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The position of a purchaser under the Family Home Protection Act 1976

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This paper has the purpose of analysing the burden placed upon a purchaser by the Family Home Protection Act 1976. This Act strives to prevent a spouse, consistently referred to during the Bill's passage through the Dáil as "vindictive," from disposing of the family home over the head of his or her mate. In fact, in the Dáil Debates, such a vindictive spouse was generally assumed to be masculine, and for convenience I shall adopt that convention here, though, of course, the Act works both ways, should there perchance happen somewhere to be a spouse of the female variety sufficiently endowed with both property and malice.

The basic underlying position adopted by the Act is that any purported conveyance of the family home by a husband without the prior written consent of his wife shall be *void:* Section 3(1). And not only is the actual conveyance or transfer void in such circumstances, but also any *contract* to make such a conveyance: see the definition of 'conveyance' in the interpretation Section 1(1). These formidable provisions are not absolute, as will appear, but where they do bite, their consequences upon a purchaser could be devastating. They have the potential of transferring the burden of a husband's less than perfect marital conduct from his wife to his purchaser who may, at worst, be left not only homeless (his existing home having been sold on the faith of the void purchase) but also financially destroyed. At best, the disappointed purchaser in such a case has the cold comfort of a personal quasi-contractual action against a purported vendor (if he has neither absconded nor become insolvent) for moneys had and received by him under the void transaction, *e.g.* a deposit paid to him or his agent where the unconsenting wife comes to light before completion, or the sole purchase money where she surfaces later; a proprietary action might lie against such moneys where they remain traceable; and, if a solicitor has been employed, he may be justified in feeling vulnerable and looking to his professional indemnity policy.

What then can a prospective purchaser do to avoid these serious consequences? If the basic provisions of Section 3(1) as outlined above had remained *unmodified,* he and his prospective mortgagee would, in order to safeguard their respective interests, have been forced to the ridiculous lengths of employing someone to investigate the occupancy of the house throughout the period of the prospective vendor's residence therein. Apart from actual inspection of the premises in a search for traces of departed women and children, enquiries would be bound to include questions asked of the neighbours. Had they ever observed a woman on the premises? Then would follow the delicate matter of eliciting from the prospective vendor his precise relationship with the lady in question, supported, of course, by statutory declarations which would thenceforth lie on the title for all the world to see. Every now and then the vendor's answers would lead to interesting discussions on the civil consequences of church annulments, the effect of an Irish domicile on an English divorce and on bigamy generally. These investigations would not be confined to apparently single and unattached prospective vendors: a vendor in current possession of an apparent wife could not claim to be above suspicion. The only limit to investigation would be the period of the vendor's occupation of the house, since to qualify as a "family home" the wife whose consent is required must have been ordinarily resident there at some time: Section 2(1).

But this basic position as it would exist under an unqualified Section 3(1) *was* modified by later provisions of the Act, and the question remains to what extent these modifications have relieved the purchaser from the foregoing private investigator's dream and conveyancer's nightmare, in which the spectral spouse arises in a new guise to haunt not only the finer points of the Rule against Perpetuities, buut everyday suburban conveyancing as well.

The Bill as introduced into the Dáil which even at that stage represented the *sixth* draft of a "difficult and novel piece of legislation" (Minister for Justice: Parliamentary Debates, Dáil Éireann, vol. 291, No. 3, Col. 434) modified the basic position of a purchaser under Section 3(1) in the following terms, which were themselves to be substantially amended at the Committee stage into the present form of the Act, representing, one must suppose a *seventh* or subsequent draft of what became by virtue of them an even more "difficult and novel piece of legislation". The purchaser's burden in Section 3(1) was *originally* modified in these terms:

"(3) Subsection (1) shall not apply as against a person if he is a purchaser in good faith for full value and if all such steps, inquiries and inspections as ought reasonably to have been taken and made for the purpose of ascertaining whether a consent was necessary under that subsection or, if necessary, was obtained were taken and made by him or on his behalf; and if a question arises, in any proceedings whether the conditions specified in this subsection were fulfilled, the burden of proving this shall be on that person".

Some solicitude for the purchaser under such a provision was expressed during the second reading debate in the Dáil, and in particular Deputy O'Kennedy *(ibid,* cols. 378, 379) asked pertinently what was meant by "such steps, inquiries and inspections as ought reasonably to have been taken" by a purchaser? The Minister in winding up took the opportunity of explaining the duties of a purchaser. Firstly, he explained his understanding of the requirement of "good faith" as being aimed against collusion between vendor and purchaser *(ibid,* vol. 431). It will be submitted below that "good faith"bears a somewhat wider meaning than this. Secondly, he purported to deal with the purchaser's obligation to make all reasonable inquiries. "He must", said the Minister, "have made all reasonable inquiries. The phraseology of the Bill refers to the obligation to make reasonable enquiries as does the Conveyancing Act, 1882. Deputy O'Kennedy

asked precisely what it meant. It has a clear meaning in the realm of conveyancing. It means that reasonable steps, in the circumstances of a particular title, have to be taken by a purchaser. That normally means that he puts the usual requisitions or questions to the vendor and may seek a statutory declaration to support the replies to the requisitions. He has to make reasonable enquiries to satisfy himself that there was no need for a consent ... It is only another incident of title that will have to be investigated on the Conveyance, and it will not be a harsh or onerous burden".

With every respect to the Minister, this answer begs the question. Omitting the circularity, it boils down to a statement that *reasonable* conduct on the part of a purchaser consists in doing that which is *usual*.Unhappily, doing what is usual is in the case of a novelty somewhat difficult. Furthermore, the reference to Section 3 of the Conveyancing Act 1882 was unfortunate. This reference was clearly made initially by way of analogy only, and not in the context a wholly sound analogy at that, but now as a result of the amendments of Section 3 of the original Bill introduced at the Committee stage (of which more below) the Act reads *as if* Section 3 of the Conveyancing Act 1882 has of its own motion a direct application to the type of situation created by the 1976 Act, which it does not. Section 3 of the Conveyancing Act 1882 says, inter alia. that "a purchaser shall not be prejudicially affected by notice of any instrument, fact or thing, unless ... it is within his own knowledge, or would have come to his knowledge if such inquiries and inspections had been made as ought reasonably to bave been made by him ..." This section does *not* of course operate so as to remove in favour of a purchaser who has done everything he reasonably ought to have done by way of investigation of title any *legal* incapacity on the part of the vendor or any *legal* inability to convey what he purported to convey through lack of legal title in him. For example, a purchaser may have properly and fully investigated a forty years title to an apparent fee simple estate only to find himself defeated years later by the reversion on a long lease falling in. Section 3 of the Conveyancing Act will not help him. Similarly, the vendor's disability under the 1976 Act is legal, in the sense that his purported conveyance is void at law except in favour of a limited class of purchasers. Indeed, it is trite knowledge that Section 3 of the Conveyancing Act 1882 is concerned *not* with the passing of legal titles but with the standard to be observed by a purchaser of a legal estate who wishes to avoid being bound by a pre-existing *equitable* proprietary interest. And the framers of the Bill disavowed the intention of conferring on a wife any such interest in the family home. Apart from the foregoing conceptual difficulties, references to Section 3 of the Conveyancing Act 1882 are scarcely appropriate as a means of elucidating (as the Minister sought to do) the standards of investigation required of a purchaser. simply because the Section presupposes a pre-existing body of case law, (which in fact the Section sought to restrict) setting out what a reasonable purchaser ought to do to avoid being bound by outstanding equitable interests. This case-law reflects current conveyancing practice and the former reflects the latter in a symbiotic relationship, whereas in the case of the new "right" created by the 1976 Act there was when the Minister spoke neither current practice nor case-law. The words "ought reasonably to have been made" in Section 3 of the 1882 Act refer to the enquiries which a purchaser ought as a matter of prudence to have made, having regard to what is usually done by men of business under similar circumstances: *Bailey v. Barnes* [1894] 1 Ch. 35.

We are now in a position to turn to the final form of Section 3 of the 1976 Act as modified by an amendment introduced by the Minister at the Committee stage of the Bill. As already mentioned, this amendment swept away the greater part of the original formulation of the qualifications in favour of a purchaser quoted above. The amended form provides:

> "(3) No conveyance shall be void by reason only of subsection (1) – (a) if it is made to a purchaser for full value, (b) if it is made, by a person other than the spouse making the purported conveyance referred to in subsection (1), to a purchaser for value, or (c) if its validity depends on the validity of a conveyance in respect of which any of the conditions mentioned in ... paragraph(s) (a) or (b) is satisfied.
> (4) If any question arises in any proceedings as to whether a conveyance is valid by reason of subsection ... (3), the burden of proving that validity shall be on the person alleging it.
> (5) In sub-section (3), "full value" means such value as amounts or approximates to the value of that for which it was given.
> (6) In this section, "purchaser" means a grantee, lessee, assignee, mortgagee, chargeant or other person who in good faith acquires an estate or interest in property.
> (7) For the purposes of this section, section 3 of the Conveyancing Act, 1882 shall be read as if the words "as such" wherever they appear in paragraph (ii) of subsection (1) of that section were omitted."

Considering first the position of an immediate purchaser of a family home, it will be observed that the duty to make reasonable inquiries is no longer stated. The only quality *expressly* required of a purchaser apart from the giving of full value is that he be in *good faith*. This somewhat overworked term is capable of bearing a wider meaning than merely the avoidance of the collusion adverted to by the Minister *(supra);* the term, as commonly understood, embraces more than the freedom from actual complicity in a fraudulent design. Good faith requires actual subjective honesty of such a quality that suspicious circumstances alone, without actual knowledge of or complicity in them, founds a duty to enquire which, if not discharged, leads to a person being found *mala fide*.*Jones v. Gordon*, 2 App. Cas. [1877] 616 at 628, 9). Honesty is subjective, and it follows that a person's good faith is judged by his own mental state, equipment and knowledge at the relevant time (e.g. *Hutton v. West Cork Railway Co.* [1883] 23, Ch. D. 654 at 671); and that failure to live up to an objective standard such as that of the ordinary, prudent purchaser envisaged by Section 3 of the Conveyancing Act 1882 is not necessarily equivalent to bad faith. Identical facts therefore will result in a prospective purchaser who appreciates the significance of what comes to his attention being in bad faith, and another who does not, being blameless. Thus if good faith alone were the test, it is arguable that a prospective purchaser who hears that a prospective vendor had a wife

who had fled the nest will be in good faith if he remains ignorant of the requirement of her consent until after completion. Though *Ignorantia iuris haud excusat*, statute is at liberty to provide otherwise. However, this said, it will be rare to find such happy ignorance on the part of a purchaser prevailing throughout every stage of a conveyancing transaction; he will almost inevitably have employed a solicitor (in the case of a private treaty sale often before the contract stage or at worst *purported* contract, and in the case of many auctions only afterwards) and that solicitor's better informed mental state together with its consequences will be imputed to his client as is normal in such circumstances between an agent and a principal. *(Rolland v. Hart*, Law Rep. 6 Ch. 678, 682; and *Bradley v. Riches* [1878] 9 Ch. D. 189, 196. See also Section 3(7) of the 1976 Act, of which more below, which ends in the same direction). The central-question therefore arises: can a prospective purchaser who is well-informed, whether by imputation or otherwise, on the provisions of the 1976 Act and its consequences *assume* in the absence of suspicious circumstances (whether founded in rumour, or on inspections of the premises or otherwise) that a prospective vendor is unmarried and remain in good faith? Or must such a prospective purchaser automatically, whatever the circumstances, make enquiries about the prospective vendor's marital status in order to remain in good faith, and if so, how extensive should such enquiries be? It is an essential element of good faith that the person required to possess it may assume that all is in order and in accordance with appearances unless he is put on inquiry; in other words, there is no underlying duty to investigate unless suspicious circumstances come to that person's attention. Were the position otherwise under this concept, no one could at common law have taken a negotiable instrument without first having investigated title (see *Jones v. Gordon*, supra, and *Manchester Trust v. Furness* [1895] 2 Q.B. 539, 545). Applying these principles to the legally well-informed purchaser of a dwelling house, must he assume that a vendor who remains an apparent bachelor is so unusual as to be sufficiently suspect to warrant further inquiry? One would think, or certainly hope, not. One would think also that apparent wives might consistently with good faith (and in the absence of suspicious circumstances) be accepted at their face value as being what they purport to be, without either requiring the production of the marriage lines or investigating the vendor's occupation of the house in a search for other, earlier women and so on. Nonetheless, the translation of an established concept to a new context obviously engenders uncertainties, and the extent of the underlying assumptions of a purchaser in good faith cannot yet confidently be predicted. Accordingly therefore, it is suggested that the prudent course for the legally well-informed purchaser (meaning usually one who has retained the services of a solicitor) to follow would lie in asking a vendor whether he or she has a spouse as part of an appropriate preliminary enquiry (if a solicitor is employed at the precontractual stage) and, in any event, as part of an appropriate requisition before completion. The answers to these questions may, it is submitted, be accepted as conclusive (see *Selangor Rubber Estates Ltd. v. Cradock* (No. 3) [1968] 2 All E. R. 1073 at 1104), unless the answer is sufficiently ambiguous or evasive as of itself to found a duty to enquire, or unless, as ever, other suspicious circumstances come to the attention of the purchaser or his agents.

Such then is the concept of good faith required of a purchaser. It remains to be seen what more, if anything, is required by the 1976 Act of a purchaser as a prerequisite to gaining a clear title. These further elements are being treated here separately from good faith partly because the Act is less than clear on them, and partly because good faith is a tolerably certain concept, suited to treatment in isolation.

It will be recollected that the Bill up to the Committee Stage (unlike the Act) *expressly* imposed on a purchaser the obligation to make *reasonable* enquiries and inspections in addition to the requirement that there be good faith on his part; that the Bill, though imposing these additional objective standards on a purchaser, failed to spell out what their satisfaction involved; that the Minister, in seeking to explain, got distinct concepts into confusion and, in any event, begged the question by referring to as appropriate whatever practice might be usual, when, of course, there was none; and that the Minister dropped the express statement of an objective standard of conduct at the Committee stage and substituted the present section 3(7) of the Act. He, himself, was clear about what he thought he was accomplishing by this. He said: "the substance of the requirements regarding notice is the same in the amendment as in the original section although expressed in different terms. What I am doing here is incorporating Section 3 of the Conveyancing Act 1882. The conveyancing obligation in that section will apply to all purchasers under this proposed section." *(Parliamentary Debates Dáil Éireann, Official Report*, vol. 29, No. 11 paragraph 1602 *et seq.)*. Be that as it may, all that Section 3(7) of the 1976 Act in fact did on the face of it was to modify, for the purpose of the 1976 Act, that part of Section 3 of the Conveyancing Act 1882 dealing with imputation of notice from agent to principal, on the assumption that the 1882 Act in some manner already laid down an objective code of standards to be followed

by a purchaser in respect of his obligations under such a piece of legislation as the 1976 Act. As I have sought to show, such an assumption is both false and inept. Nevertheless, we have in the 1976 Act this oblique reference to the Act of 1882; it is therefore a practitioner's duty to make some attempt to predict what the Courts will make of it; one must, if one is to err on the side of caution, suppose that the Courts will be tempted by a leap in construction to hold that the 1976 Act intended to impose some sort of objective standard on a purchaser in addition to the subjective requirement of good faith; and that that objective standard is to be found in the words of the 1882 Act which refer merely to "such inquiries and inspections ... as ought reasonably to have been made", thus begging the question again but this time by a more circular route. I would submit that the Courts should find that this question, (namely *what inquiries and inspections ought reasonably be made?)* is one to be answered by the legal profession itself, in that doing whatever is *usual* in a conveyancing situation generally satisfies also the requirement of being *reasonable* in a constructive notice context. Consequently, if the Incorporated Law Society of Ireland were to lay down certain guidelines which it considers to be appropriate to be followed by a solicitor acting for the purchaser of a family home, those guidelines will *ipso facto* become the reasonable inquiries and inspections which it has been supposed as a matter of construction the 1976 Act requires. A purchaser who satisfies them *and who is also in good faith* will take free of any spouse's claim.

The Conveyancing Committee of the Incorporated Law Society is currently considering this problem, and it is to be hoped that they do not set the objective standard too high. Indeed, little more than the standard which the cautious view expects of a legally well-informed purchaser if he is to remain in good faith, *(supra),* should suffice, i.e. a straight question to which a seemingly straight answer may be accepted as conclusive. Additional elements would include the normal searches in the Registers, and an inspection of the property itself by someone aware of the legal questions which might arise would be advisable: indeed, such an inspection has always been advisable in conveyancing, and is reasonably to be expected, but unfortunately has by no means always been undertaken in practice. Furthermore, it is to be hoped that the Law Society will limit the necessity for reasonable enquiries and inspections to the *post*-contractual stage, so that a purchaser who wishes to allege that he has a valid contract (with a consequent right to damages for non-completion and a lien for the deposit) will have only to surmount the hurdle of showing that he was in good faith. If *Wroth v. Tyler* [1973] 1 All E.R. 897 were to be followed in Ireland, it is probable that a purchaser under an open contract whose vendor has failed to complete through failure to obtain his spouse's consent would be entitled to damages for loss of bargain, notwithstanding the rule in *Bain v. Fothergill* [1874] L.R. 7 H.L. 158 limiting a disappointed purchaser's damages to his costs only, e.g. of investigation of title, where the vendor has failed to show title through some irremovable defect of title not brought about through his own fault.

The 1976 Act provides that a spouse *may* register the fact of her marriage, in the case of unregistered land, in the Registry of Deeds and, in the case of registered land, in the appropriate folio: Section 12. A purchaser seeing such an entry will fail to satisfy the test of good faith if he ignores it, and if he fails to make the searches which would have revealed it, he will have failed to fulfil the objective standard postulated above, it being assumed naturally that a search for such an entry will form part of the recommended usual practice. This, it is submitted, is the scheme of the 1976 Act even though the normal position as far as unregistered land is concerned is that registration in the Registry of Deeds does *not* constitute notice: *Latouche v. Dunsany* 1 Sch Lef. 137.

Failure to register is not to "give rise to any inference as to the non-existence of a marriage": Section 12(2) of the 1976 Act. Indeed, in the case of registered land the 1976 Act appears to envisage that the requirement of a spouse's consent should rank as an overriding interest within the ambit of Section 72(1) of the Registration of Title Act 1964, *viz.* "... all registered land shall be subject to such of the following burdens as for the time being affect the land, whether those burdens are or are not registered, namely ... (q) the burdens to which Section 59 ... applies." Section 59(1) states that nothing in the 1964 Act "shall affect the provisions of any enactment by which the alienation, assignment, subdivision or subletting of any land is prohibited or in any way restricted ...". That spouse's right to consent should fall into this category was stated in the 1976 Act in an unnecessarily oblique manner, the draftsman merely satisfying himself with providing in Section 13 thereof: "Section 59(2) of the Registration of Title Act, 1964 (which refers to noting upon the register provisions of any enactment restricting dealings in land) shall not apply to the provisions of this Act", the implication in the context being that Section 59(1) abovementioned, does so apply.

The last specific matter briefly to be mentioned concerns the outlines of the position of the sub-purchaser, that is to say, a purchaser who has taken from a purchaser whose conveyance was void under the Act. Section 3 of the 1976 Act in effect provides that the conveyance to such a sub-purchaser will fail to pass the property unless he can show that he was likewise in good faith, and likewise had, assumedly, followed the appropriate conveyancing practice. In such a case, it is submitted that the sub-purchaser should be entitled to accept as conclusive the signature of an apparent spouse in the conveyance to his immediate predecessor or the registration of his immediate predecessor as proprietor as the case may be, on the grounds that *omnia praesumuntur ut rite esse acta.* This would leave him vulnerable to suspicious circumstances actually known to him, adverse claims communicated to him, and registrations in the Registry of Deeds which had clearly not been satisfied in the purported conveyance to his predecessor.

In conclusion, one hopes that it is not too reactionary to say that purchasers are as much to be protected by our law as unfortunate wives, and it is to be regretted that the choice having been made not to put the onus of self-protection on the wife herself (as would have been the case if an exclusive system of registration akin to that introduced in England under the Matrimonial Homes Act 1967 had been chosen) the burden on the purchaser was not more clearly defined.

INTERNATIONAL SECTION

DECISIONS OF THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

1. Judgements

Case 24/76—Colzani (Milan) and Rüwa (Cologne) (preliminary ruling) 14 December 1976.

Brussels Convention — The Bundesgerichtshof (Federal Court of Justice) referred to the Court of Justice of the European Communities in Luxembourg two cases (24/76 — Colzani and 25/76 — Segoura) concerning the interpretation of the first paragraph of Article 17 of the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (Brussels Convention).

The first paragraph of Article 17 of the Convention provides that: "If the parties, one or more of whom is domiciled in a Contracting State, have, by agreement in writing or by an oral agreement confirmed in writing, agreed that a Court or the Courts of a Contracting State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular relationship, that Court or those Courts shall have exclusive jurisdiction".

The first question put to the Court of Justice by the Bundesgerichtshof was as follows: Does a clause conferring jurisdiction, which is included among General Conditions of Sale printed on the back of a contract signed by both parties, fulfil the requirement of a writing under the first paragraph of Article 17 of the Convention? In its general interpretation of Article 17 the Court of Justice has stated that the validity of clauses conferring jurisdiction is subject, pursuant to Article 17, to conditions which must be strictly interpreted. The formal requirements of Article 17 are designed to ensure that consent beteen the parties has indeed been reached. The Court which is seised of the matter is under a duty to examine, first of all, whether the clause conferring jurisdiction upon it is indeed the outcome of consent between the parties, which must be clearly and precisely apparent.

In the light of these general considerations the Court has replied to the first question with a ruling that the requirement of a writing under the first paragraph of Article 17 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters is fulfilled in the case where a clause conferring jurisdiction is included among the General Condition of Sale of one of the parties, printed on the back of the contract signed by both parties, only where the contract signed by both parties includes an *express reference* to those general conditions.

A second question asked whether the requirement of a writing under the first paragraph of Article 17 of the Brussels Convention is fulfilled if the parties expressly refer in the contract to a prior offer in writing which, in its turn, referred to General Conditions of Sale including a clause conferring jurisdiction.

In that hypothesis, the Court of Justice has ruled that the reference must be *express* and therefore capable of control by the party concerned by the exercise of normal care.

Case 25/76 — Galeries Segoura (Brussels) and Bonakdarian (Hamburg) (preliminary ruling) 14 December 1976.

This again is a question of interpretation of the first paragraph of Article 17 of the Brussels Convention, in a slightly different context. The first question asked the Court of Justice whether the requirements of the first paragraph of Article 17 of the Convention are satisfied if, at the *oral conclusion of a contract of sale*, a vendor has stated that he wishes to rely on *his General Conditions of Sale* and if he subsequently confirms the contract in writing to the purchaser and annexes to that confirmation his General Conditions of Sale which contain a clause conferring jurisdiction. The Court has ruled that in the case of the oral conclusion of a contract the formal requirements of the first paragraph of Article 17 of the Convention of 27 September 1968 are fulfilled only if the *written confirmation* from the vendor *accompanied by* the general business conditions has provoked a *written acceptance by the purchaser.*

A second question asked whether Article 17 of the Convention is to be applied where, in dealings between merchants, the vendor, after the oral conclusion of a contract of sale, confirms in writing to the purchaser the conclusion of the contract subject to his General Conditions of Sale and annexes to that document his conditions of sale and conferring jurisdiction and if the purchaser does not challenge this confirmatory letter.

The Court has ruled that the fact that the purchaser raised no objection does not signify acceptance of the clause conferring jurisdiction unless the verbal agreement is to be viewed in a context of *current* commercial relations between the parties on the basis of the *general conditions* of one of them including *a clause conferring jurisdiction.*

Case 45/76 — Comet and Produktschap voor Siergewassen (preliminary ruling) 16 December 1976.

Rules of Procedure — Period of Limitation — The Comet undertaking, which exports flower bulbs, brought an action against the Produktschap voor Siergewassen for a declaration that it was not liable to pay contributions constituting charges having an effect equivalent to customs duties on export, as prohibited by the Treaty. The said charges, designed to finance publicity in Germany for flower bulbs, were levied by the Produktschap in respect of exports effected during the final months of 1968 and the beginning of 1969.

The plaintiff in the main action, Comet, has requested the national court to recognise that it is entitled to set off the sums paid in error against sums claimed from it by the Produktschap in a different connection.

The Produktschap maintains that since it did not

institute proceedings within the period laid down by the national legislation concerning such proceedings against the assessments and the reminder notice sent to it, the plaintiff in the main action can no longer contest the contributions at issue nor claim repayment of them.

For its part, Comet maintains that the supremacy of Community law implies that any measure infringing that law is void and that therefore it has a cause of action before the national courts, independently of restrictions laid down by the national legislation which might lessen the impact of the direct affect of that law in the legal systems of the Member States.

The question put to the Court of Justice asks whether the procedure — at least in so far as periods of limitation are concerned — in respect of judicial actions intended to ensure protection for rights which individuals hold by reason of the direct effect of a Community provision are governed by the national law of the Member State where those rights of action are exercised or whether, on the contrary, they are independent and can only be governed by Community law itself.

After analysing the principle of co-operation with national courts laid down in Article 5 of the Treaty, the Court of Justice has ruled that in the case of a litigant who is challenging before the national courts a decision of a national body for incompatibility with Community law, that law, in its present state, does not prevent the expiry of the period within which proceedings must be brought under national law from being objected against him, provided that the procedural rules applicable in his case are not less favourable than those governing the same right of action on an internal matter.

Case 33/76 — Rewe-Zentral AG and Landwirtschaftskammer für das Saarland (preliminary ruling) 16 December 1976.

Rules of Procedure — Period of Limitation — This case is similar to Case 45/76 *(Comet)*, summarised above. This time the Bundesverwaltungsgericht turned to the Court in Luxembourg to obtain its interpretation of Article 5 of the EEC Treaty concerning procedural aspects of actions at law.

These questions were raised in the context of proceedings concerning the payment in 1968, in respect of imports by Rewe, of charges in respect of phytosanitary inspection, which were considered to be equivalent to customs duties by the judgment of the Court of 11 October 1973 in Case 39/73 [1973] ECR 1039). The respondent, the Agricultural Chamber for the Saarland, rejected the complaints of the appellant Rewe, requesting the annulment of the decisions imposing the charges and the reimbursement of the sums paid (including interest), on the ground that they were inadmissible in that the time-limit laid down by Article 58 of the German Rules of Procedure of the Verwaltungsgericht was not observed.

The first question asked whether, where an administrative body in one State has infringed the prohibition on charges having equivalent effect, the Community citizen concerned has a right under Community law to the annulment or revocation of the administrative measure and/or to a refund of the amount paid, even if under the rules of procedure of the national law the time-limit for contesting the validity of the administrative measure is passed.

The court has replied with a ruling that in the case of a litigant who is challenging before the national courts a decision of a national body for incompatibility with Community law, that law, in its present state, does not prevent the expiry of the period within which proceedings must be brought under national law from being objected against him, provided that the procedural rules applicable in his case are not less favourable than those governing the same right of action on an internal matter.

The second question asked whether the fact that the Court has already ruled on the question of infringement of the Treaty has an affect on the reply given to the first question. The Court answered in the negative.

FORTHCOMING LECTURES AND SEMINARS

March 31 — London — *The European Communities and The Rule of Law. Hamlyn Lecture I.* First of four by Lord Mackenzie Stuart — at Institute of Advanced Legal Studies, Russell Square, London.

April 4 — London — *The European Communities and The Rule of Law. Hamlyn Lecture II.*

April 5 — London — *The European Communities and The Rule of Law. Hamlyn Lecture III.*

April 6 — London — *The European Communities and The Rule of Law. Hamlyn Lecture IV.*

April 19 — London — *"Consequences and experiences concerning the competition between Floating charges and Reservation and of Title".* Sponsor: Section on Business Law of the International Bar Association. Apply: The Director General, International Bar Association, 93 Jermyn Street, London SW1Y 6JE.

April 20-21 — London — *The Responsibility and Liability of Directors and the Lawyer's Role as a Director.* Sponsor: International Bar Association. Apply: Director-General, IBA, 93 Jermyn Street, London SW1 6JE.

April 28 — London — *Confidentiality and Clients Privilege.* Sponsors: Solicitors European Group and Commerce and Industry Group of The Law Society, Law Society's Hall, 113 Chancery Lane, London WC2A 1PL. Tel. (01) 242 1222.

April 28-29 — Venice — *First European Seminar on Product Liability.* Sponsors: European Organisation for Quality Control and the Italian Association for Quality Control (AICQ). Languages: (Simultaneous translation) English, French, German, Italian. Apply: AICQ Seminar Secretariat, Piazza Diaz 2, 20123 Milan, Italy. Tel. (02) 80.08.21 or 89.22.85. Telex 22481 I UNI Sig.na.Pagetti.

May 15-21 — Florence — *New Perspectives on a Common Law of Europe.* Sponsor: The European University Institute, Badia Fiosolana, Florence, Italy.

May 22-25 — Nice — *74th French Notaries Congress.* Theme: "Droit Fiscal et Gestion des Biens". Organiser: Mme. Boulanger, P.O. Box 149, 62520 Le Touquet-Paris-Plage, France.

DUBLIN SOLICITORS' BAR ASSOCIATION

As already reported in The Gazette, at the first half-yearly meeting of the Association, held on the 5th April 1976, Mr. Charles Meredith read a paper on the subject of Solicitors' Undertakings which the meeting recommended should be offered to The Gazette for publication.

The text of the Paper, slightly amended for visual rather than verbal presentation, is set out below.

There is a further warning which may be passed on to the profession as a whole, beyond that inherent in the contents of the Paper; in direct consequence of his industry in the preparation of his address, the writer was co-opted to the Incorporated Law Society's Sub-Committee on the whole question of Undertakings. Let those who presume to air their views beware!

UNDERTAKINGS NOT TO BE UNDERTAKEN LIGHTLY

You may not know the story – the, sadly, true story – of The Three Solicitors. Unlike the Three Bears, who were, one is led to believe, a family, or at least a related group of Bears, the Three Solicitors had nothing in common except their professional qualifications and, possibly, the desire to secure a prospective piece of lucrative conveyancing business.

The Three Solicitors gave three separate undertakings to hold title documents in trust for three separate banks, in three separate financing arrangements – the only small snag being that the three separate solicitors all turned out to be acting for the one client and there was only one property the subject of the title documents referred to.

Fortunately for one of the three solicitors, the lucky one did indeed hold the Title Deeds, but the other two found themselves in positions of considerable discomfort, especially as the client left the jurisdiction, with the borrowed money in his pocket!

The story of the Three Solicitors is a salutory story – and one which serves as a timely reminder of the risks Solicitors run in giving Undertakings on their clients' behalf without considering extremely carefully just what they are doing.

The writer was recently involved in advising upon the strength of a collection of paper writings held out by an independent Merchant Bank to represent security for advances amounting to approximately £1,000,000. These turned out to be a motley collection of unperformed Solicitors' Undertakings dating from the property boom of 1973, given in every conceivable circumstance of property utilisation, Guarantees by the directors of private development companies and other miscellaneous security documents – but mostly, regrettably, Solicitors' Undertakings.

In at least one case, it appeared that the Solicitor concerned had returned the title documents to his own client, leaving himself open to the Bank on an Undertaking securing an advance in excess of £50,000.

All this is a somewhat lengthy way of pointing out the very obvious fact that Solicitors should never give undertakings without very careful consideration; without being absolutely certain that they can perform that Undertaking; without ensuring continuously that they remain able to perform that Undertaking; and without ensuring that their client is not in a position to discharge the Solicitor from the case, leaving the Solicitor liable on foot of a previous Undertaking given on the client's behalf.

Broadly speaking, Solicitors' Undertakings fall into three categories:-

First: Those they give to other Solicitors in the course of everyday practice – mostly in conveyancing transactions;

Second: Those they give to persons or bodies other than other Solicitors – mostly Banks or other providers of Finance;

Third: Those they give in their capacity as Officers of the Court – that is, in general terms, those they give to the Court – and mostly relating to litigation.

The same basic considerations apply to all three and it should possibly be borne in mind that, in the case of Undertakings given as Officers of the Court, a Solicitor is actually liable to commital for breach of such an Undertaking. A Solicitor failing to enter an appearance in an action, in pursuance of a written Undertaking – a very common situation – is liable to attachment. Fortunately, the situation is seldom reached wherein such drastic measures are necessary or resorted to, but it is worth remembering that such remedies exist.

As between Solicitors themselves, usually in conveyancing transactions, it is accepted – and probably rightly so – that without such Undertakings and without the mutual trust that makes such Undertakings possible, a great many wheels would very rapidly cease to turn and considerable hardship would result to a great many unsuspecting and innocent clients. However, most Solicitors have their Blacklists, and some have been forced into the extreme position of refusing to accept any Undertakings whatsoever. Most Solicitors content themselves with being selective as to whose Undertakings they will accept.

The Conveyancing Sub-Committee of the Dublin Solicitors' Bar Association was interested to discover recently that one of the country's leading Banking Groups keeps all Solicitors' Undertakings it receives under the personal eye of the Law Agent himself, who is believed to have remarked that he has a whole filing cabinet drawer full of what can only be called, at best, 'dubious' undertakings, and who has told us that the Law Society is now backing up the Bank to ensure that all Solicitors' Undertakings are performed. This is absolutely as it should be, but no doubt a good many red faces will result.

The practical points to be made concerning Undertakings are very few and the writer considers that they can be reduced to the following, applied in a general fashion to all situations:-

First:- Always ensure, before giving it, that the client's clear authority to give the Undertaking has been obtained. And it should be noted that a Solicitor cannot hide behind an Undertaking expressed to be given 'on behalf of . . .' the client. It has been judicially decided that such an Undertaking still binds the Solicitor personally.

Second:- Always ensure, before giving the Undertaking, that the client's written Undertaking has been obtained not to discharge the Solicitor's retainer in connection with the matter in which the Undertaking is given.

Third:- Always ensure, before giving the Undertaking, either (a) that the Title documents or whatever may be

the subject of the Undertaking are in the Solicitor's hands; (b) that the Solicitor will without question be physically capable of performing the Undertaking, whatever it may be; (c) that, if necessary, the Undertaking is clearly qualified by reference to any matter which, at the time the Undertaking is given, is not within the Solicitor's competence.

Fourth:- Always ensure, if giving an Undertaking to a provider of finance, that the money so provided on the strength of the Solicitor's Undertaking, passes through the Solicitor's hands and that he sees to its application in the proper manner. The Solicitor's Undertaking in cases of this nature should be expressed to be binding on the Solicitor giving it, only so long as the provider of finance passes that finance through the hands of the Solicitor concerned.

Fifth:- Always ensure that the Undertaking given – and, possibly more important, that the Undertaking received – is wholly unambiguous. It is not unknown for Undertakings deliberately to be expressed in such vague or obscure terms as to be virtually meaningless and, too often, this is realised only after the failure by the giver of the alleged Undertaking to perform it.

Sixth:- And probably the most practical of all the essentials – Solicitors should always note on their files, the original deeds, the working papers and even – with discretion – on Account Cards, that an Undertaking has been given in the case concerned – in order to save themselves and their staff from doing something irretrievably unfortunate – and expensive – with the security.

There are other things that might be added – such as for example, to take a clear note of any Undertakings given, but space forbids and the purpose of these words is really to remind the Profession of the seriousness of their Undertakings and to point out the fact that they are likely to be enforced against them. It is up to every Solicitor to work out the systems of personal protection best suited to individual working practices.

DUBLIN DOCUMENT EXCHANGE

The Dublin Solicitors' Bar Association has for the past year being investigating the possibility of introducing into Dublin a system of "document exchanging" which has been operating in certain areas of London since 1975, with apparent success and with considerable saving to its users in postal expenses.

Practitioners will probably have noticed during the past year that, with the re-printing of London Solicitors' stationery, more and more letterheads are including the mysterious information ."L.D.E. Box No: . . .". This is, in fact, the number of the firm's Exchange Box at the London Document Exchange, into which will be delivered by hand letters and packets from correspondents within easy travelling distance of the Exchange itself.

The first London Exchange was opened on 15th September 1975, just off Chancery Lane and includes, by now, virtually every firm of Solicitors in the area, as well as a considerable number of other offices (Insurance, Estate Agency, Accountants, Building Societies, etc.). The Law Society itself is among the members.

On 1st December 1975 a second Exchange was inaugurated, in the City, with similar success.

Through London Solicitors, the Dublin Solicitors' Bar Associatrion contacted the proprietors of the London Exchanges and the possibility of opening a similar Exchange in Dublin was considered in great detail.

Inspired by the compactness of the centre city area and by the fact that not only Solicitors, but almost every other facet of trade and commerce takes place in the same area, the proprietors of the London Exchanges are establishing an Exchange in Dublin, which will open on 1st March 1977.

Counsel's Opinion has been obtained in London that the Document Exchanges do not infringe the Post Office Monopoly and, as the legislation is similar in this Country, the same advice has been received here.

Members of the Dublin Document Exchange will be allocated a steel, lockable, slitted box, capable of taking letters and documents up to 15 inches in length, 12 inches wide and 1½ inches thick. Larger items can be accommodated in larger, special boxes, by arrangement with Exchange staff.

Persons (who need not be Members) wishing to send communications to Members, merely visit the Exchange and place their communications in the various numbered boxes of the intended recipients.

The Members themselves, to collect whatever offers, visit the Exchange whenever suitable, open their own locked box with their own key and remove the contents. On the same visit, they can, of course, deliver their outgoing correspondence to the boxes of other Members.

The experience in London has been that, in the case of busier firms, a despatch and collection can be made twice a day, with considerable saving in time, as well as postal charges.

The Dublin Exchange is situated at 3 Molesworth Place (just off Molesworth Street, opposite South Frederick Street) and will open from 8.00 a.m. to 6.00 p.m., Monday to Friday. It is envisaged that the hours of opening may be varied in the light of experience.

The annual rent for an Exchange Box will be £250 and an entrance fee of £50 will be charged upon joining. However, the entrance fee of £50 will be waived for all members joining the Exchange prior to 1st July 1977.

In view of the involvement of the Dublin Solicitors' Bar Association in introducing the Exchange to Dublin, all sole practitioners who are members of the Bar Association and every firm having one or more partners who are members of the Bar Association are being offered a permanent discount of 20% on the annual rent from time to time and, in addition, for Bar Association members the entrance fee of £50 will be suspended until 1st November 1977.

On an estimated postal cost of 15p per communication, the Dublin Document Exchange calculate that members of the Exchange will only have to deliver 6 letters per day through the Exchange to break even with the rental cost. Thereafter, every letter delivered represents a clear saving.

The Solicitors to the Exchange are Matheson, Ormsby and Prentice.

The first fifty subscriptions to the Exchange will be held by McMahon & Tweedy, Solicitors, as independent stakeholders and, if the target of fifty subscribers has not been reached by 1st November 1977 all subscriptions received will be refunded.

The Dublin Document Exchange will be managed by Miss B. S. Deighan. For further particulars please contact her at the Dublin Document Exchange, 3 Molesworth Place, Dublin 2. Telephone 01-767101.

Correspondence

1 Rowe Street,
Wexford.
14th February, 1977

Re: Family Home Protection Act 1976

Dear Sir,

I would like to emphasise the point made in the article by Mr. Garrett Gill S.C. (1976 Gazette, page 209) relating to Section 3(1) of this Act. This section makes it clear that unless made to a purchaser in good faith for full value, any conveyance by one spouse without the prior consent in writing of the other of a family home is void. It must follow that all other conveyances deriving from this, are also void for the simple reason that no interest can pass under a void conveyance.

Accordingly, the purported exemptions in sub-clauses (b) and (c) of sub-section 3(a) of the Act, are traps for the unwary. These sub-clauses give the impression that a conveyance of a family home, not made by one of the spouses, is good in certain circumstances. In other words, any subsequent conveyance in a chain complying with the conditions (purchaser for full value, etc.) is good. This is not so as Mr. Gill points out and if the original Conveyance is void, nothing can save the others stemming from it.

It is a serious objection to the Act to find that there is no provision to enable a spouse to give a subsequent consent and so remedy a situation which may have arisen purely through inadvertence. As Mr. Gill says, this Act requires urgent amendment.

Yours faithfully,

T. J. Kirwan

4, St. John's Park,
Mounttown,
Dun Laoghaire,
Co. Dublin.
18th February, 1977

Re: Family Home Protection Act, 1976

Dear Sir,

Thank you for showing me Mr. Kirwan's letter on this Act. One of the worst features of the Act will become most manifest some years hence, when there have been several conveyancing transactions affecting the same property after the passing of the Act. If *any one* of these transactions, which required the prior written consent of a spouse, was effected without such consent it was *void* unless the conveyance was for full value to a purchaser in good faith. But how can one possibly be certain that a prior purchaser acted in good faith and had not got notice of some fact that prevented him from being a purchaser in good faith? A basic principle of equity is that a purchaser in good faith from the vendor to him is not put on enquiry as to whether or not every prior purchaser was a purchaser in good faith. He is only affected by equities of which he himself has notice, actual or constructive. Section 3 of this Act alters that position completely and will make the title of the most *bona fide* prchaser, advised by the most careful solicitor, uncertain if there have been several intermediate conveyances executed since the passing of this Act. If any one of these conveyances is void, then no title passes under it. This seems to have been beyond the comprehension of the draftsman of this Act.

I regret to note that my bad writing has led to several misprints in the Article on this Act in your last issue. "Constructive notice" appears twice as "Construction notice", and "exist" in the last paragraph appears as "assist". My apologies to your readers.

Yours faithfully,

Garrett Gill

94 Lr. Baggot Street,
Dublin 2.
11th February, 1977

Re: Report on Annual General Meeting

Dear Sir,

I refer to the report of the Annual General Meeting contained on pages 205-207 of the issue of the Gazette for December 1976.

Certain statements are attributed therein to me which are incorrect.

On page 205, it is incorrectly stated that I asked when telephone facilities would be available in Blackhall Place. What I asked was whether the telephone facilities presently existing in the Solicitors' Buildings in the Four Courts would continue and be expanded.

On pages 206 and 207, I am quoted as saying "if increases to Legal staff contemplated by the Law Clerk Joint Labour Committee are passed, the overheads will be practically wiped out, due to office expenses". This is inaccurate. What I, in fact said was that as a result of the proposed increases referred to, the overheads would increase to such an extent as to make it totally unprofitable for a Solicitor to continue in practice, taking into account that there is no corresponding increase granted in fees to meet such increased overheads. At the same time, I asked what progress had been made regarding the application for increases in our fees.

Yours faithfully,

Quentin Crivon

VACANCY FOR POST OF APPEAL COMMISSIONER OF INCOME TAX IN THE OFFICE OF THE REVENUE COMMISSIONERS

The Minister for Finance invites applications for appointment to a post of Appeal Commissioner of Income Tax.

The post at present carries a salary of £10,023 a year (married). The post is pensionable.

Candidates must be practising Barristers or Solicitors in the State of not less than six years' standing.

Application forms and conditions of service for the post may be obtained from the Secretary, Department of Finance, (Personnel Section), Upper Merrion Street, Dublin 2. Completed Applications should be sent to the same address to arrive not later than 5.30 p.m. on 22nd March 1977.

Note: Persons who applied in response to the previous advertisement need not re-apply.

Department of Finance,
Upper Merrion Street,
Dublin 2.
17 February 1977

RECENT IRISH CASES

CRIMINAL LAW

Man machine gunned to death in Cork. Four accused of murder. Two accused acquitted for lack of evidence to commit crime. Two other accused duly convicted of murder.

The four defendants were charged with the murder of Laurence White on 10th June, 1975 on the basis that each was an accessory, and after a long trial, were duly convicted by the Special Criminal Court, and sentenced to life imprisonment.

While the four defendants have been tried together and prosecuted jointly, the cases against each of them must be considered separately, as if each defendant had in fact been tried separately. The following facts appear to be incontrovertible, and admissible against all defendants:-

Laurence White lived with his father, Laurence White senior, at Orrery Road, Cork. He had been on a visit to his sister, and subsequently had a drink in a public house. He then walked to Wolfe Tone Street with Hogan, with whom he had spent most of the day. At about midnight, while proceeding on his way home, in Mount Eden Road, he was machine gunned to death. The assailants used a White Cortina car which was parked in that road about 11.45 p.m. As soon as White appeared on Mount Eden Road, one of the occupants of this car carrying a machine gun met him on the road, and shot him to death. The man then re-entered the Cortina, which was driven quickly away to Upper Fair Hill. From there, the occupants made their escape in a Volkswagen truck. The Cortina was found by the Gardai at Upper Fair Hill with false number plates. The car in fact was the property of a farmer in Kilfinane, Co. Limerick and had been stolen from there on 6th June; its roof-rack was subsequently removed. The parking system in Cork City is controlled by discs, and a parking disc book, as well as used discs, was found by the Gardai.

The Function of the Court of Criminal Appeal

Before considering the evidence against each separate defendant, it is necessary to consider the function of the Court of Criminal Appeal as an appellate Court to the Special Criminal Court, which is provided by S.44 of the Offences against the State Act 1939. S.12 of the Courts (Supplemental Provisions) Act 1961 now provides that the Court of Criminal Appeal shall be a Superior Court of Record and vests in it all jurisdiction which was vested in the former Court of Criminal Appeal before the operative date. Holmes L. J. in *Aberdeen Glenline Steamship Co. v. Macken* (1899) 2 I.R. 18, made the following statement of principle which is applicable here:

"When a Judge after trying a case upon viva voce evidence comes to a conclusion regarding a specific and definite matter of fact, his finding ought not to be reversed by a Court that has not the same opportunity of seeing and hearing the witnesses unless it is so clearly against the weight of the testimony as to amount to a manifest defeat of justice. The same rule does not apply, at least in the same degree, where the conclusion is an inference of fact. It often happens, as in the present instance, that the decisive finding is a deduction from facts hardly disputed or easily ascertained. In such a case the appellate tribunal is in as good a position for arriving at a correct conclusion as the Judge appealed from, and it would be un undue restriction of the functions of the former if it were to hold itself bound by what has been found by the latter". Thus the function of this Court is to consider the conduct of the trial as disclosed in the stenographer's report to determine whether or not the trial was satisfactory as being conducted in a constitutional manner with fairness to review any rulings on law or evidence, and to consider whether any inferences of fact drawn by the Court of trial can properly be supported by evidence. Otherwise all the findings of fact can be adopted subject to the admonitions in the Aberdeen Glenline case.

The killing of Laurence White is described in the evidence, and consequently the *mens rea* necessary to prosecute the charge of murder against each of the accused has been established. In order to sustain a conviction of any one of the accused as an accessory before the fact for aiding and abetting in the commission of this murder, the prosecution must prove an unlawful killing under S.4 (1) of the Criminal Justice Act, 1964. Undoubtedly the trial Court had correctly stated the principles applicable to the onus of proof in this case.

Bartholomew Madden

The case against Madden rests on a statement made by him while in custody on 21st June, 1975. The statement was made after caution, and started at 6.40 a.m. It was dictated by the defendant, and was taken down in writing by Inspector Butler in the presence of Sergeants Canavan and Brennan. The dictating, taking down and reading over of the statement lasted from 6.40 a.m. until 9.00 a.m. The statement contains certain admissions which were relied on by the State as evidence of the guilt of the defendant as an accessory of the murder. Counsel for accused objected to the admission of the statement, on the ground that it was induced by oppression, prolonged questioning and abuse by the Gardai. It was further contended that, when the statement was taken, the defendant was unlawfully detained by the Gardai.

Madden had been arrested at 7.15 a.m. on 19th June, 1975, under S.30 of the Offences against the State Act, 1939. Under S.30 the maximum period of lawful detention or custody is 48 hours, and accordingly expired at 7.15 a.m. on 21st June, 1975. After this time Madden was entitled to be set free unless he was charged with some offence. The Special Criminal Court had ruled that Madden's statement was voluntary, and should be admitted in evidence, the Court further ruled that there had been no deliberate and conscious violation of the accused's constitutional right. The Court of Criminal Appeal held that the trial Court, having heard the relevant evidence, was entitled to reach the conclusion that the statement was voluntary.

As regards the statement, Inspector Butler must have been aware that by starting to take it at 6.40 a.m. it was unlikely to be completed by 7.15 a.m. It was only some time after 10.00 a.m. that morning that Madden was told he was free to go home. No reasonable explanation was given by Inspector Butler as to why he proceeded with the taking of the evidence at this late hour. It was held that in such circumstances the onus on the

prosecution of showing that there had been some inadvertence in the failure to observe the lawful period of detention, had not been discharged. Although Inspector Butler must have been aware of the lawful period of detention, he deliberately regarded the taking and completion of the statement, as being of more importance than setting the defendant free. The Court cannot regard the completion of the statement as a justification or excuse for the continued detention of the defendant. This Court considers that for this reason the statement ought to have been excluded. The Special Criminal Court appears to have sought an element of wilfulness or *mala fides* in the conduct of the Garda officer, and, not finding such, that the deprivation of constitutional rights was not deliberate or conscious. What was done by the officer was done without regard to the liberty guaranteed to the defendant by Article 40 of the Constitution, and the State's obligation to defend and vindicate that right under that Article,and this cannot be ignored by this Court. As Kingsmill Moore J. had stated in People v. O'Brien (1965)I.R. 142, "It is much better that a guilty individual should escape punishment than that a Court of Justice should put aside a vital fundamental principle of the law in order to secure his conviction". Accordingly Madden's statement ought not to be admitted in evidence, and his conviction will be set aside.

David O'Donnell

In this case the Special Criminal Court refused an application on behalf of the accused to discharge him at the close of the prosecution. It is consequently contended that his ultimate conviction was perverse, by not being supported by sufficient evidence.

As previously stated, on the morning after the murder, there were found in the white Cortina car some parking discs, which contained seven finger prints of Mr. O'Donnell. While in custody, O'Donnell was asked whether he ever used parking discs. At first he denied using them, but later he said he gave discs to another man at the end of March, 1975. These false denials were made to Inspector Courtney, before O'Donnell was told that his fingerprints had been found on the discs. When told of this, he at first offered no explanation.

The question to be determined was whether that evidence, coupled with the general evidence as to the commission of the crime, was evidence beyond a reasonable doubt that the parking by O'Donnell of the white Cortina car on the morning of the murder was part of a preparation of what he knew to be a crime of violence, or whether such evidence was inconsistent with any credible explanation other than the guilt of the accused. O'Donnell did not give evidence, nor were witnesses called on his behalf.

For the carrying out of a murder of this type, it was established to the satisfaction of the Special Criminal Court as an inference which they were entitled to draw that a necessary part of the preparation for that murder would be the availability of the white Cortina car in Cork during the day on 10th June, and that consequently it should be so parked as not to attract attention by the Garda. It follows that the parking of the white Cortina in Cork City on the morning of 10th June was a necessary and vital part of the preparation of this crime. Once the Court reached these conclusions, then the denials made by O'Donnell to Inspector Courtney as to the use of the parking discs were false. Once the Special Criminal Court reached the conclusion that in the circumstances the conviction of O'Donnell was proper, this Court has no alternative but to dismiss his application for leave to appeal.

Bernard Lynch

In this case, it is contended that the Special Criminal Court erred in law (1) in holding that evidence tending to establish an association between the accused with the larceny and subsequent control of a motor car was capable of establishing Lynch's implication in the murder of Laurence White, and (2) in refusing to enter a verdict of acquittal of Lynch at the conclusion of the prosecution.

On being questioned by Garda Carey, the accused admitted that he was in Mary Street, Cork, with Madden on the morning of 10th June, and that he got out of Madden's car to speak to O'Donnell. On being told that the Garda suspected that a stolen car had been parked in Mary Street on that occasion, the accused invited the Garda to charge him with the theft. On being subsequently interviewed as to his organisation being involved in murder, Lynch denied that he was personally involved. This Court is satisfied on the evidence (1) that Lynch was aware of the existence of the stolen car on the morning of 10th June, (2) that Lynch was anxious to communicate with O'Donnell that morning, and that O'Donnell's finger prints were found on objects in the stolen white Cortina car. This Court considers that there is no admissible evidence against Lynch of any activity in the preparation or commission of a crime of violence. Unless there was active participation, mere proof of knowledge that such a crime was about to be committed would not amount to murder. The conviction of Lynch must therefore be set aside.

Cornelius Finbarr Doyle

The grounds of appeal in this case were twofold:

(1) The Special Criminal Court erred in law in ruling as admissible in evidence a statement in writing purporting to be made by Doyle on 22 June, 1975, to Inspector Butler and Sergeant Canavan. It was contended that this statement was obtained by violence and by threats of violence, and under circumstances of oppression. Evidence was given by the prosecution concerning the detention of Doyle for 1½ days prior to the taking of the statement in Limerick Garda Station. This evidence occupied 3½ days of the trial, and the conflicting evidence of Doyle occupied 1½ days. At the conclusion of this evidence, the Special Criminal Court admitted the statement. The Court found that this written statement, and certain oral statements which preceded and succeeded it were made by the accused after due and proper caution had been administered, and that they were made voluntarily, and not as a result of threats of physical violence. The Court also ruled that allegations made by the accused of ill-treatment, assault, deprivation of food, and cross-examination by Garda Officers were all untrue. In short the Court expressed the view that no liability could be placed on Doyle's evidence. Having reviewed the evidence, this Court is satisfied that there was am-

CONTRACT

Implied Term

Agency—Plaintiff sole distributing agent for defendant's goods—Implied term that plaintiff would not deal in goods of defendant's competitors—Termination of agency—Implied term that agency terminable by reasonable notice of termination—(1974 No. 3565p—Finlay P.—8/10/76).

Irish Welding Ltd. v. Philips Electrical (Ir.)

Implied term

Set off—Implied exclusion of common law right of set off by provisions of building contract which were inconsistent with exercise of that right—(1976 No. 1124—Finlay P.—15/11/76).

John Sisk & Sons Ltd. V. Lawter Products B.V.

Terms

Set off—Interim certificate issued to contractor by architect in course of performance of building contract—Failure of employer to pay sum certified—Contractor's motion for summary judgment—Employer claiming right to set off unproved and unquantified counterclaims — Common law right of set off inconsistent with terms of building contract—Contractor entitled to summary judgment for amount certified—(1976) No. 1124—Finlay P.—15/11/76).

John Sisk & Son Ltd. v. Lawter Products B.V.

CRIMINAL LAW

Assault

Assault at common law charged—Trial—Whether charge triable summarily—No offence created by s.42 of Offences Against the Person Act, 1861—Section 11 of Criminal Justice Act, 1951—Summary trial authorised—(1976 No. 365 SS—Finlay P.—29/11/76).

The Attorney General (O'Connor) v. O'Reilly.

Detention

Treatment of detaince—Conduct of police enquiry—Whether ill-treatment would invalidate lawfulness of detention—(1976) No. 439 SS—Finlay P.—14/12/76.

The State (Harrington) v. Commissioner of Garda Siochana

Legal Advice

Detainee—Suspect being questioned in police station—Right to legal advice—Procurement of such advice—(1976 No. 439 SS—Finlay P. 14/12/76).

The State (Harrington) v. Commissioner of Garda Siochana

Murder

Capital murder—Whether a new offence—Mens rea—Whether prosecution must prove that accused knew that deceased was a policeman acting in the course of his duty—Criminal Justice Act, 1964, s.1—(137-8/1976—Supreme Court—9/12/76).

The People (D.P.P.) v. Murray

EMERGENCY POWERS

Police

Arrest—Suspect thought to have committed offence—Release after expiration of statutory period of detention—Suspect arrested a second time in respect of the same offence — Suspect not charged—Whether second period of detention lawful—Habeas corpus—Emergency Powers Act, 1976, s.2—(1976 No. 443 SS—Finlay P.—12/11/76).

The State (Hoey) v. Commissioner of Garda Siochana

HUSBAND AND WIFE

Infants

Custody—Two sons and one daughter—14, 9 and 3 years—Mother remarrying after divorce in England—Mother pregnant—Children to continue in father's custody—(1975 No. 244 Sp.—McWilliam J.—26/1/76).

M. v. M.

LANDLORD & TENANT

New Tenancy

Statutory right—Service of notice of intention to claim such relief—Lessor's interest in premises terminating during term granted by him to lessee—Consequent termination of interest of lessee—Lessee unaware of termination of lessor's interest when serving notice—Failure of lessor to inform lessee of facts and to serve statutory notice on superior landlord—Notice of claim served by lessee on superior landlord—New tenancy directed by court—Term of new lease to be 21 years with rent review at end of seven years—(1976 No. 33—Gannon J.—31/5/76).

Eamonn Andrews Productions Ltd. v. Gaiety Theatre (Dublin) Ltd.

LICENSING ACTS

Restaurant

Premises with on-licence—Application for certificate stating that portion of premises a restaurant for purpose of s. 13 of Intoxicating Liquor Act, 1927—No existing user as restaurant—Public bar in said portion—No jurisdiction to issue certificate—(1976 No. 238 SS—Finlay P.—29/11/76)

Whelan v. Tobin

LOCAL GOVERNMENT

Planning

Notice — Misleading advertisement — Notice of application for permission to erect three temporary prefabricated classrooms in secondary school—New access to school from cul-de-sac also intended—Permission to develop invalid—(1976 No. 3557 P.—McMahon J.—12/11/76).

Keleghan v. Corby

NEGLIGENCE

Builder

Scaffold—Plaintiff injured in fall from scaffold—Scaffold obtained by plaintiff's employers on hire from 3rd defendants—Plaintiff's employers acting as sub-contractors for 2nd defendants—Plaintiff recovering damages from his employers — Building (Safety, Health & Welfare) Regulations, 1959, reg. 29 — (1973 No. 2940P — Murnaghan J. — 1/12/76).

Delaney v. Mather & Platt Ltd.

REVENUE

Income Tax

Forestry—Allowable expenses—Cost of purchasing and planting young trees to replace old woodland being a revenue expense and allowable—Cost of preparing waste land for planting being a capital expense—Cost of

purchasing and planting young trees on reclaimed waste land being a capital expense—Income Tax Act, 1918, Sch. B, rr. 5 & 7 – (38/1976 – Supreme Court – 20/12/76).

Wilson-Wright v. Connolly

Income Tax
Occupier of land – Schedule B—Whether taxpayer had the use of land—Taxpayer cultivating, cutting and removing grass from military aerodrome under licence of Minister in whom aerodrome was vested—Whether Act contemplated two users of same land—Taxpayer not the dominant user and not assessable under Schedule B – Income Tax Act, 1967, s. 18 – (13/1975 – Supreme Court – 20/12/76).

O'Conail v. George Shackleton & Sons Ltd.

SOCIAL WELFARE
Benefit
Hospital services—Geriatric ward of court—Whether ward was receiving "in-patient services" under s. 51 of Health Act, 1970, or "institutional assistance" under s. 54 of Health Act, 1953—Whether ward chargeable for maintenance—(133/75—Supreme Court—20/12/76).

In re McInerney

Insurance
Contribution – Special rate for employees of public authorities—Whether General Medical Services (Payments) Board a public authority—(1976 No. 121 Sp.—Hamilton J. 30/11/76).

Genneral Medical Services (Payments) Board v. Minister for Social Welfare

STATE SIDE
Certiorari
Refusal—Conviction in District Court—Trial alleged to have been unsatisfactory—Certiorari proceedings not a substitute for an appeal—Conditional order refused—Illegal fishing by foreign ship—(1976 No. 502 SS—Finlay P. – 15/12/76).
The State (Shinkaruk) v. Carroll

Habeas Corpus
Treatment of detainee—Conduct of police enquiry—Whether ill-treatment would invalidate lawfulness of detention—(1976 No. 439 SS—Finlay P.—14/12/76).

The State (Harrington) v. Commissioner of Garda Siochana

TRADE UNION
Trade Dispute
Picketing—Seasonal worker—Application for employment refused because of unsatisfactory work when employed by plaintiff on previous occasion—Dispute about non-employment—Trade dispute in existence—Interlocutory injunction refused—(1976 No. 4860P. – Hamilton J. – 19/11/76).
McHenry Bros. Ltd. v. Carey

WORDS AND PHRASES
"Public Authority"
Social welfare—Insurance—Special rate for employees of public authorities—(1976 No. 121 Sp.—Hamilton J.—30/11/76).

General Medical Services (Payments) Board v. Minister for Social Welfare.

Index to Recent Irish Cases 1976

ple evidence upon which the Special Criminal Court could make the findings of fact which it did.

Although it would be possible for a protracted period of detention, coupled with persistent interrogation or interviews by the Gardai, to constitute oppression even without physical violence, in this case there was direct evidence as to Doyle's morale and mental capacity namely that it was good, alert, and normal. Consequently this Court cannot upset the finding of the Special Criminal Court, when they ruled Doyle's statement admissible.

(2) It was contended that irrespective of the findings of fact made by the Special Criminal Court, the failure by the Garda to provide for Doyle any legal adviser at the time of making the statement, when he asked for one, was a deprivation of his constitutional rights. The Court is satisfied that a person held in detention by the Garda, whether under the Offences against the State Acts or not, has got a right to reasonable access to his legal advisers, and that a refusal upon request to give such reasonable access would render his detention illegal. The test is one of reasonable means having regard to the circumstances of each individual case. This does not mean that there is any obligation on a Garda to offer a detained person the assistance of a legal adviser without request. The Special Criminal Court found as a fact that Doyle did not at any time request the presence of a legal adviser.

Under S.52 of the Offences against the State Act, 1939, a Garda may demand from any person in custody under the Act an account of his movements, and information relating to the commission of any suspected crime under the Act. Any person who refuses to give an account of his movements, or of such truthful information, is guilty of an offence, and is liable to be sentenced to 6 months imprisonment. Apart from S.52, any person detained by the Gardai, whether under the Offences against the State Acts or otherwise, is entitled in law to refuse to give an account of his movements, or to give the information requested, and is not liable to a penalty if such information is false or misleading.

The confining of an obligation under S.52 to the giving of a single account of his movements, provided it is complete and true, does not prohibit the Gardai from further questioning, although it removes the penalty in the event of the person detained refusing to answer such further or repeated questions.

In this case however all the material statements tendered in evidence were not made as a result of any form of request of an account of the accused's movement, but, as found by the Special Criminal Court, after a proper caution duly administered to the accused. The mere fact that on repeated occasions the accused was requested to give an account of his movements by different Gardai did not constitute illegal action towards him, nor the deprivation of any right on his part; this was therefore a lawful detention.

(3) Even if the admissibility of Doyle's statement be accepted, this did not constitute an admission of participation in the crime of murder. In the statement, Doyle admitted that he had stolen the white Cortina car in Kilfinane on 6th June, 1975, at the request of a friend in Cork; he then concealed the car in Limerick, and drove it to Cork on the night of 8th June, 1975. On 9th June, Doyle took the existing number plates off the car, and, and having thrown them in the river, substituted false number plates. He then parked the car in Evergreen Road, and went to meet his friend. While driving around, his companions were discussing the feasibility of getting at White; Doyle thought he was going to be wounded or beaten up. This Court is satisfied that, after the knowledge which Doyle acquired on his journey towards Evergreen Road as to the iniquitous purpose for which the car was required, he took active steps to assist in implementing that purpose, and that Doyle knew that the crime which was to be committed was one which would cause serious injury to White.

Having regard to the authorities, it is clear that in such circumstances Doyle is guilty of murder. The application for leave to appeal on behalf of Doyle is accordingly refused.

People (Director of Public Prosecutions) v. Madden, O'Donnell, Lynch and Doyle.-Court of Criminal Appeal (The Chief Justice, The President of the High Court and Gannon J.) per O'Higgins C. J.-unreported-16th November, 1976

Damages for £1,162 awarded for costs of remedying detailed defects and for inconvenience in carrying out repairs to dwelling house.

The defendants undertook to build for the plaintiff the dwellinghouse now known as 101, Georgian Villas, Castleknock for £12,250. The plaintiff claims damages for the costs of remedying defects in his house, and for diminution in the value of the house because of the defendant's alleged failure to construct the adjoining house to a high standard of construction and design, as well as for inconvenience and anxiety. The only plans seen by the plaintiff before entering the contract were a "Sales Specification" and a "House Type 7A", which, showing individual rooms, gave a total floor space to the house of 1,400 square feet. Subsequently the plaintiff obtained from the Planning Dept. of Dublin Corporation a "Builder's Specification", which detailed the houses to be built in the Georgian Village by a sub-contractor named Belcourt Housing Estate Ltd., which was not a contract document.

The principles in *Brown v. Norton* (1954) I.R.34 as to the house being reasonably fit for immediate occupation when completed were to apply. Clause 12 of the contract excluded any liability of the defendants for structural defects in workmanship and materials not being in accordance with the specifications, and the plaintiff insisted upon the addition of this clause—"Provided that nothing in this contract is to deprive the purchaser of his guaranteed common law rights". Thus the defendants are deprived of any defence under the printed clause in respect of any defect attributable to a breach of contract on their part.

As a result of delays in erection the plaintiff did not enter into occupation of the house until 25th November, 1971. 11 houses were then completed, but the standard of workmanship by the sub-contractors was very poor. On 8th December, 1971, the plaintiff and other dissatisfied purchasers were informed that Guinness & Mahon had taken control of the defendant company, and intended to carry out all necessary remedial works. A list of defects was sent to the plaintiff by the architects, who represented all the purchasers of the estate, on 14th December, 1971. The various defects

were to be remedied by new sub-contractors, Messrs. McInerney, under the supervision of the architects.

Meanwhile alternative accommodation would be provided at defendant's expense where necessary. The plaintiff and his family moved to the Four Courts Hotel from 7 March to 2 May, 1972 while these repairs to his house were being undertaken. When they returned, the plaintiff and other purchasers were not satisfied with the repairs effected. On 17th July, 1972, the defendants were notified that it was intended to institute proceedings, and that a new team of architects had been retained, who furnished a report in September. In December, 1972, Messrs. Crampton were employed by the defendants to execute further repairs, as a result of the plaintiff's complaints. The plaintiff who was a director of an engineering company, in January, 1973, listed 33 items which required attention. In April and May, 1973, Messrs. Crampton carried out remedial works on the plaintiff's house. The plaintiff then employed a quantity surveyor, who submitted a detailed priced bill of quantities in November, 1973, for remedial works.

The plenary summons and statement of claim were both issued in June, 1974. A defence which contained notice of lodgment of money in Court was delivered in January, 1975. The evidence established that there was on the part of the plaintiff a progressive increase in the number of defects complained of. As the measure of damages in November, 1973, is the amount it would actually cost the employer to complete the work as it was originally intended, any further delay in carrying out the remedial works must be attributed to the plaintiff's decision, in a period of rising costs, to allow the defects to remain in existence until this litigation is concluded. The cost of central heating equipment will be allowed, and will be measured at present day prices. The original 33 items as well as some of the supplementary items were then investigated one by one. The plaintiff was unable to prove that he was entitled to damages because an insufficient number of wall tiles had been provided. £200 damages will be awarded for inconvenience. The total damages awarded will be £1,162.10.

Johnston v. Longleat Properties Ltd.—McMahon J.—unreported—19 May, 1976.

Accused cleared of all charges in Garda murder trial.

Ronan Damian Stenson was on 27 January, found not guilty of charges of murder, manslaughter, armed robbery and firearms possession and released by the Special Criminal Court in Dublin.

Stenson (26), of Marino, Dublin, had been accused of the murder of Garda Reynolds, at St. Anne's Park, Raheny, Dublin, on September 11th, 1975, and the robbery of the Bank of Ireland, Killester, on the same date, as well as the manslaughter of Garda Reynolds and the possession of firearms. He had pleaded not guilty to all charges.

When the case opened the Prosecuting Counsel, Mr. Noel K. McDonald, S.C., sought a ruling from the Court on the admissibility of a statement made by the accused in light of the Bartholomew Madden case in the Court of Criminal Appeal.

Asked by Mr. Justice Hamilton why the State was not then entering a *nolle prosequi*, Mr. McDonald said he had specific instructions from the Director of Public Prosecutions to ask the Court for a ruling. The Court then rose to consider its ruling.

When the Court resumed after lunch, Mr. Justice Hamilton recalled the evidence of Stenson's arrest at 10.35 a.m. at his home on October 8th, 1975, under Section 15 of the Firearms Act. He was taken to Rathmines Garda Station and was questioned by Detectives Culhane and O'Malley and at 12.45 was put in a cell in the Garda Station.

At 1.55 p.m. that same day he was taken to a room in the ground floor of the Garda Station and there he stayed with Detective O'Malley. At 2.40 p.m. he was brought upstairs to another room, and was questioned by Detective Sergeant Keane and O'Malley. At 3.30 p.m. he was questioned by Detectives Finn, Keane and O'Malley.

Mr. Justice Hamilton said that at 4.10 p.m. Stenson made a statement which subsequently was transcribed into writing between 6 p.m. and 7.50 p.m. He later signed the statement.

The Director of Public Prosecutions was seeking to have this statement admitted as evidence, but in light of the Bartholomew Madden case in the Court of Criminal Appeal, the Court could not admit it, Mr. Justice Hamilton said.

In this case, he said, Stenson had not been brought before a Peace Commissioner, the District Court or the Special Criminal Court "as soon as convenient."

He said Stenson could have been brought before any of these before 4 p.m. on that day. He said in cases like these, it was not up to the police but the Courts to decide how long a person should be detained. In this case the State had admitted the defendant was unlawfully detained and the Court was satisfied that the statement had been taken under circumstances involving a breach of the defendant's Constitutional rights.

Mr. Justice Hamilton said the Court found Stenson not guilty of the charges against him in the indictment. Stenson then left the dock.

People (D.P.P.) v. Stenson — Special Criminal Court — unreported — 27 January, 1977.

SOCIETY OF YOUNG SOLICITORS

4. GUIDELINES – FAMILY LAW

CUSTODY OF CHILDREN

INTRODUCTION

Custody of Children can be categorised, as illustrated by Senator Mary Robinson in her lecture to this Society in 1972 (Lecture No. 68), into (a) Guardianship, (b) Affiliation, (c) Legitimacy, (d) Illegitimacy, (e) Legitimation and (f) Adoption. Of the foregoing, Guardianship and Adoption are certainly the most topical at present and are also perhaps the subjects which require the most detailed investigation. For this reason, it is proposed to deal in this article with Guardianship alone and at a later date Adoption.

The Guardianship of Infants Act, 1964 (for abbreviation G.I.A.–1964) is the main and guiding authority in this entire subject of Guardianship. The Act itself is a consolidating Act which both repealed and re-enacted provisions contained in the earlier Acts. It also improved greatly the position of the mother by giving her rights identical to those of the father, following the Supreme Court in *Tilson v. Tilson* – [1951] I.R. I.

WHO CAN BE A GUARDIAN?

1. Father *and* Mother:- Section 6 (1) of the G.I.A.–1964 states that they are guardians of the infant jointly.
2. A Testamentary Guardian:- Section 7 of the G.I.A.–1964 enables either parent to appoint by Deed or Will a testamentary guardian to act jointly with the surviving parent after the Appointor's death.
3. A Guardian appointed by the Court:- Section 8 of the G.I.A.–1964 states that any person can apply to the Court to be made guardian of an infant where that infant has no other guardian. The Court is also empowered to appoint a guardian to act with a surviving parent where the Deceased parent appoints no testamentary guardian or if a guardian so appointed refused to act.

GENERAL PRINCIPLES IN GUARDIANSHIP CASES

In deciding any guardianship question the Court "shall regard the welfare of the infant as the first and paramount consideration" (Section 3 G.I.A.–1964).

The word "welfare" is itself defined in Section 2 of the Act as comprising the religious, moral, intellectual, physical and social welfare of the infant. Understandably much case law has devolved around this Section 2. At this point it is perhaps worth noting the comments of Henchy J. in Re J. An Infant [1966] IR 295 which would appear to cast some doubt on the ruling to the Court in Section 3 of the Act; "I wish, however, to make it clear that I expressly reserve an opinion as to whether it was competent for the Legislature to provide that for the purpose of giving effect to their inalienable right or duty to provide for its *education*, the Court should be bound to decide the question of custody by regarding the welfare of the infant as the first and paramount consideration." (Quotation abbreviated.) Furthermore Kenny J. in O.B. v. O.B. 1971 High Court (unreported) said "Subject to the Constitution the welfare of the children is the first and paramount consideration." (O'B. v. O'B. – 5 January 1971).

PROCEDURE

Section 11 of the Act is perhaps the most important Section from a practical point of view since it is the Section which relates to applications to the Court by providing that any guardian may apply to it for its direction on any question affecting the welfare of the infant and the Court is thereby entitled to make such order as it thinks proper.

PROCEEDINGS TO BE HELD IN CAMERA

The Rules of the Superior Court provide that applications under the Act are made by way of Special Summons supported by Affidavit. In contentious cases, the Defendant will then file a Replying Affidavit and because there are then so many allegations and counter allegations contained in the respective Affidavits, the Judge will invariably direct a plenary Hearing. It is very rare for a Guardianship of Infants case to be decided without some oral evidence. And the Court will always examine settlements to ensure the Children's welfare is not overlooked.

No stamp Duty is now payable on proceedings in Guardianship cases. The relevant rules are O. 3 R. 10 and O. 66 R. 4, 5, 11 and 12.

On an apeal to the Supreme Court from an order of the High Court, the Supreme Court is empowered to hear further evidence.

CUSTODY "AWARDS"

"An Award of custody is not a prize for good matrimonial behaviour" (Kenny J. in W. v. W. unreported May, 14th 1971). Although this principle runs through the vast majority of decisions in guardianship cases, it commonly emerges that where the marriage relationship has broken down and the inevitable dispute relating to custody of children commences, neither parent is disposed to pay particular regard to what is best for the children and consequently they (the children) tend to become pawns in the parental battle.Because of this tendancy to try and "drag" the other side down the parties become embittered for (perhaps) ever after and naturally this embitterness will become apparent to the children at an all too early stage.

Since the welfare of the child is the overriding factor under the G.I.A.–1964 every possible effort should be made to spare the children from the unpleasantness of these actions. And the present practice of the High Court is not to allow a Guardianship of Infants case to be turned into a matrimonial action, and the only evidence of cruelty, adultery, etc. that will be permitted, is that evidence that is relevant to the welfare, and hence custody, of the children.

IS THE CUSTODY ORDER FINAL?

No Court Order made in Guardianship proceedings as to custody of children is ever final but is subject to review at any time *if* it is established that facts and circumstances previously taken into account by the Court have changed since the original Order was made. The Orders are therefore to be regarded as being of an interlocutory nature and reviewable at any time on notice to the other side.

WHAT IS THE POSITION OF THE ADULTEROUS SPOUSE VIS-A-VIS CUSTODY ORDERS?

"The Courts ... should always be reluctant to reach ... a conclusion" that one parent is unfit by reason of character or conduct to have custody "because the welfare of the children will rarely be advanced by a verdict of condemnation of one or other of the parents" (O'Dalaigh C. J. in *B. v. B.* (unreported) Supreme Court, 24 April, 1970). At one point the Supreme Court tended to place much more emphasis (than many would have thought desirable) on the moral aspect of the marriage (viz *W. v. W.* unreported Supreme Court December, 10, 1971) but the more recent decision is *O.S. v. O.S.* (unreported, 5 April, 1974, Supreme Court) would now tend to dispel this viewpoint. However, one should note that Section 18 (1) of the G.I.A.—1964 does give much support to a moralistic viewpoint by providing that the parent by reason of whose misconduct a decree of divorce *a mensa et thoro* is made may be declared by the Court to be unfit to have custody and consequently on the death of the other parent the "guilty" parent will not be entitled as of right to the custody of the children. It is certainly true that Judges are often left with an agonising choice.

WHAT COURTS HAVE JURISDICTION IN GUARDIANSHIP CASES?

The High Court has complete jurisdiction in all areas under the G.I.A.—1964 whereas the Circuit Court has a limited jurisdiction and only, in relation to Part 2 of the Act (which concerns actual guardianship but excludes "enforcement of right of custody" which is dealt with in Part 3 of the Act).

PRINCIPLES GOVERNING THE TERMINATION OF A PARENT'S RIGHT TO CUSTODY

1. On reaching majority — i.e. 21 years.
2. On the marriage of the child.
3. On joining the Army or the Maritime Service.
4. Under Sections 14 and 16 of the G.I.A.—1964 — a parent who has abandoned a child and later applied for an order of custody may be refused that order by virtue of his earlier conduct in abandoning the child.

CUSTODY PROVISIONS IN SEPARATION AGREEMENTS

Such provisions will not be invalid by reason only of its providing that one of them shall give up the custody or control of the infant to the other. But as the overriding factor is the welfare of the children and not what the parents agree themselves, it is perfectly open to one spouse to apply to have a custody provision in a Separation Agreement set aside. He or she would have to give a satisfactory explanation to the Court why he/she signed his rights away.

MAINTENANCE IN RELATION TO THE SPOUSE WHO IS AWARDED CUSTODY

Although the Court can order either spouse to pay towards the maintenance of the infant, this power does not extend to a natural father, and consequently, although he (the natural father) may apply to the Court for rights of custody and access, he cannot be compelled under the G.I.A.—1964 to provide for that child. One should pay particular regard to the maintenance provisions of the Family Law (Maintenance of Spouses and Children) Act, 1976. Many parties have tended to use Section 11 applications (i.e. Applications to the Court regarding the welfare of the children) as a "second-best" method to getting a divorce *a mensa et thoro*, primarily because of the cost factor and also because these type of cases are dealt with much more quickly. However this mode of practice has been strongly disapproved of by Mr. Justice Kenny.

CUSTODY ORDERS BY FOREIGN COURTS

Such orders may be used in Court (custody) proceedings here — However English decisions cannot be enforced.

CHILDRENS' AGES — A RELEVANT FACTOR

It seems to be generally accepted that children of tender years should be left in the custody of the Mother. However there is no hard and fast rule, but in the great majority of cases unless there are strong arguments to the contrary the mother will be awarded custody of the very young children as the children need the care of their mother and the father is probably not able to look after the children because he is working all day.

GUARDIANSHIP VIS-A-VIS RIGHTS OF ACCESS

Custody does not mean exclusion of rights of access. Any parent who has been deprived of custody of the children still retains the status of guardian of those children and he or she must be consulted on all matters affecting the welfare of the child. Thus in making its Order, the Court merely deprives the "losing" parent of one of the attributes of guardianship (i.e. custody). A Custody Order is never final and the parent deprived of custody can always reapply to the Court to have the matter reconsidered. Consequently, any parent who has been awarded custody can never be guaranteed that he or she will always retain the right to custody. Generally the Court will grant the parent who has refused the right to custody, rights of access on stated intervals.

COSTS

The nature of guardianship proceedings is such that the costs tend to be fairly high. There is as yet no state legal aid.

CONCLUSION

Of all areas of law that Solicitors are called upon to deal with, this must be one of the most trying and difficult. It is probably fair to say that many such cases will always

remain unfinished files – the most unfortunate side of it though is that the children are always in the centre of it.

CASE LAW

1. B. v B. (Unreported High Court, Jan. 1969, Kenny J.) – Illustration of agonising choice faced by the Judiciary.
2. (a) O'B. v.O'B. – (Unreported High Court, 5 January, 1971, Kenny J.); (b) W. v. W. (Unreported High Court, May 14, 1971), Supreme Court, 10th December, 1971; (c) O'S. v. O'S. (Unreported Kenny J., 10 July 1973), (Supreme Court, April, 1974). Weight of moral viewpoint in judicial decision.
3. C. v. C. (Unreported Supreme Court, 8 May 1970)– Child's own preference for parent taken into consideration.
4. Stark v. Stark and Hitchins – L.R. (1910), Prob. 190 – C.A. – Child's own wish.
5. H. v. H. (Child Judicial Interview), (1974 IAER 1145) – Child's view.
6. O'B. v. O'B. (Unreported High Court, 5 January 1971, Kenny J.) – Possible clash with Constitution.
7. B. v. B. (1971 3 AER 683) – Parent's right of access terminated.
8. M. v. M. (1973 2 AER 81) – Parent's right of access terminated.
9. B. v. B. (Unreported High Court, 4 July 1972, Kenny J.) – Variation of Custody Order.

BIBLIOGRAPHY

1. Guardianship of Infants Act 1964.
2. Guardianship of Minors Acts 1971-1973 (England).
3. Bromleys Family Law (5th Edition) 1976 (Butterworths).
4. Eckelaar, "What are parental rights?" 89 LQR 210.
5. Articles of James O'Reilly & William Duncan, *Irish Times*, 15th March, 1974.
6. Society of Young Solicitors Lectures: (a) Lecture No. 91 by Mr. Justice Hamilton, "Guardianship of Infants"; (b)Lecture No. 68 by Senator Prof. Mary Robinson, "Status of Children"; (c) Lecture No. 69 by Robert Barr, S.C., "Family Law in the High Court in the Irish Republic"; (d) Lecture No. 67 by Dr. Paul E. McQuaid, "Reform Law Relating to Children".
7. Kelly J. M. – "Fundamental Rights in Irish Law and Constitution, 2nd Edition, pp. 204-239.
8. Puxon, Margaret – "Family Law". – 2nd Edn. (1971).
9. Bevan H. K. – "The Law Relating to Children". (1973).

Cretney, S.M., Priciples of Family Law, 2nd edition. London: Sweet & Maxwell, 1976. xlix. 474p. 25 cm. £7.50.

The learned author, who is a solicitor and a lecturer in law in Oxford, has been so successful with the first edition in 1974, that it was necessary to publish a second in 1976. This edition is 85 pages longer than its predecessor, and contains a full discussion of the more recent developments in English divorce law, and the financial consequences thereof. This textbook is not a practitioner's manual, but is intended primarily as a student's guide. The fact that the English Adoption Act 1976 and the English Legitimacy Act 1976 receive full coverage, as well as the citation of recent cases, shows that Mr. Cretney has not overlooked any recent material. As he points out, one major difficulty of the laws of marriage is their complexity and obscurity. He criticises ecclesiastical banns of marriage, and the notice requirements of civil marriages as entirely unsatisfactory. Since the Divorce Reform Act 1969, the sole ground for securing a divorce in England is that the marriage has broken down irretrievably. Incidentally many children were legitimated by the legislation of unrecognized unions. There is a strong sustained plea by the author, following the publication of the recent Finer Report in England, for setting up a Family Court; the emphasis here is mainly that of giving guidance to those who desire it. The learned author has covered this involved subject in a most readible way.

COUNCIL OF THE SOCIETY

GUARDIANSHIP OF INFANTS ACT 1964

In the first instance the designated Committee decided to furnish a Case to obtain Counsel's opinion on questions of privilege arising under the Guardianship of Infants Act 1964.

This opinion was helpful and Counsel specifically dealt with the five questions in the Case as follows:-

Q. (1): Does the Guardianship of Infants Act. 1964, mean that it is incumbent upon a solicitor, marriage guidance counsellor or clergyman to divulge adverse information to the Court regarding a spouse, client or confidant in the interests of the infant?

A. In my view a soliicitor is under no such obligation. The client, himself, however, may be under such an obligation. Likewise, it would not appear that a clergyman is under any such obligation. A marriage guidance counsellor may, however, be obliged to disclose such information if called upon to give evidence.

Q. (2): If so, how can the confidential nature of the communication from the spouse and the privileged position of the solicitor or confidant be protected?

A. If my reply to question 1 is correct this question does not arise.

Q. (3): Should the privilege of the solicitor or confidant be merely uncompellable, which would mean that a solicitor or confidant would be at liberty under the law to break his client's confidence in the interests of the infant?

A. In my view, a solicitor or clergyman who had professional privilege would be uncompellable. He would also be under professional obligation not to disclose confidential information without the permission of his client. A marriage guidance counsellor, on the other hand, would be a compellable witness. I do not see, however, that he would except in the rarest of cases – be under any obligation to come before the Court and disclose to the Court information damaging to his client which he had received in confidence.

Q. (4): Has the solicitor or confidant the duty to have a case re-opened in the light of after-acquired information?

A. In my opinion no. This appears to me to be essentially work appropriate to a welfare officer.

Q. (5): As the law stands, is a solicitor or confidant entitled to refuse to testify concerning the spouse's confidence? If not, does such a person face the possibility of a sentence of imprisonment for contempt of Court?

A. In my view, a solicitor may – and, indeed, must – refuse to disclose professional confidences received from his client unless he has his client's permission. A clergyman would appear to be in a similar position. A marriage counsellor has no similar privilege. If he is called upon to testify, he should make it clear to the Trial Judge his reluctance to disclose information on the grounds that he has received it in confidence. He should, however, also make clear his willingness to abide by any direction which the judge may give to him. It would appear to me that there would only be one circumstance in which a marriage counsellor may avoid having to disclose confidential information and that would be in the case of his having engaged in "without prejudice" negotiations. Even then his position might be difficult.

The Committee's view is that the following categories of persons are, in view of Counsel's Opinion, not protected by privilege in the same way as solicitors or clergymen, namely:-

1. Social workers.
2. Marriage guidance counsellors.
3. Advisers at F.L.A.C. centres, including attending solicitors.
4. Welfare officers.

The Committee recommends that representations be made to the Department of Justice for the introduction of legislation which would afford protection to those persons enumerated above who appear to be at risk as the law stands at present where the Guardianship of Infants Act is concerned.

The four categories which we have mentioned are not necessarily exhaustive. On the other hand, the Committee feels that privilege should be limited to selected categories of persons. If privilege was to apply to too many categories, serious abuse could arise.

Dated this 15th day of September 1976
DAVID R. PIGOT
WALTER BEATTY

THE PRESIDENT'S DIARY OF ENGAGEMENTS

27/1/1977 – Attended Annual General Meeting of Mayo Solicitors' Bar Association at Breaffy House Hotel, Castlebar accompanied by Gerald Hickey, Chairman Finance Committee.

28/1/1977 – Presided at Solicitors' Apprentices Debating Society of Ireland Inaugural Meeting at Four Courts and spoke to a paper, seconded a resolution proposed by Senator Mary Robinson.

31/1/1977 – Was received by the Chief Justice in his Chambers.

3/2/1977 – Paid a courtesy visit to the President of the High Court.

3/2/1977 – Attended meeting of Wicklow Solicitors' Bar Association at La Touche Hotel, Greystones.

4/2/1977 – Dined at King's Inns at invitation of the Honorable Society of King's Inns.

12/2/1977 – Attended Southern Law Association's Annual Dinner in the Metropole Hotel, Cork.

15/2/1977 – Attended a dinner hosted by An Taoiseach in honour of the Prime Minister of Portugal at Iveagh House, Dublin.

16/2/1977 – Attended meeting of West Cork Bar Association in Skibbereen.

Purchasers at Risk on Deposits

(1) The Practice of house builders insisting upon payment of a Booking Deposit has now escalated to the degree where the minimum booking deposit is about £1,000. These are being collected by Builders, direct from intending customers without the intervention of a Solicitor, often at a point in time when no development exists and Building of houses is contemplated at a point in time from 2 to 3 months subsequent to the payment of the initial booking deposit.

(2) When the Booking deposit is paid it is normally provided that in due course Contracts will be submitted and a further deposit of £1,000 and upwards be paid at Agreement for Lease and Building Contract stage. These Contracts would normally be signed at a point in time a month or so subsequent to the payment of the Booking deposit.

(3) Most of these operations are carried out by Limited Liability Companies with Limited capital investment and it is quite clear that in the event of the insolvency or liquidation, the initial deposits would, in the hands of the Liquidator be looked upon as unsecured creditors.

(4) The situation which exists once there is a building Contract and Agreement for Lease may be in a slightly different situation. The Purchaser would then have an equitable right to the site coupled with the Contract to Build, entered into with the Builder, who may not necessarily be one and the same person as the Developer or Lessor. Sometimes the Builder and Lessor are one and the same person and in other cases they are not. Many houses are built by Building Companies under a Licence from Developers with whom they have no connection.

(5) From a practical point of view the equitable right which the Purchaser would have on foot of an Agreement for Lease might be no help to him. Practically all Developers borrow to fund the massive capital outlay needed to lay sewers, drains, roads, etc. and this Institution (usually a Bank) normally secures these advances by way of a First charge on the proposed building Estate. It seems clear that in a contest between such an Institution the equitable right of a Contracting Party would be unlikely to win through.

(6) There is a tendency on the part of many clients to try and pay booking deposits through their solicitors. They feel that this passes the responsibility to the Solicitor and it is very important that the Solicitor should advise the client that they are taking a commercial risk and that there is no guarantee that they will obtain a refund of the booking deposit or for that matter the deposit paid on the completion of the contracts. The same remarks would apply to any deposit paid by way of stage payments.

(7) Many Solicitors seem to have been under the impression that there is some protection to purchasers once there is a contract. It would seem to us that this protection is purely theoretical. In England, Purchasers dealing with a registered Builder will be protected under the Guarantee system in operation there by the Construction Industry. The Society has made representations to the Construction Industry Federation here but while they have been contemplating some sort of a guarantee system, none is likely to be produced in the immediate future.

(8) The purpose of this memorandum is to emphasise to Solicitors the importance of putting on record to their clients the risks which they are taking. Clients in our experience are under the mistaken impression that once the monies are paid to a Solicitor or through a Solicitor they have the full protection as if their own Solicitor was a stakeholder. It does of course seem quite unfair that the Purchasers should be at risk in this way as while transactions like this might be a commercial risk to the builder it could hardly be so described from the point of view of the Purchasers.

RESTRICTION ON SECOND APPRENTICE

The Council has decided that it will not normally grant permission to Solicitors to have a second apprentice indentured to them.

THE MURRAY CASE

This vital decision of the Supreme Court is of capital importance. In view of its length, it was not found practicable to include it in the green pages. It wll not be officially reported for at least one year. In view of the demand, particularly by law students, it has been decided to publish it as an ordinary article.

Death Sentence on Noel Murray quashed because he had no gun, and was not guilty of capital murder

Marie Murray will stand new trial on question of recklessness

The Supreme Court has, on 9 December, quashed the conviction and sentence of death on Noel Murray for the capital murder of Garda Michael Reynolds and substituted a conviction for murder, with a sentence of life imprisonment, and ordered a retrial on a charge of capital murder of his wife, Marie Murray.

The couple had been convicted of the capital murder of the Garda in St. Anne's Park, Raheny, Dublin, in September 1975, following an armed bank robbery at Killester and were sentenced to death in the Special Criminal Court. Their appeal was dismissed, but the Court granted them a certificate of leave to appeal to the Supreme Court, and their appeal was heard on the first three days of November. The judgments, which totalled about 25,000 words, and examined the legal position in several other countries, had been completed in five weeks.

These were five separate judgments delivered which all took three hours to read in the crowded Courtroom. Mr. Justice Henchy, Mr. Justice Griffin, Mr. Justice Kenny and Mr. Justice Parke held that the test of guilt was whether the accused intended to kill a Garda, or was reckless as to whether his victim was a Garda. Mr. Justice Henchy, Mr. Justice Griffin and Mr. Justice Parke held that there should be a retrial of Marie Murray on the capital charge, as there was evidence on which the trial Court could find that she was reckless. Mr. Justice Griffin, in his judgment, said that there should be a retrial of Noel Murray also on the capital murder charges as the trial Court could find that he was reckless. Mr. Justice Kenny said there was no evidence of recklessness against either Noel or Marie Murray, so they should be found guilty of murder and not capital murder.

Mr. Justice Walsh, President of the Court, in his judgment, said that both should be found guilty only of murder, as the test for capital murder was whether the accused actually knew that the victim was a Garda.

Mr. Justice Walsh, who presided, said there was no doubt, whatever, that on the evidence adduced at the trial each of the Murrays was guilty of the murder of Garda Reynolds.

If degrees of guilt had to be indicated then, on the evidence, Marie Murray was by far the more guilty. On the evidence, she wilfully, and without request from her husband, undertook to rescue him from Garda Reynolds whom she killed to effect her purpose.

What was in issue was whether, on the evidence and in the circumstances of the case, the verdict of capital murder found by the Special Criminal Court against the appellants could be sustained.

It was clear that this case must be approached on the basis that neither appellant was aware that the victim was a member of the Gárda Siochana, or that he was acting in the course of his duty.

While it might very well be that the Gárda, as he drew close to the robbers, called on them to stop and revealed his identity, nevertheless there was no evidence whatever of that fact and there was no evidence on which knowledge of his being a Civic Guard could be attributed to the appellants.

Mr. Justice Walsh said the Special Criminal Court was of opinion that, as the appellants were guilty of murder, they were guilty of capital murder by reason of the fact that the person murdered was a member of the Gárda Siochána acting in the course of his duty.

Dealing with the appellants' ground of application for leave to appeal to the Court of Criminal Appeal, Mr. Justice Walsh said the Court came to the conclusion that the Criminal Justice Act, 1964, did not create any new offence and that, therefore the ingredients in relation to the *mens rea*, necessary to constitute the offence of murder, were identical with those necessary for capital murder and, consequently, that the absence of knowledge of the fact that the murdered man was a member of the Gárda Siochána was immaterial to the verdict.

The Court of Criminal Appeal, however, felt that its decision necessarily involved a point of law of exceptional public importance, and that it was desirable in the public interest, that an appeal should be taken to the Supreme Court.

Mr. Justice Walsh said that the first point to be decided was whether, or not, the 1964 Act created a new offence of capital murder, or whether it simply continued the then existing offence of murder, so that the effect of the Act was simply to remove the death penalty for some murders, and to leave it stand for other murders, including the murder of a civic guard in the course of his duty.

New offence on capital murder

Mr. Justice Walsh said that, prior to the passing of the 1964 Act, there was no offence known to the law as capital murder. He thought it was a fair inference, that the Oireachtas bore in mind, when enacting this legislation that our Police Force was an unarmed Police Force, and had a special claim to whatever additional protection the law could give its members by providing the deterrent of the death penalty for violent criminals with whom members of the Gárda Siochána often had to contend.

The same, or similar, considerations probably existed with regard to the murder of prison officers in the course of their duty. What was remarkable was that all the other categories of capital murder in the Act were what might be described as political murders, or politically-motivated murders.

Mr. Justice Walsh said that up to the 1964 Act there had never been a murder of a member of the Gárda Siochána, in the course of his duty, otherwise than in the course of a "political" crime.

It was to be noted that a person going to the aid of a member of the Gárda Siochána, in the course of his duty, was not protected in the same way as the Gárda himself. This, to his mind, indicated that what the Oireachtas had in mind was (1) that an assailant who contemplated killing a Gárda would be aware that his punishment would be quite different from that which he would incur by killing a private citizen and (2), that if that was to have a deterring effect, it would have it only if the assailant was aware that his prospective victim was a Garda.

Mr. Justice Walsh said it was a fair inference that the bank robbers were prepared to kill, if necessary, in the course of the robbery, and the flight from it, and that if, in a confrontation with civilians and police, the success of their flight depended on killing someone, the victim was more likely to be a member of the

Police, though they were aware of his identity.

He thought it was an inescapable inference that the Oireachtas intended that the offence of capital murder should be a separate and distinct offence from those categories of murder which one might describe as non-capital.

Capital murder cannot be inferred if accused did not know victim was a Gárda

The Oireachtas, in enacting Section 4 of the 1964 Act, repealed what had hitherto been the law, namely, that the killing of an officer or a member of the Gárda Siochána, done in the course of, or for the purpose of resisting, or preventing a lawful arrest, was murder in the absence of any intent to kill, or cause grievous bodily harm, even in the case where it was known to the assailant that his victim was a Gárda.

Mr. Justice Walsh said he found this expressed legislative intention utterly irreconcilable with an intention which it was now sought to impute to the Oireachtas that a person could be guilty of the offence of capital murder by the fortuitous circumstance that his victim was, unknown to the murderer, a Gárda.

Such a meaning could not be read into it in the absence of clear and unambiguous wording to that effect. There was no such wording in the Act. The absence of a word such as "knowingly", in the statute, did not raise any question of constructive knowledge; that was to say, that if the appellants did not know that their victim was a Civic Guard, they ought to have known it. The whole tenor of Section 4 of the Act contradicted this.

He held that a person could not be guilty of the capital murder of a Gárda, in the course of his duty, unless he intended to do serious injury to a Gárda, in the course of his duty, and that injury caused his death. The state of mind of the accused must have been not only that he foresaw, but also willed, the possible consequence of his conduct. There could not be intention unless there was also foresight, and it was this objective element of foresight which constituted the necessary *mens rea*.

Mr. Justice Walsh added that the appellants were undoubtedly guilty of murder, but in his view the absence of the knowledge of the status of their victim meant that the offence of capital murder had not been established. For the reasons he had already given, it could not be said to be intentional unless the evidence established that the person who fired the shot—Marie Murray—knew that her victim was a Gárda.

The position of Noel Murrray was that he could not be convicted of capital murder unless it was established that he had the same knowledge, or at least that it was part of a common design to murder a Gárda, if it should prove necessary, to execute and undertake, and in the course of which the Gárda was murdered.

The Judge said that the prosecution had been conducted on the basis of an incorrect interpretation of the law; that was, that capital murder was not a new offence, and the evidence called and the submissions made took no account of the necessity to establish the *mens rea* on the part of the appellants.

Mr. Justice Walsh said the trial Court had misdirected itself in law on this fundamental point in ruling that capital murder was not a new offence, and in ruling that the question of the degree of knowledge, if any, of the appellants of the status, or occupation, of their victim was not relevant to the proof of the offence of capital murder, and that it was not necessary for the prosecution to prove *mens rea*, concerning that aspect of the case.

In the result, said the Judge, the Trial Court made no findings as to the state of knowledge, or the state of mind, of either of the appellants concerning this matter. This was a misdirection of law crucial to the charge of capital murder.

Even if recklessness was sufficient to constitute the necessary *mens rea*, which, in his view, it was not, in his opinion the prosecution could not now seek to establish in the Supreme Court recklessness as constituting the necessary *mens rea*.

The Supreme Court could not be asked to uphold a conviction of capital murder by finding facts which not only were not found by the Trial Court, but which the Trial Court did not even consider.

For the reasons given, he was of opinion that the conviction of capital murder in each case should be quashed and that a conviction in respect of the murder of Garda Reynolds should be substituted in each case, and that the Court should impose the mandatory statutory penalty of penal servitude for life on each. In his view the other convictions and sentences should not be in any way altered.

Capital Murder and murder distinct

Mr. Justice Henchy said that capital murder and murder must be treated as distinct offences for the purpose of proof of guilt, of sentence and of consequence of sentence. The bar in Section 3 (5) of the Criminal Justice Act, 1964 on treating capital murder as a distinct offence from murder for any purpose must be read as a prohibition against doing so for any procedural purpose. The legislature could not have intended that the substantive and consequential differences between the two offences were to be ignored.

Capital murder, in his view was a new offence, or type of offence in the sum of its essential component elements. It would be repugnant to reason and fairness if the death penalty were to depend on the outcome of what in effect would have been a lottery as to the victim's occupation and activity. Fortunately, as he read the 1964 Act that conclusion did not follow.

He found an unrebutted persumption that the Oireachtas in enacting Section 1 of the Criminal Justice Act, 1964 and creating the new offence of capital murder, defined for the purpose of this case as "murder of a member of the Gárda Siochána acting in the course of his duty" intended that the section should be read as requiring *mens rea*, for all the elements of that definition. To hold otherwise, would remove any logical or ethical basis for the distinction between murder and capital murder.

Recklessness considered

Mr. Justice Henchy said the Special Criminal Court, acting on the basis that neither intention, nor recklessness, was necessary for the capital murder charge, did not make a finding that Marie Murray had the required guilty mind, which in the circumstances was recklessness. The Court of trial did not address its mind at all to the question. It misdirected itself in law, therefore, in holding her guilty of capital murder without finding that in shooting Garda Reynolds she was reckless as to whether he was a Garda acting in the course of duty. The verdict of guilty on the count of capital murder, therefore, could not stand.

Whether Marie Murray had the required recklessness was essentially a matter of fact to be inferred from the evidence. It was not a matter that could be determined at second hand. He held that in the case of Marie Murray there should be a retrial on the count of capital murder, the verdict of which would depend, primarily, on whether she had the required recklessness. If

she was found guilty on that count, a verdict of guilty of murder would in the circumstances be correctly substituted under Section 3 (2) of the Criminal Justice Act, 1964.

Mr. Justice Henchy said that in the case of Noel Murray he would hold that as *mens rea*, in the form of either intention, or recklessness, could not be attributed to Noel Murray, the verdict against him could not stand. However, the alternative verdict against him of murder, as allowed by Section 3 (2) of the Criminal Justice Act, 1964, was inescapable.

At all event, it could not be fairly inferred from the evidence that the discharge of a shot at a Garda was part of the pre-arranged scheme of things, and more particularly the discharge of a shot against a Garda in the circumstances in which Marie Murray shot Garda Reynolds.

Substituting a conviction for murder with the mandatory sentence of penal servitude for life, he said that, running with that sentence, would be the sentences of penal servitude imposed for the non-capital offences of which he was convicted.

In regard to objections to the validity of the sentences of penal servitude imposed on her for the non-capital offences, on the ground that they were incomptaible with the sentence of death, Mr. Justice Henchy said for the present, at any rate, these were removed by the quashing of the sentence of death on Marie Murray.

Mens Rea a necessary ingredient in all these circumstances

Mr. Justice Griffin said in his opinion, on a proper construction of the Act, capital murder was a new offence created by the Act and was not the offence of murder at common law.

The further question that arose was the nature and extent of the *mens rea* required in the case of the murder of a member of the Garda Siochana acting in the course of his duty.

He found it very difficult to accept that, once the intention or will, to seriously injure, was proved, the Oireachtas intended that guilt under Section 1 of the 1964 Act depended on the accidental or fortuitious event that the person killed happened to be a Garda acting in the course of duty.

There seemed to be no basis in justice, reason, or expediency for imposing increased punishment on those whose victim was, fortuitously, a Garda.

He would accordingly hold that *mens rea* was a necessary ingredient of all the elements which went to make up the offence of capital murder.

Mr. Justice Griffin said that the necessary *mens rea* might in an appropriate case, exist not only where there was intention, but where there was recklessness as to the surrounding circumstances. In his view, recklessness on the part of an accused as to the existence of present facts would not be sufficient to support a conviction if a specific intent as to those facts was necessary. Applied in the present case, the relevant fact was membership of the Gárda Siochána.

In his opinion, the necessary *mens rea* as to the murder was the intent required by Section 4 of the Act; the necessary *mens rea* as to the concomitant circumstances was recklessness.

Recklessness essential

By reason of the course which the trial took, the question of recklessness was not considered. The Court therefore misdirected itself in law in relation to the *mens rea* necessary for capital murder and did not in consequence make any findings as to whether, or not, the accused had adverted to the possibility that the deceased was a Gárda. The Special Criminal Court was the Court which must find the facts.

As to Marie Murray, Mr. Justice Griffin said the *mens rea* required was not that she ought to have known that the possibility existed that the person was a Gárda, but that she must necessarily have known that this possibility existed. Before their could be recklessness on her part there must be advertence to this possibility.

The case therefore must be approached on the basis that there was no evidence that she knew that the victim was a Gárda.

Mr. Justice Griffin said that both of the Murrays were highly intelligent as was demonstrated by their submissions and arguments at the trial.

In his opinion, there was, at the trial, evidence on which it would have been open to the Trial Court to hold (1), that in all the circumstances Marie Murray must have adverted to the fact that there was a risk that their pursuer was a Gárda, and, (2), that, in shooting that person who was holding her husband, she disregarded that risk.

If the Special Criminal Court, as the fact-finding Court, so found, it would follow as a matter of law that she would have the necessary *mens rea* to support a conviction for capital murder.

In Noel Murray's case, he could see no logical or rational basis for differentiating between him and Marie Murray. They were engaged in a common design to rob the bank. On the findings of the trial court, Noel Murray was the person who appeared to be in charge of the operation. Each carried a loaded gun, ready to fire, and his gun had the safety catch off. The only inference which could be drawn from these facts was that, if necessary, the guns would be used for the purpose of carrying out the robbery, or enabling the participants to escape. Each was in possession of a gun to the knowledge of each other.

Mr. Justice Griffin said that at some time during the chase, Noel Murray gave his gun, fully loaded, with a bullet in the breach and the safety catch off, to his wife. On the available evidence, he had precisely the same means of knowledge as his wife of the possibility of the person by whom they were being followed being, in fact, a Gárda. In his opinion, on the facts, there was evidence on which it would be open to the trial court to hold that Noel Murray could properly be convicted of the capital murder of Garda Reynolds.

For the reasons stated, as there was a misdirection in law at the trial, he would quash the conviction of capital murder in both cases, and hold that a re-trial on the count of capital murder should be directed in respect of each.

Clear language necessary for mens rea in capital murder

Mr. Justice Kenny said there was coercive evidence that Marie Murray shot the Gárda and that her husband was present. Gárda Reynolds was not in uniform, and there was no evidence that he gave any indication to either accused that he was a Gárda, or that he was acting in the course of his duty. It had not been proved that either accused knew that he was a Gárda, or that he was acting in the course of his duty. It had not been proved that either accused knew, or had grounds for believing that he was.

If the 1964 Act did not create a new offence of capital murder a verdict of capital murder would have been appropriate if the prosecution proved, beyond reasonable doubt, that Marie Murray intended to kill, or cause serious injury, to the Garda even though she

did not know he was a Gárda in the course of his duty.

When he took into consideration that the expression of "capital murder" was unknown to our law before 1964, and that it was defined by the 1964 Act, he came to the conclusion that it was a new offence and was not to be equated with murder.

Dealing with the question whether Marie Murray knew, or suspected that Garda Reynolds was a member of the force, acting in the course of duty, or that she was recklessly indifferent as to whether he was or not, the Judge said it was a general rule of law that the Act itself was not criminal, unless it was accompanied by a guilty mind.

The Oireachtas might make acts crimes, although the accused was not aware that he was committing an offence, but to effect this, clear language must be used. In the absence of such an indication the general rule was that the guilty mind, or criminal intent, must be established.

Mr. Justice Kenny said there was no evidence that Marie Murray knew that the Garda was a member of the force, or that she knew anything from which she could infer that he was. In those circumstances she could not be held to have been recklessly indifferent as to whether he was.

As Marie Murray did not know that Garda Reynolds was a member of the Garda Siochana, and as she did not know anything from which she could infer, or advert, to the fact that he was, and as she was not recklessly indifferent as to whether he was or not, she was not guilty of capital murder.

He would therefore substitute a verdict of guilty of murder against both accused for the verdict of capital murder.

Mens Rea discussed

Mr. Justice Parke said that he agreed with the conclusions reached in the judgments delivered by Mr. Justice Henchy and Mr. Justice Griffin except in so far as the judgments of Mr. Justice Griffin related to Noel Murray.

He said he agreed with all the judgments delivered in finding that capital murder was a new statutory offence.

In applying the principle of *mens rea* it was essential to distinguish two different states of mind: knowledge and intention. With the greatest respect, he believed that failure to distinguish betwen knowledge and intention had been the cause of much judicial confusion.

He said he was in agreement with the passage in the judgment of the Court of Criminal Appeal in this case, in so far as it laid down that an accused person should not be guilty of capital murder unless he had a *mens rea* in relation to all the ingredients of crime, but he differed from the conclusion which was drawn from that finding namely; that would mean that no person could be convicted of the capital murder of a member of the Garda Siochana unless the prosecution had established that the accused *knew* the victim was a member of the Garda Siochana and was acting in the course of his duty.

Mr. Justice Parke said he shared the view expressed by Mr. Justice Henchy, Mr. Justice Griffin and Mr. Justice Kenny that recklessness could constitute the necessary element of *mens rea*. He expressly adopted the observations of Mr. Justice Griffin on this subject.

The question of whether Marie Murray had, or had not, such *mens rea* was not considered by the Special Criminal Court, because that Court misdirected itself in law by finding that capital murder was not a new statutory offence and did not, therefore, direct its mind to the degree of *mens rea* required for such new offences.

He would accordingly quash her conviction on the charge of capital murder and order a retrial on this charge.

He was not satisfied that the same considerations applied to Noel Murray.

Furthermore, Noel Murray, had no gun, and was, therefore, never faced with the decision of whether to fire, he was in the grip of Garda Reynolds, so that he had neither the opportunity, nor the means, of either assisting, or preventing his wife in the commission of the actual murder.

After Mr. Justice Walsh announced the overall result of the appeal, Mr. Seamus Sorahan, SC, for the Murrays, said that as both had been under sentence of death for six months, which, he thought was a record for England and Ireland, the exception being William Joyce in 1945, could the decision of the Court be communicated by telephone to his clients so that they could communicate with other prisoners, he asked.

Mr. Justice Walsh said the Chief State Solicitor was present in the Court and no doubt the Governors would be made aware of the decision.

STATUTES, DECISIONS AND TEXTBOOKS CITED

1. **The People v. Dwyer** (1972) I.R. 416.
2. **The State v. McMullen** (1925) 2 I.R. 9.
3. The Criminal Justice Act 1964.
4. **R. v. Galvin** (No. 1) (1961) Victoria (Australia) L.R. 733.
5. **R. v. Galvin** (No. 2) (1961) Victoria (Australia) L.R. 740.
6. **The Queen v. Reynhoudt** 36 Australian L.J.R. 26.
7. **R. v. McLeod** (1954) 111 Canadian Criminal Cases 106.
8. Glanville Williams, **Criminal Law**. 2nd edition.
9. **R. v. Forbes and Webb** 10 Cox Crim. Cases 362.
10. **R. v. Maxwell and Clanchy** (1909)2 Crim. App. Repts. 20.
11. Offences against the Person act, 1861, Sec. 38.

PENAL SYSTEM SHOULD OPERATE WITHOUT SEEKING RETRIBUTION

By Rev. Professor Enda McDonagh
St. Patrick's' College, Maynooth.

Retribution should have no place in the Irish penal system according to the Rev. Enda McDonagh, Professor of Moral Theology at St. Patrick's College, Maynooth. He was delivering a final paper to a special Seminar on "Crime and Punishment" organised by the Mental Health Association, Ireland, in December, 1976.

Professor McDonagh's assertion received very substantial support from the 80 delegates at the Seminar. including psychologists, psychiatrists, criminologists, social workers, clergy and others concerned with prisoners' welfare in this country. The support was given despite the fact that there had been little challenge offered earlier in the Seminar to the opposite assertions during the Seminar when he had said that society must stop doing things to prisoners and instead try to do things with them. Simply putting someone in prison was to do many things to him; he lost his freedom, his name and his identity and his personal security.

Dehumanisation in prisons

"If 1,150 people are being dehumanised in our prisons at the moment, despite the best will in the world on the part of the authorities—and all the evidence suggests that they are—then we are being dehumanised as well, for they are our people and they are in our society", said Professor McDonagh.

"If, in fact, we are just diminishing prisoners as people we have to look very carefully at the whole structure of our penal system and our prisons". Maybe it would be better to do away with prisons altogether unless the prisons became more humane institutions.

Professor McDonagh then spoke of how the vast majority of prison inmates came from the lowest socio-economic groups in society. Referring to the largely middle-class participation at the seminar, he said: "Our chances of becoming a prisoner are very small. We don't have the ordinary option of criminal activity open to us for the most part, partly because of inbuilt inhibitions . . . and partly because we don't have the same needs that criminals have".

These people were marginal people, he went on, to both Lord Longford and the Minister for Justice, who had held that retribution was one of the principal factors integral to any penal system.

Irish society, for all its peculiarities, shared a great deal of both the wisdom and what might be called the unwisdom of the Western world, said Professor McDonagh, and one thing it seemed to share was the idea of retribution as a justifiable component of punishment. But he could not accept that retribution was justifiable; rather, it was an obstacle to understanding the kind of penal system which many participants in the Seminar would like to see. (From the bulk of the discussion, it seems likely that this would be a humane and rehabilitative system).

At the same time, Professor McDonagh went on, one had to concede the objectionable fact that retribution was built into the present Irish penal system. It was most often explained in terms of fairness: "In fairness, a person should be made to pay for what he has done". But, Dr. McDonagh asked, pay what, and to whom? It was felt, he continued, that there must be some proportion between a punishment and the crime for which it was prescribed. But it was not necessary to retain an element of retribution in order to achieve this.

Retribution a fancy name for vengeance

Professor McDonagh regretted that many people believed that retribution was a Christian idea. They must have a strange notion of Christianity he said. Retribution was just a very fancy name for peoples' desire for vengeance and was not a reputable attitude. The deliberate infliction of pain of any kind seemed to him to be a form of retribution and was unacceptable to him. Yet, the whole panoply of the Courts before which an offender might appear could have a most inhibiting and painful effect on the person accused. The amount of pain felt by a person from the moment he was charged to the time he was eventually discharged had been underestimated.

Professor McDonagh apologised for speaking as a member of a group which believed that dressing up in unusual clothing could have some significance; but the appearance — "the extraordinary gear" — and procedures of the court system did not, in his opinion, uphold the dignity of the law; they simply damaged some very vulnerable citizens. And the stigma of a court appearance would linger in society even when the defendant was found not guilty.

The people who made and enforced the laws were from a different social class and if, as it seemed, the vast majority of offenders came from a particular social class then there was something seriously wrong in society, said Professor McDonagh, adding that if society was to have an effective penal system it might need to have far more radical changes made in its structures of society than it was now apparently prepared to admit

But it was not necessary to wait for such changes before making some improvement in the prisons. They should be made more humane and, as to achieving a proportionality between a crime and its punishment that could be done through a degree of public repudiation and denunciation of the crime, rather than through retribution. By maintaining a sense of moral outrage, was the supporting suggestion from the Attorney General, Mr. Costello, who was chairman for the session. Moral outrage was fine by Professor McDonagh as long as it did not become just a cry for vengeance.

One other recurring theme of the Seminar which Professor McDonagh picked up in his paper was the absence from both lectures and discussions of people employed by the Department of Justice. Time after time, the delegates had complained—more often in sorrow than in anger—of this absence. But, said Professor McDonagh, they should remember that people in the Department of Justice were people who shared the same fears as anyone else and who felt the same needs to hold on to their bit of power.

Indeed, they might well feel also that they were the true custodians of the views of the Irish people. But was it enough for Irish society simply to employ civil servants and leave them to get on with it. "If we are not all prepared, able and free to accept responsibility for what happens to offenders in our society, then that society is in a very poor condition", said Professor McDonagh. The first thing to do then was to awaken people to their personal responsibilities in this matter.

This, too, echoed another Seminar theme—the need to arouse, even to contact, public opinion on the whole question of what happens to criminals. Only thus, it was felt, could there be hope of overcoming what Mr. Seamus Sorohan, SC, had called the "siege mentality" of the Department of Justice.

Dr. Liam Daly, the Eastern Health Board's director of forensic psychiatry, noted that there was a need to open up all of the penal services, especially those aimed

at the psychiatrically treated fraction of the offender population, to responsible public evaluation. Other delegates had voiced similar sentiments, and one of the most eminent contributors, Dr. Wilfreid Rasch, Professor of Forensic Psychiatry at the Free University of West Berlin, had spoken of the need to keep prison walls penetrable to the ordinary public whose visits would help to destroy the stereotypes of the personality of criminals. Good public relations, he went on, could encourage people to take in a prisoner as to a foster family. That such a prospect is unlikely in the near future in Ireland was underlined by Dr. Daly, who said that while after-care was a well tried approach in other countries in dealing with offenders, co-ordinated rehabilitation was not really possible here, while the welfare services in the Department of Justice might not legally concern themselves with discharged offenders.

Acts of The Oireachtas, 1976

No.	Name of Statute	Signed by President
1.	ACP-EEC Convention of Lome (Contracts of Guarantee between Ireland and European Investment Bank) Act 1978 –	27 January 1976
2.	Diplomatic Restrictions and Immunities (Amendment) Act 1976 –	27 January 1976
3.	Rates on Agricultural Land (Relief) Act 1976 –	2nd February 1976
4.	Juries Act 1976 –	2nd February 1976
5.	Harbours Act 1976 –	16th March 1976
6.	Social Welfare Act 1976 –	29th March 1976
7.	Corporation Tax Act 1976 –	31st March 1976
8.	Capital Acquisitions Tax 1976 –	31st March 1976
9.	Health Contribution Act 1976 –	1st April 1976
9.	Committees of the Houses of the Oireachtas (Privileges and Procedure) Act 1976–	6th April 1976
10.	Family Law (Maintenance of Spouses and Children) Act 1976 –	6th April 1976
11.	British and Irish Steampacket Co. (Acquisition) (Amendment) Act 1976–	13th April 1976
12.	Foyle Fisheries (Amendment) Act 1976 –	13th April
14.	Criminal Law (Jurisdiction) Act 1976 –	6th May
12.	Industrial Relations Act 1976–	18th May 1976
18.	Public Hospitals (Amendment) Act 1976 –	23rd June
19.	Regulations of Banks (Remuneration and Conditions of Employment) (Temporary Provisions) Act 1976 –	25th June 1976
20.	Dairy Produce (Miscellaneous Provisions) (Amendment) Act 1976 –	29th June 1976
21.	Local Government (Planning and Development) Act 1976 –	5th July 1976
22.	Organisation for Economic Co-Operation and Development (Financial Support Fund) (Agreement) Act 1976 –	6th July 1976
23.	Superannuation and Pensions Act 1976–	6th July 1976
24.	Fisheries (Amendment) Act 1976 –	7th July 1976
25.	Employment Premium Act 1976 –	7th July 1976
26.	Foir Teoranta (Amendments) Act 1976 –	7th July 1976
27.	National Stud Act 1976 –	7th July 1976
28.	Family Home Protection Act 1976 –	12th July 1976
29.	Social Welfare (No. 2) Act 1976 –	12th July 1976
30.	Adoption Act 1976 –	13th July 1976
31.	Gas Act 1976–	19th July 1976
32.	Appropriation Act 1976 –	21st July 1976
33.	Criminal Law Act 1976 –	24th September 1976
34.	Emergency Powers Act 1976 –	16th October 1976
35.	Criminal Justice Act 1976 –	7th December 1976
36.	Electricity Supply (Amendment) Act 1976 –	14th December 1976
37.	Air Companies (Amendment) Act 1976 –	20th December 1976
38.	Broadcasting Authority (Amendment) Act 1976 –	20th December 1976
39.	Building Societies Act 1976 –	21st December 1976
40.	Wildlife Act 1976 –	21st December 1976

PRIVATE ACTS

1.	Local Government (Provisional Order of Confirmation) Act 1976. Relating to County of Louth and Drogheda Corporation (Boundaries) Provisional Order. 1976 –	20 December 1976

THE REGISTER

REGISTRATION OF TITLE ACT, 1964

Issue of new Land Certificate

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

Dated 31st day of March, 1977

N. M. GRIFFITH

Registrar of Titles

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

Schedule

(1) Registered Owner: David P. McConnell; Folio No.: 5415; Lands: Newland West (part); Area: (1) 28a. 1r. 30p., (2)15a. 2r. 36p.; County: Kildare.

