy should be followed, it could be achieved by a short amendment to the Companies (Winding-up) Rules, 1949. In the result the summons will be dismissed.

Note: This is an English decision on the construction of the English Statutory definitions of contentious and non-contentious business. There are no such Statutory definitions in Ireland. In particular, the decision does not affect the application of the Solicitors' Remuneration General Order 1884 clause 2 (*c*) to the costs of conveyancing business in Court proceedings.
(Re Simpkin Marshall Ltd. (1958) 3. All E.R. 611.)

Bankrupt solicitor cannot defraud his creditors by giving property to his wife after marriage.

On Jan. 18, 1955, the deceased (a solicitor) and his wife (referred to hereinafter as "the widow") were married. About the time of the marriage the deceased opened a bank account in the joint names of himself and the widow on which either could draw. On Feb. 14, 1955, the deceased entered into an agreement in writing to purchase a freehold house for some £15,000, and he paid the deposit on the purchase price from his account with his firm. By a conveyance dated Mar. 15, 1955, which recited that there had been an agreement with the widow for the purchase, the property was conveyed by the vendor to her. The deceased was not a party to the conveyance nor did it recite that it was made by his direction. The balance of the purchase price was provided by a banker's draft on the joint account, which at that date was in debit, but to which some £18,000 misappropriated from the proceeds of sale of securities of clients of the deceased was credited shortly afterwards. The deceased was at all material times insolvent and heavily indebted in respect of clients' funds that he had misappropriated. He died on Nov. 17, 1957. His executors obtained an order for administration of his insolvent estate in bankruptcy under s. 130 of the Bankruptcy Act, 1914. The trustee in the administration brought an action to recover the house from the widow under s. 172 of the Law of Property Act 1925, and a motion in bankruptcy to recover from her chattels which were at the house, also under s. 172. The court found that there was a gift of the house to the widow and that there was no consideration for the gift; and that some at any rate of the chattels appeared to have been voluntary gifts to her by the deceased.

Held by Harman J. that the trustee was entitled to recover the house known as "Peppermills," Lamberhurst, Kent and chattels (subject to an inquiry as to what chattels the widow might be entitled to retain, e.g., as wedding gifts) from the widow under s. 172 of the Law of Property Act, 1925, for the following reasons—

(i) the claims under s. 172 could be maintained by the trustee in the administration in bankruptcy under s. 130 of the Bankruptcy Act, 1914, but, if this were not so, a representative creditor by whom the claim would be maintainable would be added as plaintiff.

(ii) though a conveyance within s. 172 of the Law of Property Act, 1925, need not, it seems, be a conveyance in writing yet there was a conveyance of the house in writing within s. 172 in the present case, since the deceased had become beneficial owner of the house on his contracting to buy it, and the deed of conveyance thereof to the widow had transferred his equitable interest to her, notwithstanding that he was not a party thereto, and thus was a conveyance within s. 172. (In Re Eichholz Decd. (No. 1)—(1959) 1. All E.R. 169.)

Note: Section 172 of the Law of Property Act 1925 re-enacts the Statute 13 Elizabeth cap. 5. It enacts that, save as provided, every conveyance of property made, whether before or after the commencement of the Act, with intent to defraud creditors, shall be voidable at the instance of any person thereby prejudiced.

A vendor of rent-restricted property which has become vacant between the dates of the contract and of completion is under a duty to consult the purchaser before reletting before completion of the contract.

After the appellants had entered into an agreement to sell to the respondents property in Nairobi consisting of three shops let to three tenants at rents controlled under the local rent restriction legislation, one of the tenants surrendered his tenancy before completion of the contract. The appellants, without consulting the respondents, relet the vacated shop on the same day to another tenant at the same maximum controlled rent. The evidence established that the value of the premises with the vacated shop unlet was Shs. 18,000/- more than with the shop let. The appellants being unwilling to compensate the respondents in respect of the depreciation in value of the premises resulting from the reletting, the respondents claimed specific performance of the agreement and compensation by way of an abatement of the purchase price for the loss resulting from the reletting :—Held by the Privy Council (Lord Reid, Lord Cohen and Lord Somervell) affirming the Court of Appeal for East Africa that the vendors' obligations were defined in section 55 (1) (*e*) of the Indian Transfer of Property Act, 1882, as applied to Kenya, which provided that the seller was bound "between the date of the contract of sale and the delivery of the property to take as much care of the property . . . as an owner of ordinary prudence would take of such property. . . ." The words "take . . . care of the property" were not restricted to the preservation of the property from physical deterioration, but included care in its management having regard to the interest of the purchaser. On that view the obligations imposed by section 55 (1) (*e*) were substantially those imposed on the vendor under English Law, and the vendors here had no right, without consultation with the purchasers, to diminish the value of the property as it was after the surrender by reletting. The respondents were therefore entitled to a decree for specific performance and an abatement of Shs. 18,000/- from the purchase price.
(Abdulla *v.* Shah—(1959) 2. W.L.R. 12.)

Motion for committal for contempt of solicitor dismissed.

A firm of solicitors who had instituted proceedings on behalf of clients for alleged infringement of trading rights sent round letters to members of the trade informing them that the writ had been issued. The defendants alleged that this amounted to contempt of Court and threatened to bring proceedings for contempt against one member of the firm unless a certain notice was published in the Press. One of the partners in the firm agreed to the publication of this notice but his agreement was not endorsed by the firm and the notice was not published. Mr. Justice Vaisey dismissed this motion by Richmond Film Productions for the committal of a member of a firm of solicitors, for alleged contempt of Court in failing to procure the publication of a notice which a partner in the firm, had agreed through counsel to give an undertaking to publish in the Press.

Sir Lionel Heald, for the Law Society, said that in view of some uncertainty in the public mind it was desirable to make it clear what the position of solicitors was. Anything a solicitor did in his capacity as a solicitor, wherever he did it, rendered him amenable to the discipline of the Court.

In *Myers v. Elman* ((1940) A.C. 282) Lord Atkin had said that from time immemorial judges had exercised a disciplinary jurisdiction over solicitors in cases of misconduct. Solicitors were now subject to two concurrent jurisdictions ; judicial action by a solicitor should always be dealt with by the Court, while extra-judicial action by a solicitor should normally be dealt with by the Disciplinary Committee of the Law Society, an independent statutory body, with appeal to the Divisional Court of the Queen's Bench Division. As a general rule the maxim *pacta servanda sunt* applied but there must be some limit to this in cases of fraud, mistake or duress. The Court of Appeal had recently decided, in *Hughes v. Hughes* ((1958) 3. W.L.R. 500) that the Court had no jurisdiction to relieve a solicitor of an extra-judicial undertaking given by another solicitor.

His Lordship said that no officer of his Court ought to sign a document and repudiate it. But there was an obligation on him to protect his officers from embarrassment and, if they got into difficulty, to help them.

Mr. Justice Vaisey, giving judgment, said that this was a motion which he believed, and sincerely hoped, was unprecedented. After the writ was issued on December 12, 1958, certain publicity was given on behalf of the plaintiff, Mr. Schuller, to which the defendant company, Richmond Film Productions, took exception. A meeting took place on January 16, 1959, between counsel for the film company and a partner in the firm, as a result of which a most extraordinary document was produced. It was headed, "In the matter of the action Schuller *v.* Richmond Film Productions" and then "In the matter of an application on behalf of the defendants . . . for an order for committal against the solicitor for contempt of Court." In fact there had never been any application on the part of the defendants to commit the solicitor for contempt of court and the heading was completely wrong.

It was initialled as a "minute" and signed by counsel for the company and, curiously enough, by

counsel for the solicitor. Annexed to it was a form of proposed advertisement and a form of letter to be sent round to correct or remove misapprehensions which had arisen. Whatever else this document was, it was not an undertaking given to the Court. Mr. Schuller was not a party to the motion now before his Lordship. His Lordship did not know in what capacity the solicitor purported to enter into the minute, but it was clear that he did not enter into any obligation with the Court. How could his Lordship commit him and his partner merely on the ground that he happened to be a solicitor and that this minute was signed by counsel for him personally?

One of the distressing parts of this case was that the solicitor's senior partner refused to allow the firm's signature to be put on the notices or letters, and the solicitor was left in the undesirable position of having agreed to do certain things which he found himself unable to do. His Lordship thought that this motion, as it asked for the serious remedy of committal to prison, was completely misconceived. The responsibility for any wrong which was done, if there was any, was the wrong of Mr. Schuller, the principal for whom the firm was acting.

His Lordship could not see any ground upon which he could make an order forcing the solicitor or his partner to publish the "legal notices" and sign and post the letters. It was a very unfortunate case because the standard of conduct and good faith which was expected of officers of the Court was very high.

(Re Smeaton and Egerton, *The Times*, February 12, 1959.)

LIST OF LIBRARY ACQUISITIONS

as at 1st March 1959

A.—BOOKS PURCHASED

Best—*Law of Evidence*, 1911; Bowen—*Law of Easements 3rd Edn.* 1925; Burke (Sir J.)—*The Landed Gentry of Ireland 4th Edn.* 1958; Catholic Directory, 1959; Charlesworth—*Law of Negligence, Second Cumulative Supplement to 3rd Edn.* 1958; Copinger and Skone-James—*Law of Copyright, 9th Edn.*, 1958; Current Law Citator, (1947–1957); Current Law Yearbook, 1957; Dias and Hughes—*Jurisprudence*, 1957; Dicey—*Conflict of Laws 7th Edn.*, 1958.

English and Empire Digest—*Third Cumulative Supplement*, 1958; *English and Empire Digest*—(a) Replacement Volume 2 (Agriculture to Arbitration), (b) Replacement Volume 13 (Copyholds to County Courts), (c) Replacement Volume 18 (Discovery of Distress), (d) Replacement Volume 40 (Sale of Land to Settlements); Forms and Precedents for Use of Accountants, 2 vols., 1906–7; Freeman—*Law of Rights of Way, 4th Edn.*, 1958; Foote—*Private International Law*, 1890; General Orders of Masters in Chancery, 1843–1848; Green—*Law of Death Duties, 4th Edn.*, 1958.

Halsbury (Earl of)—*Laws of England, 3rd (Simonds) Edn; Vol.* 22 (*Insurance to Judgments and Orders*); *Vol.* 23 (*Juries to Landlord and Tenant*); *Vol.* 24 (*Libel and Slander to Local Government*); *Vol.* 25 (*London Government to Mayors' and City of London Court*); 1958; Halsbury (Earl of)—*Laws of England, 3rd (Simonds) Edn.*; *Cumulative Supplement*, 1958; International Bar Association, Oslo, 1956, Conference Report; Ireland—*Revenue Commissioners, 34th Annual Report*, 1956–57; Ireland—*First Report of Seanad Committee on Statutory Instruments*; Ireland—*Finance Accounts* 1957–58; Ireland—*Report of Oireachtas Committee on Public Accounts, July* 1958; Irish Catholic Directory, 1959.

Jackson—*The Law of Damages*, 1934; Jenks—*Book of English Law*, 1928; Kenny, C. C. S.—*Outlines of Criminal Law*—17th Edn., 1958; Lauterpacht—*The Development of International Law by the International Court*, 1958; Law List—1958; Law Society (London)—*Land Registry Practice* (Pamphlet), 1958; Maxwell-Miller—*Irish Probate Practice*, 1900 (extra copy); Meriton—*Exact Abridgment of Irish Statutes from Edward II to William III*, 1724; Miles and Knight-Dix—*In the Eyes of the Law*, 1937; Moriarty—*Police Law*, 1931; Moriarty—*Police Procedure and Administration*, 1930.

Napley and Grattan-Doyle—*Law of Auctioneer's Remuneration*, 2nd Edn., 1957; Northern Ireland Statutes—1957; O'Sullivan and Brown—*Law of Defamation*, 1958; Pease and Chitty—*Law of Markets and Fairs*, 2nd Edn., 1958; Piesse and Gilchrist-Smith—*Elements of Drafting*, 2nd Edn., 1958; Powell—*Law of Evidence*, 10th Edn., 1921; Read—*The Company Director, His Powers, and Functions*, 1958; Russell—*The Law of Crime*, 2 Vols., 11th Edn., 1958.

Smith—*Criminal Case and Comment*, 1958; Statesman's Yearbook—1957; Stone—*Justice's Manual*, 2 Vols., 1958; Treagus and Rainbird—*Butterworth's Law of Costs*, 6th Cumulative Supplement, 1958; Tristram and Coote—*Probate Practice*, 3rd Supplement to 10th Edn., 1958; Turner and Armitage—*Cases on Criminal Law*, 2nd Edn., 1958; Underhill—*Law of Partnership*, 7th Edn., 1958; Vester and Gardner—*Trade Union Law and Practice*, 1958.

Weekly Law Reports Index (1953-58); Whitaker's Almanack—1959; Wilson and Carmichael—*Principles of Executorship Accounts*— 3rd Edn., 1957; Wilson and Kelly—*Principles of Irish Income Tax*, 1st Supplement, 1958; Woodfall—*Law of Landlord and Tenant*, 3rd Cumulative Supplement, 1958; Woodfall—*Law*

of Landlord and Tenant, Permanent Supplement, Vol. 1, *The Rent Acts*, 1958; "*Words and Phrases*" *Judicially Defined* — 1958 Pocket Supplements to .5 Vols.; Wurtzburg—*Building Society Law*, 11th Edn., 1958; *Who's Who*—1959.

DONATIONS AND EXCHANGES

MISCELLANEOUS EXCHANGES—Canberra (Australia) University College—*Calendar*, 1958-59; *International Law List*—1959; Edinburgh University—*Calendar*, 1958-59; *Scottish Law List*, 1958; Glasgow University—*Calendar*, 1958-59; Queen's University, Belfast—*Calendar*, 1958-59; Manchester University—*Calendar*, 1958-59; Royal Institute of Architects (Ireland)—*Yearbook*, 1958; *New South Wales Law Almanack*, 1958; National University of Ireland—*Calendar*, 1958; University College, Dublin—*Calendar*, 1958-59; University College, Cork—*Calendar*, 1958-59; University College, Galway—*Calendar*, 1958-59.

MISCELLANEOUS DONATIONS—Ireland—*Statutory Instruments*, 2 Bound Volumes for 1954, 1955, 1956, and 1957; Scottish Law Agents Society—*Memorandum Yearbook*, 1958; Incorporated Law Society—*Calendar*, 1959; Stock Exchange—*Yearbook* 1957, 2 Vols.; New York City Bar Association—*Handbook*, 1958; American Bar Association—*Journal* (from January, 1957); Martindale-Hubbell—*Law Directory* 1957 (3 Vols.); *American's Lawyers' List*, 1954; English General Council of the Bar—*Annual Statements* for 1956 and 1957; American Institute of Judicial Administration—*Lawyer Indemnity Plans, Report of November*, 1954; Irish Medical Registration Council—*Regulations as to Inquiries in connection with Erasure from the Register*, 1933; Irish Veterinary Council—*General Regulations of* 1955; Irish Dental Board—*Regulations as to Inquiries in connection with Erasure from the Register*, 1946; *Garda Directory*, 1958; United Nations Food and Agriculture Organisation—*Comparative Principles of Tenancy Legislation*, 1957; Institute of Advanced Legal Studies, London—*Report*, 1957-58.

DENIS GREENE, DUBLIN. Kime—*International Law Directory*, 1957; *American Bar Register*, 1956.

DESMOND MORAN, DUBLIN. Dillon—*Irish Judicature Act of* 1877, 1879; Ireland—*Standing Orders relating to Private Business in the Oireachtas*, 1932; *Dublin Corporation Printed Reports*, 1902; Henry Grattan—*Speeches*, 1811; Birmingham—*Handbook of Irish Sanitary Law*, 1905.

JOHN P. KING, DUBLIN. *Canadian Law List*, 1957; *Australian and New Zealand Law List*, 1957.

LAW SOCIETY, LONDON (Pamphlets). Rowe and Pearson on the *Formation of Private Companies*; Wheatcroft on *Tax Planning for the Solicitor*, 1958; Gilchrist-Smith on *Conveyancing*, 1958; Blundell on *Landlord and Tenant*, 1958; *Contract and Mercantile Law* by Diamond, 1958; *Revenue Law* by Beattie, 1958; *Tort* by Griffith, 1958; *Divorce Law and Practice* by Dew, 1958.

MESSRS. FOTTRELL & SONS, DUBLIN. Issac Butt—*Practical Treatise on the Law of Compensation to Tenants under the Landlord and Tenant Act*, 1870; Sir Arthur Vicar—*Index to the Perogative Wills of Ireland* (1536-1810), 1897; Cropper on *Book-keeping and Accounts*, 1920; Fottrell—*Practical Guide to the Land Purchase Acts*, 1889; Best—*Law of Evidence*, 1893; Walker—*Rating Provisions of Local Government Act*, 1898; Dodd and Wilberforce on *Private Bill Procedure*, 1898; Indermaur—*Leading Conveyancing Cases*, 1903; Finlay—*Law of Landlord and Tenant in Ireland*, 1825; Gore-Browne—*Law relating to Assurance Companies*, 1910; Adams—*Guide to Irish Chancery Practice*, 1869; Longfield—*Game Laws of Ireland*, 1868; Institute of Bankers—*Questions on Banking Practice*, 1921; Institute of Bankers—*Legal Decisions affecting Bankers*, 1900; Boyle and Waghom—*Law relating to Railway and Canal Traffic*, 3 Vols., 1901; Hodges—*Law of Railways*, Vol. II, 1889; Land Registry—*Systems of Registration of Title in operation in Germany and in Austria, Hungary*, 1896; Roche and Rearden—*Irish Land Code and Labourers' Acts*, 1886; Parkyns-Levinge—*The Game Laws of Ireland*, 1858.

C. GAVAN-DUFFY. McKay—*An American Constitutional Law Reader*, 1958; Marke, Deans *List of Recommended Reading for Law Students*, 1958; Hood-Phillips—*Principles of English Law and the Constitution*, 1939; Muirhead—*The Institutes of Gains and of Ulpian Translated*, 1904; Buckland—*Manual of Roman Private Law*, 1928; Coldridge and Hawksford—*The Law of Gambling*, 1913; Fifoot—*English Law and its Background*, 1932; Easton—*The Law as to the Appointment of New Trustees*, 1900; Ireland—*Summary of Fishery Bye-Laws*, 1927; Willis and Oliver—*Roman Law Examination Guide*, 1910; Chalmers and Hood-Phillips—*Constitutional Laws of Great Britain and the Commonwealth*, 1946; MacAuliffe—*Gaelic Law*, 1924; Ginsburg—*Leading Duties of Shipmasters*, 1911; Jethro Brown—*The Austinian Theory of Law*, 1906; Warburton—*Leading Cases in Criminal Law*, 1908; Stone—*Rent Restriction Acts of* 1920 *and* 1923; Devereux-Knowles—*Evidence in Brief*, 1913; Hunter—*Roman Law*, 1897; De Smet *Canonical Treatise on Betrothment and Marriage*, 1914; Ratanjal—*English and Indian Law of Torts*, 1905; Sheldon Amos—*History of the Civil Law of Rome*, 1883.

OBITUARY

Mr. Kenneth P. Kilbride, Solicitor, died on the 11th March, 1959 at his residence, Greenbank, Trim, Co. Meath.

Mr. Kilbride served his apprenticeship with Mr. William E. O'Brien, Mitchelstown, Co. Cork, was admitted in Michaelmas Sittings, 1929, and practised under the style of Messrs. Frederick W. Moorehead & Co., at Trim, Co. Meath.

REGISTRATION OF TITLE ACTS, 1891 AND 1942

Issue of Duplicate Land Certificate

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

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

Dated the 14th day of April, 1959.

D. L. McAllister,
Registrar of Titles.

Central Office,
Land Registry,
Chancery Street,
Dublin.

Schedule

1. Registered Owner, Peter Hyland. Folio number, 883. Queens County. Lands of Morett in the Barony of Portnahinch containing 20a. 2r. 0p.

2. Registered Owner, Edmond Kissane. Folio number 15496 (Revised). County Kerry. Lands of Rahavanig in the Barony of Iraghticonnor containing 127a. 2r. 19p.

THE REGISTRY

Register A

Assistant Solicitor required for Dublin office. Competent working knowledge of Irish essential. Apply with details of experience and references if any to Box No. A 178.

Register B

Solicitor presently in practice country desires partnership in well established firm, provincial town preferably Leinster. Replies treated in confidence. Box No. B 237.

Register C

Mr. H. Harper Wilson of F. J. Orr & Co., Solicitors, 68 Upper Church Lane, Victoria Square, Belfast, is anxious to obtain copies of the books detailed below. Will any person who has copies for sale kindly contact him.

1. "A Treatise on the Registration of Ownership of Land in Ireland," by W. E. Glover, published by John Falconer, 2 Crow Street, Dublin, in 1933.

2. O'Connor's "Licensing Laws of Ireland."

THE SOLICITORS' BENEVOLENT ASSOCIATION

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

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

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

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

Address:
Secretary,
Solicitors' Benevolent Association,
18, Hume Street,
Dublin.

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APRIL,
1959

THE GAZETTE

of the

INCORPORATED LAW SOCIETY OF IRELAND

President
JOHN R. HALPIN,

Vice-Presidents
JOHN J. NASH
CORNELIUS J. DALY

Secretary
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

COUNCIL MEETING,

APRIL 17th—The President in the Chair. Also present, Dermot P. Shaw, John Kelly, D. B. Gilmore, G. G. Overend, John J. Nash, Desmond J. Collins, Niall S. Gaffney, Eunan McCarron, Reginald J. Nolan, Joseph P. Tyrell, Charles J. Downing, Desmond Mayne, James R. Quirke, Cornelius J. Daly, Arthur Cox, Francis J. Lanigan, Ralph J. Walker, James J. O'Connor, James Green, Derrick M. Martin, John J. Sheil, R. McD. Taylor, George A. Nolan, Thomas A. O'Reilly, John Carrigan, John R. Halpin, John Maher, Peter E. O'Connell, Patrick Noonan.

The following was among the business transacted.

Income Tax child allowance, in respect of solicitors apprentices'

The Secretary reported that following representations made by the Society the Minister for Finance had announced in his budget statement that the Income Tax child allowance will be given in respect of children over 16 years of age serving apprenticeship. Provision will be made in the Finance Bill.

Road Traffic Acts prosecutions, costs

The Council considered a report from the Committee on replies received from a number of Bar Associations to the recent circular from the Society asking for their views as to the adequacy or otherwise of the costs at present paid by insurance companies to solicitors for conducting the defence under the Road Traffic Acts. It was decided to recommend that the minimum fee for defending a summons for dangerous driving should be £5 5s. 0d. in a local court and £5 5s. 0d. plus a reasonable addition for time and travelling expenses where the case is heard in a town other than the town where the solicitor has his principal office. These are minimum fees for normal cases and do not apply to cases of exceptional difficulty or to cases of drunkenness in charge of motor vehicles. A letter in these terms has been sent to each Bar Association.

Land Registry, costs of transmission on death

An inquiry was received from a member as to the appropriate charge under the Land Registration Rules for registration of a probate to include pre-

paring of affidavits and also as to the costs of transmission on intestacy to include preparing deed of release. Reference was made to clause 10 (1) (iii) of the Land Registration Costs Rules 1954. The Council on a report from a Committee express the view that the appropriate charges are as follows :—

(1) registration of grant of probate or letters of administration and work incidental thereto, two and one third times the charges prescribed by clause 2 (*c*) S.R.G.O. 1884 in accordance with clause 10 (2) Land Registration Solicitor Costs Rules 1954.
(2) transfer by the personal representatives to a beneficiary the scale charges in the second schedule Land Registration (Solicitors Costs) Rules 1954.
(3) deed of release from the beneficiaries to the personal representatives the same charges as in (1) above.

Restrictive conditions of sale

A Committee of the Council submitted a report on a number of complaints received from members as to the inclusion in agreements for sale or conditions of sale of clauses in unduly restricting the right of the purchaser to obtain a marketable title. In some cases vendors sought to impose on the purchasers the whole or part of the vendors' costs of deducing title. It was decided to draw the attention of members to the statements already published in the Gazette that agreements which unduly restrict the right of the purchaser to investigate the title or throw the whole or part of the vendor's costs on the purchaser are not in the interests either of the profession or the public. Such practices result in criticism of solicitors' charges, and make it difficult to justify the commission scale fee.

On a particular question submitted the Council decided that the contract should not deprive the purchaser of the right to a sealed and certified copy of the land registry folio or a certified copy of a superior lease containing restrictive covenants. Both these documents should be furnished by and at the expense of the vendor.

Advertisements by builders

A Committee reported that a news feature in one of the Dublin evening newspapers relating to the sale of newly built houses in Dublin included statements with reference to the costs which might lead to a contravention of the provisions of the Solicitors' Act 1954 (Professional Practice Conduct and Discipline) Regulations 1955. Article 5 of the Regulations provides that a solicitor shall not directly or indirectly. . . . do in connection with his practice any act or thing which can reasonably be regarded as advertising or as calculated unfairly to attract business and that a solicitor shall not permit to be done on his behalf in connection with his practice or by a client for whom he proposes to act anything which if done by the solicitor himself would be a breach of the regulations, and further provides that it is the duty of a solicitor to make reasonable enquiry before accepting instructions, either from the client or any person dealing with the client, for the purpose of ascertaining whether the acceptance of such instructions would involve a breach of the regulations. The news feature and some of the advertisements published in connection with it contained statements calculated to suggest to purchasers that the vendor or lessor would pay the costs of the purchaser—lessee. This was stated not so much directly as by implication. The Council considered that the news feature and advertisements are objectionable and letters were sent to solicitors who are believed to act for the builders in question drawing their attention to the regulations, and in particular to the obligation to make reasonable enquiries under regulation 5 before accepting instructions. None of the solicitors had been consulted or were parties to the advertisement or news features.

Solicitor and insurance broking firm

On a report from a Committee the Council stated that it is unprofessional for a solicitor to allow his name and professional description to appear on the business notepaper of a limited company carrying on business as insurance brokers of which he is a director. No reference should be made on the firm's notepaper to the solicitor's professional occupation.

Professional undertaking

The solicitors for a defendant in an action which was referred to arbitration gave an undertaking to pay the plaintiff's costs of the statement of claim in the following terms. "We wish to advise you that our clients are agreeable to pay the costs. We will give you our undertaking regarding payment of these and would suggest a fee of £X." The fee was not agreed at the time. The arbitrator's award was in favour of the defendants. The arbitrator decreed that each party should bear his own costs and should each be responsible for one half of the arbitrator's fee. The defendant's solicitors paid the whole of the arbitrator's fee, and the Council were asked to state whether they could set off one half of the said fee against the amount of

the costs due under the undertaking to the plaintiff's solicitors. The Council on a report from a Committee stated that the defendant's solicitors give an undertaking to pay the plaintiff's costs of the proceedings and were not entitled to set off half the arbitrator's fee.

Solicitor's notepaper

On a report from a Committee the Council stated that the words " successors to CD " on the notepaper of a solicitor who purchased the practice of CD (a public official) should not be printed on the new solicitor's professional notepaper but they gave permission to exhaust existing stocks.

Press notice

On a report from a Committee the Council stated that they would disapprove of a Press notice by a solicitor stating that he carried on all types of insurance business for the principal companies and inviting enquiries at his private house.

Vacancies on Committees

Messrs. Dinnen B. Gilmore and James R. Green were appointed as additional members of the Finance, Library and Publications Committee, the Privileges Committee, and the Court Offices and Costs Committee.

DUBLIN SOLICITORS' BAR ASSOCIATION

A MEETING of the Council was held on Wednesday, 1st March, 1959.

The Administration of Estates record is now available at 6d. per copy in parcels of one dozen, from Messrs. A. & S. Donaldson, Limited, of Celbridge. Practitioners will find this form very useful when taking instruction for Probate or Administration even in relatively small Estates.

The main uses envisaged for the Administration of Estates record are :—

1. It should prove a useful guide and reminder to the less experienced practitioner.
2. A Principal should see at a glance the position in a case being mainly dealt with by an Assistant or Clerk.
3. For Principal or Assistant it will be a rapid reference and assist in answering questions as to the position especially over the telephone.
4. A reasonably experienced Costs Drawer should be able to draft most of a Bill of Costs by reference to the form while the solicitor retains his files and papers while winding up the administration.
5. It will be a useful record of an administration should questions arise after a lapse of time following completion.

The Council supports the observations recently made in the Bankruptcy Court by Mr. Desmond Collins, Solicitor for the preservation of the right of audience in that Court of Dublin Solicitors.

A deputation was appointed to wait upon the County Registrar and to discuss with him the urgent necessity of improving the performance of their services by District Court Civil Bill Officers in Dublin.

The next meeting was fixed for Wednesday, 6th May, 1959.

SOLICITORS' APPRENTICES' DEBATING SOCIETY

Benchers' Trophy

THE Society were this year's hosts for the Annual inter-Debate for the Benchers' Trophy, and the debate was held in the Library on the evening of Wednesday, 18th February, under the chairmanship of the President, Mr. John R. Halpin. The motion was a quotation from Alexander Pope :

" For forms of government let fools contest,
What'er is best administered, is best."

This was the third of the new series of the debates. The attendance of about a hundred saw the Solicitors' Apprentices carry off the trophy for the second time, defeating the Bar Students (last year's winners), and the representatives of the Law Societies of U.C.D. and Dublin University.

The Society was represented by Mr. John Temple Lang and the Auditor, Mr. R. M. Neville. The assessors were Mr. George Overend, solicitor, District Justice Farrell, Mr. William Finlay, S.C., and Professor Exshaw.

Seventy-fifth Anniversary Meeting

A Special Meeting was held in the Library on Thursday, 5th March, to commemorate the foundation of the Society in 1884. Mr. John R. Halpin, the President, was again in the chair, and the attendance included Mrs. Halpin, Mr. Nash, Vice-President, and Mrs. Nash, members of the Council of the Law Society, of the Benchers of Kings Inns, and of the Diplomatic Corps, and several past auditors of the Society.

A paper entitled " The Solicitors' Profession in Ireland " was read by Mr. John Temple Lang, solicitor, wherein he critically surveyed recent developments in the profession, including the stultifying of the powers of the disciplinary committee, and the rejection of the Solicitors' Costs Order by the Seanad. In his appraisal of the future the lecturer ranged from legal education to the condition of solicitors' offices, and stressed the need to guard against the filching of legal work by the accountants' profession.

The Chairman read a charming letter from Chief Justice Maguire regretting his inability to speak due to illness. The Chief Justice dwelt on the time when he himself was auditor of the Society, and on the part played by the profession in the foundation of the State.

Mr. James Napier, President of the Incorporated Law Society of Northern Ireland, who was the first speaker, referred to the good relations which had always existed between his Society and its counterpart in Dublin, and described recent legal developments in the North. Mr. Arthur Cox followed with a delightful reminiscing speech in which he recalled his own days as auditor, when the Society boasted such personalities as Chief Justice Maguire, and the late Judge Roe, Sean O h-Uadhaigh, and Ambrose Davoren. Mr. Eoin O'Mahony, barrister-at-law, drew from his vast fund of stories about lawyers past and present, and prophesied that the unification of the two branches of the legal profession was something which the present generation would see coming to pass.

In his closing remarks the Chairman paid tribute to the work of the Society and spoke of the part played by the Law Societies both in Dublin and in Belfast.

The Meeting was preceded by a very pleasant reception in the Council Chamber, organised by William and Mrs. O'Reilly with the help of the lady members of the Society and the office staff.

UNIVERSITY SCHOLARSHIPS IN FRANCE

FIVE scholarships open to students of any faculty are offered by the French Government for the University year 1959-60. Further particulars can be obtained from the University Registrar or the French Embassy, 53 Ailesbury Road, Dublin.

THE ROLE OF THE LAWYER IN PROMOTING THE RULE OF LAW

By Ross L. Malone—*President of the American Bar Association*

"LAW did not have its inception in the mind of man, even though law, as we usually think of that term, refers to man-made laws enacted by legislative bodies, and the Common Law as declared by the Courts. These are merely the means by which the law of God is made effective; the means by which it is applied to the conduct of man. They are comparable to the portion of a tree which is above ground and apparent to the eyes of an observer. As in the case of the tree however, it is the roots from which it draws its strength. The law, to be effective, must be rooted deep in the Divine Will, in the immutable rules of the Natural Law of God. Man-made law which is contrary to, or not supported by, the law of God will as surely wither and die as the tree which is not supported by a root structure.

Law, essentially, is the body of rules which govern the conduct of human beings. The Rule of Law makes those rules paramount to the will of any individual, or group of individuals, regardless of how powerful the individual or how large the group. It is the antithesis of the concept that "Might is Right." It is inherent in the Rule of Law that all men are equally subject to the law, and that no man or group of men shall place themselves above it.

Implicit in the Rule of law is the sanctity of the individual and the protection of his rights against any person or group of persons who infringes upon them. This protection extends as well to actions by persons exercising the power of government, as to those acting individually. As Amoury de Aiencourt said in his book, *The Coming Caesars*. "freedom of the individual from arbitrary tyranny and the paramountcy of the law are inseparable."

The Rule of Law is a concept which has existed since Moses received the Ten Commandments upon Mount Sinai. It has survived autocracy, anarchy, tyranny and demagogism, and has come to its highest state of development in the Democracy of the twentieth century. And what of the rôle of lawyers in the Rule of Law? Lawyers are the ministers of justice.

(*Extract from the American Bar Association Journal, March*, 1959, *page* 242).

"Attorneys are ministers of justice as well as courts, and justice will not be contented with half-hearted service on the part of her ministers."

(*Dictum of Judge Winslow of Wisconsin in* "Young *v.* Murphy,"—1903, *cited in Drinker, Legal Ethics, at page* 91).

OBITUARY

MR. SEPTIMUS D. Lambert, Solicitor, died on the 21st April, 1959, at his residence, 7 Leeson Park, Dublin.

Mr. Lambert served his apprenticeship with the late Mr. Charles H. Chaytor, 12 Molesworth Street, Dublin; was admitted in Hilary Sittings 1904 and practised at 7 Leeson Park, Dublin.

REGISTRATION OF TITLE ACTS, 1891 AND 1942

Issue of Duplicate Certificates

APPLICATIONS have been received from the registered owners mentioned in the Schedule annexed hereto, for the issue of Certificates of Title in substitution for the original Certificates issued in respect of the

lands specified in the said Schedule, which original Certificates, it is alleged, have been lost or inadvertently destroyed.

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

Dated this 10th day of May, 1959.

D. L. McALLISTER,
Registrar of Titles.

Central Office,
Land Registry,
Chancery Street,
DUBLIN.

SCHEDULE.

1. Registered Owner, Peter Fay. Folio number, 2822. County Cavan. Lands of Coragh in the Barony of Loughtee Lower, containing 39a. 3r. 24p.

2. Registered Owner, Patrick J. Lynch. Folio number, 400L. City of Dublin. The leasehold estate in the dwelling-house and premises known as No. 171 Griffith Avenue situate on the north side of the said Avenue in Drumcondra Parish of Clonturk and City of Dublin measuring in front to the said Avenue 34 feet 8 inches in the rere 35 feet and in depth from front to rere on the east 197 feet 1 inch and on the west 197 feet 4 inches and shown as Plan 400L edged green on the Registry Map (O.S. XVIII—8 City of Dublin.)

SOME RECENT STATUTORY INSTRUMENTS

THE *Exchange Control Regulations* 1959—S.I. No. 44 of 1959—consolidate the Exchange Control Regulations 1955 to 1958, and amend them as follows:—

(1) By widening the scope of the statutory exemptions covering the purchase of goods originating in the U.S. Dollar Area and Canada;

(2) By altering the prescribed manners of payment for goods exported to countries outside the Sterling Area;

(3) By simplifying the procedure to be followed by persons exporting goods to or importing goods from outside the Sterling Area; and

(4) By reducing the number of specified currencies which must be offered for sale to an Authorised Dealer, i.e. American and Canadian dollars, all Western European and Scandinavian currencies (except Spanish pesetas..)

Copies may be obtained from the Stationery Office for 1/-

The *Office Premises Act* 1958 (*Commencement Order* 1959—S.I. No. 29 of 1959—brought the Act into operation on 1st April, 1959. Arising from this fact, many orders listed below have been made, which will all come into force on the 1st September, 1959. The provisions of the Act only apply to offices employing more than five clerical workers; "clerical work" is defined as "including book-keeping, sorting and filing, typing, document reproduction, machine calculating, drawing, the handling of mail, telephone and telegraph operating and the handling of money."

The Regulations at present issued are as follows:—

(1) The *Office Premises* (*Overcrowding*) *Regulations* 1959—S.I. No. 30 of 1959—prescribe that 50 square feet shall be the minimum amount of floor space allowed for every person employed in any room.

(2) The *Office Premises* (*Minimum Temperature in Workrooms and Cloakrooms*) *Regulations* 1959—S.I. No. 31 of 1959—prescribe that the temperature for every room in which persons are employed or a cloakroom shall be not less than 63 Degrees Fahrenheit, and that such temperature must be attained within one hour after the commencement of work.

(3) The *Office Premises* (*Sanitary Conveniences*) *Regulations* 1959—S.I. No. 32 of 1959—prescribes detailed standards of sanitary conveniences in offices, and regulates the ventilation and lighting.

(4) The *Office Premises* (*Washing Facilities*) *Regulations* 1959—S.I. No. 33 of 1959—prescribe the standard of separate washing facilities for male and female employees at one wash-hand basin per 20 persons, and the provision of soap and clean towels.

(5) The *Office Premises* (*Clothing Accommodation*) *Regulations* 1959—S.I. No. 34 of 1959—prescribes adequate and suitable accommodation for clothing not worn during office hours, comprising at least one peg and hook per person, such pegs or hooks to be not less than 12 inches apart.

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The order applies to works first published in countries of the Universal Copyright Convention signed at Geneva on 6th September 1952 only on or after the 20th January 1959. Works of subjects or citizens of these countries or of countries signatories of the Berne Union of 1886 (as subsequently amended at Paris in 1896, Berlin in 1908, Rome in 1928, and Brussels in 1948), which are first published outside the Scheduled Territories on or after the 20th January 1959 are similarly protected. The Order does not apply to a work first published in a Berne Union country before that country became a member of the Berne Union. All previous orders granting reciprocal copyright facilities to specified countries are henceforth revoked.

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MAY,
1959

THE GAZETTE

of the

INCORPORATED LAW SOCIETY OF IRELAND

President
JOHN R. HALPIN,

Vice-Presidents
JOHN J. NASH
CORNELIUS J. DALY

Secretary
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

MEETINGS OF THE COUNCIL

APRIL 30th: The President in the chair; also present Messrs. Ralph J. Walker, Dinnen B. Gilmore, James J. O'Connor, John J. Sheil, Arthur Cox, R. McD. Taylor, James R. Green, John Maher, Eunan McCarron, Peter E. O'Connell, Desmond J. Mayne, Desmond J. Collins, George G. Overend, John J. Nash, Charles J. Dowling, Thomas A. O'Reilly.

Solicitors (Amendment) Bill, 1958

The bill was further examined and it was decided to make representations to the Department of Justice on certain matters arising thereon.

Dublin Solicitors' Bar Association

It was decided to press for an amendment in the Solicitors (Amendment) Bill, 1958, providing that the association will be entitled to nominate three extraordinary members of the Council of the Society.

MAY 14th: The President in the chair, also present Messrs. Niall S. Gaffney, R. McD. Taylor, James R. Green, John Carrigan, John J. Nash, Francis J. Lanigan, Dinnen B. Gilmore, Thomas A. O'Reilly, Dermot P. Shaw, Eunan McCarron, Peter E. O'Connell, Arthur Cox, George G. Overend, Ralph J. Walker, John J. Sheil, James J. O'Connor, Patrick O'Donnell, John Maher, Cornelius J. Daly, Patrick Noonan, Desmond J. Mayne, T. deV. White and Desmond J. Collins.

The following was among the business transacted:

Accountant's Office High Court

The Council considered a report from a committee on the subject of the practice adopted by the office in the issue of drafts pursuant to a payment schedule. The practice is to issue the drafts to the solicitor who lodges the schedule whether or not he acts for the payees. This may result in the issue of a draft made payable to the defendant to the solicitor for the plaintiff where money had been lodged in court. It was decided to ask the Society's representatives on the Superior Courts Rules committee to raise the matter at that committee.

Solicitor's Retaining Lien

A member who held a client's title deeds pursuant to a lien for undischarged costs handed them to another solicitor then acting for the client "subject to and without prejudice to my lien for costs." Member furnished a bill of costs, the client denied liability and refused to sign a requisition to tax. Member took no further action. The Council were asked for an opinion as to whether member lost his lien by parting with the deeds and replied that member did not lose his lien as the other solicitor undertook to hold them subject to the lien and that the solicitor to whom the deeds were given should return them on demand.

On a further question submitted the Council stated that in their opinion a solicitor who receives a mortgagor's title deeds from a mortgagee is entitled to retain them under his lien as against the mortgagee until the mortgagee discharges any costs due by him but is not entitled to retain the deeds against the mortgagor if the latter seeks to redeem, assuming that the mortgagor and the mortgagee were separately represented on the execution of the mortgage. See Barratt *v.* Gough-Thomas and others (61 T.L.R. 534).

Society's Annual Dinner Dance

It was decided to hold the dinner dance in the Shelbourne Hotel, Dublin, on November 26th.

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ORDINARY GENERAL MEETING

A general meeting of the Society was held at the International Hotel, Killarney, on Saturday, 23rd May, 1959. The President, Mr. John R. Halpin took the chair. The notice convening the meeting was by permission taken as read.

The minutes of the Ordinary General Meeting held on 20th November, 1958, were read, confirmed and signed by the chairman.

Mr. Gerald Baily, the President of the Co. Kerry Law Society, welcoming the meeting to Killarney, said:

Ladies and Gentlemen, As President of the County Kerry Law Society, I have, on behalf of my colleagues in that Society, and indeed on behalf of the people of Kerry, to welcome you here.

Much honour has been done to our County in that it has been selected as the venue for the first General Meeting of The Incorporated Law Society ever to be held outside Dublin.

I think it right to express appreciation on behalf of the country practitioners of the way in which the Council of The Incorporated Law Society, and the Secretary Mr. Plunkett, reacted to the suggestion that a General Meeting be held down the country. It was plain that it would cause inconvenience to many, and would involve for Mr. Plunkett a very great deal of extra work. Yet the suggestion was taken up gladly and everything that was humanly possible has been done to make it a success. Mr. Plunkett has, I know, put in a tremendous amount of work in arranging the Meeting and the social function to follow.

I believe it to be a good thing in very many ways that Meetings of the Incorporated Law Society should be held at country venues.

When I was a young solicitor I regarded the Council of the Incorporated Law Society as a remote and soulless Corporation, incapable of appreciating the trials and tribulations of a young practitioner, particularly a country one. Holding local meetings would help to dispel any such ideas. It will also, in the course of time, provide a forum in which country members may voice their views under an atmosphere familiar to them, and at a convenient place. As time went on, I came to appreciate what the Incorporated Law Society had done to the profession.

I think it proper that I should pay tribute particularly to the work that has been done by the Council of the Incorporated Law Society. Each year when I see the attendances at Council Meetings of the Society it amazes me the amount of time given voluntarily by members of the Council, all of whom are men at the top of the profession with very much business of their own to attend to; special tribute is due to the country members who have to bear the expense and inconvenience of travelling to Dublin for meetings. All this has been done for the purpose of upholding and maintaining the status and honour of the profession.

The Incorporated Law Society has frequently advised the formation of local Bar Associations. I am very glad to say that our Society here in Kerry since it was revived in 1939, has been of great help to local practitioners. There are thirty-one solicitors in Kerry, and every one of them is a member of the Kerry Law Society. It has improved

beyond all recognition the tone of the profession. Incidentally, the Rules of the Kerry Law Society provide that every member thereof shall be a member of the Incorporated Law Society.

In conclusion, I hope that when you leave Kerry each and every one of you will leave it with the most pleasant memories of our County.

The President, addressing the meeting, said: Ladies and Gentlemen, since our last General Meeting in November, 1958, I have to record, with much regret, the deaths of the following members: Sean O'hUadhaigh, a member of the Council from 1933, a Vice-President in 1936/37 and President of the Society in 1947/48. John K. Cooper, Kenneth P. Kilbride, Septimus D. Lambert and District Justice Fintan Fitzpatrick, who was a member of the solicitors' profession before being called to the Bar, and Land Commissioner Daniel J. Browne, who was formerly a solicitor practising in this County. To all their relatives and friends I tender the sympathy of myself and the members of the Council in their loss.

I must particularly refer to the great loss which the whole profession has suffered by the death of Sean O'hUadhaigh. He was an outstanding President and served on every Committee of the Council. He never spared himself in the work of the Council over a period of 25 years. His first thought was always to promote the welfare and good name of our profession which he loved. He gave to every problem the utmost care and consideration. He was a man of the very highest integrity, and in his own life and practice set us all an example which it would indeed be difficult to emulate. While he was a man of many interests and enthusiasms he was always scrupulously fair and was a most generous and courteous opponent, and to every one of us on the Council he was a personal friend whose memory will not soon be forgotten. A great man has passed from our midst to his reward in the Great Beyond.

I think it is only right that I should mention that Mr. Patrick R. Boyd has retired from the Council owing to ill health, after many years of loyal and most valuable service, during which he served as Vice-President in 1938-39 and as President in 1948-49. We all of us miss his help and advice, but we rejoice to know that his health has greatly improved since he retired from active work, and on your behalf I would like to express to him our thanks for all his work on behalf of the profession.

It is my privilege to give you a Report on the work of the Council and on the well being of the Profession during the past six months. The first innovation, and one which I hope may have a profound and beneficial affect on the future development of the profession was the institution of a Professional Policy Committee composed of the President and all ex-Presidents who are still members of the Council. As its name indicates it is the business of this Committee to consider and to make suggestions to the Council on future policy, public relations, the regulation of the profession and everything pertaining to the well being of the Society and its members.

The first suggestion which emanated from this new Committee was that this half yearly General Meeting should be held in Killarney instead of in Dublin. If this change proves to be a success it is intended to go to different parts of the Country each year for the Summer half-yearly meeting. The intention is to give to our members practising in that part of the country a better chance of attending the meeting and expressing their views on current matters of interest instead of having to travel to Dublin. It will provide the opportunity for members and their wives to meet each other socially. I am certain that the more we can arrange to meet our legal brethren on a social plane, the more good fellowship there will be amongst our members, and also it gives us the welcome chance of endeavouring to repay, in some measure the lavish hospitality which has been offered to our Presidents by the Law Societies of Northern Ireland, Scotland and England. We are delighted to welcome as our guests the President of the Incorporated Law Society of Northern Ireland and Mrs. Napier, the President of the Law Society of Scotland and Mrs. Dandie, Mr. Norman Murray, the Northern Ireland Secretary and Mr. Laurie, the Scottish Secretary and Mrs. Laurie, and we regret that on this occasion, the President and Secretary of the Law Society of England were unable to accept our invitation. I would like to tender our thanks to the President, Chairman and Council of the Kerry Solicitors' Association for all their help in arranging this week-end in Killarney, and I must mention the additional work which it has entailed for our ever willing and most competent and tactful Secretary, Eric Plunkett. If any of our members have any ideas as to how we could improve the programme and other arragements for these Summer half-yearly Meetings I hope they will express them and I can promise them that they will be fully considered by the Council even if I cannot promise that they will necessarily be adopted.

The Policy Committee have been very much concerned regarding the public relations of the profession. If we Solicitors are to retain the good-will of the public and are to avoid the transfer to other bodies and professions of work which has always been regarded as solicitors' work, we must take steps to see that the profession is properly regulated, that

there is every reason for the public to have complete confidence in the integrity of our members and to know exactly what work we solicitors are competent to perform for them. It is of great importance that so far as possible every client should be a satisfied client, and in order to attain this it is essential that the client should understand and appreciate what is being done for him and why it is being done. With this in view the Policy Committee are actively considering various suggestions and taking advice on their legal implications before communicating them to our members.

The Council are well aware that many Solicitors, particularly in the country, are gravely inconvenienced by serious delays in getting their bills of costs drawn and much thought is being given to the best way of overcoming this difficulty.

I know that there is widespread anxiety in the profession arising from the delay in proceeding with the Solicitors' Amendment Bill. We have been in consultation with the Government, and I would like to acknowledge the courteous and helpful way in which the Minister of Justice, the Attorney General and Mr. Coyne, the Permanent Secretary of the Ministry of Justice, received our representatives and listened to our views on the amendments to the Bill which would be necessary to make it workable and yet to keep its provisions within the framework of the Constitution. It is clearly of great importance not merely in the interests of the profession but even more so in the interests of the general public that adequate powers to regulate the profession should be provided, and it is our earnest hope that the Government will proceed with the Bill at the earliest possible date. It is only right that every Solicitor should understand that as a result of some serious defalcations by a small number of solicitors in the last few years during a period while the Disciplinary Committee have been unable to function, the Compensation Fund is now in a serious financial position and it is certain that power will have to be obtained to increase considerably the contributions payable by solicitors if the Fund is to be made sufficient to compensate all claimants in accordance with the provisions of the Solicitors' Act, 1954. These provisions in relation to the Compensation Fund are quite intolerable, and most unfair to the members of our profession, unless we are given adequate powers to check defalcations at an early stage and to safeguard the Compensation Fund from unnecessary loss. The profession only agreed to the provision in the 1954 Act to pay compensation in full on the clear understanding that the Incorporated Law Society would have full powers to regulate and control its own members. I think that every Solicitor whatever may be his political affiliations should in his own interests and in the interest of his Profession, use all his influence with his local T.D.'s and Senators to see that the Solicitors' Amendment Bill is passed into law as quickly as possible, and in the form approved of by the Council, who have devoted to it much hard work and detailed consideration, and in this connection I would like to record my gratitude for the great assistance which has been given by all the members of the Council and in particular by the Vice-Presidents and by Mr. Arthur Cox and Mr. George Overend, who have devoted much time and care to the suggested amendment to the Bill, and finally, but by no means least, our Secretary, who has minutely examined every word in the Draft Bill and who has made numerous suggestions for its improvement.

The Council have been very much concerned about the costs payable in Land Commission matters where there has been no adequate increase and the Costs are still very little more than they were 35 years ago. This is obviously quite ridiculous having regard to the change in the value of money during that period. The position has now arisen owing to the failure of the Land Commission to agree to any adequate increase, that there is often no profit whatever for Solicitors in Land Commission business. The completely inadequate costs are in many cases payable to the solicitor in depreciated Land Bonds while he has to pay counsel's fees and all other outlay in cash and the net result can sometimes be an actual financial loss to the solicitor. Numerous representations have been made to the Land Commission but without achieving anything. I would, however, like to acknowledge the sympathetic consideration, help and advice which we have received from Mr. Justice Teevan in our endeavours to have this injustice rectified.

I am glad to be able to report that the Minister of Finance has acceded to the representations made to him on behalf of this Society and other professional bodies that income tax relief should be granted to contributions by self-employed persons to pension annuity funds. The Council have carefully considered the possibility of setting up a group insurance scheme for solicitors and engaged the services of brokers to explore the market to ascertain if more favourable terms could be obtained in this way for solicitors than by individual insurance, but so far the result has been negative, since taking into account the ten per cent. commission which Irish Insurance Companies are prepared to allow to solicitors on individual insurance policies there would be no financial advantage in a group scheme and consequently it is in the interests of individual solicitors to take out

pension annuity insurance for themselves. If at a later date some method is discovered of setting up a group insurance scheme with improved terms this will be done.

I am also glad to say that the Minister of Finance has accepted a submission from the Society that the law should be brought into line with the existing law in England so that the parent of a person serving under indentures of apprenticeship shall be entitled to the full income tax child allowance for such apprentice. Previously this was only given during full educational training which did not include service as an apprentice.

I have always been keenly interested in the welfare of the local bar associations. The Council fully realise the important work which they are performing. When I commenced practising 36 years ago there were very few bar associations operating in the country and in many areas the relations existing between the local Solicitors were hostile in the extreme. The formation of the local bar associations has developed a much improved spirit amongst the members throughout the country. The local bar associations are often better able to deal with a local problem than the Council, and are also able to supply most valuable information to the Council. The social functions organised by the bar associations play a most important role in promoting a friendly, professional atmosphere amongst the members and in many Counties the local bar associations have been instrumental in checking that great curse of our profession, touting and price cutting to attract business. One of the most pleasant functions of the President of this Society is attending the various social occasions of the local bar associations. I have enjoyed, like my predecessors, much delightful hospitality from the bar associations and if there is anything that either I or the Council can do to help and further their activities we shall be most happy to do so. The vast majority of the Counties have now active and efficient associations and I am glad to say that some associations which had temporarily lapsed have recently been revived and I wish them every success, but it is a tragedy that there are still one or two areas where there is no local bar association.

Some of the local bar associations have given us a lead in making rules that their members shall not act for both vendor and purchaser in a sale unless the purchase money is quite insignificant in amount. The Council have stated that it is undesirable that a solicitor should act for both vendor and purchaser but it has been pointed out to us quite correctly that a statement such as this is useless unless it is enforced by regulation. Personally I would like to see a regulation on these lines enforced throughout the country. I am certain it would be in the interests of both the solicitor and the public. No man can serve two masters and every one of us has had experience of cases where the vendor and purchaser were on the most friendly terms at the time of the signing of the contract and there did not appear to be any likelihood of conflict between them and then some dispute has arisen before completion which has placed the solicitor acting for both parties in an impossible position besides being most unfair to the vendor who has then no adviser on whose advice he can completely rely. There is also the grave danger of an action for negligence against the solicitor since no matter how careful and conscientious he may be the requisitions on title and searches are seldom as carefully prepared and perused when there is no solicitor acting on the other side. Some local bar associations would have adopted the rule but for fear of some local solicitors leaving the bar association and so gaining an unfair advantage for themselves. This could only be prevented by enforcing the rule throughout the State. In other local bar associations there has been opposition to the adoption of the rule on the ground that solicitors might lose established clients if a client purchased property belonging to another client. This is true but the few clients which a solicitor might lose in this way would be made good by clients coming to him from other solicitors in similar circumstances. It is most significant that in those counties where the rule is enforced, even if there has been some initial opposition to the adoption of the rule, it has worked well and solicitors who were formerly opposed to it have been converted by experiencing it in operation.

I had the honour as your President of being invited to propose the adoption of the report of the Solicitors' Benevolent Association at their annual general meeting and I would like to commend to you the work being done by this Association which is one of our remaining links with Northern Ireland, since the Association, I rejoice to say, still operates throughout the entire country. I think every solicitor should be a subscriber to the Benevolent Association. Most of us subscribe to some charity and surely our own charity which provides assistance for members of our profession, who perhaps through ill-health have fallen by the wayside, and their relatives should have first priority. In my opinion the annuities and grants now being paid by the Association are quite inadequate, having regard to the depreciation in the value of money, but they cannot be adequately increased until more funds are available, so I would ask the local bar associations to advocate the claims of the Solicitors

Benevolent Association and to make certain that all their members are subscribers.

The Auditor of the Solicitors' Apprentices' Debating Society did me the honour of inviting me as your President to preside at their debate with the Law Students' Debating Society and the Law Societies of Trinity College and University College, Dublin, for the Benchers Trophy, and I am very glad to be able to report that the Solicitors' Apprentices' Debating Society were successful for the second time in winning this annual contest.

Now to conclude, if I may be permitted a personal note, I would like to thank the Council for the great honour which they conferred upon me in electing me President for this year, and also to thank the general body of the members of this Society for returning me to the Council year after year and so making possible my election as President. I wish to thank my two most competent Vice-Presidents, John Nash and Neil Daly, for all their support and assistance and all the members of the Council and the Sub-Committees for the whole-hearted work and advice which they have given so willingly in the interests of the well-being of the profession. Finally there is our Secretary, Eric Plunkett, always available at the right hand of the President to guide and assist him.. Only those who have been President of this Society can possibly realise the tremendous amount of thought and work which Mr. Plunkett gives to every problem affecting the solicitors' profession and how impossible a President's work during his year of office would be without his ever-willing assistance.

The President announced that he nominated the following members of the Society to act as scrutineers of the ballot for the election of the Council to be held on 19th November, 1959: John R. McC. Blakeney, Thomas Jackson, Brendan P. McCormack, Alexander J. McDonald and Roderick J. Tierney.

On the motion of Mr. Ignatius M. Houlihan the chair was then taken by Mr. John J. Nash, Vice-President. Mr. Houlihan proposed a vote of thanks to the President which was carried with acclamation. The President having replied the proceedings were concluded.

EXAMINATION DATES

Examination	*Date*	*Last Date for Notice*
1st & 2nd Irish	June 26th & 27th	June 5th
	Sept. 18th & 19th	Aug. 28th
1st Law	Sept. 1st & 2nd	Aug. 11th
Final	Sept. 1st, 2nd & 3rd	Aug. 11th
Preliminary	Sept. 2nd & 3rd	Aug. 12th
Bookkeeping	September 4th	Aug. 14th

DUBLIN SOLICITORS' BAR ASSOCIATION

A MEETING of the Council was held on Wednesday, 6th May, 1959.

A further reminder was sent to the Department of Justice about the unsuitability of Court No. 9 Chancery Place.

Certain other matters were dealt with and the next meeting was fixed for Wednesday, 3rd June, 1959.

Solicitors' Golf Competition (Fourball) at Killarney

1st Prize: M. O'Sullivan (Listowel) and J. S. O'Reilly (Listowel)—7 up.

Runners up: P. Treacy (Nenagh) and T. Adams (Tullamore)—4 up (on 2nd nine).

Solicitors' Golfing Society: *Captain's Prize* (Mr. L. K. Branigan) at Baltray (by kind permission) Saturday, 27th June, 1959.

Also *Veteran's Prize:* Golfing Society's Cup and St. Patrick's Plate.

Entries to: G. M. Doyle, *Hon. Sec.*, 50 Lower O'Connell Street, Dublin.

THE MEDICO-LEGAL SOCIETY OF IRELAND

Officers and Council for 1959-60

PATRON:	The Chief Justice, the Hon. Mr. Justice Conor A. Maguire
PRESIDENT:	Professor Patrick N. Meenan, M.D., B.L.
VICE-PRESIDENT:	Dr. J. P. Brennan
HON. SECRETARY:	M. J. Leech
HON. TREASURER:	Capt. J. A. Kelly
COUNCIL:	Dr. M. D. Hickey, M.D.
	Brendan A. McGrath
	Professor E. Y. Exshaw, B.L.
	Dr. John P. Shanley, M.D.
	Herman Good
	M. B. Daly, B.L.
	Dr. G. Doyle
HON VICE-PRESIDENTS:	The Hon. Mr. Justice George D. Murnaghan
	Donough O'Donovan
	Dr. D. A. McErlean
	Dr. J. Fitzgerald
	Dermot P. Shaw
	Daniel Cortigan
	Joseph A. McCarthy, S.C.

STATUTES OF LIMITATIONS, BILL 1954

ADMINISTRATION OF ESTATES BILL, 1957

The attention of members and apprentices is drawn to the advertisement on page 2 of the sale of the above mentioned bills at the Government Publications Sales Office. Members when ordering should specify the bills as passed by both Houses, not the Acts. The Statutes of Limitations Bill contains a number of valuable marginal notes and references which do not appear in the Act. The Administration of Estates Bill is accompanied by a very useful explanatory memorandum prepared by the Department of Justice for members of the Dail and Seanad. Both these publications will be of great assistance to students and practitioners and the texts of the bills are of course the same as the statutes as enacted.

REGISTRATION OF TITLE ACTS, 1891 AND 1942

Notice

Folio 3767
City of Dublin
Registered Owner—Margaret Alice Atock.

The Registered Owner has applied for a Duplicate of the Certificate of Title specified in the Schedule hereto which is stated to have been lost or inadvertently destroyed.

The duplicate will be issued unless notification is received in this Registry within 28 days from the date of this Notice that the said Certificate of Title is in the custody of a person not the Registered Owner. Such notification should state the grounds on which the Certificate is retained.

Dated this 13th day of June, 1959.

D. J. McALLISTER,
Registrar of Titles.

SCHEDULE

Land Certificate of Margaret Alice Atock to 2a. or. op. of the Lands situate in the Parish of Glasnevin and District of Clonturk and City of Dublin being the lands comprised in said Folio.

THE REGISTRY

Register C

SOLICITOR'S GOWN for sale. Excellent condition. £6 accepted. Box C.158.

Mr. W. E. Murphy, B.E., F.R.I.C.S., Chief Valuer, General Valuation Office, wishes to announce that as from 1st May he will be with the firm of Messrs. Jackson, Stops & McCabe, Auctioneers, Estate House, 62 Dawson Street, Dublin.

A Valuation Department is about to be developed, which we had been asked to initiate and conduct.

It is the intention to act as Consultant Valuers in all types of property—with special attention to Rating and Probate Valuations, compensation for property acquired and advice on rental values.

DECISIONS OF PROFESSIONAL INTEREST

Costs incurred by a successful party are in the discretion of the Lay Commissioners in the Land Commission.

The Supreme Court (Maguire, C. J., Lavery and O'Daly, J. J.) held that it had no jurisdiction to award a successful party the costs incurred by him before the Lay Commissioners on account of statutory provisions contained in the Land Acts of 1936 and 1939.

Per Maguire, C. J.: It seems to me that the object of s. 26 of the Land Act, 1936, and ss. 16 and 17 of the Land Act, 1939, is reasonably clear. Before the enactment of the first of these sections it was apparently considered that whether the objectos was successful or not before the Lay Commissionerr they had no jurisdiction to indemnify him against his expenses or his costs. Sect. 26 of the Land Act, 1936, was intended to remedy this position. It gave to the Lay Commissioners power to award to an objector a sum, by way of compensation, for the expenses incurred by him in bringing the objection. Sect. 26, sub-s. 2, laid down the way in which such money was to be provided. The provisions of s. 16 of the Land Act, 1939, widened the scope of the provisions of s. 26 of the Act of 1936. The power of the Lay Commissioners to compensate applicants appearing before them was extended so as to include all applicants whatever the nature of the proceedings. Furthermore, by s. 17 power is given to the Lay Commissioners, when parties appear before them to award costs to one party as against another. The fixation of the amount of compensation for expenses is entirely in the discretion of the Lay Commissioners. (In re Estate of Roscrea Meat Products Ltd. 2—(1958) I.R. 138).

A poor plaintiff is strictly bound by an order for security for costs if resident in Northern Ireland.

The plaintiff, a widow with 6 children, whose

only source of income was £10 per week which she received from 3 of her children who were working and living with her, resided in Newry, County Down. She commenced proceedings for damages for injuries suffered by her while using the staircase in defendant's restaurant shop and premises at Dundalk as a customer. The defendant brought a motion for security for costs and in the affidavit grounding same it was stated that from a report furnished by an engineer, in respect of the stairway and steps, it was believed that the defendant had a good defence to the action. The plaintiff stated that she would be unable to give security for costs and asked the Court to exercise its discretion in her favour.

Murnaghan, J. held that it was highly improbable that in this case the defendant, if successful, would succeed in recovering any costs against her. It seemed to him that the effect of granting the order sought would probably be to determine the action. He feared that if he made the order sought he would be doing an injustice to the plaintiff and therefore had little hesitation in exercising his discretion in favour of the plaintiff.

The Supreme Court (Maguire, C. J. Kingsmill Moore, O'Daly, and Maguire, JJ.) held that the order for security for costs should be made in this case and accordingly reversed Murnaghan, J.

Maguire, C. J., held that Mr. Justice Murnaghan was correct in saying that the position is that *prima facie* a defendant is entitled to an order for security costs where the plaintiff resided outside the jurisdiction. In order to deprive him of this right some special circumstances must be shown, e.g., that there is no defence to the action, as in the two cases to which reference has been made, or where there is shown to be ample assets within the jurisdiction. There may be other circumstances which would justify the exercise of the Court's discretion in favour of the plaintiff. Here it is suggested by the defendant, on the report of an engineer, that she has a good defence to the action. In view of this and no other circumstances being shown to justify its being refused the application should have been granted.

Per Maguire, J., It was also unfortunate that there is no reciprocal rule corresponding to Or. XXIX, r. 2 of the Rules of the Supreme Court of Northern Ireland (Note: O XXIX, r. 2 of the Northern Ireland Supreme Court Rules 1936 reads as follows:

"A defendant is not entitled to an order compelling the plaintiff to give security for costs solely on the ground that the plaintiff resides in England or Scotland or in the Irish Free State.") (*Heaney v. Malocca*—(1958) I.R. 111).

Amount of security for costs should be reasonable.

The plaintiff and the first-named defendant (who was the only defendant concerned in the motion for security for costs), both resided outside the jurisdiction. The plaintiff commenced proceedings for £25,000, forming a half share in a sweepstake ticket which won a first prize of £50,000. The High Court ordered the plaintiff to give security for costs and the Master of the High Court fixed the security at the sum of £2,500. The plaintiff appealed to the High Court on the ground that the amount was excessive.

O'Daly, J., held that the amount of the security should be such as to constitute a security for the costs of the defendant, if successful, and not merely an earnest of good faith or even a security for part of those costs. The Master of the High Court not having departed from that principle, the figure fixed by him (£2,500) was reasonable and should be confirmed.

Gibson *v.* Coleman (1950) I.R., 50 followed.

O'Daly, J., delivering judgment in the High Court said:

The plaintiff by this motion has appealed against the order of the Master of the High Court, dated the 30th July, 1953, fixing the amount of security to be given by the plaintiff in respect of the costs of the defendant, Manuel Soares, at the sum of £2,500. The ground of the appeal is that the sum fixed is excessive.

The subject-matter of the action is the sum of £25,000 a half share in an Irish Hospitals Trust Sweepstake Prize. The parties, the plaintiff and the defendant, are persons of lowly stations and they have their homes in New York State.

The defendant's solicitor had an estimate of the defendant's costs of the action prepared by Mr. William D. Smith, costs drawer. This estimate, drawn up in the form of a draft bill, amounted to £3,226 19s. 0d. The plaintiff's solicitor, on the other hand, took counsel with his assistant, Mr. William Maginn, who has considerable experience of taxation matters. Mr. Maginn made a report on the items in the defendant's estimate down to £1,767 12s. 0d. An affidavit supporting Mr. Maginn's figure was made by Mr. Christopher McSweeney, costs drawer.

The Master of the High Court, having considered this evidence, fixed the amount of the security at £2,500. This figure, it will be noted, is midway between the two figures put before him, and it exceeds the figure contended for by the plaintiff in Mr. Maginn's report by the sum of £732 8s. 0d.

Mr. McGonigal has boldy advanced the proposition that security should be for the bare minimum which will enable the case to be presented. I think it is right to say that the Master did not act upon

this basis; and if Mr. McGonigal's proposition were sound this appeal should be allowed, and the matter should go back to the Master to re-assess security. Mr. Justice Dixon in *Gibson v. Colman* (1959) I.R. 50, considered carefully the principle to be applied by the Master. The principle enunciated by him is not that contended for by Mr. McGonigal.

The Supreme Court (Maguire, C. J., Lavery and Kingsmill Moore, J. J.) reversing O'Daly, J., held that it was customary for many years to require as security an amount of not more than about one third of the costs which would probably be incurred by the defendant. In fixing security for costs care must be taken by the Court not to fix such a sum as would shut the plaintiff out from such rights as he might have.

The order of the High Court was therefore varied and the plaintiff was ordered to find security for costs in the sum of £1,000.

Kingsmill Moore, J., in the course of his judgment said:

Mr. Justice O'Daly in confirming the figure of £2,500 followed the judgment of Mr. Justice Dixon in *Gibson v. Coleman* (1950) I.R. 50, which laid down that, where security for costs was ordered, the amount of the costs to which the defendant would, on a fair and reasonable computation, probably be put in defending the action. It was not seriously contested before this Court that, if this was the correct principle, the amount of £2,500 was excessive: but it was urged that the principle so laid down was erroneous, and contrary to long-established practice. The plaintiff did not attempt to put forward any other basis which could be applied with the same approach to definiteness as it is afforded by that laid down by Mr. Justice Dixon, but suggested that the amount fixed for security should be not greater than would suffice to ensure the good faith of the person bringing the action.

Except in the case of impecunious limited companies, the power to order a plaintiff to give security for costs does not depend on statute but on the inherent jurisdiction of the Courts.

The significant feature of the 1876 rule, which for three-quarters of a century has survived substantially unaltered despite the scrutiny of so many rule-making committees, is its careful avoidance of any indication as to a measure whereby the amount of security is to be gauged. Such indefiniteness cannot have been otherwise than deliberate. The framers of the rule were perfectly aware of the Chancery rule of thumb and of the provisions in the Companies Act, 1862. They chose not to follow such guidance. It seems to me that they and their successors left everything at large, realising that the considerations which arose when the amount of security has to be fixed are so varied and so numerous as to render dangerous any striving after precise direction. Security for costs must be so fixed as to advance the ends of justice and not to hinder them. If the amount is too small a plaintiff with a speculative or even dishonest case may be able to force a defendant into an unfavourable settlement by the threat of expensive litigation whose costs may be irrecoverable: if too large a defendant may be able to defeat an honest and substantial claim because the plaintiff cannot find the necessary security. Somewhere between Scylla and Charybdis a way has to be found but there can be no Admiralty chart, not succinct sailing directions.

Finally, if I may rely upon my own experience of the practice which has prevailed in Ireland from 1919 until recent years, it was customary to require as security an amount not more than about a third of the costs which would probably be incurred by the defendants.

We are not given any exact details of the means of the plaintiff in the present case but he is described as a "constructors' foreman" which does not suggest any degree of affluence. The defendant has not suggested in his affidavit that the plaintiff is well off, a fact which was considered as relevant by O'Byrne, J. in *Guion v. Heffernan* (1929) I.R. 487. Undoubtedly there is a large sum at stake and the costs of the trial will be heavy but we must be careful not to fix a sum which will shut out the plaintiff from such rights as he may have. On a full consideration of the facts it seems to me that the sum of £1,000 would be reasonable to fix as security. (Thalle *v.* Soares (1959) 93 I.L.T.R. 49).

Acquisition of Possessory Title.

This question has recently been the subject of a very important decision by the Supreme Court. In the case of *Vaughan v. Cottingham* two points have been settled: (1) Section 86 (1) of the 1891* Act does not create an express trust and In re Loughlin (1942) I.R. 15 has been overruled; (2) the period over which the possessory title to such land may be acquired by the personal representative is twenty years under the Law of Property (Amendment) Act 1860, sec. 13, as in the case for personal estate.

The facts of the case are simple:—The deceased owner of registered freehold land died intestate and a bachelor, leaving as next-of-kin a brother and five sisters. One sister, Margaret, remained in exclusive possession of the land until her death on 22nd February, 1955, having taken out a grant of administration to his estate on the 19th May, 1947. The plaintiff claimed title to the lands by virtue of

* Registration of Title Act 1891.

the will of Margaret and issued an Equity Civil Bill asking for a declaration under section 52 that Margaret had acquired a statutory title and for the deletion from the register of the defendant's name, another sister who had taken out a grant of *administration de bonis non* to the deceased registered owner's estate and had been registered. The combined periods of the plaintiff's and the original administratrix's possession exceeded twelve years but was less than twenty years.

Lavery J. said that an executor as such or an administrator is not an express trustee for the persons beneficially entitled under the will or an intestacy, as the case may be of the personal estate including chattels real which vests in him and such representative may claim the benefit of the statute of limitations.

His Lordship next went on to discuss the effect of Part IV of the Act of 1891 dealing with the devolution of freehold registered land sold under the Land Purchase Acts. Such lands are freehold but on the death of the owner intestate the beneficial interest therein, subject to the provisions of the Act, devolves upon and is divisible among the same persons as if it were personal estate (section 85), and by section 84, on the death of the owner, such land devolves to and becomes vested in his personal representative " as if it were a chattel real vesting in him."

In *re Loughlin* (1942 *I.*R. 15) following the English decision of *Toates v. Toates* (1926 2 *K.B.* 30) decided on the construction of a similar section in the Land Transfer Act 1897, held that under section 86 the personal representative was an express trustee of freehold registered land vesting in him and therefore under the Judicature (Ireland) Act, 1877, section 28 (2) this personal representative was barred from taking advantage of the Statutes of Limitation. Maguire P., in In Re Loughlin (supra), who did not reserve his judgment, merely quoted from the judgements, also given extempore, in Toates *v.* Toates and followed them. In Toate's case Warrington and Atkin L.JJ., both quoted from Lord Cairn's judgement in Cunningham *v.* Foot (1878) 2 App. Cas 974, where he defined an express trust as " a trust which arises upon the construction of a written instrument, not upon any inference of law imposing a trust upon the conscience; a trust arising upon the words of the instrument itself.

They held that the statute was a written instrument and the trust it imposed was therefore an express trust. As Lord Atkin said: " I see no reason why the word 'express' should appear in the Act any more than in a deed or written instrument."

The Executors Act of 1830 provided that executors were deemed to be trustees of the residue of an estate for the persons beneficially entitled under the Statutes of Distributions to such residue "unless it shall appear by the will or any codicil thereto the persons so appointed executors were intended to take beneficially." But Stirling J., said in Re Lacy (1899) 2 Ch. 149: " I do not think that the trusteeship created by this Act was intended to be different in its nature from that which existed previously under the rule established in Courts of Equity and if prior to the Act, executors were not held to be express trustees, I do not think, they ought now to be so held."

Lavery J. then said:—" These words might be applied to the circumstances of this case."

" In my opinion, the trust imposed on a personal representative by section 86 of the Act of 1891 is of the same character as the trusts upon which personal estate, including chattels real, vest in him." Section 86 (1) imposes the trust subject to the powers, rights, duties and liabilities hereinafter mentioned and the section relates the manner of administration (subject to the special characteristics set forth) of personal estate and section 84 (1) vests the land in the personal representative "as if it were a chattel real vesting in him."

On the second point, his Lordship pointed out that McNeill *v.* McNeill (1957 N.I. 10), held that the personal representative in such a case was an express trustee following Toates *v.* Toates (supra). Although he differed from that case on that point, McNeill's Case held also that where the personal representative had been in exclusive possession for twenty years he acquired a statutory title under section 13 of Deasy's Act 1860, since section 86 created an express trust that was by virtue of that section subject to the "powers, rights . . . of the personal representative"

His Lordship pointed out that in this case twenty years possession without acknowledgment had not expired, and continued: " In my opinion, a personal representative is not entitled to rely on section (1) of the Act of 1874. Chattels real and freehold registered land are, for the reasons I have explained, to be treated on the same footing."

His Lordship held that the personal representative in respect of freehold registered land held it on the same terms and conditions as he would hold chattels real and that under " the Law of Property (Amendment) Act, 1860, section 13 the period required to establish a statutory title would be twenty years, which has not elapsed." (The Irish Law

Times, Oct. 11th 1958. Volume 92 (1958), page 244).

Note.—The effect of this decision has now been incorporated in the Administration of Estates Act, 1959.

In Probate suits the party who loses may have to pay the costs if he bolsters up a weak case, as costs follow the event.

The plaintiff, a cousin of the deceased, alleged that the last will of the deceased, executed in February, 1954, was invalid on the ground of lack of testamentary capacity and want of knowledge and approval. Evidence in support of the will, of which the plaintiff had knowledge prior to the hearing, included that of a doctor, a matron of a hospital and a solicitor's managing clerk. The plaintiff relied for medical evidence on that of a psychiatrist who had not seen the deceased until nearly three years after the will had been executed. Sachs J. pronounced for the will, held that this was a case in which costs should follow the event, and accordingly ordered the plaintiff to pay the costs. Sachs J. also stated that it was not reasonable to go forward with the psychiatrist's investigation, because the plaintiff had no claim upon the bounty of the testator, and he could not see why the costs of this three-day action should be borne by the estate. (Re Gollop decd.—Pearse *v.* Elliott and Pym. *The Times*, 13 March, 1959).

THE SOLICITORS' BENEVOLENT ASSOCIATION

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

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

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

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

Address :

SECRETARY,
SOLICITORS' BENEVOLENT ASSOCIATION,
18, HUME STREET,
DUBLIN.

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JUNE,
1959

THE GAZETTE

of the

INCORPORATED LAW SOCIETY OF IRELAND

President
JOHN R. HALPIN,

Vice-Presidents
JOHN J. NASH
CORNELIUS J. DALY

Secretary
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

MEETINGS OF THE COUNCIL

JUNE 11th.—The President in the Chair. Also present Messrs. O'Reilly, Walker, Nolan, Kelly, Maher, Gilmore, McCarron, Tyrrell, O'Connell, George A. Nolan, Cox, O'Connor, Green, White, Dillon-Leetch, Noonan, Lanigan, Collins, O'Donnell, Shaw, Gaffney, Carrigan, Nash, Overend and Quirke.

The following was among the business transacted.

Service of processes

The Council considered a report from a committee on difficulties experienced by country practitioners caused by the absence of proper facilities for service of processes. The committee stated that this was due to the fact that the salaries and remuneration offered are insufficient to attract suitable persons. It was decided to make representations to the Department of Justice that (*a*) provision should be made for amalgamation of areas and for payment of a double salary where one civil bill officer is appointed for two adjoining areas. (*b*) If it is impossible to secure the services of suitable persons, rules should be made to enable documents to be served by registered post without special order of the court in all civil cases except a summons for committal under the Enforcement of Court Orders Act.

Counsel's fees in proceedings under the Landlord and Tenant Acts

In a report from a committee it was pointed out that the principle which is generally followed throughout the Circuit Court Rules, appears to be that the solicitor's costs and counsel's fees of a successful plaintiff or applicant should be computed in accordance with the amount recovered, not the amount claimed, while the costs and counsel's fees of a successful defendant or respondent should be calculated on the basis of the amount claimed. This is borne out by the third schedule to the Circuit Court Rules 1954 part I (costs in actions in contract and tort) part XI, section (*a*), (Landlord and Tenant Acts) and part XIV items (i) (ii) (iii) (counsel's fees in actions in contracts and tort). There appears to have been a drafting error in dealing with counsel's fees in applications for compensation under the Landlord and Tenant Acts where the fees are related

solely to the amount claimed, irrespective of the amount recovered, by a successful applicant. It was decided that this was a matter for the appropriate rules committee.

Acting for both parties

The Council considered a report from a committee on a suggestion from members that a regulation should be made under section 71 of the Solicitors Act 1954 preventing solicitors from acting for both parties in conveyancing matters. Member was advised that he could if he so wished put the matter down for discussion at a half yearly meeting of the Society.

Retainer through a third party. Subsequent change of solicitor. Payment of costs.

A purchaser who bid in person at an auction informed the solicitor for the vendor that Mr. X was his solicitor. Mr. X received the title and did some work thereon. Unknown to Mr. X, the purchaser on the day of the auction instructed Mr. Y, to act as his solicitor. Mr. X enquired whether in the view of the Council he was entitled to regard the communication from the vendor's solicitor of his retainer by the purchaser as sufficient instructions. The Council on the facts before them were of the opinion that the retainer was sufficient. Mr. X also enquired whether in the view of the Council the second solicitor should see that his costs down to the date of change of solicitor were discharged before acting for the purchaser. The Council expressed the view that on the facts before them the second solicitor should see that Mr. X's costs are paid.

LAND REGISTRATION RULES, 1959 S.I. No. 96 of 1959.

The new Land Registration Rules came into operation on 1st June, 1959. The Land Registration Rules 1937-1956 are thereby rescinded but rules 95 and 96 (and forms 44, 45 and 46 referred to therein) of the Land Registration Rules 1937 continue to apply in relation to the estate of any person dying before 1st June, 1959. The rules may be obtained from the Government Publications Sales Office, G.P.O. Arcade, Dublin, price 5/6, postage 6d. The principal changes affected by the new rules are as follows :—

The Rules consolidate and amend the Land Registration Rules 1937-1956 which have been rescinded except as provided therein. The main amendments have been made necessary by the enactment of the Administration of Estates Act 1959 which provides that all real property of any person dying after the 1st June, 1959 devolves on the personal representative in trust for the persons beneficially entitled.

Rules 89–95 and the forms prescribed thereunder are designed to amend the former Rules 88–96 and the corresponding forms to meet this change.

Rule 56 (3) has been amended by omitting the undertaking to procure the production of a land certificate for a dealing. In place of this, an application under Rule 163 for an order compelling production must be lodged with the application.

Rule 155 has been included to give effect to the present practice of issuing photostatic facsimiles of the folios as land certificates.

Practitioners should particularly note that Rule 98 of the 1937 Rules which allowed registration of the personal representative as such with an appropriate inhibition has been rescinded and in effect has been replaced by the present Rule 95 which allows the notation of the death of the registered owner as was the old practice prior to the coming into existence of the Land Registration Rules 1937.

The other Land Registration Rules 1937 which have been amended or deleted are as follows :—

Rules 19(1), 22(2), 32(1), 37(2), 48, 61, 67, 73, 76, 79(2), 82(3), 85, 97(2), 98(2), 100(1) and (2), 106, 124, 134 (1) and (2), 135(2), 160 and 178.

Consequent modification in or deletion of the relevant Forms has also been made.

COMPANIES ACT, 1959

The Companies Act, 1959 is a short measure of 12 Sections by which some of the more urgent reforms advocated by the Company Law Reform Committee will be met.

Redeemable Preference Shares.—A company may, if so authorised by its articles, issue redeemable preference shares provided that (i) they are fully paid up, and (ii) that they are redeemed out of the profits of the company; (iii) the premium payable on redemption must have been provided out of the profits of the company, or, if applicable, out of the company's share premium account; a capital redemption reserve fund in accordance with the provisions of the Act should be built up, which should be a sum equal to the amount of the shares redeemed. The redemption of preference shares shall not have the effect of reducing the amount of the Company's authorised share capital—but the Company may issue shares up to the nominal amount of the shares to be redeemed; this shall not increase the share issue for the purposes of stamp duty. Subject to penalties, there must be included in every balance sheet of a company which has issued redeemable preference shares, a statement specifying what part of the issued capital of the com-

pany consists of such shares. (Section 2). There is a general prohibition of a provision of financial assistance, whether by cash, loan or guarantee, for the purchase of, or subscription to be made by any person for, any share in the company; this shall not apply if the lending of the money by the company is done in the ordinary course of business, or if the shares are bought by trustees for the benefit of employees (including salaried directors), or if the loan is made by the Company to persons other than directors in the bona fide employment of the Company who wish to purchase shares for themselves in the Company. (Section 3). In general, a subsidiary Company cannot be a member of the holding Company, and any allotment or transfer of shares to its subsidiary shall be void; this shall not affect subsidiary Companies already in being except that they shall have no right to vote at meetings of the holding company (Section 4). The terms "holding Company" and "subsidiary Company" are defined at length (Section 5).

An "Extraordinary Resolution" shall henceforth be deemed to be passed if not less than three-fourths of the members as are entitled to do so approve of it at a specially summoned meeting. A "Special Resolution" need no longer be confirmed by a majority of members at a second specially summoned meeting, but it may henceforth be passed by not less than three-fourths of the members as are entitled to approve of it at a general meeting, but 21 days' notice of such meeting must be given. (Section 6).

Section 26 of the 1908 Act states the detailed requirements of the Annual List of Members; except for members who die or retire, provision is now made that those detailed particulars need henceforth be given only every five years, instead of every year (Section 7).

If there is a scheme or contract involving an offer for the transfer of shares from a subsidiary company to a principal company, and if within four months of the making of the offer by the principal company such offer has been approved of by shareholders representing not less than four-fifths of the shares, whose transfer is involved, the principal company may within the following two months give notice to any dissenting shareholder that it intends to acquire his shares. In such an event such shares shall be duly acquired by the principal company according to the terms of the contract unless the Court otherwise orders.

Detailed provisions are set out of the circumstances in which such transfers cannot take place except upon equitable grounds. The detailed considerations governing such transfers, if they take place, and governing the requisite notices, are also set out (Section 8).

A company which was registered by a name specified by Statute may, notwithstanding anything contained in such statute, change its name by passing a special resolution, and getting the approval of the Department of Industry and Commerce. If the Minister for Industry and Commerce is of opinion that any other Minister is concerned in the administration of the statute specifying the name of such company, he shall not approve of the change of name without consulting the other Minister (Section 9).

The Companies (Foreign Interests) Act, 1917 is repealed (Section 11).

FINANCE BILL, 1959

The Finance Bill, 1959—as introduced—a comprehensive measure of 80 Sections and 4 Schedules—together with an Explanatory Memorandum of 10 pages—may be purchased from the Government Publications Sale Office, G.P.O. Arcade, Henry Street, Dublin, for 3/6d., plus 6d. postage. It is hoped to publish a summary of the Finance Act, 1959 in its final form, when it has been passed by both Houses.

ADMINISTRATION OF ESTATES ACT, 1959

The Administration of Estates Act, 1959, is now law, and its 26 Sections and 2 Schedules amend in certain respects the present law relating to administration of estates.

PART I.—(Preliminary and General).

By Section 1, Parts I and IV are to come into operation on the date the Bill is enacted, i.e., the 28th May 1959. However Parts II and III, and Section 26 will only come into operation the 1st June 1959. Parts II and III shall not apply to the estate of any person dying before the 1st June 1959 (Section 3).

PART II.—Devolution of Real Estate on death.

Real property shall henceforth devolve on and become vested in the personal representative as if it were a chattel real (Section 6).

The personal representatives will hold the estate as trustees for the persons entitled—i.e., for the heir-at-law, if the owner has died intestate, or for the devisee under the will, if the owner has made a will. Henceforth the law as to the effect of Probate and Letters of Administration where personal property is concerned will apply to real property. Henceforth also a person's real estate shall be administered in the same manner as his personal

estate, and be subject to the same liabilities for debts, costs and expenses; but the order in which real and personal assets are applicable towards the payment of funeral and testamentary expenses, debts and legacies, is to remain the same as under the existing law. The heir-at-law, if not one of the the next-of-kin, shall be equally entitled to the grant with the next-of-kin (Section 7). Nothing shall affect any duty payable in respect of real estate, or impose any additional duty thereon (Section 8). It will be recalled that death duties payable in respect of real estate are payable out of the estate itself, while estate duty on personal property, for which the personal representative is personally liable, ranks as a testamentary expense.

Freehold compulsorily registered land under the Land Acts is excluded from Part II (Section 9), because, by reason of Part IV of the Registration of Title Act, 1891, this land already devolves and descends as personalty. It is to be noted that, as most land comes within the provisions of Part IV of the 1891 Act, the right of the heir-at-law to succeed to the real property seldom arises in practice. Nothing in Part II is to affect the operation of Section 30 of the Conveyancing Act, 1881, which provides that trust and mortgage estates in realty shall devolve and become vested in the personal representatives as if they were chattels real (Section 10).

PART III.—Executors and Administrators.

The old Statute of 1351, which provided that an executor of an executor represents the original testator, is repealed and this enactment is now repeated in modern form (Section 11).

The discretionary powers of the High Court, formerly exercised by Section 78 of the Irish Probates Act, 1857, now repealed, are considerably widened, and the Court may now make a grant to any person the Court may think fit, having regard to any special circumstances whenever it is necessary or expedient to do so, and may order such security as it deems fit (Section 12). Where a person dies intestate, his real and personal estate shall vest, until administration is granted in the President of the High Court, in the same manner as it vested before 1859 in the Ordinary of the Diocese (Section 13). This ensures that, for the purpose of proceedings concerned with the property, the owership will at all times lie in somebody.

Administration bonds, which enure for the benefit of the President of the High Court, must be given by an administrator to ensure that he will properly and duly administer the estate. They are generally in double the amount of the estate, unless reduced by direction of the Probate Officer. An administration bond must henceforth include provisions for the payment of death duties, income tax, and surtax (Section 14). A Grant of Probate or of Administration may be made henceforth in the case of real estate, either separately or together with personal estate (Section 15).

The High Court is henceforth empowered to make grants of Probate or of Administration, where there is no estate within the jurisdiction; this will for instance facilitate a relative who proposes to sue as a personal representative under the Fatal Injuries Act, 1956 on behalf of the children of a person who is killed in an accident, but who leaves no assets (Section 16). The law as to the preparation of calendars of grants of probate and of administration is being consolidated and brought up-to-date (Section 17).

Personal representatives may henceforth sell the whole or any part of the real and personal estate of a deceased for the purpose of not only paying the debts but also of distributing the estate amongst the persons beneficially entitled thereto, and shall as far as practicable give effect to the wishes of beneficiaries of full age—or of the majority of them. Where land is settled by will, and there are no trustees of the settlement, the personal representatives proving the will shall for all purposes be deemed to be such trustees until trustees of the settlement are appointed by the Court (Section 18). Note that the power of sale extends henceforth to all land.

A *bona fide* purchaser for value from the personal representatives of any property, being the whole or part of the real or personal unregistered estate of the deceased, shall be entitled to hold that property freed and discharged from any debts or liabilities of the deceased and from all claims of beneficiaries, and from all claims of creditors of the deceased except claims of which the purchaser had actual or constructive notice at the time of purchase (Section 19).

Personal representatives may at any time after the death execute an assent vesting any estate or interest in any part of the land to the person entitled, or may transfer such estate or interest to the person entitled; they may also make such transfer or charge free from or subject to any charge; if made subject to a charge, all liabilities of the personal representatives in relation to such land shall cease. The Court is entitled to make an order of transfer, if one year has elapsed after the death, and the personal representatives have taken no steps in the matter (Section 20). The statutory covenants against incumbrances implied in a deed of conveyance by a personal representative shall also be implied in any assent. As an assent is deemed to be a conveyance henceforth

for the purpose of registering deeds, it must henceforth be in writing, and, for the purposes of rents and profits, it will relate back to the time of death. A beneficiary may require the personal representatives to register an assent or a conveyance in the Registry of Deeds at his expense (Section 21).

Section 87(2) of the Local Registration of Title Act, 1891 is henceforth amended to include personal property and compulsorily registered land, as well as pure real property, as formerly; henceforth, on the death of a sole registered full owner, or of the survivor of several registered full owners, who are not tenants in common, the personal representatives shall alone be recognised by the Land Registry as having any rights in respect of the land, and any registered dispositions by them shall have the same effect as if they were the registered owners. The production of an assent or transfer from the personal representatives in the prescribed form shall authorise the Land Registry to register the person named in such assent or transfer as full owner or limited owner, but the costs of registration shall be borne by such person. Following the decision in *Vaughan v. Cottingham* (1958), the Land Registry is no longer required to register any owner of land in his capacity of personal representative. Section 21 of the Registration of Title Act 1942, which now only applies to compulsorily registered land, will henceforth be extended to all registered land; therefore the Court may, after a lapse of six years from the death of a registered owner order that an applicant for registration be registered as full owner, provided it is satisfied that the personal representatives of the deceased owner are either dead or out of the jurisdiction (Section 22).

The jurisdiction of the Circuit Court under Part III of the Act shall be exercised by the Circuit Judge of the Circuit where the land is situate (Section 23).