(2) Registered Owner: Esther Meehan; Folio No.: 18193; Lands: Petitswood (Situate on the south side of the road leading from Mullingar to Kinnegad in the town of Mullingar); Area: 0a. 1r. 15p.; County: Westmeath.

(3) Registered Owner: Mary Ellen Ward: Folio No.: 569R; Lands: Corgorman; Area: 4a. 3r. 0p.; County: Roscommon.

(4) Registered Owner: James Quigley; Folio No.: 23223; Lands: Drumnacarta; Area: 19a. 2r 25p.; County: Mayo.

(5) Registered Owner: Valentine Patrick Daly; Folio No.: 20087; Lands: Drummond Otra; Area: 0a. 2r. 24p.; County: Monaghan.

(6) Registered Owners: The Clongrennane Lime and Trading Company Limited; Folio No.: 2057; Lands: (a) Clongrenan, (b) Raheendoran: Area: (a) 35a. 3r. 4p., (b) 63a. 2r. 38p.; County: Carlow. (This folio is now closed and the property is contained in folio 4083F, County Carlow).

(7) Registered Owner: James Leonard; Folio No.: 32191; Lands: (1) Killosolan, (2) Ticooly (O'Kelly); Area: (1) 26a. 2r. 39p., (2) 5a. 0r. 16p.; County: Kildare.

(8) Registered Owner: Patrick Cannon; Folio No.: 4682; Lands: Knockroe; Area: 23a. 1r. 8p.; County: Galway.

(9) Registered Owners: Thomas Cusack and Josephine Cusack; Folio No.: 20906; Lands: (1) Carnaun, (2) Moanmore South, (3) Moanmore Lower; Area: (1) 22a. 2r. 9p., (2) 1a. 1r. 3p., (3) 12a. 3r. 7p.; County: Clare. (This folio is closed and the property is now contained in folio 25304, County Clare.)

(10) Registered Owner: Charles Tully; Folio No.: 13231; Lands: Lislin (part); Area: 27a. 2r. 14p.; County: Cavan.

(11) Registered Owners: Patrick Tobin and Doreen Tobin; Folio No.: 35064; Lands: Killeen; Area: 0a. 3r. 31p.; County: Kerry.

(12) Registered Owner: Hugh O'Donnell; Folio No.: 2655; Lands: Leabgarrow; Area: 0a. 0r. 24p.; County: Donegal.

(13) Registered Owner: Alice Donnelly; Folio No.: 1684; Lands: Commons; Area: 21a. 2r. 21p.; County: Meath.

(14) Registered Owner: D. R. Wills; Folio No.: 18391; Lands: Mainham; Area: 0a. 2r. 10p.; County: Kildare.

(15) Registered Owner: John McMahon; Folio No.: 1911; Lands: Inchbeg; Area: 84a. 0r. 1p.; County: Clare.

(16) Registered Owner: Michael Lynch; Folio No.: 8903; Lands: Athea Upper; Area: 0a. 0r. 32p.; County: Limerick.

NOTICES

Assistant Solicitor required for Dublin Office especially for Litigation and Probate. Replies to Box No.152.

Cork City Office requires Assistant Solicitor with Conveyancing and/or Company Law experience. Write giving full particulars of experience to-date to Box No. 153. Replies will be treated in strictest confidence.

Northern Ireland Solicitor (27) seeks Master to qualify in Republic. Vast experience in Probate and Conveyancing. Salary Negotiable. Reply to Box No. 154.

LOST WILLS

John Hyland, late of Ballyboy, Clogheen, Co. Tipperary, farmer, deceased. Anybody having any knowledge of any Will of the above-named deceased, please contact H. Shannon & Co., Solicitors, Clonmel, Co. Tipperary.

Anne (otherwise Hannah) Dunleavy Deceased – Will any person having a will of the above named deceased who resided at 54, Aughrim Street, Dublin, and who died at the Mater Hospital, Dublin, on the 13th day of November, 1976, please contact Messrs. O'Doherty & Monahan, Solicitors, Sligo.

THE INCORPORATED LAW SOCIETY OF IRELAND

GAZETTE

MARCH 1977 VOL. 71 NO. 2

Solicitors' Remuneration in Ireland

Comment by The Incorporated Law Society of Ireland on the Consultant's Report and the Findings of the National Prices Commission (Occasional Paper No. 22)

In June 1975 the Society indicated to the Prices Commission that it would welcome a study of solicitors' earnings. On the appointment of the Consultant, the Society arranged to co-operate fully in the mammoth task which he undertook in his terms of reference. At that time the remuneration of solicitors was under considerable criticism in the media, notwithstanding the Society's comment, that remuneration was reasonable. This criticism appeared to be based on the lack of understanding of the function of and the services provided by a solicitor and of the cost of providing that service, which was understandable, in the absence of any independent reliable source of information as to the true position. Hence, the announcement of the intended enquiry was welcomed by the profession.

In general, the Consultant, understandably points out that it was not part of his purpose to reflect on general national policy in relation to redistributing income from professional people to other occupational groups, or indeed to say how much a solicitor "ought" earn and that he could not act, as he indicates in his own words "as a one man Royal Commission on the Irish legal system". He does however acknowledge that the enquiry, being the first of its kind in this country, has caused many problems to be put to him by the profession which were unfortunately beyond his remit.

General increases of 150% in Court costs and other controlled remuneration were sought in May 1975. Later in its formal submission to the Consultant, the Society sought specific increases in specific areas of remuneration. In response to that application and after detailed consideration of the relevant factors, the Consultant has now recommended –

150% increase in District Court Costs
100% increase in Circuit Court costs
50% increase in High Court costs

An increase in Land Registry fees

Acceptance of an increased minimum fee in certain Conveyancing transactions.

A right to charge a special negotiation fee of 1% for negotiating the sale or purchase of property.

In general the report has found that the application made by the profession for the increase in fees sought, was justified on the following grounds –

Rapid increases in wage, salary and administration costs (pg. 18).

Earnings in private practice had fallen somewhat behind that of many employees in public employment (pg. 46).

Solicitors had done relatively badly in comparison with the community as a whole (pg. 112).

The Consultant also found that – contrary to general belief–increases in property values through inflation did not, by reason of the tapering scale of fees applicable, increase solicitors' incomes from conveyancing in the same proportion.

Scale fees were the more appropriate manner of regulating solicitors' fees.

The Consultant has made no recommendations in relation to fees for the free legal aid programme, explaining that he understood that this matter was under active and separate discussion.

In the area of fees for court work, he has found that –

Increases in the past have been infrequent.

Long delays have occurred between applications for increases and their final determination.

Increases granted have failed to take account of rapid inflation (pg. 130).

Hence, in putting forward his recommendation for increases in the scale of fees he has suggested that they should be effected as soon as possible (pg. 135).

Reference is made to the monopoly of solicitors, particularly in conveyancing and also to advertising and to general procedural problems in the work of solicitors, which cause delays.

The questions of monopoly and advertising are, in the view of the Society, matters of public policy which have been debated in great depth and at considerable length in

the United Kingdom, in the British Commonwealth and European countries over the years, without any conclusions being arrived at, other than that the present system should be retained. The Society welcomes the views of the Consultant, as an economist, but believes that far greater research is necessary on these fundamental issues, before they can be fully debated and before sensible conclusions can be arrived at, which in the final analysis must be prepared to co-operate fully with the Restrictive Practices Commission in its investigation.

The Society is conscious of the many problems which have given rise to criticism and in its own way and in so far as it can, it has endeavoured to overcome some of the more obvious inequities which exist.

The Consultant's comments, that it was not possible for him to cover all of the many areas in the legal structure and system which would warrant consideration is appreciated, having regard to the wide terms of reference and the time at his disposal. Hence the Society, in so far as fundamental issues are concerned, must express serious reservations as to the correctness of the basis from which are argued, some of the conclusions arrived at. It will comment on these aspects in greater depth at a later date.

While in general the Society welcomes the report of Professor Lees, Consultant to the National Prices Commission, it considers that the findings of the Commission on its Consultant's recommendations have been most unreasonable. In brief:

(i) **Land Registry scale fees:** The non-acceptance of the Consultant's recommendation of an increase from $\frac{1}{2}$ to $\frac{3}{4}$ of the scale in the case of registered land will bear particularly hard on the situation of practitioners outside Dublin and certain other large centres. Coupled with the non-acceptance of the recommendation re Court fees it will make it difficult for solicitors to earn a reasonable living in smaller towns and will act contrary to the general policy of encouraging the retention of services in the less populated and less well-off areas. It is obvious that the Commission has based its finding on the conveyancing aspect of the transaction and has had no regard to such ancillary work as advice on:-

(i) the tax situation in the context of new Capital Tax legislation
(ii) the position in relation to the Succession Act, 1965.
(iii) the requirements in relation to the Planning and Development Acts 1963 and 1976.
(iv) situation in relation to the Family Home Protection Act, 1976
(v) the situation in relation to hire purchase and credit sales.

These points were made to the Consultant and accepted by him. The approach of the National Prices Commission will leave solicitors throughout the country with no option but to agree additional fees with their clients for this additional work which the N.P.C. has not taken into account.

(ii) **Court Costs:** The Society's initial application for 150% increase in Court Costs was based on its understanding of the deterioration of the situation in this area. The Consultant, in relation to District Court work, the major court work item in a solicitor's practice outside Dublin vindicated the Society's application. Now that solicitors fully understand the cost implications, the effect of the National Prices Commission findings, if implemented, will be a reduction in the time solicitors are prepared to spend on Court work, especially having regard to the present very inefficient organisation of the Courts.

(iii) **Criminal Legal Aid:** The findings of the National Prices Commission which are of particular relevance to a small section of the profession in Dublin are completely unacceptable. Coupled with the present considerable delay in the submission of claims by the Dublin District Court Office, it is more than likely that many of the more experienced solicitors on the panel will withdraw from this type of work.

Taking the Commission's suggestion the Society proposes making further comment to the National Prices Commission on the foregoing points and on certain other aspects of the Consultant's report.

A matter affecting seriously the well being of its members is the time lag involved in the processing of the application. This was first made to the relevant statutory bodies in 1st May, 1975, almost two years ago, and based on income figures for the year 1974 at the latest. Since then further very substantial increases have occurred in wages of solicitors' staffs and in other overhead costs, particularly so in the case of postage and telephone costs. The result is that while the National Prices Commission regards its findings as complete increases, the Society is left with no option but to process a further application for an adjustment in the gross remuneration of its members.

1st March, 1977.

Mr. W. Beatty – Here and Now – 2/3/77, R.T.E. Radio

The Solicitors went in looking for 150% and they came out with 50% increase. For that I suppose we can be grateful, but given the flow of complaints that come into this programme about the legal profession I know that a lot of listeners will be unhappy with any increase granted. The increase is mostly for civil litigation fees and many people will be interested to know that the Examiner for Restrictive Practices is being asked to look at the monopoly solicitors have in Conveyancing. So how do the Solicitors feel about the way the N.P.C. has treated them?

Are you a happy man this morning, Walter?

I am not, Rodney, because we feel that it is most disappointing that the Prices Commission should appoint a Consultant who is a very intelligent man, a professor of Nottingham University, that he should issue recommendations, which for the most part are realistic and fair and that these should be almost totally rejected by the Commission. It is also quite wrong to talk about 50% increase. On page 13 of the Commission's Report they say that "From mid-February to mid-November, 1975 the consumer index increased by 52% In our view Court Fees for civil litigation should be increased by 50% on average. The distribution of this percentage between the High Court, Circuit Court and District Court will best be decided by the Legal Profession. Now this does not mean a 50% increase – far from it. It means that the District Court fee may be increased if the Statutory Rules Committee so decide by perhaps 25%, the Circuit Court by 15% and the High Court by 10%. So, it is wrong and misleading to say there is a 50% increase.

Is that a little bit of playing with figures, though?

I think it is a little bit of playing with figures by the Commission, because it certainly is not playing with figures by us, it is anything but. And, also, I think it is very unfair that it has not been highlighted that the increase that was received since January 1964 was in Autumn 1972. That is the only increase and it was 20%. The Rules Committee recommended 40% and the Government vetoed it and reduced it to 20%. So, since 1964 until now, in the last 13 years there has only been a 20% increase and the present increase was based on a 1974 recommendation so we're running much faster to stand still, working longer hours and there is a serious, a very serious aspect of this. We tried to highlight the problem of the solicitor in the rural area, we tried to get an increase for him in the Land Registry scale because these solicitors are not finding it in any way economic to bring in assistants to cut out delays – in fact a lot of them cannot afford to pay the going rate to an assistant solicitor, they are getting older, their health is suffering, the work has to be done, they provide in many cases a social service and now the increase which would help to cut out the delays which you highlight is not being given and this is going to be serious. The Government is going to regret this.

Well the position that, I think, a lot of listeners would adopt is that solicitors in many, many cases do not provide a very good service and you know the number of complaints that come through this office and that I have been in touch with you about and other colleagues of yours as well, and are you saying that if the fees aren't increased substantially that kind of delay, that kind of problem, is going to continue.

I think in rural Ireland it is going to get worse in certain areas because delays often arise because people do not have enough staff. The delays now in many of the Governmnet offices arise because of this. There is 66⅔% more applications in the Land Registry in the last 12 months than before and there is no increase in staff. How can the same staff deal with 66⅔ increase? And if a man is suffering from bad health and getting older he should be able to pay an assistant and bring him into the practice. If the fees are not economic he is not going to be able to do that, and it is going to mean practices will close and it is going to mean you are going to get more drift towards the city. At the moment most of the big work goes towards the cities and we wanted to try and give the country solicitors a better and fairer crack of the whip so that they could provide the service which is very essential for the country as a whole.

Do you find that at the moment there are a lot of young solicitors qualifying and then not going back to where they came from?

This is the problem and there is also the problem which most people do not think about, because it does not effect them, but the liberty of the citizen is at stake. If there is not a lawyer on tap in the local village or town, it is going to cause problems.

Do you think that perhaps you could overcome that by getting down to talking about demarcations between yourselves and barristers? Things like that which might make it easier and indeed work that perhaps a solicitor's clerk could appropriately do?

Well, solicitor's clerks could not deal with court work, they could not go in and defend

No but Conveyancing for example which is recommended for the Examiner of Restrictive Practices

Well, yes in simple cases they can and under supervision they do at the moment, but they must be supervised. It is also significant that it is very unfortunate that you cannot say to yourself that the profession is guaranteed a future which it should have had if the Consultant's recommendations had been accepted, particularly in rural Ireland.

I saw a figure in a newspaper today of £40 per hour for a solicitor in the High Court. £40 an hour is good money by anybody's standards.

I am glad you raised that because that sounds very attractive and I wish it were true, but the £40 an hour takes into account all the research and background work. It is like saying a doctor is paid £1 a minute because he charges £60 for an hour's operation. But in fact he has consultancy work beforehand, he has to examine the patient, he has to look at X-rays, there is a lot of background work. It is the same with the legal profession. In no way do you go in at 11 o'clock and you come out at 12 o'clock with £40. That would be ludicrous and we do not want that.

But looking at the difference between the money that you calculated to be getting for the High Court, Circuit Court and the District Court, is it because there is much more work involved in the High Court case?

That includes the time that was spent preparing the barristers brief, taking statements from witnesses, going out to the scene of the accident, instructing the mapper, going along and interviewing Gardai, interviewing doctors, surgeons, looking at X-rays, passing them on to doctors. There is an enormous amount of back-up work, and in criminal work it is just the same. So you just do not go in and get £40 an hour – no way.

What would you say to Mrs. Smith in the Street who said she never saw a poor solicitor?

Well that it would be a poor profession that was going round in dilapidated condition. It would not inspire much confidence to Mrs. Smith. I think we must try and keep up appearances and that is what we try to do.

And does that mean that you have to have very big fees to do that?

I think the fees are not very big if you see the Commission's own figures. They are talking about an average for solicitors of £6,500 a year in round figures. I do not think there is anything extraordinary about that. There are many, many electricians and more power to them and other skilled people who are earning much more.

S.A.D.S.I. Inaugural—Friday, January 28th, 1977

ILLEGITIMACY IN IRISH LAW – FILIUS NULLIUS?

Ciaran A. O'Mara, B.C.L., (Auditor 1976/77)

SOLICITORS' APPRENTICES DEBATING SOCIETY OF IRELAND

The 93rd Inaugural Meeting of this Society was held in the Library of Solicitors' Buildings on Friday, 28th January, 1977, at 8.00 p.m. The President, Mr. Bruce St. St. John Blake, presided. The minutes of the previous meeting were then read with the customary humour and irrelevancies.

The President then presented the following awards for the 92nd Session:-

Oratory
Incorporated Law Society's Gold Medal: Thomas Murran, LL.M.
Society's Silver Medal: Maria Durand.

Legal Debate
President's Gold Medal: Ciaran O'Mara, B.C.L.
Society's Silver Medal: Jacqueline Maloney.

Impromptu Speeches
Vice-President's Gold Medal: Neal Lamb, B.C.L.
Society's Silver Medal: Michael D. Murphy.

Irish Debate
Society's Parchment: Eugene Tormey, B.C.L.

First Year Speeches
Society's Silver Medal: Niall King.

Replical of Auditorial Insignia
Niall Sheridan, B.C.L.

The President then called on the Auditor, Mr. Ciaran A. O'Mara, B.C.L. to deliver his Inaugural address on Illegitimacy in Irish Law – Filius Nullius? In the course of his address, the Auditor said:-

Family Law could be said in recent years to have become a much more publicised branch of the law. Knowledge and information have dramatically spread, leading to pressure for reform. As a result legislation has been enacted dealing with succession, maintenance and the family home. However, it can be said, I think fairly, that our approach to the crises of family breakdown and insecurity has been piecemeal.

The new Family Law (Maintenance of Spouses and Children) Act, 1976, is a prime example of the response of our Legislators. It provides a basic District Court remedy for failure to maintain one's spouse and children. However, in practice, this Act is being used by lawyers as a general solution to marital breakdown—likewise with the Guardianship of Infants Act 1964 in the High Court. I feel that we have as yet only scratched the surface of family problems. Short-term and interim answers do little about the root causes of the misery that is increasingly evident in Irish family life. We must get down to the basic problems and particularly to the structure of the Family in Irish society.

Irish Family Law reflects the constitutional and social precepts upon which our society is founded. The Canon Law influenced the Common Law system which we have in this country, and this meant that the law adopted the Christian view of the family, based on marriage. It would seem that the 1937 Constitution entrenched this view in Article 41, which states: "The State pledges itself to guard with special care the institution of Marriage, on which the Family is founded, and to protect it against attack". Our judges have accepted this as delimiting the family to the marital sphere. The majority viewpoint in *McGee v. Attorney General* [1974] I.R. 284 clearly enunciated privacy as a personal right of married persons and Kenny J. in *McN. v. L.* in 1970 considered that a mother and her illegitimate child were not a family within the meaning of Article 41.

So we can see that our law clearly draws a distinction of status between those who are part of a formal family and those who are not. This distinction has the role of underlining the concepts of morality which our society accepted. Amongst Church and State, there is general agreement that we must protect the institution of Marriage and its effects on public morality as being fundamental to the fabric of society. What concerns us is the effect of this distinction both in law and in general social terms on those who fall outside the fold.

Historically, the attitude of the Common Law towards illegitimacy reflected the Canon Law approach just as it followed the general view of the Church on marriage. Fornication and adultery are sinful, therefore the product of those sins must be discriminated against. Children born out of wedlock had to suffer to deter adults from committing sin. The Common Law adopted this approach by forming the rule that no child can be legitimate unless it is either born or conceived in wedlock. This rule was actually worse than the Canon Law in that it would not allow a child whose parents married after its birth to be legitimate, and also in that it caused the issue of an annulled marriage to be rendered illegitimate retrospectively. It should be pointed out that our legislators caught up with the Church in the Legitimacy Act, 1931, when the doctrine of legitimation by subsequent marriage was accepted. The Attorney General in his recent discussion paper on Nullity proposes to accept the doctrine of the putative marriage by deeming issue of annulled marriages legitimate. (Curiously though, this proposal does not find concrete expression in the accompanying draft Bill!).

The Common Law tempers its harsh approach to illegitimacy by a strong presumption in favour of legitimacy. If intercourse took place at or near the time of conception, between husband and wife, despite the wife's adulterous relationship with another man, then it is difficult to rebut the presumption of legitimacy.

An interesting illustration of this point is the recent and almost Dickensian *Ampthill Peerage Case (1976) 2 All ER* which dated back to the nineteen-twenties and the well known rule in *Russell v. Russell.* As Lord Simon of Glaisdale said, "If ever there was a family, seemingly blessed by fortune, where the birth of a child was attended by an evil spirit bearing a baneful gift liable to frustrate all

the blessings, it was the Ampthill Russells. Its curse was litigation".

Clearly, we as lawyers must see legitimacy as a legal concept which gives recognition to the status of a couple's child. I think status is very important. If a child is illegitimate he is *filius nullius*, that is child of no-one and with no general rights of support.

The only statutory provisions which help to support the single parent family are those in the *Illegitimate Children (Affiliation Orders) Act. 1930*, and the *Social Welfare Acts* of recent years. From the lawyer's point of view the former would seem to be of more importance. The 1930 Act does not appear to have been brought in just for the benefit of the child, but rather to relieve the state of any civic responsibility it may have owed to the child. This is a concept dating from the Poor Law of Victorian times. The 1930 Act tries to make the father pay maintenance for his child through the mother. In fact, the Act used to be very restrictive and inaccessible. For example, there was a time limit of six months and only the mother could bring an action for an affiliation order.

A Bill introduced in the Seanad some years ago stirred the Minister for Justice into amending the law in his own Maintenance Act of 1976, section 28. Since May of last year there has been a much more humane approach with the placing of the illegitimate on the same plane as the legitimate, though there is still a petty-minded limit of three years in which to issue a summons. Surely the ordinary rules of evidence cover any possible risk here? I believe that one important development in the new Act is that both parents of an illegitimate child are obliged to maintain the child. It would appear from the wording of the Statute that a third party, or even the child himself could use this to apply to the Court. I think this is a very welcome development. With the more secure maintenance rights available, no doubt more and more mothers (and perhaps fathers) will keep their children.

If the maintenance position has improved, rights of succession have not. An illegitimate child has no rights of succession to property other than those under the Legitimacy Act 1931 which allows him to succeed to the estate of his mother if she dies intestate and without lawful issue. This of course, has no effect on any legacy left to the child but in an age where the freedom of the testator is rapidly decreasing it is not fair to so minimise *rights* to succession. The child could possibly use section 117 of the *Succession Act 1965* to gain proper provision for himself but this would only work out if the Court held that there was a moral duty owing by the testator. Interestingly, *the Rent Acts* cater for all children regardless of status in succession rights.

I feel that the law of succession practises an invidious discrimination against illegitimate children, and I shall argue later that this is susceptible to constitutional challenge in the courts.

Aside from the position of the child, there is the effect of the law on the natural parents. Gavan Duffy P. in *Re M. [1946] I.R.* took the view that the constitutional guarantee for the Family in Article 41 did not avail the mother of an illegitimate child, although he regarded the child "as having the same natural and imprescriptible rights under Article 42 as a child born in wedlock to religious and moral, intellectual, physical and social education". It seems absurd to me to refuse to the single mother and her child the same protection as is afforded to the ordinary family. What difference is there between the widow and her child and the unmarried mother and her child in social function, particularly, in view of the decline of the traditional role of the family and the increasing security provided by the Welfare State? The question of the status of the single parent family has an important practical effect in the area of adoption (Art. 41). The Constitution lays down that the Family has natural imprescriptible and inalienable rights and duties. If we are to accord such "natural" rights to the single mother and her child how can she lawfully consent to the adoption order which will take away her child? How can she transfer rights which could be regarded as inalienable, or non-transferable, under the Constitution? This argument was disposed of in the famous *The State (Nicolau) v. An Bord Uchtala (1966) I.R.* at p. 630 (Supreme Court).

In that case, the natural father of an illegitimate child tried to prevent his child being adopted, and when the Adoption Board refused to hear him he applied to the High Court for an order of certiorari to quash the adoption order but lost his case there and also in the Supreme Court. One of Nicolau's grounds for his application was that the *Adoption Act* was unconstitutional in that it did not respect the inalienable and imprescriptible rights and duties of the Family recognised by the Constitution. The Supreme Court held however, that Articles 41 and 42 of the Constitution do not cover either of the natural parents. The Court went on to say that the mother could only find rights in Article 40 and that that Article did not prevent or restrict or transfer any of those rights.

Whatever one thinks of the actual decision or of the position of the natural father, I think it can be said with respect to the Court that it was a very harsh interpretation for the status of the unmarried mother and her child. The Court reasoned that an illegitimate child "may be begotten by an act of rape, by a callous seduction, or by an act of casual commerce by a man with a woman". While this is so, there are other situations possible—for example, a nullity decree, as we have seen can produce illegitimacy; more commonly if people are living together in stable relationships although not married, are their rights to be crudely lumped in with those of the casual relationships the Supreme Court cited in its judgment?While the natural father's rights (perhaps rightly) should be small, how can we deny him at the very least a fair hearing or an interest in his child? The only statutory provision which seems to give him any recognition is s.II (3) of the *Guardianship of Infants Act 1964*, which allows him to apply for custody of his child.

Parental rights have produced some of the most tragic cases to come before our Courts in recent years, there has been a number of custody cases involving children where adoption orders have been challenged. Often, the welfare the child has been a side issue for the Court and parental rights have been clouded by obscure points of law. I believe the recent *Mc L. case* (June 1976) is a classic example of this. That was the case concerning the six-year old child whose adoption order was quashed by the Supreme Court as the natural mother was not fully informed of her position at the time of the consent to the adoption. In the end, the case was settled in the High Court. However, public opinion forced a change in Adoption Law and s. 5 of the new *1976 Adoption Act* provides that adoption orders shall not be invalidated if the best interests of the children would be put in jeopardy.

At the same time the Government recognised the possible conflict with the Natural Law theory in the Constitution on inalienable rights (which I have mentioned earlier) and have proposed changing the Constitution.

I think the law must change to cater for the needs of people and must get away from the dogmatic shibboleths enshrined in the Constitution. For this reason, I think Articles 41 and 42 must go.

I have now sketched for you the various problems produced by the concept of illegitimacy in our law but this paper would be very inadequate if the social dimension was not considered.

The legal discrimination gives strength and support to a much larger and more prejudiced social discrimination. The hypocrisy of Irish society has been well documented but I think unmarried mothers would form an excellent case study. It is worth noting that one of the more progressive bodies here is the Roman Catholic Hierarchy which came out very strongly against discrimination in August 1974. There is a great lack of sympathy for the unmarried mother, and it is no wonder that Irish women are going to England in growing numbers for abortions which have been legally available there since 1967. It is estimated that presently there are about 1,600 abortions of Irish women per year, compared to 577 in 1971. Such is the effect of the law's hostility to the single parent.

If the aim of present social and legal attitudes is to deter and discourage illegitimacy and promiscuity, then they have signally failed. In 1961, the percentage of illegitimate births as a percentage of all births was 1.6%. Today, the corresponding figure is 3.9%. In other words, the problem of the single parent family has more than doubled, despite our repressive attitudes. Our conclusion must be that the law has failed and that the nett result is unnecessary and un-Christian misery, not only for the parents, but also, for the innocent children—innocent I believe, by any criterion. About 70% of all illegitimate children are placed for adoption, this is a high figure by European standards where adoptive parents are frantically looking for Korean and Vietnamese children suitable for adoption. The other alternatives for an illegitimate child are to be placed in foster care, the care of Local Authorities or to be left with his mother.

The tide is obviously running in favour of adoption. The Minister for Justice, Mr. Cooney, said, during the passage of the Adoption Bill in 1974, that the good of the child was not normally served by leaving it with its mother, and that adoption was the best solution to the dilemma. While adoption is often the best solution, and may be preferred by the mother, there is no reason why it should always be so. The unmarried mother may be just as capable as a widow, or a widower, at looking after a child and she almost certainly has as much love for her child. Surely we should not only improve our Adoption law, as we have done, but should also end the existing discrimination against the illegitimate child. The law can, in turn,change social attitudes.

Earlier I criticized the Constitution and its interpretation by our Courts, in this area, which has heightened distinctions in the definition of the Family. While I think little will be done by the Judges to change this, there could be developments if the Courts looked at the Constitution from a child-centred position. The Supreme Court in *Nicolau* said the natural parents could look to Article 40, Section 3 for Constitutional protection, and presumably, so could the child. Article 40. 3. is the provision in our Constitution which protects the personal rights of the citizen, including such rights as have been implied by the Courts since Kenny J.'s judgment in the Ryan fluoridation case in (1965) I.R. at p. 312.

It is not impossible for the Supreme Court to use this Article as a weapon against discrimination. Likewise the Supreme Court could interpret Article 40, section I, which holds all citizens as equal before the law, in a stronger fashion than it has up to now. The Supreme Court could draw inspiration from the American experience in this area, as it has already done in areas like legal aid, juries and privacy. Since the mid-sixties the Federal Supreme Court has struck down several statutes which discriminated against the illegitimate child on the basis that they were contrary to the Constitution's Equal Protection Clause.

Perhaps the most instructive example is *Weber v. Aetna (1972) 406 U.S* where the deceased left four legitimate and two illegitimate children. The former only got compensation under Louisiana Workmen's Compensation laws. The Supreme Court declared the laws to be unconstitutional. The Court reasoned that the State's legitimate interest in protecting legitimate family relationships was not promoted by distinguishing legitimate from illegitimate children in a compensation scheme. The Court went on to state that "visiting condemnation on the head of an infant because of his parents' irresponsible liaisons beyond the bonds of marriage is illogical and unjust and contrary to the basic concept that legal burdens should bear some relationship to individual responsibility or wrongdoing".

An interesting contrast to the Nicolau Case is provided in *Stanley v. Illinois 405 U.S.* where on the death of their mother, illegitimate children were taken into care without any hearing being given to the natural father. The U.S. Supreme Court held that there was a violation of the due process of law clause of the Fourteenth Amendment since an unwed father, like other parents, was entitled to a hearing on his fitness before his children were taken from him, the advantage to the State in the convenience of presuming rather than proving an unwed father's unfitness being sufficient to justify the refusal of a hearing. The Court also based its reasoning on the equal protection caluse.

It may seem hard to imagine that the Irish High and Supreme Courts would follow the trend of the American cases. However, our Supreme Court has stated that the old rule of *stare decisis* is now gone and both Walsh J. in the McGee case (1974) I.R. 284 and O'Higgins C.J. in the Legal Aid Case *(State (Healy & Foran) v. D. J. Kennedy and ors. unrep. S.C. 22 July 1976)* have declared that constitutional interpretation is not static but can develop with changing social attitudes. I quote the Chief Justice: ".... rights given by the Constitution must be considered in accordance with concepts of Prudence, Justice and Charity which may gradually change or develop as society changes and develops, and which fall to be interpreted from time to time in accordance with prevailing ideas. The Preamble envisages a Constitution which can absorb or be adapted to such changes. In other words, the Constitution did not seek to impose for all time the ideas prevalent or accepted with regard to these virtues at the time of its enactment." I look forward to our Judges meeting the challenge in this area.

Despite the progress that judicial activities can make, in the final analysis the massive and comprehensive reforms needed can only be undertaken by the politicians—our legislators. I believe that a new deal for

illegitimate children should be based on the precedents set by reforms in New Zealand and the United States. Both these countries have Common Law systems like ours. *The Statute of Children, Act, 1969* in New Zealand removed the legal disabilities of children born out of wedlock. The relationship of *every* person in New Zealand to his parents is to be determined regardless of the parents' marital status. The American *Uniform Parentage Act* is a model draft to fill in the vacuum left by the Supreme Court decisions. It also provides that all children should be equal in status.

The child would receive full rights of succession and maintenance as would befit his status. The main problem that reforming legislation encounters is proof of paternity. This works in two ways. Firstly there is a non-contentious procedure where the father acknowledges the child as his own. Though this is as yet unknown to Irish law, it would be a simple reform to introduce. Where there is a dispute, then proof of paternity is more difficult. The haphazard rules presently used in affiliation proceedings would have to be updated to include medical evidence, though it would be foolish to regard it as any sort of conclusive proof. Finally I believe legal aid to be essential for the full working of these reforms.

Tinkering with the system is a hobby of Irish Governments. What we need is a radical new structure in Family Law including the problem of parentage and children's rights. A start is to be made with a referendum to change the constitutional position on Adoption. Let us use this opportunity in the Spring, when the decision is to be put to the people, to broaden the issue into a new Charter of Rights for all children which shall hold them, as human persons, equal before the law.

The Resolution "That the best thanks of the Society be given to the Auditor for his Address, and that it be published at the expense of the Incorporated Law Society" was proposed by the Chief Justice, the Hon. T. F. O'Higgins.

A call on the Government to provide more money for the improvement of courthouses throughout the country is essential. He said that District Justices were facing the difficulty of having to deal with family law cases–required to be held in private–in unsuitable courthouse accommodation.

He explained that the new Family Law Act required that cases be held "otherwise than in public", but that District Justices were still faced with inadequate courthouse facilities.

The Chief Justice added that he hoped the appropriate Minister and the Government realised that suitable accommodation was needed if these cases were to be heard in private.

The Chief Justice said that it was a fact of life that cases relating to marriage breakdown were becoming more and more a feature in the hearings before the Courts.

Referring to the address on Illegitimacy in Irish Law he said: "It is, I think, a good thing that in a society such as ours that thought-provoking subjects should be put forward for discussion so that all of us realise that these are community problems which must engage the attention of all".

He felt that little or no progress had been made in the treatment under the law of illegitimate children, in regard to succession.

This Resolution was duly seconded by Mr. James O'Reilly, B.C.L., LL.B., Lecturer in Law, University College, Dublin. Mr. O'Reilly said:-

The Auditor, Mr. O'Mara, is to be congratulated on his choice of topic. The injustices daily imposed by the law of illegitimacy cannot be glibly ignored anymore. A child never asks to be born. As the law now stands, we are all witnesses to a system that brands an innocent person as an outcast. Nothing less than the extirpation, root and branch, of the disabilities imposed by the status of illegitimacy, will do justice now. Our Constitution in Art. 40, s. 1. guarantees equality. While there are hopes of possible developments under this section, the recent Constitutional amendment put forward by the Irish Council for Civil Liberties would seem preferable. In their report on Children's Rights under the Constitution, they suggest adding the new section to Art. 41 which Senator Robinson mentioned as the proposed At. 41, s. 4, sub.-s. 2:

> "Equality of rights under the law shall not be denied to any child on the basis of status at birth or parentage."

Here, in a Constitutional directive, you have enshrined what many want to see. This proposed amendment would ensure real equality among children and the removal of the present status of illegitimacy.

At present, society is ambivalent towards the plight of this child. The maxim *Nolumus mutare leges Angliae* arose in the context of illegitimacy seven centuries ago, and it still reflects the basic approach of the law. We must not let fears about conventional morality or threats to the stability of the family, deflect society from the path of reform. We cannot let ourselves forget that a child never asks to be born. How can our legal system be so insensitive to the claims of basic justice now being put forward on behalf of illegitimate children? Fears and doubts pale into insignificance when presented with the sight of an innocent child.

To some,adoption is the solution. It is not. The percentage of illegitimate children being placed for adoption is decreasing. In 1969, over 90% of illegitimate children born in that year were adopted. By 1976, that figure has been reduced to almost 50% While many "single" mothers may have their children adopted, the presence of such facilities does not remove the need for reform nor does it solve the problem of illegitimacy.

Irish society would like to pride itself on its attitude to life. To most of our politicians abortion is anathema. Abortion, like illegitimacy, is an ugly word. What many do not want to realise is that in many cases the legal discrimination society places on this child and his mother are an impetus to seek an abortion abroad. The challenge facing Irish society now is to make it as open as possible to live. If our system is pro life, it must be pro all forms of life and not just "legitimate" life. If this is admitted, then the case for reform is made.

While the Courts may be able to achieve something through a jurisprudential development, here the primary responsibility lies with the politician. His obligation is patently clear, namely the removal of the status of illegitimacy from Irish law.

The Resolution "That the Solicitors' Apprentices' Debating Society of Ireland is worthy of the support of Solicitors' Apprentices, of the Council of the Incorporated Law Society of Ireland, and of the Solicitors' profession" was proposed by Senator Mary Robinson, President of CHERISH. In the course of her speech, Senator Robinson said.

Despite the firm and repeated commitment by the Government that it will introduce a constitutional amendment to regularise the law and practice relating to adoption there has been no indication of the precise nature of this amendment. Meanwhile, seven months have gone by and now we are into an election year. It is most important that the Government's intention be carried out, but also that the scope of the proposed amendment be broadened to ensure that it redresses the present imbalance in the Constitution and provides a clear statement of the rights of children and of their equality before the law.

Earlier this week the Irish Council for Civil Liberties made specific proposals and suggested a form of wording of any such amendment. The report emphasised four points:

Firstly, that the rights of parents should continue to be guaranteed but should no longer be defined as imprescriptible or inalienable. This would make it possible for legitimate children to be adopted in cases where their parents had abandoned them or seriously illtreated them – instead of spending their young lives in institutions or fosterage as many do at present.

Secondly, a new balance should be established between the rights of parents and children's rights. The 1937 Constitution is biased in favour of the rights of parents.

Thirdly, the protection of the rights of children should be recognised as a special responsibility of the State, which would involve independent legal representation for children where their interests require it.

Fourthly, discrimination between children based on parentage alone should be prohibited. The precise wording recommended to achieve this position would require an addition of a new subsection to Article 41 as follows:

"Equality of rights under the law shall not be denied to any child on the basis of status at birth or parentage."

That statement, inserted in the Constitution would ensure the abolition of the legal concept of illegitimacy, and would prevent a legal distinction being made between the constitutional rights and protection afforded to a family based on marriage and one not based on marriage.

I believe there is considerable and growing support in the community for such a reform and that public attitudes and prejudices would change even more quickly if the Government were prepared to give a lead. The law is not neutral on this point – it both reflects and influences public attitudes. For that reason it would be unrealistic to wait until there was overwhelming support for such a move – the moral responsibility for leadership must be accepted.

The constitutional and legal position is important but forms only part of the picture. Lawyers should also have a deep concern for the social dimension. The world through the eyes of a single mother is a difficult and some times hostile environment in which she suffers a cumulative series of disadvantages. Being a woman she can expect to fill the lower paid jobs and to be discriminated against in access to employment, promotion, training and pension rights. If she was employed before her child was born it may be difficult or impossible for her to return to her job. The absence of adequate nursery facilities, and in particular the lack of any state-subsidised nursery for a child under 10 months, is a great hardship. If her job involved working on Saturdays, such as in a shop, hotel or laundry, it could easily cost £5 to get a childminder for the day. She has to cope alone with problems of accommodation hire purchase agreements, etc. She may feel isolated and alone in coping with decisions affecting her child and in particular the child's relationship with its father. She may have to decide whether to bring affiliation proceedings, whether to encourage a relationship between child and father (who may be a married man) and worry about how to ensure the balanced emotional development of her child.

So far the Irish community has been slow to respond and to provide adequate supports and services in order to help the single mother cope with this cumulative series of problems.

Only one local housing authority – Cork City – has been prepared to recognise the single mother and child as a family unit which should receive favourable consideration in the housing list. The Health Boards acknowledge a general responsibility for giving advice and help but lack specialised personnel. There are no subsidised nurseries for children under 10 months and very few for pre-school children. The working single mother could expect to pay an average of £7-£8 a week on nursery fees. Alternatively, she and her child could try to learn to live on £14.30 a week, rising to £15.65 in April.

Clearly, the Health Boards should increase their involvement at two levels: firstly, by providing and subsidising nurseries that cater for very young children – with a higher ratio of qualified staff, and secondly, by developing daily child-minding and compiling a register to ensure proper standards and safeguards.

A conscious attempt should be made to provide an adequate advice service throughout the country, and not just in Dublin and the cities. It has been the experience of Cherish that about 25% of the girls who contact them each year have left their home in the country to seek help in Dublin and have an immediate problem of accomodation, job finding etc. Either there is no community service in their locality or they lack confidence in the service offered.

We have become increasingly aware of, and alarmed by, the high abortion figures for Irish women going over to England for that purpose. Yet we seem reluctant to take elementary steps to reduce that figure – by a comprehensive system of family planning advice and services, and by creating a caring supportive community environment for the single mother who has rejected that option and decided to have her child and to assume all the responsibilities of a single parent.

This Resolution was duly seconded by the President, Mr. Bruce St. John Blake, who said:

Before bringing this meeting to a close I am very glad to be afforded the opportunity of expressing certain personally held views which I am satisfied reflect the attitude of the Solicitors' Profession on the entire subject of Family Law in the Republic of Ireland and with particular reference to the question of illegitimacy.

It is both the right and the duty of lawyers to speak out loudly and clearly to the community to point out defects

in our laws. This is the right of any citizen, but it is in my view a duty that is incumbent upon the legal profession who are uniquely placed to judge the inadequacy of the law in any particular respect. Contrary to what appears to be a general misconception on the part of the public, lawyers as such do not make our laws. This is the function and the responsibility of the politicians. It is reasonable to expect that our laws should reflect the public need based on informed opinion and enlightened concepts of not only the Common Good, but also of Justice in the broadest possible sense of that term. Politicians are unfortunately slow to take the initiative in the field of law which might involve a conflict with ingrained traditions, attitudes and beliefs based on dogmatic ideologies which have ceased to have any reality in terms of present day living. It is for these reasons that I believe it to be the unquestioned right and duty of lawyers to point out inadequacies and defects in our laws in order that the public may realise that changes in the law are necessary to promote justice and to ensure that all citizens are treated equally before the law.

The Auditor in his paper has highlighted a glaring inadequacy in our laws concerned with the status of so called illegitimate children. Let us be clear about one thing, namely, that there are no illegitimate children, there are only illegitimate parents.

Whether a child is born within or without of wedlock that child is still the child of its natural parents and nothing any law can say or do can alter that fact and recognition of the rights of that child should be enshrined in our laws on the same basis as those rights are enshrined and recognised in our laws for children who are born within wedlock and thus regarded as legitimate. Such an attitude cannot be reasonably regarded as condoning the creation of a family type of situation outside the institution of marriage, but that institution should not require that the rights of illegitimate children be less than those of legitimate children for the purpose of conferring a legitimate child with additional legal status.

Legislators who are politicians are traditionally slow to bring our laws into line with the requirements of a changing Society and it is thus of vital importance that the ultimate guardian of the Constitution and the guarantor and the defender of the rights of the citizens, namely the Supreme Court should ensure that the rights of the citizens, in the absence of adequate laws, should be upheld by means of enlightened constitutional interpretation to accord with the requirements of changing social attitudes.

I would like to commend most highly the Auditor not only for the excellence of his paper, but for having brought this subject of illegitimacy out into the open for public debate by such a distinguished panel of speakers who have themselves made a significant contribution to this debate.

The Incorporated Law Society of Ireland is most conscious of its role as the watchdog of the rights of the citizens of this State and in particular the less privileged sections of the community and in this regard I would like to publicly take the opportunity of paying tribute to the work of the Free Legal Advice Centres, staffed by law students and supported by practising members of the legal profession on an entirely voluntary and gratuitous basis in the absence of any system of civil legal aid in this country.

The meeting then terminated.

College Historical Society:

MORALITY LEGISLATION IS NOT THE CHURCH'S SPHERE – SENATOR

Senator Mary Robinson said that for too long in this country the whole area of sexual morality had been regarded as the proper sphere of Church leaders rather than of politicians. Too many politicians had been prepared to allow the bishops to make the political judgment of the relationships between law and morality.

Senator Robinson was speaking to the motion "That the State shall not legislate for private morality" at a meeting of the College Historical Society in T.C.D.

She said that facing politicians with their full responsibility meant opening up a key debate in this fundamental area. It meant freeing politicians from any fear of Church influence and preventing them from abdicating their own role. The essence of morality was the assumption of personal responsibility.

When people began to fear the courts rather than treat them as their servants, a monster was created. People may fear the courts because only those with money or with some standing in the community could safely and comfortably approach them; or because the courts were more and more identified with punishing sinners. If a court penalised a man for being drunk and disorderly it was supposed to be protecting other men, women and children; it was not supposed to be punishing a sinner.

The idea that Courts were punishing instruments was at the root of much of our troubles. "Once you admit that Courts can punish sin, or wrongdoing, and thus shift the emphasis from protection to punishment you leave the way open for quite sterile debates, like, the debate about legislating for private morality.

Legislation should protect the person

"We have to clear away the ambiguity of what the courts are supposed to be doing and what they are actually doing, in order to forstall such sterile debates. You should ask about every piece of legislation, does it protect the person, does it protect the people in general? To decide such questions we employ lawyers and politicians. And we pay them well. The first question of all of them must answer is, does this or that law or court protect or threaten.

"Too often, however, they have not answered the question at all and have asked instead, will this law or this Court help to keep us in power? There begins the corruption of a state.

"It was through the political process that they had to consider decisions about the extent to which the law should regulate the availability of contraceptives; about whether the problem of marriage breakdown would be helped by providing the remedy of divorce; about the operation of censorship; about whether they should promote integrated schooling in a positive way; and about the response of the evidence of high abortion figures for Irish girls in Britain.

Politicians the arbiters of morality

"Politicians could not dodge their responsibility for assessing and promoting the common good on this strife-torn island. Morality was not confined to areas of sexual morality – it permeated the whole political process and should form a more conscious part in the general approach of politicians to the whole range of political options and decisions.

"So what are the standards and values which should help us to work out proper relationship between law and morality, and who should take the responsibility for doing it?" she asked. "The second question is easier to answer than the first: it is not the responsibility of Church leaders, nor of philosophers, nor of lawyers, but of politicians.

"The assessment must be a political one and the basic criteria on which it is formed will depend on a political judgement of what constitutes the common good. This may depress those who lack faith in politicians and in the political process, but it is a vital factor which has extraordinary implications".

Senator Robinson said that the relationship between law and morality was a complex and difficult one, and this difficulty had been compounded by problems of language and by lack of definition of terms. Discussion in Ireland had been influenced by the wording of the Constitution, Article 40 of which guaranteed liberty to exercise a number of basic rights, such as freedom of expression, freedom of assembly, and freedom of association, "subject to public order and morality".

This qualification had led to a distinction being drawn between public morality which was ambiguous and ultimately unhelpful. There were not two moralities – one identifiable as public and the other as private – but rather two spheres of actions which may be performed either in public or in private, she said.

A separate and further distinction had to be made between those actions which should not be regulated and controlled by the law. There were a number of examples of immoral actions which we did not consider suitable for regulation by the criminal law, such as a relationship of adultery, telling lies (except under formal oath) or excessive drinking).

Similarly, there may be very private actions which they considered should be brought under legal control, such as an attempt by a woman to procure her own miscarriage.

Court's duty essentially to protect the individual

The Rev. Desmond Wilson, from Ballymurphy, Belfast, said the Courts and the laws were set up first and foremost to protect the citizen as an individual and as a member of society. In many countries the laws and the Courts were used in such a way that they seemed not a protection at all but a threat, another means of keeping power, a means of controlling the population.

Fr. Wilson said the essential quality of law was that it protected. The essential relationship between the citizen and the Courts was one of comfort. "Change that and you have begun to sow the seeds of a bitter revolution. That is what we have seen in Northern Ireland. We have changed the Court from instruments of protection to instruments of threat. We did the same with the church and the politicians".

Fr. Wilson said that those who were suggesting that punishment was not a relevant concept in the laws or courts were not just an unruly crowd of anarchists. They were people who believed that the evolution of our thought about how people behaved was moving us in the direction of rethinking and perhaps eliminating the idea of punishment from our laws and Courts; to any citizens this would come not only as a surprise but a shock. The strange thing was that more were shocked at the thought of removing punishment than by the possibility of lessening it. That itself says much about the kind of society we have created.

"It would be a great pity if discussion about the meaning of courts and about the meaning of sin, or of private morality and the common good were to be narrowed into discussion about contraception and its related topics. This is to narrow the field far too much. That problem is a very real one."

Private morality should not be legislated for. "We don't need it", Fr. Wilson said.

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Father and aunts – Separation of husband and wife – Wife caring for four children in Ireland – Husband living in England – Death of wife – Re-marriage of husband in England – Children in care of three aunts in Ireland – Father seeking custody of two children – Aunts appointed guardians jointly with father – Father refused custody – (1975 No. 300 Sp. – Murnaghan J. – 20/1/77).
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LANDLORD & TENANT

Time Limit

Extension – New tenancy – Business premises – Premises held under sub-lease terminating in September on expiration of landlord's lease – Tenant's solicitor aware in April of time of expiration of landlord's lease – Statutory requirement that tenant's notice of intention to claim new tenancy be served on landlord before June – Tenant failing to serve notice because of mistaken view of law by legal advisers – Period for service extended – (125/1976 – Supreme Court – 21/1/77).
H. Wigoder & Co. v. Moran.

NEGLIGENCE

Occupier

Highway – Defendant occupier's lorries breaking road surface opposite entrance to defendant's business premises – Fall of motor cyclist opposite entrance – Cyclist killed by following traffic – Nuisance – Foreseeability – Defendant held liable – (97/104-1976 – Supreme Court – 21/1/77).
Wade v. Connolly.

NUISANCE

Occupier

Highway – Defendant occupier's lorries breaking road surface opposite entrance to defendant's business premises – Fall of motor cyclist opposite entrance – Cyclist killed by following traffic – Defendant held liable – (97/104 – 1976 – Supreme Court – 21/1/77).

PRACTICE

Appeal

Discretionary order – Appellate court not bound by exercise of discretion by trial judge – (125/1976 – Supreme Court – 21/1/77).
H. Wigoder & Co. v. Moran.

Time Limit

Extension – Claim to new tenancy of business premises – (See Landlord & Tenant).

RATES

Assessment

Occupier – Liability – Defendants not in occupation of transit sheds in port of Dublin – Defendants not liable for municipal rates levied by plaintiffs – (124/1969 – Supreme Court – 16/2/77).
Corporation of Dublin v. Dublin Port & Docks Board.

WILL

Construction

Misdescription – Bequest to "my nephew Denis Bennett" – No nephew of that name – Testator leaving brother of that name – Extrinsic evidence – Intention of testator to benefit nephew William Bennett – William entitled under bequest – Succession Act, 1965, s. 90 – (1974 No. 109 Sp. – Parke J. – 24/1/77).
Bennett v. Bennett.

SOCIETY OF YOUNG SOLICITORS

5. GUIDELINES – FAMILY LAW

MAINTENANCE PROCEEDINGS

STATUTES

Married Women (Maintenance in Case of Desertion) Act 1886.

Public Assistance Act 1939.

Maintenance Orders Act 1974.

Family Law (Maintenance of Spouses and Children) Act 1976.

1. Who is entitled to Maintenance?

(a) A spouse is entitled to be maintained financially by his or her marriage partner. The applicant spouse need not be deserted or female or chaste to succeed – mere failure to maintain on the part of the other spouse is sufficient grounds for the application.

(b) A Dependant child of the marriage is also entitled to maintenance. Dependant child includes an adopted child and any child in relation to whom a spouse is *in loco parentis* where the spouse against whom the order is sought has treated the child as a member of the family. The age limit of 16 may be raised to 21 where the child is receiving full time education or instruction and indefinitely where the child is so disabled as to be unable to maintain himself. The child of a deserting spouse may also be entitled.

2. Form of Application

Application is to the District Court on a new special form of Summons (Form 1 Rule 7) which can be obtained from the Local Court Office. Complete the form in triplicate and present to the Court Office for signature and the insertion of a date. Keep a copy, have one part served according to the usual District Court regulations and when served enter the original for hearing in the District Court Office. All maintenance proceedings are heard in camera.

3. Who can Apply?

Normally only the spouse unless it can be shown to the Court that the spouse is not in a position to apply when any person can apply for maintenance on behalf of a child.

4. How much money can be obtained?

The maximum award in the District Court is £50 per week for a spouse and £15 per week per child. Unlimited amounts can be claimed in the High Court. In assessing the amount heed is taken not only of the income but also the earning capacity, property and financial resources of the spouses (also see Porter v. Porter 1969 3 AER 640) where it was ruled that the standard of living of an innocent wife should be the same as before separation).

5. Who will not get a Maintenance Order?

(a) A deserting spouse is not entitled on his own behalf. Desertion includes conduct which causes the other spouse to leave.

(b) An adulterous spouse may not in the discretion of the Court be entitled in his own behalf.

(c) Since income and earning capacity is the criterion under the Act, where the Defendant spouse has neither, the granting of an order would not appear possible.

Note: the dole is income and where an order is granted against a spouse on the dole, the money will be paid directly by the Labour Exchange to the applicant spouse

6. The Order

Once the case is heard and the order granted the kindly District Court Clerk lifts the burden from the Solicitors shoulders. He notifies the Defendant spouse of the order and provided the Justice has directed that maintenance be paid through the clerk, he can request that payments be made to him. He then forwards the payments to the applicant spouse.

7. Costs

There is no stamp on a maintenance summons. Legal costs are in the discretion of the Court but are normally awarded to the successful applicant spouse and can be included as an addition to the first instalments on the order to be reimbursed by the District Court Clerk to the Solicitor.

8. If the spouse does not pay?

If a spouse defaults on a maintenance order, the applicant spouse or the District Court Clerk may take enforcement proceedings. Under the 1976 Act an application for attachment of earnings of the spouse may be directed against his employer who must then deduct the maintenance from the spouse's earnings and pay this money to the applicant. The amount so attached cannot be so great as to leave the earning spouse without sufficient to subsist on i.e. the "Protected Earnings Rate". The earning spouse must give details of his circumstances of employment in writing to the Court.

9. If the spouse is in Britain?

Under the Maintenance Orders Act 1974 an extra copy of the Maintenance Summons when issued is sent by the District Court Clerk to the Master of the High Court with a full statement of the case and these are then passed to the British Authorities for service on the spouse. The proceedings may then be heard here and an order for maintenance, if granted, can be enforced in Britain.

10. Appeals

An appeal may be taken in respect of any Maintenance Order granted by the District Court to the Circuit Court and thence to the High Court in the normal way. On lodgment of the Notice of Appeal liability for payment of maintenance is suspended but if the higher Court grants the maintenance, arrears of payment will usually be granted back-dated to the lower Court Order.

11. Maintenance Agreements

The maintenance clause to the normal separation Agreement has been discussed in the December Gazette. Where a Maintenance Agreement in writing is made after the 1976 Act, application may be made to the High Court or Circuit Court to have this made a rule of Court. Application is by Notice of Motion grounded on an Affidavit setting out the facts of the case and exhibiting the Agreement. If the Court thinks the Agreement is reasonable it will deem it to be a Maintenance Order. This gives it the advantage of enforceability—where the Maintenance Agreement has an increase clause based on the cost of living you now have a Maintenance Order enforceable under the 1976 Act with automatic increases. There is no other provision in the 1976 Act for automatic increase in Maintenance Orders—application for increase is otherwise only possible by issuing a new Maintenance Summons.

12. Miscellaneous details to bear in mind

(a) A spouse cannot contract out of his liability to pay maintenance.

(b) Maintenance Orders can be discharged, varied or terminated on application to the Court – they will automatically be discharged where children become old enough to be no longer eligible.

(c) Where an application under the 1886 Act fails, the matter is *res judicata* and cannot be redecided in the light of the 1976 Act – see Downey v. Downey – (1943) Ir., Jur. Rep. 72. per Davitt J.

(d) Where all else fails consider having the husband prosecuted under the Public Assistance Act 1939 as a vagrant for failure to maintain his wife and children.

(e) If you are dealing with any maintenance proceedings it is very advisable to obtain a copy of the Maintenance of Spouses & Children Act 1976 Rules 1976 (Statutory Instrument No. 96 of 76) which details all of the procedures and the forms necessary under the Act.

SPRING SEMINAR 1977

The Society's Spring Seminar will be held at the Mount Brandon Hotel, Tralee on 23rd and 24th April 1977. The Committee have chosen Employment and Labour Law and Practice as the principal topic. It appeared to us that Solicitors are getting an increasing number of queries both from employers and employees about their respective rights and obligations and that in view of the number of recent and proposed statutes it would be useful to hear about the workings of 'Industrial Tribunals'. Solicitors do not often appear before these but it can happen. Clients will also expect their solicitor to be able to inform them of the form which the hearing before such Tribunals will take even if they are not seeking representation. The important changes introduced by the 1976 Planning Act seem to merit a lecture. There will be three lectures pertaining to Employment and Labour Law and one on the 1976 Planning Act. As arranged these are:-

(1) James O'Driscoll (Senior Counsel)
The effect of Recent Case and Statute Law on the Common Law Employment/Employee relationship.

(2) Ercus Stewart (Barrister-at-law)
The Law and Practice of the Labour Court.

(3) John Doherty (Divisional Director, F.U.E.)
The Law and Practice of the Labour Court, Redundancy Appeals Tribunal and Rights Commissioner.

(4) Richard Woulfe (Solicitor, Limerick Corporation)
The Local Government (Planning and Development) Act 1976.

Detailed programmes and Application Forms have been circulated to all members of the Law Society. There will be reserved carriages in trains Dublin/Tralee/Dublin on Friday 22nd and Sunday 24th April.

DO YOU KNOW THAT there is no obligation on the owner of a motor cycle to insure against damage sustained by a pillion passenger whilst travelling on the motor cycle. In fact, the Road Traffic (Compulsory Insurance) Regulations 1962 (S.I. No. 14 of 1962) includes the "Pillion passenger" as an "excepted person" for the purposes of Sections 56 and 65 of the Road Traffic Act, 1961.

Consequently, if a pillion passenger is injured due to the negligent driving of the owner of the motor cycle, he may never be compensated for his injuries if the owner of the motor cycle is a "bad mark". The Motor Insurance Bureau of Ireland will not pay compensation on foot of the Judgement obtaining against the motor cycle owner, as the motor cycle owner has no ability to cover a pillion passenger by an approved Policy of Insurance.

Furthermore, even if a motor cycle owner did wish to take out cover for his pillion passenger, he would find no insurance Company prepared to take on the risk at any price.

THE HIGH COURT – PROBATE

The overall size of all grants issuing from the PROBATE Office is being altered to the E.E.C. size, A. 4. (Approximately 8¼" x 11¾").

Accordingly, Engrossments of Wills lodged in the Probate Office on and from the 1st April 1977 must not exceed this size and must include within the overall measurement a margin of 1½" on the left-hand side of the Engrossment.

P. Waldron, Probate Officer.

COUNCIL OF THE SOCIETY

LAND REGISTRY

Report of meeting held in the Department of Justice on 27 January 1977

1. The meeting was the fourth in a series of meetings being held periodically between the Council of the Incorporated Law Society and the Department of Justice to discuss Land Registry matters.

2. **Present**

Representing the Incorporated Law Society: Mr. Ivers (Director General), Mr. Buckley, Mr. Lanigan, Mr. Moore, Mr. McEvoy, Mr. Noonan, Mr. O'Donnell. *Representing the Department of Justice:* Mr. Donnelly, Mr. Griffith (Registrar of Titles), Mr. Early, Mr. McMahon.

3. Mr. Donnelly welcomed the Law Society representatives and Mr. Ivers said that they appreciated the opportunity to air their views.

4. In the course of a wide-ranging discussion the following were the principal matters discussed:-

(a) the overall position about delays in the Land Registry, particularly insofar as certain categories of work were concerned;
(b) a deterioration in the position about priority searches;
(c) the difficulties being caused by Folios not being available for inspection because they were "out" e.g. with a dealing – the difficulties being particularly pronounced where "omnibus" folios (i.e. where a number of holdings was registered on the one folio) were concerned;
(d) the necessity for having Land Certificates at all;
(e) the map reconstruction programme;
(f) difficulties in connection with Maps required in sub-division cases;
(g) the position regarding availability of Ordnance Survey maps;
(h) delays in First Registration cases;
(i) some implications of the Landlord and Tenant Bill, 1977;
(j) difficulties caused for solicitors by the Registrar's requirements under the Family Home Protection Act, 1976; and
(k) complaints about the Registry of Deeds.

5. **The overall position about delays**

The Law Society representatives felt that the position about delays, particularly where First Registrations, Transfers of part and copy Maps were concerned, were at an unacceptably high level. Mr. Donnelly said that the difficulty was that, while the intake of work in the Land Registry was increasing significantly, no additional staff could be recruited to handle the increased work-load because of a general service-wide embargo on the creation of new posts.

Mr. Moore asked if statistical information about intake of work, delays, etc. could be made available to the Law Society. Mr. Donnelly said that there would be no difficulty about this. He suggested that, perhaps, Mr. Ivers would specify the Law Society's requirements in the matter.

6. **A deterioration in the position about priority searches**

Mr. Buckley mentioned that, in his experience, the position about Priority Searches had been generally satisfactory until recently when he had noticed a marked lengthening in the time taken to complete these searches.

Mr. Griffith said that he was not aware of any change in the position but he promised to look into the matter.

7. **The difficulties being caused by folios not being available for inspection**

The difficulties were particularly pronounced where omnibus Folios were concerned.

Mr. Griffith said that some of the Folios were constantly in use in different areas of the Registry and, accordingly, might not be readily available for inspection.

Various suggestions as to how to solve the problem were discussed, including the possibility of having duplicate Folios maintained in a certain fixed location in the Registry.

It was agreed that the Registrar would consider the matter further.

8. **The necessity for having Land Certificates at all**

Mr. Moore, in particular, considered that Land Certificates were much more of a liability (e.g. through danger of loss) than an asset in the process of Registration.

It was agreed that the Registrar would consider whether, or to what extent, the use of Land Certificates might be reduced. (The Registrar pointed out that amending legislation would be involved if the Land Certificates were to be abolished altogether).

9. **The Map Reconstruction programme**

Mr. Lanigan drew attention to the estimate given at the last meeting (on 5 February 1976) that the pilot scheme for Co. Carlow would be completed before the end of 1976.

Mr. Griffith said that the completion of the pilot scheme had taken longer than anticipated because of unexpected snags which had arisen. The present target date for completion was April. It was then hoped to start on the reconstruction of the Dublin maps.

10. **Difficulties in connection with Maps required in Sub-division cases**

These difficulties have arisen as a consequence of the Registrar's requirement that applications should be accompanied by plans drawn on the current largest scale Ordnance Survey maps (in accordance with the Land Registration Rules 1972). This requirement was discussed at the last meeting when it was agreed that it would operate from 1st September 1976.

Mr. McEvoy had particular difficulties related to maps prepared prior to 1st September which now had to be redrawn on the 25" scale.

Mr. Griffith said that solicitors' difficulties in Sub-division cases should be eased because of the Land Commission having recently agreed that where an application for consent to sub-division was made to them they would not require the production of a Land Registry copy Map of the holding if the part transferred was a small area (under three acres) and shown on an Ordnance Survey sheet. The Land Commission and Land Registry requirements would now be identical in these cases.

11. The position regarding availability of Ordnance Survey Maps

While there was some suggestion of inconvenience being caused by delays in getting O.S. maps Mr. Ivers said that this was not a major subject of complaint.

Mr. Donnelly suggested that a further meeting with the Ordnance Survey Office could be arranged later if Mr. Ivers thought this necessary.

12. Delays in First Registration cases

Generally, this was regarded as one of the major problem areas where delays were concerned.

Mr. Buckley said that while he recognised that voluntary applications for First Registration did not normally merit equal priority with compulsory First Registration cases there were nevertheless some instances (such as where part of a building estate was already registered and an application for the registration of the remaining part had been submitted) which, he felt, should get priority.

Mr O'Donnell suggested that where counsel's opinion was available to the effect that title was good, this should be accepted for registration purposes.

Mr. Griffith promised to look into the matter. He said that, in general, the Land Registry gave priority to any House Purchase cases. The Rules Committee had agreed to make an amendment to the Land Registration Rules (subject to the concurrence of the Minister) extending from £20,000 to £25,000 the value of the property where a solicitor's certificate may be accepted as evidence of title.

Mr. Donnelly said that at the last meeting he had mentioned that the Study Group was hoping to report on the First Registration area soon. The Study Group had recently reported and had recommended a change in the method of dealing with applications for First Registration, which would involve initial processing of these cases by the dealings groups before they were referred to the Examiners. It was hoped that by relieving the Examiners of the more routine aspects of examination of title the time of the Examiners would be used more productively and the delays in dealing with first registrations would be reduced.

13. Some implications of the Landlord and Tenant Bill, 1977

Mr. Moore outlined some points which he wished to have considered in the proposed legislation. At Mr. Donnelly's suggestion, he agreed to write to the Department on the matter.

14. Difficulties caused for solicitors by the Registrar's requirements under the Family Home Protection Act

Mr. O'Donnell outlined these difficulties which were related to the Registrar's requirement that a solicitor's certificate should be lodged with applications affected by the Act.

Mr. Moore said that this arrangement had been agreed with the Registrar subject to review when there would be some experience of its practical operation.

15. Complaints about the Registry of Deeds

It was agreed that a situation which had arisen some months ago about the service being provided for searchers had been remedied satisfactorily.

Mr. Buckley said that the complaints had now moved to the comparison area where he understood there was an unfilled vacancy.

Mr. Donnelly said the vacancy had now been filled.

16. Miscellaneous suggestions

(i) Mr. Buckley and Mr. O'Donnell suggested that it would be much more convenient for solicitors if they could requisition a copy of the new folio when they were lodging the application (Form 17) for registration. Mr. Griffith promised to consider this.

(ii) Mr. Lanigan suggested that the location of the certificate placed on copy documents might be examined and standardised as far as possible so as to facilitate further office copying. Mr. Griffith promised to consider this also.

17. Summary of matters agreed and/or requiring attention

(a) The position about delays in priority searches would be looked into by the Registrar.

(b) The possibilities of making folios (particularly omnibus folios) more readily available for inspection would be explored by the Registrar.

(c) The necessity for Land Certificates at all or a possible reduction in their use would be considered by the Registrar.

(d) The position as to whether there were unacceptable delays in supplying Ordnance maps would be looked into by the Director General.

(e) Priorities, certification and delays generally in first registration cases would be examined by the Registrar.

(f) Mr. Moore would communicate with the Department about the Landlord and Tenant Bill, 1977.

(g) The Registrar would review his requirements under the Family Home Protection Act,

(h) The Director General would communicate (to the Registrar of the Department) his requirements regarding statistical information.

(i) The Registrar would consider a suggestion about the lodgment of applications for new copy folios with the applications for registration, and

(j) The Registrar would consider standardising the location of certificates on copy documents so as to facilitate further copying.

LAUNCHING OF BOOK ON IRISH FAMILY LAW

Mr. W. D. McEvoy, Chairman of the Public Relations Committee, presided at the official launching of Mr. Alan Shatter's book on Family Law in the Republic of Ireland, in the Library of Solicitors' Buildings, on Monday, 14th March, at 4.30 p.m. He said it was a privilege and a pleasure on behalf of the Society to welcome all present, and emphasised the great value of the new publication.

The President of the High Court, Mr. Justice Finlay, thanked the Society for giving him the opportunity for the first time to launch a textbook on Irish Law and stressed the following reasons:-

(1) It was precisely a textbook on Irish Law – an unusual event, as, unless it is subsidised, it does not pay an Irish lawyer, no matter how well qualified, to write a book on Irish Law.

(2) He had known personally the excellent work performed by Mr. Shatter, whether as Chairman of FLAC, or as a solicitor, who had vast practical experience in Family Law. The scholarship and industry of the author were manifest.

(3) The work itself was extremely good, and was well designed for practical use by Irish lawyers.

(4) It was a specific book on Family Law. He thought that in 20 years the law on this topic would be judged not so much as a result of jurisprudence, but rather on the basis on which we personally applied Family Law.

The President, **Mr. Bruce St. John Blake**, then said:-

As President of the Incorporated Law Society of Ireland it is my particular pleasure to welcome you all here as guests of the Society on the occasion of the publication of the book on Family Law in the Republic of Ireland by our colleague and brother solicitor, Alan Joseph Shatter.

I am particularly glad to be able to record that a member of the solicitors' profession has made such a significant contribution to this most important topic of Family Law which is now engaging the attention of so many persons and organisations and in which the legal profession has such an important part to play.

The Incorporated Law Society of Ireland is very glad indeed to be associated with the publication of this book which we have no doubt will have a much wider market than amongst the legal profession. The Society from limited resources is endeavouring to encourage writers in the legal and allied social fields but, such as they are, the limited resources will be made available for much worthwhile projects. In this way, the solicitors' profession is glad to have an opportunity of being involved in a direct and concrete fashion in assisting the community to better understand the human and social problems that the family in our society experiences in connection with the law.

The author Alan Shatter has had a distinguished academic career and he has left a particular mark on the F.LA.C. movement during his term as Chairman of that most worthy organisation.

From the point of view of the legal profession I am glad to welcome this book on Family Law in the Republic of Ireland because it will provide an invaluable text book not only for practitioners but for the specific aspect of the Society's new educational programme devoted to the topic of Family Law. The Society is determined that emerging solicitors will have a solid grasp of the possibilities and pitfalls in this area of Family Law.

I would here like to also take the opportunity of further indicating the Society's forward thinking in this field, namely the publication of a leaflet entitled "If a Family breaks up" which will be available for distribution later this week.

In the legal profession we are particularly conscious that Family Law in this country is an area of rapid expansion. As the situation stands at present I do not believe that any of us can yet quite visualise how far this expansion will go and how it will be serviced. In this regard it is hoped that the Pringle Committee on Civil Legal Aid will recommend and that the Government will accept that Legal Aid be made available in respect of all aspects of Family Law.

It is of the utmost importance that Court facilities and support staff should expand to meet the new demands that will be placed upon the administration of justice in the field of Family Law simultaneous with their rapid development. Unfortunately, the facilities that are at present available have fallen very far short of meeting the existing demand, but in this regard I am glad to be able to record the Society's welcome for the announcement by the Department of Justice of the proposed provision and expansion of facilities for Family Law Courts in the immediate future.

I would finally again like to congratulate Mr. Shatter for the contribution he has made both to the legal profession, the study of law and the community in general by the publication of his book which I strongly commend to all organisations represented here to day and who have honoured the Society with their presence and to whom once again I say you are all most welcome and we in the legal profession look forward to working together with you in the service of the community in this all important human area of Family Law.

The author, Mr. Alan Shatter, then thanked the speakers for their comments, and the Society for arranging the launching ceremony. *Family Law in the Republic of Ireland,* published by Wolfhound Press, is available hardback at £12.10, and paperback at £7.98, V.A.T. inclusive.

INCORPORATED LAW SOCIETY OF IRELAND

INSURANCE COMMITTEE

Indemnity Insurance For Law Searchers

At a recent meeting, it was agreed that members be advised that –

(i) Law search firms should be insured to the same amount that the solicitor concerned is, and

(ii) Solicitors should inspect the insurance receipt of the firm of law searchers each year.

THE PRESIDENT'S DIARY OF ENGAGEMENTS

18/2/1977 – Attended reception at House of Lords, Bank of Ireland.

25/2/1977 – Attended Annual Dinner Dance of Limerick Bar Association at Dunraven Arms Hotel, Adare.

26/2/1977 – At the invitation of the President and Council of Dublin Solicitors' Bar Association attended the Annual Dinner Dance of the Association at the Prince Regent Suite, Leopardstown Racecourse.

2/3/1977 – On the occasion of the Annual Conference of the Association of Trustee Savings Banks in Ireland attended Dinner at Jury's Hotel, Dublin.

8/3/1977 – Attended meeting of Meath Bar Association, Navan.

10/3/1977 – Attended meeting of Midland Solicitors Association at Shamrock Lodge Hotel, Athlone.

11/3/1977 – Spoke at Inaugural meeting of Law Students' Debating Society King's Inns, Dublin to paper by Julian Deale, Auditor, on "Legal Aid – The need for a comprehensive system" in the company of Declan Costello, Attorney General and Maureen De Burca.

14/3/1977 – Attended and spoke at launching of Alan Shatter's new book on "Family Law in the Republic of Ireland", in the company of the Honourable Mr. Justice Thomas A. Finlay, President of the High Court at Solicitors' Buildings, Four Courts, Dublin 7.

15/3/1977 – Attended meeting of Kilkenny Bar Association.

SUMMER MEETING

6–8 May, 1977

WHITE'S HOTEL,
WEXFORD

Programme and Booking Forms with this Gazette.

SOCIETY MOVES TO BLACKHALL PLACE

As of Wednesday, 13th April, 1977, the Offices of the Incorporated Law Society of Ireland will be located at Solicitors' Buildings, Blackhall Place, Dublin 7. Tel. (01) 784533.

DUBLIN SOLICITORS' BAR ASSOCIATION

"THE MOTOR INSURANCE CLAIM"

As already advertised, the Association broke new ground when its Activities Sub-Committee presented a meeting on the subject of "The Motor Insurance Claim", in the Library of the Incorporated Law Society on the 19th January.

Mr. Liam Collins, of The Insurance Corporation of Ireland, opened the proceedings with a very erudite, informative and amusing Paper on the Motor Insurance Claim, as seen from behind the Insurance Company desk.

Among a number of interesting matters, Mr. Collins mentioned that the current estimates before the Motor Insurers' Bureau, in respect of claims not covered by proper insurance, amount to something in the region of £2,000,000—unfortunately, the funding of this bill must inevitably fall upon the law-abiding majority of motorists, through increased insurance premiums.

Mr. Collins also ventilated the perennial questions of the lack of vigilance in detecting uninsured motorists and of the inadequacies of Court fines imposed for failure to insure and tax cars—as he pointed out, the fine imposed by District Courts in this respect is usually considerably less than the cost of insurance and road tax and it is arguably a sound economic proposition for motorists to decline to insure and tax their cars and risk periodic prosecution.

Referring to another matter calculated to give rise to difficulties, Mr. Collins remarked that insurance companies did their best to adopt a flexible attitude towards the question of car hire, but they were not, at the same time, prepared to lay themselves open to abuse in this respect. In the case of a vehicle so damaged as to require a fairly short period for repair, insurance companies would normally agree to pay the cost of car hire for a replacement vehicle for a "reasonable period" in relation to the anticipated length of repair; if an insured's car is a complete write off, then an insurance company might be expected to agree to car hire for a period of up to say, two weeks, to enable all arrangements being made to secure a replacement vehicle. Despite Mr. Collins' remarks on this subject, members of the profession may have found, from time to time, that it is not always as easy as this!

Another of Mr. Collins' remarks calculated to raise eyebrows, was that the Insurance Companies in general found it more profitable to admit liability in cases where their investigations indicated their clients' culpability and, rather than engage in tactics, the insurers should move for an expeditious settlement, thus defeating inflation, cutting overheads, and hopefully, leaving all parties happy! While this may be true of certain companies, at least one member of the audience, in the discussion which followed, remarked to Mr. Collins that the profession's experience did not necessarily support this statement! Among other useful matters of professional interest Mr. Collins mentioned in particular the recent decision that failure to wear a safety belt amounted to contributory negligence. He also stressed the desirability of becoming Plaintiff rather than Defendant in any running down proceedings. In fact, as he put it, "there should be a race to become Plaintiff".

Finally, Mr. Collins made the very important point, not widely realised, that depreciation is nowadays substantially disregarded in insurance claims.

Mr. David Pigot of Arthur Cox & Company, then read a Paper on Insurance from the Solicitors' standpoint and mentioned a number of matters of practical and procedural importance. Among these, he raised the question of whether the cost of a wake could be recovered as part of Special Damages!

The discussion following the two Papers was opened by Mr. Nat Lacy, who argued that the time had come to revise the whole question of running-down procedure and that in particular, the summons, as such, should be abolished and that Pleadings should be confined to a very full Statement of Claim and a Defence. He further suggested that a great deal of the spade work involved, including the agreement of medical reports etc. could be done befor the Master instead of in open Court. Mr. Lacy received a spontaneous round of applause for the contentious statement that"solicitors should not be slaves to the Bar Library" and he suggested that more of us should be prepared to take on our own advocacy.

Mr. Desmond Moran referred to the procedure of the Notice to Admit and suggested that this device was insufficiently used in modern practice. Mr. Moran also made a more revolutionary suggestion, as to the use of motion film for evidential purposes in Court proceedings, instead of still photos.

Extending the earlier remarks on the subject of failure to wear safety belts, Mr. Moran commented that listening to car radios might also amount to contributory negligence!

Mr. Moran concluded his remarks by quoting the Obiter of the United States Supreme Court, which had commented favourably on the subject of the speed and relative inexpense of the British (and, presumably, the Irish) Court systems!

Another member suggested that a second Senior Counsel might be unnecessary in certain Actions, to which David Pigot replied that if only one Senior was employed, he might well charge as much as two! The evening was as enjoyable as it was educative and it is to be hoped that it will be but the first of many.

DUBLIN CITY AND COUNTY SHERIFFS

For a considerable time, the Practice and Procedure Sub-Committee of the Association has been considering the increasingly difficult matter of obtaining Returns from the Dublin City and County Sheriffs.

It may be helpful to practitioners to note that the Sub-Committee has been advised by the City and County Sheriffs that the average length of time which may be expected to elapse between the date of lodgment of a Decree and the receipt by the practitioner of a Return is as follows:

1. Where there are no seizable goods and a Return of "No Goods" is made – two to three months;
2. where Execution can be levied without the necessity of a seizure—four months;
3. where Execution can only be levied by means of a seizure and sale—four to six months.

In view of this unsatisfactory position, the Association is continuing to explore the possibility of obtaining greater expedition in the making of Returns by the City and County Sheriffs.

The Sub-Committee, in its correspondence with the City and County Sheriffs, has elicited the following

further information, which will also be of interest to practitioners:

1. where a Judgment Creditor withdraws a Decree from the Sheriff, no poundage will ordinarily be payable, unless part or the entire of the Judgment Debt has been collected by the Judgment Creditor;
2. the amount of the poundage payable by the Judgment Creditor will be related to the amount of the Judgment Debt actually recovered;
3. irrespective of any amount recovered, where a Decree is withdrawn from the Sheriff, the Sheriff may charge proper out-of -pocket expenses incurred by him in the matter.

It also appears that the percentage of Decrees levied successfully varies, at the present time, from approximately 25% in Dublin City Area to approximately 35% in the County. This can only raise the larger question of the extent, in terms of Gross National Product, to which the time, trouble and expense of endeavouring to collect debts can be justified—at least in the City and County Areas. The Association may well recommend that the whole procedure of debt collection should be reviewed and, if appropriate, that alternative methods of collection should be considered.

WHITE PAPER ON THE LAW OF NULLITY

The Family Law Sub-Committee of the Association has considered this matter at great length and has made a detailed submission on behalf of the Association to the Attorney General.

DUN LAOGHAIRE CIVIL BILL OFFICER

The Court Practice and Procedures Sub-Committee of the Association has, with others, been making representations to the County Registrar as to the Area assigned to the Civil Bill Officer, Mr. Eugene McEneaney.

Members will have observed that the County Registrar recently varied the Area assigned to Mr. McEneaney by excluding that part of the Area from which Civil Processes would be returned to the Bray District Court.

This is for the convenience of both Dublin City and County practitioners and their clients.

YOUR ASSISTANCE IS REQUESTED ...

The Dublin Solicitors' Bar Association is considering proposals it might make to the President of the High Court concerning the following matters:

1. *The rules of office practice* as operated in the High Court, as distinct from the Superior Court rules.
2. *The Superior Court rules.*
3. *The expedition of business* in the High Court (including the Court's accessibility to the public).
4. *Pre-trial procedure.*

The Association's Court Practice and Procedure Committee would be grateful to receive in writing, through the Association's Hon. Secretary, Andrew F. Smyth, 1, Upper Ely Place, Dublin 2, as soon as possible and not later than 25th April 1977, constructive criticism from practitioners of present procedures and practices as adopted by the High Court and suggestions for improvement for the future. The Association believes that a speedy and informative response from the profession will result in a useful and early submission to the President and will be of considerable benefit to the profession and the clients it serves.

LOCAL AUTHORITY SOLICITORS ASSOCIATION

(1) The Local Authority Solicitors' Association held their 4th Annual Seminar in the Clarence Hotel, Dublin, recently. Papers were given on the following subjects:

(1) Contracts – "Construction within the Law" – Max W. Abrahamson LL.B.
(2) Recent decisions affecting Local Authorities – Phillip O'Sullivan B.L.
(3) The Local Government (Planning & Development) Act, 1976 – Michael Murphy B.L.

Mr. William Dundon, Law Agent, Dublin Corporation, presided. The President of the High Court, Mr. Justice Finlay was the chief guest of honour at the luncheon, and also present were Mr. J. B. Molloy, Dublin City and County Manager; Mr. W. A. Osborne, Solicitor, representing the President of the Incorporated Law Society, and Mr. Michael Murphy B.L. Legal Adviser, Department of Local Government.

(2) At Dun Laoghaire District Court recently, Justice Delap congratulated Mr. John P. Hooper, Solicitor, Dun Laoghaire, on being elected President of the Dublin Solicitors Bar Association for the year 1976-'77. Justice Delap said that apart from the confidence shown in Mr Hooper by his colleagues who had elected him President of the Bar Association it was also a signal honour for the legal profession in Dun Laoghaire because Mr. Hooper was the first Solicitor practising in DunLaoghaire to become President of the Dublin Solicitors' Bar Association. He congratulated Mr. Hooper and wished him every success for his term of office. Justice Delap added that Mr. Hooper was the son of a respected member of the Bar, the late Mr. Sean Hooper S.C. and that was all the more reason for congratulating him. The members of the legal profession present in Court joined in the tributes to Mr. Hooper. Mr. Hooper suitably replied.

COUNTY CLARE BAR ASSOCIATION

The following officers were elected for 1977 – President, Mr. Sean Casey, Solicitor of Messrs. Casey & Cahir, Solicitors, Green Lawn, Ennis; Vice-President, Mr. Patrick O'Shea, Solicitor, of Messrs. M. O'Shea & Co., Solicitors, Kilrush; Secretary/Treasurer, Mr. Daniel C. Chambers, Solicitor, of Ignatius M. Houlihan & Sons, Solrs., 10 Bindon Street, Ennis. Committee: James B. MacClancy, Michael P. Houlihan, Patrick C. Chambers, Daniel O. Healy, Michael J. McMahon, James Monahan.

THE LAW REFORM COMMISSION

FIRST PROGRAMME OF LAW REFORM

The Law Reform Commission, which was established on 20 October 1975, consists of five Commissioners.

The Commissioners are:

The Hon. Mr. Justice Brian Walsh, Senior Ordinary Judge of the Supreme Court, *President;*
The Hon. J. C. Conroy, M.A., LL.B., S.C., former President of the Circuit Court;
Professor R. F. V. Heuston, D.C.L. (Oxon.), Regius Professor of Laws, Trinity College, Dublin;
Helen Burke, M.A., Ph.D., Lecturer, Department of Social Science, University College, Dublin;
Martin E. Marren, B.A., LL.B., Solicitor.

Roger Hayes, B.A., LL.B., Barrister-at-Law, is Director of Research to the Commission.

William Binchy, B.A., B.C.L., LL.M., Barrister-at-Law, and Bryan M.E. McMahon, B.C.L., LL.M. (Harvard), Ph.D., Solicitor, are Research Counsellors to the Commission.

The Commission offices are located at River House, Chancery Street, Dublin 7, Ireland.

INTRODUCTION

1. The Law Reform Commission was established by the Law Reform Commission Act 1975 as a statutory body corporate to keep the law of the State under review and, in accordance with the provisions of the Act, to undertake examinations and conduct research with a view to reforming the law and to formulate proposals for law reform. By section 4 of the Act the Commission is required, in consultation with the Attorney General, from time to time to prepare for submission by the Taoiseach to the Government programmes for the examination of different branches of the law with a view to their reform. If such programmes prepared by the Commission are approved by the Government, then the Commission shall undertake an examination of and conduct research in relation to the subjects set out in the programme and, if the Commission thinks fit, formulate and submit to the Taoiseach proposals for the reform of the law.

2. The Act also provides that, at the request of the Attorney General, the Commission shall undertake an examination of and conduct research in relation to any particular branch or matter of law whether or not such branch or matter is included in the programme submitted by the Commission and approved of by the Government. If the Commission is so requested by the Attorney General, then it shall formulate and submit to the Attorney General proposals for reform of the particular branches or matters of law submitted. Pursuant to this provision of the Act, the Attorney General already submitted to the Law Reform Commission the following matters:

(1) The law relating to the age of majority;
(2) The law relating to the domicile of married women;
(3) The prohibited degrees of relationship in the law of marriage;
(4) The application of foreign law in cases in which the courts of this country have jurisdiction to grant a decree of nullity of marriage.

In respect of each of these subjects the Attorney General has requested the Law Reform Commission to undertake an examination of and conduct research into the law and, if it thinks fit, to formulate proposals for reform of the law in question and to submit these proposals to him. The Law Reform Commission is currently engaged in the examination of all these matters.

3. For some time the Law Reform Commission has had under consideration possible areas of study to be undertaken by the Commission in its early years. As it obviously would not be feasible to endeavour to include in the Commission's first programme a review of all the laws of the State, a selection of subjects has been made that will encompass an area touching on many different branches of the law. In the programme the subjects appear in alphabetical order. While the Commission hopes to be able to deal with the several aspects of these subjects concurrently, it is clear that all aspects of a particular subject cannot be dealt with at the one time, and the Commission may find it necessary or desirable to deal separately with different aspects of a particular subject. It is also clear that some subjects will require a longer period of research and study than others. However, as a matter of priority, the Commission will give its first attention to the subject of Family Law and to the law relating to the liability of builders, vendors and lessors for the quality and fitness of premises.

4. With respect to the matters appearing in its programme for Law Reform the procedure of the Commission in its work will be to prepare, after the necessary study and research, a working paper on the subject, which may, if the Commission thinks it necessary or desirable, be accompanied by draft legislative proposals for consultation with interested parties. When the Commission, within whatever time-limit it fixes, has received the views of the various interested parties, the Commission will prepare a final report and will, where it thinks fit, formulate and submit to the Taoiseach proposals for reform in that particular branch of the law; and may, if it thinks it helpful to do so, also submit as part of its proposals a draft Bill to implement the proposals.

5. The Commission will take into account the reports, findings or recommendations of any other Committees that have dealt with or are currently dealing with any aspect of the subjects contemplated in the Commission's programme. It also envisages the setting up of working parties, partly composed of persons from outside the Commission, for the purpose of examining and making recommendations to the Commission in respect of any aspect of the programme referred to such working parties by the Commission. It is also contemplated that the Commission may from time to time consider the desirability of recommending that certain areas of our statute law should be referred for consolidation to one or more of the existing statute law consolidation agencies, e.g., the statutes relating to the sale of intoxicating liquors (the Licensing Laws), the statutory provisions for Compulsory Acquisition of land and premises, the statutes dealing with Local Government and the enactments relating to prisons (the Prisons Acts).

THE PROGRAMME

Administrative Law

6. As a first step in the examination of this vast subject the Commission proposes to examine the question

of establishing a uniform procedural system to govern –

(1) the making and processing of applications for the many different kinds of Licences now required by law for various activities,

(2) the decisions to grant or refuse such Licences, and,

(3) the hearing of appeals from decisions granting or refusing such licences.

Animals (liability for injuries or damage caused by)

7. This will involve an examination of the present state of the law and consideration of whether there is justification for the continuation of the doctrine of *scienter* and whether any distinction should be made between liability for animals used for, and necessary for, the owner's or keeper's trade or business and liability for other animals. It will also involve an examination of the necessity for or the desirability of a continued distinction being made between the liability of those who keep what are regarded in law as domestic animals.

Conflict of Laws

8. There is very little case law in Ireland in regard to Private International Law and little has been written on the subject. The Commission intends as a long-term project to prepare proposals for a statute codifying, reforming and modernising the rules of conflicts as they apply in the State. They propose that in the meantime the conflict rules in various branches of the law be examined with a view to recommending reforms, in particular so far as concerns the following matters:

(1) Recognition and (where appropriate) Enforcement of Foreign Marriages, Legitimations, Adoptions, *filiations*, Maintenance Decrees, Annulments, Legal Separations and Divorces;
(2) Recognition and Enforcement of Foreign Arbitral Awards;
(3) The concept of Domicile and the concept of Habitual Residence;
(4) The application and construction of Foreign Law;
(5) The Rules of Conflict in regard to Matrimonial Property regimes and succession, in particular, *(a)* the distinction drawn between Moveables and Immovables and between plurality of succession and unity of succession, *(b)* the application of the *lex situs*, the *lex domicilii* or the *lex patriae* and *(c)* the doctrine of *renvoi* etc.;
(6) The rules of Conflict in regard to Contractual and non-contractual Obligations, including the rules on the International Sale of Goods.

9. In considering the Rules of Private International Law in any particular branch of the law the Commission will take account of the various International Conventions (multilateral, bilateral and regional) dealing with Conflict of Laws, and more particularly the Conventions prepared by The Hague Conference on Private International Law since 1954. The Commission will also examine the present method of implementing in Municipal Law and ratifying International Conventions as well as the interpretation by the Courts of the Rules contained in the Conventions (use of *travaux préparatoires etc.).*

Criminal Law

10. The Commission proposes to examine various aspects of the Criminal Law, and especially the following subjects:

(1) The Law concerning larceny and kindred offences and concerning acts involving fraud and dishonesty. This is largely covered at present by the Larceny Act 1916, which has proved to be unsatisfactory in many respects and inadequate in others. The Commission considers it desirable to provide a clearer and more effective code of law to replace the existing law.
(2) The mental element in crime and the legal fault required to constitute a crime.
(3) Criminal responsibility, including such matters as Intoxication, Necessity, Duress and Age.
(4) The criminal culpability of corporations.
(5) The law relating to minor offences concerned with Public Peace and Order. In the Commission's view the existing statutory law in this area (e.g., the Vagrancy Act and the Dublin Police Acts) require to be amended and consolidated or replaced.
(6) The law relating to Offences against the person and Offences against Property, including the question of the possible reclassification of the existing Statute and Common Law Offences and reform and consolidation of the law relating to Malicious Injury and Damage to Property and to persons.
(7) The law on matters proper to be taken into account in sentencing convicted persons.

Evidence

11. The existing Law of Evidence rests mostly on judicial decisions and to a considerably lesser extent upon statutory provisions. The revision and codification of the law of evidence, both civil and criminal, has been a subject much discussed for many years in common law countries and there seems to be general agreement as to the desirability of a code or Codes of Evidence, if such should prove to be practicable. The Commission appreciates that because of the immensity of the task it would not be feasible to undertake the preparation of comprehensive codes all at once. It is proposed that particular areas of the law be examined with a view to reform and that the reforms be designed to fit into an ultimate whole without the necessity for any subsequent substantial change. Priority will be given to areas where the reforms will simplify and improve Court Procedures and to particular problems, such as burdens of proof (evidential and persuasive burdens etc.), the competence and compellability as a witness of the spouse of an accused person, the hearsay rule, the Judges' Rules, unsworn evidence by children, and unsworn statements by an accused person. The Commission also proposes to examine the question of the desirability of retaining the oath for witnesses and for jurors.

It is to be noted that the Criminal Law Bill of 1967 contained much of a reforming character and the Commission will give close attention to the provisions of

that Bill in its examination of the criminal law and the law of evidence.

Family Law

12. This is a subject which covers a very wide area and in this programme it is not the intention of the Commission to undertake studies in the whole field of Family Law. For example, certain aspects of it, such as the Law of Succession, have been the subject of comprehensive legislation, which came into operation as late as 1 January 1967. Also, certain proposals by the Government for the amendment of the law of Nullity have recently been put forward by the Attorney General for public discussion. The Commission considers that it should undertake an examination of both the substantive and the procedural law relating to matrimonial causes and the nature and the basis of existing matrimonial proceedings generally.

In addition, the Commission proposes to examine the law relating to causes of action (other than strictly matrimonial proceedings) such as Criminal Conversation, loss of *consortium,* breach of promise to marry, and the adequacy of the existing law for the protection of the family. Furthermore, the Commission proposes to undertake an examination of the rights of Husband and Wife (including property rights) arising out of the marriage and the duties and relationship of the members of the Family (parents and children) towards each other. The Commission will also examine the law as to illegitimacy (including the succession and other rights of illegitimate children). In examining the various aspects of family law the Commission will consider the question of the best type of judicial or court structure or structures appropriate to deal with the different matters which fall under the general heading of Family Law.

Privacy

13. There appears to be growing public concern in most countries, including Ireland, at the lack of legal protection in this area. It is proposed by the Commission to examine the whole area of the protection of Privacy and to include in this examination and under this heading, in addition to purely personal privacy, the question of Professional Secrets, industrial secrets, Expertise and what is commonly referred to nowadays as "know-how". The examination will also cover the protection of the knowledge of persons who by their research or other work produce new varieties or species of plant life.

Sales

14. The desirability and the feasibility of enacting in one statute or in some codified form a law dealing with the sale,and matters arising from the sale, of both movables and immovables are matters that the Commission proposes to examine. This would include the liability of the vendors, lessors and builders of premises and the quality and fitness of the premises. This latter aspect is one which the Commission proposes to examine at a very early stage, as mentioned in paragraph 3 *supra.* In considering the law as to sale, the Commission will examine the desirability of ratifying, and giving effect to, the two Hague Conventions of 1 July 1964 on (1) the Uniform Law on the International Sale of Goods and (2) the Uniform Law on the Formation of Contracts for the International Sale of Goods.

State Side Actions

15. The whole basis of that form of litigation which comes under the heading of "State Side", e.g., Mandamus, Certiorari, Prohibition etc., requires to be examined with a view to seeing whether the continuation of the present forms of procedure can be justified or whether the same or similar relief ought to be obtainable under a general heading in appropriate cases. The Commission will undertake this examination.

Statute Law

16. For some time there has been an increasing interest in Common Law countries in the desirability of a more flexible rule for the interpretation and construction of Statutes and for a departure from what is at present largely a purely literal interpretation. Since our membership of the European Communities involves us in a very close way in legal and other matters with countries that have a much more flexible approach to statutory interpretation than is the case in this country and since Community instruments and regulations will be interpreted by the standards and methods of the European Communities, it is desirable to re-examine this whole question in the context of our own legal system. It is to be noted that in the United States of America, which is a Common Law country, there is a much more flexible approach to the interpretation of statutes than exists here. However, "interpretation" covers not merely the general approach to the problem but also the question of what materials (written or other) outside the statute itself may legitimately be used for the purpose of ascertaining the intent of the legislature. Specifically, the Commission will examine the use of *travaux préparatoires* and of commentaries by experts. They will also examine such canons of interpretation as the *ejusdem generis* rule and the rule (often known as the rule in *Heydon's* case) under which the Court has to consider the law before the enactment of the Statute, the defect or mischief in that law and the remedy adopted to cure that defect or mischief. These canons of Interpretation will, of course, have to be considered not alone in the context of ordinary statutes but also in the context of codified law and of the International Conventions that become part of Irish law.

17. The Commission proposes to examine ways in which the present method and style of drafting Statute Law might be improved. It also proposes to examine the form of production and publication of statutes and of amendments to statutes, as well as the question of the consolidation of statute law (already referred to in paragraph 5 *supra*).

December 1976

THE REGISTER

REGISTRATION OF TITLE ACT, 1964

Issue of new Land Certificate

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

Dated 30th day of April, 1977

N. M. GRIFFITH

Registrar of Titles

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

Schedule

(1) Registered Owner: James Cronin; Folio No.: 5406; Lands: Rathorgan; Area: 77a. 2r. 35p. County: Cork.

(2) Registered Owner: Henry Vincent Hughes; Folio No.: 470; Lands: Kilmurry; Area: 3a. 2r. 0p.; County: Monaghan.

(3) Registered Owner: Cornelius Brosnan; Folio No.: 22551; Lands: Knockeenahone; Area: 2a. 2r. 24p.; County: Kerry.

(4) Registered Owner: Gerard Christopher Mann; Folio No.: 24413; Lands: (1) Knockanillaun, (2) Knockanillaun; Area: (1) 1a 3r. 9p., (2) 3a. 2r. 35p.; County: Mayo.

(5) Registered Owner: Patrick Joseph Mannion; Folio No.: 24403L; Lands: The leasehold interest in the property in part of the Townland of Blanchardstown and Barony of Castleknock situate to the North side of the Royal Canal in the town of Blanchardstown containing 0a. 0r. 17p.; County: Dublin.

(6) Registered Owner: Patrick R. Woulfe; Folio No.: 5463; Lands: Knocknasnaa; Area: 8a. 2r. 0p.; County: Limerick.

(7) Registered Owner: James O'Donovan; Folio No.: 57390; Lands: (1) Glanduff, (2) Glanduff; Area: (1) 19a. 3r. 12p., (2) 47a. 2r. 1p.; County: Cork.

(8) Registered Owner: James O'Donovan; Folio No.: 23060; Lands: Glanduff; Area: 57a. 1r. 20p.; County: Cork.

(9) Registered Owner: Reuben David Bernard Hurst; Folio No.: 24517; Lands: Plot of ground with the houses and premises thereon in Murphy's Row and on the North side of Windmill Lane in the town of Youghal containing 0a. 0r. 16p.; County: Cork.

(10) Registered Owners: Brendan Rogers and Maria Rogers; Folio No.: 23630; Lands: Hazelwood Demesne; Area: 0a. 2r. 0p.; County: Sligo.

(11) Registered Owner: Patrick Bourke; Folio No.: 18228; Lands: Ballyfauskeen (E. D. Cullane); Area: 19a. 3r. 2p.; County: Limerick.

(12) Registered Owner: William Swords; Folio No. 1633F; Lands: Downings South; Area: 0a. 2r. 0p.; County: Kildare.

(13) Registered Owner: Patrick L. Heron; Folio No.: 317; Lands: Barberstown; Area: 110a. 0r. 3p.; County: Dublin.

(14) Registered Owner: Patrick Heron; Folio No.: 331; Lands: Pickardstown; Area: 63a. 3r. 11p.; County: Dublin.

(15) Registered Owner: Walsh Holdings Incorporated; Folio No.: 1251F; Lands: Clondalkin; Area: 3a. 1r. 8p.; County: Dublin.

(16) Registered Owner: Roderick Corcoran; Folio No.: 19175; Lands: (1) Aghadonagh, (2) Aghaluskey, (3) Newtown; Area: (1) 41a. 0r. 23p., (2) 10a. 3r. 3p., (3) 10a. 1r. 2p.; County: Kings.

(17) Registered Owner: Bridget O'Kelly; Folio No.: 20814; Lands: Loughatorick (part); Area: 0a. 3r.38p.; County: Galway.

(18) Registered Owner: Michael Leo Healy; Folio No.: 34916; Lands: Curraghrour East; Area: 33a. 0r. 30p.; County: Cork.

(19) Registered Owner: John Burke; Folio No.: 11960; Lands: (1) Collegeland, (2) Newtown (E. D. Maynooth); Area: (1) 7a. 2r. 3p., (2) 20a. 1r. 0p.; County: Kildare.

(20) Registered Owner: Michael Mulvee; Folio No.: 5559; Lands: St. Brendan's or Cregganagrogy; Area: 25a. 2r. 18p.; County: Galway.

NOTICES

Northern Ireland Solicitor (27) seeks Master to qualify in Republic. Considerable experience in Probate and Conveyancing. Salary negotiable. Reply to Box No. 154.

Cork City Office requires Assistant Solicitor with Conveyancing and/or Company Law experience. Write giving full particulars of experience to-date to Box No. 153. Replies will be treated in strictest confidence.

Large Munster country firm have a vacancy for a well-qualified experienced Assistant Solicitor. Apply with full details to Box No. 155.

LOST WILL

Reverend Michael J. McEleney, Chapel Street, Carndonagh in the County of Donegal, formerly attached to a Mission in Glasgow, Catholic Curate, deceased. Will any Solicitor or person having knowledge of a Will made by the above who died on the 9th August, 1976, please communicate with Patrick J. O'Doherty, Solicitor, Carndonagh, Co. Donegal.

THE INCORPORATED LAW SOCIETY OF IRELAND

GAZETTE

APRIL 1977 VOL. 71 NO. 3

LAW SOCIETY'S NEW PREMISES IN BLACKHALL PLACE

The new premises of the Incorporated Law Society of Ireland, at Blackhall Place, Dublin 7.

The Administration Section of the Society which includes Education has moved to Blackhall Place. The Library and Photocopying/Consultation Unit will remain for the present in the Four Courts.

Telephone: 710711/784533 **Telex: 31219 1 Law E1**

LEGISLATION RELATING TO FOOD

Presidential Address to Medico-Legal Society (1976-77)

Thelma King, Solicitor

I propose to deal briefly with the recent historical aspect of this subject, to outline the present statutory safeguards and to touch on the E.E.C. Directives.

The first attempt to deal effectively with the problem was The Public Health (Ireland) Act 1878 which (Section 132) empowered a Medical Officer of Health to inspect food exposed for sale and if found unfit for human consumption to remove it and have it dealt with by a Justice.

The following Section directed the Justice to condemn such food if it appeared to him to be unfit for human consumption. The owner or the person in whose possession or in whose premises the food was found was liable to a penalty not exceeding £20 for each item so condemned, or to imprisonment for a term of not more than three months.

"(S. 132) Any sanitary officer of the sanitary authority may at all reasonable times inspect and examine any animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, flour, milk or butter exposed or being conveyed for sale, or deposited in any place for the purpose of sale, and intended for the food of man. The proof that the same was not exposed or being conveyed or deposited for any such purpose, or was not intended for the food of man, will rest with the party charged. If any such animal carcase, meat, poultry, game, etc., appears to such sanitary officer to be diseased or unsound or unwholesome, or unfit for the food of man, he may seize and carry away the same himself, or by an assistant, in order to have the same dealt with by a Justice. Should he seize the same in a public thoroughfare, he may require the person conveying the same to give his own name and address and that of the owner of the article seized, and in default or if the officer has reasonable ground for suspecting the names or addresses so given to be false, may detain such person and give him into custody until his real name and address be ascertained. Any person giving a false name or address to any officer authorised to demand the same under this Section shall be liable to a penalty not exceeding five pounds.

"If it appears to the Justice that any animal, carcase, meat, poultry, game, etc., so seized is diseased, or unsound or unwholesome or unfit for the food of man, he shall condemn the same and order it to be destroyed or be so disposed of as to prevent it from being exposed for sale or used for the food of man. The person to whom the same belongs or did belong at the time of exposure or conveyance for sale or in whose possession or on whose premises the same was found, shall be liable to a penalty not exceeding twenty pounds for every animal carcase or fish or piece of meat flesh or fish or any poultry or game or for the parcel of fruit, vegetables, corn, bread or flour or for the milk or butter so condemned, or, at the discretion of the Justice without the infliction of a fine to imprisonment for a term of not more than three months."

The Justice who, under this Section is empowered to convict the offender may be either the Justice who may have ordered the article to be disposed of or destroyed, or any other Justice having jurisdiction in the place.

These Sections have been repealed by the Health Act 1947. The term "Justice" included any police or Stipendiary Magistrate invested with the powers of a Justice of the Peace in England and any Divisional Justice in Ireland. By virtue of the Courts of Justice Act these powers were later vested in Peace Commissioners.

The Sale of Food and Drugs Act 1875

Three years prior to the 1878 Act the Sale of Food and Drugs Act 1875 had been enacted. The term "food" is defined therein as "every article used for food or drink by man, other than drugs or water".

The Act imposes a penalty of £50 for the injurious adulteration of food intended for sale, but, if the person charged could show that he did not know and could not with reasonable diligence have discovered that the food was adulterated, he could not be convicted.

The Act contains another Section which is rather interesting in that it is designed to protect the requirements of the individual purchaser rather than to set an objective standard.

"(S.6) No person shall sell to the prejudice of the purchaser any article of food or any drug which is not of the nature, substance, and quality of the article demanded by such purchaser, under a penalty not exceeding twenty pounds."

The penalty for infringement of the provision is a fine not exceeding £20. Section 25 of that Act contains a provision which is somewhat similar to a provision in the Act which now governs our legislation, namely the Health Act 1947.

"If the defendant in any prosecution under this Act proves to the satisfaction of the Justices or Court that he had purchased the article in question as the same in nature, substance and quality as that demanded of him by the prosecutor and with a written warranty to that effect, that he had no reason to believe at the time when he sold it, that the article was otherwise, and that he sold it in the same state as when he purchased it, he shall be discharged from the prosecution but shall be liable to pay the costs incurred by the prosecutor, unless he shall have given due notice to him that he will rely on the above defence."

The abstraction of part of a food so as to affect its quality, substance or nature also rendered the vendor liable to a penalty. One wonders why such provisions were not availed of by the proponents of health foods.

The Act makes provision for the appointment of analysts and any member of the public as well as the Medical Officer of Health was entitled to have an analysis of any item of food carried out by the public analyst on payment of the sum of 10s 6d.

The person causing the analysis to be made was entitled to take proceedings for the recovery of the penalty before any Justice in Petty Sessions.

This Act was clarified rather than amended by an Act of 1879 entitled "An Act to Amend the Sale of Food and Drugs Act 1875".

The Sale of Food and Drugs Act 1899

We now turn to another aspect of the sale of food as provided for in the Sale of Food and Drugs Act 1899.

The Sale of Food and Drugs Act 1875 and the Sale of Food and Drugs (Amendment) Act 1879 and the Margarine Act 1887 together with the Act I am about to refer to, namely the Sale of Foods and Drugs Act 1899 and the later Acts of 1907, 1935, and 1936 are collectively known as the Sale of Food and Drugs Acts.

The 1899 Act attempts *(inter alia)* to prevent the importation of margarine masquerading as butter and contains provision for the proper marking of such imported articles as margarine, condensed milk and other agricultural products unless adequately marked so as to indicate their true identity. The Act conferred powers on the Local Government Board and on the Board of Agriculture analogous to those conferred by the Sale of Food and Drugs Act 1875.

The Board of Agriculture is also empowered to make regulations for determining the standard constituents of dairy produce.

The legislation of the time appeared somewhat obsessed with the passing of margarine as butter because even before the 1899 Act the Margarine Act of 1887 had carefully defined the distinction and imposed regulations as to the clear marking of containers and the imposition of penalties for infringement thereof. So strongly did they feel about the subject that they cast the onus on the vendor to show, if charged, that he had no reason to believe that the article was butter when relying upon a warranty to that effect from the manufacturer. And the powers of procuring samples for analysis conferred upon authorised officers under the Sale of Food and Drugs Act 1875 were extended to the procurement of samples of butter suspected of being margarine. Clearly the cholesterol scare had not raised its head in those days. Continuing the theme the Butter and Margarine Act of 1907 set out to make provisions with respect to the manufacture, importation and sale of butter and margarine and similar substances. This Act extended *inter alia* the powers of inspection of premises registered under the Sale of Food and Drugs Acts to premises engaged in the manufacture of these products and to take samples.

The adulteration of butter is prohibited and the moisture content regulated. There is also provision for the prohibition of preservatives of specified substances.

There is a reiteration of the prohibition against the use of a name other than the word "margarine" to describe this product and one suspects at this stage that the Legislature was intent upon protecting the home butter industry rather than safeguarding the public health.

The Sale of Food and Drugs (Milk) Act 1935

We now pass from 1907 to 1935 in which year was enacted a statute entitled the Sale of Food and Drugs (Milk) Act and was described as an Act to amend the Sale of Food and Drugs Acts 1875 to 1907 in relation to milk and certain lactic products. This extended the penalties applicable for infringements of the 1875 Act to purchasers of milk, cream or buttermilk which was not of the prescribed standard. The standard could be fixed by regulations made by the Minister for Agriculture after consultation with the Minister for Local Government and Public Health.

The liability imposed by this Act was not absolute so far as the purchaser was concerned, since the Act enabled him to plead warranty if he had purchased it from a supplier and served the prescribed notice after the offending sample had been taken.

The following year, it was found necessary to pass an amending Act viz. the Sale of Food and Drugs (Milk) Act 1936.

This extended the class of officers authorised to procure and take samples of milk.

I will now turn to the statutes which have been enacted in our own time and which are of a much more comprehensive nature.

The Health Act 1947

The most important of these is the Health Act 1947, Part V of which as amended by Sections 38 and 39 of the Health Act 1953 deals with food and drink.

The Act, in Section 53, again attempts a definition of "Food", for the purpose of Part V of the Act and it is defined as "every article used for food and drink by man, other than drugs or water and –

(a) Any article which ordinarily enters into or is used in the composition or preparation of human food.

(b) Flavouring matters, preservatives and condiments.

(c) Colouring matter intended for use in food, and

(d) Compounds or mixtures of two or more foods."

The Act empowers the Minister for Health after consultation with the Minister for Industry and Commerce and the Minister for Agriculture to make Regulations for the prevention of danger to the public health arising from the manufacture, importation, storage or distribution of food, the prevention of contamination and the prohibition of the sale of food intended for human consumption or of living animals or constituents of foods which are diseased, contaminated or otherwise unfit.

The provisions are far reaching and it is the first attempt to deal with the problem as a whole rather than in a piecemeal fashion.

The penalties, however, are lamentable, the maximum fine being £100 with a further fine of £10 per day for a continuing offence or, at the discretion of the Court, a term of imprisonment for a period not exceeding six months or to both fine and imprisonment. Since our Courts are unlikely to impose prison sentences for offences of this nature, which, whilst they may be a good deal more injurious to the public, do not carry the same odium as shop-lifting, petty theft or vagrancy, where there does not seem to be any such reluctance, the only effective deterrent, in my view would be the power vested in a Court of greater jurisdiction than the District Court, to make closure orders for serious or repeated offences.

Part V of the 1947 Act also enables Regulations to be made for the licensing and registration of persons and premises engaged in the manufacture, importation, storage or distribution of food intended for human consumption. The Minister for Health is next empowered to make regulations prescribing a standard for the composition of any food and the labelling thereof.

The penalties for infringement of these regulations are again inadequate. For a first offence, the maximum fine is £20 and in the case of a second or subsequent offence, a fine not exceeding £100. The Court has a discretion if satisfied that the offence was committed by the personal act or culpable negligence of the defendant to impose a prison sentence of six months.

The true sanction, of course, is the wide publicity given to the prosecution of these offences. In my experience a few lines in small print in an evening newspaper reporting the conviction of a store under this Act had the instantaneous effect of reducing the sales of that commodity in that store by 50% for a period of several months.

Appropriate powers are given in the Act for the examination of samples of food and drink and the carrying out of tests and analyses of these samples.

As with most of our modern statutes, extensive powers are given to make Regulations and amongst these, are the provisions relating to the enforcement and execution of the Regulations by the appropriate officers as set out in Section 59 of the Act, and the power to seize and destroy offending items of foods which are conferred on authorised officers or members of the Garda Siochana.

Authorised officers are defined in a later part of the Act as:

(a) An officer of the Minister appointed in writing by the Minister to be an authorised officer for the purposes of this part of this Act.
(b) An officer of the Minister for Agriculture appointed in writing by the Minister with the consent of the Minister for Agriculture, to be an authorised officer for the purposes of this part of this Act.
(c) The manager of a Health Authority.
(d) A Chief Medical Officer.
(e) An officer of a Health Authority appointed in writing by the manager thereof to be an authorised officer for the purposes of this part of this Act.
(f) An officer of a Sanitary Authority appointed in writing by the manager thereof to be an authorised officer for the purposes of this part of this Act.

Offences under this Act are frequently committed by a number of traders who handle the food in sequence. The trader last in possession is the one most vulnerable to prosecution but it could be that he is the least blameworthy. The Act, therefore, provides for a "by-passing" procedure which enables the real offenders to be brought before the Court and in certain circumstances enables a person prosecuted to avoid conviction and even to enable a person legally at risk, to avoid prosecution. I quote the Section to which I refer, viz. S. 63, Sub.S. 1 (d) and Sub.S. 2 and 3.

63 (1) (d) If the defendant in any prosecution for an offence relating to the nature, substance, quality or condition of any food proves –

(i) that he purchased such food as of a nature, substance or quality or in a condition which would not have contravened such regulation and with a written warranty to that effect, and

(ii) that he had no reason to believe at the time when he sold such food that it was of a different nature or quality or in a different condition, and

(iii) that he sold such food in the same state as when he purchased it,

such defendant shall be discharged from the prosecution but shall be liable to pay the costs incurred by the prosecutor unless he gave due notice to the prosecutor that he proposed to rely on the said defence.

63 (2) A statement by the manufacturer, importer or seller of food as to its nature, substance, quality or condition in an invoice or on a label attached to the food, or on the packet or container in which the food is sold shall be deemed for the purpose of subparagraph (i) of paragraph (d) of subsection (1) of this section to be a warranty.

63 (3) Where it appears to the authority or officer enforcing any provision of this part of this Act or the regulations made thereunder that an offence has been committed in respect of which proceedings might be taken against some person but that such person could establish a defence under paragraph (d) of subsection (1) of this section by proving that the offence complained of was due to an act or default of some other person, such authority or officer may take proceedings against that other person without taking proceedings against the first-mentioned person.

There is a school of thought which maintains that such a defence is not necessary and that the Courts habitually have regard to mitigating circumstances. It would seem to be contrary to Natural Justice that an accused person should be obliged to provide such information to the prosecutor and be liable to pay costs when not actually convicted.

One final point to be noted about this Act is that the expression "food intended for sale for human consumption" includes food kept in certain establishments such as hotels, schools, hospitals, etc., specified by ministerial Regulation.

As we have seen the 1947 Act enabled the Minister for Health to make Regulations for the better implementation of the Statute, after consultation with the Minister for Industry and Commerce and the Minister for Agriculture. Accordingly, the Food Hygiene Regulations 1950 came into being and became operative on 15 February 1951.

The Food Hygiene Regulations 1950

The Regulations which are of a very comprehensive nature, attempt to give effect to the provisions of the 1947 Act in the following areas, viz.:

(1) The sale of food unfit for human consumption; (2) the importation of food unfit for human consumption; (3) the taking of food samples; (4) the regulation of food premises and stalls and the transport and handling of food; (5) the registration of food premises and (6) the manufacture of ice-cream and sale of shellfish.

Some of the powers of enforcement provided in these Regulations are more effective than those we considered earlier. For instance the local Chief Medical Officer is empowered to make Orders prohibiting the importation of food unfit for human consumption. An appeal lies from this decision to a Justice of the District Court or a Peace Commissioner.

The Regulations relating to the condition of food premises govern such matters as cleanliness, ventilation, lighting, washbasins, garbage disposals, conditions of machinery and utensils, exposure of food, overalls, etc., similar provisions are made with regard to food stalls and food vehicles.

It is noteworthy, and commendable, that the Regulations govern not only the proprietor of the food premises but the workers employed there and these are directed to keep themselves clean and wear clean clothing, maintain their utensils and machinery in clean condition and to avoid unnecessary handling of food.

Indeed, even members of the public are forbidden to engage in any unhygienic practices whilst in food premises, so that presumably anyone suffering from the common cold who enters the local supermarket can render himself or more likely herself liable to a fine of £20.

The Minister is given authority to direct that any premises or stall shall not be used in connection with a food business if he is of the opinion that there is grave and immediate danger that the premises will cause food to be contaminated.

This, of course, falls a good deal short of the closure orders which I suggested might be vested in a Court and very properly, there is a right to appeal to the District Court.

The next part of the Regulations provide for the registration of food premises, that is to say, premises where the manufacture, preparation, importation, storage, distribution or sale of food intended for human consumption takes place other than raw fruit, raw vegetables, dairy produce or eggs by the producers of such produce.

The effect of the Regulations is that all such premises must be registered and this enables the Local Authority to make directions as to any requirements relating to the premises before such registration takes place and to refuse the registration of unsuitable premises.

After registration, where the proprietor has been convicted of an offence under the 1947 Act, the Health Authority may in certain circumstances, apply to the Minister for an Order cancelling the registration.

An appeal against the decision of the Minister lies to the District Court.

Section 38 of the Health Act 1953 extended the powers of the Minister to make Regulations under the 1947 Act and makes explicit the power to make Regulations prohibiting the preparation and sale of food in unregistered premises and the cancellation of licences. It also enables Regulations to be made vesting certain functions in a Justice of the District Court or a Peace Commissioner such as ordering the destruction of food unfit for human consumption, the review of prohibition orders on importation of food, the review of orders relating to the registration of food premises, the direction of Health Authorities to register food premises.

It also contains an interesting provision, viz. that repairs, structural alterations, etc., required to be carried out for the purpose of Part V of the 1947 Act may be carried out, notwithstanding any covenant or agreement to the contrary contained in any contract of tenancy.

The Food Standards Act 1974

The final Act which I propose to mention is the Food Standards Act 1974. The main purpose of the Act was to enable the Minister for Agriculture and Fisheries, the Minister for Industry and Commerce or the Minister for Health to make Regulations providing for standards in relation to food, and the regulations might prohibit the import/export, transportation, storage or sale of food which did not measure up to the standards.