PART IV.—Miscellaneous

The Supreme Court and High Court (Fees) Order 1956 applied up to now only to the Principal Probate Office in Dublin as the six District Probate Registries were not offices established under the Court Officers Act, 1926; consequently the Probate fees in Dublin were double those in district registries; this anomaly is now being remedied, and henceforth a uniform scale of fees will apply in all district registries, as well as in Dublin (Section 24). Provisions are made for the full exercise of the functions of the Probate Officer in the Principal Registry in Dublin by the Assistant Probate Office, in case of absence or illness (Section 25).

Section 2(2) (*d*) of the Statute of Limitations, 1957 had provided that Section 86 (1) of the Registration of Title Act 1891, which makes personal representatives upon whom freehold registered land devolves trustees for the persons beneficially entitled, is not to be construed as making personal representatives trustees for the purposes of that Statute; this Section of the Statute of Limitations 1957 is henceforth extended to Section 7 (1) of this Act, which provides that the personal representatives shall hold real estate for the persons beneficially entitled; the effect of this is that, for the purposes of the Statute of Limitations personal representatives upon whom the real estate devolves are put in the same position as personal representatives upon whom freehold compulsorily registered land devolves. Personal representatives, whether as respects realty or personalty, will in future be able to rely on the Statute of Limitations, except where they are guilty of fraud (Section 26).

In the Schedule, all Sections of the Probate Acts of 1857, 1858, 1859, 1876 and 1892, providing for the resealing of English, Scottish and colonial grants of probate or of administration is henceforth repealed, as this procedure has in fact been suspended since 1923.

NOTE.—The Administration of Estates Bill, 1957, as passed by both Houses of the Oireachtas, together with a very useful explanatory memorandum, may be obtained from the Government Publications Sales Office, Arcade, G.P.O., Henry Street, Dublin, for 1/-, or 1/2, including postage.

LEARNING THE LAW

In publishing his *Learning the Law* in 1945, Professor Glanville Williams had rendered an invaluable service to future students of English Law by pointing out the pitfalls which the novice should avoid and encouraging the budding lawyer to know the proper sequence of Law Reports and cite them properly. The success of this new venture was assured, but not even the most optimistic could have foretold that six editions of this *invaluable vade-mecum* would have been published in twelve years. The sixth edition, published in 1957, contains 60 more pages than the earlier edition; apart from new material, references to new books and new law journals have been brought up to date. There are two new excellent chapters on "the Interpretation of Statutes" and "General Reading". This latter chapter is a most entertaining account of the effects of the mention of the law and of lawyers upon English drama, fiction and biography, not to mention jurisprudence and famous trials. The lawyer who has laboriously mastered all the advice and learning contained in this slim volume will know at his fingertips the principal textbooks and other aids

to each branch of law; the student who applies the examination technique advocated by Dr. Williams will almost certainly pass with honours, and the general librarian will appreciate the special problems of a law library. If the publishers could be induced to publish a short Irish supplement at the end of Dr. William's volume giving references to Irish law reports and Irish textbooks, this book would be as essential as Wylie on the Judicature Acts or O'Connor's *Justice of the Peace*. As it is, Professor Williams is an invaluable guide, philosopher and friend, particularly for the beginner, and this volume is as essential as any of the prescribed text-books.

C.G.D.

MAYO SOLICITORS' BAR ASSOCIATION

The Annual Meeting was held in the Bar Room, Courthouse, Castlebar, on Monday, 27th April, 1959.

The following Officers were elected for 1959–1960 :—*President*, Edward Fitzgerald; *Vice-President*, Patrick J. Mulligan; *Hon. Treasurer*, Bea M. Hynes; *Hon. Secretary*, John F. Garavan. *Council* :—Joseph King, Patrick J. Brennan, Edward Williams, Thomas V. O'Connor and William Dillon-Leetch.

The minimum fees recommended by the Law Society for defending Dangerous Driving prosecutions were approved of.

A Scale of Costs for Short Tenancy Agreement Lettings, on a sliding scale, where rents were under £105 per year was adopted and a minimum fee for Agistment Agreements of £1 1s. 0d. plus outlay was approved of.

It was agreed to make representations to the County Registrar to allow increased mileage allowance at 1]– per mile for witnesses and solicitors in cases where travelling expenses are allowed in costs.

A proposal to approve of representations to the Land Registry to have proper stiff covered backs attached to photographic copies of Folios (similar to those supplied by the Principal Probate Registry for copy Grant) was carried.

On a general discussion about costs and the difficulties about drawing and typing of long Bills, the members expressed the view that if costs of Probate and Administration could be fixed on a percentage scale—similar to Sales—the profession would benefit.

The absence of Folio Number from Receivable Order was again referred to and the members were informed that the Law Society had made representations to the Land Commission on the matter.

The members were asked to endeavour to travel to the Law Society meeting to be held in Killarney and were again urged to join the Benevolent Association.

EXAMINATION RESULTS

At the Preliminary Examination for intending apprentices to solicitors held on the 20th and 21st days of May, the following candidates passed the examination :—

Stuart L. W. Cosgrave; Daniel J. Hamilton.

3 candidates attended; 2 passed.

At the Book-keeping Examination for apprentices to solicitors held on the 22nd day of May, the following passed the examination :—

Passed with Merit: 1. Richard R. Pierse; 2. Dermot Bouchier-Hayes; 3. John B. M. Doyle; 4. Thomas J. D. Lane.

Passed: Robert E. Blakeney; Oliver J. Conlon; John N. Lavelle; Maire McHale; Mary M. O'Callaghan; Jeremiah A. Reidy.

16 candidates attended: 10 passed.

EXAMINATION DATES

Examination	*Date*	*Last Date for Notice*
1st Law	Sept. 1st & 2nd	Aug. 11th
Final	Sept. 1st, 2nd & 3rd	Aug. 11th
Preliminary	Sept. 2nd & 3rd	Aug. 12th
Bookkeeping	Sept. 4th	Aug. 14th
1st & 2nd Irish	Sept. 18th & 19th	Aug. 28th

DECISIONS OF PROFESSIONAL INTEREST

In a consent to settlement under the Fatal Injuries Act, 1956 an averment must be made that children are not adopted or illegitimate as the case may be.

Section 2 of the Fatal Injuries Act, 1956 provides that (*a*) that only one action may be brought in respect of the death, (*b*) the action by whomsoever brought shall be for the benefit of ALL the defendants, (*c*) relationship to the deceased for the purposes of the Act is extended beyond the scope of previous Acts, to cover adopted children, illegitimate children and persons *in loco parentis*.

M. was the widow of the deceased, who was survived by her, his eight minor children and his mother. The case was settled and application was made to the High Court (Murnaghan J.) to approve of a settlement on behalf of the minor children, and to divide the amount amongst the persons entitled. There was no averment in the plaintiff's affidavit to the effect that the deceased had not illegitimate children.

Murnaghan J. held that the affidavit was insufficient to comply with the terms of s. 2 of the Fatal Injuries Act, 1956.

On appeal to the Supreme Court, it was held by Kingsmill Moore, O'Daly and Maguire JJ. that (1) Murnaghan J., was entitled to regard the plaintiff's affidavit as insufficient.

(2) It was suggested by the Supreme Court that a practical formula where the widow is the plaintiff would be that the affidavit should contain an averment to the effect that her solicitor had read para. (*b*) of s. 2, sub-s. 2, to her and explained the class of persons referred to therein and that to the best of her knowledge and belief the deceased had no such offspring.

Per O'Daly J. As a claimant for compensation a widow, if she should know of such offspring, would be bound to disclose it to the Court; but the common case will be that in which there are no such offspring or none to the knowledge and belief of the widow. In such case, when an affidavit falls to be sworn, we see no objection to a formula being employed which will save the widow from embarrasment.

For the employment of the formula it should be required that the plaintiff's solicitor should read to her the provisions of paragraph (*b*) and explain its meaning.

In such circumstances the Court might reasonably accept an averment from the widow that her solicitor had read the paragraph to her and explained the class of persons referred to therein, and that to the best of her knowledge and belief the deceased had no such offspring.

In saying this, we are not to be taken as attempting to lay down what inquiries it may be proper for a judge to make in any particular case—although save in exceptional circumstances we see no reason to think why the widow's averment in the terms we indicate might not be considered adequate so far as persons falling within the class mentioned in paragraph (*b*) are concerned.

(O'Mahoney *v.* E. S. B. (1959) 93 I.L.T.R. 4).

An application for a Habeas Corpus has no right to go from judge to judge.

H., whose application for a writ of habeas corpus directed to the governor of Liverpool Gaol had been refused by two Divisional Courts of the Queen's Bench Division, composed of different judges, made a like application on the same grounds to a Divisional Court of the Chancery Division.

Held by the Chancery Division (Vaisey and Harman, JJ.) that the applicant had no right to go from division to division or judge to judge of the High Court of Justice applying for a writ of habeas corpus, and when once the proper court according to the rules, a Divisional Court of the Queen's Bench Division whose order was the order of the one High Court of Justice, had decided the application, the matter was ended; therefore, the Divisional Court of the Chancery Division had no jurisdiction to entertain the application.

Re Hastings (No. 2) ((1958) 3 All E.R. 625) applied.

Note: The decision in *Re Hastings* (No. 2) ((1958) 3 All E.R. 625) distinguished between the positions when, before the Supreme Court of Judicature Act, 1873, application for habeas corpus was made in vacation or in term time. In the former case there was a right to go from judge to judge, as the court was not sitting in banc. It seems that, if that right survives theoretically, it is now ineffective because the judge would direct the applicant to apply to the appropriate Divisional Court.

Per Vaisey J. The mistake that the applicant made is to assume that the Chancery Division is a separate entity, a separate court, and that either by single judges or by a Divisional Court it can deal with the matter afresh. The applicant uses an expression which, I think, he must suppose to be flattering to us who are sitting here. He says—and I am now quoting from his own affidavit—he has decided to come to a "*complete* hearing before a hitherto unconnected and impartial Bench. This I seek in the Chancery Court". I hope that this is an impartial Bench, but it is not an independent Bench. Indeed, as Lord Parker, C.J., has ruled, and with, I think, perfect accuracy, as soon as the Divisional Court of the Queen's Bench Division has come to its conclusion there is an end of the matter. It always has to be remembered that an order is not an order of any particular division of any particular Divisional Court; an order is an order of the High Court. It is beyond my comprehension how we here, judges of the High Court, could be heard to overrule or otherwise interfere with a judgment which was the result of Lord Parker, C.J.'s hearing before his Divisional Court—how we could be heard to say that the conclusion and the order of our own court, the only court which exists, the High Court of Justice, was wrong, and to say that something else should be done.

When Lord Parker, C.J., came to a conclusion in the Queen's Bench Divisional Court, acting strictly under the rules, he finally disposed of the application of this present applicant to have a writ of habeas corpus issued to him. I cannot see how this court, or we who are all judges of the High Court, could stultify a decision of the High Court of which we are ourselves constituent parts.

Per Harman J. I concur in the conclusion at which my Lord has arrived. It is always sad to be stripped of any illusion, and I, like, I expect, most lawyers, have grown up in the belief that in cases of habeas corpus the suppliant could go from judge to judge until he could find one more merciful than his brethren. That illusion was stripped from me when I read the report of the decision in the Queen's Bench Divisional Court last year in this very case. The decision was based on this, I think, that there never had been such a right. There had been a right to go from court to court; there had been a right in Vacation to go from judge to judge, for the simple reason that the court was not sitting in banc; but there had never been a right in term time to go from one judge to another when the court was available to which the applicant should properly apply.

I think that the judgment of the Queen's Bench Divisional Court did make it clear that this supposed right was an illusion. If that be right, the rest follows. Nobody doubts that there was a right to go from court to court, as my Lord has already explained. There are no different courts now to go to. The courts that used to sit in banc have been swept away and their places taken by Divisional Courts, which are entirely the creatures of statute and rule. Applications for a writ of habeas corpus are assigned by the rule to Divisional Courts of the Queen's Bench Division, and that is the only place to which a suppliant may go. He will, in the first instance, it is said, have a right to go to one judge, but the only result of that, except in a case of the most extreme urgency, would be that the judge would direct him to go to the proper tribunal, namely, the Divisional Court. Even if the right to go from one to another were now existing it would not, in practice, be any bulwark of the liberty of the subject, for the only result of going from one judge to another would be that the applicant would find himself before the Divisional Court. Nobody doubts that if he has a decision of the Divisional Court then he will not be able to get it again.

I concur respectively in what Lord Parker, C.J., says at the end of his judgment, namely, that it does seem a pity that, this being a criminal case, there is no appeal. It would seem it would be a good step, as Lord Goddard, C.J., was frequently heard to observe, if there was a right or some means of taking a case like this to the House of Lords in order that the subject should not feel that he had a grievance. But that is a matter not within our province. All we can do is to dismiss the application.

(Re Hastings No. 3 (1959) 1 All E.R. 698).

Note.—This decision was affirmed by the Court of Appeal, (Lords Evershed, M.R., and Romer and Pearce (JJ.) on 15th June, 1959.

Reasons given by a Judge for reaching conclusions on a question of negligence, which, if the trial were with a jury, the jury would decide were not propositions of law, and authorities should not be cited for them.

The respondent was employed at the appellants' foundry as a moulder. He was thirty-eight years old and had been a moulder all his working life. While he was casting at the moulding boxes, the ladle of molten metal which he was holding slipped, and some of the metal splashed on to his left foot and, as he was not wearing protective spats or special boots, his foot was injured. The appellants kept in their stores spats which could be had for the asking, and strong boots which could be had on payment. The respondent knew that the spats and boots were available. The appellants had not ordered or advised the respondent to wear protective clothing, as he was an experienced worker, and he knew and appreciated the risks of the metal splashing which attached to his work. In an action for damages against the appellants, the respondent alleged negligence on their part in failing to provide any proper spats or other sufficient protective clothing, and in failing to provide a safe system of work and safe and proper plant and equipment. The county court judge found that there had been a breach of duty at common law by the appellants to the respondent, but that the respondent was guilty of contributory negligence, and that his share of the responsibility was seventy-five per cent. He expressed the view that, had he not been bound by authority, he would have decided that the respondent was so experienced that he needed no warning, that what he did was with the full knowledge of all the risks involved, and that there was no negligence on the part of the appellants.

Held by the House of Lords (Lord Radcliffe, Lord Keith of Avonholm, Lord Somervell of Harrow and Lord Denning, Lord Cohen dissenting, reversing the Court of Appeal (Lords Evershed, M.R., Parker and Sellers L.JJ.) and Judge Norris) that a failure of duty on the part of the appellants, as employers of the respondent, had not been established, because the respondent was an experienced moulder and by making protective spats available to him, to his knowledge, the appellants had on the facts of this case sufficiently provided proper protective clothing and had fulfilled their duty to take reasonable care for his safety, despite the fact that they had not brought pressure to bear on him to wear the spats.

Per Lord Somervell of Harrow and Lord Denning (Lord Cohen concurring): Reasons given by a judge for reaching conclusions on a question of negligence which, if the trial were with a jury, the jury would decide, were not propositions of law and authorities should not be cited for them.

Per Lord Somervell of Harrow: When a point that has not been pleaded is allowed to be taken in the Court of Appeal, an amendment should be drafted whether or not the case seems likely to reach the House of Lords.

When negligence cases were tried with juries, the judge would direct them as to the law as above. The question whether, on the facts in that particular case, there was or was not a failure to take reasonable care was a question for the jury. There was not, and could not be, complete uniformity of standard. One jury would attribute to the reasonable man a greater degree of prescience than would another. The jury's decision did not become part of our law citable as a precedent. In those days it would be only in exceptional circumstances that a judge's direction would be reported or be citable. So far as the law is concerned they would all be the same. Now that negligence cases are mostly tried without juries, the distinction between the functions of judge and jury is blurred. A judge naturally gives reasons for the conclusion formerly arrived at by a jury without reasons. It may sometimes be difficult to draw the line, but if the reasons given by a judge for arriving at the conclusion previously reached by a jury are to be treated as "law" and citable, the precedent system will die from a surfeit of authorities. In the present case, and I am not criticising him, the learned county court judge felt himself bound by certain observations in different cases which were not, I think, probably intended by the learned judge to enunciate any new principles or gloss on the familiar standard of reasonable care. It must be a question on the evidence in each case whether, assuming a duty to provide some safety equipment, there is a duty to advise everyone whether experienced or inexperienced as to its use.

I have come to the conclusion that the learned judge's first impulse was the right conclusion on the facts as he found them, and for the reasons which he gives. I will not elaborate these reasons or someone might cite my observations as part of the law of negligence.

Per Lord Denning: My Lords, in 1944, Du Parcq, L.J., gave a warning which is worth repeating to-day:

"There is a great deal of danger, if I may say so, particularly in these days when very few cases are tried with juries, of exalting to the status of propositions of law what really are particular applications to special facts of propositions of ordinary good sense."

In the present case, the only proposition of law that was relevant was the well-known proposition—with its threefold subdivision—that it is the duty of a master to take reasonable care for the safety of his workmen. No question arose on that proposition. The question that did arise was this: What did reasonable care demand of the employers in this particular case? That is not a question of law at all but a question of fact. To solve it, the tribunal of fact—be it judge or jury—can take into account any proposition of good sense that is relevant in the circumstances, but it must beware not to treat it as a proposition of law.

This is not the first time this sort of thing has happened. Take accidents on the road. I remember well that, in several cases, Scrutton, L.J., said that "If you ride in the dark you must ride at such a pace that you can pull up within your limits of vision". That was treated as a proposition of law until the Court of Appeal firmly ruled that it was not. So, also, with accidents in factories. I myself once said that an employer must, by his foreman, "do his best to keep them up to the mark". Someone shortly afterwards sought to treat me as having laid down a new proposition of law, but the Court of Appeal, I am glad to say, corrected the error. Such cases all serve to bear out the warning which has been given in this House before:

"We ought to beware of allowing tests or guides which have been suggested by the court in one state of circumstances, or in one class of cases, to be applied to other surroundings . . .",

and thus by degrees to turn that which is at best, a question of fact into a proposition of law. That is what happened in the cases under the Workmen's Compensation Act and it led to a "wagon-load of cases". Let not the same thing happen to the common law, lest we be crushed under the weight of our own reports.

(Qualcast Ltd. *v.* Haynes (1959), 2 All E.R. 38.)

REGISTRATION OF TITLE ACTS, 1891 AND 1942 ISSUE OF DUPLICATE LAND CERTIFICATE

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

A duplicate Certificate will be issued in each case, except a case in respect of which notification is received in this Registry within 28 days from the publication of this notice, that the Certificate of Title is still in existence, and in the custody of

some person other than the registered owner. Any such notification should state the grounds on which such Certificate is being held.

Dated the 30th day of July, 1959.

D. L. McALLISTER,
Registrar of Titles

Central Office,
Land Registry,
Chancery Street,
DUBLIN.

SCHEDULE.

1. Registered Owner, Patrick Moynagh. Folio number, 10688, County Monaghan. Lands of Lisnadarragh in the Barony of Cremorne containing 21a. or. 10 p.

THE REGISTRY

SOLICITOR, 12 years' experience in Dublin, presently employed, seeks position town or country. Box No. 239.

LADY SOLICITOR with general experience seeks position as assistant solicitor. Box No. 238.

Register C

WANTED: Vols. 21 to 24 of the 2nd Edition of the pre-1920 Statutes Revised. Particulars as to condition, price, etc., to John J. Timoney, Solicitor, Tipperary.

OBITUARY

MR. WILLIAM D. MOCKLER, Solicitor, died on the 15th June, 1959, at the Bon Secours Home, Cork.

Mr. Mockler served his apprenticeship with the late Mr. Barry C. Galvin, 36 South Mall, Cork, was admitted in Trinity Sittings, 1918, and practised at 57 South Mall, Cork.

MR. CHARLES A. FLATTERY, Solicitor, died on the 17th June, 1959, in London.

Mr. Flattery served his apprenticeship with the late Mr. Edward McFadden, Letterkenny, Co. Donegal, was admitted in Trinity Sittings, 1913, and practised at Letterkenny, Co. Donegal until his appointment as District Justice in 1923.

Government Publications

as passed by the Oireachtas

Statutes of Limitations Bill, 1954, with explanatory sidenotes—(2s. 6d.) postage 2d.
Administration of Estates Bill, 1957, with explanatory memorandum—(1s.) postage 2d.
On Sale at the Government Publications Sales Office, G.P.O. Arcade, Dublin.

THE SOLICITORS' BENEVOLENT ASSOCIATION

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

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

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

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

Address:
SECRETARY,
SOLICITORS' BENEVOLENT ASSOCIATION,
18, HUME STREET,
DUBLIN.

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No. 3

JULY,
1959

THE GAZETTE

of the

INCORPORATED LAW SOCIETY OF IRELAND

President
JOHN R. HALPIN,

Vice-Presidents
JOHN J. NASH
CORNELIUS J. DALY

Secretary
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

MEETINGS OF THE COUNCIL

JULY 2nd.—The President in the Chair. Also present, Messrs. Comerford, O'Connor, McCarron, O'Connell, Noonan, Quirke, Lanigan, Gilmore, Walker, Martin, Green, Overend, Collins, White, O'Donnell, Gaffney, Carrigan, Kelly, Taylor, O'Reilly, Shaw, Nolan, George A. Nolan, Sheil, Mayne.

The following was among the business transacted.

Pleadings during long vacation

It was decided that the Society's representatives on the Superior Courts Rules Committee should be asked to bring before that committee a proposal by the Society that the rule of court which provides that pleadings may not be delivered during the long vacation should be revoked.

Accountant General, High Court

It was decided to make representations to the appropriate quarters that the practice in the office of the Accountant General, High Court, whereby payments will not be made during the long vacation should be changed.

Insurance Company. Defence to negligence action inconsistent with position appearing in negotiations

A member was instructed by Miss A and Mrs. B, driver and passenger in a motor car to institute proceedings for personal injuries in respect of a collision with a car driven by C. C at the time of the accident held the other car involved in the collision on hire from his employers X, Ltd., but the exact relationship between C and X, Ltd., was unknown at that time to member. Member wrote to C stating that A and B would hold C responsible for the damage suffered and subsequently received correspondence from an insurance company headed "Motor Claim No. 3174, X, Ltd., your clients Miss A and Mrs. B." The negotiations for a settlement were unsuccessful and proceedings were instituted by member on behalf of his clients against X, Ltd. Defences were filed denying that the motor car driven by C was the property of the defendants as alleged or at all. The plaintiff's solicitor then ascertained that the relationship of C with X, Ltd. was that of a hirer of the motor vehicle and accordingly by virtue of section 3 of the Road Traffic Act, 1933, X, Ltd. were not the owners thereof. The

Council took the view that the defence filed in the action was inconsistent with the implicit acceptance by the insurance company that their insured was the owner of the motor vehicle and the proper party to be sued in any proceedings and representations to this effect were made to the insurance company through their solicitors as a matter affecting solicitors and insurance companies generally.

Registry of deeds

On a report from a committee it was decided that representations should be made to the Department of Justice in favour of the introduction of legislation on the lines of the Registry of Deeds (Amendment) Northern Ireland Act, 1957. That statute made provision for the following matters, (*a*) persons who authenticate seal of a body corporate are deemed witnesses for registration purposes, (*b*) swearing of affidavits for registration purposes. (*c*) paper and writing authorised for registration purposes; parchment has been abolished, (*d*) uniform registration fee on memorial, (*e*) transcripts of memorials no longer required, (*f*) duplicate negative searches, (*g*) remedy for breach of statutory duty by registry officials and bringing the procedure of the registry into line with modern conditions.

Statutory notice to creditors

A deputation was appointed to seek an interview with the Revenue Commissioners following the recent case which was brought to the notice of the Council in which it was alleged on behalf of the Revenue that the State is not bound by the statutory notice of creditors in an administration matter.

Debt collection work for the Official Assignee

A deputation was appointed to seek an interview with the bankruptcy Judge.

Labourers' Acts. Taxation of costs

Members drew the attention of the Council to the fact that the Taxing Masters consider that they have no jurisdiction to tax costs of acquisitions under the Labourers' Acts since the making by the Minister for Local Government of the Labourers' Acts (Solicitors Remuneration) Order 1957 (S.I. No. 144 of 1957). The effect of this order was to revoke the special code of costs under the Labourers' Acts and orders thereunder and to terminate the commission of the special taxing officer under the Labourers' Acts in respect of business undertaken on or after 1st October, 1957. Thereafter the costs of such acquisitions are to be taxed on the same scale as acquisitions under any other statutes, i.e., under the provisions of the Solicitors Remuneration General Orders, 1884-1951. The Secretary stated that he had been informed that the matter is under consideration between the Taxing Masters and the Departments concerned with a view to removing the difficulties mentioned.

DINNER DANCE

A Dinner Dance for members and their friends will be held in the ballroom of the Shelbourne Hotel on Thursday, 26th November, the date of the Ordinary General Meeting. Further particulars will be published in the Society's Gazette in due course. Applications from members will be dealt with in order of receipt. Members may apply for tickets for friends. The price of tickets will be £1 1s. 0d., each to include dinner and dance.

TEXT BOOKS FOR LAW STUDENTS

The Publications Committee of the Society are considering a project for the publication of handbooks, manuals and textbooks for law students. The project at present is at the exploratory stage, but as far as can be seen the field to be covered is as follows:—

1. The Practice and Procedure of the High Court and the Circuit Court.
2. Registration of Titles.
3. Registration of Deeds.
4. Probate and Executorship Law and Practice.
5. The Law of Landlord and Tenant.

The Committee would consider proposals from barristers, solicitors, and court officials for the writing and publication of works suitable for students on any of the above mentioned subjects. Those interested should communicate with the undersigned.

ERIC A. PLUNKETT, *Secretary*,
The Incorporated Law Society of Ireland.

COUNTY OF TIPPERARY AND OFFALY (Birr Division) SESSIONAL BAR ASSOCIATION

AT the Annual General Meeting of this Association held in Thurles on the 11th May, 1959, the following were elected as Officers and Committee for the current year. President: Francis Murphy, Clonmel; Hon. Secretary: John Carrigan, Thurles; Hon. Treasurer: Martin T. Butler, Thurles; Committee: John C. Reedy, Birr; Michael MacGrath, Nenagh; Michael O'Meara, Nenagh; John C. Devitt, Roscrea; Robert A. Frewen, Tipperary; John J. Timoney, Tipperary; Gerard O'Donnell, Clonmel; Michael C. Black, Nenagh; Henry Hayes, Nenagh; Patrick F. Treacy, Nenagh; James A. Binchy, Clonmel; Thomas J. Reilly, Clonmel; Nicholas J. O'Donnell, Tipperary.

DUBLIN METROPOLITAN DISTRICT COURT

Appointment of places for the transaction of the business of each of the three divisions of the Dublin Metropolitan Justices

I, OSCAR TRAYNOR, Minister for Justice, in exercise of the powers conferred on me by section 11 of the Courts of Justice (District Court) Act, 1946, do hereby appoint with effect from the 1st September, 1959, the places mentioned in the second column of Schedule hereto to be the places for the transaction of the business of the Division of Dublin Metropolitan Justices mentioned opposite in the first column of the said Schedule.

Dated this 17th day of July, 1959.

(Signed) OSCAR TRAYNOR,
Minister for Justice.

SCHEDULE.

Division of Dublin Metropolitan Justices	Places for the transaction of the business of the Division
CIVIL AND JUVENILE DIVISION	Court No. 1 in the Courthouse at Morgan Place in the City of Dublin; The Courthouse in No. 5 Upper Castle Yard, Dublin Castle.
SUMMARY DIVISION ...	Courts No. 1 (whenever not required for the business of the Civil and Juvenile Division), No. 2 and No. 3 in the Courthouse at Morgan Place in the City of Dublin; The Courthouse in Dun Laoghaire in the County of Dublin.
CUSTODY DIVISION ...	Courts Nos. 1, 2 and 3 in the Courthouse at Chancery Street in the City of Dublin (commonly known as Inns Quay Courthouse); Court No. 9 in the Circuit Court Building, Chancery Place, in the City of Dublin.

COURTS OF JUSTICE (DISTRICT COURT) ACT, 1946

DUBLIN METROPOLITAN DISTRICT COURT

Distribution of the business of the court amongst the three divisions of the Dublin Metropolitan Justices.

Pursuant to the provisions of Section 10 of the Courts of Justice (District Court) Act, 1946, I, OSCAR TRAYNOR, Minister for Justice, do hereby direct that the business of the District Court to be transacted in the Dublin Metropolitan District shall be distributed amongst the three Divisions of the Dublin Metropolitan Justices in the manner following—that is to say:—

CIVIL AND JUVENILE DIVISION.

The business of this Division shall consist of:—

A. Civil proceedings instituted by Civil process (excluding all ejectment Civil processes) and all causes and matters arising out of or appertaining to such proceedings.

B. (1) The preliminary investigation of indictable crimes and offences alleged against children and young persons, and the hearing of all other informations, complaints and charges against children and young persons.

(2) The preliminary investigation of indictable crimes and offences alleged against adults and all other informations, complaints and charges against adults where the adult is either charged jointly with a child or young person or charged with a crime or offence arising out of or relating to a crime or offence in respect of which a child or young person is charged.

(3) All applications for orders or licences relating to a child or young person at which the attendance of the child or young person is required.

(4) All informations, complaints and charges under the School Attendance Act, 1926.

(5) All applications under sections 74 and 75 of the Children Act, 1908, as amended by the Children Acts, 1941 to 1957.

C. Proceedings for the estreating of any recognisance which is entered into consequent on an order made in this Division and which is deposited with the Chief Clerk of the Dublin Metropolitan District Court.

SUMMARY DIVISION.

The business of this Division shall consist of:—

A. All complaints of a criminal nature, and all summary charges in respect of which a summons shall have been issued against the defendant except such complaints or summary charges as are allocated to the Civil and Juvenile Division or to the Custody Division.

B. (1) All civil processes in Ejectment.

(2) All applications and proceedings under

the Rent Restrictions Act, 1946, and proceedings by way of summons under sections 15 of the Summary Jurisdiction (Ireland) Act, 1851, as extended by section 42 (2) of the Rent Restrictions Act, 1946.

(3) Complaints by way of summons brought by the Dublin Corporation, the Dublin County Council, or the Dún Laoghaire Borough Corporation for the recovery of rates.

(4) Proceedings by way of summons under the Cottier Tenants (Ireland) Act, 1856, and sections 81, 84, 85 and 86 (as amended and extended in the case of the last mentioned section by section 7 of the Land Law (Ireland) Act, 1887) of the Landlord and Tenant Law Amendment Act (Ireland), 1860.

(5) Proceedings in ejectment instituted by Summons by the Dublin Corporation.

C. (1) Applications for the temporary transfer of publicans' licences, special exemption orders, restaurant certificates, certificates for the grant of wholesale beer dealers' licences and occasional licences, public dance hall licences and authorisations for the supply of excisable liquors in registered clubs on special occasions, game dealers' licences, and all other licensing applications not hereinbefore specified.

(2) The Annual Licensing District Court for the hearing of applications for certificates of character by licensed vintners, spirit grocers, wholesale and retail beer dealers, for general exemption orders, restaurant certificates and for public dance hall licences.

(3) The Licensing District Court for the hearing of applications for certificates of character by licensed pawnbrokers.

(4) The Licensing District Court for the grant of certificates to applicants for moneylenders' licences.

(5) The Licensing District Court for the grant of general dealers' licences.

(6) Appeals under the Betting Act, 1931, jurisdiction to hear which is conferred on the District Court under the said Act.

(7) Applications for renewal of certificates of registration of clubs, objections to such applications, complaints under section 9 (1) of the Registration of Clubs (Ireland) Act, 1904, cancellation of certificates of registration of clubs under section 9 (2) and the making and cancellation of an order under section 9 (3) of the said Act.

(8) Applications for Certificates of Qualification under the Auctioneers and House Agents Act, 1947.

(9) Applications under the Gaming and Lotteries Act, 1956.

D. (1) Applications and proceedings under the Illegitimate Children (Affiliation Orders) Act, 1930, and the Married Women (Maintenance in case of Desertion) Act, 1886.

(2) Sanitary and dangerous buildings summonses and complaints consequent on defaults in compliance with orders made on sanitary summonses.

(3) Applications under section 4 of the Acquisition of Derelict Sites Act, 1940, for the annulment of preliminary orders of Sanitary Authorities made under section 3 of the said Act.

(4) Applications by Public Assistance Authorities to recover the cost of (*a*) public assistance; (*b*) general assistance, under the provisions of section 28 and 29 respectively of the Public Assistance Act, 1939, and applications by Public Assistance Authorities under section 30 (3) (*b*) of the said Act.

(5) Complaints under section 68 of the Dublin Police Act, 1842 (*i.e.* for the delivery of goods not exceeding in value £50, unlawfully detained, to the owner).

(6) Complaints under Section 16 of the Summary Jurisdiction (Ireland) Act, 1851 (*i.e.* complaints for recovery of wages, hirage and tuition fees), and under Section 17 (1) of the same Act (*i.e.* disputes at sales in fairs and markets).

(7) Applications and proceedings under the Enforcement of Court Orders Acts, 1926 and 1940.

(8) Proceedings in relation to disputes or matters in respect of which jurisdiction is given by the Employers and Workmen Act, 1875, to a Court of Summary Jurisdiction.

(9) Claims under sections 164, 167 (1) and 167 (2) of the Merchant Shipping Act, 1894.

(10) Proceedings for the estreating of any recognisance which is entered into consequent on an order made in this Division and which is deposited with the Chief Clerk of the Dublin Metropolitan District Court.

E. All causes, matters and disputes, whether of a civil or criminal nature, within the jurisdiction of the District Court, not hereinbefore specifically mentioned or not specifically assigned to either the Civil and Juvenile Division or the Custody Division.

CUSTODY DIVISION.

The business of this Division shall consist of :—

A. The preliminary investigation of indictable crimes and offences and the hearing of summary charges ancillary to such crimes or offences (whether the defendant shall have been summoned or arrested), except the preliminary investigation of such indictable crimes and offences as is allocated to the Civil and Juvenile Division.

B. (1) All other informations, complaints and summary charges in respect of which the defendant shall have been arrested except :—

(i) such informations, complaints or summary charges as are allocated to the Civil and Juvenile Division, and

(ii) proceedings under Section 8 of the Enforcement of Court Orders Act, 1940.

(2) All summary charges under sections 220 to 225 inclusive of the Merchant Shipping Act, 1894, and section 65 of the Merchant Shipping Act, 1906.

C. All applications for Warrants of Arrest or Search.

D. (1) The attestation of statutory declarations of persons who have lost or mislaid pawnbrokers' duplicates, and the inquiry as to the ownership of goods and chattels in respect of which such lost or mislaid duplicates were issued.

(2) The making of orders for the condemnation and destruction of diseased, unsound or unwholesome foodstuffs under the Public Health Acts.

E. All applications under the Police Property Act, 1897.

F. Proceedings for the estreating of any recognisance which is entered into consequent on an order made in this Division and which is deposited with the Chief Clerk of the Dublin Metropolitan District Court.

Dated this 17th day of July, 1959.

(Signed) OSCAR TRAYNOR,
Minister for Justice.

EXAMINATION RESULTS

At the Final Examination for apprentices to Solicitors held on 19th, 20th and 21st days of May the following passed the examination :—

Passed with Merit : 1. Conal J. Clancy ; 2. Fionnuala Duane, B.C.L., LL.B.

Passed (in alphabetical order) : Michael P. M. Connellan ; Francis G. M. Gannon ; Thomas J. N. Gannon, B.C.L. ; Michael J. Hogan, B.C.L. ; Patrick J. Madigan, B.A.; Noelle Maguire; James F. MacCarthy ; Thomas F. O'Connell, B.C.L. ; John A. O'Dwyer, B.C.L. ; George J. P. O'Sullivan, B.C.L., LL.B. ; Thomas D. Shaw, B.C.L. ; Donald O. Stuart ; Gerrard A. Walsh ; Rosaleen Walsh, B.A.

26 Candidates attended ; 16 passed.

The Council has awarded a Silver Medal to Conal J. Clancy and a Special Certificate to Fionnuala Duane.

The following passed in Part 1 or Part 2 Final Examination :—

Part I (in alphabetical order) : Richard J. Black, B.C.L. ; Thomas C. Buckley, B.A.—(A) ; James E. Cahill, B.A.—(A) ; Margaret T. C. Casey, B.A. —(A) ; Fionbarra Dempsey, B.C.L.—(A) ; Marie T. Donnellan ; Fergus L. Fahy ; Patrick J. Farrell —(A) ; David R. Felton ; John G. Fish ; Adrian F. J. Fitzgerald, B.C.L. ; Marie Neasa Gibbons, B.C.L.—(A) ; Peter F. Houlihan ; Charles B. Kingston, B.A.—(A) ; Dominic Mockler, B.A., B.C.L. — (A) ; Patrick G. McMahon, B.C.L. ; Donald M. Pratt, B.A., LL.B.—(A).

Part II (in alphabetical order) : Timothy D. Allman; Thomas J. Ballagh, B.A. ; Michael E. Binchy, B.A. ; Michael J. Fitzsimons, B.C.L.—(B) ; Thomas J. Furlong ; Thomas J. D. Lane, B.A.Mod, LL.B. —(B) ; Edward M. Masterson ; Dermod Morrissey-Murphy ; Cathal N. Young.

(A) denotes having already passed Part II. (B) denotes having already passed Part I.

At the First Law Examination for apprentices to solicitors held on 25th and 26th days of May, 1959, the following passed the examination :—

Passed with Merit : Maurice R. Curran ; Mary P. M. Berkery ; Michael J. Browne ; Colin A. Chapman.

Passed (in alphabetical order): Michael J. P. Allen; Mary Binchy; Michael B. Creed; James J. Dennison; Joseph Gilmartin; Rory M. Hogan; Thomas Jackson; John Jay; Charles McDonnell; Patrick J. J. McGrath; Peter J. McMahon; Roderick D. O'Donnell; Francis J. O'Mahony.

42 entered; 17 passed.

The Centenary prize was awarded to Maurice R. Curran.

PRESENTATION OF CERTIFICATES OF ADMISSION

On July 24th the President at a ceremony in the Society's Library presented certificates of admission to the following Solicitors:—

Michael P. M. Connellan, Church Street, Longford; Thomas F. Cusack, B.C.L., Ballyjamesduff, Co Cavan; Miss Fionnuala Duane, B.C.L., LL.B., 23 Eaton Square, Monkstown, Co. Dublin (2nd Place, Final Examination, May 1959, Special Certificate); Michael J. Fitzsimons, B.C.L., 1 Ludlow Street, Navan, Co. Meath; Miss Maire N. Gibbons, B.C.L., 16 Dollymount Avenue, Clontarf, Dublin; Miss Jill Greensmith, 16 Garville Avenue, Rathgar, Dublin; Michael J. Hogan, B.C.L., Ladymount, Callan, Co. Kilkenny; Thomas J. D. Lane, B.A.(Mod.), LL.B., The Hut, Howth, Co. Dublin; Miss Noelle Maguire, Bullock Castle, Dalkey, Co. Dublin; Kevin C. McGilligan, B.C.L., 58 Lansdowne Road, Dublin; Miss Gertrude L. O'Connell, B.C.L., Alta Villa, Listowel, Co. Kerry; Miss Rosaleen Walsh, B.A., Port-na-Blagh, Co. Donegal.

LIBRARY
Vacation Arrangements

THE Library will be closed from Thursday, 27th August to Saturday, 26th September, inclusive. The Library will re-open on Monday, 28th September at 10 a.m. Members wishing to borrow books urgently may do so by applying to the office.

DECISIONS OF PROFESSIONAL INTEREST

Solicitor-trustee has a right to be paid even if an attesting witness to will, if he is appointed trustee after testator has died.

The Master of the Rolls, Lord Justice Hodson and Lord Justice Romer in the Court of Appeal allowed this appeal by a solicitor, Mr. George Tildesley, of Staines, from the decisions of Mr. Justice Wynn Parry on November 5, 1958 (1959) 1 Ch. 191). The Court held that although he was an attesting witness of the will of the late Sir Frederick Royce, who died in 1933, he was not precluded by section 15 of the Wills Act, 1837, from entitlement to remuneration for his services as trustee under clause 16 or to charge professional remuneration under clause 17 of the will, since he was only appointed as a trustee of the will by the surviving trustee after the testator had died and the will had been proved.

Section 15 provides: ". . . if any person shall attest the execution of any will to whom . . . any beneficial interest . . . shall be thereby given or made, such beneficial interest . . . shall . . . be utterly null and void . . ."

The Master of the Rolls, giving judgment, said that the language of section 15 of the Act 1837, pointed on its face to an inquiry at one date only—namely, the date at which the will was attested; and the question to be posed at that date was whether any beneficial interest was given to the attesting witness under the will. Mr. Tildesley's name did not appear anywhere in it; nor when the testator died was he a beneficiary under it. He had been appointed as a trustee, as anybody in the world might have been, by persons other than the testator after the testator's death, and his interest under the will arose therefore from what might be called a *novus actus interveniens*. The appeal should be allowed. (See Gazette, Vol. 52, No. 6, pages 69–70) (Re Royce, Decd.—*The Times*, 15 July, 1959).

Plaintiff's solicitors ordered to pay costs of the day, when plaintiff did not attend.

Mr. Justice Finnemore ordered that the plaintiff's solicitors subject to an application to the Court, should pay the costs thrown away in the day's hearing of this case, at which the plaintiff failed to attend.

Counsel for the plaintiff, said that when the case came into the list yesterday, the plaintiff's London agents made efforts to warn his Southend solicitor by telephone, but these efforts were unsuccessful. They had been able to communicate with him only this morning, with the result that the plaintiff, who was in Southend, had only just learnt of the matter, and would not be able to reach the Court before about the usual time of the adjournment.

Counsel for the defendants, said that most of his witnesses, had been brought back specially from their holidays for to-day's hearing.

His Lordship said that it was intolerable if a case was put into the list and one could not get hold of the plaintiff. Perhaps counsel for the plaintiff would convey to those concerned the very considerable displeasure of the Court. The defendants must have their costs of to-day in any event, and subject to an application to the Court these costs must be paid by the plaintiff's solicitors. Unless it turned out

that it was the plaintiff's fault, it would be quite unfair to make him pay the costs himself. Perhaps if the solicitors were made to pay the costs they would appreciate these things better. (*The Times*, 18 July, 1959).

Agreement as to costs between two defendant joint tortfeasors enforceable.

A passenger in a lorry, who had been injured in a collision between the lorry and a bus, sued both the owners of the lorry and the owners of the bus for damages for his injuries. In the action neither defendant pleaded contributory negligence or inevitable accident against the plaintiff, who was therefore bound to succeed, and his special damage and the medical reports as to his injuries were agreed. On April 17, 1958, the lorry owners made a written offer to the bus owners "to contribute towards the plaintiff's claim and costs to the extent of one-third thereof." The offer was made with a denial of liability, and the right was reserved to bring it to the notice of the trial judge as it were a payment into court. On September 26, 1958, the plaintiff was awarded £255 damages, including £65 the agreed special damage, and costs against the defendants, as between whom liability was apportioned as to two-thirds against the bus owners and as to one-third against the lorry owners. No order was made as to the defendants' costs. On appeal as to these costs only, the lorry owners contended that by virtue of R.S.C., Ord. 16*a*, r. 12*a*, the county court judge should have taken the offer made in the letter of April 17, 1958, into account in exercising his discretion as to these costs.

Held by the Court of Appeal (Hodson, Morris and Willmer, L.JJ.) allowing the appeal that as between the defendants the bus owners should pay all costs incurred after April 17, 1958, because the contest in court was in reality between the two owners only and had the offer of April 17 been accepted by the bus owners there would have been saved either all subsequent costs, as was probable, or all except those incurred in assessing the damages. (*Bragg v. Crossville Motor Services* (1959) 1 All E.R. 613).

Note—Order 16*a*, Rule 12*a*, was added to the English Rules of the Supreme Court in 1954; briefly it states that, in an action between tortfeasors, a party may, in making an offer for contribution (even if without prejudice), bring notice of such offer before the Judge, who may take the offer into account in exercising his discretion as regards costs.

Documents privileged if bona fide obtained for purpose of taking professional advice in view of anticipated proceedings.

In an action for damages brought against the British Transport Commission by the widow of an employee who had been killed in the course of his employment, the commission claimed privilege from producing the correspondence between and reports made by the Commission's officers and servants on their inquiries into the accident. Privilege was claimed on the ground that these "came into existence and were made by the commission or their officers after this litigation was in contemplation and in view of such litigation was wholly or mainly for the purpose of furnishing to the commission's solicitor evidence to enable him to conduct the defence in the action and to advise the commission." The documents were described as "correspondence between and reports made by the (Commission's) officers and servants." As a customary practice accident returns had been rendered by local officers in charge after the amalgamation of the railway companies in 1924. These accident reports and statements were prepared and taken for the purposes of workmen's compensation or common law claims; they were also for submission to the companies' solicitors, now the solicitor to the commission, to enable them to advise as to legal liability or to conduct anticipated proceedings.

Held by Havers J. that:—(i) The documents were privileged because they had *bona fide* been obtained for the purpose of taking professional advice from the commission's solicitor in view of anticipated proceedings, and the fact that these documents also served other purposes did not place them outside the scope of the privilege. (ii) The documents were sufficiently identified by the description of them quoted above and the court would not inspect them.

Per Havers J.:—The practice with regard to discovery and the production and inspection of documents, and the objections which can be made on the ground of privilege, are really a reconciliation between two principles. The first principle is that professional legal advice and assistance is at times essential in the interests of justice, and without the assistance of some protection it could not be obtained safely or effectually. Accordingly, the principle has become established that confidential communications passing between a person and his legal advisers are absolutely privileged. On the other hand, there is another principle of law that it is in the interests of justice that all material and relevant documents should be before the court to enable it to arrive at a true and proper conclusion, and also in order that the parties should not be taken by surprise. The practice which has developed is, as I have said, a reconciliation between those two principles.

Then there was this passage in the judgment of Jenkins, L. J. in "*Westminster Airways Ltd. v. Kuwait Oil Co. Ltd.* ((1950) 2 All E.R. 596).

" The question whether the court should inspect the documents is one which is a matter for the discretion of the court, and primarily for the judge of first instance. Each case must depend on its own circumstances, but if, looking at the affidavit, the court finds that the claim to privilege is formally correct, and that the documents in respect of which it is made are sufficiently identified and are such that, *prima facie*, the claim to privilege would appear to be properly made in respect of them, then, in my judgment, the court should, generally speaking, accept the affidavit as sufficiently justifying the claim without going further and inspecting the documents."

These documents did come into existence for the purpose of being put before the solicitor, and for the purpose of being used not necessarily in existing litigation, but in anticipated litigation. I think that in these days the British Transport Commission are entitled to say that, whenever a man is fatally injured in the course of his work on the railway line, there is at least a possibility that litigation will ensue. In those circumstances, there is no material on which I can come to the conclusion that there is any ground for challenging the correctness or conclusiveness of the affidavit, and I feel constrained to hold that the claim for privilege has been established, and this appeal must, therefore, be dismissed. (*Seabrook v. British Transport Commission* (1959) 2 All E.R. 15).

OBITUARY

Mr. Patrick J. Kennedy, Solicitor, died on 23rd June, 1959. Mr. Kennedy served his apprenticeship with the late Mr. J. H. Callan, 1 Suffolk Street, Dublin, and was admitted in Hilary Sittings, 1918, and practised as Senior Partner in the firm of P. J. Kennedy & Son, Carrickmacross and Dundalk.

Mr. John K. H. Lloyd-Blood died on 16th July, 1959, at his residence, Glencot, Glencormac, Bray, Co. Wicklow. Mr. Lloyd-Blood served his apprenticeship with the late Mr. Adam Lloyd-Blood, 53 Dame Street, Dublin, was admitted in Easter Sittings, 1934, and practised under the style of Messrs. Wm. Findlater & Co., 53 Dame Street, Dublin.

THE REGISTRY

Register A

Wanted for Solicitor's office in North Leinster, Clerk, experienced in Costs and Probate matters. Young assistant solicitor with such experience might suit. Box No. A181.

Register B

Solicitor (lady) recently qualified. Special certificate, LL.B., B.C.L., requires assistantship in Dublin. Thomas Crozier & Son, Solicitors, 14 Ely Place, Dublin.

NOTICE

The Solicitor's Practice carried on at No. 53 Dame Street, Dublin, by the late Mr. J. K. H. Lloyd-Blood under the name of Wm. Findlater & Co., has been acquired by Mr. Stephen E. Law of Messrs. Malcomson & Law, 60 Dawson Street, Dublin, and has been transferred to Mr. Law's Offices at 60 Dawson Street, Dublin.

REGISTRATION OF TITLE ACTS, 1891 AND 1942

Issue of Duplicate Land Certificate.

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

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

Dated the 21st day of August, 1959.

D. L. McAllister,
Registrar of Titles.

Central Office,
Land Registry,
Chancery Street,
Dublin.

Schedule.

1. Registered Owner, Edmond Fogarty, Folio Number 7339, County Tipperary. Lands of Gortnahaha in the Barony of Eliogarty, containing 15a. 3r. 33p.

2. Registered Owner, John Gilmartin, Folio Number 1774, now Folio 20727, County Sligo. Lands of Mullaghnaneane in the Barony of Carbury containing 5a. or. 20p.

Printed by Cahill & Co. Ltd., Parkgate Printing Works, Dublin.

Vol. 53
No. 4

AUG.-SEPT.
1959

THE GAZETTE

of the

INCORPORATED LAW SOCIETY OF IRELAND

President
JOHN R. HALPIN,

Vice-Presidents
JOHN J. NASH
CORNELIUS J. DALY

Secretary
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

MEETINGS OF THE COUNCIL

JULY 23RD: The President in the Chair. Also present Messrs. Nash, Gaffney, Sheil, Collins, Green, Gilmore, O'Reilly, Walker, Nolan, Lanigan, Taylor Maher, Tyrrell, Kelly, O'Connell, O'Connor, O'Donovan, Cox, Quirke, Daly.

The following was among the business transacted:

Examination Results

A report from the Court of Examiners on the first and second Irish examinations was considered. The results are printed at page 34.

Ambulance Chasing

The Council considered a report from a committee on the desirability of a regulation prohibiting the association of solicitors with ambulance-chasing bodies. Consideration was adjourned.

Free Conveyances, Mortgages and Leases

The Council considered a report from a committee on the subject of the desirability or otherwise of a regulation similar to the regulation in force in Northern Ireland prohibiting solicitors for vendors from offering free or assisted conveyances, mortgages or leases unless certain conditions are fulfilled. Consideration was adjourned.

Advertisement for client

The Council on a report from a committee stated on the facts submitted that there was no objection to the publication by a member over his professional name and address of a certain business matter in which for good reasons the client did not wish his name to appear provided that the form or appearance of the publication did not constitute an advertisement for the solicitor.

Retaining Lien

A member enquired whether he was entitled to a retaining lien in respect of documents of a client on whose behalf he had acted as surety on a promissory note on which liability still remains. The Council on a report from a committee stated that the question was one question of law on which the Society cannot advise but they were of the opinion that there is no retaining lien over documents in such a case unless the promissory note was given to secure costs due to the solicitor.

Insurance Brokers Communicating Direct with Client

On certain facts submitted by a member the Council directed that a letter should be written to a firm of insurance brokers protesting against their action in authorising a representative to call on a claimant against their insured with a view to negotiating a settlement in a case in which a solicitor had already been instructed.

International publication: Signed article by solicitor advertising

Members received a letter from an American publishing company which is preparing an international manual of commercial law. The publishers propose to include an introductory article dealing with the law in various countries in which the manual will be circulated, and members were invited to contribute an article on Ireland with their names appearing in the heading of the article. The publishers stated that in view of the wide publication which would be given thereby to each author and the fact that members would be recommended should any of the subscribers to the bureau require an attorney in Ireland the article should be written without charge. Members enquired whether by so doing they would contravene any of the Society's regulations. The Council directed that members should be informed that the contribution of an article and the publication of members' names on the terms suggested would be in contravention of regulation 5 of the Solicitors Act, 1954 (Professional Practice, Conduct and Discipline) Regulations, 1955, which makes it a professional offence for a solicitor to do in connection with his practice anything which can reasonably be regarded as calculated unfairly to attract business.

Registry of Deeds

The Council have made representations to the Department of Justice in favour of the introduction of legislation modernising the practice of the registry of deeds. The suggested reforms include the discontinuance of the use of parchment for memorials.

This has already been done in Northern Ireland. The Council propose to press this matter as far as possible.

Legal Textbooks

An advertisement appears in this issue of the Gazette inviting proposals from members of both branches of the profession for the publication of textbooks suitable for students. The notice has been sent to the Bar Library, the Court Offices, and University Law Schools and the Council wish to obtain the names of those who would be interested in supplying the manuscript for suitable works either alone or in collaboration. The Council will consider proposals from Court officials for the production of suitable manuals or textbooks on practice. The field to be covered is stated in the advertisement and the matter is still at the explanatory stage. The Council intend to pursue it actively.

AS OTHERS SEE US

A number of members probably listened to a recent broadcast discussion on Radio Eireann in "Saturday Forum" on topic "The Cost of Conveyancing". For the benefit of those who did not, the following summary is given. The discussion took place between a solicitor, a barrister and a chartered accountant, all of whom were anonymous, with a compère in the chair. The solicitor who opened the discussion, which was in the form of questions by the compère and answers from the participants, took as a typical case a sale of a house in Dublin for £2,500. He said that the total cost to the purchaser if the sale were by public auction would be approximately £275, being 5% to the auctioneer, 3% stamp duty and roughly, 3% to the solicitor. On a sale by private treaty the solicitors' fees and stamp duty would be approximately £150 and if a substantial part of the purchase price was raised on the security of a mortgage from a Building Society about £25 additional fees would be payable in respect of the loan. He said that the revenue returns show that about two million pounds is collected annually in the form of stamp duty on the transfer of property. The compère asked whether the lawyers' fees are high in relation to the work performed and it was pointed out by the barrister member that the present commission scale fee is about twice the commission fee fixed in 1880 whereas expenses have risen by about 500%. The chartered accountant took the view that the lawyer's fees are unduly high and that the stamp duties are excessive especially in the case of small property. He suggested a graduated scale of stamp duties and pointed out that in England no stamp duty is charged where property is sold for less than £3,000. He went on to point out that on a sale by private treaty the total legal fees on a sale for £2,500, would amount to £150, being £75 to each solicitor and asked why it is necessary to employ two solicitors. It was pointed out in reply that a conflict of interest may arise either in the preparation of the contract for sale or in the deduction and investigation of title. The barrister member of the panel expressed the view that the fees charged by an auctioneer on a sale by public auction are altogether out of proportion to the value of the services rendered and

went on to compare these fees with the remuneration received by a barrister for the investigation of a difficult title. The chartered accountant was inclined to disagree with the criticism of the auctioneers' fees. The compère summed up this part of the discussion by expressing the opinion that the whole machinery of conveyancing is cumbersome and unduly expensive for a small country. The compère took the view that the auctioneer's fees are too high.

This led to a discussion of the need for reform of the law and practice of conveyancing. The compère posed the question whether we in Ireland are lagging behind in modernisation. The solicitor answered in the affirmative, pointing out that legislation introduced in England in 1925 has very much simplified conveyancing. This led to a discussion on the question of delay. The chartered accountant mentioned that he was personally involved in a sale of property for which the contract was signed in May, 1958. The transaction took almost eight months to complete and he said that if business men carried on their affairs in this way many of them would be in the bankruptcy court. The solicitor stated that the normal time allowed for completion of a sale is one month but that difficulties, either technical or personal to one or other of the clients, often prolong the time. The compère asked whether the difficulties could be overcome by compulsory registration of title in the towns. The chartered accountant said that this is a desirable objective but pointed out the difference between rural and city properties and the difficulty of compiling an adequate register for the latter owing to the vast number of interests which may exist in the same house or building. He was of the opinion that not one but a series of registers would be necessary in respect of different interests. The solicitor said that successive governments have looked at but never tackled this whole question of law reform. Registration of title was desirable but he questioned whether it was within the realm of economic possibility. To be efficient registration of city property would have to be compulsory. This would require a vast expansion of the staff and buildings of the present land registry. The benefits enuring from registration would be enjoyed by future generations but the present owners of the property would get no immediate return for the outlay involved. The machinery of transfer of land or house property cannot be simplified to the point of selling a television set or, even stocks and shares. A considerable degree of simplification could be achieved if universal registration of title were introduced. This could be done if the necessary money and effort were available. It is a question of priority. The solicitor thought that some reduction in the cost of conveyancing might be effected if the law were thoroughly examined with a view to reducing overhead costs. Larger partnerships and specialisation would help to promote this objective. The compère summed up the discussion in his own way by saying that too many people share in a rather large nest egg and stressed the need for simplification and the creation of public opinion on the issues.

It is interesting and salutory to hear the viewpoint of the layman on aspects of legal practice which affect him in his daily life and business affairs. There is little doubt that the grievances so often expressed on the need for law reform and the inordinate delay which appears to be inseparable from many legal transactions are well-founded. They all contribute to the layman's distrust of the law and lawyers and a widespread feeling that something is wrong with the legal system. To many it may appear that the grievances expressed during this radio discussion are only a part of the larger question whether the present organisation of the legal profession and the whole approach to the administration of justice is not a large extent unproductive from the viewpoint of the national economy. If it be so it would be in the interests of the profession and the administration of justice that the move for reform should come from within rather than, as must eventually happen, be imposed from without. (*Contributed.*)

DINNER DANCE

Forms of application for tickets are issued with this number of *The Gazette*. The Dance will be held in the Shelbourne Hotel, Dublin on Thursday, 26th November, the date of the Ordinary General Meeting. Tickets will cost one guinea each.

PROGRAMME OF LECTURES, 1959-1960

COURSE A.—Company Law and Administration of Estates. 50 lectures delivered as follows :— Michaelmas Sittings—18 ; Hilary Sittings—18 ; Easter Sittings—14. Minimum attendance for credit is, Michaelmas—14 ; Hilary—14 ; Easter —10. Lectures each Monday and Thursday at 2.15 o'clock save where otherwise notified. Commencing Monday, 12th October.

COURSE B.—Conveyancing Law and Practice and Land Law, 50 lectures delivered as follows :— Michaelmas Sittings—18 ; Hilary Sittings—18 ; Easter Sittings—14. Minimum attendance for credit is, Michaelmas—14 ; Hilary—14 ; Easter—10. Lectures each Tuesday and Friday at 2.15 o'clock save where otherwise notified. Commencing Tuesday, 13th October.

COURSE C.—The Procedure and Practice of the Courts, 50 lectures delivered as follows:—Michaelmas Sittings—18; Hilary Sittings—18; Easter Sittings—14. Minimum attendance for credit is, Michaelmas—14; Hilary—14; Easter—10. Lectures each Tuesday and Saturday at 9 a.m. save where otherwise notified. Commencing Tuesday, 13th October.

COURSE D.—Taxation including death duties, 50 lectures delivered as follows:—Michaelmas Sittings—18; Hilary Sittings—18; Easter Sittings—14. Minimum attendance for credit is, Michaelmas—14; Hilary—14; Easter—10. Lectures each Monday at 9 a.m. and Saturday at 10 a.m. save where otherwise notified. Commencing Monday, 12th October.

COURSE E.—Book-keeping, 50 lectures delivered as follows:—Michaelmas Sittings—18; Hilary Sittings—18; Easter Sittings—14. Minimum attendance for credit is, Michaelmas—14; Hilary—14; Easter—10. Lectures each Monday and Thursday at 5 o'clock, save where otherwise notified. Commencing Monday, 12th October.

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

For a selection of recommended reading see the published syllabus for the First, Second and Third Law and Final Examinations. The lecturers will not necessarily undertake to cover the entire field in each subject, or lecture out of any particular text book. They will advise the class as to its reading and will assume that each student will have read on the lines advised, in advance of each lecture, on the subject matter of the lecture. The aim of lectures will be to guide students in their work and to illustrate, explain and supplement their reading.

A written examination will be held at the end of each term's lectures.

Fee—8 guineas for each course except course E for which the fee is £6 6s. and course F for which there is no fee.

Apprentices are advised to take the first law examination *before* attending any of the above lecture courses.

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

EXAMINATION RESULTS

At examinations held on the 26th day of June under the Solicitors Act, 1954, the following passed the examinations:—

First Examination in Irish: Brendan P. Byrne; Stuart L. Cosgrave; Michael P. Houlihan; Giles F. Montgomery; Patrick F. O'Donnell.

Second Examination in Irish: Bruce F. Blake; Oliver J. Conlon; Fionbarra F. Dempsey; Adrian F. J. Fitzgerald; Peter F. Houlihan; John O. Lee; Maire McHale; Mary Monica O'Callaghan; Christopher T. N. O'Meara; James G. Orange; Ronald T. Ringrose.

ADMISSIONS AS SOLICITORS

1st August, 1958 to 31st July, 1959.

Name	*Service with*
BOWMAN, MICHAEL J., Kanturk, Co. Cork.	WILLIAM J. LENEHAN, Kanturk, Co. Cork.
BUCKLEY, THOMAS CHRISTOPHER, B.A. Analore, Castle Road, Blackrock, Co. Cork.	TIMOTHY A. BUCKLEY, 52 Grand Parade, Cork.
CAHILL, JAMES E., B.A., Hibernian Bank House, Abbeyleix, Co. Laois.	LEONARD A. DAVIES, Abbeyleix, Co. Laois.
	JOHN G. BOLGER, Portlaoighise, Co. Laois.
CONNELLAN, MICHAEL P. M., Church Street, Longford.	PATRICK J. CONNELLAN, Longford.
	FRANCIS J. GEARTY, Longford.
CROWLEY, TIMOTHY H., Stone House, Stillorgan Road, Dublin.	EAMON J. CROWLEY, 3 Lr. O'Connell Street, Dublin.
CUSACK, THOMAS F., B.C.L., Ballyjamesduff, Co. Cavan.	PATRICK CUSACK, Ballyjamesduff, Co. Cavan.
DEMPSEY, FIONBARRA F., B.C.L. 2 Elm Bank Douglas Road, Cork.	MICHAEL J. C. DEMPSEY, 45 South Mall, Cork.
DUANE, FIONNUALA, B.C.L., LL.B. 23 Eaton Square Monkstown, Co. Dublin.	MICHAEL J. DUNNE, 14 Ely Place, Dublin.
FITZSIMONS, MICHAEL J., B.C.L. 1 Ludlow Street, Navan, Co. Meath.	LAURENCE J. B. STEEN, Navan, Co. Meath.
FOLEY, MARGARET M., Tyrconel, Perrott Avenue, Cork.	MAURICE W. B. O'CONNOR, 62 South Mall, Cork.
GIBBONS, MAIRE NEASA, B.C.L. 16 Dollymount Avenue, Clontarf, Dublin.	JOHN GIBBONS, 8 Trinity Street, Dublin.

Name	*Service with*
GREENSMITH, JILL, 16 Garville Avenue, Rathgar, Dublin.	THOMAS JACKSON, 11 St. Stephen's Green, Dublin.
HOGAN, MICHAEL J., B.C.L. Callan, Co. Kilkenny.	CHRISTOPHER HOGAN, Green Street, Callan, Co. Kilkenny.
HOLMES, GORDON A., B.C.L. 5 Pery Square, Limerick.	JAMES G. LYONS, 98 O'Connell Street, Limerick.
HOOPER, JOHN P. A., B.C.L. 4 Pakenham Road, Monkstown, Co. Dublin.	EDWARD J. MONTGOMERY, 63 Dawson Street, Dublin.
HUSSEY, GILLIAN M., Vailma, 13 Woodbine Avenue, Blackrock, Co. Dublin.	ANTHONY FORREST HUSSEY, 4 Sth. Leinster Street, Dublin.
KIRWAN, VALENTINE J. D., B.A. (Mod.), LL.B., Dalkey Lodge, Barnhill Road, Dalkey, Co. Dublin.	VALENTINE E. KIRWAN, 3/5 Suffolk Street, Dublin.
LANE, THOMAS J. D., B.A. (Mod.), LL.B. The Hut, Howth, Co. Dublin.	FRANCIS DEVINE, 12 Dame Street, Dublin. HARRY MCCRACKEN, 89 St. Stephen's Green, Dublin.
LANG, KELLER TEMPLE JOHN, B.A. (Mod.), LL.B. Lismorna, Stillorgan Road, Donnybrook, Dublin.	DESMOND J. MAYNE, 6 Dawson Street, Dublin.
MACCARTHY, JAMES F., 22 Galtymore Park, Drimnagh, Dublin.	RICHARD J. MCCARTHY, 29 Lr. Abbey Street, Dublin.
MCGILLIGAN, KEVIN C., B.C.L. 58 Lansdowne Road, Dublin.	PATRICK F. O'REILLY and DOROTHEA M. O'REILLY, 8 Sth. Great George's St., Dublin.
MCGOWAN, JOSEPH MURRAY, The Square, Balbriggan, Co. Dublin.	GERRARD L. MCGOWAN, Balbriggan, Co. Dublin.
MACHALE, LIAM, B.A., Kevin Barry Street, Ballina, Co. Mayo.	JOHN MACHALE, Ballina, Co. Mayo.
MACNAMEE, PATRICK, M. A., Glenview House, Glenroe, Kilmallock, Co. Limerick.	WILLIAM A. LEE, Kilmallock, Co. Limerick.
MAGUIRE, NOELLE, Bulloch Castle, Dalkey, Co. Dublin.	EUGENIE HOUSTON, 55 Dame Street, Dublin.
MOCKLER, DOMINIC, B.A., Maryland, Hawkes Road, Bishopstown, Co. Cork.	WILLIAM D. MOCKLER, 59 South Mall, Cork.
MOORE, MICHAEL I. Garr House, Rhode, Co. Offaly.	PETER P. WILKINSON, Naas, Co. Kildare.
MURPHY, CLIVE HUNTER, B.A., LL.B., The Croft, Mount Merrion Avenue, Blackrock, Co. Dublin.	DERMOT MCGILLYCUDDY, 30-31 Kildare Street, Dublin.
NEVILLE, MAURICE A., Main Street, South, Bandon, Co. Cork.	JAMES NEVILLE, Bandon, Co. Cork.
O'BRIEN, PATRICK J., 81 Main Street, Cootehill, Co. Cavan.	LABHRAS C. Ó'RAGHALLAIGH, Cootehill, Co. Cavan.
O'CONNELL, GERTRUDE LOUISE, B.C.L., Alta Villa, Listowel, Co. Kerry.	MICHAEL L. O'CONNELL, Listowel, Co. Kerry.
O'CONNOR, JAMES P. G., 2 Clyde Road, Ballsbridge, Dublin.	JAMES G. O'CONNOR, 9 Clare Street, Dublin. THOMAS H. BACON, 9 Clare Street, Dublin.
O'CONNOR, THOMAS P., Slieve Rua, Lr. Kilmacud Road, Stillorgan, Co. Dublin.	LIAM D. MCGONAGLE, 34 Upper O'Connell Street, Dublin.
O'DONNELL, JOHN M., 37 Oliver Plunkett Street, Mullingar, Co. Westmeath.	GORDON ROSS, Mullingar, Co. Westmeath.
O'REILLY, ANTHONY J., B.C.L., Auburn, Santry, Co. Dublin.	GERARD J. QUINN, 7 Leinster Street, Dublin.
O'SULLIVAN, FRANKLIN J., B.C.L., Lisheen, Kilminchy, Portlaoise, Co. Laois.	PHILIP T. MEAGHER, Portlaoise, Co. Laois.
QUINN, FRANCIS C., Castletown Mount, Dundalk, Co. Louth.	PATRICK QUINN, Dundalk, Co. Louth.
READ, MARY P., B.A., LL.B., H. Dip. in Ed., 31 Raglan Road, Ballsbridge, Dublin.	STEPHEN E. LAW, 60 Dawson Street, Dublin.
SMITHWICK, PETER A., Kilcreene Lodge, Kilkenny.	WALTER A. SMITHWICK, 43 Parliament Street, Kilkenny.
WALSH, GERRARD A., 3 St. Peter's Terrace, Balbriggan, Co. Dublin.	GERRARD L. MCGOWAN, Balbriggan, Co. Dublin.
WALSH, ROSALEEN, B.A., Port-na-Blagh, Co. Donegal.	JOSEPH H. DIXON, 15 Parnell Street, Dublin. MOYA QUINLAN, 15 Parnell Street, Dublin.
YOUNG, WILLIAM A., B.A., LL.B., 25 John Street, Waterford.	FRANCIS W. HUTCHINSON, 21 O'Connell Street, Waterford.

LIST OF NEW MEMBERS FROM

1st August, 1958 to 31st July, 1959.

John Baily, 35 Lower Baggot Street, Dublin.
Susanna Bowler, 2 Lower Ormond Quay, Dublin.
Michael J. Bowman, Kanturk, Co. Cork.
Eileen Bourke, 22 Nassau Street, Dublin.
Richard J. Branigan, Drogheda, Co. Louth.
Brian J. Claffey, Longford.
Norbert P. Colbert, Ballinasloe, Co. Galway.
Patrick M. Cooney, Athlone, Co. Westmeath.
Timothy H. Crowley, 42/3 St. Stephen's Green, Dublin.
Michael P. Donnelly, Tullow, Co. Carlow.
Francis X. Downes, 16 Molesworth Street, Dublin.
Charles F. C. Downing, Killarney, Co. Kerry.
Patrick Fagan, 20 Wicklow Street, Dublin.
John C. Farrell, 13/16 Fleet Street, Dublin.
Eithne Flanagan, Sligo.
Margaret M. Foley, 62 South Mall, Cork.
Patrick J. Gardiner, 29 Clare Street, Dublin.
Niall Gibbons, 8 Trinity Street, Dublin.
Jill Greensmith, 13 Hume Street, Dublin.
Gillian M. Hussey, 11 Wellington Quay, Dublin.
Valentine J. D. Kirwan, 3/5 Suffolk Street, Dublin.
Henry Lafferty, 25 Eden Quay, Dublin.
John K. Temple Lang, 46 Kildare Street, Dublin.
Desmond McAllister, Land Registry, Four Courts, Dublin.
Liam MacHale, Ballina, Co. Mayo.
Patrick M. MacNamee, 51 Dawson Street, Dublin.
Martin E. Marren, 6 Marlborough Street, Dublin.
James K. Martin, Drogheda, Co. Louth.
Timothy Murphy, Tralee, Co. Kerry.
John D. Nugent, 8 Merrion Square, Dublin.
Michael A. Noonan, Rathkeale, Co. Limerick.
Patrick J. O'Brien, Monaghan.
Michael B. O'Cleirigh, 11/12 St. Andrew Street, Dublin.
William A. P. O'Connor, Killarney, Co. Kerry.
John M. O'Donnell, Kilkenny.
Albert C. O'Dwyer, Cahir, Co. Tipperary.
Franklin J. O'Sullivan, 8 Clare Street, Dublin.
James Rowlette, Sligo.
John E. Russell, 35 Grand Parade, Cork.
Richard Ryan, 31 Dame Street, Dublin.
Joseph D. Simon, Galway.
Andrew F. Smyth, 43 Mary Street, Dublin.
James N. Tanham, 2 Inns Quay, Dublin.
Desmond P. Windle, Galway.
William A. Young, 8 South Great George's Street, Dublin.

SOLICITORS' GOLFING SOCIETY

SUMMER MEETING AT COUNTY LOUTH CLUB, BALTRAY

On 27th June, 1959

CAPTAIN'S (L. K. BRANIGAN) PRIZE DAY

LIST OF PRIZE-WINNERS

1. Golfing Society's Challenge Cup and Captain's Prize :—
   Winner : T. F. McKeever (12) 3 Up (2nd Nine).
   Runner-up Prize : G. M. Doyle (17) 3 Up.

2. Veterans Challenge Cup and Prize :—
   Winner : A. J. Malone (13) 3 Up.
   Runner-up Prize : Basil Doyle (9) 2 Up.

3. St. Patrick's Plate and Prize :—
   Winner : William Menton (12) 2 Up (on 2nd Nine).
   Runner-up Prize : William A. Tormey (9) 2 Up.

4. Best Score—1st Nine Holes :—
   Winner : Eamon English (12) 2 Up on last 6.

5. Best Score—2nd Nine Holes :—
   Winner : John Farrell (9) 3 Up.

6. Best Score by Competitor Resident more than 30 miles from Baltray :—
   Winner : R. B. McConnell (14) 2 Up.

7. Best Score of Three Cards drawn by Lot :—
   Winner : A. O'Donnell.
   Other Prizes : R. W. White and P. L. Tracey.

DECISIONS OF PROFESSIONAL INTEREST

Society incorporated by royal charter. Construction of bye-laws.

A Society incorporated by royal charter had power by a supplemental charter to amend the charters (subject to the approval of Her Majesty in Council) by a special resolution passed by a three-fourths majority of the fellows present at a meeting and entitled to vote at the meeting. Under the bye-laws, a new bye-law could be made " if the majority of fellows entitled to vote " should vote in its favour. Did this mean a majority of all the fellows, or a majority of the fellows present at the meeting ?

The Court of Appeal (Lord Evershed, M.R., Romer and Pearce, L.JJ.), reversing the decision of Vaisey, J., held that the words meant a majority of fellows present at the meeting and entitled to vote thereat. This was a possible construction of the

words in their context, and one which should in the circumstances be adopted to avoid inconvenience and inconsistency with the charters. (Knowles *v.* Zoological Society of London—(1959) 2 All E.R. 595).

Defamatory statements made before a Disciplinary Committee are absolutely privileged.

For the purposes of privilege against liability for defamation in respect of statements made on a privileged occasion, proceedings before the Disciplinary Committee constituted under s. 46 of the Solicitors Act, 1957, are judicial in character, and the privilege attaching to the publication of the findings and order of the committee is absolute privilege.

Per Gorman, J.,—In the course of the case of "Royal Aquarium & Winter Garden Society *v.* Parkinson, (L. R. (1892) 1 Q.B. 431) the principles governing the position of courts or tribunals which are concerned with matters of the kind with which I am now concerned were set out, and Lord Esher, M.R., said ((1892) 1 Q.B. at p. 442):

"It was argued, in the first place, on behalf of the defendant, that he was exercising a judicial function when he spoke the words complained of, and therefore was entitled to absolute immunity in respect of anything he said. It is true that, in respect of statements made in the course of proceedings before a court of justice, whether by judge, or counsel, or witnesses, there is an absolute immunity from liability to an action. The ground of that rule is public policy. It is applicable to all kinds of courts of justice; but the doctrine has been carried further; and it seems that this immunity applies wherever there is an authorised inquiry which, though not before a court of justice, is before a tribunal which has similar attributes."

Based on those authorities, it was the submission of the defendants that the Disciplinary Committee was not an administrative tribunal; that this was an authorised inquiry which was by nature a judicial inquiry; that, as such, the committee was not merely performing administrative functions, and that it was right that the findings of the Committee should be subject to absolute privilege. I do not intend to go through all the references made by counsel for the defendants to the various sections of the Solicitors Act, 1957, and to the rules; I have them in my mind. Having regard particularly to the fact that the plaintiff conducted his case alone, I shall quite shortly set out his submissions on the sections of the Act of 1957 and the various rules which were made under the Act.

The following were the submissions made by the plaintiff. While accepting that the principles to be applied were those laid down in the authorities to which the Court had referred, the plaintiff submitted that to come within those principles the committee must be a tribunal which was equivalent to a court of law, that is, a tribunal which acted in a manner similar to a court of law and which had similar attributes to those of a court of law. On consideration of the matters dealt with by the authorities, the committee was not a tribunal to which the protection of absolute privilege should attach. In particular, by r. 21 of the Solicitors (Disciplinary Proceedings) Rules, 1957, the committee must hear all application in private. In judicial tribunals the judge was independent and took an oath; but the members of the committee were not independent of the Law Society, nor did they take an oath. The test whether the proceedings were judicial was the rule which forbade tribunals to have self-interest, but the committee, as solicitors, had an interest in the proceedings before them. In view of the Supreme Court's jurisdiction over solicitors, proceedings before the committee should be treated as administrative proceedings. He said that it was a fundamental principle of justice that a person should be allowed to reply to allegations, but that his application to give evidence before the committee was refused. He commented on the fact that the committee had no power to issue a writ of subpoena, and referred to r. 27, r. 29, r. 30, r. 31 and r. 34 which latter rule expressly applied the Evidence Act, 1938, and the Evidence and Powers of Attorney Act, 1940, to proceedings before the committee. He contended that, in substance, the committee was a domestic disciplinary court, similar to that of a club, and that the word "court" was nowhere used to refer to the committee.

Summarising his case, the plaintiff contended that, at the highest, the committee was an administrative tribunal, administering in private discipline over solicitors, with powers which were limited to imposing fines, striking off, or suspending, solicitors from the roll; the committee had no power to imprison.

His Lordship continued:—I do not propose to go through the plaintiff's other submissions; I have them all in my mind.

Bearing in mind the fact that the onus is on the defendants, I have to decide which of these contentions is right.

I have no doubt at all, having thought over the matter carefully, and having considered the authorities and the submissions, that the submissions made to me by the defendants are right. The publication of the words complained of in para. 5 of the

statement of claim was absolutely privileged, and the publication was made under the provisions and in accordance with the authority of the Solicitors Act, 1957, and the Solicitors (Disciplinary Proceedings) Rules, 1957. (Addis *v.* Crocker—(1959) 2 All E.R. 773.)

Search fee. Solicitors to pay damages for witholding deeds.

"A solicitor agreed at Boston County Court yesterday that there was no legal right to retain a client's deeds until a fee of two guineas was paid. 'It is the practice of solicitors, but apparently it is not the law,' he said. The solicitors were sued by Mr. J. G. Marshall, of Old Leake, Lincolnshire, for the return of the deeds of his farm and £5 damages for their retention. He was awarded £2 damages and costs.

The solicitors were said to have told Mr. Marshall that he could have the deeds back on payment of the fee of two guineas. Mr. Edwin F. Jowitt (for Mr. Marshall) told Judge R. S. Shove that the deeds in question were in fact returned two days ago.

Judge Shove: 'What right had they to retain the deeds after the costs of the conveyance had been paid?'

Mr. Jowitt: 'None, your honour.'"

(*Manchester Guardian*, 14th August, 1959.)

Privilege not allowed on a ground that document might furnish evidence to party's solicitor; Court entitled to adjudicate.

In March, 1955, shortly after an accident in respect of which the plaintiff brought this action for damages from the British Transport Commission, his employer, the commission held a private inquiry into the cause of the accident, in which the plaintiff took part. At the time of the inquiry, the commission did not know that the plaintiff intended to bring the action and first became aware of this from a letter dated July 5, 1955. The writ commencing the action was issued by the plaintiff on February 29, 1956. In a list of documents filed by the commission, the commission claimed privilege from production for inspection in respect of documents set out in the first schedule to the list, which included the report of the private inquiry, on the ground that the documents came into existence "wholly or mainly for the purpose of obtaining for and furnishing to the solicitor of the (commission) evidence and information for the use of the said solicitor" to enable him to conduct the defence or to advise the commission. Subsequently the commission filed an affidavit in which privilege was claimed on the ground that the documents came into existence "for the purposes, *inter alia*, of obtaining for and furnishing evidence or information to the solicitor . . ." The report stated that at the inquiry it was explained to the plaintiff that the purpose was to ascertain the cause of the accident with a view to safeguarding against future accidents, rather than to establish guilt. On appeal from the order of a master requiring the commission to produce the report for inspection by the plaintiff.

Held by Diplock J. that:—(i) the claim of privilege was not established by the ground put forward in the affidavit, viz., that the documents including the report were made for the purposes *inter alia* of furnishing evidence or information to the solicitor, without stating that that was the main purpose, since privilege was not established by the mere fact that one of the purposes of a document, however improbable, might be to furnish evidence to the party's solicitor; accordingly the court was entitled to and would look at the report itself.

Per Diplock J.: in the Seabrook Case the affidavit claimed that the reports of which inspection was sought had been made by the defendants or their officers "after this litigation was in contemplation and in view of such litigation wholly or mainly for the purposes of obtaining for and furnishing to the solicitor of the defendants evidence and information," etc.

Havers, J., adjourned the matter into open court to deliver his judgment, of which I have a shorthand note, in which he considered in detail many of the authorities in the long string of authorities on this subject dating from some ninety odd years ago, and the decision is a valuable authority on this branch of the law of procedure. Although I am not bound by the judgment of another judge of *nisi prius* I have no hesitation in saying that I agree with every word that Havers J. said in his judgment.

That does not dispose of this case, because in that case there was an affidavit, which Havers J. accepted, that the documents were prepared wholly or mainly for the purpose of being furnished to the solicitor. In this case there is no such claim on affidavit and indeed there was a change from that claim, which was made in the list of documents, to a claim that the reports were prepared *inter alia* for the appropriate purpose.

When I looked at the affidavit, and saw the description of "correspondence between and reports made by the defendants' officers and servants and correspondence between the defendants and their solicitor which came into existence after this claim was anticipated and for the purposes, *inter alia*, of obtaining and furnishing to the solicitor of the defendants evidence and information" it seemed to me that the description "Correspondence between and reports made" was too wide to assist me to say whether the nature of the documents was such

that a sufficiently substantial purpose would be that of showing to the solicitor. The actual document of which inspection is sought is described as "The report of the private inquiry held by the defendants shortly after March 19, 1955 . . . including statements of witnesses made in and for the said inquiry." I must say that the nature of the document very nearly persuaded me that it was such that it was likely to fall within privilege without the necessity for my looking at it. But I decided in my discretion that I ought to look at it, because there may be different reasons for an inquiry to be made after an accident, and accordingly it was produced. It is the report of "a court of inquiry set up to investigate the circumstances of an accident to R. S. Longthorn (the plaintiff), Capstanman, Aston Goods Station, Jan. 21, 1955." After two preliminary paragraphs it goes on as follows:

"It was then explained to the injured man the purpose of the inquiry, that it was not so much convened to establish guilt or attach blame to either himself or any other person who may have been concerned but rather to ascertain the cause of the accident with a view to safeguarding against any possible similar happening in the future. Longthorn's cooperation was invited to this end, this being willingly promised by him."

On the face of this document it shows that the purpose of the inquiry was not for the purpose of furnishing evidence to the solicitor, and I read it as an express disclaimer by the chairman of the inquiry that that was its purpose. Whether they had at the back of their minds that it could be furnished to the solicitors at that time I do not know. I hope not, because if they had it seems to me a most deceptive way of describing the purpose of an inquiry at which the plaintiff was being asked to give evidence how the accident happened in order to protect his workmates in the future.

I hold, therefore, that on the facts of this case neither this document nor any part of it is privileged, because the inquiry was not to any appreciable extent for the purpose of obtaining for or furnishing to the solicitor to the commission evidence and information as to the evidence which will be obtained.

I would add one other matter. If I am wrong as to that it seems to me that the plaintiff was misled into giving the evidence that he did, and I would hold even if I were wrong on the main ground of my decision, that the commission was estopped from claiming privilege in respect of that part of the document which contains the plaintiff's evidence. This appeal is dismissed with costs. (*Longthorn v. British Transport Commission* (1959) 2 All E.R. 32).

THE REGISTRY

Register B

SOLICITOR presently in practice seeks partnership in well-established firm preferably Leinster. Replies in strict confidence to Box B.240.

SOLICITOR with 10 years' experience seeks assistantship with view to partnership. Box B.241.

LADY SOLICITOR at present disengaged, with experience of general office work including Probate and Conveyancing and Wards of Court practice, seeks position as Assistant Solicitor. Box. No. B.242.

APPOINTMENT

Mr. Gerard O'Donnell, Solicitor, Clonmel, has been appointed County Registrar for Galway with effect from 1st September, 1959.

OBITUARY

Mr. John Macken, Solicitor, died on the 18th August, 1959 at Petitswood House, Mullingar, Co. Westmeath. Mr. Macken served his apprenticeship with the late Mr. John J. Macken, Mullingar, was admitted in Michaelmas Sittings 1934 and practised in Mullingar, Co. Westmeath.

REGISTRATION OF TITLE ACTS, 1891 AND 1942

Issue of Duplicate Land Certificates

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

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

Dated the 28th day of September, 1959.

D. L. MCALLISTER,
Registrar of Titles.

Central Office,
Land Registry,
Chancery Street,
DUBLIN.

SCHEDULE.

1. Registered Owner, Patrick Connor. Folio number, 7250. County Cork. Lands of Carhoo in the Barony of Ibane and Barryroe containing 30 a. 1 r. 32½ p.

2. Registered Owner, Hector James Toler-Aylward. Folio number, 4190. County Kilkenny. Lands of Kellymount in the Barony of Gowran containing 1a. 2r. 14p.

3. Registered Owner, Jeremiah McSweeney. Folio number, 33865. County Cork. Lands of Boolypatrick in the Barony of Muskerry East containing 33a. —r. 39p.

4. Registered Owner, Peter Kenny. Folio number, 10723 (Lands No. 2 formerly in Folio 2226). County Kildare. Lands of Clane in the Barony of Clane containing 3a. —r. 27p.

5. Registered Owners, Patrick Egan and Michael Christopher Egan. Folio numbers, 525R and 1460. County Cork. Lands of Ballinvarrig Lower and Kilnatoora containing 73a. 0 r. 30 p. and 0 a. 0 r. 35p. respectively comprised in said Folio 525 (Revised) and Lands of Kilnatoora and Ballinvarrig containing 2a. 3r. 34p. and 114a. 3r. 15p. respectively comprised in said Folio 1460, all situate in the Barony of Imokilly and County of Cork.

6. Registered Owner, William Keefe. Folio number, 6036. County Kilkenny. Lands of Kill in the Barony of Fassadinin containing 31 a. 0 r. 32 p.

INDEX TO STATUTORY INSTRUMENTS

published since February, 1959

AGRICULTURE, LANDS AND FISHERIES

SUBJECT MATTER AND REFERENCE NUMBERS

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Bovine Tuberculosis—Movement of Cattle not permitted in Counties Cavan and Monaghan save under licence after 20 July, 1959—116/1959.
Bovine Tuberculosis—Counties Cavan and Monaghan declared a clearance area after 20 July, 1959—117/1959.
Bovine Tuberculosis—Control of public sale of cattle imposed for compulsory tests in Counties Clare, Donegal, Galway, Leitrim, Mayo, Roscommon and Sligo after 1 September, 1959—110/1959.
Bovine Tuberculosis (Fourteen Day Test) (Amendment) Order 1959—103/1959.
Bovine Tuberculosis (Control of Certain Private Tests) Order 1959—102/1959.
Cathaleen Falls Weir, Ballyshannon, Co. Donegal—E.S.B. may operate it without a free gap—88/1959.
Committees of Agriculture—Allowances payable to members for attendance at committees—110/1959.
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River Erne, Co. Donegal—Times, places and conditions for the use of draft nets in the tidal waters of the Erne—90/1959.
River Erne, Co. Donegal—Special Local Licences for fishing salmon may no longer be paid in instalments, but must be paid in full—91/1959.
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Road Vehicles (Index Marks) (Amendment) Regulations 1959—107/1959—136/1959.

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Road Vehicles—New Index Marks for Dublin Corporation and Dublin County Council—107/1959.

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Traffic Signs (Amendment) Regulations 1959 to indicate new pedestrian crossings—57/1959.

TEXT BOOKS FOR LAW STUDENTS

The Publications Committee of the Society are considering a project for the publication at the Society's expense of handbooks, manuals and textbooks for law students. The project at present is at the exploratory stage, but as far as can be seen the field to be covered is as follows :—

1. The Practice and Procedure of the Court and the Circuit Court.
2. Registration of Title.
3. Registration of Deeds.
4. Probate and Executorship Law and Practice.
5. The Law of Landlord and Tenant.

The Committee would consider proposals from barristers, solicitors, and court officials for the writing and publication of works suitable for students on any of the above mentioned subjects either alone or in collaboration. Those interested should communicate with the undersigned.

ERIC A. PLUNKETT,
Secretary,
The Incorporated Law Society of Ireland.

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Vol. 53
No. 5

OCT.-NOV.
1959

THE GAZETTE

of the

INCORPORATED LAW SOCIETY OF IRELAND

President
JOHN R. HALPIN,

Vice-Presidents
JOHN J. NASH
CORNELIUS J. DALY

Secretary
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

VACANCY FOR LAW LECTURER AND SPECIAL EXAMINER

THE Council invite applications from practising barristers and solicitors for the post of lecturer on the practice and procedure of the courts and special examiner in certain subjects for the second and third law examinations. Copies of the terms and conditions of appointment may be obtained from the Secretary, the Incorporated Law Society of Ireland, Solicitors' Buildings, Four Courts, Dublin.

MEETINGS OF THE COUNCIL

SEPTEMBER 24TH: The President in the Chair. Also present, Messrs. J. J. O'Connor, J. R. Green, G. G. Overend, D. M. Martin, D. B. Gilmore, R. J. Walker, J. R. Quirke, F. J. Lanigan, John Kelly, P. E. O'Connell, R. McD. Taylor, T. de V. White, W. J. Comerford, John Maher, Eunan McCarron, John Carrigan, J. J. Nash, N. S. Gaffney, D. J. Collins, G. A. Nolan, John Sheil, Arthur Cox, Patrick Noonan and D. P. Shaw.

The following was among the business transacted:

TEXTBOOKS FOR LAW STUDENTS

THE Publications Committee of the Society are considering a project for the publication at the Society's expense of handbooks, manuals and textbooks for law students. The project at present is at the exploratory stage, but as far as can be seen the field to be covered is as follows:—

1. The practice and procedure of the High Court and the Circuit Court.
2. Registration of Title.
3. Registration of deeds.
4. Probate and executorship law and practice.
5. The law of landlord and tenant.

The Committee will consider proposals from barristers, solicitors and court officials for the writing and publication of works suitable for students on any of the above mentioned subjects either alone or in collaboration. Those interested should communicate with the Secretary.

Accountant General's office, closing during long vacation

A deputation was appointed to seek an interview with the President of the High Court with a view

to ascertaining whether arrangements can be made to enable drafts in pursuance of payments schedules to be issued by the Accountant General of the High Court during the long vacation.

Delivery of pleadings during the long vacation

The Council having considered a report in this matter decided to amend the direction given at their meeting on July 2nd (*Gazette*, July 1959, page 23) and in lieu thereof the Society's representatives on the Superior Courts Rules Committee were requested to ask the committee to make a new rule which will enable pleadings to be delivered and filed during the long vacation where all parties to the proceedings consent.

Auctioneers preparing contract for sale of property

It was decided that representations should be made to the Irish Auctioneers and Estate Agents Association pointing out that it is contrary to the provisions of the Solicitors Act 1954 for unqualified persons to draw up contracts for sale of property for or in expectation of fee or reward and pointing out that the Council are aware of cases in which auctioneers and house agents have contravened this provision. The Association are to be asked to state whether any steps can be taken to prevent or discourage the practice.