Appropriate powers of enforcement are provided for, including the taking of samples, the entry on and inspection of premises by the persons authorised in the Statute, and the destruction of unfit food, either with the consent of the owner or by order of the District Court.

It is very satisfactory to note that in this bureaucratic age, such recent legislation affords protection to an owner whose food has been wrongfully seized by empowering the Court to award compensation to be paid by the responsible Minister.

There is again in this Act a by-passing procedure, such as we have noted in earlier statutes which is designed to bring the real culprit to justice.

The penalties for infringement of the Act are a fine not exceeding £200 and in the case of a continuing offence, to a further fine not exceeding £10 for each day on which the offence is continued or imprisonment for a term not exceeding 6 months or to both fine and imprisonment.

The Statute was enacted on 12 June 1974 and pursuant thereto, three Statutory Instruments have been issued dealing with sugar, cocoa, and chocolate products and honey.

The interesting point about these regulations is that the standards they impose are those set down by E.E.C. Directives. The Directive relating to sugar was issued on 11 December 1973, that relating to honey on 22 July 1974, and those relating to cocoa and chocolate on 24 July 1973, 1 August 1974, 19 December 1974 and 4 March 1975.

An E.E.C. Directive governing standards in the composition of dried milk was issued on 18 December 1975 but so far as I have been able to discover, no regulations have yet been made by our Government to implement this Directive, and I think in fact this Directive has not yet been adopted.

It will have been observed that the day to day operation of the various Statutes mentioned are largely dependent upon the officials of the Regional Health Authorities and of the Ministries concerned and prosecutions are brought without reference to the Garda.

I believe that the duties imposed on the authorities in the Statutes mentioned are mandatory and not discretionary and presumably, therefore, an interested party would be entitled to an Order of Mandamus if the powers conferred by the Regulations were not enforced.

I have not, and do not intend in this paper to touch upon the contractual or tortious liability of a vendor toward a purchaser or of the latter's rights to recover damages in any circumstances. The law on this subject leaves much to be desired.

The Consumer Protection Bill 1976

The Consumer Protection Bill, in course of legislation, deals only with the criminal liability of a vendor and does not seek to provide an individual purchaser with a personal remedy.

In England, the Criminal Justice Act 1972 enabled a Court to award compensation for personal injury, loss or damage resulting from an offence from which a person had been convicted by the Court at the time of the conviction and there appears to be no reason why this should not be done here. Again in England the Consumer Protection Act 1961 makes the seller liable in damages to any person injured by his breach of the Regulations made under the Act. No such provision is contained in the Consumer Protection Bill we are about to enact and there appears to be no good reason for the exclusion.

Finally, what of the future and how is our membership of the E.E.C. going to affect our standards.

By a decision of the Commission of the European Communities dated 25 September 1973 (Com. 73 (73) 1608 final) a Consumers Consultative Committee was established, composed of representatives of European Consumer Organisations as well as of other individuals specially qualified in consumer affairs.

The task of the Committee was declared to be "to represent Consumer Interests to the Commission and to advise the Commission on the formation and implementation of the policies and actions regarding consumer protection and information, either when requested to do so by the Commission or on its own initiative".

On 21 May 1974 the Commission of the European

Communities presented to the Council a Preliminary Community Programme for Consumer Information and Protection (Section 74, 1939 final).

In the introduction to that paper Consumer Interests were summarised by a statement of four basic rights:

(1) The right to protection, particularly of health, safety and economic interests;
(2) The right of redress;
(3) The right of information and education; and
(4) The right of representation (the right to be consulted, represented and to participate in decisions of consumer concern).

It is recommended that protection in terms of health and safety should mean action on the following principles:

(1) Goods and services provided for consumers should be such that, when used in a normal and reasonable way, they are not likely to be injurious to the health or safety of consumers.

(2) When certain categories of goods and services are primarily intended for particular categories of consumers such as children, who are likely to use them in other than a normal manner, such goods and services should be provided in such a way that there is no risk to health and safety, even when used abnormally.

(3) In general any risk of danger which might arise from an unusual but rational use of a product should be clearly indicated in an appropriate manner.

(4) The manufacture of goods and the providers of services should be liable for injury caused by defective products and services supplied by them.

(5) Appropriate Community Measures should be taken to ensure the safety of goods and services. Special measures may be necessary with regard to particular products or services.

(6) Community Standards should be set and enforced so as to eliminate or reduce, as far as possible, any inherent risk of danger in the content of goods and the containers thereof, their handling and use.

(7) There should be quick and simple procedures for withdrawal from the market of goods and services whose use has been proved to constitute a danger to the health and safety of consumers, or which may, when used in a normal and reasonable way, constitute such a danger.

(8) Substances which may form part of or be added to foodstuffs should be defined and their use regulated by reference to clear and precise positive lists. Such lists should be based on simple principles which do not inhibit innovation.

(9) Prototypes of machines, apparatus and electrical and electronic equipment which may constitute a safety hazard, either in themselves or by their use, should be checked by an appropriate public or non-public body before being declared fit for use by the public.

(10) Foodstuffs should not be detrimentally affected by packaging and other materials with which they come into contact.

(11) Certain categories of new products which may prejudicially affect the health or safety of consumers should be submitted for prior authorisation according to procedures agreed within the Community.

The paper proceeds to list a number of priorities in regard to standardisation and harmonisation of measures in the agricultural and industrial fields. Of primary concern are foodstuffs; animal foods; fertilisers, pesticides and insecticides; pharmaceuticals, cosmetics and detergents; household utensils and applicances; textiles; toys; cars and other consumer durables.

LANDLORD & TENANT:

Extension of Time for Service of Notice of Intention to Claim Relief

In a recent decision (H. Wigoder & Co. Limited v. Joseph Moran and Kayzer Leopold; judgment delivered 21st January 1977), where the principal reason for the tenants' failure to serve a Notice of Intention to Claim Relief within the period prescribed by Section 24 of the 1931 Act was the erroneous advice given by Counsel that the tenant would not have to serve a notice until a Notice to Quit determining his tenancy was served by a Superior Landlord the Supreme Court held that the Judge hearing the application should take into account all the relevant factors surrounding the application, including in particular whether the Landlord had taken any steps consequent upon failure to serve the Notice, which would result in prejudice to him if the time were extended. The mere fact that the tenant would become entitled to a 21 year lease at a fixed rent under the provisions of the Act would not in fact prejudice the Landlord. The Court ought also to take into account any economic loss which would be suffered by the Tenant having to vacate the premises as a result of the failure to serve a Notice in time. From this case, and the decision in a subsequent case of *Thomas Nagle and Catherine Nagle v. Mamies Limited,* heard on the 28th March, 1977, in the Supreme Court, it is now clear that the Judges hearing applications for extension of time for service of Notices of Intention to Claim Relief can no longer feel themselves bound to refuse an application if the reason for the failure arose out of the negligence of the professional advisers, but must take all relevant factors as laid down in the judgments of the Supreme Court in *Wigoder v. Moran and Leopold* into account. It would seem that the recent cases must give more hope to tenants (and their erring solicitors) that time will in fact be extended.

INTERNATIONAL SECTION

COUNCIL OF EUROPE

Court of Human Rights

Case of Ireland v. The United Kingdom Second Part of the Oral Proceedings

Opened 18 April 1977

(I) Brief Outline of the Case

(1) Principal Facts

Faced with the continuing emergency situation, the Northern Ireland Government brought into operation on 9 August 1971 various special powers involving the arrest, interrogation and/or detention without trial of large numbers of persons. These powers continued to be used after the introduction of direct rule on 30 March 1972 when the functions of the Northern Ireland Government and Parliament were transferred to United Kingdom authorities. The main target of the special powers was stated to be the Irish Republican Army. After 5 February 1973 the powers were also utilised against persons suspected of involvement in Loyalist terrorism.

The legislation granting the special powers evolved during the course of the present case and the extent to which recourse was had to them varied from time to time. Individuals were subjected to one or more of the powers which, basically, took the form of (a) an initial arrest for interrogation; (b) prolonged detention for further investigation; and (c) preventive detention for a period unlimited in law. The ordinary criminal law remained in force and in use concurrently with the special powers.

(2) Proceedings before the Commission

In December 1971 the Government of Ireland lodged an application with the European Commission of Human Rights alleging that the United Kingdom had contravened, in relation to Northern Ireland, certain Articles of the European Convention on Human Rights. The essence of these allegations was that many persons held under the special powers had been subjected to ill-treatment and that the powers themselves were not in conformity with the Convention and had been used with discrimination on the grounds of political opinion.

In its report of 25 January 1976 the Commission expressed the opinion that:

(a) *Article 1* of the Convention cannot be the subject of a separate breach;
(b) the combined use in 1971 of certain techniques ("the Five Techniques") during the interrogation of fourteen persons amounted to a practice of inhuman treatment and torture in breach of *Article 3*;
(c) ten other persons had suffered inhuman treatment contrary to *Article 3* and there had been in 1971 at Palace Barracks, a holding centre near Belfast, a practice in connection with interrogation which was inhuman treatment in breach of that Article;
(d) such practices had not been found to exist as regards various other places;
(e) *Article 6* was not applicable to the special powers;
(f) although those powers were not in conformity with *Article 5*, they did not violate the Convention since they were justified under *Article 15* which permits a State, under specified conditions, to derogate from its normal obligations;
(g) the powers in question had not been applied with discrimination contrary to *Article 14*.

(3) Reference of the Case to the Court

In March 1976 the Government of Ireland referred the case to the Court. They have asked the Court to confirm the Commission's opinion that there had been violations of *Article 3* and also to hold that:

(a) *Article 1* can be the subject of a separate breach and was in this case;
(b) there had been breaches of *Article 3* additional to those found by the Commission;
(c) *Article 6* was applicable to the special powers;
(d) those powers were not in conformity with *Articles 5 and 6* and that there had been a violation of those Articles since the powers, by going beyond what was strictly required by the exigencies of the situation, fell outside the United Kingdom's power of derogation under *Article 15*;
(e) the powers were applied with discrimination on the grounds of political opinion in violation of *Article 14*.

(4) Proceedings before the Court to Date

On 29 April 1976 the Chamber of seven Judges constituted to hear this case (Article 43 of the Convention) relinquished jurisdiction in favour of the Plenary Court (Rule 48 of the Rules of Court).

Memorials were filed with the Court by the Government of Ireland, the Government of the United Kingdom and the delegates of the Commission on 30 July, 28 October and 15 December 1976, respectively.

The oral proceedings before the Court have been divided into two parts. The first part (7-9 February 1977) was limited to questions concerning the scope and exercise of the Court's jurisdiction and its role as regards an enquiry into the facts and the procedure followed by the Commission. These questions formed the subject of an Order of 11 February 1977.

During the hearings the Court heard argument on the remaining issues in the case. After the closure of the hearings, the Court will begin its deliberations which are held in private. Judgment will be delivered at a later date.

* * * * * *

Court of Justice of the European Communities

Case 78/76

Steinike und Weinlig v. Federal Republic of Germany (preliminary ruling) – 22 March 1977 – Aid granted by a State

In this case the Verwaltungsgericht Frankfurt-am-Main referred to the Court of Justice questions concerning the interpretation of provisions of the Treaty concerning aids granted by States. The main action concerns proceedings brought by a German firm against the Federal Republic of Germany, represented by the Bundesamt für Ernährung und Forstwirtschaft (Federal Office for Food and Forestry) relating to the compatibility with Community Law of a contribution of 20,000 DM exacted from the plaintiff on the processing of citrus concentrates imported by it from Italy and various third countries.

The contribution is intended to finance a fund for the promotion of German agriculture, forestry and food industries. The aid is given to the food industry independently of whether the German food products are made from domestic raw materials or semi-processed goods or such goods from other Member States.

The plaintiff in the main action takes the view that the contributions demanded of it infringe the Treaty and are therefore not payable because, on the one hand, their purpose is to finance aid which is incompatible with Article 92 of the Treaty and, on the other, they were levied on the processing of citrus concentrates coming from another Member State, although there is no similar product in the country of import, and were therefore either charges having an effect equivalent to customs duties prohibited by Articles 9, 12 and 13 of the Treaty or internal taxation discriminating against a product from another Member State contrary to Article 95.

The case has raised a large number of questions, namely: whether the procedural rules prescribed in Article 93 of the EEC Treaty preclude a National Court from obtaining a preliminary ruling on Article 92 of the EEC Treaty and subsequently from deciding on the application of that provision; whether the expression "undertakings or the production of certain goods" in Article 92 of the EEC Treaty is restricted to private undertakings or whether it also includes non-profit-making institutions governed by Public Law; whether the concept "any aid granted through State resources" is satisfied even if it is the State agency itself which receives aid from the State or private undertakings; whether there is aid in the sense of granting a gratuitous advantage if the recipient of aid is not a private undertaking but a State agency, and whether it can be said to be gratuitous when the charge on the individual undertaking is insignificant in relation to the total amount of contributions; whether competition is distorted and trade between Member States affected if the market research and advertising carried on by the State agency in its own country and abroad is also carried on by similar institutions of other Community countries; whether a charge levied not on the imported goods themselves but on their processing is a charge having an effect equivalent to a customs duty; and, finally, whether the imposition of taxation on "the products of other Member States" not when they are imported but only when they are processed amounts to discrimination within the meaning of Article 95 of the EEC Treaty.

In reply to these questions the Court has ruled as follows:

(1) A National Court is not precluded by the provisions of Article 93 from referring a question on the interpretation of Article 92 of the Treaty to the Court of Justice if it considers that a decision thereon is necessary to enable it to give judgment; in the absence of implementing provisions within the meaning of Article 94, however, a National Court does not have jurisdiction to decide an action for a declaration that an existing aid which has not been the subject of a decision by the Commission requiring the Member State concerned to abolish or alter it, or a new aid which has been introduced in accordance with Article 93 (3), is incompatible with the Treaty.

(2) Save for the reservation contained in Article 90 (2) of the Treaty, Article 92 covers all private and public undertakings and their entire production.

(3) The prohibition contained in Article 92 (1) covers all aids granted by a Member State or through State resources, no distinction being made as to whether the aid is granted directly by the State or by public or private institutions established or instructed to implement the system of aid.

(4) A State measure favouring certain undertakings or products does not cease to be a gratuitous advantage by the fact that it is wholly or partially financed by contributions exacted from the undertakings concerned by the public authorities.

(5) Where a Member State infringes an obligation under the Treaty in connection with the prohibition contained in Article 92, it is no justification that other Member States likewise fail to fulfil that obligation.

(6) Where a charge satisfies the conditions characterizing effects equivalent to customs duties, the fact that it is applied at a stage of marketing or processing of the product subsequent to its crossing of the frontier is irrelevant, provided that the product is charged solely because it crosses the frontier, which factor excludes the domestic product from similar taxation.

(7) There is, generally, no discrimination such as prohibited by Article 95 where internal taxation applies to rational products and previously imported products on processing into more highly-finished products where there is no distinction between them as to rate, basis of assessment or conditions of payment by reason of their origin.

* * * * * *

Case 96/76

Liégeois v. Office National des Pensions pour Travailleurs Salariés – 16 March 1977 – (Request for a preliminary ruling) – Social security for migrant workers.

The plaintiff in the main action, a Belgian national, studied engineering in Belgium from 1950 to 1954 and in France from 1954 to 1956. After continuing his studies in the United States he worked, first, in France, then in the United States and since 1971 in Belgium.

In accordance with Belgian law he asked to be allowed to buy in his periods of study but the request was rejected on the ground that he did not fulfil one of the requirements of Belgian legislation, namely, the pursuit

immediately after the period of study of an occupation in which he was subject to *Belgian* law on retirement and survivor's pensions for employed persons.

The dispute led the Tribunal du Travail, Charleroi, to ask the Court of Justice whether the requirement that the person concerned must have been employed, in this case in Belgium, immediately after the period of study, is affected by Article 9 of Regulation No. 1408/71, as being a clause under which admission to voluntary or optional continued insurance is made conditional upon the obligation to complete an insurance period, or by any other provision of a Community Regulation.

Article 9 (2) of Regulation No. 1408/71 provides that "Where, under the legislation of a Member State, admission to voluntary or optional continued insurance is conditional upon completion of insurance periods, any such periods completed under the legislation of another Member State shall be taken into account, to the extent required, as if they were completed under the legislation of the first State."

The plaintiff in the main action states that the regularization of periods of study for the purpose of determining the pension rights of the employed person is a matter of admission to continued voluntary or optional insurance involving the application of the Community legislation. The Court stated that the assimilation of periods of study to periods of employment is devoid of purpose unless it gives those concerned the benefit of insurance for the periods in question subject to their paying the contributions prescribed by the national legislation.

The Court has ruled that the expression "voluntary or optional continued insurance" appearing in Article 9 (2) of Regulation No. 1408/71 covers assimilation to periods of employment for the purposes of insurance in respect of periods of study, whether or not there is any continuation of existing insurance.

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RECENT IRISH CASES

CERTIORARI – FISHERY LAWS

Conditional order of Certiorari discharged as conviction for entering exclusive fishery limits valid.

Application to make absolute, notwithstanding cause shown, a conditional order of Certiorari granted to the prosecutor by Butler J. on 3 June 1976 directing Justice McCourt to send before the Court, for the purpose of being quashed, an order made by him on 28 May 1976.

The prosecutor, Oprea Ion Neculai, is master of the fishing vessel, Negoiu. He was charged under the Fisheries Consolidation Act, 1959, with the following offence, that the Negoiu did on 25 May 1976 unlawfully enter within the exclusive fishery limits of the State, contrary to S. 221 of the 1959 Act. On May 28 the District Justice struck out the first two charges, but found the prosecutor guilty on the third charge, and imposed a fine of £50 with £100 for expenses, and ordered that the fish and fishing gear on the vessel be forfeited.

The prosecutor relied on Gannon J.'s decision in *The State (Emile Coyan) v. District Justice O'Donovan* – unreported, 21 December 1973. However, the form of the charges and the nature of the conviction in Coyan's case are distinguishable from this case. In Coyan's case, the charges were laid upon the basis that two separate offences could be committed against S. 221, namely (1) the entry within the exclusive fishery limits, and (2) once a boat had entered these limits, a person on board could then fish or attempt to fish. On charge number two, relating to the forfeiture of fish and fishing gear, Gannon J. found that this Section created only one offence, and dismissed the application. The Section does undoubtedly only create a single offence, that of entering the exclusive fishery limits.

It was submitted by the prosecutor that if, apart from being charged with entering the exclusive fishery limits, it could be alleged that a person on board fished, then, though charged with a summary offence, he would be entitled to a book of evidence as if he were charged on indictment. This contention cannot be entertained in view of the Supreme Court decision in *Attorney General (Ó Maonaigh) v. Fitzgerald* – (1964) I.R. 258 – which deals with duplicity in relation to dangerous driving under S. 53 of the Road Traffic Act, 1961. In these circumstances, where the Justice heard alternative charges, his order was good and valid. Accordingly the cause shown must be allowed, and the conditional order of Certiorari must be discharged.

The State (Neculai) v. District Justice McCourt – Finlay P. – unreported – 27 July 1976.

CONTRACT – BREACH OF

Due to defects in workmanship and materials in building a house, plaintiff purchaser awarded £2,305 damages for breach of contract.

The plaintiff now resides in Rushbrooke, Co. Cork. In April 1973 she was an air hostess in Aer Lingus and decided to invest some capital in the purchase of a house to provide an investment. The defendant company is a building contractor, and the plaintiff agreed to purchase for £4,000 a site in Castleknock, Co. Dublin, by way of lease for 900 years from 1 January 1970 subject to an annual rent of £5. By contract in writing of April 1973 the plaintiff agreed to purchase an uncompleted house known as site 12, Park View, for £15,000. The sale was completed by a lease of July 1973. The plaintiff duly paid £4,000 for the site, and a total of £15,632 for the house, and took possession in August, 1973.

No valid planning permission had been obtained for the house purchased, and accordingly the house was an "unauthorised structure" within the Planning and Development Act, 1963. It is obvious that this failure of the lessor, who is also the builder, is a breach of the covenant for quiet enjoyment. It is nevertheless settled that no remedy can be granted for breach of covenant for quiet enjoyment until damages can be claimed for disturbance of such enjoyment. It is therefore proposed that a declaration be made that no proper planning permission has been obtained, and to give liberty to either party to apply.

The plaintiff also contends that the house was not built in an efficient or workmanlike manner, or with proper materials, in accordance with the plans and specifications. It is contended that there were a large number of specific defects in workmanship and in materials, and the plaintiff claims the cost of rectifying these. Due to these defects, the plaintiff alleges that the defendants failed to give her what she contracted to buy, namely a soundly constructed house of high quality, instead of having in fact a house of poor quality. The reasons for this contention were: (1) the high price for the new house, (2) the good residential area in which houses of superior workmanship should be erected, (3) the general appearance of the interior should match that of the exterior. It is clear that the plaintiff did not get the house she reasonably expected, as much of the work and material was of cheap quality. There was necessarily more divergence between the evidence offered by experts on each side than is usual in such circumstances. In view of the totally unmeritorious nature of defendant's work, and the unsatisfactory attitude of defendant's correspondence, the plaintiff was right to stop them from continuing the alleged improvements. There was a dispute about the built-in wardrobes in the bedrooms. The plaintiff architect states that they are a cheap and shoddy job, and that it would cost £600 to rectify; this sum will be allowed.

The plaintiff was undoubtedly entitled to a well built, well furnished and well fitted house.

The expert witnesses on each side gave contradictory accounts of the various amounts of damage sustained. The plaintiff wished to have a house conforming to high standards while the defendants merely sought to put things right. A total of £2,200 damages is allowed in respect of defects in workmanship and material. However, the claim for the purchase of hardware, furniture, lamp shades, the landscaping of the garden together with purchaser's stamp duty and legal expenses will not be allowed.

The plaintiff claimed £160 for journeys from Cork to Dublin to discuss matters with the defendants, and the sum of £75 will be allowed. It must be remembered that this house was essentially not built as a residence for the plaintiff, but as an investment. Despite all defects, however, the house was nevertheless

habitable. Although expensive furniture, carpets and equipment were installed by the plaintiff, there is no evidence that she tried to let the premises. There is however no proper basis under the rule in *Hadley v. Baxendale* in which to award for proper compensation for the long delays to which the plaintiff has been subjected. Accordingly a total sum of £2,305 will be allowed, as well as the declaration sought.

Fitzpatrick v. McGivern Ltd. – Parke J. – unreported – 10 February 1977.

MUNICIPAL RATES

Port and Docks Board not liable for municipal rates allegedly due on transit sheds in the Port of Dublin.

The plaintiffs, Dublin Corporation, sued the defendants, the Dublin Port and Docks Board, for £22,221 for arrears of municipal rates on transit sheds in the Port of Dublin. O'Keeffe P. dismissed this claim.

The defendants have resisted the Corporation's appeal on the grounds:

(1) That they were not in rateable occupation of these transit sheds;

(2) That they were not liable for poor rate in respect of the transit sheds prior to the Local Government (Dublin) Act, 1930;

(3) That consequently they were still not liable for this rate under the 1930 Act.

Transit sheds were first mentioned in S. 69 of the Dublin Port Act, 1867, for the general use of persons requiring the same. S. 20 of the Dublin Port Act, 1902, reinforced the notion that the primary purpose of the transit sheds was to act as temporary repositories for goods landed from ships, until the goods had been cleared by the Customs Authorities, and are thus a convenience for shippers of goods. It is the Harbour Master who assigns a particular shed to a particular ship when the ship arrives.

The statutory intent under S. 71 of the Poor Relief (Ireland) Act, 1838, was that the poor rate would be paid by an actual, rather than a notional or constructive occupier. But the Board neither used nor enjoyed these transit sheds, and did not derive any financial or other benefit from them. The only persons who have used them have been the shippers of the goods into the port. The Board was consequently not in immediate use or enjoyment of the sheds. It was consequently not possible to put a valuation on them, so that the poor rate could fall on the Board as occupier.

Quays as such have never been rated, because on the authority of *Belfast Harbour Commissioners v. Commissioner of Valuation* (1897) 2 I.R. 516, they were exempt from rateability for the poor rate, as being "dedicated or used for public purposes" under S. 63 of the Poor Relief (Ireland) Act, 1838. Transit sheds are self-contained hereditaments, and the Board was never in rateable occupation of them. Transit sheds were marked exempt in the valuation lists, under S. 2 of the Valuation (Ireland) Act, 1854, because they were "of a public nature". The statutory application of the poor rate law to the municipal rate under the Local Government (Dublin) Act, 1930, means that, if a person is rated who is not an occupier, the rate is void as having been made without jurisdiction. Consequently the assessing of the municipal rate on the Board in this case was void. The appeal is consequently dismissed unanimously.

Dublin Corporation v. Dublin Port and Docks Board – Supreme Court (Henchy, Griffin and Parke JJ.) per Henchy J. – unreported – 16 February 1977.

NEGLIGENCE – NUISANCE

Third party liable to contribution to defendant in respect of plaintiff's death as a result of a road accident caused by icy surface due to potholes on road caused by heavy lorries owned by third party.

Rain was falling heavily on 21 January 1973 and this was followed by a heavy frost. The late Jonathan Wade, a well-known artist, while travelling on his motor cycle along Monastery Road, Clondalkin, fell from it and was run into and killed by a motor car owned and driven by the defendant. His fall occurred immediately opposite to the South of Ireland Asphalt Co. factory. At this place, the roadway was broken into several potholes and was covered by ice. When the plaintiff, the widow of Wade, had taken proceedings in the High Court for damages for his death, a compromise was reached between the parties on terms that the deceased had been guilty of contributory negligence. The defendant agreed to pay the plaintiff damages of £25,000 for herself and four young children. The defendant then claimed contribution against the Asphalt Co. but Murnaghan J. decided that the defendant was not entitled to contribution. The defendant has appealed, relying on S. 21 (1) of the Civil Liability Act, 1961. The question to be decided is whether the third party, the Asphalt Co., is "liable in respect of the same damage" as the defendant, in other words, whether the widow could have successfully sued the third party instead of the defendant. The third party's business entailed the constant use of large lorries which travelled to their premises through this entrance and along the road, which caused these seven potholes; there was also a sheet of ice there on the night of the accident, which was particularly dangerous for cyclists and motor-cyclists. Murnaghan J. rightly found that Wade was caused to overbalance and to fall on the road as a result of coming into contact with the ice. While Wade was picking himself up and recovering his bicycle, he was killed by defendant's vehicle approaching from the same direction. Murnaghan J. also found that the defendant was not keeping a proper look-out for other hazards in the circumstances. Although Wade and the defendant were negligent, this negligence was essentially due to the dangerous conditions prevailing that night. Because of their weight and their number, the lorries belonging to the Asphalt Co. could not be supported by the road surface, and this caused potholes. This company was not entitled to exercise rights without regard to whether damage was caused to the public road. This damage undoubtedly constituted a danger to a motor cyclist on that road at night time. As the Asphalt Co. had so damaged the surface of its own entrance and the adjoining road to create a danger on it, it had certainly created a public nuisance. The widow could have sued the Asphalt Co. instead of the defendant.

As regards negligence, a serious road hazard had been created by the pressure of the lorry traffic on the road surface, yet nothing had been done to remedy it. The Asphalt Co. was negligent in causing the roadway to break, and in failing to repair it. What happened was clearly foreseeable to the Asphalt Co. The defendant is accordingly entitled to contribution against the third party, and the appeal against Murnaghan

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Proof – Control of foot and mouth disease – Failure to comply with Prohibition Notice served on defendant by veterinary inspector – Notice prohibiting defendant from entering upon specified lands – Notice authorised if inspector "has reason to believe" that the movement of any person may be attended with risk of spread of disease – Conviction in District Court without evidence of inspector – Appeal to Circuit Court – Case stated – Necessary for prosecution to prove that inspector had reason to believe and believed the relevant matters – Appeal Court still having discretion to admit missing evidence being a procedural matter – Foot and Mouth Disease Order, 1956, Article 19 – (113/1974 – Supreme Court – 5/4/76).
The Attorney General (Corbett) v. Halford.

Police
Interrogation – Suspect required to give full account of his movements – Whether any power to require repetition of full account given – Offences Against the State Act, 1939, s. 52 – (5-8/1976 – C.C.A. – 16/11/76).
The People (D.P.P.) v. Madden & Ors.

Procedure
District Court – Plea of guilty – Indictable offence – Court empowered to send accused forward for sentence to the court to which accused, if he had pleaded not guilty, could lawfully "have been sent forward for trial" – Certificate of Attorney General issued under s. 46(1) of Act of 1939 – Accused sent forward properly for sentence under Act of 1967 to Special Criminal Court – Habeas corpus – Offences against the State Act, 1939, s. 13 (2) (b) – (1976 No. 26 SS – Butler J. 16/2/76).
The People (A.G.) v. Littlejohn.

Procedure
District Court – Plea of guilty – Indictable offence – Court empowered to send accused forward for sentence to the court to which accused, if he had pleaded not guilty, could lawfully "have been sent forward for trial" – Certificate of Attorney General issued under s. 46 (1) of Act of 1939 – Certificate valid – Accused sent forward properly for sentence under Act of 1967 to Special Criminal Court – Habeas corpus – Offences against the State Act, 1939, s. 46 (1) – Criminal Procedure Act, 1967, s. 13 (2) (b) – (19/74 & 25/76 – Supreme Court – 18/3/76).
The State (Littlejohn) v. Governor of Mountjoy Prison.

Prosecution
Authority to initiate – Summary charges brought by police in the name of The People and at the suit of the Director of Public Prosecutions – No authority to prosecute given by D.P.P. – District Justice having no power to determine charges – (1976 No. 58 SS – McMahon J. – 10/12/76).
The People (D.P.P.) v. Roddy.

Road Traffic
Alcohol test – Blood sample – Statutory procedure mandatory – Certificate of result of test not stating that certain requirements satisfied – Onus on prosecution to prove aliunde omitted matters – Failure of proof – Adjournment refused – Complaint dismissed – Decision upheld – (103/75 – Supreme Court – 29/7/76).
Verdon v. Downes.

Road Traffic
Caution – Failure to provide blood specimen – Statutory defence if defendant shows that he has not been cautioned in the prescribed manner of "the possible effects of his refusal or failure" – Defendant cautioned in accordance with regulations – Caution informing defendant that he would be liable to be prosecuted for an offence under s. 30 of Act of 1968 – Defendant prosecuted and convicted under that section – Caution failing to inform defendant that on conviction he would be disqualified from holding driving licence for minimum period of one year – "Possible effects" not equivalent of "possible consequences" – Conviction valid – *Attorney General v. Jordan* 107 I.L.T.R. 112 overruled – Case stated – (33/1976 – Supreme Court 8/4/76).
Grogan v. Byrne.

Road Traffic
Insurance – Complaint that defendant was

owner of vehicle when it was used by third party when user was not covered by policy of insurance – Failure of user to produce on demand such policy – No such demand made on defendant – Whether presumption that no policy in existence – Complaint properly dismissed – Case stated – Road Traffic Act, 1961, ss. 56 (4) 69 – (1975 No. 553 SS. – Gannon J. – 15/3/76).
Lyons v. Cooney.

Sentence
Detention – St. Patrick's Institution– Prisoner serving sentence of imprisonment – Appeal by prisoner to Circuit Court from earlier sentence of detention imposed by District Court – Sentence of detention affirmed with variation – Circuit Court purporting to postpone start of detention until expiration of existing sentence of imprisonment – Lack of jurisdiction – Certiorari – (127/1976 – Supreme Court – 21/10/76).
The State (White) v. Martin.

Sentence
Mistake – Two months imprisonment – Sentence recorded as "three months imprisonment" – Judicial shorthand for "convicted and sentenced to three months imprisonment" – Order of certiorari quashing sentence only – Effect of order – Conviction and sentence not severable – Conviction also quashed – Order prohibiting District Justice from substituting "two months imprisonment"– (39/1973 – Supreme Court – 5/4/1976).
The State (Burke) v. o hUadhaigh.

Warrant
Validity – Sentence of 7 years penal servitude be imposed – Sentence recorded on warrant as "to be detained in military custody for a period of 7 years" – Warrant held to be valid – (189/75 – Supreme Court – 27/1/76).
The State (Flannery) v. Governor of Military Detention Barracks.

DAMAGES

Assessment
Fault – Apportionment – Plaintiff claiming damages for personal injuries caused by alleged negligence of two defendants – Question of liability of each party left to jury – Question of degrees of fault of each party also left to jury although trial judge ultimately responsible for deciding those questions – Civil Liability Act, 1961 s. 38 – (1974 No. 3554P – Murnaghan J. – 24/11/76) – Interlocutory ruling during trial.
Lynch v. Lynch.

Assessment
House destroyed – Cost of rebuilding plaintiff's house awarded as damages rather than market value of destroyed house – (1975 No. 3504P – Finlay P. – 30/7/76).
Munnelly v. Calcon Ltd.

Assessment
Inconvenience and discomfort – Breach of building contract – Failure of defendant to implement compromise – (1975 No. 4344 – McWilliam J. – 22/6/76).
Murphy v. Quality Homes.

Assessment
Inconvenience and loss of enjoyment – Breach of building contract – Defects in new house – Assessment of cost of repairs – (1974 No. 198P – McMahon J. – 19/5/76).
Johnson v. Longleat Properties.

Assessment
Injury resulting from death – Claim on behalf of dependants of deceased – Wife and four children – Posthumous child – Deceased farmer with forty acres – Children too young to suffer mental distress – Apportionment of damages – (1975 No. 68P – Murnaghan J. – 5/10/76).
O'Sullivan v. Coras Iompar Eireann.

Contract
Breach – Termination of commercial agreement – Whether plaintiff's damages limited to compensation for loss – Whether such damages should deprive defendant of unjust enrichment resulting from his breach – Breach not calculated by defendant to obtain benefit of unjust enrichment – Damages restricted to compensation for loss – (1975 No. 1007P – Finlay P. 14/7/76).
Hickey & Co. Ltd., v. Roches Stores Stores (Dublin) Ltd.

Contract
Breach – Termination of doctor's contract for services – Three months' notice – Three months salary in lieu of notice – Three months profits for loss of authorised concurrent private practice also awarded – Expenses of removal awarded – (1964 No. 4 Sp. – Gannon J. – 9/7/76).
Murphy v. Mulligan.

DEFENCE FORCES

Member
Discharge – Natural justice – Audi alteram partem – Rule ignored by Minister – Member the holder of an office upon statutory terms – Discharge invalid – Defence Forces Regulations A. 10, paragraph 58 (r) – Defence Act, 1954, s. 73 – (6/76 – Supreme Court – 1/7/76).
The State (Gleeson) v. Minister for Defence.

EMERGENCY POWERS

Police
Arrest – Suspect thought to have committed offence – Release after expiration of statutory period of detention – Suspect arrested a second time in respect of the same offence – Suspect not charged – Whether second period of detention lawful – Habeas corpus – Emergency Powers Act, 1976, s. 2 – (1976 No. 443 SS–Finlay P. – 12/11/76).
The State (Hoey) v. Commissioner of Garda Siochana.

EJECTMENT

Trespasser
Building erected by trespasser – Owner having no knowledge until building completed in eighth year of ownership – Genuine mistake by trespasser who nevertheless had means of knowledge that he was trespassing – Order for possession with stay to enable defendant to pay value of site and damages – Stay to be perpetual if payment made – (1974 No. 2597P – Finlay P. – 28/7/76).
McMahon v. Kerry County Council.

EVIDENCE

Estoppel
Statutory power – Statutory power to be exercised after specified event – Authority exercising power before specified event – Authority exercising power properly on second occasion – Whether authority bound by exercise of power on first occasion – No estoppel in face of statute – (1976 No. 143 SS – McMahon J. – 24/6/76).
Greendale Building Co. v. Dublin County Council.

Extradition
Foreign law – Application for leave to adduce evidence of foreign law to establish foreign warrant issued without jurisdiction – Application refused wrongfully – (124/75 – Supreme Court – 1/6/76).
Gillespie v. The Attorney General.

HIGH COURT

Jurisdiction
Affiliation – Adaptation of High Court procedure to produce procedure prescribed by statute – Claim for maintenance in excess of District Court jurisdiction – (212/75 – Supreme Court – 29/7/76).
O. v. W.

HUSBAND AND WIFE

Infant
Custody – Failure of marriage – Daughter aged 6 years and son aged 3 years – Custody of both children awarded to mother – (1976 No. 77 Sp. – Hamilton J. – 17/6/76).
O'D. v. O'D.

Infant
Custody – Two sons and one daughter – 14, 9 and 3 years – Mother remarrying after divorce in England – Mother pregnant – Children to continue in father's custody – (1975 No. 244 Sp. – McWillaim J. – 26/1/76).
M. v. M.

Infant
Custody – Wife applying for sole custody for purpose of taking child abroad – Intention of wife to marry paramour abroad and to change her religion for that purpose – Husband alive within jurisdiction – Both parents Catholics – No express mutual promise at date of marriage to rear children in that faith – Such promise implied *(In re May,* 92 I.L.T.R. 1). Application refused and custody awarded to father – (Parke J. – 4/2/76).
H. v. H.

Marriage
Nullity – Marriage not consummated – Husband not impotent as such but only in relation to wife – Marriage in 1969 – Decree obtained in ecclesiastical court – Decree of nullity granted to wife – (1/75 – Supreme Court – 1/7/76).
S. v. S.

Property
Matrimonial home – Wife's application for declaration of her estate or interest – Wife's contribution on purchase of house – House conveyed to husband and wife as joint tenants – No reason to alter effect of conveyance at common law – Wife not given and not entitled to any interest in second house purchased solely by husband – Married Women's Status Act, 1957, s. 12 – (1976 No. 77 Sp. – Hamilton J. – 17/6/76).
O'D. v. O'D.

INDUSTRY

Apprentices
Training scheme – Statutory levy imposed on employers – Constitution – Statute – Validity – Delegated legislation – (1974 No. 3902P – McMahon J. – 28/5/76).
City View Press Ltd. v. An Comhairle Oiliunta. (Training Board).

INFANT
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See Husband and Wife.

INJUNCTION
Remedy
Damages – Plaintiff seeking interlocutory injunction – Allegation that defendant had induced third party to act in breach of contract with plaintiff – If tort established by plaintiff, damages an adequate remedy – Interlocutory injunction refused – (1976 No. 1494P – Hamilton J. – 8/9/76).
Reno Engrais et Produits Chemiques S.A. v. Irish Agricultural Wholesale Society Ltd.

JURY
Panel
Method of selection – No objection taken by accused at his trial – Subsequent objection that provisions of Juries Act, 1927, declared unconstitutional – Members of jury all qualified – Conviction valid – Habeas corpus refused – (1976 No. 197 SS – High Court – 12/7/76).
The People (Byrne) v. Governor of Mountjoy Prison.

LANDLORD AND TENANT
Lease
Breach of covenant – Forfeiture – Covenant by lessee not to use or permit premises to be used for trade or business purposes without consent in writing of the lessor – Sublease by lessee expressly allowing user for purpose of business – No attempt to remedy breach – Order for recovery of possession – (1972 No. 3328P – McMahon J. – 3/3/76).
Walsh v. Legge.

New Tenancy
Statutory right – Service of notice of intention to claim such relief – Lessor's interest in premises terminating during term granted by him to lessee – Consequent termination of interest of lessee – Lessee unaware of termination of lessor's interest when serving notice – Failure of lessor to inform lessee of facts and to serve statutory notice on superior landlord – Notice of claim served by lessee on superior landlord – New tenancy directed by court – Term of new lease to be 21 years with rent review at end of seven years – (1976 No. 33 – Gannon J. – 31/5/76).
Eamonn Andrews Productions Ltd. v. Gaiety Theatre (Dublin) Ltd.

Time limit
Extension – Intention to claim new tenancy in tenement – Service of notice of intention – Negotiations by respondent to purchase applicant's interest in tenement – Decision of respondent in July, 1974, not to purchase – Decision not communicated to applicant – Tenancy terminating by expiration of term of years on 31st December – Period for serving notice extended – (D 3255 – Hamilton J. – 25/1/76).
Grey Door Hotel Co. Ltd. v. Pembroke Trust.

LICENSING ACTS
Licence
Interim transfer – Nominee of applicant company – Shareholder and director of company having been convicted of offence under licensing code – Whether valid ground for refusing application – Company held to be distinct persona – (153/75 – Supreme Court – 29/7/76).
The State (Hennessy) v. Donnelly.

Restaurant
Premises with on-licence – Application for certificate stating that portion of premises a restaurant for purpose of s. 13 of Intoxicating Liquor Act, 1927 – No existing user as restaurant – Public bar in said portion – No jurisdiction to issue certificate – (1976 No. 238 SS – Finlay P. – 29/11/76).
Whelan v. Tobin.

LIMITATION OF ACTIONS
Negligence
Motorist – Infant plaintiff injured in motor accident – Driver of car killed in same accident – Plaintiff's action commenced within three years of date of accident against personal representative of driver – Statute requiring that plaintiff's proceedings be commenced within two years after driver's death – Whether plaintiff's property rights protected – Held cause of action barred – Civil Liability Act, 1961, S. 9 – (1969 No. 2136P – Murnaghan J. – 12/7/76).
O'Shea v. Greensmyth.

LOCAL GOVERNMENT
Planning
Compensation – Permission for building development refused – Whether intended development involved material change in the use of any structure or other land – Definition of "use" – Applicant entitled to compensation – Local Government (Planning & Development) Act, 1963, ss. 2, 55, 56 – (1976 No. 229 SS – Finlay P. – 21/12/76).
In re Viscount Securities Ltd.

Planning
Notice – Misleading advertisement – Notice of application for permission to erect three temporary prefabricated classrooms in secondary school – New access to school from cul-de-sac also intended – Permission to develop invalid – (1976 No. 3557 P. – McMahon J. – 12/11/76).
Keleghan v. Corby.

NATURAL JUSTICE
Office Holder
Dismissal – Member of Defence Forces – Audi alteram partem – Rule ignored – Dismissal invalid – (6/76 – Supreme Court – 1/7/76).
The State (Gleeson) v. Minister for Defence.

Police
Dismissal – Statutory procedure – Right of accused to be informed of allegations – Right to be given opportunity of answering charges – *The State (Gleeson) v. Minister for Defence* (S.C. – 1/7/76) considered – Garda Siochana (Discipline) Regulations, 1971, reg. 34. (1976 No. 1715P – Hamilton J. – 8/9/76).
Hogan v. Minister for Justice.

NEGLIGENCE
Builder
Scaffold – Plaintiff injured in fall from scaffold obtained by plaintiff's employers on hire from 3rd defendants – Plaintiff's employers acting as sub-contractors for 2nd defendants – Plaintiff recovering damages from his employers – Building (Safety, Health & Welfare) Regulations, 1959, reg. 29 – (1973 No. 2940P – Murnaghan J. – 1/12/76).
Delaney v. Mather & Platt Ltd.

Demolition
Support – Terrace of houses – Demolition of business premises by negligent removal of support from plaintiff's house – Damages the cost of rebuilding as distinct from market value of destroyed house – (1975 No. 3504P – Finlay P. – 30/7/76).
Munnelly v. Calcon Ltd.

Employer
System of work – Plaintiff railwayman injured in fall from vertical steel ladder – Whether employer should have provided circular metal cage around ladder – Cage not a customary feature of railway installation – No similar accident within 10 years – Defendant's appeal allowed – (137/75 – Supreme Court – 9/2/76).
Bradley v. Coras Iompar Eireann.

NEGOTIABLE INSTRUMENTS
Cheque
Dishonour – Presentment for payment delayed by bank strike – Drawer customer of one branch of bank – Payee customer of another branch – Drawer's account in funds when payee lodged cheque in his branch for collection – Drawer's account insufficient at artificial date chosen by banks as day of settlement at end of strike – Drawer's cheque dishonoured by his (paying) branch – Plaintiff payee claiming damages from bank for negligence and breach of contract – Two branches treated as distinct banks – Plaintiff's claim rejected as paying branch/bank owed no duty to payee – Query whether proper method employed in selecting cheques to be dishonoured – (38/1975 – Supreme Court – 22/7/76).
Dublin Port and Docks Board v. Bank of Ireland.

NUISANCE
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Vibration – Mining activities – Damage to dwellings – Damages in lieu of injunction – (1973 No. 1516P – Gannon J. – (16/2/76).
Halpin v. Tara Mines Ltd.

ORDER
Validity
Attachment – Civil contempt of court – Detention of person in contempt – Transfer to mental hospital – Whether offence excused by state of mind – (59/1976 – Supreme Court – 14/10/76).
The State (Heany) v. Central Mental Hospital.

PARTNERSHIP
Dissolution
Examiner to prepare accounts – Items in dispute – Matter re-entered in court list for issues to be determined by court – Trial of issues on affidavit and oral evidence – Issues determined by court – Interest on balance found due to retiring partner – Costs of all parties payable out of partnership assets – Partnership Act, 1890, s. 42 – (1970 No. 812P – Kenny J. – 22/1/76).
O'Connor v. Woods.

PRACTICE
Action
Transfer – Claim for unliquidated damages in High Court – Assault and battery committed in 1970 – Summons issued in 1975 – No defence delivered – Whether plaintiff had absolute right to trial with jury – No trial with jury in Circuit Court – Action transferred to Circuit Court – *Ronayne v. Ronayne* (1970) I.R. 15 considered – (1975 No. 1183P – McWilliam J. – 23/2/76).
McDonald v. Galvin.

Attachment
Contempt of Court – Civil contempt – Jury not required for trial of issue – *The State (Commins) v. Fawsitt* approved – (59/1976 – Supreme Court – 14/10/76).
The State (Heany) v. Central Mental Hospital.

Attachment
Contempt of Court – civil contempt – Whether issue may be tried without a jury – Order of the Court in a civil action disobeyed by one of the parties – Verdict of jury not required (*McEnroe v. Leonard* 9/12/75 not applied) – Sentence may be of indefinite duration – Constitution of Ireland, Article 38, s. 5 – (1976 Nos. 64 & 65 SS. – Finlay P. – 19/3/76).
The State (Commins) v. Fawsitt.

Attachment
Contempt of Court – Criminal contempt – Bias imputed to judges of Special Criminal Court – False representation about evidence tendered against accused at criminal trial – Conditional order of attachment against editor of publication – Conditional order of sequestration against body corporate which published the contempt – (121/1976 – Supreme Court – 14/7/76).
The State (D.P.P.) v. Hibernia National Review Ltd.

Costs
Taxation – Counsel's fees – Principles stated by Gannon J. in *Dunne v. O'Neill* (1974 I.R. 180) applied (1972 No. 1470P – Parke J. – 12/3/76).
Irish Trust Bank Ltd. v. Central Bank of Ireland.

Procedure
Affiliation – High Court jurisdiction – Jurisdiction apparently dependent upon existence of appropriate rules of court – Rules not made – Jurisdiction not excluded – Application of existing High Court rules to create procedure similar to procedure prescribed by statute – Claim for maintenance in excess of District Court jurisdiction – (212/75 – Supreme Court – 29/7/76).
O. v. W.

Time Limit
Extension – *See* Landlord and Tenant.

PRISON
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Enforcement – Whether a criminal matter – Limited function of a judicial nature – Constitution – Punishment not unconstitutional – (1975 No. 613 SS. – High Court – 21/1/76).
The State (Murray) v. Governor of Limerick Prison.

RATES
Hereditament
Valuation – Increase in value – Statutory exclusion from liability to rates arising from consequential increase in value of hereditament due to specified works – Valuation (Ir.) Act, 1852, s. 14 – (Gannon J. – 21/12/76).
Nixon v. Commissioner of Valuation.

REAL PROPERTY
Easement
Support – Terrace of houses – Demolition of business premises by negligent removal of support from plaintiff's house during rebuilding of adjoining house – Measure of damages to be the cost of rebuilding plaintiff's house as distinct from market value of destroyed house – (1975 No. 3504P – Finlay P. – 30/7/76).
Munnelly v. Calcon Ltd.

Trespass
Building erected – Trespasser acting in belief that building site belonged to him – Owner having no knowledge until building completed in eighth year of ownership – Lack of attention by owner to his property and failure to fence plot from surrounding land – Trespasser having means of knowledge that he was trespassing – Unjust enrichment – Ejectment – Order made for possession with stay to enable defendant to pay value of site and damages – Stay to be perpetual if payment made – (1974 No. 2597P – Finlay P. – 28/7/76).
McMahon v. Kerry Co. Council.

REVENUE
Company
Constitution – Distribution of profits – Company not liable for Corporation Profits Tax if a "corporate body which by its constitution is precluded from distributing any profits among its members" – Company so precluded by its articles of association – Revenue claim that provisions in company's Articles relating to the winding up of the company allowed a distribution of profits to its members – Both claims rejected – Finance Act, 1932, s. 47 – (1974 No. 28 – Kenny J. 22/1/76).
Wilson v. Dunnes Stores (Cork) Ltd.

Income Tax
Forestry – Allowable expenses – Cost of purchasing and planting young trees to replace old woodland being a revenue expense and allowable – Cost of preparing waste land for planting being a capital expense – Cost of purchasing and planting young trees on reclaimed waste land being a capital expense – Income Tax Act, 1918, Sch. B, rr. 5 & 7 – (38/1976 – Supreme Court – 20/12/76).
Wilson-Wright v. Connolly.

Income Tax
Occupier of land – Schedule B – Whether taxpayer had the use of land – Taxpayer cultivating, cutting and removing grass from military aerodrome under licence of Minister in whom aerodrome was vested – Whether Act contemplated two users of same land – Taxpayer not the dominant user and not assessable under Schedule B – Income Tax Act, 1967, s. 18 – (13/1975 – Supreme Court – 20/12/76).
O'Conail v. George Shackleton & Sons Ltd.

SALE OF GOODS
Consideration
Failure – Defendant seller not the owner of goods – Property not vested in plaintiff buyer – Buyer claiming recovery of price of goods – Quasi contract – Seller handing over price to owner of goods who became hirer under sham hire-purchase agreement with buyer as a device for obtaining a loan – Plaintiff having no knowledge of true facts – Agency – Agent's knowledge of fraud or misfeasance against his principal not imputed to principal – (97/1975 – Supreme Court – 19/3/76).
United Dominions Trust (Ir.) Ltd. v. Shannon Care Hire Vans Ltd.

SALE OF LAND
Contract
Breach – Discharge – Recission – Sale of licensed premises with intoxicating liquor licence as going concern – No express term stipulating that date fixed by contract for completion to be of essence of contract – Normally such term implied by law in contracts for sale of such premises – Existence of express term relating to interest on purchase money after completion date and conduct of parties excluding implication of such term – Consequently term implied by law that sale (if not completed on or before) should be completed within reasonable period after completion date – Deliberate delay by purchaser who tried to provide purchase money by sale of other property in order to avoid necessity of obtaining bridging loan otherwise required to enable him to complete – Vendor not informed of reason for purchaser's delay – No conveyancing or title difficulties – After expiration of 3 months demand by vendor that purchaser complete within 14 days – Failure of purchaser to so complete – Rescission (and return of deposit) by vendor – Plaintiff purchaser's claim for specific performance – Judgment for defendant – Purchaser in breach of implied term to complete within reasonable period after completion date – (Circuit Appeal – Finlay P. – 31/5/76).
O'Brien v. Seaview Enterprises Ltd.

Contract
Formation – Agreement "subject to contract" – Facts supporting inference that parties had concluded a contract to buy and sell property – Phrase used to indicate that provisions of existing agreement should be recorded in formal written document – Execution of formal contract by vendor not a condition precedent to his liability – (1976 No. 377P – McWilliam J. – 3/11/76).
O'Fiaherty v. Arvan Properties Ltd.

Contract
Formation – Knowledge of terms – Foreign purchaser unable to speak English – No independent advice – Contract prepared and deposit taken by helpful estate agent – Express term that deposit (¼ of £72,500) to be forfeited in event of purchaser failing to complete – Purchaser signing memorandum of contract – Purchaser having no knowledge of express term or nature of a deposit – Purchaser failing to complete – Plaintiff purchaser recovering deposit with accrued interest – (1975 No. 748P – Finlay P. – 1/6/76).
Siebel v. Kent.

Contract
Recission – Licensed premises – Defendant vendor misrepresenting amount of current turnover of business – Misrepresentation an inducement to contract – Plaintiff entitled to rescind – Sale also invalidated by unlawful use of puffer at auction contrary to Sale of Land by Auction Act, 1867 – (1974 No. 983P – Hamilton J. – 27/1/76).
Early v. Fallon.

Contract
Specific performance – Damages in addition – Breach by defendant of contract to build house for plaintiff – Plaintiff's action compromised – Compromise including sale of defective house by plaintiff to defendant – Failure of defendant to implement compromise – Specific performance ordered – Damages awarded to plaintiff for loss of bargain in purchase of other property because of defendant's failure to pay purchase price – Damages awarded for discomfort and inconvenience suffered by plaintiff – (1975 No. 4344P – McWilliam J. – 22/6/76).
Murphy v. Quality Homes.

Contract
Specific performance – Licensed premises – Memorandum not invalidated by intoxication of defendant vendor – Acquisition of licence by plaintiff not mentioned by either party – Delay by plaintiff – Damages in lieu of specific performance – (1973 No. 1412P – Gannon J. – 26/4/76).
White v. Mc Cooey.

Contract
Specific performance – Purchase price not ascertained – Purchase of landlord's interest by tenant – Provision that price to be the number of years purchase of rent that would be fixed under Landlord and Tenant (Ground Rents) Act, 1967, if rent reserved were a ground rent within the meaning of that Act – Price of purchase of ground rent under Act of 1967 ascertained by county registrar – Registrar declining to perform function sought to be imposed on him by tenant – Tenant claiming specific performance of contract by landlord – Contract failing to specify person to fix price – Price essential to contract – No concluding agreement – Specific performance refused – (1973 No. 2361P – Hamilton J. – 18/6/76).
Carr v. Phelan.

Judgment mortgage
Registered land – Contract of sale – Registration of judgment mortgage as burden on Folio after execution of contract by owner and before conveyance – Interest of purchaser superior to that of judgment creditor – Registration of Title Act, 1964, s. 71 – (145/75 – Supreme Court – 1/6/76).
Tempany v. Hynes.

SOCIAL WELFARE

Benefit
Entitlement – Alienation of property in order to qualify for benefit – Claim rejected – (1975 No. 362 SS. – Gannon J. – 2/2/76).
The State (Power) v. Moran.

Benefit
Hospital services – Geriatric ward of court – Whether ward was receiving "in-patient services" under s. 51 of Health Act, 1970, or "institutional assistance" under s. 54 of Health Act, 1953 – Whether ward chargeable for maintenance – (133/75 – Supreme Court – 20/12/76).
In re McInerney.

Insurance
Contribution – Special rate for employees of public authorities – Whether General Medical Services (Payments) Board a public authority – (1976 No. 121 Sp. – Hamilton J. 30/11/76).
General Medical Services (Payments) Board v. Minister for Social Welfare.

Pension
Qualifications – Non-contributory Old Age pension – Applicant alienating property before application – Whether alienation effected to qualify for pension – Decision of appeals officer rejecting application – Evidence to support decision – Decision not invalidated by consideration of irrelevant factors – (1976 No. 362 SS. – Gannon J. 2/2/76).
The State (Power) v. Moran.

STATE SIDE

Certiorari
Criminal offence – Admission by applicant and plea of guilty – Conviction of applicant in District Court – Conviction affirmed on appeal to Circuit Court – Applicant alleging absence of evidence which would have been essential to support conviction – Application refused on ground that court would not enquire into allegation in certiorari proceedings – (1976 No. 122 SS – McWilliam J. – 17/8/76).
The State (Lee-Kiddler) v. Dunleavy.

Certiorari
Refusal – Conviction in District Court – Trial alleged to have been unsatisfactory – Certiorari proceedings not a substitute for an appeal – Conditional order refused – Illegal fishing by foreign ship – (1976 No. 502 SS – Finlay P. – 15/12/76).
The State (Shinkaruk) v. Carroll.

Habeas corpus
Constitution – Convicted prisoner – Disturbed state of mind and history of self-inflicted injuries – Stringent conditions of detention – Right of bodily integrity not infringed – (1975 No. 140 SS. – Finlay P. – 13/4/76).
The State (Crawley) v. Governor of Mountjoy Prison.

Habeas corpus
Contempt of Court – Imprisonment of indefinite duration – Civil Contempt – Prisoner transferred from prison to mental hospital – Imprisonment replaced by detention for treatment – Applicant in lawful custody – (1976 No. 11 SS. – Finlay P. – 19/3/76).
The State (Heany) v. Central Mental Hospital.

Habeas corpus
Treatment of detainee – Conduct of police enquiry – Whether ill-treatment would invalidate lawfulness of detention – (1976 No. 439 SS – Finlay P. – 14/12/76).
The State (Harrington) v. Commissioner of Garda Siochana.

STATUTE

Interpretation
Conflicting provisions – Companies Act, 1963, ss. 99, 104 – (1976 No. 37 Sp. – Hamilton J. – 10/12/76).
Lombard & Ulster Banking (Ir.) Ltd. v. Amurec Ltd. (In Liquidation).

Natural Justice
Delegated legislation – Statutory instrument – Imposition of price control for sale of intoxicating liquor – Legislative power not exercised arbitrarily or capriciously – (1974 No. 1146P – McMahon J. – 28/6/76).
Cassidy v. Minister for Industry and Commerce.

TRADE MARK

Registration
"Aphrodisia" – Non-medicated soaps, perfumes etc. – No direct reference to character of goods – Not adapted to distinguish and not registerable in Part A – Mark not incapable of distinguishing applicant's goods and registerable in Part B – (1968 No. 219 Sp. – Kenny J. – 31/3/76).
Fabergé Inc. v. Controller of Patents etc.

Registration
"Durex" – Class 10 – Surgeons gloves and finger stalls – Whether public likely to be deceived or confused – Trade Marks Act, 1963, s. 19 – (1974 Nos. 239-43 – Hamilton J. – 13/7/76).
L.R.C. International Ltd. v. Controller of Trade Marks.

TRADE NAMES & DESIGNS

Passing off
Packaging – Similar designs – Equipment for slimming – Plaintiff not the owners of relevant goods but sole distributing agents of the owner – Judgment for the plaintiffs – (1976 No. 80P – McWilliam J. 17/6/76).
Grange Marketing Ltd. v. M. & Q. Plastic Products Ltd.

TRADE UNION

Trade Dispute
Picketing – Closure of factory and cessation of business – Employer paying redundancy money – Former employees in dispute about non-employment – Trade dispute in existence and injunction to restrain picketing refused – (1976 No. 3509P – Hamilton J. – 22/9/76).
Gouldings Chemicals Ltd. v. Bolger.

Trade Dispute
Picketing – Seasonal worker – Application for employment refused because of unsatisfactory work when employed by plaintiff on previous occasion – Dispute about non-employment – Trade dispute in existence – Interlocutory injunction refused – (1976 No. 4860P. – Hamilton J. – 19/11/76).
McHenry Bros. Ltd. v. Carey.

TRIBUNAL

Decision
Validity – Evidence to support decision – Decision not invalidated by consideration of irrelevant factors – (1976 No. 362 SS Gannon J. – 2/2/76).
The State (Power) v. Moran.

TRUSTS

Will
Bequest – Whether precatory trust or absolute gift – (1974 No. 374 Sp. – Hamilton J. – 14/5/76).
In re Sweeney: Hillary v. Sweeney.

WILL

Construction
Devise of "freehold land" – Testator owning property under long lease – *Falsa demonstratio non nocet* – Lease for 10,000 years with provision for abatement of rent – No rent paid for 40 years – Presumption that rent redeemed – Bequest of leasehold interest to tenant for life – Provision that life tenant use premises as principal residence not void for uncertainty but void under s. 51 of the Settled Land Act, 1882 – Costs payable out of specific bequest – (1974 No. 94 Sp. – Kenny J. – 30/3/76).
In re Atkins, deceased.

Construction
Precatory trust or absolute bequest – Universal devise and bequest to wife "for her own absolute use and benefit" subject to express wish that she makes provision for the payment of specified legacies – Wife entitled beneficially – No trust or condition attached to bequest – (1974 No. 374 Sp. – Hamilton J. – 14/5/76).
In re Sweeney: Hillary v. Sweeney.

WORDS AND PHRASES

"Chips"
Prosecution for breach of condition imposed in granting permission for user of premises as "fried fish and chip shop" – Condition imposed under Local Government (Planning and Development) Act 1963 – (1976 No. 36 SS – Finlay P. – 1/6/76).
Corporation of Dublin v. Raso.

The entries in the Index were prepared by Nevil Lloyd-Blood, Barrister-at-Law, on behalf of the Incorporated Council of Law Reporting for Ireland.

CRIMINAL LAW

Nolle prosequi

Entry – Statute requiring entry to be made prior to indictment being preferred to jury – Whether further prosecution permissible – Whether used as a device to set aside ruling of trial Judge at abortive trial – Criminal Justice (Admin.) Act, 1924, S. 12 – (1976 No. 307 SS – Finlay P. – 4/2/77).
The State (O'Callaghan) v. Ó hUadhaigh.

Prosecution

Authority to initiate – Director of Public Prosecutions – Further prosecution after entry of nolle prosequi in former proceedings – Adverse ruling of trial Judge – Further prosecution prohibited – (1976 No. 307 SS – Finlay P. – 4/2/77).
The State (O'Callaghan) v. Ó hUadaigh.

Prosecution

Authority to initiate – Summary charges brought in the name of The People and at the Suit of the Director of Public Prosecutions – No express authority to prosecute given by D.P.P. – District Justice had power to determine charges – Decision of High Court (10/12/76) overruled – (1/1977 – Supreme Court – 25/2/77).
The People (D.P.P.) v. Roddy.

Road Traffic

Insurance – User of motor vehicle without insurance – Presumption of contravention where unsuccessful demand for production of insurance policy made under S. 69 of Act – Presumption available against owner where unsuccessful demand made against user – Road Traffic Act, 1961, SS. 56, 69 – (66/1976 – Supreme Court – 23/2/77).
Lyons v. Cooney.

EVIDENCE

Admissibility

Tribunal – Natural justice – Medical report as prima facie evidence – Improperly used as superior to sworn evidence to contrary effect – Descent of medical assessor into arena behind back of appellant – Social Welfare (Insurance Appeals) Regulations, 1952 – Social Welfare Act, 1952, S. 44 (93/1973 – Supreme Court – 16/2/77).
Kiely v. Minister for Social Welfare.

Gift

Chattels – Delivery essential proof – Constructive delivery – Life tenant entering into possession of part of settled property – Life tenant being intended donee – (3/1975 – Supreme Court – 23/2/77).
Conner v. Quinlan.

Presumption

Criminal law – Road traffic – User of motor vehicle without insurance – Statutory presumption of contravention where unsuccessful demand made under S. 69 for production of insurance policy – Presumption available against owner where unsuccessful demand made to user – Road Traffic Act, 1961, SS. 56, 69 – (66/1976 – Supreme Court – 23/2/77).
Lyons v. Cooney.

NATURAL JUSTICE

Tribunal

Evidence – Medical report as prima facie evidence – Improperly used as superior to sworn evidence to contrary effect – Descent of medical assessor into arena behind back of appellant – Social Welfare (Insurance Appeals) Regulations, 1952 – Social Welfare Act, 1952, S. 44 – (93/1973 – Supreme Court – 16/2/77).
Kiely v. Minister for Social Welfare.

PERSONAL PROPERTY

Chattels

Gift inter vivos – Proof – Delivery essential – Life tenant entering into possession of part of house – Intended subjects of gift situate in all parts of house – Constructive delivery – Inquiry as to which chattels existing at time of inchoate gift were situate in life tenant's portion of house at date of constructive delivery – (3/1975 – Supreme Court – 23/2/77).
Conner v. Quinlan.

POLICE

Dismissal

Recruit – Initial probationary period of two years – Power of Commissioner to dispense with services of probationer during such period – Power exercisable if Commissioner considers recruit physically or mentally unfit or not likely to become efficient and well conducted – Recruit absent through sickness for 39 days – Termination invalid – (1976 No. 421P – McWilliam J. – 19/11/76).
Hynes v. Garvey.

SALE OF GOODS

Cattle

Intervention price – Contract before announcement of intervention price – Conflict of evidence about whether seller entitled to all intervention price – Seller's version of contract accepted – (1975 No. 1580 – McWilliam J. – 15/12/76).
Achates Investment Co. v. Cork Co-Operative Marts.

J.'s decision will be allowed. So held by *O'Higgins C.J., and Parke J.*

Kenny J. having considered in detail the cases of (1) *Miller v. South of Scotland Electricity Board* – 1958 Sessions Cases, (2) *Hughes v. Lord Advocate* – (1963) A.C., and (3) *The Wagon Mound* (No. 2), – (1967) A.C., also came to the conclusion that the Asphalt Co. was liable in negligence and in nuisance, and that the appeal should be allowed.

Wade v. Connolly and South of Ireland Asphalt Co. – Supreme Court (O'Higgins C.J., Kenny J. and Parke J.) – unreported – 21 January 1977.

PERSONAL PROPERTY – CHATTELS

The donee who enters into beneficial occupation of lands in 1971 is entitled to receive the cattle, stock and farm implements donated in 1962, still extant, but never delivered. Subject to enquiry the donee is also entitled to the chattels in the rooms occupied by himself and his family in the house since 1971.

The donor was a retired District Justice who resided in his ancestral home, including a farm of 346 acres, near Ballyneen, Co. Cork. In 1962 he was a widower with three children, the eldest son, Cornelius Conner, the plaintiff in this action (hereinafter called "the donee"), and two daughters. As the donor was anxious that the family property should descend to the male line, he executed a deed of settlement in December 1962, whereby his house and lands, save the property specified later, were conveyed to trustees to be settled on the donee for life, with remainder to the first and other sons of the donee successively in tail male, with an ultimate remainder to the donee in fee simple. The donor's daughter, Ann Conner, received from this settlement "The Farm House", and one half of "The Coach House". O'Keeffe P. had rightly held that this was an effective settlement giving the donee a beneficial estate for life in most of the property. It is, however, contended that O'Keeffe P. had misdirected himself in holding that the chattels (cattle, farm machinery, implements, furniture, family heirlooms and silver) on the lands settled were not legally transferred by the donor to the donee by a separate gift.

When the settlement was being effected in 1962, the donor consulted his solicitor orally as to how the chattels could legally be settled upon the donee, and the solicitor advised that this should be done by delivery, with a subsequent letter confirming it. But the donor in fact made no delivery then, either actual or constructive. In 1962, the donee was living in Dublin, and continued to reside in Dublin, until 15 November 1971, when he entered into residential occupation of the lands as tenant for life. It followed that in the absence of delivery in 1962 the gift of the chattels was legally inoperative. It is also contended that when the donee took possession of the lands in 1971 he also went into possession of the chattels. However, the donor continued to reside in the same premises after 1971 until he died in October 1972, at the age of 85.

When the donee entered into beneficial occupation and possession of the lands in 1971 under the settlement, it must be assumed that, as the person now solely working the lands, he was put in possession of the livestock and farm implements, and that he, his wife and 13 year old son, were given by the donor sole possession of certain rooms in the house, which would include furniture and chattels. As tenant for life, the donee went into beneficial occupation in 1971, and the donor withdrew from the running of the farm. The livestock, farm machinery and implements, insofar as they were already on the lands in 1962, passed into the possession of the donee. There is no doubt that the donor, by allowing the donee, his wife, and son, to occupy certain rooms in the house, intended to part with the chattels in those rooms to the donee. The remainder of the chattels, insofar as they subsisted at the date of the death of the donor, had passed under his will to his two daughters in equal shares. A declaration will be made accordingly, but it will be necessary to hold an inquiry to determine which chattels have passed to the donee. The appeal will be allowed to that extent.

Conner v. Quinlan and others – Supreme Court (Henchy J., Kenny J. and Parke J.) per Henchy J. and Kenny J. – unreported – 23 February 1977.

EDUCATION – BREACH OF CONTRACT – CONSPIRACY

Plaintiff awarded £367 damages against school Manager for not appointing him a Principal of a National School – Four other defendants, officials of Cork Branch of I.N.T.O., guilty of breach of contract and conspiracy – Plaintiff awarded £1,562 against them for having to transfer to Co. Wicklow – Full contribution to be paid by these four defendants to School Manager in respect of £367 damages.

Plaintiff claims damages against Canon Ahern for breach of contract to appoint him Principal of Ovens National School, Co. Cork, and against the remaining defendants, who are respectively Chairman, Vice-Chairman, Treasurer and Secretary of the Cork City Branch of the Irish National Teachers Organisation (I.N.T.O.).

The plaintiff, a native of Cork, qualified as a primary teacher in 1954, and, save for two years, has since taught in various schools in Ireland. In 1963, he was appointed to Schull National School, Co. Cork, and eventually became Principal of a two teacher boys school. In 1972, he obtained an appointment as Assistant at a larger school at New Inn, Lower Glanmire, on the outskirts of Cork City. Shortly afterwards, he was offered and accepted the post of Vice-Principal, although the local officials in the I.N.T.O. told him that more junior applicants who had been longer in New Inn were entitled to be considered first. The plaintiff refused to attend an arbitration by the I.N.T.O. as to whether his appointment as Vice-Principal was valid, and eventually resigned from the I.N.T.O. The defendant members of the Cork City Branch of the I.N.T.O. then made repeated representations to the Bishop of Cork to have the plaintiff removed from the position of Vice-Principal, but were unsuccessful.

In April 1974, Canon Ahern advertised in the newspapers the post of principal of Ovens National School. The plaintiff sent particulars of his qualifications and experience to Canon Ahern. Eventually Canon Ahern drew up a list of 8 names, which included those of the plaintiff and Denis Lynch. The effective Rules governing appointments are the Rules for National Schools of the Department of Education of 22 January 1965, and more particularly Rule 15. This is supplemented by a circular of the Department dated January 1969, which relates specifically to the details of appointing a Principal, where the staff exceeded three persons. Under

this Circular, the Manager submitted particulars to the Department of all applicants. The Department then "short listed" those applicants in alphabetical order, and, provided that the Manager subsequently decided to appoint one of those short listed, the sanction of the Minister to such an appointment was automatic.

On 3 June 1974, Canon Ahern interviewed the plaintiff for the post. He informed him that he was the next candidate on the list. Canon Ahern then offered the post to the plaintiff, provided he could take up his appointment on 1 July 1974. The plaintiff accepted these terms, and Canon Ahern wrote a confirmatory letter of appointment.

One of the unsuccessful candidates for the post was Mr. Denis Lynch who was an assistant teacher at the school. Mr. Lynch was informed of this by Canon Ahern, and he informed the Treasurer of the Cork City Branch, Mr. O'Shea, that he had been unsuccessful, and that the plaintiff was not a member of the I.N.T.O. Mr. O'Shea advised Mr. Lynch to inform Canon Ahern of this, which he did on 6 July. Canon Ahern then sent for the plaintiff, and informed him of the position, but did not suggest he was cancelling the appointment. The plaintiff then visited one of the defendants, Mr. Motherway, who was the secretary of the local Branch of the I.N.T.O., and gave a brief resume of his dispute with the I.N.T.O. in 1972 which had led to his resignation, but now asked to be re-instated. On the morning of 6 June, there had been a meeting of the Cork City Branch of the I.N.T.O. The Chairman, Mr. Hurley, had telephoned the General Secretary of the I.N.T.O., Senator Brosnahan, to enquire whether the Department of Education had sanctioned plaintiff's appointment as Principal of Ovens School and Senator Brosnahan was informed by the Department that no appointment had as yet been made. It was then decided that Mr. Hurley and Mr. Motherway should make representations to Canon Ahern.

As Canon Ahern was about 75 years of age, it was finally decided that the Chairman (Mr. Hurley), the Vice-Chairman, Mr. Garvey, and the Treasurer, Mr. O'Shea, would visit him.

When the visit took place, they informed Canon Ahern of their dissatisfaction with his decision to appoint the plaintiff as Principal of Ovens School. On being requested to furnish the information whether he had obtained the approval of the Bishop of Cork to this appointment, Canon Ahern replied that he had not yet sought for this approval.

The delegation then intimated that they were prepared to discuss the appointment with the Bishop of Cork, and Canon Ahern then expressed the view that the appointment might be cancelled. He followed this up, by writing a letter to the plaintiff on 6 June, cancelling the appointment he had made on 4 June. Canon Ahern intimated to the delegation that he would appoint Mr. Lynch as Principal, and asked them to insert an advertisement in the *Cork Examiner* for an assistant teacher in the school. The plaintiff was then able to persuade the Manager of New Inn school to retain him as Vice-Principal. In May 1975, the plaintiff applied for many posts as Principal in the Cork area and was nearly appointed Principal of St. Peter and Paul's School, Cork, but the Manager, having consulted the local officials of the I.N.T.O., who were opposed to his appointment, declined to appoint him. In the end, the plaintiff eventually applied for, and accepted the post of Principal of one of the National Schools in Bray, Co. Wicklow.

The President is satisfied that the local officials in Cork of the I.N.T.O. tried to ensure as far as possible that all national teachers in the area should be members of the I.N.T.O., a duly registered trade union. The officials went so far as to circulate at the back of their balance sheet every year a list of teachers in the Cork City area, who were not members of the organisation, and, from 1974, this list included the plaintiff. The visit of the officials to Canon Ahern on 6 June was to use the most powerful pressure to prevent the appointment of the plaintiff as Principal, solely due to the fact that he was not a member. There was an undoubted oral agreement, supplemented by a collateral letter on 4 June, that Canon Ahern would appoint the plaintiff Principal of Ovens School from 1 July 1974. By not seeking the sanction either of the Bishop or of the Department of Education, Canon Ahern had clearly committed a breach of contract with the plaintiff. The President is also satisfied that the other defendants, the officials of the Cork City Branch of the I.N.T.O., induced the breach of contract by Canon Ahern with the plaintiff. In all the circumstances, Canon Ahern must have taken upon himself the implied obligation of seeking in a genuine and *bona fide* way the approval of the Bishop and of the Minister.

The President, on the basis of the judgment of Walsh J., delivering the Supreme Court judgment in *Meskell v. C.I.E.*, (1973) I.R. 121, is quite satisfied that the defendants were guilty of an actionable conspiracy in this case. It is clear that agreement by two or more persons to prevent the promotion of a National Teacher as part of a campaign to ensure that he and all National Teachers in the area must be members of a trade union is to seek to coerce or penalise that person into waiving his constitutional right to dissociate, and as such is an actionable conspiracy. These defendants are thus liable to the plaintiff for conspiracy as well as breach of contract.

As regards damages from Canon Ahern, the plaintiff is entitled to the damage and loss suffered as a result of the natural and probable consequences of the breach by the defendant, i.e. the services of the plaintiff as Principal for the school year, 1974-75, and the difference of salary between a Principal of a school and a Vice-Principal, which amounts to £376.24.

The conspiracy proved against the defendant officials was not only proved in respect of 1974 but continued right into 1975. They are, therefore, liable for all the miscellaneous expenses which the plaintiff and his family incurred in transferring to Bray, and which amount to a total of £1,562.55. Accordingly, judgment will be given against all the defendants including the Canon, jointly in the sum of £376.24 previously mentioned, and a separate judgment jointly and severally in the sum of £1,562.55 against the officials of the Cork City Branch of the I.N.T.O. defendants in this action. The real and effective cause of the breach of contract by Canon Ahern was the action of the four other defendants in furtherance of their actionable conspiracy against the plaintiff. There will accordingly be an order of contribution, by which these four defendants will have to reimburse Canon Ahern in full.

Cotter v. Canon Ahern, Hurley, Garvey, O'Shea and Motherway — Finlay P. — unreported — 25 February 1977.

SOCIETY OF YOUNG SOLICITORS

6. GUIDELINES – FAMILY LAW

BREAKDOWN OF MARRIAGE

SOCIAL WELFARE BENEFITS ON DESERTION

(A) DESERTED WIFE'S BENEFIT

(1) This is payable to a wife where she is
- (a) Deserted for at least three months and
- (b) Receiving no money from her husband and
- (c) If childless, aged over forty and
- (d) Resident in the State for any two years and
- (e) Either herself or her husband has the necessary number of Social Welfare Stamps (i.e. 156 contributions before the desertion date paid on a yearly average of at least thirty-nine in either the three or the five years before the desertion).

Note: The wife can still get the benefit if in receipt of income from a source other than her husband but where she is entitled to a State pension she must opt either for the pension or the Deserted Wife's Allowance.

(2) How to Claim

Claim forms may be obtained from and should be submitted to the Department of Social Welfare, Phibsboro Tower, Dublin 7.

(3) What evidence is required for Payment?

Department of Social Welfare will send an officer to investigate each case and to see that the wife qualifies under all of the headings listed above. She will also have to show that she has taken maintenance proceedings against her husband if she knows his address or will have to show that she tried in every way reasonably possible to trace him by contacting the Garda, the I.S.P.C.C. and the Salvation Army.

If the husband is on the dole no allowance is payable but on an application by the wife, the unemployment exchange will pay a part of his dole directly to her.

(4) How much is Payable under Deserted Wife's Benefit?

The maximum figure is £12.60 per week for a wife and £4.25 per week for each child under eighteen or under twenty-one if a student.

(B) HOME ASSISTANCE

(1) Where wife is deserted for less than 3 Months

Here a wife may be entitled to *Home Assistance* if she can show the local assistance officer that she is unable to support herself or her children and she will be given a small amount of money and food, fuel or other necessaries at the discretion of the officer. This assistance is given on a weekly basis and may also be given where the wife cannot qualify for a Deserted Wife's Benefit under the headings (c) and (d) above.

(2) How to Apply

Contact the Regional Health Board or, if none, the local County Council.

BREAKDOWN OF MARRIAGE
SOURCES OF ASSISTANCE

Name	*Address*	*Service*
A.I.M.	44 Lower Mount St. Dublin 2.	Family Law Information and Reform.
ADAPT	P.O. Box 673, Dublin 4. P.O. Box 84, Cork. Limerick Social Service Centre, Henry Street, Limerick. Broleek, Ravensdale, Dundalk, Co. Louth.	Advice for deserted and alone parents.
ALLY	Dominican Priory, Upper Dorset St., Dublin 1.	Information and family placement for single mothers.
CHERISH	2 Pembroke St., Dublin 2.	Assistance for single mothers and legal and social reform.
Catholic Marriage Advisory Council	35 Harcourt St., Dublin 2. Phone 01-780688. Details of branches throughout the country can be obtained from above.	Advice and support in the area of marital relationships.
Marriage Counselling Service	43 Molesworth St., Dublin 2. Phone 01-764659.	Counselling service on marriage associated with the Church of Ireland.
Irish Woman's Aid Society	P.O. Box 791, Dublin 1.	Help and accommodation for battered wives.

(C) SOCIAL ASSISTANCE ALLOWANCE

(1) Where there is no Social Insurance Cover

In this case a deserted wife may qualify for a *Social Assistance Allowance* if she qualifies under all of the other headings for the Deserted Wife's Benefit and passes a means test. This allowance is payable at the same rate as the non-contributory widow's pension.

(2) How to Claim

Claim forms may be obtained from and should be submitted to the Department of Social Welfare, Phibsboro Tower, Dublin 7.

(D) OTHER BENEFITS

The deserted wife should in the required circumstances also be advised to apply to her Local Authority for a waiver of rates and to her Local Health Board for details of the current schemes that may be in operation for the supply of free milk and footwear to her children.

Note: It is advisable to obtain the *Summary of Social Insurance and Assistance Services* published annually by the Department of Social Welfare, Dublin 1, which gives a very comprehensive outline of the benefits afforded by the State in all cases.

RELEVANT LEGISLATION

Public Assistance Act 1939.
Social Welfare Act 1952.
Social Welfare Act 1970, Section 22.
Social Welfare Act 1973, Section 17.
Social Welfare (No. 2) Act 1974.

BOOK REVIEW

Family Law in the Republic of Ireland by Alan Joseph Shatter (Dublin: Wolfhound Press, 1977).

The publication of any book dealing with Irish Law is a welcome event but when the book contains a detailed study of Family Law in the Republic of Ireland, the occasion is very special indeed. Alan Shatter has produced a book which will immediately replace the collection of miscellaneous lectures and articles on Family Law which have been the principal sources of information to practitioners and students alike on recent developments in an intricate area of Law.

In recent years, the general public have become more aware of the complexities of Irish Family Law and in particular its constraints and shortcomings.

The much discussed Government proposals on changes in the Law on nullity are considered in detail in the work and the draft proposed Nullity of Marriages Bill is reprinted in full.

Mr. Shatter has also analysed the Guardianship of Infants Act, 1964 and the controversial Family Home Protection Act, 1976 both of which have had enormous effect on Family Law. Indeed, the chapter on the 1976 Act will also be of interest to conveyancers (when and if they manage to escape from the multitude of practical problems created since the Act came into force).

The structure of the book is logical, starting with a chapter on "The Family, Marriage and the Constitution", then covering the jurisdiction of the Courts and moving on to the Engagement and the Marriage. Although some items, such as the detailed history of the jurisdiction of the Courts and similar treatment of the historical formalities of marriage, are unlikely to have day to day relevance in practice, Mr. Shatter has recognised that they are the foundations of our present procedures and system. He has obviously gone to considerable trouble to research these and other historical aspects of the topics covered. Practitioners may be somewhat disappointed with the relatively short chapter on Separation Agreements but, on the other hand, the difficult topics of recognition of foreign divorces and adoption are treated in a thorough and most helpful manner. The inclusion by Mr. Shatter of his personal criticisms of the present law and his suggested reforms will appeal more to the academic lawyer than to the practitioner and while some might say that such criticisms and suggestions should be incorporated in a separate report, one can understand Mr. Shatter succumbing to the temptation of airing his views in his book in the light of his practical experience in dealing with Family Law matters.

The footnotes to the text are comprehensive and refer to a large number of articles and lectures on specific topics. Perhaps in a future edition the author might add an appendix of a list of the books, articles, and other authorities to which he has referred, in order to facilitate further reading on the topics concerned.

The maze surrounding Irish Family Law has not been altered by the publication of Mr. Shatter's book but he has painted very clèar signposts which will help all those dealing with this subject to find their way much more easily. For this, the legal profession and all others who are involved with Family Law in the Republic of Ireland owe him a considerable debt.

Michael Carrigan

When the **Society of Young Solicitors** originally embarked on its Guidelines of Family Law it did so not only because it was a topic in which a number of practitioners expressed interest but also because it felt that this was an area of law in which all practitioners were becoming more and more involved and which sadly lacked an authoritative textbook to which the inexperienced practitioner might in need refer. The programme which it undertook was designed to fill that void but in the light of Alan Shatter's new book it would seem that to continue with the programme is only to do inadequately what Mr. Shatter's book does so well.

It is therefore proposed over the coming months to consider further topics of interest. We would not only ask members of the profession to suggest topics which might be included in our programme but would also invite them to contribute articles of a serious or humorous nature and to submit notes on practice or procedure which might be of general legal interest.

SOLICITORS' GOLFING SOCIETY

Half-Yearly Meeting at Wexford

Golf Competition (7 May 1977)

Ladies: Mrs. Joan Toolan (17) 17 points.

Men: 1, Ernest Margetson (17) 34 points; 2, Harry Robinson (9) 32 points (on second nine).

Visitors: Len Cotton (18) 32 points.

President's Prize

The President's Prize will be at Milltown Golf Club on Thursday, 30th June, 1977.

COUNCIL OF THE SOCIETY

COUNCIL DINNER

The Annual Dinner of the Council of the Society was held in the Library of the Society in the Four Courts on Thursday, 31st March, 1977. The President, Mr. Bruce St. John Blake, received the guests. The guests included representatives of all the professional bodies and banking and commercial institutions, and also included the Minister for Finance (Mr. R. Ryan, T.D.) and the Minister for Justice (Mr. P. Cooney, T.D.). The members of the Judiciary present included the Chief Justice (the Hon. T. F. O'Higgins), the President of the High Court (the Hon. Mr. Justice T. Finlay), Mr. Justice Walsh, Mr. Justice Henchy, Mr. Justice Griffin, Mr. Justice Kenny, Mr. Justice Butler, Mr. Justice Hamilton, Mr. Justice Murnaghan, Mr. Justice Gannon, Mr. Justice McMahon, Mr. Justice Doyle, Mr. Justice Pringle, Mr. Justice Conroy, the President of the Circuit Court (Mr. Justice Durcan), and the President of the District Court (Justice Ó Floinn). Also present were the President of the Incorporated Law Society of Northern Ireland (Mr. Lennox Cotton), the Attorney-General (Mr. Declan Costello), Mr. Sydney Lomas and Miss Thomasina McKinney of the Incorporated Law Society of Northern Ireland, the Provost of Trinity College (Professor F. S. L. Lyons), Professor R. F. V. Heuston, Dean of the Faculty of Law, T.C.D., Professor Niall Osborough, Dean of the Faculty of Law, U.C.D., and Professor E. Ryan, Dean of the Faculty of Law, U.C.C.

The toast of "Our Guests" was proposed by Mr. Walter Beatty, Junior Vice-President of the Society, and responded to by Mr. Justice Hamilton. The toast of "The Society" was proposed by Mr. Patrick Cooney, T.D., Minister for Justice, and responded to by the President.

THE PRESIDENT'S DIARY OF ENGAGEMENTS

22-3-1977: Attended Carlow Bar Association Meeting.

23-3-1977: Attended Annual General Meeting of the Solicitors' Benevolent Association.

24-3-1977: Accompanied by the Vice-Presidents, Messrs Joseph Dundon and Walter Beatty, and the Director General, paid a courtesy visit to the President of Ireland.

28-3-1977: Attended Kildare Bar Association Meeting at Lawlor's Hotel, Naas.

29-3-1977: Attended Cavan Bar Association Meeting at the Farnham Arms Hotel, Cavan.

31-3-1977: Presided at the Dinner given by the Council of the Law Society in the Library, Four Courts.

4-4-1977: Attended Wexford Bar Association Meeting at White's Hotel, Wexford.

13-4-1977: Attended Irish Medical Association, Presidential Address and Reception at Europe Hotel, Killarney.

15-4-1977: Was guest of the Tipperary and Offaly (Birr Division) Sessional Bar Association.

19-4-1977: Attended Louth Bar Association Meeting at the Imperial Hotel, Dundalk.

20-4-1977: Attended Limerick Bar Association Meeting at Chamber of Commerce. Later was guest of the Clare Bar Association at Dinner in the Old Ground Hotel, Ennis.

22-4-1977: Represented the Law Society in St. Patrick's Cathedral, Armagh, at the funeral of his Eminence Cardinal Conway in the forenoon. Attended at the Mount Brandon Hotel, Tralee, the Society of Young Solicitors' weekend seminar, commencing on 22 April 1977 on developments in Employment and Labour Law and Planning Law.

26-4-1977: Attended Galway Bar Association Meeting in the Great Southern Hotel, Galway.

29-4-1977: At the invitation of the President and Council of the Royal Institute of the Architects of Ireland attended a Reception and Dinner in the Gresham Hotel, Dublin. Was guest speaker at the Ex-Auditors Debate of the Solicitors' Apprentices Debating Society of Ireland on the motion "That we would fuse the legal profession".

EXAMINATION DATES AND FEES

Please note that the Society's examinations will commence on the following dates and the closing dates are as shown:

Examination	*Date of Commencement*	*Closing Date*
First Irish	Wednesday, 13 July 1977	29 June 1977
Second Irish	Friday, 15 July 1977	29 June 1977
Law Examinations	Friday, 19 August 1977	26 July 1977

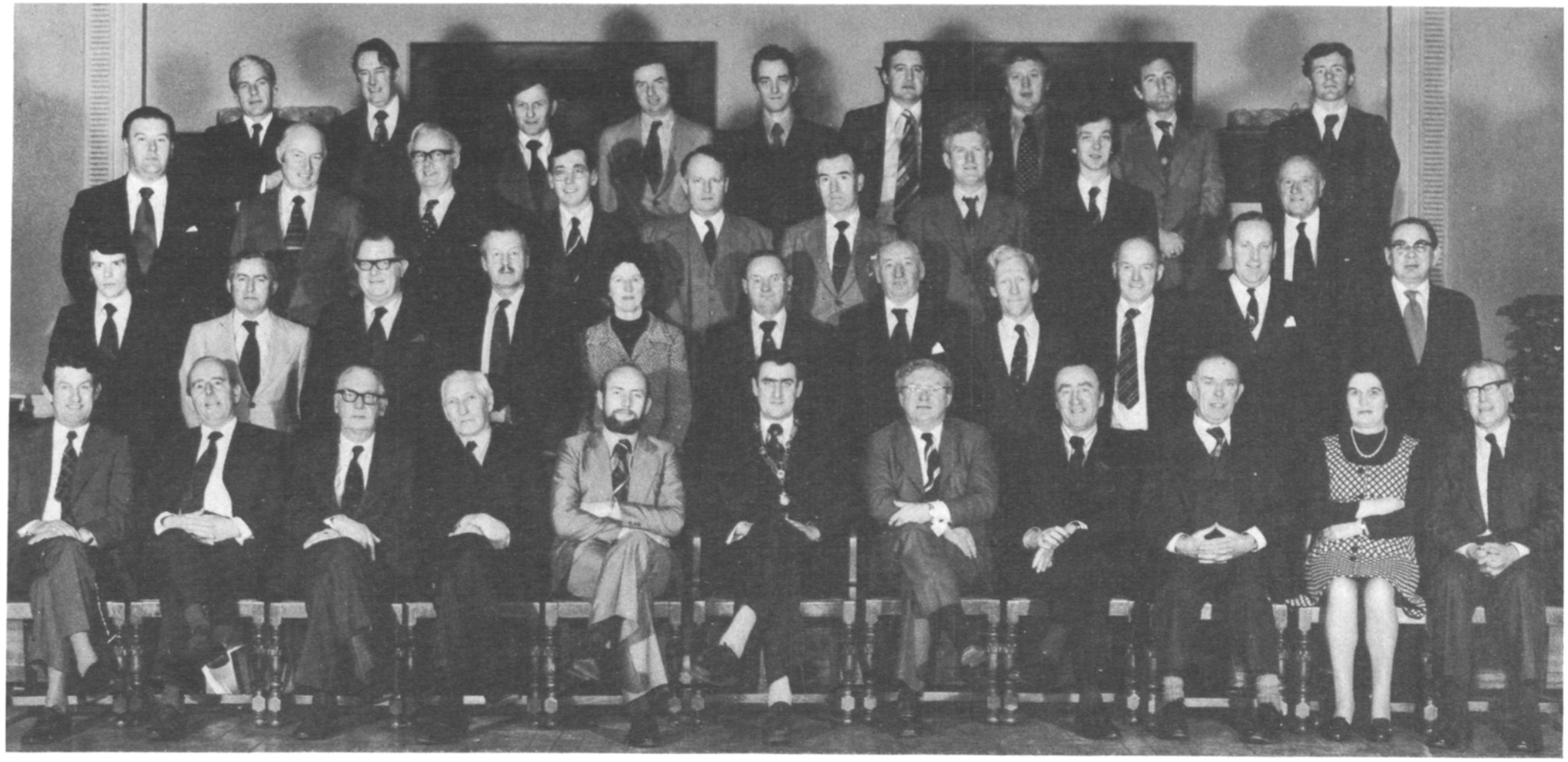
Entries received after 4.00 p.m. on the specified closing date will not be considered.

All entry forms should be accompanied by the appropriate fee as specified in the Solicitors Acts 1954 and 1960 (Apprentices Fee) Regulations, 1975, which are as follows:

Examination	*First Entry*	*Repeat Entry*
First Irish	£5.00	£3.00
Second Irish	£5.00	£5.00
First Law	£10.00	£10.00
Second Law	£15.00	£10.00
Third Law	£15.00	£10.00

Applications received without the entry fees will not be accepted.

The Education Committee will only consider applications for exemption from sitting the First Law Examination from those who have entered for the examination, paid the prescribed fee and furnished the appropriate evidence of their degree qualification.



PRESIDENT AND COUNCIL OF THE INCORPORATED LAW SOCIETY 1976/77

Back row (from left) Gerald J. Moloney, Donal G. Binchy, Peter Murphy, Anthony E. Collins, Rory O'Donnell, Francis D. Daly, Patrick F. O'Donnell, Robert Flynn, Jeremy Blake O'Connor.

Third row Michael P. Houlihan, W. D. McEvoy, Edward P. King, Michael V. O'Mahony, Thomas Jackson, Andrew F. Smyth, John F. Buckley, Adrian P. Bourke, Robert McD. Taylor.

Second row Raymond T. Monahan, Maurice R. Curran, Gerald Hickey, John B. Jermyn, Mrs. Moya Quinlan, W. B. Allen, Gerard M. Doyle, David R. Pigot, Brian W. Russell, Thomas D. Shaw, James J. Ivers (Director General).

Front row W. A. Osborne, Patrick Noonan, John J. Nash, Patrick C. Moore, Joseph L. Dundon (Senior Vice-President), Bruce St. John Blake (President), Walter Beatty (Junior Vice-President), John Carrigan, John Maher, Miss Carmel Killeen, Peter D. M. Prentice.

Absent Laurence Cullen, Christopher Hogan, Francis J. Lanigan, Patrick J. McEllin.

PRICES COMMISSION REPORT ON SOLICITORS' REMUNERATION

In a Radio Interview, 2 March 1977, given following the publication of the Report, the President stressed that it was erroneous to state that, under the terms of the Prices Commission Report, solicitors were to be awarded an increase of 50% in costs; in fact the Prices Commission merely recommended a 50% increase on average in civil litigation costs which is a very different matter. The application for increases in costs will now have to be processed through the Superior Court Rules Committee, the Circuit Court Rules Committee, and the District Court Rules Committee. In the short period available since publication there has not as yet been an opportunity of considering either the Consultant's (Professor Lees) report to the Prices Commission, or the actual conclusions of the Prices Commission. The Law Society had submitted a very detailed and documented Report of more than 90 pages to the Consultant, in which increases ranging from 150% in the District Court to 100% in the Circuit Court and 50% in the High Court were sought, and approved of by the Consultant, who recommended that they be paid.

The Prices Commission in their Report state that the average total gross fee income of a solicitor is £16,000. The net income would be one-third of this figure and £5,500 as the average earnings of a solicitor was anything but excessive.

It would not be correct to state, as the Commission does, that 83% of an average solicitor's income is in fact indexed. The Commission in their Report refrained from stating that in April, 1971, the Law Society sought an increase in new conveyancing costs of 40%, and that, in the autumn of 1972, they were only granted a 20% increase. The previous increase obtained by the Law Society in this sphere had been January, 1964. These increases compare very unfavourably with the large increases which are granted automatically to semi-State bodies almost every year.

The Law Society would be pleased if the overall remuneration of lawyers were looked into, instead of distinguishing between civil and criminal litigation. The Society welcomed the appointment of the consultant, and gave him every co-operation. All we ask for is fair play, and, compared to other professions, we are not getting this. It is a matter of concern that the Prices Commission would not concede any increase in fees in Criminal Legal Aid; this may result in the withdrawal of solicitors from the Criminal Legal Aid panel, as a result of which persons could be undefended.

LAW STUDENTS' DEBATING INAUGURAL

The inaugural meeting of the Law Students' Debating Society was held at the King's Inns, Dublin, on Friday, 11 March 1977, when the Auditor, Julian K. B. Deale, delivered the Inaugural Address entitled "Legal Aid – The Need for a Comprehensive System".

The President, Mr. Bruce St. John Blake, speaking to this paper, said:

I would first like to compliment the Auditor on his choice of topic for his Inaugural Address and secondly for the depth of thought and research which he has put into his excellently presented paper.

I must also pay tribute to the Attorney General, Mr. Declan Costello, S.C., who has taken such a particular interest in the subject of Legal Aid and who has, I strongly suspect, had such a major say and undoubtedly been a very strong influence in the establishment of the Civil Legal Aid Committee. The Law Reform Commission is also a monument to Mr. Costello's tenure of office as Attorney-General and we are privileged that the Chairman of the Commission, The Honorable Mr. Justice Brian Walsh, is presiding at our meeting tonight. The published programme of the Law Reform Commission gives us grounds for confidence that the fruits of its labours will be very well worth while.

The Auditor in his address has identified a problem which has existed in this country for a very long time. There is undoubtedly a need for a system of Legal Aid. The Auditor has called for a comprehensive system of Legal Aid. Amongst the desirable factors are *social, geographic and demographic* dimensions relevant to the country in respect of which a Legal Aid Scheme is being considered.

Unfortunately, an all important consideration is that of the financing of the Legal Services to be provided within any scheme of Legal Aid. The question must be considered on which particular individuals, groups or institutions in society should the financial responsibility rest for providing legal services to those unable to afford them themselves. In each society the factors affecting the evaluation of each alternative inevitably will differ; there can be no universally valid solution to the problem of limited resources which certainly applies in the case of this country. In the choice between alternatives a number of questions must be answered. The alternatives would appear to be:

1. The individual litigant.
2. The Legal Profession.
3. Charitably-inclined individuals and groups.
4. Various social and economic groups, such as Unions or Co-operatives.
5. Society as a whole, represented by the Government and this latter group is undoubtedly the one on which final responsibility should and will rest.

Historically the primary financial responsibility for legal services to the poor and needy has been placed on public charity, the legal profession and government, either directly or indirectly. Increasingly, government is viewed as the responsible agency. In a number of countries, especially in England, Scotland and the United States, and indeed in our own country there has been a proud record of service provided on a voluntary and charitable basis by lawyers, and in most countries practitioners have regarded it as a professional obligation to give what help they could to people in need of their legal services who were not able to meet the cost. Quite manifestly this charitable and professional attitude has fallen hopelessly short of the social responsibility of societies themselves to ensure equal justice. It is as a result of this fact that the cause of Legal Aid has been gaining ground elsewhere in the world and governments have increasingly become aware of their obligation to enhance the effectiveness of legal services. In consequence comprehensive legal aid schemes based upon the availability of necessary legal services as a matter of right have been introduced in very many countries throughout the civilised world. It is, consequently, a matter of regret and a cause of concern that Ireland is the only country in Europe without a Statutory Civil Legal Aid Scheme.

The Auditor has rightly referred to the extent of the people's ignorance of the Law and the extent of their rights under the Law. We must accordingly consider the extent of the citizen's need for legal advice and then the extent of the responsibility of the State to provide such advice and the range and area over which such advice should extend. There must of necessity be constraints upon the extent to which this advice can be provided, but I am concerned in particular with the extent of the responsibility of the Legal Profession to provide legal services. I am in particular concerned that there should be an awareness on the part both of the State and the public as to where a Citizens' Advice Service should end and where a Legal Aid scheme should begin.

Having regard to the rapid development of statutory tribunals in this country, the general lack of knowledge on the part of the public of their rights before such tribunals, coupled with recent Court decisions, the Incorporated Law Society of Ireland is emphatic that from the inception of a scheme of Civil Legal Aid which I earnestly hope will soon be provided, it should embrace proceedings before Statutory Appeal Boards, Social Welfare Appeals and all such Tribunals where the enforcement of the rights of the citizens is concerned.

I am aware that the Committee on Civil Legal Aid has been meeting continually for the past two and half years to consider and make recommendations on a difficult problem. While commending the members of the Committee for their work in a difficult task, I would hope that a report will be presented at an early date and that the recommendations will be implemented without delay, notwithstanding the financial constraints of the present time.

The title of the Auditors paper, gives me the opportunity to turn for a moment to look at the only existing legal aid service – that for Criminal Legal Aid. Introduced on an experimental basis in 1965, with the co-operation of the professions, to enable the State to meet its international obligations, in recent years, the Scheme has encountered difficulties and lost much of that goodwill. On the financial side, the failure of the State to match remuneration with continuing inflation, has not encouraged the solicitors' profession to embrace the scheme in a wholehearted way, much as I, the President of the Society, would wish them to do so. Indeed, the present unsatisfactory situation, as evidenced by the lack of appreciation shown by the National Prices Commission will lead many of the more experienced solicitors to turn their back upon the Scheme. This at a time when, following from the *Healy v. Foran* judgment in the Supreme Court in July 1976, on entitlement to legal aid in criminal matters, more and more defendants are being awarded aid in the Courts. The whole situation is fraught with difficulty to which no ready solution is obvious. For its part, arising out of previous difficulties, the Society through my predecessors in office, urged a comprehensive review of the Scheme. The Minister accepted the recommendation, the Tormey Committee resulted and the report is eagerly awaited. More so indeed than that of the Pringle Committee, in that it is dealing with an ongoing scheme in imminent danger of breaking down.

Last October, it was my privilege to attend an international symposium on Legal Aid in London. On the criminal side, one of the speakers outlined the U.S. experience since the *Gideon v. Wainwright* judgment in the U.S. Supreme Court in 1963 (the parallel of our *Healy v. Foran*). It would appear that criminal work has become highly specialised and has increased out of all proportions. Applying the experience to this country, one is forced to ask the question whether the present organisation within the professions and within the Courts is adequate to handle, the massive increase in case work which is proverbially around the corner. The question must also be posed as to whether the non-specialist lawyer in the country town will continue to be able to provide an adequate service in this area.

Being conscious of the degree of specialisation which a developed system of criminal legal aid will bring with it, I am personally forced to the conclusion that notwithstanding the problems, the criminal scheme should continue to be administered as a separate entity at least until the Scheme of Civil Legal Aid is functioning adequately.

Up to now the legal profession has accepted its social responsibility to provide Legal Aid on a voluntary basis, but unfortunately this is no longer sufficient to cope with the extent of the public's requirement for legal services and the liability of large sections of the public to pay for these services. It is of vital importance to be aware of the fact that experience from other countries has demonstrated that such obligations placed on the legal profession have been difficult to translate into effective legal services. The profession in this country as in many other countries of similar size and economic wealth is too small and its economic prosperity is too limited to make it a viable source of funds or services for the population at large. This must be accepted both by the population and the government. In this regard of considerable significance are recent decisions of the Austrian Constitutional Court and the European Commission of Human Rights striking down Legal Aid Schemes based upon compulsory, gratuitous service by lawyers, in effect on the ground that the burden thus placed on individual lawyers was inequitable and therefore inappropriate.

The Auditor has clearly set out the way in which legal aid is being provided at present and I would like to take this opportunity of publicly paying tribute to the work of the Free Legal Advice (F.L.A.C.) Centres, staffed by students and gratuitously assisted by members of the legal profession whose work is recognised by the government in the form of a small grant.

I hope that in its report the Pringle Committee will accept that a comprehensive system of Legal Aid cannot be formulated on the basis of being a lost leader for the legal profession, who must be adequately remunerated for the work they will undertake.

Before closing I would like to consider the likely effect of the introduction of a comprehensive scheme of Legal Aid on the legal profession itself. The nature of the services being provided by the legal profession and the range of its activities are ever changing and are undoubtedly on the increase. I would urge upon the profession an acceptance of the need for change and also the fact that this does not necessarily involve a sacrifice of our principles, our standards, or ethics, or traditions or our code of professional conduct. I feel that we should be ever mindful of Edmund Burke's dictum "that the practice of law while it broadens the intellect narrows the mind".

There is an urgent necessity for a comprehensive scheme of Civil Legal Aid in this country and I fully support this call for the establishment of such a scheme. I have every confidence and belief that the legal profession will fully play its part in the implementation and operation of such a scheme.

ISSUING SHARES AT A PREMIUM – SECTION 62 OF THE COMPANIES ACT, 1963

By William O'Dea, LL.M., Barrister-at-Law, Assistant Lecturer in Law, U.C.D.

It has been a long established rule of consumer law that a company may not reduce its capital.[1] The reason for this rule is that when a company goes into liquidation it is to the assets which represent its capital that creditors of the company must look for repayment of what the company owes to them. Any dissipation of those assets would then reduce the funds from which creditors could be repaid.[2] The net result would be, of course, that a company would have, on liquidation, less funds to repay their creditors, than those creditors had been led to expect when they risked their money by lending it to the company (or when they took a risk of another sort such as, for example, letting the company have goods on credit). This would be clearly unjust. If, however, a company issued shares for more than their nominal value (e.g. £1.00 share issued for £2.00) then, there was no objection at common law to distributing the surplus received over nominal value amongst its shareholders in the form of dividends.[3] This was of course provided it had sufficient assets left to answer for its share capital after paying those dividends.[4] The distribution of this sort of "profit" amongst the shareholders of a company is now, it is submitted, prohibited by legislation both in Ireland and in the U.K. The legislation in the U.K. is Section 56 of the Companies Act, 1948, and in Ireland, Section 62 of the Companies Act, 1963. The wording of each of those Sections is precisely the same.[5] Section 62 deals with the issue of shares by a company "at a premium". The broad effect of the Section is that if shares are issued "at a premium" the excess over the nominal value must be treated as part of the capital of the company. This means that such excess can no longer be distributed among the shareholders as "profits". It will be noticed that I have used the expressions "issuing shares 'at a premium' and issuing shares at more than their nominal value" interchangeably. This is because issuing shares "at a premium" means issuing shares at more than their nominal value. The dictionaries are very clear on this.[6] The question I wish to consider here is whether the expression issuing shares "at a premium" in Section 62 of the Companies Act, 1963, means not just issuing shares at more than their nominal value, but also, in fact, something more. If the expression issuing shares "at a premium" in Section 62 means not only issuing shares for more than their nominal value but also something more (i.e. if there is an additional element to the definition of "premium") then, obviously the definition of the word "premium" in Section 62 is narrower than it seems to be at first sight.

The expression "shares at a premium" (in Section 56 of the U.K. Companies Act, 1948) was considered in the case of *Henry Head and Co. Ltd. v. Ropner Holdings Ltd.*[7] The facts of that case were that Company A and Company B were amalgamated by the formation of Company C and by A and B shareholders exchanging their shares for new shares in C. Company C transferred 2,000,000 £1 shares to A and B shareholders in exchange for their shares in A and B on a pound for pound basis. However, the assets of A and B had been written down and were, in fact, worth £7,000,000. It was held that there had been an issue of shares by C at a premium.[8] Counsel for the plaintiff Company raised an interesting argument in that case.[9] He argued that Section 56 (our Section 62) cannot apply where the issuing company has no assets at all other than the assets which it will acquire as the price of the issue of shares. "Premium", he said, meant something resulting from the excess value of a company's existing assets over the nominal value of its shares. Harman J. said he was "much attracted" by that argument. He rejected it, however, because "It is not stated to be a Section (i.e. Section 56) which only applies after the company has been in existence for a year, or after the company has acquired assets, or when the company is a going concern, or which does not apply on the occasion of a holding company buying shares on an amalgamation."[10] He continued: "Whether that is an oversight on the part of the legislature, or whether it was intended to produce the effect it seems to have produced, it is not for me to speculate. All I can say is that this transaction seems to me to come within the words of the Section, and I do not see my way to holding as a matter of construction that it is outside it . . ."[11] This result, arrived at, may prove, on analysis, to be quite logical. The reasoning seems confused, however. Counsel does not seem to be relying on anything in the Section except the word "premium". Harman J. confessed himself to be attracted by the interpretation which counsel sought to put on the word "premium". Why then does he reject this admittedly attractive definition by merely saying that the transaction in this case did not "come within the words of the Section"? The other words of the Section do not seem to either narrow or broaden the word "premium". Surely, then, the more logical approach for Mr. Justice Harman would have been to examine the word "premium" to determine whether counsel's suggested interpretation of that word as used in Section 56 had any validity. Another way of putting it is as follows. Mr. Justice Harman thought that the transaction in this case fell within the words of the Section. "Premium" is one of those words. It

1. There are now statutory exceptions to this rule – see Companies Act, 1963, Sections 63, 64, 72-77.
2. In *Trevor v. Whitworth* (1887 12 A.C. 409), Lord Herschell said: "Creditors have a right to rely and were intended by the Legislature to have a right to rely on the capital remaining undiminished by any expenditure outside (stated) limits or by return of any part of it to shareholders." Gower refers to the capital as the creditor's "guarantee fund" – 1969 ed., p. 111.
3. Because this will not result in reduction of the *nominal* capital.
4. *Drown v. Gaumont-British Picture Corporation Ltd.* (1937) 2 AER 609.
5. Section 62 (i) states:
   "Where a company issues shares at a premium whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to an account to be called 'the share premium account', and the provisions of this Act relating to the reduction of the share capital of a company shall . . . apply as if the share premium account were paid up share capital of the company."
6. E.g. The Concise Oxford Dictionary, 5th ed., 1964, p. 961, defines "premium" as follows: "Simply an increase in value", "Sum additional to interest, wages, etc.", "Bonus". At a premium – "at more than normal value". Similar definitions to be found in Oldham's dictionary and Wheeler's dictionary.
7. (1951) 2 AER 994; also 1951 Lloyds Reports 348.
8. Therefore the difference between the nominal value of the shares issued by C and the actual value of the assets of A and B acquired (i.e. £500,000) had to be carried to C's share premium account.
9. See (1951) 2 AER 996.
10. (1951) 2 AER 997.
11. (1951) 2 AER 997.

follows then that Mr. Justice Harman felt that the word "premium" in Section 56 had a broader meaning than the meaning which counsel had sought to have attached to it. He advanced no reason whatever for his conclusion, however. In effect he rejected, for no stated reason, an interpretation of the word "premium" which, by his own admission, he found attractive.

As already stated counsel's argument hinged on the word "premium". I now propose to examine the word to ascertain whether this argument had any validity. The ordinary meaning of the word "premium" in the English language is at more than original or nominal or usual value — i.e. a value possessed by something over and above what one would expect to be the normal value.[12] I have referred to dictionary definitions which make this clear. Counsel's argument in *Head v. Ropner* amounted to the contention that the expression shares issued "at a premium" in Section 56 means not only shares issued for more than their nominal value. His argument was that the expression meant (a) Shares issued for a value greater than their nominal value, (b) When that increase in value (over and above nominal value) is due to an increase in the value of the assets which those shares represent. This is, in effect, an argument for saying that the word "premium" in Section 62 has a meaning different from its ordinary, commonsense dictionary meaning. I think that the onus should be on counsel to show what authority exists for such a proposition. Counsel did not cite any authority for his proposition. He merely said that "the line must be drawn somewhere" and that the legislature can hardly have intended to make the legislation as wide as Section 56 proves to be if the word "premium" in that Section is given its ordinary natural meaning. This is hardly sufficient. Even if counsel had wished to cite any authority for his proposition he would, it is submitted, have had extreme difficulty in finding any authority to cite in support of his claim. In fact such authority as there is seems to point in the opposite direction.[13] Gower describes the phrase issuing shares at a premium as "issuing shares at a price exceeding their nominal par value".[14]

In similar vein is Palmer which states bluntly: "A company issues shares at a premium if the consideration it receives for them exceeds in value the nominal value of the issued shares".[15]

Pennington contains the following passage: "If a company's issued shares are saleable for more than their nominal value they are said to be at a premium."[16] Of course it must be pointed out that those statements were made after the *Henry Head* case and, therefore, to quote them as authority for the correctness of what was decided in that case may be begging the question to an extent. However, the fact that there seems to be no difference in opinion between any of them as to the meaning of "premium" in Section 56 (our Section 62) and that there is no hint of disagreement with the decision in *Henry Head v. Roper* is significant. *Henry Head* is the only case in which the word "premium" has come up for consideration in the context of Section 56 (our Section 62). There are, however, some cases where the general meaning of the word "premium" in other contexts is considered. These cases are not very explicit as to the meaning of the word. Insofar as anything can be gleaned from them, however, they seem to suggest that "premium" generally means, simply an increase in value over and above original value. For example in *King v. Earl Codogan*,[17] a property case, Warrington L.J. said:

"Premium as I understand it, used as it is frequently in legal documents means a cash payment made to the lessor, and representing, or supposed to represent the capital value of the difference between the actual rent and the best rent that might otherwise be obtained . . ."[18] The word arose for consideration in the context of "Insurance Premium" in the case of *Barrow v. Methold*.[19] A testator had given to his wife by a codicil to his will the premium of insurance on his life. Pagewood V.-C. said:

"The testator had a policy and a bonus declared on it. To which am I to apply the words 'premium of insurance'? It is to be observed that the word premium is ordinarily used to denote the increased value of any original share . . . I must hold that the bonus and no more passes to the widow under this codicil."[20]

Whilst these cases are not very helpful in determining the precise meaning of the word "premium" in Section 62 of the Companies Act, 1963, I think it may nevertheless be safely said that they are certainly no authority for saying that the word "premium" in Section 62 means anything other than more than nominal value. As already stated ordinary English dictionaries indicate that premium simply means more than nominal value. The only legal dictionary which ventures a definition of the word is Stroud's Judicial Dictionary. There it is simply stated: "Premium ordinarily means increased value."[21]

Therefore, it seems that the phrase "shares issued at a premium" in Section 62 of the Companies Act, 1963, means no more than shares issued for a price greater than their nominal value. Counsel's argument represented an attempt to define the phrase as indicating not simply an issue for greater value than nominal value but an issue for greater value than nominal value where the increase in value over their nominal value had occurred for a certain reason, i.e. that there are assets which these shares represent and these assets have themselves increased in value. This would give the word "premium" in Section 62 a far narrower meaning than its dictionary meaning. As we have seen there is not a shred of authority for this narrower meaning which counsel in *Henry Head* sought to attach to the word "premium" in Section 56 (our Section 62). It may seem difficult, then, to see why Mr. Justice Harman felt himself "much attracted" by the definition suggested by counsel. A possible clue emerges from the very next sentence in his judgment where he said: "I have every desire to reduce the effect of this Section to what I cannot help thinking would be more reasonable limits." Perhaps the Legislature did not intend the Section to be quite so wide as it appears to be. It is

□*Continued on page 70*

12. See dictionary definitions cited *ante*. A phrase often found in the law books is "putting a premium on fraud" (or stupidity). This means encouraging fraud by making it worth a person's while to be fraudulent — making fraud very valuable.
13. The Companies Acts contain no definition of the word. The context in which the word appears in the 1948 Act, Section 56 (or in the 1963 Act, Section 62) contains nothing from which it can be concluded that the word should be narrowly construed. There is, then, nothing in the Section to support counsel's argument.
14. "The Principles of Modern Company Law", 3rd ed., 1969, p. 108.
15. Palmer's Company Law, 21st ed., p. 192.
16. Pennington's Company Law, 2nd ed., 1967, p. 143.
17. (1915) 3 K.B. 485.
18. At pp. 492-493.
19. (1885) 26 L.T. (o.s.) 56.
20. See also *Elmdene Estates Ltd. v. White* (1960) 1 AER 306. This case was also a property case based on Section 18 (2) of the Landlord and Tenant (Rent Control) Act, 1949.
21. Stroud's Judicial Dictionary, 4th ed., Part 4, p. 2092.

RECENT ENGLISH CASES

(a) Attorney-General; Relator Actions

Gouriet v. Union of Post Office Workers and Others – Court of Appeal – Lord Denning M.R., Lawton and Ormrod L.JJ.

By Sections 58 and 68 of the Post Office Act 1953 and Section 45 of the Telegraph Act 1863, as amended, it was an offence punishable by imprisonment or fine for persons engaged in the business of the Post Office wilfully to delay or omit to deliver postal packets and messages in the course of transmission and for any person to solicit or endeavour to procure any other person to commit such an offence.

On Thursday, 13 Jan. 1977, it was publicly announced that the executive council of the Union of Post Office Workers (U.P.W.) had unanimously resolved to call on its members not to handle mails to South Africa during the week beginning at midnight on Sunday the 16th, in response to a call from the International Confederation of Free Trade Unions to its member unions for protest action against the South African government's policy of "apartheid"; and on the Friday, the press reported that similar action was proposed by other British trade unions, including the Post Office Engineering Union (P.O.E.U.).

On Friday the 15th, shortly before 1 p.m., the plaintiff applied to the department of the Attorney-General for his consent to act as plaintiff in relator proceedings for an injunction to restrain the U.P.W. from soliciting or endeavouring to procure any person wilfully to detain or delay any postal packet in the course of transmission between England and Wales and the Republic of South Africa. A draft writ and statement of claim had been prepared.

At about 3.30 p.m. the Attorney-General stated that "having considered all the circumstances including the public interest" he had concluded that he should not give his consent to the application. The plaintiff thereupon issued the writ of summons in his own name and applied to the Judge in Chambers for a final injunction. The Judge refused the order on the ground that in the absence of any reported authority on the point he had no jurisdiction to grant the relief where the Attorney-General had refused his consent. The plaintiff appealed, and the Court of Appeal was convened on the Saturday to hear him. The Court granted him an interim injunction in the terms asked for against the U.P.W. It also gave him leave *ex parte* to join the P.O.E.U. as defendants and also to join the Attorney-General as a defendant, the injunction to run until 10.30 a.m. on Tuesday the 18th or such other time as the Attorney-General might be able to attend to assist the Court. In face of that order the proposed boycott by Post Office employees did not take place.

On the resumed hearing the plaintiff had amended his pleadings to claim permanent injunctions against both trade unions and a declaration that the Attorney-General by refusing his consent had acted improperly and wrongfully exercised his discretion.

The Attorney-General attended, and stated, *inter alia*, that by virtue of his special office and functions, the prerogative vested in him on behalf of the Crown, and by long established constitutional practice his discretion to consent or refuse to act as plaintiff in relator proceedings was absolute and could not be reviewed by the Courts; that he did not have to give his reasons, and that the Court was not entitled to inquire into them; and that if his decision was wrong he was answerable to Parliament alone. He applied for the declaration now claimed against him to be struck out.

The two trade unions applied under R.S.C., Ord. 18, r. 19 (1) *(a)* to strike out the writ and statement of claim against them on the ground that as the Attorney-General alone could seek an injunction in a Civil Court to prevent a threatened breach of the law, and as he had refused to do so, the plaintiff's pleadings disclosed no reasonable cause of action. At the end of the hearing the declaration sought against the Attorney-General was provisionally amended to claim that notwithstanding his refusal to consent to relator proceedings, the plaintiff was entitled to proceed with his claim for final injunctions against the two unions:

Held, allowing the appeal, (1) (*per* Lawton and Ormrod L.J.J.) that the Attorney-General's exercise of his discretion to refuse his consent to the bringing of relator proceedings in his name could not be reviewed or questioned by the Courts.

Per Lord Denning M.R. Where the Attorney-General refuses his consent to relator proceedings in a matter which appears plainly to threaten a breach of the criminal law, to the prejudice of the public as a whole, and declines to give his reasons for his refusal, the Courts are entitled to review the exercise of his discretion, not directly but indirectly, by allowing the complainant to come to the Court himself, and to grant him an injunction, and, if need be, a declaration. The Attorney-General has no prerogative by which he alone can say whether or not the criminal law should be enforced in the Courts.

Per Lawton L.J. I cannot accept that the Attorney-General in relation to law enforcement through the Civil Courts is the sole arbiter of what is the public interest.

(2) That where the Attorney-General's consent to relator proceedings had been refused, the Court was not without jurisdiction to provide a remedy; it could allow a member of the public, who did not claim any special interest of his own but who asserted that other persons or bodies were threatening to commit acts in breach of the criminal law enacted in Acts of Parliament, which would, if carried out, affect the rights of the public, including his own, to use the facilities of the Post Office, to apply to the Court for a declaratory judgment against the intending infringers that the apprehended action would be unlawful; and if the plaintiff had claimed a declaration against the unions, the Court could in the exercise of its equitable jurisdiction grant him an interim injunction pending the final determination of any application for a declaration; that the Court had therefore had jurisdiction to grant the interim injunction; but that as it had been effective to restrain the proposed postal boycott it could now be discharged.

(3) But (*per* Lawton and Ormrod L.JJ.) that so long as the plaintiff was unable to add the Attorney-General as plaintiff in relator proceedings, he could not obtain final injunctions against the trade unions; and as his pleadings claimed only that relief the writ and statement of claim would have to be struck out, unless he amended them to include a prayer for declaratory judgments that it would be unlawful for the unions to counsel or solicit their members wilfully to delay or omit to transmit any postal packet or message between this country and South Africa.

Per Lord Denning M.R. If the Court can grant a declaration I see no reason why it should not grant a final

injunction even though it is not sought to protect a right.

(4) That in the circumstances of the present case leave should be given to the plaintiff to join the Attorney-General as a defendant and to claim a declaration that notwithstanding his refusal to consent to relator proceedings the plaintiff was entitled (a) to proceed with his applications for declarations; and (b) pending the final determination of those applications, to obtain relief by way of interim injunction.

(1977) 2 W.L.R. 310.

* * * * * *

Issuing Shares at a Premium

◊*Continued from page 67*

quite possible that it did not. However, the Legislature, like the rest of us, does not always say what it means, and it is on the basis of what it says that we must proceed. It is not open to a Judge (or indeed anybody else) to hold the Legislature as saying what he feels it must have meant by a strained and totally artificial construction of what it actually said. It is submitted that Mr. Justice Harman was quite right in refusing to do so, although, it is submitted he should have been far more explicit as to the reasons for his refusal in this case.

Some members of the accountancy profession have suggested that Section 56 (or Section 62) applies when the book entries relating to the transaction indicate that there is a premium.[22] It is submitted that this interpretation of the Section is wrong for the reasons advanced above. If it were correct, then the words "shares issued at a premium" in Section 56 (or Section 62) would not mean simply shares issued for a value over and above nominal value. It would mean the issue of shares for a value over and above nominal value and the making of the appropriate accounting entries. As already indicated there is no authority whatever for restricting the definition of premium in this way.[23] Therefore, the word premium in Section 62 of the Companies Act, 1963, must be taken to have its ordinary dictionary meaning.

22. See Gower (1969 ed.), p. 109, footnote 28.
23. The Jenkins Committee supports this view and recommended that it should be clearly stated (Cmnd 1749, paragraphs 161-166).

BOOK REVIEWS

JOWITT (The late Earl): Dictionary of English Law. **Second edition by John Burke, 2 vols., 1935 p. London: Sweet & Maxwell, 1977. £45.00.**

The first edition of this work was begun under the General Editorship of the late Earl Jowitt, a former Lord Chancellor, who approved the principles upon which it was compiled. As a result of the labours of the then Editor, Mr. Clifford Walsh, this compact encyclopaedia of law was published in 1959. Mr. John Burke, the Editor of the invaluable *Current Law*, has continued in more detail and with more concentration the learned work of his predecessor. Despite the fact that this edition has been published in two volumes, it in fact only contains 30 pages more than its predecessor, a remarkable achievement considering all the Statute Law that has been passed and the Case Law that has been adjudicated upon in the last eighteen years. As the Preface stresses, the years since 1959 have seen great and frenzied activity, and of late there has been a cataract of large complex Acts which seek to legislate in detail for every human activity. The whole structure of the Courts and of Local Government in England has been remodelled. There has been consolidation of Statutes relating *inter alia* to Juries, Income Tax, Friendly Societies, Building Societies, Town Planning, Insurance, Solicitors, Adoption and even Legitimacy. The magnitude of the task allotted to Mr. Burke can thus be appreciated, but he has overcome all difficulties with admirable clarity and precision. This is indeed *the* Dictionary of English Law, and it would be well nigh impossible to supersede it.

We learn that the "Court of pie poudre" was one which determined disputes in markets and fairs, that a "Couthutlaugh" was a person who willingly received an outlaw and concealed him, that "eavesdroppers" were persons who stood under walls by night or day to hear news and to carry it to others to make strife, and that an "effractor" is a burglar. These few examples should induce members who wish to improve their legal vocabulary to consult these volumes frequently. Any time spent in perusing these volumes will be repaid a hundredfold by the knowledge acquired. There is also a very useful Bibliography at the end. The inevitable high price will preclude members from purchasing these volumes, but, as a reference volume, the knowledge they will instil will be of inestimable value.

McGILVRAY, James, Social Statistics in Ireland: a Guide to their Sources and Uses. **Dublin: Institute of Public Administration, 1977, x, 204 p. £3.50.**

A philosopher once made a distinction between lies and statistics. Many politicians tend to rely unduly on statistics, particularly if they are favourable to their party. Those who do will find Mr. McGilvray's work of great assistance, particularly as he had already published *Irish Economic Statistics*, and is a statistician of international merit. Those who wish to wend their way through the statistical data of health, housing, education, social security, expenditure and the standard of living, and of survey methods in social research have been given invaluable guidance by Mr. McGilvray in this work. The learned author rightly points out that the most valuable source of information is the five-yearly census; it is unfortunate that the census due in May 1976 was cancelled as an economy measure. There follows a discussion relating to vital statistics of births and deaths. Each chapter is followed by detailed sources and references, and there is a good index at the end. The problem of housing is tackled from the point of view of analysis of houses: (i) by size, (ii) by nature of occupancy, and (iii) by type of dwelling. The various sources from which data relating to incomes, expenditure and the standard of living are culled are clearly set out. Mr. McGilvray's book will be of inestimable help to those who wish to study and analyse social statistics.

CORRESPONDENCE

The General Council of the Bar,
Four Courts.

12 April 1977
Telex in the Law Library

Dear Mr. Ivers,

Following requests from several solicitors' offices, the Bar Council has installed a telex machine in the Law Library. It occurs to me that the following relevant information could be most conveniently disseminated, if the Society thinks fit, through the medium of the Society's *Gazette*.

The telex number is LALI 4845.

Due to lack of other accommodation, the apparatus has had to be installed in the main body of the Law Library. Two consequences flow from this:

(i) No answering service can be provided. That means that a solicitor may telex the Law Library, but the relevant barrister will not be able to telex a reply.

(ii) Messages received will not be private. Messages will be removed regularly and placed on the recipient's desk but may in the meantime be read by other Counsel who may be expecting a telex.

Yours sincerely,

G. D. Coyle
(Secretary)

Office of the Minister for the Public Service,
Dublin 2 (19 May 1977)

re: Adjudication Office

Dear Mr. Ivers,

I have, as promised, been looking into the matter raised in your letter of 5 April 1977 regarding the Adjudication Office in the Office of the Revenue Commissioners.

I am pleased to tell you that the Revenue Commissioners have already taken steps towards removing the grounds for your complaints. They have assigned additional staff to the Office to cope with the increasing demands and to clear the arrears which have, unfortunately, built up over a period. For my part I am authorising the assignment of still more staff to the area in order to ensure that the work is brought up to date at the earliest possible moment. As to your reference to my efforts to restrain the cost of the public service, I assure you that my policy in this regard takes account at all times of particular situations and it would never be my intention to apply it in such a way that the efficiency of a Department or Office suffered.

I am confident that there will be a rapid improvement in the service provided by the Adjudication Office as a result of the steps mentioned above. I will, of course, keep the situation there under review in the months ahead.

Yours sincerely,

Richie Ryan,
Minister for the Public Service.

LAW EXAMINATIONS

The Education Committee wishes to remind students they will not be allowed to enter for the Second Law Examination until they have completed their First Law Examination.

Land Registry, Central Office,
Chancery Street, Dublin 7.
15th April 1977.

re: Land Registration Rules 1977

Dear Mr. Ivers,

The above Rules (S.I. No. 89 of 1977) were signed by the Rules Committee on 24th February last and the Minister for Justice signified his concurrence on the 25th ultimo.

They provide for the raising of the value of the property in which a certificate by the solicitor may be acceptable under Rules 19 and 35 from £20,000 to £25,000 and they substitute a new form of certificate for the existing Form 3.

The Rules came into operation on the 1st April.

Yours sincerely,

N. M. Griffith,
Registrar.

OBITUARY

Mr. Robert A. Osborne died on 17th February 1977. Mr. Osborne was admitted in Hilary Term 1915, and practised as senior partner in Emily Square, Athy, Co. Kildare, under the style of Robert A. Osborne & Son.

Mr. Patrick Healy died on 3rd February 1977. Mr. Healy was admitted in Michaelmas Term 1945, and practised under the style of Nicholas Healy & Co. in 72, High Street, Kilkenny.

Mr. Patrick Glynn, B.A., LL.B. (T.C.D.), died on 23rd February 1977. Mr. Glynn was admitted in Hilary Term 1923, and practised at 22, Nassau Street, Dublin 2. He had been a former Secretary of the Solicitors' Benevolent Association.

Mr. Patrick Joseph Rooney died on 25th January 1977. Mr. Rooney was admitted in Trinity Term 1937, and first practised in Belmullet, Co. Mayo. He eventually came to Dublin, where he was an assistant to Messrs Roger Greene & Sons in 11, Wellington Quay, Dublin 2, since 1965.

Mr. Maurice O'Sullivan died on 12th March 1977. Mr. O'Sullivan was admitted in Easter Term 1941, and practised in Listowel, Co. Kerry, with branch offices in Abbeyfeale and Glin, Co. Limerick.

Mr. Gerald F. O'Flynn died in St. Finbarr's Hospital, Cork, in March 1977. Mr. O'Flynn was admitted in Trinity Term 1931, and was the senior partner of Messrs O'Flynn, Exhams and Partners, 59, South Mall, Cork.

Mr. Christopher Gore-Grimes died in Majorca, Spain, on 15th April 1977. Mr. Gore-Grimes was admitted in Michaelmas Term, 1934, and was the senior partner of the firm of Messrs Gore & Grimes, 6 Cavendish Row, Dublin 1. Mr. Gore-Grimes was a founder member of the Irish Association of Civil Liberties.

Mr. Thomas A. W. Purefoy died at his residence in Glenageary, Co. Dublin, on 14th April 1977. Mr. Purefoy was admitted in Trinity Term, 1922, and had been solicitor to the Royal Bank, 3-4, Foster Place, Dublin 2, until its amalgamation with Allied Irish Banks.

THE REGISTER

REGISTRATION OF TITLE ACT 1964

Issue of New Land Certificate

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

Dated 31st day of May, 1977.

N. M. GRIFFITH

Registrar of Titles

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

Schedule

(1) Registered Owner: Nicholas Fay; Folio No.: 3675; Lands: Oldkilcullen; Area: 30a. 1r. 26p.; County: Kildare.

(2) Registered Owner: Michael McGreevy; Folio No.: 20616; Lands: Legvoy or Gardenstown; Area: 5a. 0r. 31p.; County: Roscommon. (This folio is now closed and the property forms the lands No. 1 on Folio 22316, County Roscommon.)

(3) Registered Owner: Thomas Brennan (Junior); Folio No.: 2284; Lands: Killeenboy; Area: 25a. 1r. 28p.; County: Roscommon. (This folio is now closed and the property therein forms the land No. 1 on Folio 32186 County Roscommon.)

(4) Registered Owner: Patrick Nevin; Folio No.: 19800; Lands: (1) Cappacuilla (parts), (2) Moat (part); Area: (1) 29a. 3r. 0p., (2) 5a. 3r. 8p.; County: Galway.

(5) Registered Owner: Douglas Gill (tenant in common of an undivided moiety); Folio No.: 38775. Lands: Part of the land of Cornery containing 1a. 0r. 12p., with the cottage thereon situate in the Barony of Muskerry West; County: Cork.

(6) Registered Owner: James Travers; Folio No.: 15358; Lands: Longtown; Area: 0a. 2r. 0p.; County: Kildare.

(7) Registered Owner: William Leen; Folio No.: 1641F; Lands: (1) Ballymacelligott, (2) Ballymacelligott (an undivided moiety), (3) Arabela; Area: (1) 36a. 3r. 12p., (2) 0a. 0r. 2p., (3) 12a. 1r. 28p.; County: Kerry.

(8) Registered Owner: Francis Murray; Folio No.: 6515; Lands: Calliaghstown; Area: 38a. 2r. 10p.; County: Westmeath.

(9) Registered Owner: Denis Neill; Folio No.: 8461; Lands: Part of the land of Coolafancy with the cottage thereon situate in the Barony of Shillelagh; County: Wicklow.

(10) Registered Owner: Patrick Sheehy; Folio No.: 96L; Lands: The leasehold interest in the property situate in part of the Townland of Ummerawirrinan and Barony of Banagh containing 0a. 1r. 15p.; County: Donegal.

(11) Registered Owner: Thomas Curran; Folio No.: 17976L; Lands: The leasehold interest in the property in part of the Townland of Cappagh and Barony of Uppercross situate on the west side of Lucan Road in the Town of Clondalkin containing 0a. 0r. 11p.; County: Dublin.

(12) Registered Owner: John Burns; Folio No.: 20344; Lands: Balleeghan; Area: 17a. 2r. 3p.; County: Donegal.

(13) Registered Owner: Michael Maguire; Folio No.: 4362; Lands: Ballynakill (E.D. of Ballymore); Area: 74a. 2r. 27p.; County: Wexford.

(14) Registered Owner: Leo Healy (otherwise Leo M. Healy); Folio No.: 41965; Lands: (1) Gougane, (2) Curraghroar East, (3) Curraghroar West; Area: (1) 10a. 1r. 10p., (2) 12a. 2r. 30p., (3) 11a. 1r. 30p.; County: Cork.

(15) Registered Owner: Jeremiah Sullivan; Folio No.: 1562L; Lands: The leasehold interest in the property known as 701 Newtown, Situate in part of the Townland of Newtown and Barony of Salt North, County Kildare.

(16) Registered Owner: Andrew Bissett; Folio No.: 5055; Lands: Rush; Area: 1a. 2r. 30p.; County: Dublin.

(17) Registered Owner: Joseph Gerard Cleary; Folio No.: 21325; Lands: Killeroran (part); Area: 3a. 3r. 7p.; County: Galway.

(18) Registered Owner: Thomas Quinlan; Folio No.: 22436; Lands: Athassel Abbey South; Area: 20a. 2r. 28p.; County: Tipperary.

NOTICES

CORLEY ESTATE

Re: GILBERT ESTATE, Premises: Moore Street and Parnell Street, Dublin. Would any solicitor or other person having knowledge of the trustees or beneficiaries of the CORLEY ESTATE please contact Maxwell Weldon & Darley, Solicitors, 19/20 Lower Baggot Street, Dublin 2.

Assistant Solicitor with some experience required for general practice by Nolan Farrell & Goff, Newtown, Waterford.

North-West Donegal. Long established practice. Assistant with Conveyancing, Probate and general office experience required with view to carrying on Practice on Principal's retirement in 4/5 years time. Box No. 156.

Commerce Graduate seeks apprenticeship to solicitor. Fee available. Location irrelevant. Please reply to Box No. 157.

LOST WILLS

Edith Sowter, Widow, late of Carnalea, Florence Road, Bray, Co. Wicklow, deceased. Anybody having any knowledge of any will of the above named deceased, please contact Brian S. Murphy, Solicitor, 89 Upper George's Street, Dun Laoghaire, Co. Dublin.

Colonel C. F. S. Langridge, deceased. Mrs. Avice M. Langridge, deceased. Late of Carramanagh, Oughterard, Co. Galway. The above died on the 15th March and 26th January, 1977, respectively, and no Will of either of them has come to light. Any information concerning a Will, or any information as to the next-of-kin of Colonel Langridge, should, please, be sent to Messrs A. & L. Goodbody, 31, Fitzwilliam Square, Dublin 2, under the reference L/EK.

James Healion, late of Sragh, Tullamore, County of Offaly, Widower. Would any solicitor or other person having knowledge of any Will of the above named deceased please contact Brian P. Adams, Solicitor, Cormac Street, Tullamore, Co. Offaly.

Leo Smith, deceased. Would any person holding or knowing the whereabouts of any Will made by Leo (otherwise Leopold) Smith, late of 61 Kenilworth Square, Rathmines, Dublin, and of The Dawson Gallery, 4 Dawson Street, Dublin, who died on 30th April, 1977, please communicate with Messrs McMahon & Tweedy, Solicitors, 9/10 Ely Place, Dublin 2.

Joseph Reilly Junior, deceased, late of Nanisivik Mines, Nanisivik, Northwest Territories, Canada, and formerly of Drewstown, Fordstown, Navan, Co. Meath. Would any solicitor or other person having any knowledge of a will made by the above deceased, it is thought in Dublin, during the past few years, please communicate with Michael J. Gleeson, Solicitor, Rossa House, 77 Marlborough Road, Dublin 4.

CHANGE OF STYLE

Since 6th April 1977 the firm Richard F. Gallagher & Son has changed its name to Richard F. Gallagher, Shatter and Company and continues at 11 Hume Street, Dublin 2.

THE INCORPORATED LAW SOCIETY OF IRELAND

GAZETTE

MAY/JUNE 1977 VOL. 71 NO. 4

Incorporated Law Society's Ordinary General Meeting, Wexford, 7th May,1977

The President, Mr. Bruce St. John Blake, took the chair on the occasion of the half-yearly meeting which was held in White's Hotel, Wexford, on Saturday, 7th May, 1977, at 10.00 a.m.

The Notice convening the meeting was read by the Director General, Mr. J. Ivers. The Minutes of the Annual General Meeting held on 25th November, 1976, having been circulated in advance, were taken as read and signed by the President.

Mr. Fintan O'Connor, President, Wexford Bar Association, welcomed the President, the members of the Council, Official Guests and members of the Society and wished them an enjoyable time in Wexford and a successful meeting.

The appointment of the following as Scrutineers of the Ballot of the Council to be held on 17th November, 1977 was proposed by Mr. J. Dundon, seconded, and passed unanimously.

Scrutineers: R. J. Branigan, E. McCarron, A. J. McDonald, B. P. McCormack, R. J. Tierney.

The President, Mr. Bruce St. J. Blake, then delivered his Presidential address.

President's Address

Ladies and Gentlemen, Fellow Members and Colleagues, my first duty is to welcome you all here and in particular to welcome our very distinguished guests from overseas, the Presidents and Secretaries of the Law Society, London, and the Law Society of Northern Ireland. In addressing you this morning, on the occasion of the Society's half yearly General Meeting, I propose to deal with events which have occurred since I was elected President last December and then comment on the developments which are likely to occur or, through action by the Society, might be caused to occur in the period ahead.

The major event from the point of view of the Solicitors' Profession was the publication by the National Prices Commission of its Occasional Paper No. 22 containing the report of the Commission's Consultant, Profession Denis Lees of the University of Nottingham, on Solicitors' Remuneration in Ireland and the Conclusions and Recommendations of the Commission thereon. In June, 1975 the Society indicated to the Prices Commission that it would welcome a study of Solicitors' Remuneration and on the appointment by the Commission of its Consultant the Society arranged to co-operate fully in the very considerable task which he undertook in his terms of reference. At that time the remuneration of solicitors was under considerable criticism in the media, notwithstanding the Society's comment that remuneration was not only not unreasonable, but in many instances in fact inadequate. This criticism appeared to be based on a lack of understanding of the functions of, and the services provided by, a solicitor and of the cost of providing that service, which was understandable, in the absence of any independent reliable source of information as to the true position. Hence, the announcement of the Independent Inquiry was welcomed by the Profession.

The Council of the Society has certain reservations on some of the details of the Consultant's Report and on some of his recommendations, but it nevertheless takes the view, that, by and large, the Report is both fair and reasonable and has reflected the thoroughness with which the Commission's Consultant and his colleagues pursued their investigations, not just in Dublin, but throughout the country where I would like to emphasise they were facilitated in every possible way by the profession, both at Council, Bar Association and individual level. It must be said that the Council of the Society on behalf of the Profession is gravely disappointed with the approach of the National Prices Commission in its conclusions and recommendations which the Society considers to be unreasonable, unrealistic and unfair. The National Prices Commission has in effect disowned many of the reasonable recommendations of its own Consultant and has chosen to disregard many of the reasonable proposals made by the Society which were accepted by the Consultant and recommended to the Commission in his Report. In its very thorough and detailed approach to the Inquiry the Society endeavoured to improve the situation of those solicitors practising in the country areas and, in particular, in the undeveloped and consequently much less affluent areas and also to improve the terms of practice in the lower Courts jurisdictions in the hope that solicitors would be encouraged to work, especially in the District Court, which, at the moment, is completely

uneconomic and further to improve the service in the area of Criminal Legal Aid where the existing service is to put it mildly only basic and rudimentary.

It is a matter of considerable regret to the Society that in its approach to the Consultant's Report the National Prices Commission revealed itself as being quite unsympathetic to the problems of solicitors endeavouring to carry on legal practice outside the larger urban centres in Ireland and seemed to be concerning itself with property transactions to the detriment of the problems in the area of Court work.

Taken as a whole the outcome from the Profession's point of view is totally unsatisfactory. The Consultant's Report found that the Society's application on behalf of the Solicitors' Profession for the increase in fees sought was justified on the grounds of rapid increases in wages, salary and administration costs in addition to the fact that earnings in private practice had fallen behind that of many employees in comparable forms of public employment and further, and of considerable significance, that solicitors had done relatively badly in comparison with the community as a whole. In particular the Consultant found that, contrary to the general belief, increases in property values through inflation did not, by reason of the tapering scale of fees applicable, increase solicitors incomes from Conveyancing in the same proportion.

I am glad to once again have an opportunity of emphasising that in the area of fees for Court work, the Consultant has found that increases in the past have been infrequent, and long delays have occurred between applications for increases and their final determination, but more important probably still, that increases granted have failed to take account of rapid inflation. Hence, in putting forward his recommendation for increases in the scale of fees the Consultant has suggested that they should be effected as soon as possible. As members of the Solicitors' Profession realise only too well, but this may not be appreciated by the Public and the Media, all increases for solicitors' fees must be processed through the Statutory Costs Committee which controls Solicitors' Costs. The Profession's experience in the past as to the time taken for such processing has been that by the time increases are finally sanctioned that any benefit that might have accrued as a result has been totally eroded by the rapid increases in the overheads referred to above and the effect of inflation.

Reference is made in the Report to the monopoly of solicitors, particularly in the field of Conveyancing and also to advertising and to general procedural problems in the work of solicitors, which cause delays.

The questions of monopoly and advertising are, in the view of the Society, matters of public policy which have been debated in great depth and at considerable length in both the United Kingdom, the British Commonwealth and European Countries over many years, without any conclusions having been reached, other than that the present system should be retained. The Society accepts the views of the Commission's Consultant as an Economist, but believes that much more research is necessary on these fundamental issues, before they can be fully debated and before reasonable conclusions can be drawn which in the final analysis must be in the best interests of the public. The Society will be prepared to co-operate fully with the Restrictive Practices Commission in any investigation it proposes to carry out in these areas.

If there is any satisfaction to be derived for the Profession from the Conclusions and Recommendations of the National Prices Commission in their Report it is that the Public is now fully aware that the Solicitors' Profession, instead of being overpaid as is widely believed, is in fact inadequately compensated in many areas of work. To that limited extent the inquiry must be regarded as having been worthwhile if it provides little consolation for the Profession. It is a matter of regret that the members of Profession who spend so much of their time and in fact devote so much of their working lives to endeavouring to secure justice for their clients seem to be unable to secure elementary justice for themselves, which is now clearly being denied to the Profession in the field of Remuneration. This simple fact is borne out by the National Prices Commission's own Report on Solicitors' Remuneration in Ireland.

The New Premises in Blackhall Place

An event of major importance in the history of the Society took place in the month of April of this year when the Society formally moved into its new premises at Blackhall Place. The Society's administrative offices are now located there and the Council and its Committees are already availing of the excellent facilities for their work and meetings. It is hoped that by the Autumn of this year facilities will be available there for members of the Society which will be of very considerable benefit and advantage, in particular to Country Members. Office type facilities and car parking will be available at Blackhall Place, but in the meantime, every effort is being made to improve the facilities for consultations and other necessary and ancillary services at the Society's existing premises at the Solicitors' Buildings in the Four Courts. I would like to take this opportunity of emphasising that the Society does not at any stage propose abandoning its presence at the Four Courts and it is proposed to retain an adequate portion of the existing Solicitors' Buildings to maintain these facilities. The Society is financing the current Blackhall Place Development Project from its own resources, which in effect means from its own membership. An extensive fund raising campaign is now in motion and, to date, the indications are that the support of the membership is both generous and enthusiastic which is most encouraging. It is of vital importance that this should be so, because if the Profession were to seek financial support from other sources it could then be regarded as compromising the independence which it values so highly and here I would like to once again take the opportunity of emphasising the fact that we are one of the very few truly independent professions still left in existence. As part of its efforts to generate funds for the Blackhall Place Development the Society proposes to dispose of a section of its premises at the Solicitors' Buildings in the Four Courts, but the Society is satisfied that the remaining accommodation will be quite adequate for the needs of the Profession in the immediate area of the Courts.

The Society's Educational Programme

I am glad to be able to say that the preparations for the Society's new Educational Programme which is due to come into operation on the 1st September, 1978 are proceeding with considerable expedition. The accommodation provided for the Society's new Law School in Blackhall Place is expected to be available by the end of the current year allowing adequate time for all

necessary final adjustments. The Education Advisory Committee and its many "course" sub-committees are well ahead in the formulation of the intensive programme envisaged and a start has been made in the preparation of the necessary detailed study material. A Director of Training, Mr. L. Sweeney, is due to take up this newly created position on the 1st June, 1977. The Society is deeply indebted to all concerned with the development of its new Educational Programme and I am glad to be able to take this opportunity of paying a special tribute and extending the thanks of the Society to the University Authorities in this country in particular who have co-operated in every way with the Society in its endeavours in this regard.

Unfortunately, due to the teaching requirements of the high intensity course with its unavoidably heavy costs it will be necessary to limit the maximum intake number in any one year to 150 apprentices. I would like to emphasise that this is substantially more than the number required to meet the natural wastage in the profession, but it falls short of the total numbers currently seeking admission to the Society's Law School. It is thus important that those concerned with career guidance should be aware of the situation and, indeed, the Society has already alerted them to this fact.

The Public Image of the Profession

I consider it appropriate that on an occasion such as this that I should refer to the profession's public image. The Profession's role and the nature and complexity of the problems with which it has to deal are to a very large extent both misunderstood and misconceived by the Public. The Society processes with the utmost possible expedition all enquiries and while some of these, particularly with regard to delays may be justified the Society makes every effort to rectify any problems that arise as a result. Indeed the Society has received many expressions of thanks for the assistance and results obtained from enquiries in this regard. In this difficult area of the Society's activities the media have shown an understanding and appreciation of what the Society is endeavouring to achieve and I would like to take this opportunity of expressing the thanks of the Society for the degree of co-operation received from them.

Garda brutality

Recent months have witnessed allegations of brutality on the part of individual members of the Garda Siochana. The Society is concerned that such allegations have been made because it believes that the Garda Siochana is one of the finest police forces in the world of which fact the legal profession in this country is justly proud and holds them in the highest esteem. I am glad to have yet another opportunity of publicly paying tribute to the work and dedicated service that the Garda Siochana have given and are continuing to give to the people of this country in which they have the fullest possible support of the Society. Members of the Society throughout the country maintain excellent relations with the Garda Siochana, but the Force will appreciate that the Society is particularly concerned that the rule of law and the liberty of the subject be observed at all times, especially by those responsible for the administration of justice. The Garda Siochana are an essential element in the observance of the rule of law and the protection of the rights and liberties of the individual. Because of the importance of the Garda Siochana in regard to this function it is most vitally necessary, both for the Force itself and the Public, that this function should be seen to be carried out in a just, impartial and proper manner. On this account it is desirable that the establishment of an autonomous Garda Authority should be seriously considered by the Government. I would once again like to emphasise that the Society is particularly concerned that the good name and image of the Garda Siochana be maintained and I would once again like to publicly pay tribute to the Force which is looked upon by the members of the Society as a Body of the highest integrity.

Right to speak out clearly on vital matters

In looking to the future it seems that the Society can, and should, articulate what it considers to be the needs of the Irish community in the last quarter of the 20th century. The Society considers that it is both the right and duty of lawyers to speak out clearly to the community on matters that it considers to be of vital concern to them in their daily lives. This is the right of any citizen, but it is in my view a duty that is incumbent upon the legal profession who are uniquely placed to judge situations which are of vital importance to the citizens of which they may not themselves be fully or adequately aware. The need to create an air of expedition and urgency in the processing of Court business is of very great importance to the Community. The entire legal process in the Court area is far too slow and cumbersome and with the hoped-for imminent emergence of Legal Aid the system as at present constituted is unlikely to be able to cope adequately with the new situation that is envisaged in consequence if in fact at all. On that account the Society is glad to see that the judicial establishment is to be increased. In itself this step is unlikely to achieve a great deal unless it is accompanied by a significant increase in support staff and the provision of adequate Court accommodation. In this regard the Legal Profession is particularly conscious that Family Law in this country is an area of rapid expansion and as the situation stands at present I do not believe that any of us can yet visualise how far this expansion will develop and how it will be serviced. I am glad, however, to be able to record the Society's welcome for the recent announcement by the Department of Justice of the proposed provision and expansion of facilities for Family Law Courts in the immediate future.

Legal Aid

In the coming years the greatest challenge facing the Legal Profession is likely to be in the area of Legal Aid. On the Criminal side, the recent Supreme Court decision in the *Foran v. Healy* case deciding in effect that a citizen accused of a criminal offence is entitled as of right to legal aid will undoubtedly have far reaching consequences for all concerned, particularly those charged with the administration of justice and the Legal Profession. If our experience is similar to that of the United States of America following the *Gideon v. Wainwright* judgment of the U.S. Supreme Court in 1963 which was to the same effect as the decision of our Supreme Court in the *Foran v. Healy* case, then in the very near future Criminal Law, especially in the Higher Courts will become a specialised

practice. This poses a considerable problem both for the Profession and the Public as to how the country outside the larger centres is to be served. In Dublin the development of specialisation in the sphere of Criminal Law could bring with it a greater identity between solicitors and the barristers profession leading in time to a possible type of fusion.

On the civil side of Legal Aid it is hoped that the Pringle Committee on Civil Legal Aid may present its Report this year and it is earnestly hoped by the Society that the implementation of this Report will not be long delayed especially as the Government through the person of the Attorney General, Mr. Declan Costello, S.C., has already indicated its commitment to the early introduction of a scheme of Civil Legal Aid.

A better educated and advised public is increasingly conscious of its rights in the areas of marital, housing, consumer and labour law. Legislation is contemplated or already enacted to improve those rights, but the obtaining of them is frequently difficult due to the cost of the required legal process. Compared, for example, to the medical services a scheme of Civil Legal Aid, or Criminal Legal Aid for that matter, would cost a very small sum indeed and on that account should be a priority target of Government expenditure if the maintenance of the liberty of the subject and the fundamental Rights Articles of the Constitution, not to mention justice, are to be guaranteed to the citizens of this State.

Having regard to the rapid development of Statutory Tribunals in this country, the general lack of knowledge on the part of the Public of their rights before such Tribunals, coupled with recent Court decisions, the Society is most concerned that from the inception of a scheme of Civil Legal Aid that such a scheme should embrace proceedings before Statutory Appeal Boards, Social Welfare and all similar types of Tribunals where the enforcement and maintenance of the rights of the citizens are concerned.

The Free Legal Aid Service

The Profession is particularly proud of the record it has of providing what is in effect a Free Legal Aid service on a voluntary basis without remuneration both in the Civil and Criminal field of Law and I would like to take this opportunity in particular of paying a very special tribute to the work of the Free Legal Advice Centres, staffed by Law Students and assisted by members of the Legal Profession on a totally voluntary basis. The work of the younger members of the Profession most of whom are not even qualified when giving their services entirely gratuitously to F.L.A.C. must be seen as an inspiration, not only to the Legal Profession itself, but to the Community as a whole and I feel that in fairness and justice to these young aspirants to the Legal Profession and to those members of the Profession who assist them they provide to a considerable extent an answer to much of the criticism that is frequently unfairly levelled at the Profession.

Before concluding I would like to say how gratifying it has been to see the recent publication of the first programme of the Law Reform Commission. I hope that it will be possible for the Commission to pursue its programme with diligence and that its recommendations will be rapidly translated into legislation for the benefit of the community. On this topic, may I be permitted to express the hope that our legislators when enacting amending legislation would periodically consolidate the statutes wherever possible. The present position where the ascertainment of the law in a particular area requires reference to a principal statute and several amendments is highly unsatisfactory and makes the law unnecessarily complicated.

May I conclude by thanking my colleagues on the Council and the General Membership of the Society for the support given both to me personally and to the Society in its various endeavours which it is earnestly hoped will be to the benefit not only of the Profession, but of the community at large whom we have the honour to serve.

The President was received with applause at the conclusion of his address.

Amendment of the Bye-Laws of the Society:

The adoption of the following additional Bye-Law was proposed by Mr. Houlihan, seconded by Mr. Curran and agreed unanimously:—

"38 (b) Any Past President of the Society who has ceased at any time to be a member of the Council and who notifies the Council in writing of his desire to participate in the affairs of the Council shall, so long as he remains a member of the Society, have the privilege of receiving notices and agenda papers for and attending at all meetings of the Council and to speak, but not to vote, thereat. Provided however that such privilege may be suspended and removed from any such Past President in the same manner as is provided in Bye-Laws 47 and 48 of the Society for the suspension and removal of a Member of Council."

Proposed: Michael P. Houlihan;
Seconded: Maurice Curran.

Thanking the meeting for its acceptance of the new Bye-Law, the President explained that it was designed to facilitate the introduction of new blood to the Council while at the same time retaining at both Council and Committee meetings the experience of Past Presidents who were prepared to continue to serve the Society in an active capacity.

Finance

Mr. Gerald Hickey, Chairman of the Finance Committee then said:

It gives me great pleasure to report to you today on the Society's Retirement Pension and associated schemes of Life Cover and Income Continuance. The Scheme is now two years in existence and notwithstanding intense competition, has already established itself as a feature of the Society's services.

I am pleased to report that there has been a very satisfactory increase in the level of subscriptions received in the year ended 1st March last. Subscriptions were sixty two per cent up on the previous year — this compares with a projected increase of fifty per cent as reported at the Tralee meeting last year. The level of increase in the current year will certainly exceed the previous year, though not by the same degree since the percentage growth will obviously be more marked in the first two years than it will be subsequently.

In all the circumstances, the target of £5m set for March 1978 should be exceeded.

The performance of the Fund in the two years since

inception has been exceptionally satisfactory. In brief, the unit cost at inception, after expenses, was 97.50p and was valued at the 1st March last at 127.05p. This indicated a gain over the two year period of 29.55p free of tax, which averages out at just under 15p per annum.

Least satisfaction can perhaps be expressed on the number of members participating in the Funds. While there has been a satisfactory increase in the numbers joining the Fund and a sizeable upsurge in interest and enquiries received from prospective members, there are many others who are not forthcoming, at this juncture at least. Members of the Society will be aware of the efforts being made to encourage mambers to participate, and it is hoped that the success of the Scheme and the achievements reported on will lead to support from a wider selection of members as soon as their commitments permit. So that all members will fully appreciate the advantages of the Scheme, it is intended that officers of the Society in association with the Trustee, the Investment Bank of Ireland, will make an intensive promotion drive in the Autumn. Also, in view of the terms of this year's Finance Bill, it is of particular importance that members who have not yet settled their tax situation for previous years should discuss the possibility of participation in the Scheme with their accountants.

The Life Cover option of the Scheme should be of particular interest to the younger solicitor, who at this stage possibly has large commitments and little resources. It is a facet of the plan which principals in practice might bear in mind when considering the remuneration of their assistants.

Membership of the Income Continuance plan continues to grow steadily. The cover offered is vital to every Solicitor, but is particularly recommended to younger members of the profession who should take the opportunity of utilising the lower rates whcih are available at the younger ages. When one is disabled it is too late to effect disability cover, and the obvious time for action is when one is in good health. It should be noted that the Income Continuance Plan has been specifically designed for professional people, and contains many aspects of cover not readily available on the individual market.

Concluding my remarks, I would like to express my appreciation to the Trustees in the person of Mr. Cummins, who is here with us today and Mr. Browne of the Trustee Department of the Bank of Ireland, the Investment Manager, Mr. Harvey-Kelly, Bank of Ireland, the actuary, Mr. Reddin and Irish Pensions Trust, in the person of Mr. Hoffman, who deals with the Income Continuance Plan. I would also like to thank Mr. P. J. Connolly, A.C.A., who has audited the accounts of the Fund.

Education Programme:

Mr. M. Curran, Chairman, Education Committee presented a detailed report on the Society's future educational programme due to come into effect on 1st September, 1978. He emphasised that under the new programme apprentice intake would be limited to 150 persons per annum and that discussions were proceeding with the University Colleges as to how this might be achieved, bearing in mind the need to provide lectures in the core subjects for non-law degree students. It is hoped to reach finality in the discussions with the University Colleges by the summer.

Premises

Mrs. Quinlan reported on developments to date in Blackhall Place and in Solicitors Buildings, Four Courts. It had been decided to defer a deicsion on the development of the Chapel area (Stage III) for the time being but to proceed with the provision of overnight accommodation. Mr. Pierse thought that the only appeal to the country man would be the availability of overnight accommodation and he wondered if the 6 rooms proposed would be sufficient. In reply to a query from Mr. B. O'Connor, Mr. Hickey explained that in commencing the work the Society had £200,000 in hands together with a 7-year term loan of £250,000 and it hoped to realize about £175,000 for the sale of part of Solicitors' Buildings. The total cost of the project in Blackhall Place would be between £600,000 and £700,000. Mr. Hickey then introduced Mr. John Connolly, Development Director, to the Meeting. Mr. Connolly detailed the Fund Raising Project and his approach to it for the members and dealt with queries raised. Concluding his comments, Mr. Connolly, thanked the Bar Associations and the individual members for the manner in which they had received him.

Irish Auctioneers & Valuers Institute:
Joint Auctioneer - Solicitor Action on Sales:

Mr. Osborne explained that when the previous proposal had been circulated to the profession, it provoked an adverse re-action. The revised proposal which had now been circulated had been worked out in consultation between the Institute and representatives of the Society. The opportunity afforded by the General Meeting was being used to test the feelings of the members in regard to the proposal. In the discussion which followed reference was made to the increased responsibility being placed on members. The general reaction of the members was that any scheme which did not provide for the deposit being held by the solicitor, would not be acceptable. Members commented adversely on the growing practice of seeking substantial booking deposits prior to contract where the clients interest was completely unprotected. At the conclusion of the discussion the meeting decided that the proposal be referred back to committee for further consideration and report in light of the points discussed.

National Prices Commission Inquiry:

Mr. Osborne and the Director General presented a comprehensive report on the situation. In answer to those members who urged an early application for the revision of District and Circuit Court costs, it was explained that the Costs Committee had decided to defer making such an application, until the Commission had disposed of the Society's submission (already made) on the many unacceptable and incorrectly based arguments and conclusions contained in the Consultant's Recommendations and in the Commission's Report by reason of the importance of these points in the establishment of a proper base for the assessment of increases in fees now and for the future. Mr. Crivon stressed the need for urgent action, since after paying staff and other overheads, members had little left for themselves and that remainder was decreasing rapidly. He considered that the Society should be far more

(concluded on page 80)

The Constitution and the Right to Reinstatement after Wrongful Dismissal

By Mary T. W. Robinson and John Temple Lang.

It has taken a remarkably long time for the right to reinstatement or re-engagement after wrongful dismissal to become a normal part of Irish legislation in the area of Industrial Relations. These rights are now provided as redress for unfair dismissal under section 7 of the Unfair Dismissals Act 1977. Also there is a provision in the Anti-Discrimination (Employment) Bill 1975 for amendment of section 9 of the Anti-Discrimination (Pay) Act 1974, to introduce these rights in the case of a woman who has been dismissed for pursuing an equal pay claim.

There appears to have been a body of legal opinion supporting the view that the Constitution of Ireland prevents any legislation being enacted which creates any such right to reinstatement or re-engagement after wrongful dismissal. During the Second Reading of the Unfair Dismissals Bill in the Senate (29/3/'77, Vol. 86, No. 7, Col. 540-541) the Minister for Labour said:

> "Senator Robinson raised the point that we did not provide in the equal pay legislation for re-instatement of a person seeking implementation of its provisions. It is true that at the time constitutional problems were cited that prevented us from doing this. Obviously the Constitution has not changed nor has the legal advice available to us. It would be tragic to think that legislation that Deputies and Senators in both Houses agree is desirable should be held back or rendered less strong because of legal advice that the Constitution could be cited against these provisions. It would be nonsense to think that legislation did not offer the option to the aggrieved party of re-instatement. The Constitution has not changed but we have accepted the possibility of certain elements of the Constitution being cited against the legislation before us. On the other hand, there is conflict in relation to this advice ..."

The present article discusses whether the doubts which have been expressed about the constitutionality of this and similar legislation are justified.

The question would present no difficulty if the right to re-instatement was given directly or indirectly under European Community Law. As a result of the Third Amendment to the Constitution, in that case the right to reinstatement could clearly be given.

The basic constitutional problem is said to arise from the employer's right to associate, which, it is argued, carries with it a right not to associate and therefore rules out any provision for compulsory re-instatement. However, the employee's right to work is also involved. This is clearly a constitutional right: *Moran v Att. Gen.*, 110 I.L.T.R. 85, at p. 87 (1976). The question discussed here is not whether the Constitution itself already gives the right to reinstatement, although the right to work and earn one's living might well imply a right not to be wrongly deprived of one's job, but whether the Constitution prevents any such right being given in cases of wrongful dismissal, in any sense of the phrase. Nor is the question the narrower point of whether any specific legislation is unconstitutional: it is said that no legislation giving any right to reinstatement could be constitutional, ever.

The difficulty is said to be due to the fact that the employer's right of association implies a right not to associate, and that since the employer could not have been obliged to employ the employee in the first place, he cannot be obliged to reinstate him. Since this would mean that the employer would be constitutionally entitled to take advantage of his own wrong (the wrong in question moreover being a violation of the constitutional rights of another), the theory would be both startling and serious in its implications if it were true.

In the *National Union of Railwaymen v Sullivan* 1947 I.R. 77, legislation was held unconstitutional which would have denied to employees the right to form unions having the same privileges as officially approved unions, and so creating pressure on them to join the approved unions. Perhaps more directly relevant, *Educational Co. of Ireland v Fitzpatrick* 1961 I.R. 345 laid down that picketing is illegal if it is intended to force certain employees to join a union: this involved the rights of the employees in question to continue in their jobs as well as their rights to be free from compulsion to join a union which they did not want to join.

Although in *N.U.R. v. Sullivan* the legislation in question was held to deny the right of association, not merely to regulate it, it is clear that in principle legislation regulating the right of association is constitutional, and that the distinction between denial and regulation of this right (and other constitutional rights) is a valid distinction even if it is not always easy to apply. The right to associate, and the right to be free not to associate, are qualified rights, not absolute rights. The presumed right of the former employer not to associate with his wrongfully-dismissed ex-employee is hardly a more absolute right than the right to keep a job, especially if the employer is a company which may not have all the constitutional rights of an individual.

The proper constitutional balance was considered in depth by Mr. Justice Walsh in *Meskell v C.I.E.* (1973) I.R. 121 at p. 135, as follows:

> "one of the questions which was argued in detail in the present appeal was the effect of the constitutional right to form an association, or the constitutional right not to belong to an association, on the ordinary Common Law rights of an employer to engage or dismiss his workers when, in doing so, he was not in breach of contract. If an employer threatens an employee with dismissal if he should join a trade union, the employer is putting pressure on the employee to abandon the exercise of a constitutional right and is interfering with his constitutional rights. If the employer dismisses the worker because of the latter's insistence upon

> exercising his constitutional right, the fact that the form or notice of dismisssal is good at Common Law does not in any way lessen the infringement of the right involved or mitigate the damage which the worker may suffer by reason of his insistence upon exercising his constitutional right. If the Oireachtas cannot validly seek to compel a person to forego a constitutional right, can such a power be effectively exercised by some lesser body or by an individual employer? To exercise what may be loosely called a Common Law right of dismissal as a method of compelling a person to abandon a Constitutional right, or as a penalty for his not doing so, must necessarily be regarded as an abuse of the Common-Law right because it is an infringement, and an abuse of the Constitution which is superior to the Common Law and which must prevail if there is a conflict between the two. The same considerations apply to cases where a person is dismissed or penalised because of his insistence upon, or his refusal to waive, his right to dissociate. In each of these cases the injured party is entitled, in my view, to recover damages for any damage he may have suffered by reason of the dismissal or penalty resulting from his insistence upon exercising his Constitutional right, or his refusal to abandon it or waive it. As there is no claim in the present case for reinstatement, I do not need to consider that matter."

In any case, an employer who takes on an employee in some sense waives or contracts out of his constitutional right not to associate with the employee: by exercising his freedom to contract, the employer imposes obligations on himself. Clearly the constitutional right to associate and not to associate may be regulated by a contract made by the individual, just as certain other constitutional rights can be: *Re Tilson* (1951) I.R. 1; *State (Nicolaou) v Bord Uchtala* (1966) I.R. 567. It appears that quite apart from the Constitution, there are circumstances in which the law imposes an obligation to contract, as a result of the actions of the person subject to the duty: *Constantine v Imperial Hotels* (1944) K.B. 693: the inability of a landlord unreasonably to withhold his consent to an assignment of a lease, under the Landlord and Tenant Acts; and certain Orders under the Restrictive Trade Practices Acts making collective boycotts illegal. If these are constitutional (and they certainly are) they clearly imply that the right not to associate is a qualified one.

Moreover, the recent decisions in *Hynes v Garda Commissioner Garvey* (High Court, 19th Nov. 1976) and *State (Gleeson) v Minister for Defence* (Supreme Court, 1st July 1976) show that there may be a right to reinstatement where dismissal or its equivalent has followed a procedure which did not comply with the rules of Natural Justice or of "Constitutional Justice". If the right to reinstatement exists where the dismissal from an official position or an "office" was vitiated by a procedural defect, there seems no reason to say that it could not exist where the dismissal is vitiated by being substantively unlawful. In the *Hynes case* the plaintiff was granted a declaration that the defendant's order dispensing with the Plaintiff's services was void, and in *Gleeson v Minister for Defence*, an order of Certiorari was granted to quash a discharge from the army. In both these cases therefore the effect of the Courts' decisions was reinstatement. These cases could be distinguished on the grounds that they dealt with offices rather than contracts of employment with a private employer, but it is not clear whether the constitutional right to one's livelihood (as distinct from the legal incidents of the situation) depends on the technical legal nature of the job, or indeed on whether he is employed or self-employed. Nor is it clear whether the employer's right of association depends on the nature of his association with the employee or office-holder: see *Glover v BLN*, Supreme Court, 18th December, 1972, (1973) I.R. 388. On the face of it, Constitutional Rights should depend on technicalities, in particular on technicalities which could be altered by legislation.

It also seems that in appropriate circumstances an employee fearing wrongful dismissal could get a declaratory judgment or a *quia timet* injunction to prevent it. If this is correct under the Constitution, it would be illogical if no statutory right to reinstatement could validly be created, since the rights of the employer and the employee would not be materially different in the two cases. It may be helpful to consider a hypothetical situation similar to that in *Educational Co. v. Fitzpatrick.* Suppose an employer agreed with a union or with his unionised employees to dismiss certain employees unless they joined a union. In such circumstances there seems to be no doubt that the Constitutional Right to work of the victimised employees would be upheld by the Courts, in proceedings brought either for wrongful dismissal or "to prevent the threatened or impending infringement" of their constitutional rights: *East Donegal Livestock Mart v Att. Gen.* (1970) I.R. 317. Clearly in proceedings to prevent a threatened infringement an employer could not plead that his Constitutional Right not to associate entitled him to enter into a conspiracy to breach his contract of employment or to violate the constitutional rights of others. It would be a totally irrational result if the Constitutional Rights of the employees to retain their jobs (as distinct from obtaining damages for losing them) could be defeated by the employer's right not to associate with them, depending on whether or not they had issued proceedings before the purported dismissal took effect. It is important to bear in mind that the question being discussed is not whether there is a specific right to reinstatement under existing law, but whether the Constitution allows such a right to be created by legislation.

In *Moran v Attorney General* (at p. 87) Doyle, J. said: "The revocation (of a taxi driver's licence) . . . operated to deprive each plaintiff of his previous means of livelihood as a taxi driver. It seems clear that such deprivation affects the 'personal rights' and 'property rights' of the citizen recognised in Article 40.3.1 and 2 of the Constitution" and in *Educational Company v. Fitzpartick* – (1961) I.R. (at p. 397) Kingsmill Moore J. said "The right to dispose of one's labour and to withdraw it seems to me a fundamental personal right . . ." See also *Brendan Dunne v. Fitzpatrick* (1958) I.R. 29; Butler, J. in *The State (Gleeson) v. Minister for Defence.*

Faced with a conflict between the Constitutional Rights of the employer and the employee in the case of wrongful dismissal, there seems – on even this brief analysis – to be no reason to say that the employer's rights are absolute, or that they must necessarily over-ride those of the employee. Indeed, it seems an obvious case in which the Legislature is free to regulate and reconcile, as far as may be, both rights, especially since, *ex hypothesi*, the situation has arisen as a result of the voluntary act of the

employer in entering into the contract of employment. Even if the Constitution now protects the right not to be compelled to perform a contract of personal service, as it may well do under the heading of "personal liberty", this would not prevent an employer being obliged to reinstate a wrongly dismissed employee. There is an obvious and surely valid distinction between being compelled to join a union of which one has never been a member on pain of losing one's job (the situation in *Educational Company of Ireland case),* and being obliged in circumstances specified by legislation to reinstate an employee whose contract has never been properly terminated.

In principle it seems reasonable to say that the Legislature should be free to protect Constitutional Rights directly by appropriate legislation rather than merely by giving a right to damages, where the former is possible. Not only the Constitutions, but the National Legislation of many other European countries give a right to reinstatement without the suspicion that by so doing they are violating the employer's constitutional rights. It may also be relevant to point out that the right to reinstatement has been recognised in such international documents as the European Social Charter and the International Labour Organisation Recommendation on Termination of Employment.

It would be unfortunate if public opinion were led to believe that only an amendment to the Constitution, or a new Constitution, could make possible the creation by legislation of a right to re-instatement. It is suggested that in this respect as in others, the Constitution has been maligned.

The distinction has been drawn, correctly, between re-engagement and re-instatement. But this distinction does not seem relevant from the constitutional point of view: either the employer's rights under the Constitution are such that he cannot be obliged to re-employ the dismissed employee, or they are not. Constitutional rights of association could hardly depend on such technical distinctions. The distinction does not seem relevant even to the law on specific performance or injunctions: if an employer can be obliged to re-engage, he can be obliged to re-instate.

Careers and Appointments Service

The Association of Irish University Careers and Appointments Services is compiling a Directory of Organisations and firms who have in the past recruited graduates, or who have an interest in graduate recruitment.

It is intended that the information included will be brief and factual and will comprise the name and address of the firm, the type of business and the degree subject or subjects sought.

The Directory will be available to students throughout Ireland, for their University Careers and Appointments Services.

Firms of Solicitors accepting apprentices or with whom occasional vacancies for apprentices arise, can be included.

Any Firm of Solicitors wishing to be represented in this Directory should contact:

Miss Sandra Walker, B.A.,
Assistant Careers and Appointments Officer,
University College,
Administration Building,
Belfield,
Dublin 4.

Ordinary General Meeting of the Society

(continued from page 77)

aggressive in its approach to the NationalPrices Commission and others responsible for fixing costs.

OTHER BUSINESS:

Professional Indemnity Insurance

In response to Members queries, the President detailed the developments which had taken place in recent years leading the Society to endorse the insurance programme prepared by J. H. Minet & Co. He explained that the Society's concern was to make the best possible insurance programme available. It would be a matter for each practice to make up its own mind as to where it placed its insurance. The one point he wished to emphasise was the absolute necessity for a practice to carry professional indemnity insurance. Mr. Crivon pointed to the difference in the questions asked in the proposal form relating to notice of possible or likely claims being made against the proposer, and the effect this could have on future claims being made, by the previous carrier and the new carrier. He wondered if the Council had fully examined the implications before recommending the Minet scheme. The President indicated that the Committee concerned had examined the various propositions in great detail before the Council had issued its recommendation to members over his signature.

Gazette

Mr. Crivon and Mr. Shatter drew attention to the unfortunate situation arising out of the reporting of certain family cases. Arising out of the discussion, Mr. Shatter suggested that once the matter had been dealt with to the satisfaction of the parties, the President of the High Court might be invited to issue a practice direction which would serve as a guide-line for future reporting. This was agreed.

Conclusion

As there was no further business arising, the President thanked the members for their attendance and participation in the discussion. He declared the meeting closed.

The 126th Session of the European Commission of Human Rights

(Strasbourg, Monday, 28 February–Friday, 11 March, 1977)

The 126th Session of the European Commission of Human Rights was held at Strasbourg at the Human Rights Building from 28 February to 11 March 1977. At the close of the Session the Secretary to the Commission gave the following information on matters dealt with in the Commission:

The Commission considered some 160 individual applications (Art. 25 of the European Convention on Human Rights).

A. Examination of admissibility

I. Applications declared admissible

Four applications were declared admissible by the Commission: 1. *Artico v. Italy*

The admitted complaint under Art. 6 (3) (c) of the Convention concerns the lack of legal assistance in criminal proceedings against the applicant before the Court of Cassation.

2. *De Weer v. Belgium*

The applicant, a butcher, was charged with offences under the price legislation and informed that his shop would be provisionally closed. The Public Prosecutor offered to discontinue the proceedings if the applicant paid a fine of 10,000 BF within ten days. The applicant accepted in order to avoid the closure of his shop. He invokes in particular Art. 6 of the Convention.

3. *X and Y v. Belgium* (Application No. 7238/75).

The applicants, Belgian doctors, complain of disciplinary proceedings against them as being contrary to Art. 6 of the Convention; they also invoke Art. 11. The application was joined with an earlier application raising the same issues.

4. *Guzzardi v. Italy*

The applicant complains of his confinement to an Italian island as a security measure.

II. *Applications declared inadmissible or struck off the list*

1. *Ordinary proceedings*

After substantial deliberations the Commission declared 22 applications inadmissible and struck three applications of its list of cases. The following were among the applications declared inadmissible:

(1) three applications (Nos. 6782-6784/74) concerning criminal convictions for indecent publications in Belgium;
(2) an application (No. 6832/74) concerning trade union benefits in Sweden;
(3) an application (No. 6853/74) concerning education in Swedish municipal nursery schools;
(4) an application (No. 6930/75) concerning representation through a guardian in court proceedings in Norway;
(5) two applications (Nos. 7126 and 7573/76) complaining of exposure to anti-riot gas in Long Kesh, Northern Ireland, in 1974;
(6) an application (N0. 7130/75) complaining of the taking of evidence in a Belgian court;
(7) an application (No. 7704/76) concerning the treatment of gypsies of the Kalderas tribe, who had come from the Netherlands, in the Federal Republic of Germany.

2. *Summary proceedings*

The Commission also declared 69 applications inadmissible and struck off its list of cases six applications in the summary procedure which it uses in cases which do not raise any special problems.

III. *Applications communicated to Governments*

The Commission decided to bring ten applications to the notice of the respondent Governments inviting them to submit their written observations on the admissibility of these applications. Among these applications were:

(1) two applications (Nos. 6973 and 7368/76) concerning alleged assaults by prison officers and subsequent attempts to take legal action in the United Kingdom;
(2) an application (No. 7262/75) concerning detention on remand and subsequent detention as a mental patient in Belgium;
(3) an application (No. 7402/76) concerning a trial in the United Kingdom;
(4) an application (No. 7408/76) concerning the treatment of a remand prisoner in a German prison;
(5) an application (No. 7654/76) concerning the refusal of the Belgian authorities to modify the birth certificate of a person on the ground that he had changed his sex;
(6) an application (No. 7710/76) complaining that the applicant, following his arrest in Switzerland, was not brought promptly before a "judge or other officer authorised by law to exercise judicial powers" (Art. 5 (3) of the Convention);
(7) an application (No. 7743/76) concerning corporal punishment in a secondary school in Scotland;
(8) two applications (nos. 7823 and 7824/76 against the Federal Republic of Germany and the Netherlands) concerning the situation of gypsies of the Kalderas tribe who, having stayed for some time in Germany, have now been readmitted to the Netherlands;

IV. *Hearings to be held*

In the following cases the Commission decided to hold a hearing of the parties:

1. *A, B, C and D v. the United Kingdom* (Nos. 6840/74, 6871/75, 6998/75 and 7099/75)

The hearing will deal with various problems arising under the Convention in connection with the applicants' indefinite detention as mental patients.

2. *X v. the United Kingdom* (No. 7141/75)

The case concerns the right of a prisoner to marry (Art. 12 of the Convention).

3. *Professor Deutsch v. the Federal Republic of Germany*

The hearing will relate to the applicant's complaint that he was wrongfully arrested and detained and refused compensation (Art. 5 of the Convention).

4. *Y and Z v. Switzerland* (Nos. 7289/75 and 7349/76)

The case concerns a prohibition of entry pronounced by Swiss authorities against the first applicant with effect for both Switzerland and Liechtenstein and the alleged repercussions of this prohibition on the applicants' family life (Art. 8 of the Convention).

B. *Examination of admitted applications*

The Commission also continued its examination of a number of admitted applications.

I. *Reference to the European Court of Human Rights*

The Commission, having adopted its Reports at its previous session, decided to bring the following cases before the Court:

1. *X v. the United Kingdom* (no. 5856/72)
Corcerning corporal punishment in the Isle of Man.

2. *Dr König v. the Federal Republic of Germany*

Concerning the length of administrative court proceedings.

II. *Reports adopted*

The Commission adopted Reports in the following cases:

1. *Klass and others v. the Federal Republic of Germany*

This case concerns an Act of 1968 permitting under certain circumstances the clandestine control of correspondence and telecommunications (Arts. 8, 6 and 13 of the Convention). The Commission adopted its Report under Art. 31.

2. *Neubecker v. the Federal Republic of Germany*

The applicant complained of the Court decision by which he was refused reimbursement of the costs of his defence when criminal proceedings against him were discontinued. He invoked Art. 6 (1) and (2) of the Convention (fair trial and presumption of innocence). A friendly settlement under Art. 28 (b) has now been reached and the Commission's Report under Art. 30 of the Convention will be published shortly.

III. *Continued examination of other admissible applications*

1. *Hilton v. the United Kingdom*

The applicant complains of ill-treatment in prison (Art. 3 of the Convention). The Commission decided to hear the parties' oral conclusions on the evidence obtained by its Delegates.

2. *Luedicke, Belkacem and Koc v. the Federal Republic of Germany*

On 2 March 1977 the Commission held a hearing of the parties on the merits of these applications. The applicants complain that they had to pay the costs of interpretation in criminal proceedings. A separate press release has been issued.

3. *X v. the Netherlands* (No. 6301/73)

The applicant complains of his detention as a mental patient (Art. 5 (1) (e) and (4) of the Convention). The Commission decided to hold a hearing of the parties on the merits of the application.

4. *Times Newspaper Ltd. v. the United Kingdom*

The applicants complain of an injunction preventing them from publishing an article dealing with thalidomide children. The Commission considered its draft Report under Art. 31 of the Convention.

5. *Brüggemann and Scheuten v. the Federal Republic of Germany*

The applicants submit that the criminal law concerning the interruption of pregnancy violates their right to respect for their private life (Art. 8 of the Convention). The Commission decided to hear at its May session the parties' oral submissions on the merits of the case.

6. *Haase v. the Federal Republic of Germany*

On 3 March 1977 the Commission held a hearing of the parties on the merits of this application which relates to the length of criminal proceedings against the applicant and, in this context, to the length of his detention on remand. A separate press release has been issued.

Articles of the European Convention on Human Rights

Article 3: Freedom from torture or inhuman or degrading treatment or punishment
Article 4: Freedom from slavery, servitude and forced labour
Article 5: Right of liberty and security of person
Article 6: Right to a fair trial by an independent and impartial tribunal established by law
Article 8: Right to respect for family life, home, correspondence
Article 9: Freedom of thought, conscience and religion
Article 10: Freedom of expression

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

Judgments

Case 71/76—*Thieffry v Conseil de l'Ordre des Avocats à la Cour* de Paris (The Paris Bar Council) — 28 April 1977 — *Freedom of establishment*

After the Reyners case in 1974, *Thieffry* raises the problem of the exercise of the profession of Advocate.

The facts are as follows: Mr. Thieffry, a Belgian national, holds a doctorate in Belgian law. In 1974 he obtained recognition of the diploma for his doctorate in Belgian law as a qualification equivalent to a licentiate's

degree in French law. In 1975 he also obtained the Certificat d'Aptitude à la Profession d'Avocat (C.A.P.A) (qualifying certificate for the profession of Advocate).

Mr. Thieffry then applied to take the oath with a view to his registering for the period of practical training at the Ordre des Avocats à la Cour de Paris (Paris Bar). His application was rejected on the ground that he offered no diploma evidencing a licentiate's degree or a doctor's degree in French law, as required by the French Law reforming certain legal and judicial professions.

As a result, the Cour d'Appel, Paris, was led to ask the Court of Justice to give a ruling on the following preliminary question:

> "When a national of one Member State desirous of exercising the profession of Advocate in another Member State has obtained a diploma in his country of origin which has been recognised as an equivalent qualification by the University authority of the country of establishment and which has enabled him to sit in the latter country the Advocate's professional qualifying examination – which he has passed – does the act of demanding the national diploma prescribed by the law of the country of establishment constitute, in the absence of the directives provided for in Article 57 (1) and (2) of the EEC Treaty, an obstacle to the attainment of the objective of the Community provisions in question?"

The Court of Justice referred to the reasoning behind the principle of freedom of establishment and stated that under Article 3 of the Treaty, the activities of the Community shall include *inter alia* the abolition of obstacles to freedom of movement for persons and services. With a view to attaining this objective the first paragraph of Article 52 provides that restrictions on freedom of establishment shall be abolished by progressive stages in the course of the transitional period, and Article 53 underlines the irreversible nature of the liberalization achieved in that regard.

In order to make it easier for persons to take up and pursue activities as self-employed persons, Article 57 assigns to the Council the duty of issuing Directives concerning, first, the mutual recognition of diplomas and, secondly, the co-ordination of the provisions laid down by law or administrative action in Member States concerning the taking up and pursuit of such activities.

In the general programme for the abolition of restrictions on Freedom of Establishment, which was adopted on 18 December 1961, the Council proposed to eliminate not only overt discrimination but also any form of disguised discrimination.

The principle of Freedom of Establishment, subject to observance of professional rules justified by the general good, is one of the objectives of the Treaty.

Those objectives may be attained by measures adopted by the Member States, in so far as Community law itself has made no special provision. However, where the Freedom of Establishment provided for in Article 52 can be ensured by means of national provisions, the practical benefit of such freedom cannot be denied to a person subject to Community law for the sole reason that, for a particular profession, the directives provided for by Article 57 of the Treaty have not yet been adopted.

As regards the present case in particular, the question has arisen whether a distinction should be drawn, as regards the equivalence of diplomas, between University recognition, granted with a view to the pursuit of certain studies, and recognition having "civil effect", granted with a view to the pursuit of a professional activity.

Since that distinction falls within the ambit of the national law of the different States, it is for the national authorities to assess its consequences, taking into account the objectives of Community law.

The fact that National Legislation provides for recognition of equivalence only for univeristy purposes does not in itself justify a refusal to accept such equivalence as evidence of qualification to enter a profession.

The Court has ruled that when a national of one Member State desirous of exercising a professional activity such as the profession of Advocate in another Member State has obtained a diploma in his country of origin which has been recognized as an equivalent qualification by the competent authority under the legislation of the country of establishment and which has thus enabled him to sit and pass the special qualifying examination for the profession in question, the act of demanding the national diploma prescribed by the legislation of the country of establishment constitutes, even in the absence of the directives provided for in Article 57, a restriction incompatible with the freedom of establishment guaranteed by Article 52 of the Treaty.

IRELAND WILL TAKE FRANCE TO COURT OVER ACCESS TO LAMB MARKET

Ireland is bringing the French Government before the European Court of Justice for failing to allow free access to the French market for Irish lamb contrary to the principles of the Common Market. At a press conference in Dublin recently, the Minister for Agriculture, Mr. Clinton, announced that Ireland's case would be placed before the Court and he expected the proceedings to be completed within six months.

The decision to instigate legal action against the French, who open and close their markets to imports in order to ensure high prices for French lamb producers, has been forced on the Minister by the growing disappointment suffered by Ireland's 30,000 sheep producers, who were assured of access to the high-priced Continental lamb market on entry to the EEC.

Mr. Clinton said that he had been completely "deceived" over the past four years by the French who had led him to believe they were favourably disposed towards allowing free access to their market for Irish lamb, but each time they had approached a solution "the French simply backed away".

He said the delay in bringing legal action against the French was also due to the Irish Farmers' Association persuading him that they would gain access to the French market for Irish lamb through their influence with the French farmers' union. Now, he said, he was not prepared to wait any longer.

The case would clarify the situation and he was certain that the manner in which the French protected their market was totally illegal. The country's sheep farmers would know where they stood by the end of the year.

In this light the prospects for sheep in the future were good, Mr. Clinton said. It depressed him to hear that sheep production was continuing to decline because farmers lacked confidence at a time when prices were never better.

France continues to protect her producers by closing her market to imports when the price of lamb drops and only allows imports when prices rise above the threshold level. But even then, Irish lamb carries a heavy levy entering the market. Britain, on the other hand, because of her geographical location, can often beat Ireland into France when the market opens and therefore supplies nearly half of France's 53,000 tons of import requirements compared with Ireland's 3,000 to 4,000 tons. The balance comes from Eastern European countries, Bulgaria in particular.

France imports 28% of her 190,000-ton lamb consumption each year, so access for Ireland on an all-year-round basis would mean exports of 6,000 tons or more, worth in the region of £12 million, a major fillip to sheep producers especially in the poorer regions of the country, and would constitute a mere tenth of France's total imports.

Mr. Clinton had hoped that the Community spirit might have persuaded the French to allow some concessions in the case of Irish lamb exports on the grounds that, according to the Treaty of Rome, preference should be shown by the EEC countries for the produce of other Member States, and also the fact that the French might reasonably be expected to show a preference for Irish produce against that of Eastern European countries.

FORTHCOMING CONFERENCES

Union Internationale des Avocats

The 27th Congress of the Union Internationale des Avocats will be held in Zagreb, 4 - 9 September, 1977. Programmes and application forms may be obtained from the Kongresna Kancelarija, xxvii Kongres U.I.A., Zrinjevac 15, 41000 Zagreb, Yugoslavia.

Association Internationale des Jeunes Avocats

The Association Internationale des Jeunes Avocats will be holding its 15th Annual Congress in Christ Church and Merton College, Oxford, 12 - 16 September, 1977. Working topics include Employment Protection – an International Survey, Harmonisation of Laws in the E.E.C. – what progress after 21 years? The Rights of the accused from the time of arrest. Further information is available from the National Vice-President of the A.I.J.A., John Maycock, Messrs. Crossman, Block & Keith, Solicitors, 199 Strand, London WC2R 1DR.

International Bar Association

Section on Business Law

The third Conference of the I.B.A. Business Law Section will be held 2 - 5, November, 1977, at the Hyatt Regency Hotek, Atlanta.

The Working Programme will include lectures and discussions on MaritimeTransport and Aeronautical Law, Company Law, Insolvency and Liquidations, Patents, Trademarks and Copyrights, Sale of Goods, Labour Law and Consumer Affairs, Advertising, Unfair Competition and Product Liability.

Membership, Registration Forms and details of travel arrangements may be obtained from the Director-General, The International Bar Association, Byron House, 7 - 9 St. James's Street, London SWIA IEE.

INTERNATIONAL BAR ASSOCIATION

17th BIENNIAL CONFERENCE SYDNEY

11 - 16 SEPTEMBER, 1978

In order to present a comprehensive travel programme for the 1978 I.B.A. Conference in Sydney, the Society is seeking an estimate of the number of people who will be travelling from Ireland.

Members who are considering attending the Sydney Conference are requested to complete the short questionnaire which is inserted looseleaf in this issue of the GAZETTE.

RECENT IRISH CASES

PRACTICE – TRANSFER TO CIRCUIT COURT

A claim for damages for assault was remitted to the Circuit Court, as a jury in a High Court action would be unlikely to award more than £2,000 damages.

Claim for damages for asssault and battery by defendant on plaintiff in drawing room of defendant's house in February, 1970. The plenary Summons was issued on 26th March, 1975, and an appearance was entered on 2nd July, 1975. The injuries sustained are described as pain, shock and humiliation, but no special damages are claimed. This is a motion to have the case remitted to the District Court or Circuit Court.

It is contended by the defendant that, as the statement of claim does not disclose any injuries, such an assault would be fully compensated by £250, the limit of the District Court jurisdiction, and that in any event, damages of more than £2,000 would be excessive. The plaintiff contends that, by remitting the case to the Circuit Court, he would be deprived of his right to trial by jury. The plaintiff also contends that he has a constitutional right of access to the High Court, and that, if this right is exercised, he has a right to trial by jury, and cannot be deprived of it.

The question is whether the plaintiff has an absolute right to a jury which he can enforce by starting his action in the High Court, or whether he has only got a right to a jury if his action goes to trial in the High Court. The Judge is not satisfied that there is any absolute right in the form claimed. It follows that, in accordance with the Supreme Court decision in *Ronayne v. Ronayne*–(1970) I.R. 15 – there is no alternative but to remit the case to a lower Court, as the Judge is not satisfied that a High Court jury in this case would award more than £2,000. The defendant was a wealthy man and in a dominant position as regards the plaintiff, and the incident was most humiliating, but there were no injuries sustained. In the circumstances, it is reasonable to remit the case to the Circuit Court.

McDonald v. Galvin – McWilliam J. – unreported – 23rd February, 1976.

LOCAL GOVERNMENT – PLANNING

Plaintiff's claim for a declaration that Ministerial permission given for housing development to a development company was null and void rejected.

Plaintiffs claim a declaration that permission given to Templefinn Estates by the Minister for Local Government for housing development at Hackettsland, Killiney, is invalid and void, and made in disregard of the principles of constitutional justice.

The plaintiff's case is based on a consideration of an imposed condition to the effect that no houses were to be constructed on the part of the site to the south of the culverted stream before the expiration of 3 years from the Order, in order to control and regulate developments. Throughout the long proceedings, the plaintiff has made the case that the provision for sewerage disposal is inadequate. A previous order of the Minister granting permission for this development was declared invalid by Finlay J. on other grounds in March, 1974, (see Gazette, 1974, p. 79).

As there has been a delay of 3 years so as to ensure that sewage disposal facilities are satisfactory, the plaintiffs contend that, at the time of the making of the Order, the Minister decided that these sewage facilities were not satisfactory, and that consequently the whole ministerial permission was bad on its face. Having referred to Sections 19 and 26 of the Pianning and Development Act, 1963, the Judge stated that it must be obvious to any responsible person that adequate sewage disposal facilities should be provided before a new housing development is occupied.

However desirable such a provision might be, neither Section 26 nor Section 19 require a Planning Authority to impose conditions regarding sewage disposal or pollution. It follows that the plaintiff's proposition is that a condition is bad unless it necessarily ensures the accomplishment of the reason for imposing it. S. 26(8) of the Act states that "the notification of the Ministerial decision shall comprise a statement specifying the reasons for the refusal or the imposition of conditions". The Judge can see no reason for the justification for the approach that the stated reason for the condition, namely the provision of satisfactory sewage disposal, must itself be treated as a condition binding on the Local Authority or the Minister. The plaintiff's claim for a declaration must accordingly be dismissed.

Killiney and Ballybrack Development Association Ltd. v. Minister for Local Government and Templefinn Estates Ltd. (No. 2) – McWilliam J. – unreported – 1st April, 1977.

CRIMINAL LAW – EVIDENCE – VOLUNTARY STATEMENTS

Defence contentions that statements made relating to the kidnapping of Dr. Herrema were not voluntary rejected.

The two accused were convicted in the Special Criminal Court on the first count of having on 30th October, 1975, at Limerick falsely imprisoned Dr. Herrema by unlawfully detaining him against his will, and, on the second count, of the unlawful possession of firearms. The only evidence against them was contained in their respective statements, and in Garda sketches of the scene of the kidnapping.

It was first contended that the trial was unsatisfactory, in that, when the Special Criminal Court had decided to admit the statements, the Court did not proceed to hear the same evidence. S.41(4) of the Offences against the State Act, 1939, provides that the practice and procedure applicable to the trial of a person in indictment in the Central Criminal Court shall, so far as practicable, apply to the trial of a person before the Special Criminal Court. It was contended that if subsequently evidence had been tendered as to the making of the statement, and the circumstances in which it was made, counsel for the accused could have cross-examined the Garda on the accuracy of the matters stated therein. It is clear from the transcript that the usual procedure was followed, whereby the admissibility of statements would be determined by the Court. At the special request of counsel for the defence, prosecuting counsel recalled each witness who had previously given evidence in regard to the taking of statements, and each of these witnesses re-affirmed that the evidence already given was true and

correct. Though given the opportunity to cross-examine the witnesses, counsel for the defence did not do so. It follows that the requirements of S.41 (4) of the 1939 Act, in relation to the practice and procedure to be adopted by the Special Criminal Court were sufficiently complied with in these circumstances.

In any event, the statements made by the accused were precisely confirmed subsequently by Dr. Herrema himself in relating the kidnapping. In his third statement, McGowan admitted that he drove with Gardai to Kildangan, and showed them the house in which Dr. Herrema was held captive. It was as a direct result of this that Dr. Herrema was eventually located at Monasterevan. This ground fails.

The second ground is that two statements made by McGowan on 20th October, 1975, were made after he had been subjected to prolonged and continuous interrogation, and consequently the statements were not voluntary. McGowan was in fact arrested at 9.00 a.m. on 18th October, and brought to Portlaoise Garda Station, and there questioned with breaks from noon on 18th October, to 1.00 a.m. on Sunday, 19th October. After some sleep, his questioning was resumed at 11.00 a.m. on Sunday, 19th October, and continued through most of Sunday to Monday morning, save for a short period. At 9.15 p.m on Sunday he made an exculpatory statement in regard to his movements.

At 9.00 a.m. on Monday, 20th October, he was allowed to leave, but requested a lift to Tullamore from the Gardai. Two Detective-Inspectors, who had interrogated him, then drove him to Tullamore. After Mountmellick, McGowan stated he would tell the truth, and that he had in fact kept watch on the movements of Dr. Herrema in Limerick for Gallagher. As a result of this confession, McGowan was taken into custody under S.30 of the Offences against the State Act, 1939, at 11.15 a.m. on Monday, 20th October. McGowan remained in a cell in Tullamore Garda Station until 5.30 p.m. when he made a full confession admitting his part in the kidnapping of Dr. Herrema. Counsel for the defence did not complain that the manner in which the Gardai had taken these statements was oppressive, but merely that the length of time during which McGowan had been interrogated was oppressive. The statement which McGowan made in the car on the way to Tullamore was not induced by oppressive means. Accordingly there was ample evidence that justified the Special Criminal Court in finding all these statements voluntary and properly admissible. It is then contended that, as both accused had been arrested under S.30 of the Offences against the State Act, 1939, and made statements while detained for the 48 hours, permitted by that Section, the statements should not be admitted in evidence. Under S.30, a Garda may demand of the person detained his name and address, and refusal to provide same is a penalty. A Garda may also, under S.52 of that Act, demand a full account of accused's movements during a specified period under penalty. Counsel for the accused submitted that, as the accused was bound under penalty to supply the requested account of his movements, any statement made thereafter was not voluntary, and should not be admitted. At no time during the questioning of the accused was S.52 invoked, and the accused made no statement under a threat of penalty. On the contrary, the accused were continually cautioned that they were not obliged to make a statement. Statement made by 4th Edition of Cross on Evidence at p.248 approved "If information has been lawfully obtained pursuant to statutory provisions, and there is no express restriction on the use which can be made of the information, the person giving it cannot object to its being used in evidence against him, either on the ground that such use would infringe his privilege against self-incrimination, or because the evidence would not have been given voluntarily."

The application for leave to appeal is accordingly dismissed.

The People (D.P.P.) v. Walsh and McGowan – Court of Criminal Appeal (Griffin J., Murnaghan J. and McMahon J.) per Griffin J. – unreported – 31st January, 1977.

WILL – SUCCESSION ACT

Extrinsic evidence under Succession Act, 1965, admitted to show that words in will "my nephew Denis" really referred to "my nephew William".

A testator devised, after his wife's death, his farm in Co. Laois to his nephew Denis Bennett for his own use and benefit absolutely. The testator never had any nephew called Denis, but he had nephews called James, William, Patrick, Peter and Martin, and he also had a brother called Denis. It is therefore contended that the provision for the nephew Denis is void for uncertainty and therefore that the property should fall into residue. The deceased died in June, 1969, and probate of his will was granted to the plaintiff brother, Denis, on 12th November, 1973.

William alleges that he should be allowed to adduce evidence to prove that the testator intended him to have the farm. Under S.90 of the Succession Act, 1965, such evidence will be admissible. All the other nephews, as well as deceased's brother, Denis, support William's claim. The evidence establishes that from 1951 William resided at testator's farm, and worked this farm on behalf of the testator, without receiving any remuneration. In 1955, William went to England, and returned to Ireland to his father's farm, which is about 7 miles from testator's farm, in 1960. From that time on, he has been living with his father, but, at his uncle's request, from time to time he would till the uncle's land and sell his stock for which he was unremunerated. The testator informed his brother, Peter, who was William's father, that the lands would go to one or more of Peter's sons. The lands were the Bennett family lands, and the whole family believed that the lands would go to William after the death of the Testator as having been impliedly selected by him. The will was drawn by the family solicitor, but no explanation can be furnished to show how the phrase "my nephew Denis Bennett" was inserted. It was contended on behalf of the plaintiff that, prior to the Succession Act, 1965, extrinsic evidence was frequently admitted in the construction of ambiguous phrases. But S.90 of the Succession Act is wider than that, in that it places no limitation on the purpose for which extrinsic evidence may be admitted. It states: "Extrinsic evidence shall be admissible to show the intention of the testator and to assist in the construction of, or to explain any contradiction in, the will." S.90 does direct the Courts in a proper instance to look outside the will altogether, in

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order to ascertain testator's intention.

The general principle is that a will will be construed to avoid an intestacy if possible. There is little doubt that here the testator did not wish to appoint a non-existent person as one of his executors. On the evidence the testator did not intend to benefit his brother Denis, therefore the word "Denis" in the will is wrong. Taking into account all the circumstances of the case, the Judge is satisfied that the testator clearly intended to prefer his nephew William above all others. S.90 is accordingly applied, and the words "my nephew William Bennett" will be substituted for "my nephew Denis Bennett".

Re James Bennett, Deceased – Genevieve Bennett v Denis Bennett and others – Parke J. – unreported – 24th January, 1977.

CRIMINAL LAW–CONSPIRACY

Appellant's appeal for conspiracy to cause explosions dismissed, because fingerprints found in co-conspirator's garage established his guilt.

On 10 July, 1974, the applicant, Keane, was convicted by the Special Criminal Court of conspiracy with four others to cause explosions contrary to the Explosive Substances Act, 1883. One of the other accused, Jones, with whom Keane was jointly indicted, was acquitted. The prosecution was then granted leave to delete Jones from the indictment, and ultimately Keane was convicted and sentenced to 5 years imprisonment.

The applicant brings a motion to adduce special evidence. This relates to a notebook, acknowledged by the applicant to be his own, which was found in his house when he was arrested: the applicant admitted the handwriting and diagrams concerning bombs were his. A matter which was not in dispute at the trial is now sought to be raised, and accordingly the Court does not deem it proper that this evidence should be adduced.

The applicant seeks to amend the indictment. But once Jones had been acquitted, there could be no question of the applicant being convicted of conspiring with Jones. This ground accordingly fails.

It is then contended that evidence on which the conviction was based was insufficient to warrant a conviction. The evidence clearly establishes that Noel Murray and Longmore were in possession of explosive substances in their respective flats in Cullenswood Avenue and in Sydney Lodge, and that the applicant was the owner of a notebook containing details for making explosive devices. The finger prints of the applicant were found on the containers of the timing devices in Murray's garage, and upon a timetable in Longmore's flat. There were sufficient explosive substances in Murray's falt to establish a *prima facie* case against him, and the same facts applied to Longmore. It could also be inferred from the fingerprints that the applicant knew of the existence of the explosives in those flats. The Court is satisfied that these were the fingerprints of a person who was proved to have a knowledge in the making of explosives with Murray. But the timetable found in Longmore's flat does not establish a conspiracy between the applicant and Longmore.

However counts for conspiracy should not be laid where the substantive offence can be laid and established. A conspiracy cannot be established by the admission of evidence, which is not admissible, unless a conspiracy has already been established. There is no count, out of 46 counts on the indictment, which charged the applicant with causing these explosions. The liability of the person charged with conspiracy is limited to the common purpose while he remains in it. There was accordingly no evidence upon which the applicant could be convicted with the other named persons, other than Murray. That however does not alter the validity of the conviction. The appeal is accordingly dismissed.

The People (A.-G) v. Keane – Court of Criminal Appeal (Walsh J., Murnaghan J., and Parke J. per Parke J. – unreported – 3 February, 1975).

NATURAL JUSTICE

A Special Inquiry set up to inquire into the dismissal of plaintiff Garda must furnish him with full particulars of the charge in accordance with Natural Justice.

The plaintiff joined the Garda in November, 1955, was promoted Sergeant in 1964, and was appointed Sergeant in Ballaghaderreen in July, 1969. By an order of the Garda Commissioner, he was suspended from duty on 5 March, 1976, under the Garda (Disciplinary Regulations 1971) and has continued to be suspended since then. On 9 March, the plaintiff was served with a notice in writing stating that he had committed a breach of discipline in attending a Provisional Sinn Fein demonstration in Ballina on 22 February, 1976, and that Superintendent Shea of Roscommon had been appointed to investigate the matter. The Commissioner was not aware of this investigation, and purported to issue a notice on 9 March, 1976, to the effect that the plaintiff was unfit for retention in the force, and that, subject to the recommendation of a Special Inquiry Board, he proposed to dismiss him. This notice was served on the plaintiff on 15 March.

On 29 March, the plaintiff was served with a further notice signed by Chief Superintendent Clinton, informing him that a special inquiry would be held in Roscommon on 22 April to inquire into the plaintiff's alleged breach of discipline by attendance and participation in a Provisional Sinn Fein demonstration in Ballina on 22 February. On 19 March, plaintiff's solicitor had written to Superintendent Shea asking him not to conclude his investigation, and he had received a reply from the Assistant Commissioner dated 24 March stating "that the question of advancing reasons for his dismissal is purely a matter for the member concerned". The solicitor replied to the Commissioner on 13 April, requesting him to furnish (1) A copy of the completed discipline form relating to the plaintiff, (2) A copy of the exact charge of breach of discipline, (3) A copy of each statement and particulars to be read at the inquiry, (4) The names and rank of Garda officers conducting and prosecuting the inquiry and names of witnesses, (5) Will the plaintiff be given an opportunity to admit or deny the facts, or to challenge the members of the Court of Inquiry?

The plaintiff's solicitor received a reply from the Commissioner on 15 April, to the effect that he was not obliged to supply any information, but he did name the officers of the Board of Inquiry, as well as the prosecutor, and stated that the plaintiff could be legally represented. On 21 April a Plenary Summons was issued on behalf of the plaintiff in the

High Court, and the plaintiff obtained a temporary injunction restraining the holding of this Court of Inquiry. The application for an Interlocutory Injunction was adjourned from time to time until the hearing of the action. In this action, the plaintiff asked for:-

(1) a Declaration that the Garda Disciplinary Regulations, 1971, are repugnant to the Constitution and void,
(2) An order restraining the Commissioner from purporting to dismiss the plaintiff, and from setting up a Special Inquiry.
(3) An Order restraining the named Garda officers from holding the Special Inquiry.

On ground (1), the plaintiff's application fails. The Commissioner rightly or wrongly held the opinion that the disclosure of facts relating to the alleged breach would be liable to affect the security of the State. As regards dismissal, Article 34 of the Disciplinary Regulations states that the Commissioner has power to do this, subject to the sanction of the Minister, and having given the objector an opportunity to state his reason. This power of dismissal is not absolute, unqualified and arbitrary. It is only a power exercisable in specific instances, and by acting fairly and judiciously, in accordance with the Constitution. Article 34 of the Disciplinary Regulations does not conflict with the Constitution. The notice of 9 March, in which the Commissioner purported to dismiss the plaintiff from the force subject to the consent of the Minister is *not* in fact a notice of dismissal.

This notice of 9 March, did not give the plaintiff any facts or findings to justify dismissal, and thus did not give him an opportunity of replying.

In the notice, purporting to set up the Special Inquiry, it is clear that the Inquiry was not to be limited to the alleged breach of discipline, but with "other things" of which the plaintiff was given no notice. Thus the plaintiff had no adequate notice and knowledge of the nature of the charge made against him.

Before the Special Inquiry proceeds, the plaintiff should be given:-

(1) Full notice of the grounds upon which the Commissioner considers him unfit to be a Garda, (2) Full notice of the essential facts and findings to justify this, (3) Full particulars of the alleged breach of discipline.

The Interlocutory Injunction will be refused, but if the plaintiff should be dismissed as a result of the report of the Special Inquiry, he can institute fresh proceedings.

Hogan v. Minister for Justice and others – Hamilton J. – unreported – 8 September, 1976.

PRACTICE

High Court rules against second prosecution.

The President of the High Court, Mr. Justice Finlay, held that a Dublin fitter, Gerard O'Callaghan, of Clogher Road, Crumlin, could not be prosecuted a second time by the Director of Public Prosecutions in relation to three charges on which he had already been returned for trial and on which a *nolle prosequi* had been entered by the State.

The President said he was satisfied in this particular case that the Director had not got a right to institute a fresh prosecution.

He made absolute a conditional order of prohibition to O'Callaghan, a prisoner on remand, restraining District Justice O hUadhaigh from continuing the further hearing of three charges against O'Callaghan.

In a long judgment , the President said O'Callaghan was arrested and charged with four offences arising out of an alleged armed robbery of a post office in Walkinstown, Co. Dublin, on January 17th, 1976.

The charges were armed robbery, receiving, possession of firearms with intent and unlawful possession of firearms. On February 16th he was charged with four further offences.

On March 18th he was returned for trial by the District Court to the Circuit Court on each of the eight charges. O'Callagan's trial was later transferred to the Central Criminal Court. The indictment contained a total of 12 counts.

On July 21st, a jury was sworn to try O'Callagan but during legal argument it was indicated by Mr. Justice Gannon that in his view the only count on which he had any jurisdiction to try O'Callaghan was the single count of receiving. Counsel on behalf of the D.P.P. , after an adjournment and having received the appropriate instructions, purported to enter a *nolle prosequi* against O'Callaghan on all counts arising on any of the three indictments.

Rearrested

The President said that counsel for the Directorhad then indicated that it was the intention of the Director to have O'Callaghan re-arrested on his release and re-charged with all the original charges.

Mr. Justice Gannon discharged O'Callaghan and his four accused, granting them their one-day costs against the State.

O'Callaghan, continued the President, was discharged and re-arrested and was then charged on three separate charge sheets which were identical to those in respect of which he had originally been charged.

It was against the further hearing of those charges that the President granted the order of prohibition.

The President said that, having regard to the facts of the case, he was satisfied it was not necessary, in order to determine the rights of O'Callaghan, for him to decide as a general matter whether it would under no circumstances be possible for the D.P.P. having entered a valid *nolle prosequi* under Section 12 of the Criminal Justice Administration Act, to institute a fresh prosecution arising out of the same alleged offence.

The President, concluding, said if the D.P.P., having entered a *nolle prosequi,* was entitled without restriction from any court to institute an entirely fresh prosecution in respect of the same alleged offence, there would appear to be nothing to prevent him (D.P.P.), in a case where, on a discretionary matter arising from a decision of mixed fact and law which fell to be determined by the trial judge rather than by the jury, if it appeared that the prosecution's contention was likely to fail, to enter a nolle prosequi then.

"Viewed in this light the basic unfairness of such a contention appears to me to become clear", said the President.

The President made a similar order in respect of one of O'Callaghan's co-accused, Douglas Byrne.

He granted both of them their costs and allowed a stay of execution in the event of an appeal to the Supreme Court.

The State (O'Callaghan) v. District Justice O'hUadhaigh – Finlay P. – unreported – 4 February, 1977.

SOCIETY OF YOUNG SOLICITORS

REPORT ON SPRING SEMINAR

Dear Mr. Editor,

When you asked me to write an account of the recent seminar of the Society of Young Solicitors held at Tralee, I am afraid that you made an unfortunate choice of reporter. You see, although I was indeed at the seminar, and my portly presence has been a decorative feature of many seminars over the years, my participation was more notable in the Chambers reserved for social activities in these hotels than in the lecture halls. I deny, however, that I am one of those gentlemen whose acquaintance I reluctantly acknowledge and whose boast on these occasions is that they have been attending such functions for years without ever having heard a single lecture. I do take in the occasional lecture in the course of a weekend, and quite a number of talks have derived benefit from my sharp hitting questions delivered to a quailing lecturer at the end.

However, I must confess that this was the first weekend when I was seen to be seated in the lecture hall before the speaker had actually arrived on Saturday morning. This lapse was not in any respect my own fault – I should have realised that an eminent senior counsel is prevented by long practice from exercising the old vocal chords to any great effect before 11 o'clock in the morning. Jim O'Driscoll eventually got the show on the way however and his talk on "The Effect of Recent Case and Statute Law on the Common Law Employer/Employee relationship" was a stimulus to encourage us to read his very interesting lecture on the topic. At least I am assured by several people that it makes most rewarding reading and although I did, declaring "To hell with poverty", purchase a set of notes from Mr. Spendlove I am afraid they have joined the pile of literature which I religiously take from every seminar and reserve unread for those leisure moments which are so much more pleasurably occupied in a less rewarding pastime. (I am sorry to introduce such an unworthy note into the Gazette – your consolation should be that I must be the only solicitor whose performance does not quite match his good intention.)

A slight lingering over the lunch meant that I was ten minutes late for the lecture on "Labour Law and Recent Labour Legislation" which included in particular a detailed study of the Unfair Dismissals Bill 1976 and the Anti- Discrimination (Employment) Bill 1975 given by Ercus Stewart, B.L., by which time the whizz kid had reached page 25 of his talk. His audience was gasping in its mental efforts to keep with the furious pace set by the lecturer and was constantly occupied in a flurry of turning pages. The lecturer is to be commended in preparing a paper that was outstandingly informative on its topic and I shall reserve six hours at some future date to read it.

Exhausted by so much information, at the close of that talk many of my colleagues tottered to the bar for recuperation. I was about to slither in their wake when my eye was caught by the baleful Chairman and I slunk instead to a seat in the rear of the hall to hear John Doherty, Divisional Director of the Federated Union of Employers give a lecture on "The Law and Practice of the Labour Court, Redundancy Appeals Tribunal and Rights Commission", a subject which although dealing with a topic not directly associated with Law, gave a valuable insight into the workings of these machines which are of increasing importance to us.

We were honoured on Saturday evening in having dinner in the same hall where the Rose of Tralee is chosen annually. The alcoholic appetites of those at one end of the hall, however, one of whom I saw knocking back his wine out of a pint glass, caused the wine to run out. This produced consternation. However, I dare say that those deprived felt the better for it next day.

On Sunday morning we were treated to the sartorial elegance of Mr.Richard Woulfe, Solicitor for Limerick Corporation, who gave a talk on "The Local Government (Planning & Development) Act 1976". The lads from Limerick were there thronging the front seats in support of their man, trying to out-do their counterparts from Cork who had done the same thing the morning before. Mr. Woulfe read a very good paper on the new Enactment and on its repercussions which will be fairly widespread. His audience was afterwards served morning coffee followed immediately by lunch and was then left to wilt away homewards.

The idea of having a seminar on Labour Law and associated topics was a good one. It is a subject of growing importance and one about which I knew very little before the seminar. In fact I still know very little about the topic but I hope that my colleagues whose heads may be less dense than my own may have profited by the information furnished to them at the weekend so that when I pick their brains in the future, I may have ample reward.

Yours sincerely,

ANON (at all costs).

Note—A resume of each of the lectures will be included in the forthcoming issues of the Gazette.

THE DRAFTING OF WILLS

Mr. Robert Johnston delivered a most comprehensive lecture to the Society of Young Solicitors at the Ardree Hotel, on Saturday, the 6th of November, 1976. He set out and warned us of the pitfalls and difficulties into which a Solicitor could place an entire family and business through the inadequate drafting of a Will. The inadequacies of such Wills arise through the lack of appreciation and understanding by Solicitors of the following legislations:–

1. The Succession Act 1965.
2. The Capital Acquisitions Tax Act 1976.
3. The Capital Gains Tax Act 1976.
4. The General Income Tax Legislation.

He covered all aspects of the drafting of Wills from testamentary capacity to Inheritance Tax considerations.

A Solicitor, when taking instructions, should persuade his client to disclose all his assets so that he might advise him of (a) the Wealth Tax and Inheritance Tax implications (b) the provisions of Part 9 of the Succession Act of 1965, and in particular the provisions for the widow and the children as set out in Sections 111 and 117, respectively, of the Succession Act. The usefulness of the Discretionary Trust to avoid the implications of Section 111 of the Succession Act was clearly demonstrated. Mr. Johnston gently reminded us of the doctrine of advancement and the necessity of the Testator taking advancements to children or would-be beneficiaries into account when expressing his intentions in the Will. He told us that a Solicitor should be able to remind his client of his widow's future liability for income tax, and this should be taken into account, particularly in larger estates. The powers of Trustees were fully set out.

In advising the clients in the making of Wills, a Solicitor should have a good knowledge of the legal and tax implications of:

1. The making of life interests.
2. The Apportionment Rule.
3. The Rule in Howe v. Dartmouth and Allhusen v. Whittel.
4. Commorientes Clauses.
5. If the Estate is subject to mortgages and charges.
6. The doctrine of advancement.
7. Creation of annuities.
8. Whether or not Banks, individuals or corporations should be Executors or Trustees.
9. The Provisions of the Guardianship of Infants Act in relation to testamentary guardians.
10. Inheritance Tax considerations, especially Sections 22 and 68 (1) (b) of the Capital Acquisitions Tax Act.

Mr. Johnston gave some very sound general advice to the practitioner, viz., always have the instructions typed up and kept with the original Will; if the Testator is disinheriting a child, he should make a signed statement indicating why the child is to be disinherited; paragraphs in the Will should be numbered. In the Appendix of the Will, Mr. Johnston included a draft specimen Will, which includes all precedent Clauses recommended by him. Finally, he gave us a list of don'ts:–

1. Don't punctuate the Will.
2. Don't puncture it with a pin or a clip.
3. Don't make extraneous comments.
4. Don't get a trainee typist to type the Will.
5. Don't make interlineations or amendments in the Will, but if they cannot be avoided, refer to them as having been made prior to the execution, in the Attestation Clause.

We would recommend that a eopy of this most excellent lecture be always situate in the right-hand drawer of every Solicitor who has occasion to draft Wills. A copy of the lecture can be obtained from the Society's Keeper of Records and Lectures, Norman Spendlove, of Grafton Street, Dublin, on payment of the usual fee.

REPORT ON JOINT DISCUSSION GROUP MEETING WITH THE JUNIOR ORGANISATION OF CHARTERED SURVEYORS

A meeting arranged by the Society with the Junior Organisation of Chartered Surveyors was held in Buswell's Hotel on Monday, 23rd May at 6 p.m. to discuss the Landlord and Tenant Bill 1977. It had been decided that a representative of both the Legal Profession and of the Chartered Surveyors should deliver a short talk on the Bill by way of introduction and discussion would then be invited from the floor. Mr. Maurice Curran had been asked to represent the Legal Profession and Mr. Sean McDermott to represent the Chartered Surveyors.

After the two speakers had been introduced by the Chairman, Mr. Michael Carrigan, Mr. Curran commenced the discussion by detailing the principle changes in the Bill with particular regard to the most recent ministerial amendments. He mentioned that about three-quarters of the amendments suggested by the Incorporated Law Society had in fact been accepted by the Minister but further submissions were to be made. The amendments to the Bill as introduced in the Dail were extensive: the old distinction between proprietary and building leases had gone; Planning Permission was now to include outline Planning Permission; Landlords were prohibited from making a charge for supplying documents or maps to Tenants. Five year rent reviews were to replace seven year rent reviews; the definition of business has been amended from that contained in the Landlord and Tenant Act 1931.

Mr. McDermott followed Mr. Curran and analysed the Bill from the standpoint of Surveyors. He was particularly concerned with the definition of Gross Rent in the Bill which he argued was impossible to understand and bound to lead to confusion. He also pointed out that the State Authorities and the Local and Planning Authorities were afforded protections in the Bill which he thought were unnecessary and unfair.

A general discussion then followed and particular interest was shown in Section 35 of the Bill which it was argued is open to a lot of criticism in that it effectively permits a Court Order to be ignored and could be unconstitutional. It was also mentioned that many Landlord and Tenant cases are now being frozen in anticipation of an early enactment of the Bill. It is acknowledged that the entire Landlord and Tenant Legislation in recent years had been very pro Tenant and this had created severe hardship for the Landlords in some cases.

The meeting, which was very well attended both by Solicitors and Surveyors alike, concluded after it was announced that further meetings would be held later in the year to discuss other topics.

DID YOU KNOW?

Did you know that under the Local Government (Planning and Development) Regulations 1977 the conversion of a garage for use as part of a dwellinghouse or the addition of a garage to a dwellinghouse is exempted development and that no planning permission is required?

This only applies where the conversion of the garage is for use as a utility to the house. If the garage is converted to a shop or to a surgery, planning permission will be required.

GUIDELINES – FAMILY LAW

Readers' attention is drawn to the Table appearing on p. 61 of the April *Gazette* giving details of the various organisations which give counselling and assistance on the breakdown of a marriage. It should be noted that the correct address of the Marriage Counselling Service is 24, Grafton Street, Dublin 2. Telephone 01/720341, and that it is not associated with the Church of Ireland, but is an independent body whose services are available to anyone.

COUNCIL OF THE SOCIETY

EDUCATION

Exemptions in Law Examinations

The Education Committee has reviewed the criteria for granting exemptions in Law Examinations and has decided that the following rules shall operate for the Examinations to be held between 19th and 29th August, 1977, and until further notice.

1. No apprentice shall be allowed to enter for the Second Law Examination uunless he has passed the First Law Examination in full.
2. An apprentice will not be allowed to carry two subjects in Second Law and enter for the Third Law Examination at the same time.
3. Where an apprentice has obtained four exemptions in a single sitting of the Second Law Examination he will be allowed *on one occasion only* to carry the remaining subject together with the Third Law Examination.
4. Where an apprentice (a) has been allowed to carry one subject of the Second Law Examination together with the Third Law Examination, (b) fails the Second Law subject being carried and (c) does not pass or gain examptions in the Third Law Examination, then the remaining Second Law subject must be repeated by itself only.

Examiners' Reports

Please note that an examiner's report is available in each subject of the First, Second and Third Law Examinations held in August, 1976, and March, 1977.

REGISTER

Vacancies for Assistants and Apprentices

The Society proposes to open a comprehensive register to include the following categories, viz.

Solicitors requiring assistants,

Newly qualified solicitors seeking employment,

Solicitors having vacancies for apprentices,

Persons requiring apprenticeship.

No fee will be charged for this service. The relevant form for inclusion on the Register will be available from Solicitors' Buildings, Blackhall Place, Dublin 7. The Register may be inspected during the Society's office hours, 9.00 a.m. - 1.00 p.m. and 2.20 p.m. - 5.30 p.m. Please address all queries regarding the scheme to the Education Offficer.

SOLICITORS' BUILDINGS, FOUR COURTS

Please note that the Society's Four Courts office (except for the Library) will be closed during the month of August. Members requiring consultation rooms will be facilitated in Blackhall Place.

LAW REFORM COMMISSION

As part of its First Programme the Law Reform Commission is making a study of the law relating to the liability for injuries or damage caused by animals, and would welcome submissions from the Society or suggestions on any aspect of the problem which should be brought to the notice of the Commission.

The Commission's work will involve an examination of the present state of the law and consideration of whether there is justification for the continuation of the doctrine of scienter and whether any distinction should be made between liability for animals used for, and necessary for, the owner's or keeper's trade or business and liability for other animals. It will also involve an examination of the necessity for or the desirability of a continued distinction being made between the liability of those who keep wild animals and that of those who keep what are regarded in law as domestic animals.

Members wishing to assist the Law Reform Commission in its examination of this subject are invited to submit comments to the Society's Parliamentary Committee which will correlate the material and forward it to the Law Reform Commission.

Contributions should be addressed to: The Director General, The Incorporated Law Society of Ireland, Solicitors' Buildings, Blackhall Place, Dublin 7, and be marked for the attention of the Parliamentary Committee.

V.A.T. ON LEGAL SERVICES

The Sixth Council Directive on the Harmonisation of Value Added Taxes was adopted by the Council of the European Communities on 17th May, 1977.

Under Annex F of this Directive member States may continue to exempt the services supplied by lawyers during a transitional period which shall last initially for five years as from 1st January, 1978 (the date specified for the Directive to come into operation). At the end of this 5-year period the situation shall be reviewed by the E.E.C. Council and further derogations may be granted where necessary.

The attention of members is drawn to the fact that at present V.A.T. charged on Solicitors' Fees in England, and in other Countries where V.A.T. on legal services has already been introduced, is not payable in Ireland.

Law Examination Results, March 1977

First Law Examination

At the First Law Examination held in March 1977, the following candidates passed:

Callanan, Patrick; Chambers, Joseph A.; Chesser, Brian; Clarke, Geraldine M.; Coghlan, Michael; Coleman, Therese A.; Colfer, Niall P.; Collins, Thomas; Conway, Bernadette; Copplestone, Grahame; Cronin, Patricia.

Dalton, Thomas C.; Dawson, Patrick; Donoghue, Barry; Duncan, Dermot B.; Dunn, Edwina; Dunne, James B.; Farrell, James E.; Fitzpatrick, David J.; Flynn, Mary A.; Gleeson, Edward; Griffin, Catherine M.; Griffin, Joseph; Griffin, Vincent T.

Hart, Nicholas M.; Heather, Douglas;Houlden, Noel W.; Hughes, Michael J.; Johnson, Brendan L.; Johnston, William F.; Joy, John M.; Joyce, Emer; Kelly, Michael; King, Michael; King, Niall.

Ledwith, Adrian; Lindsay, John; Lucey, James; Macklin, Patrick J.; Maguire, Cliona; Margetson, Stuart; Moore, Nicholas; Murphy, Eugene; Murphy, Frank; McCarthy, Philomena.

MacDermott, Laura; MacEvilly, Walter; McGonagle, Patrick W.; McPoland, John P.; Ni Choigligh, Mairead; O'Brien, Owen; O'Connor, Julie G.; O'Connor, Niall; O'Donohoe, Cathal; O'Herlihy, Gerard; O'Sullivan, Timothy R.

Peart, Valerie; Quilty, Maigread; Quinn, James A.; Rice, Ailbhe; Rooney, Niall; Shaw, Duncan C.; Sheil, Anthony F.; Shubotham, Boyce; Simms, C. Dermot M.

Soden, Peter; Spenser, John; Spillane, Maurice T.; Sweeney, Manus; Tansey, David; Tierney, Laurence J.; Walsh, Miriam; White, John W.

189 Candidates Attended; 73 Candidates Passed.

Second Law Examination

At the Second Law Examination held in March 1977, the following candidates passed:

Alexander, David W.; Archer, Martin D.; Arigho, Henry J.; Barrett, Mary E.; Blackwell, Noeline M.; Boland, Helen; Bradley, Vivienne; Brady, Padraic; Brady, Paul P.; Brady, Philomena.

Brennan, Gerard M.; Brennan, John K.; Brogan, Enda; Bruton, Elizabeth; Buckley, Marie; Cahill, James; Campbell, Hugh J.; Carey, Margaret M.; Carroll, Michael; Clancy, Joe.

Clery, Ronald J.; Collins, John K.; Comiskey, Kevin E.; Connolly, Carol; Corrigan, Jean E.; Cronin, Mary-Lou; Cullen, William; Dargan, Margaret; Deacy, John P.; Diamond, Paul.

Dillon, David; Dobbyn, Paul R.; Doolan, Mary; Doyle, David; Doody, Michael; Drumgoole, Patricia; Duffy, Margaret W.; Duffy, Paula; Dunne, Daniel; Egan, Frances M.; Fagan, Anne; Fitzgerald, Ann.

Fitzpatrick, Michael; Flanagan, Eithne; Fleming, William P.S.; Foley, Paul; Geraghty, Donal; Gibbons, Conal; Gleeson, John; Gray, Catherine M.; Grennan, John; Griffin, Gerard F.

Hanley, Daniel J.; Hanna, Barbara; Harte, Nicholas M.; Heffernan, Catherine P.; Hickey, Desmond G.; Horgan, Pauline M.; Kennedy, Giles J.; Kennedy, Owen; Killeen, Conor M.F.; Killeen, Ruadhan.

Kelly, Mary P.; Kilrane, Mel; Leggett, Terry; Leon, David B.; Loomes, Thomas; Louth, Charles J.M.; Lucey, James; MacArdle, Paul; Maher, Daniel; Malocco, Elio.

Martin, Patricia; Martyn, Michael D.; Mathews, Raphael; Mays, Kevin; Meagher, Pierce; Meaney, Gerald; Moran, Terence C.; Morrissey, Daniel.

Moylan, John; Mullane, Michael; Murphy, David M.; Murphy, John N.; Murphy, Stanislaus; Murran, Thomas A.; Mylotte, Mary; McCartan, Brendan.

McCarthy, Mary; McCourt, Henry; McDermott, Patrick; McGovern, Patrick J.C.; McInerney, Michael; McParland, Mark M.; Nowlan, Francis B.; O'Brien, Ronan; O'Brien, William M.; O'Connor, Deirdre.

O'Donnell, Clifford; O'Donovan, Denis; O'Farrell, Orlagh; O'Higgins, Mary B.; O'Leary, Cornelius; O'Mahony, Deirdre; O'Mara, Ciaran; O'Neill, Gregory; O'Reilly, Peter F.; O'Shee, J. John.

Petty, Michael T.; Purcell, John P.; Power, Patrick; Prendergast, Norman D.; Quinn, Noel A.; Quirk, Jacqueline; Ryan, Christine; Redmond, John; Reilly, Celine R.; Rooney, Fergal.

Ryan, Kieran A.; Sheehan, Robert J.; Sheridan, Niall; Ni Shuibhne, Maire; Simpson, Thomas; Sisk, Noel M.; Stack, Nora; Synnott, David J.; Toale, Mairead; Toolan, Brian F.G.

Twomey, Brendan J.; Walsh, John G.; Walsh, Maurice H.; Walsh, Roisin; Walsh, Rosamond; White, John W.; Winston, James; Woods, Ann P.

228 Candidates attended; 136 Candidates passed.

Third Law Examination

At the Third Law Examination held in March 1977, the following candidates passed:

Allen, Michael E.; Anthony, Elaine; Becker, Monica; Beresford, Marcus; Bolger, Michael A.; Bourke, John M.; Bourke, Kevin M.; Boyle, Peter; Bradley, Vivienne.

Brogan, Enda; Brosnan, Aidan; Byrne, Garrett V.; Callinan, John G.; Canney, Jarlath A.; Carey, Eugene; Carey, Margaret M.; Casey, Katherine E.; Cleary, Kieran W.; Collins, Helen.

Costello, John; Craig, Catherine; Cunningham, Michael; Cullen, Mary; Curtin, Bryan; Davy, Eugene; Debeir, Heather K.; Delahunty, Michael F.; Dodd, Ian; Dudley, Jane.

Duffy, Bridget J.; Duffy, Tom; Duncan, Dermot B.; Elder, Shaun; Evans, Richard A.; Fingleton, Sheila; Fitzpatrick, Ivor; Flynn, James; Gallagher, Avril; Garahy, John J.

Gleeson, Irene; Gleeson, William F.; Harney, Patricia; Hickey, James; Hogan, Richard M.M.; Houlihan, Kevin M.; Jordan, Catherine M.; Joyce, James H.; Keenan, Patricia J.

Keller, Mark; Kelly, Philip J.; Kennedy, William J.; Levine, Laurence M.; Linnane, Martin G.; Loughnane, Gemma; Lynch, Meave; Mangan, Mary W.; Marshall, Robert D.; Moran, Michael.

Morley, Roger; Moylan, John; Muldoon, Fiona M.; Mulloy, Sheila M; Mulvihill, John; Murphy, Mary; Murphy, Miriam; McAlinden, Gavan; McCarthy, Gerard; McCarthy, John W.

McDonnell, Patrick; McElligott, Mary; McEllin, Edward; McLaughlin, Ciaran; McNamara, Barbara; Nicholas, Stephen; Nolan, Ann; O'Callaghan, Maurice;

(Concluded on page 93)

Rights, Duties, Responsibilities and Obligations of Solicitors

A Lecture to Apprentices by Walter Beatty, Vice-President — 23 May 1977

RIGHTS:

The saying "Anyone who is his own lawyer has a fool for a client" is particularly apt in the case of a solicitor who acts in his own cause and, indeed, where vital issues are at stake, on behalf of close members of his family. The best advice I can give to you is NEVER! It is sometimes difficult to be dispassionate, though one always should be, in advising a client. It is almost impossible when you are advising yourself:

> "Oh wad some power the giftie gie us – to see ourselves as others see us
> It wad frae monie a blunder free us an' foolish notion".

The greatest right which we have is, generally speaking, that we do not have to act for any particular client. Exceptions, of course, arise in the following cases:

(a) Where you are a member of a criminal legal aid panel
(b) Where you are on record in Court proceedings and require the permission of the Court to withdraw from the case.

So long as we remain an independent profession we have the right to refuse to act for any person without giving any reason. Privately we may do this, because we do not like the person or we may not like the type of case in which he is involved, or for a variety of other reasons. Never forget that you have this right, and also that you have the right to withdraw from a case if you feel that your client wishes that case to be handled in a manner contrary to your advice, or not in accordance with proper practice. However, subject to what I have just said, if you take a case on for a client it is your duty to undertake that case as well as you can and as expeditiously as possible. The other main right of our profession, which I will mention because it is still of fairly recent origin, is that we can now appear in all Courts as a result of the enactment of the Courts of Justice Act 1971.

PROFESSIONAL NEGLIGENCE:

This is a subject I will come back to in discussing other aspects of a solicitor's practice, but there are some general remarks which I should make at this stage. Negligence is never to be confused with misconduct, and that is why the Registrar's Committee and the Disciplinary Committee of the Incorporated Law Society are not concerned with the negligence of a solicitor. Nobody likes to hear stories about mistakes which our colleagues made, but remember we are all human and we will make mistakes. If a client suffers as a result of our mistake he has a Common Law action against us for negligence, and that is why all prudent solicitors insure themselves under a professional indemnity policy.

Negligence arises either because we fail to do something which we should have done, or which we should have *known* that we should have done, or because we omit to do something which we should have done, or which we should have *known* we should have done. Delay may or may not give rise to an action for negligence – it depends upon the instructions which we received and how they were carried out. Against a solicitor a failure to issue proceedings within the time limitations provided for in the Statute of Limitations 1957 would be a case of "res ipsa loquitur". These limitations, as you know, are statutory, but in the case of infant plaintiffs the statute commences to run from the time upon which they attain the age of twenty-one years.

Damages awarded against a solicitor for professional negligence would generally arise out of a contract which exists between the solicitor and his client. which is hardly ever in writing, and which is based on the offer of the client to the solicitor to do certain work, and acceptance to do this in return for payment of his fees and disbursement of his outlays. However, since the decision of *Hedley Byrne & Company v Heller & Partners* (1963) 2 A.E.R. 594 – if a solicitor or any other person upon whom the public is entitled to rely acts gratuitously, or gives advice free of charge, an action may lie against that solicitor or other person if the advice or representations, although gratuitous, turn out to be wrong.

Privilege:

Until the passing of the Finance Act 1974, the general rule was that all communications passing between a solicitor and his client were privileged. This meant that unless the client released his solicitor from the obligation to respect the privilege of his client's communication, that under no circumstances could the solicitor be forced to break his client's confidence. Indeed the solicitor doing so without his client's permission would be guilty of grave professional misconduct.

Section 59 of the Finance Act 1974 now imposes a statutory obligation upon a solicitor to reveal to the Revenue Commissioners the names and addresses of those beneficially or legally entitled in any discretionary trust, or company, in which the solicitor acted as a solicitor and which is not within this jurisdiction. At the time of the introduction of this section strong pressure was brought to bear by the profession to have it dropped, on the grounds that it would damage the relationship between solicitor and client, but unfortunately the provision in the Bill was not changed and was duly enacted.

Service To and Communication With Clients:

Not alone does civility cost nothing but it is also a very good habit. Some clients can make an infernal nuisance of themselves, if you let them, and I think you must let them make an infernal nuisance of themselves if you do not answer telephone calls, if you are always late for appointments, and if you do not answer letters, and do

not give them the faintest idea of what is happening in their case. Before they eventually dismiss you, they will probably take to ringing you up once or twice a day – or at least several times a week – all of which you richly deserve. Even if you do, by some stroke of genius or luck, succeed in getting the case back on to the rails, if you have any sense of shame for the way in which the client is being treated you will either have to take nominal costs, or probably at best, half of what you would have been entitled to be paid if you had given the client and his case the care, attention, common manners and expertise which he and your profession deserve.

Do not be ashamed to say to a client "You have no case". Many of our profession have found themselves in serious trouble because they waffled or they had not the heart to tell a client exactly that. They spoke about trying to get him something, and, of course, you may take it that the solicitor went home that night thinking that he had done his good deed for the day, and the client left the office under the delusion that he had the best case in the world. If a client comes to you, and you take on his case, unless you spell out to him that it is highly speculative and you follow this up by recording your conversation in a letter, he will invariably consider, because you have taken on his case, that he has a case. Matters then drift, and eventually the file becomes a black spot on your horizon. Nothing is done. Time runs out and the next thing is that there is an action against you for negligence, not because the client failed to get his damages but because you failed to issue the proceedings within the statutory time. The question now of whether the client has or has not a case is very much of academic interest.

Do not blame other solicitors, the Bar, civil servants, or anybody else, for delays. Quite frankly the client is not interested in a litany of complaints concerning your colleague's failure to answer a telephone call or letter – no matter how justified. He probably does not respect you for talking about your colleague in this way. All the client is interested in is that his work is done as fast as possible.

The way to be on top of your case is to keep your client fully informed, and it is so simple to do this by instructing your secretary to do a second carbon of any letter of reminder that you are sending to a colleague, the Bar, or anyone else, and then to send this out to the client under a "With Compliments" slip. Not alone does the client see that you are pressing his case but is also appreciative of the fact that you are communicating with him. This enables him to answer any direct approaches should he receive them from the other side, and it also keeps him from contacting you unnecessarily on the telephone or by calling in to enquire what is happening. The small additional cost of postage involved would be gladly met by any normal client. This is also an added safeguard to the profession because it gives the lie to the all too frequently used catch cry that solicitors are slow. If a client receives copies of three or four reminders to a Government department, pleading with them to attend to a case, he cannot blame you for the delay.

Never be afraid to say to a client"I don't know". If you did know the answer to every legal problem without having to refer to the statutes or reference books, you wouldn't be advising that client – because he couldn't afford the fees which you would command. Tell the client that there are some matters which you have to check out. If the problem is a very complicated one, advise him to permit you to take counsel's opinion, and suggest to him that he contacts you at a date in the future, which, of course, will bear relationship to the urgency of the matter involved. Incidentally, if a matter is urgent, it is no harm to suggest to a client that he should put you in funds – certainly to the extent of the counsel's fee involved – because counsel, like everybody else, should deal with the work more promptly if they know that they will be paid by return.