OCTOBER 8TH: The President in the Chair. Also present, Messrs. N. S. Gaffney, John Kelly, R. J. Walker, J. R. Green, G. G. Overend, John Maher, F. J. Lanigan, P. E. O'Connell, Eunan McCarron, Patrick Noonan, D. M. Martin, Reginald J. Nolan, T. A. O'Reilly, D. P. Shaw, J. J. Sheil, George A. Nolan, John Carrigan, John J. Nash. J. P. Tyrrell, D. B. Gilmore, J. J. O'Connor and R. Mc D. Taylor.

The following was among the business transacted:

Petroleum and other Minerals Development Bill, 1959

The Council considered a report on the bill and it was decided to invite the Bar Council to send a joint deputation to the Minister for Industry and Commerce on certain objectionable provisions therein.

Professional undertakings

On a case submitted for their opinion the Council stated that as between the parties a solicitor who gave an undertaking to lodge title deeds on behalf of a client with the client's bankers on the completion of a purchase was bound to carry out the undertaking although no provision was made for his costs. The undertaking was unconditional and was silent on the question of provision for member's costs.

Lecture by solicitor on legal subject

A member enquired whether there would be any professional objection to his delivering a lecture on a legal topic by invitation to a voluntary association. The Council referred to the statement printed in the Society's Gazette, April 1944, as follows:—

> Any activity on the part of a solicitor of a self advertising nature designed to attract business is clearly not permissible. Lectures delivered or articles published by a solicitor contrary to this principle therefore necessarily involve a breach of professional etiquette.

The Council stated that on the facts submitted in the present case there is no professional objection to the delivery by member of the lecture mentioned provided that it is not published in connection with his name.

OCTOBER 29TH: The President in the Chair. Also present, Messrs. John Carrigan, N. S. Gaffney, P. O'Donnell, George A. Nolan, J. J. Sheil, F. J. Lanigan, G. G. Overend, W. Dillon-Leetch, J. J. O'Connor, D. M. Martin, Reginald J. Nolan, D. B. Gilmore, C. J. Downing, John Kelly, John Maher, Patrick Noonan, E. McCarron, P. E. O'Connell, J. R. Green, T. G. Quirke, T. de V. White, W. J. Comerford, C. G. Daly, Arthur Cox, J. P. Tyrrell, R. J. Walker, Edward Treacy, J. J. Nash and D. J. Mayne.

The following was among the business transacted:

Ambulance Chasing

The Council considered a report from a committee submitting draft regulations dealing with the association of solicitors with ambulance chasing bodies. Draft regulations are printed at page 45 of this issue and the Council will be obliged if any member with views thereon will communicate with the Secretary.

Land Commission Costs

The President reported that, accompanied by the Secretary, he had been received by the Minister for Lands, who had informed the Society's representatives that he was willing to make new regulations increasing solicitors' fees and charges under the Land Commission Provisional Rules, 1924, by an amount equal to 50% calculated on the present item charges.

AMBULANCE CHASING

THE Council propose to make the following regulations under section 71 of the Solicitors Act, 1954, prohibiting association between solicitors and ambulance chasers. Any observations received from members will be considered before the regulations are made.

(1) A solicitor shall not join or act in association with any organisation or person whose business or any part of whose business is to make, support or prosecute, whether by action or otherwise and whether by a solicitor or agent or otherwise, any claim arising as a result of death or personal injury or damage to property, at common law or under any statute, nor shall a solicitor act in respect of any such claim for any client introduced to him by any such organisation or person.

(2) A solicitor shall not with regard to any such claim as is mentioned in paragraph (1) of this regulation knowingly act for any client introduced or referred to him by any organisation or person whose connection with such client arises from solicitation in respect of the cause of any such claim.

(3) A solicitor shall not permit to be done on his behalf by any person in connection with his practice anything which if done by the solicitor himself would be a breach of this regulation and it shall be the duty of a solicitor before accepting instructions in respect of any such claim to make reasonable enquiries for the purpose of ascertaining whether the acceptance of such instructions would be in contravention of this regulation.

PROBATE PRACTICE

THE rules of the High Court and Supreme Court, 1959 (S.I. 139/1959) are now on sale at the Government Publication Sales Office, G.P.O. Arcade, Dublin, Price 2/-. The Rules make provision for procedure in the Probate Office and prescribe new forms of administration bonds in certain cases.

LAND REGISTRATION FEES ORDER 1959

(S.I. 157 of 1959)

THE above order came into operation on the 30th September, 1959, and revokes the previous Land Registration Fees Orders of 1944 and 1954. The fee in respect of any transmission on death to a person beneficially entitled of the property of a person dying before the 1st June 1959 is unchanged.

SOLICITORS AND AUCTIONEERS

REPRESENTATIONS were received from the Irish Auctioneers and Estate Agents' Association on the subject of the making of valuations by solicitors for probate purposes. The Association consider that this is within the province of auctioneers and valuers and that solicitors should not perform this work. The Council in reply to the Association stated that valuers are almost always employed and that solicitors seldom make the valuation themselves. There is of course no statutory provision which would prevent them from doing so and obviously the client is entitled if he wishes to make his own valuation without reference to anybody else and the solicitor could not legally or properly prevent him from so doing. Whether such a valuation will be accepted is a matter for the Revenue Commissioners. While the Council have no power to prevent solicitors or their clients from acting in accordance with the existing state of the law they wish to inform members of the Society that the making of valuations of real or leasehold property for death duty purposes is not a normal function of a solicitor and that in the opinion of the Council, solicitors should not normally accept responsibility for this work.

The Council have made representations to the Irish Auctioneers and Estate Agents' Association on the subject of the preparation by auctioneers and estate agents of open contracts for the sale of property.

MEDICO—LEGAL SOCIETY

THE first meeting of the Medico-Legal Society was held in the Royal Hibernian Hotel, Dublin, on Thursday, 29th October, 1959, at 8 p.m., when Mr. Sean MacBride, S.C., read a paper on "The doctrine of diminished responsibility in murder cases." Mr. MacBride traced the history of this doctrine in Scotland, where it applies to all criminal cases, and strongly criticised the narrow construction given by the English Court of Criminal Appeal since the passing of the Homicide Act, 1957; he showed that mental instability completely exonerated the criminal from punishment arising from crime in Belgium and Denmark. Mr. MacBride's paper gave rise to a spirited discussion in which Judge Deale, Mr. Joseph McCarthy, and Dr. McLoughlin took part.

The next meeting of the Society will be held on Thursday, 3rd December, 1959, in No. 10 Fitzwilliam Place, Dublin, when the Hon. Mr. Justice Cecil Lavery will read a paper on "The Burroughs and Welcome Case." (This unreported case deals with the death of a child arising from inoculation in Ring, Co. Waterford.)

The following papers will be read in the Royal Hibernian Hotel at the following meetings:—

Thursday, 28th January, 1960—Judge Kenneth Deale on "Our Sluggish Law."

Thursday, 25th February, 1960—To be arranged.

Thursday, 24th March, 1960—Dr. Keith Simpson, Pathologist to the Home Office in London, on "The Doctor's Part in Criminal Investigation."

Full details as to membership may be obtained from the Hon. Secretary, 4 Chancery Place, Dublin.

SOLICITORS' GOLFING SOCIETY

AUTUMN MEETING AT ROYAL DUBLIN GOLF CLUB, DOLLYMOUNT

Thursday, 1st October, 1959.

RESULT SHEET

I.L.S. Challenge Cup (with Prize presented by the President)—Winner: A. O'Donnell (10) 38 pts.

Prize for Runner-up (presented by the Golfing Society)—Winner: M. S. Matthews (11) 34 pts.

The Ryan Challenge Cup (with Prize presented by the Golfing Society)—Winner: S. Shaw (18) 34 pts.

Prize for Runner-up—Winner: T. A. O'Reilly (18) 34 pts.

Best Score (1st Nine Holes)—Winner: John Maher (10).

Best Score (2nd Nine Holes)—Winner: G. Crawford (13).

OTHER PRIZES—D. P. Shaw, E. Dillon, D. Buchalter, M. E. Hanahoe, B. Donnelly.

CO. MEATH SOLICITORS' ASSOCIATION

THE Annual General Meeting of the above Association was held on the 30th October, 1959. The following officers were elected: President, Mr. N. Lacy; Secretary and Treasurer, Mrs. E. Leahy; Committee—Messrs. F. O'Reilly, L. Noonan, W. O. Armstrong, Barry Steen, W. Carroll, A. Donnelly; Provincial Delegate, Mr. P. Noonan.

DUBLIN SOLICITORS' BAR ASSOCIATION

THE Annual General Meeting of the Association was held on Wednesday, 7th October, 1959.

Present: The President, Mr. Leslie Kearon in the Chair, and Messrs. Charles Hyland, George A. Williams, Richard Knight, Desmond Moran, Alfred E. Ashton, G. S. O'Rourke, James J. O'Connor, Rory O'Connor, S. Millington, John A. G. Cullen, Victor Wolfe, Edmond O. Sheil, E. J. Margetson, J. F. V. Arnold, John Maher, Kevin Burke, Frank R. Tully, J. B. McGarry, T. J. Kirwan, J. M. Farrelly, E. McCarron, B. T. Walsh, E. W. Proud, D. B. O'Sullivan, P. J. Walsh, E. H. Byrne, F. A. Gibney, Charles P. Forde and Ralph J. Walker.

The reports of the Honorary Secretary and Honorary Treasurer were adopted. The latter remarked on the strengthened financial position and pointed out that the membership of the Association now exceeded 300.

The following Officers and Council were elected, namely: President, Eunan McCarron; Vice-President, Rory O'Connor; Honorary Secretary, Charles Hyland; Honorary Treasurer, Edmond O. Sheil; Honorary Auditors, P. Glynn and E. Crowley. Council: Messrs. Victor Wolfe, J. A. G. Cullen, J. M. Farrelly, E. Byrne, S. Millington, K. Burke, E. J. Margetson, R. Knight, George A. Williams.

In the course of the meeting the President referred to the importance of observing the terms of accountable receipts for documents. Mr. McGarry urged that more pains be taken as to attire in Court especially if gowns were not available.

Certain matters were referred to the incoming Council.

A Meeting of the Council was held on Wednesday, 14th October, 1959. Messrs. Knight and Williams were welcomed as new members of the Council. The following sub-committees were appointed:—

1. Court areas—Messrs. McGarry, Byrne and Farrelly.

2. Circuit and District Courts—Messrs. Byrne, Wolfe and Knight.

3. Emergency—The President, the Vice-President and the Hon. Secretary.

4. Dinner—The Vice-President, the Hon. Treasurer and Mr. McGarry.

Certain matters referred by the Law Society were considered and dealt with; as were an application for permission to use the Association's form of contract for sale, and recent appointments of District Court Summons Servers.

The attention of members is drawn to the Association's form of administration of estates reminders which solicitors generally should find very useful and which may be obtained from Messrs. Donaldson, Celbridge, at 6/- per doz.

Other matters having been dealt with, the next meeting was fixed for Wednesday, 4th November, 1959.

A Meeting of the Council was held on Wednesday, 4th November, 1959.

A resolution of sympathy was passed to the widow of the late Mr. Justice Dixon whose personal and professional qualities had been so highly esteemed.

The meeting noted with interest the use of a typewriter in the Metropolitan District Court for the taking of depositions, this being an innovation which it had suggested some years ago. The Honorary Treasurer reported on the position of

membership and subscriptions. Arrangements for the annual dinner to be held on 12th December next were discussed and the next meeting was fixed for Wednesday, 2nd December, 1959.

SOLICITORS' APPRENTICES' DEBATING SOCIETY OF IRELAND

THE following are the names of the officers and committee for the session 1959-60 :—

Auditor, M. J. Hogan; Treasurer, J. J. Dennison; Correspondence Secretary, Miss M. G. Hanna; Record Secretary, D. Bouchier-Hayes; Committee, J. N. M. Lavelle, Miss H. M. Kirwan, Miss M. Timoney.

The following are the awards for the session 1958-59 :—

Oratory : Incorporated Law Society's Gold Medal, Michael J. Hogan; Society's Silver Medal, John B. M. Doyle; Society's Special Certificate, Denis Murnaghan.

Legal Debate : President's Gold Medal, Dermot Bouchier-Hayes; Society's Silver Medal, Maire Berkery.

Impromptu Speeches : Vice-Presidents' Gold Medal, Dermot Bouchier-Hayes; Vice-Presidents' Silver Medal, Grace Hanna.

Irish Debates : Society's Gold Medal, Richard R. Pierse; Society's Silver Medal, James J. Dennison.

First-Year Speakers : Society's Silver Medal, John N. M. Lavelle.

Auditorial Replica : Ex-Auditor, Richard M. Neville.

EXAMINATION RESULTS

AT examinations held on 18th day of September under the Solicitors Act, 1954, the following passed :

Irish Examinations

First Examination in Irish : Brian A. Carroll, Colm J. Doyle, James N. Dudley, Francis P. Gleeson, Patrick T. Liston, Bryan M. E. McMahon, Thomas G. Neville, William F. O'Driscoll, Michael V. J. O'Mahony, Niall O'Neill, John R. Sweeney, James G. Tynan, Edmond M. Veale.

15 Candidates attended; 13 passed.

Second Examination in Irish : Michael J. P. Allen, Michael E. Binchy, Patrick J. Farrell, Patrick J. J. MacGrath, William J. McGuire, John C. O'Donnell.

6 Candidates attended; 6 passed.

Book-Keeping Examination

At the Book-keeping Examination for apprentices to Solicitors held on the 4th day of September, the following passed the examination : Colin A. Chapman, Patrick J. Madigan, Peter J. McMahon, Thomas F. O'Connell, John A. O'Dwyer, Donald M. Pratt, Diarmuid P. Teevan.

10 Candidates attended; 7 passed.

First Law

At the First Law Examination for apprentices to Solicitors held on the 1st and 2nd days of September, the following passed the examination :

Passed with Merit : 1.—Maire Nic Shiomoin; 2.—Thomas K. Smith; 3.—Anthony C. Gore-Grimes; 4.—Ailin A. Gibbons; 5.—Desmond J. O'Malley.

Passed : Bruce F. Blake, Fintan M. Earley, Edward R. A. Glover, Lewis J. Goldberg, Helen M. Kirwan, Denis M. McDowell, Patrick J. O'Shea, David A. Potterton.

32 Candidates attended; 13 passed.

The Centenary Prize was awarded to Thomas K. Smith.

Final

At the Final Examination for apprentices to Solicitors held on 1st, 2nd and 3rd days of September, the following passed the whole examination :

Laurence F. Branigan, B.C.L.; James J. Devine, LL.B.; Mary Monica O'Callaghan, B.C.L.

12 Candidates attended; 3 passed.

The following passed in Part 1 or Part 2 Final Examination :

PART 1 : Kenneth L. Armstrong (A); Thomas J. Ballagh, B.A. (A); Thomas J. Furlong (A); Edward M. Masterson (A); Dermod Morrissey-Murphy (A); Diarmuid P. Teevan, B.A.; Daire Walsh.

PART 2 : Richard J. Black, B.C.L. (B); Maire T. Donnellan (B); Robert A. Downes; Fergus L. Fahy (B); David R. Felton (B); John G. Fish (B); Adrian F. J. Fitzgerald, B.C.L. (B); Michael F. S. King; Henry Murphy, B.A.; Maire McHale, B.A.; Patrick G. McMahon, B.C.L. (B); James Joseph O'Connor; Jeremiah A. Reidy.

"A" denotes having already passed Part 2.

"B" denotes having already passed Part 1.

Scholarships 1959

The Findlater Scholarship was awarded to John Keller Temple Lang who served his apprenticeship with Mr. Desmond J. Mayne, 6 Dawson Street, Dublin.

The Overend Scholarship on the results of the First Law Examination was awarded to Maurice R. Curran who is apprenticed to Mr. William D. McEvoy, Enniscorthy, Co. Wexford.

DECISIONS OF PROFESSIONAL INTEREST

Privilege upheld where copy of hospital case notes made for purpose of advising plaintiff in personal injuries claim.

For the purpose of assisting and advising the plaintiff in connection with a claim for damages for personal injuries, and after the proceedings were clearly contemplated, the plaintiff's solicitors prepared a copy of the case notes made and kept by the hospital at Birkenhead which the plaintiff had attended. In the action the defendants applied for disclosure of the copy.

Held by the Court of Appeal (Lord Evershed, M.R., and Willmer, L.J.) affirming Elwes J. that as the copy of the case notes had been prepared by the solicitors for the purposes of the action, the document was privileged from production.

Per Lord Evershed, M.R.: On being afflicted with meningitis, the plaintiff went to a hospital in Birkenhead, and, in accordance with routine practice, case notes were made and kept by the hospital of his condition. As counsel for the defendants pointed out, no doubt rightly, meningitis may be of two kinds, traumatic or infective, and, according as it is one or the other, it may be deduced whether it was or was not the result of the accident.

It seems to me that in this case, the document with which we are concerned is a copy which was made by the plaintiff's advisers for the purposes of the litigation in which the solicitors were acting for the party. That being so, it seems, I think, clear that the learned judge was right to say that he could not make the order.

As a matter of common sense, I felt sympathy with counsel for the defendants, because plainly his conduct of the defence, including the matter of possible payment into court, would be materially affected by the medical evidence which the case notes would supply. I am, however, happy to say that anxiety and sympathy on those grounds is greatly lessened because counsel for the plaintiff has pointed out that he has, or that those advising him have—very sensibly, if I may say so—offered to disclose these documents provided that a similar courtesy or facility is shown on the other side, that offer being expressed to be without prejudice to what the strict rights may be; and that counsel for the defendants has not accepted that offer, preferring to treat this as a matter of right or principle which, he says, may be important. I am happy to think that those advising the parties in practice have shown good sense in trying to assist to reach a conclusion of the matter. (Watson *v.* Cammell Laird & Co.—(1959) 2 All E.R. 757.)

Disciplinary Committee need not find express finding in respect of each separate complaint by solicitor.

The Divisional Court (The Lord Chief Justice, Mr. Justice Ashworth and Mr. Justice Edmund Davies) dismissed this appeal by a solicitor from an order of the Disciplinary Committee of the Law Society made on August 20, 1959, that he should be suspended from practice for one year from September 1, 1959.

The Lord Chief Justice, dismissing the appeal on this and other grounds, said that the most serious complaints made against the solicitor were that he had utilised moneys in his clients' account for himself and that he had utilized the moneys for the benefit of other clients.

The Disciplinary Committee had held that it was unnecessary to make any findings in respect of the complaints. It had been contended on behalf of the solicitor that it was the duty of the Disciplinary Committee to make express findings on each complaint. His Lordship could not see as a matter of law that that was so. The Disciplinary Committee must hear and determine the application as a whole.

At the same time, as a matter of fairness to the solicitor concerned, it would sometimes be the case (as it was here) that the Disciplinary Committee should make definite findings on all the complaints made. These two complaints were very serious and the solicitor had had no exoneration from them. Where such complaints were not alleged in the alternative and were serious matters, it was only fair that the Disciplinary Committee should say whether they were justified or not justified.

Leave to appeal to the Court of Appeal would be granted. (In Re a Solicitor—"*The Times*," 22 October, 1959.)

On a taxation, the party ordered to pay costs is not entitled to see the contents of a brief delivered on behalf of a third party.

Mr. Justice Stevenson held that on taxation of a bill of costs, the party who had been ordered to pay costs was not entitled to see the contents of a brief delivered on behalf of another party.

At the end of a hearing of a contested divorce suit, which lasted a day and a half, the husband, Mr. Robert Hobbs, of Kampala, Uganda, was on February 10, 1959, granted a decree nisi of divorce from Mrs. Dorothy Patricia Hobbs, of Kensington, on the ground of her adultery with the co-respondent. The co-respondent was ordered to pay the husband's costs.

These costs, which amounted to about £800, included an item of £228 in respect of the husband's

journey from Dar-es-Salaam to London for the hearing of the suit and an item of 200 guineas for "instructions for brief." The co-respondent attended in person before the taxing registrar on the taxation of the costs, and, in connection with the item for "instructions for brief" asked to be allowed to inspect the brief delivered to the husband's counsel. The registrar referred to the Judge the question whether a litigant should be permitted, on taxation, to inspect a brief delivered on behalf of another party.

His Lordship said that at first sight it seemed reasonable that the co-respondent should be allowed to inspect the contents of the brief for which he was required to pay, by way of party and party costs, in order to put himself in a position to contend that the brief fee was excessive. There was no doubt, however, that legal professional privilege, which had a sure, unshakeable foundation in our law, protected from disclosure all documents which embodied communications between a client and his legal advisers. That privilege had a sound basis in common-sense because it existed for the purpose of ensuring that there should be complete confidence in the mind of a client who consulted a solicitor or conferred with counsel that there would be no danger of what he disclosed ever being divulged. He was quite satisfied that the co-respondent was not entitled to inspect this brief or its contents, and he so held. That did not prevent the co-respondent from contending before the taxing registrar that sums allotted to particular items were excessive. It would be the duty of the taxing officer to scrutinise closely the contents of the brief to see whether it was overloaded with surplus material.

There was an abundance of authority for the proposition "once privileged, always privileged." That meant that once privilege attached to a document, that document remained privileged for all time, unless the client who enjoyed the privilege expressly waived it. (Hobbs *v.* Hobbs—*The Times* 22 October, 1959.)

OBITUARY

Mr. Gerald M. Counahan, Co. Registrar, died on the 2nd July, 1959.

Mr. Counahan served his apprenticeship with the late Mr. Robert M. Kieran, 41 Kildare Street, Dublin, was admitted in Trinity Sittings, 1929, and practised at Galway up to his appointment as Co. Registrar in 1940.

Mr. Marcus A. Lynch, Solicitor, died on the 20th September, 1959, at the Meath Hospital, Dublin.

Mr. Lynch served his apprenticeship with the late Mr. William Lynch, 12 Lr. Ormond Quay, Dublin, was admitted in Trinity Sittings, 1913, and practised under the style of Messrs. Marcus A. Lynch & Son, at 12 Lr. Ormond Quay, Dublin.

Mr. Francis J. Gearty, Solicitor, died on the 24th September, 1959, at the Mater Private Nursing Home, Dublin.

Mr. Gearty served his apprenticeship with the late Mr. Thomas W. Delany, Longford, was admitted in Michaelmas Sittings, 1937, and practised under the style of Messrs. F. J. Gearty & Co. at Longford. He was a member of the Council of the Society from 1947 to 1957 and was a Vice-President for the year 1950/51.

District Justice Francis J. MacCabe died on the 18th October, 1959, at his residence, Park Lodge, Waterford.

Mr. MacCabe served his apprenticeship with the late Mr. William J. Fegan, Cavan, was admitted in Trinity Sittings, 1917, and practised at Manorhamilton, Co. Leitrim until his appointment as District Justice in 1924.

Mr. Donal McClement, Solicitor, died on the 1st October, 1959, at Sydney, Australia.

Mr. McClement served his apprenticeship with the late Mr. Frederick L. Blake, 27 Marlboro' Street, Cork, was admitted in Easter Sittings, 1936, and practised under the style of Messrs. J. C. & A. Blake at 27 Marlboro' Street, Cork.

Mr. Robert E. Felton, Solicitor, died on the 25th October, 1959, at his residence, 34 Belgrave Road, Monkstown, Co. Dublin.

Mr. Felton served his apprenticeship with the late Mr. Edward Felton, 18 Eustace Street, Dublin, was admitted in Hilary Sittings, 1923, and practised under the style of Messrs. Molloy, Fayle & Co., at 18 Eustace Street, Dublin.

Mr. John Jermyn, Solicitor, died on the 7th November, 1959, at South Infirmary, Cork.

Mr. Jermyn was admitted in Trinity Sittings, 1891, and practised as senior partner in the firm of Messrs. Gregg, Jermyn & Son, at 67 South Mall, Cork.

Mr. John L. Burke, Solicitor, died on the 10th November, 1959, at his residence, 12 Rostrevor Terrace, Rathgar, Dublin.

Mr. Burke served his apprenticeship with the late Mr. James L. Burke, 26 Bachelor's Walk, Dublin, was admitted in Trinity Sittings, 1914, and practised under the style of Messrs. James L. Burke & Co., at 63 Upr. O'Connell Street, Dublin.

REGISTRATION OF TITLE ACTS, 1891 AND 1942

Issue of Duplicate Land Certificate

Applications have been received from the registered owners mentioned in the Schedule annexed hereto, for the issue of Certificates of Title in substitution for the original Certificates issued in respect of the lands

specified in the said Schedule, which original Certificates, it is alleged, have been lost or inadvertently destroyed.

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

Dated the 26th day of November, 1959.

D. L. McAllister,
Registrar of Titles.

Central Office,
Land Registry,
Chancery Street,
Dublin.

Schedule.

1. Registered Owner, Eliza Rispin, Folio number 1585. County Meath. Lands of Kildalkey in the Barony of Lune, containing 60a. 1r. 12p.

2. Registered Owner, Maurice Power. Folio number, 33410. County Cork. Lands of Monacreagh, in the Barony of Imokilly, containing 35a. 1r. 10p.

3. Registered Owner, John Boland. Folio number, 469. County Wexford. Lands of Pallas Lower, in the Barony of Gorey, containing 41a. 0r. 3p.

4. Registered Owner, Elizabeth Kelleher. Folios 7063 and 16925. County Cork. Lands of Lehenagh More, in the Barony of Cork, containing 58a. 0r. 25p. and 61a. 3r. 30p., respectively.

5. Registered Owner, Mary Costello. Folio number, 1005. County Limerick. Lands of Ballydonohoe, in the Barony of Shanid, containing 9a. 3r. 34p.

THE REGISTRY

Register A

Young Solicitor wanted to take charge of good Country Town practice. Apply: Box A.182.

Register B

Experienced Solicitor wishes to purchase practice or partnership. Replies in confidence. Box B.243.

Recently qualified solicitor (lady) seeks position. Dublin preferred. Box B. 244

Solicitor, admitted 1954, experienced both in office procedure and court work seeks position. Would consider purchasing partnership or practice. Box B.245.

Solicitor (lady) recently qualified, B.A., requires assistantship Dublin or country. Box B.246.

Solicitor, qualified October, 1958, seeks position in office, Dublin, Kildare or Wicklow area. Box B.247.

Register C

Wanted to purchase the following books: Laws of England (1917 edition), Halsbury; Tristram & Coote's Probate Practice (17th edition); Latin Maxims & Phrases (4th edition), by Traynor; Strahan's Digest of Equity (4th edition); Lewin's Law of Trusts (11th edition); The Principles of Equity by T. O'N. Keily; Acts and Orders relating to Death Duties in Ireland, by Collins & Collins. Apply Box C.159.

Will any Solicitor who may know the whereabouts of the Will of Richard Moran, late of 24A Hill Street, Dublin, deceased, please communicate with Seán Ó hUadhaigh & Son, Solicitors, 51 Dawson Street, Dublin.

THE SOLICITORS' BENEVOLENT ASSOCIATION

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

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

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

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

Address:
Secretary,
Solicitors' Benevolent Association,
18, Hume Street,
Dublin.

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DECEMBER,
1959

THE GAZETTE

of the

INCORPORATED LAW SOCIETY OF IRELAND

President
JOHN J. NASH

Vice-Presidents
RALPH J. WALKER
PETER E. O'CONNELL

Secretary
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

VACANCIES FOR TWO LECTURERS AND SPECIAL EXAMINERS

There are vacancies for two lecturers and special examiners to the Society in the subjects of:

1. The practice and procedure of the Courts and kindred subjects.
2. Executorship law and practice

respectively. Practising barristers and solicitors may obtain further particulars on application to the Secretary.

PRACTISING CERTIFICATES 1960-61

(1) Members are reminded that practising certificates for the year to end 5th January, 1961, should be taken out on or after 6th January, 1960, and not later than 5th February, 1960, in order to take effect as a qualification to practise from January 6th.

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

TEXTBOOKS FOR LAW STUDENTS

The Publications Committee of the Society are considering a project for the publication at the Society's expense of handbooks, manuals and textbooks for law students. The project at present is at the exploratory stage, but as far as can be seen the field to be covered is as follows:—

1. The practice and procedure of the High Court and the Circuit Court.
2. Registration of title.
3. Registration of deeds.
4. Probate and executorship law and practice.
5. The law of landlord and tenant.

The Committee will consider proposals from barristers, solicitors and court officials for the writing and publication of works suitable for students on any of the above mentioned subjects either alone or in collaboration. Those interested should communicate with the Secretary.

THE PRESIDENT AND VICE-PRESIDENTS

Mr. John J. Nash of Thurles, has been elected President of the Society for the coming year. Mr. Ralph J. Walker of Dublin and Mr. Peter E. O'Connell of Dundalk have been elected Vice-Presidents.

ORDINARY GENERAL MEETING

An ordinary general meeting of the Society was held in the Library Solicitors' Buildings, Four Courts, Dublin on Thursday 26th November, 1959. The President Mr. John R. Halpin took the chair.

The notice convening the meeting was taken as read.

The minutes of the ordinary general meeting of the Society held on 23rd May, 1959, were read, confirmed and signed.

The audited accounts and balance sheet for the year ended 30th April, 1959, were adopted and the chairman signed the balance sheet.

Messrs. Kevans and Sons were re-appointed as the Society's auditors.

The Secretary read the report of the scrutineers of the ballot for the election of the Council and provincial delegates for the year 1959-60. The report stated that for the office of provincial delegate the following had been returned unopposed; Ulster Derrick M. Martin; Munster, Edward Treacy; Leinster, Reginald J. Nolan; Connaught, Francis A. Armstrong.

The foregoing were declared duly elected.

The result of the ballot for the 31 ordinary members of the Council was as follows:

Dermot P. Shaw, 491, John Carrigan, 479, Arthur Cox, 457, John R. Halpin, 456, Thomas A. O'Reilly, 450, Niall S. Gaffney, 448, Desmond J. Collins, 434, Eunan McCarron, 431, John J. Nash, 426, Augustus Cullen, 421, James J. O'Connor, 407, Peter E. O'Connell, 406, Francis J. Lanigan, 397, Charles J. Downing, 394, Ralph J. Walker, 394, Patrick Noonan, 392, George A. Nolan, 389, William J. V. Comerford, 387, George G. Overend, 374, Terence de Vere White, 374, Patrick O'Donnell, 369, Robert McD. Taylor, 368, John Maher, 366, Dinnen B. Gilmore, 363, John Kelly, 351, James R. Quirke, 346, John J. Sheil, 342, James R. C. Green, 329, Brendan A. McGrath, 304, James W. O'Donovan, 302, Thomas V. O'Connor, 298.

The President declared the foregoing members of the Society duly elected to the Council in accordance with the scrutineers' report.

The following candidates received the number of votes passed after their names:

Peter E. Prentice 295, Thomas H. Bacon 281, Charles W. Hyland 259, Elizabeth Wright 156, Martin E. Marren 92.

The President moving the adoption of the report of the Council said:—

Ladies and Gentlemen, Since our last meeting in May I have to record with great regret the deaths of the following members: William D. Mockler, Cork; District Justice Flattery, who practised as a solicitor at Letterkenny until he was appointed a District Justice in 1923; Patrick J. Kennedy, Carrickmacross; John Kenneth Lloyd-Blood, Dublin; John Macken, Mullingar; Marcus A. Lynch, Dublin; Francis J. Gearty, Longford; District Justice Francis J. McCabe, who practised as a solicitor in Manorhamilton until he was appointed District Justice at Waterford in 1924; Robert E. Felton, Dublin; Donald McClement, Cork; Gerard M. Counahan, County Registrar of Galway; John Jermyn, Cork; John L. Burke, Dublin; Arthur S. Coulter, Dundalk.

Mr. Francis J. Gearty was a popular and genial member of the Council from 1947 to 1957, and was Vice-President in the year 1950-51.

Many of us have lost close friends amongst this list of those who have passed to the Great Beyond, and to all their relatives and friends I tender the sympathy of myself and the members of the Council in their grievous loss.

The Council are grateful to Comhdhail Naisiunta na Gaeilge for their generous offer of an annual prize of £50 to be presented for proficiency in the first Irish Examination in memory of our friend and colleague, the late Sean O'hUadhaigh.

As you all know the last half-yearly General Meeting was held as an experiment at Killarney. I think all those of us who were present regarded it as a great success, and personally I hope that it will be repeated. We had the pleasure of having as our guests there the President and Secretary of the Law Society of Scotland and the President and Secretary of the Incorporated Law Society of Northern Ireland with their wives. I would like to thank the President and Council of the County Kerry Solicitors Association for their assistance in organising this function. The objects of holding these Summer meetings away from Dublin is to give the solicitors practising in that part of the country a better opportunity of attending the meeting and hearing something of what the Council is endeavouring to do on behalf of the profession, and also to provide an occasion for our members to meet together socially and to get to know one another as friends. I am convinced that it is particularly important that we solicitors, who usually meet as opponents in cases and as rivals for business, should have as many opportunities as possible to meet in a friendly social

atmosphere, and I believe that all such meetings enhance the morale of the profession. The Council will consider the possibility of holding a similar week-end in connection with the Summer general meeting at some place in the country away from Dublin as at least a biennial event. Since then my wife and I and the Secretary, Mr. Eric Plunkett, have received the most generous hospitality as guests of the Incorporated Law Society of Northern Ireland in Belfast and as guests of the Law Society of Scotland at Gleneagles. Mrs. Plunkett was also a guest at Gleneagles, and I would like to tender to the Presidents and Law Societies of Northern Ireland and Scotland our grateful thanks for all the kindness which we received from them.

I know that there is considerable concern amongst our members at the delay in the introduction of the Solicitors (Amendment) Bill. I can only say that this matter has received close and continuous attention from the Council, and we have had a number of conferences with the Department of Justice to try to agree on the provisions to be inserted in this Bill. It is a matter of great complexity to secure adequate powers in order to regulate the profession while avoiding any infringement of the Constitution as interpreted by the Supreme Court. The urgency of obtaining the necessary powers must be obvious to all our members when they realise that the claims already received against the Compensation Fund are more than double the contributions to the Fund paid by solicitors since the 6th January 1955. It is important that it should be generally known that the Council only accepted the obligation to establish a Compensation Fund on the definite understanding that the Society would be given adequate powers to regulate and control its own members so as to protect the Fund against claims. These powers have now been taken away by the judgment of the Supreme Court. Unless suitable powers can be obtained under the new Solicitors Amendment Bill or the obligations of the Compensation Fund are relaxed the burden of increased contributions to the Compensation Fund are likely to become more than the members of the profession can bear. I would like to acknowledge the consideration which we have received from the Minister for Justice, and the interest taken in the matter by Mr. Coyne, Secretary of the Department of Justice, and the help and wise advice which he has given us. I would also like to pay tribute to the great help which the Vice-Presidents and I have received in these negotiations with the Department from Mr. Arthur Cox and Mr. George Overend in particular, and of course from our most competent Secretary, Eric Plunkett. When the Amendment Bill is finally introduced in the Dail it is of great importance that all our members should do their utmost to influence their T.D.'s and Senators to support it, and to get it passed into law without any unnecessary delays or amendments which might defeat its purpose.

In my address at Killarney I commented strongly on the deplorable position which had arisen in connection with the costs of Land Commission proceedings which had received only a nominal increase in the last 35 years in spite of the complete change in the value of money since the 1923 Land Act was passed. I am glad to be able to inform you that since then, and since the Report of the Council was printed, a compromise of our claim has been accepted and the item charges in the Land Commission Scale will shortly be increased by fifty per cent. on the present costs payable. For this satisfactory result we are almost entirely indebted to the great help and understanding of the position which we received primarily from the Judicial Commissioner Mr. Justice Teevan, and subsequently from the new Minister for Lands, Mr. Moran, and I would like respectfully to thank both of them. It is a great personal pleasure to me that this increase in the Land Commission Costs has been secured in my year of office as Mr. Dermot Shaw and I have been closely concerned with these negotiations for the past three years.

The standard of living of the solicitor's profession, as in most other professions, has seriously declined in the last 20 years owing to a failure to obtain an adequate increase in costs to even remotely approach the change in the cost of living, the depreciation of the currency and the enormous increase in overhead expenses. Both the Council and the Policy Committee have this situation continually in their minds and are always striving to improve the financial position of the members of the profession, but much of their efforts are frustrated by that deplorable and most invidious practice of under-cutting indulged in by a few solicitors with a view to unfairly attracting business. Thousands of pounds are lost to the profession every year in this way, and those solicitors who are guilty of this practice should realise that not only is touting for business in this manner an offence with which they can be charged under the professional practice regulations, but that they are undermining the very foundations of the financial stability of all their professional brethren. If one solicitor in a locality commences to under-cut, the other solicitors in that locality are driven inevitably to follow suit in order to protect their own business. The result is a feeling of complete insecurity amongst all the solicitors in that area, and it is bound to react on the original solicitor himself who has set the vicious circle in motion by resorting to this under-cutting.

Another nefarious practice which I think it is my duty to bring to the notice of our members is what is commonly called ambulance chasing. It is, of course, a serious offence for any solicitor to tout for business in this manner, but a new refinement of this practice has recently been devised. The Council have received complaints that there is now at least one non-legal association of this kind in Ireland who send representatives to interview injured persons and suggest that they should instruct a solicitor chosen by the Association in place of the injured person's own solicitor. The activities of such Associations are clearly a menace to the profession and the Council are considering making a new regulation under the Professional Practice Regulations to prohibit any solicitor from acting for such bodies.

The fact that the standard of living in the solicitor's profession has substantially fallen in comparison with the greater financial rewards to be won in business, and the further fact that the profession is considerably over-manned and that the number of practising solicitors does not yet show any sign of decreasing, should be taken into very careful consideration by the parents of any boy or girl who is considering being apprenticed unless there is an opening available in a family firm for the boy or girl when he or she becomes qualified.

The Council are much concerned regarding the absence of suitable legal textbooks dealing with the law in Ireland for the use of both practitioners and students. More than ten years ago the government agreed to make a sum of £7,500 available to the Incorporated Council of Law Reporting for the publication of practitioners textbooks. No active steps have ever been taken by the Council of Law Reporting to obtain offers from professional authors and no use has been made of the government's offer to provide this money. There is a great need for up-to-date books on many branches of law in this country, but particularly on practice, and the Council through its representatives on the Law Reporting Council is pressing for some definite action.

The Publications Committee has published an advertisement inviting offers from suitable persons for the publication of students' textbooks, of which there is an urgent need, at the expense of the Society. A number of offers have been received. The Council wish to obtain the widest possible response and it is important that the information should be widely circulated that the Society are willing to finance suitable publications of this nature. If our apprentices are to have the opportunity to prepare themselves properly for our own examinations it is essential that textbooks should be available for them dealing with the law as it stands to-day in Ireland. It is hoped that some competent young solicitors, barristers or court officials who have sufficient time available will offer to write the necessary textbooks in consultation with the Society. The present position of law reporting in this country is also unsatisfactory owing to the delay in producing the official reports of cases. I understand that apart from the government the Society is the largest single contributor to the cost of publishing the law reports. Apparently there is some arrangement in existence between the Judges and the Bar Council that a copy of each judgment delivered is filed in the law library. If our Society could also obtain a copy of each judgment we would arrange to have them filed and indexed in the library, so that they would be available for reference to members of the Society during the period prior to their appearing in the official reports.

The new Professional Policy Committee have been meeting regularly, but their time has been largely occupied with the details of the new Solicitors Amendment Bill, to which I have already referred, and to all the implications arising from it, and they have had very little time as a result to devote to improving the public relations of the profession with the public, which I anticipate will be their major function in the future. I understand that the Law Society of England have greatly enhanced the standing of the profession in England by suggesting necessary changes in the law and taking the initiative in promoting legislation on these lines instead of merely criticising Bills after they have been introduced. There is certainly abundant scope for the reform of various branches of the law in this country, and I would very much like to see the Policy Committee or some other Committee of the Council looking into this matter when time can be found to tackle it.

The tendency in both England and Scotland and to a somewhat lesser extent in Northern Ireland seems to be towards the amalgamation of firms. In Ireland we are inclined to be by nature individualistic, but I think that this tendency to amalgamate is bound to spread to this country in order to reduce the tremendous cost of overheads and to permit of greater mechanisation in the office equipment and better organisation. From the professional point of view I believe that this will be a desirable development. In a partnership the accountancy must be kept accurate and up-to-date and as the law becomes more and more complex it is becoming increasingly difficult for any one solicitor to be a master of every branch of it. In a partnership the partners have much more opportunity to specialise and to keep themselves completely efficient in their own line with obvious advantage to their clients. Moreover I am convinced that however good a brain any

solicitor may have, two or more heads are better than one and that the presence of a partner or partners to discuss a problem has great advantages, both for the solicitors themselves and for their clients. The creation of larger firms will almost certainly result in a reduction of overhead expenses by enabling the staff and office equipment to be kept fully occupied continuously.

It is most encouraging to note that every area in the country, except one, has now a local bar association, and I trust that the solicitors practising in County Longford will soon fall into line with all the other counties. The County Longford solicitors must have heard from the solicitors in the adjoining counties what an enormous improvement has been effected in those counties in the legal relations between the members of these bar associations. During one half of my legal life there was no local bar association in my county, and during the subsequent half there has been an active local bar association, and it has completely revolutionised the relations between the members, where there used to be hostility and a readiness to take advantage of a brother solicitor, there is now friendship and a willingness to help each other. The local bar associations have made the most tremendous difference to the life of solicitors practising in the country and have introduced a feeling of security which did not previously exist.

Finally to end on a personal note I would like to thank the members of the Council for electing me President. It has been a tremendous honour and privilege to occupy for the past year the chair of my own profession, and for this I am deeply grateful. I would like to thank my two most efficient and charming Vice-Presidents for their ready and continuous assistance to me throughout the year, and all the members of the Council and of the committees for their cooperation and their kindness and consideration towards me, and above all Eric Plunkett without whose ever-ready aid and advice I would have been quite helpless, and all the members of his courteous and efficient staff who have always been glad to help and assist me in every way.

The motion for the adoption of the report was seconded by Mr. James R. Quirke. Messrs. T. Desmond McLoughlin, Dermot P. Morris and James B. McGarry commented on various matters in the report. The President and Mr. Nash, Vice-President, replied to a number of matters raised. The motion for the adoption of the report was then put to the meeting and carried unanimously.

Thursday, 24th November, 1960 was appointed as the date of the next Autumn Annual General Meeting.

Mr. Charles W. Hyland then requested that the President should vacate the chair which was taken by Mr. Nash, Vice-President. Mr. Hyland then proposed and Mr. Cox seconded a vote of thanks to the President for his distinguished services to the Society during his year of office. Mr. Nash associated himself with the motion which was put to the meeting and carried with acclamation. The President replied and the proceedings terminated.

MEETINGS OF THE COUNCIL

November 26th: the President in the Chair. Also present Messrs. George G. Overend, James R. Green, Peter E. O'Connell, John Maher, C. J. Downing, Dinnen B. Gilmore, Ralph J. Walker, James J. O'Connor, Derrick M. Martin, Thomas V. O'Connor, Brendan A. McGrath, John Kelly, T. De Vere White, William J. Comerford, James R. Quirke, Niall S. Gaffney, Desmond J. Collins, John Carrigan, Arthur Cox, John J. Nash, James W. O'Donovan, John B. Jermyn, Augustus Cullen, Robert McD. Taylor, Eunan McCarron, John J. Sheil, Dermot P. Shaw, George A. Nolan.

The following was among the business transacted:

Committees of the Council

The Committees for the year 1959-60 were appointed and are printed in this issue at page 57.

Vacancies on the Council

The meeting unanimously passed a vote of appreciation and thanks to Messrs. Cornelius J. Daly, William Dillon-Leetch, Desmond J. Mayne, Joseph P. Tyrrell and C. E. Callan who did not seek re-election for the services which they have rendered to the Council during their period of office. The President on behalf of the Council welcomed Messrs. Augustus Cullen, Brendan A. McGrath, Thomas V. O'Connor and James W. O'Donovan new ordinary members who were present.

Examination dates, first, second and third law examination and book-keeping examinations

It was decided that from Autumn 1960 onwards the dates of the examinations now held in Summer and Autumn will be changed. In future the examinations will be held in the Autumn followed by a further examination in January or February on dates to be fixed. There will be no summer examinations. Candidates will be expected to attend the Autumn examinations in the first instance. Unsuccessful candidates may attend the examinations in the following January or February.

Sale of registered and unregistered land as one lot. Costs

Members acted for a vendor of land which was sold for £12,000 held under three different titles, *viz.*, 150 acres freehold registered land held free of equities but subject to a land purchase annuity, 2 acres held in fee simple free of rent and 1 acre held under lease for 900 years. The last mentioned two parcels of land are not registered land within the meaning of the Registration of Title Acts and the whole three were sold as one lot without any division of the purchase money. Members enquired on what system the costs should be charged. By sub-paragraph (6) of paragraph (3) of the Land Registration Fees Order 1959 value for the purpose of a transfer on sale means the amount of the money consideration expressed in the transfer together with the amount of any registered charge and it is provided that where the transfer comprises unregistered property also the value shall be the proportionate cost of the consideration attributable to the registered property only as certified by the solicitor for the applicant or by a person who in the opinion of the Registrar is competent to value property. The Council stated that in their opinion the costs should be calculated by apportioning the consideration between two holdings, one being registered land and the other unregistered land, on the basis of the respective values and the appropriate commission scale fee should be charged on each. The two parcels of unregistered land one held in fee simple and the other under lease should be regarded as one holding for the purpose of costs.

Certificate of discharge of income tax

Members enquired whether the vendor is under any liability to hand over a certificate under section 6 of the Finance Act 1928. They took the view that a purchaser for value would not be liable for any tax due by the vendor under schedules A or B and consequently there would not be any obligation to obtain the certificate and they referred to the case of Dolan *v.* Joyce and Kirwan (61. I.L. T.R. 104). The Council many years ago expressed the view that a vendor's solicitor should obtain the statutory certificate under section 6 without any additional charge against the purchaser. The Council decided to reaffirm this ruling and informed members that a certificate of discharge of income tax under section 6 should be supplied without any charge against the purchaser.

Part-time legal assistants

A report from a committee on the question whether it is permissible or desirable to employ agencies offering part-time legal assistance was considered. The matter was referred to the Dublin Solicitors Bar Association for their views.

Client's privilege against disclosure

A client when leaving the office of a solicitor whom she had consulted on professional business fell down the stairs and suffered personal injuries. She subsequently consulted the solicitor as to her rights against the lessor of the premises. Member advised her thereon. She subsequently sought other legal advice as the result of which proceedings were threatened against member and the lessor jointly as being responsible for the maintenance of the stairway. When member passed on the claim to his insurance company they requested him to supply information as to the conversations between member and his former client on the subject of her injuries, and member enquired whether the communications were privileged. The Council stated that on the facts submitted any information which member received from the client as her solicitor was privileged and that it should not be disclosed to the insurance company.

Conflicting interests

A member was instructed by MR to act for her in a claim for personal injuries arising out of an accident while a passenger in a car driven by her husband FR which collided with a car driven by SM. When MR gave the instructions she was accompanied by her husband FR and member had then in his possession a copy of the husband's statement taken by the Garda Siochana. At the same time he accepted instructions from FR to write to the latter's insurance company to protect his no claim bonus. Member was advised that SM was responsible for the accident but at the same time he thought it advisable to notify FR lest counsel should advise that the latter should be joined in the proceedings. The insurance company of FR objected to member's acting for MR having regard to his professional position in relation to both MR and FR and member sought guidance from the Council. The Council expressed the view that member should not act for MR in any proceedings brought by her against FR.

December 10th: Mr. Halpin and subsequently Mr. Nash in the Chair. Also present Messrs. Arthur Cox, James R. Quirke, Dinnen B. Gilmore, Francis J. Lanigan, George G. Overend, James R. Green, James J. O'Connor, Thomas A. O'Reilly, Ralph J. Walker, Brendan A. McGrath, Desmond J. Collins, Thomas V. O'Connor, George A. Nolan, John Carrigan, John J. Nash, John R. Halpin, William J. V. Comerford, Augustus Cullen, John

J. Sheil, Eunan McCarron, Peter E. O'Connell, Robert McD. Taylor, John Maher, Frank Armstrong, James W. O'Donovan, Terence De Vere White.

The following was among the business transacted :

The President welcomed Mr. Francis A. Armstrong a new member of the Council.

Statutory notice to creditors

On a report from a committee it was decided to send a case for the opinion of senior counsel on the question whether the State is bound by the provisions of Lord St. Leonard's Act 1859 whereby claims not notified in time in reply to a statutory notice to creditors will not thereafter be enforceable against the personal representatives personally.

Insurance company administration bond. Duty of solicitor

An insurance company issued a fidelity bond to the administrator of the estate of a deceased person on member's assurance that the administration would be carried out through member and that he would see that everything was properly done. The personal representative requested member to transfer all the papers and assets to her and she intimated that she intended to disregard a claim against the estate which member believed would be legally enforceable. Member enquired whether he was under a professional obligation to pay over the money to the administrator having regard to his knowledge or whether he should retain it to see that the insurance company are protected. The proposal for the bond was signed by the applicant and by member but there was no written undertaking or assurance that member would see to the proper application of the assets by his client. The Council on a report from a committee stated

(1) The Society cannot advise on any question of member's legal liability.

(2) If member gave an assurance to the company that he would see to the due application of the assets without the knowledge and approval of the client he is not entitled as a matter of professional conduct to refuse to hand over the assets to the client on lawful demand.

(3) If member gave an assurance to the insurance company with the knowledge and approval of the client the position may be different.

It was decided to draw the attention of members to the fact that a solicitor may run a personal risk if he gives an undertaking or promise to an insurance company as to the administration of an estate by his client unless he has received written instructions from the client to give the undertaking and unless he is satisfied that he will be in a position to carry it out.

Mr. M. E. Knight

The Council resolved to send a message to Mr. Michael E. Knight, Clones, a former President, congratulating him on his ninetieth birthday and on his seventieth year of practice as a solicitor.

DISCIPLINARY COMMITTEE

The following members of the Council were appointed as the Disciplinary Committee for the year 1959-60 with the approval of the Chief Justice : John R. Halpin, *Chairman*, John Carrigan, William J. Comerford, Charles J. Downing, Niall S. Gaffney, Patrick Noonan, James J. O'Connor, Dermot P. Shaw, Ralph J. Walker, Terence De Vere White.

COMMITTEES OF THE COUNCIL

The following committees were appointed for the year 1959-60 :

Registrar's

George G. Overend, *Chairman*, Desmond J. Collins, Dinnen B. Gilmore, James R. Green, Francis J. Lanigan, John Maher, Eunan McCarron, George A. Nolan, Peter E. O'Connell, Thomas A. O'Reilly, James R. Quirke, John J. Sheil, Robert McD. Taylor.

Compensation Fund

John Maher, *Chairman*, Desmond J. Collins, Dinnen B. Gilmore, James R. Green, Francis J. Lanigan, Eunan McCarron, George A. Nolan, Peter E. O'Connell, Thomas A. O'Reilly, George G. Overend, James R. Quirke, John J. Sheil, Robert McD. Taylor.

Finance, Library and Publications

Charles J. Downing, *Chairman*, John Carrigan, Arthur Cox, Dinnen B. Gilmore, James R. Green, John Kelly, Patrick O'Donnell, T.D., James W. O'Donovan, Thomas A. O'Reilly, Dermot P. Shaw, with the President, Vice-Presidents and immediate past President ex-officio.

Court of Examiners

Robert McD. Taylor, *Chairman*, Desmond J. Collins, Derrick M. Martin, James R. Quirke, Terence de Vere White, with the President, Vice-Presidents and immediate past President ex officio.

Parliamentary

William J. Comerford, *Chairman*, Arthur Cox, Dinnen B. Gilmore, Patrick Noonan, Thomas V. O'Connor, Patrick O'Donnell, T.D., Dermot P. Shaw, with the President, Vice-Presidents and immediate past President ex officio.

Privileges

Derrick M. Martin, *Chairman*, Francis A. Armstrong, John Carrigan, William J. Comerford, Charles J. Downing, Niall S. Gaffney, John Kelly,

Francis J. Lanigan, John Maher, Eunan McCarron, Brendan A. McGrath, Patrick Noonan, James J. O'Connor, George G. Overend, with the President, Vice-Presidents and immediate past President ex officio.

Court Offices and Costs

James J. O'Connor, *Chairman*, Francis A. Armstrong, Augustus Cullen, Niall S. Gaffney, John Kelly, Brendan A. McGrath, John J. Nash, George A. Nolan, Thomas V. O'Connor, Patrick O'Donnell, T.D., James W. O'Donovan, Dermot P. Shaw, John J. Sheil, Terence de Vere White, with the President, Vice-Presidents and immediate past President ex officio.

THE INCORPORATED LAW SOCIETY OF NORTHERN IRELAND

The President of the Society for the year 1959–60 is Mr. Robert McD. Coulter, of Belfast. The Vice-Presidents are Mr. James J. Napier of Belfast and Mr. Denis K. McMillan of Belfast.

The five extraordinary members of the Council of the Incorporated Law Society of Ireland are Messrs. Robert McD. Coulter, James J. Napier, Denis K. McMillan, Charles MacLaughlin and Frederick H. Mullan.

SOUTHERN LAW ASSOCIATION

At the Annual General Meeting of the Association held in Cork on 3rd December, the following officers were elected for the year 1959–60: *President*, Francis P. Galvin; *Vice-President*, Denis J. Quinlan; *Hon. Secretary*, Humphrey P. Kelleher; *Hon. Treasurer*, Gerald J. Moloney.

The following members were appointed to represent the Association as extraordinary members of the Council of the Incorporated Law Society of Ireland: Messrs. Francis P. Galvin, Cornelius J. Daly, John B. Jermyn, Gerald Y. Goldberg, Edmund Hayes.

SOCIETY'S DINNER DANCE

A successful Dinner Dance was held on November 20th in the Shelbourne Hotel, Dublin. Among the guests were The Chief Justice, The Hon. Conor A. Maguire, and Mrs. Maguire, and the Hon. Mr. Justice Lavery and Mrs. Lavery. There was an attendance of approximately 280 members and friends.

PRESENTATION OF CERTIFICATES OF ADMISSION

On November 26th the President at a ceremony in the Society's library presented certificates of admission to the following solicitors:

PRESENTATION OF ADMISSION PARCHMENTS

Kenneth L. Armstrong, Willowdale, Lr. Glenageary Road, Glenageary, Co. Dublin; Thomas J. Ballagh, B.A., Birch Hill, Proby Square, Blackrock, Co. Dublin; Richard J. Black, B.C.L., Ardeevin, Clones, Co. Monaghan; Laurence F. Branigan, B.C.L., Rosemount, William St., Drogheda, Co. Louth; James E. Cahill, B.A., Hibernian Bank House, Abbeyleix, Co. Laoise; Margaret T. C. Casey, B.A., Main Street, Clifden, Connemara, Co. Galway; Conal J. Clancy, Eden Bawn, Goatstown Road, Dundrum, Co. Dublin (*1st Place May Final Examination—Silver Medal*); Fionnbarra F. Dempsey, B.C.L., 2 Elm Bank, Douglas Road, Cork; Marie T. Donnellan, Avenue Road, Dundalk, Co. Louth; Fergus L. Fahy, Foxford, Co. Mayo; Patrick J. Farrell, 11 Ginnell Terrace, Mullingar, Co. Westmeath. David R. Felton, 34 Belgrave Road, Monkstown, Co. Dublin; Adrian F. J. Fitzgerald, B.C.L.; Ballinrobe, Co. Mayo; Thomas J. Furlong, Letter-kenny, Co. Donegal; Francis G. M. Gannon, Aughrey House, Dromod, Co. Leitrim; Thomas J. N. Gannon, B.C.L., Aughry House, Dromod, Co. Leitrim; Edward M. Masterson, Tubbercurry, Co. Sligo; Mary M. O'Callaghan, B.C.L., Helensburg, Greystones, Co. Wicklow; John A. O'Dwyer, B.C.L., 229 Griffith Avenue, Drumcondra, Dublin, Ronald T. Ringrose, 11 Avoca Park, Blackrock, Co. Dublin; Thomas M. D. Shaw, B.C.L., Mullingar, Co. Westmeath.

SCHOLARSHIPS, 1960

The Findlater Scholarship has been awarded by the Council to Mr. John K. Temple Lang, who served his apprenticeship with Mr. Desmond J. Mayne of Messrs. Milward Jones Mayne and Knapp.

The Overend Scholarship has been awarded to Mr. Maurice R. Curran who is serving under indentures of apprenticeship with Mr. William D. McEvoy of Enniscorthy.

MR. MICHAEL E. KNIGHT

The *Northern Standard* of Friday, October 30th, carried a long report of a presentation made to Mr. Michael E. Knight, of Clones, Co. Monaghan on the occasion of his ninetieth birthday and the seventieth year of his practice as a solicitor. Mr. Knight was admitted in Hilary sittings 1890 and was elected to the Council of the Incorporated Law Society of Ireland in November, 1924. He served as President for the year 1935–36. During the course of his long and active professional career Mr. Knight has been prominent in many spheres and is happily, still actively engaged in professional practice.

On the occasion of his ninetieth birthday Mr. Knight received a presentation from the County Monaghan Bar Association of a piece of silver bearing the following inscription:

"Presented to Michael Elliot Knight, Esqr., Solicitor, Clones, Father of the Co. Monaghan Solicitors' Bar Association by his colleagues of the Association on the occasion of his ninetieth birthday and of his seventieth year in active practice in token of the affectionate regard in which he is held by them and in appreciation of the valuable services rendered and the high example set by him throughout the course of his long and distinguished career. January 1959"

The presentation was made by Mr. J. J. Keenan, State Solicitor, in Mr. Knight's office premises which is situated in the building where he was born and in which he practised all his life. Solicitors from different parts of the county attended to pay tribute to Mr. Knight, who in his reply in returning thanks gave ample evidence that his mental faculties are as keen as ever.

Mr. Knight is, if not the oldest, the longest practising solicitor in the Republic and indeed we believe in the whole of Ireland and we take this opportunity of congratulating him on the tribute which has been paid to him by his brother solicitors.

CIRCUIT COURT, WICKLOW

Kindly note that an Order was made by the Circuit Court Judge on the 23rd instant permitting service of Court documents for the Arklow area between the 23rd November, 1959, and 31st January, 1960, by REGISTERED POST, owing to illness of the resident Summons Server.

P. McDowell,
County Registrar.

SOLICITORS APPRENTICES' DEBATING SOCIETY
ANNUAL DANCE

The Auditor and Committee cordially invite all members of the profession to our Annual Dance on Thursday, 21st January, 1960 at the Gresham Hotel. Dancing 9 p.m.–3 a.m.

The Society is making every effort to repeat last year's success and the support of the profession is essential for this.

Further information as to tickets, bookings, etc., may be had from me.

D. Bouchier Hayes,
Hon. Dance Secretary.

DUBLIN SOLICITORS' BAR ASSOCIATION

A Meeting of the Council was held on Wednesday, 2nd December, 1959.

Proposals in connection with the Dublin District Court areas were further considered. An enquiry from the Law Society about Legal Agencies was considered and answered. Fresh complaints were received about the difficulty of securing service of District Court documents in the Dublin Court areas.

It was decided to pass to the Law Society an advertisement by a Builder offering houses for sale at prices stated to be inclusive of all legal fees.

The next Meeting was fixed for Wednesday, 6th January, 1960.

COUNTY KERRY LAW SOCIETY

At the Annual General Meeting of the County Kerry Law Society held at the Courthouse, Tralee on the 28th November the following Officers and Committee were appointed for the year 1959–60:

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

The Meeting protested against the Increases in Probate Court Fees payable to the State and recently imposed by the Department of Finance without consultation with the profession.

OBITUARY

Mr. Arthur S. Coulter, Solicitor, died on the 23rd August at his residence, Seatown House, Dundalk, Co. Louth.

Mr. Coulter served his apprenticeship with the late Mr. Robert Dickie, Dundalk, was admitted in Hilary Sittings, 1903, and practised as senior partner in the firm of Messrs. Dickie, Coulter & Hamill at Dundalk, Co. Louth.

Mr. Valentine W. Miley, Solicitor, died on the 28th November, 1959.

Mr. Miley served his apprenticeship with the late Mr. Daniel O'C. Miley, 12 South Frederick Street, was admitted in Michaelmas Sittings, 1914, and practised as senior partner in the firm of Messrs. Miley & Miley, 12 South Frederick Street, Dublin.

Mr. Matthew G. R. Lardner, Solicitor, died on the 14th December, 1959, at the District Hospital, Gorey, Co. Wexford.

Mr. Lardner served his apprenticeship with the late Mr. James C. R. Lardner, Monaghan, was admitted in Michaelmas Sittings, 1911, and practised under the style of Messrs. J. V. Lombard & Co., Gorey, Co. Wexford. Mr. Lardner was a member of

the Council of this Society from 1940 to 1946, and was Vice-President for the year 1945–46.

REGISTRATION OF TITLE ACTS, 1891 AND 1942

NOTICE

FOLIO 1963, COUNTY WEXFORD.
Registered Owner: PATRICK MCCREA.

The Registered Owner has applied for a Duplicate of the Certificate of Title specified in the Schedule hereto which is stated to have been lost or inadvertently destroyed.

The Duplicate will be issued unless notification is received in this Registry within 28 days from the date of this Notice that the said Certificate of Title is in the custody of a person not the Registered Owner. Such notification should state the grounds on which the Certificate is retained.

Dated this 28th day of December, 1959.

D. L. MCALLISTER,
Registrar of Titles.

SCHEDULE.

Land Certificate of Patrick McCrea to 61a. 1r. 0p. of the lands of Kiltilly situate in the Barony of Scarawalsh and County of Wexford being the lands comprised in said folio.

THE REGISTRY

Register A

FOR SALE Solicitor's practise in progressive Western Town. Box. A.183.

Register C

FOR SALE. Law Reports. Vol. III (M–Y); 19 vols. Revised Statutes and Index; Boundaries and Fences (Hunt); Judicature Acts (Wylie); Commentaries of Laws of England (3 vols.); Digest of Cases 1891–1895; Wills (Sanger); Nisi Prius Evidence (Roscoe) Vol. I and II; Law of Trusts and Trustees (Lewis); Short Form of Wills; Contract (Anson); Ancient Law (Maine); Irish Law Times Reports 1904–1916 (except 1912 and 1913); Law of Copyright (Coppinger); Smith Mercantile Law (Vols I and II); Law of Vendors and Purchasers of Estates (Sugden).

Also—Halsbury's Laws of England; The Liquor Licensing Laws of Ireland (Sargent); Law of Parliamentary Election in Ireland (McGrath); O'Connor's Justice of the Peace; Irish Forms & Precedents (Butterworth); The Empire Law List 1935 to 1938; Pleadings, Evidence & Practice (Archbold); The Irish Digest (1919–1928); Laws of Excise (Sweet & Maxwell); Elections (Rogers); Butterworth's Supplemental Forms & Notes (Vols. 1 to 7 inclusive). Box No. C. 160.

SOLICITOR in Bristol, England prepared to offer commodious house to another Solicitor for two weeks holiday period in August, 1960, in exchange for similar home in Eire.
Details to Cox, 48 Ravenswood Road, Bristol 6.

THE SOLICITORS' BENEVOLENT ASSOCIATION

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

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

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

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

Address:
SECRETARY,
SOLICITORS' BENEVOLENT ASSOCIATION,
18, HUME STREET,
DUBLIN.

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No. 7

JANUARY,
1960

THE GAZETTE

of the

INCORPORATED LAW SOCIETY OF IRELAND

President
JOHN J. NASH

Vice-Presidents
RALPH J. WALKER
PETER E. O'CONNELL

Secretary
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

VACANCY FOR LECTURER AND SPECIAL EXAMINER

There is a vacancy for a lecturer and special examiner to the Society in the subject of Executorship Law and Practice. Practising barristers and solicitors may obtain further particulars on application to the Secretary.

MEETINGS OF THE COUNCIL

January 24th: the President in the chair, also present Messrs. Peter E. O'Connell, Charles J. Downing, Augustus Cullen, John Maher, Frank Armstrong, Robert McD. Taylor, Eunan McCarron, James R. Green, Dinnen B. Gilmore, Gerald Y. Goldberg, Cornelius J. Daly, George G. Overend, James J. O'Connor, Brendan A. McGrath, Edward Treacy, Thomas A. O'Reilly, Thomas V. O'Connor, George A. Nolan, Desmond J. Collins, James W. O'Donovan, John J. Sheil, Niall S. Gaffney, John R. Halpin, Ralph J. Walker, Arthur Cox, Reginald J. Nolan, Terence de Vere White, Dermot P. Shaw.

The Council passed in silence a vote of condolence with the widow and relatives of the late Mr. G. R. Lardner, deceased, a former member of the Council and one time Vice-President of the Society.

The following was among the business transacted:

Dividends on funds in Court

It was decided to make representations on the subject of delays which are stated to have occurred in paying out dividends on funds in court pursuant to order.

Committees

The following members of the Council were appointed to the undermentioned committees with the President, Vice-President and Past President *ex officio*.

Privileges Committee

Derrick M. Martin, *Chairman*, Francis Armstrong, John Carrigan, William J. Comerford, Cornelius J. Daly, Charles J. Downing, Niall S. Gaffney, John Kelly, Francis J. Lanigan, John Maher, Eunan McCarron, Brendan A. McGrath, Patrick Noonan, James J. O'Connor, George G. Overend, Edward Treacy.

Court Offices and Costs Committee

James J. O'Connor, *Chairman*, Francis Armstrong, Augustus Cullen, Charles J. Daly, Niall S. Gaffney, John Kelly, Brendan A. McGrath, George A. Nolan, Thomas V. O'Connor, Patrick O'Donnell, T.D., James W. O'Donovan, Dermot P. Shaw, John J. Sheil, Edward Treacy, Terence De Vere White.

Legislation in Dail Eireann

The Secretary reported on behalf of the Parliamentary Committee that representations made by the committee on the Petroleum Bill, 1959 and the Apprentices Bill, 1959 had been favourably received by the Minister and that the necessary amendments had been made at the committee stage.

Solicitors' offices in bank premises

It was reported to the Society that a solicitor who is the son of a bank manager had established his office in the residential portion of the bank of which his father is manager. It was submitted to the Society that this might result in the unfair attraction of business in contravention of the regulation 5 of the Professional Practice Regulations. Representations were made to the solicitor concerned who informed the Society that his reason for taking the particular office was that there was no other suitable office accommodation readily available. The Council took the view that it is undesirable that a solicitor should maintain his office in a building forming part of bank premises and that this may lead to a breach of the regulations. The solicitor concerned has since obtained other office accommodation.

Medical witnesses' fees. Implied personal undertaking

On December 13th a member wrote to a surgeon asking him to examine a client who had been injured in a road accident and to supply a medical report. He wrote again on December 30th and on January 9th wrote that an appointment had been made for an examination on January 17th. The surgeon's report and account for £5 5s., are both dated January 17th. On February 26th member wrote again to the surgeon stating that the case had been listed for hearing on March 10th. On March 3rd the surgeon replied stating that he would attend and naming his fee 25 guineas. On March 6th member wrote stating that the hearing had been adjourned but making no reference to the surgeon's fees and on March 23rd member wrote again stating that the case would be taken on April 6th and asking the surgeon to attend. Again there was no reference to the fee. On these facts the Council expressed the opinion that there was an implied personal undertaking by member to see that the surgeon's fee is paid.

Registry of Deeds

A committee reported that a deputation had attended at the Department of Justice to submit proposals in favour of the introduction of legislation on the lines of the Registry of Deeds (Amendment) Northern Ireland Act 1957. That statute made provision *inter alia* for the following matters:

(*a*) persons who authenticate the seal of a body corporate are deemed witnesses for registration purposes,
(*b*) swearing of affidavits for registration purposes,
(*c*) paper and writing authorised for registration purposes; parchment has been abolished,
(*d*) uniform registration fee on memorial,
(*e*) transcripts of memorials no longer required,
(*f*) duplicate negative searches,
(*g*) remedy for breach of statutory duty by registry officials, and generally bringing the conditions of the registry into line with modern conditions.

The deputation were informed that the Minister is in favour of the proposals and hoped subject to Government approval to introduce legislation when parliamentary time permits.

Stamp Office Delays

Complaints of delays in the Stamp Office were referred to the Dublin Solicitors' Bar Association for report.

Increase in Land Commission Costs.

In May, 1956 a memorandum was submitted by the Council to the Irish Land Commission in support of an application for a general increase in the scales of professional costs. It was pointed out that the scales of costs proposed in 1954 and increased by 25 per cent. in 1947 was completely out of accord with the general level of solicitors' office expenses and the prevailing cost of living figure. Since then representatives of the Council have attended a number of conferences with the officials in support of the case made in the memorandum. Representations were made to the Judicial Commissioner and personally to the Minister and several further memoranda were submitted.

As the result of these submissions the Minister has now made provision under the Land Purchase Acts Rules, 1960 for a general increase of 50 per cent. in the professional charges in the schedule of fees in the appendix to the Provisional Rules dated 5th January, 1924 as amended, that is to say 50 per cent. in the present charges in respect of business

transacted on or after 1st February, 1960. The increase does not apply to

(1) items 89 and 90 in the schedule of rules of 1924 which may however be increased to the sums of £1 and £15, respectively.

(2) the fixed costs of resumption proceedings under the Appeal Tribunal Rules, 1934 (S.R. & O. 1934, No. 26).

It should however be noted that the last mentioned scale provides an amount of elasticity which enables the Tribunal to direct the exercise by the Taxing Master of a discretion to exceed the scale in suitable cases and members should bear this in mind when appearing in person or instructing counsel in resumption proceedings. The effect of the order is that item charges now stand at 87.5 per cent. over pre-war figures.

DUBLIN SOLICITORS' BAR ASSOCIATION

A Meeting of the Council was held on Wednesday, 6th January, 1960. A satisfactory intake of new and renewal subscriptions was noted, as was the favourable publicity given by certain newspapers to the Association's proposals for Dublin Metropolitan and County District Court reorganization.

The question of State subsidised legal aid for defendants in Criminal cases was discussed and decided against. A reference from the Law Society relating to the Law Clerks Joint Labour Committee was considered, and the reply approved.

A Sub-committee consisting of Mr. Knight, *Chairman*, and Messrs. Margetson and Byrne was appointed to consider the Hire Purchase Bill.

Other matters having been dealt with the next meeting was fixed for Wednesday, 3rd February, 1960.

STATUTES OF THE OIREACHTAS, 1959

No.	*Signed by the President*
1. Air Navigation and Transport Act, 1959	18th March, 1959
2. Turf Development Act, 1959	18th March, 1959
3. Irish Shipping Limited (Amendment) Act, 1959	18th March, 1959
4. Imposition of Duties (Confirmation of Orders) Act, 1959	18th March, 1959
5. Referendum (Amendment) Act, 1959	18th March, 1959
6. Central Fund Act, 1959	26th March, 1959
7. Companies Act, 1959	5th May, 1959
8. Administration of Estates Act, 1959	20th May, 1959
9. Presidential Elections (Temporary Provisions) Act, 1959	30th May, 1959
10. Local Government Act, 1959	16th June, 1959
11. Rates on Agricultural Land (Relief) Act, 1959	16th June, 1959
12. Road Funds (Grants and Advances) (Temporary Provisions) Act, 1959	16th June, 1959
13. Social Welfare Act, 1959	16th June, 1959
14. Fisheries (Consolidation) Act, 1959	8th July, 1959
15. Army Pensions Act, 1959	21st July, 1959
16. Housing (Gaeltacht) (Amendment) Act, 1959	22nd July, 1959
17. Ministers and Secretaries (Amendment) Act, 1959	27th July, 1959
18. Finance Act, 1959	27th July, 1959
19. Cheques Act, 1959	28th July, 1959
20. Export Promotion Act, 1959	28th July, 1959
21. Bankers' Books (Amendment) Act, 1959	29th July, 1959
22. Maritime Jurisdiction Act, 1959	29th July, 1959
23. Appropriation Act, 1959	30th July, 1959
24. Industrial Credit (Amendment) Act, 1959	4th August, 1959
25. Grass Meal (Production) (Amendment) Act, 1959	6th August, 1959
26. Industrial Grants Act, 1959	6th August, 1959
27. Tourist Traffic Act, 1959	6th August, 1959
28. Sea Fisheries (Amendment) Act, 1959	11th August, 1959
29. Air Navigation and Transport (No. 2) Act, 1959	11th August, 1959
30. Johnstown Castle Agricultural College (Amendment) Act, 1959	24th November, 1959
31. Transport Act, 1959	24th November, 1959
32. Funds of Suitors Act, 1959	24th November, 1959
33. Electoral (Amendment) Act, 1959	26th November, 1959
34. Rent Restrictions (Continuance and Amendment) Act, 1959	8th December, 1959
35. Courts of Justice Act, 1959	8th December, 1959
36. Shannon Free Airport Development Company Limited Act, 1959	8th December, 1959
37. Restrictive Trade Practices (Amendment) Act, 1959	9th December, 1959
38. Staff of the Houses of the Oireachtas Act, 1959	15th December, 1959
39. Apprenticeship Act, 1959	22nd December, 1959
40. Transport (No. 2) Act, 1959	22nd December, 1959
41. Comptroller and Auditor General (Amendment) Act, 1959	22nd December, 1959
42. Finance (No. 2) (P.A.Y.E.) Act, 1959	22nd December, 1959
43. Pensions (Increase) Act, 1959	22nd December, 1959
PRIVATE ACTS—Local Government Provisional Order Confirmation Act, 1959	3rd March, 1959

THE REGISTRY

Register A

SOLICITORS' Practice for sale, Dublin. Correspondence in confidence. Apply Box No. A 184.

Register B

EXPERIENCED Solicitor wishes to purchase practice or partnership. Replies in confidence. Box B 243.

DECISIONS OF PROFESSIONAL INTEREST

A driver who drives a motor car which leaves the road, and collides with a telegraph pole three feet on a grass verge, is prima facie guilty of driving without due care and attention.

The Lord Chief Justice, Mr. Justice Ashworth

and Mr. Justice Edmund Davies held that evidence that a car had left the road and had mounted a grass verge on its rearside and collided with a telegraph pole some three feet from the edge of the road disclosed a *prima facie* case of driving without due care and attention.

The Court allowed this appeal by the prosecutor, Mr. Watts, from a decision of Essex justices sitting at Clacton, who dismissed an information preferred against Mr. Carter that he had, on February 13, 1959, driven a motor vehicle on the Colchester Road without due care and attention. The justices had upheld a submission made on behalf of Mr. Carter at the close of the prosecution's evidence that he had no case to answer. They had awarded Mr. Carter seven guineas costs.

Mr. Michael Odgen appeared for Mr. Watts. Mr. Carter did not appear and was not represented.

The Lord Chief Justice asked who had represented Mr. Carter before the justices.

Mr. Ogden said that he had been represented by a solicitor.

The Lord Chief Justice—He must have been very persuasive.

The Lord Chief Justice said that this was a perfectly plain instance where the prosecution had adduced evidence to support a *prima facie* case of driving without due care and attention. It might well be asked what Mr. Carter's car had been doing off the road and in collision with a telegraph pole.

A bad point had been taken before the justices and they had been persuaded to accept it. The matter had now come before this court and additional costs had been incurred. The case must be sent back to the justices.

(Watts *v.* Carter, *The Times*, October 22, 1959.)

Public confidence in solicitors.

The Queen's Bench Division in England affirmed an order of the Disciplinary Committee striking off a solicitor who had (*inter alia*) committed breaches of the Solicitors' Accounts Regulations even although in the result no client had suffered any loss. There had at one stage been a deficiency in the client's bank account which had been replaced. The Court stated that this was no answer because public confidence in the profession would be shaken by such behaviour.

(In Re a Solicitor, 103 S.J. 875. 29 October, 1959).

This decision was affirmed by the Court of Appeal on January 11, 1960.

Professional negligence. Principles applicable.

A medical practitioner, Dr. R, while visiting a cottage hospital with no resident medical staff, was told that a butcher had stabbed himself at work. He went to the shop at once, transferred the man to the cottage hospital, and there examined the wound, which was in the abdomen, with great care and skill. He diagnosed, wrongly, that the wound, though cutting the deep fascia, had not penetrated to the peritoneum, and sent the man home, but told him emphatically to see his own doctor that evening and tell him what had happened. When the man's own doctor, Dr. M, saw him, symptoms of pain and nausea had developed. The man reported that he had been told by the hospital that the wound was "superficial". Dr. M, thinking that he had been to a general hospital, accepted that report and treated him for dyspepsia. Five days later the man died after operation, and a post-mortem showed a wound in the small intestine. The widow sued Dr. R, alleging negligence on a number of grounds including failure to communicate directly with Dr. M to report what had happened and what had been found. The trial judge dismissed all the charges of negligence save that in respect of failure to communicate. On that he awarded the widow agreed damages of £9,050. Dr. R appealed.

Morris, L.J., for dismissing the appeal, said that Dr. R had said that he could not have put into a letter anything that the patient could not tell his own doctor or which his own doctor could not infer from Dr. R's actions. Yet the melancholy fact remained that Dr. M, who was in no way criticised, was led to think that he need not concern himself with the wound. If he had received a communication, he would have been made aware of facts not within his knowledge. The question whether the omission was negligent was one on which expert technical guidance was not needed. Medical witnesses had in this special case stated that if similarly placed their conduct would have been no different from that under review. But the duty still remained with the court to decide whether such conduct amounted in law to negligence, and his Lordship could not on the evidence say that the judge's conclusion that negligence was here established was faulty.

Romer, L.J., for allowing the appeal, said that all that Dr. R did was consistent with and founded on his diagnosis—which later proved wrong—that the peritoneum had not been penetrated. His Lordship was not prepared to hold that any action or conduct of Dr. R on that day, which two distinguished witnesses had regarded as being in every respect reasonable, constituted professional negligence. He knew of no case in which a medical man had been held guilty of negligence when eminent members of his own profession had expressed on oath their approval of what

he had done. On the evidence he was satisfied that in no way should Dr. R be regarded as guilty of professional negligence as distinct from having made a pardonably erroneous diagnosis.

Willmer, L.J., also for allowing the appeal, said that the material question was whether Dr. R, when he sent the patient home, ought to have appreciated that it was so vitally important to inform Dr. M of the cutting of the deep fascia, and to have contemplated the possibility that without that information the latter was likely to be misled. That question must be answered in the light of the situation as it presented itself to Dr. R at the same time. In the light of everything that was now known it would have been better if he had sent a letter to Dr. M, but that was not the kind of precaution which in practice was regularly adopted between general practitioners. If Dr. R was to be held negligent for not having taken sufficient precautions to guard against the possible risk of penetration, why was not Dr. M in like case? The fact was that Dr. M's action was to a large extent conditioned by an unfortunate misapprehension as to the nature of the hospital and the status of Dr. R. That was something for which Dr. R could not be blamed and which he could not be expected to have foreseen. The finding of negligence could not be supported on the evidence. Appeal allowed.

(Chapman *v.* Rix—103 S.J., 940.—27 November, 1959).

An ordinary witness is qualified to give evidence as to drunkenness.

A complaint was brought against the defendant under section 30 of the Road Traffic Act; 1933, which provides that for the purposes of the section, a person shall be deemed to have been drunk while driving or attempting to drive a mechanically propelled vehicle, if the Court is satisfied, that by reason of the consumption by him of intoxicating liquor or of drugs, such a person is incapable of exercising effective control over the vehicle in motion. The incident occurred in March, 1957 in Morehampton Road. A Guard purported to give an opinion as to the condition of the defendant, i.e., that he was not capable of driving at the time. The defendant's solicitor objected and on 26th April, 1957 District Justice Farrell stated a consultative case for the opinion of the High Court as to whether evidence by a Guard of his opinion that the defendant driver, by reason of his being drunk, was unfit to drive a mechanically propelled vehicle could be given. Davitt P. answered the question in the affirmative on the 15th January, 1958, but referred it to the Supreme Court on a question of law. The Supreme Court (Lavery and O'Daly J.J., Kingsmill-Moore J. dissenting) having heard arguments in July, 1958, delivered judgment on 29th June, 1959 and affirmed Davitt P. Kingsmill-Moore J., dissenting, held that drunkenness was a vague term to indicate the various phases of insobriety. It is more satisfactory to get the witness to describe the appearance, behaviour, movements, reactions and utterances of the person alleged to be drunk and leave it to the Justice to draw his own conclusions. Lavery J. adopted the judgment of Davitt P., who held that evidence as to drunkenness or sobriety need not necessarily be that of a doctor or similar witness, but that any ordinary witness would be qualified to give evidence on such matters for it would be impossible to administer the criminal code if the fact of drunkenness could only be established by an expert witness. O'Daly J. stated that the offence under section 30 of the Road Traffic Act could be proved simply if the defendant had consumed intoxicating liquor, and that, by reason thereof, he was incapable of exercising control over the mechanically propelled vehicle. An expert need not diagnose drunkenness, for the clear purpose of section 30 is to safeguard the public against the drunken driver. Accordingly it is compatible for any witness, apart from a Guard, to give his opinion as to the state of drunkenness of an alleged driver.

(The State (Ruddy) *v.* Kenny)—unreported.

OBITUARY

Mr. Cecil H. Exham, Solicitor, died on the 24th December, 1959, at his residence, 5 Alta Terrace, Monkstown, Co. Cork.

Mr. Exham served his apprenticeship with the late Mr. Alfred H. Exham, Cork, was admitted in Hilary Sittings, 1913 and practised as senior partner in the firm of Messrs. Thomas Exham & Sons, 10 South Mall, Cork.

Mr. Thomas O'Neill, Solicitor, died on the 28th December, 1959, at his residence, Craobh Ruadh, Castleisland, Co. Kerry.

Mr. O'Neill served his apprenticeship with the late Mr. Richard C. Meredith, Castleisland, was admitted in Trinity Sittings, 1922, and practised as partner in the firm of Messrs. O'Neill and Twomey, Castleisland, Co. Kerry.

Mr. John D. T. Rooney, Solicitor, died on the 28th December, 1959, at his residence, 12 Prince Edward Terrace, Blackrock, Co. Dublin.

Mr. Rooney served his apprenticeship with the

late Mr. William T. Clare, 33 Anglesea Street, Dublin, was admitted in Michaelmas Sittings, 1925, and practised at the Bank of Ireland, College Green, Dublin.

Mrs. Margaret Daly, Solicitor, died at her residence, 53 Frankfort Avenue, Rathgar, Dublin.

Mrs. Daly served her apprenticeship with the late Mr. Timothy O'Shea, Killarney and was admitted in Trinity Sittings, 1936.

Mr. James J. Tuohy, Solicitor, died on the 10th January, 1960, at St. Laurence's Hospital, Dublin.

Mr. Tuohy served his apprenticeship with the late Mr. Roger Greene, 11 Wellington Quay, Dublin, was admitted in Trinity Sittings, 1950, and practised at 10 Clare Street, Dublin.

REGISTRATION OF TITLE ACTS, 1891 AND 1942

NOTICE

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

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

Dated the 6th day of February, 1960.

D. L. McCallister,
Registrar of Titles.

Central Office,
Land Registry,
Chancery Street,
Dublin.

Schedule.

1. Registered Owner, Edward Murray. Folio number, 2093. County Longford. Lands of Kilcurry in the Barony of Shrule containing 26a. 3r. 23p.

2. Registered Owner, Patrick Egan. Folios number 2079 and 2080. County Offaly. Lands of Knockbarron in the Barony of Eglish containing 21a. 3r. 7p. and 27a. 2r. 30p.

3. Registered Owner John Rourke. Folio number 4611 (revised). County Leitrim. 36a. 2r. 34p. of the lands of Cortober and 61a. or. 14p. being one undivided sixth part of the Lands of Cortober both situate in the Barony of Drumhaire.

4. Registered Limited Owner William Wilson Ashe. Folio number 3597, County Kildare. Lands of Narraghmore containing 9a. 3r. 19p. and lands of Killeen containing 11a. or. 5p. both situate in the Barony of Narragh and Reban East.

5. Registered Owner, Richard Carroll (orse. O'Carroll). Folios number 666, 7105 & 7096. County Limerick. Lands of Cromwell containing 59a. 3r. 20p. Lands of Kilteely containing 60a. 3r. 15p. and Lands of Garrynoahera containing 44a. 1r. 23p. all situate in the Barony of Small-county being the lands comprised in said Folios 666, 7105 and 7096 respectively.

THE SOLICITORS' BENEVOLENT ASSOCIATION

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

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

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

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

Address:
Secretary,
Solicitors' Benevolent Association,
18, Hume Street,
Dublin.

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THE GAZETTE

of the

INCORPORATED LAW SOCIETY OF IRELAND

President
JOHN J. NASH

Vice-Presidents
RALPH J. WALKER
PETER E. O'CONNELL

Secretary
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

MEETINGS OF THE COUNCIL

February 11th: The President in the Chair. Also present, Messrs. Dinnen Gilmore, George G. Overend, James R. Green, James J. O'Connor, Gerald Y. Goldberg, George A. Nolan, Arthur Cox, Desmond J. Collins, Niall S. Gaffney, John R. Halpin, Frank Armstrong, Francis J. Lanigan, John Maher, Augustus Cullen, Robert McD. Taylor, Eunan McCarron, Charles J. Downing, Reginald J. Nolan, James R. Quirke, William J. Comerford, James W. O'Donovan, Brendan A. McGrath, Peter E. O'Connell, Patrick Noonan, Thomas V. O'Connor, John J. Sheil, John Carrigan, John Kelly, Terence De Vere White.

The following was among the business transacted.

Legal Textbooks

A report from the Publications Committee on replies received to the advertisements recently published inviting offers for the publication of suitable books was considered. The report recommended that the Council should immediately pursue the project for the publication of books which would be suitable both for practitioners and students on registration of title and the general law of landlord and tenant. It was decided to pursue the matter with the Incorporated Society of Law Reporting and the suggested authors and with the Department of Justice.

Law Clerks Joint Labour Committee

The Secretary reported that the committee has made proposals to the Labour Court for an increase of 8% on existing statutory wage rates with a minimum of 10/- weekly at the top of the scale. An application for statutory annual holidays of three consecutive weeks was refused. It was decided that representations should be made on behalf of the Society to the Joint Labour Committee against the proposed increases.

Statutory Notice to Creditors

The Council considered a report from a committee on the question whether the State is or should be bound by the statutory notice to creditors published by the personal representatives in accordance with the Real Property Limitation Act, 1859. The Secretary stated that he had ascertained that the relevant provisions of this statue have been replaced by section 27 of the English Trustee Act, 1925 and

that in section 71 of the last mentioned Act it is provided that the provisions of the statute binds the Crown. It was decided that a memorandum should be sent to the Revenue Commissioners asking that legislation should be introduced to clarify the position so that the State will be bound by the provisions of the statutory notice in the same manner as the Crown in England.

Legal Aid in Criminal Matters

A committee which considered a proposal that the Society should make representations in favour of the introduction of a general scheme of legal aid in criminal matters reported that there is no support or demand in the profession for such a measure. It was decided to take no further action.

Valuation Office Delays

The Council considered a report from a committee which referred to the arrangements made between the Society and the Commissioner of Valuation reported in the Society's *Gazette* in March, 1956. While the Society at that time did not consider that the arrangements then suggested were completely satisfactory to the profession they were the best that could be obtained. In the Society's *Gazette* in March, 1956, it was stated that the Commissioner hoped that by June, 1956 the arrears would be equivalent to six weeks intake of business and that from then

(*a*) City cases would be dealt with in six weeks to two months except during the months of January and February each year.

(*b*) Country cases would be dealt with where inspection is required with a maximum delay of six months.

The longer period in country cases was stated to be due to the fact that there are no resident valuers in the country and that with the present staffing position it was impossible to arrange for more frequent inspections. The Commissioner stated that he would try to have cases in the Dublin suburbs dealt with as city cases. From information received by the Council it appears that the delays in making assessments now exceeds the period mentioned in the memorandum published in the Society's *Gazette* in March, 1956 and it was decided to make further representations to the Valuation Office. A copy of the statement published in the Society's *Gazette* in March, 1956 is reprinted in this issue as it contains a number of other matters of interest to practitioners.

Compulsory acquisition by local authority. Indemnity against costs

A committee reported that the position with regard to the costs indemnity given by the Dublin Corporation where property is compulsorily acquired is unsatisfactory as it does not provide a complete indemnity against costs to the owner whose property is acquired. The committee stated in their opinion it is a requirement of justice that where property is compulsorily acquired by a local authority the authority should pay the costs on a solicitor and own client basis. It was decided to make representations to the Dublin Corporation.

Service of Processes

A Committee reported that there are inadequate facilities for service of processes in various parts of the country owing to the inadequate salaries paid by the Department of Justice to process servers. It was suggested by the Society in correspondence with the Department that districts should be amalgamated with increased salaries in order to provide better remuneration and attract suitable persons. The Secretary stated that the question had been referred by the Department of Justice to the District Court Rules Committee who have under consideration a proposal for the extension of the provisions for service by registered post without any special order of the Court except in cases under the Enforcement of Court Orders Act.

DELAYS IN THE VALUATION OFFICE

The President attended with representatives from the Council at a conference with the Commissioner of Valuation and officials of the Valuation Office to discuss the present unsatisfactory position and arrears of business in the office. It was agreed on both sides that the present delay in obtaining determinations as to the value of property for the purpose of Death Duties and Stamp Duties is unsatisfactory and the Commissioner informed the Society's representatives that a reorganisation plan has been drawn up and was in operation. The Commissioner hopes that the arrears would be equivalent to six weeks intake of business and that

(*a*) city cases would be dealt with in six weeks to two months except during the months of January and February in each year;

(*b*) country cases would be dealt with where inspection is required with a maximum delay of six months.

The longer period in country cases is due to the fact that valuers visit each country twice during the year and with the present staffing position it is not possible to arrange for more frequent inspections. The Commissioner will try to have cases in the Dublin suburbs dealt with as in city cases.

(*c*) Unnecessary delay will be avoided by endeavouring to agree valuations with the office and personal visits from solicitors for this

purpose will be welcomed. It was pointed out that in some cases which might otherwise have been disposed of without undue delay difficulty had been caused by the unrealistic nature of the figures submitted to the Valuation Office.

(*d*) It was pointed out to the Commissioner that extra delay was caused when an application was made for a Certificate under Section 11 of the Finance Act, 1894, because if land or house property is included in the assets the value of such property had to be referred back to the Valuation Office for final determination when the Certificate was applied for and this meant a second delay.

It was suggested that where a solicitor knew he would, in due course, be applying for a Certificate under Section 11 rather than for a non-statutory Certificate (form 149) he should mark the form 77 at the time of lodging the Schedule of Assets with a note asking that a final determination be made of the value of property in the first instance and so avoid a reference back. The Commissioner promised to consider this suugestion but pointed out that if a final determination had to be made it entailed a more thorough investigation and it was possible that he would have to insist on a higher figure in some cases in which, if no determination were sought he might have allowed it to pass without comment. This arises by reason of the fact that after a final determination the Valuation Office cannot re-open the figure even on a subsequent sale at a higher sum while the client can, on the other hand, claim repayment of duty if a sale is subsequently made at a lower figure.