If you find you have given wrong advice, and believe me you will find this, you should, as a matter of urgency, telephone your client and put him right. He is not going to think any the worse of you because you admit that you were wrong. However, do not make a habit of it.

If you are asked to take over a case from a colleague, suggest to the client in the first instance that it could prove quicker and less costly in the long run, if he would go to the solicitor and offer to pay him for work done in return for his papers. If this is not possible, rather than sending a client's authority to hand over the case in the first instance, contact your colleague, tell him that you have been asked to act, and ask him to facilitate you. If you find that you can get nowhere with your colleague then, of course, you must get your client's written authority, and your client's previous solicitor is then obliged to hand over all papers to enable you to look after your client's work without a delay factor arising as a result of the change. In turn, you must obtain your client's irrevocable authority to undertake to pay his ex-solicitor his reasonable costs, or to be taxed in default of agreement. Over the years it has happened that clients have suffered through the unnecessary delay of some solicitors in handing over papers, and some of these cases are eventually referred to one of the statutory Committees of the Law Society, who, before taking any action, must obtain the comment of the client's former solicitor. All this makes for delay and if a client's former solicitor is being unreasonable in refusing to hand over papers, whilst the matter may have to be reported to the Law Society ultimately, the best service that you can give your client is to issue a Petition in the High Court under the Attorneys and Solicitors (Ireland) Act 1849 seeking an Order directing the solicitor to hand over your client's papers. Unless there is considerable justification for your client's former solicitor's attitude, invariably you will find that the papers will be handed over without further delay. Even though your client's former solicitor may have put you and your client to a lot of trouble, if you succeed in getting the papers I suggest that you waive the profit costs involved in such High Court application.

Professional Indemnity Insurance:

There are now about 1,800 solicitors practising within this jurisdiction, and roughly less than 600 of these are covered by insurance for professional negligence. In these days, where farming land and residential house property are worth more than ever before, it is horrifying to think that roughly two out of every three of our colleagues are un-insured, which means that any one of them could be destroyed overnight by a simple mistake.

The Incorporated Law Society have established a scheme for professional indemnity insurance through their brokers – Minet Limited of 27 Upper Fitzwilliam Street, Dublin 2 – and the amount of premium will depend upon the cover which is required, the number employed in the solicitor's office and the solicitor's claims

experience to date. The policy that will be issued will guarentee continuity of insurance for three years.

Professional indemnity, like all other insurance, is a contract of "uberrimae fidei", which means that not alone must there be full disclosure in the initial application form but upon renewal every year you must disclose to the insurance company not alone claims that have been notified to you but also claims, although not notified, which may arise because of professional negligence. An obvious example would be failure to issue a writ within time. Although no claim may have been notified against you, you are obliged to inform the company that a claim may arise once you are aware of what has happened. In a large office, at the time of renewal, a printed questionnaire should be sent round to all qualified and unqualified personnel dealing with clients' work, asking them the relevant questions, and once the form has been signed by each individual it should be returned to the partner in charge.

If you take over a practice, or amalgamate with another practice, it is very important that you ensure that in both cases run-off insurance is continued for six years from the date of the take-over or amalgamation. The premium for this is substantially less than in the case of the normal professional indemnity policy.

Solicitors' Accounts Regulations:

Your obligations under this heading will have been fully covered in the lectures which you have received. However, it is important to emphasise that the lack of book-keeping in solicitors' offices in the past has been the rock upon which many of our colleagues have perished. It is penny wise and pound foolish not to have a proper system of book-keeping in your office. It pays for itself, and it is worthwhile before even installing a simple system to take the professional advice of an accountant. If your books are written up to date, if you carry out a regular bank monthly reconciliation statement, and take out at least quarterly accounts, your accountancy fee will be much less than the fee that will be charged where the accountant has to pay an articled clerk for three weeks to do the preliminary work to try and bring the accounts into some sort of shape, to enable him to issue the Accountants' Certificate.

To be in breach of the Solicitors' Accounts Regulations is a disciplinary matter. Every practising solicitor has six months from the end of his financial year in which to file his Accountants' Certificate. For reasonable cause some extension has been allowed over and above this time in the past. The Society is, however, entitled to refuse a solicitor his practising certificate if his accountants' certificate is not up-to-date, and refusal of a practising certificate means that a solicitor can face prosecution for acting as a solicitor without such certificate.

Undertakings:

These are the profession's shop window. Without the solicitor's undertaking commercial life would become extremely difficult, and delays would be enormous. Our profession has been given the recognition and trust by the financial institutions, Building Societies, Courts, Government Departments and other bodies, which enables us, by issuing an undertaking, to obtain valuable concessions for our clients, without which it would be impossible for us to operate efficiently. Therefore, it is vital that not alone should we ever fail to perform on foot of our undertaking but also that we should never be seen to fail. If the day should come where because of a bad track record in the performance of undertakings, the facility of which I have spoken should be in any way curtailed, we could not give our clients the service which they expect, and then the standing of the profession would be seriously undermined.

Therefore:

1. Never give an undertaking unless you have your client's irrevocable authority to do so, and get this at the start of the case.
2. Never give an undertaking unless you know that you can perform it.
3. Never give an undertaking to pay a specific sum out of the proceeds of sale. At the end of the day there may be no proceeds. Always undertake to pay the *net* proceeds of sale.
4. Never undertake to do anything for anyone who is not within this jurisdiction.
5. As a member of a firm, or as an assistant solicitor, never give an undertaking unless in accordance with the strict practice of the firm, and if you are an assistant, unless with a partner's full authority.
6. Never undertake to pay a Government tax without being absolutely sure how much is involved. For example, an undertaking to pay Wealth Tax might appear to be limited to some thousands of pounds on a particular property. Remember, however, all the taxpayer's liability under this heading is a charge on each piece of his immovable property which is being sold.

The reason why I say the undertaking should be irrevocable is that unless it is so, if the client should withdraw a retainer you could be in very serious trouble. Remember, in most cases the property being sold is subject to a mortgage, and that if you do get deeds up from the loan society you do so upon accountable receipt, and these deeds *must* be returned to the loan society at their request. It the client changes his solicitor, you will have no lien on deeds which you have obtained from a lending institution.

The reason I say that an undertaking should always be in respect of net proceeds of sale is that until the actual day of closing you do not know what the net proceeds will be. It is not sufficient to know that a vendor has sold a property for 'X' pounds and that he owes his building society 'Y' pounds, and that auctioneers' and solicitors' fees and outlays will come to 'Z' pounds. On the day of closing there may be 'A', 'B' and 'C' Judgment Mortgages, which have come in since the contract has been signed, which could well create a shortfall, leaving you personally liable if you have undertaken to pay to your clients's bankers 'D' pounds and you find yourself now with 'D' minus £2,000.00.

Wills:

It is not necessary for me to attempt to go into the intricacies of drawing up a Will. Hopefully you have learnt this elsewhere. However, it is important to emphasise that there should be no delay in attending a person, particularly if they are in hospital or ill, to make their Will. If you have any doubt about their testamentary capacity do not make the Will unless you are assured by their visiting doctor, or a doctor in the hospital, that in his opinion the testator is lucid. Even then, in the first

instance, ask the doctor is he prepared to witness the Will. If a testator wishes to leave you a substantial amount of money, do not have anything to do with the Will yourself and refer the testator to a colleague to make it.

If you find, because of a change in the law, that your client's Will is out-dated, you should draw his attention to the change of law. An example of this, of course, is a client with an estate substantially in excess of £150,000.00 who has provided in his Will that his wife will be universal legatee. You should find out if he has children and, if he has, he should, of course, leave his wife the first £150,000.00, if that is his wish, and split the rest amongst his children. Otherwise the testator will be voluntarily paying Inheritance Tax.

Do not agree to take on the position of Executor or Trustee lightly. It is a very responsible position and can be extremely onerous at times. Also remember that property sold in course of administration will have to be accounted for Capital Gains Tax, and if you overlook doing this as an executor you may receive some unpleasant surprises after your file has been neatly tucked away.

Litigation:

In all our work it is particularly important to take detailed instructions from a client so that we can carry out his work competently. This is particularly so in the litigation side. Not alone does the attendance indicate to you the time that was spent on an aspect of the case, but it is also an aide memoire which will help you in taking the case to the next stage.

In addition, detailed attendances are a great help to you when putting together an account of your charges.

Never put your good reputation at stake for a client, and if you feel that some application which he wishes you to make,be it only for an adjournment, is unreasonable, refuse to do it. Remember, if you are constantly appearing in the Courts, you can get a bad reputation just as quickly as a good one. It therefore goes without saying that you must never mislead the Court, which apart from being grave professional misconduct, would also be in the teeth of your responsibility as an officer of the Court.

If for any reason you must withdraw from a case, make this known in advance to the Court. It is discourteous to the Court, and to your profession, once you are on record, if you do not appear in Court when the case is called to tell the Judge your predicament, particularly if there is no appearance from the other side.

It is a fair complaint by the Bar that a small number of the members of our profession are slow in the payment of their fees, or worse still, never pay them. This is not fair, and constitutes professional misconduct. Any solicitor who has received fees which are due to a barrister and who does not pay them over to the barrister could well find himself before the Disciplinary Committee of the Law Society, and in very serious trouble. Apart from this, it is also an obligation for a solicitor to do his utmost to collect the barrister's fees from his client and, if he fails to do so, he should have the courtesy to inform the barrister of this, and I doubt, if this is done, that the Barrister will rely upon the technicality that the solicitor is, of course, personally liable.

Remember that party and party costs will not indemnify your client in respect of medical fees for reports and attendances in Court, and the fees of other professional witnesses, because the Taxing Masters limit themselves to a specific ceiling insofar as these are concerned. This means that the solicitor will be personally liable to the professional people involved unless he has obtained his client's irrevocable authority to deduct such additional expenditure from the damages, which, of course, would be of no benefit in the case of an infant plaintiff.

Conveyancing:

There are certain obligations which I feel are not given sufficient emphasis, such as your liability to account to the client in respect of the proceeds of sale without delay. Generally speaking, I take this to mean not later than the day following the closing of the transaction. If, by reason of the fact that there is an unascertained amount outstanding, distribution cannot be made the day after the closing, providing that you are ninety-nine per cent certain of the amount involved, the proceeds of sale should be distributed, retaining from them a sufficiently large sum to cover the liability in question.

If through your own fault, your client is on interest on a building society loan, because the cheque has been drawn, and this applies in the case of at least one building society, and the client is at the same time on interest on a bridging loan, you should make it clear to the client that you will be responsible for the days of interest involved on the Building Society's cheque, and you should do this before the client asks you to do it. Sometimes it arises that a Building Society completion is delayed for three or four days because you failed to have the Searches in order as requisitioned by the building society's solicitors.

If you receive any substantial sum of money for a client, such as a large deposit, although at the moment you are not legally obliged to do so unless a client instructs you, I suggest that you should put it on deposit for him and let him have the benefit of the interest. This will redound to your credit and is only fair play. Of course, if the client *directs* you to place any of his money which you are holding on deposit, you must do so in your own bank and you must account to him for the interest involved, although you are entitled to deduct whatever reasonable fees would be involved in making the deposit and receiving the calculation of the interest. If you fail to carry out the client's instructions you will be personally liable. There is no obligation upon you to put the money in the client's own bank account on deposit with a view to obtaining set-off for interest, and if the client asks you to do this, you should refuse on the basis that under Central Bank regulations there can be no set-off between two accounts which are in different names.

If you lose deeds and you fail to find them after making a dilligent search in your office, do not sit back and do nothing, hoping that they will turn up. Some colleagues have found themselves in enormous trouble because they did just that. After checking obvious places where the deeds might be, such as with your client, his bankers, a former solicitor, or so forth, then if your records show that you should have the deeds admit to your client that you cannot find them and go ahead and re-constitute the title, putting with the re-constituted title your sworn Declaration to the effect that the deeds have been lost or mislaid in your office, together with your client's Declaration to the effect that the deeds have not been pledged by way of security or otherwise.

Office Administration – Public Image:

The way an office is administered contributes greatly to

the public image of the profession. No matter how small or how large an office is, there should be one person in charge of administration, and it should be this person's responsibility to instruct staff how to deal with the public, and particularly on the telephone. How often does one hear at 10.05 a.m. in the morning when one rings a colleague "He's not in yet". Again, at 5 p.m. in the evening "He went home early". It is so easy to have it as a rule of the office that if a person is with a client that they are in consultation, and, therefore, that they should not be disturbed. Some of our colleagues, when they are taking instructions from a client, take phone calls in front of him and discuss other clients' business. All these things give a very bad impression, which is a pity because they are so easy to rectify. Another trap that you can so easily fall into is not to make it clear to the telephonist that anybody who rings must leave their name, and they should as well be asked for their telephone number. This will avoid the senseless statement which a client will make when he says that he called you six times and you never returned his call. He is speaking truthfully but what he does not say – probably does not think about – is he never left his name on any of the occasions, and that is your fault really because your office administration has not been geared properly.

Another thing which you should never do is to instruct your secretary to ring a colleague. For some reason some of our colleagues go berserk if one's secretary rings them. The way round this it to get your secretary to ring your colleague's secretary. Honour appears to be satisfied then.

Try and keep the office tidy, although with the vast amount of paper that a solicitor has to cope with this is a never-ceasing battle. But picture yourself if you went into a professional adviser outside the law and there were papers everywhere. Two feet of them on the desk. Spread all over the floor. Heaps of them under the carpet. What would you think? Probably "It is time for me to go before I get involved with this mad man".

Obligations:

Probably the greatest obligation which we have is the confidentiality of our clients business. It is to the redounding credit of those who work in solicitors' offices that with very few exceptions no breach of a confidential matter ever emanates from a member of a solicitor's staff. That is why it is essential for the solicitor himself to guard against mentioning anything which can identify the business of his client. I regard it as an obligation to do your utmost to stand by your colleagues and to try to keep them right whenever you can. If you make it a point of always being fair to your colleagues they will reciprocate in the same manner to you, and the goodwill of your colleagues can be of enormous help to you in a time of need, so always work with your colleagues and never against them.

Don't take on impossible situations – such as acting for a lessor and a lessee. Indeed the golden rule is never to try to work for two masters, because when the trouble starts, or when there is a falling out, it is probably much too late to withdraw with dignity.

Do not unfairly attract business by doing cut-price work. In the end you will find that you have many, many clients all expecting you to do the job cheaper than the last time, and because you are working so cheaply the staff you employ will be inferior and you cannot afford to employ assistants, and in the end your last state will be so horrific you will wonder why you ever qualified as a solicitor in the first place. Remember that there is no such thing as a simple conveyancing transaction any more, and that with inflation we are shortly approaching, in Registry of Deeds cases, a situation where we have levelled off at a one per cent charge. I will not go into the detail of the number of steps now involved in a conveyancing transaction. I recollect doing this exercise on one occassion some years ago, and, since then, there have been three or four new steps added, and coming out at thirty. If you are going to have your client's sale closed on time and avoid additional interest charges, and give an efficient service, you can only work for the scale fee.

Some solicitors when they qualify close their books – give a deep sigh of relief – and say I am finished with all that. Anybody who thinks that way should think again, because it is essential for you to keep up-to-date with all the changes in the law, the same way as a doctor has to keep up-to-date with all changes in medicine. Therefore, apart from your own individual activity in reading new Acts of Parliament you should attend the Seminars of the Incorporated Law Society and the Society of Young Solicitors. I strongly advise you, immediately you qualify, to join these societies,and, of course, your local Bar Association, and the Solicitors' Benevolent Association. It is most desirable for you to volunteer, if you are not already involved, to assist the Free Legal Advice Centres, which fulfil the need which is met in most other countries of Western Europe by a free legal aid system.

I wish you every happiness and success as solicitors, and I look forward to co-operating with you in practice in the not too distant future.

LAW EXAMINATION RESULTS

(Continued from page 88)

O'Carroll, Seamus P.; O'Connor, Kevin.

O'Connor, Michael F.; O'Donovan, Irene; O'Driscoll, Clara; O'Dwyer, Thomas; O'Gara, Yvonne; O'Grady, William F.; O'Leary, Cornelius; O'Mahony, Timothy, O'Neill, John J.; O'Reilly, Niall; O'Reilly, William; O'Shee, J. John; O'Tuama, Cliona; Parkinson, Kenneth; Reilly, Peter.

Robinson, Barbara Ann; Roche, Luke; Rooney, Kevin; Ryan-Purcell, Oliver; Scally, James; Shanley, Colman D.; Shannon, Robert; Sheppard, Pamela J.; Sparks, Conor; Twomey, Mary A.; Tynan, Dorothy; Wallace, Patrick A.; Walsh, Anne R.; White, William X.

170 Candidates attended; 107 Candidates passed.

By Order
James J. Ivers,
Director General.

SOLICITORS' GOLFING SOCIETY

The next outing, the Captain's (W. R. White) Prize, will be held at the Heath Golf Club, Portlaoise, on Friday, 30th September, 1977.

Correspondence

20, Nutley Lane,
Donnybrook, Dublin 4.
16/6/77.

The Editor,
Law Society Gazette,

Dear Sir,

I refer to the article concerning S. 62 of the Companies Act 1963 appearing on p. 67 of theApril 1977 issue of the Law Society Gazette. I will try to explain in as few paragraphs as possible why I am in difficulties with the article.

The author refers to the case of Henry Head and Company Ltd. v. Ropner Holdings Limited (1951) 2 A.E.R. 994, his treatment of which I do not understand. He sets out to examine the word 'premium' in S. 62 of the Companies Act 1963 and to try to define the word with the help of the illustrated case, other cases, legal texts, and other sources. Firstly he produces very sensible dictionary meanings. Then counsel in the case, he says, wished to introduce a further definition (the word in S. 62 thus being narrowed) which Harman J. sympathised with but could not, as a matter of law, follow. The dictionary meaning states, the author says, increase in value. Translated to the section this means, I think, a price greater than nominal value. Counsel suggested it also meant enhanced value where the asset which the share represents increased in value. The author takes counsel to task for producing no authority to back this view and criticises the judge for giving no reason why he rejects it. To me, this must make the case unique in the reports. Counsel gives no authority for suggesting 'X' and the judge gives no reason for holding 'Y'. Not only that. The judge may have liked to follow counsel but could not. The author then supposes that the reason for this was that the judge thought he was widening the effect of the section beyond the limits Parliament had set. The author then criticises him sharply for trying to alter the meaning of a Statute and castigates him for daring to strain the meaning of the words of the Statute. He furthermore ticks him off, in severe language, for going outside his sphere of authority to accommodate counsel.

The author over-emphasises the point concerning the broader and narrower meanings of the word 'premium' in the section. For instance, he says that counsel tries to get the word premium enlarged to include a new meaning, thus leaving the definition of the word as originally placed in the section 'narrower'. The section or the Act does not define the word at all (the author admits this) – see footnote 13, page 68. Then it was said that the other words in the section do not either broaden or narrow the word. Harman J. is said to have given the word a broader meaning (he gives no reason) and counsel is accused of narrowing the broader or dictionary meaning. Gower, Palmer, and Pennington are then quoted to support the dictionary or ordinary meaning with which the author agrees. (Incidentally Palmer and Gower slightly disagree on terminology which may be significant – I do not know.) Property cases are then quoted in which the word has been discussed. The author then concludes that 'shares issued at a premium' means 'shares issued at a price greater than their nominal value'. Counsel is again berated for trying to narrow the definition and the judge is tried for lending him the slightest support. Finally it is said that accountants would like to see the word narrowed but the Jenkins committee will not, quite rightly, have it.

I can only conclude that what Counsel was trying to do was to restrict the effect of the section and what the judge was doing was trying to apply the natural meaning of the words in the section.

Perhaps I may be allowed to paraphrase from the article Counsels arguments on behalf of Company C. (presumably) thus:

'S.56 (1948 English Act) says that a company must treat as part of its capital any premium it receives on the issue of its shares for cash or otherwise. How can you tell when a premium has been received by a company? Where the cash received exceeds the nominal value of the share the exercise is easy. But where no cash excess is discernible you must look at the assets involved. But which assets? In my view one looks at the total assets of the company excluding the assets acquired in exchange for the shares. I may call these the company's existing assets. Only those may be considered because one has to consider the premium in relation to the state of the company before it acquired the assets to see if the assets acquired do in fact result in an enhanced value or premium. What existing assets had Company C. when it issued shares to A. and B? None. It was a new company. Thus, because you have no yardstick by which you can measure the excess value or premium, no premium has been received. The section does not therefore apply.'

If I may take the further liberty of paraphrasing again from the article the judgment of Harman J. it would run thus:

'S.56 commences as follows: 'Where a company issues shares at a premium, whether for cash or otherwise . . .' The words quoted mean, in my view, that a premium may be calculated by examining the cash received for the shares in relation to the nominal value of the shares or, where this yields no fruit, the direct relation between the nominal value of the shares issued and the value of the asset acquired in exchange. In the latter case one compares the nominal value of the shares against their real value. One compares like with like. Counsel has stated that there is no relation at all between the two but there is and, indeed, must be. The company's existing assets are not in issue and cannot be put in the scale at all. Absurd results would follow if they were. The section bears this out. It applies to 'a company' without any qualification whatever. This inevitably means that a new test has been introduced. With the test 'nominal value v. cash received' a further test 'nominal value v. value of asset' has been introduced in the section. The former can be automatically operated, the latter not. The latter may not always prove that a premium has been received. It will depend on the circumstances of each case. Here by using the second test an actual premium has been found to exist and the premium must be considered as share capital.'

If I have unwittingly put words in the mouth of either judge or counsel I hope I have not been unjust. I have tried to follow the case from the article.

This I think is slightly different from narrowing the meaning of the word "premium" on the one hand and broadening it on the other. I am not sure that the word itself was in issue at all. Both judge and counsel appear to be at one on the word. What they disagree with is the application of the word to the concepts of excess cash and increased underlying asset value. When counsel says that

'premium' could mean, apart from increase in price over nominal value, increase in value of share resulting from increase in value of underlying asset, I confess I cannot see how he is narrowing any word or definition thereof in the section. He may be broadening it but not narrowing it. How Harman J. broadens it then to bring it back to its dictionary meaning is similarly beyond me. What both of them agreed on was that when the idea of premium was compared and contrasted with the ideas of increase of nominal value and increase of value of underlying asset different results followed. Each opted for a different result. No strain was put on any word in the section, except possibly when counsel sought to maintain that the word 'company' in the section meant a company with existing assets. Harman J. rejected this. Possibly he thought the argument was a fair one but he could not follow it. As to meaning both agreed, it seems, with the books and law reports on 'premium'.

The accountants argue that the section should only operate where the book values show a disparity with real values. The Jenkins committee say that the section ordinarily applies to any increase in value over nominal value resultant on the issue of shares.

I feel that the case was concerned with the words 'or otherwise' if it was concerned with words at all. One glance at Gower (p. 108-9 1969 Ed.) makes this patently obvious.

Yours faithfully,

BRIAN ROCHE,

Office of the Revenue Commissioners,
Dublin Castle,
Dublin 2.
22 June, 1977

Stamp Duty (Presentation of Instruments) Regulations, 1977

Dear Mr. Ivers,

You are no doubt aware that an instrument effecting a conveyance or lease presented for stamping must be accompanied by a "Particulars Delivered" Form (ST 21) duly completed in accordance with the provisions of section 4 of the Finance (1909-10) Act, 1910.

By virtue of the regulations which were made on August 5, 1920, in pursuance of that section, conveyances of freehold registered lands were excluded from that requirement.

The Minister for Finance has decided that this exclusion be terminated. The amending Regulation, a copy of which is enclosed, is designed to bring freehold registered land into line with other property.

The new Regulation continues the practice whereby, since 1970, the delivery of the "Particulars Delivered" form was not necessary in the case of sales and lease of houses by housing authorities under the provisions of section 90 of the Housing Act, 1966.

By virtue of the new Regulations, the position will be that, with the exception of those housing authority transactions, all conveyances or leases, other than leases for terms not exceeding 30 years, must be accompanied by a Particulars Delivered from, duly completed, whether or not the property involved is registered under the provisions of the Local Registration of Title (Irl.) Act, 1891.

In view of the implications of the change, the Commissioners would be grateful if you would be good enough to draw the attention of your members to the new situation.

Yours sincerely,

M. K. O'CONNOR,
Revenue Commissioner.

S.I. No. 181 of 1977

Stamp Duty (Preservation of Instruments) Regulations, 1977

The Revenue Commissioners, in exercise of the powers conferred upon them by Section 4 of the Finance (1909-10) Act, 1910, as amended by the Finance Act, 1920, hereby make the following regulations:

1. (1) These Regulations may be cited as the Stamp Duty (Presentation of Instruments) Regulations, 1977.
   (2) These Regulations shall come into operation on the 4th day of July, 1977.
2. The Regulations made on the 5th day of August, 1920, under Section 4 of the Finance (1909-10) Act, 1910, as amended by the Finance Act, 1920, are hereby amended by the Substitution for the first subparagraph of paragraph (15) of the following subparagraph:
   "(15) Paragraphs (1) to (12) of these Regulations shall not apply to conveyances or leases of houses by a housing authority, within the meaning of the Housing Act, 1966 (No. 21 of 1966), under Section 90 of that Act, and it shall not be necessary to present such convenances or leases to the Commissioners or to furnish them with reasonable particulars thereof".

Given this 22nd day of June, 1977.

M. K. O'CONNOR,
Revenue Commissioner.

Explanatory Note
(This note is not part of the Instrument and does not purport to be a legal interpretation).

The effect of these Regulations is –

(a) to require, in the case of a transfer or lease of freehold registered property, the presentation to the Revenue Commissioners, for the purposes of stamp duty, of particulars of the transaction in the prescribed form (Form ST 21 Particulars Delivered), and

(b) to terminate the requirement for such presentation in the case of a conveyance or lease of a house by a housing authority under Section 90 of the Housing Act, 1966.

THE REGISTER

REGISTRATION OF TITLE ACT 1964

Issue of New Land Certificate

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

Dated 31st day of July, 1977.

N. M. GRIFFITH

Registrar of Titles

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

Schedule

(1) Registered Owner: Oliver Reilly; Folio No.: 15646; Lands: Curryhills; Area: 0a. 2r. 21p.; County: Kildare.

(2) Registered Owners: Michael Kelliher and Nora Kelliher; Folio No.: 2454; Lands: (1) Coolmagort, (2) Coolmagort (an undivided moiety), (3) Dunloe Upper; Area: (1) 36a. 1r. 10p., (2) 29a. 3r. 17p., (3) 0a. 3r. 39p.; County: Kerry.

(3) Registered Owner: James Fitzsimons; Folio No.: 20671; Lands: Corgrig; Area: 0a. 0r. 27p.; County: Limerick.

(4) Registered Owner: Reverend Thomas Lahert; Folio No.: 3056F; Lands: Foilacamin; Area; 0a. 1r. 8p.; County: Tipperary.

(5) Registered Owner: James Alexander Roulston; Folio No.: 3553; Lands: Trentamucklagh; Area: 112a. 2r. 22p.; County: Donegal.

(6) Registered Owner: James Tighe; Folio No.: 5154; Lands: Garrow; Area: 69a. 3r. 10p.; County: Roscommon.

(7) Registered Owner: Bartholomew O'Callaghan; Folio No.: 2756; Lands: Mossgrove; Area: 110a. 3r. 8p.; County: Cork.

(8) Registered Owner: Patrick O'Neill; Folio No.: 4868F; Lands: Part of the Townland of Tuogh situate in the Barony of Kerry; County: Limerick.

(9) Registered Owner: Mary White; Folio No.: 3326; Lands: Ballalease North; County: Dublin.

(10) Registered Owner: John Shanahan; Folio No.: 35153; Lands: Dromin Upper; Area: 0a. 2r. 10p.; County: Kerry.

(11) Registered Owner: Owen Kinsella; Folio No.: 2379; Lands: (1) Tiknock, (2) Tiknock (an undivided moiety of other part); Area: (1) 99a. 1r. 10p., (2)0a. 2r. 34p. County: Wexford.

(12) Registered Owners: Francis Conor Ffrench Davis, Ingrid Pery-Knox-Gore; Folio No.: 7025; Lands: (1) Aurora, (2) Aurora (an undivided moiety); Area: (1) 7a. 2r. 20p., (2) 16a. 1r. 0p.; County: Wicklow.

(13) Registered Owners: Alan G. Doyle and Helen Doyle; Folio No.: 49F; Lands: Malahide (situate to the South of the road leading from Malahide to Portmarnock in the non municipal town of Malahide); County: Dublin.

(14) Registered Owner: Cornelius Canty; Folio Nos.: 11779 and 11780; Lands: (1) Kilpatrick, (2) Kilpatrick; Area: (1) 68a. 2r. 29p., (2)32a. 0r. 33p. (These folios are now closed and the property therein forms the lands Nos. 1 and 2 on folio 42497, County Cork); County: Cork.

(15) Registered Owners: James McDonnell and Bridget McDonnell; Folio No.: 10447L; Lands: The leasehold interest in the property situate in part of the Townland of Oldbawn containing 0a. 0r. 7p., in the Barony of Upper Cross; County: Dublin.

(16) Registered Owner: Lucy Conroy; Folio No.: 568; Lands: Sroove; Area: 15a. 0r. 30p; County: Sligo.

(17) Registered Owner: Lilian M. E. Quirke; Folio No.: 3614; Lands: Monart East; Area: 48a. 3r. 21p.; County: Wexford.

(18) Registered Owner: Mary O'Sullivan; Folio No.: 22389; Lands: Farnahoe; Area: 4a. 0r. 13p.; County: Cork.

(19) Registered Owner: Carol Daly; Folio No.: 3138; Lands: Coolkirky; Area: 70a. 2r. 26p. County: Cork.

(20) Registered Owner: Niall P. Hickey; Folio No.: 2404L; Lands: The leasehold interest in the property situate in the property in part of the Townland of Railpark and Barony of North Salt, situate to East of Maynooth to Celbridge Road and Town of Maynooth containing 0a. 0r. 21p. County: Kildare.

(21) Registered Owner: Laurence Bergin; Folio No. 7290; Lands: Gorteen; Area: 6a. 0r. 22p.; County: Queens.

(22) Registered Owner: John Patrick Rutherford; Folio No.: 6754; Lands: Drumroghill; Area: 12a. 3r. 13p.; County: Cavan.

(23) Registered Owner: John Lynch; Folio No.: 1911; Lands: Kilfountain; Area: 34a. 0r. 15p.; County: Kerry.

(24) Registered Owners: James C. Shea and Deborah Shea; Folio No.: 2000; Lands: Boolasallagh; Area: 32a. 2r. 21p.; County: Kerry.

(25) Registered Owner: Laurence L. Harnett; Folio No.: 15947; Lands: Abbeyfeale West; Area: 0a. 0r. 20p.; County: Limerick.

(26) Registered Owner: Bernard Bradley; Folio No.: 8200; Lands: Castlelost; Area: 0a. 2r. 23p. County: Westmeath.

(27) Registered Owner: Thomas Gleeson; Folio No.: 8331; Lands: Rath; Area: 5a. 1r. 30p.; County: Dublin.

(28) Registered Owners: Louis Francis Carroll and Victoria Carroll; Folio No.: 1895L; Lands: The leasehold interest in the property situate in the townland of Marshes Lower, Barony of Dundalk Upper situate to the north of the Long Avenue in the urban district of Dundalk, containing 0a. 0r. 12p.; County: Louth.

NOTICES

LOST WILLS

James Joseph Gallagher, deceased, late of 2 St. Margaret's Avenue, Kilbarrack Road, Raheny, Dublin 5. Would any Solicitor or other person having knowledge of a Will executed by the above named deceased who died on the 17th day of April, 1977, please communicate with Messrs. Eamonn Greene and Company, Solicitors, 7 Northumberland Road, Dublin 4.

Bayan Ivan Giltsoff, deceased. Would anyone aware of a will made within the last 2 years approximately, by Bayan Ivan Giltsoff, late of Goose Cuckoo Farm, Ashford, Co. Wicklow, who died on 22nd April, 1977, please contact Mrs. P. J. Bridges, Ash Cottage, Cliff Road, North Petherton, Somerset, England.

Bridget Madeline Lynch, late of Notre Dame Nursing Home, 12 Gracefield Road, Artane, County Dublin, and formerly of 2 Elgin Road, Ballsbridge, in the City and County of Dublin. Would any Solicitor or other person having knowledge of a Will made by the above-named deceased during the past few years, please communicate with John V. Kelly, Solicitor, Church Street, Cavan, in the County of Cavan.

THE INCORPORATED LAW SOCIETY OF IRELAND

GAZETTE

JULY 1977 VOL. 71 NO. 5

Solicitors in the service of the public

MR. BRUCE ST. JOHN BLAKE, President of the Incorporated Law Society delivered the following address at the ceremony of the Presentation of Parchments to newly qualified Solicitors in the Library in the Four Courts, Dublin on 9th June, 1977.

Before presenting you with your Parchments I would like to take this opportunity of congratulating each and everyone of you on the successful completion of your apprenticeship and of the Society's examinations. The Parchments you are about to receive entitle you to entry on the Roll of Solicitors and to practice the profession which you are now about to enter which has a long and proud tradition of service to the Public of this country.

A professional person is one who has special training, ability, competence and aptitude for a very particular type of work. In the case of the legal profession, this work takes the form of service to the Public by the application of knowledge and skill in dealing with the constantly increasing intricacies of an ever growing volume of legislation with the aim of ensuring justice for clients who constitute the Public whom we have the honour to serve.

The practice of any profession and particularly the legal profession requires that its members maintain a code of conduct and standards of the very highest integrity and even specialised training and aptitude for the work involved is not sufficient in the absence of the essential requirement of a commitment to the role which also requires dedication, reliability, commonsense and above all a high respect for the dignity of the individual.

In entering into practice in the legal profession you are accepting a heavy burden and heavy responsibilities to which you will prove yourselves equal because I know that you could not have accepted this commitment without a true sense of vocation and purpose. The legal profession is one of the very few, if not in fact, the only truly independent profession. It should be remembered that one of our most important and fundamental roles is that we provide the means whereby the rights of the citizens, freedom of the individual and liberty of the subject as are guaranteed by the Constitution can be vindicated and upheld.

Importance of Free Legal Aid Centres

Many of you who are today entering the Profession have had valuable experience of contact with members of the public through F.L.A.C. and this will prove of great assistance to you in dealing with the problems of your clients as fully qualified solicitors. It is only right and proper that I should once again take the opportunity of publicly paying tribute to F.L.A.C. and to the great service which its members have given to the community with the assistance of qualified members of the legal profession. F.L.A.C. has received and is deserving of the full support of the legal profession, not only on account of the nature of the work that its members are doing, but also because of the fine example it has set to the Profession and indeed also to the Government and in particular because it has demonstrated beyond any doubt the great demand that exists for legal services by the public. This demand has highlighted the urgent need for a comprehensive system of both Civil and Criminal Legal Aid which it is earnestly hoped will be introduced as a matter of urgency and to which all the political parties are now committed. Implementation of a comprehensive system of legal aid will have far reaching consequences for the legal profession. It is on you new entrants to the profession on whom the primary responsibility for the operation of the Legal Aid Scheme will rest.

Sympathetic Treatment of Clients

Those of you who have worked in F.L.A.C. will have discovered that most of the people who come to F.L.A.C. are people with problems and people in trouble. You will find this also to be the situation in legal practice. Always remember that in dealing with your clients you are dealing with human beings who require a very great deal of understanding, patience and tolerance because in many instances they are distressed and confused and need to be treated with a great deal of sympathy. You will soon find that you will have become in addition to a practising lawyer also a practising psychologist in many respects. Clients, as you will quickly discover, can be very impatient. They see their problems only in their own terms and are not concerned with the many other cases with which you will have to deal, nor will they appreciate or greatly care about the complexities of the legal process which militate against a speedy conclusion of their case. Your clients will mainly be concerned with results, but where it is not possible for you to achieve the type of

result that a client may consider himself to be entitled it is here that all your skill, patience, understanding and tolerance will be required to explain to the client the reason why it will not be possible to achieve the result that he desires. Provided you endeavour to the very best of your ability to deal with your clients' problems with the utmost expedition possible and in particular ensure that your clients are informed constantly of the progress of the case or the reason for any delays, then you will find that your task will prove to be very much easier, because the general experience is that an informed client is a satisfied client and no matter what the outcome of the case, the client will be aware that you did your best and at all times acted in his interest. Lack of communication between members of the legal profession and their clients is one of the largest single causes of complaint received by the Society and in the majority of these instances there is no fault on the part of the solicitor in question in the way in which the client's case is being handled, but the client is simply unaware due to lack of communication from his solicitor as to the position in his case.

You should always remember that your clients in the main rely very heavily and frequently completely upon you for advice. This increases the extent of the burden of responsibility that you have to bear, but there are compensations in terms of job satisfaction, and the knowledge that complete confidence and trust is being placed in you by someone who is depending upon you to assist him in the solution of his problems.

Experience in practice

You will, in the course of time, choose between practising as an individual on your own, or in partnership with other solicitors. I cannot advise you too strongly how important it is that you first gain experience before making this final choice. The capacity of the individual solicitor practitioner to give the service that is now required by the public and the increasing range of problems with which he is required to deal is now very much in question. There is an ever increasing trend towards larger firms and more specialisation. This is not a bad thing, particularly if it can guarantee the service that the public are entitled to expect from the legal profession.

I strongly encourage you to join the Incorporated Law Society of Ireland and the Society of Young Solicitors, both of whom individually and in combination organise informative meetings and seminars as part of the all essential continuing process of legal education with which you must involve yourselves if you are to continue successfully in the practice of your profession. These meetings and seminars constitute study programmes which will enable you to keep yourself informed of the ever increasing changes in legislation which are taking place, not to mention those proposed by the Law Reform Commission, in addition to the ever increasing volume of legislation and directives resulting from our membership of the European Economic Community.

I would also urge you to join and become active in your local Bar Association, membership of which will prove to be of real practical benefit to you. You should also join and support the Solicitors' Benevolent Association which is an organisation worthy of the support of every member of the profession.

Finally it is my pleasure and my privilege to have the honour of welcoming you into the Solicitors' Profession in which I sincerely hope you will have many worthwhile years of successful and satisfying practice.

The following newly qualified solicitors then received their parchments:

Michael Allen, The Moorings, Stillorgan Rd., Donnybrook, Dublin 4.
Sheena Beale, 15 Green Park, Rathgar, Dublin 6.
John Bourke, 22 Fortfield Park, Terenure, Dublin 6.
Peter Boyle, 68 Middle Abbey St., Dublin.
Aidan Brosnan, Claycastle, Youghal, Cork.
Garrett Byrne, Westerton Hse., Ballinteer Rd., Dundrum, Dublin 14.
Jarlath Canney, Dublin Road, Tuam, Galway.
Catherine Craig, Aranmore, Dublin Rd., Drogheda, Louth.
Michael Cunningham, Ard-na-Mara, Killybegs, Donegal.
Brian Curtis, 117 Clonkeen Rd., Blackrock, Dublin.
Heather Debeir, 170 Gaybrook Lawns, Malahide, Dublin.
Ian Dodd, Abbey Street, Ballina, Co. Mayo.
Jane Dudley, Dromartin Hill, Dundrum, Dublin 14.
Bridget Duffy, Rockfield House, Scotshouse, Clones, Monaghan.
Shaun Elder, 10 Tonduff Close, Greenpark Est., Walkinstown, Dublin 12.
William Gleeson, Cupertino, Parnell Pk., Thurles, Co. Tipperary.
Michael Greene, Derryclare, Dunshaughlin, Meath.
Anne Griffin, Dublin Road, Dundalk, Louth.
Robert Halley, Killotterae House, Waterford.
Richard Hogan, 2 West End, Mallow, Cork.
Kevin Houlihan, Sandfield Park, Ennis, Co. Clare.
James H. Joyce, Market Street, Clifden, Co. Galway.
Mary Kelly, Jalna, Auburn Road, Mullingar, Westmeath.
Muriel Lee, 6 Palmerston Gardens, Rathmines, Dublin 6.
Gemma Loughnane, Island Bawn, Nenagh, Co. Tipperary.
Gerard McCarthy, Carrigfern, Bantry, Cork.
Mary Mangan, 7 St. Kevin's Park, Dartry, Dublin 6.
Michael Moran, 28 Rathdown Park, Terenure, Dublin 6.
Roger Morley, Mount Carmel, Castleredmond, Midleton, Cork.
John Moylan, Newberry Hill, Mallow, Cork.
John Mulvihill, Main Street, Dunleer, Louth.
John Nagle, Cooleens, Douglas Rd., Cork.
Ann Nolan, 69 Eglinton Road, Dublin 4.
Kevin O'Connor, 9 Mather Rd., North, Mount Merrion, Dublin.
Geraine O'Loughlin, Eirene, Clonattin, Gorey, Wexford.
John O'Shee, Wendwyne, 37 Howth Rd., Sutton, Dublin.
Cliona O'Tuama, 24 Merton Rd., Rathmines, Dublin
James Scally, 13 Woodbine Rd., Blackrock, Co. Dublin.
Robert Shannon, 8 Cremore Ave., Glasnevin, Dublin.
Mairead Toale, Belmont, Carrick Rd., Dundalk, Louth.
Mary Twomey, St. Ciaran's, Castleisland, Kerry.
Dorothy Tynan, Cloneeve, O'Connell Ave., Limerick.
Anne Walsh, The Climbers Inn, Glencar, Kerry.
William White, Heath House, Abbeyleix, Co. Laois.

Land Registry Practice

Lecture delivered at the Summer Meeting of the Law Society in Wexford – May 1977.

by Nevin Griffith, Registrar,
Land Registry

The 1891 Registration of Title Act laid the foundation of the system of Registration of Title in Ireland. This has now been superseded by the Registration of Title Act 1964.

My predecessor, Mr. Desmond McAllister, published his comprehensive book on Registration of Title in Ireland four years ago. In Mr. Wylie's recent book on Irish Land Law there is a concise chapter on Registration of Title.

In this talk I thought I might go through the Rules made under the provisions of the Act and comment on some of the more important of them.

The current Rules are the Land Registration Rules 1972. There is a recent amendment in respect of Rules 18 and 35 and Form 3. This came into operation on the 1st April. Where for convenience I refer only to "the Act" or "the Rules" I mean the 1964 Act or the 1972 Rules.

The 1964 Act came into operation on 1st January 1967 so that we have just over ten years experience of its working. The purpose of the Act was to amend and consolidate the law relating to the registration of the title to land, and to provide for the gradual extension of compulsory registration to all land in the State. Carlow, Laois and Meath became subject to the compulsory registration provisions from 1st January 1970. Conditions are not suitable for an extension of the compulsory areas at present.

The great increase in the number of Land Registry transactions over this period has unfortunately led to arrears and delays in some sectors. Most of the figures for the various categories of work in the Land Registry have doubled, some have trebled or quadrupled, or multiplied even further.

For example, the number of public inspections of folios and Instruments in the Public Office last year was 22,900 which compares with 7,400 ten years ago. In fact last years figure of nearly 23,000 was 8,500 higher than in the previous twelve months. This gives some idea of the pressure on the counter staff, who deal with these inquiries.

There were nearly five times as many Mapping Searches last year as in 1967.

Applications for Land Registry copy maps numbered 9,000 in 1967; there were 24,000 last year.

9,000 new folios were opened in 1967. In 1976 the number was 37,000.

ERRORS IN LAND REGISTRY

Rule 3 sets out the framework of a Folio. Rule 7 gives the power to the Registrar to make formal alterations in the Register or cancel any burdens or entry which no longer affects the property. Rule 8 deals with clerical and mapping errors which originated in the Registry. These may be corrected by the Registrar after giving any necessary notices and obtaining any necessary consents. No correction could be made by the Registrar which would disturb registered legal interests. In case of any other error originating in the Registry a Court Order would be required. Section 32 of the Act states that the Court, if it is of the opinion that an error may be rectified without injustice to any person, may order it to be rectified under such terms as to costs or otherwise as it thinks just. It would appear that an error on the Register which is caused by a mistake in a document submitted would normally require a Deed of Rectification by the necessary parties.

The Indexes maintained in the Central Office are an Index of the names of the registered owners of Freehold land, of Leasehold Interests or of a right under Section 8(b) of the Act. There is also an Index of lands which contains the identification reference to the Registry Map to every parcel of land on which the ownership is registered or of a Leasehold Interest or an Incorporeal Hereditament. The Local Office maintains only an Index of Names of the registered owners of Freehold and Leasehold Interests.

FIRST REGISTRATION

Part II of the Rules deals with applications for First Registration for conversion of Possessory Titles and other Registrations involving examinations of title. This is the work mainly dealt with by the Examiners of Title.

Rule 15 sets out the documents which should accompany an application for First Registration of freehold property. Note that one of the current documents should be a plan of the property drawn on the current largest scale map published by the Ordnance Survey, unless there is a sufficiently identifiable plan or map on some muniment of title.

One of the most common mistakes in these applications is to neglect to lodge the Statement of Title. If an opinion of Counsel is lodged the Statement of Title is not required. An Affidavit of Discovery should also be furnished.

In 1891 it was thought that there would be many voluntary applications for First Registration because of the advantage this would give in future dealings with the property. In practice, as the trouble and expense of registering the property would fall on the first applicant, – for the benefit of his successors – there were few such applications. Those who did apply seemed to do so because their title was not acceptable as a purchaser and it was hoped that the Registry would in effect guarantee it. In recent years however the number of applications for first voluntary registration has greatly increased. In 1976 it was seven times greater than in 1967.

Rule 16 deals with the application for first registration of a Leasehold Interest or of an Incorporeal Hereditament not held in gross.

Under Rule 19 it is provided that the title shown by the applicant may commence with a disposition of the property made not less than 30 years prior to the application that would be a good root of title on a sale

under a contract limiting only the length of title to be shown.

Sub-rules (2) (3) and (4) of Rule 19 provided that the Registrar might in specific cases accept a certificate by a solicitor in Form 3 when the market value of the property did not exceed £8,000 and make the registration without any further examination of title. This figure of £8,000 was raised to £20,000 in 1973 and is now £25,000 under the amending Rules which came into operation on 1st April 1977. These amending Rules (S.I. 89 of 1977) also prescribed a new form of certificate. It is hoped that the use of this new certificate will speed the registration of applications under this Rule.

APPURTENANT RIGHTS

Provision is now make by Section 82 of the Act for the entry on the Folio of appurtenant rights acquired by Grant or Court Order attached to the registered lands and Rule 25(b) sets out the requirements for such an application.

Only since the passing of the Land Act 1965 has the Land Commission power to vest appurtenant rights.

Appurtenant rights may be extinguished by law or by statute or by express or implied release. It is extremely difficult to establish the extinguishment of such a right by abandonment. In fact for registration purposes a Court Order would probably be necessary. The right to take turf for fuel in a house is not appurtenant to the lands but to the dwellinghouse situate on the lands. It cannot be apportioned or severed from the dwellinghouse. Normally an easement must be appurtenant to lands and cannot exist in gross. It is, therefore, necessary to ascertain the dominant tenement for the benefit of which the easement exists and to enter the right as a burden on the servient tenament. There is an exception under Section 69 of the 1964 Act where the right of the Land Commission or Local Authority to lay pipelines for any purpose may be registered as a burden.

Rule 28 deals with mines and minerals on applications for first registration of the ownership of property. Most of the lands registered under the Registration of Title Acts were purchased under the various Land Purchase Acts and roughly speaking those purchased prior to the 1903 Land Act acquired the mines and minerals, and those purchased subsequently did not.

Rule 30 deals with applications for first registration of mines and minerals; and of portions of premises such as a flat or a floor of a house.

If any application for registration includes foreshore the fact should be stated in the application so that the Registrar may notify the Minister for Transport and Power as required by the Act.

Cautions against First Registration may be entered by persons having an interest in the property (Rules 31 and 32).

DISCHARGE OF EQUITIES

Rules 33 to 37 deal with conversion of Possessory Title into Absolute Title where the property has been purchased under the Land Purchase Acts. This is the old discharge of equities and the Rules are similar to those in operation for the last thirty years. Note that under Rule 35 the conversion may now be made on a certificate by the solicitor in Form 15 where the purchase money is under a certain figure. This figure is now £25,000 after last month's amendment to the Rules. The conversions of Possessory Title into Absolute or Good Leasehold title where the property has not been purchased under the Land Purchase Acts are dealt with in Rules 38 and 39. There are not many of these applications.

Rules 41 to 44 deal with general provisions as to conversion of Possessory or Qualified titles.

Rule 45 deals with other examinations of title outside the Register, e.g. the examination of the title of a lessor when the ownership of the lease is registered with good leasehold title, for purpose of noting that it is converted to Absolute Title.

SECTION 49 APPLICATIONS – SQUATTER'S RIGHTS

Applications where it is claimed that title has been acquired by mere possession, hitherto dealt with by the Courts under Section 52 of the 1891 Act, may now be made in the Registry. Under Section 49 of the 1964 Act the Registrar was empowered to register an applicant in such cases when he is satisfied that the applicant has acquired the title. Rule 46 prescribes that such applications should be made in Form 5 or such modifications as the case may require. If the Registrar is satisfied with the title he may register the applicant as full owner of the property with an Absolute, Good Leasehold, Possessory or Qualified title as the case may require. The application is usually for an Absolute Title.

In many cases these applications are based on the supposition that twelve years undisturbed possession is sufficient for the purpose of registration as full owner with an Absolute Title on the Freehold Register. In fact, the land on which the applicant has squatted may be the subject of a long lease. Even if the property is shown to be freehold the persons entitled may be under a disability; or the lands may be in settlement in which case the squatter may only be acquiring the estate of a tenant for life. In such cases twelve years possession does not entitle the applicant to the freehold interest.

It is strictly necessary to show 40 years title by the applicant or his predecessors and to show who were the true owners at the date of dispossession, and that their claim has been barred.

The 40 year period may be curtailed in special circumstances. A 19 year period was accepted by the Court where the lands were a Commons (on appeal from Registrar).

Nevertheless every case of title claimed by long possession will be considered on its merits. Such applications are usually made by one member of a family remaining on after the others have died or departed from the lands. The facts should be fully set out in Form 5 as to dates of death and of departure etc.

In Section 49 cases statements such as that the applicant has become entitled by operation of the Statute of Limitations have been criticised by High Court Judges. They should not be accepted. It is for the applicant to prove the facts and for the Examiner to decide whether on the facts proved the title sought has been established. It is in the discretion of the Examiner dealing with the application whether notices may or may not be served where it is sworn that a person has been out of the property and long barred. Short social visits by those who left are not enough to prevent the Statute running against them. A son remaining on the death of the registered owner has been held entitled although his wife worked the

farm jointly with him. Where the application is for the registration of the applicant as full owner of the whole or part of a commonage it is usually difficult or impossible where the persons entitled are too numerous for the applicant to ascertain all their names and addresses or those of their personal representatives or successors. If they are not supplied, we would direct notice to be published in a local paper circulating in the locality in substitution for the service of notices.

We accept titles and register an applicant as full owner notwithstanding the existence of an unproved Will of the registered owner purporting to have devised the land to the applicant or a predecessor in title of the applicant, provided that the said Will does not purport to charge legacies or rights on the land, or if any such legacies arise they have been discharged or become spent or statute-barred.

APPLICATIONS FOR REGISTRATION WHEN DEEDS HAVE BEEN LOST OR DESTROYED

Registration may be effected where there is an affidavit that exhibits and identifies a copy deed which clearly shows that the original deed was duly executed, that the parties subsequently acted on it according to its tenor and that it has been lost or destroyed. Unless it shows clearly that it was stamped the copy deed tendered must be stamped as an original.

Formerly where a person entered into possession of land in the capacity of a bailiff the old doctrine was "once a bailiff always a bailiff"—but this is now abolished by Section 124 of the Succession Act 1965 as regards a person entering into possession of the estate of a deceased person who died after the 1st January 1967.

Formerly a personal representative was regarded as an express trustee of the registered freehold property of his deceased and could not claim the benefit of the Statute. This was continuously modified by the Courts until now the personal representative is apparently in the same position as any other person claiming title by possession.

From and after 1st January 1967 under Sections 126 and 127 of the Succession Act 1965 a person in possession may acquire title by six years adverse possession or, in the case of a disability, nine years. Again this only applies in the case of the estates of persons dying after 1st January 1967. Generally speaking a person cannot normally be in adverse possession to his or her spouse. There are circumstances where the possession of a spouse may become adverse as for instance where a husband deserts his wife who remains in possession. Successive squatters can between them make up the statutory period.

When it is claimed in an application that the title to part of a Folio subject to a Land Commission prohibition against sub-division had been acquired by possession it is not necessary to obtain the consent of the Land Commission if the title to the part was acquired prior to the coming into operation of the Land Act 1975. After the 9th March 1965, Section 12 of the Land Act 1965 applies and the consent of the Land Commission is necessary.

Where an applicant is a devisee under the will of a registered owner and is also his personal representative there is no adverse possession and an application under Section 49 cannot be entertained.

Part 3 of the Rules — Dealings with Registered Property

Transfers, charge etc., should follow the forms prescribed by the Rules. The execution of every application except one by a solicitor and of every Instrument must be attested: if by a blind or illiterate person it should be verified by affidavit.

Where the transfer is executed by Attorney the power of Attorney or office copy thereof filed in the High Court must be produced. In cases outside the provisions of Sections 8 and 9 of the Conveyancing Act 1882 evidence must be produced that the grantor was alive at the date of execution of the transfer and the power has not been revoked.

Rule 56 prescribes the plan which is required when there is a transfer of part. Unless the part is already clearly defined on the Registry Map i.e. if it has a separate Land Registry plan number it must be shown on the current largest scale map published by the Ordnance Survey (Land Registry Copy Maps are acceptable if on the largest scale). This Rule repeats Rules going back to 1937 which prescribed the map required. To facilitate applicants and solicitors and to expedite registration maps have over the years been accepted when their effect could be entered on the office sheets even where they did not strictly come within the Rules. Increasing difficulties in mapping with the proliferation of photocopiers, boundary conflicts and other troubles forced the stricter application of the Rule.

The covering statement which is to accompany every application or Instrument lodged in the Registry is prescribed by Rule 58. It may be in Form 17. It is important that this form should be fully filled up. Very often the names of all the parties are not given, or the Land Certificate is not referred to. It should be stated for whom the solicitor acts, whether for transferor or transferee or chargeant, or for all the parties. In the case of the Land Certificate it should be clearly stated to whom it is to be returned and who has had custody of it. Frequently, where the Land Certificate is in the custody of a third party the consent to its use for a second application or dealing is not lodged.

Under Rule 61 the priority in which dealings received for registration should rank is stated. The date of registration, with minor exceptions, is the date of lodgment except in the case of First Registration which is the date on which the draft folio or draft entry is settled.

A person claiming as tenant-in-common of an undivided share in the property must state the share to which he is entitled. This is frequently neglected.

Under Rules 68 and 71, an applicant who is a trustee may have entered on the Register an inhibition to restrict registration under dispositions that are unauthorised by the trust. Formerly it was his duty to have such an inhibition entered.

An applicant for first registration who is a trustee may apply similarly, under Rule 49.

Note that in Rule 70 dealing with applications for sub-division reference is again made to the fact that the plan of the property should be drawn on the current largest scale map published by the Ordnance Survey referred to in the consent of the Land Commission. In the case of the small areas, say a building site, the Land Commission do not now require that an applicant for consent to subdivide must necessarily lodge a copy map of the entire holding. On a transfer subject to an existing rent or burden a covenant to indemnify or exonerate the other party from a rent or burden may be noted in the Register. Rule 73.

Under Rule 74 an applicant for registration as owner as transferee under a sale from a personal representative may apply for the cancellation of any Judgment Mortgages on the Folio, that is Mortgages against the estate or interest of a person who has a beneficial interest in the property under the Will of intestacy of the deceased owner.

Rule 77 deals with Companies, the registration of Companies and the evidence on which the Registrar may act in making entries on the Register. He shall not inquire whether a transfer by the company is incidental to the objects of the company.

Rules 78 and 79 deal with registrations under the dispositions in defeasance of the estate or interest of the registered owner and the notices that may be sent in connection therewith.

TRANSMISSIONS

There are different forms and procedures in transmission cases depending on whether the death took place before 1st June 1959 or subsequently. These are set out in Rules 88 to 92 with references to the appropriate forms. These are cases in which mistakes are frequently made perhaps through not checking the Rules and Forms sufficiently.

Note the effect of the Legitimacy Act 1931 and the Adoption Act 1952 in extending, so to speak, the classes of next of kin of an intestate registered owner.

There must be a consent or concurrence to the registration of a burden under Section 69(2) of the Act.

Rule 103 sets out the persons whose concurrence in the registration of burdens may be accepted in lieu of the concurrence of the registered owner. The solicitor acting for such a person may give the concurrence on his behalf.

Rule 106 lays down that the owner of a registered burden shall not as such be entitled to the custody or delivery of the Land Certificate or Certificate of Charge of the property on which his burden is registered. This follows Section 67 of the Act. It is a rule which in many cases does not seem to be taken into account by institutions. Note that sub-section 2 of Section 67 states that every stipulation in relation to a registered charge of lands whereby the custody of the Land Certificate in respect of such lands is to be given to the registered owner of such charge shall be void. Rule 114. On the Registration of a charge created by a Company, a Certificate should be produced to show that the charge has been registered in accordance with Section 99 of the 1963 Companies Act. If it is not, a note to that effect will be registered on the Folio.

JUDGMENT MORTGAGES

Judgment Mortgages are a notoriously thorny subject and the difficulties experienced by judgment creditors in recovering their money have been the subject of numerous cases before the Courts. The Rules for the registration of Judgment Mortgages are straightforward. (RR. 118-122).

Since the passing of the 1964 Act, the land, the subject of the Judgment, is sufficiently described by reference to the folio number and the County in which the land is situate.

The registration of a judgment as a mortgage against the interest of a joint tenant of unregistered lands severs the joint tenancy – but that does not appear to apply to registered land. In practice on registration of any transmission of ownership or on death intestate of one of joint owners where a Judgment Mortgage has been registered against one, we inquire who the next of kin are (1) as though he had died as joint tenant and (2) as though he had died as tenant in common.

Failure to state costs accurately in the Judgment Mortgage affidavit or to expressly waive them has the effect of rendering the registration of such Judgment Mortgages invalid.

When notice of a Judgment Mortgage against a company is registered, a copy of the Judgment Mortgage affidavit is sent by the Registry to the Registrar of Companies.

Other burdens such as leases, rent charges and easements are dealt with in Rules 123 and 130. Since 1967 on the registration of a Lease as a burden where the unexpired residue of the term is more than 21 years the ownership of the Lease must also be registered and entered in the appropriate Register.

Regardless of whether the documents may indicate that there is unpaid purchase money a lien for unpaid purchase money is not registered unless application is made for such an entry under Rule 126.

CAUTIONS AND INHIBITIONS

Rules 131 and 146 deal with Cautions and Inhibitions. The object of an Inhibition is like that of a Caution, to protect unregistered rights against registrations under dispositions for value that would defeat them. Mr. Glover has described the difference as follows – "a Caution protects by enabling the cautioner to prevent such a registration; it always throws on him the onus of taking the action necessary to prevent the unregistered right that conflicts with his own of being converted by registration into a legal interest in the land. An Inhibition may also by its terms impose on the inhibitor the onus of preventing the registration applied for; it does so when the Inhibition is against registrations under dealings without notice to him. But it is usually in the form of a restriction on registration that prevents all registrations, except those made in

compliance with its terms as entered in the register, and so imposes on the applicant for registration the onus of seeing that the registration he applies for complies with its terms on which registration can be made: for, if it does not, the registration is refused."

OTHER ENTRIES

Rule 147 deals with the notice of exemption of specified property from former Crown Rent, Quick Rent, Ecclesiastical Tithes Rent Charge, etc. which may be entered on the Folio and the proofs required for such entry. A notice of exemption from tax under Section 68 of the Capital Acquisitions Act of 1976, would appear to come under the provisions of this Rule.

Agreements and covenants in deeds and leases which give options to purchase are not registered as burdens but may be protected by the entry of an Inhibition.

A Lis Pendens can only be registered when the suit in question is one that affects the title to realty or to chattels real.

Covenants and conditions relating to the use and enjoyment of the lands are registered on lodgment of the prescribed concurrence irrespective of any question of whether they run with the land or not. It would be complicated and time consuming for the Registry to investigate each case. The difficulties of discharging are set out in Section 69(3) of the Act.

Rules 148 to 150 and 151 deal with the notice of conclusiveness of boundaries and the evidence which is required before such a note may be entered on the Folio.

Before 1910 Folios sometimes had without justification a stereotyped entry that the boundaries were conclusive. This note is removed when any transaction occurs with one of these Folios (now). Entry of note as to the conclusiveness of the boundary is only to deal with the exact line of the boundary. It is not intended to make considerable changes in the respective areas and is never intended to cover gross errors in maps.

LAND CERTIFICATES & CERTIFICATES OF CHARGE

Part 4 of the Rules deals mainly with Land Certificates and Certificates of Charge.

The Land Certificate is a certificate of title. It is *prima facie* evidence of the facts appearing on it as of the date of its issue. It is not the Land Certificate that is the owner's proof of title but the Register itself. It is not evidence of the title to the ownership of the burdens shown thereon.

Rule 162 sets out the cases in which the Land Certificate must be produced on an application for the registration of a dealing with the property whose ownership it certifies. These include dealings by the Registered Owner, with the consent of the Registered owner and the personal representative of the Registered owner, by way of transmission and transmission under a settlement. Note that Judgment Mortgages are registered without the production of the certificate. In particular note that the Land Certificate is not produced in applications under Section 49. It is always necessary to examine the Folio or an up-to-date certified copy of the Folio rather than to rely on the Land Certificate as to the state of the Folio when dealing with the property.

A registered owner can create a lien on land by deposit of the Land Certificate. The lien is an equitable charge only and is subject to the equities that affect the registered owner at the time of the deposit. The lien generally attaches to a new Certificate issued when an old certificate has been lost or destroyed. An applicant for registration claiming to have acquired title by possession under Section 49 of the Act does not need to produce the Land Certificate or cause the Land Certificate to be produced. An Order may be made under Section 105 for the production of the Land Certificate for the registration of any right existing at the time of the deposit against the registered owner. The right, of course, must not be in dispute. The deposit of Title Deeds by way of Equitable Mortgage is of course subject to all pre-existing rights.

Where the Land Certificate is in the custody of some person other than the applicant and the applicant requires its production for the purpose of the registration of his dealing and the person in whose custody it is will not produce it for the registration, the applicant may apply for an Order directing him to produce it. (Section 105(2) of the Act.) If the person who has custody of the Land Certificate claims that it was deposited with him by way of Equitable Mortgage he has a right to hold it until the execution of a charge in his favour; until then the depositee is not compellable to produce it for any purpose which would defeat his rights.

The Registrar may only make an Order for the production of the Land Certificate under Section 105 where it is the registration of a dealing or charge which can be effected without the consent of the person having custody of the certificate.

If the depositee of the Land Certificate produces it for a subsequent dealing for value his lien would be postponed or destroyed on the registration of such a dealing.

It would seem that the Registrar has no power to order the production of a deposited Certificate for the registration of any transaction for value.

For the purpose of an exchange of holdings by the Land Commission the Registrar is given power under Section 30 of the 1965 Land Act to order any person having possession of the Land Certificate of the old holding to deliver it to the Registrar of Titles; or if he satisfies him that it has been lost or destroyed he may dispense with production. Any claim of lien or other claims on the old certificate will, from the date of the registration, be transferred to the Land Certificate in respect of the new holding. The priority of such claim or claims will thus not be affected. The Land Certificate in respect of the new holding will be issued to the person who had possession of the old certificate.

The Land Certificate is a vital document which must be produced to the Registry upon most dealings with registered land. It follows that if it is lost or destroyed an application to dispense with its production or to replace it by the issue of a duplicate must be made when any of the dealings referred to in Rule 162 is lodged.

Safeguards must be provided to prevent a possible fraudulent double dealing by the Registered Owner.

The grounding affidavit in an application for a New Land Certificate or for an order dispensing with its production should give the facts about the loss of the certificate, the searches made for it and aver that it has not been pledged as security, if such be the case, and include an undertaking to lodge the original Land Certificate in the Registry if subsequently found. The standard practice is to exhibit in the Affidavit letters from the branch offices of all banks in the neighbourhood of the applicant's

permanent residence. Each letter should expressly state that the Bank has no claims on the certificate in question. There can be no general relaxation of Rules relating to the issue of duplicate certificates because of the importance of protecting lenders from unnecessary risks of loss through fraud. An indemnity should also be given to the Registrar in respect of any costs or loss he may suffer by reason of the issue of the new duplicate Land Certificate. Incidentally, where the Land Certificate has been lost in a solicitors office the indemnity seems to be invariably included in the Affidavit of the Registered Owner, and not that of the solicitor – which seems unfair. Applications for the issue of new Land Certificates to replace Land Certificates stated to have been lost or destroyed are increasing greatly in numbers and cause much trouble and delay to all parties.

Land Certificates have been the cause of many difficulties and delays in Registration. This is probably why at least one eminent member of the profession has suggested that Land Certificates should be abolished.

But the utility of the Land Certificate as a convenient means of raising loans or securing other facilities and its value as some evidence of the owner's Title means that Registered Owners would not willingly see it abolished. Such a change in any case would require amendments to the Act.

A solicitor's lien for costs on Land Certificates is a lien on the Certificate and not on the registered property. This lien is not a security which creates a lien on the land as an Equitable Mortgage would. It extends to all costs due by the client, not for any particular transaction, and of course it cannot be greater than the right which the client has over the property.

The Land Certificate is a certificate of title so when tenants-in-common are registered each may acquire separate Land Certificates showing his interest.

Ownership of a burden is not certified on a Land Certificate.

REGISTRY MAPS

Sections 84 and 89 of the Act deal with the Registry Maps and the boundaries thereto and the relevant Rules are 174 and 176. The map is fundamental to the whole concept of registration and that it should be accurate and correct is of the utmost importance to applicants and all who deal with registered land.

Registered land is described by the names of the denominations on the Ordnance Survey map and by reference to such maps. We have great problems with the older sheets in our office, they go back of course to 1891, most of them are the 6 inch Ordnance Sheets. Over the decades they have been constantly handled and used so that many of them are worn or defaced or are almost indecipherable. As we are an office of record, to protect the map and to preserve the value of the registration for future generations we maintain a unit in our Mapping Department which is occupied full time with the restoration and reconstruction of the old sheets.

This is very painstaking work and slow but it is essential. The dozen or so menbers of the staff engaged full time on this task would of course be much better employed dealing with current work if we had no thought to the future. We have at all times to strike a balance between expediting and speeding current registration and preserving and keeping our records in the best possible condition. As the aim of the Ordnance Survey is to have eventually only 25 inch sheets covering the whole country and consequently fewer holdings on any one sheet the amount of handling each sheet will be that much less. We also have a machine now which provides a linen backing for the sheets to strengthen and preserve them. We hope that the filed plan system will be extended further which with other advantages has much less handling and wear and tear on the maps.

The first County to have the filed plan system in operation is County Carlow. This is nearly completed now. It was a pilot scheme and the lessons learned there should help us when we move into other areas.

The metric maps (63 inches to one mile) are coming into general use for Dublin, Cork and Limerick cities and they have the National Grid values printed on them. National Grid values should eventually replace the existing method of referencing properties on the Land Registry maps.

Rule 177 deals with the persons who may represent an Infant. Under Section 57 of the Succession Act the personal representatives may appoint such persons. If they do not they themselves are the Trustees. Where nobody has been appointed the Registrar has under Rule 178 to appoint a person to represent an infant.

Rule 179 deals with persons of unsound mind.

Where a person claims a lien by way of equitable mortgage on a document required by an applicant for first registration or conversion of title he may lodge it subject to lien with a claim to the lien in Form 97 signed by himself or his solicitor. This is under Rule 180. We would register the applicant with possessory title and the lien would be protected by Section 72(1)(k).

Under Section 94 of the Act, the Registrar has power to require persons who have custody of Deeds or Wills affecting a title to show cause why they should not be produced and, unless satisfactory cause is shown, to order that they be produced.

Documents to be retained and filed in the Registry are set out in Rule 181.

The Registrar may deliver to a solicitor an instrument dealing with property – other than a charge – on the solicitor certifying that it is required for a hearing in Court or before a Taxing Master or County Registrar for the purposes of a taxation and undertaking in writing to return it within a fixed time, Rule 184.

Rules 185, 186 and 187 deal with the transmission of filed documents to the Local Registrar for production in Court.

Rule 188 deals with the inspection of filed documents. At one time under various decided cases it seemed that the filed instrument might be inspected by any person. However, the Registry's view is that set out in Mr. McAllister's book. The Rule now limits the right to inspection. No one except those with a genuine interest should be allowed to inspect them.

Any person may, of course, inspect the Maps, indexes and the Folios on payment of the prescribed fee.

SEARCHES

Searches are Official Searches and Priority Searches. Note that in the Priority Search the person requiring the search must already have entered into a contract. A solicitor who obtains a Certificate of the result of the official search is not liable for loss that may arise from any error therein. See Rule 195.

● Concluded on page 110.

Custody, Adultery and the Welfare Principle

Paper delivered by Alan J. Shatter, at the Summer Meeting of the Incorporated Law Society of Ireland, May, 1977 in Wexford.

The law as to Guardianship and Custody of Children is governed by the Guardianship of Infants Act, 1964. The Act gives statutory expression to the equitable rule that all matters concerning guardianship and custody of children should be decided on the basis of the welfare of the child, and to the constitutional principle that parents have equal rights to and are the joint guardians of their children. Section 3. of the 1964 Act provides that :

"Where in any proceedings before any Court the custody, guardianship or upbringing of an infant . . . is in question, the Court in deciding that question shall regard the welfare of the infant as the first and paramount consideration".

Welfare in relation to an infant is said to comprise its religious and moral, intellectual, physical and social welfare.

Giving judgment in the Supreme Court in *M.B.O'S v. P.O.O.'S* (1974) Walsh, J. stated that:

"All the ingredients which the Act stipulates ... namely the religious, moral, intellectual, physical and social welfare of the child are to be considered globally".

The matter is not "to be decided by the simple method of totting up the marks which may be awarded under each of the five headings. It is the totality of the picture presented which must be considered".

In viewing this picture the Courts since the coming into force of the 1964 Act have constantly reiterated that

"An award of custody is not a prize for good matrimonial behaviour".

Evidence tending to prove that the behaviour of one or other parent contributed to or caused the breakdown of the parents marriage "is relevant only to the character of the respective parents with a view to deciding whether the welfare of a particular child would be best served by being left in the custody of one parent rather than the other" (Fitzgerald J. In *B. v. B. [1975] I.R. 54, (S.C.*—1970).

Thus the fact that one parent must bear the bigger share of the blame for the collapse of his or her marriage does not mean that he has by his conduct forfeited the right to be awarded the custody of his children. However, Kenny, J. has pointed out that where a marriage has broken down

"It may be possible to show that the welfare of the children requires that one or other parent should by reason of character of conduct be excluded from consideration as being a person unfit to have custody" (Kenny J. In *B. v. B.* July 1972 unreported H.C.)

In determining a parent's fitness the danger of the moral corruption of the child in respect of whom the award of custody is sought has been given considerable weight by the Courts and it seems that a parent engaging in an adulterous liaison will have considerable difficulty in securing an Order of custody. It is in this area that members of the judiciary, both in the High Court and the Supreme Court have produced a variety of conflicting opinions and approaches in the application of the welfare principle.

Custody not reward for good matrimonial behaviour

In January 1971 Kenny, J. in the High Court delivered Judgment in the case of *M.O.'B. v.P.M.O'B.*, the facts of which are as follows.

The father sought the custody of his four children, two girls aged 9½ and 7 years and two boys aged 8 and 5 years. The parties had married in April of 1960, but by September of 1965 their marriage had totally broken down. In March of 1966 the High Court granted custody of the four children to the wife. In 1970 the wife struck up a relationship with another man (a Mr. G.) and at the date of these proceedings Mr. G. was living with the wife. Kenny, J. described the husband as "unfeeling, insensitive, unemotional and very self centred", and further stated that "he wants to get custody of the children now primarily because he does not want his wife to have them and because he knows that she is passionately attached to them". Further there was evidence that all four children were fond of G. Emphasising that "custody is not a reward for good matrimonial behaviour" Kenny J., continued,

"Nor should the Court deprive a parent of it, as a way of showing its disapproval of conduct, which most people in a community regard as being immoral"

Although stating that the children's

"Religious and moral welfare is not promoted by Mrs. O'B's living with G. as his wife, although not married to him", he continued

"I do not accept the proposition that a parent who has been guilty of matrimonial misconduct is necessarily unfit to have custody or that the "Innocent" party is in every case the one who will best promote the welfare of the child".

With regard to the age of the children, the fact that they had remained in the mother's custody for five years and in view of their need of stability and affection he felt the children should remain with the mother. In a final reference to her relationship with G. Kenny, J. stated that "From the standpoint of the moral welfare of the children it was deplorable, but in considering its effects . . . it is relevant to point out that Mr. and Mrs. O'B. had not lived together since September 1965, and that the association with G. began in March of 1970".

A few months later the Supreme Court delivered Judgment in the case of *J.J.W. v. B.M.W.*, in which a similar problem arose. In this case the husband and the wife had been living in England and in 1969 the wife left her husband and went to live with a Mr. L. There were three children of the marriage, all girls, aged 9, 7 and 3 years. When the wife left home she took the two youngest girls with her, but the husband regained custody of the children. The husband returned to Dublin

and lived with his parents but as his parents were elderly the three children were too much for them, and, as a result, the two eldest were placed in a school run by nuns of the Poor Clare Order. They were visited at weekends by their father and spent their holidays with him and their grandparents.

Adulterous wife not suitable to have custody of children

The wife commenced divorce proceedings in England but the English Courts decided that the custody of the children was a matter to be decided by the Irish Courts.

Kenny, J. in the High Court decided that the religious, moral and intellectual welfare of the children would be better promoted by leaving them with the father. They would get a good secular and religious education in Ireland. They had been in school in Dublin for two years and it was not in their interests to be moved from school to school. Also, he stated

"They will not have the corrupting example of their mother living with a man, to whom she is not married;; However, he continued, these were not the only considerations.

"In my view the ages of the children, their sex, the certainty that they would be happier if they were living at home, rather than in a school and the necessity that they should grow up together . . . makes it so desirable that they should be with their mother that these elements should be held to outweigh the arguments based upon the moral, religious and intellectual aspects."

As a consequence he awarded custody of the children to the mother.

Upon appeal, the Supreme Court reversed Kenny, J.'s decision and granted custody of all three to the father. His conclusions as to the religious moral and intellectual welfare of the children were accepted. Walsh J. stated that the fact that the father was compelled by circumstances to keep two of the children in a boarding school for the greater part of the year, and was therefore unable to let them all grow up together in one household, whereas the mother could do so, was not such a decisive factor as should give the mother custody.

"As matters stand at the moment the children are leading a stable existence . . . the present position of their mother offers no such stability, and there is nothing to suggest that in the immediate future any such stability will be available"

Fitzgerald, C. J. stated

"The fact is that the home which she has to offer to her children is one in which she continues an adulterous situation with a man who has deserted his own wife and his own two children. A more unhealthier abode for the three children would be difficult to imagine"

The fact that by this time Mr. L. had divorced his wife and that Mrs. W. had obtained a Decree nisi for divorce in the English Courts against her husband was held not to in any way change the situation. He stated that even if Mrs. W. entered into marriage with L. "her status in relation to her own children would not appear to me to be thereby in any way advanced".

A factual difference worth pointing out at this stage between *M. O'B v P.M.O'B and J.J.W. v. B.M.W.* was that in the former case the parties adulterous relationship did not commence until five years after the husband and wife had separated, whilst in the latter it seems that the adulterous liaison contributed to the collapse of the marriage. In the light of the decision given in the following case that is to be discussed this difference it seems is of some importance.

In *M.B.O.'S v P.O.O.'S* (1974) the moral welfare of the children was again considered. Here the husband P. left his wife B. and with her agreement kept their three young children in his custody. They lived for a year and a half with the husband's married sister and then for a half a year with his mother and finally came to Dublin to live in a large house with the husband and a woman with whom he was by that stage living with and who had assumed his name by deed poll. A year later the wife instituted proceedings to obtain custody of the children, intending to live with them in her parents house in Cobh.

Kenny, J. in the High Court held the intellectual, physical and social welfare of the children would best be served by the father obtaining custody, but that having regard to his obligation to follow *J.J.W. v. B.M.W.*, he had no doubt whatever that he should award the custody of the three children to the wife. He stated

"The moral welfare of the children would not be promoted by the fact that their father is with a lady to whom he is not married and by whom he has had one child. As the children grow up they will be taught the virtues of chastity and the importance of marriage and they will be living in a household where each of them will be aware that the lady with whom their father is living is not his wife"

On appeal the Supreme Court, by a majority decision, held that the father should obtain custody. It was stated that there was no principle in *J.J.W. v. B.M.W.* which Kenny, J. was obliged to follow. The majority referred to the dangers of again uprooting the children, and to the fact that all aspects of their welfare, including their religious welfare were being properly attended to. Griffin, J. stated that "in my view the moral dangers to the children do not outweigh the other advantages to them in living with their father."

The majority emphasised the fact that the father's relationship with the second Mrs. O'S. had all the appearances of being a permanent union and that as such the children would have to come to terms with it.

Henchy, J. stated "that beyond the mere fact that the father and the step-mother are living together in an unmarried state, there is nothing in the evidence to suggest that the children do not live in a healthy moral atmosphere"

Both Henchy, J. and Griffin, J. stated that regardless of the parent in whose custody the O'S. children were placed, the fact that their father was living in adultery was a fact of life with which the children would have to come to terms with.

Delivering a dissenting Judgment Walsh, J. stated that "The Constitution recognizes the Famiiy as the natural primary and fundamental unit group of society: this is the keystone of the social structure which the Constitution undertakes to maintain. The household in which these children now reside with their father is not a family in that sense . . . these three children would in my view be far more of a family unit if they lived with their mother instead of residing with their father in the mixed menage in which they now find themselves."

In *E.K. v. M.K.* (1974) a similar problem gave rise to a further Supreme Court decision. In an appeal from a decision of the High Court, by which the parties children,

a boy aged 5½ and a girl aged 3½ years of age had been placed in the custody of the mother, the Supreme Court by a majority awarded custody to the father. The facts of this case were as follows:

Both parties agreed in the proceedings that their marriage had irretrievably broken down. Evidence was given that a year prior to the parties separating, the wife had committed "an act of adultery" with one of her husband's employees and it was not alleged that this act by the wife was a major factor in the breakdown of the parties marriage. Upon the collapse of the marriage the parties separated and agreed that the wife should retain custody of their children. However, a short time later the wife became friendly with a Mr. M. and it was established in Court that M. and Mrs. K. had engaged in sexual intercourse on many occasions in the latter's home after the children had gone to bed. It was also established that M. was well known to the children, was liked by them and that they called him Uncle.There was no suggestion that the wife's association with M commenced before Mr. and Mrs. K separated. Awarding custody to the father Walsh, J. stated that

"a removal of the children from the custody of their mother at such an age would be justified only when it has been found that the mother has been so greatly wanting in her duty to her children that the removal would be warranted." Having regard to the mother's behaviour he felt such removal was justified. The life she was leading he stated was "a manifest repudiation of the social and religious values with which the children should be inculcated and which she believes she can teach them, while at the same time clearly repudiating them herself in the sight of her own children"

Of particular interest is the fact that Henchy and Griffin J.J. formed a majority in the previous case of *M.B.O.'S v. P.O.O.'S.*, in which a three man Supreme Court sat, but delivered minority dissenting opinions in *E.K. v. M.K.* in which a five-man Supreme Court sat. (Majority judgment delivered by Fitzgerald C.J., Walsh and Budd JJ.).

One further Supreme Court Judgment that should be mentioned is that delivered in the case of *W. v.W.* In this case the Supreme Court affirmed a High Court Order to transfer the custody of two boys aged 14 and 11 from their father to their mother. Two years previously the High Court had granted custody of the boys to their father. However, it was established that while they were in his custody the father had engaged in a sexual relationship with another woman. It was stated that "His misconduct would have a devastating effect on the moral standards of the children at their present age". Six months later however, the High Court transferred custody back to the father. Contrary to the Order of the High Court as affirmed by the Supreme Court, the boys had returned to live with their father. Upon their being interviewed by Kenny, J. they were adamant that they wished to remain with him, and stated that if the Court placed them in their mother's custody they would run away. Stating that "When children of this age express a strong preference for living with one of their parents, the Court should give respect to it", Kenny, J. permitted them to remain with him. On appeal this Order was affirmed by the Supreme Court.

Adulterous relationship bar to custody

On the basis of the above authorities it seems that as the law stands at present a spouse who commits adultery while still living with the other spouse and who leaves the family home to set up home with a third party has little or no chance of obtaining a Court order of custody of his children. If however, such a spouse ceases to be a party to an adulterous relationship, his or her chances of obtaining a grant of custody will greatly increase. That this is so is clearly seen by the Judgment of the Supreme Court in 1970 in the case of *Cullen v. Cullen*. In this case a mother whom the Court seem to regard as the party responsible for the break up of the marriage was awarded custody of her youngest child on condition and subject to the understanding that the association with her former lover was at an end.

A spouse whose marriage has broken down and who does not become a party to an adulterous relationship until sometime after he has separated from his spouse, may be successful in an application for the custody of his children. However, for the solicitor advising his client it is impossible to predict with accuracy the likely outcome of such proceedings, having regard to the varying judicial opinions as to the damage likely to be done to the welfare of a child if it is placed in the custody of an adulterous parent. An important factor that will have considerable influence on the decision of the Court in such circumstances is whether or not the child or children in respect of whom an order is sought have resided with the adulterous spouse for a considerable period before the dispute arises for determination by the Court.

Despite judicial assertions that the Court is concerned with the behaviour of spouses as parents, and not their behaviour as spouses in determining custody disputes, it seems that the one circumstance in which a party's behaviour as a spouse is likely to greatly jeopardize his chances of an award of custody is that in which he or she commits adultery. Other types of matrimonial misbehaviour have not been subject to similar judicial condemnation, or censure, and have not been held out as constituting so great a danger to a child's welfare. Thus in *H. v. H.*, Parke, J., in the High Court granted custody to a father whom he acknowledged frequently drank to excess, was violent and unstable and who had viciously assaulted his wife whilst she was pregnant. Subsequent to being assaulted, the wife had formed a liaison with another man, a Mr. G., and there was evidence that Mr. G. and the wife intended to set up a permanent home together in England.

Delivering judgment Parke, J. held Mr. G.'s meeting with the wife to be "disastrous for the marriage" and went on to state

"I believe that had no untoward event intervened to interrupt its natural course (i.e. had Mrs. H. not met G) this marriage, like so many of such unions, would have had many violent storms, but probably would never had foundered".

Whilst religious differences inevitably also influenced the decision reached in this case, Parke J. made it quite clear that even if such complications did not exist, he would have awarded custody to the father.

He stated that "In general . . . the Courts will not grant custody to a parent who has abandoned the matrimonial home and lives in an adulterous establishment". The reason being "the extremely bad moral example which would be given to the child." Strangely whilst condemning the mother for "abandoning" the matrimonial home, he at no stage discussed the question of whether Mrs. H was justified in leaving the family

home because of the behaviour of her husband.

Put simply, Parke, J. decided that the infants' welfare would be placed in greater danger if he went to reside with his mother and G. in an adulterous situation than if he remained in the custody of a father who was an unstable person, a drunkard and a wife beater. I personally believe the reasoning behind this decision is open to serious question. I find it even more curious in the light of Parke J.'s statement that he believed Mr. G. had "the qualities which would make him a good father".

By way of comparison a recent English decision by the Court of Appeal is of particular interest. In *Re K (Minors)* an order was made granting an adulterous mother the care and control of her two children (a boy aged 5½ and a girl of 2½). The marriage between the parents had irretrievably broken down. The mother had an adulterous relationship with M and wished to leave the matrimonial home without the children. The Court of Appeal, per Stamp, L. J., affirming the decision of the Family Division of the High Court (Reeves J.), stated that "the dictates of nature that the mother is the natural guardian, protector and comforter of very young children and in particular of a very young girl had not been displaced" by the mother's conduct. The welfare of the children was the first and paramount consideration and the mother was described as "an excellent mother".

Even if the children were placed in the father's care, Stamp L. J. stated they would not be protected from "moral and spiritual harm", as they could not fail to be aware of the circumstances in which their mother was residing. This latter approach is very similar to that adopted by Henchy J. and Griffin J. in *M.B. O'S v. P.O.O'S*.

An important difference between the decision and the Irish decision discussed earlier is that the English court was prepared to grant custody to a parent about to leave her children and live in an adulterous relationship. Another recent English decision of interest in this context is that of *S(D.B) v. S(D.J.)* (1977). In the case Ormrod L.J. emphasised the danger of condemning one parent for adulterous behaviour without taking into account the matrimonial misbehaviour of the other parent. The Court has stressed that the best interests of the child is the predominant consideration in custody matters. If the interests of the child require that he or she be awarded to one parent, the interests and wishes of the other parent must yield to the child's interests, whether or not that parent's matrimonial conduct has been unimpeachable.

In a Society whose Courts possess no jurisdiction to dissolve the matrimonial bond, upon the breakdown of a marital relationship, the number of custody cases coming before the Courts, in which one or both parties to a broken marriage is engaging in an adulterous relationship is likely to increase. The Judiciary in applying the welfare principle to such custody disputes is faced with a moral dilemma. It is a dilemma that will be aggravated if the Nullity Bill proposed in the previous Attorney General's White Paper on the law of nullity becomes law. The danger is that in seeking a means to resolve that dilemma, despite judicial statement to the contrary, an award of custody will become a prize for good, or at least moral matrimonial behaviour and the importance of the parties conduct as parents and their relationship as parents with their children will be forgotten.

BIBLIOGRAPHY

Family Law in the Republic of Ireland by A. J. Shatter, Chapter 13.

M.O'B. v. P.M.O'B, Jan, 1971, unreported High Court, 1965, No. 207 Sp. – Gazette, April 1971, p. 256.

J.J.W. v. B.M.W. 1971 (110 I.L.T.R. 45) High Court, Supreme Court.

M.B.O'S v. P.O.O'S 1973 (110 I.L.T.R. 57) High Court, Supreme Court. – Gazette, 1974, p. 172.

E.K. v. M.K. May 1974 unreported High Court, Record Number 1973/17Sp. July 1974 unreported Supreme Court, Record No. 1974/86. – Gazette, December 1974, p. 265.

W. v. W. December 1974 unreported Supreme Court Record No. 1974/148. June, 1974 unreported High Court Record No. 1971/203Sp. (There was no written judgment delivered by the Supreme Court when confirming the later High Court Order).–Gazette, March 1975, p. 43.

Cullen v. Cullen May, 1970 unreported Supreme Court 1969/59.

B.V.B. (1975) I.R. 54 Supreme Court.–Gazette, April 1971, p. 256.

B. v. B. July, 1972 unreported High Court, Record No. 1968/146 Sp.

H. v. H. Feb. 1976 unreported High Court, Record No. 1975/450 Sp. – Gazette, Jan./Feb., 1976, p. 6.

K. (Minors) (Wardship) [1977] 1 All E.R. 647 (C.A.).

S (B.D.) v. S (DJ) [1977] 1 All E.R. 656 (C.A.)

In some of the above cases there are written judgments, other than those I referred to. I have merely listed above those which I have dealt with in this paper.

Editor's Note

The Editor wishes to dissociate himself from the conclusions reached by the author, namely, that the number of custody cases before the Courts, in which one or both parties to a broken marriage is engaging in an adulterous relationship is likely to increase. While the proposed Nullity Bill is not perfect, everyone has been given an opportunity to make submissions.

In *H. v. H.* (1976) it is necessary to emphasise that Mr. G. was a divorced rich alien who belonged to a minority religion. It follows that, if custody of the child had been awarded to the mother, who was a hairdresser with her own establishment, the child would inevitably have been brought up in a different religion from the one in which he was born.

Parke J., in approving of *Re Tilson* (1951) I.R. 1, and *Re May* 92 I.L.T.R. and Art. 42(1) of the Constitution, held that the mother had no right to change the religion of the child against the wishes of the father. Socially, the child might become "odd man out" if he adopted the tenets of another religion. Morally, the Courts will not generally grant custody to a parent who has abandoned the matrimonial home. Under Irish law, no lawful union can take place between the mother and Mr. G. during the father's lifetime. The father lives with his parents, and the

RECENT IRISH CASES

AUCTIONEER – COMMISSION

Plaintiff auctioneer's claim for commission dismissed as defendant's premises were not sold by auction.

The plaintiffs, a well-known firm of auctioneers, claim from the defendants £2,560, being 2½% on £106,000 which defendant vendors received on a sale of licensed premises in Ballyfermot on 11 September, 1975. The first defendant and his deceased brother, whose widow the second defendant is, had been co-owners of these licensed premises in the proportion of six tenths, and four tenths respectively. The widow, on account of death duties, was willing to sell her husband's share to the first defendant, but their respective solicitors and accountants could not agree on terms. While in negotiation, the defendants agreed to put the property up for public auction by the plaintiffs. On 1 May, 1975, plaintiffs wrote to the first defendant about the proposed auction of the premises and mentioned that their fees were 2½% of purchase price. No other terms were agreed. Between 9 and 19 May, 1975, the plaintiffs published seven newspaper notices advertising the auction for the 28th May, but instructions were given on 21 st May, to cancel the auction. No auction was subsequently held, but the property was ultimately sold privately to a Mr. Regan on 11 September, 1975. Mr. Regan gave evidence that the first time he did anything about purchasing the property was when he saw the advertisement postponing the auction. In June, there were negotiations between the auctioneers and the defendants for a possible sale for £105,000. At the meeting in June, there were conflicting versions of the events that had taken place. But the plaintiffs do not found their claim upon the June meeting, but on the terms of the letter of 1 May. The plaintiffs maintain that their services were engaged by the defendants for the purpose of finding a purchaser, and that the mode of sale was of no significance. However the plaintiffs were expressly employed in terms stated by themselves to sell the property by public auction on a specified date at a specified place. The plaintiffs were employed to use their skill to carry out a specific work. The contract contains no provision for remuneration in the event of no auction being held. The defendants are thus not in breach of their contract, and no claim is maintainable on a *quantum meruit*. Accordingly the plaintiff's claim for commission is dismissed with costs.

Daniel Morrissey & Sons Ltd. v. Joseph and Bridget Nalty – Gannon J. – unreported – 18 April, 1977.

CONTRACT – SPECIFIC PERFORMANCE

Specific performance refused as contract for sale was illegal, as an attempt to defraud the revenue.

Claim for specific performance of a contract of sale by the plaintiffs to the defendants of the Crofton House Hotel, Dun Laoghaire, for £190,000. The contract, dated 7 January, 1974, was prepared on the Law Society's standard form. A deposit of £2,000 was paid, and it was signed by the two first defendant brothers, Francis Woods and Thomas Woods "in trust". Nevertheless the contract provided that the purchaser's liability thereunder is jointly and severally binding on them. The plaintiff company was controlled by two brothers, Brian and Anthony Rhattigan, with the Anglo-Irish Bank having a substantial interest. The third named defendant, Investment Holdings International Ltd. is controlled by the Woods brothers. This company was first disclosed to the Vendors by letter from purchaser's solicitor on 19 August, 1974.

The whole transaction was far from being the straightforward sale appearing on the contract in writing. The solicitors concerned took part in the conduct of this contract although aware that their clients were dealing in ancillary transactions of which they had no notice. The main ancillary transaction referred to lands at Castletown which the Woods brothers had agreed to sell to the Rhattigan brothers for £25,000. There was a conflict of evidence in relation to most of the incidents in the transactions. At the time the contract for the sale of the Crofton House Hotel of 7 January, 1974, was duly signed by the Woods brothers, the solicitor for the plaintiff left the parties together to complete another transaction; the solicitor for the defendants was not present. In the absence of solicitors, the parties signed a supplementary agreement, to the effect that if the sale of the Crofton House Hotel was not completed due to a failure on the part of the vendors, the vendors would pay the Woods brothers the sum of £25,000. This agreement was duly signed by the Rhattigan brothers and by the Woods brothers. The back of this supplementary agreement referred to purchase of 13 acres of land at Castletown, Celbridge for £170,000 by Janus Securities, a company controlled by the Rhattigan brothers, and the sum of £25,000 related to this purchase. The real purchase price of the Crofton House Hotel was £190,000 plus £25,000 payable in respect of the Castletown lands.

In the early summer of 1974, the Woods brothers cleared the Crofton site preparatory to development. Owing to the recession and lack of demand for office blocks, the Woods brothers were not able to complete this transaction.

It was argued on behalf of the Woods brothers:-

(1) That there was no sufficient memorandum in writing to satisfy the Irish Statute of Frauds. McWilliam J. was satisfied that the memorandum did not set out all the material terms of the contract, but he was also satisfied the demolition of the Crofton premises was an unequivocal act of part performance which takes the case out of the Statute of Frauds.

(2) That the contract is illegal, as it constitutes an attempt to defraud the Revenue authorities and as constituting a fraud on the shareholders of one company to the advantage of the other company. Undoubtedly both parties were trying to conceal from the Revenue authorities the true nature of the transaction. Although the issue of illegality should have been pleaded, in the circumstances it cannot be ignored. The plaintiff's claim for specific performance of the contract is accordingly dismissed.

Starling Securities Ltd. v. Francis and Thomas Woods and Investment Holdings International Ltd. – McWilliam J. – unreported – 24 May, 1977.

LANDLORD AND TENANT

Applicants not entitled to new tenancy, as premises are not a "tenement" not being within an "urban area".

The applicants applied to the Circuit Court for a new tenancy in respect of premises at Waterstown Avenue, Palmerstown, Co. Dublin, which had been granted for 10 years from 13 August 1966. The respondents contended that the premises were not a "tenement" within the Landlord and Tenant Acts 1931-71. The Circuit Court on 17 January 1977 granted a new lease of the premises for 21 years, and its terms were fixed by the Court. The respondents appealed.

The respondents contend that the demised premises do not constitute a "tenement" as they are allegedly not situated in an "urban area". The applicants contend that the premises are situate in the village of Palmerstown, and are therefore in an "urban area". The site of the applicants is however situated just off a private driveway in open fields approximately 175 yards from the nearest habitation, and the mode of access to it does not bring it within a defined "urban area". As the premises are not a "tenement" within the Act, the applicants' claim for a new tenancy must fail, and the decision of the Circuit Court must be reversed.

Readymix Ltd. v. Liffey Sandpits Ltd. – Costello J. – unreported – 8 June 1977.

PLANNING

Application for permission to erect temporary buildings includes an access roadway – Advertisement published gives the plaintiff residents no notice of this – Declaration granted that the permission granted was not a valid permission.

Applicant nun, the first defendant, published an inadequate advertisement concerning an application for permission to erect three temporary prefabricated classrooms at a secondary school with more than six acres of ground; this notice did not purport to include a roadway giving access to the schools through a cul-de-sac. It is clear that access from this cul-de-sac to the school generally is not within the nature of an application to erect prefabricated classrooms. The grant of permission was not validly granted and the plaintiff residents are entitled to a declaration accordingly. The planning permission must specify the exact work to be done. Any person who thinks he is prejudiced by it can appeal because he has before him details of the work to be done. If there were an agreement between the appellants and the planning authority, there would be no way for other residents like the plaintiffs to appeal.

Kelleghan, Dodd and O'Brien v. Mary Corby and Dublin Corporation – McMahon J. – unreported – 12 November, 1976.

PRACTICE

Court says Gardai may use DPP'S name in prosecution

The Supreme Court upheld an appeal by the Director of Public Prosecutions from a decision of Mr. Justice McMahon in the High Court in which he dad decided that the District Justice could not hear charges brought by a member of the Garda Siochana in the name of the DPP when no specific authorisation had been obtained from him.

Because of the importance of the point of law decided,however, the Court allowed the respondents their costs.

The matter arose out of charges against William Roddy, John J. Duff and Edmond Roddy, all of Cloonlumney, Co. Roscommon, in Ballaghadereen District Court in September, 1975. The charges included assault, obstruction of the Gardai in the execution of their duty, using language calculated to lead to a breach of the peace, and being drunk and disorderly.

No Authorisation given by DPP

District Justice Gilvarry, in a consultative case stated, asked the High Court to say whether he could hear charges brought by a member of the Garda Siochana in the name of the Director when he accepted that no specific authorisation was obtained from the DPP.

The District Justice, in his case stated, said that it was conceded by the Superintendent that no such authorisation had been obtained, and it had therefore been submitted on behalf of the defendants that the charges brought in the name of the DPP were not properly laid against them.

Opposite View

In the High Court, Mr. Justice McMahon had held that such charges brought in the name of the DPP did require his specific authorisation.

In the Supreme Court, the Chief Justice, Mr. Justice O'Higgins, said that no general authorisation given to the Gardai to bring prosecutions in the name of the DPP would suffice. In his view, Mr. Justice McMahon had been correct and the appeal should be dismissed.

Mr. Justice Griffin and Mr. Justice Parke, who were the other members of the Court, took the opposite view and in separate judgments said that they would allow the appeal.

Mr. Justice Griffin, in his judgment, said it had been conceded in the District Court that the authorisation of the DPP had not been obtained. Reliance, however, was placed on a letter dated January 9th, 1975, from the DPP to the Commissioner of the Garda Siochana asking him to bring to the notice of Gardai that as and from January 19, 1975, the DPP would, pursuant to the provisions of the Prosecutions of Offences Act, 1974, perform all the functions formerly performed by the Attorney-General in relation to all criminal matters defined in the Act.

Before the passing of the Criminal Justice (Administration) Act, 1924, all prosecutions were brought in the name of the King unless they were brought by persons authorised by law to do so, including common informers who were always entitled at common law to institute a prosecution. For the purpose of bringing a prosecution in the name of the King it was not necessary to obtain the consent or permission of the King to do so.

Existing Rights

The 1924 Act substituted the Attorney-General for the King in respect of prosecutions brought in the District Court but continued to preserve existing rights. There seemed to have been no settled rule as to whether such prosecutions should be brought in the name of the Attorney-General, or at the suit of the Superintendent or in the name of the prosecuting Garda. Where the

prosecution was brought in the name of the investigating Garda, the Garda, though performing what was his duty, was in legal quality a common informer. Mr. Justice Griffin said that if, in transferring the functions of the Attorney-General to the DPP in criminal matters and in substituting the DPP for the Attorney-General in all statutes or statutory instruments, the Legislature intended that a change or reservation would be made in respect of prosecutions formerly taken in the name of the Attorney-General, he would have expected such a drastic change to have been clearly and expressly stated by the Legislature. The authority purported to be conferred by the letter of January 9th, 1975, was therefore in his view unnecessary.

Statutory Power

If the practice of bringing proceedings in the name of a Garda was to be continued it would be far more desirable that he should be given a statutory power to do so rather than having to prosecute as a common informer. It would, however, be more desirable still if all prosecutions were brought in the name of and prosecuted by the DPP, if whatever administrative difficulties which now existed could be overcome.

Mr. Justice Parke said that he would agree with the judgment of Mr. Justice Griffin and would therefore answer the District Justice's question in the affirmative and allow the appeal.

The People at the suit of the Director of Public Prosecutions v. William Roddy, John J. Duffy and Edmund Roddy. – Supreme Court (O'Higgins, C.J., Griffin and Parke J.J.) – unreported – 25 February, 1977.

PRACTICE

Plaintiff entitled to be paid in foreign currency if judgment is given against foreign defendant.

Application by plaintiff for judgment in default of appearance to a Summary Summons claiming 14,740 Dutch guilders being the amount due for goods sold and delivered. The Central Office of the High Court refused the application on the ground that the practice has always been to give judgment in Irish currency only. However there is no reported decision of an Irish Court that a judgment cannot be given in a foreign currency. The question whether a judgment can be given in foreign currency has recently been considered by the House of Lords in *Mileangos v. George Frank (Textiles) Ltd.* – (1975) 3 A.E.R. 801 – which laid down that judgments founded on moneys due on foreign currency could henceforth be paid in that foreign currency. The requirements of International Commerce are best met by a rule which enables the Court to give judgment in whatever currency the plaintiff is entitled to under the terms of the contract. In *Barclays Bank Ltd. v. Levin Brothers Ltd.* (1976) 3 A.E.R. 900, Mocatta J. held that to obtain judgment expressed in a foreign currency, it is not necessary to establish that the proper law of the contract is a Foreign Law.

Accordingly the plaintiff is entitled to an order that the defendant does pay to him the sum due in Dutch guilders or the Irish currency equivalent thereof at the date when the judgment in default is entered in the office.

Damen & Zonen v. O'Shea. – McMahon J. – unreported – 25 May, 1977.

RIGHT TO LIGHT

Injunction granted to plaintiff to demolish defendant's extension, as it obstructed the light of plaintiff's diningroom.

Plaintiff is owner of premises in Palmerston Gardens, Dublin, and defendant is owner of adjoining premises. These houses form part of a row of two storey non-basement houses with returns, built in pairs. The return of plaintiff's house is on north side, while that of the defendant is on the south side.

The defendant built an extension from the rere of his house to the garden wall, which was 12 feet high for a distance of 21 feet, and had a flat roof. The plaintiff complains that there has been an actionable interference with his right to light to the ground floor of his premises, which he uses as a dining room. The plaintiff contends that in any event the dining room was not a well-lit room, and that the erection of the defendant's extension has caused a further substantial diminution of light in that room.

The plaintiff's wife was first approached in April 1974 and asked by the builder whether she had any objection to the defendant building the extension. The plaintiff's wife told the builder that he would have to get in touch with the plaintiff, who emphasised that he would protect his rights if the building was too high; this was confirmed by a letter of 21 April 1974. The erection of the extension commenced after 15 May 1974 to a height of 12 feet 10 inches. The plaintiff's solicitors wrote to the defendant on 21 May 1974 to the effect that, as a result of a search in the Planning Department, they could not discover any evidence of an application for permission to erect the extension. The solicitors for the plaintiffs then stated that, if the work continued, an application would be made to the Court for an Injunction. No notice was taken of this letter and the extension was completed. The various witnesses for the plaintiff now proved that the diningroom was much darker than formerly. There is no doubt that the erection of the defendant's extension has caused a substantial deprivation of light to the plaintiff's dining room. The plaintiff is accordingly entitled to compel the defendant to remove the extension which he has built. This is all the more the case, as the defendant persisted in the building of the extension with notice of the plaintiff's objection, and that apparently the extension was built without planning permission.

Loughney v. Byrne – Murnaghan J. – unreported – 7 October 1974.

CERTIORARI

Conditional Order of Certiorari discharged as Tribunal had observed rules of Natural Justice in deducting Social Welfare benefits from prosecutrix.

Conditional Order of Certiorari granted to the prosecutrix, Monica Hayes, on 2 March, 1977, to quash the award made by the Criminal Injuries Compensation Tribunal in respect of the death of John Hayes. on the following grounds:–

(1) The Tribunal did not have jurisdiction to reduce the gross value of the loss suffered by the dependants of John Hayes by a sum which was the value of the

Social Welfare benefits payable on his death;

(2) The Tribunal wrongfully purported to assess the Social Welfare benefits without giving the prosecutrix an opportunity of making submissions.

This Tribunal was set up by direct executive act and by means of a Scheme which the Minister for Justice laid before the Houses of the Oireachtas in February, 1974, and not by any statute. Briefly the Scheme provided that this Tribunal could pay *ex gratia* compensation in respect of an injury which is directly attributable to a crime of violence, or if the victim attempted to assist the prevention of crime or the saving of human life. The Tribunal is free to determine the amount of the compensation, and there is no appeal from its verdict. Despite these conditions, the High Court on Certiorari can intervene if the principles of Natural Justice are not observed.

The prosecutrix is the widow of John Hayes, who, whilst an employee of Aer Lingus, was killed by the setting off of a bomb at Dublin Airport. She duly brought an application before this Tribunal for compensation on behalf of herself and other dependents. The application was supported with an actuarial report based on the earnings of the deceased which the Tribunal considered in detail. The scheme provides that the compensation to be awarded will be on the basis of damages under the Civil Liability Act, 1961. Section 50 of the Civil Liability Act provides that, in assessing damages for fatal injuries, account shall not be taken of any pension, gratuity, or other like benefit payable under Statute. This clearly excludes as a deduction any Social Welfare benefit payable to a dependant. The Tribunal contends that, if on the ordinary construction of the word "claimant", it means any person entitled to claim, the Scheme provides that any person claiming compensation from this Tribunal, which is entirely funded by the Government, should be prevented from obtaining further funds from Government sources. Therefore, as regards Point (1) ante, the Tribunal was acting entirely within its jurisdiction. As regards Point (2), the prosecutrix gave evidence before the Tribunal, and her legal representative was invited to make submissions with regard to her claim. The prosecutrix was duly informed at the hearing that the Tribunal intended to deduct the Social Welfare benefits from the amounts payable for compensation. Accordingly there was no want of Natural Justice in the proceedings before the Tribunal, and the Tribunal was correct in its approach to the matter. It follows that the Order of Certiorari will be discharged, and the cause shown against the making of the Order will be made absolute.

The State (Monica Hayes) v. The Criminal Injuries Compensation Tribunal – Finlay P. – Unreported – 24 May, 1977.

Negligence – Fatal Injury

New trial directed on the issue of damages and of mental distress – Correct actuarial evidence not applied in assessing damages.

The plaintiff was the mother of the deceased, and, as a dependant under the Civil Liability Act, 1961, took an action for negligence on behalf of herself and nine other dependants, in respect of the death of Jeremiah Dowling in the course of his employment at defendant's factory at Monkstown, Co. Cork, on 23rd May, 1973. The action was heard by Murnaghan J. in Cork sitting without a jury, and damages in the sum of £3,060 were assessed, The Judge also awared £940 for mental distress, making a total award of £4,000. The plaintiff appealed against this award, seeking to have it set aside, on the ground that the Judge failed to have regard to the evidence of the actuary in assessing damages, and that the total sum awarded was perverse, inadequate and against the weight of evidence.

The deceased was born in July, 1955, and was not yet 18 years of age at the date of the accident. The amount of his wages varied according to the number of hours worked, as he was employed at an hourly rate. He had been employed by the defendants for 5 months before his death. There were nine children in the family. The deceased paid about £12.00 per week to his mother, and the net value to the family of his contribution was £8.00.

Although the actuarial evidence did not substantiate this, the trial Judge was quite satisfied that the reasonable probability in that case was that certainly by the time he reached the age of 23 years the deceased would have left home, and probably would have got married. As the deceased was not 18 at the time of his death, there was no evidence of any kind touching his intentions with regard to marriage.

Walsh J., in considering what a Court should do in such a situation, stated that a Court could only have resort to such probable pattern as might reasonably be deduced from available statistics. The plaintiff was not absolved from the primary duty of discharging the necessary burden of proof which required not merely the evidence given by the actuary but a more detailed analysis of that evidence than was in fact given. Walsh J. said that the trial Judge admittedly misunderstood the nature of the actuarial evidence. The figure of the actuary was based on a calculation which related particularly to a case of a person who was unmarried but who would probably get married in accordance with statistics. It followed that a new trial should be ordered in respect of the damages resulting from the loss of dependancy.

Walsh J. said that it was not possible to detect upon what evidence the trial Judge awarded £940. The correct approach was for the Judge to make a notional award in the sum which he would on the evidence be justified in giving to each of the persons who suffered mental distress, without taking into account the maximum sum of £1,000. If the total of the notional figures, when arrived at, exceeded £1,000, then the figures should be scaled down proportionately, so that the total is reduced to £1,000. As this procedure has not been followed in this case, a new trial was directed on the issue of compensation for mental distress as well as on the issue of damages.

Dowling v. Jedos Ltd. – Supreme Court (Walsh, Kenny, and Parke JJ.) per Walsh J – unreported – 30 March, 1977.

child's grandmother would give him a good example.

In considering the case of *E.K. v. M.K.*, (1974) Fitzgerald C.J. said that the wife's conduct had the effect of breaking up the marriage, and of ruining her own life and that of her husband. If she persisted in that conduct, it would inevitably result in ruining the lives of the two children.

Walsh J. stated that on the facts, the wife had a permanent adulterous relationship with Mr. M. She had a separate establishment from the husband. The husband and wife were both wealthy, but the wife's efforts to obtain an annulment before the Ecclesiastical Courts had failed. The wife had quite openly and intentionally broken the matrimonial bond. In so far as the question of the social, moral and religious aspects of the children's welfare are concerned, there is a very marked difference between the husband and the wife; the way of life chosen by the wife is the more likely to be harmful to the children's welfare.

Budd J. stated that the husband was in a position to provide a suitable home and suitable care and attention for the children. It was unlikely that the knowledge of the wife's liaison could be kept from the children for long; she was thus unable to give a good example.

Henchy J. stated that the wife had acted capriciously and irresponsibly on occasions, and this led to final separation in 1973. In his view, there was insufficient evidence at the hearing before Kenny J. to establish the alleged permanent adulterous relationship with Mr. M. He also thought that the medical evidence, which stated that the daughter's health would be impaired if she did not stay with her mother, should not have been excluded. The wife had given an undertaking that Mr. M. would have no contact with the children, and the children appeared to be happy with their mother. A change would entail an exchange of the known for the unknown. In view of the importance of the children's welfare, it was essential that the full evidence should be heard. Griffin J. concurred.

APPOINTMENTS

Mr. Declan Costello, Attorney-General, has been appointed a Judge of the High Court.

Circuit Judge James D'Arcy has been appointed a Judge of the High Court.

Mr. Timothy Desmond has been appointed a Judge of the Circuit Court.

Mr. John Grattan Esmonde has been appointed a Judge of the Circuit Court.

Mr. Seamus Mahon, Solicitor, Tullamore, has been appointed a Justice of the District Court.

Mr. Anthony Hederman, S.C., has been appointed Attorney-General.

Mr. John Fitzpatrick, Solicitor, 67 Fitzwilliam Square, Dublin 2, has been appointed Solicitor to the Attorney-General.

Mr. Brendan Toal, Barrister-at-Law, has been appointed a Commissioner of the Land Commission.

CORRESPONDENCE

The Construction Industry Federation,
9, Leeson Park,
Dublin 6.

16th August, 1977.

The Editor,
Incorporated Law Society Gazette.

Dear Sir,

I refer to the article in your January-February issue entitled "Purchasers at Risk on Deposits". You refer to representations made to the Construction Industry Federation and state that "but while they have been contemplating some sort of a guarantee system, none is likely to be produced in the immediate future".

There may be a misunderstanding here. We propose to introduce, with effect from the 1st January 1978, a Structural Guarantee Scheme for privately owned houses built by member firms. With regard to a guarantee scheme for purchasers who pay a deposit and then find that the builder becomes insolvent, there are, particularly at the present time, difficulties in this regard and there is also an alternative and more satisfactory solution.

Firstly, as we will shortly introduce the above mentioned scheme for structural defects, it would be most unlikely that we could introduce another scheme in or around the same time. The Structural Defects Scheme will be financed by our members and it will take some time before we can see what the ratio of claims is. Secondly, funding a scheme to protect deposits would be extremely difficult as the experience in this regard would not be sufficient to provide data from which a properly structured scheme could be based; also, of course, it would ultimately add to the cost of housing as it would have to be financed. The incidence of builders accepting deposits and then becoming insolvent is rare but I appreciate fully that it causes extreme hardship to the house purchaser. A far better way of dealing with the matter, which would avoid the expense of setting up a deposit guarantee scheme and at the same time deal with the problem, would be to amend the legislation relating to insolvency, to specify that persons who place deposits should be regarded as preferential creditors given the same rights over mortgage or debenture holders as workmen are for the purpose of wages and the Government for the purpose of taxes. This would effectively protect the house purchasers without having to set up an elaborate and possibly costly scheme.

Yours faithfully,

THOMAS REYNOLDS, Managing Director.

Council of Europe – Study visits Abroad

The Council of Europe has drawn up a scheme to promote study visits abroad by lawyers from member States of the Council.

Full particulars and application forms for assistance towards organising or financing study visits in accordance with the scheme are available on request from the Secretariat of the Department of Justice, 72/76 St. Stephen's Green, Dublin 2. Completed forms should reach the Department not later than 30 September, 1977.

● Continued from page 104

Applications by telegrams or phone may also be made. Only a solicitor may make an application by phone. If this is done a letter must be sent the same day to the Registrar or Local Registrar confirming the application and enclosing the prescribed fee, plus a sum to cover the cost of the telephone reply.

If a forgetful solicitor has not paid after a previous phone call he may not get another search in the same way.

Proceedings in the Registry are dealt with in the next sixteen Rules. Under Rule 213 the Registrar may ask a Court to interpret its Order or direct how it may be carried out.

As regards the cancellation of registered charges on sales where the solicitor lodges the amount at the Bank in joint names, this is common but is normally not sufficient.

If he cannot get a Release he could proceed under Section 5 of the Conveyancing Act of 1881 and lodge the money in Court with the costs and expenses. In cases of hardship and small amounts we may act differently.

SOLICITOR'S COSTS

Part VII of the Rules deals with solicitors' costs. The Land Registration Rules Committee has been considering the amendments necessary to the Rules in consequence of the recent recommendations of the National Prices Commission on the subject of Solicitors' Remuneration.

FEES

The Land Registration Fees (No. 2) Order of 1966 is the current base on which the fees are assessed. A subsequent Order came into operation in November 1974 dealing only with the payment of fees as well as Land Registry stamps. We now accept fees paid by postal order, money order, bank draft or in cash.

The elasticity provided by the *ad valorem* fees has so far taken care of the fact that the fixed fee items represent less and less the actual cost of the work done in respect of these items. If they were to be based on the work done they would require frequent adjustments. Some revision of fees is being considered at the moment. New fees must be fixed in respect of the filed plan copy map and some other adjustments are proposed. Fees are fixed by Order of the Minister for Justice with the consent of the Minister for Finance.

Lists of the common errors committed by Solicitors on lodgment of Dealings and Applications were published in the Law Society's Gazette, in two sections, the first in the double issue of January/February 1976 which dealt with the dealings in general, and the second in the issue for March 1976 which dealt mainly with First Registration applications.

In correspondence with your Society in 1971 it was pointed out that 40% of the cases presented for Registration were not ready to be proceeded with because of some defect in the documents. The percentage does not seem to have changed much since. I recommend that these published lists should be consulted when preparing applications for registration.

The Landlord and Tenant Bill 1977, now before the Oireachtas has provisions about continuing covenants on acquirement of the Fee Simple interest by a tenant whether by transfer or on a County Registrars Vesting Certificate and how they will affect registered property but the form will not finally be clear until the Bill is passed by the Oireachtas.

Our problems of arrears, staffing and accommodation unfortunately remain and are inter-related.

A new system of reorganisation is about to be implemented in the Land Registry. It is hoped that when it is in full operation it will reduce the arrears and also the time taken to complete registrations of all kinds.

In answer to questions raised after the lecture, Mr. Griffith made the following points:

(1) The Register is only conclusive of the owner's title as appearing thereon, and of any right, privilege or burden appearing thereon.
(2) The effect of legislation and of Court decisions as to the conclusiveness of the Register is carried out in the Land Registry.
(3) As regards the entry of charges as burdens on the Folio, this is normally done in one of the following circumstances:
   (a) If a charge is suddenly revealed, on an application for conversion of Possessory Title into Absolute Title.
   (b) On a merger of the leasehold interest into the fee simple.

   In such cases, the Land Registry would not know whether the ownership of the charge may have been assigned since it was created, or not.

SOCIETY OF YOUNG SOLICITORS

THE LOCAL GOVERNMENT (PLANNING-DEVELOPMENT) ACT 1976

Summary of a Lecture delivered by Richard Woulfe, Solicitor, Limerick Corporation, to the Society on 24th April 1977

In this age of jubilee, centennial and bicentennial celebrations it is indeed noteworthy that Richard Woulfe's lecture was the 100th lecture delivered to this Society. In retrospect one might have expected the Society's first colour script to have reared its head on such an occasion; perhaps when the 200th lecture is delivered the then committee might consider whether or not the script should be accompanied by a full page pullout colour picture of the lecturer! Further suggestions on this particular point would be most gratefully received.

At Mr. Woulfe's suggestion the Society had made available at the lecture copies of the Local Government (Planning and Development) Regulations 1977 (Statutory Instrument No. 65 of 1977). After a brief historical outline of the planning laws in this Country, Mr. Woulfe proceeded with an analysis of the 1976 Act and the 1977 Regulations.

The Local Government (Planning and Development) Act 1963 required planning control on a nationwide basis and all development as defined in Section 3 of the 1963 Act was forbidden in the absence of a permission by the Local Planning Authority or, on appeal, by the Minister for Local Government. A development carried out before 1st October 1964 (being the date on which the 1963 Act came into force) was exempted development.

With the passage of time some inadequacies in the 1963 Act became apparent, certain Court decisions interpreted the Act in such a way as to render its administration difficult and the Appeal procedure to the Minister provoked much adverse comment. Consequently, the 1976 Act is primarily a remedial measure and its greatest single feature is the establishment of An Bord Pleanala to assume nearly all of the appellate functions of the Minister.

Although the 1976 Act was passed on 5th July 1976 it was brought in piecemeal by the following Statutory Instruments each entitled "The Local Government (Planning and Development) Act 1976 (Commencement) Order

S.I. No. 166 of 1976
S.I. No. 227 of 1976
S.I. No. 308 of 1976
S.I. No. 56 of 1977.