Here again, it was pointed out that valuations may be expedited by direct dealings between solicitors and the valuation office and it was agreed that where a notice of objection to a valuation is sent to the Revenue Commissioners a duplicate copy should be sent to the Valuation Office and that correspondence on the subject of valuation might be conducted direct with that office. (Society's *Gazette*, March, 1956.)

INCREASE IN LAND COMMISSION COSTS

Order VIII of the Land Purchase Acts Rules, 1960 (S.I. No. 20 of 1960) is as follows :

Amendment of Order XLVII of the Rules of 5th February, 1924, etc.

1. Order XLVII. of the Provisional Rules under the Land Purchase Acts dated the 5th day of February, 1924, (as amended by the Provisional Rules under the Land Purchase Acts dated the 15th day of July, 1930 and by Order II of the Land Purchase Acts Rules of 1947) is hereby amended by the insertion therein, immediately after Rule 3A, of the following Rule :—

"3B. The Costs (as distinct from outlay) incurred in the course of proceedings in the Land Commission under the Land Purchase Acts on and after the 1st day of February, 1960, shall be taxed according to the schedule of fees in the Appendix hereto (as amended) with an addition thereto of an amount equal to 50 per cent of such fees (save as to items Nos. 89 and 90 which may be increased to sums of £1 and £15 respectively) provided that this Rule shall not apply in respect of business transacted prior to the said 1st day of February, 1960, or in respect of business, the particulars of the costs of which have been prior to such date furnished to the client or person chargeable therewith or have been taxed or certified.

LAND PURCHASE ACTS RULES 1960

The Land Purchase Acts Rules, 1960 (S.I. No. 20 of 1960) came into operation on 28th January, 1960. The subject matter of the regulations is concerned with applications for an order to levy under section 19 (2) of the Land Act, 1933 and section 17 (1) of the Land Act, 1939; orders for possession; partition of right of grazing or turbary; procedure for the sealing of a certificate and for showing cause against such sealing (section 2, Land Act, 1946); compulsory acquisition; prohibition of the removal of the surface of land; solicitors' costs; Land Commission fees; power to the judicial commissioner to enlarge time; forms.

EXAMINATION RESULTS

At examinations held on 29th day of January under the Solicitors Act, 1954, the following passed :—

First Examination in Irish Richard Carrigan, Sean de Burca, John E. Gore-Grimes, Noel D. Greene, Michael B. Hegarty, Daniel Kelliher, Alan Kelly, Peter F. R. Murphy, Brian M. McMahon, James J. Nestor, Bryan L. M. O'Flaherty, Thomas J. O'Reilly, Sylvester W. Riordan, John Joseph Rochford, Brendan D. Walsh.

16 candidates attended; 15 passed.

Second Examination in Irish Michael J. Browne, James J. Dennison, Patrick John Farrell, William S. Geraghty, Ailin A. Gibbons, Joseph Gilmartin,

Thomas Jackson, John Morrissey, James J. O'Connor, Desmond J. O'Malley, Daire Walsh. 11 candidates attended; 11 passed.

DUBLIN SOLICITORS' BAR ASSOCIATION

A meeting of the Council was held on Wednesday, 3rd February, 1960. Further reports on apparent delays in the stamping of Deeds at Dublin Castle were received and considered.

A Sub-committee was set up to produce an initial draft of a standard form of Auction Particulars and Conditions of Sale.

It was thought well to remind members that on an appointment of new trustees the preparation of stock and share transfers is proper to the solicitor concerned.

Any member encountering delays in the furnishing of Negative Searches by the Registry of Deeds is requested to submit full particulars in writing to the Honorary Secretary.

A Sub-committee's report on the Hire Purchase (Amendment) Bill, 1957 was considered as were the representations which might be made thereon.

The next meeting was fixed for Wednesday, 2nd March, 1960.

RECENT STATUTORY INSTRUMENTS

THE RULES OF THE HIGH COURT AND SUPREME COURT (No. 2)—S.I. No. 189 of 1959 enables the Accountant of the Courts of Justice, in compliance with the Cheques Act, 1959, to obtain good discharges for payments directed by him and in the discharge of which the Bank of Ireland has not obtained 7 endorsements on the Drafts issued.

THE INCOME TAX (PURCHASED LIFE ANNUITIES) REGULATIONS, 1959—S.I. No. 152 of 1959 prescribe the procedure for giving effect to Section 22, Finance Act, 1959, which provides that certain purchased life annuities are to be treated as containing a non-taxable capital element. They also prescribe the mortality tables to be used for computing the capital element and provide for reference to an actuary nominated by the Minister for Finance in any case that is not within the scope of the tables referred to.

The Regulations provide for a claim to the exemption to be made by the annuitant, for particulars of the annuity to be furnished by the concern paying it and for the title to exemption and the amount of the capital element to be determined by the Inspector of Taxes subject to the same right of appeal as exists against an Income Tax Assessment. Provision is made for the repayment, subject to a six-year time limit, of tax suffered by deduction or otherwise for 1959/60, or any later year, in respect of so much of an annuity as the determination declares to be the capital element. Provision is made for informing the payer of the annuity as to the amount of it which is to be subject to deduction of tax at the source in future.

The Regulations also provide that if the Inspector or the annuitant discovers an error in the determination of the capital element, it may be revised subject to the same right of appeal against the revised determination as against the original determination. When a revised determination is settled, the tax paid for past years is to be adjusted by repayment or by additional assessment as may be necessary subject to not going back beyond 1959/60, or for more than six years (except that the six-year limit is not applicable where the original determination gave too high a capital element and was obtained by fraudulent means).

Copies of these Regulations may be obtained from the Government Publications Sale Office, The Arcade, Henry Street, Dublin—Price: Ninepence.

THE COMPANIES ACTS (1908 TO 1959) (FORMS) ORDER, 1960—S.I. No. 16 of 1960 prescribes a new form for use by companies in submitting the annual list of members and summary required by Section 26 of the Companies (Consolidation) Act, 1908, following the amendment of that Section by the Companies Act, 1959, as well as a revised Statement in the form of a balance sheet, and a revised list of persons holding shares.

This Instrument is obtainable from the Government Publications Sale Office, Dublin—Price: 6d. (Postage 2d. extra).

THE ARBITRATION ACT, 1954 (SECTION 12 [2] AND PART V) (COMMENCEMENT) ORDER, 1959—S.I. No. 14 of 1959 which is complementary to the Arbitration (Foreign Awards) Order, 1960 (S.I. No. 15 of 1960), fixes the 1st February, 1960, as the date of operation of section 12 (2) and Part V Sections 54 to 59 of the Arbitration Act, 1954. The effect of both Orders is to allow for the enforcement on a reciprocal basis in the State of foreign arbitral awards arising out of matters that may lawfully be referred to arbitration under Irish law.

It can be obtained from the Government Publications Sale Office, Dublin—Price: Threepence.

THE ARBITRATION (FOREIGN AWARDS) ORDER, 1960—S.I. No. 15 of 1960 which is complementary to the Arbitration Act, 1954 (Section 12 (2) and Part V) (Commencement) Order, 1960 (S.I. No. 14 of 1960) and which comes into operation on the

1st February, 1960, lists the States declared to be parties to the 1927 Geneva Convention on the Execution of Foreign Arbitral Awards and the territories declared to be territories to which that Convention applies. The effect of both Orders will be to allow for the enforcement on a reciprocal basis in the State of foreign arbitral awards arising out of matters that may lawfully be referred to arbitration under Irish law.

It can be obtained from the Government Publications Sale Office, Dublin—Price : Sixpence.

NATURAL JUSTICE. *Penalty against University student.*

The Judicial Committee of the Privy Council allowed an appeal by the University of Ceylon from a judgment of the Supreme Court of Ceylon declaring that the University had acted wrongly in suspending respondent indefinitely from all examinations after an investigation by persons appointed under the statute of the University to enquire into alleged irregularities in connection with an examination. The Supreme Court of Ceylon held that the investigating body was under a duty to act judicially and that the investigation had not been made in accordance with the principles of natural justice in that respondent was not given particulars of the charge against him and was given no opportunity to cross-examine witnesses. The Committee in allowing the appeal by the University from the decision of the Supreme Court said that the question was whether the inquiry was conducted with due regard to the rights accorded by the principles of natural justice. They referred to the statement in DeVerteuil *v.* Knaggs (1918 A.C.557) that "in making an inquiry there is, apart from special circumstances, the duty of giving to any person against whom a complaint was made a fair opportunity of making any relevant statement which he may desire to bring forward and a fair opportunity to correct or controvert any relevant statement brought forward to his prejudice". In the present case there was no question as to the bona fides of the investigating body. In their Lordships' opinion the fact that the witnesses were not questioned in the presence and hearing of the plaintiff, who consequently was not able to question them on the statements they made did not in itself involve any violation of the requirements of natural justice. In the words of Lord Loreburn in the Board of Education *v.* Rice (1911 A.C.179) the Vice Chancellor was not bound to treat the matter as it was a trial but he could obtain information anyway he thought best. A fair opportunity must have been given to the plaintiff to correct or contradict any relevant statement to his prejudice. Their Lordships were satisfied that the plaintiff was adequately informed of the case he had to meet by letter and interview and were of opinion that the appeal should be allowed. (University of Ceylon *v.* Fernando Times Newspaper, 17th February, 1960.)

REGISTRATION OF TITLE ACTS, 1891 AND 1942

ISSUE OF DUPLICATE LAND CERTIFICATE

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

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

Dated the 10th day of March, 1960.

D. L. McALLISTER,
Registrar of Titles.

Central Office,
Land Registry,
Chancery Street,
DUBLIN.

SCHEDULE

1. Registered Owner, Honoria Mongan. Folio number, 4616. County Galway. Lands of Carna in the Barony of Ballinahinch containing 4a. 0 r. 18p.

2. Registered Owners, Michael Cussen of one undivided moiety, Joseph Cussen of one undivided moiety. Folio number, 6510 (Revised). County Limerick. Lands of St. Nicholas in the Parish of St. Nicholas containing 1a. 1r. 10p.

OBITUARY

MR. GERALD MAGUIRE, Solicitor, died on 9th February, 1960, at a Dublin Hospital.

Mr. Maguire served his apprenticeship with Mr. Conor A. Maguire, Claremorris, Co. Mayo, was admitted in Hilary Sittings, 1919, and practised at 43 Fitzwilliam Square, Dublin and Claremorris, Co. Mayo.

CLIENT'S RIGHT TO DOCUMENTS ON TERMINATING SOLICITOR'S RETAINER

When a client terminates a solicitor's retainer or directs him to hand over papers to another solicitor

questions sometime must arise as to whether the solicitor is entitled to retain any of the papers. Where costs are due by the client there is of course a retaining lien on the client's papers but the question is now considered on the assumption that no costs are due. Generally speaking the principle is that the client is entitled to drafts and copies made in the course of business for which he has paid. The general principles are reasonably clear and are stated in the fourth edition of Cordery's Law relating to Solicitors at page 403.

Where a solicitor is requested to hand over the files of correspondence is he entitled to retain any letters or copies on the file? The answer appears to be that letters received by a solicitor from his client and copies of letters addressed by a solicitor to his client are the property of the solicitor (re Wheatcroft 6 Ch.D. 97). Letters written to the solicitor by third parties are the property of the client although copies of these letters belong to the client only if he has paid for them (re Thompson 20 Beav. 545). Letters written by the solicitor to other parties by the direction of the client, are the property of the client (Howard *v.* Gunn 32 Beav. 462). The latter statement as printed in Cordery is not very clear. Prima facie it would appear that letters written by the solicitor to another party by direction of the client are the property of the addressee and the question really seems to be whether carbon copies of those letters retained by the solicitor belong to the solicitor or the client. There has been no decided Irish or English case on this subject since the introduction of typewriters. In Marshall *v.* MacAlister and others (1952 N.Z.L.R. 257) the Supreme Court of New Zealand decided that a solicitor was liable to surrender to his former client the correspondence file carbon copies of letters had been written to two third parties on the client's behalf.

Vouchers for payments made on the client's behalf are his property. The Council have decided that such vouchers include counsel's receipts for fees paid.

Whether a solicitor can charge for preparing a schedule or list of documents which he hands over to his client depends in law on the question for whose benefit the schedule or list is required. Opinion 90 of the Council printed at page 578 of the 1960 Calendar and Law Directory deals fairly comprehensively with the question of search and scheduling fees. The Council have stated that as regards valuable documents (i.e., documents of title, wills, etc., specially entrusted to a solicitor for safe custody) no search or other fee can be charged. Where there is no claim for costs the client is entitled absolutely to the documents. As regards other documents not falling under the description of valuable as defined above, a reasonable search fee may be charged where the business to which the documents relate has been concluded at least one year previously. Those seeking further information on the subject should consult opinion 90.

ACQUISITION UNDER THE LABOURERS ACTS

TAXATION OF COSTS

The Society has been in communication with the Department of Local Government on the difficulties caused by doubts as to the statutory authority of the Taxing Masters of the High Court to tax costs of acquisitions under the Labourers Acts since the making of the Labourers Acts (Solicitors Remuneration) Order, 1957 (S.I. No. 144 of 1957). That order provided that the special provisions of the Labourers (Ireland) Orders 1912 and 1914 should cease to have effect as respects business undertaken by a solicitor on or after 1st October, 1957. It was the intention of the order that the taxation of costs after that date would be carried out by the Taxing Masters instead of by the special taxing officer under the Labourers Acts. A letter has been received from the Department of Local Government stating that the question of giving the Taxing Masters of the High Court statutory authority to tax these costs is now under consideration in the Department of Justice. As regards the arrangements to be made pending the enactment of the proposed legislation it is not considered practicable to endeavour to revert to the position which obtain prior to 1st August, 1957 but it is hoped to arrange that local authorities will deal on an interim basis with outstanding bills of costs. Wherever it has come to notice that bills of costs are outstanding the Department has suggested to the appropriate County Manager to consider settlements without taxation or interim payments or some other suitable arrangement to avoid any possible hardship to solicitors. Letters have been written on this basis to the County Managers of Offaly, Clare, Longford, Galway and Kilkenny and the Department will write to any other managers on hearing that difficulties have arisen in their areas with regard to payment of these bills of costs.

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SUBJECT MATTER AND REFERENCE NUMBERS

Dublin Port—Livestock may not be shipped from there after 23rd December 1959 without a licence from the Minister for Agriculture—221/1959.
Westport Harbour Commissioners, Co. Mayo, may charge 1/- per ton on seaweed meal after 10th October, 1959 —162/1959.
Wicklow Harbour Works—Period for completion extended to 27th September 1961—159/1959.

HEALTH

SUBJECT MATTER AND REFERENCE NUMBERS

Dublin Public Assistance District—New Registrar's District of Ballyfermot formed on 21st December 1959 and areas defined—214/1959.
Kerry Co. Council may henceforth make By-Laws for the prevention of obstruction and danger to users of seashore —182/1959.
Health (Officers Age Limit) Declaration 1960—1/1960.
Opticians Act 1956—5th August, 1959 appointed as day for setting up registers of ophthalmic opticians and dispensing opticians—143/1959.
Opticians Act, 1956—Prohibition and restriction on prescription and sale of spectacles effective from 1st December 1959—172/1959.
Public Health Act (Amendment) Act, 1907 (Application of Section 82 to County Health District of Kerry)—182/1959.

JUSTICE, EXTERNAL AFFAIRS AND DEFENCE

SUBJECT MATTER AND REFERENCE NUMBERS

Arbitration Act 1954—Part V relating to Foreign Awards in force from 1st February 1960—14/1960.
Arbitration (Foreign Awards) Order 1960 lists States parties to Geneva Convention on Arbitration, 1927, who will reciprocate in enforcing foreign arbitral awards—15/1960.
Chief Superintendents and highest officers of Garda—Scale of pay applicable from 1st April 1958—146/1959.
Companies Acts (1908–1959) Forms Order 1960—16/1960.
Gárda Síochána candidates may have concessions as to age, if previously serving members of permanent Defence Forces—234/1959.
Gárda Síochána (Appointments) Regulations 1960—38/1960.
High Court and Supreme Court Rules 1959—139/1959.
High Court and Supreme Court Rules 1959 (No. 2)—189/1959.
Land Purchase Act Rules 1960 in force from 28th January 1960—20/1960.
Land Registration Fees amended after 30th September 1959 —157/1959.
Maritime Jurisdiction Act 1959—straight base lines prescribed—173—1959.
Maritime Jurisdiction Act 1959—Charts to be used in evidence to establish territorial seas and fishery limits—174/1959.

MISCELLANEOUS

SUBJECT MATTER AND REFERENCE NUMBERS

Coras Tráchtála Teoranta dissolved on 1st September 1959, and its property and liabilities transferred to Coras Tráchtála—148/1959.
Coras Tráchtála appointed on 1st September 1959 a Statutory Board to carry on promotion of exports—147/1959.
County and City Managers' Association—do not require a Negotiation Licence under Trade Union Acts to carry on negotiations—17/1960.
Electricity Supply Board Officers' Association—sum required for Negotiation Licence under Trade Union Act reduced by 75%—11/1960.
Greyhound Race Track (Totalisator) Regulations 1960—23/1960.
Industrial Grants Act 1959—in operation from 26th August 1959—144/1959.
Seamen's Union—Sum required for Negotiation Licence under Trade Union Act reduced by 75%—175/1959.
Undeveloped Areas Act 1952 extended to Birr area, Co. Offaly —158/1959.

SOCIAL SERVICES

SUBJECT MATTER AND REFERENCE NUMBERS

Social Welfare (Age Limit for Offices) Declaration 1960 fixing age limit at 65 years—2/1960.

TRANSPORT AND TRAFFIC

SUBJECT MATTER AND REFERENCE NUMBERS

Carriage of Wheat—Licensed Millers may use their own unlicensed vehicles for this purpose—149/1950.
County Donegal Railways (Donegal—Ballyshannon) Termination of railway services after 1st January 1960—178/1959.
County Donegal Railway (Killybegs—Strabane and Letterkenny—Strabane)—Passenger services to terminate on 1st January 1960—179/1959.
County Donegal Railways—Abandonment of railway lines on said sections authorised after 16th February 1960 —9/1960.
Dublin Street Service Vehicles (Lost Property) Bye-Laws 1959 —169/1959.

Kuwait and Australia have now accepted the Merchant Shipping Safety Convention—10/1960.

Merchant Shipping (Life-Saving Appliances) Rules 1960—29/1960.

Redundancy Compensation provisions of Transport Act 1958
—extended to Stores Dept. of C.I.E.—166/1959.
—extended to Chief Accountant's Dept. of C.I.E.—167/1959.
—extended to Road Rolling Stock Section of Chief Engineer's Dept. of C.I.E.—135/1959.
—extended to Civil Engineering and Mechanical Engineering Branches of the Chief Engineer's Dept., C.I.E.—37/1960.

Road Vehicles (Registration and Licensing) (Revised Requirements as to Unladen Weights) Regulations 1959—217/1959.

THE REGISTRY

Register A

ARMAGH. The firm of Joshua E. Peel & Son require a competent and experienced Solicitor. Good commencing salary with prospects of partnership for suitable applicant. Assistance with accommodation, if necessary. Managing Clerk with experience would be considered.

Register B

EXPERIENCED Solicitor wishes to purchase practice or partnership. Replies in confidence. Box No. B243.

THE SOLICITORS' BENEVOLENT ASSOCIATION

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

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

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

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

Address:

SECRETARY,

SOLICITORS' BENEVOLENT ASSOCIATION,

18, HUME STREET,

DUBLIN.

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MARCH,
1960

THE GAZETTE

of the

INCORPORATED LAW SOCIETY OF IRELAND

President
JOHN J. NASH

Vice-Presidents
RALPH J. WALKER
PETER E. O'CONNELL

Secretary
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

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MEETINGS OF THE COUNCIL

MARCH 11TH: The President in the chair. Also present, Messrs. John Kelly, Eunan McCarron, Dinnen B. Gilmore, James R. Green, James J. O'Connor, George G. Overend, Edward Treacy, John J. Sheil, Francis J. Lanigan, Robert McD. Taylor, Desmond J. Collins, Niall S. Gaffney, John R. Halpin, Ralph J. Walker, Peter E. O'Connell, John Maher, Brendan A. McGrath, Gerald Y. Goldberg, Cornelius J. Daly, Dermot P. Shaw, Charles J. Downing, James R. Quirke, Thomas A. O'Reilly, Augustus Cullen, Patrick Noonan, Terence de Vere White, Arthur Cox, John Carrigan, James W. O'Donovan, Patrick O'Donnell.

The Council passed a vote of condolence with the family of the late Mr. Christopher E. Callan who was a Provincial Delegate from 1930 to 1949 and from 1950 to 1959.

The following was among the business transacted:

Land Commission procedure

A deputation was appointed to seek an interview with the Minister for Lands on the question of modernising the procedure of the Irish Land Commission. A memorandum on the subject was sent to the Department by the Society some years ago.

Medical practitioners. Disclosure of information concerning patients

The Council considered a report from a committee on correspondence received from a local bar association bringing to the notice of the Society the question whether medical practitioners who treat or attend injured parties should be at liberty afterwards to submit reports on their patients to insurance companies acting against the patients' interests. It was stated in correspondence from the association that a County Council employee who consulted a member of the Association was treated in a County Hospital for injuries. When the patient's solicitor asked for a report from the acting surgeon in the hospital it was refused on the ground that a report had already been furnished to an insurance company. It was pointed out to the doctor that the patient had not consented to the report being sent to the insurance company and it was then learned that the instructions for the furnishing of the report to the insurance company came from an official of the County Council, the injured man's employers. The association asked the Society to take the matter up with the Irish Medical Association. It was decided that a communication should be sent to the I.M.A., for the observations of that body.

Lectures by solicitors

A member enquired whether there would be any professional objection to his delivering a lecture on the Constitution in connection with an adult education course promoted by a local parish guild of Muintir na Tire. It would be advertised by a poster with member's name displayed outside the parish hall. A committee whose report was adopted by the Council stated that they had considered the following statement printed in the GAZETTE, April, 1944.

> Any activity on the part of a solicitor of a self-advertising nature designed to attract business is clearly not permissible. Lectures delivered or articles published by a solicitor contrary to this principle therefore necessarily involve a breach of professional etiquette.

The report of the committee went on to state that there is no objection to the publication of the name of the solicitor as lecturer, even if the lecture is on a legal topic, if it is given to members of an association provided that the literature relating to the lecture is circulated only to members of the association. If there is a newspaper report of the lecture in the local press there would not be any objection provided that the solicitor does not invite or instigate publication and that the lecture is not delivered with a view to the unfair attraction of business but is given on the invitation of the association *bona fide* for the benefit of its members.

Insurance company filing defence inconsistent with position represented during negotiations

A committee reported on correspondence with an insurance company on the matter mentioned in the Society's GAZETTE of July, 1959. A member had acted for plaintiffs in proceedings against a company in respect of an accident in which a motor vehicle the property of the company was involved. The vehicle was being driven by an employee of the company under a hiring contract with the company. Member had assumed, and the insurance company had not denied, during negotiations that the car was being driven by the employee as such and the existence of the hiring contract was not disclosed until after proceedings had been instituted against the company. It was then found that by virtue of section 3 of the Road Traffic Act, 1934, the driver and not the company was to be regarded as the owner and accordingly proceedings had been wrongly instituted. The insurance company concerned have now agreed that in future cases of this kind the company will notify the plaintiff's solicitor if the car is driven under a hiring agreement so that his attention may be directed to section 3 of the Road Traffic Act, 1934. The Council, however, think it advisable to inform members that it would be prudent to make an enquiry as to the possible existence of a hiring contract in such cases before assuming that a motor vehicle is driven by an employee in pursuance of his contract of employment and instituting proceedings on that basis. If there is a hiring contract the driver and not the company hiring out the vehicle is to be deemed the owner for the purpose of proceedings.

Claims of Irish nationals on foreign estates

The Council approved the following report from a committee:

1. An Irish solicitor should not act on behalf of an American or other foreign agent for the purpose of obtaining the execution by an Irish citizen in favour of any other person of a power of attorney dealing with the interest of that citizen in an estate situate abroad unless the agent is a lawyer acting either for a beneficiary or for the duly appointed personal representative.
2. An Irish solicitor acting on the instructions of a foreign agent should in no case obtain the signature of an Irish citizen to a power of attorney as mentioned above unless the Irish

citizen has had independent legal advice or has been advised to obtain such advice and has refused to do so.

3. The amount specified in any power of attorney to cover the costs or commission of the foreign agent and the Irish solicitor should be reasonable having regard to the responsibility and work undertaken, the amount of the property concerned and other circumstances.

Sharing of commission with foreign lawyer

A committee reported on a query received from a member on the practice of American attorneys of charging a percentage fee on the value of an estate and allowing the Irish solicitor one third of the commission on an agency basis. He asks (1) whether the Irish solicitor should disclose to his own client the ratio in which the percentage charged for work done in America is divided between the American attorney and the Irish solicitor. (2) Whether having received from the American attorney part of the fees for work done in America the Irish solicitor is entitled to charge him in addition ordinary fees for work done by him in Ireland. He pointed out that the fees received by an Irish solicitor from the American agent might in some cases exceed the taxed costs for the work done in Ireland. In their report which was approved by the Council the committee stated that provided that principles laid down above in regard to the execution of powers of attorney and independent advice have been observed the Council are of the opinion that (1) the Irish solicitor need not disclose to his own client the ratio in which the percentage charge for work done in America is divided between the American attorney and the Irish solicitor but the client is entitled to know the actual costs deducted by the American attorney. (2) In American cases the commission received usually covers all the work done in Ireland and if additional charges are made against the client the amount received from the U.S. attorney should be disclosed.

Counsel's receipted backsheets

The Council approved a report from a committee stating that on the termination of a solicitor's retainer a client is entitled to receive from the solicitor counsel's receipted backsheets for fees paid.

Gaming and Lotteries Act, 1956

In the Society's GAZETTE of February, 1958, the Council adopted a ruling of the Bar Council that it is improper to settle or institute proceedings for a gaming debt having regard to section 36 of the Gaming and Lotteries Act, 1956, whereby every contract by way of gaming or wagering is void. An enquiry was received from a member as to whether he is precluded by this ruling from instituting proceedings for a client against the promoters of a pool run for charity. The circumstances were that two tickets had been printed with the same number, which was drawn, and the promoters offered one half of the prize to each holder. The committee in their report pointed out that under the Gaming and Lotteries Act, 1956, section 36 (1) every contract by way of gaming or wagering is void. The section names all gaming or wagering and not merely unlawful gaming, etc., so as to prevent recourse to the Courts to enforce such contracts. There appears to be no statutory provision with regard to lotteries. It was not clear to the committee (1) whether the present transaction was a lottery or (2) that a lottery falls within the provisions as to gaming contracts in sub-section (1) of section 36 notwithstanding the *obiter dictum* of Goddard C. J. in Smith *v.* Wyles (1958 3. A.E.R. 281) that a lottery is gaming. It was not clear to the committee that the ruling of the Council of February, 1958, applied and they recommended that member should be entitled to test the legal question in the Courts. The report of the committee was adopted.

COSTS OF MORTGAGES UNDER THE SMALL DWELLINGS (ACQUISITION) ACTS

The following scale of costs was adopted by the Society in general meeting on 12th May, 1955 in the case of loans by local authorities under the Small Dwellings (Acquisition) Acts to occupiers or intending occupiers to secure advances for the purpose of the purchase or erection of houses :

(*a*) in all cases a commission scale of 2% on he amount of the loan whether or not the title has been registered under the Registration of Titles Act, 1891 and whether or not the equity note has been discharged, provided that

(*b*) if there is a common root of title the fee shall be 2% of the amount of the loan on the first mortgage and 1½% on the amount of the loan on each subsequent mortgage on the same title.

The Council wish to point out that these charges are intended to be inclusive and that no correspondence or other fees should be charged.

LABOURERS' ACTS COSTS

The Council wish to draw attention to the advice given in the Society's GAZETTE in July, 1957 that solicitors acting in connection with the acquisition

of property by local authorities under the Labourers' Acts should give notice of election to take the item charges before undertaking any business unless they wish to be paid by means of the commission scale fee. Where the consideration is small the commission scale fee is usually unremunerative but in the absence of notice of election given to the client before undertaking any business, the commission fee will automatically apply. It is advisable as a matter of precaution to give notice also to the local authority.

EXAMINATIONS, 1960

Examination	*Date*	*Latest date for entry*
First & Second Irish	January 29th & 30th.	January 8th
,, ,, ,, ,,	July 6th & 7th	June 15th
,, ,, ,, ,,	September 16th & 17th.	Aug. 26th
Preliminary ...	July 4th & 5th	June 13th
,, ...	September 6th & 7th.	Aug. 16th
Book-keeping ...	June 10th	May 20th
,, ...	September 9th	Aug. 19th
First Law	June 7th & 8th	May 17th
,, ,, ...	September 5th & 6th.	Aug. 15th
Second Law ...	September 5th & 6th.	Aug. 15th
Third Law	September 7th, 8th & 9th.	Aug. 17th
Final	June 7th, 8th & 9th.	May 17th

N.B.—The dates for the Preliminary and First and Second Irish examinations have been changed to the following dates :—

Preliminary Examination : 4th and 5th days of July. Last date for entry : 13th June.

First and Second Irish Examinations : 6th and 7th days of July. Last date for entry : 15th June.

DUBLIN SOLICITORS' BAR ASSOCIATION

A meeting of the Council was held on Wednesday, 2nd March, 1960.

The effect of Section 17 sub-section 2 of the Married Women's Status Act, 1957, on proceedings in the District Court was considered, and the conclusion was reached that the sub-section made no difference in any proceedings, except in bankruptcy or on an application for a committal order, and that the most that was desirable would be the addition by the Court of a marginal note as to execution on decrees against married women.

It was decided to approach the Principal Justice of the Metropolitan District Court as to the possibility of taking undefended ordinary civil processes before ordinary default civil processes with a view to facilitate plaintiffs and their witnesses.

The Honorary Secretary and the Honorary Treasurer were appointed trustees of the Association for the purpose of purchasing and holding prize bonds.

The difficulties surrounding the attendance of jurors in the month of July owing to school and other holidays infringing on the end of term were considered and referred to the Law Society.

A further approach to the County Registrar regarding the appointment of a District Court civil bill officer was authorised.

The next meeting was fixed for Wednesday, 6th April, 1960.

THE INCOME TAX (EMPLOYMENTS) REGULATIONS, 1960—S.I. No. 28 of 1960.

These Regulations, which come into force on the 6th April, 1960, prescribe the manner in which deduction of Income Tax from salaries and wages under the "Pay As You Earn" system is to operate. This new system, which will commence on the 6th October, 1960, was outlined in the White Paper (Pr. 5276) which the Minister for Finance presented to each House of the Oireachtas in November, 1959.

Part I of the Regulations contains definitions. It covers also the instance where an employee works under the management of a person who is not his immediate employer. In such circumstances the person under whose management the employee works will be deemed to be his employer. An optional provision is included for the operation of Pay As You Earn by means of stamps, instead of tax deduction cards, in relation to employees who are in receipt of a fixed salary or wage in small offices.

Part II provides for the maintenance of registers of employers and of employees. The register of employers is to be kept by the Revenue Commissioners and registers of employees by employers.

Part III requires Inspectors of Taxes to determine the amount of tax-free allowances appropriate to an employee; and to furnish the employee with a notice of this determination and also with a certificate of tax-free allowances to give to his employer. On receipt of such certificate the employer is to send a return to the Inspector if the employee's emolu-

ments exceed his tax-free allowances. The Inspector will then forward a tax deduction card on which the employer will record the tax deductions he makes from the employee emoluments; or a stamp book if its use has been authorised. An employee may appeal to the Special Commissioners from any determination by an Inspector of tax-free allowances.

Part IV concerns the deduction and repayment of tax under Pay As You Earn. Deductions and repayments are to be made by reference to cumulative emoluments, cumulative tax already deducted and the tax-free allowances of employees as recorded on their tax deduction cards. The required particulars are to be entered on the tax deduction cards on the occasion of over payment of emoluments. Where the working of Pay As You Earn by means of stamp books has been authorised, tax is to be deducted on a non-cumulative basis and tax stamps, to the value of the tax deducted, affixed to the employee's stamp book.

There are provisions about changes of employment and for deduction of tax on a temporary basis where the employee does not produce a certificate of tax-free allowances. At the end of each year employers are required to give every employee from whom tax was deducted a certificate of his emoluments, his tax-free allowances and the net tax deducted.

Part V deals with payment and recovery of tax deducted under Pay As You Earn. Employers are required within nine days from the end of every "Income Tax month" (i.e., a month beginning on the 6th day of any calendar month) to pay over to the Collector all tax which they were liable to deduct under Pay As You Earn, less any tax which they were liable to repay, during that month. Stamp books are to be sent to the Collector within nine days from the end of the period to which the books relate.

Within nine days from the end of the year employers are to send to the Collector returns, on tax deduction cards or stamp books (as appropriate), showing total emoluments paid to the employee during the year and total net tax deducted.

The statutory enactments for recovery of Income Tax charged under Schedule E were applied by Section 11 of the Finance (No. 2) Act, 1959, subject to any modifications to be specified by Regulations, to tax liable to be deducted by employers under Pay As You Earn. The necessary verbal modifications are set out in Regulation 36.

Employers are required, when requested to do so by an authorised officer, to produce for inspection wages sheets, tax deduction cards and any other record in regard to payment of emoluments and deduction of tax from them.

Part VI provides for the making of assessments on employees in special cases and, where assessments are not made, for supplying employees with statements of their liability. This Part also provides for an appeal to the Special Commissioners and to the Circuit Court—and to the High Court on a point of law—against an assessment by an Inspector; and for adjustment where underpayments of tax occur.

PROCEEDINGS IN DAIL EIREANN

Valuation Office Statistics

Mr. O'Donnell asked the Minister for Finance if he will state (1) the number of valuers employed for work in the city of Dublin and the rest of the country, respectively, by the Commissioner of Valuation, (2) the average time taken to make a valuation in the city and in the country, (3) the present position with regard to arrears of work in the Valuation Office, and (4) whether there is a possibility of having local valuers employed with a view to avoiding accumulation of arrears in country districts.

Mr. J. Brennan: (1) The number of valuer staff employed by the Commissioner of Valuation is 34, all of whom are available for work whether inside or outside the city of Dublin as the requirements of the Valuation Office demand.

(2) I am informed by the Commissioner of Valuation that without considerable research, for which staff cannot be made available in the Valuation at the present time due to the statutory obligation on the Commissioner to issue the revised valuation lists by 1st March, 1960, it would not be possible to state the average time taken to make a valuation. In view of the different types of valuation work performed in the Valuation Office, it is doubtful if a precise figure could be ascertained.

(3) The general correspondence work of the Valuation Office is not in arrears to any appreciable degree. The current revision of valuations is due to be completed and the revised Valuation Lists will be issued by 1st March, 1960. There are substantial arrears of work in relation to estate duty valuations.

(4) While the staffing of the Valuation Office is at present under review with the object, *inter alia*, of obviating arrears, there is no intention to employ local valuers, as suggested by the Deputy.

Mr. O'Donnell: Is the Parliamentary Secretary aware that in some cases, as long as 12 months elapse between the filing of an estate duty account and the valuation by the Commissioner's valuer, and that the administration of estates is held up for considerable periods because of lack of sufficient valuers? Would the Parliamentary Secretary not reconsider the possibility of appointing independent local valuers? I would ask the Parliamentary

Secretary to remember that auctioneers down the country are just as dependable as some of the gentlemen sent from the city of Dublin. Would he not consider appointing some of these to do this work which has now fallen so far into arrears ?

Mr. O. J. Flanagan : And I may add that the auctioneer can be very helpful.

Mr. J. Brennan : I am sure the Deputy is well aware there are certain things which would not make it advisable to have local or temporary valuers appointed.

Mr. O'Donnell : Bring them in from the neighbouring counties.

Mr. J. Brennan : It is a post better suited to permanent civil servants only.

Mr. O'Donnell : Who know nothing whatever about the valuation of property.

(*Dail Debates*—25th February, 1960.)

PROCEEDINGS AGAINST UNQUALIFIED PERSONS

In the Dublin District Court on March 10th,

It was held that the defendants, who carry on two summonses under section 64 of the Solicitors' Act, 1954, which provides that a body corporate or director, officer or servant thereof, shall not do any act of such nature or in such manner as to imply that the body corporate is qualified or recognised by law as qualified to act as a solicitor.

It was held that the defendants, who carry on the business of debt collecting, had written two letters which contravened the section. One of these letters dated 23rd September, 1959 was as follows :

> Our clients Huet Bros. Ltd. confirm that the above balance is still due for goods supplied several years ago and unless immediate arrangements are made to pay we regret that legal action must be taken.

The other letter, dated 30th September, 1959 (which was written on behalf of different creditors), was as follows :

> We have been instructed by the above clients to take proceedings against you for the balance of £5 12s. 0d., and £3 12s. 6d., due. We have been instructed also to lodge the decree with the County Sheriff's office to have your Ford YYI.227 seized. We would advise you to give the matter your urgent attention.

The Justice convicted and imposed a fine of £50 on each summons with £15 15s. costs and witnesses' expenses.

The defendants have appealed against this conviction.

DECISIONS OF PROFESSIONAL INTEREST

Costs where plaintiff fails to beat lodgment—Costs of the issue and costs of the cause.

Plaintiff sustained injuries when travelling on defendants' light railway near Athenry, and brought an action for personal injuries. The jury brought in a verdict of £300 against the defendants on the grounds (*a*) that the plaintiff was a lawful passenger on the train and (*b*) negligence and breach of statutory duty on the part of the defendants from which he sustained injuries. As the defendants had lodged £305 in Court, judgment was given for them from the date of lodgment, and the plaintiff was to have his costs up to the date of lodgment, together with all his costs on the issue of negligence. This judgment was interpreted by the Taxing Master to mean that the plaintiff should be allowed his costs up to the date of lodgment, and that the defendants should be allowed their costs after the date of lodgment, less the costs which were *exclusively* referable to the issue of negligence, which were allowed to the plaintiff. The plaintiff, objecting to this interpretation, asked for a review of the taxation. Counsel for the plaintiff contended that the Taxing Master should have taxed the defendants' costs, as if the action were one in which liability was admitted, and the only issue was damages ; and should have first taxed the plaintiff's costs, as if he had wholly succeeded in the action, and then taxed them, as if it was an action in which the only issue was damages, and should have allowed him the difference. In delivering judgment on 18th May, 1953, Davitt P. adopted the dictum of Baron Fitzgerald in Morgan *v.* Gray—17 Irish Jurist (1865), 335—as follows, at page 340 :—" I think it may be treated as the settled practice both before and since the Common Law Procedure Act that the party who is entitled to the costs of the cause is also entitled to the costs of the issues found for him, though such costs were also applicable to the issues found against him :—while the other party is entitled only to the costs applicable exclusively to the issues on which he has succeeded " :—Accordingly, the President refused to reverse the Taxing Master's interpretation of the order.

(Behan *v.* Bórd na Móna—Unreported Judgment of the President of the High Court, 18th May, 1953.)

This case illustrates the difference between costs of an issue and costs of the cause. The plaintiff was awarded all his costs down to date of lodgment and thereafter the defendant was entitled to the costs of the action while the plaintiff was entitled to the costs of the issue of negligence only which was contested. The result was that (*a*) the plaintiff received his costs down to date of lodgment on the issues of negligence

and damage, (*b*) he was entitled to his costs after date of lodgment relating exclusively to the issue of negligence. This meant that he was not entitled to the costs of instructions for brief or attendance on counsel or the costs of witnesses which might relate to the mixed issues of damages and negligence, (*c*) the defendant being entitled to the costs of the action from date of lodgment against the plaintiff would be entitled to costs of briefs and witnesses relating to the mixed issues of damages and negligence but in this case the costs would be apportioned and the Taxing Masters would certify for such part of the costs as related to negligence only to be set off against the plaintiff's costs. To many it will appear that this is a rather artificial distinction and that in equity at least the plaintiff ought to be entitled to the apportioned costs of the contested issue of negligence down to date of judgment. It is, however, covered by authority and on the form of the order usually made in such matters the plaintiff who fails to beat the lodgment will apparently receive no costs in respect of any items which do not relate exclusively to the contested issue and the Taxing Masters have no power to apportion.

Adjournment by District Justice, whether amounting to refusal of jurisdiction.

On the hearing of a prosecution for alleged Customs offences it was submitted on behalf of the defendant that the offence of knowingly dealing in butter the importation of which is prohibited by law is a criminal charge entitling the defendant to a trial by judge and jury. The District Justice adjourned these cases with thirty-three others pending the result of an action by another defendant in the High Court who contended that he was entitled to trial by judge and jury. An application by the Attorney General to the High Court for an order of mandamus directing the District Justice to proceed with the hearing was granted without any order as to costs. On an appeal by the defendant to the Supreme Court the order of mandamus was set aside. In their judgment the Court stated that it was proper for the District Justice to take notice of the fact that proceedings were pending which properly raised the question of the validity of the law which he was called upon to enforce. In the view which the Court took the District Justice was entitled to adjourn the summonses pending the determination of the action of another defendant in the High Court.

(State (Deaton) *v.* District Justice Mangan, unreported. Judgment of Supreme Court—3rd March, 1960.)

Libel—£105 damages—High Court Costs.

In an action for damages for libel brought by Claude Hamilton and John Mills against Beaverbrook Newspapers, Ltd., damages were claimed for an alleged libel in the Irish edition of the *Daily Express* under the heading " writ out for absent car dealers ". The jury awarded £105, damages with costs and counsel for the defendants submitted that only Circuit Court Costs should be awarded. Teevan J. held that the plaintiff's solicitor acted reasonably in bringing the action in the High Court. He said that he was not sure that the bringing of the actions was not also a matter of public importance having regard to the activities of certain categories of the press in the nature of the news items which they collected and published to an extremely wide circle of readers. Having regard to the fact that the actions were tried together he thought however, that the defendants were entitled to some relief on that account.

(Hamilton and another *v.* Beaverbrook Newspapers, Ltd., unreported—15th March, 1960.)

SOLICITORS' OPERATING EXPENSES

A special committee of the Council has been set up to investigate ways and means of reducing solicitors' office expenses. The committee have wide terms of reference and are authorised to examine and report upon any proposal or suggestion which would enable solicitors to operate their offices more economically. The cost of running an office has risen steeply in the past twenty years and the matter is receiving serious attention by the Council in the interests of the profession and its clients. In so far as the difficulty is caused by the steady increase in the cost of living figure and overhead expenses such as rates and taxes the solution is not under the control of the profession itself. It is, however, obvious that there are a number of outmoded practices and procedures in solicitors' offices and in their dealings with other offices and Government and Court departments which could be discontinued or improved with a view to saving expense. The committee will consider the matter under the following headings :

1. Improvements which could be effected by changes in the internal organisation of solicitors' offices and by cooperation among practitioners.

2. Improvements in the procedure of Government and Court offices with a view to saving time and effort by solicitors and their staffs.

The following are examples of the kind of proposals which might be considered under head 1 :

The simplification of the system of drawing and

furnishing bills of costs in contentious and non-contentious matters.

Standardisation of the common clauses in agreements (as distinct from the special stipulations as to title) and their adoption by the profession under copyright by the Law Society.

A uniform size for deeds, Court forms and paper used in solicitors' offices for notices, affidavits and briefs which would be suitable for filing, photo-copying, etc.

The extension by solicitors to colleagues by mutual arrangement of facilities with a view to saving unnecessary copying of documents. The best known example is the practice of furnishing a carbon copy of requisitions on title for use by the vendor's solicitor. With the advent of modern typewriters capable of producing upwards of six carbon copies at a time such facilities might be extended to the pooling of resources in litigation so that each solicitor by agreement with his opposite number would supply the requisite number of extra copies of documents originating in his own office.

As regards the matters under head 2, it appears to the Council that the Rules of Court and practices in various Government offices ought to be amended with a view to avoiding the necessity of personal attendance in matters which could be dealt with quite satisfactorily by the use of the telephone and the postal service. Examples are:

The extension by the Revenue Commissioners of facilities for transmission of deeds by post to Dublin Castle for stamping. These facilities are now available to country solicitors but have not been extended to Dublin.

The substitution of adhesive for impressed stamps in documents filed in the High Court.

The amendment of the Rules of Court to provide for the filing and issue of summonses, pleadings and other documents by registered post instead of personal attendance.

The service of all documents issuing from the Courts by registered post instead of personal service where the document is to be served on a solicitor on record for the other party.

The transmission of deeds and memorials by registered post to the Registry of Deeds for registration.

The committee invites suggestions from Bar Associations and individual practitioners on the matters within their terms of reference. No suggestion will be rejected merely because it seems revolutionary or unusual. The matter is rather urgent as the Superior Courts Rules Committee is at present engaged in the final revision of the new rules which will be substituted for the Rules of The Supreme Court 1903. The Committee wish to submit a report to the Rules Committee before the new rules have been finally settled.

LIST OF LIBRARY ACQUISITIONS

as at 1st March, 1960

A.—BOOKS PURCHASED

All England Law Reports—Index, 1957–58; and (*Noter-Up*), 1936–58; Allen (Sir Carleton Kemp)—*The Queen's Peace*, 1953; *Annual Practice*, Vol. I, 1959 and Vol. II, 1958; Anson—*Law of Contract*, 21st Edn., 1959; Archbold—*Criminal Practice and Pleading*, 34th Edn., 1959.

Barker and Halberstam—*The Formation of Private Companies*, 1959; Blyth—*Analysis of Snell's Equity*, 14th Edn., 1929; Bowstead—*Law of Agency*, 12th Edn., 1959; Butterworth—*Costs Handbook*, 1960.

Catholic Directory (England), 1960; Chislett—*Affiliation Proceedings*, 1959; *Criminal Case and Comment*, 1959; *Current Law* (Bound Volume), 1958; *Current Law Citator*, 1947–1958.

Deane & Spurling—*Elements of Conveyancing*, 3rd Edn., 1920; Delany—*Law of Charities in Ireland*, 1956 (Replacement); Deale—*Law of Landlord and Tenant*, 1953 (Replacement); Devlin—*The Criminal Prosecution in England*, 1960; *English and Empire Digests*—Replacement Volumes—Vols. 4 and 5 (Bankruptcy); Vol. 28 (Income Tax to Injunction); Fair Trade Commission—*6th Annual Report*, 1958; Fifoot—*Judge and Jurist in the Reign of Victoria*, 1959; Ford—*Unincorporated Non-Profit Associations*, 1959; Franks—*Limitation of Actions*, 1959.

Gale—*Law of Easements*, 13th Edn., 1959 (Two Copies); Glanville-Williams—*Learning the Law*, 6th Edn., 1957; Glanville-Williams—*The Proof of Guilt*, 2nd Edn., 1958; Goodhart—*English Law and the Moral Law*, 1955; Halsbury—*Laws of England, Simonds Edition, Third Cumulative Supplement*, 1959; Halsbury—*Laws of England, Third Edition*, Vol. 26 (*Medicine to Mistake*); Vol. 27 (*Money to National Insurance*); Vol. 28 (*Negligence to Partnership*); Vol. 30 (*Pleading to Public Authorities*), 1959; Hensey—*The Health Services of Ireland*, 1959; Hughes-Parry—*The Sanctity of Contracts in English Law*, 1959; Hudson—*Law of Building Contracts*, 8th Edn., 1959.

International Bar Association, *7th Conference Report*, Cologne, July, 1958; *Incorporated Law Society of Northern Ireland Handbook*, 1959; Indermaur—*Manual of Practice*, 10th Edn., 1919; Ireland—*Companies*, *37th Annual Report*, 1958; Ireland—*Dáil Éireann—Index to Debates* (1948–54); Ireland—*Index to Statutes* (1922–1958); Ireland—*Finance Accounts*,

1958–59; Ireland—*Income Taxation Commission—First and Second Report*, 1959; Ireland—*Estimates for Public Services*, 1960–61; Ireland—*Report of Inquiry into Cross-Channel Freight Rates*, 1959; Ireland—*Revenue Commissioners, 35th Annual Report*, 1958; Ireland—*Seanad Electoral Law Commission Report*, 1959; Ireland—*Television Commission Report*, 1959; *Irish Catholic Directory*, 1960.

Jowett—*Dictionary of English Law*, 1958; Josling—*Adoption of Children*, 5th Edn., 1959; Josling—*Change of Name*, 6th Edn., 1959; Kennedy—*C.I.F. Contracts*, 3rd Edn., 1959. Kiely—*Principles of Equity*, 1936 (Extra Copy); Kingsmill-Moore and Odel, —*Landlord and Tenant Act*, 1931 (Extra Copy); Kelly—*Post Office London Directory*, 1960; *Law List*, 1959; Lawson—*The Rational Strength of English Law*, 1951; Littlewood—*Law of Municipal and Public Entertainment*, 1951.

Mansfield-Cooper and Wood—*Outlines of Industrial Law*, 3rd Edn., 1958; Megarry and Wade—*Law of Real Property*, 2nd Edn., 1959; *Modern Law Review*, Index to Vols. 1–21, 1959; National University of Ireland—*Report on Accommodation Needs of Constituent Colleges*, 1959; Nathan and Borrowclough—*Medical Negligence*, 1957; *Northern Ireland Statutes*, 1958; *Northern Ireland Telephone Directory*, 1959; Palmer—*Company Law*, 20th Edn., 1959; Phipson—*Manual of the Law of Evidence*, 8th Edn., 1959; Potter and Monroe—*Tax Planning*, 3rd Edn., 1959; Prideaux—*Conveyancing Precedents*, 25th Edn., 3 Vols., 1958–59.

Sheldon—*Law of Banking*, 8th Edn., 1959; Schofield—*Bye-Laws of Local Authorities*, 1939; Spicer and Pegler—*Principles of Book-keeping and Accounts*, 15th Edn., 1959; Snell—*Principles of Equity*, 23rd Edn., Edited by Megarry, 1947; *Statesman's Year Book*, 1959; Sweet and Maxwell—*Legal Bibliography of British Commonwealth*—Vol. 6—*Australia and New Zealand*, 2nd Edn., 1958; Tolley—*Synopsis of Taxation in the Republic of Ireland*, 1959–60.

Wheatcroft—*Taxation of Gifts and Settlements*, 3rd Edn., 1959; *Whittaker's Almanack*, 1960; Wilshere—*Criminal Procedure*, 1950; Wilson and Kelly—*Irish Income Tax and Corporation Profits Tax*, 1957 (Replacement); Wilson and Kelly—*Irish Income Tax, Second Supplement*, 1959.

SUPPLEMENTS TO TEXTBOOKS

Archbold—*Criminal Pleading and Practice*, Fourth Cumulative Supplement to 34th Edition, 1960.

Clarke-Hall and Morrison—*Law Relating to Children and Young Persons*, Second Cumulative Supplement to 5th Edition, 1959.

Charlesworth—*Laws of Negligence*, Third Cumulative Supplement to 3rd Edition, 1958.

Clerk and Lindsell—*Law of Torts*, Fifth Cumulative Supplement to 11th Edition, 1959.

Chitty—*Law of Contracts*, Fifth Cumulative Supplement to 21st Edition, 2 Vols., 1959.

Green—*Law of Death Duties*, Second Cumulative Supplement to 4th Edition, 1959.

Hanson—*Laws of Death Duties*, Fourth Cumulative Supplement to 10th Edition, 1959.

Ryde—*Law of Rating*, Supplement to 10th Edition, 1959.

Williams—*Law and Practice relating to Title for Land*, Supplement to 2nd Edition, 1959.

Woodfall—*Law of Landlord and Tenant*, Fourth Cumulative Supplement to 25th Edition, 1959.

ORDINARY DONATIONS AND EXCHANGES

Miscellaneous Exchanges—Edinburgh University—*Calendar*, 1959–60; Glasgow University—*Calendar*, 1959–60; Manchester University—*Calendar*, 1959–60; National University of Ireland—*Calendar*, 1959; National University of Ireland—*Graduate and Sessional Lists*, 1958; *International Law List*, 1960; Dublin University (Trinity College)—*Calendar*, 1959–60; *Incorporated Law Society Calendar*, 1960; *New South Wales Law Almanack*, 1959; Queen's University, Belfast—*Calendar*, 1958–59; *Scottish Law List*, 1959; University College, Cork—*Calendar*, 1959–60; University College, Dublin—*Calendar*, 1959–60; University College, Galway—*Calendar*, 1959–60; University of Wales—*Calendar*, 1959–60.

Miscellaneous Donations—American Bar Association—*Report of Proceedings at London Meeting*, 1957; English General Council of the Bar—*General Statement for* 1959; Ireland—*Statutory Instruments* (two bound volumes for 1958); *Garda Directory*, 1959; Law Society of Scotland—*Legal Aid and Advice (Scotland), Compendium* (1959); Martindale-Hubbell—*Law Directory*, 1957 (Vol. III), *Law Digests*; Scottish Law Agent's Society—*Memorandum Year-Book*, 1959; Sweet & Maxwell—*Guide to Law Reports and Statutes, 2nd edition*, 1948; Tuairim (Dublin Branch)—*Report of Research Group on the Transfer of University College, Dublin to Belfield*, 1959; John P. King, Dublin—*Canadian Law List*, 1958; Jordan—*The New Company Law*, 1929; Denis Greene, Dublin—*International Law List*, 1958 *and* 1959; *Empire Law List*, 1957 *and* 1958; Kime—*Law Directory*, 1958; Campbell—*American Law List*, 1958; *American Bar Register*, 1959.

Law Society, London—*Conveyancing Practice and Costs and Second Cumulative Supplement*, 1959; *Edmonds on Take-Over Bids; Diamond on Contract and Mercantile Law*, 1959; *Julian Byng on Landlord and Tenant;*

Gilchrist Smith on Conveyancing; Beattie on Revenue Law; Dew on Divorce Law.

SPECIAL DONATION

The Council wish to express their most grateful appreciation and thanks to the publishers who donated the books listed below in view of the revision of the examination course for apprentices.

Messrs. Butterworths, London; Ashburner—*Principles of Equity*, 2nd Edn., 1933; Beattie—*London; The Elements of Estate Duty* (2nd Edn.) (1957), *with Supplement* (1958); Carter—*History of the English Courts*, 7th edn., 1954; Challis—*Law of Real Property* (3rd Edn.), 1911 (1955 reprint); Chalmers—*Law of Sale of Goods* (13th Edn.), 1959; Cheshire & Fifoot—*Cases on the Law of Contracts* (3rd Edn.), 1959; Cheshire & Fifoot—*The Law of Contracts* (3rd Edn.) 1952 and (4th Edn.) 1956; Chorley & Tucker—*Leading Cases in Mercantile Law* (3rd Edn.) 1948 *with Supplement* 1950; Cross—*Law of Evidence* (1958); Clay & Falkenburg—*The Young Lawyer* (1955); Crossley-Vaines—*Law of Personal Property* (2nd Edn.), 1957; Cross & Jones—*Cases on Criminal Law* (2nd Edn.), 1953; Cross & Jones—*Introduction to Criminal Law* (4th Edn.), 1959.

Dowrick—*Irish Supplement to Cheshire & Fifoot on Contracts* (1954); *Irish Forms and Precedents* 1910; James—*Principles of Law of Torts* (1st Edn.) 1959; Mozley & Whiteley—*Law Dictionary*, 1950; Mustoe—*Law of Executors and Administrators* (5th Edn.), 1952; *Northern Ireland Constitution Statutes*, 1957; Plucknett—*Concise History of the Common Law* (5th Edn.), 1956; Radcliffe & Cross—*English Legal System* (3rd Edn.), 1954; Pennington—*Principles of Company Law*, 1959; Stevens—*Mercantile Law*, (12th Edn.), 1955; Sheridan—*Irish Supplement to Challis on Real Property*, 1956; Strahan, *Digest of Equity* (6th Edn.), 1939; Street—*The Law of Torts* (1st Edn.), 1955 *and* (2nd Edn), 1959; Sutton & Shannon—*Law of Contracts* (5th Edn.), 1956; Topham—*Company Law* (12th Edn.), 1955; Topham—*Law of Real Property* (10th Edn.), 1947; Wright—*Cases on the Law of Torts*, 1958.

Messrs. Sweet & Maxwell, London: Beattie—*Elements of Income Tax* (3rd Edn.), 1957; British Commonwealth—*Development of its Laws and Constitution—The United Kingdom, Vol.* 1—*England, Wales, Northern Ireland and the Isle of Man* (1955); *Vol.* 2—*Scotland and the Channel Islands* (1955); Charlesworth—*Principles of Company Law* (6th Edn.), 1954; *Current Legal Problems*, 1958; De Smith—*Judicial Review of Administrative Action*, 1959; Ker—*Wills, Probate and Administration*, 1959; Marshall—*Natural Justice*, 1959; Nokes—*Introduction to Evidence* (2nd Edn.), 1958; Odgers—*Principles of Pleading and Practice* (16th Edn.), 1958; Parry—*Law of Succession*, (3rd Edn.), 1953; Ruoff—*Concise Land Registration Practice*, 1959; Sandes—*Criminal Law and Practice in the Irish Republic* (3rd Edn.), 1951; Sheridan & Delany—*The Cy-Pres Doctrine*, 1959; *Yearbook of World Affairs*, 1958.

Messrs. Gibson & Weldon, London: Gibson—*Elements of Conveyancing* (18th Edn.), 1959; Gibson—*Probate Law* (15th Edn.), 1958.

Messrs. Jordan, London: Gore-Browne—*Handbook on the Formation, Management and Winding-Up of Joint Stock Companies* (41st Edn.), 1957; Jones—*Student's Guide to Company Law*, 1955; Jones—*One Thousand Questions and Answers on Company Law*, 1956; Mason—*Estate Duty on Settled Property and Annuities*, 1955; Schofield—*Parliamentary Elections* (3rd Edn.), 1959.

Messrs. Pitman, London: Keeton—*Introduction to Equity* (3rd Edn.), 1952, *and* (4th Edn.), 1956, *with Irish Supplement by Sheridan;* Keeton—*Law of Trusts* (7th Edn.), 1957, *with Irish Supplement by Sheridan;* Megrah—*Bills of Exchange Act*, 1882 (5th Edn.), 1957; Risdon & Farrant—*Modern Conveyancing Precedents, Practice and Law*, 1952; Risdon & Farrant—*Modern Administration, Probate Practice and Law* (2nd Edn.), 1949; Slater—*Mercantile Law* (13th Edn.), 1956.

Supplementary List

Canberra (Australia) University College Calendar, 1960; *Ireland, Census of Population* (1946–1951), *General Report*, 1958; *Law Reports and Weekly Law Reports—Consolidated Index*, 1951–59; *Legislation of Poland, Copyright Law*, 1959; *New South Wales Law Almanack*, 1960; *Who's Who*, 1960

OBITUARY

Mr. Christopher E. Callan, Solicitor, died on the 26th February, 1960 at his residence, The Warren, Boyle, Co. Roscommon.

Mr. Callan served his apprenticeship with the late Mr. Philip C. P. MacDermot, Boyle, was admitted in Hilary Sittings 1920, and practised at Boyle, Co. Roscommon. Mr. Callan served as Provincial Delegate for Connaught from 1930 to 1949 and from 1950 to 1959.

Mr. John Joseph Power, Solicitor, died on the 27th, February 1960, at Milford House, Limerick.

Mr. Power served his apprenticeship with the late Mr. James O'Connor, 118 St. Stephen's Green, Dublin, was admitted in Hilary Sittings 1904 and practised at Kilmallock, Co. Limerick.

Mr. James Burns, Solicitor, died on the 3rd March, 1960, at his residence Market Square, Castleblayney, Co. Monaghan.

Mr. Burns served his apprenticeship with the late Mr. John G. Reid, Castleblayney, was admitted in Michaelmas Sittings 1927, and practised at Castleblayney, Co. Monaghan under the style of Messrs. J. G. Reid and Co.

MR. MARTIN FITZGERALD, Solicitor, died on the 7th March, 1960 at a Sligo Nursing Home.

Mr. Fitzgerald served his apprenticeship with the late Mr. Howard McN. McCormick, was admitted in Michaelmas Sittings 1925 and practised at Sligo under the style of Messrs. Fenton & Lyons, and Messrs. Fitzgerald & McCormick.

THE REGISTRY

Register B

SOLICITOR with honours law degrees and excellent practical experience with a leading firm of solicitors seeks improvement in salary and prospects. Suitable Assistantship in Dublin or town in Leinster or surrounding areas welcomed. Box. B248.

REGISTRATION OF TITLE ACTS, 1891 AND 1942

Issue of Duplicate Land Certificate

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

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

Dated the 12th day of April, 1960.

D. L. MCALLISTER,
Registrar of Titles.

Central Office,
Land Registry,
Chancery Street,
DUBLIN.

SCHEDULE.

1. Registered Owner, William Reid. Folio number 24041. County Donegal. Lands of Killyverry in the Barony of Raphoe containing 37a. 2r. 37p.

2. Registered Owner, John Dee. Folio number 5841. County Waterford. Lands of Knockateemore in the Barony of Decies without Drum containing 11a. 2r. 30p.

3. Registered Owner, Patrick Bermingham. Folio number 185. County Kildare. Lands of Thomastown in the Barony of Carbury containing 11a. 1r. 10p.

4. Registered Owner, Ellen Hanley. Folio number 17690. County Galway. Lands of Carnmore West in the Barony of Dunkellin formerly comprised in said Folio 17690 and now comprised in Folio 45605, Co. Galway, containing 15a. 3r. 10p.

5. Registered Owner, Michael Keane. Folio number 766L City of Dublin. Premises known as No. 12 Pairc na Gaeltachta (now known as 137 Iveragh Road, Whitehall) situate in the District of Clonturk and Parish of Clonturk and City of Dublin being the lands comprised in said folio.

THE SOLICITORS' BENEVOLENT ASSOCIATION

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

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

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

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

Address:
SECRETARY,
SOLICITORS' BENEVOLENT ASSOCIATION,
18, HUME STREET,
DUBLIN.

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No. 10

APRIL,
1960

THE GAZETTE

of the

INCORPORATED LAW SOCIETY OF IRELAND

President
JOHN J. NASH

Vice-Presidents
RALPH J. WALKER
PETER E. O'CONNELL

Secretary
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

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MEETINGS OF THE COUNCIL

April 7th: The President in the Chair. Also present, Messrs. Niall S. Gaffney, John R. Halpin, Ralph J. Walker, George G. Overend, Dermot P. Shaw, Brendan A. McGrath, Gerald Y. Goldberg. Dinnen B. Gilmore, Cornelius J. Daly, James W. O'Donovan, Francis J. Lanigan, Eunan McCarron, John Maher, Augustus Cullen, Patrick Noonan, Patrick O'Donnell, James R. Quirke, Peter E. O'Connell, James J. O'Connor, Desmond J. Collins, John Carrigan, Reginald J. Nolan, George A. Nolan, Arthur Cox, Robert McD. Taylor, John Kelly, John Sheil.

The following was among the business transacted.

Administration bonds. Duty of solicitor in regard to surety

Members acted for the personal representative of a deceased intestate. An administration bond was given by an English insurance company. The client has now requested members to hand over all the assets and they are of the opinion that there is a danger that the estate may not be properly administered having regard to the interests of certain next of kin who are abroad. Members stated that they

will be placed in a position of embarrassment with the insurance company and their English agents, through whom the policy was taken out if they are obliged to hand over the assets with a resulting claim against the insurance company. They asked for advice as to whether they would be at liberty to notify the insurance company through their agents so that the latter might look after their own interests. The Council on a report from a committee stated that members are entitled to notify the insurance company through their agents that the client is about to terminate their retainer in the matter and to take over the assets.

Purchase of practice of County Registrar

A member purchased the practice of CD a solicitor who was appointed County Registrar and enquired whether he will be entitled to adopt the firm name of CD & Co., with his own name underneath. The Council stated that there was no objection to the use of such a firm name.

Costs drawing service

The Council directed the publication of an advertisement inviting enquiries from suitable persons for a costs drawing scheme under the auspices of the Society. The advertisement appears in this issue at page 90.

Compulsory acquisition of property. Costs of negotiations and arbitration as to price

It was decided that the Dublin Corporation and the arbitrator under the Acquisition of Lands (Assessment) Act, 1919 should be asked to receive a deputation on the subject of the costs paid by the Corporation in respect of negotiations where the price is settled without recourse to arbitration and also the practice of fixing the costs of arbitration without taxation.

Road Traffic Acts. Costs of defending prosecution

A member wrote stating that local insurance agents representing brokers had refused to pay the minimum fees recommended in the Society's GAZETTE, April, 1959 and stated that their principals in company with other insurers will not pay more than a maximum fee of £3 3s. The Council decided to take the matter up with the brokers.

Organization and method

The Council considered a report from the Policy Committee on the subject of modernising the procedure in various Government and other offices with a view to facilitating solicitors and their clients. A circular had been sent to all the Bar associations and on the basis of the replies received from a number of them an interim report had been prepared for submission to the Departments of Justice and Finance, the Revenue Commissioners and the Rules Committee of the Courts of Justice. If the procedure in departments with which solicitors have to deal can be simplified it may be possible to speed up work and reduce operating expenses. The Committee are continuing their work and will present a further report.

Week-end meeting of the Society

It was decided that the next weekend meeting of the Society should be held in Galway in May or June 1961 subject to making the necessary local arrangements.

APPOINTMENT OF LECTURERS AND SPECIAL EXAMINERS

Mr. Joseph P. O'Connell, LL.B., solicitor, Dublin has been appointed as lecturer and special examiner on the law of wills and probate and executorship law and practice.

Mr. Richard M. Neville, B.L., has been appointed as lecturer on the procedure and practice of the Courts of Justice and special examiner in that subject and on criminal law and evidence.

OFFICE FACILITIES FOR SOLICITORS

The Council are considering a project for a general service under the auspices of the Society to provide greater facilities for the conduct of solicitors' offices. The principal need at the moment is the establishment of a costs drawing service. A vacancy may shortly arise in connection with the scheme. Applications from suitable persons (including solicitors) should be sent to the Secretary of the Society, Solicitors' Buildings, Four Courts, Dublin. Canvassing is prohibited.

SOLICITORS' OPERATING EXPENSES

A special committee of the Council has been set up to investigate ways and means of reducing solicitors' office expenses. The committee have wide terms of reference and are authorised to examine and report upon any proposal or suggestion which would enable solicitors to operate their offices more economically. The cost of running an office has risen steeply in the past twenty years and the matter is receiving serious attention by the Council in the interests of the profession and its clients. In

so far as the difficulty is caused by the steady increase in the cost of living figure and overhead expenses such as rates and taxes the solution is not under the control of the profession itself. It is, however, obvious that there are a number of outmoded practices and procedures in solicitors' offices and in their dealings with other offices and Government and Court departments which could be discontinued or improved with a view to saving expense. The committee will consider the matter under the following heads :

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The following are examples of the kind of proposals which might be considered under head 1 :

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A uniform size for deeds, Court forms and paper used in solicitors' offices for notices, affidavits and briefs which would be suitable for filing, photo-copying, etc.

The extension by solicitors to colleagues by mutual arrangement of facilities with a view to saving unnecessary copying of documents. The best known example is the practice of furnishing a carbon copy of requisitions on title for use by the vendor's solicitor. With the advent of modern typewriters capable of producing upwards of six carbon copies at a time such facilities might be extended to the pooling of resources in litigation so that each solicitor by agreement with his opposite number would supply the requisite number of extra copies of documents originating in his own office.

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The substitution of adhesive for impressed stamps in documents filed in the High Court.

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The Committee invite suggestions from Bar Associations and individual practitioners on the matters within their terms of reference. No suggestion will be rejected merely because it seems revolutionary or unusual. The matter is rather urgent as the Superior Courts Rules Committee is at present engaged in the final revision of the new rules which will be substituted for the Rules of The Supreme Court 1905. The Committee wish to submit a report to the Rules Committee before the new rules have been finally settled.

ORDINARY GENERAL MEETING

An ordinary general meeting of the Society will be held in the Library, Solicitors' Buildings, Four Courts, Dublin on Thursday 26th May, 1960 at 2.30 o'clock p.m.

SOLICITORS' GOLFING SOCIETY

OFFICERS AND COMMITTEE—SEASON 1960

President : Mr. John J. Nash (President I.L.S.I.)
Captain : Mr. William A. Tormey (Athlone).
Hon. Treasurer : Mr. John J. O'Dwyer.
Hon. Secretary : Mr. Gerard M. Doyle.
Committee : Mr. David Bell, Mr. William Menton, Mr. John Maher, Mr. J. J. O'Connor (Dublin), Mr. Gerald Hickey, Mr. J. J. O'Connor (Thurles), Mr. T. McKeever, Mr. M. T. Neary, Mr. Eugene Gillan, Mr. J. C. Griffin, Mr. L. K. Branigan (*Ex Officio*).

The Spring Meeting of the Society and Captain's Prize was held at Athlone Golf Club (by kind permission) on Saturday, 7th May 1960.

Members dined afterwards in Hudson Bay Hotel (adjoining Golf Course).

Annual Subscription £1 now due payable to : *Hon. Treasurer :* Mr. John J. O'Dwyer, 15 D'Olier Street, Dublin or *Hon. Secretary :* Mr. Gerard M. Doyle, 50 Lower O'Connell Street, Dublin.

Further information from Hon. Secretary.

DUBLIN SOLICITORS' BAR ASSOCIATION

A meeting of the Council was held on Wednesday, 6th April, 1960.

A vote of sympathy was passed on the deaths of Mr. H. H. Maxwell, Solicitor, a member of the Association, and of Mr. Thomas Bell, former District Court Clerk.

The meeting noted with satisfaction the decision of the Principal Justice of the Metropolitan District Court on the revision of the Civil List in accordance with representations made by the Council, and expressed their thanks.

The Sub-Committee engaged in drafting Auction Particulars and Conditions of Sale reported progress. The question of whether the months of July and August would be more suitable for the long vacation than those of August and September was considered. The meeting approved of reporting to the Law Society certain Builders' Advertisements to which objection was taken as to their tendency to prejudice purchasers' solicitors.

The next meeting was fixed for Wednesday, 4th May, 1960.

THE CIRCUIT COURT (NEW CIRCUITS) ORDER, 1960

The Circuit Court (New Circuits) Order, 1960—S.I. No. 70 of 1960—will come into operation on the 11th day of April, 1960.

The several counties and county boroughs in the State are hereby divided for the purposes of the Circuit Court into the groups specified in column (2) of the Schedule to this Order at reference numbers 1 to 8.

Business transacted in the Circuit Court which was initiated before the commencement of this Order and was not completed before such commencement shall be continued and completed as if this Order had been in operation when such business was initiated.

SCHEDULE

Ref. No. (1)	The Circuits (2)	Names of the Circuits (3)	Judge or Judges assigned to the Circuits (4)
1.	Dublin County Borough and Dublin County.	Dublin Circuit.	John Charles Conroy. Michael Binchy.
2.	Cork County Borough and Cork County.	Cork Circuit.	Thomas Joseph Neylon.
3.	Cavan. Donegal. Leitrim. Monaghan. Sligo.	Northern Circuit.	Patrick Noel Ryan.
4.	Laois. Longford. Offaly. Roscommon. Westmeath.	Midland Circuit.	Michael John Sweeney.
5.	Kildare. Louth. Meath. Wexford. Wicklow.	Eastern Circuit.	Kenneth Edwin Lee Deale.
6.	Clare. Kerry. Limerick County. Limerick County Borough.	South-Western Circuit.	The Hon. Mr. Justice Barra O'Briain.
7.	Carlow. Kilkenny. Tipperary (North Riding). Tipperary (South Riding). Waterford County. Waterford County Borough.	South-Eastern Circuit.	Sean Mac Diarmaid Fawsitt.
8.	Galway. Mayo.	Western Circuit.	John James Durcan.

Circuit Judge not assigned to any particular Circuit:—Judge James McGivern.

Explanatory Note.

This order divided the State into eight new Circuit Court circuits to replace the existing nine circuits and assigns judges to the new circuits.

DECISIONS OF PROFESSIONAL INTEREST

Income Tax and Surtax

Deficient return. (*Income Tax Act*, 1952 (15 & 16 *Geo.* 6 & 1 *Eliz.* 2, *c.* 10) *s.* 25 (3) (*a*).) *S.* 25 (3) *of the Income Tax Act*, 1952, *provides that a person who neglects or refuses to deliver a true and correct return for tax purposes shall* —"(*a*) *if proceeded against by action in any court, forfeit the sum of* £20 *and treble the tax which he ought to be charged under this act. . . .*" *Under that subsection the taxpayer is liable to a penalty of treble the whole tax which he ought to be charged during the relevant year.*

A taxpayer declared £18 6s. interest on his Post Office Savings Bank account and was assessed to tax on that amount. Later the Crown discovered his true income from that source was £51 5s. 9d. and raised a new first assessment of £14 5s., and claimed a penalty of £20 plus three times the total tax which ought to have been assessed. Held, that the date at which any penalty incurred was to be ascertained, was the date when the offence was committed; that on the true construction of s. 25 (3) (*a*) "the tax which he ought to be charged under this Act" meant the whole tax chargeable for the relevant year: "I.R.C. *v.* Hinchy (1960) 2 W.L.R. 448; 104 S.J. 188; (1960) 1 All E.R. 505, H.L. (reversing the decision of the Court of Appeal (1959) 6 C.L. 173.

Practice

Affidavits — admissibility — interlocutory proceedings. (R.*S.C.*, *Ord.* 38, *rr.* 3, 11.) *An application for leave to take a ward of court out of the jurisdiction is not an interlocutory proceeding within Ord.* 38, *r.* 3, *and accordingly hearsay evidence is not admissible. But the court has a complete discretion whether or not to strike such evidence out of an affidavit.*

A mother's application for leave to take a ward of court out of the jurisdiction contained (by reference to an exhibited statement) hearsay evidence. Held, that the hearsay evidence should not be struck out as this was not necessary to allow the application to be properly heard: Re J. (An Infant) (1960) 1 W.L.R. 253; 104 S.J. 232; (1960) 1 All E.R. 603, Cross J.

Hearsay. (R.*S.C.*, *Ord.* 38, *rr.* 3, 11.) *Proceedings in a divorce petition concerning access to the children of the marriage made after the divorce are not interlocutory proceedings within Ord.* 38, *r.* 3, *and accordingly hearsay evidence is not admissible in the affidavits.*

On an application made some years after their divorce the father of the child of the dissolved marriage applied for the suspension of the mother's right of access. Two affidavits filed on the father's behalf consisted to a large extent of scandalous hearsay evidence and was held inadmissible under Ord. 38, r. 3, and in the circumstances the whole of the affidavits should be removed: Rossage *v.* Rossage (1960) 1 W.L.R. 249; 104 S.J. 231; (1960) 1 All E.R. 600, C.A.

Contract—frustration—prohibition of use of normal route.

In Tsakiroglou & Co. *v.* Noblee Thorl (March 28, 1960) the board of appeal to the Incorporated Oil Seed Association held that sellers were in default in failing to ship groundnuts from Sudan to Hambourg under a c.i.f. contract November/December, 1956, although the Suez Canal was blocked from November 2, 1956. There was a finding that the performance of the contract by shipping the goods on an alternative route via the Cape was not commercially or fundamentally different from its being performed by shipping the goods on a vessel routed via the Suez Canal. The Court of Appeal (Sellers, Ormerod and Harman JJ.) held, dismissing an appeal from Diplock J. and upholding the award of the board, that the contract had not been frustrated by the blocking of the Suez Canal. (D.C.) See also *The Times*, March 29, 1960.

Murder—uncontrollable impulse—evidence of insanity.

In Attorney-General for South Australia *v.* Brown (March 9, 1960) that respondent was convicted of murder, the sole defence being insanity within the second branch of the M'Naughten Rules. The Australian High Court allowed his appeal on the ground that evidence of an uncontrollable impulse must be put before the jury as evidence of such insanity. The Judicial Committee (Viscount Simonds, Lords Radcliffe, Tucker, Jenkins and Morris), allowing the Crown's appeal, held that the law did not recognise such an impulse as evidence of insanity and that, if the defence contended that it was, it was a matter for evidence. (D.C.) See also (1960) 2 W.L.R. 588.

Secret report—admissibility.

In re B. (An Infant) (March 24, 1960) Roxburgh J. dismissing an appeal by the proposed adopters of a boy aged five, against the refusal of Liverpool justices to make an adoption order in respect of the boy, observed that it was monstrous that a secret report should be treated as evidence in a matter of this sort. In the present case, although the justices had come to the right conclusion in the event though for wrong reasons, a secret report was read out after the parents' evidence was closed. That report was not on oath and was not admissible evidence. (J. A. G.) See also *The Times*, March 25, 1960.

Discovery—Crown privilege—entries in a detective's diary.

In Auten *v.* Rayner (No. 2) (February 25, 1960), Glyn-Jones J. held (1) that a claim for Crown privilege in respect of entries in a detective's diary (which had been sealed by an order of the Home Secretary) was a claim made, not in respect of a class of documents, but in respect of each and every sealed entry, and that the court had no power to go behind the certificate of the Home Secretary; (2) that such a claim for Crown privilege could be made in the face of the court, and that it was un-

necessary for the claim to be supported by an affidavit of the Attorney-General; and (3) that the right of a solicitor and client to claim legal professional privilege applied with equal, if not greater, force to the Director of Public Prosecutions. (D.C.) See also (1960) 2 W.L.R. 562; (1960) 1 All E.R. 692.

PROCEEDINGS AGAINST SOLICITORS

By order made on March 25th, 1960, the Chief Justice directed that the name of Thomas F. O'Keeffe, Solicitor, of Mitchelstown, Co. Cork, should be struck off the roll of solicitors on the grounds that he had committed misconduct as a solicitor.

PROCEEDINGS AGAINST UNQUALIFIED PERSONS

Proceedings were instituted by the Society in the District Court, Galway, under section 58 of the Solicitors' Act, 1954 against Richard G. Browne, Auctioneer, Westport. It was proved in evidence that the defendant had a printed form of agreement for sale and purchase with spaces for the names of the vendor and purchaser, the description of the property sold, the title, sale price and the amount of deposit, and that he had obtained the signature of the purchaser to the document after filling in necessary information which would enable the offer to be accepted by the vendor for whom he was acting. The document provided for the payment of a sum of £270 deposit and fees. The District Justice convicted and imposed a fine of 10/- with £50 costs.

OBITUARY

Mr. Felix E. Murphy, Solicitor, died on the 29th March, 1960, at his residence, Felmar, Kildare.

Mr. Murphy served his apprenticeship with the late Mr. Peter J. McCann, Naas, Co. Kildare, was admitted in Easter Sittings, 1939, and practised at Kildare.

Mr. Bertram Barton, Solicitor, died on the 2nd April, 1960, at Port Salon, Co. Donegal.

Mr. Barton served his apprenticeship with the late Mr. Isaac J. T. Colquhoun, Londonderry, was admitted in Hilary Sittings, 1914, and practised at Port Salon.

Mr. Harold H. Maxwell, Solicitor, died on the 4th April, 1960, at his residence, Roxboro, Baily, Co. Dublin.

Mr. Maxwell served his apprenticeship with the late Mr. John M. Maxwell, 40 North Great Georges Street, Dublin, was admitted in Easter Sittings, 1925, and practised as senior partner in the firm of Messrs. Maxwell, Weldon & Co., 19/20 Baggot Street, Dublin.

Mr. Patrick R. Boyd, Solicitor, died on the 14th April, 1960, at his residence, Saul, Newtownpark Avenue, Blackrock, Co. Dublin.

Mr. Boyd served his apprenticeship with the late Mr. Patrick J. O'Hare, Newry, Co. Down, was admitted in Michaelmas Sittings, 1913, and practised at 10 College Green, Dublin, up to his retirement in 1959.

He was a member of the Council of the Society from 1935 until February, 1959; was Vice-President for the year 1938–39, and President for the year 1948–49.

Mr. Peter P. Wilkinson, Solicitor, died on the 18th April, 1960, at his residence, Aldersyde, Naas, Co. Kildare.

Mr. Wilkinson served his apprenticeship with the late Mr. Peter M. Scales, 11 College Green, Dublin, was admitted in Michaelmas Sittings, 1927, and practised as senior partner in the firm of Messrs. Wilkinson & Price, Naas, Co. Kildare, and Wilkinson & Daly, 43 Dame Street, Dublin.

THE REGISTRY

Register A

Active and well established Partnership for sale, Dublin City. Current conveyancing and probate practice of a very substantial nature. Financial end not main consideration. Box. No. A185.

Register B

Dublin Solicitor (31) would be interested in good working partnership or profit-sharing, in busy and well-established office. Box No. B249.

REGISTRATION OF TITLE ACTS, 1891 AND 1942

ISSUE OF DUPLICATE LAND CERTIFICATE

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

A duplicate Certificate will be issued in each case, except a case in respect of which notification is received in this Registry within 28 days from the publication of this notice, that the Certificate of

Title is still in existence, and in the custody of some person other than the registered owner. Any such notification should state the grounds on which such Certificate is being held.

Dated the 12th day of May, 1960.

D. L. McALLISTER,
Registrar of Titles.

Central Office,
Land Registry,
Chancery Street,
DUBLIN.

SCHEDULE.

1. Registered Owner, James Joseph Kavanagh. Folio number, 18063. County Cork. Lands of Kanturk in the Barony of Dunhallow, containing oa. or. 13½p.

2. Registered Owners, John Cogan and Mary Cogan. Folio number, 12668. County Cork. Lands of Kilmoney in the Barony of Kerrycurrihy, containing 73a. 3r. 39p.

3. Registered Owners, Margaret Ryan, Margaret O'Meara and Eithne Cunniffe. Folio number, 8282. County Kings. Lands of Kilmarogue in the Barony of Philipstown Upper, containing 14a. or. 24p.

4. Registered Limited Owner Bridget Connolly. Folio number 2138 County Galway Lands of Ballinrooaun in the Barony of Tiaquin containing 8a. 2r. 2p.

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THE SOLICITORS' BENEVOLENT ASSOCIATION

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

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

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

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

Address :

SECRETARY,
SOLICITORS' BENEVOLENT ASSOCIATION,
18, HUME STREET,
DUBLIN.

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MAY,
1960

THE GAZETTE

of the

INCORPORATED LAW SOCIETY OF IRELAND

President
JOHN J. NASH

Vice-Presidents
RALPH J. WALKER
PETER E. O'CONNELL

Secretary
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

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MEETINGS OF THE COUNCIL

April 28th: The President in the chair, also present Messrs. Niall S. Gaffney, John J. Sheil, Edward Treacy, James J. O'Connor, James R. Green, Robert McD. Taylor, Terence De Vere White, Dinnen B. Gilmore, Thomas A. O'Reilly, George G. Overend, Eunan McCarron, John Maher, John B. Jermyn, John Kelly, Augustus Cullen, William J. Comerford, Peter E. O'Connell, Ralph J. Walker, James R. Quirke, Thomas V. O'Connor, Francis J. Lanigan, John R. Halpin, Desmond J. Collins, Gerald Y. Goldberg, Derrick M. Martin, Cornelius J. Daly, Arthur Cox, Patrick O'Donnell, Dermot P. Shaw, John Carrigan, Dermot P. Shaw.

The following was among the business transacted:

Lectures

On a report from the Court of Examiners it was decided to divide the present combined course of lectures on company law and executorship law and practice into two full courses one on each subject. Mr. P. C. Kilroy, will lecture on company law and Mr. Joseph P. O'Connell on executorship law and practice.

Costs of extraction of grant in Northern Ireland

A member instructed a Northern Ireland solicitor to act on his behalf on the usual agency basis in passing a schedule of assets and lodging the papers leading to a grant in the Probate Office, Northern Ireland. The forms were obtained by the Northern Ireland solicitor and compiled by members. The schedule of assets was subsequently passed by the Northern Ireland solicitor with the Estate Duty Office in Belfast and he then lodged the papers and obtained the Northern Ireland grant. The Northern Ireland solicitor subsequently submitted a bill for £53 3s. od., being £3 3s. od. for work under the Finance Act and £50 os. od., the scale fee under the Supreme Court Rules (N.I.) 1958 for extracting grants of probate, the value of the estate being £29,853 os. od. The Council was asked by member for an opinion as to (*a*) how the costs should be computed and (*b*) how the fees should be divided between the Northern Ireland solicitor and member. The Council were of the opinion that as the work related to the extraction of a grant of probate in Northern Ireland the Northern Ireland scale applies and that as the greater part of the work contemplated by the scale fee was performed by member and as the Northern Ireland solicitors merely acted in connection with the passing of the schedule of assets and the lodgment of the papers in the Probate Office, Northern Ireland a fair division of the fee would be two thirds to member and one third to the Northern Ireland solicitor in the circumstances of the case.

Solicitors' operating expenses

On a report from the Policy Committee the Council appointed the President with Messrs. Ralph Walker, Eunan McCarron, Brendan A. McGrath and James J. Hickey (Messrs. Walker and Hickey being the Society's representatives on the Superior Courts Rules committee) as a special committee to formulate proposals for the simplification of the rules and schedules of costs in contentious and non-contentious matters and a review of procedure in Government and Court offices and in solicitors' offices with the object of reducing operating expenses.

Legal aid on assignments in murder cases.

The Costs Committee reported that a communication has been received from the Attorney General's office stating that the Minister for Finance had published the following scale of fees for counsel and solicitors :

Senior Counsel, brief fee increased from 20 guineas to 25 guineas. Refreshers increased from 10 guineas to 15 guineas.

Junior Counsel, brief fee increased from 14 guineas to 17 guineas. Refreshers increased from 7 guineas to 10 guineas.

Dublin solicitor, assignment fee increased from 10 guineas to 13 guineas. Refreshers increased from 3 guineas to 4 guineas.

Country solicitor assignment fee increased from 14 guineas to 18 guineas. Refreshers increased from 4 guineas to 6 guineas.

The committee were of the opinion that the fees allowed to solicitors are merely token payments and they reported that proposals should be made to the Attorney General and the Minister for Finance that the basis of the solicitors fees should be changed so that solicitors will obtain some reasonable compensation for the time spent and direct and indirect expenses incurred in conducting the defence on the capital charge. The Council adopted the committee's report and the President and Mr. James J. O'Connor were appointed as a deputation.

Accountant's office High Court

A report was received from the Court and Offices Committee stating that the President of the High Court had informed a deputation that all payments out of Court directed down to July 31st will be made during the month of August. No orders for payment will be made during the vacation.

Hire Purchase (Amendment) Bill 1957

The Costs Committee reported that the Dublin Solicitors Bar Association and the Southern Law Association had been asked to draw up proposals for new scales of costs in the Circuit and District Courts for submission to the rule making bodies consequent upon the increase in the jurisdictions of these Courts proposed under the Bill.

State Solicitors

On a report from a committee the Council decided to issue the following statement : (*a*) a State solicitor, his partner or a qualified assistant in his office should not, in the opinion of the Council, appear for a defendant where a summons is issued by the Gardai or the Attorney General, e.g., under the Road Traffic Acts, or the Intoxicating Liquor Acts ; (*b*) There is no objection where the prosecution is not by the State, to the State Solicitor's acting for a defendant charged with a minor offence, such as abusive language or assault merely by reason of the fact that a member of the Garda Siochana may be

a witness; (c) a State solicitor or his partner, or a qualified solicitor in his office should not act for applicants for transfers of publicans' licenses or applicants for dance hall licenses if the applications are opposed by the Gardai.

ORDINARY GENERAL MEETING

A general meeting of the Society was held in the library Solicitors' Buildings, Four Courts, Dublin on Thursday, 26th May, 1960. The President, Mr. John J. Nash, took the chair. The notice convening the meeting was by permission of the meeting taken as read.

The minutes of the Ordinary General Meeting held on 26th November, 1959 were read, confirmed and signed by the chairman.

The chairman announced that he nominated the following members of the Society to act as scrutineers of the ballot for election of the Council to be held on 17th November, 1960, John R. McC. Blakeney, Thomas Jackson, Brendan P. McCormack, Alexander J. McDonald, Roderick J. Tierney.

The President addressing the meeting said:

Ladies and Gentlemen,

Before I deal with the business of your Society may I regretfully and sorrowfully ask you to dwell for a moment upon the remembrance of those of our colleagues who have died since our last General Meeting. They are: Bertram Barton; Patrick R. Boyd; James Burns; Christopher E. Callan; Mrs. Margaret Daly; Cecil H. Exham; Martin Fitzgerald; Matthew G. R. Lardner; Gerald Maguire; Harold H. Maxwell; Valentine W. Miley; Felix E. Murphy; Thomas O'Neill; John J. Power; John D. T. Rooney; James J. Tuohy; and Peter P. Wilkinson. Of these Mr. Lardner was a member of the Council before my association with it, and was Vice-President for the year 1945-46. Mr. Christopher E. Callan and Mr. Patrick R. Boyd had been our colleagues on the Council until very recently. For a considerable time after the sun has sunk below the horizon it continues to light the earth. So too the beneficial influence which by advice and example the late Mr. Lardner, Mr. Callan and Mr. Boyd had on the governing body of our profession continues after their deaths. Mr. Callan, a kindly, genial colleague, was a provincial delegate on the Council for almost thirty years. He devoted himself unselfishly to the interests of his chosen profession. Mr. Boyd was a member of the Council for quarter of a century and one of our most illustrious past Presidents. "His life was gentle, and the elements so mixed in him that nature might stand up and say to all the world 'This was a man'." So can we think and say of our Past President, the late Mr. Patrick Boyd. In every sense of the word he was a man—a gentle, kindly, brilliant man, whom we shall miss in fellowship and in friendship. May all these, our former colleagues, rest in peace. To their relatives I extend the sympathy of myself and of our Council.

I sometimes marvel at the vast amount of work which has constantly to be done by your Council. The volume never seems to be reduced no matter how assiduously we apply ourselves. The ever-changing pattern of business life and of legal and social relations is constantly giving rise to new problems vitally affecting our Profession. In the past six months we have had six Council Meetings and somewhat over fifty Committee Meetings. Despite that, most of our work during this period is still only in the formative stage. A great portion of it concerns principles which have yet to be considered and decided upon by the Government and the Judiciary. Until they have come to a decision, courtesy forbids me to refer in public to these matters.

During the past decade or so the pattern of life in Ireland has undergone a fundamental change among the farmers, the wage-earners and the business community. What is known as "out-put" in the business world has become a matter of primary importance with all sections of the Community. Even our rural community who are so conservative feel that one can no longer kill time without injuring Eternity. Efficiency — whether real or simulated — has become so common-place that even the man who does nothing in particular does it very well. Life has become more complex and the outlook of Society has substantially changed. Our profession comes into close contact with all sections of the community. We must serve the public as they want to be served. With the changing outlook of the community we have had to change our outlook also. No profession which does not continually test its ideals, techniques and measure of accomplishment can claim real vitality. Ours has always been virile and vital. It is the ambition of your Council to keep it so. To serve the public adequately today a solicitor must know his law thoroughly and be able to apply it without hesitation.