Statutory Instrument No. 307 of 1976 appointed 1st January 1977 as the establishment day for An Bord Pleanala. Statutory Instrument No. 56 of 1977 brought all the remaining sections of the 1976 Act into operation and all the regulations are now gathered together in the Local Government (Planning and Development) Regulations 1977. In view therefore of an element of codification the practitioner will now mainly be concerned with the 1963 Act, the 1976 Act and the 1977 Regulations.

Planning Laws are now becoming an even more important part of a solicitor's work. For some time Planning was not treated by the practitioner as a matter of title but in recent times and in particular since the introduction of the Incorporated Law Society's new Contract for Sale which provides by way of a general condition that in the absence of a special condition to the contrary the Vendor warrants that planning permission has been obtained for any development (other than exempted development) that has taken place on the property in the five years immediately prior to the date of sale, the practitioner is concerned with Planning as a matter of title and should satisfy himself before issuing Contracts for Sale as to whether or not there has been any development or alteration to the premises within the specified time.

The primary clauses of the 1976 Act with which the practitioner need be concerned are as follows:—

Sections 1-24. These sections are primarily concerned with the establishment of An Bord Pleanala, its structure and administration.

Section 27. Where development is taking place without the required planning permission, or where development is being or has been carried out otherwise than in compliance with a planning permission or where unauthorised use is being made of land, the Planning Authority or any person (whether or not that person has an interest in the land) may apply to the High Court for an Order prohibiting the continuance of the development or unauthorised use or directing any person to comply with the terms of the permission. The procedure for such an application is laid down in the rules of the Superior Courts (No. 1) 1976 (Statutory Instrument No. 286 of 1976).

Section 29. This Section introduces the concept of the wasting planning permission and came into operation on 1st November 1976. Five years from that date any planning permissions then existing will cease to have effect and any permission granted since 1st November 1976 will automatically lapse five years from the date on which it was granted. If the development has not been commenced during the five year period it cannot be commenced without a fresh application and permission or an order extending the time while if it has been commenced but not completed, the part uncompleted at the end of the five year period stands denuded of its permission. There is a saver in sub-section (2) to ensure that developments which are substantially completed are not left unfinished.

There is, in certain circumstances, provision for the Planning Authority to extend the five year period for the life of a permission.

Section 33. Requires members of An Bord Pleanala or any persons whose services are used by the Bord to disclose any interest which they may have in any planning application. There are penalties for any infringement.

Sections 39-145. These sections are concerned with amendments to the 1963 Act. Regrettably but inevitably the amendments are done by references, but the practitioner who annotates and interpolates the amendments will be rewarded by having his copy of the 1963 Act up-to-date.

An Bord Pleanala took over from the Minister for Local Government nearly all of the latter's appellate functions on 15th March 1977, including any undecided cases before the Minister on that date but not the Minister's functions under Section 86 of the 1963 Act (not yet in force).

Mr. Woulfe, by dealing with each Section of the Act seriatim, has afforded the practitioner a great deal of assistance as a perusal of a requisite section followed by a quick reference to the appropriate part of the available script would suffice for most of what one might care to call the ordinary practical needs. It is not always easy for a lecturer to deliver the form of lecture which he may desire within the limited time available and he is therefore frequently left with the unenviable task of trying to confine his subject so that the more salient points are revealed. It was undoubtedly Mr. Woulfe's intention to give a broad general outline of the 1976 Act and this he accomplished in a most admirable and competent fashion. We are indebted to him for his contribution.

Limerick Corporation
City Solicitor's Office,
Old Courthouse,
Merchant's Quay, Limerick.

18 May, 1977.

Dear Sir,

In the question–and–answer session after my Lecture on the Local Government (Planning and Development) Act 1976 delivered at the Society's Seminar in Tralee on 24th April, 1977, I gave an off-the-cuff opinion that where outline planning permission had been granted and had been followed by an approval the five year period for the wasting or withering of the permission commenced to run from the date of the Approval. I now wish to correct that opinion, as, on reflection, I do not think that it is correct.

The word "permission" is not defined in the Local Government (Planning and Development) Act 1963 or in the 1976 Act. For the purposes of Part IV of the Local Government (Planning and Development) Regulations 1977 (S.I. Number 65 of 1977) "outline permission" is defined as a permission for development subject to the subsequent approval of the Planning Authority, "permission" includes outline permission and "Approval" is stated to mean an Approval consequent on an outline permission or an Approval which is required to be obtained under a condition subject to which a permission or an approval is granted under the Acts.

There are, therefore, two categories of planning permissions, namely, full permissions which are complete in themselves and outline permissions which require to have attached to them a subsequent Approval in relation to reserved matters. There can be no development without a permission and an Approval cannot enjoy an independent existence because it is no more than an appendage to a permission and not a permission in itself. This assessment of the legal position is re-enforced by Section 30 of the 1963 Act which Section provides for the revocation of permission; it does not authorise the revocation of an approval on the basis that if the outline permission to which it is attached stands revoked the approval falls with it: see *The State (Cogley) v. Dublin Corporation* – (1970) I.R. 244. Section 29 of the 1976 Act provides that a planning permission will expire five years from the 1st November, 1976 or from the date of the granting of the permission, whichever is the later. In respect of planning permissions issued after the 1st November, 1976, the five years commences to run from the date of the full unitary planning permission or, in other cases, from the date of the granting of the outline permission. An Approval has no relevance in relation to this time scale and it follows that a person who obtains outline permission only and who, thus, may not commence development until that outline permission has been followed by an Approval from the Planning Authority may actually lose – through lapse of time – his right to carry out the development before ever acquiring that right. The contradiction is explained in that such an applicant never had more than a contingent right to effect a development and his failure to obtain an Approval and carry out the development within five years from the date of the outline permission means that a contingent right never blossomed into a full right.

I might mention that on the sixth line of page two of my Lecture the No. of the Commencement Order is correctly stated as being number 56 of 1977. S.I. Number 65 of 1977 refers to the Regulations.

May I ask your assistance in bringing these corrections to the notice of participants at the Seminar.

Yours sincerely,

RICHARD WOULFE, City Solicitor.

AUTUMN SEMINAR

The Committee has decided to explore new ground for the Autumn Seminar. As we have gravitated towards the south for most of our recent Seminars we have now decided to go north and it is proposed that the next Seminar be held in Bundoran, County Donegal, on the weekend of 14th/16th October 1977 on the following topics:–

1. The handling of Road Traffic Accident Claims.
2. Offences under the Road Traffic Acts.
3. Assessment of Actuarial Damages under the Civil Liability Act.
4. Professional Negligence.

Full details of the Seminar will be issued as soon as arrangements have been finalised.

COMMITTEE OF THE SOCIETY OF YOUNG SOLICITORS

The Officers and Committee of the Society of Young Solicitors for the year 1977/1978 are as follows:–

Chairman
Clare Cusack

Treasurer
William Earley

Secretary
Aine Hanley

Committee
Maeve Breen, Michael W. Carrigan, Terence Dixon, Andrew Donnelly, Mary Finlay, John Glackin, Derek Greenlee, Michael Irvine, John Lynch, George Mills, Tom O'Connor, Thomas E. O'Donnell, Raymond O'Neill, Norman T. J. Spendlove.

COUNCIL OF THE SOCIETY

Criminal Legal Aid Scheme

A motion was adopted by a majority vote at a meeting of the Council of the Incorporated Law Society of Ireland on 21st July, 1977, recommending that all solicitors on the Criminal Legal Aid Panel withdraw from that panel.

The Council felt strongly that the remuneration received by solicitors on the panel for defence work in all Courts, but particularly for trials in the Circuit Criminal Court, the Central Criminal Court and the Special Criminal Court, are totally inadequate and uneconomic.

The Council took the view that the recent offer made by the former Minister for Justice of an increase of 40% on the existing scale of remuneration was altogether inadequate in the context that as of now no arrangement exists for the payment of a solicitor's necessary outlay.

It is the view of the Council of the Law Society that until such time as acceptable arrangements are made whereby solicitors participating in the Criminal Legal Aid Scheme are reimbursed in respect of outlay and can, within reason, retain the necessary expert witnesses, the Scheme will just not operate.

The Council hopes that the early report of the Tormey Commission on the Criminal Legal Aid Scheme and immediate action on its recommendations, will help to solve the present impasse.

The President's Diary of Engagements

6th, 7th, 8th May:
Incorporated Law Society's Half Yearly Meeting at White's Hotel, Wexford.

13th, 14th, 15th May:
Was guest of the Council of the Law Society of Scotland at their Annual Conference at Aviemore, Inverness-shire.

19th May:
Was guest of the Automobile Association at Dinner at the Shelbourne Hotel, Dublin.

27th, 28th, 29th May:
Was guest of the President and Council of the Incorporated Law Society of Northern Ireland at their Annual Conference at Cally Hotel, Gatehouse-of-Fleet, Kirkcudbrightshire, Scotland.

9th June:
Presided at Presentation of Parchments to newly qualified solicitors.

30th June:
As President of the Solicitors' Golfing Society attended the Spring Meeting of the Society at Milltown Golf Club and presented the President's Prize.

19th July:
Attended reception at British Embassy.

28th July:
Attended a dinner in honour of the departing French Ambassador and his wife at the Department of Foreign Affairs, Iveagh House.

PUBLIC RELATIONS

Cláracha Radio agus Telefíse

Dliodóirí le Gaeilge ag teastáil ón gCumann Chaidrimh Poiblí a bhéadh sásta páirt a ghlacadh, anois is arís, i gcláracha Gaeilge radio agus telefíse. Cláracha cainte agus cómhrá a bhéadh i gceist. Má tá suim ag baill in a leithéid, is féidir leo sin a chur in iúl don Stuirtheoir Ginearálta, chómh luath agus is féidir. Cuirfear ar fáil sa bhFómhar cúrsa praiticiúil, a mhairfeas ceithre oíche, i scileanna telefíse agus radio.

TV and Radio "Appearances"

Solicitors who participate in TV or radio programmes, whether discussing matters concerning the profession or not, are asked to make the Public Relations Committee aware of the "appearance" through the Director General's office. This request is made in order that a list may be compiled of contributions by members of the Profession to the media.

Solicitors' Accounts (Amendment) Regulations 1977

S.I. No. 242 of 1977

The effect of these regulations is to withdraw the authority given to solicitors under the Solicitors' Accounts (Amendment) Regulations 1976 (S.I. No. 125 of 1976) to open designated client accounts for clients' monies with the named London or Scottish clearing banks or any branch in the United Kingdom or in Northern Ireland of an Irish Associated Bank and also, to designate Allied Irish Banks Ltd. as successor to certain of the Banks deleted from the First Schedule.

It is confirmed that the making of Solicitors' Accounts Regulations does not constitute a warranty or representation by the Incorporated Law Society of Ireland as to the suitability of any or all of the Banks named in any Schedule to such Regulations and the Incorporated Law Society of Ireland does not accept any liability whatever for any loss incurred through any act, neglect or default of any such Bank.

OBITUARY

Mr. Louis Goldberg, B.A., LL.B. (T.C.D.) died on 17th June, 1977, in Dublin. Mr. Godlberg was admitted in Easer Term, 1946, and practised first with Messrs. Hubert Wine & Co. in Grafton Street, Dublin and subsequently became a partner with Messrs. Hugh J. O'Hagan Ward & Co., at 94 Lower Baggot Street, Dublin 2.

Mr. Thomas G. Lanigan died in Kilkenny on 7 July, 1977. Mr. Lanigan was admitted in Trinity Term, 1931, and was the senior partner of the firm of Messrs. Lanigan & Nolan at 81, High Street, Kilkenny. Mr. Lanigan was a brother of Mr. Francis Lanigan, State Solicitor for Carlow, and a former President of the Society.

INTERNATIONAL SECTION

European Commission of Human Rights Rules on Applications

The 127th Session of the European Commission of Human Rights was held in Strasbourg, May 9 to 19, 1977. At the close of the session the Secretary reported that the Commission considered some 200 individual applications (Art. 25 of the European Comvention on Human Rights).

A. Examination of admissibility

I. Applications declared admissible

Six applications were declared admissible by the Commission and will now be examined on their merits:

1. Salvatore Bocchieri against Italy

The Commission admitted the applicant's remaining complaint under Art. 6(1) of the European Convention on Human Rights relating to the length of criminal proceedings against him.

2. A, B and D against the United Kingdom (Applications Nos. 6840/74, 6870/75 and 6998/75).

The applicants admitted complaints under Arts. 3 and 5 of the Convention which relate to their detention as mental patients.

3. Pat Arrowsmith against the United Kingdom

The applicant, a dedicated pacifist, was convicted and sentenced to a term of imprisonment for the offence of trying to seduce soldiers from their duty or allegiance by distributing leaflets to them as part of a campaign against the United Kingdom military role in Northern Ireland. She invokes in particular Arts. 9 and 10 of the Convention.

4. Leo Zand against Austria

The applicant complains that the Labour Court, which in a suit for damages gave judgment against him at first instance, was not an "independent tribunal established by law" as required by Art. 6 (1) of the Convention.

II. Applications declared inadmissible or struck off the list

1. Ordinary proceedings

After substantial deliberations the Commission declared 32 applications inadmissible and struck 52 applications off its list of cases.

(a) The following were among the applications declared inadmissible:

Two applications (Nos. 6555/74 and 6556/74) concerning events during a search in the Maze prison at Long Kesh in Northern Ireland and the alleged unfairness of subsequent civil proceedings before the Belfast courts;

Two applications (Nos. 6909/75 and 7508/76) against Italy concerning compensation claims for the loss of property situated in former Italian territories which were ceded to Yugoslavia after World War II;

An application (No. 7628/76) against Belgium concerning the right of an accused person "to be informed of the nature and cause of the accusation against him";

15 applications by foreign students who were refused permission to remain in the United Kingdom;

Two applications (No. 7737/76 and 7754/77) concerning the interference by Swiss authorities with the correspondence between persons detained in the Federal Republic of Germany and Switzerland who are suspected of having contacts with groups of militant anarchists;

An application (No 7754/77) concerning the execution of a disciplinary penalty (arrest) in a Swiss prison;

An application (No 7774/77) concerning the detention of an alcoholic by an administrative authority in Switzerland and the absence of a remedy before a court of law;

An application (No 7816/77) concerning the expulsion of an alien, married to a German national, from the Federal Republic of Germany following his conviction and sentence for a serious drug offence;

Two applications (X v. Denmark and Hosenball v. the United Kingdom) concerning the alleged unfairness of deportation proceedings.

(b) Among the cases struck off were 51 applications lodged against the United Kingdom by East African Asians (Group V) who, having been admitted to the United Kingdom, had failed to pursue their petitions.

2. Summary proceedings

The Commission also declared 63 applications inadmissible and struck off its list of cases four applications in the summary procedure, which it uses in cases which do not raise any special problems.

III. Applications communicated to Governments

The Commission decided to bring 12 applications to the notice of the respondent Governments inviting them to submit written observations on the admissibility of these applications. Among these were the following:

An application (No. 6504/74) concerning the length of Labour Court proceedings in the Federal Republic of Germany;

● Continued on page 119

Legal Aid and the Community Centres

Lecture delivered by David Ellis, Solicitor, Community Law Officer, Coolock Law Centre, to the FLAC Seminar in the Mansion House on 28th May, 1977, on "Access to Justice and Law Centres in Ireland".

All the available information is that the Pringle Committee considering Civil Legal Aid will report shortly—but what effect this Report will have and when such a scheme will be introduced, no one knows. At the Fine Gael Ard Fheis, the former Minister, Mr. Patrick Cooney, in the context of Civil Legal Aid, was already speaking of "financial and administrative restraints" on such a scheme. Whether this is the beginning of yet a further delay on the introduction of a comprehensive Legal Aid Scheme, only time will tell but I think we must be prepared for a long battle even after the Pringle Report is published. (In the light of the admission of the Airey case by the European Commission of Civil Rights in Strasbourg, the report will doubtless be published soon).

Unfortunately the delay has already meant a certain clamping down of debate. We must ensure that the flame of debate concerning Legal Aid and Law Centres does not abate—"for we know not neither the day nor the hour" when Mr. Justice Pringle will arrive—nor if the Minister for Justice will let him in, when he does in fact arrive.

While Civil Legal Aid would be a step forward, it will not fundamentally alter the existing lack of access to justice in this country. The number of solicitors offices which will effectively implement a scheme of Legal Aid will be few and far between. This is because basically such offices are geared to profit-making business, and Civil Legal Aid will not entice them away substantially from such areas. The people who will continue to have the real access to justice in this country, will be those who can pay,and solicitors will see Legal Aid work as a sideline only.

It is questionable whether, in the area of Family Law, solicitors would be prepared to get involved in time consuming court work for Maintenance Orders, or in drawing up Separation Agreements.

Despite the desire to help, the experience necessary to give people a good service will be lacking. One glance at the subjects taught to prospective solicitors will confirm this—where is the provision made for the detailed teaching of Family Law, Labour Law, or Social Welfare Law, for example—yet these three areas accounted for nearly 50% of FLAC work in the period 1975/76, and these are precisely the areas where people using Legal Aid will want help.

If the Legal Aid Scheme fails to alter the type of work done by solicitors, it will also fail on the question of physical accessibility for Legal Aid clients.

Solicitors base themselves in those areas where they are likely to get the most work of the type that brings them their profit—therefore most offices in Dublin are in places easily accessible to their traditional class of client, and Legal Aid is unlikely to draw them away from such areas. For example in the Dublin postal areas 5, 9, and 13 (i.e. those immediately around Coolock) there are two solicitors' offices listed in the 1976 telephone book, from a list of approximately 350. It is this situation which I do not see Legal Aid putting right. Also the problem is even greater than the actual distance a person from Coolock might have to travel to see a solicitor, for in effect they will be seeing someone who could be 1,000 miles from Coolock, someone who will have no special knowledge of the area, and who will in all probability be more interested in dealing with work which will bear no relationship to that person's needs. And even once having arrived at this office, the client then will have to undergo a means test in order to get Legal Aid. He will be given a long tedious form to fill in which will require many details of his private affairs—and all this even before he begins to get help with his problem. For all these reasons therefore, I do not consider Legal Aid as being the answer, to making justice readily accessible in this country.

It is the gaps that a Legal Aid Scheme will leave that Community Law Centres can fill.

From a casework aspect, such Centres will be accessible to the people in the Communities they serve, and will be experienced in the type of casework that arises. Such centres will not be involved in work which is completely removed from the needs of people in the area.

But over and above this case work aspect, a Community Law Centre has an educational role to fulfill. No Legal Aid Scheme, however comprehensive will actually tell people what their rights are in the first place, in order that they can benefit fully from Legal Aid. In this area in Coolock for example we plan a publicity campaign on the Supplementary Welfare Act, and we hope to organise a Citizen's Rights Course. There is an enormous job to be performed in this field, because so often rights are not recognised as such, but rather as favours to be obtained by the local Deputy and a bit of pull.

A Community Law Centre has also the task of actively supporting organised groups within its area that are seeking better facilities and conditions for the people of the area. It is organisations such as Tenants Associations, and Trade Unions which are the real strength of working class people, and any Community Law Centre worth its salt, places itself firmly in a position of supporting such groups, and in no way as a sort of go-between between the establishment and the people of the area. It is vital that any future development of Law Centres in this country

places the control of such centres in the hands of the local community, so that law centres do not become glorified information centres which give people the mere knowledge of their rights.

Let us now look at the experience of Coolock, for while there is much to be learnt from the experience of Britain and America, in this field, we must recognise that Law Centres in Ireland must of necessity adapt to the particular situation in Ireland.

In laying the groundwork for greater community involvement there are three lessons to be drawn from the Coolock experience. Because of the lack of Civil Legal Aid to date, Coolock has been geared of necessity to case work. To have ignored this present existing need for individual legal advice—which cannot be obtained elsewhere—would be to bury our heads in the sand. This necessity for individual casework is likely to continue for the foreseeable future until a proper Legal Aid Scheme takes the casework pressure off the Centre, to allow more rapid development in other fields.

While casework will, for the time being, be our major concern, this need in no way exclude the community aspect of our work. Indeed to allow this to happen might set a dangerous precedent for Coolock.

There is already an attitude prevailing in the area that sees the Law Centre as a casework agency.

We have to start to develop our links with the Community now and to extend the range of work we do. But this work cannot be seen as two distinct blocks, so that on the one hand you have casework, and on the other community work. The two are very much interrelated, and so those involved in casework have an essential part to play in the Community aspect, and those primarily involved in community work must have a thorough knowledge of the casework. This can be seen from, for example, group work arising out of the Centre's casework. In order to have any real understanding of that group, and credibility with it, the community worker must have knowledge of the legal situation involved, but it is also essential that those involved primarily in casework, and who have the practical experience of dealing with the problem know what the group concerned is doing, and are able to introduce individuals to it effectively.

But this inter-relationship of work brings special problems at Coolock, because of the small number of full time staff. Overlapping of the work should not happen thus leaving the two aspects of the work isolated. While it is easier for a person engaged in community work to arrange his time to allow himself to keep up-dated on the casework, it is far more difficult for those engaged in immediate casework, to arrange their time to allow for the wider work of the Centre.

But if we accept that we want to make the Coolock Centre a Community Law Centre, we have to accept that the work I have already mentioned such as group and educational work, is also essential, and cannot be put continuously on the long finger.

This can be achieved by restricting the amount of casework adopted, and by dropping a particular category of cases, e.g. consumer rights. While this might be practical in a situation where Legal Aid is available, where there is little or no other source of help, I do not think such a solution would be practical. The only other alternative is to attempt to slow down the rate of growth of casework which will allow a day or two per week to be set aside for the Centre's wider work. This will in effect mean that people will have to wait somewhat longer for help, except in obvious cases of emergency. If we agree that the wider work of the Centre is at least equally as important as the casework, though perhaps less tangible in its immediate results, then given our present staffing situation at Coolock, we have no other alternative.

But once we take this decision we must do it openly explaining to the Community why we have taken the decision.

Another aspect of the Centre's work which we have to look closely at is that of student involvement. Clearly the Centre needs student help in order to be able to manage the amount of casework with which it has to deal. Also students could help in the wider work of the Centre, for instance in the field of educational work, and producing literature on rights.

However we should develop a greater sense of team work at Coolock between full time workers and students, if the students are to be involved fully in the Centre's future. As students are already playing a large part in the Centre's work, mainly in the evening and atweek-endsat a time when the full time workers are not there, there is a gap in the Centre's life which needs to be closed. We can do this, in the first place by organising regular meetings of all those working at the Centre, which would investigate, not only the practical workings of the Centre, but also would discuss fully the development of the Centre and its whole approach to the work. If we are to develop Coolock as a Community Law Centre which has a definite meaning for the people of the area, we cannot afford to allow a situation where the work of the Centre is split between two groups (i.e. full time workers and students) who never actually discuss in detail their approach to the work. This is a situation which could in effect give the Centre two separate existences, a situation which could destroy the work of developing the Centre's community identity. It is therefore essential that all those working at Coolock work in the fullest sense as a team.

We have to ensure that future Law Centres in Ireland are controlled by the Communities they serve, rather than by central Government. This is essential if they are to undertake the kind of wider work of advocacy for the local Community that we have already spoken of. We therefore have to look seriously and urgently at the need to develop for the Coolock Centre a base of Community control, not because the present method of management has restricted the Centre'e development, or would be likely to in the future, but because it must surely be accepted as a basic principle, that if we are talking about a Community Law Centre, then it cannot be such truly until such time as that Community is given an effective voice in its running. If we consider the Coolock Centre as belonging to Coolock, then we must accept that it can never be there until that Community controls it. Not only this, but it would make the task of expanding to the Community's needs far easier and more likely to succeed if the Centre was regularly in contact with local representatives who knew they were in a position to direct the Centre's work. I would suggest that we seriously consider such a management system for Coolock now. I believe that persons should initially be drawn from local groups such as tenants associations, trade union branches, pressure groups etc. as representatives to sit on a Management Committee for the Law Centre, and that FLAC could also be represented on such a Committee. What should be done is to at least make a commitment to such a development at Coolock, and begin to sit down and work out the details in the near future.

Book Review

MOYS, Elizabeth M., ed., Manual of Law Librarianship; the use and organisation of legal literature; a Grafton Book published for the British and Irish Association of Law Librarians. London: Deutsch, 1976. £15.00. (£16.50 in Ireland, including V.A.T.)

This extensive volume is the first published in English in Europe relating to this subject, and, as regards England and Scotland, Betty Moys is to be congratulated for editing so competently the various facets of this intricate subject. She has entrusted each chapter to an expert, with the result that this volume will remain for years the essential textbook. Law librarianship can only be acquired after years of practical experience. It was Don Daintree's enthusiasm that was responsible for the foundation of the British and Irish Association of Law Librarians (hereinafter called the Association), and he has given much practical insight as to the information to be obtained in Society Libraries, Court Libraries, Government Law Libraries, and Academic Law Libraries, and Professional Associations. Professor Cornish of L.S.E. has written learnedly about the evolution of the Courts in England and Scotland, including trial by jury, and the difference between Common Law and equity: he has dealt with legislation, judicial precedent, texts and custom as sources of law.

Derek Way of Liverpool University has given us the benefit of his expertise on legislation as a primary source of law including parliamentary Bills and Statutes, as well as such invaluable sources as Halsbury, Current Law Statutes, and Butterworth's Annotated Legislation Service. The method of citing Statutes is described in detail, as is also the bulk of English Subordinate Legislation contained in Statutory Instruments and Orders in Council. The present Chairman of the Association, Wallace Breem, Librarian of the Inner Temple, London, is a very learned librarian, as well as an eminent writer, and these qualities have been displayed to the full in writing about English and Scottish Law Reports. He has described in detail the various English Law Reports from 1865 to date, as well as what are described as "Nominate Reports" from 1571 to 1865. Useful hints are given about citations and references, as well as about Digests and Indexes and Noting-Up. Derek Way then considers in detail the Secondary Sources, such as specific features of textbooks, Encyclopaedias of law and of Precedents, Practice Books, and Case Books; the notes on the use and functions of periodicals are particularly valuable. Wallace Breem is an expert on legal history and he has given us an excellent account of the historical sources of English Law. Kenneth Parsons, the Law Librarian of L.S.E. has provided us with his deep knowledge on publications of International Organisations. He considers firstly, basic general publications, such as U.N. Official Records, then Legal Publications, then Miscellaneous Publications such as Copyright Laws of the World, and finally Reference publications such as Yearbooks. But the subject of legal publications relating to Foreign Law really comes to life under the masterful pen of Willi Steiner, Librarian of the Institute of Advanced Legal Studies (hereinafter called the Institute) who mentions the main works not only in Comparative Law, but also Collections from several jurisdictions, such as Peaslee's Constitution of Nations. The main bibliographies in all main European languages are fully covered, as is the legal bibliography of the Commonwealth and of the U.S.A. The Civil Law Continental jurisdictions and the publications of the European Community are fully mentioned. Kenneth Parsons then deals in more detail with primary legal publications relating to Public International Law, such as collections of Treaties, and Reports of International cases. The secondary sources comprise treatises, periodicals, and reference works. Ian Sainsbury, Law Librarian of Reading, then delves learnedly into the rarified atmosphere of Roman Law and of Roman-Dutch Law. Sheila Doyle of Durham University deals learnedly with religious laws, such as the Catholic Canon Law, the Law of the Church of England, Jewish Law and Islamic Law. Robert Logan of Nottingham University and Barbara Tearle of University College, London, have combined their wisdom and knowledge in writing on legal bibliographies and Reference Books. Current bibliographies such as "Law Books in Print" are fully covered, as well as "Where to Look for your Law", Law Library Catalogues, Periodicals Union Catalogues and Law Dictionaries.

Part III of this work deals specifically with the practical subject of the Law Library Practice. Betty Moys offers excellent advice in dealing with general principles such as policy and planning, Finance, Library Administration, Office organisation and public relations by means of publications and exhibitions. Paul Richardson, the Librarian of the Law Society, London, writes expertly on providing services for readers, such as reference and lending facilities, and the essential rules and regulations applicable to law libraries, and whether copyright attaches to photo-copying. Daphne Parnham, Sub-Librarian of the Inner Temple, has given us the advantage of her expertise on the subject of Acquisition and Storage of Law Books. In ordering, constant watch must be kept for new editions and in reviewing parts of periodicals and suggestions should be invited. The rules relating to gifts and exchanges, collating, stamping and bookplates are fully set out, and very useful advice is given as regards storage, including micro-films, and also as regards repairs and binding. Betty Moys then deals with the various methods of Cataloguing and Indexing, including the Anglo-American Cataloguing Rules of 1967: several practical examples are given. In a subsequent chapter, she deals with Classification of Law Books in which she is an acknowledged expert, having published a large book on the subject. She lays down useful criteria for law library classification, then deals in more detail with the general classification schemes. Margaret Chubb of Trinity College is well aware of staff conditions in Ireland, and her remarks are thus of particular value; she deals with professional training and staff management, as well as the ticklish problem of salaries, and of conditions and career prospects. Muriel Anderson, Deputy Librarian of the Institute of Advanced Legal Studies, gives invaluable advice on the problem of space, which is a perpetual nightmare to librarians. The height and thickness and depth of books determines the shelf space, and many illustrations are given. The minimum recommendation for reading space is one seat for every three members of staff or students. 30ft. sq. is the minimum space per seat. Details are given about catalogue space and about staff working space. Paul

Norman of the Institute then deals with processes of mechanization such as telex, computers, union catalogues, the MARC system of the Library of Congress and subject analysis.

The detailed Index of Works Cited alphabetically comprises no less than 51 pages. It will thus be seen that the needs of the English and Scots Law Librarians have been magnificently served by this volume. On the whole, Jill McIvor has seen to it that, in the relevant places, Northern Ireland gets its fair share of mention, save that the invaluable monthly unreported judgments of the Incorporated Council of Law Reporting in Northern Ireland, published with an Index in blue covers continuously since 1970, do not appear to have been mentioned.

The same cannot be said about the Republic of Ireland, because, as far as is known, the text was not submitted to any law librarian here. *Inter alia*, mention must be make of the following:–

(1) Delany's *Administration of Justice in Ireland* almost in its 5th edition, is not even mentioned.
(2) It is stated at page 33, that in the Republic of Ireland, the function of the National Library is performed by Trinity College. This will hardly please the hard working staff of the National Library.
(3) One would not expect our Society with its 1,700 members to have the same library space as the English Law Society with its 20,000 members.
(4) The Common Law of Ireland was not identical with, but separate from the Common Law of England. See *Byrne v. Ireland* (1972) I.R.
(5) The Irish Constitution of 1937, which is the Fundamental Law of the land, supplanting all Statutes, is inaccurately described in 4 lines. The importance of Irish constitutional case law could have been stressed.
(6) No distinction is made between the Irish Jurist (1935-65), which contained reported cases, and the present Irish Jurist from 1966, which is an academic legal journal of a high standard.
(7) The earlier Irish named Reports, prior to the Irish Law Reports (1839) are barely mentioned.
(8) It is blandly stated that there is no legal literature of any substance on Irish law reports, and law reporting: see Geoffrey Bing's lecture to the Society of Young Solicitors.
(9) The list of Irish official publications is incomplete.
(10) Delany's work on Chief Baron Palles, which contains a list of Irish judges from 1878 to 1921, should have been included amongst legal bibliographies.

These are only the most important omissions. The main work can be recommended as a model of its kind, and anyone who wishes to learn anything about Law Librarianship cannot afford to be without it.

The Law Reform Commission (Working Paper No. 1-1977)

The law relating to the Liability of Builders, Vendors and Lessors for the Quality and Fitness of Premises

The working paper, in reviewing the present law relating to builders, vendors and lessors of premises, highlights the absence of legal protection for purchasers and lessees. House purchasers in making what is commonly referred to as "the longest payment of their lives" are inadequately protected by the law as it now stands. Purchasers and hirers of goods receive a measure of legal protection in the Sale of Goods Act 1893 and the Hire Purchase Acts 1946-60, but the purchasers or lessees of land (including houses) have little or no such protection. For them the legal rule is expressed in the maxim: *caveat emptor*–let the buyer beware. The house purchaser has to look for himself. This is most vividly expressed by the judicial dictum that there is no law against letting or selling a "tumbledown house".

The Law Reform Commission takes the view that house purchasers (whether full owners or lessees) should get more protection from the law and to this end it has prepared for discussion a working paper proposing a general scheme of new legislation to improve their lot in several ways, the most important of which are:

(i) Any person who undertakes building work should owe a duty to see that the work is done in a good and workmanlike (or professional) manner and with proper materials. Where the premises consist of a dwelling, the builder should have a legal duty to ensure that they will be reasonably fit for habitation. It is to be noted that these duties will also be imposed on the participating financial "backers" of the builder.
(ii) Where a person sells or leases premises in the course of business and where the buyer/lessee makes known the purpose for which he wants the premises, a condition should be implied in the contract that the premises are reasonably fit for that particular purpose.
(iii) In so far as injury to persons or property results from defects in premises, vendors and lessors should owe a duty to take reasonable care to see that persons who might be affected by these defects are not injured in their person or in their property by the defects. However, for the vendor or lessor to be bound, such defects must have been known to him, and must exist at the time of the sale or lease.
(iv) Breach of any duty imposed by the legislation will give the purchaser/lessee a right to damages.
(v) The rights given under the new legislation should be in addition to any other common law rights which the purchaser/lessee might have. The new law should ensure that the proposed statutory obligations are mandatory ones, incapable of being excluded by contract.

The working paper also suggests that these reforms should be reinforced by a scheme that would ensure the technical ability and the financial stability of builders. This, however, it suggests could be achieved by a Registration Scheme which need not be statutory in form. Many precedents for such schemes exist in other countries and there is also the recently proposed scheme announced by the Department of Local Government and the C.I.F. (Construction Industry Federation) which, however, the Commission does not recommend.

Comments on the working paper are invited by 1 November, 1977.

Copies of the working paper may be obtained from The Law Reform Commission, River House, Chancery Street, Dublin, 7, or W. King Limited, Law Stationers, 18 Eustace Street, Dublin, 2. Price £1.50 Net.

● Continued from page 114

An application (No. 7229/75) concerning the alleged interference with family life and the right to found a family resulting from the refusal to allow an Indian national to enter the United Kingdom to join his adoptive father;

An application (No. 7287/75) concerning the alleged excessiveness of a confiscation of smuggled goods in Austria;

An application (No. 7428/76) concerning the alleged partiality of a juror in criminal proceedings in Austria;

An application (No. 7598/76) concerning the alleged unfairness of administrative proceedings in England under the Insurance Companies Act 1974;

Three applications (No. 7604/76, 7719/76 and 7781/76) concerning the length of criminal proceedings in Italy;

An application (No. 7639/76) by a divorced father concerning his access to his children in Denmark;

An application (No. 7648/76) concerning detention in Switzerland.

B. Examination of Admitted Applications

The Commission also continued its examination of a number of admitted applications.

I. Reports adopted

The Commission adopted its Reports under Art. 31 of the Convention in the following cases:

1. Luedicke, Belkecem and Koc v. the Federal Republic of Germany

These cases concern the costs of interpretation in criminal proceedings.

2. Times Newspapers v. the United Kingdom

This case concerns an injunction which restrained the applicants from publishing an article dealing with Thalidomide children.

II. Continued examination of other admissible applications

1. Winterwerp v. the Netherlands

The applicant complains of his detention as a mental patient. The Commission heard the parties' oral submissions on the merits of the application.

2. Liebig v. the Federal Republic of Germany

The applicant complains of the court decision by which he was refused reimbursement of the costs of his defence when criminal proceedings against him were discontinued. The Commission decided to hold a hearing of the parties.

3. Brüggemann and Scheuten v. the Federal Republic of Germany

The applicants submit that the criminal law concerning the interruption of pregnancy violates their right to respect for their private life. The Commission heard the parties' oral submissions on the merits of the application.

4. Eggs against Switzerland

This case concerns strict detention as a measure of military discipline. The Commission decided to hold a hearing of the parties.

Proceedings of the Court of Justice of the European Communities

JUDGMENT

Case 11/77 – Patrick v. Ministre des Affaires Culturelles – (reference for a preliminary ruling) – 28 June 1977 – Freedom of establishment.

In the wake of the lawyers (Cases 2/74, Reyners, and 71/76, Thieffry), an architect has prompted the Court of Justice to interpret Articles 52 to 54 of the EEC Treaty concerning the right of establishment.

Mr. Patrick, a British national who holds the certificate of the Architectural Association and who wished to transfer his office to France, applied for authorization to practice the profession of architect there. His application was rejected by decision of the Minister for Cultural Affairs dated 9 August 1973, on the ground that such authorization "pursuant to the provisions of the Law of 31 December 1940 continues to be exceptional if there is no reciprocal agreement between France and the applicant's country of origin". The ministerial decision continues that in the absence of a specific agreement for this purpose between the Member States of the EEC and in particular between France and the United Kingdom, the Treaty establishing the European Economic Community cannot take the place of such an agreement, since Articles 52 and 58 concerning freedom of establishment refer, for the attainment of that objective, to Council directives which have not yet been issued.

This case led the Tribunal Administratif de Paris to ask the Court of Justice whether, "in the State of Community Law on 9 August 1973 . . . a British national was entitled to invoke in his favour the benefit of the right of establishment to practice the profession of architect in a Member State of the Community".

The Court did not accept the argument that the direct effect of the rule of equal treatment with nationals contained in Article 52 is weakened by the fact that the Council has not issued the directives provided for in Articles 54 and 57.

The Court stated that, in fact, after the expiry of the transitional period the directives provided for by the Chapter on the right of establishment have become superfluous with regard to implementing the rule on nationality, since this is henceforth sanctioned by the Treaty itself with direct effect. With regard to the new Member States and their nationals, the principle contained in Article 52 takes full effect after the entry into force of the Treaty of Accession, that is on 1 January 1973.

The Court ruled that, with effect from 1 January 1973, a national of a new Member State who can produce a qualification recognized by the competent authorities of the Member State of establishment as equivalent to the diploma issued and required in that State enjoys the right to be admitted to the profession of architect and to practice it under the same conditions as nationals of the Member State of establishment without being required to satisfy any additional conditions.

Thus, pursuing the terminology of the case, the Court of Justice has placed a new "brick" in the wall of freedom of establishment, which is one of the keynotes of the Community.

THE REGISTER

REGISTRATION OF TITLE ACT 1964

Issue of New Land Certificate

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

Dated 31st day of August, 1977.

N. M. GRIFFITH

Registrar of Titles

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

Schedule

(1) Registered Owner: John Farrington; Folio No.: 654; Lands: Slate Quarries; Area: 18a. 1r. 25p.: County: Kildare.

(2) Registered Owner: Michael Kerr; Folio No.: 5010; Lands: Tossy; Area: 12a. 0r. 0p. County: Monaghan.

(3) Registered Owner: Michael Keane; Folio No.: 26011; Lands: (1) Pollnamal, (2) Pollnamal (1 undivided 24th part), (3) Sylaun, (4) Pollnamal;Area: (1) 21a. 3r. 9p., (2) 4a. 1r. 0p., (3)5a. 3r. 22p., (4)0a. 0r. 20p.; County: Galway.

(4) Registered Owner: John Moylan; Folio No.: 17619; Lands: (1) Grange (parts) (E.D. Tulsk), (2) Castleland (parts); Area: (1) 0a. 3r. 0p., (2) 0a. 2r. 20p.; County: Roscommon.

(5) Registered Owner: Thomas Brown; Folio No.: 8174; Lands: Coologmartin; Area: 5a. 2r. 10p.; County: Kildare.

(6) Registered Owner: Noel McEvoy; Folio No.: 8328; Lands: Callystown; Area: 7a. 0r. 2p.; County: Louth.

(7) Registered Owner: John Mulvagh; Folio No.: 233; Lands: Carrowdurneen; Area: 16a. 0r. 10p.; County: Sligo.

(8) Registered Owner: John Faherty (Martin); Folio No.: 21079; Lands: (1) Kilmurry (parts), (2) Oghill (parts); Area: (1) 57a. 3r. 34p., (2) 7a. 2r. 26p.; County: Galway.

(9) Registered Owner: John Sharkey; Folio No.: 4789; Lands: Leam; Area: 49a. 3r. 0p.; County: Roscommon.

(10) Registered Owner: Patrick Kennedy; Folio No.: 6254; Lands: Millbrook (E.D. Kilkeary); Area: 117a. 2r. 30p.; County: Tipperary.

(11) Registered Owner: Patrick O'Callaghan; Folio No.: 32883; Lands: (1) Rylane, (2) Rylane; Area: (1) 4a. 1r. 7p., (2)7a. 1r. 24p.; County: Cork.

(12) Registered Owner: Timothy Leahy; Folio No.: 4788; Lands: Kyleannagh; Area: 2a. 1r. 27p.; County: Tipperary.

(13) Registered Owner: Michael Kirwan; Folio No.: 2265; Lands: Ballyboy; Area: 100a. 0r. 37p.; County: Waterford.

(14) Registered Owner: Brigid Mary Kirwan; Folio No.: 4481 (Revised); Lands: Glen; Area: 57a. 3r. 1p.; County: Waterford.

(15) Registered Owner: John V. Roche; Folio No.: 31388L; Lands: Burrow (E.D. Malahide); Area: 0a. 0r. 14p.; County: Dublin.

(16) Registered Owner: Michael Foley; Folio No.: 325; Lands: Knockanpower; Area: 16a, 3r. 13p.; County: Waterford.

(17) Registered Owner: Vera Fitzpatrick; Folio No.: 5748; Lands: Aghnamard; Area: 26a. 3r. 38p.; County: Monaghan.

NOTICES

LOST WILL

Michael J. Haran, deceased, late of Bettyville, Crecora, Co. Limerick. Would any solicitor or other person having knowledge of any will of the above named deceased please contact Holmes O'Malley & Sexton, Solicitors, 57 O'Connell Street, Limerick, under reference MJOM/MMA/A.

George Alexander Leslie Glover, deceased, late of 5, Cherryfield Estate, Walkinstown, Dublin 12. Would anyone having knowledge of a will made by the above-named deceased, who died at his home on 26th June, 1977, please contact the Garda Siochana at Sundrive Road Station, Dublin 12. The property is being retained in Garda custody pending discovery of relatives.

B.C.L. Graduate sitting 2nd solicitors examination in August, 1977, seeks office. Law Society lectures completed. References available. Full driving licence. Replies to Box No. 159.

Old established Dublin Solicitors firm with substantial conveyancing business – Spacious freehold – Centrally situated Office – seeks amalgamation or will sublet part of Offices to suitable tenant. Particulars are available from the Incorporated Law Society and enquiries should be marked for the attention of the Director of Professional Services.

Precedent Bills and Schedules and Scales of Costs under The Land Registration Rules, 1954, and The Circuit Court Rules, 1954. – Copies of this book by the late John K. McMahon, Solicitor, Ardee, Co. Louth, are still available, price £1.05. Any enquiries or orders should be addressed to Mr. John P. McMahon, B.C.L., Oriel, Stonylane, Ardee, Co. Louth.

Experienced Solicitor, specialising in Litigation, seeks position in Dublin firm. Reply to Box No. 160.

THE INCORPORATED LAW SOCIETY OF IRELAND

GAZETTE

AUGUST/SEPTEMBER 1977 VOL. 71 NO. 6

New life for the Bluecoat School

by Terence de Vere White

THE Corporation of Dublin has at this moment an opportunity to enhance the beauty of the city for all time by leaving Christ Chruch Cathedral open to view.

The gain cannot be calculated in money terms; and it can cite itself for a precedent. Maurice Craig, in his classic book on Dublin, tells there how in the time of the Viceroyalty of James, Duke of Ormonde, the Dublin City Assembly was active, enclosing the ancient Green of Oxmantown in the northern suburbs.

"Under the stimulus of these schemes, and of the relatively settled times", Mr. Craig writes, "Dublin has begun to grow again, and it was not long before growth brought its attendant problems.

Since Mr. Craig wrote his book, the Hospital and Free School of King Charles the Second (King's Hospital) has been removed to Palmerstown and the former school building awquired by the Incorporated Law Society. It was about time. The Benchers of the King's Inns acquired the site of their present palatial building in Henrietta Street and the first stone was laid by Lord Clare on August 1st, 1975. It was the last of James Gandon's great architectural undertakings, in which he was assisted by his pupil, Aaron Baker.

The solicitors' profession, then more commonly denominated "attorneys" did not aspire to any administrative centre of such magnificence. Their most recent home was in the Four Courts which, for all its convenience to the fashion was from its physical character unable to be more than strictly functional. The new building is to be made available for public functions and the old chapel will be particularly suitable for entertaining in.

When King's Hospital became available, it was an imaginative step to buy it, and the sum spent in restoring the building to its former splendour amounts to £1 million. A large investment; á great debt; but the motives behind it can not be impugned. First of all, it gives the profession something to be proud of, to live up to. Secondly, it is one of the major acts of conservation of the decade.

The first stone of the Blue Coat School (as King's Hospital was formerly called) was laid in Blackhall Place in June 1773 by the Viceroy Harcourt.

The architect was Thomas Ivory, a citizen of Cork. Master of the Dublin Society's (R.D.S.) Architectural School from 1759 until 1786, and he was responsible for training the majority of those who built in Ireland at that period. It was a time when to build with a sense of design seemed innate.

(By courtesy of The Irish Times – 20 Sept. 1977).

Prospects for Computerized Legal Information Retrieval in The Republic of Ireland

By Hugh M. Fitzpatrick B.C.L.,
Solicitor

Over thirty years ago the creation of automatic retrieval systems to assist legal research was suggested. In 1946 Lewis O. Kelso gave a warning: "Today the lawyer works substantially as he worked before the industrial revolution. Only automated legal research will save him from playing one of the most confused, ill-paid and unsatisfactory professions in the world of tomorrow".[1] There has been much development in the area of computerized legal information retrieval – "storing large quantities of information [in a computer] and retrieving with speed and accuracy the materials relevant to particular problems"[2] – in North America and Europe over the past twenty years. However, the use of computers in the field of information retrieval has attracted little interest among academic and practising lawyers alike in the Republic of Ireland.

The beginning of "full-text" retrieval systems (which according to Bing and Harvold are predominant in computer-based legal information retrieval today) where the retrievable documents are identical with the original documents was described recently by Bing and Harvold in the following terms:

"The University of Pittsburgh started developing a Data Processing and Computing Center in 1955. In the course of four years, systems for information retrieval had become in integral part of the Center . . .

"At approximately the same time, Professors John F. Horty and William B. Kehl started a project in the Graduate School of Public Health, designed to study and improve the health statutes of Pennsylvania . . . In 1956 the Health Law Center under the direction of Horty undertook the writing of a manual on the subject of hospital law. They looked at material from several states, and found that there was little uniformity in indexing from state to state. Therefore, special indexes had to be developed. Problems increased as the project moved into wider areas of "health law", and the project looked to the Computing Center of the University for a solution. . . .

"A special assignment proved to be a kind of turning point. A state legislator in Pennsylvania had a bill passed to change the expression "retarded child" to "exceptional child". In order to implement the bill, all instances where the expression occurred, had to be located.

"The Health Law Center started out to solve this problem in the traditional way; they paid a group of students to read through the statutes and make a note of all occurrences of the relevant expressions. It turned out that the inaccuracy was too high to be acceptable – another group of students were hired to re-read the material. Still there were errors.

"A more radical method was then adopted. The entire material was registered on punch cards and verified by double-punch. When a machine-readable copy of the material was established, it became a trivial task for the computer to read through the material and retrieve all occurrences where the word "retarded" preceded the word "child" or variations of "child". . .

"The result was not only a satisfactory solution to the original assignment; as a by-product, the Health Law Center got the full text of the statutes in machine-readable form."[3]

Although the early projects of Horty were mainly restricted to statutory material, according to Bing and Harvold the results of the Pittsburgh Project had a stimulating effect not only on lawyers in the United States, but also overseas. Experiments with case law retrieval were undertaken by Mr. Colin Tapper of Magdalen College, Oxford, in the 1960's.[4] Tapper has asked: "It is natural to expect the computer to help solve the problems of case law; how can it do so?"[5] In his view: "No automated retrieval system is of any use to a common lawyer unless it can give access to case-law. Every lawyer knows how voluminous case-law has become, how fast it increases and how slowly it becomes inoperative. Not is it easy to find. Statutes and statutory instruments are also difficult to find (and even more difficult to read when found), but at least they explicitly up-date each other by repeal and amendment."[5] At first sight, therefore, it would seem that the difficulties in establishing and maintaining a computer based retrieval system which includes case-law in its data-base are greater than those which exist in creating one with Statute as its data-base.

According to Bing and Harvold the development in Europe has lagged 5 to 7 years behind that in the United States, but the European activity has been considerable.[6] The initiative came from the Council of Europe. A Committee known as the "Committee of experts on the harmonization of the means of programming legal data into computers" was set up and held its first meeting in September 1969. The Committee recommended certain harmonization measures in the field of legal data processing, which were adopted as resolution (73) 23 by the Committee of Ministers of the Council of Europe. A new committee – the "Committee on legal data processing in Europe" – held its first meeting in October 1974.

The Legal Service of the Commission of the European Communities has been diligent also. It created a computer-based legal information system for Community law, which is known as CELEX and has been in operation since 1971. The system was developed for the use of the Commission only. But now it is shared between the Parliament, Council, Commission, Court of Justice

and the Economic and Social Committee.[7]

In 1966 in Belgium the Union of Belgian Lawyers and the Federation of Notaries set up a working group. The group made a report which formed the basis for the creation of CREDOC (*Centre de documentation juridique*). The Centre became operational in 1969 and offers its services to all Belgian lawyers in all fields of Belgian law. CREDOC rejected the full text approach and adopted an indexing or keyword system under which the basic idea is a "concept" which expresses "a legal idea". It is a batch processing service (as opposed to a real-time system). A question is submitted by a lawyer in writing and the question is processed by the staff of CREDOC off-line in batch runs. In 1970 a user had to wait for 4 to 12 days to receive his answer but the response time has since been reduced. The data-base is legislation, case-law and articles published in certain legal journals since 1st January 1968.

Although other systems are operative in France, Italy, Sweden, West Germany and the United Kingdom, the Belgian system, CREDOC, should be particularly interesting to the Irish legal profession for the following reasons: It was established by a small profession in a small country (which is, of course, a small market). It is supported by all sides of the Belgian legal profession (including *avocats*, *notaires*, judges and government lawyers). It was created by the legal profession to satisfy its own needs and is non-profit making. Every practising lawyer makes an annual subscription to a fund supporting the system. A further subscription is received from the local Bar Associations and a grant is provided by the Belgian Government. Once the yearly subscription is paid by a lawyer he can pose as many questions as he desires. The climate for the establishment of CREDOC in Belgium was the "unsatisfactory organisation of legal materials, and the need for increased efficiency and better methods of handling the information available to Belgian lawyers". Therefore, it would seem that CREDOC could be a worthwhile subject for study by anyone considering setting up a system in the Republic of Ireland.[8]

It is reasonable to ask for a justification for the introduction of a computer-based retrieval system. Bing and Harvold point out that "retrieval systems – in the form of manuals, indexes etc.– have for a long time been of assistance to the lawyer in his research. The computer-based systems represent a technical revolution in this respect ..."[9]They continue: "reference retrieval corresponds to the traditional legal research. Computer-based reference retrieval systems represent an attempt to make this research more efficient. But opinions may differ with respect to what "more efficient" should imply."[10] They state that "there are limited possibilities of justifying computer-based retrieval systems by arguing that the user will be able to do the same amount of research in less time. The flaw in this argument is inherent in the phrase "same amount of research". The introduction of a better retrieval system will in itself imply a change in the "amount of research carried out". This is a qualitative change – and this change may itself be the justification for introducing the new information system".[11]

Bing and Harvold also refer to the argument of Professor Spiros Simitis of West Germany who in *Informationskriese des Rechts und Datenverarbeitung* (1970) refers to "the legal information crisis". He argues that modern society has caused a legal information explosion. Legal norms are used as a tool for implementing social reform and gaining political control, resulting in a deluge of statutes, regulatory law etc. ("Normenflut"). At the same time the complexities of modern society give rise to more frequent conflicts – which in turn has led to the establishment of an increasing number of agencies for solving conflicts (administrative courts, revision boards, etc.), causing a deluge of legal decisions and precedents ("Entscheidungsflut"). This legal information crisis undermines the "rule of law" in its traditional sense – Simitis argues that the rule of law can be strengthened only by extensive use of computer-based systems. According to Bing and Harvold this is the main justification given for the massive effort by the German Ministry of Justice to create a national, legal information system (JURIS, Germany). They conclude that "improvement in the quality of the legal decisions is usually emphasized as a justification for introducing computer-based legal information systems".[12] (But what is the extent of the legal information crisis in the Republic of Ireland? And, if, in fact, none exists will one develop and, if so, how can it be averted?).

Bing and Harvold acknowledge that computer-based legal information systems represent investments in time and money but argue: "When justifying the change in technology, one might argue that the new information system is more efficient – making legal research less time-consuming and consequently cheaper in the long run. This is obviously not the main motivation behind the creation of better information systems. We have several times pointed out that the new technology represents a basic change influencing the research habits of lawyers. Comparing the state of research before and after the introduction of the new technology, one will find a difference in *quality*. A different type of research is conducted; the lawyers do not confine themselves to doing what they were doing before the change; they do more or something else. These changes in the quality of legal research may not adequately be translated into quantitative terms (time or money) and it is precisely these changes in quality that are very often pointed out as the chief justification for introducing the new technology."[13] In their historical survey of computer-based legal information retrieval Bing and Harvold give several examples of this sort of argument. In the United States, they state, "a major concern was the failure of conventional information systems to cope with the information growth".

In West Germany "the principles of the rule of law were emphasized: the new information systems were to act as guarantees for equal decisions in equal cases, co-ordination of the stands taken by the government, etc. Actually these systems represented measures taken by the public administration in order to reconfirm that the "rule of law" was their major concern, and that the information growth had not undermined the system".[13] In France, according to Bing and Harvold, the tendency was similar. The lack of publication of the decisions of the appeal courts was stressed when introducing the documentation system of IRETIJ and other centres. They believe that this line of reasoning has become most apparent in West Germany. "The plan of a total, national, legal information system (JURIS) has in many ways been introduced as a therapy to an ailing conventional system. The JURIS system should once more bring the capabilities of the information system up to the standards demanded by the volume of information, thus re-establishing the "old order" ... These examples must suffice to demonstrate that the label "rule of law" has served as a major

justification for introducing legal information systems."[14]

But one commentator has had misgivings about retrieval systems. The Slayton Report stated in its conclusion: "These systems (i.e. computerized law retrieval systems) have not been developed with full regard for their implications, and preliminary investigation, such as we have undertaken in this study, suggests that at the very least their contribution to the legal profession is slight, and that quite possibly their effects are decidedly unfavourable. Even the legal information problem they were originally constructed to solve may not really exist and if it does exist, the cure may be worse than the disease".[15]

Having sketched the beginnings and developments of computerized legal information retrieval and possible justifications for such a system it would seem that there are three options open to the legal profession in the Republic of Ireland (each of which will be examined in turn):—

1. Retain the traditional "book system" as the sole method of legal research (and make such improvements as are considered necessary to that system) and reject a computer-based system, or

2. Retain the "book system" for the time being and learn from the experience of developments in computer-based systems in the United Kingdom and elsewhere thus ensuring a slow and careful progress towards a computerized system, or

3. Develop a practical computer-based system or (if one is launched) become involved in the development of a national computer-based legal information system.

(1.) One of the aims of the "book system" — the manual method of looking up the law — should be to provide an Irish lawyer with sufficient up-to-date source material on Irish Law to enable him to engage in efficient legal research on Irish legal problems. The lawyer in the Republic of Ireland today has traditional tools to assist him in his legal research. The most important is, of course, the law library. When the user requires material he will refer to catalogues organised alphabetically or systematically to find that material. The law librarian must be able to cope with the accumulation of volumes. Also the catalogues and indexes of a library must be sufficient to satisfy the needs of the lawyer in finding the material requested by him. This, it need hardly be said, is not an easy task for the librarian. Already, therefore, a problem in the "book system" presents itself — the administration of the library system. But that, of course, is not essentially the concern of the lawyer.

A second problem in the "book system" in the Irish context in particular is that of sufficiency of sources. Does the Irish lawyer have sufficient material available for his use on Irish law? Until recently Irish lawyers and law students had to rely in general on books that in many cases were 50 years out of date or if there was no Irish book to rely on at all they has to read with discretion a recent English text book. However in 1969 the Incorporated Law Society of Ireland established a Committee to promote the publication of textbooks and commentaries on Irish Law. Over the past few years law books have been published on various aspects of Irish law by the Incorporated Law Society of Ireland and the Incorporated Council of Law Reporting for Ireland. Therefore, although the market in the Republic of Ireland is small, some legal textbooks on Irish law are available now to assist lawyers and law students in legal research. However, it is unfortunate that there are only three law journals (and not any specialist law journals) for the whole of the legal profession in the Republic of Ireland. Also, it is a pity that the Irish Lawyer does not have a series of regular case law reports (similar say to the All England Reports or Weekly Law Reports) at his disposal.

It is interesting to refer to a study of the information needs of lawyers in private practice undertaken in Canada between June 1971 and April 1972.[16] The research was based on lawyers' opinion. A questionnaire was issued to 1100 Canadian lawyers and there were 200 follow-up interviews. The researchers acknowledged that "there are various sorts of lawyers with various sorts of needs and any computer service developed will be based on a number of competing considerations and a large number of choices. There is no one right system; different systems are, however, likely to be more or less successful. Indeed the whole point of testing lawyers' opinion is to find out which service would be most appreciated (and thus likely to be successful) by lawyers; the design of any service must be influenced by the interaction between technical capabilities, commercial feasibility, and consumer demands." It is interesting that the report concluded that the improvement of the "book system" of legal research should have priority over the development of techniques for computer assisted legal research. However, it should be pointed out that since the time of the Report computerized systems have been introduced in Canada.

If it could be proved that in the Republic of Ireland legal research is a small part of lawyers' work and that the public would not benefit greatly by computer assisted legal research the priority would then be to improve the "book system" of legal research. This could be done in the Republic of Ireland perhaps by re-organising the law report system to ensure that a series of case law reports appears at regular (and specific) intervals; publishing more text books and up-to-date practical manuals for use by the practical lawyer; reducing possible time lag in

publication and up-dating of text books by the use of loose-leaf systems (which is very important, for example, in the field of tax law); and by the publication of specialist law journals or even newsletters for practitioners. Also. the question of publication of material in microfiche form should be examined.

(2.) The Irish lawyer makes use of much of the legal material which is published in England. He reads English legal textbooks, case-books, precedent books and monographs. Therefore, it should be in his interests to follow the developments in England and the rest of the United Kingdom in recent years towards computerized legal information retrieval (including drafting from precedents in a computer). Those developments could have important consequences for the Irish lawyer who is largely dependent on English commentaries on law still and who may have no choice but to share in any computerized system introduced in the United Kingdom eventually or to adapt that system to suit his own requirements. The feasibility of even doing that would depend not only on the cost but even more so on the extent to which developments in the law in both countries are similar in the future.

In England, as long ago as 1961, Tapper stressed the importance of studying computer applications to law. But it was not intil 1968 that a project, STATUS, was initiated in England to attempt to develop a legal information retrieval system using statutory material as a data base. The project was sponsored by the United Kingdom Atomic Energy Authority and its founders were Professor Bryan Niblett and Mr. Norman Price. The data base of STATUS consists of all the Acts of Parliament relating to Atomic Energy, the Income and Corporation Taxes Act 1970 and the European Treaty Series. This system "not only confirmed the feasibility of retrieving legal materials but demonstrated the practical utility of such a development, as well as in an attractively simple systems design, showing capability for a much larger date base".[17] The system can be used by persons without any computer knowledge.

Aitken, Campbell and Morgan, in their report (published by the Scottish Legal Computer Research Trust in 1972) expressed disappointment at the lack of progress made in the United Kingdom. The Trust had been founded by solicitors in practice in Edinburgh and Glasgow in 1970 to promote the use of computer-based systems. The report should be of particular interest to Irish lawyers because it is based on the needs of the users in a legal profession the structure of which is similar in many ways to the Irish legal profession.

The first recommendation of the Report was that a British organisation should be established to further developments in this field. Such an organisation — The Society for Computers and Law Ltd., — was founded in December 1973. The Society is particularly interested in the needs of the practising. lawyer. It publishes a newsletter (*Computers and Law*) in four quarterly issues.

According to Aitken, Campbell and Morgan the *Statutes in Force* project of the H.M.S.O. whereby a computer is used for typesetting and printing of statutes meant that magnetic tapes containing all the statutory material in force in Great Britain will be generated before the end of the 1970's or the early 1980's. They believe that (the computer usable form of) *Statutes in Force* may be the most important stimulus to concrete developments in that country because, in their view, if such tapes become available to outside bodies and organisations the setting up of an information retrieval system may come sooner rather than later.

Bearing the above in mind the Irish lawyer could retain the "book system" for the present and at the same time keep a close eye on future developments in the United Kingdom and elsewhere.[18]

(3.) A computer-based system would allow a lawyer to "search the law" rather than continuing to rely on traditional, manual methods of looking up the law. If Irish lawyers want to develop a practical legal information system (or, indeed, if they want to be involved in the setting up and design of a national legal information system if it is decided that one should be established) they must ensure that the most suitable legal information retrieval system is chosen because, simply, they would be the primary user of such a system. To make this possible they must ask — according to Professor Colin Campbell of Queen's University, Belfast — what are "lawyers' needs?"[19]

What do the "users of law", the users of legal information and the potential users of these computer systems actually need?"

According to one estimate there are at least 70 computerized legal information retrieval systems in Western countries but "only a few can claim to be operating as successful systems". Professor Campbell believes that at least one of the reasons for the relative failure of most of the systems is the distance there seems to have been between the designers of the systems and the potential users especially practising lawyers. Researchers have identified 'the problem of fit' between available systems and lawyers' actual needs, and have advised caution". If a computer-based system is to be introduced "then it is in everybody's interest that it be properly geared to lawyers' needs".

Campbell believes that it is unlikely that a simple transplantation of a system from one jurisdiction to another would work. For example, even if perfectly suitable in America or Canada a system might be quite inappropriate or commercially impossible in Britain or in the Republic of Ireland. He states that: "In America there is a different legal system, different ways of handling sources of law, there are over 300,000 practising lawyers, the structure of law firms and the organistation of business is different, and there is not a divided profession". Attention must be paid in Ireland to the salient features of the legal profession "including the number of lawyers, the size of firms, the trends in specialization and mergers of firms, the effect of having a divided profession etc. These all have effects on lawyers' work patterns".

Also the cost of the system and the price that potential users might pay for such computer services are important. The system must be commercially viable. The mode of access to the computer (on-line or batch etc.) is, of course, related to the cost of the system.

How comprehensive should the date base be? How many of the following sources of law should be included in the data base?

1. The 1937 Constitution. 2. Statute Law. 3. Case law. 4. Statutory Instruments. 5. Private Acts. 6. Text books and journals. (Presumably the responsibility for the inclusion of the sources of European Community Law in an information retrieval system will be borne by the European Commission).

Also, should the system be based on the full text of the law which would cost more to establish and operate or

should it include only abstracts or references which would cost less?

Campbell agrees with the view expressed in *Operation Compulex* that there is no one, right, definitive computer system and no one right legal information system. "Systems which are sensibly established are set up on the basis of careful planning, a balancing of interests and compromise: often the aestehtic appeal or "purity" of the system from a designers point of view must be polluted by the introduction of pragmatic concerns and, especially, commercial viability".

In his research, Campbell speaks of "lawyers' needs" instead of their wants or claims. What the profession (now and in the future) truly need rather than what they want must be determined, he says. Campbell states that his only concern is "the need for efficiency". His focus is "what do lawyers need to make the legal system work efficiently". Campbell believes that it is obviously important to examine the size, structure and nature of the legal profession (in the different jurisdictions covered in his research – i.e. England and Wales, Scotland and Northern Ireland). It is necessary to find out from lawyers by means of questionnaires and follow up interviews:–

1. How they organise their time?
2. How they do their work at the moment?
3. What is the extent of their libraries?
4. What are their needs for information?
5. What are their research habits?

Campbell stresses the importance of the context in which Solicitors work. There are considerable pressures on Solicitors. The bulk of the law has been increased recently by our accession to the European Communities and the integration of European Community Legislation. The law itself is becoming increasingly complex (but, of course, lawyers can meet thid sevelopment by increasing specialization and departmentalization in firms and the use of branch offices). Also, one must ask if legal publications are fulfilling the needs of solicitors, he says. Add to these pressures the urgency of the work, increasing workload, "increasing overheads, difficulties in recruiting and paying adequate salaries to staff" and "uncertainty about the future" and it would seem to be necessary to examine the way legal practice is organised and the way lawyers do their work. But, of course, different considerations apply to firms of differing sizes and to firms in different localities and to firms the nature of whose practice is different.

Campbell remarks that lawyers "are seldom allowed to focus on one particular client's problem, do research and see the matter through to a satisfactory conclusion. Rather they are badgered by the telephone, by clients, by colleagues, by other lawyers; they have correspondence to attend to, court appearances, consultations, meetings and administration. They work under pressure of deadlines and sometimes have to react quickly ... solicitors' work is by its nature 'prone to interruption'. Instead of being able to focus on one thing at a time, solicitors are required to attend to a variety of matters. Frequently it is difficult to predict which clients' affairs, what tasks or which actions will be required in any day".

Campbell believes that insofar as the solicitor's needs for information are concerned it is clear that:

"[1.] in moving rapidly from one client's affairs to the next he must be able to quickly identify the stage to which matters have progressed,

[2.] he needs some system for warning him where one client's affairs demands attention (say because of some approaching deadline) and where others may be postponed meantime,

[3.] he needs information about the relevant law and procedures to allow him to move any particular client's affairs on to the next stage, and

[4.] he needs a sufficiently flexible system so that, if he has to "drop everything" and dedicate all of his time to a particular matter, then he can trust that the others will proceed without him, or that their supervision can be delegated to others".

Campbell states that it is not surprising that the amount of time solicitors do (or can) spend on looking up or checking the law is extremely limited – perhaps just an hour or so a week on average. Also, "Counsel's opinion may be sought by a solicitor solely because a barrister has access to relevant sources and a work style that allows him to do the research in a way that solicitors in general do not".

Campbell believes it is clear that "the extent to which Solicitors in practice are involved in looking up the law or doing legal research has been generally over-estimated" and that this "may advise caution in considering the prospects of any computerized legal information retrieval systems". And yet, he concludes by saying that "it is doubtful if the present situation can continue much longer; if the amount and complexity and change in the law go on increasing, the stress and strain in legal practice will become even worse".

Certainly, Campbell's thesis is of much interest. His comments, of course, relate solely to the legal profession in the United Kingdom but the points made concerning pressures on lawyers and lawyers' needs apply equally in the Irish context.

It is clear, therefore, that before a system of legal information retrieval could be introduced in the Republic of Ireland (and it is hoped that the advantages of such a system will outweigh the cost of the system) research will have to be done on the needs of lawyers who would be the

primary users of that system and on the size, structure and nature of the legal profession in Ireland. An inquiry of this nature would enable us, according to Campbell, to attend to the following relevant questions: "First, are computer systems needed and are computer applications likely to be advantageous? . . . Second, if it is the case that *some* lawyers or legal firms could benefit from (or perhaps urgently need) computer systems or legal informational retrieval systems can we determine what services would be attractive and viable?"

Conclusion:

1. It is hoped that interest will be generated amongst the legal profession in computer applications to law by the Incorporated Law Society of Ireland and by the local Bar Associations and that members of learned societies such as the Society of Young Solicitors and the Irish Society for European Law will devote some of their time to this area.

2. It is also hoped that the Incorporated Law Society of Ireland will set up a Committee to study computer applications to law and related topics and to report on their findings to the members of the Incorporated Law Society from time to time or, at least, that a group of lawyers independently establish a Society concerning this whole matter. It is hoped also that the Law Society co-operates with other bodies who are interested in this area. For example, the inclusion of Irish tax law statutes in a computer-based retrieval system surely would be of interest to both lawyers and accountants.

3. It is hoped that a course in computer applications to law will be included in the new system of legal education which the Incorporated Law Society of Ireland proposes to commence in 1978/79. Of course, law retrieval is merely one example of what computers can do for lawyers. There are other subsidiary applications – for example, accounting or drafting from precedents in a computer.

4. It is hoped that the Government will establish a Committee to examine this area in all its aspects.

There is much to be done but one wonders how much more time will pass before the potential users of a legal information retrieval system in the Republic of Ireland take up the challenge.

Footnotes

1. "Does the law need a technical revolution?" in Rocky Mountain Law Review 1946, at p. 378, cited in *Legal Decisions and Information Systems* by Jon Bing and Trygve Harvold (Universitetsforlaget, Oslo, 1977), at p.60. Bing and Harvold's book is the most up-to-date work on legal information retrieval. A reference hereafter to: Bing and Harvold: constitutes a reference to that book.
2. *Computers for Lawyers* by William Aitken, Colin M. Campbell and Richard S. Morgan (A Report to the Scottish Legal Computer Research Trust November 1972) at p.1. A reference hereafter to: Aitken, Campbell and Morgan: consitiutes a reference to that Report.
3. Bing and Harvold, pp. 61-62.
4. See *Computers and the Law* (1973) by Colin Tapper, pp. 176-182 for a summary of the Oxford Experiments.
5. "Case Law and Computers" by Colin Tapper, *Computers and Law*, No. 4, May 1975, p. 7.
6. See Bing and Harvold, Chapters 4 to 7 inclusive, for a survey of the developments in North America and Europe.
7. See "System for Legal Document Retrieval in the European Economic Community" by Alan Brakefield and Norman Price, *Computers and Law*, No. 5. August 1975, pp. 7-8, and "Computerised Legal Documentation System of the European Communities", *Computers and Law*, No. 7. February 1976, pp. 2-3.
8. See *CREDOC* by William Aitken (A Report to the Scottish Legal Computer Research Trust, 1972) for a detailed study of the CREDOC system. See Aitken, Campbell and Morgan, pp. 18-25, for an outline of the CREDOC system.
9. Bing and Harvold, at p 50.
10. Bing and Harvold, at p. 51.
11. Bing and Harvold, pp. 52-53.
12. Bing and Harvold, at p. 53.
13. Bing and Harvold, at p. 225.
14. Bing and Harvold, p. 226.
15. *Electronic Legal Retrieval* by Philip Slayton, Information Canada, 1974. See "Practical Benefits of the Computer for Lawyers": The Proceedings of a Conference at the University of Warwick, Coventry, September 1976: "Designing Datum II" by Ejan Mackaay, pp. 12-20, at pp. 12-13 for a critique of the Slayton Report where Mackaay states that "The [Slayton] Report itself has been criticised virtually unanimously for the rather cursory evidence from which these drastic conclusions are drawn."
16. *Operation Compulex* (1972). Information Needs for the Practising Lawyer. Department of Justice, Ottawa, summarised in Aitken, Campbell and Morgan, pp. 117-121.
17. Aitken, Campbell and Morgan at p. 12. For a brief example of the system in operation see "Computers and Lawyers – a Personal View", by Nicolas Bellord *New Law Journal*, (24th October 1974) pp. 990-1.
18. See "Society for Computers & Law Limited. Evidence submitted to The Royal Commission on Legal Services", *Computers and Law*, No. 11. January 1977, pp. 2-6 for a recent account of the present computer applications to law in the United Kingdom.
19. See "Practical Benefits of the Computers for Lawyers", The Proceedings of a Conference at the University of Warwick, Coventry, September 1976. "Lawyers' Needs" by Professor Colin Campbell, pp. 2-5 *passim* on which this third section is based.

WHITE PAPER ON N.I. COURT REFORMS

"Major reform to the law governing the organisation and jurisdiction of the courts in Northern Ireland is long overdue", says a White Paper entitled "Courts in Northern Ireland – the Future Pattern".

The main proposals in the White Paper are:

* Creation of a reconstituted Supreme Court of Judicature in Northern Ireland;
* Creation of new Crown Courts to which will be transferred criminal cases in indictment, presently dealt with by Assize and County Courts;
* Creation of a new Family Division within the High Court;
* Merging the present Courts of Appeal and Criminal Appeal into a single new Court of Appeal;
* Merging of the administrative staffs of each of the three tiers of the present judicial structure into a single integrated service;
* Revision of territorial boundaries so as to relate them to local government boundaries; and
* Appointment of Circuit Registrars.

The U.K. Government intends to introduce, as soon as is practicable, appropriate legislation to implement the changes. But detailed aspects of the general administrative reorganisation – particularly in relation to court staffing and the territorial redistribution of courts and of court offices – are still the subject of consultation with interested parties.

The running costs of the new Court Service are not expected to exceed present running costs. All members of the Judiciary will continue to be appointed by the Queen on the recommendation of the Lord Chancellor, and their independence from executive interference in the discharge of their judicial functions will be strictly preserved.

New Horizons in Law: Consumer Protection Legislation

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Mrs. Murphy, two children at her side, pregnant with a third, stands in a supermarket queue: the inevitable display of chocolates at the checkout desk prompts the conditioned plea from the children for "Zapo" chocolate bars. Mrs. Murphy, her mind dulled by tiredness, half remembering that "Zapo is the ideal snack between meals", reaches instinctively for the chocolate bar.

The law steps in at this stage to warn Mrs. Murphy in Latin "caveat emptor". The law says that Mrs. Murphy contracts freely, but long before buying, her decision has been influenced by newspaper, television and billboard advertisements. Her tastes are determined by colourful packages and the special offers of marketing experts. With inflation as a constant threat to her income she will try to save and will instinctively leap at special offers, sometimes without due regard to value.

Indirect Protection

Although the law allows buyers and sellers to contract freely and the basic rule is "caveat emptor" the law occasionally steps in to protect the consumer. Where the Sale of Goods Act 1893 applies, the law lays down standards of fitness for purpose and merchantable quality. The law indirectly lays down standerds to protect consumers' health in the Public Health Acts and directly protects the consumer where orders are made under the Institute of Research and Standards Act, 1961 and the Food Standards Act, 1974. Orders, however, are seldom made under these Acts.

Even where the consumers have laws to protect them they may be unaware of the laws or may lack the resources to uphold a claim. Thus for many people the law is irrelevant to their needs; much of the law affecting consumer transactions was developed in an age when buyer and seller knew each other and the buyer could easily determine the composition of goods and see if they fitted his purpose.

More positive help needed

The consumer today is presented with a variety of pre-packed goods which cannot be examined until they are brought home; complex electrical equipment, like television sets and washing machines, need spare parts and maintenance, sometimes from a factory in another country; clothing and footwear are made from a variety of natural and synthetic materials. In these circumstances the buyer needs more positive help than a warning to beware and a diverse collection of laws which provide only a small measure of indirect protection.

Need to discriminate

In addition to the problem of choosing goods which suit his needs, the consumer must learn to discriminate in his reactions to advertising; he must learn to question whether manufacturers claims are true – whether "X" really washes whiter. He must learn to recognise that his choice of product "Y" which he associates through advertising with good times and popularity will not automatically bring him good times or popularity.

Consider the problem of the old-age pensioner who sees a certain product advertised everywhere. At his local supermarket he sees the product on sale – "three packets for the price of two". He needs half a packet but one packet will cost him more than a third of the price of the special offer. He tries to make a comparison with competing product and finds it packed in a different size so that comparison is impossible.

These situations illustrate that the terms of trade between buyer and seller have altered since the sixteenth century days of "caveat emptor", and the nineteenth century Sale of Goods Act. Advertising, marketing and modern packaging do not leave a consumer with such a measure of freedom making a contract.

Other Countries

In other countries the changes in the terms of trade have been reflected by changes in the law and the development of institutions which serve to create a better balance between buyer and seller; in Britain, Sweden, Canada and the United States laws have been passed to prevent misleading statements in advertising and to encourage more honesty in trades descriptions.

Other laws prescribe rules for packaging and labelling of consumer products in order to help the consumer make a more informed choice between goods on sale. In Britain, Sweden and the U.S. a system of small Courts has been created where consumers can litigate small claims with a minimum of formality and expense.

Consumer Education

These countries, to mention a few, have also recognised that laws are of little use unless they are understood by the ordinary people. Consumer education is thus encouraged in schools so that children learn to spend as well as to earn their money. informative leaflets are produced and distributed through Citizens Advice Bureaus, Consumer Advice Centres, which inform people how to spend wisely and get value for money.

E.E.C.

Many countries have thus recognised the need to protect consumers and help them to spend wisely. The Council of Europe have drawn up a Consumer Charter, but more important, one of the basic aims of the Treaty of Rome is, "the constant improvement of living standards of the peoples of the Community".

Having regard to this aim the Council of Ministers of the EEC in Dublin in 1972 agreed to a "Preliminary Programme for Consumer Protection and Information". The basic aims of this programme were to secure:—

(1) effective protection against damage to health and safety
(2) effective protection against damage to consumers' economic interests
(3) adequate facilities for advice, help and redress
(4) the right to information
(5) the right to be heard.

Further to the community's desire to protect consumers' health and safety, a number of Directives have been approved by the Council of Ministers including Directives on additives of food, standards for steering systems of cars; the list is very long.

Draft Directives

The Commission of the EEC are at work preparing Directives to protect the consumer's economic interests, including Directives on consumer credit, in unfair terms in contracts, on door to door sales, and have passed to the Council of Ministers Directives on product liability, unit pricing (to make price comparisons easier) and on correspondence courses.

How Relevant?

The question may well be asked how relevant to the Irish market are these Directives, inspired by developments in rich countries like Germany and France. They are very relevant according to the Consumers' Association of Ireland who have urged successive Governments to develop laws and institutions which reflect modern trading conditions.

Following pressure from the Consumers' Association, the Government set up the National Consumer Advisory Council in 1973; the Council, formed to advise the Government on consumer affairs, made submissions in 1974 on proposals for legislation to assure the consumer's interests.

Proposed Legislation

On proposed Consumer Credit Legislation, they recommended the enactment of new legislation, where necessary, to protect consumers from their own lack of knowledge and from abuse from certain traders and financial bodies.

The Council also considered it necessary to enact legislation which would control misdescriptions and provide safeguards against false or misleading advertising. A bill was drafted taking account of these proposals and introduced to the last Dáil as The Consumer Information Bill, 1976; it died with the dissolution of the Dáil.

A second Bill, the Consumer Protection Bill, 1977, which incorporated the Council's submissions on the need to introduce legislation which would afford the consumer with "effective protection against damage to his economic interests from defective quality goods", also died.

The Constitution

Practitioners may look aghast at this volume of legislation, industry may fear these developments as being unnecessarily restrictive but to the long-suffering consumer these proposed changes reflect nothing more than the State's constitutional pledge, enshrined in the Constitution, to uphold the economic interests of the people and to prevent them from being exploited.

CORRESPONDENCE

11 Hume Street,
Dublin 2.
9th September, 1977.

The Editor of Gazette.

Dear Sir,

Certain gremlins seemed to have affected my paper entitled "Custody, Adulteryand the Welfare Principal", as published in the July edition of the Gazette.

In my discussion of the Judgment — Parke, J. in "H.v.H.", the second last paragraph on page 107 in my typed script read:—

"Whilst religious complications also influenced the decision reached in this case, Parke, J. made it quite clear that even if such complications did not exist he would have awarded custody to the father".

It did not read:—

"Whilst religious differences inevitably also influenced the decision etc".

In my discussion on the English Court of Appeal Decision in *Re K. (Minors)* on page 108 of the Gazette, second paragraph, two sentences that were in my typed text appear to have been edited into just one sentence and as a consequence the facts of the case, as set down in the Gazette are completely inaccurate. The sentence:—

"The mother had an adulterous relationship with M. and wished to leave the "matrimonial home without the children",

should not have appeared, but the following *two* sentences, which read as follows, should have been substituted

"The mother had an adulterous relationship with M., and wished to go to live with him. She did not wish to leave the matrimonial home without the children.

A further error appears in the fourth paragraph of page 108. The first sentence of this paragraph should have read:—

"An inportant difference between the decision and the Irish decision discussed earlier is that the English Court was prepared to grant custody to a parent about to leave her home to live in an adulterous situation."

In the Gazette the text reads:—

"A parent about to leave her children".

I am afraid that I may be partly responsible for this particular error as the word "home" was omitted from my typed text.

Yours truly,

Alan Shatter.

SOCIETY OF YOUNG SOLICITORS

COMMISSIONERS FOR OATHS

The essential function of a Commissioner for Oaths is the swearing of persons who come before him to the truth of evidence which has been reduced to writing in a specified form. It is not his duty to be concerned with the truth of the facts set out in the affidavit but it is his duty to observe strictly the code whereby he administers the oath.

Before taking the deposition the Commissioner must in particular ensure that:—

1. The deponent is present in person before him.
2. The deponent has read and fully understands the contents of the affidavit and is prepared to swear unreservedly to the truth thereof.
3. The affidavit is in the prescribed form.
4. The form of affidavit has been fully completed and there are no blanks which require to be completed subsequently.

The form of affidavit is prescribed by Order 40 of the Rules of the Superior Courts (S.I. 72 of 1969). The principal requirements are as follows:—

1. Affidavits must be confined to such facts as the deponent is able of his own knowledge to prove (Rule 4).
2. The jurat or attestation must state the date on which and the place where the deposition is made (Rule 6).
3. Every affidavit must be drawn up in the first person and must be divided into paragraphs to be numbered consecutively (Rule 8).
4. Every affidavit must state the description and true place of abode of the deponent and every affidavit of service must state when, where, and how, and by whom, such service was effected and in the case of delivery to any person, must state that the deponent was at the time of such delivery acquainted with the appearance of such person (Rule 9).
5. No affidavit having in the jurat or body thereof any interlineation, alteration, or erasure may, without leave of the Court, be filed, read or made use of in any matter pending in Court unless the interlineation or alteration (other than by erasure) is authenticated by the initials of the person taking the affidavit; nor, in the case of an erasure, unless the words or figures appearing at the time of taking the affidavit be written on the erasure are rewritten and signed or initialled in the margin of the affidavit by the person taking it. (Rule 13). It is not permissible to bracket a number of alterations and place one initial thereat to cover them all. No alteration can properly be made in any affidavit after it has been sworn and any Commissioner initialling such an alteration would render himself liable to the revocation of his commission. Such affidavit must be resworn by the deponent, and a fresh jurat, commencing with the word "resworn" should be placed below the earlier jurat. While the deponent must attend on the reswearing he is not required to sign the second jurat.
6. A Commissioner is required to certify in the jurat of every affidavit, that he himself knows the deponent or that he knows some person named in the jurat who certifies to his knowledge of the deponent. He is therefore not empowered to take affidavits from persons whom he has not met before and who are not introduced to him by some person with whom he is acquainted (Rule 14).
7. No affidavit is sufficient if sworn before the solicitor acting for the party on whose behalf the affidavit is to be used (Rule 17).
8. Any affidavit which would be insufficient if sworn before the solicitor himself is deemed to be insufficient if sworn before his clerk or partner (Rule 18).

Exhibits referred to in an affidavit should not be annexed thereto but should be referred to as exhibits marked with separate letters of the alphabet and endorsed with a certificate signed by the Commissioner to identify it with the affidavit.

The frequency with which a person is nowadays required to make affidavits and statutory declarations has tended to cause the very essence of a Commissioner's duties to be lost sight of and has resulted in Commissioners all too often being asked to abuse their powers and to depart in some way from the code under which the oath is required to be administered. Quite apart from the fact that for the Commissioner to do so is for him to show scant regard for his oath of office it also undermines the nature of the oath and the confidence which both the profession and the public have in its administration.

That confidence must be maintained and consideration ought to be given to the manner in which the present abuses might be got rid of. It is all important that the oath be properly administered and there is always a serious danger that in making a thing too common it is treated with less respect.

It should be borne in mind that members of the public have rightly come to expect and should be required to adhere to a certain formality in the administration of an oath and failure by the Commissioner to observe the necessary formalities must be detrimental to the value of the oath and can only lead to scandal. It is therefore incumbent on the Commissioner to ensure that all persons appearing before him fully understand the facts contained in the affidavit, the purpose for which the affidavit is required and the importance of the oath in relation thereto.

Many of the present abuses must undoubtedly arise from the number of relatively trivial documents which require to be sworn or declared before a Commissioner and some of these could well be replaced by some form of Solicitors certificate.

Suggestions from colleagues would be welcome.

Is the Declaration of Compliance of any great value when the Companies Registration Office check so thoroughly all the documents filed?

Is there any real advantage in having the witness to a deed swear the Memorial before it can be registered when the Deed and Memorial are compared in the Registry of Deeds?

Is it really necessary for a Master to appear before one of his Commissioner colleagues to declare that his

apprentice has well and truly served his apprenticeship?

Perhaps some of the existing affidavits and declarations might be dispensed with. Perhaps all Solicitors might be given the powers of Commissioners for all but some kinds of affidavit. It is worth more than just a thought.

Solicitors as Employers

The right of an Employer to terminate, subject to giving statutory, contractual or reasonable notice, without reason, the employment of any Employee has ended with the Unfair Dismissals Act 1977. This Act provides that an Employee who is held to have been unfairly dismissed within the meaning of the Act must either be re-instated (either in his old position or in another suitable position) or compensated for any financial loss contributable to the dismissal.

"Unfair Dismissal" is not defined in the Act. Instead, all dismissals are deemed to be unfair unless the Employer can show that there were substantial grounds justifying the dismissal or that the dismissal resulted wholly or mainly from one or more of the following causes:—

i) The capability, competence or qualifications of the employee for performing work of the kind which he was employed by the employer to do,
ii) The conduct of the employee.
iii) The redundancy of the employee, and
iv) The employee being unable to work or continue to work in the position which he held without contravention (by him or by his employer) of a duty or restriction imposed by or under any statute or instrument made under statute.

Thus, where an employer now dismisses an employee and this Act applies to such dismissal, the onus is on the employer to show that the dismissal resulted wholly or mainly from one of the above four cases or there were other substantial grounds justifying the dismissal. It is most likely that an employer seeking to dismiss an unsatisfactory employee will seek to justify such dismissal under paragraph (i) or (ii) above. It would thus seem advisable in the future that an employer set out clearly at the time of employment of a new employee the work which he is being employed to do and that a letter of appointment containing this description and other main conditions of employment be given to all new employees.

In this connection, there is of course an obligation on every employer, under section 9 (5) of the Minimum Notice and Terms of Employment Act 1973 to furnish to each employee within one month of the commencement of the employment a written statement containing the following particulars:

i) The date of commencement of the employment,
ii) The rate or method of calculation of his remuneration,
iii) The length of interval between the times at which remuneration is paid, whether weekly, monthly or any other period,
iv) Any terms or conditions relating to hours of work or overtime,
v) Any terms or conditions relating to
   a) Holidays and holiday pay,
   b) Incapacity for work due to sickness or injury and sick pay,
   c) Pensions and Pension Schemes,
vi) The period of notice which the employee is obliged to give and entitled to receive to determine his contract of employment, or (if the contract of employment is for a fixed term) the date on which the contract expires.

The Unfair Dismissals Act 1977 does not apply to certain types of contract of employment. Many of these are not of interest as they relate to special categories of employment particularly in the public service. There are three categories of contract excluded which are of significant practical importance. The Act does not apply to:—

i) A dismissed employee, who at the date of his dismissal, had less than one year's continuous service with the employer who dismissed him (except where the dismissal results wholly or mainly from the pregnancy of the employee). Continuous service is computed in accordance with the first schedule to the Minimum Notice and Terms of Employment Act 1973.
ii) Dismissal during the period when the employee is on probation or undergoing training, provided his contract of employment is in writing, the duration of the probation or training is one year or less and is specified in the contract,
iii) a) Dismissal where the employment was under a contract of employment for a fixed term made before 16th September 1976 and the dismissal consisted only of the expiry of the term without it being renewed under the same contract, or
   b) Dismissal where the employment was under a contract of employment for a fixed term or for a specified purpose (being a purpose of such a kind that the duration of the contract was limited but was at the time of its making incapable of precise ascertainment) and that the dismissal consisted only of the expiry of the term without its being renewed under the said contract or the cesser of the purpose and the contract is in writing, or signed by or on behalf of the employer and the employee and provides that this Act shall not apply to a dismissal consisting only of the expiry of cesser aforesaid.

The only practical difference between (i) and (ii) above would appear that under (i) dismissal on grounds of pregnancy during the first year of employment would bring the dismissal within the Act whereas under (ii) the Act would not apply to a dismissal on these grounds during a period of probation. It may thus be advisable in the employment of new female employees to include in a written contract of employment a probationary period up to one year.

An employee who has been dismissed in circumstances to which the Act applies may appeal to the Employment Appeals Tribunal (formally the Redundancy Appeals Tribunal) or the Rights Commissioner who may make orders for the reinstatement of the employee to his former position, the re-engagement of the employee by the employer to a different position or the payment by the employer to the employee of such compensation (not exceeding an amount of 104 weeks remuneration) in respect of any financial loss incurred by him and attributable to the dismissal as is just and equitable having regard to all these circumstances.

An excellent lecture on the Unfair Dismissals Act 1977 and other related topics was given by Ercus Stewart, Barrister-at-Law, to the Society in Tralee in April last. The script of this lecture is available.

Happenings in the Licensing Courts

From time immemorial until the mind of man runneth not to the contrary and until the matter came before District Justice Donnelly, it was accepted that if a Special Event continued for a period in excess of three days, one could and did with regularity, apply for successive Occasional Licences to ensure that adequate supplies of intoxicating liquor were available to the attendants of the special event. However, when Aer Lingus Teoranta made application for two successive Licences to District Justice Donnelly in February, 1977, on the occasion of a Boat Show being held at the Simmonscourt Extension of the R.D.S., the learned District Justice looked into Section 11 of the Intoxicating Liquor Act, 1962, and his Judgment was a bombshell that sent applicants, Aer Lingus Teoranta, supported and aided and abetted by the Federation of Marine Industries, the Royal Dublin Society and Bord Failte Eireann, rocketing to the High Court on a Mandamus application. The learned District Justice said he had no jurisdiction under Section 11 to grant more than one Occasional Licence for one event. The matter foremost in everybody's mind was how could such events as the Boat Show, the Spring Show, the Horse Show, Galway Races and Tralee Festival, possibly succeed as financial enterprises and tourist attractions if intoxicating liquor could not be readily available at all times to all who attended. The matter came before Judge Hamilton in the High Court, and after lengthy legal submissions, citing Case Law and Statutes, dating back to 1862, Mr. Justice Hamilton, in delivering his Judgment, endorsed District Justice Donnelly's view and said that Section 11 of the 1962 Act was clear and implicit, only one Occasional Licence could be granted for each special event, and no Occasional Licence can exceed a period of three days. This decision was recognised in both Houses of the Oireachtas as having such far reaching effects that the wheels of amending legislation were oiled and put into immediate motion, and in April, 1977, the Intoxicating Liquor Act, 1977, came into being. The position now is that only one Occasional Licence can be granted per special event, but no Occasional Licence can exceed a period of six days. It is ironic to note that legislation can be enacted within a period of weeks to ensure the drinking habits of the populace are not interfered with, while many other Bills, particularly within the Family Law field, are on the "waiting list" for years.

During the months of April and May. Solicitors acting for clients who made application to Court No. 1 Morgan Place for Club authorisations pursuant to Section 21 of the Intoxicating Liquor Act, 1924, as amended by Section 8 of the Intoxicating Liquor Act, 1972, were sent into a flurry of activity when the learned District Justice said that the granting of a Club authorisation extending the hours during which excisable liquor could be sold was an extension only to members of the Club. This begged the question as to whether or not non-members of the Club could even be on the premises on such occasions. As the majority of such applications were for Rugby Clubs and Golf Clubs, which do not admit full lady members, the female members of the profession who lined the benches of Court No. 1 Morgan Place, were deeply concerned at the implications of the District Justice's opinion, in case their social outings after 11 p.m. into the all-male preserve would be terminated. However, the learned District Justice, having patiently heard a lot of legal argument on the point, allowed common sense to prevail, and held that on the hearing of such applications he would not anticipate breaches of the Licensing Laws.

AUTUMN SEMINAR

If you have booked into Bundoran for the Autumn Seminar you have unfortunately booked into the wrong place. Although we indicated in the July issue of the Gazette that Bundoran would be the venue for the Seminar it did not prove altogether suitable for our requirements and we decided to opt for Sligo instead.

The Autumn Seminar is now scheduled to take place on the weekend of **15th/16th October** at the **Sligo Park Hotel, Sligo.** To those who tried to beat the rush and are now assured of a place in Bundoran – sorry!

The topic for the Seminar will be Motorists Liability, Damages and Professional Negligence and it is intended to cover the areas of litigation with which the general practitioner will normally be concerned.

The programme for the Seminar is as follows:–

Saturday, 15th October

9.30 a.m.	Registration.
10.00 a.m.	Processing of Motor Accident and Factory Accident Claims. *Speaker:* Henry Comerford, Solicitor.
11.00 a.m.	Discussion.
11.30 a.m.	Actuarial Assessment of Damages. *Speaker:* Peter Delaney F.I.A.
12.30 p.m.	Discussion.
2.30 p.m.	Defence of Road Traffic Acts Offences. *Speaker:* Kevin Haugh, B.L.
3.30 p.m.	Discussion.
8.30 p.m.	Banquet and Dance.

Sunday, 16th October

11.00 a.m.	Professional Negligence. *Speaker:* Brian McCracken, S.C.
12.00 p.m.	Discussion.

All Lectures will be held in The Conference Area of the Sligo Park Hotel

RATES:

Friday night to Sunday lunch ..... £20.00.
Registration fee ..... £4.00.

Train departs Heuston Station Dublin: Friday, 14th October at 18.25 hrs.

Departs Sligo: Sunday, 16th October at 18.30 hrs.

Special return fare: £5.00.

Alternative accommodation will be available in the event of there being insufficient accommodation at the Sligo Park Hotel.

BOOK REVIEWS

DAVIES F.R. Contract. 3rd Edition. London: Sweet & Maxwell, 1977. 233 pages. (Concise College Texts). £2.50.

Mr. Davies is Senior Lecturer in Law in Brunel University, London. The fact that three editions of this work have been published in seven years speaks for itself. As a concise text it undoubtedly covers accurately all the important English decisions, even the most recent ones, but an Irish student would also have to learn the more important Irish cases.

The learned author sometimes reminds us of conveyancing formulas, in as much as he stresses that the phrase "subject to contract" has become a kind of magic formula, and the consequent rule that neither party is bound. He emphasises that the expressions "sufficient" and "adequate" are not identical in the rule that Consideration must be sufficient but need not be adequate. The propositions of the House of Lords in the *Suisse Atlantique case* have always been troublesome to define accurately, but the four propositions put forward by the author on page 72 add clarity and precision to the case. The great advantage of this text is its clarity. The volume can be confidently recommended, particularly to students who wish to obtain Honours standard, without reading the more ponderous and well-known texts.

The Bar List of the United Kingdom 1977. 488 pages. London: Stevens, 1977. £10.00.

The Bar List of the United Kingdom now replaces, as far as Judges and Barristers are concerned what used to be the annual "Law List", which appeared for the last time in its present form in 1976. It is divided as follows:

Part I: Courts and Offices (House of Lords, Privy Council, Lord Chancellor's Office, Taxing Masters, Chancery Offices, Family Registry, Admiralty, Bankruptcy, Criminal Courts, Circuit Judges, Recorders, Government Legal Service, Law and Public Offices, Stipendianes, Coroners, Clerks to Justice, Notaries Public.)

Part II: Counsel (The Inns of Court, Council of Legal Education, Queen's Counsel, Counsel's Chambers, Advocates of the Scottish Bar, Counsel of Irish Bar who are members of English Bar, English Barristers who are experts in Foreign Law, List of Barristers on Circuit, Detailed List of Barristers).

Part III: Scotland (Court of Session, High Court of Justiciary, Government Legal Service, Law and Public Offices, Faculty of Advocates.)

Part IV: Northern Ireland (Supreme Court, Queen's Bench Division, Northern Ireland Bar.)

Part V: Isle of Man (Courts, Advocates of Manx Bar.)

Part VI: International (Commonwealth Representatives, Foreign Consulates,, International Court of Justice, Court of Justice of the European Communities, International Section)

It will thus be seen that the material contained in this volume is most useful and comprehensive. The Editorial Staff of Messrs. Stevens are to be congratulated on the patient and exacting work which they undertook in ensuring accuracy in this volume.

SALMOND (Sir John) – The Law of Tort. 17th edition by R.F.V. Heuston, D.C.L. 719 pages. London: Sweet & Maxwell, 1977. Paperback, £8.50.

The renown of Sir John Salmond's famous work on the Law of Torts has not diminished as Professor Heuston has just edited the 17th edition. Professor Heuston is such an eminent scholar in his own right that one would have thought that he would have discarded in 1977 much of Salmond's writing. Strange to relate, he has not done this save where necessary. On the contrary Dr. Heuston boasts that, as far as possible, he has left Salmond's text of 1945 untouched. This reviewer would not agree that such respect should be accorded to out of date legal writers, however eminent. It would seem strange if a modern author attempted to bring William's Law of Real Property up to date, despite its excellence in its day.

The author's claim that there were an increased number of references to cases and statutes in the Irish Republic is doubtless justified, but, for clarity, it would have been better if they had been separately indexed. Unfortunately, the high price of printing has confined mention to references only. It would have been invaluable for us to have had Dr. Heuston's views on the more important recent relevant Supreme Court decisions. It need hardly be emphasised that all the recent English decisions are listed in their place, and detailed notes are given of all relevant books and articles. The cost of production has made a charge of £8.50 plus V.A.T. inevitable for a volume of altogether nearly 720 pages. All the former good points of previous material, such as clarity of style and lay-out, are intensified in this edition. Salmond must thus remain the constant companion of all practitioners with problems in the law of Torts, for many years to come.

Foundation to promote the study of Maritime Law

The Irish Maritime Law Association has received a notice from the Comité Maritime International of the establishment, in March, 1977, of the Albert Lilar Foundation aiming to promote the study of maritime law. Baron Albert Lilar was President of the Comité Maritime International for 29 years, and during his term of office contributed greatly to the unification of Maritime Law.

Article 10 of the Foundation's Constitution provides as follows:–

"The allocation of the revenue of the Fund will be determined by the Board of directors. A prize will be awarded from the revenue every three years to a scientific study, published anywhere in the world, which the Board considers will contribute to the unification of Maritime Law and the study of comparative maritime law. The Board will determine the procedure for the allocation of the prize and the amount thereof."

The prize is expected to be in the region of 5,500 U.S. Dollars.

Anyone interested in the Foundation should contact the Irish Maritime Law Association, Merrion Hall, Strand Road, Dublin 4.

Internment and Detention Without Trial in Irish Law

by Brian F. Havel

PRIZE COMPETITION FOR HUMAN RIGHTS ESSAY—U.C.D.

"An unjust law is itself a species of violence. Arrest for its breach is more so."

Mohandas K. Gandhi (1948)[1]

Gandhi's maxim is a valuable point of orientation for this discussion. The operation of procedures of internment in Ireland is set against a well-established matrix of legal and social forces, the former referring principally to the purported supremacy of constitutional rights and freedoms, the latter to the urgency of defending the stability of the State against periodic outbreaks of politically-inspired violence which have persisted since 1922. Harmonisation of these conflicting forces is a difficult task for constitutional government, and the Irish experience of internment and detention without trial crystallizes the difficulty. Whether we have been guilty of applying "an unjust law" is a problem to be resolved by examination of empirical evidence.

By the word "internment" is meant detention without trial of persons believed to be a danger to the State, but the terminology is not of great significance. Indeed, "internment" and "detention without Trial" have been used interchangeably in Irish law. For example, Part VI of the Offences Against the State Act, 1939, is headed "Powers of Internment", whereas Part II of the amended legislation in 1940, which substantially re-enacts Part VI with only minor verbal changes, is entitled "Powers of Detention". Interestingly, the legislative vocabulary of all relevant enactments since 1922, with the single exception of Part VI of the 1939 Act, nowhere includes the term "internment". Rather, "detention" is universally preferred, although semantically both words co-incide. It is true that "internment" may sound more offensive to popular sensibility.

The supreme law in Ireland is the Constitution, a remarkable charter of governmental organisation and fundamental guarantee, including a specific right to personal liberty (Article 40.4.1). National constitutions in Western Europe recognise personal freedom as belonging to a nucleic group of constitutionally-guaranteed freedoms, also including the protection of the life of the individual, his family circle, his freedom of religion, thought and property, and collectively classified as civil or liberal rights. These codified rights and freedoms are vested with legal supremacy, and the legislator is subjected to judicial control in regard to their observance. The principle is to protect the freedom of the individual against the power of the State. Absolute rights are unknown, or virtually unknown, in democratic states, however, and therefore the scope of fundamental rights is delineated for purposes of law, in the Irish document by the pithy expression "save in accordance with law". The implications of that phraseology will be discussed later. For the moment, it suffices to remark that internment without trial breaches the right of personal liberty per se, but whether it does so "in accordance with law" is more problematical.

Constitutional government is something more than government according to the terms of a constitution—it is government according to rule, as opposed to arbitrary government. It is government limited by the terms of the Constitution, not government limited only by the desires and capacities of those who exercise power. The most damaging force which operates this concept of limited government is war, whatever its form in particular circumstances. Precisely when the exigencies of external and internal state security begin to assert themselves, constitutional law must grapple with a problem of worrisome intractability. The structural framework by which the Government was prevented from infringing individual rights during peacetime, must be sufficiently flexible to allow that same Government to defend those rights in time of conflict. To properly conduct affairs of State during national emergency, the Government will require full freedom of action. Constitutions recognise this almost inevitable consequence of war by incorporating specific provisions allowing unhampered freedom to the Executive in time of war of in defence of public safety. The Irish Constitution, in Article 28.3.3, withdraws every constitutional restraint from the Oireachtas "for the purpose of securing the public safety . . . in time of war or armed rebellion", and makes the determination of what is "time of war or armed rebellion" entirely a matter for the Oireachtas—or, in reality, for the Government. "Salus populi suprema lex" represents the activating principle behind emergency legislation, and by extension the sacrifice of individual liberty for the common good may be justified. The Emergency Powers Act, 1976, confers a power of limited detention (up to 7 days without charge) on certain officers of the police force. Mr. Lynch, then Leader of the Opposition, attacked the Bill in the Dail as sanctioning "a form of internment"[2], and that possibility (which I shall leave without comment) justifies reference to the Dail debate on the Emergency Powers Bill, 1976, and in particular to the speech of that Taoiseach, Mr. Liam Cosgrave, which illustrated the circumstances which would motivate an Executive decision to suspend constitutional liberties under Article 28.3.3:

> "The Government believe that the extent of violent crime by irregular bodies and persons associated with such bodies, the new dimension added by the recent events (i.e. the murder of the British Ambassador and explosions at the Special Criminal Court) and the further threat to the institutions of the State implied by these events, constitute a national emergency affecting the vital interests of the State."[3]

At this point, that Taoiseach stressed the resolve of his Government to proceed in accordance with law, and not to act in any arbitrary manner. The irony of the situation is striking. After all, it is precisely in conditions of

national emergency that constitutional rights are most exposed to violation, and yet their enforcement in such times must depend ultimately on the goodwill of the Executive, as here evinced by that Taoiseach. Continuing his justification for a State of Emergency, he stressed that the first duty of a democratic government is to protect the lives of the citizens and to allow them to live and go about their legitimate business in peace. In summarising his argument, he encapsulates the *rationale* of emergency legislation:

> "The very existence in the Constitution of the Article under which this Resolution (i.e. for a State of Emergency) is moved, is evidence that there are circumstances in which a democratic government may be compelled to limit the exercise of individual rights in the interests of protecting from attack the ordered community of the State, without which anarchy and armed repression would reign supreme and the exercise of individual rights would be utterly abolished."[4]

Mr. Cosgrave's Parliamentary Secretary, constitutional lawyer John Kelly, conceded that the power of preventive arrest and questioning being authorised under the Bill was very probably repugnant to the Constitution, and to avoid the issue it was necessary to withdraw that power from the process of constitutional review. He pointed out that the other constitutional safeguards (habeas corpus, the rule of law, the ordinary system of trial, etc.) remained locked in place.

The purpose of examining constitutional rights and their abnegation or partial abnegation in a climate of national emergency, is to establish the *substratum* on which rests the topic of internment and detention without trial in Irish law. The *nexus* is recognised by the European Convention on Human Rights, which concerns itself primarily with the protection of those rights which are today accepted as the basis of a democratic society, while at the same time providing adequate safeguards to permit the State to maintain and protect its democrtatic institutions. We shall see that internment without trial offends certain constitutional guarantees in the "Charter of the People", and why it is nonetheless valid procedure in an emergency environment. Essential to observe at this juncture, however, is that the principal legislative enactment under which internment without trial operated in post-1937 Ireland was passed by the Oireachtas as ordinary, permanent, peacetime legislation, and as the consequence of a Supreme Court adjudication under Article 26 of the Constitution, which allows the President to refer certain Bills to the Court for a decision as to their constitutionality, the Offences Against the State (Amendment) Act, 1940, is armour-plated against constitutional attack. That decision has been strongly criticised, and it is unlikely that the modern Supreme Court would repeat it. Nevertheless the circumstances surrounding the enactment of the Offences Against the State Acts 1939-40 provided the opportunity for fascinating judicial examination of the problem of internment without trial in Ireland.

From the foundation of the State, the internment procedure has acquitted itself as a potent weapon against perpetrators of political violence. In 1923, for example, it was applied to prevent the Civil War breaking out afresh. The 1939 legislation was introduced against the background of a resumption of illegal activity by the I.R.A., directed at undermining Mr. de Valera's policy of neutrality and forcing Ireland into the war on the German side. That legislation, amended in 1940, was reactivated by proclamation in 1957 when the Government again considered the organised life of the community to be threatened by terrorist activities. Professor John Kelly, writing in 1966, commented that the deployment of the internment sanction

> "during the last 45 years undoubtedly averted a great deal of disorder, bloodshed and violence."[5]

It is worth investigating the legislative designs which have been drafted since 1922 to bring internment without trial into play as executive policy. The Irish Free State Constitution empowered the Oireachtas to enact legislation for the preservation of public safety, and the continuing necessity to do so illustrated how a newly-created Constitution could be heavily strained by the activities of those opposed to it and the severity of the measures taken to deal with them. The Public Safety (Emergency Powers) Act, 1923, by virtue of which hundreds of Republicans were detained, provided under S.1 for the arrest and indefinite detention of a person when a Minister of State was "satisfied" either that reasonable grounds existed for suspecting that he was concerned in certain scheduled offences, or that the public safety was being endangered by his continued liberty. The Minister could also exercise his power on receipt of a report that the detention of a named individual was "a matter of military necessity". The validity of the Act was challenged in *R (O'Connell) v Military Governor of Hare Park Camp*[6], but the Court refused to hold that the power of detention it conferred was judicial, preferring to label it by nature an arbitrary power conferred by the legislature to meet a threatened danger to the State. The Court deliberately emphasized the finite duration of the instrument (initially six months) as one factor in its favour, a clear contrast with the later Offences Against the State Act, 1939, passed as permanent legislation and acquiring constitutional impregnability for its internment procedure in 1940. The Public Safety (Emergency Powers) Act, 1926, was enacted in less volatile times, and incorporated a power of arrest and indefinite detention exercisable in a context of future emergency on the issue of a proclamation by the Executive Council. A Minister of State could set the process in motion whenever he was satisfied that reasonable grounds existed for suspecting a person of being or having been engaged in the commission of scheduled offences. The 1926 Act is analogous to the 1939 model in its intended permanence, and remained operative until the latter became law. In the meantime, a large apparatus of special executive powers appeared in the Public Safety Act, 1927, passed following the assassination of Kevin O'Higgins and in the apprehension of further violence. The sweeping authority for indefinite detention commonly granted in its predecessors was excluded in the 1927 Act, which instead contained a sequential mechanism permitting an absolute maximum of three months' detention. It was repealed in 1928. Neither were any fresh powers of indefinite detention written into the Constitution (Amendment No. 17) Act, 1931, interpolated into the Constitution in the guise of a new article 2A and thus acquiring technical validity at least. S.14 provided for detention without charge for up to 72 hours on suspected commission of scheduled offences.

A new Constitution received the force of supreme law in 1937, and also attempted to synthesize, on the one hand, fundamental guarantees of rights and freedoms,

and on the other, supervening demands of public safety and the preservation of the State. The compaction of individual rights in the Constitution is balanced against the devolution upon the Houses of the Oireachtas of the ultimate power of the Irtish State, contained in Article 28.3.3 ot the same document. As amended by ordinary legislation, it reads as follows:

> "Nothing in this Constitution shall be invoked to invalidate any law enacted by the Oireachtas which is expressed to be for the purpose of securing the public safety and the preservation of the State in time of war or armed rebellion . . . In this sub-section "time of war" includes a time when there is taking place an armed conflict in which the State is not a participant but in respect of which each of the Houses of the Oireachtas shall have resolved that, arising out of such armed conflict, a national emergency exists affecting the vital interests of the State . . ."

The expanded definition of "time of war" was inserted to provide for contingency legislation during World War II. A resolution of both Houses is not a condition precedent to the enactment of any law for the purpose of securing the public safety and preservation of the State "in time of war or armed rebellion", and therefore any legislation prefaced by that formula will be protected from challenge on constitutional grounds so long as the emergency continues. the same protection attaches to legislation passed to secure the public safety and preservation of the State in the period of an armed conflict in which the State is not a participant but which affects the vital interests of the State, and here a resolution ofbot Houses *is* a condition precedent to eventual constitutional immunity. Article 28.3.3 withdraws every constitutional restraint from, the Oireachtas so that the integrity of the State can be adequately defended, and makes the question of what is "a time of war or armed rebellion" entirely one for the Oireachtas. The general proposition that when the resolutions referred to in Article 28.3.3 have been passed, the Supreme Court has no jurisdiction to review their contents, no longer stands unquestioned. In the Emergency Powers Bill, 1976, decision, the Court expressly reserved for future consideration the issue whether judicial review of such resolutions may be permissible.

The Emergency Powers Act, 1939, was prefaced with the appropriate immunity formula in its long title and was therefore excluded from the domain of judicial review. It provided in S.2 for the making of emergency orders in respect of a lengthy list of subjects, including the arrest and detention of persons (other than natural-born Irish citizens) where such detention was, in the opinion of a Minister, necessary or expedient in the interests of the public safety or the preservation of the State. The only safeguard included was the specification that all Emergency Orders should be laid before the Oireachtas for the period of 21 sitting days after they were made, and both Houses had authority within that time to pass a resolution to annul any such Order. That, of course, did not provide detainees with any effective remedy once the Order for internment cleared the annulment obstacle. An amending Act was passed in 1940 to delete the expression "other than natural-born Irish citizens" from the authorising section of the principal Act. A blanket power of indeterminate detention without trial was thus conferred on the Executive by the Emergency Powers Acts, and was never judicially considered. it did not need to be; Article 28.3.3 reposes absolute authority in the Houses of the Oireachtas, suspending the great doctrine of the separation of powers upon which the monument of the Constitution rests in peacetime. I discussed earlier the *substratum* that undergirds the operation of internment in our law. The Emergency Powers Acts 1939-40, illustrates the principle in action.

In addition to invoking Article 28.3.3, the Government in 1939 attempted to erect a permanent legislative circuitry which would activate in the appropriate circumstances, firstly, a Special Criminal Court or Courts as envisaged in Article 38 of the Constitution, and secondly, a codified procedure of internment without trial, nowhere sanctioned or provided for by the Constitution. Part VI of the eventual Offences Against the State Act, 1939, set forth in six sections the framework of the new internment process, and by November 1939 over 50 persons were detained under the pre-eminent S.55:

> "Whenever a Minister of State is satisfied that any particular person is engaged in activities calculated to prejudice the preservation of the peace, order, or security of the State, such Minister may by warrant under his hand order the arrest and detention of such person under this section."

END OF PART I.

APPENDIX

1. Gandhi, "Non-Violence in Peace and War" (1948)
2. Dail Debates, 31 Aug 1976, col 37
3. Dail Debates, 31 Aug 1976, col 5
4. Dail Debates, 31 Aug 1976, col 11
5. Kelly, "Fundamental Rights in the Irish Constitution", p.77
6. (1924) 2 I.R. 104

(To be concluded in the next issue)

SOLICITORS ACCOUNTS (AMENDMENT) REGULATIONS, 1977

(S.I. No. 242 of 1977)

The effect of these regulations is to withdraw the authority given to solicitors under the Solicitors Accounts (Amendment) Regulations, 1976 (S.I. No. 125 of 1976), to open designated client accounts for clients' monies with the named London or Scottish clearing banks or any branch in the United Kingdom or in Northern Ireland of an Irish Associated Bank and also, to designate Allied Irish Banks Ltd. as the successor to certain of the Banks deleted from the First Schedule.

It is confirmed that the making of Solicitors Accounts Regulations do not constitute a warranty or representation by the Incorporated Law Society of Ireland as to the suitability of any or all of the banks named in any Schedule to such Regulations and the Incorporated Law Society of Ireland does not accept any liability whatever for any loss incurred through any act, neglect or default of any such bank.

COUNCIL OF THE SOCIETY

Recommendation of the Conveyancing Committee of the Incorporated Law Society of Ireland with regard to Registry of Deeds Searches.

In the Edition of the Gazette dated November, 1976, a recommendation of the Conveyancing Committee was published recommending that from the 1st of January, 1977, Dublin Practitioners should in sales of individual properties adopt the Country practice of the purchaser making all searches.

The recommendation specifically mentioned that the practice on a building estate of the Vendor lodging a Master Search and distributing certified copies in due course should be continued as it was the most logical method of dealing with it.

It has been brought to our notice that some solicitors acting for Builders on Building Estates, are not lodging a Master Search and have cited as their authority the Conveyancing Committee's recommendation of November, 1976.

We would like to draw the attention of Solicitors to the fact that the recommendation of the Conveyancing Committee did *not* suggest any change in the practice regarding master searches on Building Estates.

Presentation of Parchments

The next Presentation of Parchments will take place on Thursday, 1st December, 1977, at 4 p.m.

Apprentices whose indentures have expired and have passed all the Society's examinations and who wish to receive their parchments should lodge with the Society on or before 18th November, their full name and address in Irish and English together with a Form AE 5 completed by the apprentice and the master.

Please note that no applications will be accepted after 18th November, 1977.

RESIGNATION OF MR. PATRICK NOONAN

The President announced at the Council Meeting of 15th September, that Mr. Patrick Noonan had resigned from the Council. Mr. Noonan was President of the Society in 1967/68 when the International Bar Association held their meeting in Dublin. The President and members of the Council expressed regret at losing Mr. Noonan's services and thanked him for the services he had rendered to the Council.

COMPANY FORMATION

Over recent months, lengthy delays were experienced in obtaining names from the Companies Office.Following repeated representations, Mr. N. MacLiam, Assistant Secretary, Department of Industry & Commerce, has written to the Director General:–

"I have looked into the situation in the Companies Office which you raised in your letter of the 12th. I find that, owing to a staff bottle neck, there is in fact as you say a lag of six weeks in incorporating companies. There is to be an O & M inspection of the Office this month, and I hope it will be possible to do something which will enable this position to be improved.

"I am unhappy at your reference to "the generally unsatisfactory performance of the Companies Office". From my examination of the position, and indeed from the tributes paid by a number of solicitors dealing with it, I feel that the Office in general gives a particularly helpful, prompt and courteous service. There do not appear to be any delays other than in the one under-staffed section we have been talking about. May I say that having spent some time looking at the work of that section I would feel satisfied that it could be quite up-to-date with its existing staff were it not that an extraordinarily high number of applications sent in by solicitors are in a most unsatisfactory state. One example quoted to me – I do not of course suggest that it is typical – was that out of seventeen applications received on a particular day fourteen had to be returned for amendment in one respect or another and only three could be accepted for incorporation. Anything that could be done to improve the standard of submissions for solicitors would be more than welcome".

The requirements of the Companies Office as to Company Names are set out below.

COMPANIES ACT, 1962

AVAILABILITY OF NAMES FOR PROPOSED COMPANIES

Members will recollect that any name considered undesirable may be rejected pursuant to Section 21 of the Companies Act, 1963. Names will not be acceptable, for instance, which:

(a) imply State sponsorship.

(b) are barred or restricted by legislation; a company name may not consist of or contain the words "Standard", "Caighdean" or the initials I.S. or C.E. nor may the words "Bacon Producers" be used. Such words as "Bank", "Banker", "Banking", etc. may be used only with the consent of the Central Bank.

(c) are so similar, by sight or by sound to the names of existing registered companies as to cause confusion in the public mind.

(d) contain words that are so general in meaning as to cause confusion with companies already registered, or which would seem to assume sole rights to a particular field of business e.g. "Plastics Limited" or "Irish Plastics Limited".

Note – The availability of a particular name is open to reconsideration up to the date of incorporation and applicants who incur expenses on the assumption that the name will be approved do so at their own risk.

Damages of £305,000 awarded

On 21 July, 1977, after a three day hearing before Hamilton J. and a jury in Cork in the case of John **O'Keeffe v. Irish Motor Inns Ltd., a jury awarded the** plaintiff a total of £305,088 which is by far the largest amount awarded for damages for a personal injuries action in Ireland. The plaintiff apparently fell over tar barrells and planks into a pit around the side of the Hilltop Inn Hotel, Youghal, Co. Cork, while looking for a lift to take him to Cork City, and broke his spine. The questions and answers put to the jury were the following:—

1. Did the Plaintiff fall or trip over barrells and timber at Defendant's premises? Yes.
2. If so were Defendants negligent in having wuch obstruction on their premises – and in failing to give notice of warning thereof by the provisions of adequate lighting up? Answer: Yes.
3. Was plaintiff negligent in failing to take reasonable care for his own safety? Answer: No.
4. Apportionment of fault: 100% against defendants.
5. Assess damages under special heads:
   (a) Special damages to-date (agreed): £8,938.00.
   (b) Additions to house (agreed): £6,150.00.
   (c) Future loss of earnings: £57,000.00.
   (d) Future cost of providing domestic services: £72,800.00.
   (e) Future cost of wheelchair, urinary devices and Laundry: £3,500.00.
   (f) Future cost of transport: £43,600.00.