Your Council are charged with the education and training of our students. They have the responsibility of ensuring that these students of today will be a credit to their chosen profession tomorrow. They will have to cope with the changed and more complex atmosphere in social and business relations and in the laws applying thereto. To meet this situation your Council have drastically overhauled the entire system of lectures, education and examination for our students. The course of studies is more advanced and more detailed. The examinations are much more searching.

In the education of our students we have found ourselves gravely handicapped by the dearth of standard text books on subjects of every day application. There is a growing divergence between the legal system in this country and the legal system in England. This divergence makes English law books progressively less appropriate to fill our requirements. Our population is so small that it would not be economic for an individual to devote the time required for the preparation and publication of legal text books appropriate to our country, unless the publication be subsidised. At present there is an urgent need for new text books. This need is most urgent in such matters as the practice and procedure of the High Court and Circuit Court; the registration of title; the registration of deeds; probate and executorship law and practice and also in the law of landlord and tenant. I am happy to inform you that progress is now being made with the Council of Law Reporting on which your Council is represented. It is hoped that in the immediate future a start can be made on the writing and publication of text books on some of these subjects.

The more extensive and detailed course of studies which aspirants to our profession have now to follow impose a heavy strain on our students. There is no way of avoiding that, if these students are to become competent solicitors. Only a few of our students can now hope to complete their course of lectures, examinations and apprenticeship in less than five years. Even then, the newly qualified solicitor would be unwise to start in practice on his own without giving a further period of a year or two working for an established solicitor to get a sound training in the practical application of legal principles towards solving the everyday problems of one's clients.

It would be unfair to young people about to choose a profession if they were not acquainted with what would be expected from them if they propose to become solicitors. Otherwise when half way through their course of studies and when considerable expense had been incurred they might find they were unsuitable. Also, they might feel that if the same amount of time, study and expense were devoted to some other walk of life the financial rewards would be greater. There are, however, many compensations in our profession which far out-weigh financial considerations. There is the variation in our work in the constant endeavour to solve problems which at first glance seem impossible of solution. There is the feeling of effort well spent if we succeed; the confidence and sometimes the gratitude of those whom we help. Above all, there is the feeling of personal satisfaction which comes from applying the human concept of law towards attaining the Divine virtue of justice.

Respect of the ideal of justice is inherent in the very nature of our profession. Every day the average solicitor devotes a considerable amount of his time, without any hope of financial reward, in an effort to attain justice or prevent injustice. Frequently not only does he devote his time to such an end, but, in addition, incurs considerable outlay. I estimate that approximately 10% to 15% of the time of the average solicitor is devoted to the service of the poorer section of the community who are unable from their own resources to retain professional services. In other countries free legal aid is provided for these people at the expense of the State. In Ireland it is provided at the expense of the solicitors' profession. I have never heard of anyone in this country who had to suffer a serious injustice because he was unable to afford professional fees. The fundamental difference between a profession and a business is that service to the public is the keystone of a profession; the profit motive is the basis of a business. The tradition in our profession of service to the public and particularly to that section of the public who are least able to protect their own rights is one of which we are justly proud. We make every effort to honour it in the spirit and in the letter.

Most solicitors have brought their offices and office-methods up-to-date to meet the altered outlook of our nation and the growing importance of efficiency. In some cases this has involved the reconstruction of offices; in others the mechanisation of offices and the introduction of new systems. In all cases it has involved considerable expenditure by our profession. Clients want their legal business transacted with the minimum waste of time commensurate with thoroughness. If there be delay, no matter what the reason, the blame is frequently placed on the solicitor. This is rather unfair to our profession. We have done all we are empowered to do, but find ourselves encumbered by archaic rules of procedure.

Our legal system is based on the legal system of England. It has its roots in times when human affairs proceeded at a leisurely pace; when the volume of transactions was relatively small and when there was much pomp and panoply attaching to the administration of justice. Economic factors and conditions of life have changed drastically since then; but the form of legal transactions has seen only minor alterations. The rules which govern many aspects of a solicitor's work may have been useful and even necessary whey they were first promulgated. Many of them are completely unsuited to modern conditions; and they are an

incubus militating against the prompt and efficient discharge of legal business. Most sections of the Irish community—farming and business— have endeavoured to gear their own work so as to produce maximum efficiency. They find it difficult to understand why legal transactions move at such a dilatory pace.

Besides being an irritant to the general public the delays which arise from cumbersome procedure occasion financial loss to the legal profession. The solicitor is paid to bring a transaction to a conclusion. It is in his personal interest to perform his work expeditiously.

The statutory rules of procedure which relate to litigation and title are not the only aspect of our legislation which need to be revised if legislation is to keep abreast of the ever-developing outlook, civilisation and business requirements of our nation. Some of our legislation is so antiquated and out of harmony with present day requirements as to be a possible source for chicanery. Much of it has been enacted to meet temporary necessities and overcome temporary difficulties. No blame for this unsatisfactory state of affairs rests with our Government nor with the Department of Justice. In a democratic community, where the Government is inundated with a maze of problems requiring legislation, it is human and natural that priority will be given to the demands of the most vocal sections of the community. In other countries there is a law reform committee of experienced practical lawyers who keep the Government advised on laws that need amendment or consolidation so that the evolution of legislation may keep pace with the constantly changing nature of the country's development and obviate injustice. Any expense incurred by the establishment of such a law reform committee would not be more than a very small fraction of the loss in money and time at present caused to the general public by the existence of archaic laws and cumber some procedure.

Much of the statute law still applying to this country was passed at a time when we were not a free nation and does not make provision for the altered social order which ensued from our liberation. We are young as a free nation, but we boast an ancient culture, tradition and civilisation innate in our people and of which we are proud. The laws under which a nation lives should be a reflection of the public conscience of the people and should contribute to the nation's moral and spiritual strength. The respect for justice under law is vital and abiding in a country only when the roots of the laws are grounded on the traditions of social justice, ethics and philosophy and indigenous to that country. Can we truthfully say that our laws are an example of our philosophy and way of life and that they reflect our national culture and tradition? Are they frequently a pale reflection of something found suitable to our neighbouring country where social and economic life are completely different? Does far too much of our legislation continue unamended since it was passed by an English Parliament to suit different circumstances in our country? Is too much of what has been amended in the nature of patchwork without adequate order or system and badly in need of proper codification? Those are deep and involved questions, but they go to the roots of our national life. They could be properly answered only by people skilled in jurisprudence who have a wide practical experience in the application of our laws. It would be unfair and unreasonable to expect any Government or even any Government department whose lawyers would not have an extensive practical experience to deal with them efficiently.

There is a legal maxim which says that " ignorance of the law is no excuse ". This dictum is rather hard on lay men and lawyers alike in so far as certain branches of our law are concerned, which, owing to lack of consolidation are a morass lacking unifying principles and making it impossible for any lawyer to express a confident opinion as to the legal position regarding many matters of every day occurrence. No one can give a satisfactory estimate of the amount of public money that is wasted by this unnecessary complexity occasioned by the lack of consolidation in some branches of our legislation. It must certainly be enormous.

To exemplify my point, I shall take just one instance of the grave difficulties which arise from having a patchwork legislation superimposed on old statutes and statutory orders which were handed down to us since the days of English rule in this country, namely, the law relating to local government. In one case involving a claim against a local authority the High Court judge in the course of his judgment stated :— " Both parties to the action were bewildered at the trial in their efforts to discover and interpret the actual laws in force in the years 1942 and 1946 though the subject matter is quite simple and easily regulated ". A more clear and impartial condemnation than is exemplified by these words it would be difficult to get.

If a local authority wishes to have a lawful exercise of its powers relating to any of its employees it must first consider whether under the various statutes and statutory orders the employee is " permanent " ; " casual " ; " temporary " or " quasi-permanent ". All these terms are referred to in various local government acts and orders as being distinct classes of employees ; but nowhere in the vast maze of local government legislation can one

find what exactly is the principle which indicates the difference. The same difficulty arises regarding almost every aspect of the functions and work of a local authority. As each new local government act is passed the difficulty becomes more acute. New terms are used; sections and parts of sections of previous repealing acts are again repealed. In an effort to find our bearings in this labyrinth, we solicitors strike out repealed sections in our copies of the statutes and make marginal notes of the alterations in the alterations. Then we interleave notes and interpolations in an effort to find unifying principles between the newest amendment and the existing legislation. After all this, when our opinion is asked on the legal position on a simple set of facts we find that there are some further sections or subsections of unrepealed ancient statutes or statutory orders which appear to conflict with and negative some of the most recent statutes. Our system of local government is very different today from what it was half a century ago. Yet many old statutes and statutory orders which have little or no relation to the facts of today still have the force of law. The main function they serve is the creation of endless confusion.

County managers are charged with the expenditure of many millions of pounds each year which must be in accordance with the lawful exercise of their powers. It is a great tribute to the intelligence and to the integrity of our county managers and of their senior officials that they discharge their duties so efficiently when on many occasions they can have no more than a pious hope that they are putting into effect the requirements of our existing legislation or that they are making a lawful exercise of their powers. Those of them who know precisely the right time to disobey certain statutory orders are a big help to the community as for certain sections of statutory orders there appears to be no legislative sanction, and so they would seem to be void. Surely it is an unfair imposition on these officials to be expected to discharge their onerous duties and an outrageous imposition on the civil servants in the Department of Local Government who must supervise this discharge, that they should be expected to carry out their onerous duties in a veritable legislative jungle. One easily agrees with the views of one of our High Court judges who, about ten years ago, in the course of a judgment, expressed the fear that the affairs of local authorities could easily degenerate to the level of " parish bumbledom ".

Time alone prevents me from referring to other branches of law where a similar unhappy state of affairs exists owing to lack of consolidation. The longer this state of affairs is allowed to continue the worse it will become. There is a danger of our legal system falling into disrepute through confusion and absence of reasonable certainty. The cynic may feel tempted to say that the uncertainty of our law is of more advantage to the lawyers than the knowledge of it. It is doubtful if that be so. The general public who can foretell their own business affairs with reasonable accuracy will frequently suffer what they believe to be grave injustices and forego what they believe to be their legal rights rather than get involved in litigation of which the outcome is so highly problematic.

The only way in which this situation could be rectified is by the consolidation or the codification of the law relating to these various aspects of our social order. No Irish Government, even with the best possible intentions, can hope to get this done without the assistance of a law reform committee constituted on the lines which I have indicated. The civil servants in the Department of Local Government and our local officials, by the very nature of their positions, are the least vociferous section of our community. Those gravely affected by injustices from the nature of other aspects of our existing legislation are not organised and are equally inarticulate. Undoubtedly every Government and every political party which has been in power since we attained our freedom has been assiduous for the public good and sincere in their efforts to attain it; but all Government time available for legislation is occupied by pressure from sections of the community who are organised and vocal. In the welter of legislation that is pressed upon the Government in those circumstances, it is inevitable that fundamental principles going to the roots of our system of jurisprudence are apt to be overlooked. If the public conscience could be awakened to the need for a law reform committee consisting of experienced lawyers such as exist in other countries our Government could be kept constantly informed of the existing position relating to fundamental principles and where our existing legislation is defective. Then, the Government charged with the responsibility for public good, could decide, whether any and if so, what steps should be taken in accordance with their political principles to remedy existing defects, to keep legislation in harmony with our everchanging social order and outlook, and to have our laws as they should be—a mirror of the nation's social conscience.

Ladies and Gentlemen,

May I conclude on a personal note by saying how deeply grateful I am to the Council of our Society for the honour they have paid me in electing me as your President. With the kindly co-operation and the help so unselfishly given by the Council and by some other members of our Society who have so

kindly placed their specialised knowledge at the service of some of our Committees, I shall do my best to be worthy of that honour. To my two Vice-Presidents, Mr. Walker and Mr. O'Connell, and to our immediate past President, Mr. Halpin, may I publicly say—"Thank you, for so generously extending to me your help and advice at all times". The absorbing interest in our profession of our worthy Secretary, Mr. Plunkett, is so well known to you all, that I need scarcely refer to it. Suffice it is to say that no President could hope to discharge the burdens and responsibilities of office without Mr. Plunkett's kindly guidance which is always so generously given.

In accordance with Bye-Law 28 the President appointed the following members to be the scrutineers of the ballot for the election of the Council for the year 1960-61: Messrs. James R. McC Blakeney, Thomas Jackson, Brendan P. McCormack, Alexander J. McDonald and Roderick J. Tierney.

Messrs. T. D. McLoughlin, Denzil O'Donnell, Victor Crawford, Eunan McCarron and J. W. O'Donovan addressed the meeting on matters arising on the President's statement. Messrs. McCarron and O'Donovan particularly stressed the necessity of obtaining new subscriptions for the Solicitors' Benevolent Association.

Mr. Victor Crawford proposed a vote of thanks to the President for his services to the Society since his election. Mr. Arthur Cox seconded the motion which was carried with acclamation. The proceedings then terminated.

CONVEYANCING PRACTICE RESTRICTIVE TERMS

The Council have on a number of occasions published statements in the Society's Gazette disapproving of stipulations in contracts for sale which are unduly restrictive as to title. They wish to draw the attention of members to the following practices which they think are objectionable as making it unduly difficult for a purchaser's solicitor to discharge his duty to his client. (1) The practice of some solicitors acting for vendors of furnishing an engrossment in duplicate of the contract for sale and refusing to permit any alteration by a solicitor for the purchaser. There is no objection to the vendor's solicitor furnishing the engrossment instead of a draft, but in this event the solicitor for the purchaser should, if he thinks it necessary in the interests of his client, be entitled to treat the engrossment as a draft and to amend the draft as may appear necessary. (2) A provision in an agreement for a lease where there is substantial fine that the lessee will not object or make requisitions to or in respect of the lessor's title and that no copies of title deeds will be supplied except on payment of scrivenery fees. In the opinion of the Council the commission scale fee on the fine included in a lease should include the work of the vendor's solicitor in deducing title and the imposition of costs on the purchaser-lessee is unduly onerous and contrary to the best interests of the profession. (3) Provisions in agreements for sale that the purchaser will admit the vendor's title. This, as a general practice, is obviously objectionable.

The Council regard the practices mentioned above as lowering the standard of the profession and increasing unnecessarily the difficulties of solicitors acting for purchasers and lessees. Furthermore such practices provide an argument for those who attack the commission scale fees in conveyancing matters.

The Council have on numerous occasions disapproved of the practice of including stipulations in agreements for sale of property that the purchaser will pay the vendor's costs.

PAYMENT OF DEPOSIT TO VENDOR'S SOLICITOR. QUESTION OF NEGLIGENCE

A committee of the Council recently made a report referring to the practice whereby the purchaser's solicitor returns the executed contract to the vendor's solicitor with a cheque for the deposit made payable to the vendor's solicitor. The vendor's solicitor's authority to give a receipt for the deposit does not arise until the vendor has signed the contract and if the vendor failed to sign the contract and his solicitor subsequently failed to account for the deposit the purchaser might be the loser and his solicitor might have to answer a claim for negligence. The Council decided to bring this matter to the notice of members and to recommend that contracts for the sale of property should be engrossed in duplicate and that a copy executed by the vendor should be exchanged for a copy duly executed by the purchaser, the latter being accompanied by a cheque for the deposit in favour of the vendor's solicitor where appropriate according to the terms of the contract.

DISHONOURED CHEQUE. DUTY OF COLLECTING BANK

A cheque is properly presented for payment within the meaning of Section 45 of the Bills of Exchange Act 1882 when it is handed over in the Central Clearing Office in the Bank of Ireland by a representative of the collecting bank to a representative of the paying bank.

In a recent case the defendant, who was not a customer of the plaintiffs' bank, endorsed and cashed on the 20th May 1959, in their Dun Laoghaire Branch, a cheque drawn in her favour on the National Bank, College Green, Dublin. The cheque was, in accordance with the normal practice, sent by the plaintiffs to their clearing department in their head office. On the 21st May 1959 it was handed over in the Central Clearing Office to an official of the National Bank. On the 22nd May 1959, the National Bank returned the cheque by post to the Dun Laoghaire Branch of the plaintiffs marked 'effects not cleared 22.5.59'. The plaintiffs received the cheque on the morning of the 23rd May 1959, which was a Saturday, and, on the 25th May 1959, notified the defendant by telephone that the cheque had been dishonoured. The defendant did not repay to the plaintiffs the amount of the cheque and they accordingly sued her.

On the hearing in the High Court, before Murnaghan J., the defendant contended that she was not liable as endorser as she did not receive notice of dishonour within a reasonable time in accordance with the relevant provisions of the Bills of Exchange Act 1882. Section 45 of that Act provides that a Bill must be presented within a reasonable time having regard to the nature of the bill, the usage of trade with regard to similar bills and the facts of the particular case and that if not so presented an endorser shall be discharged. Section 49 of the Act provides that notice of dishonour must be given within a reasonable time after a bill is dishonoured, and that to comply with the section, notice must be given or sent off in time to reach the person receiving it on the day after the dishonour of the Bill.

Mr. Justice Murnaghan decided that, as section 45 of the Bills of Exchange Act requires that presentment must be made to some person authorised to pay or refuse payment, it was not presented when received at the Central Clearing Office by an officer of the National Bank, as such officer had no authority to pay or refuse payment. The cheque could only be considered for payment under the deferred posting system at present in operation in the banks in the Republic after the close of business on the 22nd May 1959, that is, 48 hours after the time when the plaintiffs became holders of the cheque. He held, therefore, that the cheque could not be considered as presented for payment until then, and that such presentation was not within a reasonable time. He therefore held for the defendant. From this decision the plaintiffs appealed to the Supreme Court.

The Judgment of that Court was delivered by Lavery J. He held that it is established that, if a bill payable at a bank is presented to a clerk or agent of a bank at the clearing house, that is presentment to the bank and is sufficient (Reynolds *v.* Chettle (1811) 2 Camp. 595 and Harris *v.* Packer (1833) 3 Tyr. 370). He held, therefore, that the handing over of the cheque to the representative of the National Bank in the clearing office was presentment. Its purpose was a demand for payment by the bank, and the cheque thereupon came into the possession of the bank, and it became their duty to pay or dishonour. In the absence of special instructions, it would not have been appropriate for the Plaintiff Bank to present the cheque for payment in any other manner.

He goes on: "It is to be noted that while the Act provides by Section 45 that a bill must be presented for payment within a reasonable time and that if not so presented the indorser shall be discharged; and provides by Section 48 (12) that notice of dishonour must be given within a reasonable time after dishonour and that if not so given the indorser is discharged; no specific provision is made covering the interval between presentment and dishonour and the effect of delay by the paying bank in dealing with a bill duly presented either by paying or dishonouring. Section 47 (1) provides only that a bill is dishonoured by non-payment when it is duly presented for payment and payment is refused or cannot be obtained or when presentment is excused and the bill is overdue and unpaid. It is of course the duty of the paying bank to whom a bill has been presented to deal with it *forthwith* understanding by that word not *on the spot* but within such time as is reasonable. In determining what is a reasonable time, we have no doubt that, though not so provided specifically by the Act, regard should be had to the nature of the bill, the usage of trade with regard to similar bills and the facts of the particular case. Delay in dealing with a bill duly presented is the responsibility of the paying bank, though I would have no doubt that a collecting bank, or a bank presenting as holder, might incur a responsibility if it failed to use due diligence in requiring the paying bank to deal with a bill presented and failed to treat a bill as dishonoured if there was undue delay, on the ground that payment could not be obtained. On the view taken the delay, if this is an appropriate word, in the present case occurred in this interval between presentment and dishonour. On the case as presented, it does not arise for consideration whether this delay was unreasonable on the part of the National Bank or on the part of the plaintiff bank in not requiring the National Bank to deal with the cheque more speedily or treating it as dishonoured if it was not so dealt with. In our opinion, therefore, the defence that the cheque was not presented within a reasonable time, fails."

(The Royal Bank of Ireland Limited *v.* Isobel P. O'Rorke.)

LABOURERS' ACTS COSTS

Solicitors' costs in connection with the acquisition of land for the erection of cottages were until 1st August, 1957, regulated by rule 51 and 52 of the Labourers (Ireland) Order, 1912 and these rules also provided for the appointment of a special taxing officer to tax the costs. The rules mentioned ceased to have effect as respects business undertaken by a solicitor on or after 1st August, 1957, as provided by the terms in the Labourers Acts (Solicitors' Remuneration) Order, 1957 (S.I. No. 144 of 1957). The object of the change was that solicitors' costs in connection with the acquisition of lands for cottages would be chargeable as from 1st August, 1957, on the basis governing costs as between solicitor and client and that they would be taxable by the Taxing Masters of the High Court. Doubts have arisen, however, as to whether the Taxing Masters have power to tax these costs and the matter is under consideration by the Department of Local Government. At the request of the Society the Department has issued a circular to the County Managers suggesting that local authorities might exercise their discretion by settling such bills without taxation or making interim payments or some other suitable arrangement which will avoid any hardship which might arise if the bills or costs were left unpaid pending arrangements to have them taxed.

DUBLIN SOLICITORS' BAR ASSOCIATION

A meeting of the Council was held on Wednesday, 4th May, 1960.

A vote of sympathy was passed on the death of Mr. Patrick R. Boyd, Solicitor, a former Council member of the Law Society and a Director of the Benevolent Association.

The Sub-committee drafting a standard form of Auction Particulars and Conditions of Sale reported progress.

A Sub-committee consisting of the President, the Honorary Secretary, Mr. Brendan Walshe and Mr. J. B. McGarry was appointed to consider the desirability of revising the Association's rules and of procuring the incorporation of the Association.

The attention of members is drawn to the desirability, in certain cases where damages for infants would be held for a relatively short period, of applying to the Court for liberty to invest all or part of the sum awarded in prize bonds instead of the normal interest yielding securities.

The next meeting was fixed for Wednesday, 1st June, 1960.

MAYO SOLICITORS' BAR ASSOCIATION

The Annual General Meeting was held in the Bar Room, Courthouse, Castlebar, on Friday, 29th April, 1960.

The following Officers were elected for 1960–61 : *President :* Edward Fitzgerald ; *Vice President :* Patrick J. Mulligan ; *Hon. Treasurer :* Bea M. Hynes ; *Hon. Secretary :* John F. Garavan. *Council :* Edward A. Corr ; William Dillon-Leetch ; Thomas V. O'Connor ; Patrick J. McEllin and Patrick J. Shanley.

The following suggestions were put forward by members as improvements which could be effected to the benefit of the profession.

(1) Probate costs should be on percentage scale of the gross assets.

(2) That certified cheques be accepted by the Probate Department in lieu of Stamps.

(3) That the Bond in papers leading to Grants of Administration should simply contain: " President of the High Court " without including his christian or surnames.

(4) That it should only be necessary to sign the Schedule of Assets at one place, i.e., on Page (1).

(5) That the Revenue Commissioners and the Land Registry Officials should type their queries in duplicate.

On a general discussion about professional matters, the following resolution was proposed and carried :

That the Hon. Secretary inform the Secretary of the Incorporated Law Society that it is the unanimous view of the Association that one Solicitor should not act for both parties in a sale for valuable consideration and that this resolution be introduced on a national scale with statutory force.

CARLOW BAR ASSOCIATION

Officers and committee :

President : Samuel Roche, Tullow ; *Chairman :* Hugh O'Donnell, Carlow ; *Hon. Secretary* and *Hon. Treasurer :* Desmond Early, Carlow. *Committee :* Francis J. Lanigan, Carlow ; Arthur W. Jeffers, Carlow ; Patrick J. Cody, Bagenalstown.

SOLICITORS' GOLFING SOCIETY

The Spring Meeting of the Society was held at Athlone Golf Club (by kind permission) on Saturday, 7th May, 1960, when an exceptionally fine Prize, presented by the Captain, Mr. W. A. Tormey, was played for. Thirty-five members took out cards, and the scoring generally on a difficult course was of a very high order.

The Four Provinces were represented and at the Dinner afterwards, at which the Captain presided, the Society had the pleasure of the company of Commandant Reardon, Captain of Athlone Golf Club, to whom Mr. Desmond Collins proposed a toast with which he coupled the thanks of the Society to the members of Athlone Golf Club for the facilities afforded. Commandant Reardon suitably replied. The toast of the Captain of our Society was proposed by Mr. John Carrigan, the Captain replied, and expressed the appreciation of the Society of the work being done by the Hon. Treasurer, Mr. John O'Dwyer, and the Hon. Secretary, Mr. G. M. Doyle. The Captain urged members to encourage their colleagues to take part in the Society's Outings, as it gave Solicitors an opportunity of meeting socially.

The Captain's Prize consisting of a very fine silver tray and tea set was won by Mr. David Bell. Mr. Bell was also presented with the Golfing Society's Challenge Cup, and in his speech of thanks, Mr. Bell complimented the Captain on the numbers who had attended his Outing, on the very fine prize he had presented, and on the condition of the course of which the Captain is a very distinguished member.

A complete list of Prize Winners is set out hereunder.

List of Prize Winners

Captain's Prize and Society's Challenge Cup :
Winner : David Bell (13) 2 Up (on 2nd Nine).
Runner up : J. C. Bolger (10) 2 Up.
St. Patrick's Plate :
Winner : T. D. Shaw (3) 2 Up.
Runner up : W. A. Tormey (9) 1 Up.
Veterans Cup :
Winner : H. J. Fitzpatrick (6) all square.
Runner up : D. P. Shaw (9) 2 down.
Other Prize Winners : Messrs. W. J. Ryan, E. Walshe, Michael Hayes, E. J. Dillon, J. Maher, G. M. Doyle, A. Smyth.

PROCEEDINGS AGAINST SOLICITORS

On 29th of April, 1960, the Chief Justice made an order that Mr. Patrick J. Pettit of Ballygar, Co. Galway, be suspended from practice until further order.

On the 2nd June the Chief Justice made an order directing that the name of Mr. Daniel A. Creedan of Bantry, Co. Cork, be struck off the roll.

OBITUARY

Mr. James P. Coghlan, Solicitor, died on 13th May, 1960, at his residence, Holmwood, Rosbercon, New Ross, Co. Wexford.

Mr. Coghlan served his apprenticeship with the late Mr. Thomas J. Kelly, New Ross, Co. Wexford, was admitted in Michaelmas Sittings 1923, and practised at New Ross, Co. Wexford.

THE REGISTRY

Register A

Progressive firm of Solicitors in Uganda require Assistant for Conveyancing and Advocacy. He should be a bachelor, age 24 to 30 with five years' experience, Trinity graduate preferred but not essential. Initial contract three years at £100 per month, followed if suitable by Partnership. Air fare from Dublin paid at commencement and termination of Contract. Apply Box No. A186.

Register B

Experienced Solicitor, qualified 25 years, proprietor of Country practice, for family reasons seeks opening in Dublin ; partnership or outright purchase. Box B250.

REGISTRATION OF TITLE ACTS, 1891 AND 1942

Issue of Duplicate Land Certificates

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

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

Dated the 20th day of June, 1960.

D. L. McAllister,
Registrar of Titles.

Central Office,
Land Registry,
Chancery Street,
Dublin.

Schedule.

1. Registered Owner, James McEvoy. Folio number 41282. County Cork. Lands of Dromkeen in the Barony of Carbery East containing 8a. 0 r. 0 p.

2. Registered Owner Thomas Lynch. Folio number 538. County Cavan. Lands of Ardlow in the Barony of Castlerahan containing 1 a. 0 r. 2 p.

3. Registered Owner James Egan (Senior). Folio number 4821. County Tipperary. Lands of Park in the Barony of Ikerrin containing 14a. 3r. 27p.

4. Registered Owner Charles Kelly. Folio number 11943. County Sligo. Lands of Ogham containing 8a. 1r. 20p. and Lands of Tawnagh containing 16a. 2r. 10p. both situate in the Barony of Tirerrill.

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No. 2

JUNE,
1960

THE GAZETTE

of the

INCORPORATED LAW SOCIETY OF IRELAND

President
JOHN J. NASH

Vice-Presidents
RALPH J. WALKER
PETER E. O'CONNELL

Secretary
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

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MEETINGS OF THE COUNCIL

May 26th: The President in the chair, also present Messrs Terence de Vere White, Dermot P. Shaw, Derrick M. Martin, James J. O'Connor, James R. Green, James W. O'Donovan, John Carrigan, John R. Halpin, Ralph J. Walker, Peter E. O'Connell, Charles J. Downing, Arthur Cox, Augustus Cullen, John Maher, Eunan McCarron, Brendan A. McGrath, George G. Overend, Robert McD. Taylor, Dinnen B. Gilmore, James R. Quirke, Francis J. Lanigan, Gerald Y. Goldberg, Desmond J. Collins, John J. Sheil, Thomas A. O'Reilly.

The following was among the business transacted:

Medical Practitioners. Disclosure of information concerning patients

A committee of the Council considered correspondence with a local bar association on the subject of disclosure by a medical practitioner in the whole-time employment of a local authority of the result of an examination of a patient in a county hospital under treatment for injuries which led to a claim against the local authority under the Workmen's Compensation Acts. It was stated that the disclosure was made by the medical practitioner to the local

authority without the patient's consent. The matter was taken up by the society with the Irish Medical Association and correspondence was subsequently received from the local bar association stating that the medical practitioner concerned had given an undertaking that there would be no recurrence of this practice. It was decided to take no further action.

Auctioneers' Association

A committee reported the result of correspondence with the Irish Auctioneers' and Estate Agents' Association on the subject of proposals to purchase property and payment of the deposit. The Association agreed that an agreement for the sale or purchase of property should not be drawn or prepared by an auctioneer and that a proposal for a sale or purchase which will be turned into an agreement by signature falls within this category. They submitted for the approval of the Council a form of proposal expressly subject to contract. It was decided to inform the Association that the Council have no objection to the preparation of such document by an auctioneer as a preliminary to a proper agreement to be prepared by a solicitor.

Solicitor's right of access to prisoner

It was reported that a solicitor acting for the accused on a criminal charge had been unable to obtain permission to be present at an examination of the prisoner conducted by a medical practitioner instructed by the defence in the presence of the prison doctor. Enquiries were made by the Society from the prison authorities and it has been ascertained that no difficulties will arise in such a case where a solicitor wishes to be present at a medical examination of his client by his own doctor if reasonable notice is given to the prison authorities.

Family arrangement. Sale to personal representative

The council considered a report from a committee as to the proper charges on a purchase by the administrator of an estate of certain lands from the beneficiaries by way of transfer and release as part of a family settlement. Member had prepared a deed of transfer and release in which all the next of kin, including the administrator who was a beneficiary released and discharged any interest which they might have to the administrator beneficially. Member acts for all the parties and the sale is by private treaty. The general principle is that in order to charge the commission scale fee all the work specified in the general order must be substantially performed. In Keeping *v.* Gloag (1888–58 L.T. 679) it was held that the commission scale fee is not chargeable on a transfer of property by trustees to sons of the testators on coming of age, the trustees having been authorised to retain and carry on the business during the intervening period. In the Society's GAZETTE, June, 1957, the Council expressed the opinion on certain facts that the costs should be charged on the old system as ordered by schedule 2. The facts were that a widow who was personal representative of a deceased intestate registered owner put property up for sale and bought it in through an agent in trust for herself, the consideration being payments to each of the next of kin of an amount found due on an account stated and settled. The council on the report of the committee and on the facts stated that the costs of the present case should be charged on the old system as modified by schedule 2 S.R.G.O., 1884 as amended.

June 13th: The President in the chair, also present Messrs. Reginald J. Nolan, Dinnen B. Gilmore, James R. Green, John J. Sheil, Gerald Y. Goldberg, George G. Overend, Ralph J. Walker, Peter E. O'Connell, Robert McD. Taylor, Eunan McCarron, Thomas A. O'Reilly, Brendan A. McGrath, Derrick M. Martin, John Carrigan, John R. Halpin, Arthur Cox, Augustus Cullen, Francis J. Lanigan, John Maher.

The following was among the business transacted:

Mr. James R. Quirke. Resignation from the Council

The Secretary read a letter from Mr. Quirke stating that he wished to resign from the Council. The following resolution was passed:

> That the Council accept with great regret the resignation of their colleague Mr. James R. Quirke and wish to place on record their deep appreciation of the service rendered by Mr. Quirke to the Society and the profession during his long period as a member of the Council and as a former President.

Lease. Duty of lessor's solicitor.

A member was instructed by a landlord to draw up a letting agreement in the usual terms. The tenant was not separately advised and arranged to call to sign the agreement. Member is aware that the house is on registered land and that the Land Commission annuity is still payable. In the circumstances any letting made without the consent of the Land Commission may be void. He enquired whether he was entitled to have any dealings with the tenant. If the tenant were separately advised it would be the duty of his solicitor to advise him of the necessity of obtaining the consent of the Land Commission. Member, in effect, was instructed by the landlord to

make a purported letting to the tenant which is a nullity and he asked for the guidance of the Council whether he should (*a*) advise his client to apply for and obtain the Land Commission consent or (*b*) postpone completion until the client can be advised of the legal position. On a report from a committee the Council stated that there must be either (*a*) separate legal advice for the lessee or (*b*) full disclosure as to the legal position by the lessor's solicitor.

Press notices by solicitors

The Council in special circumstances approved of the publication by a surviving partner of a press notice stating that he had acquired the full interest in the solicitor's practice formerly carried on by another solicitor and himself in partnership. The special circumstances were that the deceased partner resided in Dublin and practised in the Dublin office while the surviving partner carried on practice in the country office of the partnership.

S.I. No. 94 of 1960
SOLICITORS ACT 1954 (APPRENTICESHIP AND EDUCATION) (AMENDMENT) REGULATIONS 1960

The Incorporated Law Society of Ireland in exercise of the powers conferred on them by sections 4, 5, and 40, of the Solicitors Act, 1954, and of every other power thereunto them enabling, hereby make the following regulations :—

1. These regulations may be cited as the Solicitors Act, 1954 (Apprenticeship and Education) (Amendment) Regulations, 1960 and shall come into operation on the 28th day of April, 1960.

2. These regulations shall be read together with the Solicitors Act, 1954 (Apprenticeship and Education) Regulations, 1955 (S.I. No. 217 of 1955) and the Solicitors Act, 1954 (Apprenticeship and Education) (Amendment) Regulations, 1956 (S.I. No. 307 of 1956) and shall in so far as they are inconsistent therewith alter and amend the same.

3. Regulation 22 of the Solicitors Act, 1954 (Apprenticeship and Education) Regulations, 1955 (S.I. No. 217 of 1955) is revoked and the following regulation is substituted therefor :—

22. Society's lectures.

(1) The Society shall provide or arrange for the provision of a course of lectures on each of the following subjects :

(*a*) company law,

(*b*) conveyancing law and practice and land law,

(*c*) the procedure and practice of the Courts,

(*d*) tax law,

(*e*) book-keeping,

(*f*) the law of wills and probate and executorship law and practice,

(*g*) the rights, duties and responsibilities of solicitors.

(2) The council may appoint and remunerate lecturers. Each lecturer shall be appointed for a year certain and shall be eligible for reappointment but his term of office shall not exceed five years in all unless the council by resolution on notice shall otherwise direct.

(3) The Court of Examiners shall submit recommendations to the council as to the programme of lectures and the council may adopt the same with such alterations as they may think fit, and may from time to time alter or amend the programme after referring the matter to the Court of Examiners and considering their report thereon.

(4) The programme of lectures shall prescribe the conditions which must be fulfilled by an apprentice in order to obtain credit for lectures, the number of lectures on each subject, the place, dates and duration of lectures and such other matters as the council shall think fit.

(5) Each apprentice seeking admission shall produce to the Society evidence that he has attended and obtained credit for the lectures prescribed by this regulation in accordance with the provisions and conditions of the published programme. A certificate of credit for such lectures may be withheld by the lecturer if he is not satisfied with the attendance of an apprentice or with his conduct. A certificate of credit for attendance at lectures shall be in form AE. 8 in the schedule hereto.

4. The following form of certificate of credit for lectures shall be substituted for form AE. 8 in the schedule of forms to the Solicitors Act, 1954 (Apprenticeship and Education) Regulations, 1955 (S.I. No. 217 of 1955).

FORM AE. 8.

CERTIFICATE OF CREDIT FOR LECTURES.

I hereby certify that

of

has attended a course of lectures in

delivered by me during the session 19 , and that

I have given him credit for the said lectures.

Dated this day of 19 .

(Signed),

Lecturer.

Signed on behalf of the Incorporated Law Society of Ireland, this 28th day of April, 1960.

JOHN J. NASH,
President of the Incorporated Law Society of Ireland.

EXPLANATORY NOTE.

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

The changes made by these regulations in the previous system are as follows: (*a*) the combined course (*a*) and (*f*) mentioned in regulation 22 (1) is divided into two full courses, (*b*) the requirement that a resolution extending the term of office of a lecturer beyond five years must be passed before the expiration of the said period is revoked, (*c*) the requirement of term examinations is revoked.

S.I. No. 131 of 1960
SOLICITORS ACT 1954 (APPRENTICES' FEES) REGULATIONS 1960

The Incorporated Law Society of Ireland in exercise of the powers conferred on them by sections 4, 5 and 82 of the Solicitors Act, 1954 and of every other power thereunto them enabling, and with the concurrence of the Chief Justice 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 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, 1956 (S.I. No. 140 of 1956) shall be revoked as from the date of operation of these regulations.

3. The Interpretation Act, 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 Act, 1954 or with these regulations.

4. These Regulations may be cited as the Solicitors Act, 1954 (Apprentices' Fees) Regulations, 1960 and shall come into operation on the 23rd day of June, 1960.

SCHEDULE

	£	s.	d.
1. On application for consent of the Society to enter into indentures	12	0	0
2. On application to attend a first examination in Irish	2	2	0
3. On each subsequent application to attend any first examination in Irish or part thereof ...	1	1	0
4. On each application to attend any preliminary examination or part thereof after the first	2	2	0
5. On application for entry by the Registrar of indentures of apprenticeship, other than supplemental indentures or a transfer of indentures	68	0	0
6. On application to attend the first law examination	5	5	0
7. On each subsequent application to attend any first law examination or part thereof ...	3	3	0
8. On application to attend the second examination in Irish...	3	3	0
9. On application to attend the second examination in Irish or part thereof	2	2	0
10. On application to attend the final examination (to cover the first attendance at the second and third law examinations and the book-keeping examination)	20	0	0
11. On each subsequent application to attend the final examination or any part thereof ...	3	3	0
12. On each application to attend a course of lectures under regulation 22 of the Solicitors Act 1954 (Apprenticeship and Education) Regulations 1955 (S.I. No. 217 of 1955) or any amendment of the said regulations other than lectures on the rights, duties and responsibilities of solicitors	10	10	0
13. On application for entry of a name on the roll of solicitors	30	0	0
14. On application for permission to give late notice of intention to attend any examination or course of lectures, £2 2s. 0d., or such lesser fee as the Society may accept in special circumstances.			

Dated this 23rd day of June, 1960.

Signed on behalf of the Incorporated Law Society of Ireland,

JOHN J. NASH,
President of the Incorporated Law Society of Ireland.

I concur in the making of the above regulations.

(Signed) CONCHUBHAR A. MAGUIDHIR,
Chief Justice.

EXPLANATORY NOTE.

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

These regulations (*a*) are consequential upon the making of the Solicitors Act, 1954 (Apprenticeship and Education) (Amendment) Regulations, 1960 which provide for an additional course of lectures for solicitors' apprentices on the subject of the law of wills and probate and executorship law and practice, (*b*) substitute a uniform fee of £10 10s. 0d. for each course of lectures provided by the Society

for the present fees of £8 8s. od. for each course of law lectures and £6 6s. od. for the course of lectures on bookkeeping, (*c*) substitute £20 for £17 17s. od., as the fee for attending the final examination. The other fees in the schedule are unchanged.

EXAMINATION RESULTS

At the bookkeeping examination for apprentices to solicitors held on the 10th day of June, the following passed the examination :—

Passed with merit: 1. Desmond J. O'Malley; 2. Michael J. Browne; 3. Maurice R. Curran; 4. Rory M. Hogan; 5. Thomas K. Smith; 6. Joseph Gilmartin; 7. William S. Geraghty; 8. Marie P. M. Berkery.

Passed: Michael E. Binchy, James J. Dennison, Ailin A. Gibbons, Peter F. Houlihan, Helen M. Kirwan, John O. Lee, James J. O'Connor, Roderick O'Donnell.

19 candidates attended; 16 passed.

FINAL AND SECOND AND THIRD LAW EXAMINATIONS

The Court of Examiners will consider applications from apprentices for exemption from certain subjects at the second and third law examinations in the following circumstances. If an apprentice has passed the first law examination and part 1 of the final examination the Court of Examiners will consider an application for exemption from papers 4 and 6 at the second law examination. In the case of an apprentice who has passed the first law examination and part 2 of the final examination the Court of Examiners will consider applications for exemption from papers 7, 10, 12 and 13 at the second and third law examinations. The decision on such an application will depend upon the standard of proficiency shown and is discretionary.

PARLIAMENTARY QUESTION

To ask the Minister for Finance what staff and machinery are available for stamping deeds in the stamp office, Dublin Castle, whether there are any substantial delays at the stamp office counter; and, if so, the cause thereof and if the delays could be eliminated by the provision of additional staff or machinery.

—Michael J. O'Higgins.

Answer: I presume that the Deputy's question relates only to the facilities provided for persons who wish to have their documents stamped while they wait. Two officers are available for checking the amount of the duty in these cases, and marking it on the documents to be stamped. One officer, who operates a single stamping press, is available for the actual stamping of the documents.

In reply to a question on the 23rd March last, I explained that the limited accommodation available on the present site of the Stamping Office does not allow of any extension of the existing facilities, and that delays occur when large numbers of callers present themselves at the same time. Better provision for personal callers is being made in the plans now under consideration for the building of new premises for the Stamping Office.

In the meantime, the Revenue Commissioners are taking all possible steps to reduce delays to a minimum. Assistance is being provided for the Stamper so as to enable him to deal more quickly with the documents presented to him, and assistance will also be provided for the Marking Officers if it should become necessary. It is hoped that these measures will result in a substantial improvement, but the position will, in any event, be kept under constant review.

(*Dáil Debates, 17th May*, 1960)

FINANCE BILL 1960

The attention of members is directed to the following sections in the bill as introduced.

Section 9 empowers the Revenue Commissioners to obtain information about payments made by traders and others in respect of services rendered by persons not employed by them. The Council are considering this section in order to see whether any representations are necessary with a view to protecting the privileges of solicitors and the secrecy of professional communications in respect of business transacted for clients.

Section 23 and the second schedule to the Act raised the exemption limit for the purposes of estate duty from £2,000 to £5,000.

Section 24 raises the corresponding exemption limit for legacy and succession duties from £2,000 to £5,000.

Section 25 relates to relief from Estate Duty in a case of securities brought within the ambit of section 7 of the Finance Act, 1932, by section 5 of the Bill. In such cases relief from Estate Duty will operate in respect of debts occurring after the passing of the Bill.

Section 36 deals with the stamp duty on copy documents issued by District Probate Registries. It will simplify arrangements for paying the duty by permitting the use of adhesive stamps instead of impressed stamps.

Section 38 makes tax relief available in certain cases where a child was adopted informally. The section relates to succession and legacy duty and

stamp duties chargeable on conveyances or transfers of land, and customs duty under paragraph (*b*) of the Finance Act, 1938, section 18. By sub-section (3) applications may be made for a refund of certain stamp duties where property was acquired on or after 1st January, 1953. It is important to note that the application for repayment must be made to the Revenue Commissioners within one year from the passing of the Act.

The scale of rates of estate duty in the case of persons dying after 27th April, 1960, contained in the second schedule to the Bill are as follows :

Principal Value of the Estate							Rate per cent of duty
Exceeding	£5,000	and not	exceeding	£7,500	...		3
„	£7,500	„	„	£10,000	...		4
„	£10,000	„	„	£12,500	...		6
„	£12,500	„	„	£15,000	...		8
„	£15,000	„	„	£17,500	...		10
„	£17,500	„	„	£20,000	...		12
„	£20,000	„	„	£25,000	...		14
„	£25,000	„	„	£30,000	...		16
„	£30,000	„	„	£35,000	...		18
„	£35,000	„	„	£40,000	...		21
„	£40,000	„	„	£45,000	...		24
„	£45,000	„	„	£50,000	...		27
„	£50,000	„	„	£60,000	...		30
„	£60,000	„	„	£75,000	...		33
„	£75,000	„	„	£100,000	...		37
„	£100,000	„	„	£150,000	...		41
„	£150,000	„	„	£200,000	...		45
„	£200,000	„	„	£250,000	...		49
„	£250,000	„	„	„	...		53

DUBLIN SOLICITORS' BAR ASSOCIATION

A meeting of the council was held on Wednesday, 1st June, 1960. A satisfactory accession to membership was reported. Correspondence with the Assistant Registrar of Deeds aimed at reducing the time required for the production of Official Searches was read and considered satisfactory.

It was agreed that if a formal restraint was to be placed on the occasional practice of acting for both sides in conveyancing matters, it should be by means of a practice regulation by the Law Society.

A report on ways and means of reducing operating expenses by overhauling solicitors' office practice and Court and Government Office practice was made for the consideration of the Law Society.

Arrangements were made for a meeting between a deputation of the Association and of the Belfast Solicitors' Association on 10th June.

The next meeting of the council was fixed for Wednesday, 6th July, 1960.

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

At the Annual General Meeting of this Association held in Thurles on the 12th May, Mr. Michael O'Meara of Nenagh was elected as President of the Association; Mr. John Carrigan of Thurles was re-elected as Honorary Secretary and Mr. Martin T. Butler of Thurles was re-elected as Honorary Treasurer; Mr. John C. Reedy was elected as a member of the Committee to represent the Birr Division and the other members of the Committee elected were: Messrs. Michael C. Black, Nenagh; Henry Hayes, Nenagh; Patrick F. Treacy, Nenagh; James A. Binchy, Clonmel; Thomas J. Reilly, Clonmel; John J. Timoney, Tipperary; Michael McGrath, Nenagh; John C. Devitt, Roscrea; J. J. Nash, Thurles; Francis Murphy, Clonmel; Robert A. Frewen, Tipperary; Edgar J. Ryan, Killenaule; William F. O'Connell, Tipperary.

HIRE-PURCHASE (AMENDMENT) ACT 1960

The Hire-Purchase (Amendment) Act, 1960, was signed on 8th June, 1960, and will come into force shortly on a date to be appointed by an order of the Minister for Industry and Commerce. This Act is a comprehensive measure of 29 sections, which amends the Hire Purchase Act, 1946, in various respects :—

By section 6 the Minister may by order provide for the regulation and control of the letting, whether under hire-purchase agreements or otherwise, and the selling by credit-sale agreements of goods or of any class or description of goods including :—

(*a*) the minimum deposit to be paid by a buyer or hirer,

(*b*) the maximum period of payment, and the amount and frequency of instalments or rentals,

(*c*) the information to be given in any visual advertisement or visual announcement published or made in any form or manner whatsoever relating to goods for sale by way of hire-purchase or credit-sale agreement regarding the terms upon which the goods will be sold,

(*d*) the inclusion in any such advertisement or announcement of a statement of the price at which the goods will be sold for cash.

A person who sells or lets goods to which the order applies shall not be entitled to enforce any agreement for such sale or letting or any right to recover the goods unless specified provisions of the order are complied with.

The Minister may by order amend or revoke an order under this section.

Section 7 requires any person who carries on, or is employed in connection with, the business of letting goods, whether under hire-purchase agreements or otherwise, or selling goods by credit-sale agreements whenever so required by the Minister, to furnish to the Minister any books, documents, records, particulars, or information in that person's power or control which the Minister may require for enabling him to exercise his functions under this Part of this Act.

Sections 8 and 9, dealing with authorised officers, state that the Minister may appoint such and so many of his officers as he thinks fit to be authorised officers.

An authorised officer may, for the purpose of obtaining any information which the Minister may require for enabling him to exercise his functions under this Part of this Act, at all reasonable times enter premises at which the business of letting goods, whether under hire-purchase agreements or otherwise, or selling goods by credit-sale agreements is carried on and subject to the production of his warrant of appointment, do any one or more of the following things :—

(*a*) inspect the business,

(*b*) require the person who carries on such business and any person employed in connection therewith to produce to him any books, documents or records relating to such business which are in that person's power or control and to give him such information as he may reasonably require in regard to any entries in such books.

(*c*) inspect any copy or take extracts from such books, documents or records,

(*d*) require such person to give to him any information he may reasonably require in regard to the persons carrying on such business (including, in particular, in the case of an unincorporated body of persons, information in regard to the membership thereof and of its committee of management or other controlling authority) or employed in connection therewith, and in regard to the business.

No one shall be required to answer any question or to give any evidence tending to criminate himself.

Any person who obstructs or impedes an authorised officer in the exercise of his powers under this section or does not comply with any requirement shall be guilty of an offence.

Under section 10 no authorised officer shall disclose information available to him by virtue of the powers of obtaining information conferred on him by this Part of this Act; save

(*a*) a communication made by him in the execution of his duties under this Part of this Act,

(*b*) the disclosure of information for the purpose of legal proceedings under this Part of this Act.

By section 11 a person who contravenes (whether by act or omission) any provision of an order under this Part of this Act for the time being in force shall be guilty of an offence; this also applies to every person who aids, abets, or assists another person, or conspires with another person, to commit an offence; section 12 provides that authorised officials of companies and unincorporated bodies may be liable to penalties.

By section 13 every person who commits an offence under this Part of this Act shall on summary conviction thereof be liable to a fine not exceeding one hundred pounds or, at the discretion of the court, to imprisonment for six months or to both such fine and imprisonment.

By section 14 proceedings in relation to an offence under this Part of this Act may be brought and prosecuted by the Minister for Industry and Commerce, and summary proceedings for an offence under this Part of this Act may be instituted within twelve months from the date of the offence.

Section 15 makes further provisions relating to postponed orders for specific delivery of goods to and to consequent execution orders when varied.

By section 16 notwithstanding section 6 of the 1946 Act, a provision in an agreement made henceforth whereby an owner of a motor vehicle which has been let under a hire-purchase agreement or a person acting on his behalf is

(*a*) authorised to enter premises (other than a house used as a dwelling or any building within the curtilage thereof) for the purpose of taking possession of the motor vehicle, or

(*b*) relieved from liability for any such entry shall be valid.

In this section "motor vehicle" means any mechanically propelled vehicle constructed for use on roads for the carriage of persons or goods and includes a tractor.

Section 17 states that, where,

(*a*) goods are let under a hire-purchase agreement,

(*b*) the owner recover possession thereof or an order is made by the court under paragraph (*a*) of subsection (4) of section 13 of the Principal Act for the specific delivery thereof to the owner,

then, the liability of a guarantor under a contract of guarantee in relation to the agreement shall not exceed the amount, if any, which the hirer would have been liable to pay under section 5 of the 1946 Act if he had determined the agreement under that section at the time of the recovery or the making of the order, as the case may be, and shall then cease.

Section 18 specifies the conditions under which appropriations of payment by an owner in respect of hire-purchase agreements may be made.

Under section 19 in an action commenced after the commencement of this Act by the owner of goods let under a hire-purchase agreement to enforce a right to recover possession of the goods from the hirer—or to enforce payment of a sum due under the hire-purchase agreement or under any contract of guarantee relating thereto—

(*a*) the Circuit Court shall have jurisdiction where the hire-purchase price or the amount claimed does not exceed £1,000,

(*b*) the District Court shall have jurisdiction where the hire-purchase price or the amount claimed does not exceed £100.

Notwithstanding the Courts of Justice Acts proceedings in the District Court must be instituted in the district in which the defendant or one, at least, of the defendants ordinarily resides or carries on any profession, business or occupation in the State.

By section 20 the term "hire-purchase" is more extensively defined than hitherto.

By section 21 a copy of the note or memorandum of hire-purchase and credit-sale agreement must be sent to the hirer within fourteen days of signature.

By section 23 a hirer may not determine a hire purchase agreement made after the commencement of this Act in respect of plant or machinery (other than mechanically propelled vehicles) which is intended for use in an industrial process and the cash price of which exceeds two hundred pounds.

Under section 24 owners and sellers must supply relevant documents and information to the hirer within seven days of receiving a request for them.

By section 26 the jurisdiction of the High Court to remit or transfer actions under section 25 of the Courts of Justice Act, 1924, may in relation to an action pending in the High Court by the owner of goods let under a hire-purchase agreement—

(*a*) to enforce a right to recover possession of the goods from the hirer, or

(*b*) to enforce payment of a sum due under the hire-purchase agreement or under any contract of guarantee relating thereto,

at any time before judgment is given in the action, be exercised by the High Court of its own motion and without application in that behalf having been made to it by any party to the action. This shall not be done unless the plaintiff consents thereto or the defendant satisfies the Court that he has a good defence to the action.

By section 27 notwithstanding anything contained in rules of court, in an action in the High Court or the Circuit Court commenced after the commencement of this Act by the owner of goods let under a hire-purchase agreement claiming, whether solely or together with any other claim, the enforcement of a right to recover possession of the goods from the hirer, judgement may be obtained only from a Judge or, where appropriate, from the Master of the High Court.

By section 28 where the hirer of goods of any class or description is a dealer in goods of that class or description and sells the goods of which he is the hirer when ostensibly acting in the ordinary course of his business as such dealer, the sale shall be as valid as if he were expressly authorised by the owner to make the sale, provided that the buyer acts in good faith and has not at the time of the sale notice that the hirer has not authority to make the sale.

DECISIONS OF PROFESSIONAL INTEREST

District Court Summons.

State (Cunningham) *v.* District Justice O'Flynn—29th January, 1960. The Supreme Court, per O'Dalaigh, J., held that, in a District Court summons, it is henceforth necessary to state not merely the Act, and the section of an Act, under which proceedings are instituted, but also that the nature of the offence committed should be set out in full detail. Consequently a summons charging a person with an offence "as by law and statute provided" is invalid, and is bad on its face.

Customs offences triable summarily

Melling *v.* O'Mahony—April, 1960. McLoughlin J., held that offences under the Customs Consolidation Acts allegedly committed by the plaintiff were not criminal offences involving trial by jury, and even if they were criminal offences they were minor offences which could be tried summarily in the District Court. It is understood that an appeal to the Supreme Court is pending.

Commission.

Transaction effected by transfer of shares. In Keningtons *v.* Nicholson's Executors (1959) 175 E.G. 101, Barry, J., held that, where four hotels were sold for a consideration of a transfer of shares, estate agents were entitled to commission calculated upon the value of the shares.

Company Law. Shares—dissentient shareholders, acquisition of shares of.

In the ordinary case of an offer under s. 209 of the Companies Act, 1948, where the 90 per cent. majority who accept the offer are unconnected with the persons who are concerned with making the offer, the court pays the greatest attention to the views of that majority; but where the persons who are in fact putting forward the offer are the only two

shareholders in the transferee company, and they are the holders of the 90 per cent. majority shareholding, whose acceptance of that offer it is suggested binds the dissenting shareholder also to accept the offer, the onus is on them to satisfy the court that the scheme is one with which the minority shareholder ought reasonably to be compelled to fall in.

Of the three shareholders in a company, the two majority shareholders promoted a transferee company of which they each held 50 of the 100 issued shares. The transferee company offered to acquire the shares of all three shareholders, but the minority shareholders refused the offer and applied for a declaration under s. 209 (1) that the transferee company was not entitled to acquire his shares. Held that, in the circumstances the onus of showing that the price was fair was on the transferee company and the company had failed to discharge that onus, accordingly, the applicant was entitled to the declaration sought: Re Bugle Press; Application of H. C. Treby. (1960) 2 W.L.R. 658; 104 S.J. 289; (1960) 1 All E.R. 768, Buckley, J. (distinguishing Re Hoare & Co. (1933) 150 L.T. 374.

Murder.—uncontrollable impulse—evidence of insanity. The law does not recognise uncontrollable impulse as a symptom of legal insanity within the M'Nalghten Rules. But in a case where evidence has been given that irresistible impulse is a symptom of the particular disease of the mind from which a prisoner is said to be suffering, its effect on his ability to know the nature and quality of his act or that his act is wrong should be dealt with by the judge in the same way as any other relevant evidence given at the trial.

B. was convicted of murder by shooting, the sole defence being insanity, the medical evidence suggesting that, at the time of the shooting B. had lapsed into a temporary state of schizophrenia in which he did not know that what he was doing was wrong. The trial judge directed the jury that "uncontrollable impulse" was no defence in law. The Australian High Court, allowing B.'s appeal, held that it was necessary to "put before the jury the true operation of incontrollable impulse as a possible symptom of insanity". Held, that irresistible or uncontrollable impulse was not recognised as a symptom from which the jury might without evidence infer insanity within the M'Nalghten Rules: Att.-Gen. for South Australia *v.* Brown (1960) 2 W.L.R. 588; 104 S. J. 268; (1960) 1 All E.R. 734, P.C. See also s. 79.

Trial—summing-up. If counsel in his address to the jury in a murder trial refers to the consequence of their verdict, it is incumbent on the judge to instruct the jury that such matters are not their concern and are completely irrelevant to any issue they have to determine. See Att.-Gen. for South Australia *v.* Brown, Cupra.

Juries.

Trial by jury, right to—action for personal injuries. (R.S.C. Ord. 36, r. 1 (3).) Although there may be much to be said for having a jury in an action for personal injuries where the injuries are very grave and there is judicial authority to indicate that a jury is not an improper or unreasonable mode of trial in such circumstances under R.S.C. Ord. 36, r. 1 (3) it is in the absolute discretion of the court or judge to decide one way or the other and in the absence of grave injustice the Court of Appeal will not interfere with the exercise of that discretion.

The plaintiff claimed damages for serious personal injuries sustained in a motor-car accident. Hinchcliffe, J., on appeal by the plaintiff from the refusal of a master to order trial by jury, dismissed the appeal. Held, that the matter was one of absolute discretion and the Court of Appeal would not interfere. Pease *v.* George (1960) 1 W.L.R. 427; 104 S.J. 328; (1960) 1 All E.R. 709., C.A.

Medicine.

Restraint of trade—covenant "not to practise privately as radiologist". (N.Z.) In Blakely and Anderson *v.* De Lambert (1959) N.Z.L.R. 356, the plaintiffs entered into a partnership deed with the defendant, which provided that in the event of a partner retiring or being expelled from the partnership he would not practice privately as a radiologist within a certain radius for a certain time. The defendant withdrew from the partnership by consent to take up a hospital appointment outside the stated radius. Later, but still within the stated time, the defendant applied for and obtained a post as a full-time radiologist at a private hospital within the stated radius to conduct the radiological department. The Court of Appeal of New Zealand held, that the defendant was not in breach of his covenant in the partnership deed since the hospital appointment would not be in private practice (following Way *v.* Bishop (1928) Ch. 647).

Practice.

Discovery — Crown privilege — entries in detective's diary. A claim for Crown privilege in respect of entries in a detective's diary (sealed by order of the Home Secretary) is a claim made, not in respect of a class of documents, but in respect of each and every sealed entry, and the court has no power to go behind the certificate of the Home Secretary.

Entries in the diaries of a detective, who was defendant in an action, had been sealed by order of

the Home Secretary, who claimed Crown privilege on the ground of public policy. In addition to an application by the plaintiff for the unsealing of the entries, a subpoena was served on the Director of Public Prosecutions requiring him to produce documents in his possession relevant to the action. Held that, both the detective's notes and the documents in the possession of the Director were privileged: Auten *v.* Rayner (No. 2), (1960) 2. W.L.R. 562; (1960) 1 All E.R. 692 Glyn-Jones, J.

Discovery—Information within knowledge of firm employed by plaintiff. (Can.) In Canadian Utilities *v.* Mannix and London Guarantee & Accident Co. (1959) 20 D.L.R. (2d) 654, the Alberta Supreme Court held that information within the knowledge of an engineering firm which the plaintiff had hired to draw up plans for a dam and to supervise its construction must be disclosed.

Agency — commission — introduction of person prepared to enter into a contract. In Ackroyd & Sons *v.* Hasan (April 12, 1960) estate agents were instructed by the defendant to sell her premises. In confirming the agreement, the estate agents wrote "in the event of our introduction of a party prepared to enter into a contract to purchase . . . you will allow us commission." The estate agents introduced a prospective purchaser prepared to enter into a binding contract, but before contracts were exchanged, negotiations broke down and the sale was never completed. The Court of Appeal (Sellers Ormerod and Upjohn, L.JJ.), dismissing an appeal from Winn J. (1959) C.L.Y. 14), held that the estate agents were not entitled to their commission. (D. C.) *The Times*, April 29, 1960.

Infants, Children and Young Persons—abduction —contempt. In Bottomley *v.* Bottomley (April 26, 1960) the husband had been guilty of contempt by kidnapping the child of the parties in breach of a perpetual injunction not to molest the child. The wife had custody and the marriage had been dissolved. As the whereabouts of husband and child were unknown, and it was feared that the husband might take the child to Ireland, application for his committal was made *ex parte*. Stevenson, J., made an order for his committal (J. B. G.) *The Times*, April 27, 1960.

Malicious Prosecution and False Imprisonment—malicious prosecution. In McKay *v.* Attorney-General (March 31, 1960) plaintiffs brought an action against the Attorney-General and two police officers for malicious prosecution, trespass and unlawful detention of their goods, negligence, alternatively for conspiracy, and libel. The action arose out of charges preferred against the plaintiffs under the Betting and Lotteries Act, 1934. McNair, J. held, dismissing the action, that the plaintiffs had failed to prove their case. (D.C.) *The Times*, April 1, 1960.

Medical practitioner — failure to arrange for telephone messages. In Corder *v.* Banks (April 8, 1960), McNair, J., held that a plastic surgeon who performed an operation on a patient's eyelids, who allowed his patient to go home after the operation, and who failed to make proper arrangements for receiving telephone messages from the patient in the event of bleeding taking place during the first forty-eight hours after the operation, was thereby guilty of professional negligence. (D.C.) See also *The Times*, April 9, 1960.

Tort—conspiracy. In Auten *v.* Rayner (April 28, 1960) A. brought two actions: the first against R. and Mrs. R. and a detective-sergeant of the Metropolitan and City Fraud Department for damages for conspiracy to cheat and injure him, malicious prosecution and false imprisonment, malicious institution of civil proceedings and injurious falsehoods; the second against a firm of accountants and one of their employees for damages for conspiracy to cheat and injure him and for breach of duty as his accountants. Glyn-Jones, J., held that A. had failed to prove his case in both of the two, consolidated, actions. (D.C.) *The Times*, April 29, 1960.

Trade Unions—exclusion of member—proceedings against member—contravention of union rules. In Payne *v.* Electrical Trades Union (April 13, 1960) a union purported to exclude a member from membership of the union. In an action by the member, for a declaration that he was still a member of the union, Ashworth, J., held, giving judgment for the member, that in the proceedings against the member the union had committed serious contraventions of the union rules, for which no satisfactory explanation had been offered, and that the member's purported exclusion was accordingly null and void. (D.C.) See also *The Times*, April 14, 1960.

Wills — execution — attestation. In the Estate of Willis (April 4, 1960) evidence was given by the two persons whose names appeared as witnesses in the attestation clause on the alleged last will of the deceased that, although the signatures were theirs, they were quite certain that the deceased never appended her signature to any document in their presence. Stevenson, J. said that he accepted such evidence, which had been given by persons of impeccable respectability and of very considerable intelligence, and accordingly held that the alleged will had not been duly executed. (J. B. G.) *The Times*, April 5, 1960.

OBITUARY

Mr. Samuel Roche, solicitor, died on the 24th May, 1960, at his residence, Bennekerry House, Carlow.

Mr. Roche served his apprenticeship with the late Mr. Francis H. Downing, Tralee, Co. Kerry, was admitted in Hilary Sittings 1911, and practised at Tullow, Co. Carlow.

Mr. Michael E. Knight, solicitor, died on the 3rd June, 1960, at his residence, The Diamond, Clones, Co. Monaghan.

Mr. Knight was admitted in Hilary Sittings 1890, and practised at Clones, Co. Monaghan, as Senior Partner in the firm of Messrs. Michael E. Knight and Son.

He was a member of the Council of the Society from 1925 to 1945; he was Vice-President for the year 1927–28, and President for the year 1935–36.

Mr. John J. Dundon, solicitor, died on the 13th June, 1960, at his residence, 6, Victoria Terrace, South Circular Road, Limerick.

Mr. Dundon served his apprenticeship with the late Mr. John Dundon, Limerick was admitted in Michaelmas Sittings 1911, and practised under the style of Messrs. John Dundon & Co., 101, O'Connell Street, Limerick.

He was a member of the Council of the Society from 1936 to 1946, and served as provincial delegate for Munster from 1948 to 1957.

Mr. Arthur Blood-Smyth, solicitor, died on the 21st June, 1960, at Barringtons Hospital, Limerick.

Mr. Blood-Smyth was admitted in Trinity Sittings 1891, and practised at 47, O'Connell Street, Limerick, as senior partner in the firm of Messrs. M. Sellors & Co.

Mr. Blood-Smyth served as provincial delegate for Munster from 1934 to 1948.

REGISTRATION OF TITLE ACTS 1891 AND 1942
Issue of Duplicate Land Certificates

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

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

Dated the 15th day of July, 1960.

D. L. McAllister,
Registrar of Titles.

Central Office,
Land Registry,
Chancery Street,
Dublin.

Schedule.

1. Registered Owner Catherine Whelan. Folio number, 4685, County Limerick. Lands of Highpark in the Barony of Clanwilliam containing 2a. 0 r. 24p.

2. Registered Owner Elizabeth J. Cunningham. Folio Number, 6046, County Donegal. Lands of Tievebane in the Barony of Inishowen West, containing 44a. 2r. 38p.

3. Registered Owner, Catherine Woulfe. Folio number, 6565, County Limerick. Lands of Raheenagh in the Barony of Glenquin, containing 15a. 0 r. 17p.

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JULY,
1960

THE GAZETTE

of the

INCORPORATED LAW SOCIETY OF IRELAND

President
JOHN J. NASH

Vice-Presidents
RALPH J. WALKER
PETER E. O'CONNELL

Secretary
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

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MEETINGS OF THE COUNCIL

July 21st, special meeting to deal with examination results. Mr. Walker, Vice-President, in the chair, also present Messrs. John Maher, John Kelly, Dinnen B. Gilmore, Cornelius J. Daly, Gerald Y. Goldberg, George G. Overend, James R. Green, Peter D. M. Prentice, Thomas A. O'Reilly, Desmond J. Collins, Robert McD. Taylor, James J. O'Connor.

The examiners' reports on the results of examinations held in June and July, 1960, were considered. The names of the successful candidates are printed at page 25.

July 28th: The President in the chair, also present Messrs. Francis J. Lanigan, Dinnen B. Gilmore, James R. Green, Thomas A. O'Reilly, Niall S. Gaffney, Desmond J. Collins, Thomas V. O'Connor, Robert McD. Taylor, Brendan A. McGrath, Augustus Cullen, John B. Jermyn, Patrick Noonan, Arthur Cox, John Maher, Peter E. O'Connell, Terence de Vere White, John J. Sheil, Gerald Y. Goldberg, Peter D. M. Prentice, James W. O'Donovan, John Kelly.

The following was among the business transacted:

Registered land. Costs of purchase of life interest

AB the tenant in remainder of registered land purchased the life interest of his mother CD for the sum of £2,000. He was then registered as full owner subject to equities and members enquired whether the commission scale fee is applicable. In a report from a committee it was stated that a life interest in freehold registered land appears to be property within the meaning of schedule 1 part 1, S.R.G.O., 1884 and rule 2 (1) of the Land Registration Rules, 1959 and that accordingly a solicitor who, on the instructions of the purchaser, investigates the title of the vendor of a life interest in freehold registered land and completes the purchase, carrying out the work specified in the general order would appear to be entitled to charge the appropriate commission under part VII of the Land Registration Rules, 1959. The report is subject to confirmation.

Road Traffic Act. Costs of defending prosecution

The Council considered a report from a committee on correspondence between members and an insurance company with reference to the recommended minimum charge of £5 5s. od. for defending proceedings under the Road Traffic Act on the instructions of an insurance company. The company undertook responsibility for members' fees but on submission of the bill stated that they could not accept the scale recommended by the Society. It was decided to take the matter up with the institute or association of which the insurance company is a member.

Change of solicitors. Apportionment of costs

AB took over the conduct of a case from CD and on completion taxed a party and party bill against the other side. The costs so taxed included the costs in respect of the work done by CD. The whole amount of the party and party bill so taxed was received by AB as solicitor for the plaintiff. The solicitor and client costs due by the plaintiff to AB in respect of the proceedings exceeded the amount of the party and party costs for the work included in the bill and the Council were asked for their opinion as to whether (*a*) AB as solicitor acting for the plaintiff on the notice of change of solicitor and receiving the party and party costs for the entire action is entitled to a lien on the costs as money recovered for the plaintiff as a first charge irrespective of any claim by the first solicitor on record. (*b*) Whether as a matter of professional etiquette apart from the question of lien a solicitor receiving the entire bill in such circumstances should claim a first charge postponing the claim of the first solicitor on the part of the bill relating to the work done by the latter. A committee which considered the facts reported under question (*b*) that AB should pay to CD the amount of the taxed costs in the bill appropriate to CD's work. The report is subject to confirmation.

Solicitor holding publican's licence

A member agreed to purchase premises in a country town to which a six day liquor licence was attached for the purpose of office premises. He proposed to sell the licence and asked the opinion of the Council whether he would be entitled to take it into his own name for the purpose of disposing of it. The publican's business will not be conducted in the premises after the completion of sale to member. The Council on a report from a committee stated that there was no professional objection to members obtaining a transfer of the liquor licence for the purpose of disposing of it as soon as possible.

Insurance agency in conjunction with solicitor's practice

A member enquired whether he would be entitled to circularise his clients to inform them that he carries on an insurance agency in conjunction with his practice. The Council stated that such a circular would be open to objection.

SOCIETY'S DINNER DANCE

A dinner dance for members and their friends will be held in the Shelbourne Rooms on Thursday, November 24th, the date of the ordinary general meeting. Further particulars will be published in the Society's GAZETTE. Applications from members will be dealt with in order of receipt. Members may apply for tickets for themselves and their friends, price £1 5s. od., to include dinner and dance.

DUBLIN SOLICITORS' BAR ASSOCIATION

A meeting of the Council was held on Wednesday, 6th July, 1960. The Sub-committee dealing with the drafting of a standard form of Auction Particulars and Conditions of Sale reported progress.

The President reported on the meeting between representatives of the Association and of the Belfast Solicitors' Association.

It was decided to request the Law Society to reconsider the question of an alteration in the period of the long vacation. The meeting noted

that the Association's representations on the Hire Purchase (Amendment) Bill, 1960, had to some extent been incorporated in the Act.

The following provisional dates were fixed :—
Council Dinner, Saturday, 8th October ;
Annual General Meeting, Monday, 10th October ;
Annual Dinner, Saturday, 10th December.

The next meeting of the Council was fixed for Wednesday, 31st August.

SOLICITORS' GOLFING SOCIETY AUTUMN OUTING

The Autumn Outing of the above society will be held on Saturday, 10th September, 1960, at County Louth Golf Club, Baltray, Drogheda, Co. Louth (by kind permission) when the following competitions will take place.

1. The President's Prize (Mr. John J. Nash) together with Incorporated Law Society's Challenge Cup.
2. The Ryan Challenge Cup with Prize presented by the Golfing Society confined to Members with Club handicaps of 13 and upwards.

There will be runner up Prizes to the above two Trophies together with Prizes for best first nine, best second nine scores and other subsidiary prizes.

In addition to the above competition it is the privilege of this Society to be hosts to Northern Ireland Golfers in the Biennial Competition for the Enterprise Trophy. The result of the competition will be calculated on the best six cards played on handicap from each Province and members are urged to see that their Province is represented.

Fuller particulars will be circulated at the earliest opportunity.

Further particulars from : The Hon. Secretary, G. M. Doyle, 50 Lower O'Connell Street, Dublin.

EXAMINATION RESULTS

At the Preliminary Examination for intending apprentices to solicitors held on 4th and 5th July, the following passed the examination :—

Passed : Michael Martin ; Peter F. R. Murphy ; Brendan D. Walsh.

5 attended ; 3 passed.

At examinations held on 6th day of July, under the Solicitors Act, 1954, the following candidates passed :—

First Examination in Irish : Denis J. Casey ; Yvonne M. Fagan ; Sarah M. Gallivan ; Graham M. Goulding ; John Paul Hayes ; Michael P. McMahon ; Elizabeth M. O'Donnell ; Henry J. M. Rochford ; Gordon J. Ross ; Richard J. D. Williams.

11 attended ; 10 passed.

Second Examination in Irish : James J. Devine ; Thomas A. Dillon-Leetch ; Dermot Bouchier Hayes ; Rory M. Hogan ; Helen M. Kirwan ; John N. M. Lavelle ; James I. Sexton ; Maire Nic Shiomoin ; Mary A. P. Timoney.

9 attended ; 9 passed.

At the first law examination for apprentices to solicitors held on 7th and 8th June, the following candidates passed :—

Passed with Merit : 1. James L. O'Keeffe ; 2. Francis J. O'Flynn ; 3. Joseph L. Dundon ; 4. Michael A. Lucas.

Passed : Michael A. Buckley ; John C. Cashman ; Patrick J. Connellan ; Michael G. Dickson ; Thomas A. Dillon-Leetch ; Delphine A. C. Dudley ; Brian J. Gardiner ; Mary G. Hanna ; David O'N. Kiely ; William J. P. Kirwan ; John G. Lanigan ; William E. Leahy ; Dermot V. Loftus ; Bryan F. Lynch ; James Monaghan ; Brendan A. J. Murrin ; James R. O'Donnell ; Thomas C. Smyth ; Peter John Woods.

42 attended ; 23 passed.

The Centenary Prize was awarded to James L. O'Keeffe.

At the final examination for apprentices to solicitors held on 7th, 8th and 9th June, the following passed the whole examination :—

Passed with Merit : 1. Michael G. Cody ; 2. Richard R. Pierse, B.C.L. ; 3. John Jay, B.A. (Mod.), LL.B. ; 4. William Joseph McGuire.

Passed : Robert E. Blakeney, B.A., LL.B. ; Colin A. Chapman, B.A., LL.B. ; John B. M. Doyle, B.C.L. ; Thomas Jackson (Jnr.) ; Brian O. Lyons ; Godfrey F. McDonald ; Roderick D. O'Donnell ; Edward J. W. Warren.

24 attended ; 12 passed.

The Council has awarded a gold medal to Michael G. Cody.

The following passed in part 1 or part 2, Final Examination :—

Part 1 : Michael E. Binchy, B.A. (A) ; John L. Egan (A) ; James J. O'Connor (A) ; David A. Potterton ; Jeremiah Reidy (A) ; Cathal N. Young (A).

Part 2 : Mary Binchy ; Michael J. Butler, B.C.L. ; Robert Haythornthwaite, B.A., LL.B. (B) ; Peter F. Houlihan (B) ; John N. M. Lavelle ; Francis J. O'Mahony ; James I. Sexton ; Diarmuid P. Teevan, B.A. (B).

" A " denotes having already passed part 2.
" B " denotes having already passed part 1.

PROGRAMME OF LECTURES, 1960–61

Course A.—Company Law. 50 lectures delivered as follows :—

Michaelmas Sittings, 18 ; Hilary Sittings, 18 ; Easter Sittings, 14. Minimum attendance for credit is : Michaelmas, 14 ; Hilary, 14 ; Easter, 10. Lectures each Monday and Thursday at 2.15 o'clock save where otherwise notified.

Course B.—Conveyancing Law and Practice and Land Law. 50 lectures delivered as follows :—

Michaelmas Sittings, 18 ; Hilary Sittings, 18 ; Easter Sittings, 14. Minimum attendance for credit is Michaelmas, 14 ; Hilary, 14 ; Easter, 10. Lectures each Tuesday and Friday at 9.00 o'clock save where otherwise notified.

Course C.—The Procedure and Practice of the Courts. 50 lectures delivered as follows :—

Michaelmas Sittings, 18 ; Hilary Sittings, 18 ; Easter Sittings, 14. Minimum attendance for credit is : Michaelmas, 14 ; Hilary, 14 ; Easter, 10. Lectures each Wednesday and Saturday at 9.00 o'clock save where otherwise notified.

Course D.—Taxation including death duties. 50 lectures delivered as follows :—

Michaelmas Sittings, 18 ; Hilary Sittings, 18 ; Easter Sittings, 14. Minimum attendance for credit is : Michaelmas, 14 ; Hilary, 14 ; Easter, 10. Lectures each Monday at 9 a.m. and Saturday at 10 a.m. save where otherwise notified.

Course E.—Book-keeping. 50 lectures delivered as follows :—

Michaelmas Sittings, 18 ; Hilary Sittings, 18 ; Easter Sittings, 14. Minimum attendance for credit is : Michaelmas, 14 ; Hilary, 14 ; Easter, 10. Lectures each Monday and Friday at 5.15 p.m. save where otherwise notified.

Course F.—Probate and executorship law and practice, 50 lectures delivered as follows :—

Michaelmas Sittings, 18 ; Hilary Sittings, 18 ; Easter Sittings, 14. Minimum attendance for credit is : Michaelmas, 14 ; Hilary, 14 ; Easter, 10. Lectures each Tuesday and Friday at 2.15 o'clock save where otherwise notified.

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

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

Fee—10 guineas for each Course except Course G, for which there is no fee.

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

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

PRESENTATION OF CERTIFICATES OF ADMISSION

On July 28th, the President at a ceremony in the Society's Library presented certificates of admission to the following solicitors :—

Donald O. Stuart, 47 Palmerston Road, Rathmines, Dublin ; Patrick G. McMahon, B.C.L., 38 Ashe Street, Listowel, Co. Kerry ; Patrick J. B. Madigan, B.A., LL.B., Killadangan, Westport, Co. Mayo ; James J. O'Connor, 11 Greenmount Road, Terenure, Dublin ; John G. Fish, 74 Highfield Park, Dundrum, Co. Dublin ; Thomas F. O'Connell, 60 Lansdowne Road, Ballsbridge, Dublin.

EXAMINATIONS, AUTUMN 1960

Examination	*Date*	*Last date for notice*
1st Law	5th & 6th Sept.	15th Aug.
2nd Law	6th, 7th & 8th Sept.	15th Aug.
3rd Law	8th, 9th & 10th Sept.	17th Aug.
Preliminary	6th & 7th Sept.	16th Aug.
Bookkeeping	5th Sept.	19th Aug.
1st & 2nd Irish	16th & 17th Sept.	26th Aug.

LIBRARY VACATION ARRANGEMENTS

The Library is closed from Monday, 22nd August, 1960 until Wednesday, 14th September inclusive.

Members wishing to borrow books urgently may do so by applying to the office.

COSTS OF SALES BY LOCAL AUTHORITY TO TENANT PURCHASERS

The following resolution was passed at an ordinary general meeting of the Society on 1st June, 1955 :—

That in the case of sales by local authorities of houses to occupying tenant-purchasers under the provisions of the Housing Act, 1919, the Housing of the Working Classes Acts, and the Labourers

Acts, as extended by sections 31 and 35 of the Housing Acts, 1952 and similar legislation, whether by way of conveyance, assignment, or lease, the Society approves of the adoption of a scale of costs of 1½% on the amount of the fine or purchase money whether payable in a lump sum or by instalments with a minimum fee of £10, to include the work of the solicitor for the local authority in connection with the conveyance, assignment, or lease, and a fee of 1½% as the costs of the solicitor acting for the purchaser or lessee, to include the costs of perusing and completing the conveyance, assignment or lease, calculated on the amount of the fine or purchase money whether payable in a lump sum or by instalments with a minimum of £10, provided that in all cases an additional fee of 2 guineas shall be chargeable if there is a separate mortgage or other document to secure or guarantee any moneys payable by the purchaser or lessee.

(Reprinted from Society's GAZETTE, June, 1955).

VALUATION OFFICE

A statement was published in the Society's GAZETTE in March, 1956 and reprinted in issue for February, 1960, under the title "Delays in the Valuation Office", in which it was stated that in the course of an interview with representatives of Council the Commissioner of Valuation had pointed out that a valuation for the purpose of final determination required a very detailed and thorough examination and that in such cases it might be necessary to insist on a higher figure than in cases in which the Valuation Office accept the figures submitted by the tax payer without any final determination. It was stated that this arose by reason of the fact that after a final determination the Valuation Office cannot reopen a figure even on a subsequent sale at a higher sum while the client can, on the other hand, claim repayment if the sale is subsequently made at a lower figure. The Society has had some further correspondence with the Valuation Office on the subject of the statement that the question of value may be reopened by the client after final determination. It is now understood that there is no authority for this proposition and that in the event of the sale of property after a final determination of value has been made the matter cannot be reopened whether the sale price is above or below the figure finally determined as the value.

STAMP DUTY ON LEASES OF SITES FOR BUILDING DEVELOPMENT

Members have written about the practice recently adopted by the Revenue Commissioners of requiring building leases to be lodged for adjudication of the stamp duty.

The Society has been in touch with officers of the Revenue Commissioners and it may be taken that the following sets out the Commissioners' practice in dealing with building leases.

1. Where no buildings have been completed at the date of the lease :—

If a lease of a site is granted in consideration of (*a*) a rent reserved by the lease and (*b*) of a *bona fide* covenant to expend moneys on the erection or completion of buildings on the site, the duty is charged only on the rent. Such a lease containing a covenant to expend a specified sum in building development and to employ a named builder, e.g., the lessor, is ordinarily regarded as exempt from duty on the building expenditure, and adjudication is not considered necessary in such cases.

2. Where buildings are completed or are in a state of substantial completion at the date of the lease.

(*a*) Where there is a previous agreement with the lessee to grant a lease, and a collateral building agreement, the duty charged on the lease depends upon the substance of the antecedent agreements. If the agreement for the lease is such that the lessee can enforce the grant of the lease independently of the completion of the building contract the lease is not normally regarded as chargeable with *ad valorem* duty in respect of the building price. If, however, the documents show that the lessee cannot enforce the grant of the lease until the building contract has been completed *ad valorem* duty is charged in respect of the building price.

(*b*) On the granting of a lease of a site from A to B, where buildings are erected on the site between the date of the agreement and the date of the lease, the fact that the buildings are mentioned in the parcels clause of the lease does not of itself mean that duty will be claimed on the value of the buildings, if they were erected under a collateral independent agreement. If it appeared from a lease that substantial buildings had been demised in consideration of a ground rent only, or in consideration of expenses incurred by the lessee, the Revenue Commissioners would be obliged to investigate the facts of the case on adjudication to ascertain whether or not there was in fact an independent building agreement.

(*c*) Adjudication may also be necessary in the case of a lease or other document, in order to establish the facts on which duty has to be assessed. In some cases of leases expressed to grant undeveloped sites for terms of years, with covenants by the lessees to erect buildings, it was found on investigation that

the buildings had been completely or almost completely finished before the leases were granted.

3. To summarise the position, (*a*) a lease of a site with a *bona fide* unfulfilled covenant by the lessee to expend an agreed amount on building is not charged with duty on the capital expenditure even though the money is to be paid to a named builder, e.g., the lessor. (*b*) Where there is an agreement for a lease of a site at a rent only, and buildings are erected by or on behalf of the lessee between the date of the agreement and the granting of the lease, duty is not charged on the capital moneys expended, provided that the agreement for the lease and the building agreement are separate and independently enforceable. (*c*) Where, between the date of an agreement for a lease of an undeveloped site and the granting of the lease, buildings are erected on the site, either by the lessor or by a third party, and under the terms of the agreement the lessee is not entitled to enforce the grant of the lease until the building price has been paid to the builder, the money so paid is regarded as consideration for the lease and *ad valorem* duty is charged in respect thereof.

CIRCUIT COURT. SOLICITOR AND OWN CLIENT COSTS

It is understood that the practice in the Taxing Master's office is as follows :—The Taxing Masters when taking bills of costs between solicitor and own client will act reasonably. Generally they will allow solicitors more than the party and party costs set out in the Circuit Court rules. They will not necessarily allow costs on the High Court scale less one third or less one fifth. In particular cases they might tax on such a basis but each matter will depend upon its own facts and circumstances.

On a taxation of costs between solicitor and own client it might be objected on behalf of a client that the solicitor instituted proceedings on behalf of the plaintiff for say £600 when he should have claimed only £200 or £300 and that therefore the solicitor who had not explained to the clients the incidence of costs should be entitled to tax the costs only on the basis of a claim for £200 to £300. In such a case the solicitor might be expected to satisfy the taxing master that he is entitled to tax on the basis of a claim for £600.

RECENT LEGAL DECISIONS

Solicitor—conduct unbefitting a solicitor not being professional misconduct—previous convictions—penalty.

A solicitor was convicted of using insulting behaviour tending to cause a breach of the peace. There was no evidence before the Disciplinary Committee as to the circumstances giving rise to the conviction. The solicitor had previously been convicted in 1956 on two charges of indecency and had been suspended from practice for two years. As the result of the conviction in 1959, the Disciplinary Committee directed that his name be struck off the roll and he appealed. It was held by the Court of Appeal that although not every type of conviction on a criminal charge would show conduct unbefitting a solicitor, nevertheless a conviction of insulting behaviour followed by a sentence and the maximum fine show such conduct and the findings of the Disciplinary Committee should stand. As regards sentence, in the absence of evidence before the Committee as to the nature of the acts leading to the conviction in 1959 the Committee were not entitled to assume that they were similar to the circumstances in the 1956 conviction. The Court reduced the penalty to one year's suspension. In differing in the matter of the penalty, which the Court said it would never do in a case of *professional* misconduct, the Court acted on the authority of re a Solicitor (1956. 3. All E.R. 516) in which the Court stated that they would interfere with the penalty only because the conduct was not committed by the solicitor in his professional capacity.

(Re a Solicitor (1960. 2. All E.R. 621)).

Deed—delivery by agent—escrow.

A limited company issued under its seal a debenture giving a floating charge to a bank's nominees. The nominees were a wholly owned subsidiary of the bank. The bank decided to call in the loan and at the request of the bank the nominee company sealed an undated deed appointing a receiver in the presence of two directors of the nominee company who signed the deed in the ordinary course of attesting the affixing of the seal. The nominee company did not intend the deed to become unconditionally binding on them at the time that the seal was affixed. The documents were sent by the bank to their branch manager with instructions failing immediate payment to hand the instrument of appointment to the receiver. The branch manager subsequently inserted the date in the deed appointing the receiver and subsequently handed to the receiver the deed of his appointment. On the question whether the receiver had been validly appointed, viz., whether the deed appointing him had been delivered as the deed of the nominee company or was effective as an instrument under hand, it was held by the English High Court that (1) delivery of a deed was essential to its validity and the branch manager of the bank was not an agent of the nominee company duly authorised to deliver the deed of appointment on its behalf because no such power was conferred on him by the constitution of the

nominee company and the appointment of an agent to deliver a deed already sealed must itself be under seal if it were to be valid.

(2) If a deed is delivered to an agent (not authorised by deed delivered) on the footing that it was not to become binding on the grantor until certain instructions had been fulfilled, and if the instructions are revocable so that the deed could be recalled at any time before delivery, then there was not delivery of the deed by the grantor either as an escrow or at all; accordingly as the branch manager's instructions were revocable, the deed of appointment did not become binding as the deed of the nominee company when he fulfilled them.

(3) The deed of appointment could not be regarded as an appointment under hand validly made on behalf of the nominee company because there was no evidence that the directors, when they put their names to the deed, were authorised to do any other thing than witness the affixing of the deed of the nominee company to the deed of appointment, which, being on its face a deed, could not, therefore, be treated as an instrument under hand.

(Windsor Refrigerator Company, Ltd. and another *v.* Branch nominees Ltd. and others (1960. 2. All E.R. 568).)

Certiorari—costs—mistake of justices. It is not the general practice to award costs against a party who has not appeared to resist an application for an order of certiorari.

Justices convicted the defendant of a driving offence at the close of the prosecution's case. The defendant applied for an order of certiorari. Held, allowing the application and quashing the conviction, that the defendant would not be granted costs, since the justices had acted under a pure mistake, and since the prosecution had not appeared to resist the application: R. *v.* Liverpool Justices ex p. Roberts (1960) 1 W.L.R. 585; 104 S.J. 450; (1960) 2 All E.R. 384n., D.C.

Covenant not to assign—unreasonable refusal—claim for damages.

In Rendall *v.* Roberts & Stacey (1959) 175 E.G. 265, where a lessee covenanted not to assign without the previous consent of the lessor "but so that such consent shall not be unreasonably withheld to an assignment of the whole of the demised premises to a respectable or responsible person," Salmon J. held that although there had been an unreasonable refusal the lessee was not entitled to damages.

Landlord and Tenant Act, 1954—new lease—reconstruction—discovery. (Landlord and Tenant Act, 1954. s. 30 (1) (f)). Discovery in proceedings in the Chancery Division by originating summons ought only to be ordered in very special cases, when the facts are such as to justify an order being made.

On a notice served by landlord under s. 30 (1) (*f*) of the Landlord and Tenant Act, 1954, determining a tenancy of business premises and stating that they intended to reconstruct the premises, the tenants applied to the court by originating summons for a new tenancy. The tenants filed an affidavit disputing the landlord's intention to reconstruct and the Master adjourned the summons into court to be tried on oral evidence-in-chief which would be cross-examined. The tenants applied for discovery of a large number of documents. Held that in the circumstances discovery, bearing on the question whether the landlords had a firm and settled intention of reconstructing would be ordered: Wine Shippers (London) *v.* Bath House Syndicate (1960) 1 W.L.R. 613; 104 S.J. 490; (1960) 2 All E.R. 511, Buckley J.

Dentists—infamous and disgraceful conduct. (Dentists Act, 1957, ss. 25, 29.)

To make good a charge of "infamous or disgraceful conduct in a professional respect" under s. 25 of the Dentists Act, 1957, in relation to such a matter as the keeping of the prescribed dental records it is not enough to show that some mistake has been made through carelessness or inadvertence in two or three cases out of some hundred patients treated during the period in which the mistakes occurred, whether the carelessness or inadvertence consisted in some act or omission by the dentist himself or in his ill-advised delegation of the making of the relevant entries to a nurse or receptionist and omitting to check the forms to see that she had done as she was told. To make such a charge good there must (generally speaking) be some element of moral turpitude or fraud or dishonesty in the conduct complained of, or such persistent and reckless disregard of the dentist's duty in regard to records as can be said to amount to dishonesty for this purpose. The question is to some extent one of degree.

The Disciplinary Committee of the General Dental Council found a dentist, registered under the Dentists Act, 1957, guilty of infamous or disgraceful conduct in a professional respect in overcharging for and wrongful certification of treatment of National Health Service patients. The committee ordered that his name should be erased from the Register. Held, allowing the dentist's appeal, that on the facts the case of overcharging fell short of the degree of culpability required, nor could the wrongful certification amount to infamous or disgraceful conduct. Felix *v.* General Dental Council (1960) 2 W.L.R. 934; 104 S.J. 446; (1960) 2 All E.R. 391, P.C.