   Total: £305.088.00.

On 29 July, 1977, the defendants lodged a notice of appeal to the Supreme Court. Amongst the grounds advanced were the following:—

1. That the trial Judge was wrong in law in refusing to accede to defendant Counsel's application to withdraw the case from the jury.
2. That the trial Judge did not direct the jury properly as to the duty owed by the defendant to the plaintiff and vice-versa.
3. That the questions to the jury on liability were inappropriate.
4. That on the evidence the jury could not reasonably have found the defendant negligent.
5. That the jury's finding that the defendant was negligent was wholly unreasonable and perverse.
6. That on the evidence the jury could not reasonably have found that the plaintiff was not negligent. Accordingly their failure to apportion fault to the plaintiff was unreasonable.
7. That the finding of the jury that the plaintiff fell or tripped over barrells was inappropriate and against the weight of evidence.
8. That the finding of the jury that the defendant was negligent in having an obstruction on its premises, and in failing to give notive thereof by adequate lighting, was against the evidence.
9. That the finding of the jury that the plaintiff was nqt guilty of contributory negligence was against the evidence and wholly unreasonable.
10. That the learned trial Judge did not preserve a balance in his charge in that he placed undue emphasis upon the damages issue, and that he did not put the case made by the defendants to the jury in an adequate manner.
11. That the learned Trial Judge misdirected the jury in law in so far as he told them that if they found that the Plaintiff sustained his injury in the outer back yard of the Defendants premises, they would be entitled to find the Defendants negligent.
12. That the amount of damages awarded by the jury for future cost of providing domestic services as well as the damages for future cost of transport and the damages for pain and suffering were excessive and perverse.
13. That the damages were excessive.

The defendants request the Supreme Court either to enter judgment for them, or to order a new trial.

Bungalow man wins appeal on flats

Three judges unanimously agreed in the Lands Valuation Appeal Court in Edinburgh on March 11, 1977 that the valuation of a bungalow should be reduced because a multi-storey block of flats built nearby cut off the view and destroyed the amenity.

Mr. John Ferguson, of Craigton, Glasgow, who had conducted his own case, was granted a reduction of £8 on his gross annual value of £168. Afterwards he was congratulated by Mr. John Pinkerton, counsel for the Glasgow assessor, and even by the clerk of court.
of court.

Lord Avonside, who presided, said he had put forward his case "with praiseworthy clarity".

Afterwards Mr. Ferguson said he was satisfied with the result. He was not so much concerned with the figures involved but the principle.

In his case he had complained that he has suffered serious loss of amenity by the erection of the blocks. One of them was 75 yards from the end of his back garden.

Lord Avonside said the Court would not usually interfere in "amenity cases" which were essentially matters of fact and degree for the committee.

"To my mind", Lord Avonside said, it would be an affront to all commonsense to find in the circumstances that an alteration in value had not been proved. It was accepted that the appellant had shown a material change of circumstances which adversely affected his house. It is absurd in my opinion to suggest that a hypothetical tenant would offer the same rental for this house that he would for a house nearby not affected by the presence of mulit-storey flats. Lord Thomson agreed.

Lord Ross, also agreeing, said a hypotetical tenant would have paid more rent for a house like this which had privacy and a view and was not overlooked than he would for a identical house which had lost its privacy and view and was overlooked. To contend otherwise would be unrealistic and contrary to commonsense.

THE REGISTER

REGISTRATION OF TITLE ACT, 1964

Issue of new Land Certificate

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

Dated 31st day of October, 1977

Schedule

(1) Registered Owner: Bernard Duffy; Folio No.: 5583; Lands: Corlargan South; Area: 14a. 3r. 30p; County: Monaghan.

(2) Registered Owner: Thomas Rispin; Folio No.: 1567; Lands: Kildalkey; Area: 46a. 2r. 3p; County: Meath.

(3) Registered Owner: William Kelly; Folio No.: 3322; Lands: Clonree; Area: 10a. 0r. 20p.: County: Roscommon.

(4) Registered Owner: Brian Charles Pennefeather Warren; Folio No.: 8059; Lands: Leperstown; Area: 29a. 1r. 2p.; County: Waterford.

(5) Registered Owner: Jeremiah Ryan; Folio No.: 2948; Lands: Moheragh; Area: 124a. 0r. 6p.; County: Tipperary.

(6) Registered Owner: Garrett O'Meara; Folio No.: 6303; Lands: Abbeyville; Area: 19a. 0r. 29p.; County: Tipperary.

(7) Registered Owner: Joseph P. Harper; Folio No.: 319SDL; Lands: A plot of ground with the dwellinghouse thereon known as 11 Reuben Street in the Parish of St. James: City of Dublin.

(8) Registered Owner: Charles H. Brennan; Folio No.: 11749; Lands: Lemgare; Area: 19a. 0r. 11p.; County: Monaghan.

(9) Registered Owner: Noreen Keane; Folio No.: 7982R; Lands: Carrownluggaun; Area: 7a. 1r. 26p.; County: Mayo.

(10) Registered Owner: John Leonard; Folio No.: 18681; Lands: Castleknock; Area: 0a. 0r. 28p.; County: Dublin.

(11) Registered Owner: Margaret Minnock; Folio No.: 7565; Lands: Kilpatrick (parts); Area: 21a. 1r. 25p.; County: Kings.

(12) Registered Owner: Woodpark Limited; Folio No.: 1310; Lands: Piercetown; Area: 146a. 2r. 13p.; County: Meath.

(13) Registered Owner: Brendan Keegan; Folio No.: 57038; Lands: Corcullen; Area: 1a. 0r. 0p.; County: Galway.

NOTICES

LOST WILLS

Kathleen Agatha O'Donnell, deceased, late of 76 Lindsay Road, Glasnevin, Dublin 9. Would any Solicitor or other person having knowledge of a Will executed by the above named deceased who died on the 28th June, 1977, please communicate with Messrs.. Bowler Geraghty & Company, Solicitors, 2 Lower Ormond Quay, Dublin 1.

John Charles Balding (otherwise Jack Balding), late of Killerig House, Palletine, Carlow. Would any Solicitor or other person having knowledge of a Will executed by the above named deceased who died on the 30th day of July, 1977, please communicate with Messrs. Clarke Jeffers & Co., Solicitors, 15 Dublin Street, Carlow.

Solicitor required for progressive practice, provincial town, County Cork. Salary related to experience. Apply to Box No. 161.

Complete set of the All England Law Reports from 1936 to date required by Max W. Abrahamson, 51 Fitzwilliam Square, Dublin 2.

Experienced Solicitor, specialising in litigation, seeks position in Dublin firm. Replies to Box No. 160.

Assistant Solicitor required for North Leinster Practice in large town. Wages commensurate with experience. Apply in strict confidence to Box No. 162.

Solicitor – Busy firm in Co. Cork requires an experienced Solicitor capable of working on own initiative. Attractive salary and partnership prospects. Apply to Box No. 163.

Assistant Solicitor required for busy practice in South Monaghan. Salary negotiable and commensurate with experience. Apply to Box No. 164.

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THE INCORPORATED LAW SOCIETY OF IRELAND

GAZETTE

OCTOBER 1977 VOL. 71 NO. 7

Annual Report of the Council 1976-77

THE PRESIDENT REPORTS

1.1 In accordance with established precedent the reports of the Council and its various sub-committees are published in the succeeding pages of this Gazette.

1.2 During my year of office a number of very important matters have engaged the attention both of the Council and the members of our Society to which I wish to make specific reference in this report.

1.3 The Policy Committee which is composed of the President, Vice Presidents, Past Presidents and the Chairmen of the sub-committees of the Council met at the beginning of the year for the purpose of formulating the policy whereby the affairs of the Society would be guided during the year. This meeting was held early in January and a very wide range of topics was discussed and every aspect of the Society's activities for the year was thoroughly examined and objectives were set on the basis of memoranda prepared by the sub-committee Chairmen. In addition the organisation of the Society's internal administration was reviewed and improvements with a view to achieving the maximum efficiency and level of service available to members were agreed.

1.4 I have endeavoured to the best of my ability and as time has permitted, to visit every Bar Association throughout the country on at least one occasion during the year and I am happy to be able to report on the vitality and effectiveness of the Bar Associations. I would like to take this opportunity of thanking each and every one of the Bar Associations and in particular their officers for the courtesy and hospitality extended to me personally and also to my wife, Grace. The President and the Council of the Society are dependant on the individual Bar Associations for the implementation of the policy of the Society. It is for this reason that the Meeting of Presidents and Secretaries of the Bar Associations has become an important annual event.

1.5 In my visits to and attendance at meetings of the Bar Associations I have endeavoured to deal with what I have considered to be the major matters which have engaged the attentions of the Council on behalf of and in the service of the members this year.

1.6 The Society's move of its headquarters to Blackhall Place this year together with the development of the Society's premises there and the necessary funding operation has been one of the single most important projects embarked upon by the Society since its foundation. The Society's administration is now firmly established in Blackhall Place and the Council and its Committees have been meeting there on a permanent basis since the month of July. I am very glad to be able to report that the profession's response to the funding operation has been magnificent and the generosity of the many individual members who have subscribed to the project has been most gratifying. I would like to emphasise that the Society will not be abandoning its presence in the Four Courts, notwithstanding the sale of the two top floors for a satisfactory sum in ease of the Blackhall Place Development Project. The Society will maintain essential services for members in the two remaining floors of the Solicitors' Buildings at the Four Courts.

The President
Bruce St. John Blake

1.7 The Society's Retirement Scheme is being well supported by the members and the unit value has now increased from £97.50 at its inception to £146.15. I would remind members of the considerable tax advantages that are to be gained by participation in the scheme. This is the Society's own self-funded scheme which in the short period since it has been established, has had a very satisfactory and significant growth and its advantages and benefits to the members will increase in accordance with the degree of support given to it.

1.8 The new Professional Indemnity Scheme organised by the Society through the Society's brokers J. H. Minet (Ireland) Ltd. was established this year and is a product of three years work on the part of the Insurance Sub-Committee of the Council. The scheme has received a significant degree of support and members are strongly encouraged to consider their indemnity cover. In particular, any members who do not already have

professional indemnity cover are strongly advised to contact the Society or the brokers from whom they can obtain a quotation. Accepting that the members may wish to avail of the Society's scheme or may prefer to make their own private arrangements, it is a matter of considerable concern that as many as 400 solicitors practices still do not have professional indemnity insurance cover. It cannot be emphasised sufficiently to all members that they should seek such cover, if they have not already done so.

1.9 The report of the National Prices Commission on Solicitors' remuneration was published in March and gave rise to media comments which were dealt with appropriately. This report did, I feel, serve to emphasise that the level of solicitors' earnings by comparison with equivalent occupations is in fact below an acceptable level. Arising from the National Prices Commission Report, the Society has made applications for increases in costs to the various Court Costs Committees, but the members will appreciate that the procedure is slow and cumbersome. Bearing in mind that the National Prices Commission Report relates to earnings up to mid-September, 1974, the Society has made an application to the National Prices Commission for a further increase. The effectiveness of the Society's argument in favour of the granting of increases in costs is very substantially dependent upon the information which the Society has sought from members. Consequently members are earnestly requested to submit the returns sought from the Society's management consultants, Coopers & Lybrand, if they have not already done so, to enable an effective case to be made to both the Prices Commission and the various Costs Committees.

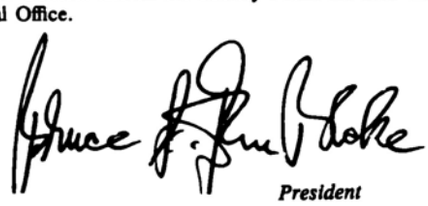
1.10 The report of the Education Committee will serve to emphasise the difficulties and complexities which are being encountered at the moment in this most important area. I avail of this opportunity to emphasise that I have the most complete confidence in the Chairman and the members of this Committee who provide a continuous and vitally important service for the aspiring members of our profession.

1.11 The Society's Summer Meeting which was held in Wexford early in May was most successful, both on the business and social side. The Society was honoured by the presence of the President of the Law Society of Scotland, Dr. Ian MacMillan, the President of the Incorporated Law Society of Northern Ireland, Mr. Lennox Cotton and representatives of the Law Society of England and Wales, in addition to the Lady Mayor of Wexford, Mrs. Avril Doyle, the then Tanaiste and Minister for Health and Social Welfare, Mr. Brendan Corish, T.D., his Lordship the Bishop of Ferns, Most Rev. Dr. Herlihy and local representatives and dignitaries.

1.12 My wife and I have been guests of the Law Society of Scotland at their Annual Conference at Aviemore and also at the Northern Ireland Law Society's Annual Meeting in Scotland in May. We have also attended the 25th Anniversary Celebrations of the Netherlands Order of Advocates in Amsterdam in September. We attended the opening of the English Law Term in London and were subsequently guests of the Law Society of England and Wales at their Annual Conference in Harrogate in October. Also we have attended the formal opening of the Legal Year as guests of the Bars of Antwerp and Brussels with whom on behalf of the Society, I am happy to have established firm contact, a contact which I strongly feel should be maintained, particularly having regard to our country's membership of the European Community and our Society's representation on the Commission Consultative of the Bars and Law Societies of the E.E.C. countries.

1.13 During my year of office I have done my utmost to maintain and foster good relations with all our allied organisations in this country. We have had their representatives at the Council's Annual Dinner which took place at the end of March. In addition both my wife and I have enjoyed the reciprocal hospitality of these organisations throughout the year when we have had the privilege of representing the Society. I am particularly pleased to be able to report that the good relations which the Society has developed with the various government departments with which it is, of necessity, in constant contact have been maintained and indeed strengthened. I would like to acknowledge the very real degree of co-operation that the Society has received from the offices of these departments and, from the offices of the Department of Justice. I am also particularly glad to be able to acknowledge that the good relations established with the former Minister for Justice have been maintained with the present Minister, to whom I wish to pay tribute for the co-operation and assistance which he has given to the profession on the difficult matter of Criminal Legal Aid.

1.14 Finally I would like to thank most sincerely my Vice Presidents and the members of the Council for their steadfast loyalty and sterling encouragement to me during my period of office. I wish to acknowledge their help and support. Also I would like to thank the Director General and all the Society's staff for their willing assistance in discharging the burdens of the Presidential Office.



President

COUNCIL

Bruce St. John Blake
President

Joseph L. Dundon
Walter Beatty
Vice Presidents

2.1 As is the case in any year, the year under review was a continuation of the work initiated by the Council in previous years. A satisfactory record of achievement has been accomplished. Throughout the year, the Council operated on the basis that all work was initially processed by the Standing and ad hoc Committees of the Council and that decisions were taken on the basis of recommendations from those Committees. Except in the case of the Premises Committee, all Standing Committees met on the evening before or on the morning of the day of the Council meeting. It was not necessary to hold any Special Meeting of the Council during the year.

2.2 **Premises:** During Easter, 1977, the Society's administration was transferred from the Four Courts to the premises at Blackhall Place. After some initial teething troubles, the new arrangements functioned satisfactorily, except for the telephone service. Despite vigorous efforts in the way of representation to the Department of Posts & Telegraphs, this is still not completely satisfactory. Thanks are due to the members for their patience and forbearance during a difficult period.

2.3 On Blackhall Place Premises the main concern of the Council during the year was the determined effort made to raise the funds necessary to carry through the reconstruction project. It is pleasing to report that the Fund Raising Campaign is progressing satisfactorily and the gratitude of the Society is expressed to all those

members who have contributed so generously. We would ask those who have indicated their willingness to contribute to commit themselves to contributing now.

2.4 The sale of the top two floors of Solicitors' Buildings, Four Courts, to the Trustees of the General Council of the Bar of Ireland is at the time of writing almost complete.

2.5 **Education:** Following on the advice received from Mr. Kevin O'Leary, Director, Legal Workshop, Australian National University, Canberra, Australia, in the previous year, the year under review saw considerable activity on the part of the Education Committee and the Education Advisory Committee in their efforts to have the new training course organised for January, 1979. Mr. Laurence Sweeney, was appointed Director of Training early in the New Year and under his enthusiastic guidance, the Advisory Committee and its attendant working Committees have made considerable progress in preparing material for the new course. The recruitment of a Director of Education, who will be responsible for the detailed training on the course, is now in hand. As the course is got underway and experience obtained, it is hoped there will be a spin off effect in the way of refresher training facilities and arrangements for the training of persons employed as law clerks.

2.6 Apart from the arrangements for the new course, the Committee was particularly concerned with the arrangements for admission to the course. To that end, discussions continued throughout the year with the Law Faculties in the University Colleges. Agreement in principle was reached on the allocation of quotas for admission to the Society's Law School. Reviewing the agreement, the Council found that, for a variety of reasons, in particular the effect of the points system of University admission which the Council feels does not necessarily produce the best result in terms of vocational aptitude, it was unable to endorse the agreement. Discussions are still continuing with the Universities. It is probable, however, that for the majority of candidates for the Society's Law School, the method of entry will be by way of the Society's Final Examination — First Part, following upon the obtaining of a Univeristy Degree, whether in law or in another discipline.

2.7 The Committee Chairman, Mr. Maurice Curran, has followed up on the work of previous years in organising a Taxation Seminar on Friday, 17th November, 1977. Judging by the enthusiastic response, it may be necessary to repeat the exercise.

2.8 **Legal Costs:** The year was an unsatisfactory one insofar as the review of remuneration is concerned. The National Prices Commission, in a report published in March, 1977, accepted some but not all of the Consultant's recommendations. To the extent that the recommendations were accepted, despite pressure from the Society, the Statutory Committees have yet to implement the recommendations. The items not accepted were referred back to the National Prices Commission and except for the Criminal Legal Aid Fees, a report is still awaited. An application for a further review was made following the publication of the National Prices Commission report. This will be based on the returns submitted to Coopers and Lybrand which are being processed at present.

2.9 After much difficulty, including a break-down of the service, satisfactory arrangements have now been made for the operation of the Criminal Legal Aid Scheme on the basis of the First Interim Report of the Tormey Commission. The Council's thanks are due to District Justice Tormey and his colleagues, who produced an excellent report in difficult circumstances. One satisfactory outcome of the dispute is that the National Prices Commission has indicated that it does not regard itself as the proper forum for ventilating disputes in this area; an opinion with which the Council of the Society wholeheartedly concurs. Now that the Scheme of Criminal Legal Aid has been recommenced on a satisfactory basis, it is recommended that all offices and particularly the larger Dublin offices, should have a member of the firm participating in the Scheme.

2.10 **Restrictive Practices:** Arising out of the publication of the National Prices Commission's Occasional Paper No. 22 entitled "Solicitors' Remuneration in Ireland", the Council of the Society was informed by letter dated 11th October, 1977, that the Minister for Industry, Commerce and Energy has asked the Examiner of Restrictive Practices to forward a request to the Restrictive Practices Commission to hold a Public Enquiry under Section 5 (i) (a) of the Restrictive Practices Act, 1972, into:

(1) the nature and extent of competition in the carrying on of conveyancing for gain with particular reference to the effects on competition of legal requirements restricting the provision of this service;

(2) how the prohibition on advertising by solicitors affects competition by solicitors.

2.11 **Lending Institutions:** The Council established a special Committee to discuss certain difficulties, which had arisen, with representatives of the lending agencies. While some of the difficulties have been solved, as detailed in the Committee's Report, there is still the outstanding matter of the effect of computerisation.

2.12 **Conveyancing:** Currently the Contract for Sale is being reviewed in light of difficulties posed by the Family Home Protection Act, 1976, and certain other difficulties brought to light with the experience of use. Progress on the new standard Requisitions on Title was slower than expected, but, hopefully, the revised text will be available in the near future. During the year, discussions took place with representatives of the architects, surveyors and auctioneers.

2.13 **Solicitors' Undertakings:** The Committee's report has now been accepted by the Council. It is hoped to have the recommended form of Undertaking available for sale through the Society's office in December, 1977. This opportunity is availed of to emphasise the serious view taken by the Council of the Society of breaches of professional undertakings by solicitors. Inevitably such breaches result in disciplinary proceedings.

2.14 **Members' Services:** Much thought has been given to the development of services for members. During the year the following developments took place:

(i) **Professional Indemnity Insurance:** Arrangements were entered into with J. H. Minet (Ireland) Ltd. for the provision of a service. Experiences reported to the Council during the year emphasise the importance of every practice carrying this type of cover. It is frightening to realise that, as far as the Council is aware, at least half of the practices in the country still do not carry professional indemnity insurance.

(ii) **Superannuation Scheme:** The Finance Committee report which follows, details the satisfactory state of the Fund which is now in excess of £400,000. A further promotional drive on behalf of the scheme will be made next February/March.

(iii) **Company Formation:** The demands on the service continue to increase, which in itself is an indication that the service is appreciated by members. At the time of going to press, a special Committee under the chairmanship of Mr. Maurice Curran, is reviewing this and related services, including town agency, with a view to improving and expanding the facilities for members.

(iv) **Saleable Forms & Publications:** The Publications Committee, under the Chairmanship of Mr. Walter Beatty has detailed its programme later in the report. Otherwise, through its various Committees the Council is endeavouring to standardise forms and produce them for members at a minimum cost.

(v) **Employment Register:** This year efforts were made to re-activate and expand the Society's Employment Register. It is satisfactory to record that the needs of several firms which had difficulty in recruiting staff, were met. It is hoped that employers and solicitors seeking appointments will avail of the service.

REGISTRAR'S COMMITTEE

David R. Pigot,
Chairman

William B. Allen
Donal G. Binchy
Anthony E. Collins
Carmel Killeen
William D. McEvoy
Patrick F. O'Donnell
Michael V. O'Mahony
Thomas D. Shaw
Andrew F. Smyth

3.1 The responsibility of the Registrar's Committee is to investigate complaints brought against Solicitors, and in appropriate cases, to take the necessary action to ensure compliance by Solicitors with their statutory and ethical obligations both to their clients and fellow members of their profession.

3.2 The Interview Board, established in January 1976, has continued to ease the burden of work on the full Registrar's Committee. While this less informal enquiry into complaints appears to be preferred by members of the Profession who are required to attend before it, it must be emphasised that only selected matters are in the first instance referred to the Interview Board. More serious matters continue to be referred initially to the full Registrar's Committee.

3.3 The type of complaints received by the Society maintained their customary form, the largest single complaint being of the failure of Solicitors to deal with their clients' business either with reasonable expedition or, in some cases, at all. Unhappily, the number of complaints showed a not insubstantial increase in the period under review over the corresponding period in 1976.

3.4 Once again, it is noted that a very high proportion of the total complaints received were against sole practitioners or firms with a single principal. Such a Solicitor is expected by his clients to maintain a high degree of competence and expertise in every facet of his practice, something that is becoming, if not impossible, certainly extremely difficult due to the ever increasing complexity of our Laws today. I believe enlargement or amalgamation of existing firms would permit a degree of specialisation that would greatly reduce these difficulties and consequently the number of complaints by members of the public reaching the Society.

3.5 In the period from January to September 1977, the Interview Board dealt with 167 items. A further 164 items were dealt with by the Registrar's Committee, many of these having been referred from the Interview Board. Some 40 cases were referred by the Registrar's Committee to the Disciplinary Committee for consideration. Naturally, not all of these cases related to different Solicitors and some of the items were simply the same cases being followed up on a later occasion.

3.6 In view of the failure of many Solicitors against whom complaints are made to answer correspondence from the Society and to attend before the Interview Board or Registrar's Committee when called upon so to do, it may be helpful to state that the Interview Board and Registrar's Committee consider it is part of their function to offer where reasonably possible assistance to the Solicitor complained against in an effort to resolve his problem. Given the co-operation of the Solicitor complained against, many of the complaints reaching the Society could be resolved in their early stages and the necessity of the Solicitor attending before the Interview Board or Registrar's Committee (often at considerable personal inconvenience) thereby avoided.

3.7 Steps were taken during the year to reduce the number of Accountants' Certificates currently in arrears. Thanks to the co-operation received from the members of the Profession, these efforts have met with considerable degree of success. The Committee is confident that the Profession as a whole appreciates the importance of ensuring compliance with the Solicitors Accounts Regulations and will continue to co-operate with the Society in its efforts to ensure that all Members' Accountants' Certificates are brought up to date and so maintained.

David R. Pigot,
Chairman

3.8 Up to September 1977, the Society's Accountant, Mr. P. J. Connolly, carried out some nine new investigations of Solicitors' Clients' accounts. Many other visits were paid by him to Solicitors' Offices following up previous investigations carried out by him, and in each case, reports were submitted by him to the Registrar's Committee which, where necessary, took appropriate action. The Committee is very appreciative of the thorough nature of Mr. Connolly's investigations and reports and would express their gratitude to him for all his assistance throughout the year.

3.9 On behalf of the Committee, I would like to express our thanks also to the Director General (who is also a member of the Interview Board), Mr. Fintan Burke and Miss Margaret Casey, and indeed all the other members of the Secretariat for their assistance and guidance and unfailing courtesy to us all throughout the year.

3.10 Finally, may I express my personal thanks to all of my colleagues on the Committee for their unending patience with and support of me as Chairman, and in particular, to Mr. Tom Shaw who attended the monthly Meetings of the Interview Board as well as those of the Registrar's Committee.

COMPENSATION FUND COMMITTEE

David R. Pigot,
Chairman

William B. Allen
Donal G. Binchy,
Anthony E. Collins
Carmel Killeen
William D. McEvoy
Patrick F. O'Donnell
Michael V. O'Mahony
Thomas D. Shaw
Andrew F. Smyth

4.1 The Society is obliged by Statute to provide full indemnity to members of the public who suffer actual financial loss as a result of defalcation by any practising Solicitor.

4.2 The contribution of each member of the Society to the Compensation Fund in 1977 was fixed at £50 (in the case of members admitted less than 3 years, £20).

4.3 Payments from the Fund in respect of ascertained losses and other expenses during the year to 30th April 1977 amounted to £59,000 — an increase in excess of £17,500 over last year.

4.4 The book value of the Compensation Fund as at 30th April, 1977 was £490,338 — an increase in excess of £47,500 as at the corresponding date last year.

4.5 To protect the Fund the Society during the year took out insurance indemnifying the Compensation Fund against claims in excess of £250,000 in one year up to a maximum of £1,000,000.

4.6 The help and co-operation of the Society's Accountant, Mr. Patrick J. Connolly, and Mr. Martin Healy, who took over the administration of the Fund on 1st May last, has been of much assistance too and greatly appreciated by the Committee.

4.7 Finally, as Chairman, may I express my personal thanks to all my colleagues on the Compensation Fund Committee for their help and co-operation throughout the year.

PRIVILEGES COMMITTEE

William B. Allen
Chairman

John Carrigan
Gerard M. Doyle
Robert M. Flynn
Thomas Jackson
John B. Jermyn
Carmel Killeen
John Maher
Patrick C. Moore
Moya Quinlan
Thomas D. Shaw
Andrew F. Smyth

William B. Allen
Chairman

5.1 During the past year your Committee met on twelve occasions and among the many matters considered and dealt with were the following:

1. Complaint of a Firm of Accountants for employing a Solicitor for Company Formation though aware that a Solicitor was already acting in the matter.
2. Complaint against R.T.E. re Programme criticising and naming a firm of Solicitors.
3. Complaint about a Solicitor for Trade Union approaching Members of the Union re Claims for compensation without enquiring as to whether the person involved had a Private Solicitor.
4. Irish Auctioneers and Valuers – endeavouring to get an agreed scheme for appointment of Auctioneers.
5. Advertising by Solicitors franking envelopes.
6. Liabilities of Solicitors re Undertakings.
7. Rights of Northern Ireland Solicitors to act in relation to property in the Republic of Ireland.
8. Institute of Auctioneers and Valuers and Livestock Salesmen — Form of Contract.
9. Complaint about a High Court Judge's remarks in Court on handling of Case by C.I.E. Solicitor.
10. F.L.A.C. Appointment of Community Law Officer.
11. Brian Bell and N.A.C.L.P.
12. Company Promotions and Company Printers.
13. Right of Solicitor to give lectures in Regional Technical College.
14. Prison Visits by Solicitors to Clients — Privileges.
15. Fees chargeable for Medical Reports — discussions with I.M.A.
16. Jordans Limited opening a Branch in Ireland.
17. Accident Advice Centre.
18. Sales procedure of National Building Agency in Galway.
19. Booking Deposits.
20. Complaint by Circuit Judge of non-appearance of Solicitor in Criminal matter.

21. Unethical conduct — obtaining Judgment by surprise.

22. Dissolution of Partnership — Press Notices.

23. Insurance Companies appointing own Solicitor to defend proceedings where client has his own Solicitor.

24. Solicitors acting for two parties in one transaction.

5.2 During the year a sub-committee of your Committee dined with Members of the Irish Medical Association and resolved matters of misunderstanding regarding Medical Reports and Relationship between the Association and your Society and they also met with the Legal Staff of Allied Irish Banks and discussed matters in relation to the Banks Mortgages.

5.3 Your Committee also adopted the role of appointing a sub-committee to hear Members of the Profession who had been complained against and investigated the nature of the complaint and reported fully thereon.

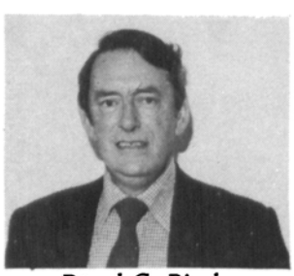
5.4 Perhaps the greatest achievement was the Sub-committee formed under the Chairmanship of Past President Mr. P. C. Moore who prepared and drafted a form of Undertaking which it is now hoped will be in universal use by Members of the Society within the year. This clarifies once and for all the matter which has taken up time of your Committee during past years namely, Undertakings.

5.5 I personally take this opportunity of thanking my Colleagues on the Committee for the time and energy which they so unselfishly gave during the past year in the interest of this Profession and of their Colleagues.

PARLIAMENTARY COMMITTEE

Donal G. Binchy,
Chairman

William B. Allen
Adrian P. Bourke
Anthony E. Collins
Robert M. Flynn
Raymond T. Monahan
Patrick C. Moore
John J. Nash
Patrick F. O'Donnell
William A. Osborne
Brian W. Russell
Andrew F. Smyth



Donal G. Binchy, Chairman

6.1 The function of the Parliamentary Committee is to report to the Council on legislation introduced in the Oireachtas or Statutory Instruments which appear to affect the profession or the administration of justice. In order to discharge this role the Committee try to procure copies of all pending Bills at the earliest possible date; and to have these considered and studied by the Committee or members of the profession having special expertise in relation to any Bill. Following this the Committee make such submissions thereon as the Council may approve to the Government. This is frequently a difficult task, especially when there is a large volume of legislation going through the Oireachtas or where Bills are being put through quickly without debate or opposition. The Committee's task is further complicated by the fact that representations on matters of policy will generally not be entertained by the Government or Civil Service and effective representations are therefore substantially confined to matters of construction, interpretation or omissions from legislation.

6.2 In the year under review the Committee gave special consideration to the following:

(i) The Anti-Discrimination (Unfair Dismissals) Bill 1976 upon which certain submissions were made.

(ii) The problems arising from the Family Home Protection Act 1976. This Act was put through the Oireachtas so quickly that the 1976 Committee had no opportunity of making any submissions thereon. The profession is by now well aware of the conveyancing difficulties created by this Act in relation to the "Family Home" and prior written consent required from the spouse without which "the Conveyance" is void. This was also considered and dealt with by the Conveyancing Committee who made very strong representations for amendments without success. The conclusion was that the profession would have to live with the Act for the present at any rate.

(iii) The Landlord & Tenant Bill 1977: This Bill together with many submissions from members of the profession was considered and analysed in depth by the Committee. A detailed submission was prepared and made to the Minister for Justice. The Committee also met the Minister and members of his Department for a long discussion thereon. The Bill, however, lapsed with the defeat of the last Government but it is hoped that the Committee's work will provide a useful base in considering any new Landlord & Tenant Bill that may be introduced by the present Government.

(iv) The Committee also gave preliminary consideration to the White Paper on Nullity and the draft Bill which accompanied same. Again this passed into limbo after the General Election.

(v) Succession Act 1965: Arising from suggestions by some members of the profession this Act was considered fully by the Committee and a Memorandum suggesting the need for certain amendments was circulated to the profession through the Bar Associations. The Committee propose to make a submission to the present Government on this Act and will welcome any further suggestions from the profession.

6.3 Generally speaking the work load of this Committee has been temporarily eased by the change of Government since all pending legislation has lapsed. The Committee are seeking a meeting with the new Minister for Justice to try and establish a relationship which will ensure proper advance particulars of new Bills and the best basis for making effective submissions. The legislative programme of the present Government is awaited with interest. The Committee will do its best to study and report on future Bills bearing in mind its obligations to the profession, the administration of justice and the public good.

FINANCE COMMITTEE

Gerald Hickey
Chairman

Donal G. Binchy
Patrick C. Moore
Peter Murphy
William A. Osborne
Peter D. M. Prentice
Thomas D. Shaw

7.1 In the year to April, 1977, the expenditure of the Society as anticipated increased under all headings from a figure of £235,000 in 1975/76 to £317,000 in the year under review. Fortunately, the Society's income also increased substantially, the major contributing factors being substantial increases in Members Subscriptions, Registrar's Certificates, the profitability of the Company Formation Service, and profit on sundry publications of the Society.

7.2 The income for the year amounted to £317,000 and the Society therefore achieved a breakeven position on current account by the skin of it's teeth.

7.3 This breakeven position could, of course, only be achieved by capitalising interest payments on the Blackhall Place expenditure, which the Finance Committee feels justified in doing until the completion of this expenditure, when it is hoped that at least certain portions of the premises will become income producing.

7.4 The budget for the current year estimates a deficiency on current account of approximately £36,000 apart from expenditure on the Law School and interest on the Blackhall Place loans.

7.5 Owing to the uncertain situation with regard to completion of Blackhall Place it is impossible to make a final estimate of the Society's deficit for the current year, but the deficit is likely to be substantial because the year will be a transition year in which a great deal of the current account expenditure on Blackhall Place will be incurred and no offsetting income from the Education Area or the promotional activities of the Society will yet have commenced to accrue.

7.6 However, the most disturbing aspect of the financial affairs of the Society has been on Capital account because of the very great increase over the budgeted figure for Stages one and two of the Blackhall Place renovation programme.

7.7 Mr. Osborne in his report of last year, pointed out that our Professional Advisers had estimated the cost of completing stages one and two at £463.000.

7.8 This figure has now risen to approximately £750,000 and your Premises and Finance Committees are at present waiting final reports from their Professional Advisers, firstly, as to the reasons for this very great increase in the estimated cost of the work and, secondly, for indications as to the total final cost of the project.

7.9 The Society is fortunate in that the fund raising programme under the management of our professional fund raiser, Mr. John Connolly, is at present progressing satisfactorily and in addition agreement has been reached with the General Council of the Bar for the sale to them for a substantial sum of the first and second floors of Solicitors' Buildings in the Four Courts.

7.10 There are still however, a great number of members of the profession who have not contributed to the Blackhall Place fund raising scheme and the Finance Committee is most anxious that all Members of the Society should carefully consider their position in relation to this most important step in the Society's history and do their best to make an appropriate contribution.

7.11 The position with regard to the Compensation Fund continues to remain satisfactory and the fund stands at a higher figure than at the beginning of the year. We are glad to say that no serious losses were sustained by the fund during the year in question.

7.12 Lastly, I would like to report on the very successful performance of the Society's Retirement Pension Scheme.

Gerald Hickey, Chairman

7.13 In the two and a half years since the inception of this scheme the amount of the fund has now risen to over £400,000 and the value of each unit, which after expenses cost Members £97.50 at inception, had risen on 1st September last to £146.15. This indicates a gain over the period of £48.65, which averages just over 19% per annum free of tax. This result undoubtedly makes the fund one of the most successful provately managed Pension Funds in the Country and well deserving of further support from all Members.

7.14 The projections for the fund are that the target of half a million pounds originally set for March, 1978, should now be exceeded and that the ultimate target for the 1st March, 1980, of a fund in excess of One Million Pounds should be well within the power of the Society to achieve.

7.15 There are still, however, many Members who have probably not considered the Scheme in detail and I would now urge upon them to look at it very closely as I feel sure that, in the words of the old legal advertisement, they will find something to their benefit.

COURT OFFICES AND COSTS COMMITTEE

Michael P. Houlihan, Chairman

Laurence B. Cullen
Francis D. Daly
Christopher Hogan
Edward P. King
Francis J. Lanigan
Patrick J. McEllin
William D. McEvoy
Gerald J. Moloney
Raymond T. Monahan
Peter Murphy
John J. Nash
Patrick Noonan
Rory O'Donnell
David Pigot
Robert McD. Taylor

8.1 Under the Regulations of the Council of the Incorporated Law Society the Court Offices and Costs Committee is obliged to report to the Council on Court Procedure and Administration and the working of Government Departments affecting the profession, and on questions of costs and practice. Since taking over in October 1976 I have also sought to try and co-ordinate the approach of the Society's representatives who are independent of this Committee on the District Court Rules Committee, the Circuit Court Rules Committee, the Superior Court Rules Committee and the Land Registration Rules Committee.

8.2 During the past year, this Committee dealt with many queries from members of the profession with regard to professional charges and the basis of such fees and of disputes as between solicitors and clients in relation to the basis of charges in certain instances.

8.3 Representatives of the Committee had discussions with the President of the High Court concerning various difficulties that were arising in High Court actions and concerning High Court Jury Sittings in the provinces. The Society's representatives represented to the President of the High Court that he should consider appointing on a rotation basis Judges to sit on a permanent basis to deal with Jury actions in the provinces in centres such as Cork, Limerick, Galway, Sligo, Kilkenny, etc.

8.4 Consideration was also given to the arrears which had accumulated in the Circuit Courts, particularly in Dublin, and to problems arising in different Circuits.

8.5 Following the recommendations of the National Prices Commission based on the report of Professor Dennis Lees, the Land Registration Rules Committee was requested to implement the increases advised, as was the Superior Court Rules Committee. The other applications were deferred pending a re-submission to the Prices Commission. I would have to record on behalf of the Committee extreme frustration at trying to get these most cumbersome procedures implemented with the result that the effect of the improvement in living standards brought about by the increases is long since eroded before they ever come into operation. Clearly an improvement in the procedures and the streamlining thereof is necessary.

8.6 During the year members of the Committee were involved in discussions with the Allied Irish Banks and the Bank of Ireland and the Agricultural Credit Corporation in relation to procedures and their charges. Representation has also been made for the abolition of judicature fees, but little progress is reported towards this end.

8.7 On a number of occasions problems have arisen in relation to the professional fees for infant plaintiffs, and discussions have taken place with the Irish Medical Association and with the Federation of Insurers in Ireland on these matters. Hopefully a new procedure can be evolved at least on an experimental basis. Discussions are at a fairly advanced stage on the question of an experimental approach to agreeing on medical evidence and agreeing on medical reports.

8.8 Consideration was given to the question of increased jurisdiction in the various courts and discussions have taken place on these lines. The Committee also reviewed the status of Commissioners for Oaths and their fees. The majority of the Committee took the viewpoint that every solicitor should be a Commissioner for Oaths as in England, and a memorandum on the matter has been submitted to the Chief Justice.

8.9 The Committee assisted in a review of the Society's Opinions, as published in the Handbook of the Incorporated Law Society, and a new edition of the Handbook incorporating these Opinions has now been published.

8.10 The Committee is also considering actively new procedures for motions for judgment in the High Court in claims for unliquidated damages. During the year also different members of the Society queried the Committee on the procedures in the Accountant's Office in relation to payment of interest on lodgments. Discussions are continuing on these matters with the President of the High Court. Complaints were received by the Society and referred to the Committee relative to the effectiveness of the Sheriff's Office. Representations are being made by the Dublin Solicitors' Bar Association on these matters.

8.11 The Committee became aware of increased fees being charged by barristers in the Circuit Court; no prior discussions had taken place with the Bar Council in relation to such increases and a request has been made to the Bar Council for a meeting with the Liaison Committee between the Society and the Bar Council so that various matters in relation to the Bar and the solicitors profession, including the question of the increase of fees, may be discussed.

8.12 The Society received many queries from members relative to the increased costs and the necessity for ordnance survey maps. Continuing discussions with the Land Registry and the Ordnance Survey Office are taking place on these matters.

8.13 A new compendium of District Court Rules has been prepared by the District Court Rules Committee. The Society has sought an opportunity of commenting on these District Court Rules without success to date despite the serious implications for the profession on the implementation of these Rules.

8.14 The Committee continues to be frustrated in its efforts to have some sane and logical approach evolved to deal with increases which the profession are entitled to from time to time and the implementation thereof. The members will understand the reasons for the frustration when it is considered that it was in the summer of 1975 the Prices Commission referred to Professor Dennis Lees the question of solicitors income and remuneration and expenses. His considered and final report was submitted in October of 1976, and despite the rationale of his enquiries, his recommendations were not in any way fully implemented by the Prices Commission, and even their sanctioned recommended increases have not to this date been implemented, and these recommendations are based on expenses up to the year 1975, as a result of a survey then carried out. The fact that it is necessary for the profession to live in and combat the day to day running of their practices in 1977 and continuing increases in overheads without corresponding allowances in fee increases, makes the reason for the Committee's frustrations more obvious. Clearly a new and updated procedure for annual increases will have to be evolved most urgently.

8.15 Finally, I am grateful for the assistance of each and every member of the Committee, particularly the Deputy Chairman, Mr. David Pigot, and the Committee's secretary, Miss Margaret T. C. Casey, Solicitor.

EDUCATION COMMITTEE

Maurice R. Curran
Chairman

Adrian P. Bourke
John F. Buckley
Francis D. Daly
Rory O'Donnell
Michael V. O'Mahony

9.1 During the year the main problem confronting the Committee and causing considerable anxiety was the number of actual and potential apprentices. The numbers issue has also raised delicate problems with the Universities

9.2 There are approximately 1,800 practising Solicitors on the roll of whom one-third are not more than five years qualified. In the year 1976 alone we admitted to practise 144 Solicitors leaving us with about 800 apprentices in the pipeline. This figure does not include a further 100-200 persons who have completed their apprenticeship but who still have to pass one or more of the Society's examinations. In 1977, 206 apprentices passed the Third Law examination and will be admitted to practise in the near future. The statistics for admission to apprenticeship over the last five years are as follows:

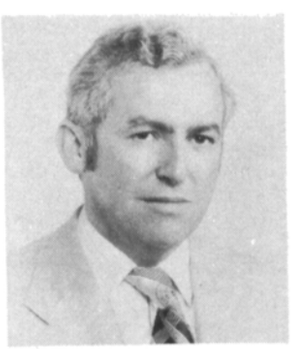
Year ending 30th September

1973	182
1974	275
1975	532
1976	68
1977	98
Total	1,255

The following is a summary of the law examination results over the last two years. The figure on the left hand side represents the number of apprentices who passed the examination outright. The figure on the right hand side indicates the total number sitting for the examination.

	Spring, 1976	*Autumn, 1976*	*Spring, 1977*	*Autumn, 1977*
FIRST LAW	60/142	71/279	73/189	96/241
SECOND LAW	86/165	100/202	136/228	102/223
THIRD LAW	68/106	45/ 99	107/170	98/165

9.3 The Universities are producing over 240 Law Graduates each year and experience shows that approximately 75% of these graduates will seek to become Solicitors.



Maurice R. Curran, Chairman

9.4 We have not researched the figures, but if one assumes that about 40 Solicitors cease to practise in any given year and that outside interests, such as industry or employment abroad will assimilate another 60, (which may be optimistic), it would seem that the maximum number per year that should be permitted to qualify would be 120. However the Committee take the view that it would be a discriminatory and restrictive practice to limit the number allowed to qualify to what it was anticipated could be absorbed. At the same time, the Education Committee and the Education Advisory Committee have taken the view that the physical facilities available in Blackhall Place can handle at any one time not more than 75 Students. Accordingly the current thinking is that there will be two Courses run in each year, each of 23 weeks, and each handling 75 students giving a total of 150 students in one year, almost all of whom will be expected to qualify under the new system. 150 new Solicitors each year would appear to be too many unless there is some expansion either in the areas of work handled by Solicitors or in the volume in those areas. If a scheme of civil legal aid was introduced, obviously there could be a considerable expansion of volume in certain areas currently sparsely covered. As to new areas, it is not so clear in what directions the profession may develop in years to come.

9.5 Because of the points system operated by the Universities, many individuals who wish to become Solicitors are failing to gain admission to the University Law Schools. The Education Committee do not accept that the present point system is a suitable way of selecting students who have the potential to be

successful Solicitors and believe that students who fail to gain entrance on the points system to the Law Faculties, (this year 22 points are required for U.C.D. and 23 points for U.C.C.) may turn out to be quite competent Solicitors upon completion of their studies.

9.6 During the past year, the Committee has endeavoured to work out with the representatives of the University Law Schools a quota system in respect of the 150 places in our Professional Law School, but ultimately negotiations were unsuccessful.

9.7 Subject to further negotiations with the University Law Faculties and subject to approval by the Council, it is the present view of the Education Committee that graduates of whatever faculty, Law Clerks given exemption from the preliminary examination and successful candidates at the preliminary examination will all sit a common entrance examination to the Professional Law School in six law subjects, Contract, Tort, Property, Constitutional Law, Company Law and one other subject. This may be combined with an aptitude test in legal studies and there may be exemption for a limited number of high Honours Law Graduates.

9.8 The Committee is not happy with the situation as it has developed, because when the new education system was set up in October 1975 it was not envisaged that there would ever be a problem of numbers, but, in the light of the present apparently insatiable demand for professional qualifications, there appears to be no alternative to a competitive entrance examination.

9.9 Obtaining a Master, not surprisingly, has become a constant problem: there are too many apprentices in the system and too many applicants. With the approval of the Council, the Committee is seeking a system whereby the number of new apprentices per year will be limited to the number of places available in the Society's Law School and that all apprentices should have the same period of apprenticeship, namely three years.

9.10 Normally the apprentice under the new system will proceed as follows:

(i) Spend a three month familiarisation period in his Master's office

(ii) spend six months on a full time practical course in the Society's Law School.

(iii) spend an eighteen month full time uninterrupted period learning his profession in his Master's office.

(iv) spend a four month final period in the Society's Law School dealing in a more specialised way with certain subjects.

(v) be admitted as a qualified Solicitor.

9.11 The new apprentice, when he arrives from the Society's Law School into his Master's office, should be of considerable use immediately. Not only will he be (usually) a graduate or of equivalent education and maturity, but the practical bias of the courses in the Law School should ensure that he can begin to apply himself productively for his Master's benefit. If the apprentice is working productively it would seem to follow that he should be paid appropriately. It should be remembered that there will be a limit of 150 apprentices per year and, if the system works as well as it is hoped, Solicitors may find themselves in competition to obtain the services of this new breed.

EDUCATION ADVISORY COMMITTEE

Maurice R. Curran
Chairman

Adrian P. Bourke
John F. Buckley
Francis D. Daly
Ernest B. Farrell
Dr. Bryan McMahon
David Molony
Rory O'Donnell
Garrett Sheehan

10.1 This Committee has worked steadily through the year on the planning of the Professional Course and the preparation of the required materials and exercises. 12 Sub-Committees, details of which are given below, were appointed to plan and prepare the content of each subject to be taught in the Professional Law School.

10.2 Mr. Laurence Sweeney was appointed Director of Training early this year and with the assistance of our Education Officer, Mr. Harry Sexton, has worked energetically and enthusiastically with the Committee and its Sub-Committee's in planning and developing the Courses. Mr. Sweeney has qualifications both in Law and Education and has worked on Practical Training Courses in other disciplines. The Committee consider we are fortunate to have obtained his services.

10.3 Mr. Sexton went to Australia, at our request, to participate as a student in the Practical Law Courses operating there, which were the first of their type in the Common Law world and upon which, to some extent, we have based our new Course. The experience with which he has returned and his general enthusiasm and commitment have been a tremendous help and encouragement to the Committee.

10.4 With the introduction of the new Practical Apprenticeship Training System the Committee considers it vital to involve not only the apprentices but their Masters more fully in the system and it is intended to have meetings prior to the commencement of the new course with the Masters of the apprentices who will be entering the Professional Law School.

10.5 I would like to thank all the members of the Education Advisory Committee and the Sub-Committees for their intensive work throughout the year.

PROFESSIONAL COURSE
COMMITTEES TO CONSIDER COURSE CONTENT

1. **Civil Litigation:**
   David Molony, Declan Moylan, Paul McLaughlin.

2. **Criminal Litigation/Legal aid:**
   Garrett Sheehan, Dudley Potter, Brendan Garvan.

3. **Family Law:**
   Michael V. O'Mahony, Alan Shatter, Raymond Downey.

4. **Accountancy:**
   P. J. Connolly, Patrick Kevans, Edward Grace, Gerard O'Malley.

5. **Business Law I:**
   Frank Daly, Michael Enright, Bryan McMahon, Hugh M. Fitzpatrick.

6. **Business Law II:**
   Brian Gallagher, Ercus Stewart.

7. **Applied Company Law, Partnership Law:**
   Brian O'Connor, David Tomkins.

8. **Bankruptcy, Liquidation and Receiverships:**
   Frank Sowman, Laurence K. Shields, Andrew Smyth, Barry O'Neill.

9. **Conveyancing:**
   Ernest Farrell, Rory O'Donnell, Eric Brunker.

10. **Applied Landlord and Tenant Law:**
    Patrick Clyne, John Buckley.

11. **Taxation and the Drafting of Wills and Settlements:**
    John Quinlan, Maurice Curran, Terence Cooney, Robert Johnston.

12. **Probate and Administration:**
    Adrian Bourke, Eamonn Mongey, Anne Sweeney.

PUBLIC RELATIONS COMMITTEE

William D. McEvoy
Chairman

Donal G. Binchy
John F. Buckley
Francis D. Daly
Michael P. Houlihan
Raymond T. Monahan
Peter Murphy
Michael V. O'Mahony
William A. Osborne
Mrs. Moya Quinlan
Andrew F. Smyth

William D. McEvoy, Chairman

11.1 The year 1977 might be referred to as the year of the Prices Commission Report, as it has tried to lay down before the Public in general the basis for the payment of the services rendered by the Solicitors Profession. It was necessary that all material be available for the purpose of answering the numerous views expressed when this Report was published. The media was the main source of criticism, constructive and otherwise; such criticism was met by the views expressed by members, who by their understanding of the functions, and the services provided and the cost for such provision, dealt with the report from the Public Relations point of view. The Consultant's Report and recommendations in general were fair and reasonable, but it is true to say that the approach of the National Prices Commission did not at all give the Profession a fair and reasonable image.

11.2 The newspapers, television and radio, with a few exceptions, during the year gave a better and fairer acknowledgment of the place in the community of the Profession. The areas of controversy and criticism were very ably dealt with by the members of a panel from the Profession who, from time to time, gave their voluntary help and assistance in dealing with difficult areas such as appearances on T.V., interviews on radio and in the press. Most of the credit for this service is due to the new idea of training such a panel, to be available to put our views before the media. The thanks of the Society is due to Maxwell Sweeney, the Society's Publicity Consultant and those who gave their time, as I have said, voluntarily and then made themselves available to express the views of the Profession to the Public in the media arena.

11.3 Communication with the Members is a continuing problem. The News Letter has undoubtedly helped in many ways to improve communications within the Society. In the coming year, the Committee proposes an examination to ascertain how best to communicate with the widely dispersed membership.

11.4 The Young Solicitors Society have, as in the past, contributed in many ways to good public relations by their energy and assistance, by expression of views, and by keeping us au fait with new legislation and with the need for more new legislation created by a changing Society.

11.5 The necessity of good relations with the public was never more necessary. This can be performed to the optimum effect by the individual members of the profession, remembering at all times that as an individual he or she carries the responsibility of the good relationship of its members. The Solicitor, both in regard to the manner he serves his profession, and his client, by maintaining the highest professional standards, which should be indicative of a Solicitor, can achieve more than any other single factor in this field.

11.6 Leaflets giving information on our services to the community were made available to members, and to other sources, for distribution, and the Committee feel that these will be part of the programme to give the public a more enlightened view of what the profession can really provide. Members who require additional copies of leaflets can have same on application. The publication and launching of Mr. Alan Shatter's book on *Family Law* was a success as a publication both assisting the Profession and the Public to understand this most controversial area. The publicity it received on its launching from a public relations aspect did an amount of good in having the Public realise that the Profession is always anxious to meet the demands of change in our Society. During the year discussions have taken place with the President of the Ecclesiastical Matrimonial Court, Right Reverend Monsignor Sheehy, in an effort to have more helpful communication in all areas between the Civil and Ecclesiastical Court in regard to Matrimonial matters. This dialogue is to be advanced further during the coming year.

11.7 The transfer to King's Hospital, Blackhall Place, was a milestone in the Society's development and perhaps in the future Blackhall Place could be used to better advantage from the point of view of Public Relations by having it brought before the public in many different ways related to the fact of course that it now is the Solicitors Apprentices and the Profession's real home.

11.8 Good relations were maintained with the Public Service who have such a part to play in relation to the competent and expenditious servicing of all the various operations that Solicitors perform on behalf of their clients. It is indeed in this area that most good can be done to bring a better image to the profession having regard to delays, frustrations and unnecessary communications which from time to time occur in transactions with this branch of the Government.

11.9 Again the Director General and the administration staff give every assistance in dealing with complaints and comments and made available to the Public Relations Committee all the necessary information and material to cover such situations that arose from time to time, during the year.

11.10 In Public Relations one must always look at the commercial and the human elements and perhaps it is in the latter that our Public Relations can be advanced by a more practical personal application in a conscientious manner in each and every one of our relationships with our clients. Justifiable criticism in some individual cases has come from the Public, which does reflect the general overall standing of Solicitors in the Community. This criticism should be dealt with by not being hesitant in advising our fellow professionals and by endeavouring to assist many of them in keeping up a proper standard of service and conduct even by helpful criticism if necessary.

11.11 During the year, the good relationship with the English, Scottish, Northern Ireland and E.E.C. legal associations were continued on a Professional and social basis. The Public relations of the Society were very much advanced by the continued contact by the President and Director General by travelling to the Bar Associations throughout the country. Added to this was the meeting in Dublin of Members of the Council with the Presidents and Secretaries of all Bar Associations where a full descussion took place on the many problems raised. This is to be an annual event.

11.12 To the present members of the Committee and to last year's Chairman, Walter Beatty, there is due a sincere thanks for all the thought, time and effort which they gave.

Above all from a Public Relations aspect the opportunity cannot be allowed to pass without an expression of appreciation to the President who, during the year, in every way, carried the Office to the Public with the true sense of what the profession means to Society, but above all in his sacrifice and unselfishness in putting such Office before his personal ambition. For his total commitment to creating a proper Public Relations image on behalf of the Profession with the Public, he cannot be too highly praised.

PREMISES COMMITTEE

Moya Quinlan
Chairman

Gerald Hickey
Thomas Jackson
Gerald J. Moloney
Patrick C. Moore
Patrick F. O'Donnell
William A. Osborne
Peter D. M. Prentice

12.1 This year has been one of great achievement for the Premises Committee. In April the work of reconstruction and alteration to the centre block was completed and the Director-General with the entire administrative staff went into occupation of the offices in Blackhall Place during the Easter Vacation. It must be said that the departure from the Solicitors' Buildings in the Four Courts was a remarkable achievement and went without a hitch. For this, tribute must be paid to the Director-General, the staff and all concerned for their efforts.

12.2 As members are aware the entire administration of the Society is now being carried on at Blackhall Place. The consultation rooms are in constant demand as are some other areas of the centre block, for meetings and social functions. It has been a great pleasure for the Premises Committee to welcome so many of our colleagues as well as members of the Judiciary and the Bar to Blackhall Place. Indeed, the praise which has been given to the work already carried out there has been most gratifying to the Committee.

12.3 Work on the Students' and Members' wing is almost completed. It is expected that this area will be ready for use by March, 1978. In this part of the building will be located the Members' lounge, bar and restaurant, as well as the library, lecture theatre, seminar rooms, students' restaurant and bar. Again, many members will have seen this section of the building during recent visits. A feature of the Members' lounge is the delightful gallery which in fact is one of the very few additions made to the existing building. It will be remembered that in response to the request of Members at the Half-Yearly meeting in Wexford this year, a decision was taken by the Council to proceed with the provision of five bedrooms in the Northern wing. These rooms will be ready for use in early December. It is hoped that this facility will be fully availed of by Members.

12.4 In July, negotiations with the Bar Council were finalised, for the sale to it of the first and second floors of the Solicitors' Buildings, in the Four Courts. It is hoped that this sale will be completed before the end of this year. The Society will be retaining the Hall Floor and basement of the Buildings for consultation rooms and the copying and duplicating service presently maintained there. It is intended also to provide a reference library for the use of members during term. Some alterations are envisaged on the Hall Floor to provide for more consultation and arbitration rooms.

Mrs. Moya Quinlan, Chairman

12.5 During this year, as in the previous one, the members of this committee have been unstinting in their efforts to discharge the very heavy responsibility which has been entrusted to them by the Council. In this they have been greatly assisted by our Consultants, Mr. Terence Nolan and his Assistant Mr. Leonard Morgan of Messrs. Nolan and Quinlan, Architects, Mr. Tom D'Arcy, Thomas D'Arcy & Co., Quantity Surveyors, Mr. Joe Tierney and Mr. Michael Callan of J. Tierney & Co., Consultant Engineers. A special word of thanks must be given to our Clerk-of Works, Mr. Reburn for his unfailing co-operation at all times. The Committee wishes also to express its appreciation to Mr. Paddy Doyle, foreman of G. & T. Crampton Ltd., the Contractors, for the wonderful team-spirit shown by all involved in this challenging task.

12.6 The Committee looks forward to the continued support and encouragement of the members of the Society in their efforts to make this undertaking an outstanding success and something of which future members of the profession will be proud.

DISCIPLINARY COMMITTEE

Thomas A. O'Reilly
Chairman

Thomas R. C. Bacon
James R. C. Green
Thomas Jackson
Francis Lanigan
John Maher
Patrick C. Moore
Patrick Noonan
Roderick O'Connor
Robert McD. Taylor

Thomas A. O'Reilly, Chairman

13.1 Since 30th September, 1976, the Disciplinary Committee met 29 times.

New cases commenced after 30th September, 1976	33
Of the 33 new applications	
(a) No Prima facie decided	9
(b) Prima Facie case found	24
Of the cases at hearing	
(a) Findings of misconduct	15
(b) Findings of no misconduct	5
(c) At or awaiting hearing	13

13.2 Seven Reports have been presented to the President of the High Court (Thirteen are outstanding)

(a) One case was disposed of on an Order of "costs only".
(b) Four cases are before the High Court.
(c) One solicitor was suspended from practice and the case was remitted to the Disciplinary Committee to take further evidence and present a further Report.
(d) A Freezing Order was obtained against the accounts of one solicitor.

13.3 Another case which had been remitted to the Disciplinary Committee to take further evidence and submit a further Report is at present before the High Court.

13.4 An Order of suspension from practice was extended for a further period of 12 months.

13.5 An outstnding case was disposed of on an order of "costs only".

13.6 In another outstanding case the solicitor was reproved.

E.E.C. and INTERNATIONAL AFFAIRS COMMITTEE

Adrian P. Bourke
Chairman

Anthony E. Collins
John G. Fish
John B. Jermyn
Bernard A. McGrath
Gerald J. Moloney
Raymond T. Monahan
Michael V. O'Mahony
Andrew F. Smyth

Adrian P. Bourke, Chairman

14.1 The Solicitors' European Group of the English Law Society held their Annual Conference, in co-ordination with the Incorporated Law Society, in Killarney in June 1977. Contributions were made by Irish lawyers on the impact of E.E.C. legislation on Business Law and on Family Law and related matters. The two day session was intensive in the depth of discussion, and the social programme was admirably arranged by the Law Society in London.

14.2 As in previous years, various members of the Committee continued to represent the Society at Meetings of the Commission Consultative and the Union Internationale du Notariat Latin. These meetings cover subjects of great importance for lawyers of the Community, and the success of the contribution from John Moloney, and from Anthony Collins and John Fish is acknowledged.

14.3 Throughout the year representatives of the Committee had discussions with the Secretary of the Land Commission relating to the continued operation of Section 45 of the Land Act 1965 in the light of recent decisions of the European Court. An Opinion was taken from Counsel and it is hoped to keep members informed of the situation through the Gazette.

14.4 The Committee has continued to press for the establishment of a Central E.E.C. Library, firm proposals having been received from U.C.D., and the matter is under active discussion. No firm commitment had been received from Trinity College.

14.5 The Committee and its individual members and outside advisers continued to provide a commentary and liaise with Government Departments on various Conventions and Directives including those relating to Bankruptcy, Consumer Credit and Protection, Moveable Goods, Insurance, Judgments and Suretyship, Conflict of Laws on Employment Relationships and the creation of a European Trade Mark. In addition, the Committee and its members keep under constant review the reports of the Court of Justice of the E.E.C., and certain of these reports are published in the Gazette.

14.6 The Directive on Provision of Services by Lawyers within the European Community had been extensively examined by the Committee over a number of years and the final document has been noted in all aspects. The Council have been kept advised on the effects of the Directive, and in the light of the legislative programme which must necessarily be implemented to give effect to certain provisions of it, discussions are to be initiated with the Department of Justice.

14.7 An Opinion was taken from Counsel on the entitlement of Northern Ireland Solicitors to practise in the Republic. The case was subsequently re-submitted to Counsel to take account of the E.E.C. Lawyers Directive, and this further Opinion was noted. The Department of Justice have been advised on the Opinion.

14.8 V.A.T. on legal services became an issue during the year in the light of proposals emerging from Brussels. A Meeting was arranged with the Revenue Commissioners and it was understood from this discussion that in the case of Irish lawyers there would be a derogation from the Directive for a period of five years, and possibly a further derogation after that period.

14.9 The Chairman of the Parliamentary Committee was requested to attend a Colloquy on European Law on the subject of "Forms of Public Participation in the preparation of Legislative and Administrative Acts" in October 1977. Mr. Garrett Sheehan and a representative of the Council attended a Council of Europe Meeting with representatives of Bar Associations of the nineteen members of the Council of Europe in Strasbourg in October 1977, on Human Rights legislation within the Member States.

14.10 The Committee gave active consideration during the year to establishment of an Irish Solicitors' European Group. The objective would be to liaise with a similar group recently established in Northern Ireland and with the standing Group in London, part of the English Law Society. It has been decided in principle that the matter be raised with the Society of Young Solicitors to ascertain if the establishment of such a body could be effected.

14.11 The Committee considered other matters, such as the introduction of an identity card for lawyers within the Community, the effect of Irish Firms opening Offices abroad and Foreign Firms opening Offices in Ireland, the attendance by Irish Solicitors at the International Bar Association Meeting in Australia in 1978, and the effect of the Law Society joining the International Chamber of Commerce. Particular thanks are expressed by the Committee to the Administration of the Law Society, and especially to the Committee Secretary, Miss Margaret Byrne, who patiently effected the transition from the previous year, and who successfully monitors the minutes and agenda of the Committee from one meeting to another.

COMPANY LAW COMMITTEE

Brian J. O'Connor
Chairman

Walter Beatty
Anthony E. Collins
Francis D. Daly
Michael G. Dickson
Mary Finlay
Houghton Fry
Michael Irvine
Patrick Kilroy
James M. O'Dwyer
Laurence K. Shields

Brian J. O'Connor, Chairman

15.1 The work of the Company Law Committee in the year has been twofold. Firstly, a review of the technical operation of the Companies Act 1963 was completed. This has been submitted to the Department of Industry, Commerce and Energy for consideration. Comments were also submitted to the Department on submissions by other bodies on the same topic.

15.2 The second aspect of the Committee's work has continued to be in the area of Harmonisation of European Company Law. Here, the main activity has been the Third Draft Directive on National Mergers. The Community appears to be inactive in other areas. However, the coming year is expected to be important for Company Law in Ireland. The draft legislation to implement the Second Directive on Company Law is expected soon. Furthermore, the new government can be expected, once again, to introduce a Mergers and Monopolies bill. It is to be hoped that it will be an improvement both on its own bill when last in office and on that of the coalition.

LIBRARY REPORT

Colum Gavan Duffy
Librarian

16.1 The services provided by the Library in the Four Courts have been expanded within the limits of the space available. Efforts continue to be made to increase the number of copies of students' textbooks to cope with the expanded number of students. The invaluable shelf space in the basement was withdrawn to make way for consultation rooms, and no corresponding space elsewhere has been provided. This problem can only be resolved by the erection of shelves in consultation rooms. .

16.2 New editions of standard legal textbooks and issues of leading legal periodicals have been acquired. It is hoped to provide a full list in the November Gazette.

16.3 Mrs. Caroline Pfeifer successfully re-classified according to the Dewey Classification System the textbooks in the Library in August and September. The Library building in Blackhall Place is not yet completed but it is understood that the Library will move there in the Spring of 1978. Many members seem to favour the maintenance of a skeleton library service in the Four Courts.

16.4 The total amount spent on the purchase of books for the year ending 30th April, 1977 was £3,837 and on the purchase of periodicals was £677.30. The total amount spent on binding was £573.53. The effect of inflation is shown, when the corresponding amounts in the previous year in respect of books were £3,310, periodicals £418, and binding £583, making a total of £4,311. Due to their high cost, the need for libraries to provide essential books is more necessary than ever, as it is becoming ever more difficult for practitioners to purchase them.

16.6 The legal publications of the European Communities, consisting of the daily Legislation and Information Sections of the Journal, the Bulletin, the Annual Report of the Council, the bound and loose copies of the Judgments of the Court, as well as the Legal Bibliography, and the National Decisions concerning Community Law have been received. For comparative purposes, the office of the European Court in Luxembourg is sending free the French text of the judgments. The French Conseil d'Etat has continued to send a very useful summary of its decisions. Unfortunately the Council of Europe failed to provide most of the publications which it had promised, but Mr. Kiernan, the Irish member of the European Commission, is expected to successfully overcome this.

Colum Gavan Duffy, Librarian and Editor of the Gazette

16.7 The Librarian thanks the Council for giving him the opportunity of attending the valuable 50th Conference of the International Federation of Library Associations, which was held in Brussels from 2nd to 10th September. He wishes to express his sincere thanks to his Assistant Librarian, Margaret Byrne, whose unfailing aid, courtesy, and efficiency were at all times invaluable to him. He also wishes to thank the Society of Young Solicitors for kindly inviting him and his wife to their Seminars, in Tralee, in April, which he was unable to attend due to illness, and in Sligo in October.

COSTS COMMITTEE

William A. Osborne
Chairman

Denis J. Bergin
Thomas Callan
Laurence Cullen
John J. Dockrell
Dominick Kearns
William D. McEvoy
Gerald J. Moloney
Robert Pierse
John Rochford
Raymond M. Walker

William A. Osborne, Chairman

17.1 In the early part of this year the Report of the National Prices Commission on remuneration was issued and the Report was circulated to all members of the profession. Comment in relation to the Report was circulated to the media and was published.

17.2 In accordance with the recommendations of the National Prices Commission application was then made to the Supreme Court Rules Committee, to the Land Registration Rules Committee and to the other appropriate Committees for increases in fees to the extent recommended by the Prices Commission.

17.3 The recommendations of Professor Lees and the comment of the Prices Commission in its Report were studied in detail by the Society's Committee, who also sought comment from Mr. A. Somerville, Lecturer in Economics, Trinity College, and from the Society's Consultants, Messrs. Coopers & Lybrand. Consequent on the full detailed consideration given to the Report from the Prices Commission, the Committee in May last made further detailed submissions to the Prices Commission which related to many fundamental factors which, in the view of the Committee, the Commission overlooked in arriving at its conclusions and recommendations. In particular, the Commission's failure to deal with criminal legal aid costs, and the unsatisfactory position in the criminal legal aid scheme were referred to and highlighted.

17.4 The problems arising in relation to the criminal legal aid scheme have been dealt with and a more satisfactory end result has meanwhile been achieved. The Commission has not yet commented upon the Society's submissions, but an early response from the Commission is anticipated.

17.5 In addition, application has been made to the Commission for further increases in remuneration to cover the period which has elapsed since the first submission was made and in relation to the present application for further increases in fees a questionnaire issued some time ago from Messrs. Coopers & Lybrand, seeking up-to-date information, which is absolutely essential for the purpose of justifying the application made for further increases in remuneration. There has been a good response from the profession but the Committee now asks all colleagues who have not yet completed and returned the questionnaire, to do so immediately, so that the information can be processed and submitted to the Prices Commission as soon as possible. Unfortunately office expenses are continuing to increase at a rapid pace and hence, it is absolutely essential to have the application for further increases processed as quickly as that can be achieved, otherwise remuneration in our profession will again lag far behind current remuneration in every other walk of life.

CONVEYANCING COMMITTEE

William A. Osborne
Chairman

Eric Brunker
John F. Buckley
Maurice R. Curran
Patrick Fagan
Ernest B. Farrell
Rory McEntee
John Maher
Patrick C. Moore
Francis J. J. Murphy
Rory O'Donnell
Moya Quinlan
Brian W. Russell

18.1 Regular meetings of the Committee have been held during the year. Recently the Committee has been enlarged by the co-operation of additional Members in an endeavour to deal with the many items which are on the Committee's Agenda and which are under consideration. During the year the following matters have been dealt with.

18.2 **Requisitions on Title:** The final draft has been approved of and has been submitted to Counsel for final checking. This work has been delayed by the introduction initially of the new Taxation Legislation and the problems which have been created by the Family Home Protection Act, 1976, and by reason of the amendments to the Local Government (Planning and Development) Act, 1963. The Committee are presently in consultation with Counsel and it is hoped to present the new Requisitions at an early date.

18.3 **Family Home Protection Act, 1976:** The implementation of this very imprecise legislation has caused many problems. Counsel's Opinion has been obtained on various points arising and is presently under consideration by the Committee. Meetings have been held during the year with the Department of Justice in relation to the Conveyancing problems which have arisen and with a view to obtaining some amending legislation. If it is not possible to obtain some amendments to the Act, the Committee will issue a practice note with a view to establishing a uniform and reasonable code of practice for the Profession in relation to the Act.

18.4 **Sale of Flats:** A precedent set of documents suitable for this type of sale has been prepared. Discussions have taken place with the Law Agents and Solicitors for Lending Institutions and the draft scheme documents have been accepted in principle. Some minor problems have yet to be cleared and Counsel's Opinion has been sought in relation to same.

18.5 **Insurance — Re Flats:** The Committee has dealt with this matter and Block Policies are now acceptable to Lending Institutions.

18.6 **Construction Industry Federation:** Meetings were held with the Federation during the year with particular reference to the forms of Building Contract and Guarantees in relation to structural defects and other allied matters. The form of Guarantee plan was discussed in detail and suggestions put forward in relation to the implementation of the Guarantee Scheme. The varied forms of Contract in relation to building were considered and discussed and the Committee is now in the course of revising the Society's Building Contract and will consult again with the Federation with a view to obtaining agreement on the form of Contract.

18.7 **Stamp Duty:** By reason of the change in issue of Grants by the Department of Local Government and to cover the first sale of new houses which are in excess of the Grant floor area, Mr. O'Donnell prepared a Memorandum as to practice and procedure with the Revenue Commissioners and this Memorandum has been circulated.

18.8 **Royal Institute of Chartered Surveyors:** Meetings have been held with the Institute during the year particularly in relation to Rent Review Clauses in Leases and Tenancy Agreements. The standard Arbitration Clause has also been under discussion and these discussions are presently continuing.

18.9 **New Houses — Architect's Certificates:** Meetings have been held with the Institute of Architects with a view to adopting a Certificate which will be acceptable to the Institute and also acceptable to Law Agents and Solicitors acting for Lending Institutions. A Draft Certificate has been prepared and has been approved of by the Institute and is being submitted to Solicitors and Law Agents for Lending Institutions for final acceptance.

18.10 **Land Registry and Registry of Deeds:** Regular meetings have been held during the year with Officials from the Department of Justice in relation to the Land Registry and also the Registry of Deeds. All of these meetings have been very helpful and the Committee is grateful to the Department Officials for their assistance and co-operation in endeavouring to speed up the work of the Land Registry and of the Registry of Deeds. Discussions are presently taking place with the Registrar in the Registry of Deeds in relation to intended alterations in the Registry.

18.11 **Title Insurance:** Title Insurance which has been introduced in England by certain Insurance Companies and which has been the topic of much comment is presently under consideration by the Committee and the Committee's Report on this matter will be issued in due course.

18.12 Apart from the matters above-mentioned many points in relation to practice and procedure have been dealt with by the Committee during the year. The Committee welcome comment from Members of the Profession on any practical or procedural points which they may come across from time to time.

PUBLICATIONS COMMITTEE

Walter Beatty
Chairman

Bruce St. John Blake
John F. Buckley
Michael W. Carrigan
Garrett P. Gill
Desmond J. Moran
Donough O'Connor
Michael V. O'Mahony

Walter Beatty, Chairman

19.1 A very encouraging response was received to the advertisements in the press indicating that the Society would be prepared to sponsor the publication of legal textbooks and commentaries. The Committee met monthly to examine the many proposals submitted.

19.2 Forthcoming publications include two books on Planning Law. Currently work is progressing on the following subjects:

—Corporation Tax
—Conveyancing
—Company Law
—An Office Manual for the particular guidance of staff with no legal experience.

It is hoped that work will commence shortly on a revised edition of the Garda Siochana Guide.

19.3 During the year the Committee was happy to contribute a grant towards the publication of Alan Shatter's excellent book, *Family Law in the Republic of Ireland*, published by Wolfhound Press, Dublin. The President of the High Court introduced the book at a reception held by the Committee to mark the publication.

19.4 A revised edition of the Society's Handbook, incorporating the Society's Charter, the Bye-Laws of the Society, and the Regulations of the Council to-date, was published towards the end of the year.

19.5 In the area of Government Publications, the Committee is concerned about the non-availability of bound volumes of the Irish Statutes. It is endeavouring to discuss the re-printing of the Statutes with officials in the Stationery Office.

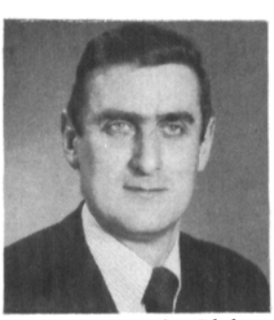
19.6 The Society's representatives on the incorporated Council of Law Reporting for Ireland, Peter Prentice, John Buckley, Thomas Jackson, and the Director General, participated fully in the work of the Council over the year.

19.7 I would like to thank the members of the Committee for their help during year and in particular, Mr. Desmond Moran, who attended some of our Meetings in a voluntary capacity and then kindly consented to join the Committee.

LENDING INSTITUTIONS

Bruce St. John Blake
Chairman

Walter Beatty
Joseph L. Dundon
Gerald Hickey
Michael P. Houlihan
Charles R. M. Meredith
Rory O'Donnell
William A. Osborne



Bruce St. John Blake Chairman

20.1 The introduction by Bank of Ireland and Allied Irish Banks of facilities for long term house purchase finance gave rise particularly in the case of the latter to certain difficulties in practice which caused concern to many of our members. In particular the form of undertaking required by Allied Irish Banks from solicitors to whose clients they afforded bridging facilities had several features which your Society's representatives found unacceptable. I am pleased to report that following negotiations with the Executive of the Bank and with their Law Agent, a revised form of undertaking and a new system of making such advances has been introduced. I would like to record your representatives' appreciation of the courtesy with which these representations were received by Allied Irish Banks. During these discussions we made reference to the Society's stated policy that in our view the systems whereby borrowers are bound to pay the lender's costs is not fair or reasonable in so far as it places a heavy burden of expense on a borrower at a time when he is least equipped to bear it. The Bank is sympathetic to the view and indicated that consideration is given, and will continue to be given, to the cost of borrowing in budgeting for the borrowing needs of individual borrowers.

20.2 This matter was also raised in discussions which we had with representatives of the A.C.C., and I am very pleased to report that they have agreed, at our request, to give an option in future to borrowers to add the handling charges to the amount of their loans to be paid off over the term of the borrowing.

20.3 Another matter of grave concern to our members has arisen during the year in relation to the computerization of the branch banking system. The technical term used to describe the process is "transit decimals". The effect of it is that any debit item to your account is back dated for one day and any credit item is deferred for two days. The result of this procedure is that an account which is never apparently overdrawn may still give rise to an interest charge and where substantial sums are involved the interest charge will also be substantial.

20.4 Our enquiries into the matter have led us to the conclusion that this matter can only be dealt with by the Irish Banks Standing Committee and we have recently submitted representations to that Committee in strong terms seeking to have the present procedures reviewed. We intend to continue to pursue this matter vigorously during the coming year.

UNDERTAKINGS COMMITTEE

Patrick C. Moore
Chairman

Walter Beatty
Matthew Drum
John Maher
Charles R. M. Meredith
Gerald J. Moloney
Philip O'Connor
Ian Scott
Thomas D. Shaw

Patrick C. Moore, Chairman

21.1 **Your Committee have held eight Meetings, the first on the 28th April 1976.**

21.2 Your Committee, at that Meeting, reviewed the operation and practice of Undertakings in non-contentious matters and agreed that a reasonable degree of standardization was necessary. Arising out of its subsequent discussions, the opinion of Senior Counsel was sought on such matters as to whether or not an Undertaking constituted a Contract, essential safeguard for the protection of Solicitors, necessity for irrevocable authority from client, obligations imposed upon Solicitor and partners, nature of Undertakings, redress of recipients and rights of Solicitors.

21.3 The following are the recommendations of the Committee:

(a) That a standard form of Undertaking incorporating client's irrevocable authority and retainer be adopted and approved by the Council.

(b) That there be printed on the reverse side (if feasible) of the standard form of Undertaking, the recommendations to the undertaking Solicitor as an aide memoire.

(c) That Forms of Undertaking be printed in groups of four and numbered consecutively for record purposes. The top copy is for the recipient; the second copy for the file; the third copy for Central Control or Central Register, and the fourth copy is for the client.

(d) That Solicitors be at liberty to adopt the Council's Form of Undertaking for printing on their own letter headings, so as to clearly identify the giver of the Undertaking, but where this is not practicable for financial or other reasons, that the Council do print and make available the standard Form of Undertaking for use by members of the profession generally, and such Undertaking should be annexed to a covering letter from the Firm.

21.4 Your Committee has drafted a standard Form to include the Undertaking, the client's authority and the Society's recommendation.

21.5 Your Committee further recommends as follows:

(i) That this Committee in view of its expertise and experience in the area of Undertakings, be available at all times for the advice and guidance of practitioners on problems arising from time to time in the area of Undertakings, and if necessary, a Sub-Committee of the Council's Committee on privileges.

(ii) That the Council agree to sponsor the publication of a Book or small Pamphlet dealing with the historical background of Solicitors' Undertakings, the legal background and the implications generally of Solicitors' Undertakings to Financial Institutions and the operation of such Undertakings between the members of the profession. In this connection, it is only right to point out that a considerable degree of research and discussion was undertaken by the Committee and the members thereof, and many of the conclusions were analysed and fortified by Senior Counsel's opinion when required. It is therefore important that the research, investigations and conclusions arrived at be reduced to writing in the form of a Book or Pamphlet in this fundamental area of activity.

21.6 In conclusion, I would like to express my personal thanks to all the members of the Committee who rendered their willing help and co-operation, not alone by attending the many Meetings, but by carrying out special research projects arising from our discussions from time to time.

21.7 The Committee would also like to express appreciation of the assistance given by Mr. Fintan Burke who acted as Secretary to the Committee, and also to Miss Margaret Moran whose work behind the scenes was willingly given and undertaken, though often tedious and repetitive.

INSURANCE COMMITTEE

Michael P. Houlihan
Chairman

Walter Beatty
Bruce St. John Blake
John Carrigan
Joseph L. Dundon
John B. Jermyn
William A. Osborne
Thomas D. Shaw

Michael P. Houlihan, Chairman

22.1 Since 1968 the Society has been endeavouring to organise an adequate Professional Indemnity Insurance cover for members on the most reasonable terms possible. An initial scheme was arranged in April, 1970. In 1974 the Council of the Society decided to review the operation of the existing scheme with Irish Underwriting Agencies Ltd. in an effort to improve its effectiveness. Subsequently, the Society decided to explore the possibility of providing an alternative scheme.

22.2 In the limited time available, prior to the general renewal of policies in 1976, this was not possible and, as a result, members were advised to make the best available arrangements as an interim measure. Subsequently the Society explored all the possibilities with a view to providing an alternative scheme. Following an extensive period of negotiations the Society was able to offer to its members a scheme organised by its nominated brokers, J. H. Minet (Ireland) Ltd. This scheme is specifically designed to cater for the profession's needs. It carries with it the advantage of continuity at existing rates — in those cases where no claims have been notified — (subject to adjustment only for inflation) for a period of three years. In devising the scheme the Society was at pains to evolve a system which would expedite the handling of claims and to that end has agreed with the broker the establishment of a panel of solicitors from whom the insured can select one to handle the case.

22.3 The Society has arranged with the broker to provide, in association with the professional indemnity insurance, a scheme of insurance to cover the other general insurance needs of a solicitor's practice.

22.4 The Society's brokers, J. H. Minet (Ireland) Ltd. is the Irish operating company of an international firm of insurance brokers which has experience in handling professional indemnity insurance for many professional societies and institutions.

22.5 The Society is aware that unfortunately many firms do not carry professional indemnity insurance. In this day of increasing client awareness of the possibilities of litigation against professional firms, the Committee emphasises that it is essential that all firms be adequately covered, and strongly advises the taking out of immediate cover, if not already covered. To date 173 firms have taken out cover under the Society's scheme.

22.6 The Society's brokers, J. H. Minet (Ireland) Ltd., or the Director General will give every assistance possible if members are in any doubt about cover under the scheme.

SOCIETY OF YOUNG SOLICITORS

SUMMARY OF RECENTLY INTRODUCED LABOUR LEGISLATION

The following is a very brief summary of the more relevant of the recent Labour Legislation with details of the date on which the Acts came into force.

1. Minimum Notice and Terms of Employment Act 1973

This Act came into force on 1st September 1973. It lays down minimum periods of notice to be given by employers and by employees when terminating a Contract of employment. In addition it gives employees the right to have information about the terms of their employment set out in writing.

2. Holidays (Employees) Act 1973

The Act came into force on 1st April 1974 replacing the Holidays (Employees) Act 1961. It provides that most non-agricultural employees are entitled to three weeks annual holidays for each "leave year" with pro rata entitlements for periods of employment of less than a year. It also provides for entitlements in respect of public holidays.

For the purposes of the Act a "leave year" means the year beginning on 1st April.

3. Anti- Discrimination (Pay) Act 1974.

This Act came into force on 31st December 1975. It aims to ensure equal treatment between men and women in regard to pay firstly by establishing the right to equal pay for like work and secondly by providing the means by which this right can be enforced.

The Act provides that the right to equal pay will apply retrospectively to 31st December 1975 and so employers who delay implementation may find themselves faced with claims for substantial arrears of pay.

4. Unfair Dismissals Act 1977

The Act came into operation on 9th May 1977. The purpose of the Act is to protect employees from being unfairly dismissed from their jobs by laying down criteria by which dismissals are to be judged unfair and by providing an adjudication system and redress for an employee whose dismissal has been found to be unjustified.

Effectively it protects employees who have been in the same job for more than one year from being unfairly dismissed.

It does not apply to those of retiring age, to the Defence Forces or Gardai or to State or other similar employments. To justify dismissal the employer must show substantial grounds, for example, employee's misconduct, redundancy or the employee's incompetence.

Dismissals will be unfair under the Act where it is shown that they resulted wholly or mainly from any of the following:

(a) The employees trade union membership or activities, either outside working hours or at those times during working hours when permitted by the employer.
(b) Religious or political opinions.
(c) Race or colour.
(d) Legal proceedings against the employer where the employee is a party or a witness.
(e) Unfair selection for redundancy.
(f) Pregnancy, unless the employee was unable to do her work adequately or her continued employment would involve contravention of a Statutory requirement.

A woman employee who claims she was dismissed due to pregnancy may bring her unfair dismissal claim even though she does not have a years continuous service with her employer.

Claims by employees under the Act are heard before the Rights Commissioner and there is a right of appeal to the Circuit Court.

5. Protection of Employment Act 1977

This Act came into force on 10th May 1977. The purpose of the Act is to give greater protection to groups of workers faced by redundancy. It ensures that their representatives receive prior notification and are consulted beforehand by their employer. The Act also provides that an employer must notify the Minister for Labour of the proposed redundancies and then delay their implementation until thirty days have elapsed.

6. Employment Equality Act 1977

This Act came into force on 1st July 1977. It outlaws discrimination on the grounds of sex or marital status:

(a) In recruitment for employment.
(b) In conditions of employment (other than remuneration or a term relating to an occupational pension scheme).
(c) In training or in work experience or
(d) In opportunities for promotion.

Under the Act it is unlawful for an employer to have rules or instructions which discriminate on grounds of sex or marital status. While the Act is aimed primarily at eliminating discrimination by employers it also makes unlawful, discrimination by employers in activities which are related to employment. The Act does not apply to specified employments for example the Defence Forces or the Gárda Siochána, family employments or by the sex of the employee as an occupational qualification for the job.

The Statutory bar on male midwives is also removed.

Any individual who feels he is suffering from discrimination of a nature outlawed by the Act may apply directly to the Labour Court under the procedures specified in the Act.

7. The Protection of Young Persons (Employment) Act 1977

This Act came into operation on 5th July 1977. The main purpose of the Act is to extend the scope of the legislative protection given to young workers under the

age of eighteen. It contains provisions about the minimum age for entry into employment, sets limits to the working hours of young people, provides for rest intervals and prohibits night work. It also requires employers to keep records of the ages and working times of employees under eighteen years of age.

The Department of Labour has prepared very helpful explanatory booklets on each of these Acts, and while these booklets are not a legal interpretation of the Act, they are well worth having.

SALE OF LAND BY RECEIVERS

(1) Registered Land

Where the Receiver of a Company is selling registered land of which the Company is registered owner the Land Registry insist that the Deed of Transfer be executed under Seal in accordance with the Company's Memorandum and Articles of Association notwithstanding the fact that the Debenture under which the Receiver is appointed will invariably confer power on the Receiver to act as the Company's agent and to inter alia sell or concur in selling all or part of the Company's property. From a practical point of view this is most unsatisfactory since it makes the Receiver entirely dependent on the co-operation of the Directors of the Company unless of course the Articles of Association have been amended to provide for the Seal to be countersigned by the Receiver. In the absence of such a power the only apparent method of obviating this difficulty is for the Mortgagee to sell under Section 62 of the Registration of Title Act 1964.

(2) Unregistered Land

Butterworths Forms and Precedents indicate (Vol. 19 p. 1139) that if the conditions of the Debenture confer upon the Receiver not only a power of sale but also a Power of Attorney to execute instruments and assurances in the name of the Company the Receiver will be able to convey the legal estate in the property. There is however a body of legal opinion which holds that a company cannot by a Debenture confer a Power of Attorney on any other person to act in contravention of its Articles of Association.

At present there appears to be no standard practice for the execution of Deeds by Receivers. The result is that purchasers are obliged to adopt a conservative view and to insist that the Seal be affixed to the Deed in accordance with the Company's Articles of Association. For the Receiver this creates endless problems as he is obliged to procure the co-operation of the Directors who are often, if not always, quite hostile.

The problem warrants some thought.

FAMILY HOME PROTECTION ACT, 1976, SECTION 4

Practice Note

The President of the High Court has directed that, in applications under sub-sections (3) or (4) of Section 4 of the Family Home Protection Act, 1976, where the spouse whose consent is required cannot be served as a party, the fact of desertion or of unsoundness of mind or other mental disability or of inability to trace should be corroborated on Affidavit by some responsible disinterested person confirming the material facts contained in the Affidavit of the applicant spouse.

DID YOU KNOW?

CAPITAL GAINS TAX ACT 1975 AND SALES OF PROPERTY AFTER DEATH OF OWNER

The personal representative (PR) is deemed to acquire the assets of which the deceased was competent to dispose at date of death as if the PR's acquisition was the acquisition by the deceased (section 14[1]) *but* the PR is treated as a single and continuing body of persons and *not* an individual (section 14 [3] and schedule 4-13[2]). This means that PRs are not entitled to exemption which may be claimed by individuals such as:

(i) Section 25 relief on sale of deceased's private residence
(ii) Section 16 relief on gains of £500 or under in any one year
(iii) Section 17 relief on disposal of tangible movable property for less than £2,000
(iv) Section 4(3) relief in respect of gains from disposals of assets outside the State where the deceased was not domiciled in the State.

The PR is treated as having the deceased's residence, ordinary residence and domicile at date of death (Section 14(3).

Where an asset is acquired by a person as legatee, no chargeable gain accrues to the PR and the acquisition by the legatee is treated as if it was the acquisition by the PR (section 14(4)). Thus in some circumstances a legatee may be deemed to have acquired an asset upon the acquisition by the deceased.

It maybe important in some circumstances as to in which capacity a PR/legatee may sell assets of the deceased and in particular the private residence. The following is an interesting example where the PR/legatee has also been residing in the private residence:

Mother, (M), resides with son, (S), and M owns the dwellinghouse. M dies either testate or intestate and S extracts appropriate Grant either as Executor of the Will or Administrator. S decides to sell dwellinghouse.

(i) If S sells as PR the gain is chargeable as if S had acquired the dwellinghouse when M acquired same but without any exemption for private residence.
(ii) If S assents to the vesting of dwellinghouse in himself and sells as beneficial owner, his acquisitions is taken to be that of PR, which in turn is taken to be that of M and he is entitled to the exemption for private residence because he is an individual and was resident during the whole period of his ownership.

DID YOU KNOW?

LIABILITY FOR RATES

A person who is not primarily liable for rates (i.e. a purchaser) is not obliged to pay for arrears of rates unless proceedings are commenced within two years of the making and publishing of the said rate.

Internment and Detention Without Trial in Irish Law

by Brian F. Havel

PRIZE COMPETITION FOR HUMAN RIGHTS ESSAY—U.C.D.

PART II.

Part I of this essay which appeared in the August/September Gazette examined two conflicting forces — the supremacy of constitutional rights and the necessity of defending the stability of the State in times of national emergency — and traced the enforcement of internment in Ireland from the foundation of the State to the passing of the Emergency Powers Act, 1939.

Part VI of the 1939 Act was balanced on a knife-edge from the outset, and it required only the humane and characteristic approach of Gavan Duffy, J., in the celebrated decision of *The State (Burke) v Lennon*[7] in 1940, to strike down S.55 as invalid having regard to the provisions of the Constitution. His review of the constitutionality of Part VI was given in the context of an application to the High Court to make absolute a conditional order of *habeas corpus*. As the law then stood, the State was unable to appeal to the Supreme Court against the granting of an order of *habeas corpus*, and the Government had no option but to release James Burke and his fellow internees likewise detained under a Minister's warrant. This antithesis between judicial and executive policy indicated what would consistenly be liable to occur if the legislature were subjected to ordinary judicial stricture during periods of national emergency. The potential of the conflict, was observed in the consequences which flowed from opening the Curragh Camp after Burke's case. A week later, on 23rd December 1939, the Magazine Fort in the Phoenix Park was raided and over 1,500,000 rounds of ammunition stolen; some of the persons just released were believed to be implicated.

Against this background the Government reintroduced internment in the Offences Against the State (Amendment) Act, 1940. In practically every respect the Bill duplicated the provisions of the offending Part VI of the 1939 Act, so that the President felt obliged to submit it to the Supreme Court under Article 26. The majority in this Court subsequently advised the President that the Bill was not repugnant to the Constitution, and accordingly upon its promulgation it acquired an unchallengeable constitutional invulnerability. S.55 of the 1939 Act was repeated as S.4 of its successor, with the exception that where previously a Minister had to be "satisfied" that any particular person was engaged in treasonable activities, under the revised legislation his "opinion" is sufficient to ground the issue of a warrant.

> "Whenever a Minister of State is of opinion that any particular person is engaged in activities which, in his opinion, are prejudicial to the preservation of public peace and order or to the security of the State, such Minister may by warrant under his hand and sealed with his official seal order the arrest and detention of such person under this section."

The blueprint in Part II of the 1940 Act incorporates a number of safeguarding devices, distinguishing it from the unconditional power available to the Executive under the Emergency Powers Acts 1939-1940. When the operation of Part II was attacked before the European Court of Human Rights in 1960, representing an ingenious and novel attempt to stymie its operation[8], the existence of safeguards in the internment procedure was regarded as critical to its acceptability. The Court formulated three types of protection under the Act. The first lay in the power of the Irish Parliament to annul by resolution of either House the Government's Proclamation bringing Part II into operation, and also in the Government's statutory obligation under the same Act to provide Parliament with details of the exercise of this power. The control envisaged was that of a politically representative body supervising a Government with wide discretionary powers. A second safeguard was provided in S.8 of the Act, which established a Detention Commission consisting of an officer and two judges or experienced lawyers. The detainee had a right to insist that it considered whether there were any "reasonable grounds" for his detention, and if found that there were no such grounds the Government was obliged to release him. The Commission also had power to order the production of documents. The final safeguard was the promise given by the Government to release anyone who gave an undertaking to observe the law and refrain from activities contrary to the 1940 Act, characterised as a political or effective obligation, rather than a legal one. Article 6 of the European Convention on Human Rights specifies the requirements of a fair trial, and the Court patently regarded the Detention Commission as being a substitute for a trial and the more closely it resembled a trial, the more a safeguard it would be. The Court did not advert to the rather languid method of procedure proposed in the Act; the setting-up of the Commission, its consideration of complaints, and the release of detainees if it so recommended, were to be carried through "with all convenient speed". This lack of specificity was actually a disimprovement on the 1939 model, when for example the Government was obliged to release persons vindicated by the Commission within one week of a recommendation to that effect. Even a week's delay was criticised by Gavan Duffy J. in *Burke's case* as inordinately long, particularly since a finding for the applicant under the *habeas corpus* procedure entails immediate release. The Supreme Court in 1940 stressed the availability of *Habeas Corpus* as an additional and important safeguard against indiscriminate internment. The Court overlooked, however, that an applicant for *habeas corpus* under S.4 of the 1940 Act would be met by a warrant of a Minister of State bearing the words "in my opinion" and it had itself followed earlier authority in holding that the Judiciary was not competent to inquire into the validity of a

Minister's opinion. The Act left the form of the writ intact, but effectively swept away the substance. In sum, the primary safeguard available to a detainee under S.4 is the Detention Commission, composed of legally qualified and experienced persons, with power to obtain documents, and the decisions of which are binding on the Government. There is no guarantee offered to the Commission by the instrument creating it as to whether proof on the balance of probabilities or beyond reasonable doubt would be required. The Diplock Commission seems to presume the latter in respect of the present Northern Ireland procedures.

The Emergency Powers Act, 1976, has already been discussed. The practical thinking behind detention without trial as a means to control terrorist violence was stated by the Taosieach in the following extract from the debate on the Bill in Dail Eireann:

> "Experience has shown that the period of 48 hours during which persons can now be held in custody under the law is often insufficient for the completion of Garda inquiries in relation to serious offences of the type in question. We have seen that the organisation and execution of such offences can extend widely over the country and involve a substantial number of persons. The security authorities consider that the extended period available for questioning suspects—as information becomes available in the course of inquiries—would unquestionably help to bring to justice the perpetrators of a significantly greater number of offences before they can carry out further outrages. The Government consider that in dealing with ruthless paramilitary organisations, the necessary limitation of individual liberty is fully justified".[9]

Internment is ostensibly designed to contribute to the collection of adequate evidence to secure convictions, and to prevent criminal acts pending the achievement of these convictions. That this represented Government policy in relation to the 1940 Act was insisted upon in 1957 by the then Minister for Justice, Mr. Oscar Traynor. He said that internment under the Act was preventive, and denied that it was being used by the Government as punishment:

> "When satisfactory evidence of the commission of offences is obtainable, the persons concerned are charged with such offences, and, if convicted and sentenced, suffer the punishment imposed by the Courts. There is no question of substituting detention for punitive imprisonment."[10]

"Preventive justice", as it is called, received recent judicial scrutiny in *Attorney-General v O'Callaghan*[11] in 1966, in which Walsh J. condemned it as offensive to the constitutional guarantee of personal liberty, and envisaged its operation only in very definite circumstances of national emergency:

> "In this country it would be quite contrary to the concept of personal liberty enshrined in the Constitution, that any person should be punished in respect of any matter upon which he has not been convicted or that in any circumstance he should be deprived of his liberty upon only the belief that he will commit offences if left at liberty, save in the most extraordinary circumstances spelled out by the Oireachtas and then only to secure the preservation of public peace and order or the public safety and the preservation of the State or in some situation akin to that."[12]

It is unlikely that the judgments in *O'Callaghan's* case are to be read as casting doubt on the constitutional validity of the ancient jurisdiction to bind a person over to be of good behaviour, and it must be presumed that the Court confined itself to forms of preventive justice involving as a direct consequence the deprivation of the individual's liberty. Observations in the case on the Offences Against the State Act, 1940, are consequently of considerable interest. The Court appears to have treated detention under this Act as a legitimate, although exceptional, form of preventive justice, upholding the controversial verdict of its predecessor given in *In Re Article 26 and the Offences Against the State (Amendment) Bill, 1940*,[13] which brusquely decide that

> ". . . the detention is not in the nature of a punishment, but is a precautionary measure taken for the purpose of preserving the public peace and order and the security of the State."[14]

The willingness of the later Court to at least tacitly approve of the definition of the interment without trial procedure as "preventive justice" proves especially disquieting in the light of Gavan Duffy J.'s scornful rejection of the contention that detention without trial of a person suspected of being engaged in treasonable activities was preventive only, stated in *Burke's* case, and which has received the almost unanimous preference of commentators. An examination of S.55 of the Offences Against the State Act, 1939, moved him to reach the following conclusion:

> ". . . indefinite internment under Part VI of the Act is indistinguishable from punishment for engaging in the activities in question, and . . . the decision of a Minister of State to order the arrest and internment of a man under S.55 is equivalent to a judgment pronounced against the internee for his dangerous activities."[15]

Gavan Duffy J. used the facts of *Burke's* case to present an inductive analysis of how the punitive potential of S.55 was being actively realised. Burke was originally arrested under S.12 of the 1939 Act for "being in possession of seditious and incriminating documents", as defined in S.2. When the Minister for Justice was appraised of the circumstances of the defendant's arrest, he signed a warrant for Burke's arrest and detention under S.55 of the Act. The judge sharply criticised the practice:

> "The inescapable conclusion . . . is that the Executive Authority of the State, having under the Act the right to prosecute for the alleged offence, elected to take the alternative course of directing the indefinite imprisonment without trial for the "activity" of possessing seditious or incriminating documents. And I am quite seriously asked to hold that this internment was not punishment at all, but merely a "deterrent" . . ."[16]

The 1966 approbation is made more extraordinary by the following passage from the judgment of O Dalaigh C.J., in which he points to a feature of the Offences Against the State Act which would make the label "preventive

justice" peculiarly inappropriate to it. He says:

> "Even under this most stringent Act, a Minister of State is empowered to detain a person only if of opinion that he is *engaged* in activities which are prejudicial to the preservation of the public peace and order . . . the Minister is not empowered to act because he is of opinion that a person if not detained *will engage* in such activities."[17]

As O Dalaigh CJ. remarks here, the procedure described in the Act renders the citizen liable to indefinite detention because of activities already embarked on, a feature in total conflict with the guiding principle that preventive justice, where it is permitted, should be solely concerned with prevention and not with punishment. Thus it may be concluded that although successive Governments have pledged themselves to enforcing internment without trial as a preventive measure, the inevitable and necessary implication of S.4 of the Offences Against the State Act 1940 is that indefinite internment operates to punish people for engaging in activities prejudicial to the security of the State, and is in that sense wholly divorced from the norms of our system of criminal justice.

The concept of preventive detention was disapproved also by the European Court of Human Rights in the *Lawless Case*, 1960, when it held that the applicant's detention under S.4 of the 1940 Act did not comply with the provisions of Article 5, paras. 1(c), 3 of the Convention. By the terms of these provisions any person about whom it can be "reasonably considered necessary to prevent him committing an offence", can be arrested only for the purpose of bringing him before the competent legal authority and he is entitled to a trial within a reasonable time. The Court rightly noted that a contrary construction of these provisions would have sanctioned the arrest and detention of any person "suspected of harbouring an intent to commit an offence" for an unlimited period on the strength merely of an executive decision. By branding such a practice "repugnant to the fundamental principles of the Convention", the European Court proclaimed freedom from arbitrary detention a basic principle of European public law.

The Government's decision to secure the passage of the Offences Against the State Act, 1939, by ordinary legislation enabled its constitutionality to be challenged in the High Court in *Burke's case*. Gavan Duffy J. emphasized that he was deciding a question of law: "I am not concerned with policy". Examining the contention that S.55 authorised the Executive to interfere in the administration of justice (in contravention of Article 34.1), his method was to decide, firstly, whether the Minister was acting judicially, and secondly, whether in doing so, the Minister was administering justice. Gavan Duffy J.'s analysis of the duty of the Minister pivoted on the word "satisfied" as used in S.55. To have the right to intern, he argued, the Minister had to be "satisfied" that a person was in fact engaged in specific activities, and having found against him on that issue of fact, to have the right to intern, the Minister was required to consider whether those activities were calculated to endanger the security of the State, and be "satisfied" that they were. By the Minister's dual determination of fact, right or wrong, the person became a potential internee. Since to act judicially meant to determine rights and liabilities according to law upon the ascertainment of certain facts, such that the determination rather than the fact determined operates to impose liability or affect rights, Gavan Duffy J. held that the Minister had been acting judicially under S.55. This finding was not altered by the Minister's discretion (if any) not to prosecute an offender. To decide whether the section authorised the administration of justice, the judge listed the implications of S.55. He established that the activities contemplated in S.55, if not otherwise unlawful, were made so by this Act, under pain of internment, and that these activities sufficed to make the subject-matter of Part VI one "which, by its very nature, belongs to the domain of criminal jurisdiction". Concluding that indefinite internment was being applied as a punishment for engaging in these activities, and that a decision for the arrest and detention of a person under S.55 was equivalent to a judgment against him for endangering the security of the State, Gavan Duffy J. held that the authority conferred on a Minister by S.55 was an authority, not merely to act judicially, but to administer justice. Furthermore, it was an authority to administer criminal justice and to condemn an alleged offender without charge or hearing and without the aid of a jury, thereby contravening Article 38.1 which prohibits trial on any charge "save in due course of law". Prof. Willoughby's principle of the separation of powers was employed to affirm the invalidity of S.55 having regard to the provisions of A.34.1:

> ". . . the administration of justice is a peculiarly and distinctly judicial function, which, from its essential nature, does not fall within the executive power and is not properly incidental to the performance of the appropriate functions of the Executive; consequently a law endowing a Minister of State . . . with these powers is an invasion of the judicial domain and as such is repugnant to the Constitution."[18]

The Judge cited Article 37, which forbids the conferring of criminal jurisdiction on non-judicial officers, to confirm and strengthen his opinion. The Constitution makes exceptions for military law and Special Courts in time of danger, but even then does not appear to contemplate internment without trial, he maintained.

The amending legislation in 1940 was drafted to take cognisance of Gavan Duffy J.'s decision, replacing the condition whereby the Minister had to be "satisfied" by one which merely required him to be "of opinion". The Judge had himself recognised the acceptability of such a substitution when he distinguished an earlier authority on the basis that the statute impugned in the case involved

> "nothing except the inner consciousness of the Minister expressed in the written order for internment."[19]

That was the approach which commended itself to the Supreme Court when it reviewed the amending Bill under Article 26. It found that the only preliminary to the exercise of his powers was for the Minister to form "an opinion", and because in forming an opinion he was not purporting to weigh evidence, but merely performing a subjective function in his own mind, the validity of such opinions could not be questioned in any Court. The further contention that the Minister was administering justice contrary to Article 34 was curtly dismissed as "unsustainable".

Burke's case also considered the internment procedure in relation to Article 40.4.1, which guarantees the liberty of the citizen "save in accordance with law". Gavan Duffy J. interpreted this qualification by reference to Article 40.3.1, 2:

3.1 The State guarantees in its laws to respect and, as far as possible, by its laws to defend and vindicate the personal rights of the citizen

3.2 The State shall, in particular, by its laws protect as best it may from unjust attack, and in the case of injustice done, vindicate the life, person, good name and property rights of every citizen.

He posited the view that the right could only be abrogated in accordance with a law which respected the fundamental right of the citizen to personal liberty, defended and vindicated it as far as practicable, and protected his person from unjust attack. A law for the internment of a citizen, without charge or hearing, outside the great protection of criminal jurisprudence and outside even the special courts, for activities calculated to prejudice the State

> "does not respect his right to personal liberty and does unjustly attack his person . . . (it) does not defend his right to personal liberty as far as practicable, first, because it does not bring him before a real Court and again because there is no impracticability in telling a suspect, before ordering his internment, what is alleged against him . . ."[20]

The Constitution, in Gavan Duffy J.'s estimation, solemnly recognised the right to personal freedom as an essential basis of the social structure of a society of free men, and despite its emergency provisions, it secured personal freedom as truly as did Magna Carta.

The majority of the Supreme Court per Sullivan C. J. again differed with Gavan Duffy J. in considering these arguments. I referred earlier to opposing forces of individual freedom and social order, and the Court in 1940 was prepared to subjugate the dignity and freedom of the individual to the promotion of the common good, the attainment and maintenance of social order. It delegated to the Oireachtas the duty of determining the extent to which the rights of any particular citizen, or class of citizens, can properly be harmonised with the rights of the citizens as a whole, and opted for a narrowly legalistic interpretation of the phrase "in accordance with law":

> ". . . it means in accordance with the law as it exists at the time when the particular Article is invoked and sought to be applied. In this Article (40.4.1), it means the law as it exists when the legality of the detention arises for determination. A person in custody is detained in accordance with law if he is detained in accordance with the provisions of a statute duly passed by the Oireachtas; subject always to the qualification that such provisions are not repugnant to the Constitution or to any provision thereof."[21]

The Judges in the 1940 Supreme Court received their legal education under the British system of parliamentary sovereignty, and the concept of a judge interfering in the duly-enacted legislation of Parliament must have seemed intellectually repellent to them. Although the Judiciary still concedes the prerogative of the Oireachtas to circumscribe personal rights in time of national emergency, they have developed an activist function in determining and upholding rights at other times. There is little doubt that the modern Supreme Court would reproduce Gavan Duffy's reasoning in Burke's case to strike down internment without trial as arranged in the 1940 Act, declaring it offensive to the constitutional guarantees of personal liberty. A foreshadowing of such a development appeared in the review under Article 26 of the Emergency Powers Bill, 1976, when the Court commented that statutes making such serious inroads on civil liberty demanded very strict construction. Its vigilance in scrutinizing legislation of this character necessarily leads one to infer that the present Supreme Court would unhesitantly strike down legislation analogous to the 1940 model in terms of content and manner of enactment. It is interesting to note that the Court held that because of the exemption granted by Article 28.3.3, emergency Bills referred to it by the President under Article 26 were inescapable of being struck down on the grounds of repugnancy to the Constitution.

The European Court of Human Rights in the Lawless Case examined the justifiability of the internment measure. The existence of an emergency was held to have been reasonably deduced by the Irish Government in the circumstances, and what is relevant to internment is the limiting of the derogation under Article 15 of the Convention to the "extent justified by the exigencies of the situation." The Special Criminal Courts or the more extreme power in Article 38 (4) of the Constitution for military tribunals in time of war or armed rebellion constituted alternatives to internment. The Court took the view that the ordinary, special or military courts would not suffice to restore order, chiefly because of difficulties encountered in the collation of evidence for convictions. Possible sealing of the border was considered and rejected. The Court undoubtedly made a subconscious distinction between measures which were effective, a category into which sealing of the border and internment both fitted, and measures which were justifiable, a category including only internment. Sir Humphrey Waldock believed that Special Criminal Courts might have been effective, but conceded that the Irish Government had a "margin of appreciation" in the circumstances. Military courts were considered most objectionable of all, and were for that reason excluded from the hypothesis. The Court offered no explanation of why the derogations from Article 6 resulting from the use of military courts were worse than those from Article 5 of the Convention consequent on internment. Furthermore, it is not clear that sealing the border would have involved derogation from any provision of the Convention despite the view of the Court that it would have had extremely serious repercussions on the population as a whole, beyond the extent required by the exigencies of the emergency, The Diplock Commission[22] considered the similar choice open to the Government in Northern Ireland when faced with the problem of securing witnesses, between radically altering their judicial procedures or continuing to use internment. In order to preserve the reputation of the judiciary in a divided community, their Report advised that no ordinary court should derogate from the minimum standards of fair trial codified in Article 6 of the European Convention.

In his book, *Taking Rights Seriously*, Prof. Ronald Dworkin argues that a government "professing to

(concluded on p. 172)

COUNCIL OF THE SOCIETY

STATUTORY INSTRUMENT NO. 330 of 1977

Solicitors Acts 1954 and 1960 (Apprentices' Fees) Regulations, 1977

The Incorporated Law Society of Ireland in exercise of the powers conferred on them by sections 4, 5, and 82 of the Solicitors Acts, 1954 and 1960 and of every other power thereunto them enabling, and with the concurrence of the President of the High Court hereby make the following regulations.

1. On and after the date on which these regulations shall come into operation the fees specified in the schedule hereto shall be paid to the Incorporated Law Society of Ireland by the petitioner or applicant in respect of the matters therein mentioned.
2. The Solicitors Act, 1954 (Apprentices' Fees) Regulations, 1975 (S.I. No. 308 of 1975) shall be revoked as from the date of the 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 Acts, 1954 and 1960 or with these regulations.
4. These may cited as the Solicitors Acts, 1954 and 1960 (Apprentices' Fees) Regulations, 1977 and shall come into operation on 1st November, 1977.

Schedule:

1. On application for consent of the Society to enter into indentures of apprenticeship (excluding Preliminary Examination) £20.00.

1a. Preliminary Examination Fee, £20.00.

2. On application to attend a first Examination in Irish, or part thereof, £7.50.
3. On each subsequent application to attend any first examination in Irish or part thereof, £4.00.
4. On each application to attend any Preliminary Examination or part thereof after the first, £7.50.
5. On application for entry by the registrar of indentures of apprenticeship, other than supplemental indentures or a transfer of indentures, £120.00.
6. On application to attend the first law examination, Old Regulations, £15.00; New Regulations, £20.00.
7. On each subsequent application to attend any first law examination or part thereof, £15.00.
8. On application to attend the second examination in Irish, £7.50.
9. On each subsequent application to attend any second examination in Irish or part thereof, £7.50.
10. On application to attend the final examination, Second Law Examination £20.00; Third Law Examination £20.00; Book-keeping Examination £7.50.
11. On each subsequent application to attend the final examination, Second Law Examination, or any part thereof, £15; Third Law Examination, or any part thereof, £15.00; Book-keeping Examination, or any part thereof, £7.50.
12. On each application to attend a course of lectures of the Society other than lectures on the rights, duties and responsibilities of solicitors, £20.00; Half course, £10.00.
13. On application for entry of a name on the roll of solicitors, £50.00.
14. On application for permission to give late notice of intention to attend any examination or course of lectures £7.50 or such lesser fee as the Society may accept in special circumstances.

Dated this 26th day of October, 1977.

Signed on behalf of the Incorporated Law Society of Ireland

Bruce St. John Blake
President of The Incorporated Law Society of Ireland.

In pursuance of the provisions of Section 82 of the Solicitors Act, 1954 as amended by Section 25(1) of the Solicitors (Amendment) Act, 1960, I concur in the making of the above regulations.
Signed: Thomas A. Finlay
President of the High Court.

PLANNING LAW — CHANGES IN REQUISITIONS

Sections 26 and 27 Local Government (Planning and Development) Act, 1976

Following queries from Members the Society has obtained a joint Opinion from Mr. E. M. Walsh S.C. and Mr. Ronan Keane, S.C. as to the effect of the two sections on Conveyancing Practice.

The general view of the profession was that under the Local Government (Planning and Development) Act 1963 the purchaser of an unauthorised structure or a structure in which an unauthorised use was carried on was immune from any form of prosecution or enforcement procedure provided that the unauthorised structure or use had enjoyed an existence for upwards of five years. The only dissenting voice was that of the Dublin Planning Authority who considered that an unauthorised use was a continuing offence and that a special offence was committed every day the use was carried on that a prosecution could therefore be brought not merely against the original developer but also any purchaser who carried on the development as long as the prosecution related only to the six month period immediately preceding the issue of the Summons.

The effect of Section 26 of the 1976 Act is to provide for the introduction of a Warning Notice where any unauthorised use is being made of the land and where that notice requires the discontinuance of an unauthorised use any person who knowingly fails to comply with the requirement is guilty of an offence and is liable to a fine of £250 and in the case of continuing offence to a fine not exceeding £100 for each day on which the offence is continued or to imprisonment for a term not exceeding 6 months or to both fine and imprisonment.

In the opinion of both Counsel it is clear that such a warning Notice can be served notwithstanding the fact that the period five years provided for by Section 31 of the 1963 Act might have expired.

Section 27 of the 1976 Act entitles any person to apply to the High Court for an injunction prohibiting an unauthorised use of land and it is clear that such an order may be made notwithstanding the expiration of the five year period for the service of an Enforcement Notice.

So far as can be ascertained at this stage Planning Authorities have not in fact been invoking Section 26 in cases where the original Development or the original change of use took place more than five years ago but there is no guarantee that Planning Authorities will continue to exercise such forbearance. Fortunately in the cases in which they are most likely to be put under pressure to serve such a Notice, namely where local residents are concerned about some unauthorised use the Planning Authority can say to such pressure Groups that the procedure laid down by Section 27 can be adopted immediately by the residents without the need of the Planning Authority's participation.

As far as the effect of the two Sections on Conveyancing Practice is concerned it has been recommended by both Counsel that a Purchaser's Solicitor ought to make detailed enquiries as to the use of any premises for sale. If it does not go back before the 1st of October 1974 or if there is no Planning Permission for it the Purchasers Solicitor would do well to seek a Statutory Declaration from some person who is beyond argument competent to depose to the relevant facts and which establishes that the use in question was in existence prior to October 1964.

Purchasers Solicitors may consider it advisable to alter general Condition Number 17(2) of the Society's Standard Condition of Sale so as to provide that the Warranty given by the Vendor should extend back to the 1st October 1964.

THE INCORPORATED LAW SOCIETY OF IRELAND
DIRECTOR
PROFESSIONAL LAW SCHOOL

The new Professional Law School of the Incorporated Law Society of Ireland, will commence operation in Autumn, 1978. The School will be responsible for the professional training of prospective solicitors in the Republic of Ireland. The candidates will enter at Graduate level.

The Society wishes to appoint a full time director, who will become the School's chief executive. The position is intended to be permanent and a contributory pension scheme will be operated. However, the Society is willing to consider a non-permanent appointment for a minimum period of 5 years.

Applications are invited from solicitors with considerable practical experience. Teaching experience would be an advantage but is not essential. The objective of the Law School will be to duplicate office or practical working conditions and considerable experience is essential — preferably in general practice.

The director will have the assistance of a full-time director of training who was appointed in June last and who is at present planning the course schedules in co-operation with the Society's specialist committees.

Commencing salary will be negotiable but not less than £10,000 per annum.

Replies with full details of career to date marked personal, should be sent to:

James J. Ivers, Director General, Incorporated Law Society, Blackhall Place, Dublin 7.

PRESIDENT'S DIARY OF ENGAGEMENTS

17th September: Attended joint meeting of Donegal, Leitrim and Sligo Bar Associations in Donegal. Attended Dinner Dance that night.

20th September: Hosted reception for Dublin members at viewing of Blackhall Place.

20th September: Hosted/Presided at Dinner in Blackhall Place.

21st September: Hosted reception for Dublin members at Viewing of Blackhall Place.

23rd September: Attended 25th Anniversary meeting of Netherlands Law Society in Amsterdam. Received by Queen Juliana of the Netherlands.

27th September: Hosted reception for Dublin members at viewing of Blackhall Place.

27th September: Hosted/Presided at Dinner in Blackhall Place.

28th September: Attended Annual Dinner of Incorporated Law Society of Northern Ireland at Culloden Hotel, Craigavad, Co. Down.

29th September: Attended meeting of Bar Association Cavan.

30th September: Attended Annual General Meeting and Dinner of Solicitors' Golfing Society at Heath Golf Club, Portlaoise. Attended reception to mark 50th Anniversary of A.C.C.

2nd October: Attended Dinner given by President of Law Society of England and Wales in London.

3rd October: Attended ceremonies for opening of Law Term in London at Law Courts, Westminster Abbey and House of Lords. Received by the Lord Chancellor and Master of the Rolls, Lord Denning. Attended Dinner at English Law Society Hall, Chancery Place, London.

5th-8th October: Attended National Conference of the Law Society for England and Wales in Harrogate.

12th October: Attended Annual Dinner of Corporation of Insurance Brokers of Ireland.

13th October: Attended Dublin Stock Exchange Biennial Dinner, Trinity College, Dublin.