Notice of intention to prosecute not given—whether must be raised as preliminary point. (*Road Traffic Act*, 1930 *s.* 21.) [*Though it is convenient for the lack of any notice of intention to prosecute under s.* 21 *of the Road Traffic Act*, 1930, *to be raised as a preliminary point at the trial, it can be raised in the cross-examination of the appropriate prosecution witness.*

At the trial of the appellant on a charge of driving without due care and attention the justices refused to allow cross-examination of a prosecution witness or evidence by defence witnesses on the question whether a notice of intended prosecution had been served, on the ground that the question should have been raised as a preliminary point. Held, that the conviction should be quashed; R. *v.* Edmonton Justices, ex p. Brooks (1960) 2 All E.R. 475, D.C.

Libel and Slander—libel—defence—fair report of judicial proceedings.

In Webb *v.* Times Publishing Co. (June 2, 1960) Pearson J. held, that a defence to a libel action that the words complained of were part of a fair and accurate report of judicial proceedings, which related to the trial of a British subject and the administration of justice in England, and which were heard before a criminal court of competent jurisdiction at Zurich in Switzerland, and which report was published contemporaneously, disclosed a good defence in law. (D.C.) See also *The Times*, June 3, 1960.

Defamation—justification.

In Keyes *v.* Daniels (June 1, 1960) the plaintiff brought a libel action on a circular letter written by the defendant to the shareholders of a company of which the plaintiff was chairman. The defendant, who appeared in person, pleaded justification. Cassels J. directed the jury that, if the words complained of were true, the plaintiff was a man who had abused and was not fit to occupy his position and that if they were false, the attack on him could only be met by handsome damages. The jury returned a verdict for the plaintiff for £6,500. (D.C.) See also *The Times*, June 2, 1960.

MISSING DEED

Information is sought in reference to a Deed of Settlement executed on the 28th day of December, 1848 between the following parties:

George Culloden Frend of Rosetts in the County of Cork Esquire of the First Part—

William Causabon Frend of the City of Limerick Esquire of the second part—

George Harvey of Thornvale in the Kings County Esquire and Harriett Georgina Charlotte Garvey Spinster of the Third Part, Edward Parker of Kilcolman in the County of Tipperary and John Michael Croker of Quarter Town in the County of Cork Esquire of the Fourth Part—

The said Indenture was registered on the 1st day of February, 1849 in the Registry of Deeds.

Any practitioner having information regarding the whereabouts of the original of this Deed, or who may be in possession of a copy or copies of same is requested to furnish such information as may be in his possession to Fergus B. O'Meara, Solicitor, Thurles, Co. Tipperary.

REGISTRATION OF TITLE ACTS, 1891 AND 1942

ISSUE OF DUPLICATE LAND CERTIFICATES

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

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

Dated the 18th day of August, 1960.

D. L. McALLISTER,
Registrar of Titles.

Central Office,
Land Registry,
Chancery Street,
DUBLIN.

SCHEDULE.

1. Registered Owner, Bernard McEntee. Folio number 7095. County Cavan. Lands of Drumachoon in the Barony of Tullygarvey containing 25a 1r. 32p.

2. Registered Owner James Hayes. Folio number 1658. County Waterford. Lands of Coolnacappogue in the Barony of Middlethird containing 74a. 2r. 25p.

3. Registered Owner James Mahony. Folio number 7149 (Revised). County Cork. Lands of Berrings in the Barony of Muskerry East containing 100a. 0r. 32p.

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AUG.-SEPT.,
1960

THE GAZETTE

of the

INCORPORATED LAW SOCIETY OF IRELAND

President
JOHN J. NASH

Vice-Presidents
RALPH J. WALKER
PETER E. O'CONNELL

Secretary
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

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DINNER DANCE

Tickets for the dinner-dance on Thursday, November 24th, will shortly be on sale at the Shelbourne Hotel. Remittances, 25/- per ticket, made payable to the Shelbourne Hotel, with applications for table reservations, should be addressed to the Bookstall, Shelbourne Hotel, St. Stephen's Green, Dublin.

COUNTY TIPPERARY AND OFFALY (BIRR DIVISION) SESSIONAL BAR ASSOCIATION

At the Annual General Meeting of the Association held in Thurles on the 12th May, Mr. Henry Shannon of Clonmel, a founder member of the Association, in consideration of his outstanding services to the Association and to the solicitors' profession, was elected the first honorary life member of the Association and of the committee.

LECTURES MICHAELMAS SITTINGS

COURSE A.—Company Law. Mondays and Thursdays, 2.15 p.m., commencing Monday, October 10th.

COURSE B.—Conveyancing Law and Practice and

Land Law. Tuesdays and Fridays, 9 a.m., commencing Tuesday, October 11th.

Course C.—The Procedure and Practice of the Courts. Wednesdays and Saturdays, 9 a.m., commencing Wednesday, October 12th.

Course D.—Taxation including death duties. Mondays, 9 a.m., and Saturdays, 10 a.m., commencing Monday, October 10th.

Course E.—Book-keeping. Mondays and Fridays, 5.15 p.m., commencing Monday, October 10th.

Course F.—Probate and executorship law and practice. Tuesdays and Fridays, 2.15 p.m., commencing Tuesday, October 11th.

Course G.—The rights, duties and responsibilities of solicitors, two lectures. The dates on which the lectures will be held will be announced at a later date.

Fee £10 10s. 0d. for each course except Course G for which there is no fee.

APPLICATIONS TO HIGH COURT

Country solicitors should note that in all cases where applications are to be made to the High Court, the office copy of the order made under which money was originally lodged or other directions given should be sent to town agents with the other papers. In addition to the original affidavit which is filed a copy for attesting should also be sent with a further copy for use on the making of the application. If notice of filing of an affidavit is to be transmitted it is suggested that a copy of the affidavit be sent for transmission to the solicitor for the notice party for his convenience.

LIST OF NEW MEMBERS FROM 1st AUGUST, 1959 TO 31st JULY, 1960

Thomas J. Ballagh, 14 Molesworth Street, Dublin.
Laurence F. Branigan, Drogheda, Co. Louth.
Richard J. Black Nenagh Co. Tipperary.
James E. Cahill, Abbeyleix, Co. Laoighis.
Margaret T. C. Casey, Clifden, Connemara, Co. Galway.
James D. Coughlan, New Ross, Co. Wexford.
Michael P. M. Connellan, Longford.
Laurence Cullen, Church Street, Wicklow.
Esmond Davies, 14 Lower Mount Street, Dublin.
Marie Donnellan, Tuam, Co. Galway.
Michael J. Duigan, Roscrea, Co. Tipperary.
Fergus L. Fahy, 62 Middle Abbey Street, Dublin.
Patrick J. Farrell, Mullingar Co. Westmeath.
David R. Felton 18 Eustace Street.
John G. Fish, 8–10 Suffolk Street.
Thomas J. Furlong, Letterkenny, Co. Donegal.
Francis G. M. Gannon, 18 Lower Baggot Street, Dublin.
Thomas J. N. Gannon, Templemore, Co. Tipperary.
Maire N. Gibbons, 8 Trinity Street, Dublin.
John P. A. Hooper, 102 Upper Georges Street, Dun Laoghaire.
Desmond G. Houston, 55 Dame Street, Dublin.
Michael P. Keane, Carrick-on-Shannon, Co. Leitrim.
Gregory A. Lynch, 12 Lower Ormond Quay, Dublin.
Noelle Maguire, 55 Dame Street, Dublin.
Denis A. McArdle, 28 South Frederick Street, Dublin.
John McKnight, 11/12, St. Andrew Street, Dublin.
Maurice A. Neville, Bandon, Co. Cork.
William T. Nicholl, 7 Lower Ormond Quay, Dublin.
James P. G. O'Connor, 9 Clare Street, Dublin.
James J. O'Hanrahan, Parliament Street, Kilkenny.
Arthur J. O'Leary, Tralee, Co. Kerry.
Thomas M. D. Shaw, Mullingar, Co. Westmeath.
Peter A. Smithwick, Kilkenny.
Henry Wynne, Boyle, Co. Roscommon.

LAW RELATING TO PATENTS, DESIGNS AND TRADE MARKS

The Department of Industry and Commerce are examining the laws relating to the grant of patents for inventions and to the registration of designs and trade marks to see whether changes are necessary to suit existing conditions and to comply with international arrangements to which Ireland is a party. The existing laws are contained in the Industrial and Commercial Property Protection Acts 1927-1958 and the statutory rules and orders made thereunder. Any member of the Society with views or suggestions which might be of assistance in connection with the examination is requested to forward them to the Secretary for transmission to the Industrial and Commercial Property Registration Office.

FINANCE BILL 1960

By section 9 of the Finance Bill, which has now become law, power is given to the Revenue Commissioners to compel any person carrying on a trade or business, or carrying on any activity which does not constitute a trade or business, to supply information of payments made in the course of the trade or business for services rendered by other persons. It appeared to the Council that the section as drafted might enable the Revenue Commissioners to require information from solicitors and representations were made to the Department of Finance and to the solicitor-members of Dail Eireann. The

following is an extract from the Dail debates, 29th June, 1960, columns 631 and 632;

Mr. Sweetman: I move amendment No. 10:—

In page 9, between lines 22 and 23 to add an new subsection to section 9 as follows:—

"(12) Nothing in this section shall require a solicitor to include in any return to be made hereunder any payment made by him on behalf of a client."

I move this amendment for the purpose of getting an express assurance from the Minister that he has been advised that this section as now amended, cannot be utilised to force a solicitor to disclose his client's business.

Dr. Ryan: Definitely not because as I said, the principle underlying this is effective payment and that is a payment made by the ultimate payer. An agent cannot be requested, therefore, to give information under this section.

Amendment, by leave, withdrawn.

ADMISSIONS AS SOLICITORS

1st August, 1959 to 31st July, 1960.

Name	*Service with*
ARMSTRONG, KENNETH L., Willowdale, Lower Glenageary Road, Glenageary, Co. Dublin.	JOSEPH N. HUGHES, 31 Dame Street, Dublin.
BALLAGH, THOMAS J., B.A., Birch Hill, Proby Square, Blackrock, Co. Dublin.	DESMOND M. MCCRACKEN, 94 Grafton Street, Dublin.
BLACK, RICHARD J., B.C.L., Ardeevin, Clones, Co. Monaghan.	JOSEPH P. BLACK, Clones, Co. Monaghan.
BRANIGAN, LAURENCE F., B.C.L., Rosemount, William Street, Drogheda, Co. Louth.	MALACHY S. MATHEWS, Drogheda, Co. Louth.
BUTLER, PIERCE O'BRIEN, 46 South Hill, Dartry, Dublin.	JAMES R. QUIRKE, 15 South Frederick Street, Dublin.
CASEY, MARGARET T. C., B.A., Main Street, Clifden, Connemara, Co. Galway.	WILLIAM BRENDAN ALLEN, Galway.
CLANCY, CONAL J., Eden Bawn, Goatstown Road, Dundrum, Co. Dublin.	DENIS GREENE, 11 Wellington Quay, Dublin.
COONAN, CHARLES E., B.A., Luggadowden, Ballymore Eustace, Co. Kildare.	DANIEL P. O'CONNOR, and MICHAEL V. FAY.
DONNELLAN, MARIE T., Avenue Road, Dundalk, Co. Louth.	JOSEPH HUGHES, Tuam, Co. Galway.
EGAN, JOHN L., The Corner, Malahide Road, Dublin.	JOHN J. O'DWYER, 15 D'Olier Street, Dublin.
FERGUS, L. FAHY, Foxford, Co. Mayo.	MICHAEL J. O'HARA, Ballina, Co. Mayo.
FARRELL, PATRICK J., 11 Ginnell Terrace, Mullingar, Co. Westmeath.	PATRICK J. SHAW, Mullingar, Co. Westmeath.
FELTON, DAVID R., 34 Belgrave Road, Monkstown, Co. Dublin.	TREVOR G. R. MCVEAGH, 32 Kildare Street, Dublin.
FISH, JOHN G., 74 Highfield Park, Dundrum, Co. Dublin.	HAMILTON R. BLAKENEY, 8/10 Suffolk Street, Dublin.
FITZGERALD, ADRIAN, F. J., B.C.L., Ballinrobe, Co. Mayo.	EDWARD FITZGERALD, Ballinrobe, Co. Mayo.
FURLONG, THOMAS J., Letterkenny, Co. Donegal.	C. J. FURLONG, Letterkenny, Co. Donegal, and WILLIAM T. MCMENAMIN, Ballybofey, Co. Donegal,
GANNON, FRANCIS G. M., Aughry House, Dromod, Co. Leitrim.	THOMAS J. GANNON, Mohill, Co. Leitrim.
GANNON, THOMAS J. N., B.C.L., Aughry House, Dromod, Co. Leitrim.	THOMAS J. GANNON, Mohill, Co. Leitrim.
KINGSTON, CHARLES B., B.A., 22 Kildare Street, Dublin.	CHARLES J. C. JOYCE, 128 St. Stephen's Green, Dublin.
MCMAHON, PATRICK G., B.C.L., 38 Ashe Street, Listowel, Co. Kerry.	DONAL T. RYAN, Cashel, Co. Tipperary.
MADIGAN, PATRICK J. B., B.A., LL.B., Kildangan, Westport, Co. Mayo.	PATRICK J. G. KEYS, Eglinton Street, Galway.
MASTERSON, EDWARD M. Tubbercurry, Co. Sligo.	FRANCIS ARMSTRONG, Sligo.
MORRISSEY MURPHY, DERMOT, Hibernian Bank House, Main Street, Charlestown, Co. Mayo.	MATTHEW C. MULLEN, Dundalk, Co. Louth.
O'CALLAGHAN, MARY M., B.C.L., Helensburgh, Greystones, Co. Wicklow.	MARTIN J. LAVAN and FRANCIS P. GALVIN, 36 South Mall, Co. Cork.
O'CONNELL, THOMAS F., 60 Lansdowne Road, Ballsbridge, Dublin.	JAMES G. CLAHANE, 4/5 Eustace Street, Dublin. ex barrister-at-law.
O'CONNOR, JAMES J., 11 Greenmount Road, Terenure, Dublin.	
O'DWYER, JOHN A., B.C.L., 229 Griffith Avenue, Drumcondra, Dublin.	STEPHEN DEMPSEY, 20 Molesworth Street, Dublin.
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THE REGISTRY

Register B.

COUNTRY solicitor presently in private practice seeks assistantship in Dublin firm with a view to partnership. Fourteen years' experience. Replies treated in strict confidence. Box No. B252.

WANTED, established practice Galway, Clare or Midlands. Replies in confidence to Box B253.

Register C

WANTED a copy of *Fuller on Friendly Societies*, 3rd or 4th Edition. Box No. C.161.

RECENT IRISH LEGISLATION

CRIMINAL JUSTICE ACT, 1960.

1. The Criminal Justice Act, 1960 proposes to authorise the release on parole of convicted prisoners and criminal lunatics, to empower the Courts to remand in custody, otherwise than to prison, young persons charged with offences, to give additional powers in relation to the places of confinement of criminal lunatics, to discontinue the use of the term "Borstal" and to empower the Courts to sentence young offenders direct to St. Patrick's, North Circular Road, Dublin, instead of to prison. St. Patrick's, formerly known as the Borstal Institution, is an institution for youths sentenced to Borstal training and for such other convicted offenders under 21 as may be transferred there from prison by the Minister for Justice under section 3 of the Prevention of Crime Act, 1908.

2. Section 2 authorises the Minister for Justice to make rules providing for the temporary release of convicted prisoners from prisons or from St. Patrick's. This has now been done by the Prisoners (Temporary Release) Rules, 1960—S.I. No. 167 of 1960.

3. Section 3 authorises the release on parole of a criminal lunatic who, in the opinion of the person in charge of the mental institution concerned, is not dangerous to himself or to others. The consent of the Minister for Justice will be necessary for the grant of parole and for the conditions imposed on the parolee.

4. Section 4 provides that any conditions attaching to the release on parole of a person must be communicated to him at the time of his release by notice in writing. He is required to comply with any such conditions.

5. Section 5 authorises the Minister for Justice to suspend the currency of the sentence, if any, of a person released on parole in respect of the whole or part of the period of parole.

6. Section 6 provides that a parolee who does not return on the expiration of parole or breaks a condition of parole is deemed to be unlawfully at large and is liable on summary conviction to imprisonment for a term not exceeding six months. The currency of the sentence of a person who is unlawfully at large for any period will be suspended for the whole of that period.

7. Section 7 provides that a member of the Garda Siochana may arrest without warrant a person whom he suspects to be unlawfully at large and may take him to the place in which he is required in accordance with law to be detained.

8. Section 8 extends the powers of the Minister for Justice in relation to the places in which criminal lunatics may be confined. At present persons who become insane in prison while on remand or awaiting trial must be sent to the local district mental hospital. Prisoners who become insane while serving a sentence must be sent either to the local district mental hospital or to the Central Mental Hospital, Dundrum. As there are now only three prisons (at Dublin, Portlaoise and Limerick) criminal lunatics in district mentals have tended to become concentrated in the district mental hospitals at these centres although in the case of some of the patients it would be more desirable to have them confined in district mental hospitals nearer to their homes and relatives. This section enables the Minister to transfer to any district mental hospital or to the Central Mental Hospital, or from the Central Mental Hospital to a district mental hospital.

9. Section 9 authorises the remand of a person between 17 and 21 years of age, with his or her consent to a remand institution instead of to a prison. For example, it is proposed to approve of St. Mary Magdalen's Asylum, Sean McDermott Street, Dublin, as a remand institution for girls. Subsection (2) of the section prohibits the detention of a person in a remand institution conducted otherwise than in accordance with the religion to which the person belongs. Under section 10 the Minister for Justice when requested by the person in charge of a remand institution, may direct that the person

in custody be transferred from the institution to another remand institution or to a prison or to St. Patrick's, as the case may be. Persons remanded or transferred in accordance with these provisions are being deemed to be in lawful custody (section 11).

10. Section 12 provides for the discontinuance of the term "Borstal" and for the substitution for the references to Borstal Institutions in any statute or statutory instrument of references to St. Patrick's. Since the Borstal Institution was transferred in 1956 from Clonmel to Dublin it has been the practice to transfer to it virtually all youths committed on conviction to Mountjoy Prison with the result that the Institution is now a place of detention for male prisoners under 21 years of age, giving as much corrective training as practicable, rather than a Borstal Institution as such. The Institution has been known as "St. Patrick's" since 1948.

11. Section 13 empowers the Court to sentence young offenders to be detained in St. Patrick's instead of in prison. The Minister may make regulations for the rules and management of St. Patrick's and the constitution of its visiting committee, and for the classification, treatment, employment and control of juvenile offenders.

DOGS (PROTECTION OF LIVESTOCK) ACT, 1960.

The Dogs (Protection of Livestock) Act is a short measure designed to protect livestock from worrying by dogs.

By section 2 where a dog worries livestock which includes cattle, sheep or horses, on agricultural land which includes arable, meadow or grazing land, the owner of the dog, and, if the dog is in the charge of a person other than the owner, that person also shall be guilty of an offence unless the dog is owned by or in the charge of the occupier of the land or of the livestock, a member of his family or a person employed by him.

It shall be a good defence in a prosecution for an offence under this section if the defendant proves that reasonable care was taken to prevent the worrying of the livestock.

A person who is guilty of an offence under this section shall be liable on summary conviction

(*a*) in the case of a first offence, to a fine not exceeding twenty pounds, and

(*b*) in a case where the person has been convicted previously of an offence under this section in respect of the same dog, to a fine not exceeding fifty pounds.

By section 3 (1) where in the case of a dog found on agricultural land

(*a*) the dog has been worrying livestock on the land, and

(*b*) no person is present who admits to being the owner of the dog or in charge of it,

a member of the Garda Siochana may seize the dog, and thereupon the provisions of the Dogs Act, 1906, in relation to seized stray dogs shall apply.

(2) Where in the case of a dog found on agricultural land when worrying livestock lawfully on the land

(*a*) the finder is the occupier of the land or the owner of the livestock, and

(*b*) no person is present who admits to being the owner of the dog or in charge of it,

such occupier or owner may seize the dog and deliver it to a member of the Garda Siochana at the nearest Garda Siochana station, and thereupon the provisions of the Dogs Act, 1906, in relation to seized stray dogs shall apply.

By section 4, in an action for damages for the shooting of a dog, it shall be a good defence if the defendant proves :—

(*a*) that the dog was shot when worrying livestock on agricultural land,

(*b*) that the livestock were lawfully on the land,

(*c*) that the defendant was

(i) the occupier of the land or the owner of the livestock a member of his family or a person employed by him,

(*d*) that the owner of the dog was, when the dog was shot, not known to the defendant or the owner of the dog had, at any time before the dog was shot, been warned by or on behalf of the defendant that the dog had been found worrying livestock and

(*e*) that the defendant notified the shooting within forty-eight hours to a member of the Garda Siochana at the nearest Garda Siochana station.

SOCIAL WELFARE (MISCELLANEOUS PROVISIONS) ACT, 1960.

The Social Welfare (Miscellaneous Provisions) Act, 1950 contains 26 sections, and provides for modest increases in old age pensions, unemployment assistance, etc. Practitioners should note the terms of section 20 relating to prosecutions, which states :—

(1) Proceedings for an offence under the Old Age Pension Acts (including this Act) or under regulations made thereunder shall not be instituted except by or with the consent of the Minister for Social Welfare or by an officer authorised in that behalf by special or general directions of the Minister.

(2) A prosecution for an offence under these Acts or under regulations made under these Acts may be brought at the suit of the Minister.

(3) Notwithstanding any provision in any Act specifying the period within which summary proceedings may be commenced, proceedings in respect of an offence under these Acts or under regulations made under these Acts may be commenced at any time within the period of three months from the date on which evidence, sufficient in the opinion of the Minister to justify a prosecution for the offence, comes to his knowledge, or within the period of twelve months after the commission of the offence, whichever period last expires.

(4) For these purposes, a certificate, sealed with the official seal of the Minister, as to the date on which such evidence as aforesaid came to his knowledge shall be conclusive evidence thereof.

(5) This section shall only have effect as respects proceedings in relation to offences committed after the 1st August, 1960.

FINANCE ACT, 1960.

The Finance Act, 1960 is a comprehensive measure of 41 sections and 4 schedules. Space precludes a detailed consideration of the Act. Attention is, however, drawn to section 23 (Alteration of rates of estate duty), section 24 (No estate duty payable for estates under £5,000), section 34 (confirmation of agreements dated 23rd June, 1960 between Ireland and U.K. with respect to exemptions from tax); section 36 (Abolition of Stamp Duty on passports), section 37 (use of adhesive stamps on attested copies of wills, probates and letters of administration). The Finance Act, 1960 contains 27 pages, and is obtainable from the Government Publications Sale Office, Henry Street Arcade, Dublin for 4/6—postage 3d. extra.

INTOXICATING LIQUOR ACT, 1960.

The Intoxicating Liquor Act, 1960 became law on the date of its signature by the President on the 4th July, 1960. This measure amends the Licensing Act, 1902 and the Intoxicating Liquor Acts of 1927 and 1943 in various respects; it is a measure of 41 sections and one schedule, and space precludes detailed consideration of the Act. Attention is, however, drawn to section 4 (Revised prohibited hours) which apply generally also in hotels and restaurants (section 5) and in clubs (section 6), section 13 (Grant of new licences in rural areas in substitution for two existing licences), section 14 (Grant of new licence in respect of premises substituted for demolished premises), sections 15 and 16 (Declaration as to fitness and convenience of proposed licensed or club premises, or as to suitability of licensed premises for restaurant certificate), section 21 (Extended definition of "hotel" to include 20 rooms in Dublin, and 10 rooms elsewhere), section 27 (Power to grant full seven day licence for premises having restricted licence within two years upon payment of £200) and section 40 (Sale of intoxicating liquor in sealed containers if quantity indicated thereon). The Intoxicating Liquor Act, 1960—No. 18 of 1960—may be obtained from the Government Publications Sale Office for 3/6—postage 3d. Members who desire to obtain the very useful explanatory memorandum annexed thereto should apply for the Intoxicating Liquor Bill, 1959—as passed by Dail Eireann—obtainable at 2/6—postage 4d.

RECENT DECIDED CASES

Applications for contribution in an action for damages dismissed.

The appeal of Messrs. John Sisk and Son, Ltd., Cork, from the dismissal of their action for an indemnity or a contribution from National Grain Silo, Ltd., Cork, in an action for damages was dismissed by the Supreme Court in a reserved judgement.

It was stated that Messrs. Sisk and Son had been doing building work at the National Grain Silo company's premises in 1953, when one of the Silo company's employees, Roger Power, fell into an excavation and injured himself. He took proceedings against Messrs. Sisk and Son, and Murnaghan, J., on 21st July, 1955 in the High Court gave a direction in favour of Messrs. Sisk and Son. On appeal the Supreme Court ordered a new trial on 15th May, 1956, and a second jury found that Messrs. Sisk were negligent and awarded Mr. Power £750 damages, with the costs of both trials before Lavery, J., in Cork in March, 1957. Mr. Power's costs taxed at £716 odd, and Messrs. Sisk's costs, taxed at £704, making a total with the £750 damages of £2,170.

Messrs. Sisk claimed an indemnity or a contribution from National Grain Silo company in relation to that sum. Dixon, J. held that on this issue their claim must fail. He was not satisfied he said, that National Grain Silo, Ltd. knew there was any unusual danger.

The Chief Justice, Mr. Justice O'Dalaigh and Mr. Justice M. Maguire were unanimous in their decision that Dixon, J. should be upheld and consequently the appeal failed.

(*Irish Independent*, 8th April, 1960.)

Educational Co. of Ireland v. *Fitzpatrick—8th April*, 1960.

Granting of interlocutory injunction by Teevan, J. affirmed by Supreme Court (Lavery, Kingsmill-Moor, O'Dalaigh and Maguire, JJ. Maguire, C.J. dissenting).

This injunction restrains the defendant from picketing plaintiff's premises until substantial questions of law are decided in the plenary action :—

(1) Whether "White *v.* Riley" (1921. 1 Ch. 1) and similar English decisions are valid decisions in Ireland. Here it was held that the mere statement to an employer by a number of workmen that they will not work with another workman, and that, if that workman is retained in the employer's service, they will strike, even where they have knowledge that he cannot dispense with their service, does not, of itself constitute an unlawful threat, and is therefore not of itself, actionable; but it is a trade dispute, and is, in the absence of threats, protected by section 3 of Trade Dispute Act, 1906.

(2) Whether some sections of the Trade Disputes Act, 1906 are in accordance with the Irish Constitution of 1937.

The property of any adjudicated bankrupt who has property in his shop over which he has power of disposing, even though the disposing power may be somewhat restricted as it was in this case, nevertheless forms part of the Bankrupt's property.

The facts are as follows :

The bankrupt was adjudicated on the 18th August, 1958 and on that date had in his possession four ladies' bicycles which the Hercules Cycle & Motor Co. (Ireland), Ltd. contended were held by him as the property of the Company and the invoice issued in respect of the bicycles was so endorsed, viz. "notwithstanding the furnishing of this invoice the bicycles, the serial numbers of which appear thereon, are held by the consignee as a Stockist and is the property of The Hercules Cycle & Motor Co. (Ireland), Ltd. and may not be sold otherwise than on a Credit Sales Agreement through the Hercules Cycle & Motor Company (Ireland) Ltd."

The Official Assignee contended that these bicycles were within the disposition of the bankrupt and accordingly came within the scope of section 313 of the Ireland Bankruptcy Insolvency Act of 1857 and claimed the bicycles on behalf of the ordinary creditors.

In August, 1958 an application was made to the managing director of the Hercules Company (Ireland), Ltd. notifying him that the bicycles were within the disposition of the bankrupt pursuant to the aforementioned section and it was intended to apply to the Court for a sale of the bicycles. No reply was received and a notice of motion was served on the Hercules Company (Ireland), Limited, in which a request was made for an order for the sale or disposal under section 313 of the Act of 1857 of the four ladies' bicycles manufactured and distributed by the Hercules Company. The affidavit of the Official Assignee merely avered that the bicycles were within the order and disposition of the bankrupt and the Court messenger averred that he was in the bankrupt's shop and that the bicycles were displayed in a prominent position as merchandise for sale.

The case came on for hearing before Mr. Justice Budd on the 31st day of July, 1959 and there was no appearance for the Hercules Company. The Court held that the bankrupt at the time he became a bankrupt had, by the consent and permission of the true owner thereof, in his possession, order or disposition four ladies' bicycles manufactured or distributed by the Hercules Company whereof the said bankrupt was the reputed owner, and ordered that the said four ladies' bicycles be sold and disposed of by the Official Assignee for the benefit of the creditors under the bankruptcy.

In Re: O'Callaghan, a Bankrupt—Unreported judgement of Budd, J., 31st July, 1959.

Sale of land—solicitor stakeholder.

A question of considerable interest to solicitors arose before Haugh, J., recently in the case of Sheppard *v.* Callaghan. This was a specific performance action brought by the purchaser of a property which was held by the vendor as to portion thereof as full owner but as to the greater part as tenant for life under a settlement. The purchase price was £15,500 and a deposit of £3,875 was paid to the vendor's solicitor, who was named and described in the conditions of sale as the vendor's solicitor, but it was not stated that he was to receive the deposit "as agent for the vendor" or "as stakeholder".

The purchaser having got a decree for specific performance, it appeared that the vendor's solicitor had in hand only £1,750 or thereabouts, of the deposit, having paid out to the vendor or applied to his use the balance of over £2,120. The interest of the vendor in the property was subject to prior charges and the plaintiff had been awarded costs against the vendor, so that there was not enough money available out of the balance of the purchase money (and the £1,750 which the solicitor had lodged in Court pursuant to an Order to that effect) to pay to the trustees for the purposes of the Settled Land Acts of the settled part of the property the

sum which was apportioned to the settled lands and to clear costs and incumbrances. In these circumstances the purchaser applied, with the support of the trustees of the settlement, for an order directing the vendor's solicitor to bring into Court a sum of £1,045, part of the deposit money, which he had paid to or applied on behalf of the vendor.

For the applicant, it was argued that the solicitor, being well aware that the greater part of the property was settled land and that there were charges affecting the unsettled land, should not have parted with any part of the deposit. Part of the moneys so paid out of the deposit by the solicitor was paid out after the solicitor had written, on the vendor's instructions, a letter purporting to rescind the sale, and the applicant, as an alternative argument, submitted that at least such part should not have been paid to the vendor. The applicant relied on Wiggins *v.* Lord 4 Beav. 30 where a similar order was made to that now sought.

Against this it was submitted that it was well settled that payment to a person as solicitor to the vendor, or so described, was payment to him as agent for the vendor, and that the solicitor so receiving the deposit was bound to pay it to or as directed by his principal: Ellis *v.* Goulton (1893) 1 Q.B. 350 and Hall *v.* Burnell (1911) 2 Ch. 551 were relied on to support this argument.

In giving judgement in favour of the applicant and directing the solicitor to lodge in Court the said sum of £1,045, Haugh, J. stated that in the circumstances of this case he had no hesitation in holding that the solicitor received the deposit as a stakeholder, particularly in view of the fact that he was aware that the property for sale included trust property in which the vendor had only a limited interest.

We suggest that it is advisable for solicitors, in their own interests, when the vendor is only a limited owner, to specify that the deposit be paid to them " as stakeholders ".

Irish Law Times, Vol. 94. p. 104, 30th April, 1960.

Evidence on commission.

Carmody *v.* de Courcy and Another, a motion heard before Murnaghan, J., on the 4th March, 1960, was unusual in being an application to have evidence taken on commission which was being contested. It arose out of an action under the Fatal Injuries Act, 1956, brought by the widower of a lady who was killed when the floor of Carmody's Hotel, Ennis, collapsed in the course of an auction which was being held there by the defendants, and the application was brought on behalf of the plaintiff to have the plaintiff's own evidence taken on commission at his home. The application was not based on any physical incapacity to attend Court on the plaintiff's part, but on the contention of his own doctor that, if called on to give evidence bearing on his wife's death, the emotional upset and depression from which he was suffering as a result of her death would be so aggravated as to cause the plaintiff unnecessary suffering, if indeed he were capable of giving evidence at all. The defendant's medical adviser in his replying affidavits, agreed that the plaintiff was an emotional type of man who was suffering from depression consequent on his wife's death, and who would be somewhat upset by any reference thereto, but took the view that he was perfectly capable of travelling to Court and of giving intelligent evidence of his family circumstances, if treated with courtesy, more particularly as, negligence having been admitted by the defendants in their defence, there was no likelihood that evidence would have to be given of the circumstances of Mrs. Carmody's death. The defendants took the view that it had not been adequately shown that the plaintiff was so emotionally disturbed as to be unable to give what would be largely formal evidence in Court and that the damages might be unduly inflated if counsel for the plaintiff were in a position to say that his client had been so much disturbed emotionally by his wife's death as to be unable to attend Court. Murnaghan, J., pointed out that it was possible that the damages might also be unduly inflated if the jury were to see the plaintiff in an unduly disturbed state, to which counsel for the defendants replied that that was a risk which his clients had to take, but that it was a less risk than that which they would have to take if the jury were told that the after-effects of the plaintiff wife's death had disabled the plaintiff from attending Court.

Murnaghan, J., held that there was no real difference of opinion medically between the two doctors. It was clear, from both affidavits that the plaintiff had suffered depression as a result of the loss of his wife in tragic circumstances and had not succeeded in overcoming such depression as well as the average man in his situation would. While it might be said that having to give evidence of his family situation ought not to affect the plaintiff unduly, his Lordship thought that the mere fact of having to come to Court would bring back to the plaintiff associations which, to say the least of it, would be unpleasant and which might aggravate the plaintiff's disturbed condition. Such a course, in his Lordship's opinion, should be avoided if possible and could be avoided by taking the plaintiff's evidence on commission at home which, though distressing for him, would be less distressing than giving evidence in Court. His Lordship expressed himself as unable to see how the defendants could be

damnified by the non-attendance of the plaintiff in Court; his Lordship stated, on the other hand, that it might be harmful to the defendants' interest to have the plaintiff in Court, however expressly the jury were told that they must ignore the plaintiff's distress and depression and deal only with the monetary loss sustained by him as a result of his wife's death. In those circumstances, Murnaghan, J., held that, in the interest of both parties, the proper course for him to pursue was to order that the plaintiff's evidence be taken on commission.

(*Irish Law Times*, Vol. 94, p. 146, 18th June, 1960.)

Injunction ignored.

The case of Fitzgerald *v.* Noone, a Circuit Appeal decided by Mr. Justice Walsh at the end of last term, was a salutary illustration of the truth that it does not pay to disregard other peoples' rights or the exact terms of Court Orders. The plaintiff was the tenant of the hall flat in a large house owned by the defendant, a builder. The defendant proposed to take down the upper portion of four large chimney stacks on the house and to recap them at a lower level, and had arranged to get a grant for this work. His foreman told one of the plaintiff's children to tell his mother not to light fires in the flat, but apart from this no warning of the work was given to the tenant, several of whose rooms were suddenly covered with soot resulting from the work on the chimneys and whose family was exposed to danger from stones and material dropped from the roof to the ground in front of the house. The plaintiff obtained an injunction and damages in the Dublin Circuit Court, the injunction providing that the defendant might continue the work only upon certain conditions, one being that he should not touch a kitchen chimney until he had completely reinstated the sittingroom chimney. The defendant learned that the plaintiff and his wife would be away from the flat for the following week, and thought that it would be empty and that there was, therefore, no need to observe this condition, which he accordingly ignored. The plaintiff returned during the progress of the work to find all the chimneys out of commission and issued a notice calling on the defendant to show cause why he should not be committed for contempt of Court.

In the Circuit Court the defendant was committed to prison for two months for contempt. On appeal this was reduced to seven days to run from the date of the original committal order (during which time the defendant was out on bail). The High Court affirmed the original decree for £130 damages with costs in both Courts, so that the defendant must have had an expensive lesson.

(*Irish Law Times*, Vol. 94, p. 171, July, 1960.)

Frustration—prohibition of use of normal route. The existence of a possibility, appreciated by both parties at the time of making a contract, that a certain event may occur, does not necessarily prevent the frustration of the contract by that event when it does occur.

By a charterparty, dated 18th October, 1956, a vessel was chartered to proceed to Masulipatan, India, and there load a cargo of iron ore for carriage to Genoa. It was provided by the charterparty that the captain was to telegraph the charterers at Genoa "on passing Suez Canal". At the date of the charterparty the parties knew that owing to hostilities in the Canal Zone the canal, which was the customary route, might be closed to shipping. In November, 1956, the canal was blocked to shipping. The ship owners claimed that the contract was frustrated. Held that, it was an implied term of the contract that the vessel was to go by the Suez Canal; that a voyage by the Cape would have been a fundamentally different voyage and, accordingly, the contract was frustrated; Societe Franco Tunisienne D'Armement *v.* Sidermar S.P.A. (1960) 2 All E.R. 529, Pearson, J. (distinguishing Carapanayoti & Co. *v.* E. T. Green (1958) C.L.Y. 560; Tsakiroglou & Co. *v.* Noblee Thort G.m.b.H. (1960) 5 C.L. 28).

Defamation—privilege—letters to Bar Council.

In Lincoln *v.* Daniel (June 24, 1960) the defendant sent two letters to the Secretary of the General Council of the Bar alleging professional misconduct against the plaintiff, who was Queen's Counsel. Salmon J. held, in the plaintiff's libel action, that the letters were the subject of qualified and not absolute privilege, since the Bar Council had no judicial or quasi-judicial function; and on the verdict of the jury that the contents of the letters were untrue, entered judgement for the plaintiff for £7,500. (D.C.) See also *The Times*, June 25, 1960.

Practice—contempt—newspaper—influence on judge.

In R. *v.* Duffy, ex p. Nash (June 21, 1960) the applicant for a writ of attachment for contempt against the editor of, and journalists employed by a newspaper was convicted of causing grievous bodily harm after a trial which attracted considerable publicity, and forthwith announced to the press his intention of appealing. The newspaper published the next day, an article describing him as an obscure thug and a small-time hooligan with big ideas although it was said on his behalf in court, he bore a good character. The Divisional Court (Lord Parker, Hilbery, Cassels, Donovan and Edmund Davies J.J. held, dismissing the application that the case had been *sub judice* at the time of the publication, but that even had a judge seen the article, it was

inconceivable that he should have been influenced by it and therefore in the absence of any intention to influence the Court of Criminal Appeal, the article was not a contempt. (D.C.) See also *The Times*, June 22, 1960.

The proceedings of the Disciplinary Committee of the Law Society are privileged, and may not be questioned in a Court of Law.

The Court of Appeal (Hodson, Pearce and Upjohn, L.JJ. upholding Gorman J.) held that proceedings before the disciplinary committee constituted under s. 46 of the Solicitors Act, 1957, are judicial in character, and the proceedings (including the committee's findings and order) have the benefit of the absolute privilege against liability for defamation that protects the proceedings before a court of justice, notwithstanding that, under r. 21 of the Solicitors (Disciplinary Proceedings) Rules, 1957, the committee hear all applications in private and only pronounce their findings and order in public.

Principles laid down by Lord Esher, M.R., in Royal Aquarium & Summer & Winter Garden Society *v.* Parkinson (1892) 1 Q.B. at p. 442) applied.

Per Hodson L.J.: The plaintiff's contention is that there can be no absolute privilege here, and he has put forward five contentions. First of all, his main contention is that the proceedings were held in private. His second contention is what I call for convenience, his autrefois acquit contention, which is in effect this, that a solicitor may well be subject to criminal prosecution and afterwards may be called before this committee on a disciplinary charge, and that the functions of that committee in so acting are inconsistent with those of a judicial body. His third contention is that the procedure laid down by the rules inconsistent with the judicial function. His fourth contention is that there was here such an irregularity in proceedings (to which I shall refer in further detail) as to show that the tribunal was not acting judicially; and his fifth contention is that even if the hearing itself was protected by absolute privilege, the findings and order, or that part of it which contained the libel, was outside the scope of a judicial inquiry.

Perhaps, having said that, it may be convenient to postpone returning to the point about publicity and deal with the last point—that even if the hearing itself was protected the findings and order are not. I think that the short answer to that is that the findings and order were an intrinsic part of the hearing, and if the hearing itself is protected by absolute privilege the same applies to the findings and order; and the subsidiary point that matters irrelevant to the findings and order were included in the document which is called "Findings and Order" really, I think comes under another point which the plaintiff has made, to which I shall refer in a moment. So far as publicity is concerned, this is, I think, the most formidable—indeed I think the only formidable—part of the plaintiff's case; because he is quite right in saying that it is axiomatic, so far as British justice is concerned, that proceedings should be, wherever possible or convenient subject to the overriding rule that justice must be administered in public.

The constitution of the tribunal authorised by Act of Parliament speaks for itself. The functions are judicial functions, not administrative functions. This is not comparable with a meeting concerned with the issue of licences. If there is a prima facie case brought before this tribunal, it has to hear and determine it. This does in a sense affect the status of the solicitor: he is liable to be struck off the roll if he is convicted of unprofessional conduct, and disabled from practising. There is power to fine him, power to make him pay costs, power to administer the oath, power to obtain a subpoena. No doubt that last provision was inserted in order to get over the difficulty as to the attendance of witnesses, which would otherwise only be cured by application to the High Court. There is further the right of appeal to the High Court. The orders of the committee are enforceable; and there is the further point that the jurisdiction is concurrent with the existing High Court jurisdiction.

The plaintiff drew our attention to the fact that, this being an inquiry as to the conduct of a solicitor in permitting his clerk to do something wrong, the solicitor's defence was that whatever had gone wrong without his knowing anything about it, and the only question before the committee, it being admitted that there had been an error, was: was the solicitor himself at fault? He was acquitted. In dealing with that issue, the matter to which evidence was directed was the information that the solicitor had. He thereupon told the committee what he himself had been told. There was nothing irregular in that; but even if there had been, on the authorities to which I have made reference it would not have made any difference. The same, of course, applies to the findings and order: if the findings and order, as a document, had contained anything which was not relevant or should not have been contained therein, it would not for that reason (by virtue of the same authorities) have caused the proceedings to lose their character, which was such that the members of the tribunal, as well as the witnesses and all those who appeared before the tribunal, were protected by absolute privilege.

I would dismiss the appeal.

Per Upjohn, L.J.: In general, no doubt, a tribunal having judicial functions to perform should deliberate in public. But there may be good reasons, either in particular cases or indeed in particular classes of cases, where justice demands that the hearing should be in private. The High Court sometimes hears cases in private, and examples have been given by both my Lords, which I need not repeat. In this case one can well understand the reason that may have actuated those responsible for framing r. 21: justice to the solicitor against whom a complaint is made. One can well understand how serious it might be if a complaint had to be deliberated in public and then a period necessarily elapses while the tribunal has to put its findings into writing.

In my judgement, this tribunal is entitled to the benefit of the rule applicable to courts of law and may claim absolute privilege.

(Addis *v.* Crocker, (1960), 2 All E.R. 629.)

Solicitors apprentice, even though remunerated at irregular intervals, is nevertheless "gainfully employed" within the National Insurance Act 1946 *and liable for contributions:*

In order to determine whether a person is within the class of employed persons in s. 1 (2) (*a*) of the National Insurance Act, 1946, *viz.*, "persons gainfully occupied in . . . employment under a contract of service" two questions must be decided, namely, (*a*) whether the person is employed under a contract of service and then (*b*) whether he is gainfully occupied, but it is not necessary that the gain should be derived from the contract of service.

On August 31, 1954, K. entered a solicitor's employment as an articled clerk. The articles of clerkship were in the usual form and contained no provision for any remuneration to the clerk. Before the articles were drawn up, the solicitor explained to K. that he would receive no remuneration. At Christmas, 1954, the solicitor gave £10 to K., because he liked K. and because it was Christmas. At Christmas, 1955, he gave £25 to K., for the same reasons. In January, 1956, the solicitor told K that he was pleased with him and that, in recognition of his work, he would give him £100 in 1956 which he was to spend on holidays and not to use for his general living expenses. It was arranged that K. should receive the money in four equal payments when he wanted them, and K. received cheques for £25 in March, July, September and December, 1956. From Nov. 17, 1956 to July 8, 1957, K. was absent from the office, with the solicitor's permission, attending a firm of law tutors. On July 8, 1957, after successfully completing his examinations, he returned to the solicitor's office, and continued to work there until the term of the articles expired on Aug. 30, 1957, being paid £5 a week during this period. On the question whether K. was included in the class of employed persons or in the class of non-employed persons, for the purposes of the National Insurance Act, 1946, during the period from Jan. 1, 1956 to Dec. 31, 1956, it was not disputed that during that period K. was employed under a contract of service.

Held, by Salmon J.: K. was included in the class of employed persons for the purposes of the Act of 1946, from Jan. 1, 1956 to Dec. 31, 1956 because

(i) in the circumstances, the £100 given to K. during 1956 was intended to be in payment for services, and was not given to him as a personal present.

(ii) he was thus a person "gainfully occupied in employment . . . under a contract of service", within s.1 (2) (*a*) of the Act of 1946, although the contract of service made no provision for payments to him.

(iii) the fact that a person, when he entered into his employment had no hope, intention or desire of obtaining gain was irrelevant, if he was subsequently paid for his services during the course of his employment, to the question whether he was "gainfully occupied" for the purposes of the Act.

(Benjamin *v.* Minister of Pensions and of National Insurance—1960, 2 All E.R. 851).

OBITUARY

Miss Adelaide M. Quin, solicitor, died on the 31st July, 1960 at Our Lady of Lourdes Hospital, Drogheda, Co. Lough.

Miss Quin served her apprenticeship with the late Mr. John Quin, Ardee, Co. Louth, was admitted in Easter Sittings, 1929 and practised at Ardee, Co. Louth.

District Justice Timothy P. Coffey died on the 4th August, 1960 at Barrington's Hospital, Limerick.

Justice Coffey served his apprenticeship with the late Mr. John Mackay, Dundalk and the late Mr. Patrick J. Kerley, Dundalk, was admitted in Trinity Sittings, 1916 and practised at Dundalk, Co. Louth up to his appointment as District Justice in 1932.

Mr. William Franklin died on the 4th August, 1960 at Sir Patrick Dun's Hospital, Dublin.

Mr. Franklin served his apprenticeship with the late Mr. Alfred Lane Joynt, 4 St. Stephen's Green, Dublin and Mr. Robert E. English, 7 St. Stephen's Green, Dublin, was admitted in Michaelmas Sittings, 1938 and practised at 24 South Anne Street, Dublin.

REGISTRATION OF TITLE ACTS, 1891 AND 1942

Issue of Duplicate Land Certificates

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

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

Dated the 26th day of September, 1960.

D. L. McALLISTER,
Registrar of Titles.

Central Office,
Land Registry,
Chancery Street,
DUBLIN.

SCHEDULE.

1. Registered Owner Jeremiah Buckley. Folio number 1628, County Meath. Lands of Kilmore in the Barony of Deece Upper containing 78a. 2r. 0p

2. Registered Owner Patrick Tohall. Folio number 16109, County Sligo. Lands of Knocknaganny in the Barony of Carbury containing 0a. 1 r. 1 p.

3. Registered Owner Patrick McCabe. Folio number 20047, County Cavan. Lands of Cargagh containing 20a. or .30p. and Lands of Corrateinner containing 0a. 1r. 27p., both situate in the Barony of Castlerahan.

CORRECTION

The Supreme Court, per O'Dalaigh, J. held that, in a conviction for an offence created by statute, it is not sufficient to allege the offence in the words of the statute. Convictions for offences contrary to Section 30 and 51 of the Road Traffic Act, 1933 were bad because of their failure to specify that the offences are statutory either by express reference to the Act or by employing the formula "contrary to the statute in such case made and provided". (State—Cunningham *v.* District Justice O'Flynn, 29th January, 1960, unreported.)

The unofficial report of this case published at page 18 of THE GAZETTE for June 1960 is incorrect and the above note should be substituted. We regret having misled members by the publication of an incorrect version of this report. In the absence of the official report we used information from a usually reliable source.

THE SOLICITORS' BENEVOLENT ASSOCIATION

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

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

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

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

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SOLICITORS' BENEVOLENT ASSOCIATION,
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THE GAZETTE

of the

INCORPORATED LAW SOCIETY OF IRELAND

President
JOHN J. NASH

Vice-Presidents
RALPH J. WALKER
PETER E. O'CONNELL

Secretary
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FOR CIRCULATION AMONG MEMBERS

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MEETINGS OF THE COUNCIL

October 6th: The President in the Chair, also present Messrs. Desmond J. Collins, Reginald J. Nolan, Dinnen B. Gilmore, Derrick M. Martin, Niall S. Gaffney, James J. O'Connor, James R. Green, Robert McD. Taylor, John J. Sheil, Peter D. M. Prentice, Patrick Noonan, Gerald Y. Goldberg, George A. Nolan, Thomas V. O'Connor, James W. O'Donovan, Thomas A. O'Reilly, John Carrigan, William J. Comerford, John R. Halpin, Peter E. O'Connell, John Maher, Augustus Cullen, Ralph J. Walker, John Kelly, George G. Overend, John B. Jermyn, Edmund Hayes, Brendan A. McGrath, Francis J. Lanigan, Eunan McCarron, Arthur Cox.

The following was among the business transacted:

Registered land, costs of purchase of life interest

The report of the costs committee printed in the July issue of the GAZETTE at page 24 was confirmed.

Change of solicitors, apportionment of costs

The report of the privileges committee printed at page 24 of the July issue of the Society's GAZETTE was confirmed.

Employment of press reporter as law clerk

On the question submitted by a committee the Council replied that a solicitor should not employ in his office as a law clerk a person who reports Court cases for the newspapers.

Solicitors' Remuneration Order General Order 1960

The Secretary stated that a general order made by the statutory body under the Solicitors' Remuneration Act 1881 dealing with costs of non-contentious business, other than business to which the commission scale fee applies, was laid before each house of the Oireachtas and would come into operation on the expiration of a statutory period of one month from the first sitting day of the Dáil and Seanad.

Costs of High Court proceedings

The Secretary stated that a memorandum and draft scale of costs of proceedings in the High Court had been sent to the Superior Courts Rules Committee for consideration. One of the chief objects of the memorandum and draft scales of costs is to simplify bills of costs by reducing the number of items.

At an adjourned meeting of the Council held on October 13th the report of the Court of Examiners on the results of the second and third law examinations was adopted and the results were declared. The Council also awarded the Overend and Findlater scholarships.

October 27th: The President in the Chair, also present Messrs. Arthur Cox, John Maher, Eunan McCarron, Augustus Cullen, Frank Armstrong, Thomas A. O'Reilly, Reginald J. Nolan, Francis J. Lanigan, Dinnen B. Gilmore, James J. O'Connor, George G. Overend, James R. Green, Peter D. M. Prentice, John J. Sheil, Patrick Noonan, Gerald Y. Goldberg, Thomas V. O'Connor, George Nolan, James W. O'Donovan, Niall S. Gaffney, Dermot P. Shaw, John Carrigan, John R. Halpin, Ralph J. Walker, Cornelius J. Daly, Terence De Vere White, John B. Jermyn, Peter E. O'Connell, John Kelly.

The following was among the business transacted:

Taxation of costs under the Labourers Acts

The Secretary reported that arrangements have been made with the Department of Local Government that county managers will be asked to settle bills of costs without taxation pending the solution of difficulties which have arisen in regard to taxation of such bills.

Part-time legal agencies

The council adopted a report from a committee on the subject of the employment by solicitors of legal agencies offering clerical services on a part-time basis. The report is printed at page 54 of this issue.

Offer to undertake professional business at less than the commission charges

Information submitted by the Secretary to a committee were considered and it was decided to refer the matter to the Registrar's Committee for consideration and any appropriate action.

Medical witnesses' fees

A committee reported to the council on the following facts: Members acting for the defendant in proceedings in a local Circuit Court asked a medical witness to attend to give evidence and accepted responsibility for his fees. The witness was also summoned to attend Court on subpoena by the plaintiff's solicitor who paid a fee of £15 15s. 0d., with the subpoena. He attended and gave evidence and the action was dismissed with costs against the plaintiff. He subsequently sent a bill for 40 guineas to the defendant's solicitor giving credit for £15 15s. 0d. received from the plaintiff's solicitor. The County Registrar allowed a fee of 25 guineas for the witness as sufficient and deducted 15 guineas certifying for the balance. The distance travelled by the witness was 36 miles and the case was finished before the luncheon interval. Member asked for the guidance of the Society as to whether he was personally liable for 25 guineas being the sum of 40 guineas claimed less the amount paid by the plaintiff's solicitor. The council adopted a report from the committee which stated that (*a*) member was personally liable on his undertaking to pay a reasonable fee and (*b*) the sum of 25 guineas fixed by the County Registrar was reasonable; (*c*) member was liable for 25 guineas with credit for 15 guineas already paid by the plaintiff's solicitor.

Change of solicitor

A member of a trade union retained the solicitor for the trade union to act for him in common law proceedings for damages. He subsequently decided to instruct other solicitors who asked for the papers. The first solicitor offered to hand them over on receipt of a cheque for £15 15s. 0d., costs to date and was unwilling to accept the personal undertaking by the second solicitor instructed. The latter enquired whether there was any professional objection to his proceeding with the case without providing for the first solicitor's fees. The client is without funds. The council on a report from a

committee stated that there was no objection to the acceptance by the second solicitor of instructions to proceed with the case on the material available.

Local authority, sale to tenant-purchaser by way of lease

On a report from a committee the council interpreted the resolution reported in the Society's GAZETTE in June 1955 authorising reduced fees as follows. Where the sale is effected by means of a lease reserving a fine and a rent. A solicitor who adopts the Society's resolution will charge the commission scale fee of 1½% on the amount of the fine (subject to the stated minimum of £10 0s. 0d.). If the purchaser is separately represented his solicitor will charge the same fee. Where the same solicitor acts for lessor and lessee he will charge the same fees in respect of each and if the lessee is bound to indemnify the local authority he will be responsible for all the costs payable by vendor and purchaser. *Rule 2 schedule 1, part 2, S.R.G.O. 1884 provides that where a solicitor is concerned for both vendor and purchaser or lessor and lessee he is to charge one set of charges only. Where the lessor's solicitor also acts for the lessee and charges the reduced scale of costs in the Society's resolution he is entitled to charge each party separately provided that all the appropriate work is carried out as specified in the general order and that the amount so charged will not exceed the total costs which would be chargeable under the full scale without any reduction if the solicitor had acted for the lessor only. The charges are inclusive but an addition of £2 2s. 0d. may be made where there is an instrument giving effect to collateral security or guarantee.

*Not applicable to outright sales by assignment.

FINDLATER AND OVEREND SCHOLARSHIPS

The Findlater scholarship has been awarded to Michael G. Cody, who served his apprenticeship with Mr. James Cody of Bagenalstown. The Overend scholarship on the results of the first law examinations was awarded to James L. O'Keeffe, who is serving under indentures with Mr. Michael R. Boland, of Skibbereen, Co. Cork.

EXAMINATION RESULTS

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

At the Preliminary Examination for intending apprentices to solicitors held on 6th and 7th days of September two candidates attended the examination and were postponed.

At examinations held on 16th day of September under the Solicitors Act 1954 the following candidates passed :—

First Examination in Irish : Albert D. Burke, William M. Cahir, Joseph T. A. Deane, Keith M. Dillon-Malone, John F. Glynn, John V. Glynn, Philip P. Murphy, Robert T. R. McDowell, Brian D. McLoughlin, Anna Mary O'Shea, David W. Prentice, John O'Sullivan Roche, Ian A. Scott, Norman T. J. Spendlove.

19 candidates attended, 14 passed.

Second Examination in Irish : Mary P. M. Berkery, Robert E. Blakeney, Michael G. Cody, Delphine A. C. Dudley, Edward R. A. Glover, Denis M. McDowell.

10 candidates attended, 6 passed.

At the Book-keeping examination for apprentices to solicitors held on 5th day of September the following candidates passed :—

Passed with merit : Malcolm B. Yaffe.

Passed : Michael J. P. Allen, Thomas Jackson (Jnr.), John Jay, Francis J. O'Mahony, James I. Sexton.

8 candidates attended, 6 passed.

At the first law examination for apprentices to solicitors held on the 5th and 6th days of September the following candidates passed :—

Peter B. Fagan, Patrick J. Farrell (B.C.L.), Bartholomew J. Flynn, Charles E. Gavin, Michael F. S. King, Oliver D. G. McArdle, Margaret J. O'Callaghan (B.A.), James A. O'Donohoe, Martin J. Ruane.

32 candidates attended, 9 passed.

At the second law examination for apprentices to solicitors held on 6th, 7th and 8th days of September the following passed the examination :—

Passed with merit : 1. Maurice R. Curran, B.C.L. ; 2. Michael J. Browne, B.A.

Passed : Oliver J. Conlan ; Ian R. Farrell, B.C.L. ; William S. Geraghty, B.A. ; Joseph Gilmartin ; Dermot F. Bouchier Hayes, B.C.L. ; Rory M. Hogan ; John O. Lee, B.A., B.C.L. ; Francis J. O'Mahony ; David A. Potterton ; Daire Walsh.

26 candidates attended, 12 passed.

At the third law examination for apprentices to solicitors held on the 8th, 9th and 10th days of September the following passed the examination :—

Passed with merit : 1. Dermot F. Bouchier Hayes, B.C.L. ; 2. Ian R. Farrell, B.C.L.

Passed : Mary Binchy, B.A. ; Robert A. Downes ; John O. Lee, B.A., B.C.L. ; Maire McHale, B.A. ; Michael Reynolds ; James I. Sexton.

16 candidates attended, 8 passed.

PRESS NOTICES BY SOLICITORS

It is permissible to have one insertion in each

recognised Irish daily and local newspaper circulating in the district in which the solicitor practices, of any of the following matters :—

(*a*) change of address or telephone number,

(*b*) commencement of practice,

(*c*) acquisition of another practice,

(*d*) dissolution of partnership,

(*e*) entry of a new partner into an existing firm,

provided that in any case the notice has not the form or appearance of an advertisement. A solicitor commencing independent practice after dissolution of a partnership of which he is a member, may publish notice thereof in accordance with the above conditions. The ruling is in substitution for all former rulings of the council.

CHARITIES BILL 1957

The text of the bill which has just been circulated, consolidates the law relating to the powers of the Commissioners of Charitable Donations and Bequests. Among the new provisions contained in the bill, section 29 amends section 1 of the Charitable Donations and Bequests (Amendments) Act 1955, by enabling the commissioners to frame schemes applying the cy-pres doctrine to certain charitable gifts where the value of the gift does not exceed £5,000. This is in substitution for the sum of £2,000 in the 1955 Act, applicable to personalty. By section 32 the commissioners, on the application of charity trustees, may direct the investment of charity funds *inter alia* in equity stock or shares of an industrial or a commercial company incorporated in the State, or in the purchase of freehold or leasehold land in the State. Section 44 makes certain provisions with regard to the taxation of solicitors' costs, which are not considered satisfactory and the council have made representations thereon. The Act may be amended on its passage through the Oireachtas and, when passed, will be of considerable importance to practitioners advising charities.

INCOME TAX ALLOWANCE TO SALARIED SOLICITORS

The Society are in correspondence with the Departments of Justice and Finance about difficulties which have been experienced by some salaried solicitors in obtaining an allowance for income tax purposes of the registration fee and the compensation fund contribution on taking out practising certificates. No difficulty arises in respect of schedule D assessment, but some members assessed under schedule E have found difficulty in getting the allowance. Representations have been made to the appropriate authorities.

THE NEW SCHEDULE II

The following general order under the Solicitors' Remuneration Act 1881 was laid before Dáil Èireann on 26th October, 1960, and before Seanad Èireann on 9th November, 1960 and is now in force :—

S.I. No. 165 of 1960
SOLICITORS' REMUNERATION GENERAL ORDER 1960

We, the body in that behalf authorised by the Solicitors' Remuneration Act, 1881, as adapted by the Solicitors' Remuneration Act, 1881 (Adaptation) Order, 1946 (S.R. and O. 1946 No. 208) made pursuant to the Adaptation of Enactments Act, 1922, do hereby, in pursuance and execution of the powers given to us by the said statute as so adapted and of all other powers enabling us in that behalf, make the annexed general order.

1. This order may be cited as the Solicitors' Remuneration General Order, 1960, and this order and the Solicitors' Remuneration General Order, 1884, the Solicitors' Remuneration General Order (No. 1), 1920, the Solicitors' Remuneration General Order, 1947, and the Solicitors' Remuneration General Order, 1951, shall be read together and may be cited as the Solicitors' Remuneration General Orders, 1884 to 1960. References in this general order to "the Order of 1884" mean the Solicitors' Remuneration General Order, 1884, as amended by the above-mentioned subsequent general orders, other than this order.

2. In paragraph 2 (*c*) and in paragraph 6 of the Order of 1884 for the words "according to the present system as altered by Schedule II hereto" there shall be substituted the words "in accordance with Schedule II hereto".

3. The following amendments shall be made in the rules applicable to Part I of Schedule I to the Order of 1884 :—

(*a*) In Rule 2 for the words "according to the present system, as altered by Schedule II hereto" there shall be substituted the words "in accordance with Schedule II hereto".

(*b*) In Rule 5 for the words "under the old system, as altered by Schedule II hereto" there shall be substituted the words "under Schedule II hereto".

(*c*) In Rule 10 for the words "according to the present system, as altered by Schedule II hereto" there shall be substituted the words "in accordance with Schedule II hereto".

(*d*) At the end there shall be added the following rule :—

"11. The remuneration according to the preceding scale shall apply to sales and purchases of leasehold property although there may have been no previous assignment or other dealing with the leasehold interest since the grant of the lease".

4. The following amendments shall be made in the rules applicable to Part II of Schedule I to the Order of 1884 :—

(*a*) In Rule 1 for the words "according to the present system as altered by Schedule II" there shall be substituted the words "in accordance with Schedule II hereto".

(*b*) In Rule 4 for the words "under the old system as altered by Schedule II" there shall be substituted the words "under Schedule II hereto".

(*c*) At the end there shall be added the following rule :—

"7. Except in cases to which Rule 5 applies where the solicitor for the vendor, lessor, purchaser or lessee negotiates the conveyance or lease he shall be entitled to charge for such negotiation in accordance with Schedule II hereto".

5. The following Schedule shall be substituted for Schedule II to the Order of 1884 :—

"SCHEDULE II.

		£	s.	d.
1.	Instructions : Such fee as may be fair and reasonable, having regard to all the circumstances of the case, including :— (*a*) the complexity, importance, difficulty, rarity or urgency of the questions raised; (*b*) where money or property is involved, its amount or value; (*c*) the importance of the matter to the client; (*d*) the skill, labour, and responsibility involved therein and any specialised knowledge given or applied on the part of the solicitor; (*e*) the number and importance of any documents perused; (*f*) the place where and the circumstances in which the business or any part thereof is transacted; and (*g*) the time reasonably expended thereon.			
2.	Drawing deeds, wills, powers of attorney, bonds, memoranda and articles of association, cases for counsel, regulations, bye-laws, agreements, notices, requisitions and other documents not specifically excluded—per folio ...	0	6	0
3.	Drawing abstracts of title, requisitions for searches and schedules of deeds or documents —per folio	0	2	6
4.	Engrossing—per folio	0	2	0
5.	Copying—per folio	0	1	0
6.	Carbons or duplicated copies—per folio ... (*Note :* Where a document is given out to be copied by any means (including printing) there may be charged in lieu of the foregoing charges for engrossing and copying, the actual cost of copying. The charge for a fair copy for the copier may, where necessary, be allowed.)	0	0	6
7.	Perusing (where not allowed for in the fee for instructions): Deeds, wills, powers of attorney, bonds, memoranda and articles of association, cases for counsel, regulations, bye-laws, requisitions, searches, agreements, and other documents not specifically excluded newly drawn and fair copied and submitted by or on behalf of another party for examination, approval or agreement on their contents —per folio	0	3	0
8.	Perusing accounts and rentals—per hour ...	1	0	0
9.	Perusing abstracts of title—per folio ... minimum ...	0	0	6
		0	7	6
10.	Comparing any deed or instrument—per folio	0	0	6
11.	Certifying any deed, instrument or writing ...	0	7	6
12.	Attendance in the solicitor's office—for the first half hour	1	0	0
13.	Attendance in the solicitor's office—for each subsequent half hour	0	15	0
14.	Attendance outside the solicitor's office, in Ireland—for each half hour	1	0	0
15.	Attendance outside Ireland—per day ...	18	18	0
16.	Attendance outside Ireland when engaged less than one day—per hour, provided that the total shall not exceed £18 18s. 0d.	3	0	0
	Note to items 14 to 16 inclusive :— (*a*) Time occupied in travelling (except outside Ireland between midnight and 8 a.m.) to be reckoned as if employed on business; (*b*) in addition to the charges prescribed the reasonable personal and travelling expenses are to be allowed.			
17.	Writing, signing and entering letter not exceeding one folio	0	7	6
	Exceeding one folio	0	10	0
18.	If several letters or circulars of the same import—for the first	0	6	0
	each subsequent letter or circular ...	0	2	0
19.	Carbon copy of letter to send	0	2	6
20.	Registration of deed	3	10	0
21.	Any other work not hereinbefore mentioned	Such fee as may be fair and reasonable having regard to all the circumstances of the case including analogous items in this scale.		

Notes :—

(1) A folio contains 72 words in accordance with the present practice of the Taxing Office.

(2) If, having regard to all the circumstances of the case, including the complexity of the matter, the novelty of the questions raised, the skill, labour and responsibility of the solicitor, the amount involved and the importance of the matter to the client, it is reasonable to do so, the foregoing charges for drawing, perusing, attendances and letters may be increased. The said charges may also be reduced by the Taxing Master for any special reason."

6. The remuneration of a solicitor in respect of all business described in paragraph 2 (*c*) of the Solicitors' Remuneration General Order, 1884, may at the option of a solicitor be by a gross sum in lieu of by detailed charges, provided that within twelve months after delivery of a charge by way of gross sum, or within one month after payment (whichever shall be the earlier date), the client may require particulars of the charges computed in the manner prescribed by the Order of 1884 as amended by this order and the solicitor shall thereupon comply with the requisition and any further bill so delivered shall be subject to taxation as if the provisions of this order with respect to the regulation of remuneration by gross sum has not been made. The Solicitors' Remuneration General Order (No. 2) 1920 is hereby revoked.

7. This order shall come into operation on the first day of December, 1960, and shall apply to all business transacted on or after that date.

DATED this 5th day of August, 1960.

Signed : CONCHUBHAR A. MAGUIDHIR,
Chief Justice.
CAHIR DAVITT,
President of the High Court.
CECIL LAVERY,
Senior Ordinary Judge of the Supreme Court.
JOHN J. NASH,
President of the Incorporated Law Society of Ireland.

EXPLANATORY NOTE.

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

This order—

(*a*) applies to solicitors' costs for non-contentious business,
(*b*) simplifies the system of charging by reducing the number of items,
(*c*) amends certain existing conditions in the furnishing of gross sum bills,
(*d*) authorises certain increases in the item charges,
(*e*) removes a doubt by expressly authorising solicitors to charge the commission scale fee on the occasion of the first assignment of a leasehold interest, and
(*f*) authorises a solicitor who negotiates a lease or letting to charge for such negotiations under the order.

Except as stated at (*e*) and (*f*) above, the order does not affect the present commission scale fee on sales, purchases or leases.

SOLICITORS' (AMENDMENT) ACT 1960

The Solicitors' (Amendment) Act 1960 came into operation on 22nd November 1960 and except for the provisions of Section 31 relating to Accountants' Certificates, is now in force. It amends the Solicitors' Act 1954, mainly in relation to the powers of the Disciplinary Committee arising from the decision of the Supreme Court in the case of O'Farrell and Gorman against the Society in February, 1958. In Section 3 the definition of misconduct includes a contravention of any provision of the Solicitors' Acts of 1954 and of 1960, or of any order or regulation made thereunder, or conduct tending to bring the solicitors' profession into disrepute. This includes the provisions of the Professional Practices Regulations 1955, which prohibit canvassing, unfair attraction of business and holding out as being willing to cut costs.

Part II (Sections 6 to 18) deals with disciplinary powers. The Disciplinary Committee shall consist of not more than ten and not less than seven members of the Council appointed by the President of the High Court, its quorum shall be three, and the Society shall defray its costs and expenses. The jurisdiction of the new Disciplinary Committee on applications against solicitors is substantially the same as that of the former Statutory Committee under the Solicitors' (Ireland) Act 1898, which was repealed by the Act of 1954. The orders which the High Court may make on a report from the Committee are contained in Section 8.

The Disciplinary Committee may decide to accede to an application by a solicitor to have his name removed from the roll, otherwise a report is forwarded to the High Court.

The High Court alone shall have power to order that the name of a solicitor who has been struck off the roll shall be restored to the roll. Any solicitor in respect of whom an order was made by the former Disciplinary Committee under Section 18 of the Solicitors' Act 1954 must appear before the High Court, if the Society applies by notice of motion; in such case, all previous affidavits and documentary evidence shall be admissible as evidence and the High Court, after reading these documents, and hearing any additional evidence tendered by the Society, or by the solicitor, shall treat the case as if it had been first brought under this Act.

An order of the High Court under this jurisdiction will be final, but an appeal to the Supreme Court lies by leave of the High Court on a question of law. All matters and documents which were before the former or present Disciplinary Committee, and the reports brought before the High Court are absolutely privileged. As regards the enforcement of the attendance of witnesses, and the compelling of the production of documents, the Disciplinary Committee shall have the same powers as the High Court, and may bring before the High Court any offender to be punished for contempt of Court. A copy of every order made by the High Court under the Act, or of an order by the Disciplinary Committee removing a solicitor from the roll at his own request shall be filed with the Registrar. Notice of such orders shall be published in "Iris Oifigiuil". Proceedings before the Disciplinary Committee shall be a legal proceeding within the Bankers' Books Evidence Acts 1879 and 1959.

Part III (Sections 19 to 24) deals with the control of the solicitor's property and with the Compensation Fund. Under the first heading the existing provisions of the Solicitors' Act 1954 with regard to taking over documents and applications to freeze a bank account are re-enacted with certain minor amendments. These provisions are for the protection of the Compensation Fund. The Society shall continue to maintain and administer the Compensation Fund in accordance with the provisions of the Third Schedule, and the principles upon which the Society will make grants for losses suffered by clients are fully set out. Before a practising certificate is issued to any solicitor in respect of the practice year 1961–62, he shall pay to the Society an annual contribution of twenty pounds, which is reduced to five pounds in the case of solicitors who have been admitted for less than three years. The Society shall have regard to the principle of maintaining the total amount standing to the credit of the Compensation Fund at £25,000 after providing for all liabilities, and in reducing the amount of the annual contribution for any subsequent practice year, are to have regard to this principle.

Section 21 (5) (*c*) gives an important discretion to the Society in considering an application for compensation. The application may be refused, or

granted only to a limited extent, if the Society are of opinion that the claimant has by his conduct actively assisted in the commission of misconduct by the solicitor. Misconduct includes such matters as canvassing, unfair attraction of business and holding oneself out as being willing to undertake professional business at less than the professional charges.

Part IV (Sections 25 to 33) deals with miscellaneous matters. The former statutory jurisdiction of the Chief Justice in regard to solicitors is now vested in the President of the High Court. In addition to the grounds set out in Section 49 of the Solicitors' Act 1954, for refusing to issue practising certificates, the Registrar may also refuse to do so if the solicitor has failed to comply with an order of the High Court or with regulations made under Sections 66 or 71 of the Solicitors' Act 1954.

Under Section 31 every solicitor to whom the provisions of the Solicitors' Accounts Regulations apply, shall once in each practice year, deliver to the Registrar an accountant's certificate duly signed by him, showing that, in compliance with the regulations, the accountant has examined the books, accounts and documents of the solicitor or his firm for a specified accounting period, and that he is or is not satisfied that the solicitor has complied with the Solicitors' Accounts Regulations, and, if not satisfied, the specific matters upon which he is not satisfied. The Society shall, with the concurrence of the President of the High Court, make Accountants' Certificate Regulations setting out these matters in detail. The Solicitor shall not be entitled to obtain a practising certificate until he has complied with these regulations. Section 31 is to come into operation on such day as the Minister for Justice, by order made on the request of the Society, appoints.

Section 32 abolishes the rule in Clayton's Case, in the case of a solicitor who becomes a bankrupt or dies insolvent. The result is that all proved claims on the client bank account will be paid *pro rata*.

The Council may appoint three additional extraordinary members from the Council of the Dublin Solicitors' Bar Association.

DUBLIN SOLICITORS' BAR ASSOCIATION

A Meeting of the Council was held on Wednesday, 31st August, 1960.

The President reported on enquiries he had made with the Dublin Corporation, directed towards expediting the sealing of documents; and also on the progress in the preparation of the Association's form of Auction Particulars and Conditions of Sale.

The Honorary Secretary reported on proposals for the revision of the Association's rules.

The fixing of the next meeting was left to the Council, to be elected in October.

SOCIAL WELFARE (MISCELLANEOUS PROVISIONS) ACT 1960

Distribution of estates of deceased pensioners

By Section 19 of the Act the personal representative of a person dying after the commencement of the Act, who was at any time in receipt of a pension, shall, before distributing the assets of the deceased, inform the Minister for Social Welfare by notice in writing not less than three months before the distribution commences, of his intention to distribute the assets. A personal representative who neglects to give notice and who distributes the assets without payment of any monies due to the Minister, may be held personally liable to repay to the Minister, the amount of any valid claim by the latter against the estate of the deceased.

The Act came into operation on 1st August, 1960. The Society has been in communication with the Department of Social Welfare (Departmental ref: A.C. 2146/6) on the subject of possible delays in obtaining clearance from the Department which might result in delaying distribution of assets. By letter dated September 26th, from the Department, it is stated that in the normal course a personal representative will obtain a certificate from the Department stating the amount due, or, alternatively stating that there was no claim against the estate well within the statutory period and will then be in a position to distribute the estate without incurring any risk under Section 19 (2) after payment of the amount (if any) due to the Minister.

BOOK REVIEW

PRACTICE AND PROCEDURE IN THE DISTRICT COURT IN PROCEEDINGS OTHER THAN CIVIL PROCEEDING, *by* James F. Crotty, LL.B.

8vo., pp. xxxv, 373. *Cork University Press*, 1960, £3

Anyone who publishes a textbook on Irish law deserves high praise, because the limited market for Irish law books will hardly warrant the effort and expenditure in writing it. District Justice Crotty deserves superlative praise for he has placed his unrivalled knowledge of District Court practice in summary and criminal trials at the practitioner's disposal. The work is most comprehensive, and there is no Act, statutory instrument, District Court rule, or judicial decision bearing on the details of District Court procedure which has been overlooked. The chapters contain numerous sub-headings in heavy type by which the practitioner is led easily to the reference he wishes to look up. There is also a complete index of 23 pages, as well as a table of statutes, and an index to cases. Mr. Justice Ó Dálaigh in his Foreword, has said that the book takes its place worthily beside the first volume of O'Connor's "The Irish Justice of the Peace" and District

Court practitioners who secure a copy will rest content in the knowledge that this essential volume will considerably lighten their burden. Every solicitor and barrister should have this work in his library, and, if he practises in the District Court, on his desk.

District Justice Crotty has long experience of the District Court Bench and, for many a day to come, his colleagues and those who practice before them, will thank him for providing in such easily assimilable form the fruits of his experience and the results of very patient research. *C.G.D.*

ADMISSIONS AS SOLICITORS

1st August, 1959 to 31st July, 1960.

Correction to August/September GAZETTE.

Name	*Service with*
FELTON, DAVID R., 34 Belgrave Road, Monkstown, Co. Dublin.	FELTON, ROBERT E., 18 Eustace Street, Dublin.

PART-TIME LEGAL AGENCIES

The council do not approve of the employment by solicitors of part-time legal agencies except in the recognised field of searches and costs drawing. No other work should be entrusted to a person who is not in the wholetime employment of the solicitor.

RECENT DECIDED CASES

Libel—pleadings—defence—striking out parts. (*R.S.C. Ord.* 19, *r.* 15.)

A defendant in a libel action may, in mitigation of damages, give evidence that the plaintiff bears a bad character in the sense that he has a bad reputation. Evidence must be limited to general reputation and cannot be extended to specific acts. In an action for libel in a film the defendants pleaded justification and in the alternative that in mitigation of damages they would give evidence as to the character of the plaintiff. As particulars under the latter it was alleged that the pictures and words complained of were published as part of the film wherein the plaintiff was depicted as having been guilty of conduct therein set out, " the truth of which the plaintiff, in his amended statement of claim, does not deny ". The guilty conduct was then particularised under the description of various war crimes. Held, that, the defence should be amended so as to omit reference to specific acts of the plaintiff: Speidel *v.* Plato Films; Same *v.* Unity Theatre Society (1960) 3 W.L.R. 391; (1960) 2 All E.R. 521, C.A.

Costs—Bullock order—unsuccessful defendant bankrupt.

Where there are two defendants, one of whom is successful and the other unsuccessful and bankrupt, the judge can, at his discretion, take either of two courses: he can order the plaintiff to pay the costs of both defendants and allow him to recover all those costs from the unsuccessful defendant, so throwing the burden of the bankrupt on the plaintiff, *or* he can order the unsuccessful defendant to pay the costs of both his co-defendant and the plaintiff direct, so throwing the burden of the bankruptcy on the successful defendant.

A plaintiff obtained judgment against the third of three defendants, but the first two defendants succeeded in their defences. Fifteen months before the trial all but £5 10s. 0d. of the damages ultimately awarded had been paid into court and the plaintiff knew who the third defendant was, but took no steps to discover his financial standing. He was an undischarged bankrupt. The judge refused to order the third defendant to pay the first two defendants' costs, but ordered the plaintiff to pay them, with recourse against the third defendant. On appeal to the Court of Appeal, Sellers and Willmer L.JJ. Harman L.J. dissenting, held that the judge was exercising a discretion and so his order should not be disturbed but in any case in the circumstances the burden should fall on the plaintiff, not on the first two defendants: Mayer *v.* Harte (1960) 1 W.L.R. 770; (1960) 2 All E.R. 840, C.A.

Malicious prosecution and false imprisonment—malicious prosecution—unsuccessful prosecution.

In *Berry* v. *British Transport Commission* (July 30, 1960) Diplock J. held, that an unsuccessful prosecution for unlawfully, wilfully and without reasonable and sufficient cause, pulling the communication cord on a train, contrary to section 22 of the Regulation of Railways Act 1868, did not entitle the person prosecuted to recover damages for malicious prosecution—(1960) 3 W.L.R. 666.

Practice—appeal—interventions by judge—submission to judgment—application for new trial.

In *Badcock* v. *Middlesex County Council* (July 28, 1960) on December 3, 1959, on the eighth day of the trial of an action before Roxburgh J., in which the plaintiffs claimed damages for nuisance and injunctions against the Middlesex County Council, the Central Electricity Generating Board and the London County Council, in respect of alleged corrosion by sewage effluent to the plaintiffs' Thames barges, the plaintiffs through their counsel, submitted to judgment for the defendants with costs. The plaintiffs thereupon appealed, asking that the judgment of Roxburgh J. be reversed or set aside, and that a new trial of the action be ordered; that if and in so far as the decisions or rulings of the judge during the opening of the plaintiffs' case were orders or

judgments of the court, they should be reversed and set aside. The grounds of the appeal were that the judge had misdirected himself, decided wrongly in law, and wrongly exercised his discretion in holding, *inter alia*, that the plaintiffs' statement of claim was demurrable and disclosed no cause of action. The plaintiffs, in interlocutory proceedings before the Court of Appeal, were given leave to amend the notice of appeal by adding a supplemental ground, the effect of which, according to counsel, was to allege that "there was no prospect of a fair trial". The Court of Appeal (Lord Evershed M.R., Willmer and Upjohn L.JJ.) dismissing the appeal held, that although the judge's interventions went beyond what was either necessary or desirable, the transcript showed that the judge, though expressing strong views about the need for amendment, made it clear that he invited and expected counsel for the plaintiffs to address arguments to him if and so far as he did not accept his views. Further, and more important, an ample margin of time was given to the plaintiffs and their advisers to consider what arguments should be submitted and what amendments put forward. In the circumstances the plaintiffs had not made good their case that, on the morning of December 3, they were justified in their apprehension that any further prosecution of their claim would not be fairly, properly, or satisfactorily heard.

(*The Times*, July 29, 1960.)

Practice—striking out proceedings—vexatious litigant—injunction.

In *Att.-Gen.* v. *Vernazza* (July 21, 1960) the Divisional Court, acting under s. 51 (1) of the Judicature Act 1929, had declared V. to be a vexatious litigant and directed that he should not, without leave, institute proceedings. After the Divisional Court's order the Supreme Court of Judicature (Amendment) Act 1959, gave power to the Court to inhibit in the same manner, proceedings already instituted. The House of Lords (Viscount Simonds, Lords Reid, Keith, Denning and Morris), allowing the Attorney-General's appeal against the refusal of the Court of Appeal (Omerod, Willmer and Harman L.JJ. (1959) C.L.Y. 2669) to vary the Divisional Court's order by ordering V. not to continue without leave, proceedings already instituted, held, (1) that the Divisional Court could now make such an order; (2) that the Court of Appeal could also do so.—(1960) 3 All E.R. 97; (1960) 3 W.L.R. 466.

Trade unions—election of officer—publication of results of election.

In *Chapple* v. *Electrical Trades Union* (July 27, 1960) Russell J. granted interim injunctions on a motion by the plaintiff against the defendant union, its general president, general secretary and assistant general secretary, restraining the above-named defendants until trial or further order from continuing to hold the election in process of being held, for the office of assistant general secretary of the union, or from publishing the purported results of the election or the purported number of votes for each candidate.

(*The Times*, July 28, 1960.)

It is understood that an appeal to the Supreme Court is pending in the case of Sheppard *v.* Callaghan. (See GAZETTE, Vol. 54, page 40, August-September, 1960.)

OBITUARY

MR. LAURENCE WALSH, solicitor, died on 6th September, 1960, at his residence, Coolscart, Hospital, Co. Limerick.

Mr. Walsh served his apprenticeship with Mr. Thomas E. F. Bennett, Kilmallock, Co. Limerick, was admitted in Trinity Sittings, 1942, and practised at Hospital, Co. Limerick.

MR. WILLIAM J. MURPHY, solicitor, died on 13th September, 1960.

Mr. Murphy served his apprenticeship with Mr. James O'Brien, Nenagh, Co. Tipperary, was admitted in Hilary Sittings, 1938, and practised at Roscrea, Co. Tipperary.

MR. EDMUND W. MOONEY, solicitor, died on 23rd October, 1960.

Mr. Mooney was admitted in Hilary Sittings, 1920, and practised under the style of Messrs. William Mooney & Son at 15 Westmoreland Street, Dublin.

MR. DERMOT J. HANLY, B.L., died on 10th November, 1960, at his residence, "Glenholme," Lr. Churchtown Road, Dublin.

Mr. Hanly served his apprenticeship with Mr. Charles S. Doyle, 34 Kildare Street, Dublin, was admitted in Trinity Sittings, 1934, and practised at 38 Parliament Street, Dublin, up to his being called to the Bar in 1945.

MR. LUGHAIGH P. GLEESON, solicitor, died on 14th November, 1960, at Barrington's Hospital, Limerick.

Mr. Gleeson served his apprenticeship with the late Mr. Francis J. Little, 48 Upper Sackville Street, Dublin, was admitted in Trinity Sittings, 1916, and practised under the style of Messrs. Michael Gleeson & Son at Nenagh, Co. Tipperary.

THE REGISTRY

Register A

WANTED, Solicitor or experienced Law Clerk for Conveyancing. Apply, with particulars, to Guest, Lane, Williams & Co., Solicitors, 26 South Mall, Cork.

RECENTLY qualified Solicitor with some experience, required as assistant. Graduate preferred. Box No. A.187.

Register B

EXPERIENCED Solicitor wishes to purchase practice or partnership. Replies in confidence to Box No. B.254.

LADY Solicitor seeks assistantship, Dublin. Six years' experience in Conveyancing. Box No. B.255.

SOLICITOR, 17 years' private country experience, seeks partnership, or assistantship with partnership prospects. City preferred. Replies in confidence to Box No. B.256.

EXPERIENCED young Solicitor (married) desires to hear of position to lead to a partnership. Box No. B.257.

Register C

FOR SALE—limited number of copies of "Precedent Bills and Schedules and Scales of Costs under Land Registration (Solicitors' Costs) Rules 1954 and Circuit Court Rules 1954". Selling at 13/- (post free) to clear. J. McMahon, Solicitor, Ardee, Co. Louth.

BRIDGET KAVANAGH, deceased, late of 7 Pleasants Street, South Circular Road, Dublin. Died on 13th October, 1960. Will any person knowing the whereabouts of a Will made by the above deceased, communicate with Dominic M. Dowling Solicitor, 45 Lower Baggot Street, Dublin.

WANTED, *Law Times* 1946 *to* 1960, bound. Box No. C.162.

WILL SOLICITOR having Will of ISABELLA NOLAN, 6 GULISTAN TERRACE, RATHMINES, possibly executed within the last three years, please communicate with Box No. C.163.

REGISTRATION OF TITLE ACTS 1891 AND 1942

Issue of Duplicate Land Certificate

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

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

Dated the 29th day of November, 1960.

D. L. McALLISTER,
Registrar of Titles

Central Office,
Land Registry,
Chancery Street,
DUBLIN.

SCHEDULE.

1. Registered Owner Thomas Joyce. Folio number 5223, County Wexford. Lands of Ballask in the Barony of Bargy, containing 32a. 2r. 2p.

2. Registered Owner Paul Fitzgerald. Folio number 3271, County Kilkenny. Lands of Knockbrack, in the Barony of Ida, containing 260a. 3r. 26p.

3. Registered Owner Joseph Quinn. Folio number 2987, County Westmeath. Lands of Gneevebrack, in the Barony of Moycashel, containing 18a. 3r. 14p.

4. Registered Owner James Egan. Folio number 5013 (revised), County Cork. Lands of Farthingville East, in the Barony of Orrery and Kilmore, containing 13a. 2r. 31p.

5. Registered Owner Mark Connolly. Folio number 15714, County Galway. Lands of Rindifin, in the Barony of Kiltartan, containing 12a. 0r. 30p.

6. Registered Owner John Joseph Reynolds. Folio number 434 (revised), County Leitrim. Lands of Cloonturk, Knockmacrory and Carnagillagh, all situate in the Barony of Mohill, containing 8a. 1r. 4p.; 10a. 0r. 16p.; 0a. 2r. 8p., respectively.

7. Registered Owner Edward Power. Folios number 7748 and 7780, County Wexford. Lands of Templetown, containing 11a. 3r. 17p. and 22a. 0r. 18p., situate in the Barony of Shelbourne, being the lands comprised in Folios 7780 and 7748 respectively.

8. Registered Owner Donal K. Mangan. Folio number 1015, County Limerick. Lands of Parkmore, containing 29a. 3r. 19p. and 13a. 1r. 36p., and lands of Shanagolden, containing 1r. 22¾p., all situate in the Barony of Shanid.

9. Registered Owner James Lacy. Folio number 9300 and 13475 (consolidated), County Kings. Lands of Ballyheashill in the Barony of Warrenstown, containing 186a. 2r. 13p.

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No. 6

DECEMBER,
1960

THE GAZETTE

of the

INCORPORATED LAW SOCIETY OF IRELAND

President
RALPH J. WALKER

Vice-Presidents
GEORGE G. OVEREND
JOHN MAHER

Secretary
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

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PRACTISING CERTIFICATES 1961–62

1. Members are reminded that practising certificates for the year to end 5th January, 1962 should be taken out on or after 6th January, 1961 and not later than 5th February, 1961 in order to take effect as a qualification to practise from January 6th.

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

3. The amount of the registration fee and Compensation Fund contribution is as follows:

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

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

THE PRESIDENT AND VICE-PRESIDENTS

Mr. Ralph J. Walker of Dublin has been elected President of the Society for the coming year. Mr. George G. Overend and Mr. John Maher, both of Dublin, have been elected Vice Presidents.

ORDINARY GENERAL MEETING

An ordinary general meeting of the Society was held in the Library, Solicitors' Buildings, Four Courts, Dublin on Thursday, 24th November, 1960. The President, Mr. John J. Nash, took the chair.

The minutes of the ordinary general meeting held 26th May, 1960, were read, confirmed and signed.

On the motion of the President, seconded by G. G. Overend, Messrs. Kevans and Sons were reappointed as the Society's auditors.

The Secretary read the report of the scrutineers of the ballot for the election of the Council and provincial delegates for the year 1960–61. The report stated that for the office of provincial delegate the following had been returned unopposed; Ulster: Derrick M. Martin; Munster: Edward Treacy; Leinster: Reginald J. Nolan; Connaught: Francis Armstrong.

The foregoing were declared duly elected.

The result of the ballot for the 31 ordinary members of the Council was as follows:

John R. Halpin, 482; John P. Carrigan, 478; Augustus Cullen, 467; Arthur Cox, 466; John J. Nash, 461; Niall S. Gaffney, 455; Thomas A. O'Reilly, 445; Desmond J. Collins, 435; Peter E. O'Connell, 429; Eunan McCarron, 428; Francis J. Lanigan, 420; William J. Comerford, 410; James J. O'Connor, 410; Patrick O'Donnell, 393; Robert McD. Taylor, 388; James W. O'Donovan, 386; Terence de Vere White, 386; George A. Nolan, 384; John Maher, 383; George G. Overend, 381; Ralph J. Walker, 377; John J. Sheil, 376; Patrick Noonan, 376; Dinnen B. Gilmore, 373; Brendan A. McGrath, 372; John Kelly, 369; William A. Tormey, 363; Thomas V. O'Connor, 359; James R. C. Green, 321; Peter D. M. Prentice, 301; Brendan T. Walsh, 265.

The President declared the foregoing members of the Society duly elected to the Council in accordance with the scrutineers' report.

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

James B. MacGarry, 232; Francis A. Gibney, 184; Elizabeth Wright, 152; Raymond V. H. Downey, 135; Max W. Abrahamson, 107; Martin E. Marren, 106.

The President moving the adoption of the report of the Council said,

Ladies and Gentlemen,

Before dealing with the business of our Society I regret to say that since our last meeting death has taken many of our former colleagues—Michael E. Knight who was president in the year 1935–36; vice president in the year 1927–28 and a member of the Council from 1925 to 1945; John J. Dundon, who was a member of the Council from 1936 to 1946 and a provincial delegate from 1948 to 1957; Arthur Blood-Smyth, who was a provincial delegate from 1934 to 1948; District Justice Coffey; James Coghlan; William Franklin; Luighaidh P. Gleeson; Dermot J. Hanly; Edmund W. Mooney; William J. Murphy; Miss Adelaide Quin; Samuel Roche and Laurence Walsh. Our profession is the poorer for their loss. The true function of our profession is to further the rule of law and to bring peace, order and harmony into the lives of others. Many of those whose names I have mentioned have a noble record in that regard. Their story is not graven only on stone over their clay. It abides everywhere without visible symbol woven into the warp and woof of other men's lives. To their relatives I express the sympathy of myself, my Council and our Society. Ar dheis Dé go raibh a n-anamacha.

Ladies and Gentlemen: It is important in a free society that there should be an independent body of private legal practitioners with autonomy in their profession. History, and especially modern history, shows that whenever a tyrannical power wished to impose its arbitrary will on a community, it began by subjugating the legal profession. This was done in Russia in March, 1918; in Czechoslovakia by an Act on the 20th December, 1951; in Hungary since September, 1958 and in Poland by a Statute of the 27th June, 1950. A similar state of affairs exists in East Germany. In all these countries, the control of the legal profession was taken over by the Ministry of Justice and the private practice of law was for all practical purposes eliminated. The lawyer's work in these countries is now done through Legal Aid Offices, which are legal entities under the control of the Ministry of Justice. The general pattern is that as a general rule a person may select the lawyer of his choice. The fee is not paid to the lawyer but to the Legal Aid Office. The lawyer must not accept from a client any remuneration of any kind. The salaries of lawyers are fixed according to Schedules of the Ministry of Justice. Not only is the lawyer not allowed to engage in private practice, but he is not even entitled to choose the Legal Aid Office in which he would like to carry out his profession. The Legal Aid Centre establishes the Legal Aid Offices and determines whether and to which Legal Aid Office a lawyer is admitted. By the direct control which the Minister

for Justice thus exercises over the legal profession and the economic pressure which he can bring to bear on its individual members he is able to stifle the free expression of their arguments and objections to any iniquity. It is, therefore, important in a free society that nothing should be done which would unreasonably interfere with the full development of an independent, autonomous legal profession. It may seem attractive at first glance that some of the work which normally falls to the private practitioner should be done by whole-time lawyers in civil service departments or corporations. The attractions are chimerical. By undermining the economic stability of the profession and the relationship which should exist between the public and their private legal consultants the diversion of work from the private practitioner to the whole-time legal employee may cause irreparable damage.

The ethical standards of our profession are such as to give one justifiable cause for pride. There is, however, a very small minority which, for some years past, has averaged each year approximately one per cent. of practising solicitors who have betrayed public confidence and sullied the good name of our profession. There is a further minority which is much more substantial who unethically endeavour to attract business from their colleagues to themselves by canvassing and price cutting. A man who is unethical in one direction is capable of being unethical in another. Your Council have been applying their attention to the best methods of preventing the exploitation of the public by dishonest solicitors and the exploitation of the profession by dishonourable solicitors. The Solicitors' (Amendment) Act, 1960, which has just now been passed into law, gives your Council control over practising members of the profession which is consistent with the Constitution of our State. In this Act, your Council, on your behalf and in the name of the profession, have made a very generous gesture towards the general public. They accepted legislation providing at the expense of the profession a compensation fund. According to the statistics and figures in our possession, this fund should be completely adequate to protect the public against financial loss through the dishonesty of that small minority who have proved themselves unworthy of our profession. For the future the public may, with confidence, be reasonably assured that if they place their legal affairs in the hand of any solicitor, they have adequate financial protection. There are a few very important exceptions where the Society have discretion to refuse compensation. Members of the public who sustain financial loss through their own negligence, as for example clients who place their legal affairs in the hands of solicitors whom they already know to be of doubtful integrity will not necessarily be compensated. Members of the public who give their business to any particular solicitor because they have been canvassed by him directly or indirectly, or because the attraction of undercutting in legal charges has been held out to them may for the future have to bear their own losses. If a member of the public gives his business to a solicitor in those circumstances, he does so at his own risk. If that solicitor commits a fraud involving financial loss to the client, it is optional to your Council to refuse to compensate for that loss. Those exceptions are very reasonable. It would be most inequitable to suggest that honourable members of the profession should have to indemnify members of the public who, by their conduct, have actively assisted solicitors in the unprofessional and degrading conduct of unfairly attracting business by canvassing or by under-cutting in legal fees.

This Act will mean a considerable advance in good relations between our profession and the general public. It enables the public to have complete confidence in the profession. It also gives the Society the right to lay down rules of professional conduct for the profession and to insist that its standards will be maintained. In the negotiation of its terms with the Government, our profession are indebted to Mr. Haughey, the Parliamentary Secretary for Justice, not only for his invariable courtesy but also for his practical assistance.

Another very important matter which has for some time past been engaging the attention of your Council is the legal education of our students. Your Council are not satisfied that the present system is satisfactory. It may not be generally recognized that down to almost 100 years ago there was no organized training and education either for the Bar or for solicitors. For a call to the Bar, the sole *de jure* qualifications consisted of the ability to eat and drink and to sign one's name. *De facto* this involved, according to a description of Joseph Napier, Q.C. in the House of Commons Debate on the 1st March, 1854 " going into a Pleader's Office for two or three year to learn to tell a plain story in very unintelligible language ". For a solicitor, the only training was practical apprenticeship—in his case without the gastronomical consolations. Such instruction as the student obtained, therefore, depended entirely on his own initiative and that of his principal. There was no test of educational proficiency, either general or legal, and if the student sought guidance from lectures or classes, he would be unlikely to find it. The system of lectures and examinations during apprenticeship has evolved since then. It is hidebound by statute and has the inherent defect of inflexibility which appertains to statutory provision.

It cannot be altered by the profession to meet the changing needs of the public. The Law Society should have greater control over the system of education and apprenticeship of its students and should be entitled to prescribe the appropriate requirements subject to the approval of, say, the Chief Justice or of the President of the High Court.

Law, being a profession, is not merely a source of livelihood. It carries with it a social responsibility, a duty to use the knowledge and training with which the lawyer is equipped to further the public good. As a member of a profession practising a learned art, a solicitor should have, not only a general culture, but a culture in his own avocation, which today calls for a learning beyond the practical technicalities of the system he is to practise. Our existing system of legal education does not instruct our students in the humanities and the social sciences, nor does it train them in the arts of investigation, reasoning and expression. Some of the social sciences, like economics and political science, deal with particular phases of human relationships. Law deals with all of them. Law, specially in recent years, has become vitally related to the social sciences. Statutes to regulate social services, to alleviate unemployment, to provide decent housing for the lower income groups—all deal with sociological problems. Taxes and tariffs, wage and price controls, profoundly affect our national economy. Law is, therefore, a growing and not a static thing. The education to meet that development must also be a growing and not a static thing limited by statute. The old easement of light and air for the parlour window may gradually become an easement for unobstructed passage between one's television aerial and the transmitting tower. In view of the increasing complexities of our society, a legal training which confines itself to teaching such technicalities as the rule in Shelley's case, what constitutes offer and acceptance in the formation of a contract and the legal requisites of a valid will has abdicated its vital function, which is to equip its students properly for the important rôle they must play in the interests of their future clients. A proper legal training should give the students some knowledge and understanding of the interaction of all phases of human activity. It should impart to them an acute awareness of the continuous flow of the stream of history by showing how in the past the law has grown and expanded to meet new conditions and new needs, and how in the future it should develop in order to continue in this evolutionary process. A sound legal education should make and maintain a balance between training learned men as well as men learned in their art on the one hand; and, on the other hand, men who are equal to the practical task of wise and effective advice to clients and of aiding the courts in the administration of justice.

An adequate background of general legal theory cannot be provided in the relatively short time devoted to lectures at present, especially when instruction is at odd times taken off from practical work in an office. The minimum period needed for such a background is four years uninterrupted, intensive study of legal theory. After that, when the theory has been mastered and examinations passed in the theory, there should be a practical apprenticeship of whole-time employment for two to three years in a solicitor's office. Then, all entrants should be required to pass a professional qualifying examination in the running of a solicitor's office.

In my address to you last May I referred to the fact that much of our legislation is antiquated and out of harmony with the present day requirements, and that many of our statutory orders which provide for the practical application of our law and for methods and procedure are just as outmoded, and are an incubus militating against the efficient and expeditious discharge of public work. A memorandum suggesting improvements in this outmoded and archiac procedure has been submitted by my Council to the Department of Justice. The Council noted with pleasure that the Minister for Justice, in answer to a Parliamentary question last June, stated that the task of Law Reform had been specifically assigned to the Parliamentary Secretary who had been recently appointed. Furthermore, in the Dáil Debates on the 26th October last on the Second Reading of the Solicitors' (Amendment) Bill, the Parliamentary Secretary promised that his department will do all they reasonably can to help the Society's efforts in the elimination of outmoded procedures which involve a waste of time, energy and money on the part of our profession and of the public.

Law Reform is not a subject which commands popular appeal and the Government are to be congratulated on having the initiative to tackle it. If our outmoded laws were permitted to continue, such grave hardships would be caused to progressively increasing section of the community that there might be disastrous results. Law Reform is a difficult and onerous responsibility. It will involve deep research, and detailed study of Comparative Law, if it is not to be in the nature of a read-made suit which is made to fit anyone but properly fits no one. The current feeling in my profession is one of complete good will towards the Parliamentary Secretary, who has the courage to tackle it, combined with certain doubts as to whether he will have adequate staff to help him. In England there is a

special Lord Chancellor's Department who can devote their time exclusively to this work. In this country it is only in a spirit of co-operation between the Government, the professors of law, the judges and practising lawyers, that there can be hope of success in efforts to restate and modernise our laws. Much depends upon the spirit with which the work is undertaken and the point of view that is consistently maintained throughout the task. It will, however, be well worth the effort to develop our separate nationality and evolve our own ideas of social order and social justice. The Government can count on the whole-hearted co-operation of our profession in their endeavours to adapt our complicated system of law to the needs of the times.

On a personal note of diffidence I feel under an obligation to our profession to refer to one matter which seems to give justifiable cause for complaint to solicitors and has been the subject matter of publicity in the press. It is accepted in this country that all citizens have equal rights dependant only on their capacity. Political patronage is almost non-existent and appointments within the gift of the Government are made exclusively on the basis of merit and suitability. The main appointments within the gift of the Government which are open to our branch of the legal profession are State Solicitor, County Registrar and District Justice. There is an uneasy feeling among solicitors generally that under all Governments since the formation of our State it is practically futile to apply for any of these appointments unless the applicant be an active political supporter of the party for the time being in power. There seems to be no justifiable reason for adopting a different principle of selection between, say, a county surveyor and a county registrar, or between the solicitor for a county council and the state solicitor for a county. There are many solicitors outstanding in their ability who have a keen sense of their social and professional obligations, but who take no active interest in party politics. It does seem inequitable if such solicitors cannot compete on equal terms, and are automatically overlooked for preferment because they do not take an active interest in politics.

My colleagues and friends: The end of my year of office is now approaching. I can look back upon it with happy memories and deep feelings of sincere gratitude to the profession for the honour which they paid me and the confidence which they reposed in me, and to the Council for their co-operation and loyal assistance. If my year of Office has—as I sincerely hope—been fruitful of advances in our profession, much of the credit goes to our worthy secretary for his inspiration and guidance and to members of the various committees for their herculean efforts. The volume of work done by the committees throughout the year is a tribute not only to their diligence but to their patience, having regard to the many demands I made on their time. It is evidence of their deep concern not only for our common heritage of law but also for the community in which we live.

The motion for the adoption of the report was seconded by Mr. Walker. Messrs. T. Desmond McLoughlin and Desmond Moran spoke to the motion. The President replied to points raised on the report.

The motion for the adoption of the report was put to the meeting and carried unanimously.

Mr. John Carrigan proposed and Mr. Robert McD. Taylor seconded the adoption of the following motions on the agenda for the amendment of the bye-laws:

(1) That bye-law 3 be amended by the substitution of the words "at least one week before the date of the election" for "on or before 20th day of November".

(2) That the following bye-law be substituted for bye-law 4:—

4. The Secretary shall on or before July 1st in each year send a notice to each member whose subscription is in arrear informing him of that fact and every member whose subscription shall not be paid before the expiration of the time appointed for receipt of nominations under bye-law 29A shall thereupon cease to be a member.

(3) That the following bye-law be substituted for bye-law 13:—

13. Two ordinary general meetings shall be held each year on such dates as the Society in general meeting or the Council may from time to time appoint. At any ordinary general meeting any special business connected with the Society may be dealt with, provided that fourteen days' previous notice thereof in writing shall have been given to the Secretary and posted by him in the Society's premises for one week at least previous to the meeting. Notice of all such special business shall be sent by the Secretary to each member at least three days before the general meeting at which it is to be discussed.

(4) That the form of the ballot paper in schedules C and D be altered by omitting the words "Members who have not paid their annual subscriptions, which become due on 1st May in each year, are not entitled to vote, and their Ballot papers will be rejected unless the subscriptions be first paid", in direction 4 in schedule C and direction 5 in Schedule D.

By leave of the meeting Mr. Carrigan proposed and Mr. Walker seconded an amendment to the motion that all necessary consequential amendments to other bye-laws to bring them into conformity with the main motion, if passed, should be made including the following :

Bye-Law 28. By the substitution of " previous general meetings " for " May General Meeting ".

Bye-Law 29*A*. By the deletion of the words " (in either October or November) " in line 2 and " (in the month of November) " in line 4.

Bye-Law 37. By the substitution of the words " last ordinary general meeting " for " November general meeting" with the consequential alteration of the headings of the ballot papers in Schedules C and D.

The motion as so amended was put to the meeting and carried unanimously.

The 23rd November, 1960 was appointed as the date of the next annual general meeting.

At general business : Mr. Eunan McCarron proposed and Mr. John R. Halpin seconded the following motion :

This general meeting being satisfied that it is in the common interest of the general public and the solicitors' profession that the practice of a solicitor acting for both vendor and purchaser in certain conveyancing transactions is dangerous and undesirable and should be curtailed or prohibited.

Resolve that the Council of the Incorporated Law Society of Ireland be and is hereby requested to consider the matter and if satisfied that it is desirable and practicable to curtail or prohibit such practice to introduce a rule to implement such decision.

The following members spoke : Messrs. J. B. MacGarry, Arthur Cox, J. W. O'Donovan, C. J. Daly, T. V. O'Connor, Hugh O'Donnell.

The motion was not put to the meeting but the President stated that it would be considered by the appropriate committee of the Council and that the Council would make a report to the ordinary general meeting in May, 1961.

10. On the motion of Mr. Cox, Mr. Walker, Vice-President took the chair. Mr. Cox then proposed and Mr. Halpin seconded a vote of thanks to the President for his distinguished services to the profession during his period of office. Mr. Walker associated himself with the motion which was put to the meeting and carried with acclaimation. The President replied and the proceedings then terminated.

MEETINGS OF THE COUNCIL

November 24th. The President in the chair, also present Messrs. Arthur Cox, George A. Nolan, Terence de Vere White, Thomas V. O'Connor, Patrick Noonan, Desmond J. Collins, Dinnen B. Gilmore, James J. O'Connor, Thomas A. O'Reilly, James R. Green, Robert McD. Taylor, John Carrigan, James W. O'Donovan, John R. Halpin, Ralph J. Walker, Peter E. O'Connell, Brendan T. Walsh, John Maher, Eunan McCarron, William A. Tormey, John Kelly, Augustus Cullen, Brendan McGrath, George G. Overend, John J. Sheil, Peter D. M. Prentice.

The following was among the business transacted :

Committees of the Council

The committees for the year 1960–61 were appointed and are printed in this issue of the GAZETTE.

Vacancies on the Council

The Council unanimously passed a vote of appreciation and thanks to Messrs. Dermot P. Shaw, and Charles J. Downing who did not seek re-election for their services to the profession during their period of office on the Council. Mr. Shaw was elected to the Council in November, 1946 and served as President for the year 1955–56.

Mr. Downing was elected in November, 1952 and served as Vice-President for the year 1956–57.

Pension annuity scheme

The Council adopted a report from a committee approving of the pension annuity scheme submitted by Irish Pensions Trust. A brochure with particulars of the scheme will be circulated by the Society to members in the new year.

DISCIPLINARY COMMITTEE

The President of the High Court has appointed the following members of the Society to be the Disciplinary Committee for the year 1960–61 : John Carrigan, Desmond J. Collins, Niall S. Gaffney, John R. Halpin, Eunan McCarron, Peter E. O'Connell, George G. Overend, Peter D. M. Prentice, Robert McD. Taylor, Dermot P. Shaw.

COMMITTEES OF THE COUNCIL

Registrar's Committee

Thomas A. O'Reilly, chairman, William J. Comerford, Dinnen B. Gilmore, James R. Green, Charles W. Hyland, John Kelly, John Maher, Desmond J. Moran, Brendan A. McGrath, George A. Nolan, Patrick Noonan, James J. O'Connor, John J. Sheil, Terence de Vere White.

Compensation Fund Committee

Dinnen B. Gilmore, chairman, William J. Comerford, James R. Green, Charles W. Hyland, John Kelly, John Maher, Desmond J. Moran, Brendan A. McGrath, George A. Nolan, Patrick Noonan, Thomas A. O'Reilly, James J. O'Connor, John J. Sheil, Terence de Vere White.

Finance, Library and Publications Committee

Thomas A. O'Reilly, chairman, Arthur Cox, Dinnen B. Gilmore, John R. Halpin, Francis J. Lanigan, James B. MacGarry, George A. Nolan, Peter E. O'Connell, Patrick O'Donnell, T.D., James W. O'Donovan, with the President, Vice-Presidents and immediate past President *ex-officio*.

Court of Examiners

Desmond J. Collins, chairman, James R. Green, Thomas A. O'Reilly, Robert McD. Taylor, Terence de Vere White, with the President, Vice-Presidents and immediate past President *ex officio*.

Parliamentary Committee

John Carrigan, chairman, Arthur Cox, Augustus Cullen, Thomas V. O'Connor, Patrick O'Donnell, T.D., with the President, Vice-Presidents and immediate past President *ex officio*.

Privileges Committee

Francis J. Lanigan, chairman, Francis Armstrong, Arthur Cox, Cornelius J. Daly, Gerald Y. Goldberg, James B. MacGarry, Brendan A. McGrath, Reginald J. Nolan, Thomas V. O'Connor, James W. O'Donovan, John J. Sheil, William A. Tormey, Brendan T. Walsh, with the President, Vice-Presidents and immediate past President *ex-officio*.

Court Officers and Costs Committee

Patrick Noonan, chairman, Augustus Cullen, Cornelius J. Daly, Niall S. Gaffney, Gerald Y. Goldberg, John Kelly, James B. MacGarry, Derrick M. Martin, Peter E. O'Connell, James J. O'Connor, James W. O'Donovan, George G. Overend, William A. Tormey, Edward Treacy, Brendan T. Walsh, Terence de Vere White, with the President, Vice-Presidents and immediate past President *ex-officio*.

THE INCORPORATED LAW SOCIETY OF NORTHERN IRELAND

The President of the Society for the year 1960–61 is Mr. Denis K. McMillan of Belfast. The Vice-Presidents are Mr. Robert McD. Coulter and Mr. William J. Jefferson, both of Belfast.

The five extraordinary members of the Council of the Incorporated Law Society of N. Ireland on the Council are Messrs. Denis K. McMillan, Robert McD. Coulter, William J. Jefferson, Charles MacLaughlin, Frederick H. Mullan.

SOUTHERN LAW ASSOCIATION

The President of the Association for the year 1960–61 is Mr. Denis J. Quinlan; Vice-President, John K. Coakley; Hon. Treasurer, Gerald J. Maloney; Hon. Secretary, Humphrey P. Kelleher.

The extraordinary members of the association on the Council of this Society are Messrs. Denis J. Quinlan, Edmund Hayes, John B. Jermyn, Cornelius J. Daly, Gerald Y. Goldberg.

DUBLIN SOLICITORS' BAR ASSOCIATION

The officers of the association for the year 1960–61 are as follows: Rory O'Connor, President; Charles Hyland, Vice-President; Edmond O. Sheil, Hon. Treasurer; Ernest J. Margetson, Hon. Secretary.

The extraordinary members of the Association on the Council are Desmond Moran, James B. MacGarry and Charles Hyland.

COUNTY MEATH SOLICITORS' ASSOCIATION

At the annual general meeting of the above association held on 21st November, 1960, the following officers were elected: President, Nathaniel Lacy, Kells; Hon. Secretary and Treasurer, Thomas Noonan, Kells; Committee, W. O. Armstrong, Kells; B. Steen, Navan; A. Donnelly, Navan; A. J. Malone, Trim; Patrick Noonan, Athboy; Mrs. E. A. Leahy, Oldcastle; Provincial Delegate, Patrick Noonan, Athboy.

COUNTY KERRY LAW SOCIETY

At the annual general meeting of the County Kerry Law Society held at the Courthouse, Tralee, on the 10th December, the following officers and committee were appointed for the year 1960–61: President, Mr. Gerald Baily; Vice-President, Mr. J. D. O'Connell; Chairman, Mr. Charles J. Downing; Secretary and Treasurer, Mr. J. J. Grace; Committee, Messrs. D. E. Browne, W. A. Crowley, H. J. Downing, M. L. O'Connell, J. J. O'Donnell, J. S. O'Reilly, D. F. O'Shea, M. O'Sullivan and D. Twomey.

SOCIETY'S DINNER DANCE

The Annual dinner dance was held on November 24th at the Shelbourne Hotel, Dublin. There was an attendance of over 300.

PRESENTATION OF CERTIFICATES OF ADMISSION

On November 24th the President at a ceremony in the Society's library presented certificates of admission to the undermentioned solicitors. In his address to the newly admitted solicitors the President said :

Ladies and Gentlemen,

Starting in life you have the advantages of youth, ideals, ambitions and hopes that have no limits. I wish you one and all success, and, what is more important, the qualities of character and mind upon which success is based. Every individual forms his own idea of the meaning of the word " success ", but the attainment is chimerical unless it involves bringing happiness and contentment to those with whom we come in contact—our families, our clients, the members of our profession and the community among whom we live.

One's mind easily spans oceans and covers space. So, too, youthful ambition may leap from youth to greatness without considering the hard climb and the steps that lead upwards. Only by hard work, constant endeavour and persistent application can the beginner in any profession attain success. There is no easy way and no magic carpet to carry the young solicitor from the receipt of his certificate today to success in his profession.

You all start from the same point, even though you may not be equally equipped at the starting point. The traits which will bring you success are character, work and knowledge in that order. Some have already, by their industry as students, cultivated habits of self-sacrifice, concentration and application ; some, by their interest in games and debating societies, will have learned that it is more important to play according to the rules than to win ; some, by the help which they have given their fellow students in their studies and the interest which they have taken in their student and college functions and societies, will have realised the importance of unselfishness. Be that as it may, he must now start again on a new life.

Youth is impatient of results. Entry into a profession merely means that a young man has now attained sufficient knowledge under tuition and that he is in a position to study on his own. A bachelor's degree in a profession, as the name baccalarius shows, is merely a laurel berry or the smallest seed of honourable study. It is only by developing that seed and maintaining your studies throughout your entire professional careers, you can hope to be masters of the subject. The presentation of these parchments, therefore, does not imply the end of your studies, but rather the beginning of your studies without formal tuition. Concentrate your minds on each aspect of your work from the small technicalities of the most methodical methods of filing, accounting and record keeping through the technical knowledge of the rules of law applying to each case, to a knowledge of the legal background where those rules fit into the general system of jurisprudence. It would be well perhaps if that study could be done for a few years in an office where you will get a good general training. From study, there will come knowledge and self-confidence and the ability to help one's clients and the courts of which you are officers.

Industry and knowledge are, however, of little use, unless they are associated with character. In our profession, one needs perhaps a stronger character than in most other services, as there are more temptations in one's way. One meets nature in the raw when feelings are high and perhaps the worst traits in the characters of one's clients are for the moment predominant. Never let your zeal run away with your discretion. Remember that you exist to see justice is done and not to perpetrate an injustice by chicanery and remember also that even though your primary obligation is to your own clients, you also owe a duty to your opponents not to do anything unjust.

The good solicitor will, as a rule, be unselfish. He will interest himself in matters outside the sphere of his own personal affairs. He will take an interest in his profession generally by joining his local Bar Association and the Law Society and the Solicitors' Benevolent Association, and he will interest himself also in the community around him.

The following solicitors received certificates.

Michael E. Binchy, M.A. (N.U.I.), Gortskagh, Charleville, Co. Cork ; Robert E. Blakeney, B.A., LL.B. (T.C.D.), Abbert, Saval Park, Dalkey, Co. Dublin ; Michael G. Cody, Bagenalstown, Co. Carlow. *1st place final examination June, Gold Medal, Findlater Scholarship ;* John B. M. Doyle, B.C.L., LL.B. (N.U.I.), Rosbercon, New Ross, Co. Wexford ; Dermot F. Bouchier Hayes, B.C.L. (N.U.I.), 43 Lr. Leeson St., Dublin. *1st place third law examination September ;* Peter F. B. Houlihan, Athenry, Co. Galway ; Robert B. Haythornthwaite, B.A., LL.B. (T.C.D.), Vallombrosa, Bray, Co. Wicklow ; Thomas Jackson, 11 St. Stephen's Green, Dublin ; John O. Lee, B.A., B.C.L. (N.U.I.), Anchorville, Connaught Ave., Cork ; Brian O. Lyons, 25 Castle Park, Monkstown, Co. Dublin ; Godfrey F. McDonald, 28 Dublin Street, Carlow ; William J. McGuire, Attymanus, Kilnagross, Carrick-on-Shannon, Co. Leitrim. *4th place final examination June ;* Richard R. Pierse, B.C.L. (N.U.I.),

Market Street, Listowel, Co. Kerry. *2nd place final examination June;* Jeremiah A. Reidy, Kilmallock, Co. Limerick; Diarmuid P. Teevan, B.A. (N.U.I.), 3 Eglinton Road, Donnybrook, Dublin; Cathal N. Young, Ashe Street, Cavan.

THE MEDICO-LEGAL SOCIETY OF IRELAND

Session 1960–61

Patron: The Chief Justice, The Honourable Mr. Justice Conor A. Maguire.

President: Professor P. N. Meenan, M.D., Barrister-at-Law.

Past President: Dr. J. P. Brennan, County Coroner.

Vice-Presidents: The Honourable Mr. Justice Murnaghan; Mr. Donough O'Donovan, Chief State Solicitor; Mr. J. A. McCarthy, Senior Counsel; Dr. Francis McLaughlin; Mr. Dermot Shaw, Solicitor; Commissioner D. Costigan; E. Y. Exshaw, Barrister-at-Law

Honorary Secretary: Miss Agnes B. Cassidy.

Honorary Treasurer: Captain James A. Kelly, Solicitor.

Council: Professor Maurice Hickey, State Pathologist; Mr. Brendan McGrath, Solicitor; Mr. Herman Good, Solicitor; Dr. Shanley; Dr. Hamilton; Mr. M. B. Daly, Barrister-at-Law; Dr. J. Fitzgerald.

Editor of Debates: Mr. Robert Barr, Barrister-at-Law;

Assistant Editor of Debates: Mr. Max Abrahamson, Solicitor.

Honorary Auditor: Dr. Falvey.

Programme: 27th October, 1960, Symposium, "The Professional Man in the World of to-day"—the following took part: T. C. J. O'Connell, M.D., Dr. Sean McCann, M.D., Darach Connolly, Solicitor and E. S. Fitzsimon, Barrister-at-Law. *10th November*, 1960, Annual Dinner, Royal Hibernian Hotel. *24th November*, 1960, Paper: District Justice O Riain: "The Children's Court". *12th January*, 1961 Dr. C. P. S. Hamilton, "The History of Medicine and the Law—East and West". *9th February*, 1961: Dr. Stafford Clarke, M.D., F.R.C.P., D.P.M., Physician in psychological medicine and Director of the York Clinic, Guy's Hospital, Paper: "True Deliverance; Medicine and the Law". *30th March*, 1961: The Honourable Mr. Justice Walsh: "The Preliminary investigation of indictable Offences in the District Court".

ASSISTANT SOLICITORS; ALLOWANCES AGAINST SCHEDULE E ASSESSMENTS

The Revenue Commissioners have given the following ruling:

A solicitor employee is allowed the costs of;

(*a*) the annual registration fee on taking out a practising certificate.

(*b*) the Compensation Fund contribution.

(*c*) the £1 library subscription to the Society.

as a deduction under schedule E where he has to bear the costs of these items himself.

RENT RESTRICTIONS ACT, 1960

The Rent Restrictions Act 1960—No. 42 of 1960—was signed by the President on 21st December 1960 and is now law. It is hoped to publish a summary of it later.

The Rent Restrictions Act 1960 (Forms) Regulations 1960—S.I. No. 270 of 1960—which give detailed prescribed forms relating to Notice of Increase—or of Reduction—of Rent and of Particulars of Proposed Expenditure on Improvements—have now been published, and may be obtained from the Government Publications Sale Office, G.P.O. Arcade, Henry Street, Dublin—Price 2/- (Postage 3d. extra). The Rent Restrictions Act, 1960 is now available at 5/- per copy.

DECISIONS OF PROFESSIONAL INTEREST

Driving offences not deemed conduct professionally disgraceful.

Before the Lord Chief Justice, Mr. Justice Ashworth and Mr. Justice Elwes.

The Divisional Court allowed with costs this appeal under section 18 of the Veterinary Surgeons Act, 1948, by a veterinary surgeon, Mr. Arthur Hans, of Southampton, from the order of the Disciplinary Committee of the Council of the Royal College of Veterinary Surgeons constituted under section 4 of the Act of 1948, sitting on November 12th, 1959, that his name be removed from the Register of Members of the College, and substituted a two years' suspension.

The Lord Chief Justice, giving judgment, said that the Disciplinary Committee found, first, that the appellant had twice been convicted—those convictions were admitted—and also that he had been guilty of conduct disgraceful in a professional respect. His lordship would himself have thought that a finding against a veterinary surgeon that he had been guilty of conduct disgraceful in a professional respect about as serious as it could be. This surgeon had had to come to the court to say that, whatever he had done, he was not guilty of such conduct. His counsel having opened the case, it was then conceded that that finding was wrong and could not be supported. Nevertheless, it had been said that this man should suffer the extreme penalty of having his name removed from the register. His lordship

had only to state that to feel that something had gone very wrong. It was said that the commission of the offences was so serious that, whether he had been guilty of conduct disgraceful in a professional respect or not, his name ought to be removed. But the fact remained that the committee, in considering the penalty, must have taken that finding into consideration.

The two offences were driving while under the influence of a drug and dangerous driving. They were undoubtedly serious offences, although it did appear that there were mitigating factors. The appellant suffered from alcoholism. He submitted himself to treatment and in the course of one treatment was given paraldehyde, and, most unfortunately, although it might have cured his alcoholism, it made him an addict of that drug. The medical evidence was that on the day of the offences he was suffering from the drug and just did not know what he was doing.

It did appear that he had had previous convictions. They were quite rightly before the committee, but in his lordship's opinion, even taking them into account, it was not a case for the extreme penalty. His lordship would substitute two years' suspension to date from the date of the original findings by the committee in November, 1959.

Mr. Justice Ashworth and Mr. Justice Elwes agreed.

(In re Hans, *The Times*, 12th October, 1960)

Appeal against dismissal of case by disciplinary committee rejected.

The Lord Chief Justice, Mr. Justice Ashworth and Mr. Justice Elwes dismissed with costs this appeal by Colonel Alfred Wintle, of Wrotham, Kent, from the findings and order of the Disciplinary Committee refusing his application that the respondent solicitors, practising under the style of Janson, Cobb, Pearson & Co., be struck off the roll, and ordering Colonel Wintle to pay the costs of the application.

Colonel Wintle appeared in person; Mr. Norman Broderick, Q.C., and Mr. Michael Hoare for the respondents; and Mr. Peter Webster for the Law Society.

The Lord Chief Justice, giving judgment, said that Colonel Wintle had had some prolonged litigation in the courts against a solicitor at Brighton, and the respondents had acted throughout as the London agents of that solicitor. In the course of the litigation, and at a time when Colonel Wintle was appealing to the Court of Appeal, he received from them a letter saying that they enclosed therewith a notice requiring him to bring a certain legacy into Court within seven days. The names of the parties were set out and then: "Notice to bring legacy into court". Colonel Wintle's case was that that notice enclosed in the letter was calculated to and did deceive him. He said that he looked on it as a writ and that he had suffered great anxiety; that it was a great shock; that he had come to London to consult other people; and that he had been put to great expense. His case was that the notice was sent by the London agents espousing the cause of the solicitor at Brighton; that it was done deliberately; bad faith was mentioned and such phrases as "playing with loaded dice", "illegitimate means of warfare", and, in his own affidavit, "immoral and wilful attempt to pervert the course of justice by means of a trick".

Colonel Wintle had had some experience of litigation and his lordship himself doubted whether the notice had come as a shock to him, but for the purpose of the proceedings he was prepared to assume that he was horrified. There was not a shred of evidence that the London firm of solicitors were acting in bad faith, or using illegitimate means of warfare, or were intending to mislead or pervert the course of justice. So far from that, it was to be observed that what they did was done on the advice of counsel. The appeal should be dismissed.

Mr. Justice Ashworth and Mr. Justice Elwes agreed.

The Lord Chief Justice said that in the ordinary case where there was an appeal by a solicitor, names were not mentioned in the Cause List and the press were good enough not to give the names in case of any prejudice resulting in the event of a successful appeal. That practice had not altogether been followed in the present case and his lordship asked whether anyone minded the names being disclosed.

Colonel Wintle said that he did not suppose that his name would be kept quiet.

Mr. Broderick said that there was no objection to the names being disclosed.

The Lord Chief Justice said that there seemed no good reason for keeping the names out of the press.

In re solicitors—*The Times*, 27th, October, 1960.

Innkeeper—motor-car left in garage.

In Adams (Durham) *v.* Trust Houses (1960) 1 Lloyd's Rep. 380, the plaintiffs left their car in the hotel garage under the direction of the defendant's night porter who, during the night, took the car and wrecked it. Atkinson J., held (1) that there was a contract of bailment; (2) that as the second plaintiff had never been given a garage ticket the clauses on the ticket were not part of the contract; (3) that the night porter's act was a fundamental breach of the contract determining the contract together with any conditions which formed part of it; and (4) that the defendants were negligent in their engagement of the night porter.

Costs—death of judge. (N.Z.)

In Lilley *v.* Kay (1960) N.Z.L.R. 292, the New Zealand Supreme Court held that when the trial judge has died, another judge may deal with questions of costs in an action, particularly where the trial judge has not reserved to himself outstanding questions of fact and where there is no need to exercise discretion in any unusual way.

Construction—"in the opinion of the Governor-General" (N.Z.)

In Reade *v.* Smith (1959) N.Z.L.R. 996, the New Zealand Supreme Court held (1) that the words in an Act "in the opinion of the Governor-General" (that certain regulations were necessary to secure the due adminstration of the Act) did not give the Governor-General a complete and unexaminable discretion, (2) that any question of law which the Governor-General is required to decide as a basis for his opinion is always examinable by the court, and (3) that the court could always inquire, in any case, whether the Governor-General (or a Minister) as the case may be could reasonably have formed any opinion on the law or on fact, which is set up as a foundation for any regulation.

REGISTRATION OF TITLE ACTS, 1891 AND 1942

Issue of Duplicate Land Certificate

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

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

Dated the 6th day of January, 1961.

D. L. McALLISTER,
Registrar of Titles.

Central Office,
Land Registry,
Chancery Street,
DUBLIN.

SCHEDULE.

1. Registered Limited Owner, Robert Francis Bennett. Folio number 940. County Queens. Lands of Ballyhegadon in the Barony of Clandonagh containing 10a. 3r. 4p.

2. Registered Owner, Patrick Murphy. Folio number 1717. County Limerick. Lands of Caher (Hayes) containing 46a 1r. 15p. and an undivided moiety of Lands of Caher (Hayes) containing 8a. 2r. 34p. both situate in the Barony of Glenquin.

THE REGISTRY

Register A

FOR SALE the goodwill of a deceased solicitor practising in Dublin. Apply to George D. Fottrell & Sons, 30 Lower Baggot Street, Dublin, Solicitors for the Executrix.

Register B

YOUNG SOLICITOR seeks position as assistant City or Country. University Degree. General experience. Box No. B. 258.

Register C

COMPLETE Dictaphone set for sale. For further particulars apply to Box No. C 164.

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JANUARY,
1961

THE GAZETTE

of the

INCORPORATED LAW SOCIETY OF IRELAND

President
RALPH J. WALKER

Vice-Presidents
GEORGE G. OVEREND
JOHN MAHER

Secretary
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

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PRACTISING CERTIFICATES, 1961-62

1. Members are reminded that practising certificates for the year to end 5th January, 1962 should be taken out not later than 5th February, 1961 in order to take effect as a qualification to practise from 6th January, 1961. Certificates taken out after 5th February, 1961 will operate as a qualification to practise only from date of issue unless the Court should otherwise order in any particular case.

2. Under the provisions of the Solicitors Acts, 1954–60, the declaration to be lodged with the Society on applying for a practising certificate shall be completed and signed by the applicant personally unless the registrar, on the ground of illness or some other sufficient cause, dispenses with personal signature of the declaration.

3. The amount of the registration fee and Compensation Fund contribution is as follows:

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

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

MEETINGS OF THE COUNCIL

DECEMBER 15TH: Mr. Nash and later Mr. Walker in the chair. Also present Messrs. Arthur Cox, William J. Comerford, Augustus Cullen, John

Maher, George G. Overend, Dinnen B. Gilmore, Eunan McCarron, James J. O'Connor, James R. Green, Robert McD. Taylor, Peter D. M. Prentice, Thomas V. O'Connor, George A. Nolan, Desmond J. Collins, John R. Halpin, Peter E. O'Connell, James W. O'Donovan, John J. Sheil, William A. Tormey, Francis J. Lanigan, John Carrigan, Niall S. Gaffney, Brendan A. McGrath.

The following was among the business transacted:

Application under section 29 (2)

The Council on a report from the Court of Examiners refused an application by a solicitor admitted less than seven years for permission to take an apprentice.

Solicitors Remuneration General Order, 1960

It was decided that a short brochure should be published by the Society for the information of members on the provisions of the above mentioned general order. The text of the order was published in the October-November issue of the Society's GAZETTE.

Land Registration Rules

It was decided that an application will be made to the Land Registration Rules Committee for amendments in the Land Registration Costs Rules *inter alia*, giving effect to the provisions of the Solicitors Remuneration General Order, 1960 in regard to Land Registry conveyancing business to which the commission scale fees do not apply, i.e., business other than completed sales, leases and mortgages.

Sale of weekly tenancy

A member acted for the vendor on the sale of a weekly tenancy for £700. The work done included the preparation of a contract of sale, the furnishing of an abstract of title, replying to requisitions, approving of draft deeds and having the engrossment and memorial completed and registering the deed in the Registry of Deeds. The premises comprised a lock-up shop with one room and two additional rooms subsequently acquired under a parol agreement. The tenant had rights under the Landlord and Tenant Acts and the Rent Restrictions Acts and enquired as to the proper basis of charge. The Council adopted a report from a Committee stating that the proper basis of charge in the absence of election to the contrary by member is the commission scale fee.

Assistant solicitors. Allowances for schedule E tax

A committee reported that the Revenue Commissioners had given a ruling at the request of the Society that the Compensation Fund contribution, and registration fee on taking out a practising certificate and membership subscription to the Society will be allowed as deductions for schedule E tax by assistant solicitors who pay these amounts personally. The Council directed that thanks be given to Mr. Gerard Sweetman, T.D., who raised the matter in the interests of the profession.

Temporary liquor licence

On a report from the committee the Council stated that there is no objection to the taking by a solicitor when acting for purchasers of a hotel of a transfer of the hotel liquor licence into his own name in special circumstances pending the final transfer of the licence to the owners who are abroad.

EXTRAORDINARY MEMBERS OF THE COUNCIL

Pursuant to section 33 of the Solicitors (Amendment) Act, 1960, the Council appointed Messrs. Charles Hyland, James B. McGarry and Desmond Moran as extraordinary members of the Council from the Council of the Dublin Solicitors Bar Association.

Pursuant to the provisions of the Society's Charter the Council appointed Messrs. Edmund Hayes, John B. Jermyn, Dennis J. Quinlan, Cornelius J. Daly and Gerald Y. Goldberg as extraordinary members of the Council from the Council of the Southern Law Association.

COMMITTEES OF THE COUNCIL

Messrs. Charles W. Hyland, Desmond Moran and Terence de Vere White were appointed as additional members of the Registrar's and Compensation Fund Committees.

Mr. James B. MacGarry was appointed as an additional member of the Finance, Library and Publications Committee.

Messrs. Cornelius J. Daly, Gerald Y. Goldberg, and James B. MacGarry were appointed as additional members of the Privileges Committee.

Messrs. Cornelius J. Daly, Gerald Y. Goldberg and James B. MacGarry were appointed as additional members of the Court Offices and Costs Committee.

DECISIONS OF PROFESSIONAL INTEREST

Meeting—notice—validity of resolution.

(Companies Act, 1948 (11 & 12 Geo. 6, c. 83),

s. 141). The proviso to s. 141 (2) of the Companies Act, 1948, requires the persons who agree to a resolution being passed on short notice to agree to it in the knowledge that the notice is insufficient. Where, however, all the shareholders agree that a resolution passed on short notice shall be treated as valid, the court will not be ready to hear a shareholder say that the resolution is not valid.

On a petition for confirmation of the reduction of a company's capital it appeared that insufficient notice had been given of the requisite special resolution. 95 per cent. of the members entitled to attend and vote at the meeting attended, and agreed in writing to a further special resolution (of which no notice had been given) being considered. Both resolutions were then passed. After the meeting it was realised that insufficient notice had been given of the original resolution, and all members of the company then consented to both resolutions being considered as valid and special resolutions. It was contended on behalf of the company that the members thereby impliedly agreed to the passing of the original resolution on short notice. Held, that the written consents given at the meeting could not operate to validate the original resolution, but that the court would not allow any member to say that the resolutions were not validly passed, and the reduction of capital would be confirmed: Re Pearce, Duff & Co. (1960) 1 W.L.R. 1014; (1960) 3 All E.R. 222, Buckley J.

Memorandum of Association—objects clause.

Where a company has several objects and the memorandum of association provides that "the objects specified in any paragraph of the objects clause are not to be restricted by reference to or inference from the terms of any other paragraph", the "main objects" rule will be excluded.

A company's memorandum of association empowered it, *inter alia*, to act as exporter and importer of a wide variety of goods, and to acquire concession rights and contracts. It was provided that the objects were not to be restricted in the terms set out above. The company engaged the defendants to obtain a building lease, and then later brought an action against them for damages for conspiracy and breach of the contract of employment. The defence raised the point that the acquisition of the building lease would have been *ultra vires* the company, and this point was ordered to be tried as a preliminary issue. Held, that the clause permitting the acquisition of concessions, etc., was not to be construed restrictively by reference to the main object of the company, namely the export/import business and that the acquisition of the building lease would not have been *ultra vires* the company: Anglo Overseas Agencies *v.* Green (1960) 3 W.L.R. 561; 104 S.J. 765; (1960) 3 All E.R. 244, Salmon J.

Mistake—identity of party.

Where A makes an offer to B in the belief (known to B) that B is X, there is no offer capable of acceptance by B.

A rogue offered to buy the plaintiffs' motor-car for £717, and produced a cheque book. The plaintiffs were not prepared to accept a cheque and refused to sell. The rogue then stated that he was H and gave an address. One of the plaintiffs checked the telephone directory and discovered that there was a person named H living at the address given. The plaintiffs then agreed to let the rogue have the car against a cheque for £717, which was later dishonoured. The rogue had meanwhile sold the car to the defendant, who purchased in good faith. In an action for damages for conversion Slade J. gave judgment for the plaintiffs, and the defendant appealed. Held, dismissing the appeal (Devlin L.J. dissenting), that as the plaintiffs intended to deal only with the genuine H, the rogue was incapable of accepting their promise to sell the car, so that the property therein remained in the plaintiffs: Ingram *v.* Little (1960) 3 W.L.R. 504; 104 S.J. 704, C.A.

Money paid—whether paid under duress.

(Can.) In R. *v.* Beaver, Lam & Shearling Co. (1960) 23 Dominion. E.R. 513, a taxpayer, believing tax to be payable on a commodity, made fraudulent returns. The revenue authorities discovering this threatened to prosecute and make an example of him. He settled the matter by paying a large sum. Subsequently it was decided by the courts that no tax was payable on this commodity and he tried to recover the sum which he had paid. The Supreme Court of Canada held, by a majority, that the money was not paid under duress and was therefore irrecoverable.

Murder—intent—presumption as to consequences of act.

Where the accused is capable of forming an intent in that he is not insane within the M'Naughten Rules and is not suffering from diminished responsibility, and where the unlawful and voluntary act of the accused is of such a kind that grievous bodily harm is the natural and probable result, then the question is not what the accused actually contemplated to be the consequences of his act but what in all circumstances the ordinary reasonable man would have contemplated to be the natural and probable result.

S. was driving a motor-car containing stolen

property and was ordered to stop by a police constable. Instead of doing so S. accelerated and the constable jumped on the car. S. drove fast and made the car swerve violently so that the constable fell off and was killed beneath an oncoming car. S. pleaded, *inter alia*, that he had no intent to kill or to cause grievous bodily harm but he was convicted of capital murder. The Court of Criminal Appeal allowed his appeal and substituted a verdict of manslaughter and a sentence of 10 years' imprisonment. The House of Lords, allowing the prosecution's appeal held (1) that S.'s actual intention was not material, since as a reasonable responsible man he must be taken to have intended the natural and probable consequences of his acts; (2) there was no justification for drawing a distinction between harm "certain" to result and harm "likely" to result; (3) the words "grievous bodily harm" bear their ordinary meaning of "really serious" harm; (4) s. 1 (1) of the Homicide Act, 1957 has not abolished malice constituted by a proved intention to inflict grievous bodily harm: Director of Public Prosecutions *v.* Smith (1960) 3 W.L.R.546; 104 S.J. 683; (1960) 3 All E.R.161, H.L.; reversing decision of the Court of Criminal Appeal *sub. nom.* R. *v.* Smith (1960) 6 C.L. 77.

Note: This decision has been severely criticised by Academic lawyers.

Alimony—Wife receiving National Assistance

(Matrimonial Causes Act, 1950 (14 Geo.6. c.25), s. 19 (1)). The Court has a wide and unfettered discretion to do what it thinks just in awarding alimony, and will not fetter that discretion by laying down any general principle that national assistance benefit received by a wife must be taken into account in awarding alimony.

An order for alimony *pendente lite* at the weekly rate of £2 5s., was made in the district registry in favour of a petitioning wife. The order was affirmed on appeal by Marshall J. and the husband now appealed to the Court of Appeal on the ground that the wife was in receipt of national assistance benefit and that this should have been taken into account. Held, that there was no general principle or rule of practice to the effect that national assistance benefit must be taken into account, although it would be wrong to remove it from the area of the judge's discretion: Slater *v.* Slater (1960) 3 All E.R. 217, C.A.

Evidence—Statement by witness on previous occasion.

Evidence of a witness's previous statements is not in general admissible to support the evidence given by him in the box, though there is an exception where his evidence is challenged as being a recent invention.

The appellant, Dr. F., was charged with infamous conduct in a professional respect in committing adultery with a named patient. The Disciplinary Committee of the General Medical Council found the charge made out and decided that Dr. F.'s name shall be erased from the Register of Medical Practitioners. The main evidence against Dr. F. consisted of statements made by him to one of the witnesses. On appeal to the Privy Council it was argued on his behalf that these statements ought not to have been admitted and that, in any event, they were capable of an innocent interpretation. Dr. F. tendered evidence that at a date before the hearing by the General Medical Council he had made a statement to a friend denying the alleged adultery. Held, dismissing the appeal, that the main evidence of statements made by Dr. F. was admissible, and that the Privy Council was free to form its own view of their significance; but that Dr. F.'s statement to a friend denying the alleged adultery amounted to no more than the previous assertion of the appellant's story told at the hearing and was inadmissible: Fox *v.* General Medical Council (1960) I.W.L.R. 1017; 104 S.J. 725; (1960) 3 All E.R. 225, P.C.

Covenant—Payment of School Fees.

If trustees receive payments applicable for the benefit of a child and use it in paying a school bill for which the child's parent is legally liable, or if they put the payments at the disposal of the parent and he uses it to discharge such a bill, the payment in question does not thereby lose its character as income of the child and become income of the parent.

I.C.I. covenanted to pay to trustees £27,000 less tax per annum for seven years for the maintenance, education or benefit of named children of certain employees. The trustees paid into the bank account of one such child the sum of £140 odd less tax and the child's father directed the child's bankers to apply this sum in paying school bills. Neither the child nor his parent gave any consideration to I.C.I. for the covenant. The child's bankers claimed a repayment of the tax deducted by the trustees. The claim was not allowed by the inspector, and an appeal to the General Commissioners failed. On appeal by way of case stated, held that the appeal should be allowed. The payments made by I.C.I. were in the nature of annual payments from which I.C.I. could deduct tax, and the income was the income of the child, not the father: Barclays Bank *v.* Naylor (1960) 3 All E.R. 173. Cross J.

Verdict of Jury—to be given in open Court (Eire).

In Long *v.* Saorstát & Continental Steamship Co. (No. 2) (1953) 94 I.L.T.R. 130, in an action for

negligence and breach of statutory duty, the jury answered ten out of the eleven questions left to them but disagreed on the eleventh, despite further directions being given by the trial judge on this question. On return to court the foreman informed the judge that the jury could not agree and the judge discharged the jury. After the parties and counsel had left the court the Issue Paper, which was unsigned, was handed to the judge. Two days later when counsel appeared before him the judge gave judgment for the defendants based on the findings of the jury. On a motion by the plaintiff for a new trial the Supreme Court of Eire held that the verdict of the jury must be given in open court and must be accepted by the judge and recorded in due course by the certificate of the proper officer countersigned by the judge. The appeal was allowed and a new trial ordered.

Injunction granted to Attorney-General.

Per Pearce L.J.: It is now firmly established that where an individual or public body persistently breaks the law, and where there is no person or sufficient sanction to prevent the breaches, these courts in an action by the Attorney-General may lend their aid to secure obedience to the law. They may do so whether the breaches be an invasion of public rights of property or merely an invasion of the community's general right to have the laws of the land obeyed: Att.-Gen. *v.* Harris, (1960) 3. All E.R. 207.

Misconduct—Costs.

(R.S.C., Ord. 65, r.11). It is not a proper ground on which to deprive a solicitor of his costs that he may have acted unprofessionally in obtaining evidence.

The solicitor to a petitioner in a divorce suit interviewed the husband and obtained from him a statement admitting adultery. The trial judge disapproved of this practice, and while giving judgment for the petitioning wife refused to allow the solicitor's costs of obtaining the statement. The wife and the solicitor both appealed. Held, (1) that there was no general principle as to the propriety of such conduct, and that on the facts of the present case the solicitor was not guilty of misconduct; (2) that it was no part of the judge's function to say whether the solicitor has acted improperly or not; the only ground on which a solicitor can be deprived of his costs is where his misconduct has caused costs to be thrown away, whether the order is made under R.S.C., Ord. 65, r.11, or under the inherent jurisdiction of the court: Davies *v.* Davies (1960) I.W.L.R. 1004; 104 S.J. 745; (1960) 3 All E.R. 248, C.A.

Restrictive Trade Practices—Evidence.

During the course of a hearing, where the Phenol Producers' Association were seeking to justify their price restriction policy under s. 21 (1) (*b*) of the Restrictive Trade Practices Act, 1956, one of the witnesses, called by the registrar, said that he was buying phenol at prices below those fixed by the association. The registrar sought to exclude this evidence on the ground that the witness should not be questioned about his contract which was a confidential trade document and should not be shown to his trade competitors nor should its contents be made known to them. It was directed that "The normal method of giving evidence is by oral testimony. In some instances, as a matter of discretion, we shall direct that the answer of the witness should be written down where it seems to us proper to do so. But there is no advantage to be obtained by that course in the present case with this witness and, therefore, if it is sought to adduce evidence about the actual price he has paid for his phenol, he must give that evidence like any other witness by oral testimony, and he will be subject to cross-examination on it in the same way as any other witness. It may be that in all the circumstances it will not be sought to elicit from this witness the actual price he has paid for his phenol": *Re* Phenol Producers' Agreement (Practice Note) (1960) L.R. 2. R.P. 49, R.P. Ct.

Trade Dispute—Picketing—Liability of Executive.

(Trade Unions Act, 1939 (Leeward Islands No. 16 of 1939), s. 2 as amended).

Pickets employed by executives of a trade union are not the servants of the executives, so as to make them (the executives) vicariously liable for torts committed by the pickets.

The owners of a drug store in Antigua dismissed a trade union member employed there as a clerk without giving reasons. The executive committee of the trade union resolved that H., the general secretary, should take steps to picket the drug store. H. and J., another member of the executive committee, engaged pickets including S. J. and S. and other pickets caused an actionable nuisance. In an action by the owners for damages and for an injunction restraining the watching and besetting of the drug store, the executive committee, H., J. and S. were defendants. The trial judge awarded an injunction and damages of £80 against all the defendants. The plaintiffs appealed on the ground that there was no trade dispute, as (*a*) the dismissed clerk was not a "workman" within the meaning of s. 2 of the Leeward Islands Trade Union Act, 1939 and (*b*) the only dispute was between the plaintiffs and the union, no other members of which were employed at the

drug store. S. 2 of the Act of 1939 as amended defines "trade dispute" as "any dispute or difference between employers and workmen, or between workmen and workmen, connected with the employment or non-employment, or the terms of employment, or with the conditions of labour of any person." Held, allowing the appeal of the defendants other than J. and S., that these defendants were not vicariously liable for the acts of the pickets and, allowing in part the appeal of J. and S., there was a trade dispute, as (*a*) the clerk was a "workman", and (*b*) a dispute between a union and an employer could be a trade dispute. An injunction was granted to restrain J. and S. from continuing the nuisance and £80 damages awarded: Bird *v.* O'Neal (1960) 3 W.L.R. 584; 104 S.J. 725; (1960) 3 All E.R. 254 P.C.

Executors and Administrators—Probate—Destruction of will of living person—Admission of copy to probate.

In the estate of Penson (September 29 1960) solicitors destroyed the will of a living person, thinking it to have been the revoked will of a deceased person. The mistake was not discovered until after the living person had died. On a motion to admit a copy of the will to probate, the widow and four surviving children consented to the motion. There were, however, two infant grandchildren who had an interest in the estate. No consent to the motion had been sought on their behalf. Buckley J., ordering that the copy of the will be admitted to probate, held that since the case was a clear one, the court should allow the contents of the will to be proved on motion, without the consent of the grandchildren. (D. C.) See also *The Times*, September 30, 1960.

Husband and Wife—Action by Wife against Husband—Injunction against molesting.

In Gordon *v.* Gordon (September 15 1960) Collingwood J. granted an injunction restraining a husband from molesting his wife and from going to her home, her parents' home or to the office of her solicitor, and from communicating with his wife or her aunts, cousins or parents or with her solicitor otherwise than by prepaid letter. On a summons to commit the husband to prison for contempt of court for breach of the injunction, Pennycuick J., dismissing the summons, ordered that the injunction be continued, pending the hearing of the divorce suit between the parties, but that it be varied to the extent that the husband be restrained from communicating with the wife otherwise than by prepaid letter or with her written consent. (D.C.) See also *The Times*, September 16, 1960.

Libel and Slander—Publication.

In Truth (N.Z.) *v.* Holloway (July 26, 1960) a jury awarded a plaintiff damages in respect of an article which had appeared in the defendant's newspaper. In the course of his summing-up the trial judge had said: "It is not a defence at all that a statement that might be defamatory is put forward by way of report only." On appeal on the ground of misdirection, the Privy Council (Lords Simonds, Reid, Tucker, Denning and Morris) held, dismissing the appeal, that every republication of a libel was a new libel, and that each publisher was answerable for his act to the same extent as if the calumny originated with him. (D.C.) See also (1960) I.W.L.R. 997; 104 S.J. 745.

FORMATION OF LIMITED COMPANIES

In 1952 the Society was in communication with the Institute of Chartered Accountants and the other bodies representing the accountants' profession. It was agreed that the preparation of the memoranda and articles of association is properly the function of the legal profession and should be so regarded by members of the Institute of Chartered Accountants. The Council of the Society have been informed that a number of accountants, possibly through ignorance of the recommendation made by the Institute, have been acting in contravention of it by preparing memoranda and articles of association. The Council of the Society are advised by counsel that the preparation of a memoranda and articles of association of a limited company by an unqualified person (i.e. a person other than a duly qualified solicitor or barrister) is in contravention of section 58 of the Solicitors Act 1954.

Members of the Society are invited to submit to the Society any cases in which unqualified persons are known to have acted in contravention of the statute so that the particulars may be submitted for consideration to the appropriate professional bodies.

PROPERTY VALUES (ARBITRATION AND APPEALS) ACT, 1960

The Property Values (Arbitration and Appeals) Act 1960 makes provision for the appointment of property arbitrators to exercise the powers and functions (1) of referees in relation to appeals under Part I of the Finance (1909–10) Act 1910 and (2) of arbitrators in relation to arbitrations under the Acquisition of Land (Assessment of Compensation) Act 1919 and under the Arterial Drainage Act 1945. The Reference Committee, consisting of the Chief Justice, the President of the High Court and the Chairman of the Surveyors' Institution (Irish

Branch), may appoint one or more persons having special knowledge of valuation to be "property arbitrators" for the purpose of these Acts; these arbitrators will hold office and be remunerated as determined by the Reference Committee; previous holders shall be deemed to be appointed under the Act (Section 2). Detailed provisions in relation to referees under the Act of 1910, and of arbitrators under the Act of 1919 and under the Act of 1945 are set forth in Sections 3, 4 and 5. Section 6 makes provision in relation to arbitrations and appeals pending before the passing of the Act.

COUNTY CLARE LAW ASSOCIATION

At the Annual General Meeting of the above Association held at the Courthouse, Ennis, on the 8th December, 1960, the following Officers were elected: *President*, Patrick P. O'Shea, Kilrush; *Vice-President*, Michael J. Walshe, Ennis; *Honorary Secretary and Treasurer*, Michael J. McMahon, Kilrush; *Committee*, Patrick J. Chambers, Ennistymon, Daniel O. Healy, Scariff, Thomas A. Lynch, Thomas F. O'Reilly and James B. Mac Clancy of Ennis.

BOOK REVIEWS

Mr. Bernard Shillman, S.C., has recently written a volume entitled *Trade Unionism and Trade Disputes in Ireland* (Dublin Press, 20 Merrion Square, Dublin, 15/6d.). This is a book first and foremost written for the layman, particularly officials of trade unions. Irish lawyers are already indebted to Mr. Shillman's industry for books on licensing law, the law of workmen's compensation and factory law; in this book the author has deliberately aimed at a larger audience, and has concentrated on presenting the principal cases dealing with Irish trade union law in a manner easily understood by the man in the street; all the cases have been explained simply, but there is a footnote reference to the Law Reports for those who wish to delve into the matter more deeply. The learned author has even included Mr. Justice Budd's judgment in "The Educational Co. of Ireland *v.* Fitzpatrick" (1960) in which an appeal to the Supreme Court is pending. The author has also included many leading English cases, such as Bonsor's case (1956), but lawyers might not agree with his interpretation. Despite its very high price, the book consists of only 63 pages of text; Mr. Shillman would have been better advised to adopt a larger print giving approximately twice the number of pages.

Mr. Peter Allsop, Assistant Editor of *Current Law*, has recently produced the fifth edition of his invaluable guide called *The Legal Profession* (Sweet & Maxwell, 1960, 10/6). Although written for English practitioners, most of the advice given also applies to the Irish legal profession. The first part consists in giving advice to the budding novice who wishes to become a barrister or a solicitor as to the courses to be pursued, and as to the prospects when qualified; there is also a useful chapter on University Law Degrees, which, as the author points out, "develops flexibility of mind and helps a student to grasp the technique of legal reasoning". The chapter "Reading and the choice of books" gives invaluable hints as to how to use textbooks, etc., and as to the technique of reading law. A critical appraisal is then given of the best general law books and periodicals most suited to students and this is followed by chapters dealing with individual branches of law (Contracts, Torts, Equity, Property, Practice, Probate, Death Duties, etc.) in which reference is made to the best books on every subject. The book concludes with suggested courses of reading for the Bar Final, the Law Society's Examinations and the London LL.B. Mr. Allsop has performed an invaluable task in guiding the footsteps of the law student, who will only have himself to blame if he does not follow the advice given.

STATUTES OF THE OIREACHTAS, 1960

No.	*Name of Act*	*Signed by President*
1.	Finance (Excise Duties) (Vehicles) Amendment Act 1960	9 March 1960.
2.	Army Pensions Act 1960	9 March 1960.
3.	Military Service Pensions (Amendment) Act 1960	9 March 1960.
4.	Connaught Rangers (Pensions) Act 1960	9 March 1960.
5.	Pensions (Amendment) Act 1960	9 March 1960.
6.	Mac Swiney (Pension) (Increase) Act 1960	9 March 1960.
7.	Petroleum and Other Minerals Development Act 1960	10 March 1960.
8.	Central Fund Act 1960	30 March 1960.
9.	Health Authorities Act 1960	12 April 1960.
10.	Broadcasting Authority Act 1960	12 April 1960.
11.	Imposition of Duties (Confirmation of Orders) Act 1960	12 April 1960.
12.	Oireachtas (Allowances to Members) and Ministerial and Parliamentary Offices (Amendment) Act 1960	12 April 1960.
13.	Housing (Amendment) Act 1960	24 May 1960.
14.	Elections Act 1960	24 May 1960.
15.	Hire Purchase (Amendment) Act 1960	8 June 1960.
16.	University College Dublin Act 1960	8 June 1960.
17.	Dogs (Protection of Livestock) Act 1960	16 June 1960.
18.	Intoxicating Liquor Act 1960	4 July 1960.
19.	Finance Act 1960	19 July 1960.
20.	Restrictive Trade Practices (Carpets) (Confirmation of Order) Act 1960	19 July 1960.

No.	Name of Act	Signed by President
21.	Telephone Capital Act 1960	26 July 1960.
22.	Defence (Amendment) Act 1960	26 July 1960.
23.	Local Government Act 1960	26 July 1960.
24.	Oil Burners (Standards) Act 1960	26 July 1960.
25.	Social Welfare (Amendment) Act 1960	26 July 1960.
26.	Diseases of Animals Act 1960	26 July 1960.
27.	Criminal Justice Act 1960	26 July 1960.
28.	Social Welfare (Miscellaneous Provisions) Act 1960	27 July 1960.
29.	Appropriation Act 1960	28 July 1960.
30.	Military Service Pensions (Increase) (No. 2) Act 1960	15 November 1960.
31.	Pensions (Amendment) (No. 2) Act 1960	15 November 1960.
32.	Irish Steel Holdings Limited Act 1960	15 November 1960.
33.	Mac Swiney (Pension) (Increase) (No. 2) Act 1960	15 November 1960.
34.	Veterinary Surgeons Act 1960	15 November 1960.
35.	International Development Association Act 1960	22 November 1960.
36.	Pensions (Increase) Act 1960	22 November 1960.
37.	Solicitors (Amendment) Act 1960	22 November 1960.
38.	Local Government (Temporary Reduction of Valuation) Act 1960	22 November 1960.
39.	Army Pensions (No. 2) Act 1960	21 December 1960.
40.	Local Government (No. 2) Act 1960	21 December 1960.
41.	Transport Act 1960	21 December 1960.
42.	Rent Restrictions Act 1960	21 December 1960.
43.	Electoral Act 1960	21 December 1960.
44.	Defence (Amendment) (No. 2) (Service in United Nations Force) Act 1960	21 December 1960.
45.	Property Values (Arbitration and Appeals) Act 1960	21 December 1960.
46.	Health (Fluoridation of Water Supplies) Act 1960	28 December 1960.
Private Act—No. 1.—	Institution of Civil Engineers of Ireland (Charter Amendment) Act 1960	24 March 1960.

THE REGISTRY

Register A

Junior Assistant Solicitor urgently required for Dublin Solicitor's office. Send references, if any, to Box No. A.188.

Register B

Solicitor requires to purchase practice or partnership in Dublin City or North Leinster. Replies in confidence to Box B.259.

REGISTRATION OF TITLE ACTS, 1891 AND 1942

Issue of New Land Certificate

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

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

Dated the 10th day of February, 1961.

D. L. McAllister,
Registrar of Titles.

Central Office,
Land Registry,
Chancery Street,
Dublin.

Schedule.

1. Registered Owner, Patrick J. Felle. Folio number 520 (Revised). County Longford. Lands of Drumlish in the Barony of Longford, containing 0a. 2r. 0p.

2. Registered Owner, Annie Kathleen Percival. Folio number 1450. County Leitrim. Lands of Treanmore in the Barony of Mohill, containing 13a. 2r. 9p.

3. Registered Owner, James Kelly. Folio number 1897. County Donegal. Lands of Cronadun in the Barony of Raphoe South, containing 127a. 1r. 10p.

4. Registered Owner, William Moore (Junior). Folio number 349 (Revised). County Waterford. Lands of Cloghaun in the Barony of Coshmore and Coshbride, containing 43a. 1r. 0p., formerly comprised in Folio 349 (Revised) and now comprised in Folio 7293.

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FEBRUARY,
1961

THE GAZETTE

of the

INCORPORATED LAW SOCIETY OF IRELAND

President
RALPH J. WALKER

Vice-Presidents
GEORGE G. OVEREND
JOHN MAHER

Secretary
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

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ASSISTANT TO THE SECRETARY

The Council invite applications from qualified solicitors, preferably under 26 years of age, for the above post.

Particulars may be obtained from the Secretary, Solicitors' Buildings, Four Courts, Dublin.

MEETINGS OF THE COUNCIL

JANUARY 12TH: The President in the Chair. Also present, Messrs. George G. Overend, Arthur Cox, John R. Halpin, Niall S. Gaffney, John Carrigan, Francis J. Lanigan, Desmond Moran, James R. C. Green, Peter D. M. Prentice, Reginald J. Nolan, Dinnen B. Gilmore, Charles Hyland, James J. O'Connor, William A. Tormey, John B. Jermyn, John Maher, Brendan A. McGrath, Eunan McCarron, Robert McD. Taylor, George A. Nolan, T. V. O'Connor, Desmond Moran, John J. Sheil, Gerald Y. Goldberg, J. Bernard MacGarry, Desmond J. Collins, Patrick Noonan.

The President welcomed Messrs. C. H. Hyland, J. B. MacGarry and J. Desmond Moran, the newly appointed extra-ordinary Members, from the Dublin Solicitors' Bar Association.

The following was among the business transacted:

Solicitors to bodies corporate

The Council considered on a Report from the Court of Examiners applications from two whole-time solicitors to bodies corporate for permission to take apprentices under section 29 of the Solicitors Act. In one case the application was granted in special circumstances disclosed. The other application was refused.

Ambulance chasing

The Council considered a draft regulation submitted by a Committee to be made under section 71 of the Solicitors Act, 1954. After discussion, the matter was referred back to the Committee for further consideration.

Solicitors acting for both parties in conveyancing matters

The following resolution received from a Bar Association was considered on a report from the Committee.

This meeting being satisfied that it is in the common interests of the general public and solicitors' profession that the practice of a solicitor acting for both vendor and purchaser in certain conveyancing transactions, is dangerous and undesirable and should be curtailed or prohibited, resolved that the Council of the Incorporated Law Society of Ireland be and is hereby requested to consider the matter, and if satisfied that it is desirable practicable to curtail or prohibit such practice, to introduce a rule to implement such decision.

It was decided that a circular should be sent to each of the Bar Associations to ascertain their views and that no action will be taken until all communications received from the Associations have been considered.

Contemplated fraud by client. Duty of solicitor

A member acted for a client who was registered in 1925 as the owner of certain lands for the purpose of administration of the estate of his father, the previous registered owner. The client now wishes to transfer the lands to his own son and the only method will be to obtain the consent of the next-of-kin to the transfer, or to sell the lands in the course of administration for full value. The client wishes to take the second course. Member is aware that the client will, as a private arrangement, return the amount of the cheque to his son after the latter's title has been registered, thereby committing a fraud on the beneficiaries. Member will have no connection with the transaction after the conveyancing business has been finished, but he wishes to be advised as to his professional position, having regard to his knowledge of the client's intention. An administration bond was issued by a private person to guarantee the due administration of the estate. In reply to a request for guidance the Council on a report from the Committee stated that member should insist either (*a*) that the proceeds of the sale should be paid to him for distribution to the beneficiaries, or, alternatively (*b*) should notify the administrator that he will refuse to act and will notify the bondsmen and the beneficiaries. If the sale does take place through member, he should notify the bondsmen and the beneficiaries of the price and the circumstances, and the client should be advised thereof in advance.

Formation of limited companies by unqualified persons

On a report from a Committee, it was decided that particulars of any cases received by the Secretary of the formation of companies by unqualified persons contrary to section 58 of the Solicitors Act, 1954, should be submitted to the appropriate Committee for action.

Lectures by solicitors

On a report from a Committee, the Council stated that there was no professional objection to the delivery by a member of a lecture on a legal subject in a Workers College for trade unionists, and the publication of the lecture for members of the College in a brochure, giving member's professional qualification.

FEBRUARY 10TH: The President in the Chair. Also present, Messrs. Thomas A. O'Reilly, Desmond Moran, Charles Hyland, James B. MacGarry, Desmond J. Collins, George A. Nolan, Niall S. Gaffney, John R. Halpin, George G. Overend, John Maher, James J. O'Connor, Eunan McCarron, Augustus Cullen, Robert McD. Taylor, Terence De Vere White, Francis J. Lanigan, Peter E. O'Connell, James R. C. Green, Dinnen B. Gilmore, Cornelius J. Daly, John Carrigan, Arthur Cox, Peter D. M. Prentice, James W. O'Donovan, John J. Sheil, John J. Nash, Reginald J. Nolan, Patrick Noonan.

The following was among the business transacted:

Practising certificates

It was decided to draw the attention of members to the fact that the clients of a solicitor who practises without a certificate are not protected by the Compensation Fund. Under section 21 of the Solicitors (Amendment) Act, 1960, the Society has a discretion to make or refuse to make a grant in such cases in respect of any losses suffered which would otherwise give rise to a claim against the Fund. It was decided that members should be advised to display

their practising certificates prominently in their offices. The practising certificate for the year 1962/63 and subsequent years will be of the same size as heretofore, but will have a more distinctive form and layout.

Land Commission procedure

The Secretary stated that he had received a memorandum from the Land Commission on the suggestions submitted some years ago by the Council with a view to simplifying and expediting procedure. The President, with Messrs. Halpin and Shaw, were appointed as a sub-committee to deal with the matter and to discuss it with the Land Commission.

Labourers Acts. Taxation of costs

It was decided to make further representations to the Departments of Local Government and Justice, with a view to the introduction of any necessary legislation or regulations to enable solicitors' costs under the Labourers Acts to be taxed and certified.

Formation of limited companies

On a report from a Committee, it was decided that the President should write a letter to each practitioner, advising him that it is unprofessional for a solicitor who is not engaged in the formation of a Company to assist an unqualified person by signing a certificate under section 17 (2) of the Companies Act, 1908.

Special default procedure

On a report from a Committee of the Council, it was decided to refer to the Dublin Solicitors' Bar Association a suggestion that the special civil bill default procedure should be made generally available in all areas, and that the requirement of personal service of the civil bill should be abolished so that special default civil bill may be served in the same manner as ordinary civil bills. The Association is to be asked to consider a further suggestion that the present requirement of personal service in the case of ordinary default civil bills should be changed with a view to saving time in the Court Lists.

Week-end Meeting, Galway, June 2nd—5th, 1961

A circular was recently sent to all members asking them to indicate whether they will be interested in attending the Week-end Meeting in Galway. Those who are likely to attend the Meeting are asked to return the circular to the Society with the necessary information, if they have not already done so. A list of hotels and other information will be issued very shortly to those who return the circular.

WATERFORD LAW SOCIETY

At the Annual General Meeting of this Society the following officers were elected: President, George A. Nolan; Hon. Sec./Treas., John P. C. Goff; Committee, Messrs. D. R. Counahan, F. J. Power, M. J. Lardner, P. J. O'Connor and John Cooke.

CARLOW BAR ASSOCIATION

The following have been elected to the Committee of the above Association: President, Hugh O'Donnell, Carlow; Hon. Sec./Treas., Desmond Early, Carlow; Committee, Francis J. Lanigan, Carlow, Patrick Cody, Bagenalstown and Michael Donnelly, Tullow.

SOCIAL WELFARE (MISCELLANEOUS PROVISIONS) ACT, 1960

Distribution of Estates of deceased pensioners, etc.

The Society has been in correspondence with the Department of Social Welfare, on the subject of section 19 of the Act, which provides that the personal representative of a person who dies after the commencement of the Act, and who was at any time in receipt of a pension, shall before distributing the assets of that person inform the Minister by notice in writing, not less than three months before the distribution commences, of his intention to distribute the assets. A personal representative who fails to comply with the section will be personally liable to repay any amount which the Minister would have received on a claim against the estate. In a letter received from the Department it is stated that the provision of section 19 (1) need not impose a delay of three months in the distribution of assets in all cases coming within its scope. It is anticipated that, in the normal course, a personal representative will obtain a certificate from the Department stating the amount due, or alternatively stating that there is no claim against the estate, well within the period mentioned. He would then be in a position to proceed with the distribution of the estate without incurring any risk under section 19 (2) after payment of the amount (if any) due to the Minister.

(Departmental reference 26th September, 1960, A.C.2146/60.)

S.I./No. 6 of 1961
DISTRICT COURT (DISTRICTS) ORDER, 1961

I, OSCAR TRAYNOR, Minister for Justice, in exercise of the powers conferred on me by section 22 of the Courts of Justice Act, 1953 (No. 32 of 1953), hereby order as follows:

The district court areas mentioned in column (3) of the Schedule hereto at a particular reference number shall form a district for the purposes of the District Court, and the district shall be known by the name mentioned in column (2) of the said Schedule at that reference number.

SCHEDULE.

District Court Districts formed from the District Court Areas created by the District Court (Areas) Order, 1961, for the purposes of the transaction of the business of the District Court exercising its civil and summary jurisdiction.

Ref. No. (1)	District Court District (2)	District Court Areas forming District Court District (3)
1	District No. 1	The District Court Areas of Ballyshannon, Bunbeg, Buncrana, Carndonagh, Donegal, Dunfanaghy, Dungloe, Falcarragh, Glenties, Killybegs, Letterkenny, Lifford, Milford, Moville, Newtowncunningham, Pettigo, Raphoe and Stranorlar.
2	District No. 2	The District Court Areas of Ballyfamon, Ballymote, Boyle, Collooney, Dowra, Dromahair, Easky, Grange, Inniscrone, Manorhamilton, Riverstown, Skreen, Sligo and Tubbercurry.
3	District No. 3	The District Court Areas of Achill, Balla, Ballina, Ballinrobe, Ballycastle, Ballycroy, Belmullet, Castlebar, Crossmolina, Foxford, Killala, Kiltimagh, Newport, Swinford and Westport.
4	District No. 4	The District Court Areas of Ballaghaderreen, Ballyhaunis, Carrick-on-Shannon, Castlerea, Charlestown, Claremorris, Dunmore, Elphin, Glenamaddy, Kilkelly, Roscommon, Ruskey, Strokestown and Williamstown.
5	District No. 5	The District Court Areas of Arva, Bailieborough, Ballinamore, Ballyconnell and Swanlinbar, Ballyjamesduff, Belturbet, Cavan, Clones, Cootehill, Kingscourt Mohill, Monaghan, Oldcastle and Virginia.
6	District No. 6	The District Court Areas of Ardee, Ballybay, Carlingford, Carrickmacross, Castleblayney, Drogheda, Dundalk and Dunleer.
7	District No. 7	The District Court Areas of Athenry, Carna, Clifden, Derreen, Derrynea, Galway, Headford, Kilronan, Kinvara, Letterfrack, Maam, Oughterard, Spiddal and Tuam.
8	District No. 8	The District Court Areas of Athlone, Ballinasloe, Ballyforan, Banagher, Birr, Borrisokane, Eyrecourt, Ferbane, Kilcormac, Loughrea, Moate, Mount Bellew, Portumna and Woodford.
9	District No. 9	The District Court Areas of Ballymahon, Ballynacargy, Castlepollard, Daingean, Delvin, Drumlish, Edenderry, Granard, Kilbeggan, Killucan, Longford, Mostrim, Mullingar and Tullamore.
10	District No. 10	The District Court Areas of Navan, Athboy, Balbriggan, Kells, Dunshaughlin, Howth, Kilcock, Longwood, Lucan, Slane, Swords and Trim.
11	District No. 11	The District Court Areas of Dundrum, Kilmainham and Rathfarnham.
12	District No. 12	The District Court Areas of Corofin, Ennis, Ennistymon, Gort, Kildysart, Kilkee, Killaloe, Kilrush, Lisdoonvarna, Milltown Malbay, Sixmilebridge, Tuamgraney and Tulla.
13	District No. 13	The District Court Areas of Abbeyfeale, Adare, Askeaton, Ballybunion, Bruff, Drumcollogher, Kilfinane, Kilmallock, Listowel, Newcastle West, Rathkeale, Charleville, Shanagolden and Tarbert.
14	District No. 14	The District Court Areas of Cappawhite, Limerick City, Limerick Rural, Nenagh, Newport, Pallasgreen and Thurles.
15	District No. 15	The District Court Areas of Abbeyleix, Athy, Ballyragget, Carlow, Castlecomer, Mountmellick, Mountrath, Portarlington, Portlaoighise, Rathdowney, Roscrea, Templemore and Urlingford.
16	District No. 16	The District Court Areas of Baltinglass, Blessington, Bray, Clane, Newbridge, Dunlavin, Hackettstown, Kildare and Naas.
17	District No. 17	The District Court Areas of Annascaul, Cahirciveen, Castlegregory, Castleisland, Causeway, Dingle, Kenmare, Killarney, Killorglin, Rathmore, Sneem, Tralee and Waterville.

Ref. No. (1)	District Court District (2)	District Covrt Areas forming District Court District (3)
18	District No. 18	The District Court Areas of Bandon, Bantry, Castletown Bere, Clonakilty, Coachford, Dunmanway, Glengariff, Kinsale, Macroom, Millstreet, Schull and Skibbereen.
19	District No. 19	The District Court Area of Cork City.
20	District No. 20	The District Court Areas of Ballincollig, Blarney, Buttevant, Carrigaline, Castlemartyr, Castletownroche, Cobh, Fermoy, Kanturk, Mallow, Midleton, Mitchelstown and Riverstown.
21	District No. 21	The District Court Areas of Cahir, Cappoquin, Carrick-on-Suir, Cashel, Clogheen, Clonmel, Dungarvan, Killenaule, Lismore, Tallow, Tipperary and Youghal.
22	District No. 22	The District Court Areas of Callan-Gowran, Graiguenamanagh, Kilkenny, Kilmacthomas, Thomastown, Tramore and Waterford.
23	District No. 23	The District Court Areas of Arklow, Ballycullane, Bunclody, Enniscorthy, Gorey, Muine Bheag, New Ross, Rathdrum, Shillelagh, Tullow, Wexford and Wicklow.

DISTRICT COURT (AREAS) ORDER, 1961

The effect of the District Court (Areas) Order 1961—S.I. No. 5 of 1961—is to divide the State (apart from the Dublin Metropolitan District) into new District Court Areas, comprising 23 Districts, and to appoint places and times for sittings of the District Court. Details of the compositions of the new areas, which will come into force on the 1st April, 1961, and of the places, days and times appointed for the sittings of the Court, are fully set out in the Schedule to the Order. This Order may be obtained from the Government Publications Sale Office, Henry St. Arcade, Dublin, for 4/6 (or 4/10, inclusive of postage).

The District Court (Districts) Order, 1961—S.I. No. 6 of 1961—printed herein, may be obtained from the Government Publications Sales Office, for 6d. per copy.

SYNOPSES OF STATUES

It is intended to issue to members synopses of acts of particular interest to solicitors. These will be issued separately from the Gazette. A synopsis of the Rent Restrictions Act 1960 has been prepared and will be issued shortly.

ASSOCIATION OF ATTENDERS AND ALUMNI OF THE HAGUE ACADEMY OF INTERNATIONAL LAW CONGRESS, APRIL, 1961.

The Hague Academy of International Law is probably the largest and best known body for the study of International Law in the world. It was founded under the auspices of the League of Nations, and its lecturers are drawn from the most distinguished international lawyers and diplomats, university lecturers and legal advisers to international institutions and government departments. The Academy's Association of Attenders and Alumni includes the Academy's most distinguished lecturers and attenders from all over the world.

This year the Association's annual Congress is being held in Dublin on 24th-29th April and is a unique and important occasion for Irish lawyers. The general subject of the congress is "The New State in International Law", and two of the lecturers are being given by the Hon. Mr. Justice O'Dalaigh and Dr. S. Ehler of University College, Dublin. The congress gives a great opportunity to members of the legal profession to meet their colleagues from abroad, both at the working sessions of the congress and socially outside them. The visiting delegates are being received by An t-Uachtaran, Mr. de Valera.

Associate membership of the congress is open to all members of the legal profession and their wives who would be interested in meeting any of the foreign delegates or in attending any of the functions of the Congress. The Associate membership fee of £1, should be sent to the Treasurer, Miss Neasa M. Gibbons, at 16 Dollymount Avenue, Clontarf, Dublin in advance of the Congress.

DECISIONS OF PROFESSIONAL INTEREST

Award of £87,000 rejected on appeal as too high for total paralysis—settlement for £50,000 damages

This was an action for personal injuries brought by the Plaintiff, a Solicitor, and who was paralysed virtually from his neck downwards, against the driver of the car in which he was a passenger (the first-named defendant), who collided with a Shell Tanker when passing it between Longford and Mullingar in November 1957. After the accident the first-named defendant was made a bankrupt and, of course, as under the Road Traffic Act, 1933, he

was not liable to insure his passenger, it then became necessary to join the Official Assignee for the purposes of conformity.

The action was heard by Mr. Justice McLoughlin and a Jury, on the 16th February 1959, and after five days' hearing the Jury dismissed Irish Shell from the action and awarded £87,401 damages against the first-named defendant, no Order being made against the Official Assignee.

The first-named defendant appealed against the amount of the award and in December 1959 the Appeal was heard by the Supreme Court, and in a reserved Judgment the Court (Maguire, C. J., Lavery, Kingsmill-Moore, O'Dalaigh and Martin Maguire, JJ.) unanimously allowed the appeal with costs, and ordered a new trial limited to the amount of damages.

The Plaintiff then re-served Notice of Trial and the re-trial took place in May 1960 in the High Court before Mr. Justice Teevan and a Jury. On the second day of the re-trial, terms of settlement and consent were agreed between Counsel, subject to suitable arrangements being made to deal with the bankruptcy position before such settlement was implemented.

Negotiations then took place between the parties and the Official Assignee, which ultimately resulted in the Official Assignee being paid £1,000 of the agreed settlement figure of £50,000, the balance of £49,000 being paid to the Plaintiff.

The complications that arose in this case are not likely to arise again once the Road Traffic Bill, 1960, becomes law, as under it liability to passengers will have to be covered and no question will then arise of damages awarded against a bankrupt defendant having to go into the bankruptcy to enable the creditors to be paid 20/- in the £.

It is interesting to note that, in McMorrow's case, if the damages had been treated as belonging to the bankrupt's estate, the entire costs and expenses of the bankruptcy and the payment of 20/- in the £ to the creditors would have been paid out of the damages and the balance only would have been paid to McMorrow. His damages, therefore, would not have ranked for a dividend.

(McMorrow *v.* Knott, Irish Shell Ltd. and Clancy —unreported.)

NOTE.—In a similar case in Northern Ireland, an award of £50,000 made to the Plaintiff, a girl who was paralysed from the neck downwards as a result of a road accident, was upheld by the Northern Ireland Court of Appeal in March 1960.

OBITUARY

MR. PATRICK J. NEILAN, Solicitor, died on the 20th December, 1960, at his residence, Ratharane, Abbey Street, Roscommon.

Mr. Neilan served his apprenticeship with the late Mr. Michael J. Heverin, Roscommon, was admitted in Michaelmas Sittings, 1911, and practised at Roscommon under the style of Messrs. Patrick J. Neilan & Sons.

MR. JOHN W. O'GORMAN, Solicitor, died on 29th December, 1960, at his residence, South Mall, Lismore, Co. Waterford.

Mr. O'Gorman served his apprenticeship with the late Mr. Edward A. Ryan, Dungarvan, Co. Waterford, was admitted in Trinity Sittings, 1926, and practised at Lismore, Co. Waterford.

MR. JAMES CODY, Solicitor, died on 11th January, 1961, at his residence at Bagenalstown, Co. Carlow.

Mr. Cody served his apprenticeship with the late Mr. Charles H. Thorp, Bagenalstown, was admitted in Easter Sittings, 1928, and practised at Bagenalstown under the style of Messrs. James Cody & Son.

MR. MICHAEL F. FLANAGAN, Solicitor, died on 25th January, 1961, at a Dublin hospital

Mr. Flanagan served his apprenticeship with the late Mr. John C. Garvey, Castlebar, Co. Mayo, was admitted in Easter Sittings, 1952, and practised at Castlebar under the style of Messrs. Garvey, Smith & Flanagan.

INDEX OF STATUTORY INSTRUMENTS

published since August, 1960

AGRICULTURE, LANDS AND FISHERIES.

SUBJECT MATTER AND REFERENCE NUMBERS.

Bacon Pigs Production Levy—258/1960.

Bacon Sales Levy (Home Consumption) Suspending Orders—214/1960, 230/1960, 257/1960, 8/1961, 28/1961.

Bovine Tuberculosis—Co. Clare and Co. Limerick North of Shannon declared attested areas after 4th February 1961—17/1961.

Bovine Tuberculosis—Co. Donegal, Co. Mayo and Co. Sligo declared attested areas after 5th December 1960—236/1960.

Bovine Tuberculosis—Counties Kildare, Louth, Meath, Offaly and Baltinglass District to be clearance area after 1st March 1961—38/1961.

Bovine Tuberculosis—Co. Galway to be an attested area from 20th January 1961—9/1961.

Bovine Tuberculosis—Co. Leitrim and Co. Roscommon declared attested areas after 13th February 1961—29/1961.

Bovine Tuberculosis—Movement of Cattle in Counties Cavan, Longford and Monaghan regulated after 12th December 1960—248/1960.

Bovine Tuberculosis—Movement of Cattle save under Permit prohibited in Counties Clare, Galway, Leitrim and Roscommon after 1st November 1960—218/1960.
Bovine Tuberculosis—Prohibition of Movements of cattle in Counties Kildare, Louth, Meath, Offaly and Baltinglass District after 1st March 1961—39/1961.
Bovine Tuberculosis—Public Sales of Cattle restricted in Counties Cavan, Longford and Monaghan after 12th. December 1960—247/1960.
Chief Agricultural Officers and Deputy Chief Agricultural Officers of Committees of Agriculture—Revised Scale of Salaries on 1st April 1960—213/1960.
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Dairy Produce Marketing Act 1961 mostly in force from 1st March 1961—46/1961.
Dairy Produce Marketing Act 1961—12th April 1961 fixed as Nomination Day—47/1961.
Dairy Produce Marketing Act 1961—17th May 1961 appointed as Establishment Day—48/1961.
Dairy Produce Marketing Act 1961—Forms of Nomination and Balloting Procedure for An Bórd Báinne—49/1961.
Foot and Mouth Disease—Importation of Animals from Britain and Continent allowed after 6th February 1961—20/1961.
Foot and Mouth Disease—Importation of Animals from Britain and Continent prohibited save under licence after 6th March 1961—50/1961.
Foot and Mouth Disease—Importation of all Animals from Britain and the Continent prohibited save under licence after 15th November 1960—215/1960.
Home-Grown Wheat—National Percentage for Cereal Year 1961–62 ending August 1962 fixed at 75%—262/1960.
Pig Carcases Grading (Amendment) Regulations 1960—209/1960.
Tobacco—Maximum total area to be planted in 1961 to be 1,500 acres, and maximum individual area to be planted in 1961 to be 6 acres—256/1960.

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Dead Turkeys exported to 31st December 1960 need not be killed on licensed Poultry Premises—231/1960.
Electricity Supply (Amendment) Act 1961 in force from 1st March 1961—36/1961.
Food Hygiene (Amendment) Regulations 1961 re Ice Cream—24/1961.
Undeveloped Areas Act 1952 extended to Killeshandra, Co. Cavan—21/1961.

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Personal Clothing and Apparel (Cotton)—Control of Exports to Great Britain continued—33/1961.
Pneumatic Tyres for Bicycles—Import Quota limited to 105,000 to January 1962—267/1960.
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Cavan, Clare, Westmeath and West Cork County Health Districts and Athlone U.D.C. may grant Licences for Camping to a Camping Organisation—22/1961.
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Local Authorities (Combined Purchasing) Act 1939 in force from 1st January 1961—271/1961.
Local Authorities (Combined Purchasing) Regulations 1961—37/1961.
Local Offices (Gaeltacht) Order 1961 substituting 31st January 1962 as date on which competent knowledge is required—15/1961.
Local Officers (Irish Language) (Amendment) Regulations 1961—16/1961.
Local Authorities—Travelling Expenses of Members Regulations 1960—201/1960.
Louth and Roscommon Health Districts and Kilrush U.D.C. may grant Licences for Camping to a Camping Organisation—220/1960.
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Shot Gun Cartridges—Customs Duty of 30/- per 100 cartridges imposed after 3rd March 1961—34/1961.
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SUBJECT MATTER AND REFERENCE NUMBERS.

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Docks, Wharves and Quays—Regulations for the Safety, Health and Welfare of Persons employed therein—279/1960.
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SUBJECT MATTER AND REFERENCE NUMBERS.

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Death Duties (Condition of Payment in Stock of the 6% Exchequer Stock 1980–1985) Regulations 1961—25/1961.
Electoral Act 1960 in force from 21st December 1960—265/1960.
Electoral (Amendment) Order 1961—27/1961.
Exchange Control (Miscellaneous) Regulations 1961—19/1961.
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Land Bonds—New consolidated 6% Land Bonds 1961—10/1961.
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5% Land Bonds—Arrangements for Annual Drawing from April 1961—until Bonds redeemed—52/1961.
5½% Land Bonds—Arrangements for Annual Drawings from April 1961—until Bonds redeemed—52/1961.
Statistics (Census of Distribution) Order 1961—3/1961.

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SUBJECT MATTER AND REFERENCE NUMBERS.

Galway Harbour Commissioners may increase specified Maximum Tonnage Rates after 2nd January 1961—260/1960.
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Medical Practitioners—Reciprocity of Registration established with State of Victoria, Australia—31/1961.
Medical Practitioners—Reciprocity of Registration established with Union of South Africa—206/1961.

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SUBJECT MATTER AND REFERENCE NUMBERS.

Association of Hospital and Public Pharmacists may carry on wages negotiations without a Negotiation Licence—233/1960.
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Social Welfare—Increased Rates for Disability, Unemployment and Marriage Benefit Regulations 1961 in force from 2nd January 1961—249/1960.
Social Welfare—Old Age Contributory Pensions payable henceforth weekly in advance—259/1960.
Social Welfare—Old Age Contributory Pension reduced in event of lesser payments Regulations—274/1960.
Social Welfare—Old Age (Contributory Pensions) (Transitional) Regulations 1960—255/1960.

Social Welfare (Overlapping Benefits) (Amendment No. 1) Regulations 1960—278/1960.
Social Welfare—Payments of Old Age and Assistance Benefits suspended during Imprisonment—221/1960.
Social Welfare—Rates of Contributions by Persons on foreign-going Ships modified after 2nd January 1961—272/1961.
Social Welfare—Voluntary Contributors may elect to pay either 2/6 or 4/9 per week after 1st January 1961—277/1960.
Unemployment Assistance—Persons not resident in Towns excluded from 8th March 1961 to 31st October 1961—45/1961.

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SUBJECT MATTER AND REFERENCE NUMBERS.

Dublin (Authorised Carriage Stands for Licensed Hackney Carriages) (Amendment) Bye-Laws 1961—2/1961.
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Shannon Custom Free Airport—Exchange Control Regulations 1961 extended thereto—42/1961.
Traffic Signs—Temporary Authorisation to use unauthorised signs to 31st December 1961—275/1960.

THE REGISTRY
Register B.

SOLICITOR, extensive experience in Dublin and abroad, seeks position in Dublin office, preferably with view to Partnership. Box No. B.260.

Register C.

JAMES FITZPATRICK, deceased. Will any person having any knowledge of the whereabouts of any Will of James Fitzpatrick of 6 Cherrywood Road, Loughlinstown, Co. Dublin, deceased, kindly communicate with Messrs. McCann, White & Fitzgerald, Solicitors, 72 St. Stephen's Green, Dublin, immediately.

WILL any Solicitor knowing of the whereabouts of a will of James Collins, deceased, of Moat House, Inistioge, County Kilkenny, retired National School-teacher, please communicate with Messrs. Walter A. Smithwick & Son, 43 Parliament Street, Kilkenny.

Solicitors' Golfing Society

The Spring meeting of the Society will be held at Woodbrook, Golf Club on Saturday the 22nd April, 1961.

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1961

THE GAZETTE

of the

INCORPORATED LAW SOCIETY OF IRELAND

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RALPH J. WALKER

Vice-Presidents
GEORGE G. OVEREND
JOHN MAHER

Secretary
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

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MEETINGS OF THE COUNCIL

MARCH 2ND: The President in the chair, also present, Messrs. James J. O'Connor, Robert Taylor, Peter E. O'Connell, Patrick Noonan, William A. Tormey, Brendan T. Walsh, J. Bernard MacGarry A. Cox, John Maher, Thomas A. O'Reilly, D. B. Gilmore, Cornelius J. Daly, James R. C. Green, Peter D. M. Prentice, Desmond J. Collins, Desmond Moran, Gerald Y. Goldberg, John A. Shiel, Edward Treacy, T. V. O'Connor, John Carrigan, James W. O'Donovan, John R. Halpin, John J. Nash, George G. Overend, Reginald J. Nolan, Augustus Cullen, Eunan McCarron.

The following was among the business transacted:

Contemplated fraud by client. Duty of solicitor

A member acted for a client in the extraction of letters of administration intestate to the estate of the client's father. The client supplied the names of brothers and sisters whom he stated were the only next-of-kin and instructed member to prepare a deed of release and family settlement whereby the other next-of-kin released their rights to the personal representative. The deed was prepared, executed and registered in due course. Sometime later member received instructions from the client to sell the lands.

He then ascertained that the client had a brother in a mental hospital whose existence had not been disclosed. Member asked for advice as to his professional position particularly as to his obligation to make this disclosure to the purchaser, the position of the sureties and his obligations to the Land Registry who have apparently registered the client as owner on a misrepresentation made by the latter. It would appear that no question of privilege can arise between the client and member having regard to the fact that the client apparently retained member as a solicitor for the purpose of committing a fraud. The Council on a report from a Committee stated that in their opinion the client should be informed of the rights of the next-of-kin in the mental home to share in the estate and that member is obliged to disclose the mistake to the Registrar of Titles and to the sureties.

Certificate of discharge of income tax

The Council reconsidered on request the existing ruling that the work of a solicitor for a vendor in applying for and obtaining the Section 6 Certificate is included in the commission scale fee and that no further charge should be made against the vendor and that no charge should be made against the purchaser in respect thereof. In cases in which the solicitor has to make a return of income tax on behalf of a client in order to obtain the certificate the appropriate charge therefore may be made against the vendor under Schedule 2. The Council decided to make no change in the existing ruling.

Compensation Fund

On report from the Compensation Fund Committee the Council admitted claims amounting to £11,863 for payment.

Land Registry Map

A member who acted for a purchaser who bought under a contract containing a stipulation that the purchaser would admit the identity of the property from the muniments of title offered by the vendor, wrote asking whether it was in accordance with ordinary conveyancing practice to refuse to furnish a certified copy of the Land Registry Map. The Council replied that the matter is one for the parties under the contract or conditions of sale.

Registry of Deeds searches

Members wrote referring to delays in the Registry of Deeds in supplying negative searches which make it impossible or difficult in many cases to complete a sale in the normal period of one month stipulated in the contract. Many solicitors are closing on land searches and member asked for advice as to the incidence of the additional expense. The matter was referred to the Dublin Solicitors' Bar Association.

Northern Ireland Commissioners for Oaths

The Council were informed that some district justices will not accept an affidavit sworn before a commissioner for oaths in Northern Ireland and that counsel has advised that they may be correct in this view having regard to certain provisions in the District Court Rules. No difficulty arises as regards affidavits filed in the High Court. The Council directed that the matter be referred to the District Court Rules Committee.

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

The Council on report from the Legislation Committee considered the provisions of the Bills and directed that representation should be made thereon to the Department of Justice.

Commission scale fees on leases

The Costs Committee submitted the following report:

(i) At the present time as regards property registered and unregistered as a whole there are four different commission scales printed in the Society's calendar: Table B is for leases at rack rent of unregistered land. Table E, is for the same kind of lease of registered land. Table C is for building leases and long leases not at rack rent of unregistered land. Table F is for the same kind of lease of registered land. A short lease not at a rack rent, if there is such a thing, does not fall under any commission scale fee. If the subject matter is unregistered land the new Schedule 2 applies; if it is registered land the costs are chargeable by items under the old Schedule 2.

(ii) The Committee think there should be only two scales, a higher and a lower scale applicable equally to the registered and unregistered land. The present scales for registered land should be adopted.

(iii) The old distinction between leases at rack rent and leases at less than a rack rent should be abolished. Instead, a building lease, a lease containing a fine and a lease for a term greater than thirty five years should each be charged on the higher scale. All other leases should be charged on the lower scale.

(iv) The existing practice of the profession as regards yearly and shorter tenancies should remain,

i.e., they should be charged on the lower scale with discretion to the solicitor to accept a lower fee where justified.

(v) Differentiation between the fees of the lessor's and lessee's solicitors is too great. Having regard to the responsibility thrown on the lessee's solicitor he should receive a fee equal to seventy five per cent. of the lessor's solicitor's fee.

(vi) The new Schedule 2 giving the solicitor a negotiation fee where he negotiates a lease will be applied to registered land if the Land Registration Rules Committee adopts the new Schedule 2.

(vii) At common law in the absence of a stipulation to the contrary the lessee must pay the lessor's costs. This does not apply to a transaction which is really a sale effected by way of lease having regard to the decision of Dixon, J. in Sims *v.* Ilet Ltd. (1960 Calendar, page 576). The Committee are in favour of a change in the law whereby the parties to any lease should each pay their own costs. This could be done only by legislation as has been done in England. The Department of Justice should be asked at an appropriate time to seek legislation to this effect.

(viii) The Committee are of opinion that the question of increasing or altering the commission rates should be postponed until the law has been altered as recommended in paragraph (vii).

The Council having considered this report decided that an application should be made in due course to the Statutory Body under the Solicitors' Remuneration General Order, 1881 for a new Order consolidating the Solicitors' Remuneration General Orders, 1884 to 1961 and including an amendment providing that the commission scale fees for leases of unregistered land shall be the same as those for registered land. Consideration of the other matters mentioned in the Committee's report was postponed until such time as the law can be amended to provide that the respective parties to any lease will each pay their own costs.

Series of leases—reduced charges

A member who acts for a company engaged in the construction of houses for employees was asked to prepare a standard form of letting agreement. The only matters to be inserted will be usual particulars of the tenant's name, date of letting, amount of rent, etc. He enquired whether he could charge reduced fee. The Council stated that there would be no objection to a reduced charge provided that

(i) Member reserves the copyright in the agreement and the right to charge extra fees in any case where the work justifies it.

(ii) there should be separate instructions for each agreement.

(iii) the reduced fees would be charged only in respect of short leases or letting agreements.

COURTS (SUPPLEMENTAL PROVISIONS) BILL, 1959

Section 45 of the Bill as introduced proposes to abolish the present mode of address in Court to the Chief Justice, Judges and the District Justices and to substitute a form of address in the Irish language. The following resolution passed by the General Council of the Bar of Ireland was received by the Council of the Society:

It is the opinion of the Council that the provisions of Section 45 of the Courts (Supplemental Provisions) Bill, 1959, as introduced are objectionable on the grounds:—

1. That they are inconsistent with the Constitution and in particular with the provisions of Articles 8(2) and 34 thereof.
2. That they will unnecessarily interfere with the traditional and established mode of address in Court and inevitably tend to confusion and loss of dignity.
3. Because they would impose an embarrassment on the professions and the public involving loss of dignity to the Courts and do a disservice to the advancement of the Irish language and in any event would not be capable of enforcement.

Further, the Council regret that such an alteration as now proposed in the procedure and usage of Court should have been advocated without prior consultation with the Bar.

By direction of the Council a letter was written to the Department of Justice stating that the Council of the Society support the resolution of the Bar and further stating that in the opinion of the Council the mode of address of the judges and other matters of procedure should be laid down by the statutory Rules Committees with which the judges are associated and that it is wrong in principle that such matters should be prescribed by direct statutory enactment.

PROCEEDINGS AGAINST SOLICITORS

By Order made on 27th January, 1961 the Chief Justice directed that the name of John B. Sullivan, Solicitor of Mallow, County Cork, shall be struck off the Roll on the ground that he had committed misconduct as a solicitor.

PROCEEDINGS AGAINST UNQUALIFIED PERSON

In the Dublin District Court on March 12th on proceedings brought by the Society Messrs. Bruton Limited of 5 Henry Street, Dublin and Moira Healy a servant of the defendant-company were convicted on summonses brought under Section 64 of the Solicitors Act 1954 in respect of a letter issued by the defendant company and signed by the other defendant which the Justice held was such as to imply that the body corporate was qualified or recognised by law as qualified to act as a solicitor. The Justice imposed fines of £25 on the defendant company and £10 on the other defendant.

EXAMINATION RESULTS

At the Preliminary Examination for intending apprentices to solicitors held on the 7th and 8th days of February 1961 the following candidate passed the examination.

John M. Fitzpatrick

1 Candidate attended; 1 passed.

At examinations held on 3rd February, 1961 under the Solicitors Act, 1954, the following candidates passed.

First Examination in Irish: Henry C. L. St. John Blake, Thomas J. Colgan, Francis D. Daly, Patrick E. Dooley, Thomas W. Enright, Joseph G. Finnegan, John M. Fitzpatrick, Barry St. John Galvin, William B. Glynn, Mary T. Griffin, Mary Margaret Harvey, George B. Holland (B.A.), Paul W. Keogh, Gerard A. Kirwan, John B. D. Lacy, Patrick J. Lavan, Michael R. Law, Thomas A. Menton, Kieran C. McDermott, Thomas D. J. O'Brien, Mathew Purcell, Austin Turnbull, Anne D. Walsh, Brian A. F. Woodcock.

26 candidates attended; 24 passed.

Second Examination in Irish: Mary Binchy (B.A.), Maurice R. Curran (B.C.L., LL.B.), Michael G. Dickson, Joseph L. Dundon, Charles E. Gavin, Anthony C. Gore Grimes, Mary Grace Hanna (B.C.L.), John Jay (B.A., (Mod) LL.B.), David O'N Kiely, William J. P. Kirwan (B.C.L.), John G. Lanigan (B.C.L.), Dermot Loftus, Oliver D. McArdle, James R. O'Donnell, Roderick D. O'Donnell, James L. O'Keeffe, Francis J. O'Mahony, David A. Potterton, Martin T. Ruane (B.C.L.), Thomas K. Smith (B.C.L.), Peter John Woods.

21 candidates attended; 21 passed.

At the Book-keeping Examination for apprentices to solicitors held on the 27th day of February the following passed the examination:

Passed with Merit: Iain R. Farrell, (B.C.L.)

Passed: Joseph L. Dundon, Fintan Earley (B.C.L.); Mary G. Hanna (B.C.L.); John G. Lanigan (B.C.L.); William E. Leahy, Oliver D. McArdle.

16 candidates attended; 7 passed.

At the First Law Examination for apprentices to solicitors held on the 6th and 7th days of February the following passed the examination:

Passed with Merit: Henry Owen Comerford.

Passed: Henry C. P, Barry, Thomas O. Boyle, Sean de Burca (B.A.); Malachy F. Concanon (B.A., B. Comm.); Robert Cussen (B.C.L.); Michael N. Dolan, Graham M. Golding (B.A.Mod.); James A. Harte, John S. Horgan, John M. W. Lenahan, Garrett P. Lombard, Thomas J. Macken, Neil M. Matthews, John C. O'Donnell, Thomas J. M. O'Donoghue, Carmel O'Halloran, Christopher T. N. O'Meara.

32 candidates attended; 18 passed.

The Centenary prize was not awarded.

At the Second Law Examination for apprentices to solicitors held on the 7th, 8th and 9th days of February the following passed the examination:

Passed: Michael J. P. Allen, Mary P. M. Berkery, Mary Binchy (B.A.); Michael B. Creed (B.C.L.); John V. P. Cresswell (B.A., LL.B.); James J. Dennison, Ailin A. Gibbons (B.C.L.); Lewis J. Goldberg, Owen Mulholland, Denis M. McDowell (B.C.L.); James A. O'Donohoe, James G. Orange (B.C.L., LL.B.); James I. Sexton.

25 candidates attended; 13 passed.

At the Third Law Examination for apprentices to solicitors held on the 9th, 10th and 11th days of February the following passed the examination:

Passed with Merit: Michael J. Browne) B.A.); Maurice R. Curran (B.C.L., LL.B.)

Passed: Oliver J. Conlon, James J. Dennison, Joseph Gilmartin, Rory M. Hogan (B.C.L.); Francis J. O'Mahony, James G. Orange, Daire Walsh.

13 candidates attended; 9 passed.

On the combined results of the Second and Third Law Examinations the Council has awarded a Silver Medal to Maurice R. Curran (B.C.L., LL.B.) and a Special Certificate to Michael J. Browne (B.A.).

COMMISSIONERS OF CHARITABLE DONATIONS AND BEQUESTS BOARD MEETINGS

(*For Easter and Trinity Terms*)

Tuesday	11th April, 1961
,,	2nd May, 1961
,,	16th May, 1961
,,	6th June, 1961
,,	20th June, 1961
,,	4th July, 1961
,,	25th July, 1961

S. Martin
Secretary

LIST OF DISTRICT JUSTICES IN REVISED COURT AREAS

The following District Justices have been appointed to the District Court Areas, as previously listed in the District Court (Districts) Order 1961—S.I. No. 6 of 1961—See *Gazette*, February 1961, Vol. 54, page 79.

District No. 1	Michael Larkin.
District No. 2	John Hugh Barry.
District No. 3	Hugh McGahon.
District No. 4	Patrick Joseph Loftus.
District No. 5	Philip Lavery.
District No. 6	Alfred Rochford.
District No. 7	Thomas Gerard Burke.
District No. 8	Michael O'Callaghan.
District No. 9	Robert O'Huadhaigh.
District No. 10	Denis O'Donoghue (Donnchadh Ua Donnchadh).
District No. 11	Louis Murphy.
District No. 12	John Gordon Hurley.
District No. 13	John Patrick Feran.
District No. 14	Dermot Gleeson.
District No. 15	William Sweetman.
District No. 16	Michael J. Keane.
District No. 17	Richard D. Johnson.
District No. 18	James F. Crotty.
District No. 19	Denis Patrick O'Donovan.
District No. 20	John Mary Buckley.
District No. 21	Leo Skinner.
District No. 22	John Richard Coghlan.
District No. 23	Donagh Mac Donagh.

District Justices Desmond O'Hagan and Kevin McCourt have been appointed permanent movable Justices.

All these appointments take effect as from 1st April, 1961.

LIBRARY ACQUISITIONS

List of Books ordered in Library to March, 1961.

A.—BOOKS PURCHASED OR ON ORDER

All England Law Reports—Index and Notes-Up, 1959; Albery and Essayan—*The New Supreme Court Costs*, 1960; Allsopp—*The Legal Profession*, 5th Edn., 1960; Alpe—*Law of Stamp Duties*, 25th Edn., 1960; Bailey—*Law of Wills*, 5th Edn., 1957; Beattie—*Elements of Income Tax*, 4th Edn., 1960; Bingham—*Motor Claims Cases*, 4th Edn., 1960; Birks—*Gentlemen of the Law*, 1960; Boland and Sayer—*Oaths and Affirmations*, 1957; Burke—*Anecdotes of the Connaught Circuit* (1604-1884), 1885; Burke—*History of the Lord Chancellors of Ireland* (1186-1874), 1879.

Charlesworth—*Mercantile Law*, 9th Edn., 1960; Cheshire—*Law of Real Property*, 8th Edn., 1958; Cheshire and Fifoot—*Law of Contracts*, 5th Edn., 1960 (Two Copies); Citrine—*Trade nion Law*, 2nd Edn., 1960; Cohen—*Powers of Attorney*, 8th Edn., 1959; Cross and Garner—*Highway Law*, 1960; Crotty—*Practice and Procedure in the District Court*, 1960; *Current Law Citator*—1947-1959 *Current Law Yearbook*—1959.

Deale—*Law of Landlord and Tenant*, 1953 (Two Copies); Delany—*Christopher Palles*, 1960; Dicey—*Law of the Constitution*, 9th Edn., 1950; Dymond—*Law of Death Duties*, 13th Edn., 2 Vols., 1960; *English Catholic Directory*, 1961; *English and Empire Digest, Third Cumulative Supplement*, 1960; *English and Empire Digest*—Replacement Volume 26 (*Guarantee and Indemnity to Housing*), 1960; Replacement Volume 38 (*Public Authorities to Real Property*), 1960; Replacement Volume 3 (*Auctioneers to Bastardy*), 1960; *English Statutes*—Chronological Table to 1959.

Fleming—*Law of Torts*, 1957; Garner—*Law of Sewers and Drains*, 2nd Edn., 1960; Gatley—*Law of Libel and Slander*, 5th Edn., 1960; Green—*International Law through the Cases*, 2nd Edn., 1960; Griffith—*Principles of Bankruptcy*, 6th Edn., 1958; Grogan—*Irish Income Tax*, 2nd Edn., 1952 (Extra Copy).

Hahlo and Kahn—*The Union of South Africa, The Development of its Laws and Constitution*, 1960; Halsbury—*Laws of England, Cumulative Supplement*, 1960; Halsbury—*Laws of England, Simonds Edn.*, Vol. 31 (*Public Health to Railways and Canals*), 1960; —Vol. 32 (*Rating to Rent charges and Annuities*), 1960; —Vol. 29 (*Patents and Inventions to Persons Mentally Disordered*); —Vol. 34 (*Sale of Goods to Sherriff and Bailiffs*), 1960; Halsbury—*Laws of England, Simonds Edn., Interim Index to Vols.* 1-28, 1960;

Harris—*Criminal Law*, 20th Edn., 1960; Harrison and Hillman—*Book-Keeping and Accountancy for Solicitors*, 1960; Hooper—*Law relating to Voluntary Liquidations*, 3rd Edn., 1949.

Ireland—*Acts of the Oireachtas*, 1958 (Two Copies); Ireland—*Commission for Income Taxation, Third Interim Report*, 1960; Irish Association for Documentation—*Union List of Current Periodicals and Serials in Dublin Libraries*, 1959; *Irish Catholic Directory*, 1961; Jarman—*Law of Wills*, 8th Edn., 3 Vols., 1951; Josling—*Law of Naturalisation*, 2nd Edn., 1960; Keeton—*Cases on Equity and Trusts*, 1959; Kemp and Kemp—*The Quantum of Damages for Personal Injuries*, 2nd Edn., 1961; Ker—*Wills, Probate and Administration*, 1960 (Second Copy); Kerly—*Law of Trade Marks*, 8th Edn., 1960; Kersell—*Parliamentary Supervision of Delegated Legislation*, 1960.

Law List, 1960; *Law Quarterly Review*, Vols. 51 (1935) to 54 (1938); Lawson—*Introduction to the Law of Property*; Lund—*Professional Conduct and Etiquette*, 1960; McCleary—*County Court Precedents*, 2 Vols., 2nd Edn., 1960; Mayne—*Law of Damages*, 12th Edn., 1961; Megarry—*Manual of Law of Real Property*, 2nd Edn., (1957) and 3rd Edn., (1961); Moeran—*Guide to Practical Conveyancing*, 2nd Edn., 1960; Monroe—*Law of Stamp Duties*, 3rd Edn., 1961; Morris—*Cases on Private International Law*, 3rd Edn., 1960.

Nathan—*Equity through the Cases*, 4th Edn., 1961; Northern Ireland—*Newark Committee Report on Charity Law*, May 1958; Northern Ireland—*Chronological Table and Index of Statutes*, 9th Edn., 1959; Northern Ireland—*Patton Report on Amendment of Company Law*, July 1958; Northern Ireland—*Sheil Report on Reform of Supreme Court*, 1958; Odgers—*Pleading and Practice in Civil Actions*, 17th Edn., 1960; Palmer—*Company precedents*, Part II, 17th Edn., 1960; Park—*Collection of Debts*, 1960; Parry—*The Law of Succession, Testate and Intestate*, 4th Edn., 1960; Phillips—*Probate and Estate Duty Practice*, 6th Edn., 1958; Preston and Newsom—*Restrictive Covenants affecting Freehold Land*, 3rd Edn., 1960.

Redgrave—*Factories and Truck Acts, Supplement to* 19th Edn., 1960; Robinson—*Conveyancing Costs*, 3rd Edn., 1960; Robb—*Law of Bankruptcy in Ireland*, 1907 (Extra Copy); Roddis—*Law relating to Caravans*, 1960; Ryan—*Notes of Irish Cases* (1949-1958), 1960 (Two Copies); Schmitthoff—*The Sale of Goods*, 1951; Schwarzenberger—*Manual of International Law*, 2 Vols., 1960; Shillman—*Trade Unionism and Trade Disputes in Ireland*, 1960 (Two Copies); Snell—*Principles of Equity*, 25th Edn., 1960; Society of Public Teachers of Law—*Journal* 1947-1961; Stephen—*Digest of the Law of Evidence*, 13th Edn., 1961.

Tearmai Dli—(*Irish Legal Terms bound in One Volume*); Terrell—Law of Patents, 10th Edn., 1961; Thom's Directory of Ireland—2 Vols., 1960; Tolstoy—*Divorce Law and Practice*, 4th Edn., 1958; Tristam & Coote—*Probate Practice*, 21st Edn., 1960; Vanston—*Municipal Corporation Acts*, 1907 (Extra Copy); Vanston—*Law of Municipal Towns*, 1900 (Extra Copy).

Walford—*Practical Hints on Draft Leases*, 3rd Edn., 1942; Where To Look for your Law—13th Edn., 1960; Who's Who—1961; Wild—*Law of Hire Purchase*, 1960; Wilkinson—*Affiliation Law and Practice*, 1960; Wilkinson—*Road Traffic Offences*, 3rd Edn., 1960; Williams—*Law of Executors and Administrators*, 2 Vols., 1960; Wilson—*Principles of the Law of Contract*, 1957; Wilson and Kelly—*Principles of Irish Income Tax*, 1957, *with* 1958, 1959 *and* 1960 *Supplements*; Words and Phrases Judicially Defined—*Pocket Supplement*, 5 Vols., 1960.

COURTS (ESTABLISHMENT AND CONSTITUTION) BILL, 1959

This Bill, which has only been printed now, proposes to establish in pursuance of Article 34 of the Constitution the Supreme Court and the High Court, the Court of Criminal Appeal, the Circuit Court and the District Court and to specify the constitution of those Courts. In effect, Section 58, which was one of the transitory provisions of the Constitution and which consequently was not printed in recent copies of the Constitution, purported to continue in force the Courts of Justice established by the Courts of Justice Act, 1924 as amended by subsequent Acts, but the actual Courts specified in Article 34 of the Constitution have not yet come into existence. This Bill proposes to remedy this provision and to set up properly constituted Courts under the Constitution; the number of judges in each Court is left to subsequent legislation. The newly constituted office of President of the District Court is mentioned for the first time. The Bill contains 8 Sections, and will come into operation on such day as the Government will appoint, when all existing courts will cease to exist. Copies of this Bill may be obtained from the Government Publications Sale Office, Henry St. Arcade, Dublin for 9d.

COURTS (SUPPLEMENTAL PROVISIONS) BILL, 1959

This Bill, which has only been printed now, sets out in detail the constitution of the Courts mentioned in the Courts (Establishment and Constitution) Bill

1959, it states that all existing Judges and Justices shall have priority in being appointed to the new Courts. Excluding the Chief Justice and the presidents of the High Court, the Circuit Court and District Court, this Bill limits ordinary Supreme Court Judges to four, and ordinary High Court Judges to six, ordinary Judges of the Circuit Court to eight, and District Court Justices to thirty four.

Many of the provisions of the Courts of Justice Acts have been re-enacted, such as the qualifications for appointment as a judge, emoluments, retiring age, pension rights, jurisdiction, etc. As regards the jurisdiction of the Circuit Court, no less than 71 different kinds of proceedings are listed in the Fourth Schedule, and the Fifth Schedule lists 29 old British Statutes which are still effective in that Court. The jurisdiction of the Cork Circuit Judge in Admiralty and Bankruptcy matters is fully set out. Henceforth a trial may not generally be transferred from the Circuit Criminal Court to the Central Criminal Court unless seven days notice is given either by the accused or by the Attorney-General. The President of the District Court may inquire into the conduct of a Justice if he consider it prejudicial to the prompt and efficient discharge of the business of the Court. Justices shall be compelled to attend twice yearly meetings summoned by the President of the District Court to discuss matters relating to the discharge of business. The continuity of the administration and enforcement of justice shall not be interrupted by the coming into operation of these Acts. The Courts (Supplemental Provisions) Bill 1959 contains 56 Sections, and no less than 8 Schedules; it is accompanied by an explanatory memorandum which sets out in detail the particular sections of the Court of Justice Acts which have been repealed; it is hoped to introduce in due course a comprehensive Courts (Consolidation) Bill which will embody all sections of the Courts of Justice Acts in existence at its enactment. The Courts (Supplemental Provisions) Bill 1959—together with explanatory memorandum—may be obtained from the Government Publications Sale Office, Henry Street Arcade, Dublin, for 3/6 (or 3/10 including postage).

DECISIONS OF PROFESSIONAL INTEREST

Customs offences may in certain cases be tried by a Judge and a Jury, but this particular case being a minor one, can be tried summarily by a District Justice.

The Supreme Court in a reserved judgment yesterday found for the Revenue Commissioners in an important appeal from Mr. Justice McLoughlin affecting the rights of people charged with dealing in smuggled goods as to their mode of trial.

While holding that the charges concerned did not constitute a criminal offence, they gave a majority decision that the offences were minor ones which could be tried by a District Justice.

The Supreme Court decisions affects a number of charges pending against defendants in the district courts for dealing in butter, the import of which had been prohibited, and which had been adjourned pending the Supreme Court ruling.

The appeal had been brought by Peter Melling, commercial traveller, Putland Road, Bray, Co. Wicklow, against the dismissal by the High Court of his action seeking a declaration that charges brought against him under the Customs Consolidation Act, 1876, of dealing in a quantity of butter, the import of which had been prohibited, were not minor offences but criminal charges entitling him to be tried by a jury. The appeal had been at hearing in the Supreme Court for 17 days.

All five judges held against the contention of the Attorney-General, and Joseph O'Mahony, an officer of Customs and Excise, that the charges did not constitute a criminal offence but by a majority decision (Maguire C. J., Lavery and Martin Maguire JJ.—Kingsmill Moore and O Dalaigh JJ. dissenting) they found that the offence charged was a minor one —as provided for in the Constitution—which could be tried summarily by a district justice.

The charges against Mr. Melling related to knowingly dealing in approximately 2¼ tons of butter, the importation of which was prohibited on various dates in 1957. The questions involved in the appeal were stated to be of very high constitutional importance and it was also stated that there was a back-log of other cases awaiting the decision of the Supreme Court.

In view of the importance of the issues, and the fact that Mr. Melling had succeeded in establishing that customs offences involved criminal charges, the Court directed that he be required to pay the Attorney-General's costs of the hearing in respect of five days only.

Mr. Justice Lavery, in his judgment, with which the Chief Justice and Mr. Justice Martin Maguire, agreed, stated that notwithstanding his decision that the offences charged against Mr. Melling were triable summarily, there were cases—depending on the election by the Revenue authorities as to penalty—in which a district justice could decide that the case was one proper to be tried by a jury.

Melling *v.* O'Mahony—unreported—Judgment of the Supreme Court on 8th February, 1961—*Irish Independent*, 9th February, 1961.

Provision of Solicitors Act by which Solicitor's Clerk if guilty of Offence in the past, has to Notify the English Law Society indefinitely of Every Change of Employment, Criticised by Court.

The Divisional Court, before (The Lord Chief Justice, Mr. Justice Ashworth and Mr. Justice Elwes) dismissing this appeal by a solicitor's clerk against the order of the Disciplinary Committee of the Law Society imposing restrictions on his employment pursuant to section 38 of the Solicitors Act, 1957, expressed misgivings about the effects of that section and a wish that they might be mitigated.

The Lord Chief Justice said that the order of the Committee dated July 28, 1960 directed that no solicitor should in connection with his practice as a solicitor take into or retain in his employment, or remunerate, the clerk, except in accordance with permission in writing granted by the Law Society, for such period and subject to such conditions as the Society might think fit. Section 38 provided that the Committee might make such an order where a person had been convicted, *inter alia*, of larceny and an application under the section was made by the Society.

The facts were that the clerk had returned from Kenya and got into grave financial difficulties in 1954. He was supporting four children and a sick wife. Living in lodgings, he had over a period sold the furniture belonging to his landlord piece by piece, in order, presumably, to get money to live. There were a number of offences taken into consideration and the justices took a serious view when the case came before them and sentenced the clerk to six months' imprisonment. The matter did not come to the attention of the Law Society until six years after the event, but having regard to the provisions of the section they had felt it their duty to take steps.

The point now taken, very ably, by Counsel was that the Committee ought not to have exercised their discretion to make the order, having regard to all the circumstances. Counsel said that, having regard to the circumstances of the offences and to the lapse of time, the penalty was out of proportion. Undoubtedly it was a serious matter to make this order; but it was only a controlling one and not designed to prevent the clerk from earning his living. The main object was to provide protection for the public. It was quite impossible to say that the Committee had been wrong in exercising their discretion and his Lordship could see no ground to interfere. This was a serious offence and the Commitee might be criticised if they did not in these circumstances fulfil their duty.

Quite apart from this case, however, his Lordship was rather concerned about the full implications of the section. There was no provision limiting the order in time. There was no means of providing that it should remain in force for, say, five or ten years. Moreover it was an order where any permission by the Society had to be given to the solicitor and not to the clerk, so that the Society could not say that the clerk had full permission to be employed by anyone. His Lordship could see very grave hardship to a man of middle age, who in his youth had been guilty of an offence, made the subject of such an order, and led a blameless life since, since he could get no employment without his employer knowing full well what had happened and the clerk would be completely at the mercy of the Society. The order might be out of all proportion to the offence. His Lordship would very much like the Society to consider, without prejudice to the question of amending legislation, the question of publishing a general permission, so that the man could in future be employed without the need for any further permission.

Mr. Justice Ashworth—I agree. I share my Lord's misgivings as to the effect of this order on a man who has committed a relatively trivial offence which he has lived down. There are difficulties even in the giving of a general permission, which would involve the publication of the man's name, revealing his murky past.

Mr. Justice Elwes agreed.

Mr. Webster said that the matter of disciplinary proceedings against clerks was under review.

Mr. Justice Ashworth—A power to limit the period of the order would be the simplest way to avoid the difficulties.

Mr. Justice Elwes—Or a power to entertain an application to rescind the order after a time.

Mr. Justice Ashworth—I agree.

The appeal was dismissed with costs.

In re a Solicitor's Clerk, 12th November 1960.

Practice—pleading—osteo-arthritis.

In McKay *v.* McClure (Practice Note) (1960) N.I. 34, counsel for the plaintiff in an action for damages for personal injuries mentioned when opening his case to the jury that the plaintiff had developed osteo-arthritis as a result of the accident. Counsel for the defendants objected that this had not been pleaded. Sheil J., expressing the view that osteo-arthritis should always be alleged in the pleadings if it was to form part of the plaintiff's case at the trial, gave the plaintiff leave to amend, whereupon counsel for the defendants objected that the defendants were taken by surprise and were not in a position to deal with the allegation. Sheil J. then adjourned the trial, discharged the jury and awarded the costs of the day to the defendants.

Dangerous driving and careless driving—causing death by—distinction from culpable homicide. (Scot.)

In Dunn *v.* H. M. Advocate (1961 S.L.T. 106) the High Court of Justiciary held that the burden of proof on the Crown in a charge under s. (1) of the Road Traffic Act, 1960, is not so exacting as that in a charge of culpable homicide against a motorist where the prosecutor has to establish gross, wicked or criminal negligence amounting to or analogous to a criminal indifference to the consequences of dangerous driving.

Libel and Slander—damages—reputation prior to the publication.

In Dingle *v.* Associated Newspapers (February 8, 1961) the trial judge awarded the Town Clerk of Manchester £1,100 damages for libel ((1960 1 C.L. 169). On appeal by the Town Clerk against that award, the Court of Appeal (Sellers, Pearce and Devlin L.JJ.) held, allowing the appeal and increasing the award to £4,000, that the trial judge had failed in the assessment of damages to take into account that part of the innuendo which alleged that the plaintiff had committed a criminal offence, that he had concluded that the period of damage was much less than it was, and that he had assessed damages on the basis that the Town Clerk had a bad reputation prior to the publication complained of. (D.C.) See also *The Times*, February 9, 1961.

Trees—roots spreading—apprehended danger.

In Lemos *v.* Kennedy Leigh Developments (February 13, 1961) plaintiffs, fearing danger to their property from roots of poplar trees growing on adjoining land, issued a writ *quia timet* in July 1959. Expert evidence showed that possible damage might be looked for by 1962. The Court of Appeal (Lord. Evershed M.R., Upjohn and Pearson L.JJ.) held, dismissing an appeal from Lloyd-Jacob J. ((1960) 10 C.L. 195), that the test of such an action depended on the imminence of the apprehended danger, and that, on the evidence, there was no such imminence (D.C.) See also *The Times*, February 14, 1961.

THE REGISTRY

Register B

SOLICITOR extensive experience in Dublin and abroad seeks position in Dublin office, preferably with view to partnership. Box No. B.260.

WANTED TO PURCHASE, established practice Dublin City with or without benefit of existing lease. Box No. B.261.

SOLICITOR, considerable experience of general practice in Dublin, seeks position in City office. Box No. B.262.

HONOURS GRADUATE U.C.D., well grounded in Solicitors practice, seeks partnership or similar arrangement in the City of Dublin. Box No. B.263.

REGISTRATION OF TITLE ACTS, 1891 AND 1942

Issue of New Land Certificate

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

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

Dated the 26th day of April, 1961.

D. L. MCALLISTER,
Registrar of Titles.

Central Office,
Land Registry,
Chancery Street,
DUBLIN.

SCHEDULE.

1. Registered Owner James Feely. Folio number 5534. County Roscommon. Lands of Macmoyne, in the Barony of Boyle containing 0a. or. 21p.

2. Registered Owner Walter Walsh. Folio number 2052. County Waterford. Lands of Moyng in the Barony of Decies within Drum containing 56a. 1r. 7p.

3. Registered Owner Gregory Lancaster. Folio number 2357. County Carlow. Lands of Kildavin in the Barony of St. Mullins upper, containing 91a. 3 r. 25 p.

4. Registered Owner Mary Garry. Folio number 4338. County Kildare. 15a. 3r. 25p., 2a. 1r. 5p., and 20a. or. 20p. of the lands of Grangeclare West, Ballyteige North and Ballyteige North (one undivided 41st part) respectively, all situated in the Barony of Connell and County of Kildare.

5. Registered Owner Emma White. Folio number 1627. County Dublin. Lands of Redcowfarm in the Barony of Uppercross containing 2a. or. 16p.

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No. 10

APRIL,
1961

THE GAZETTE

of the

INCORPORATED LAW SOCIETY OF IRELAND

President
RALPH J. WALKER

Vice-Presidents
GEORGE G. OVEREND
JOHN MAHER

Secretary
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

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MEETINGS OF THE COUNCIL

MARCH 23RD: The President in the chair, also present Messrs. George G. Overend, John R. Halpin, Niall S. Gaffney, Desmond J. Collins, Desmond Moran, Peter E. O'Connell, T. V. O'Conner, Peter D.M. Prentice, Derrick M. Martin, James R. Green, Dinnen B. Gilmore, Reginald J. Nolan, Eunan McCarron, Charles Hyland, Augustus Cullen, William A. Tormey, Robert McD. Taylor, Thomas A. O'Reilly, James J. O'Connor, J. Bernard MacGarry, John Maher, George A. Nolan, Patrick Noonan, James W. O'Donovan, Gerald Y. Goldberg, John J. Sheil, John Carrigan, Brendan T. Walsh, John J. Nash, Francis J. Lanigan, Terence De Vere White.

The following was among the business transacted:

Medical Practitioners' Fees

A deputation was appointed to meet representatives of the Irish Medical Association to discuss the general relations between the two professions and in particular difficulties which have arisen as the result of the disallowance on taxation of costs of successful plaintiffs of fees claimed by medical practitioners for attending in Court as witnesses.

Conflict of Interest

Member was consulted by AB, who was not a regular client of his, as to AB's rights against a tenant CD. AB's usual solicitor was unwilling to act as CD was also a client of his. Member gave certain advice as to the operation of the Rent Restrictions Act 1960, a case was sent to counsel and AB paid the costs and counsel's fees. The tenant CD subsequently consulted member and wished to instruct him to defend an ejectment civil bill served on behalf of AB by another local solicitor. Member considered that there was no reason why he should not act for the defendant as he was not in possession of any material facts from AB which would prejudice him in any way. The facts as given by the defendant CD were identical with the instructions received from AB. Member enquired whether he could act. The Council on a report from a committee stated that member should not act for the defendant.

APRIL 20TH: The President in the chair, also present Messrs. George G. Overend, Desmond J. Collins, John J. Nash, John R. Halpin, John J. Sheil, George A. Nolan, Desmond Moran, Peter D. M. Prentice, James R. C. Green, James J. O'Connor, Thomas A. O'Reilly, D. B. Gilmore, T. V. O'Connor, Reginald Nolan, William A. Tormey, Eunan McCarron, J. Bernard MacGarry, Francis J. Lanigan, Augustus Cullen, John Maher, Gerald Y. Goldberg, Denis J. Quinlan, James W. O'Donovan, Edmund Hayes, Peter E. O'Connell, Niall S. Gaffney, Robert McD. Taylor.

The following was among the business transacted:

Commission Scale Fees on Granting of Leases

On further consideration of the report from the committee printed at page 87 of the March Gazette. It was resolved that special legislation should not be sought at present altering the incidence of the costs of leases between lessor and lessee but that if an opportunity occurs in connection with any amendment to the present Landlord and Tenant Act the Government should be asked to introduce legislation for this purpose.

Registry of Deeds

Correspondence received from members on the subject of delays in the Registry of Deeds in supplying negative searches was referred to the Dublin Solicitors' Bar Association for a report.

SALE OF LEASEHOLD PROPERTY. NOTICE OF ASSIGNMENT TO OWNER OF LESSOR'S INTEREST

A member who acts for a number of ground landlords has written to the Society drawing attention to the fact that in an appreciable number of cases which have come to his notice the solicitor for the vendor of leasehold property sold did not give notice of assignment to the ground landlord or his agent. This appears to have been due to oversight on the part of the solicitors for the vendors of the property. From the point of view of the vendor failure to give such notice means that his liability for rent and for performance and observance of the covenants under the lease continues owing to the neglect of his solicitor. From the point of view of the ground landlord such failure to give notice gives rise to considerable difficulty in ascertaining the party to whom the premises has been assigned and who should be responsible for the ground rent and in ascertaining whether the property continues to be properly insured. From the point of view of the solicitor for the vendor the matter is important because he may be held responsible in an action for damages for negligence by his client.

ORDINARY GENERAL MEETING, GALWAY

Members have already been advised of the Society's week-end meeting at Galway, June 2nd-5th. Forms of application have already been issued and any member wishing to attend the meeting should return the form to the society immediately with a cheque for the appropriate remittance if he has not already done so. Members are entitled to bring guests. Members should make their own hotel reservations direct.

SOLICITORS' GOLFING SOCIETY

A warm sunny Spring day graced the Outing of the Solicitors' Golfing Societyo n the occasion of the Captain's Prize at the very well-kept and picturesque Course of Woodbrook Golf Club on Saturday, 22nd April, 1961.

The Captain, Mr. Michael T. Neary, presented for competition some very fine Waterford Cut Glasses and Wine Decanter and the Members paid him the compliment of arranging one of the best attended Outings in recent times, forty-two Members returning Cards This fine prize together with the Incorporated Law Society's Challenge Cup, after a tie between Messrs. E. J. Dillon and M. S. Matthews (both 1 down) was won by Mr. E. J. Dillon on the toss of a half sovereign (lent for the occasion by the Captain of Woodbrook Golf Club); Mr. M. S. Matthews, however, secured first Prize in the St. Patrick's Plate Competition

Mr. David Bell, who also returned a score of 1 down, did not figure in the tie as the other two

Members had each a better second nine; he secured, however, the Runner-up prize.

The Veterans' Prize and Cup was won by Mr. D. P. Shaw.

At the Dinner which followed the Society had the honour of entertaining as its Guests the President of the Incorporated Law Society of Ireland, Mr. Ralph J. Walker, the Captain of Woodbrook Golf Club, Mr. Sean O'Farrell, and a former Captain and Hon. Secretary of Woodbrook Golf Club, Mr. William O'Dwyer. The toast of the Captain of the Society was proposed by Mr. W. A. Tormey and Mr. Neary suitably replied. Mr. D. P. Shaw thanked the Captain, Committee and Members of Woodbrook Golf Club for the wonderful facilities afforded to the Society during the day.

The President, Mr. Ralph J. Walker, thanked the Captain and Members for inviting him and asked the members to attend the forthcoming half-yearly Meeting of the Law Society in Galway.

Mr. T. Desmond McLoughlin contributed very much to the success of the evening by his pleasant piano playing and Messrs. Con Lehane and James J. O'Connor (Dublin) also entertained.

PRIZE-WINNERS

Captain's Prize and Incorporated Law Society's Challenge Cup.
Winner: E. J. Dillon (8) 1 down after tie.
Runner-up: David Bell.

St. Patrick's Plate.
Winner: M. S. Matthews (11) 1 down.
Runner-up: John Maher (9) 2 down.

Veterans' Cup.
Winner: D. P. Shaw (8) 3 down.
Runner-up: T. F. McKeever (12) 4 down.

Best First Nine Holes.
Winner: Kevin Burke (14) 1 up.

Best Second Nine Holes.
Winner: W. A. Tormey (11) 1 down.

Competitor resident more than 30 miles from Woodbrook.
Winner: J. C. Griffin (15).

Best of Three Cards drawn by Lot.
Winner: D. Reilly (11).

ASSOCIATION OF ATTENDERS AND ALUMNI OF THE HAGUE ACADEMY OF INTERNATIONAL LAW

The Thirteenth Annual Congress of this Association was held, by permission of the Council, in the Library of the Incorporated Law Society, Four Courts, Dublin from Monday 24th to Saturday 29th April. About 40 delegates from Austria, Britain, Chile, Czechoslovakia, France, Germany, Italy, Netherlands, Poland, Sweden, Switzerland, U.S.A., and the West Indies attended, and many members of the Society were included in the Irish Delegation. The theme of the Congress was "The new State in International Law", and papers were delivered on "Reciprocity in International Procedural Law" by Dr. Nagel (Bremen), "Ireland's Commonwealth Evolution" by Hon. Mr. Justice O'Dalaigh, "International Treaties and State Succession" by Dr. Herndl (Austria), "The legal validity of State independence forcibly acquired" by Mr. Hunnings (London), "The African States of the French Community" by M. Vignes (France), "Temporary Succession of States" by Dr. Ehler (Dublin), and "Legal problems confronting Israel" by Prof. Vitta (Florence); Dr. Nahlik (Poland) gave an admirable summary of all the papers at the last session. Amongst numerous social functions attended by the Delegates during the week, a lunch was given by Mr. R. A. Walker, President, on behalf of the Society, in the Zoological gardens on Monday 24th April; the foreign delegates appreciated very much the hospitality shown to them, as a result of an elaborate programme prepared by the Irish Organising Committee under the Presidency of the Hon. Mr. Justice O'Dalaigh, and the Chairmanship of Mr. Temple Lang. The full proceedings of the Congress will be published in the 1962 Yearbook of the Association, which will only be available in December 1962.

AUCTIONEERS AND HOUSE AGENTS ACT, 1947

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

CIVIL LIABILITY BILL 1960

The purpose of the Civil Liability Bill 1960, which has recently been published, is:—(1) to amend and consolidate the law relating to survival of causes of action on death; (2) to amend and declare the law relating to concurrent fault and to joint and several tortfeasors, based on the draft Bill printed by Dr. Glanville Williams in his book "Joint torts and contributory negligence" (1951); and (3) to re-enact, in the light of the foregoing, the existing statutory provisions in regard to damages for the benefit of the dependants of persons fatally injured. Many amendments are made to the law of contributory negligence, including the abolition of the so-called "Last Opportunity Rule"; in future damages will be apportioned between plaintiff and defendant in the light of the negligence of each party. The Workmen's Compensation Acts and the Air Navigation and Transport Act 1936 will be amended to bring them into conformity with the new provisions. The Tortfeasors Act 1951, Fatal Injuries Act 1956 and Sections 1 to 3 of the Maritime Conventions Act 1911 will be repealed. The new Civil Liability Bill is a comprehensive measure of 59 Sections contained in 29 pages of print; it is accompanied by a most useful explanatory memorandum of 25 pages. The Bill and Explanatory Memorandum may be obtained from the Government Publications Sale Office, Henry Street Arcade, Dublin, for 2/6 (or 2/10 including postage).

DEFAMATION BILL 1961

This Bill is described as "An Act to consolidate with amendments some enactments relating to the law of defamation". Briefly, the Bill re-enacts all existing statutory legislation relating to libel and slander, including many of the provisions of the English Defamation Act 1952. The Bill contains 30 sections, one repealing Schedule, and a Second Schedule describing newspaper statements which can claim qualified privilege either with or without explanation or contradiction. The bill is due to come into operation on 1st January 1962; and the definitions of "newspaper" and "proprietor" should be noted. The Criminal Libel Act, 1819, as well as the Libel Acts of 1843, 1845 and 1888 are repealed, and also the Newspaper Libel and Registration Act 1881, and the Slander of Women Act 1891. Part II (Sections 6 to 13) deals with criminal proceedings for libel; while Part III (Sections 14 to 30) deals with civil proceedings for defamation. The Bill and useful Explanatory Memorandum may be obtained from the Government Publications Sale Office, Henry Street Arcade, Dublin, for 1/6 (or 1/9 with postage).

CORRECTION

It has been pointed out that, in commenting upon the McMorrow case (*see* GAZETTE, February 1961, page 82) the member who kindly commented on the case was not quite accurate when he stated that ". . . once the Road Traffic Bill 1960 becomes law, as under it liability to passengers will have to be covered". The comment of the Minister for Local Government in relation to Section 65 of the Bill which covers this matter was "that the regulations will apply of course to public service vehicles, and my views at present are that the regulations should also apply to all vehicles of the private car and station-waggon types, subject to any representation I may receive."

HIGH COURT RULES 1961

S.I. No. 92 of 1961

The High Court Rules 1961—S.I. No. 92 of 1961—deal with the following applications to the High Court in relation to solicitors:—

(1) Applications to be admitted as a solicitor.

(2) Petitions to the High Court by the Society based on a report of the Disciplinary Committee of the Society with an alternative finding of misconduct or of unsatisfactory answering and a prayer that the solicitor concerned be struck off the roll, that he pay the costs of the proceedings, and that he pay a sum for restitution to the client who has been defrauded—or a petition that a solicitor, who applies to be voluntarily struck off the rolls, be granted or refused.

(3) Provision is made in the many instances set forth in the Solicitors Acts of 1954 and of 1960, in which an appeal is provided to the President of the High Court, that this appeal from an order of the registrar or of the Society shall be made not more than one month after the decision appealed from by a four-day notice of motion; a copy of this notice of motion together with the affidavit in support is to be delivered to the Central Offices; and, unless otherwise directed by the President, the evidence shall be by affidavit.

(4) In the case of a person who has refused to deliver or produce documents under his control, the Society may apply to the Court by Summary Summons—Form 3—for an order compelling such person to comply.

(5) If the Society are of opinion that a solicitor is guilty of dishonesty in connection with his practice, it may apply to the High Court by a motion ex-parte grounded on an affidavit of the secretary for an order that no bank shall, without leave of the Court, make any payment out of an account in the name of

the solicitor of the firm; copies of such order shall be served on the Bank, and on the solicitor concerned; the solicitor concerned may at any time apply to the Court by motion on notice to the Society to discharge, set aside or vary such order.

Copies of the High Court Rules 1961—S.I. No. 92 of 1961—may be obtained from the Government Publications Sale Office, Henry Street Arcade Dublin, for 1/6d. each (or 1/9d. including postage).

SUMMARIES OF CURRENT LEGISLATION

The Council intend to publish for the use of members summaries of current legislation. It is hoped that these publications which will be issued with the GAZETTE but in detachable form for retention will be of assistance in helping members to keep abreast of changes in the law. A short guide to the Rent Restrictions Act 1960 is enclosed with the current issue of the GAZETTE and it is hoped to publish further summaries from time to time.

DECISIONS OF PROFESSIONAL INTEREST

Termination of agreement—duty to take reasonable care of hired goods. (Mayor's and City of London Court.) (Hire-Purchase Act, 1938.)

In *Acceptance Co. v. Pike* (February 22, 1961) the defendant terminated the agreement made with the plaintiff hire-purchase company after having considerable trouble with the hired car and having incurred considerable expenditure in trying to make it run satisfactorily. The car when returned was in a very poor condition and the plaintiffs claimed damages for breach of the statutory duty to take reasonable care of the goods or, alternatively, for breach of the obligation imposed by the agreement to return the goods in a state of good repair, working order and condition. Judge Block held (1) that the defendant had fully discharged the statutory duty to take reasonable care of the car, and (2) that the condition imposed by the contract was void under s.5 (*b*) of the Act of 1938 as it imposed a greater duty on the defendant than that imposed by s.4 (2) of the Act.

Exemption from tax—taxpayer resident in Eire.

The words "a person entitled under any enactment or an exemption from income tax" in s.4 (2) of the Finance (No. 2) Act, 1955, include persons resident in Eire entitled to exemption from income tax under s.349 and Sched. 18 of the Income Tax Act, 1952. Consequently such persons are not entitled to exemption from tax on dividends from shares acquired by them in dividend-stripping transactions of the kind referred to in s.4 (2) of the Act of 1955, even if this amounts to an infringement of the relevant double taxation treaty with Ireland, as to which *quaere*.

The appellant company was incorporated and resident in Eire. In 1957 it acquired the entire share capital of two English companies, which subsequently declared substantial dividends under deduction of tax. The company claimed to be entitled to recover the tax so deducted from the Revenue. Held by the House of Lords affirming the Court of Appeal that the tax could not be recovered; *Collco Dealings v. I.R.C.* (1961) 2 W.L.R. 401; (1961) 1 All E.R. 762. H.L.

Bank manager—advice as to credit of non-customer. (Ireland.)

In *Macken v. Munster and Leinster Bank and O'Grady* (1960) 95 I.L.T.R. 17, the plaintiff brought an action against the bank and the second defendant, the bank manager, claiming damages for breach of duty in failing to exercise reasonable skill and care in answering inquiries which he made of them. P., a Dutch citizen resident in Ireland, approached the Wexford Branch for a loan and showed the manager a letter written in Dutch which, P. alleged, concerned the transfer of money belonging to him from Holland to Ireland. The manager did not have the letter translated but, despite the fact that he believed P. had the money in Holland, he refused to make the loan. Subsequently P. proposed that the plaintiff would sign on his behalf and the bank manager invited the plaintiff to call with him. In P's presence the manager told the plaintiff that P. had money in Holland and that there was no risk involved as he had seen the documents. Acting on these assurances the plaintiff, who had refused to make loans to P. on previous occasions, signed a promissory note on which P. defaulted. The plaintiff also sued the defendants for money which he had lent and the value of goods which he later supplied to P., alleging that he did so on the strength of the manager's representations that P. was creditworthy. There were, however, other personal reasons why the plaintiff lent this money and supplied these goods, i.e. Defendant had been best man at P's marriage. Judge Deale held that the bank manager failed to take reasonable care when telling the plaintiff that P. had money in Holland and was negligent in not having the letter translated and accordingly he made a declaration that the plaintiff would not be liable if called upon to pay any sum on the promissory note. He further held that as the plaintiff did not rely solely on the manager's representations when subsequently

lending P. money and supplying him with goods he could not recover under this head the sum of £373 10s. for cash lent and goods supplied.

BRIEF NOTES OF CASES

(*a*) *Tsakiroglou* v. *Noblee Thorl G.m.b.H.*—The House of Lords has affirmed the decision of the Court of Appeal and held that, despite the closure of the Suez Canal, the contract in the case was not frustrated and that consequently the buyers were entitled to damages.—(See (1961) 2. All E.R. 179).

(*b*) *Plato Films Ltd.* v. *Speidel.*—The House of Lords has affirmed the decision of the Court of Appeal (see GAZETTE, Vol. 54, page 54) and held that some paragraphs of the defence should be struck out as inadmissible and irrelevant.—(See (1961) 1. All E.R. 876).

(*c*) *Attorney General* (*Garda Michael McGowan*) v. *Arthur Carville*—95 *I.L.T.R.* (1961), 41, In this case the Supreme Court affirmed Davitt P. on 30th April, 1959, and held that District Justice Lavery was entitled to dismiss on the merits a summons charging a defendant with driving a specified mechanically propelled vehicle without holding a driving licence on the ground that the onus was on the complainant to prove that the defendant was uninsured.

(*d*) *The State* (*John Cunningham*) v. *District Justice O'Flynn.*—The judgment of the Supreme Court given by Mr. Justice O'Dalaigh, previously noted in the GAZETTE, Vol. 54, page 18) is now reported, in full at page 24 of the *Irish Law Times Reports* 1961, Vol. 95.—Members will recollect that this case dealt with the correct form of summons in the District Court.

(*e*) *Incorporated Law Society* v. *Richard G. Browne.*—In this case, an auctioneer had filled in the blank spaces of a contract for sale, including the names of the owners of the property, the intending purchaser, a description of the property, the nature of the title thereto, that it was being sold with vacant possession, and the amount of the offer made and of the deposit paid. District Justice Burke in Galway District Court on 7th April, 1960, held that the auctioneer was an "unqualified person" within Section 3 (1) of the Solicitors Act, 1954, that he had performed a legal transaction specifically reserved to solicitors, fined him 10/- and ordered him to pay £50 costs. The case is now reported in 95 *I.L.T.R.* (1961) at page 7.

LIBRARY ACQUISITIONS

B.—DONATIONS AND EXCHANGES

CANADIAN EMBASSY, DUBLIN—*Canada Law Reports* 1959 and 1960.

MISCELLANEOUS DONATIONS—Coldridge and Hawksford, *Law of Gambling*, 1913; Fitzgibbon and Johnston, *Law of Local Government in Ireland*, 1899; *Australian and New Zealand Law List*, 1959; *Ontario Mining Court Cases*, Vol. III—1918–1960, ed. D. G. Horan; *Commission of Inquiry into the Duties, Salaries and Emoluments of the Officers, Clerks and Ministers of Justice in Temporal and Ecclesiastical Courts in Ireland*, 7 Vols., 21 Reports, 1816–1831; *Report of Fry Royal Commission of Inquiry on Trinity College, Dublin*, 1907.

COUNCIL OF EUROPE, STRASBOURG—*Council of Europe News*, 1951–1960, bound together; 18 *European Conventions*, bound together (1949–1960); *Council of Europe Orders of the Day*, 1958–60; *Research* (Quarterly), Nos. 55–59 (1960); *Forward in Europe* (1959–60); *Handbook of European Organizations*, 1956; *The European Conventions*, 1956; *Juvenile Delinquency in Post-War Europe*, 1960.

MISCELLANEOUS EXCHANGES—Edinburgh University, *Calendar*, 1960–61; Glasgow University, *Calendar*, 1960–61; Manchester University, *Calendar*, 1959–60; National University of Ireland, *Calendar*, 1960; *International Law List*, 1961; Dublin University (Trinity College), *Calendar*, 1960–61; Incorporated Law Society, *Calendar*, 1961; *New South Wales Law Almanack*, 1960 and 1961; Queen's University, Belfast, *Calendar*, 1960–61; *Scottish Law List*, 1960; University College Cork, *Calendar*, 1960–61; University College, Dublin, *Calendar*, 1960–61; University College, Galway, *Calendar*, 1960–61; University of Wales, *Calendar*, 1960–61.

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BUDGET STATEMENT

DEATH DUTIES AND STAMP DUTIES

The Minister for Finance in his Budget Statement in Dáil Eireann on April 19th, made the following announcements which will be of interest to solicitors.

Death Duties on Small Estates

The present minimum rate is 3% applicable to estates between £5,000 and £7,500. The Minister proposes to re-introduce the rates of 1% and 2%. The new rate structure will be 1% on estates from £5,000 to £6,000, 2% on estates from £6,000 to £7,000, 3% on estates from £7,000 to £8,000 and 4% as at present on estates from £8,000 to £10,000.

Death Duties on Large Estates

The present rates of estate duty applicable to estates exceeding £100,000 in value ranging from 41% to 53% will be lowered to 40% which will henceforward be the maximum rate of duty.

Gifts to the State

A section will be included in the Finance Bill exempting such gifts from estate duty.

Gifts with Reservation

Where the donor retains an interest in the property the entire property becomes liable to estate duty even although the donor's death takes place many years after the transfer. The Minister will introduce a provision under which if the donor dies more than three years after making the gift the charge to duty will be confined to the value of the benefit accruing to the recipient on the donor's death, e.g., allowance will be made for the reduction in the benefit due to a right of residence or maintenance. This principle will also be applied in relation to trusts ended more than three years before the life tenant's death where some benefit was reserved to the life tenant.

Tax Avoidance—Gifts

The Finance Bill will make provision to prevent tax avoidance by means of what is known as the "disappearing trick", e.g., where short dated securities such as Exchequer Bills are given as a gift and redeemed before the death of the donor which occurs within three years from the date of the gift. Under the law existing down to the date of the budget resolution such gifts were exempt from duty as the property on which estate duty would otherwise be charged ceased to exist before date of death.

Payment by Trustees

Section 30 of the Finance Act, 1941, was enacted to prevent tax avoidance by the termination of trusts prior to the death on which they would normally have ceased. The section provides that, where the life tenant of settled property disposes of his interest three years or less before his death, the property remains liable to estate duty. The trustees of settled property are responsible for the payment of estate duty but in the case of settlements terminated in circumstances giving rise to a claim under section 30 of the Finance Act, 1941, some doubt exists as to whether the last trustees are responsible for payment of duty on foot of such a claim. The law is being changed to remove this doubt.

Wills Act, 1837—Relief

The general rule under the Wills Act, 1837, is that a legacy fails if the legatee predeceases the testator. An exception is made in the case of a legacy to a child of the testator who predeceases the testator but who leaves issue living at the testator's death. It has been held that such a legacy is, to take the simplest example, liable to estate duty as part of the estate of the testator and also as part of the estate of the child who predeceased him. The law is being changed to provide that duty will be levied only on the testator's death as if the property were given directly to the living beneficiary.

Aggregation Provisions

Because of the increase in the exemption limit for estate duty from £2,000 to £5,000 under the Finance Act, 1960, exemption may apply in certain cases to property totalling as much as £15,000 in value. This situation arises because certain subdivisions of property, based on the distinction between settled and unsettled property, may under existing law constitute separate estates, each of which would be entitled to exemption if it did not exceed £5,000 in value. The law is being changed to provide that the deceased's unsettled property whatever its value will be aggregated with any property settled by him.

Stamp Duty on Purchases of Land

The Government have decided to include provisions in the Finance Bill to strengthen the existing 25% stamp duty legislation so as to bring within its scope certain procedures which at present enable or may enable non-nationals to acquire land without incurring liability to the duty. The Minister has in mind particularly purchases of land by pre-1947 companies with non-national shareholders. It is proposed that the higher rate of duty will not apply henceforward except where it is necessary for social purposes and it will not apply at all in urban areas or to land which is to be used for industrial purposes, and, where it does apply, the Minister for Lands will have power in suitable cases to authorise the granting of exemption. The amendment of the law which will be incorporated in the Finance Bill in respect of pre-1947 companies will apply retroactively from the date of the Budget Statement, April 19th. Provision will be made for the furnishing of declarations or statements to the Revenue Commissioners and there will be stringent penalties for failure to disclose information.

THE REGISTRY

Register A.

SOLICITOR with large practice in southern town owing to advancing years would like to communicate in confidence with a Solicitor interested in a purchase. He should have a sound

general knowledge of Conveyancing, Administration of Estates and all the general work, including High Court and Circuit Court proceedings. Reply to Box No. A189.

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Register C.

LIST OF LAW BOOKS FOR SALE

The Laws of England, 31 Volumes, by the Earl of Halsbury—all in perfect condition and beautifully bound; *The Laws of England*—Supplement No. 27 by Charles W. Venning, B.Sc.; *The Irish Jurist*, Vols. 1 and 2; *Vanston's Public Health*, 1st Edition 1892 and 2nd Edition 1913; *The Irish Justice of the Peace*—O'Connor; *Woodfalls Law of Landlord and Tenant*; *Prideaux Precedents in Conveyancing* 1883, Vols. 1 and 2; *Vanston's Local Government* (Ireland) *Act*, 1898; *Carleton's County Courts Practice in Ireland*—2nd Edition by George Y. Dixon, M.A.; *Hanna on Workmen's Compensation*, 2nd Edition; Replies to Mrs. K. J. O'Gorman, Annmont, South Mall, Lismore, Co. Waterford.

REGISTRATION OF TITLE ACTS 1891 AND 1942

Issue of New Land Certificate

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

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

Dated the 26th day of May, 1961.

D. L. MCALLISTER,
Registrar of Titles.

Central Office,
Land Registry,
Chancery Street,
DUBLIN.

SCHEDULE

1. Registered Owner, Michael Murphy. Folio number 594. County Kilkenny. Lands of Whiteswall in the Barony of Galmoy containing 19a. or. 10p.

2. Registered Owner, Bernard Curry. Folio number 1160. County Meath. Lands of Monknewtown in the Barony of Slane Upper containing 61a. 2r. 17p.

3. Registered Owner, John Fitzmaurice. Folios 21244 and 21064. County Roscommon. Lands of Cloonfad East in the Barony of Castlereagh containing 6 perches and 1 rood 12 perches respectively.

THE SOLICITORS' BENEVOLENT ASSOCIATION

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

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RENT RESTRICTIONS ACT, 1960

Background of Rent Control

1. Rent control, which was introduced as a temporary war-time measure by the British Government in 1915, was continued always as a temporary measure. In 1926 an attempt was made to decontrol all houses by progressive stages until by 1929 all control would have disappeared, but this process of decontrol was arrested in 1928 at which time control applied, broadly speaking, to premises built before 1919 and having a rateable valuation not exceeding £30 in Dublin and £25 elsewhere. Control of these premises was continued by means of annual Acts until 1946, when the existing Acts were incorporated into the Rent Restrictions Act of that year. The provisions of the Emergency Powers Order, 1944, were also incorporated in the 1946 Act, the operation of which has been extended by successive Acts to December 31st, 1960. The premises now subject to rent control are pre-1941 privately-owned unfurnished dwellings which have a rateable valuation not exceeding, in the Dublin area, £60 and, elsewhere, £40. Some business premises are also controlled.

The basis for controlling rents has always been to restrict the amount of rent lawfully chargeable to the level prevailing in the free letting market at a particular date, plus certain permitted increases. When rent control was first imposed in 1915, rents were restricted to the 1914 level. Premises brought under control by the 1944 Order had their rents restricted to the 1941 level. Accordingly, in 1944 there was a distinction in the method of assessing the controlled rent of the two classes of premises and the 1946 Act of necessity perpetuated the distinction. Under the 1946 Act, therefore, the rents of the pre-1919 premises which have always remained controlled are related to the 1914 level, and the rents of the premises affected by the 1944 Order are restricted to the 1941 level. Certain additions (called "lawful additions") are permitted in both cases in respect of rates, improvements, structural alterations or repairs.

In 1950 a Commission under the chairmanship of Judge Conroy was appointed by the then Minister of Justice to inquire, *inter alia*, into the working of the Rent Restrictions Acts and the question of extending control to furnished lettings. The Commission presented a Report on these aspects of their terms of reference in June, 1952. The main recommendations in the Report were :—

(*a*) the present controls should be retained on dwellings and control should be extended so as to apply to all dwellings, whether let furnished or unfurnished, and whether now in existence or to be built hereafter ;

(*b*) in order to meet the increase in the cost of repairs, landlords of existing controlled premises who are responsible for all repairs should be entitled to increase the present net rents by 25%—the increase to be 12½% where the landlord is responsible for only part repairs.

2. The Act, which is a comprehensive measure repealing and re-enacting the present law with amendments, proposes the following main changes :—

(*a*) rent control is being *removed from* (1) *certain untenanted property* and from (2) *premises used solely for business purposes* ;

(*b*) *an up-to-date standard for determining rents is being provided* ; and

(*c*) having regard to the increased cost of repairs, an increase *of* 12½% *in controlled rents* being paid on 31st December, 1960 (less rates, where the landlord pays them) *is*, with some exceptions, *being permitted where the landlord is liable for* the whole or part of *the repairs*.

These main changes are summarised in the following paragraphs. The Act contains a large number of other amendments of the present law, most of which are based on the recommendations of the Conroy Commission.

(*a*) *Relaxations in scope of control*

3. The Bill provides (*section* 3 (2) (*e*), (*f*) and (*g*)) for the *removal of rent control* (1) *from owner-occupied houses*, (2) *from houses having a valuation exceeding* £30 *in the Dublin area* (£25 elsewhere) of which the landlord gets vacant possession and (3) *from newly-constructed self-contained flats*. No subsisting tenancies will be affected. *Future unfurnished lettings of pre*-1941 *houses* within the valuations mentioned and which are now tenanted, will be *subject to control* unless *they become owner-occupied* in the meantime. Future *unfurnished lettings of rooms or flats* (other than newly-constructed self-contained flats) *in pre*-1941 *houses* will *also be subject to control*. The

existing rights of the spouse and family *of a deceased tenant to continue in occupation* are being *preserved* and applied also to non-statutory tenants.

4. The only purely business premises controlled by the Rent Restrictions Acts are those let on *less than yearly tenancies* (e.g., a lock-up shop let on a monthly tenancy). These *business premises are being decontrolled,* but *section* 54 of the Act provides the decontrolled tenants with an immediate right to *protection under Part III of the Landlord and Tenant Act,* 1931, which will entitle them *on the termination of the tenancy to a new lease at the open-market rent. Business* premises let *with dwelling accommodation will continue* to be subject to *rent control in the same way as dwellings.*

(*b*) *Provision of up-to-date standard for determining controlled rents*

5. In accordance with the recommendation of the Conroy Commission the Act provides (*section* 7) that *controlled rents* will be *determined by reference to the actual rents being paid on* a current date. As in the 1946 Act, the lawful rent will consist of a basic element plus lawful additions, e.g., for rates paid by the landlord. *The basic rent is normally the actual rent being paid on 1st February,* 1960, less rates *where the landlord pays them.*

Hence, *basic rent will be* automatically *determined for all controlled property which is now let.*

(*c*) *Increase in controlled rents*

6. *Section* 10 of the Act provides that a landlord who is *liable for repairs* may increase the *basic rent by* 12½%. The *basic rent,* which is determined in accordance with the provisions of *sections* 7, 8 or 9, is *normally the actual rent being paid on 31st December,* 1960, *less rates* where the landlord pays them. *No increase is being allowed* where the *landlord is not liable for any repairs and the increase does not apply to tenants of property* which is *not controlled,* e.g., houses built after 1941 or local authority houses. The *increase will be modified* or not apply at all in cases *where the landlord has already secured a return under the existing Acts on expenditure incurred by him in putting property into a reasonable state of repair.*

Other amendments

Part I of the Act

7. Apart from the relaxations in control previously specified, the scope of control is being modified by the provision in *section* 3 that *houses let with land are to be controlled only if the rateable valuation of the land does not exceed* £10 (at present £15) in the *Dublin area* and £5 (at present £10) *elsewhere,* subject in either case to the existing proviso that the valuation of the land does not exceed one-half of the valuation of the house. *Section* 3 provides that *an increase in rateable valuation will not have the effect of decontrolling premises* until the *landlord gets vacant possession.* The remaining provisions of this Part are of a routine character.

Part II of the Act

Chapter 1 (*Lawful Rent of Controlled Dwellings*)

8. *Section* 7 provides for *fixing the basic rent of any controlled* dwelling *which was let on 31st December,* 1960, or which was let *within three years before that date.* In such cases the basic rent will be the rent (less rates, where the landlord paid them) being paid on 31st December, 1960, or when the dwelling was last so let, as the case may be.

9. In *all other cases, the basic rent will be determined by the Court under section* 9 at such *amount as the Court considers reasonable having regard as far as possible to the basic rents of controlled dwellings* brought under control for the first time, or recontrolled, in 1944 on the basis of the rents prevailing in 1941, which are comparable in regard to location, accommodation, amenities, state of repair and rateable valuation.

10. The provisions of *section* 7 will ensure that an up-to-date, easily ascertainable, basic rent will be provided for all dwellings which are now let. It is *proposed that the present basic rents will not be capable of variation unless in the exceptional circumstances provided for in section* 8, i.e., (1) *where the Court* is satisfied *that the rent was either excessively low or excessively high* (2) *where a basic rent had previously been determined for the dwelling under the* 1946 *Act.* In cases coming within category (1), the revised rent will be determined on the basis set out in *section* 9, that is, having regard to the basic rents of comparable dwellings to which Part II of the 1946 Act applies. As stated, these are the dwellings which were brought under control for the first time, or recontrolled, in 1944 on the basis of the rents prevailing in 1941. However, the revised rent will be determined having regard to the basic rents of comparable dwellings to which Part II of the 1946 Act applies, i.e., the dwellings which have remained under control since 1915 and whose rents are related to 1914 levels, where the dwelling is in that category and where the application for revision of the rent is made by the landlord or by a tenant whose dwelling has a rateable valuation not exceeding £10.

The *lawful additions to the basic rent* are set out in *section* 10.

Chapter 2 (*Determination of Rent and Recovery of Overpayments*)

11. These provisions (*sections* 12 to 18) re-enact the existing law with the following amendments :—

(*a*) the Court is being empowered to *demand from either* the landlord *or the tenant* such *information as is necessary* for *ascertaining the basic rent* or *lawful rent* and the landlord is being entitled to obtain similar information from his tenant (*section* 12 (1) and (3)) ;

(*b*) the *maximum penalty* for failure to supply such information or for deliberately supplying false information is being *increased from £10 to £50* (*section* 12 (6)) ;

(*c*) where the *basic rent has not been fixed by the Court* and is not otherwise ascertainable, a notice *by the landlord setting out the basic rent and lawful additions is being made binding unless varied by agreement* or by the Court (*section* 13 (2)) ;

(*d*) a landlord *who pays the rates is being entitled*, on serving *one week's notice*, to *increase the rent*, in the case of a non-statutory tenant who has availed himself of the Rent Acts to have his rent reduced, by the amount of any increase in the rates. When *the rates are reduced tenants will have a corresponding right* (*section* 13 (4)) ;

(*e*) the existing powers of the Court are being extended so as to *enable it to disallow or reduce an addition to rent which includes an amount attributable to expenditure* by a *landlord on improvements, structural alterations* or repairs *where it is satisfied that they have not been carried out satisfactorily* (*section* 13 (6)) ;

(*f*) where a *basic rent has to be determined by the Court*, it is provided that no *sum exceeding the lawful rent may be recovered by the landlord from the tenant* as and from the date on which the proceedings to determine the basic rent are instituted (at present the date in question is the date on which the basic rent is determined) (*section* 16 (*b*)) ;

(*g*) it is provided that the *making of an entry in a rent book* showing a *tenant to be in arrear in respect of a sum declared to be irrecoverable, will not be an offence* if the entry *was made in respect of a period during which proceedings in respect of the premises are pending* (*section* 17 (2)) ;

(*h*) the *period of limitation* for *recovery of overpayments of rent* is being *reduced from six years to two years* (*section* 18 (1)) ;

(*i*) without prejudice to any proceedings instituted before the passing of the Act, it is *proposed that no overpayments alleged to have been made before the passing of the Act may be recovered* (*section* 18 (2)).

Part III of the Act

12. The object of Part III of the 1946 Act was to provide the poorer class of tenants in the four county boroughs and the borough of Dún Laoghaire with a simple, cheap and expeditious method of provisionally determining lawful rents. Applications by tenants for provisional orders are dealt with privately by a District Justice. The main modifications proposed are those giving the landlord an opportunity of being heard by the District Justice before a provisional order is made and empowering the District Justice to list certain applications for provisional orders for hearing in open Court, i.e., where he is not satisfied that he has jurisdiction to make a provisional order or where he is not satisfied that a claim by the landlord for an addition in respect of moneys alleged to have been spent on improvements, structural alterations or repairs should be allowed without formal evidence and without giving the tenant an opportunity to contest the claim (*section* 21 (1) (*e*)).

Part IV of the Act

13. The *existing restrictions on the landlord's right to recover possession are being continued* with the following amendments :—

(*a*) *nuisance or annoyance to a landlord* or his agent, whether or not an "adjoining occupier", is *being made a ground for recovering possession*, and *where the landlord* alleges *that a dwelling is being used for an illegal* or immoral *purpose he need not prove a conviction* for *such user* (*section* 29 (1) (*b*)) ;

(*b*) the definition of "alternative accommodation", is now being altered to "alternative accommodation, reasonably suitable to the residential and other needs of the tenant and his family, in a controlled dwelling" (*section* 29 (1) (*e*), (*f*) and (*g*) (5) and (6)) ;

(*c*) the provision enabling a landlord to recover possession of a dwelling for occupation as a residence by one of his tenant's employees will no longer be possible ;

(*d*) a landlord is being entitled to interchange tenants subject to the reasonableness and *bona fides* of the proposed transfers

being investigated by the Court (*section* 29 (1) (*g*));

(*e*) a landlord is being entitled to recover possession where he is suffering financial stringency which arose since he acquired the dwelling and which can be relieved only by recovering possession of the dwelling with a view to its sale, where he pays compensation to the tenant not exceeding three years' rent (including rates, whether or not payable by the tenant) and where the Court considers it reasonable to make the order for possession (*section* 29 (1) (*i*));

(*f*) the Court is being entitled to make an order for possession where it considers it would be reasonable to do so and where it is satisfied that possession is required in the interests of good estate management or for the erection of further dwellings or for the erection or extension of business premises: in such a case it is proposed that the tenant should be paid compensation of not less than three years' rent (including rates, whether or not payable by the tenant (*section* 29 (1) (*j*));

(*g*) the Court is being empowered to make an order for possession of a "tied house" if it is satisfied that it is reasonable to do so and that the sales of the commodities produced or supplied by the landlord are, or are likely to be, prejudicially affected owing to the unsuitability of the tenant or the manner in which the business is being carried on (*section* 29 (1) (*k*));

(*h*) where a tenant appeals against an order for possession the appellate Court, if satisfied that the alternative accommodation which was available at the time of the first hearing was reasonably suitable to the residential and other needs of the tenant and his family, is being empowered to make an order for possession whether or not the alternative accommodation is still available, and where the landlord has kept the alternative accommodation available, the tenant may be required to compensate him for any expense or loss he has incurred in doing so (*section* 29 (5));

(*i*) the spouse and family of a deceased intestate non-statutory tenant are being placed in the same position, so far as the right to remain in possession is concerned, as the spouse and family of a deceased statutory tenant (*section* 31 (3));

(*j*) it is proposed that the spouse or family of a deceased tenant may not avail themselves of the provisions of the Act for retaining possession unless they have been *bona fide* residing with the deceased tenant at the time of death (*sections* 31 (3) and (4));

(*k*) "member of the family" in the context of succession to a deceased tenant is being extended to include an illegitimate child of the tenant or a child to whom the tenant was in *loco parentis*, provided in each case he has resided with the tenant for a period of not less than six years before the tenant's death (*section* 31 (5));

(*l*) the Court is being empowered to grant more than one stay of execution on an order for possession and in cases of urgency the tenant is being entitled to apply *ex parte* to vary the terms of the stay (*section* 33 (2));

(*m*) warrants for delivery of possession of controlled premises are now made valid for six months, not three months as at present (*section* 34 (1));

(*n*) the summary ejectment procedure under section 15 of the Summary Jurisdiction (Ireland) Act, 1851, in the case of premises with a rateable valuation under £10 is being applied to non-statutory as well as to statutory tenants (*section* 34 (2)).

Part V of the Act

14. Following are the modifications being made in this Part of the Act:

(*a*) it is proposed that the existing power of the Court to require a landlord to pay to his tenant a sum necessary for the proper repair of a controlled dwelling will not apply where the cost of repair would be uneconomic or where the premises would have to be rebuilt, reconstructed or structurally altered to a substantial extent (*section* 40 (2));

(*b*) it is provided that a consent order, whenever made, relating to the determination or apportionment of a basic rent or the apportionment of a rateable valuation should bind only the parties to the order (*section* 45);

(*c*) in the case of future tenancies, it is provided that:—

(1) when the tenant gives up possession, deposits made as security for rent may be recovered from the person to whom the rent was last paid (*section* 46 (1));

(2) such deposits should not exceed three months' rent and should be set out in the tenancy agreement or rent book: otherwise they will be recoverable on demand (*section* 46 (2) and (3));

(*d*) certain future sublettings by tenants of dwellings used partly for business purposes are to enure for the benefit of the landlord (*section* 47);

(*e*) it is being made clear that the District Court has jurisdiction in all ejectments from controlled dwellings where the rent does not exceed £53 per annum (*sections* 2 (2) and 50 (*b*) (ii));

(*f*) the provision empowering the Minister to nominate a District Justice assigned to the Dublin Metropolitan District to have sole jurisdiction in that District in all Rent Act cases shall henceforth cease;

(*g*) provision is being made for an appeal to the High Court from a decision of the Circuit Court (other than a decision on an appeal from the District Court) as to an apportionment of rent or rateable valuation;

(*h*) a provision has been implied in every future contract for the sale of a controlled dwelling binding the Vendor to give to the Purchaser information regarding any deposit made as security for rent by a tenant of the dwelling after the Act is in operation (*section* 46 (4));

Section 51 contains the transitional provisions and *section* 54 confers on tenants of business premises who become decontrolled on the passing of the Act immediate rights to a new tenancy under Part III of the Landlord and Tenant Act, 1931, except in the case of lettings for temporary convenience.

The Act came into operation on 31st December, 1960.

While every effort has been made to ensure that the explanation of this Act is accurate, it is published only as a Guide, and members should check it by reference to the Statute.

Printed by Cahill & Co., Ltd., Parkgate Printing Works, Dublin.

THE RENT RESTRICTIONS ACT, 1960

Issued for members of the Incorporated Law Society of Ireland by the Council of the Society.

RENT RESTRICTIONS ACT, 1960

Background of Rent Control

1. Rent control, which was introduced as a temporary war-time measure by the British Government in 1915, was continued always as a temporary measure. In 1926 an attempt was made to decontrol all houses by progressive stages until by 1929 all control would have disappeared, but this process of decontrol was arrested in 1928 at which time control applied, broadly speaking, to premises built before 1919 and having a rateable valuation not exceeding £30 in Dublin and £25 elsewhere. Control of these premises was continued by means of annual Acts until 1946, when the existing Acts were incorporated into the Rent Restrictions Act of that year. The provisions of the Emergency Powers Order, 1944, were also incorporated in the 1946 Act, the operation of which has been extended by successive Acts to December 31st, 1960. The premises now subject to rent control are pre-1941 privately-owned unfurnished dwellings which have a rateable valuation not exceeding, in the Dublin area, £60 and, elsewhere, £40. Some business premises are also controlled.

The basis for controlling rents has always been to restrict the amount of rent lawfully chargeable to the level prevailing in the free letting market at a particular date, plus certain permitted increases. When rent control was first imposed in 1915, rents were restricted to the 1914 level. Premises brought under control by the 1944 Order had their rents restricted to the 1941 level. Accordingly, in 1944 there was a distinction in the method of assessing the controlled rent of the two classes of premises and the 1946 Act of necessity perpetuated the distinction. Under the 1946 Act, therefore, the rents of the pre-1919 premises which have always remained controlled are related to the 1914 level, and the rents of the premises affected by the 1944 Order are restricted to the 1941 level. Certain additions (called "lawful additions") are permitted in both cases in respect of rates, improvements, structural alterations or repairs.

In 1950 a Commission under the chairmanship of Judge Conroy was appointed by the then Minister of Justice to inquire, *inter alia*, into the working of the Rent Restrictions Acts and the question of extending control to furnished lettings. The Commission presented a Report on these aspects of their terms of reference in June, 1952. The main recommendations in the Report were :—

(*a*) the present controls should be retained on dwellings and control should be extended so as to apply to all dwellings, whether let furnished or unfurnished, and whether now in existence or to be built hereafter ;

(*b*) in order to meet the increase in the cost of repairs, landlords of existing controlled premises who are responsible for all repairs should be entitled to increase the present net rents by 25%—the increase to be 12½% where the landlord is responsible for only part repairs.

2. The Act, which is a comprehensive measure repealing and re-enacting the present law with amendments, proposes the following main changes :—

(*a*) rent control is being *removed from* (1) *certain untenanted property* and from (2) *premises used solely for business purposes* ;

(*b*) *an up-to-date standard for determining rents is being provided* ; and

(*c*) having regard to the increased cost of repairs, an increase *of* 12½% *in controlled rents* being paid on 31st December, 1960 (less rates, where the landlord pays them) *is*, with some exceptions, *being permitted where the landlord is liable for* the whole or part of *the repairs*.

These main changes are summarised in the following paragraphs. The Act contains a large number of other amendments of the present law, most of which are based on the recommendations of the Conroy Commission.

(*a*) *Relaxations in scope of control*

3. The Bill provides (*section* 3 (2) (*e*), (*f*) and (*g*)) for the *removal of rent control* (1) *from owner-occupied houses*, (2) *from houses having a valuation exceeding* £30 *in the Dublin area* (£25 elsewhere) of which the landlord gets vacant possession and (3) *from newly-constructed self-contained flats*. No subsisting tenancies will be affected. *Future unfurnished lettings of pre*-1941 *houses* within the valuations mentioned and which are now tenanted, will be *subject to control* unless *they become owner-occupied* in the meantime. Future *unfurnished lettings of rooms or flats* (other than newly-constructed self-contained flats) *in pre*-1941 *houses* will *also be subject to control*. The

existing rights of the spouse and family *of a deceased tenant to continue in occupation* are being *preserved* and applied also to non-statutory tenants.

4. The only purely business premises controlled by the Rent Restrictions Acts are those let on *less than yearly tenancies* (e.g., a lock-up shop let on a monthly tenancy). These *business premises are being decontrolled*, but *section* 54 of the Act provides the decontrolled tenants with an immediate right to *protection under Part III of the Landlord and Tenant Act*, 1931, which will entitle them *on the termination of the tenancy to a new lease at the open-market rent. Business* premises let *with dwelling accommodation will continue* to be subject to *rent control in the same way as dwellings.*

(*b*) *Provision of up-to-date standard for determining controlled rents*

5. In accordance with the recommendation of the Conroy Commission the Act provides (*section* 7) that *controlled rents* will be *determined by reference to the actual rents being paid on* a current date. As in the 1946 Act, the lawful rent will consist of a basic element plus lawful additions, e.g., for rates paid by the landlord. *The basic rent is normally the actual rent being paid on 1st February*, 1960, less rates *where the landlord pays them.*

Hence, *basic rent will be* automatically *determined for all controlled property which is now let.*

(*c*) *Increase in controlled rents*

6. *Section* 10 of the Act provides that a landlord who is *liable for repairs* may increase the *basic rent by* 12½%. The *basic rent*, which is determined in accordance with the provisions of *sections* 7, 8 or 9, is *normally the actual rent being paid on 31st December*, 1960, *less rates* where the landlord pays them. *No increase is being allowed* where the *landlord is not liable for any repairs and the increase does not apply to tenants of property* which is *not controlled*, e.g., houses built after 1941 or local authority houses. The *increase will be modified* or not apply at all in cases *where the landlord has already secured a return under the existing Acts on expenditure incurred by him in putting property into a reasonable state of repair.*

Other amendments

Part I of the Act

7. Apart from the relaxations in control previously specified, the scope of control is being modified by the provision in *section* 3 that *houses let with land are to be controlled only if the rateable valuation of the land does not exceed* £10 (at present £15) in the *Dublin area* and £5 (at present £10) *elsewhere*, subject in either case to the existing proviso that the valuation of the land does not exceed one-half of the valuation of the house. *Section* 3 provides that *an increase in rateable valuation will not have the effect of decontrolling premises* until the *landlord gets vacant possession.* The remaining provisions of this Part are of a routine character.

Part II of the Act

Chapter 1 (*Lawful Rent of Controlled Dwellings*)

8. *Section* 7 provides for *fixing the basic rent of any controlled* dwelling *which was let on 31st December*, 1960, or which was let *within three years before that date.* In such cases the basic rent will be the rent (less rates, where the landlord paid them) being paid on 31st December, 1960, or when the dwelling was last so let, as the case may be.

9. In *all other cases, the basic rent will be determined by the Court under section* 9 at such *amount as the Court considers reasonable having regard as far as possible to the basic rents of controlled dwellings* brought under control for the first time, or recontrolled, in 1944 on the basis of the rents prevailing in 1941, which are comparable in regard to location, accommodation, amenities, state of repair and rateable valuation.

10. The provisions of *section* 7 will ensure that an up-to-date, easily ascertainable, basic rent will be provided for all dwellings which are now let. It is *proposed that the present basic rents will not be capable of variation unless in the exceptional circumstances provided for in section* 8, i.e., (1) *where the Court* is satisfied *that the rent was either excessively low or excessively high* (2) *where a basic rent had previously been determined for the dwelling under the* 1946 *Act.* In cases coming within category (1), the revised rent will be determined on the basis set out in *section* 9, that is, having regard to the basic rents of comparable dwellings to which Part II of the 1946 Act applies. As stated, these are the dwellings which were brought under control for the first time, or recontrolled, in 1944 on the basis of the rents prevailing in 1941. However, the revised rent will be determined having regard to the basic rents of comparable dwellings to which Part II of the 1946 Act applies, i.e., the dwellings which have remained under control since 1915 and whose rents are related to 1914 levels, where the dwelling is in that category and where the application for revision of the rent is made by the landlord or by a tenant whose dwelling has a rateable valuation not exceeding £10.

The *lawful additions to the basic rent* are set out in *section* 10.

Chapter 2 (*Determination of Rent and Recovery of Overpayments*)

11. These provisions (*sections* 12 to 18) re-enact the existing law with the following amendments :—

(*a*) the Court is being empowered to *demand from either* the landlord *or the tenant* such *information as is necessary* for *ascertaining the basic rent* or *lawful rent* and the landlord is being entitled to obtain similar information from his tenant (*section* 12 (1) and (3)) ;

(*b*) the *maximum penalty* for failure to supply such information or for deliberately supplying false information is being *increased from £10 to £50* (*section* 12 (6)) ;

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(*e*) the existing powers of the Court are being extended so as to *enable it to disallow or reduce an addition to rent which includes an amount attributable to expenditure* by a *landlord on improvements, structural alterations* or repairs *where it is satisfied that they have not been carried out satisfactorily* (*section* 13 (6)) ;

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Part III of the Act

12. The object of Part III of the 1946 Act was to provide the poorer class of tenants in the four county boroughs and the borough of Dún Laoghaire with a simple, cheap and expeditious method of provisionally determining lawful rents. Applications by tenants for provisional orders are dealt with privately by a District Justice. The main modifications proposed are those giving the landlord an opportunity of being heard by the District Justice before a provisional order is made and empowering the District Justice to list certain applications for provisional orders for hearing in open Court, i.e., where he is not satisfied that he has jurisdiction to make a provisional order or where he is not satisfied that a claim by the landlord for an addition in respect of moneys alleged to have been spent on improvements, structural alterations or repairs should be allowed without formal evidence and without giving the tenant an opportunity to contest the claim (*section* 21 (1) (*e*)).

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(1) when the tenant gives up possession, deposits made as security for rent may be recovered from the person to whom the rent was last paid (*section* 46 (1));

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(*e*) it is being made clear that the District Court has jurisdiction in all ejectments from controlled dwellings where the rent does not exceed £53 per annum (*sections* 2 (2) and 50 (*b*) (ii));

(*f*) the provision empowering the Minister to nominate a District Justice assigned to the Dublin Metropolitan District to have sole jurisdiction in that District in all Rent Act cases shall henceforth cease;

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