14th October: Opened the Fifth Annual Seminar of the Local Authorities Solicitors Association.

15th October: Attended Society of Young Solicitors' Autumn Seminar.

17th October: Attended Meath Bar Association, Beechmont Hotel, Navan.

18th October: Hosted/Presided at Dinner in Blackhall Place.

20th October: Attended Annual Dinner of the Dublin Chamber of Commerce.

21st, 22nd, 23rd October: Attended opening ceremonies of the Antwerp Bar.

24th October: Attended the Annual General Meeting of the Dublin Solicitors' Bar Association.

25th October: Hosted/Presided at Dinner at Blackhall Place.

26th October: Attended Reception for Austrian National Day.

28th and 29th October: Attended opening ceremonies of the Brussels Bar. Received by the President of the Belgian Parliament.

1st November: Hosted/Presided at Dinner at Blackhall Place.

6th November: Attended annual Citizenship Service, Christ Church Cathedral.

CORRESPONDENCE

LAND REGISTRY MAPS

Office of the Minister for Justice
Dublin

The Director General,
Incorporated Law Society

13 Deireah Fómhair, 1977

A Chara,

I am directed by the Minister for Justice, Mr. Gerard Collins, T.D., to refer to your recent letter and enclosure (ref: C/7) about maps for the Land Registry.

The Land Registry map is fundamental to the system of registration and its accuracy is of the greatest importance. You will note from Rule 56 that the maps acceptable for registration purposes are Land Registry copy maps and plans drawn on the current largest scale map of the area published by the Ordnance Survey. Over the years the Land Registry has accepted other maps but this practice gave rise to many inaccuracies and boundary conflicts. In order to deal with this problem the Registrar of Titles decided that a preliminary quality check should be made in the case of each sub-division dealing lodged, and that if the map was found on preliminary examination to be unsuitable for registration purposes it would be returned immediately with a rejection slip indicating in what way it was unsuitable.

It is in fact the practice in the Land Registry to accept photocopies of maps where there is no alteration in existing boundaries. Note (2) of the attached Rejection Slip which is issued with every case rejected by the Registry indicates this. In order to avoid confusion, it would be helpful, when photocopies are submitted, if a note could be attached or placed on them to the effect that the plots are completely bounded by Ordnance Survey detail, as it is difficult to differentiate between Ordnance Survey boundaries and those plotted by subdivision surveys when a photocopy is being inspected.

The delay on the part of the Land Registry in the issuing of copy maps is mainly due to the continuous expansion in demand for this service. However, additional staff are at present being recruited and it is hoped that the delay will be reduced substantially within a few months.

As the Ordnance Survey Office is the responsibility of the Minister for Finance, any representations about the increase in price of Ordnance Survey maps should be addressed to that Minister.

Mise, le meas,

D. Cole, Rúnaí an Aire.

REJECTION SLIP

MAPPING

1. The documents which accompanied ..... are not acceptable for registration for the reason(s) set out under .....below

(A) The map is not on the current largest scale published by Ordnance Survey *(See Rule 50 of the Land Registration Rules 1972).*

(B) The map is a photo copy/tracing *(See Rule 56).*

(C) The enlargement supplied cannot be accurately related to Ordnance Detail on the Land Registry Map. *(Rule 174/4).*

(D) Boundaries are not clearly and unambiguously defined. *(See Rule 53).*

NOTES

(1) Boundaries submitted for registration must be clearly defined on either

(a) Original Land Registry Copy Maps *(if suitable).*

(b) Original Ordnance Survey Maps *(if suitable).*

(c) Dimensioned plans at larger scales where required for clarity of internal details.

(2) The map scale of Land Registry maps issued by this Office corresponds with the map scale at which the original holdings were registered. Where the current largest scale map published by Ordnance Survey differs from the scale of the copy map issued such copy map *will not* be accepted for subdivision purposes, unless the part being transferred is entirely defined by Ordnance Survey detail . *(See Rule 56).*

(3) Ordnance Survey Maps are accepted for registration *only* in cases where such maps are the current edition of the largest scale published.

(4). Dimensioned plans of large-scale surveys are accepted for registration *only* in cases where the existing Ordnance Map scale is inadequate for accurate internal boundary definition. All such enlargements must be plotted at an accepted metric scale and must be accompanied by an accurate location map on the current edition of the largest scale map published by Ordnance Survey.

(5) Scheme maps must be plotted from site surveys and must clearly show the reference number by which each holding — or part of holding — is to be identified in subsequent dealings and correspondence.

(6) Responsibility for the accuracy of areas and boundaries given in documents lodged rests with the applicant.

To ensure that the boundaries submitted for registration reflect the applicants intentions, it is recommended that:

(a) Boundary corners be unambiguously defined and clearly marked on the ground *before survey is carried out.*

(b) Maps submitted for registration be prepared and certified by competent Land Surveyors.

N. M. GRIFFITH, Registrar.

CERTIFACATE OF REASONABLE VALUE

Department of the Environment
Dublin 1.

12th October, 1977

Mr. James J. Ivers,
Director General,
The Incorporated Law Society of Ireland,

Dear Mr. Ivers,

I am directed by the Minister for the Environment to refer further to your letter of 12th ult. regarding

Certificates of Reasonable Value and to say that he appreciates that any undue delay in issuing certificates could give rise to the type of problems you mention. I am, however, to assure you that every effort is being made to prevent any unnecessary delays in dealing with applications and issuing decisions.

When the present system was introduced in 1973 an undertaking was given to the Construction Industry Federation that decisions on first applications would in general issue within 21 days of receiving all the necessary documents/information. Despite the substantial increase in applications since the Government announced the new £1,000 grant scheme in July this undertaking is being honoured — the average time taken to issue decisions in the month of September was 16 days. One must, of course, differentiate between the issue of decisions and the issue of certificates. Where unfavourable decisions are issued further correspondence normally arises involving the submission of more detailed information and in these cases considerably more time may elapse between the receipt of the application and the eventual issue of a certificate.

You will appreciate that it is also important that builders should apply in good time for certificates.

It is noted that no specific application involving delay is mentioned in your letter. If you wish to have any such case investigated, please furnish particulars.

Yours sincerely,

G. A. Meagher.

COMMITTEE TO RECOMMEND SAFEGUARDS FOR PERSONS IN CUSTODY AND FOR MEMBERS OF AN GARDA SIOCHANA

26 Upper Pembroke Street,
Dublin 2
25th October, 1977.

The Secretary,
Incorporated Law Society of Ireland,
Kings Hospital,
Blackhall Place,
Dublin 7.

Dear Sir,

As you are no doubt aware, the Minister for Justice recently appointed the above-named Committee. The terms of reference are "to recommend with all convenient speed whether, and if so, what additional safeguards are necessary or desirable for the protection against ill-treatment of persons in Garda custody, having regard to the allegations made in relation to persons held in such custody pursuant to Section 30 of the Offences Against the State Act 1939 or Section 2 of the Emergency Powers Act, 1976 and for the protection of members of the Garda Siochana against unjustified allegations of such ill-treatment; and for that purpose to seek such information as would be likely to be of assistance to them in making a recommendation as aforesaid. The proceedings of the Committee will be private and their Report will be made to the Government".

Your Society would seem to be one well fitted to furnish information likely to be of assistance to the Committee in formulating recommendations within its terms of reference. I am, accordingly, directed by the Committee to seek your co-operation in achieving this end. Written submissions, in reasonably brief terms, outlining the views and recommendations of your Society should be forwarded to me as soon as possible. In view of the requirement to furnish the Committee's final recommendations 'with all convenient speed' I am to ask that such brief submissions be forwarded to reach me on or before Friday, 18th November, 1977. It would also be of assistance if you could indicate the person or persons who would be available to attend before the Committee, if the occasion arises, to enlarge upon or clarify the original submissions.

Yours faithfully,

G. L. Frewen, Secretary.

LEGAL AID FEES

The Minister for Justice, Mr. Gerard Collins, T.D., has received the First Interim Report of the Review Committee on Criminal Legal Aid. The Report contains proposals for the settlement of the dispute about solicitors' legal aid fees and both the Minister and the Incorporated Law Society have accepted the report as a settlement of the dispute. Regulations giving effect to the recommendations, which are now being drafted, will be effective from 28 September, 1977, the date of the Committee's Report.

The Report recommends an adjustment of the present fees payable to solicitors in the Circuit and higher Courts in order to restore the relativity which they had with counsel's legal aid fees up to 1975.

Other recommendations are as Follows:

(1) an increase from £24.50 to £27 in the first appearance fee in the District Court;
(2) an increase from £12.60 to £14 in the fee for prison visits;
(3) an increase from 8p to 15p a mile in the mileage rate payable to a solicitor using his own motor car;
(4) recoupment of disbursements reasonably incurred.

The Committee, which is under the Chairmanship of District Justice W. A. Tormey, is representative of the Incorporated Law Society, the Bar Council and the Departments of Justice, Finance and the Public Service.

Issued by the Government Information Services on behalf of the Department of Justice.

20th October, 1977.

GUARDIANSHIP OF INFANT AND OTHER FAMILY LAW CASES

Direction given by the President of the High Court

The attention of Solicitors is drawn to the necessity for ensuring that either they, their Counsel or their agents appear whenever these cases are listed in the High Court either on their first return from the Master's Court or in any list for the fixing of dates. Even if the case has been disposed of and does not require to be heard by the Court or to have a date fixed for it it is necessary to inform the Court of that fact so as to have the appropriate Order adjourning the matter or having it struck out made.

INTERNATIONAL SECTION

LAWYERS FREE TO PRACTISE IN EUROPE

Following a recent decision of the Council of the E.E.C. Lawyers qualified to practise in Member States will now be able to provide services for clients in other Member States of the E.E.C. The Directive on freedom for Lawyers to supply services was adopted on 22nd of March 1977 and while some form of legislation will be required to bring the Directive formally into application in Ireland a note on the historical position with regard to Foreign Lawyers practising in Ireland and on the effect of the Directive may be helpful to Practitioners.

THE HISTORICAL POSITION

COURT WORK

It has been clearly established that only Barristers and Solicitors qualified to practise in the Republic of Ireland are entitled to appear, whether for reward or otherwise, and conduct cases on behalf of parties to any proceedings in a Court in the Republic.

NON COURT WORK

The only restrictions, contained in Section 58 of the Solicitors Act 1954, relating to acts done by unqualified persons (including persons qualified as Lawyers elsewhere but not in Ireland) cover the drawing or preparation of Documents relating to Real or Personal Estate or any Legal Proceeding, procuring or attempting to procure the execution by an Irish Citizen of Documents relating to Real or Personal Estate outside the State and the U.K. or the making of Applications to the Land Registry or taking instructions leading to or preparing Documents grounding or opposing Grants of Probate or Letters of Administration where such acts were done either directly or indirectly for or in expectation of any fee, gain, or award.

The restriction on procuring Documents did not apply to any "purely commercial or mercantile Document". It seems clear therefore that a foreign Lawyer would have been perfectly entitled to give legal advice to a client in Ireland without contravening these restrictions and could certainly have drafted many kinds of Documents in substantial transactions which would have fallen within the description of "purely commercial or mercantile Documents". Since the Treaty of Rome prevents a member state from introducing new restrictions based on nationality no further restrictions could be imposed in the Directive.

WHAT THE DIRECTIVE DOES

The Directive entitles a person who is qualified as a Lawyer in each of the nine Member States of the E.E.C. to provide Professional Services outside the State in which he is established. Such Lawyer must describe himself by the description which he uses in his Home Country and while he may represent clients in Legal Proceedings in another Country he may be required to work in conjunction with a Lawyer who practises before the appropriate Courts in that other Country.

Such Lawyer will be bound by the Rules of Professional conduct of the other Country but without prejudice to his obligations under his own Profession's Code of Conduct.

WHAT THE DIRECTIVE DOES NOT DO

The Directive does not entitle a Lawyer established in one of the Member States to set up an office in one of the other States. It does not establish equivalence of qualification between Lawyers in different States and it does not require a Lawyer wishing to exercise his rights under the Directive to register with the professional orgainsation of Lawyers in the Foreign Country.

WHAT RESTRICTIONS MAY BE IMPOSED BY MEMBER STATES

(1) Member States may reserve to prescribed categories of Lawyers the preparation of formal Documents for obtaining Title to administer Estates and the drafting of formal Documents creating or transferring interests in land.
(2) Member States may require that a visiting Lawyer wishing to represent a client in Legal Proceedings may have to be introduced to the presiding Judge or to the President of the relevant Bar.
(3) It may exclude Lawyers who are in salaried employment of a public or private undertaking from representing that Undertaking in Legal Proceedings when Lawyers in a similar position in the State would not be permitted to represent the undertaking.
(4) The Lawyer proposing to make use of the Directive may be obliged to establish his qualification. In this respect there is a proposal that a recognised form of Document could be issued by the appropriate Authorities in the Member States to Lawyers.

COUNCIL OF EUROPE FELLOWSHIPS FOR LEGAL STUDIES AND RESEARCH

In order to promote study and research in European Law and to contribute to its wider dissemination, the Council of Europe will each year award fellowships to persons who have completed a course of studies in law at university level, or who have a similar professional qualification, for studies relating to the Council of Europe. Application forms and further details are available on request from the Secretariat Division (Room 421), Dept. of Justice, 72/76 St. Stephen's Green, Dublin 2.

It should be noted that applications for Fellowships must reach the Secretariat of the Council of Europe not later than 15th March, 1978, and that the Selection Committee of the Council have indicated a strong preference for Fellowships to be taken up during the period 1st June to 31st December, 1978.

EEC LAWYERS ENDORSE HARMONISATION POLICY

Despite the different legal systems, and the different way in which the legal professions of the EEC countries are structured, two unanimous resolutions towards harmonisation have been adopted by the Commission Consultative des Barreaus de la Communaute Europeenne. Ireland is represented on the Commission by Gerald J. Moloney, Solicitor, (Law Society), and John D. Cooke, Barrister-at-Law, (Bar Council).

Considering the Community Directive facilitating the freedom of lawyers to provide services within the EEC, the CCBE, meeting in Liege, expressed the hope that member States will, for an initial period of at least five years, require lawyers to observe the obligations laid down in Article 5 of the Directive of March 22, 1977, which states that the foreign lawyer must be formally introduced to the Court, and that the foreign lawyer must act in collaboration with a local lawyer. The resolution added that they considered it desirable to allow the professional organisations of the member States freedom to regulate, by agreement between themselves and in a liberal spirit, the provision of services in frontier areas.

The meeting also adopted a resolution urging professional authorities to take steps to ensure the application of an earlier Declaration by the CCBE setting out the common basic principles of professional conduct which are to apply to lawyers throughout the Community. This declaration of Perugia appears below.

The CCBE is recognised by the EEC Commission as representing all sectors of the legal professions and its main function is to ensure liaison between the Bars and Law Societies of EEC countries and between those bodies and the Community authorities. In addition to lawyers from EEC countries neighbouring countries — Austria, Norway, Sweden and Switzerland — send observers to the CCBE meetings and a request from the Spanish legal profession to send an observer to future meetings has now been granted.

The Liege meeting elected a Scottish advocate, David Edward, Q.C., as President; each President serves for two years.

COMMISSION CONSULTATIVE DES BARREAUX DE LA COMMUNATUTE EUROPEENNE

The Declaration of Perugia on the Principles of Professional Conduct of the Bars and Law Societies of the European Community

I The Nature of Rules of Professional Conduct

Rules of professional conduct are not designed simply to define obligations whose breach may involve a disciplinary sanction. The imposition of a disciplinary sanction is a solution only adopted in the last resort and can indeed be regarded as an indication that the self-discipline of the profession has been unsuccessful.

Rules of professional conduct are designed through their willing acceptance to guarantee the proper performance by professional lawyers of a function which is recognised as essential in all civilsed societies.

The particular rules of each Bar or Law Society are bound up with its own traditions. They are adapted to the organisation and sphere of activity of the profession in the country concerned, to its judicial and administrative procedures and to its national legislation. It is neither possible nor desirable that they should be taken out of their context nor that an attempt should be made to give general application to rules which are inherently incapable of such application.

The search for a common basis of a code of professional conduct for the Community must start from the common principles which are the source of specific rules in each member country.

II The Function of the Lawyer in Society

A lawyer's function in society does not begin and end with the faithful performance of what he is instructed to do so far as the law permits. A lawyer must serve the interests of justice as well as of those who seek it and it is his duty, not only to plead his client's cause, but to be his adviser. A lawyer's function therefore imposes on him a variety of legal and moral obligations (sometimes appearing to be in conflict with each other towards:

—the client;
—the client's family and other people to whom the client owes legal and moral duties;
—the courts and other authorities before whom the lawyer pleads his client's cause or acts on his behalf;
—the legal profession in general and each fellow member of it in particular; and
—the public, for whom the existence of a free and independent but regulated profession is an essential guarantee that the rights of man will be respected.

Where there are so many duties to be reconciled, the proper performance of the lawyer's function cannot be achieved without the complete trust of everyone concerned. All professional rules are based from the outset upon the need to be worthy of that trust.

III Personal Integrity

Relationships of trust cannot exist if a lawyer's personal honour, honesty and integrity are open to doubt. For the lawyer these traditional virtues have become professional obligations.

IV Confidentiality

1. It is of the essence of a lawyer's function that he should be told by his client things which the client would not tell to others, and that he should be the recipient of other information on a basis of confidence. Without the certainty of confidentiality there cannot be trust. The obligation of confidentiality is therefore recognised as the primary and fundamental right and duty of the profession.
2. While there can be no doubt as to the essential principle of the duty of confidentiality, the Consultative Committee has found that there are significant differences between the member countries as to the precise extent of the lawyer's rights and duties. These differences which are sometimes very subtle in character especially concern the rights and duties of a lawyer vis-a-vis his client, the courts in criminal cases and administrative authorities in fiscal cases.
3. Where there is any doubt the Consultative Committee is of opinion that the strictest rule should be observed — that is the rule which offers the best protection against breach of confidence.
4. The Consultative Committee most strongly urges the Bars and Law Societies of the Community to give their help and assistance to members of the profession from other countries in guaranteeing protection of professional confidentiality.

V Independence

1. The multiplicity of duties to which a lawyer is subject require his absolute independence, free from all other influence, especially such as may arise from his personal interests. The disinterestedness of the lawyer is as necessary to trust in the process of justice as the impartiality of the judge. A lawyer must therefore show himself to be as independent of his client as of the court and be careful not to curry favour with the one or the other.
2. This independence is necessary in non-contentious matters as well as in litigation. Advice given by a lawyer to his client has no real value if it is given only to ingratiate himself, to serve his personal interests or in response to outside pressure.
3. The rule against representation of conflicting interests, and the rules which prohibit a lawyer carrying on certain other forms of activity are designed to guarantee the lawyer's independence in accordance with the traditions and customs of each country.

VI The Corporate Spirit of the Profession

1. The corporate spirit of the profession ensures a relationship of trust between lawyers for the benefit of their clients and in order to avoid litigation. It can never justify setting the interests of the profession against those of justice or of those who seek it.
2. In some Community countries, all communications between lawyers (written or by word of mouth) are regarded as being confidential. This principle is recognised in Belgium, France, Italy, Luxembourg and the Netherlands. The law of the other countries does not accept this as a general principle: even the express statement that a letter is confidential (or "without prejudice") is not always sufficient to make it so. In order to avoid any possibility of misunderstanding which might arise from the disclosure of something said in confidence, the Consultative Committee considers it prudent that a lawyer who wishes to say something in confidence to a colleague the rules of whose country are different from his own, should ask beforehand whether and to what extent his colleague is able to treat it as such.
3. A lawyer who seeks the assistance of a colleague in another country must be sure that he is properly qualified to deal with the problem. Nothing is more damaging to trust between colleagues than a casual undertaking to do something which the person giving it cannot do because he is not competent to do it. It is therefore the duty of a lawyer who is approached by a colleague from another country not to accept instructions in a matter which he is not competent to undertake. He should give his colleague all the information necessary to enable him to instruct a lawyer who is truly capable of providing the service asked for.
4. As regards the financial obligations of a lawyer who instructs a lawyer of another country, the Council for Advice and Arbitration of the Consultative Committee issued the following opinion on 29 January 1977:
In professional relations between members of bars of different countries, where a lawyer does not confine himself to recommending another lawyer or introducing him to the client but himself entrusts a correspondent with a particular matter or seeks his advice, he is personally bound, even if the client is insolvent, to pay the fees, costs and outlays which are due to the foreign correspondent. The lawyers concerned may, however, at the outset of the relationship between them make special arrangements on this matter. Further, the instructing lawyer may at any time limit his personal responsibility to the amount of the fees, costs and outlays incurred before intimation to the foreign lawyer of his disclaimer of responsibility for the future.

VIII Professional Publicity

1. In all member countries of the Community lawyers are forbidden to seek personal publicity for themselves or to tout for business. This prohibition is designed for the protection of the public and the trustworthiness of the profession. The extent of the prohibition is not the same in every country. In some countries, it is laid down in national legislation which provides for a criminal penalty in case of breach. It is therefore possible that a lawyer from another country who engages in a prohibited form of publicity may mislead the public and run the risk of criminal proceedings. In general, there is nothing to prevent a lawyer using cards and writing paper in the form authorised by his own professional body. Beyond that, he would be wise to ask the professional organisation of the host country for guidance in advance.
2. In some countries, publicity which is designed to provide information for the public or for lawyers in other countries is permitted if it is approved by or under the auspices of the professional organisations. Lawyers from other countries may use such means of publicity insofar as the rules of their own Bar or Law Society permit them to do so.

VIII Respect for the Rule of other Bars and Law Societies

The Directive of 22 March 1977 specifies the circumstances in which a lawyer from another Community country is bound to comply with the rules of the Bar or Law Society of the host country. Lawyers have a duty to inform themselves as to the rules which will affect them in the performance of any particular activity. The Bar or Law Society of the host country has a duty to reply to their questions as to the content and effect of its own rules, always having regard to their purpose which is to protect those who require the professional services of a lawyer. Lawyers should always have in mind that the manner in which they behave will reflect on the professional organisation to which they belong, on their colleagues and on all their clients.

June 1977.

THE REGISTER

REGISTRATION OF TITLE ACT, 1964

Issue of new Land Certificate

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

Dated this 30th day of November, 1977.

N. M. GRIFFITH,
Registrar of Titles

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

Schedule

(1) Registered Owner: The County Council of the County of Mayo; Folio No.: 7612; Lands: Kiltimagh; Area: 0a. 0r. 30p; County: Mayo.

(2) Registered Owner: Denis Fitzpatrick; Folio No.: 8016; Lands: Cloghran; Area: 0a. 2r. 0p.; County: Dublin.

(3) Registered Owner: Delia Morrisroe; Folio No.: 24796; Lands: Lava Beg; Area: (a) 0a. 0r. 32p., (b) 0a. 0r. 32p., (c) 0a. 0r. 33½p.; County: Mayo.

(4) Registered Owner: Joseph McGonagle; Folio No.: 3612; Lands: Balleeghan Upper; Area: 18a. 0r. 25p.; County: Donegal.

(5) Registered Owner: John Kennedy; Folio No.: 10462; Lands: Boherroe; Area: 12a. 2r. 1p.; County: Limerick.

(6) Registered Owner: Patrick Dunlea; Folio No.: 5861; Lands: Knockyhena; Area: 32a. 1r. 15p.; County: Cork.

(7) Registered Owner: Harry Pringle; Folio No.: 5935; Lands: Barnhill; Area: 8a. 3r. 10p.; County: Dublin.

(8) Registered Owner: Evelyn Dunford, Michael Higgins and Margaret Higgins; Folio No.: 4387L; Lands: The leasehold estate in part of the Townland of Crumlin in the Barony of Uppercross with the dwellinghouse and premises thereon situate on the east side of Greenhills Road; County: Dublin.

(9) Registered Owner: Kevin Bodkin; Folio No.: 18956; Lands: Dangan; Area: (a) 16a. 2r. 22p., (b) 4a. 0r. 20p.; County: Meath.

(10) Regiatered Owner: Kevin Bodkin; Folio No.: 5888; Lands: Dangan (part); Area: 3a. 2r. 6p.; County: Meath.

(11) Registered Owner: John Francis Neylan; Folio No.: 1033; Lands: Ballygastell; Area: 45a. 3r. 31p.; County: Clare.

(12) Registered Owner: Michael McGuinness; Folio No.: 10462; Lands: Cram; Area: 9a. 2r. 10p.; County: Monaghan.

(13) Registered Owner: Michael McGuinness; Folio No.: 10279; Lands: Cram (part); Area: 6a. 2r. 7p.; County: Monaghan.

(14) Registered Owner: Michael McGuinness (Junior); Folio No.: 10283; Lands: Cram; Area: 2a. 2r. 0p.; County: Monaghan.

(15) Registered Owner: Edward Fanning and Margaret Gertrude Fanning; Folio No.: 997; Lands: Newtownallen; Area: 140a. 2r. 8p.; County: Kildare.

(16) Registered Owner: Blanche Veronica Vivian Dennehy; Folio No.: 149R; Lands: Ballymoodranagh; Area: 103a. 3r. 9p.; County: Waterford.

(17) Registered Owner: The County Council of the County of Roscommon; Folio No.: 21394; Lands: Lisroyne; Area: 0a. 1r, 29p.; County : Roscommon.

(18) Registered Owner: James Walsh and Patrick Walsh; Folio No.: 9442; Lands: Carrickmore; Area: 10a. 1r. 25p.; County: Cavan.

(19) Registered Owner; Thomas P. Cosgrove; Folio No.: 4595; Lands: Mollyglass; Area: 12a. 1r. 39.; County: longford.

(20) Registered Owner: Phil Boyle; Folio No.: 18723; Lands: Leabgarrow (part); County: Donegal.

(21) Registered Owner: Dudley MacDonald (tenant in common of one undivided moiety), Joseph MacElroy (tenant in common of one undivided moiety); Folio No.: 16801; Lands: (1) Ballyfair, (2) Ballysax Little ,)3) Ballyfair; Area: (1) 6a. 2r. 7p., (2) 9a. 0r. 9p., (3) 20a. 0r. 0p.; County: Kildare.

(22) Registered Owner: Nora Mannion; Folio No.: 1377; Lands: (a) Turlough, (b) Kilbrickan; Area: (a) 11a. 3r. 23p., (b) 12a. 2r. 11p.; County: Galway.

(23) Registered Owner: Michael Bolger; Folio No.: 6315; Lands: Piercetown; Area: 65a, 1r, 30p., County: Meath.

(24) Registered Owner: Catherine M. Molloy; Folio No.: 13461; Lands: Kilnamannagh (part); County: Dublin.

NOTICES

Practice for Sale. Goodwill of old established Law practice in West Cork town, with or without the premises. Reply Box. No. 165.

Solicitor with experience of District Court practice, Litigation and Conveyancing seeks change, preferably to Munster. Reply Box No. 166.

B.C.L. Student requires a Master in Cork City or County. Reply to Box No. 167.

LOST WILL

William Sherwood deceased. Would any person having any knowledge or information as to the existence or whereabouts of the original of a Will of the above named deceased made and executed on the 12th day of August, 1942, the deceased having died on the 24th day of August, 1942, or of the existence or whereabouts of any subsequent will or codicil thereto, kindly contact the undermentioned solicitors — William A. Lee & Son, Kilmallock, Co. Limerick.

Schedule—continued

(25) Registered Owner: Maurice Mulcahy; Folio No.: 18162; Lands: Moyeightragh; Area: 0a. 1r. 0p.; County: Kerry.

(26) Registered Owner: Bernard Joseph Rodden; Folio No.: 4775; Lands: (a) Rathowen, (b) Derrydoan; Area: (a) 87a. 0r. 27p. County: Westmeath.

Internment and Detention without trial in Irish Law *(continued from p. 164)*

recognise individual rights" must not define rights so that they are "cut off for supposed reasons of the general good". Just as the power of arbitrary imprisonment is the cornerstone of tyranny, so the limitations on this power form a large part of the foundations of democracy. The experience we have had with the internment procedure in Ireland shows clearly the abiding tension between conflicting forces of individual liberty and the common good. To return to Gandhi's concept of the "unjust law", it seems plain as a result of this discussion that internment without trial is open to attack on grounds of constitutional illegality, but within its protective shield of emergency legislation it strives to uphold social order and the integrity of the State. Only from that perspective is internment a "just" law, but unfortunately the measures taken for the security of the State may be grounded on very nebulous premises. As remarked earlier, the harmonisation of civil and personal rights with supervening demands of national security forms probably the most intractable problem for constitutional law. Our experience with systems of internment and detention without trial has given us a useful insight into it.

APPENDIX

7. (1940) I.R. 136
8. (1960) I.R. 93 Yearbook of the European Court of Human Rights, Vol. 3, pp.492-524
9. Dail Debates, 31 Aug 1976, col 12
10. Dail Debates, 20 Nov 1957, col 712
11. (1966) I.R. 501
12. (1966) I.R. 516.
13. (1940) I.R. 470
14. at p. 479
15. at pp. 151-152
16. at p.153
17. (1966) I.R. 509.
18. at p.152
19. at p.147
20. at p.154
21. at p.482
22. Chapter 4 of the Diplock Commission, Cmnd. 5185

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THE INCORPORATED LAW SOCIETY OF IRELAND

GAZETTE

NOVEMBER 1977 VOL. 71 NO. 8

PRESIDENT'S ADDRESS TO THE ANNUAL GENERAL MEETING OF THE SOCIETY

24 November, 1977.

Members of the Council and members of the Society, you already have before you my Annual Report as your President for the year 1976/77 together with the Annual Report of the Council of the Society in addition to the individual Reports from the Chairmen of the Standing Committees, all of which are contained in the Society's Gazette for the month of October, 1977.

There are however, some matters of concern to the public to which I would like to make specific reference on this occasion. In the field of Legal Aid, our Society eagerly awaits the publication of the Reports of the Tormey Committee on Criminal Legal Aid and the Pringle Committee on Civil Legal Aid. An interim solution has been worked out on Criminal Legal Aid, pending the publication of the Tormey Committee's Report and the Government's decision as to implementation of its recommendations. The Society appreciates that Civil Legal Aid is a comprehensive and fundamental matter affecting not alone the members of this Society, but more importantly the public who might hope to benefit from any such system. While the Society appreciates that the Government must have an opportunity of fully considering the Report of the Pringle Committee on Civil Legal Aid before it can take a decision on the introduction of a comprehensive system, I would earnestly appeal to the Government to give priority to consideration of the introduction of a significant measure of Civil Legal Aid in the area of Family Law. I need hardly emphasise that under Article 41 of the Constitution, special recognition is accorded to the position of the family in Irish society. In the present circumstances which obtain in this sphere as far as the law is concerned, the spirit of this Article of the Constitution is in urgent need of implementation in a very concrete way. The legal profession in this country has continued to carry the burden of providing a legal service in many cases at very considerable cost to themselves both in time and money, but with the impact of inflation and the growing number of such cases arising from the radical changes in public attitudes to family matters the profession cannot be expected to carry this burden indefinitely in the absence of any form of Government support. I would once again like to take an opportunity of paying tribute to the work of the Free Legal Advice Centres in their many areas of activity in the field of voluntary legal aid, but particularly in the area of Family Law in which the law students with the assistance of the legal profession have filled a complete void.

The Society welcomes the Government's appointment of a Committee to recommend safeguards for persons in custody and for members of An Garda Siochana. The Society has been invited to make a submission to this Committee. This task is at present in hand. I would once again like to take this opportunity of recording the appreciation of our profession for the work of An Garda Siochana which they perform in difficult circumstances frequently without an adequate degree of co-operation from the public. Crime and violence generally in Ireland has now reached an unacceptable level. Society itself must share to a considerable extent responsibility for the present unsatisfactory situation in this regard. The Government and An Garda Siochana can at best only attempt to provide short term solutions to treat the symptoms of the problem. It is society as a whole which must make a determined effort to tackle the cause of the problem. This involves everyone, but particularly the parents of the children of the nation as well as their teachers and all those concerned with the education and training of youth.

The members of the Incorporated Law Society of Ireland willingly accept their role in Irish society and are conscious of their responsibility in helping to preserve the essential stability upon which the future of our country depends.

Finally, to you the members of the Society, could I urge continued loyal support for the Council of the Society in the many critical challenges facing it at the present time.

Bruce St. John Blake,
President, Incorporated Law Society of Ireland.

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AN APPROACH TO FAMILY LAW CASES

being the text of a lecture delivered on 15 June, 1977, to the Dublin Solicitors Bar Association by The Hon. Mr. Justice T. A. Finlay, President of the High Court.

Defining 'Family Law'

In the context in which I would like to speak this evening Family Law can be defined as advice in connection with or the preparation of litigation in the following areas; Guardianship of Infants Act 1964, Petition for Separation *a mensa et thoro*, Family Law (Maintenance of Spouses and Children) Act 1976, Married Womens Status Act 1957, Family Home Protection Act 1976, Illegitimate Childrens Affiliation Act 1930 as adapted, Petitions for a Decree of Nullity, and in the context of separation proceedings, Deeds of Separation.

I will be dealing with the problems arising in this area as they occur in connection with High Court cases only and though you may find some of the matters we will be discussing of some assistance in the preparation of similar proceedings for other Courts I do not intend to deal specifically with any other Courts.

General Importance

I am firmly convinced that it is not by the capacity of the Legal system of this country being the Legislators, the Legal Practitioners and the Judiciary to handle complicated questions of contract or tort or to devise subtle equitable theories and doctrines that we will in twenty five or thirty years be judged but rather by the way in which, the compassion with which, and the efficiency with which, we handle and have handled the area of Family Law.

I am aware that for a Solicitor the handling of Family Law cases must be not only emotionally exhausting but certainly at present and until an ample system of Legal Aid in such cases is introduced largely unremunerative. I am conscious as a Judge that it is one of the more frustrating activities in that fundamentally in dealing with the problem of broken families and the children of separated parents one is essentially dealing in a science of the second worst. Notwithstanding these considerations I would urge upon you the idea that if the practical considerations of your practice and the type of work for which your office is organised permits of it at all there is on Solicitors as indeed of course also on Barristers a duty to undertake at least a reasonable share of this work.

Guardianship of Infants Act 1964

The statutory provision contained in Section 3 of the Act of 1964 that the welfare of the child shall in all proceedings under the Act be the first and paramount consideration causes unique features to the preparation and handling of litigation under it. Welfare of course in this context by Section 2 comprises religious, moral, intellectual, physical and social welfare.

Both Solicitors have in relation to a summons under the Guardianship of Infants Act 1964 as I see it really as their main client the child or children concerned. Suggestions have been made as I think occurs under other Legal systems that the child or children should be separately represented. There are it seems to me difficulties concerning this suggestion, ideal though it otherwise might be, both with regard to expense and to the prolongation of litigation. For the moment however it does not exist, but the absence of it puts a special and unusual obligation on the lawyers involved on either side of the case, and, in particular, it seems to me upon the Solicitors who take the instructions of their respective clients and prepare the case for counsel.

I think most people would agree with my experience that hostility and even in many instances hatred of the parents one for another obscures their duty to consider as a predominant matter the welfare of their children. Very frequently within the ambit of a Guardianship of Infants summons they really want to fight the marriage battle and to use the child or children as a pawn or hostage in that battle. It seems to me that the Solicitors should consistently approach the instructions of their clients with the danger of this occurring in view. They should in so far as it is possible by their advice try and direct the minds of the parents to this dominant question of the welfare of their children and in their handling of the case should at least maintain an unusual independence so as to be able to indicate to a Court where in their judgment, notwithstanding the express instructions of their clients, the welfare of the children may lie.

It really comes to this therefore over and above the obligation which in any action exists not to mislead a Court nor to use sharp practice at the instance of a client, there is in this form of proceedings under the Guardianship of Infants Act a special duty sometimes to do or omit something against the wishes of a client which the welfare of the children may require.

External Witnesses

For much the same reasons, though at first sight proceedings under the Guardianship of Infants Act 1964 arise peculiarly within the privacy and intimacy of the family and one would think might have been solved there, I would also recommend consideration in every case where it is appropriate of the possibility of obtaining assistance both to the Solicitor who is advising and ultimately to the Court if the matter must go to Court, from external or outside witnesses. Doctors, clergy, social workers, disinterested relatives, if they are genuinely disinterested, and even responsible family friends can often throw a clearer light on the needs and requirements of the children and of the real back-ground against which their future welfare must be controlled than will the parents engaged in the unfortunate matrimonial battle.

Inevitable Joinder of Actions

There is inevitably as a matter of practice in very many cases a joinder of proceedings under the Guardianship of Infants Act with other proceedings, usually proceedings under the Family Law (Maintenance of Spouses and

Children) Act 1976, and sometimes under the Married Womens Status Act 1957 and/or the Family Home Protection Act 1976. Such a joinder is a practical inevitability and to an extent the children and the welfare of the children is affected by the result of the proceedings under the other Acts to which I have referred.

Again however I would strongly recommend that the different causes of action be dealt with separately and in particular, both in the taking of instructions and in the presentation of the case in Court, that the questions of custody, access, education and general welfare of the children should be segregrated.

An endeavour should be made, as is almost always desirable, to persuade a parent who may be going to get custody of the children to recognise and accept as a matter of reality and not merely as a lip service to the Court the importance of access by the children to the other parent. There are in my experience very few cases indeed in which it is not of some importance and there are very many in which it is of great importance that the children should have access to the parent in whose custody they are not and that it should be access in the most favourable possible circumstances, giving to them an opportunity of retaining as far as possible a real relation with that parent. The difficulty of persuading a mother or father of that fact when her or his view of the marriage partner has become clouded by bitterness can be extremely difficult.

The second feature of this type of case, the Guardianship of Infants Act cases, which I would like to emphasise is that any aspect of it no matter how trivial, which can be agreed, should be agreed, and that every possibility of agreement, even on marginal or tangenitial features concerning the entire dispute, should be explored. It is probably preferable in almost every instance to have an agreed rather than an imposed solution, no matter with how much wisdom the Court may attempt to impose it.

Again a fully fought out action — and this applies not only to Guardianship of Infants Act but to other forms of proceedings between spouses — leaves inevitably behind it considerable scars. They react not only on the future relationship between the parents which may well be irretrievably broken but they also react on the atmosphere in which the children for many years may be brought up.

Anything that will minimise the extent or depth of that scarring and wounding should I think be availed of. I would accept, as far as the Court is concerned, the absolute necessity for these proceedings to be tried in the calmest possible atmosphere. I would accept that whilst impatience on the part of a Judge is always a sin, impatience in a Family Law case should be a reserved sin.

Assistance in keeping to a minimum the heat of the controversy can be contributed by the lawyers concerned cutting down the element of harshness wherever possible in the advocacy and style of advocacy. It is not always possible to avoid some real clash; it is not always wise to avoid a real and, if necessary, a telling cross-examination. The ultimate function of the Court, namely to arrive at the truth of the facts of the matter concerned, and then apply the legal principles, must never be lost sight of, and the Court cannot, no matter how desirable it might be, be turned into merely a tribunal of conciliation. With these qualifications however is seems to me that the approach to questioning, the approach to the issues that are raised, the approach to the way in which they are raised and even the approach to the way that wuestions are asked, should be significantly different in a Guardianship of Infant Act or indeed in any Family Law Case than they might be in an action for tort or contract.

Children as witness

The calling of one of the children as a witness either in a Guardianship or in any other form of Family Law case must surely be considered as a last resort. If a child has to be called then care should be taken that he or she is meticulously separately interviewed, is not apprised of issues unless those with which he or she is directly concerned, is not present at the taking of statements from a parent or other people involved in the marital dispute and is not in Court for a moment longer than is necessary for the taking of his or her evidence.

Petition for Separation and Summons Under the Maintenance Act 197

Consideration should I think now be given from a practical point of view to the limited value which applies to a petition for separation having regard to the provisions of the Family Law (Maintenance of Spouses and Children) Act 1976. (For brevity referred to as the Family Law Maintenance Act 1976). There are undoubtedly cases in which both spouses have property and substantial property rights and in which a petition for separation is an appropriate proceeding to commence, frequently with a hope that it will lead not to an ultimate hearing of the action but rather to a Deed of Separation.

There are a limited number of cases where upon grounds which would not be sufficient to justify an exclusion order under Section 22 of the Family Law Maintenance Act 1976, it is necessary that a spouse should obtain the right to live apart from the other spouse and to be saved and be immune from molestation or interference by him or her. In a great number of cases however, I think that consideration of the provisions of this Act would indicate that it is not only a less expensive and less cumbersome but also a more effective remedy for the matters which are in dispute between a married couple. The maintenance provisions in this Act of 1976, inclucing the power of the Court to grant *interim* maintenance pending the hearing of the full claim for maintenance, are co-extensive with the right to award alimony both *pendente lite* and by way of permanent alimony. Futhermore the right of the Court to make such maintenance payable by an employer adds considerable teeth to the effectiveness of an order so made. Where the conduct of the defaulting or erring spouse is of sufficient gravity to lead to a danger to the health or welfare of the other spouse and children, an Exclusion Order under the Act is much better and can usually be much more rapidly achieved than a decree of seperation. Its major advantage is of course the fact that it is enforceable other than by a motion for attachment to the Court. To act in breach of an Order made under Section 22 is a criminal offence and the apprehended or attempted commission of it can therefore properly be restrained by the Gárda Siochána.

I think Solicitors should always make sure that where such an Order has been obtained either for a limited time or on a permanent basis, the local Gárda Siochána, in whose district the house from which the spouse has been excluded is located, should be informed of the fact, and the client should then be informed that, if an attempt is made to break the Order, they can notify the Gárdai of

that fact. I would like to see a situation, if this Act is being amended or reformed, whereby some sort of register of these Orders would be kept by the Gárdai Siochána on a regional basis and whereby the Court could officially inform the Gárdai who themselves could carry down the information to the local station concerned of the making of an Order and of its terms.

Maintenance

Whether the form of litigation as between husband and wife appropriately chosen is a petition for separation or a summons under the Family Law Maintenance Act 1976, there are certain general considerations with regard to the question of maintenance which I would suggest to you. The first is that it is absolutely essential to get into the head of each of the spouses that it is inevitable that an income, which up to the time of the break-up of a marriage was adequate to maintain a single establishment, will not be adequate to maintain two separate establishments. Both parties therefore must inevitably, upon the making of an Order for maintenance and the living apart of the husband and wife, be prepared to accept a significant cut back in their living standards. Furthermore, notwithstanding the neutral provisions of the Act, these cases occur in of course a preponderance of instances as claims by a wife against a husband. My experience has been that, except for very special types of employment, the husband's capacity to earn is nearly always impaired by the break-up of his marriage and by his going to live separately from his wife.I think therefore it is unrealistic to approach any case either upon the basis that the wife is likely to be able to maintain the same standard of living for herself and/or for herself and her children than she had prior to the break-up, or that it is wise to presume in every case, certainly with regard to persons in self earning occupations, that the same income will be enjoyed in gross by the husband after the break up of the marriage as it was before. For this reason, and probably also from the psychological point of view towards trying to assist the wife, as it so often is to settle into the concept of living separately from her husband, there is much to be said for trying to persuade her to look realistically towards the possibility of earning. As you are of course aware, under the provisions of the Act and in particular under Section 5 sub-section 4 of it the income earning capacity after the break-up of her marriage, for of both spouses is a material consideration for the Court. It is therefore necessary for a Solicitor to examine the earning capacity of a wife whose children are of sufficient age or so few in number that she can resume some earning capacity after the break up of her marriage, for the purpose of being able to deal with this aspect of the matter, if the case comes fully to hearing at Court. It seems to me at least probable that, in a number of cases, the urging of the wife back to some sort of earning capacity giving to her a sense of independence, and possibly to some extent something to prevent her from continuously brooding on what undoubtedly has been a tragedy in her life, may be of great assistance towards her rehabilitation.

Order under Section 22 of the Family Law Maintenance Act 1976

As you are aware the constituent factors which arise under Section 22 for consideration by the Court are that there are reasonable grounds for believing that the safety or welfare of a spouse or of any dependent child requires the other spouse to leave the place where he is residing, or, if he is not residing there, to prohibit him from entering that place until further order for a fixed time. It is not necessary always to establish safety as being involved and the welfare, particularly of children, can, I would think, and would, I imagine, by most Courts be held to be, seriously affected by a total series of hostile rows even though they might not lead to physical assaults.

Under the terms of the Act there is no provision which makes mandatory the application for such an Order to be on notice. The instances in which the Court would be justified in granting an Exclusion Order *ex parte* are rare. I have however come across one or two cases where I was satisfied that it was an appropriate and necessary order on a very short term basis of say two or three days or over a weekend until the other party could be heard. It is almost unnecessary I should think to emphasise that, if a client comes in seeking an Exclusion Order against his or her spouse on an *ex parte* basis and as a matter of great urgency . . ., the Solicitor . . . should ensure if at all humanly possible that the facts which are being presented are true. It is not often possible in the time available in such an urgent matter to get corroboration, but where it is even in the form of information and belief, such as a letter from a Guard or from a Doctor, this would greatly assist the Court with regard to any such application when it is made *ex-parte*.

With regard to these Exclusion Orders under Section 22, one other relatively minor matter may be worth noting. The power of the District Court to make such an Order is limited to the making of a three months Order and the making of one further Order for three months. The power of the High Court is unlimited. It is undesirable from the point of view of the multiplication of proceedings, as well as from the point of view of having a trial of the issue in two separate forums, to proceed in the

District Court in a case which, on mature consideration, would indicate the necessity eventually for a permanent Order.

Separation Deed

Frequently enough a Family Law case coming to a Solicitor may come in the guise of instructions or advice towards the preparation of a Separation Deed where the parties believe that without recourse to the Courts at all, they can adjust the issues which arise on the break up of a marriage, including of course the issues concerning any children of the marriage. Possibly more frequently the issue of a petition for separation or a summons under the Family Law Maintenance Act 1976 may lead either sooner or later to the same result.

As a contract or transaction between two parties, a Separation Deed has, from a Solicitor's point of view, it seems to me, three unique features which are worthy of consideration.

1. Firstly, it would appear to me that in relation to all the clauses of a Separation Deed which concern custody, maintenance, access or education of children, an obligation in the first instance is imposed on a Solicitor to exercise a judgment in the interest of the welfare of the children independent of the wishes of his client. In this context therefore there arises this peculiar dual relationship, which in no other form of litigation may exist, between a Solicitor and a client. This duty arises from the fact that, whilst he has his client and his duty to his client, the Solicitor has in addition, apart from the ordinary duties of propriety and correctness, a duty to some other person which he must fulfil.

2. The second unique feature from a Solicitor's point of view of a Deed of Separation would seem to me to be that, whilst on the face of it it is intended in most cases as a permanent solution of the issue between the parties, either with or without its own inbuilt mechanism for review or adjustment, in fact I would be confident as a matter of law that any provision with regard to custody, access, or maintenance of children or their education contained in a Deed of Separation is necessarily and inevitably subject to review by the Court under the Guardianship of Infants Act 1964. Even the total agreements of parents cannot, it would seem to me, prevail against the statutory dominance of the welfare of the child. Since the child's welfare is the concern of the Court, a parent cannot, by a Deed, no matter how solemnly expressed, debar himself or herself from subsequently seeking the directions of the Court with regard to the welfare of the child.

Apart from this general capacity to review, a factual necessity for review is a very frequent ingredient of the arrangements under a Deed of Separation. What a parent agrees to at a particular time under such a Deed with regard to the welfare of his or her children must be an agreement made against a given background and set of circumstances. In the interest of the children this can never be properly an immutable agreement. It must be flexible so as to meet requirements of changed circumstances such as a parent making a new and undesirable relationship; changes in the physical or pyschiatric health of a parent; changes in the needs or requirements of a child with increasing age; changes even in the fortunes of the parties concerned.

A balance however here must be preserved, because there is much sound reason in the desirability for certainty which often leads to a Deed of Separation. It may be to some extent defeating the whole purpose of such a Deed if parents and children are constantly uncertain that its provisions are to continue. Therefore this liability of the provisions with regard to children contained in such a Deed to review by the Court must be faced up to and acknowledged, for it should not probably be over emphasised nor should the Deed itself be expressed in too qualified or conditional a fashion.

3. The third unique feature which I would point out for your consideration in a Deed of Separation is that it seems to me, that no matter how expressed, the maintenance provisions can no longer be considered to be final. It has been decided in England that provisions similar to the maintenance provisions contained in the Family Law Maintenance Act 1976 give to the Court a jurisdiction even where the Deed of Separation has no revision clause or appears expressly to prohibit a provision to grant maintenance at variance with the agreement of the parties. *Tulip v. Tulip [1951] 2 All E.R. 91 and Dowell v. Dowell [1952] 2 All E.R. 141.* There does not appear to be any Irish decision on the same topic but in one case which I decided, without reserving judgment, I was persuaded to follow the reasoning of these English decisions. Unless corrected by the Supreme Court I would intend to continue so to do.

The basis of these decisions is the terms of Section 5 of the Act itself which appears to give to the Court in every case where it is satisfied that a spouse, who has a duty to do so, is not providing reasonable maintenance for the other spouse and children, the power to make an Order for maintenance. Quite obviously any recent agreement between the parties embodied in a Deed of Separation, and particularly an agreement which provides its own method of adjustment according to needs or income, or according to consumer price index or salary increases, is very strong evidence indeed of what is or was at the time of the deed appropriate and of what the parties felt with due advice would be an appropriate and reasonable amount of maintenance. The Court would not therefore lightly interfere with the provisions of a Deed of Separation, but, where for one reason or another, they have become wholly inappropriate, either to the needs or to the resources of the parties concerned so as genuinely to leave the spouse failing quite clearly in his obligations to maintain the other, the Court can and will interfere under Section 5.

Since, however, one of the main purposes of a Deed of Separation frequently is the achievement of certainty and finality in financial matters, obviously an effort can be made to avoid or minimise the possibility of a subsequent Order under this Act. This can best be done by making provision within the Deed itself for appropriate methods of increase or variation. In so far as the provisions with regard to maintenance reflect the needs of a spouse, they can be tied by some fixed ratio to the consumer price index. In so far as they must reflect the capacity to pay of the other spouse, they can be tied to a salary or earnings with adjustments in relation to variations in them.

In so far as the maintenance provision may be concerned with children, a method of adjustment can be provided both in relation to their increasing needs as they grow older into their teens and for the decrease or cesser of payment as they become of earning capacity. Provisions can also be made with regard to any earning or earning capacity of the wife and for variations in her other sources of income. The more ample and flexible the mechanism built into a Deed of Separation the more

unlikely is a subsequent successful application by either spouse under Section 5.

Married Womens Status Act 1957

Proceedings under the Married Womens Status Act 1957 can be divided into two broad categories. The first consists of those which arise from a situation where a wife has made a direct cash contribution towards the purchase of a house or of furniture or effects, either consisting of the entire price, or, more probably, of a share or proportion of the price. The second broad category is where the wife has made a contribution to a joint household budget out of which, to take the most frequent practical example, mortgage repayments of the house are provided. This form of joint contribution may either be a genuinely pool budget, or, as has been dealt with in a number of decided cases, may consist of the relief by the wife's earnings or payments of the husband from what would otherwise be his expenses, leaving him free directly out of his earnings to pay all the mortgage repayments.

Obviously the first type of case is more easily prepared and presented than the second. If the wife has made a cash contribution, then all that may be necessary is to establish the amount of that contribution, the amount of the total cost of the house or chattels concerned and possibly, for the assistance of the Court, the present day values.

In the latter case, however, more difficult considerations apply, and some attempt to assess the whole cost of the house or property concerned, the whole of the household income and the broad categories of expenditure in it may become necessary.

The only practical advice which one can give with regard to these types of proceedings, which of course vary enormously, is that they are particularly susceptible of pre-trial procedures. Once a Solicitor realises the issues which must inevitably arise in a claim under the Married Womens Status Act, whether he is prosecuting or defending it, it becomes clear that discovery of documents, notices for particulars, notices to admit and even interrogatories must be properly employed in order to permit him, not only to present his case with certainty and expedition, but also to assess, long before the expense of a full hearing, the probable result of it.

Family Home Protection Act 1976

I do not intend to elaborate, as I originally indicated, on merely the legal remedies arising under this or any other Act. The issues arising are relatively clear from the provisions of the Act and the particular circumstances under which they may arise would seem to me to vary enormously. There is, however, one matter which may be of some assistance, because it is a practical matter arising in a new statute. As you are aware under the provisions of Section 4 sub-section 3 and 4 of this Act, the Court must grant consent to the sale of a family home where the other spouse whose consent is required has deserted, and may grant consent where the other spouse is, by reason of mental incapacity, unable to do so or cannot, after reasonable enquiry, be traced. In any one or more of these type of applications, I think practice will probably indicate that proceedings have to be in effect *ex-parte*, there being no possibility of finding the defendant so as to serve him. It seems to me as a matter of practice that there is a risk, no matter how careful a Solicitor may be, that he, and therefore, the Court, could be imposed on in such an *ex-parte* application. A devious and fraudulent spouse employing a Solicitor, who had not previously dealt with his or her business, could easily, by the swearing of a false affidavit, obtain an Order under these sub-sections on his own word alone, notwithstanding the ready availability of the other spouse and possibly good grounds which could be adduced by her or him as to why the Order should not be made. As a matter of practice therefore I have circulated a note to the appropriate authorities suggesting that in any such case where *ex-parte* proceedings in effect are necessary, the affidavit of the applicant spouse, dealing with the question of desertion, the mental incapacity of the other spouse, or the impossibility of tracing him or her as the case may be, should, in its material facts, be corroborated by a separate affidavit made by a responsible disinterested person.

Nullity Proceedings

I have left to the last in this discussion the question of a petition for a decree of *non est factum* or for a declaration that no marriage was entered into between the parties. As you are aware, this is a subject on which the former Attorney General issued a paper for discussion dealing with the possibility of considerably extending and reforming the existing law, and it would not be practical within the context of this evening's discussion to elaborate on that in any way. Certain clear cut facts concerning the existing procedure for nullity can be very shortly emphasised, possibly with some benefit. The first is that there is no link between a nullity in the law of the Catholic church and a nullity in the Civil Courts. Neither is there any presumption, rebuttable or otherwise, that a marriage, which has been declared null by the Catholic church, and set aside by it, will be declared null by the Civil Court. There is not any bar, even in the case of a Catholic marriage between two Catholics, to the successful institution of proceedings for nullity in the Courts before or in the absence of, or even after an unsuccessful application for nullity, according to the law of the Church.

As a practical matter, in recent years, a number of cases for petitions of nullity are undefended. When they are, in most cases practical considerations make it very desirable indeed to corroborate, as far as it is at all possible by evidence independent of the applicant spouse, the facts which are relied on.

Dublin Solicitors' Bar Association

ANNUAL GENERAL MEETING

At the Annual General Meeting of the Association, held at Blackhall Place, Dublin (by kind permission of the Incorporated Law Society of Ireland), the following Council was elected for the ensuing year:

President: Thomas Jackson.
Vice-President: John F. Buckley.
Hon. Secretary: Andrew F. Smyth.
Hon-Treasurer: Miss Mary Cantrell.

Other members of Council: Miss Clare Cusack, Mrs. Moya Quinlan, Stephen Maher, Vivian Mathews, Charles Meredith, Herbert Mulligan, Rory O'Donnell, Colm Price, Laurence Shields.
Hon. Auditors: Rory O'Connor and Peter McMahon.

The Meeting was addressed by Mr. Bruce St. John Blake, President, Incorporated Law Society of Ireland, who took the opportunity of mentioning to Dublin colleagues various matters affecting the profession, including in particular the revised system of legal education due to come into operation, whereby Legal Apprenticeship would not commence until after a University degree had been obtained and would be linked to a system of practical education through the Law Society.

In this general context, the President also referred to the fact that the Law Society's new premises in the former Kings Hospital School at Blackhall Place had been brought into use this Autumn, with considerable benefit to the profession. He stressed that contributions were still required in order to finance the very considerable debt incurred in this respect.

The Meeting discussed a number of matters of importance to Dublin Solicitors, including the present deplorable constions at Rathfarnham District Courthouse and the difficulties created for the profession by the vast backlog of pending litigation, both Criminal and Civil, in the Dublin Circuit Court.

The Meeting also heard that the Association had arranged a Seminar on Office Management and Costing, to be held in the Royal Marine Hotel, Dun Laoghaire, on 20th January 1978 and that the Association's Annual Dinner would take place at Jury's Hotel, Ballsbridge, on Friday, 3rd March 1978, on the eve of the International Rugby fixture.

BUILDER, VENDORS AND LESSORS

The first publication of the recently established Law Reform Commission was the subject of a discussion evening organised by the Association's "Activities Committee" on Wednesday, 5th October 1977.

The publication, entitled "The Law Relating to the Liability of Builders, Vendors, and Lessors", deals with the present substantially unprotected position of purchasers and lessees and seeks to redress the present imbalance in favour of Builders, Vendors and Lessors.

Professor Bryan McMahon, architect of the document described briefly the foundation and general purpose of the Law Reform Commission, established under its own Act of 1975, and said that its present priorities are in the areas of Family Law and the Law relating to Builders, Vendors and Lessors. Professor McMahon joined the Commission in January 1977 and has, in the opinion of the writer, produced in a very short space of time a remarkably well researched and well considered document. Professor McMahon described it himself as a "working paper" and indicated that he hoped that its consideration by the Solicitors' profession might produce some further useful views.

Mr. Michael Greene, Secretary to the Irish House Builders' Federation (I.H.B.F.) then spoke at some length on the I.H.B.F.'s views of the Law Reform Commission's publication and, understandably, argued that the present position of the purchaser from the House Building Industry was not as bad as the Law Reform Commission alleged. He made the point, also made in the Law Reform Commission's publication that the considerable body of recent Case Law on the subject was largely in favour of purchasers and lessees and he said that the I.H.B.F. considered that the trend of the Courts, coupled with the proposed introduction of its own Scheme, designed to protect purchasers from its members, between them rendered unnecessary any such protective legislation as was proposed by the Commission.

Mr. Greene said that the I.H.B.F. Scheme was intended to be operative from 1st January 1978, and that it had been in the process of formulation since 1968 — substantially pre-dating the setting up of the Law Reform Commission!

In Mr. Greene's view, to legislate on the relationship of Builders, Vendors and Lessors with their purchasers and Lessees could well have had the effect of slowing down the present trend of the Courts and that the increased cost of administering the proposed legislation on the subject could outweigh the social benefit which such legislation might achieve. He recommended that the Commission should, as part of its brief, consider the economic consequences of its proposals.

Professor McMahon, in reply, put the views of the Law Reform Commission on the urgent necessity for some increased protection for purchasers and lessees, and not merely purchasers from the I.H.B.F. He suggested that in fact the purchasers and lessees of property were in a poor position, when compared with other consumers. The Commission feels strongly that as a house is probably the largest and most important purchase in a person's life, the purchaser of a house is entitled to reasonable protection both from poor materials and workmanship and from the financial instability of builders and vendors.

Professor McMahon referred in particular to the present anomalous situation in which a Builder can gain immunity from the consequence of his own omissions merely by making himself into a Vendor. Professor McMahon postulated by way of example, circumstances in which a Builder invited a member of the public to view a house which he had built, with a view to sale. If, during such viewing, plaster were to fall on the head of the viewer, then the Builder would clearly be liable in

negligence. If, however, the Builder sold the house to the viewer and the plaster were then to fall on the head of the viewer/purchaser, "caveat emptor" would apply and the Builder could escape the consequences of his negligence.

Professor McMahon also referred to the present highly undesirable situation in the Housing Industry in which Builder/Vendors are only too prone to adopt a "take it or leave it" attitude, with regard to their houses and their legal documentation, leaving the prospective purchaser with no manoeuvrability whatsoever.

In the general discussion which followed, Mr. Greene said that the I.H.B.F. was aware that its Scheme did not go as far as it might, but he felt that it was preferable to start with a somewhat limited proposal, which was capable of proper implementation, than to attempt a very much wider ranging Scheme which might be impossible to administer.

A number of questioners raised the problem of what constitutes a "structural defect" and pointed clearly to the desirability of reaching some common agreement, by Statute, if necessary, on this present vexed question.

It was, perhaps, regrettable that so much of the evening was spent discussing the somewhat narrow question of the building and sale of new houses. It must surely be the experience of the profession that very considerable problems can arise through the defective building of extensions, garages, garden sheds etc, none of which come within the ambit of the I.H.B.F. Scheme.

In addition, the Law Reform Commission's publication covers the duties owed by Vendors and Lessors in general towards their purchasers and lessees and towards their servants, agents and invitees.

However, notwithstanding the fact that little mention was made of the more general aspects of the Commission's proposals, the evening was most useful, if only for clarifying the nature of some of the present problems and bringing to the attention of a wider audience the Law Reform Commission's attempt to improve the position.

WATER COLOUR PAINTING

At a simple ceremony at the Kings Hospital, Blackhall Place on Wednesday 7th September 1977, the Association had the pleasure of hanging a water colour painting of the Kings Hospital. The painting by Ralph Duck, views the buildings from the far side of the open ground opposite the front gate.

The painting was acquired some years ago on the suggestion of a past President, Mr. Eunan McCarron, with the hope that it might ultimately be displayed in the Kings Hospital premises.

The painting now hangs in the North Consultation Room, thoughtfully provided, as Mr. John Hooper, President, remarked with a goodly collection of books!

Amongst those present were Mr. Jim Ivers on behalf of the Incorporated Law Society and a number of past Presidents of the Bar Association, as well as the present Council.

The Incorporated Law Society kindly makes the North Consultation Room available to the Bar Association for its monthly meetings.

COURT PRACTICE AND PROCEDURE

This sub-committee of the Association has been pursuing actively the possibility of easing the Solicitor's burden with regard to practice in the Dublin Circuit Court. Of particular concern are the problems of Malicious Injuries Applications and of the accummulated back-log of pending cases in the Civil List.

With regard to delays in the Civil List, Mr. John Hooper met the President of the Circuit Court some months ago, who said that the hoped that the back-log of pending cases would be substantially reduced by the end of September 1977. Mr. Hooper and Mr. Stephen Maher duly met the President on 7th December, 1977, when it was reported that arrears in the Criminal List had been reduced to less than 400 cases, but that this had necessitated the working of 44 extra days. The President expressed his concern at continuing arrears of both criminal and civil cases and said that extra Judges and accommodation had already been requested.

The sub-committee has tackled even more vigorously the matter of the Malicious Injuries Code and has gone so far as to prepare a radical Memorandum, proposing substantive changes in the whole procedure. The sub-committee's Memorandum will be circulated in due course, for general consideration, as the issues involved are so large that as many views as possible should be sought before the Association makes its submissions to "Higher Authority".

OFFICE MANAGEMENT, COSTING AND ACCOUNTING

The Association's Activities Sub-Committee is endeavouring to arrange a one-day Seminar on the general subject of running a professional office in these days of ever increasing overheads and narrowing profit margins. Particular emphasis will be laid on the question of "Time Costing" which clearly will assume greater and greater importance as the professional's problems increase. There is a limit to the number of hours which the normal mortal can work in any period of 365 days and already it seems clear that, having regard to the level of overheads, a considerable number of Solicitors are not earning a sufficient sum per hour to provide themselves with an acceptable annual income. If conveyancing scale fees are to be abolished, the problem will become even more acute.

The Seminar should be of great practical assistance to the profession and the Bar Association hopes that practitioners will attend from all parts of the Country. There's nothing sectarian about the Dublin Solicitors' Bar Association.

Two eminent lecturers from England have been invited to speak and it is hoped that an Irish practitioner will contribute a session on financial control and office management in the Irish context.

The Seminar will take place on Friday, 20th January, 1978, at the Royal Marine Hotel, Dun Laoghaire. Application Forms will be circualted shortly.

INTENDING APPRENTICES

The Association receives from time to time applications from intending apprentices seeking masters.

Any Dublin practitioners seeking apprentices are invited to write to the Association's Secretary requesting particulars of recent applications.

Correspondence

Land Commission,
Upper Merrion Street,
Dublin 2.
7 December, 1977

Mr. James J. Ivers,
Director General,
The Incorporated Law Society of Ireland.

GENERAL CONSENT FOR SMALL SUBDIVISIONS

Dear Mr. Ivers,

I refer to your letter of 15th May 1975 wherein you suggested the issue of a general consent for small subdivisions.

As arranged in our brief phone conversation of 5th instant I enclose some copies of the new general Consent dated 8th December 1977 for the purposes of your office.

Copies are also being sent, of coursee, to the Land Registry for the purposes of that office.

Yours sincerely,

P. Sammon

DEPARTMENT OF AGRICULTURE
LAND COMMISSION

Subdivision control—Section 12, Land Act, 1965

General consent to the subdivision of registered agricultural holdings where the severed plots do not exceed one acre in size

1. In conjunction with the Land Registry, a revised procedure based on a general consent to certain subdivision transactions involving registered Agricultural holdings has been settled by the Land Commission. The operation of this new procedure—hereinafter referred to as the general consent procedure—is described in paragraphs 2 to 10 below.

2. With the exception of cases of the types specified in paragraph 6 the Land Commission have decided to give their general consent to the subdivision of *registered* agricultural holdings *where the severed plots do not exceed one acre in size*. Each transaction covered by this general consent is subject to the following conditions viz.

(i) the purchaser of the severed plot must be a qualified person within the meaning of Section 45, Land Act, 1965, and must be so certified in the relevant deed of transfer;

(ii) the severed plot will, in all cases, be discharged from payment of land purchase annuity and land reclamation annuity. The balance of the holding will remain charged with repayment of the entire annuity as payable out of the holding immediately prior to subdivision.

In any case where this general consent procedure is inapplicable, application for particular consent should be made to the Land Commission as heretofore.

3. The general consent procedure does not imply that planning permission for development will be forthcoming in any case. If development is contemplated, application for planning permission should be made to the appropriate Planning Authority.

4. Henceforth, following disposal of portion of a holding pursuant to this general consent procedure, the transfer documents should be lodged in the Land Registry for registration. It is NOT necessary to send a copy of this general consent to the Land Registry in any particular transaction.

5. It is NOT necessary to procure a copy map from the Land Registry. A plan of the part transferred edged in red and drawn on the current largest scale map for the area published by the Ordnance Survey will suffice. The map should be prepared—so as to comply with the Land Registry requirements as to maps lodged for registration—by a suitably qualified person, viz. a Land Surveyor or Engineer or Architect, who should sign and date the map when completed. The plot being transferred should be marked "B" on the map.

6. The general consent procedure is NOT applicable to a holding proposed to be subdivided to which any of the following circumstances is referable viz.

(i) where the owner or his Solicitor has received any communication from the Land Commission about proceedings for acquisition under the Land Acts of the whole or part of the holding;

(ii) where the severance of a plot would lead to the situation where the balance of the holding—excluding any land held in undivided commonage shares—would be less than five acres in extent; this limitation will not apply to holdings which are not subject to land purchase annuity or land reclamation annuity;

(iii) where subdivisions in excess of five out of the one holding are attempted/effected under this general consent procedure; this limitation will not apply to holdings which are not subject to land purchase annuity or land reclamation annuity. Multiple subdivisions under this general consent are conditional on the severed plots being transferred to different parties;

(iv) where the severed plot contains any existing buildings other than
(a) old buildings which are uninhabited and unused,
or
(b) a building or buildings newly erected or in course of erection pursuant to the current subdivision transaction;

(v) where the holding to be subdivided comprises a Land Commission Trust Scheme (pasturage and/or tillage, sportsfield, playground, etc.), set up purauant to Sections 4 and 20, Irish Land Act, 1903, as extended by Section 30, Land Act, 1950;

(vi) where the holding to be subdivided is a registered holding which has been involved in exchange or partial exchange proceedings with the Land Commission and where the exchanged lands are awaiting revesting.

The transfer document MUST contain a certificate covering items (i) to (vi) inclusive (see Note below); by arrangement with the Land Commission, the Land Registry will NOT register any transfers lodged pursuant to the general consent procedure which do not contain this certificate. Instead, the documents will be returned unregistered. Responsibillity for the accuracy of the certificate herein rests with the parties to the subdivision. In all this, it will be appreciated that if any purported subdivision—

(a) is not properly authorised by this general consent,
or
(b) is not authorised by a *particular* consent,

then the transaction is void (Section 12(3), Land Act, 1965).

7. Where subdivision of holdings falling into categories (v) or (vi) of Paragraph 6 is contemplated, it is essential that the owner or his Solicitor should, as a first step, communicate with the Land Commission in order to establish the position and to be advised of the special procedures appropriate to these categories of holdings.

8. In circumstances where a deed of transfer is lodged in the Land Registry in the belief that the case is covered by this general consent procedure and is found to be not so covered, registration will be refused and the deed will be returned to the Solicitor.

9. Where deeds are returned unregistered by the Land Registry (paragraphs 6 and 8), it will be open to the Solicitor, at that stage, to apply to the Land Commission for particular consent to subdivision in the normal way. If consent is forthcoming, it will operate to validate the dealing with retrospective effect as to the required subdivision consent—as provided for in Section 12 (3), Land Act, 1965.

10. This general consent procedure will remain operative until it is revoked by the Land Commission.

8 December, 1977.

NOTE: The certificate stipulated in paragraph 6 above should be in the following form:

"It is hereby certified that Folio No. ———— County ———————— herein is not affected by any of the circumstances listed in paragraph 6 of the general consent dated 8 December, 1977 (S.R. 13/7/77)."

RECENT IRISH CASES

Summaries of judgments prepared by Walter Beatty, Henry St. John Blake, John Buckley, Colum Gavan Duffy, and Michael Staines.

CERTIORARI

CRIMINAL LAW

Section 102 of the Children's Act 1908. Actual evidence that the accused is "unruly" is essential before a young person can be committed to prison.

Martin Holland was convicted in the Childrens' Court of an assault. Under Section 102 of the Childrens' Act 1908 the Court must certify that a young person (i.e., aged 15-17 years) is "of so unruly a character that he cannot be detained in a place of detention provided under this part of the Act . . ." The District Justice, without hearing any evidence as to the character of the accused (except the prosecuting Guard's testimony that he had no previous convictions), made the certificate and then sentenced him to one month in Mountjoy Jail.

On appeal from an order of Hamilton J., making absolute a conditional order of certiorari quashing the order of the District Justice, *held* (per Henchy J.)

(1) Before making such a certificate, the District Justice must be satisfied that the accused "*is* of so unruly a character (not that he *has been* so unruly) that he *cannot be* (not *ought not* to be) detained in the provided place of detention". Whereas the facts of the assault showed that the accused had been on one occasion violently aggressive, these facts, unrelated to any evidence of a behavioural pattern, could not justify the making of the certificate.

(2) Proceeding by certiorari (and not by appeal) was the correct procedure in this case. The District Justice had, indeed, jurisdiction to hear the prosecution but the sentence of imprisonment was based on a certificate devoid of legal validity and, therefore, imposed without jurisdiction.

Per Kenny J. (It is not sufficient that the evidence establishes that the young person is of an unruly character — it must further establish that he is so unruly that he cannot be detained in the place of detention. Since the evidence before the District Justice did not establish this, the certificate is invalid and, therefore, the District Justice went outside her jurisdiction when she sentenced the accused to imprisonment. Her order should, therefore, be quashed by certiorari.

The State (Holland) v. District Justice Eileen Kennedy and Governor, Mountjoy Prison. Supreme Court (O'Higgins C. J., Henchy J. and Kenny J.) — unreported—26 April, 1977.

NATURAL JUSTICE

Attempt of Trade Union to remove its Financial General Secretary from office declared null and void.

The plaintiff Union sought a declaration that the defendant, who was its Financial General Secretary prior to the proceedings, had ceased to hold the office of Financial General Secretary of the Union while the defendant counterclaimed for a declaration:

(i) That he had been at all material times and still was validly in office as the Financial General Secretary of the Union, and, (ii) That his purported removal from office was null and void by reason of the fact that meetings of the Resident Executive of the Union and its Executive Council which ultimately decided on the defendant's removal from office were not convened in accordance with the Rules of the plaintiff Union and that the procedures adopted thereat were unfair and contrary to the principles of Natural Justice in that (a) the defendant was not informed of the charges to be made against him, and, (b) he was not given an adequate opportunity of answering the said charges.

The defendant also claimed damages for wrongful dismissal.

The evidence indicated that for some time prior to the 2 March, 1977, that there had been a dispute between the defendant and the Resident Executive and the Executive Council of the plaintiff Union with regard to the manner in which the defendant was carrying out his functions as Financial General Secretary. At a meeting of the Resident Executive on the 2 March, 1977, the defendant's position was discussed and there was a complaint by officials of the plaintiff Union with regard to the difficulty they were having in obtaining a refund from the defendant, in his official position, of expenses incurred by them in the course of their work. It was proposed and unanimously approved by those present at that meeting that a meeting of the Executive Council would be convened for the 11 March, 1977, at which certain charges would be brought aginst the defendant, and that the members of the Resident Executive would attend for the purpose of supporting the charges. The defendant was informed by letter dated the 4 March, 1977, that the Resident Executive had met on the 2 March, 1977, and the the defendant was summoned to attend the next meeting of the Resident Executive on the 9 March, 1977, to answer certain charges specified in the letter such as being absent from work without notification of his excuse for three days prior to and including the 2 March; failing to up-date the Branch Registers; failing to supply accounts of the plaintiff Union for the six previous years to the Resident Executive and Executive Council for endorsement; failing to attend promptly at the plaintiff Union Office as stipulated under Rule and by showing contempt, by his conduct at Executive meetings of the Union. The defendant was furthermore charged with attending less than half the meetings of the Executive over the previous twelve months and failing to discharge Union delegation expenses for a special conference of the I.C.T.U. held on the 22 February, 1977, in proper time and thereby causing the Union and its appointed delegates to be omitted from the Official I.C.T.U. circular. All these matters, it was contended, brought the Union into disrepute.

Hamilton J. confirmed his satisfaction that the letter of the 4 March was posted to the defendant at his home on the 5 March, 1977, but was not delivered until after the defendant had left to go on holidays to the United States. He was also satisfied that a copy of this letter was delivered personally to the defendant at his Union office on the 5 March, 1977, between 1.00 p.m. and 1.15 p.m. The defendant left for the United States on the 6 March, 1977, in accordance with arrangements made by him prior to the postal receipt of the letter dated the 4 March, 1977. The defendant was accordingly not present at the meetings of the

Resident Executive on the 9 March, 1977, when he was suspended with pay, and at a meeting of the Executive Council on the 11 March, 1977, when he was removed from Office.

Hamilton J. stated that it was well established that the essential requirements of Natural Justice at least included that before someone was condemned he should have an opportunity of defending himself and that in order that he may do so that he should be made aware of the charges or allegations or suggestions which he had to meet; this was something which was basic to our system.

Hamilton J. was of opinion that on the balance of probabilities the defendant had opened the copy letter of the 4 March, 1977, delivered to his office and that glancing through it he did not appreciate that it was intended by the Resident Executive to consider the question of his suspension and removal from office if he failed to answer the charges contained therein. This was supported by the fact that the letter did not in any way indicate to the defendant that if he failed to attend the meeting to which he had been summoned to answer the charges he would there and then be suspended. The letter also summoned the defendant to attend a specially convened meeting of the Executive Council on the 11 March, 1977, at the Union office but again there was no indication that his removal from office was to be considered. The General President of the Union was made aware of an entry in the defendant's working diary indicating that he was on holiday and no further effort was made to ascertain whether or not the defendant was on holiday and would thus not be in a position to attend the meetings of the Resident Executive and the Executive Council.

Hamilton J. *held* that the resolution of the Executive Council of the plaintiff Union removing the defendant from office was null and void and he made declarations in accordance with Nos. 1, and 2, of the defendant's Counterclaim but limited damages to the loss of the defendant's salary.

National Engineering and Electrical Trade Union, and Eustace Connolly, Joseph Carter and Sylvester Sheridan (Trustees) v. Kevin M. P. McConnell —The High Court—Judgment of Hamilton J.—Unreported—20 June, 1977.

INJUNCTION—DISMISSAL OF PROBATIONER GARDA

Supreme Court uphold an Appeal against an Order of the High Court condemning the plaintiff's dismissal from his post as probationer Garda.

Plaintiff was dismissed from his post as probationer Garda shortly before his two-year probation period had expired under Regulation 9 of the Garda Siochana (Appointments) Regulations 1945. Under these Regulations the Garda Commissioner had considered that the plaintiff "is not likely to become an efficient and well-conducted Guard." He had formed this opinion after reading the plaintiff's dossier. This dossier contained several reports critical of the plaintiff. One report disclosed an abnormally high number of absences through illness. Another report stated that the plaintiff required adequate supervision on duty and went on to cast suspicion on his amount of sick-leave. A third report stated that he was inclined to be lazy and criticized his standard of discipline. Finally, the Garda Surgeon reported that his sick record was excessive and that he had a "frivolous and immature attitude to his job."

Held. The test by which this case was to be decided was whether the material in the dossier was capable of supporting the Commissioner's opinion. The Commissioner was not required to reach his opinion on the basis of a personal interview. Furthermore, the Court could not reject his opinion just because it would have reached a contrary opinion. In this case, there was ample evidence in the dossier to support the opinion of the Commissioner. His order effectively terminated the plaintiff's service as a Garda. The appeal against the order of the High Court should, therefore, be allowed.

Brendan Mary Hynes v. Edmund P. Garvey, per Henchy J.—Supreme Court (per Henchy J. with Griffin and Parke J.J.)—unreported—19 July, 1977.

PLANNING ACTS

Whether powers of Compulsory Acquisition vested in Planning Authority by Local Government (Planning & Development) Act, 1963.

The defendant County Council required 1 rood and 24 perches of sea shore at Spiddal, Co. Galway, and made a Compulsory Purchase Order under "Section 76 of and the Third Schedule to the Housing Act, 1966, as extended by Section 10 of the Local Government (No. 2) Act, 1960, as substituted by Section 86 of the Housing Act, 1966, and Section 77 of the Local Government (Planning & Development) Act, 1963". The plaintiff objected to the making of the Order, which was sent to the Minister for Local Government for confirmation. The Minister's officials tried to persuade the plaintiff to sell voluntarily, but failed. A public inquiry was then held and the Compulsory Purchase Order was subsequently confirmed. The plaintiff brought proceedings to have the Compulsory Purchase Order quashed on the grounds that the defendant County Council had no power to acquire lands compulsorily for the purposes of development or the provision of amenities. The defendants disclaimed any reliance on Section 10 of the Local Government (Ireland) Act, 1898 (which Section *inter alia* gives a County Council power to compulsorily acquire land for the purpose of their powers and duties).

Held Section 10 of the Local Government (No. 2) Act, 1960, applied the procedure under the Housing Act, 1966, to acquisitions on land and other Acts, when those Acts authorised the Local Authority to acquire lands compulsorily. It is not permissible to imply that a power of compulsory acquisition has been created, because a power to develop has been conferred on a Local Authority. As Section 10 of the 1898 Act was not referred to in the Order it cannot be invoked to justify it. The Local Government (Planning & Development) Act, 1963, does not confer any power to authorise a Planning Authority to acquire land compulsorily for the purposes of that Act.

Movie News Limited v. Galway County Council—The High Court —Judgment of Kenny J.—unreported—30 March, 1973.

An appeal in this case was dismissed on procedural grounds by the Supreme Court on the 15 July, 1977.

PLANNING ACT

Whether powers of Compulsory Acquisition vested in Planning Authority.

The defendant County Council made a Compulsory Purchase Order called the "Dublin County Council Compulsory Purchase (Local Government Planning & Development) Act, 1963, No. 3 Order, 1971", which was confirmed by the Minister for Local Government on 16 January, 1974. The Order was entitled "Compulsory Purchase Order under Section 76 of and the Third Schedule to the Housing Act, 1966, as extended by Section 10 of the Local Government (No. 2) Act 1960—Local Government (Ireland) Act, 1898—Local Government Acts, 1925-1968—Local Government (Sanitary Services) Acts, 1878-1964—Local Government (Planning & Development) Act, 1963—Local Government (No. 2) Act, 1960". The Order authorised the defendants to acquire the lands of the plaintiff's compulsorily for the purpose of providing for residential and ancillary development, which included the provision of recreational open space including playing fields. It was argued by the plaintiff that the defendant County Council can only acquire lands for recreational purposes in its capacity as Planning Authority, and that even though it be both Planning and Local Authority its functions as Local Authority are separate and cannot be exercised when acting as Planning Authority. The Judgment of Kenny J. in Movie News Limited v. Galway County Council (30/3/73 unreported) was relied on. The defendant County Council accepted the Movie News decision of Mr. Justice Kenny but argued that Section 11 of the Local Government (No. 2) Act, 1960, by interpreting Section 10(1) of the Local Government (Ireland) Act 1898 did give a Local Authority power of acquisition.

Held that Section 11 (1)(c) of the 1960 Act could hardly be more comprehensive in its terms. On the correct interpretation of this Section with Section 10 of the 1898 Act the defendant was entitled to acquire these lands compulsorily and such acquisition could, under the new Section 10 of the 1960 Act, be effected under that Act for the purposes of the 1963 Act.

Leinster Importing Company Limited v. Dublin County Council—The High Court—Judgment of McWilliam J.—unreported—26 January, 1977.

SALE OF LAND

Specific performance refused becaue of fundamental unfairness in transaction.

The plaintiffs wished to acquire the defendant's land as part of the site of a proposed smelter plant. The plaintiff's agent gave the defendant's husband, who did all the negotiating on the defendant's behalf, the impression that if the defendant did not sell lands to plaintiff, the Local Authority would compulsorily acquire the lands and pass them on the plaintiffs. The plaintiff's Managing Director knew this, and when the defendant was reluctant to sell the Managing Director called upon the Chairman, Vice-Chairman, County Manager and the Development Officer of the Local Authority to discuss the position. Following this meeting, the Chairman, Vice-Chairman, County Manager and Development Officer called to see the defendant's husband, and left him under the impression that a Compulsory Purchase Order would follow if there was no voluntary sale to the plaintiffs. This was not, in fact, the true position, in that the Local Authority had no intention of making any compulsory purchase order. Following this meeting with the officials of the Local Authority the defendant gave the plaintiffs a successive series of options, but when the plaintiffs attempted to exercise a current option the defendant declined to complete.

Held that the plaintiff would not get specific performance because there was a fundamental unfairness in the transaction. The defendant gave the option under the impression that a Compulsory Purchase Order would follow if no voluntary sale was completed.

Smelter Corporation of Ireland Limited v. Sabina Mary O'Driscoll Supreme Court—Judgment of O'Higgins C. J.—unreported—29 July, 1977.

TRADE UNION LAW

Picketing lawful by a minority of trade union members notwithstanding the existence of a compensatory termination agreement between the employer and the majority of the members of the trade unions involved.

Appeal from Hamilton J. dismissing an injunction against picketing. The defendants were all members of the Irish Transport and General Workers Union, and were all former employees of the plaintiff Company at their factory at East Wall, Dublin. The Plaintiff Company was engaged in the manufacture of fertilisers, and had two plants, one in East Wall, Dublin, and one in Cork. By reason of the substantial falling off in the plaintiff's sales on the home market, it was decided to close down the East Wall plant, and to concentrate in future on the Cork plant. The closure of the East Wall plant was to take place on 30 June, 1976. This decision was communicated by the plaintiffs and the different unions concerned at various meetings starting on 14 June, 1976. Finally an agreement was reached with the 11 Unions concerned, and the plaintiffs issued a six-point statement on 23 July, 1976. The terms for compensation were higher than would have been payable under the Redundancy Payments Acts, and the Unions agreed to these terms on 27 July, 1976.

However, the defendants would not accept these terms, and on 30 July, 1976, they refused to leave the factory premisess and staged a sit-in. This led to the first High Court proceedings on the part of the plaintiffs and the granting of an injunction against the defendants in respect of their trespassing, which was duly obeyed.

However, on 23 August, 1976, these defendants, who had at all times opposed the closing of the plant, and the conclusion of any agreement with the plaintiffs, commenced to picket the East Wall premises. This led to a further application by the plaintiffs for an injunction to restrain such picketing; on the ground that it was illegal, and that it prevented them removing from East Wall a large tonnage of valuable fertiliser material which could be used in Cork. The defendants duly contended that their action was lawfully taken in pursuance of a trade dispute relating to the closing of the plant, and the non employment of the defendants in the work still requiring to be done. Because of the urgency of the matter, pleadings were dispensed with in the High Court, and the case

was heard on oral evidence, and on the affidavits of the parties. Hamilton J. held that the picketing complained of was in respect of a trade dispute, and dismissed the application for an injunction. The Supreme Court insisted on the parties lodging written submissions.

The following submissions were argued in the Supreme Court:

(1) The plaintiffs contended that Section 11 of the Trade Union Act, 1941, which confined the application of Sections 2, 3 and 4, of the Trade Disputes Act, 1906, to authorised trade unions which held negotiating licences, and their members and officials, applied here. In such a case, it was contended that the defendants would have no remedy, as they were acting in defiance of a settlement reached through the proper channels with the organised labour views, and against the expressed views of their union. The Supreme Court rejected this submission on the ground that the defendants were all members of a trade union.

(2) The plaintiffs contended that Section 11 (1) of the Trade Union Act, 1941, conflicted with the Constitution. The Supreme Court reserved this question for the future.

(3) The plaintiffs contended that no trade dispute existed and that therefore the picketing was illegal. They contended that at the time of the picketing of the plant, the defendants were no longer their employees. The defendants however contended that the plaintiffs had employment to give and were not doing so, and in any event they were workmen who had opposed the redundancy settlement between the plaintiffs and the unions. The Supreme Court rejected this submission on the grounds that it was clear that there was employment in relation to the removal of certain raw materials which were intended to be used in Cork, and that the defendants thought they should have been employed on this work; and that therefore there was a dispute between the defendants as workmen and the plaintiffs as employers connected with the non-employment of the defendants.

(4) The plaintiffs contended that where a dismissal of a workman was lawful that no trade dispute could be raised in relation to it. The Supreme Court rejected as unsustainable Overend J.'s contention in *Doran v. Lennon* [1945] I. R. 315, that a lawful dismissal precluded the raising of a trade dispute. It held that the definition of a "trade dispute" was sufficiently wide and general to include any dispute between employer and workman, provided it was connected with employment. Meredith J.'s dictum in *Ferguson v. O'Gorman,* [1937] I. R. 620, that "a workman does not cease to be a workman because he is dismissed and out of employment and forced to take other work" was approved.

(5) The plaintiffs contended that it was implicit in the settlement proposals that their acceptance by the unions meant that there would be no trade dispute and of course no picketing and that this agreement with the union had the absolute effect of binding the defendants. The Supreme Court rejected this submission stating that it was clear that although there was a valid contract between the plaintiffs and the unions, the defendants had at all times repudiated and opposed the settlement and there was no evidence that the general rules of a union bound individual members to accept the decision of the majority.

(6) The plaintiffs contended that the Redundancy Payments Acts, 1967, and 1973, are alleged to have the effect of amending the Trade Disputes Act, 1906, by withdrawing the protection of that Act from employees who became entitled to redundancy payments. This ground was rejected by Kenny J. in his individual judgment on the basis of his own High Court decision in *Cunningham Bros. Limited v. the Irish Transport and General Workers' Union.*

(7) The plaintiffs contended that the picketing of the plaintiffs' premises did not qualify for protection under S. 2 of the Trade Disputes Act, 1906, because it was not done for any of the purposes set out in the Section. The Supreme Court rejected this submission stating that the action which is protected by S. 2 must first of all be in contemplation or furtherance of a trade dispute, and that the motives, good or bad, which inspired this trade dispute, did not arise. The Court found that it was for the purpose of securing employment during the post-closing operations of the East Wall factory that the defendants first of all conducted a sit-in, and later a picket and that the picket was undoubtedly in furtherance of their disputed claim to employment, and was fully within the ambit of S. 2 of the 1906 Act.

The plaintiffs' action was accordingly dismissed. So held by the Chief Justice, and affirmed by Henchy J., Griffin J. and also by Parke J. and Kenny J. who both delivered separate assenting judgments.

Per O'Higgins C. J. "This case highlights the extent to which immunity for picketing is given by statute to small minorities of workmen, regardless of the wishes of their fellow workmen, including their fellow trade unionists, and irrespective of how the picketing is calculated to damage the particular trade or industry or to conflict with the common good. Whether the degree of immunity for picketing granted by the law should be put on a more rational and just basis is something that might well merit consideration by those charged with the framing and enactment of our laws".

Per Kenny J. in his separate assenting judgment. "Section 30 of the Industrial Relations Act, 1946, makes a registered employment agreement binding on all the members of the union which negotiated it. If a similar provision had been passed making all agreements made by trade unions with employers and approved by a majority of their members binding on all the members, the picketing in this case would be contrary to law. I think that the Minister for Labour should give urgent attention to the introduction of legislation which will provide that any registered agreement made between employers and a union which is approved by a majority of the members of that union or, where an agreement relates to a worker employed by one employer, is approved by a majority of all the workers employed by that employer who are members of the union, should be binding on all the members of that union despite the fact that they are not parties to the agreement".

Goulding Chemicals Limited v. Lawrence Bolger, Henry Byrne & Others. Supreme Court—Judgment of the Court given by the Chief Justice on his behalf and on behalf of Henchy J. and Griffin J. Separate assenting judgments given by Kenny J. and Parke J.—unreported—26 April, 1977.

SUCCESSION ACT, 1965, — IMPORTANT SUPREME COURT DECISION

Construction of s.56(5) (b) Succession Act, 1965—Order directing executor to appropriate dwellinghouse on farm forming part of estate of deceased towards satisfaction of legal right of widow of deceased—Onus of proof—Applicant to satisfy Court that exercise of right of appropriation is unlikely to diminish value of assets other than dwelling or to make it more difficult to dispose of them in due course of administration—Court to be satisfied that *neither* of the specified eventualities is likely to happen—Meaning of words "value of the assets other than dwelling"—Words mean *all* assets other than dwelling. *H-V-H.*

(Note: As this case is of some considerable importance for practitioners, the Supreme Court judgment of Parke J. (concurred by Henchy J. and Griffin J.) is set out in full.)

Parke, J.

This is an appeal against so much of the order of Kenny J. dated 10 of December 1974 as directed the defendant as the executor to appropriate the dwellinghouse on the farm which forms part of the estate of the deceased towards the satisfaction of the legal right of the widow of the deceased, in pursuance of an application by her under s.56(5)(b) of the Succession Act, 1965.

The plaintiff's application for such an order is only one of a number of disputes between the parties relating to the administration of the deceased's estate and after the hearing before Kenny J. the plaintiff in the present proceedings instituted a partition suit in relation to the lands forming part of the deceased's estate. Judgment in that suit was delivered by McWilliam J. on the 12 of January 1977 and we have been informed by counsel for the defendant that it is his intention to appeal to this Court from that judgment.

It is clear that no final order for the distribution of the assets of the estate can be made until that appeal is determined by this Court. This Court has, however, been asked to determine the issues arising on the construction of s.56(5)(b) so that the rights of the parties in this respect may be ascertained.

Section 56(1) of the Succession Act 1965 provides:

> "Where the estate of a deceased person includes a dwelling in which, at the time of the deceased's death, the surviving spouse was ordinarily resident, the surviving spouse may, subject to sub-section (5), require the personal representatives in writing to appropriate the dwelling under section 55 in or towards satisfaction of any share of the surviving spouse."

Omitting sub-paragraph (a) of sub-section 5 (which is not relevant to this appeal) the sub-section provides:

> "A right conferred by this section shall not be exercisable—(b) in relation to a dwelling in any cases mentioned in sub-section (6) unless the Court, on application made by the personal representatives or the surviving spouse, is satisfied that the exercise of that right is unlikely to diminish the value of the assets of the deceased, other than the dwelling, or to make it more difficult to dispose of them in due course of administration and authorises its exercise".

It appears to me that this appeal raises three questions on the construction of the paragraph.

The first relates to the onus of proof. The trial judge held that the onus lies upon an applicant under the paragraph to satisfy the Court that the exercise of the right of appropriation is unlikely to diminish the value of the assets of the deceased, other than the dwelling, or to make it more difficult to dispose of them in due course of administration. This finding was not challenged in argument and appears to me to be clearly correct.

The second question is to ascertain the meaning of the words "the value of the assets of the deceased, other than the dwelling". The trial judge held that in a case such as the present, where the spouse has exercised her legal right to one half of the estate, these words are limited to the value of the assets of the deceased, other than the dwelling, *and other than those passing to the spouse.* I cannot accept this as being correct. Such a construction would not be in conformity with one of the fundamental rules of interpretation i.e. that words may not be interpolated into a statute unless it is absolutely necessary to do so in order to render it intelligible or to prevent it having an absurd or wholly unreasonable meaning or effect. No such necessity arises here. The words of paragraph (b) are clear and intelligible as they stand. They refer plainly to *all* the assets of the deceased other than the dwelling. The fact that the dwelling is the only exclusion seems to me to remove any doubt which might exist as to the comprehensiveness of the word "all". The trial judge seems to have considered that he was bound to construe the expression in the way in which he did because he considered that any other construction would render it impossible for any application under the paragraph to succeed in respect of a residential agricultural holding. This view is based upon the belief which he expressed in his judgment that a residential agricultural holding is invariably more valuable that a non-residential agricultural holding. With the greatest respect to the learned judge, I do not think that this is necessarily so. The common experience of the courts affords many examples to the contrary. A large, old and dilapidated dwelling will frequently diminish the value of the holding. In cases, common enough nowadays, where there are two dwellings on a holding the exclusion of one of them will probably enhance the value of what is left. These and other examples were cited to us in argument and reinforce the conclusion that it is not necessary to interfere with the clear wording of the paragraph on the grounds of avoiding an irrational meaning or effect. In my view the words mean what they say, namely, all the assets of the deceased other than the dwelling.

The third question which arises is as to the meaning and effect of the word "or" which separates the expressions "diminish the value of the assets of the deceased, other than the dwelling," and "to make it more difficult to dispose of them in due course of administration". It was urged upon us very strongly by counsel for the plaintiff that its effect is disjunctive. He contended that an applicant under the section could

discharge the onus of proof by establishing one or other of two things namely, that the exercise of the right would be unlikely to diminish the value of the assets or to make them more difficult to dispose of in the course of administration, but that such an applicant was not obliged to establish that *both* consequences would follow. He submitted that in a case such as the present, where no sale of the assets is contemplated, the fact that the exercise of the right might diminish the value of the assets was irrelevant and that the exercise of the right would in no way impede the personal representative in distributing the assets in due course of administration. This was the view taken by the trial judge who interpreted the word "them" as meaning "the assets of the deceased other than the dwellinghouse" and the word "dispose" included voluntary distribution amongst the beneficiaries in specie.

I regret that I cannot accept these conclusions. Reading the paragraph in its entirety it seems to me clear that what the subsection requires the court to be satisfied of is that neither of the specified eventualities is likely to happen.

In my opinion the submissions on behalf of the plaintiff on the construction of this portion of the paragraph must also fail. Accordingly the appeal must succeed. It must be held, in my view, that the plaintiff has failed to establish under s.56 the right of appropriation sought by her. Whether she is otherwise entitled to the dwellinghouse is a matter that must await the outcome of the pending appeal in the partition suit.

S.56(11) of the Succession Act, 1965, requires all proceedings in relation to s.56 to be heard in chambers. This does not mean that the judgment in such proceedings in chambers may not be published: see per Lord Denning M.R. in *Wallersteiner v. Moir* 1974 3 All E.R. 217 at P. 229. The decision in this appeal is being given in court rather than in chambers so that the opinion of the Court as to the correct interpretation of s.56(5)(b) may be promulgated. However, in order to preserve the confidentiality inherent in the requirement of a hearing in chambers, all identifying facts and circumstances, including the names of the parties, are omitted from this judgment.

H. v. H.—Supreme Court (Henchy J., Griffin J. and Parke J.)—unreported—13th May, 1977.

CAPITAL GAINS TAX SINGLE TRANSACTIONS

In reply to queries raised by the Society, the following statement has been issued by the Revenue Commissioners

Under section 5 of the 1975 Act, Capital Gains Tax is charged by reference to a year of assessment ending on the fifth day of April and the tax falls due for payment within three months after the end of the year of assessment or at the end of two months after the date of making the assessment whichever is later. This procedure is designed to secure that all gains accruing within the year are aggregated and that any allowable losses are deducted so that normally only one composite assessment is made for a particular year.

It happens in many cases, particularly in relation to land and/or buildings sold as an entirety, that there is only one disposal in the course of a year and that this situation can reasonably be anticipated at the time the single disposal is being finalised. The vendor in that type of case may wish to have any Capital Gains Tax Liability arising agreed and paid at the time the sale is being closed, so that he may receive the net consideration free of any further liability for this tax on the particular transaction and avoid having a demand for payment served on him some time after the event.

The Society has been advised by the Revenue Commissioners that, where a Member has been instructed to deal with the matter in this way, Inspectors of Taxes and their staffs will be glad to co-operate in order to arrange prompt settlement of the liability (granted normal delays, particularly where an election is made to base the computation on market value at 6 April 1974 rather than on time apportionment) and to arrange for the issue of an official receipt for tax paid even though the year of assessment may not yet have expired. Members so instructed should communicate with the Inspector who normally deals with the Income Tax affairs of the vendor as soon as possible after the contract for sale has been signed.

17 November, 1977.

PRACTISING CERTIFICATES

At the Council Meeting on 16th December, 1977, the Council of the Society voted unanimously to strongly recommend that the fees payable for the annual Practising Certificatre for an assistant solicitor should be payable by the employer on 6 January, in any year (being thr statutory date of issue of the Certificate).

James J. Ivers,
Director General.

SOCIETY OF YOUNG SOLICITORS

SLIGO SEMINAR

An Extract from Spy's Diary

Mercifully I was not left to languish alone on the platform of Heuston Station by following the programme instructions on how to travel to the Sligo Seminar—frantic telephone calls from the organisers and a back page newspaper notice all exhorted me to direct my steps to Connolly Station on Friday evening. Some malevolent person in authority had seen fit to house me, not in the Sligo Park Hotel where all the action was for the weekend, but in a somewhat less glamorous riverside establishment. For all these reasons my humour on arrival on the Friday evening was ill, and my mood was only improved by a few pleasurable hours spent blackening the characters of some chosen colleagues in the social proceedings which followed.

My humour (if not my knowledge) was bettered further on the Saturday morning on hearing the good Mr. Henry Comerford's version of the trials with or without tribulations of personal injury claims. The topic of his lecture was of secondary importance. His manner of recounting his anecdotes of Court life in Galway was entertaining enough to cure many a sick head—even if the best intentioned possessors of those heads were forced into the bar again afterwards by the violent struggle that was taking place for coffee outside.

A lecture by Peter Delaney followed on the subject of actuarial assessment of damages. I believe that it was very informative. Unfortunately my pre luncheon aperitif time clashed and I was forced to remain with the less erudite company in the bar. Lunch itself was a very well organised conveyor belt affair where the would-be diner was shunted through passages where food and eating utensils were pressed upon him from all sides and he emerged a dazed finished product helplessly weighing food and drink in either hand like the Statue of Justice and wishing for the arms of Buddha to enable him to shovel the lot into his mouth. The lunch when eventually eaten proved good and a lecture by Kevin Haugh B.L. followed where he outlined in great detail the defences available to offences under the Road Traffic Acts. I lamented the effort I had put into absorbing Mr. Haugh's learned words some days later when I read that the breathalyser laws were no longer to be enforced. Lost again my chance of shining in Court with a stunning defence!

Saturday afternoon found several Solicitors bearing the buffeting wind at Rosses Point to clear the head for the night's entertainment when a great number of sinful, ginful, rumsoaked men were to be seen capering around the ballroom floor with their partners. The sinful amongst them were not given much opportunity of indulging in the licentious behaviour encouraged by soft lights and romantic music for the musicians of Sligo, who for some reason must have thought solicitors a slow lot to get moving, were intent upon giving them some strenuous exercise for the evening. Never has there been such a moving occasion as this seminarial dance with discs slipping all over the place as solidly built famales were flung in the air with abandon but with not much thought of the consequences. Lest this may be thought a disparagement of the charms of lady solicitors generally I must add that the band members were heard to remark that the females present were "a great looking bunch of birds" which I believe is a compliment to a lady in Sligo terminology. Not to have them outdone by the ladies, one Dublin firm, I noted, appeared to have issued uniform sweat shirts to its junior partners to be worn on the occasion, and these looked very fetching indeed. The prize for elegant dressing however must go to Mr. David Pigot who was the only gentleman to wear a dinner jacket for the occasion.

Sunday morning jolted us back to the realities of life with a talk by Brian McCracken S.C. on professional negligence. He had some very interesting contributions to make on this subject and the question time at the end was all very tongue-in-cheek, with one notable and very worthy exception, which I will not dwell upon here out of respect for the laws of libel.

When we arrived back home I was told that the weekend weather in Dublin had been very fine. In Sligo it had as usual been wet, But I was able to report that the weekend had been very fine there too notwithstanding.

—SPY

A BRIEF GUIDELINE ON THE LAW RELATING TO ILLEGITIMATE CHILDREN

With the passing of the Courts Act 1971 (hereinafter called the 1971 Act) one could say that the first step on the path to reforming the legal status of illegitimate children was taken. However it was by no means a major reforming piece of legislation, evidenced by the fact that the maximum award which could then be granted by the District Court under an application order was £5—the previous maximum was £1. But the 1971 Act did enable the mother of an illegitimate child to bring affiliation proceedings in the High Court where there could be no maximum limit placed on the award.

The Family Law (Maintenance of Spouses and Children) Act 1976 (hereinafter called the 1976 Act) heralded even more of the much needed reform in this particular area of the law. S.28 of that Act is the relevant section.

What Therefore is the Present Legal Position of the Illegitimate Child and his Unmarried Mother?

The Illegitimate Children (Affiliation Orders) Act 1930 (hereinafter called the 1930 Act) is the principal piece of legislation in this area.[1] This Act enabled the mother of an illegitimate child to bring affiliation proceedings against the putative father. However the Act did not envisage any third party (apart from "a local body administering the relief of the poor then giving relief to the mother of an illegitimate child or to an illegitimate child") taking proceedings against the putative father, or for that matter, against the mother. However S.-S. 4A of the 1930 Act[2] provides that subject to the conditions laid down in S.-S. 4A(3), "any person"—including, it seems, the

illegitimate child himself—can issue proceedings against "a parent of a child who has failed to provide such maintenance for the child as is proper in the circumstances". If an action under this subsection is being brought against the putative father, the third party must first establish that an affiliation order was earlier made against that father.

The maximum amount that a District Court can now award to mothers of illegitimate children is £15 per week for each child and the order will run from a date not earlier than the date on which the order is made to the date of the happening of one of the events specified in S.28 (1) (h) of the 1976 Act which includes the date that the Court, upon application under S.5 of the 1930 Act as amended, agrees to prematurely terminate the order.

What Must be Established before an Affiliation Order will be Granted? There are basically three requirements to be fulfilled under this heading;

(1) The application must be brought within the specified time limit.[3]
(2) The District Justice must hear the evidence of the mother.
(3) The evidence of the mother *must* be corroborated in some material particular or particulars.

It is the latter point which invariably causes most difficulty. Mere opportunity is not sufficient but if the mother could produce, for example, a letter written by the putative father admitting paternity or promising support for the child, this would undoubtedly be sufficient corroboration.[4]

Can an Affiliation Order be Renewed?

If an affiliation order has been discharged by the District Court or payments have ceased to be payable, that Court may at any time thereafter, notwithstanding anything in the 1930 Act, order the putative father to make payments to the child in such amounts and for such period as the Court may specify and the said order shall, for all intent and purposes, be treated as an affiliation order.[5] The order, however, can only be made so long as the person for whose benefit it is made is a "child" as defined by S.28(1) (a) of the 1976 Act.

If a putative father dies, the liability for payment of the periodical sum under the affiliation order attaches to his estate as a civil debt[6] but his personal representatives can apply to the District Court under S.8(1) of the 1930 Act to have the periodical sum commuted by payment of a lump sum to be determined by the District Justice. The person to whom the periodical sum is payable can also make a similar application on the death of the putative father.

Should the putative father desire at any time during his lifetime to have the periodical sum commuted by payment of a lump sum, he may make an application under S.8 of the 1930 Act and if the District Justice can satisfy himself as to the provisions of S. 3 and 4 of that Section he may grant the order.

As a result of S.3(10) of the 1930 Act[7] payments under affiliation orders, like maintenance orders, can be made payable through the District Court Clerk and the provisions of S.9 of the 1976 Act apply in this regard. Furthermore, since the passing of the Maintenance Orders Act 1974, affiliation orders, along with maintenance orders have become reciprocally enforceable in both Ireland and England.

If the putative father makes a voluntary and binding agreement in favour of the illegitimate child and this agreement is approved by the District Court[8] then it is a complete bar[9] to all further proceedings under the 1931 Act.

The putative father may be ordered upon an application being brought under S.6 of the 1930 Act as amended to pay a sum not in excess of £200 for the purpose of apprenticing the child to a trade. This order can be made even if an affiliation order is still in force. However the child must be aged between 14-16½ years.

Where the illegitimate child dies, the putative father can similarly be ordered to pay a sum not in excess of £200 to defray the funeral expenses.

Succession Rights

The succession rights of an illegitimate child on an intestacy are extremely limited and are contained in S.9 of the Legitimacy Act 1931 (hereinafter called the 1931 Act). However one cannot say that the extent of those rights are entirely clear and S.9 of the 1931 Act must be read in conjunction with the provisions of the Succession Act 1965 (hereinafter called the 1965 Act). If the mother of an illegitimate child lies intestate and leaves no legitimate issue surviving her, then the illegitimate child shall be entitled to take all, even seemingly, if a parent of the mother is still alive. If the mother is survived by a husband and an illegitimate child then it would seem that under S.9 (1) of the 1931 Act, that child is treated as if he had been borne legitimate for the purposes of succession so that the father is entitled to ⅔rds of the estate and the child ⅓rd.[10] However there is also a sustainable argument that the father is entitled to the entire estate to the exclusion of the illegitimate child. The matter must therefore await clarification by the Courts.

If the illegitimate child dies intestate and is survived by his mother then she shall take all. But if there are any lawful issue of that illegitimate child surviving, they take priority over the mother in accordance with the provisions of S.67(3) of the 1965 Act. Such then are the entire intestation succession rights of an illegitimate child on any intestacy.

Declarations of Legitimacy

The Legitimacy Declaration Act (Ireland) 1868[11] enables a person to apply to the Circuit or High Court for a declaration of legitimacy to establish his legitimacy or the legitimacy of any child of his or any of his parents or remoter ancestors.

For an interesting historical introduction to the law of illegitimacy prior to the 1930 and 1931 Acts, one should read the judgment of Gavan Duffy P. in the case of **In Re M. an Infant** (1946) I.R. 334.

NOTES:

(1) Amended by S.19 of the 1971 Act and S.28 of the 1976 Act.
(2) Inserted by S.28(1) (h) of the 1976 Act.
(3) S.2 of the 1930 Act as amended by S.28(1) (b) of the 1976 Act.
(4) Contrast the judgments in Norwood v. Scott (1939) 73 1LTR200 with that of Cahill v. Reilly 1957 Ir. Jur. Rep.77
(5) S.4 and S.4(b) of the 1930 Act as inserted by S.28(1) (h) of the 1976 Act.
(6) S.4(5) of the 1931 Act inserted by S.28(1) (h) of the 1976 Act.
(7) Inserted by S.28(1) (g) of the 1976 Act.
(8) S.10 of the 1930 Act.
(9) Subject to S.4(4A) and (also seemingly) S.4(4) (a) of the 1930 Act as inserted by S.28(1) (h) of the 1976 Act.
(10) S.67(2) of the 1965 Act should be read alongside S.9(1) of the 1931 Act with regard to this point.
(11) Amended by S.2(1) of the 1931 Act and S.20 of the 1971 Act.

Seduction and Irish Law

By WILLIAM BINCHY, LL.M., Barrister-at-Law,
Research Counsellor to the Law Reform Commission

The action for seduction[1] survives in Ireland although it has been abolished in a number of other jurisdictions.[2] It is based technically on the loss of service suffered by the parents of a seduced girl by reason of her inability to perform these acts of service on account of her pregnancy and confinement. In reality, however, the loss of family honour plays a major part in the proceedings. The basic elements of the action will be considered briefly below and consideration will be given to whether it serves a sound special purpose today.

Service

The most usual type of service that a daughter will perform for her parents will be of a domestic nature: tidying the house, preparing meals and so on. It might, however, in some cases arise *ex contractu*, as where a girl is employed as an assistant in her father's shop.

The Courts have construed the concept of service broadly. Thus, in *O'Reilly v. Glavey*[3] a woman had lived away from her mother's home for twelve years. For ten years she had lived with her husband and, after his death, she lived alone for a further two years. She performed some household tasks for her mother during this period. The case was allowed go to the jury, and the Exchequer Division, by a majority, upheld the trial judge's action. The dissent of Mr. Justice Murphy is worthy of note:

> "Now, taking that evidence to be all perfectly true, it would appear that the daughter displayed a filial duty towards the mother; but did that state of facts so exist as to constitute the fiction upon which an action for seduction rests? In my opinion it did not. Fiction, though necessary to support such an action, must be proved by evidence of something of a substantial or appreciable character. But this case goes beyond any of the cases on the same point that I have ever seen".[4]

For an action for seduction to succeed, it is necessary for the plaintiff to establish a right to the girl's service at both the time of her seduction and the time of her confinement. Thus, in *Farrelly v. Donegan*[5], where the plaintiff's daughter, aged thirty years, had been in his service at the time of the seduction but afterwards had been in employment elsewhere, the High Court held that the plaintiff could not succeed.

Whilst the duty of service owed to parents may be reactivated constructively the moment the daughter is discharged from other employment – so that they may sue in respect of her seduction when she is on her way home to them[6] – the fact that, whilst still in another's employment, she *intends* to return to her parents' service after its termination will not entitle them to take proceedings for a seduction before the termination of that employment.[7] Nor will the fact that, on days from another's employment, the daughter returns to her parents' service enable them to sue if the seduction takes place during the period of employment rather than on a day off[8].

When the plaintiff's daughter is in the service of someone other than the plaintiff, no right of action will generally arise since the plaintiff will not be able to establish the necessary relationship of service with his daughter.[9] Where, however, a person induces the plaintiff's daughter to enter into a contract of service which is merely a cover for seducing her, he will not be permitted to say that the daughter is in his service rather than that of her parents.[10] But if the defendant merely encourages a girl to enter into a contract of service with a third party, who is *bona fide* in the matter, with a view to facilitating sexual relations between the defendant and the girl, her parents will have no right of action.

Who May Sue?

The Courts have held that the action may be taken by the girl's father only, where both parents are alive and living together. This rule has been rigorously applied.[11] Thus, in *Thompson v. Fitzpatrick*[12], it was held that a girl was in the service of her father rather than of her mother, even though her father was "bed-ridden and doting"[13] and the mother, who managed the farm was "substantially mistress of the place".[14]

None of these decisions were in recent years and it is more than probable that a Court today would take a different view. The presumption that the father is "head of the house" in all cases has been radically transformed by Constitutional,[15] judicial[16] and legislative[17] developments, and it seems almost inconceivable that these old cases would command support today[18]

In certain cases, it would appear that the brother or sister of a girl who has been seduced may have a right of action. The Courts, however, have evinced a considerable reluctance to accept the service nexus in respect of such relationships. In *Clements v. Boyd*[19] Judge Overend rejected the claim by a sister of a seduced girl, both being over thirty years old and running a farm together. The Judge stated:

> "How can I infer service, (since) the two work together? If they were of great discrepancy of age, as where one a minor and the other older, then a moral obligation of obedience would exist, and I would hold service existed".[20]

And in *Brennan v. Kearns*,[21] Judge Sealy considered that "in the absence of strong evidence"[22] to support a master-service relationship, he would not hold that the plaintiff, whose sister had been seduced, was her master when they and three other brothers co-owned and managed a farm.

The fact that the plaintiff

> "was the eldest son and held the purse and paid the rates and the annuity on the holding . . . out of partnership funds"[23] did not change the issue at all, in the Judge's view. The decision of *Murray v. Fitzgerald*[24] in 1906, where a brother's action for

seduction had succeeded, was criticised by the Judge in *Brennan v. Kearns*[25] for having "extended the artificiality (of this class of action) to its utmost limits".

Policy Basis for the Seduction Action

A strong argument may be made that the seduction action is inappropriate today. The concept of a girl being the victim of a seducer rather than being equally responsible for the actions may be questioned as being patronising to women and at variance with the facts in a number of cases. The fiction[26] regarding service may be criticised for proceeding on the basis that one person may have a quasi-proprietal interest in another. Even on the assumption that the action broadly serves a desirable purpose, it might be argued that it is mistaken to provide a right of action to the parents of the seduced girl. A more radical and debatable criticism of the action is that it constitutes an unwarranted interference into private relationships between adults[27].

Seduction is a part of the law that would appear to fall within the subject of "family law", described by the Law Reform Commission in its *First Programme of Law Reform*[28] as an area for examination with a view to possible reform. It is hardly likely that it will survive close scrutiny.

Notes

1. See generally A. Shatter, Family Law in the Republic of Ireland, 91-92 (1977), J. Fleming, The Law of Torts, 638-640 (5th ed., 1977), P. Bromley, Family Law, 348-351 (5th ed., 1976).

2. In England the action was abolished by the Law Reform (Miscellaneous Provisions) Act 1970, s. 5. In Northern Ireland, the Officer of Law Reform has recently raised the question of possible abolition of the action there: *the Reform of Family Law in Northern Ireland*, paras. 49, 50 (1977). The action has been abolished in South Australia and in a minority of the United States of America and law reform agencies in Ontario and New Zealand have recommended its abolition.

3. 32 L.R. Ir. 316 (Ex. Div., 1892).

4. *Id.*, at 314. *See also Long v. Keightley*, I.R. 11 C.L. 221 (Com. Pleas, 1877), criticised in 11 I.L.T. & S.J. 525 (1877) and in the Central L.J. (of the United States), abstracted in 11 I.L.T. & S.J. 402 and 428 (1877).

5. 65 I.L.T.R. 103 (High Ct., 1931).

6. *Terry v. Hutchinson*, L.R. 3 Q.B. 599 (1868).

7. *Gladney v. Murphy*, 26 L.R. Ir. 651 (Q.B. Div., 1890).

8. *Kearney v. M"Murray*, 28 I.L.T.R. 148 (1894); *Dent v. Maguire*, (1917) 2 I.R. 59 (K. B. Div. 1916), aff'd (1917) 2 I.R. 72 (C.A., 1916); *see also Barbour v. Barron*, 28 I.L.T.R. 97 (Exch. Div., 1893) and *Hedges v. Tagg*, L.R. 7 Ex. 283 (1872).

9. *Barnes v. Fox* (1914) 2 I.R. 276 (Ct. App., 1913).

10. *Speight v. Oliviera*, 2 Stark. 493 (K.B.,1819), whose *ratio* was applied in *Flynn v. Connell*, (1919) 2 I.R. 427 (K.B. Div.) and *Connell v. Noonan*, 17 I.L.T.R. 103 (Co. Ct., Purcell, Q.C., 1883) and assumed to be correct in *Morgan v. Molony*, I.R. 7 C.L. 101, and 240 (Com. Pleas, 1873). The fact that the defendant expects the girl to perform her contractual duties as well as have sexual relations with him does not relieve him of liability. In *Flynn v. Connell, supra*, the defendant's plea along these lines was rejected by the Court.

11. *Cf. Hamilton v. Long*, (1903) 2 I.R. 407 (K.B. Div., 1902, *aff'd* (1905) 2 I.R. 552 (Ct. App., 1903), where no action lay for the seduction of a girl whose father died during her pregnancy, since she thus had not been in the service of her mother at the time of conception and the time of birth, both necessary elements in establishing "loss of service". *See also Thompson v. Fitzpatrick*, 54 I.L.T.R. 184 (K.B., Molony, L.C.J. 1920), *O'Donnell v. Neely* 74 I.L.T.R. 120 (Circuit Ct., Judge Moonan, 1940). English cases are in accord: *Peters v. Jones*, (1914) 2 K.B. 781 (Avery, J.), *Beetham v. James*, (1937) 1 K.B. 527 (Atkinson, J.).

12. *Supra*, fn. 11.

13. *Id.*, at 184.

14. *Id.*

15 Especially Articles 40, 41 and 42. The fact that in *O'Donnell v. Neely, supra*, fn 11, the Constitution was not mentioned is hardly a strong reason for contending that it is not of relevance. The Constitution had then been in force for only three years and its possible effect on family relations and personal rights had not yet been analysed in any depth.

16. *E.g. In re Tilson Infants*, (1951) I.R. 1 (Sup. Ct.), *De Burca v. A.G., 111 I.L.T.R. 37 (Sup. Ct., 1975).*

17. *Cf.* the Married Women's Status Act 1957 (no. 5), the Guardianship of Infants Act 1964 (no. 7), the Succession Act 1965 (no. 27), the Family Law (Maintenance of Spouses and Children) Act 1976 (no. 11), the Family Home Protection Act 1976 (no. 27). *See further* Binchy, *Family Law Reform in Ireland — Some Comparative Aspects*, 25 INTL & Comp. L.Q. 901 (1976).

18. *See* A. Shatter, *supra*, fn. 1, 91-92 and P. Bromley, *supra* fn. 1 350, both authors being of the view that a mother has a right of action.

19. 28 I.L.T.R. 44 (Co. Ct., Judge Overend, 1894).

20. *Id.*, at 45.

21. 77 I.L.T.R. 194 (Circuit Ct., Judge Sealy, 1943).

22. *Id.*, at 195.

23. *Id.*

24. (1906) 2 I.R. 260 (C.A.)

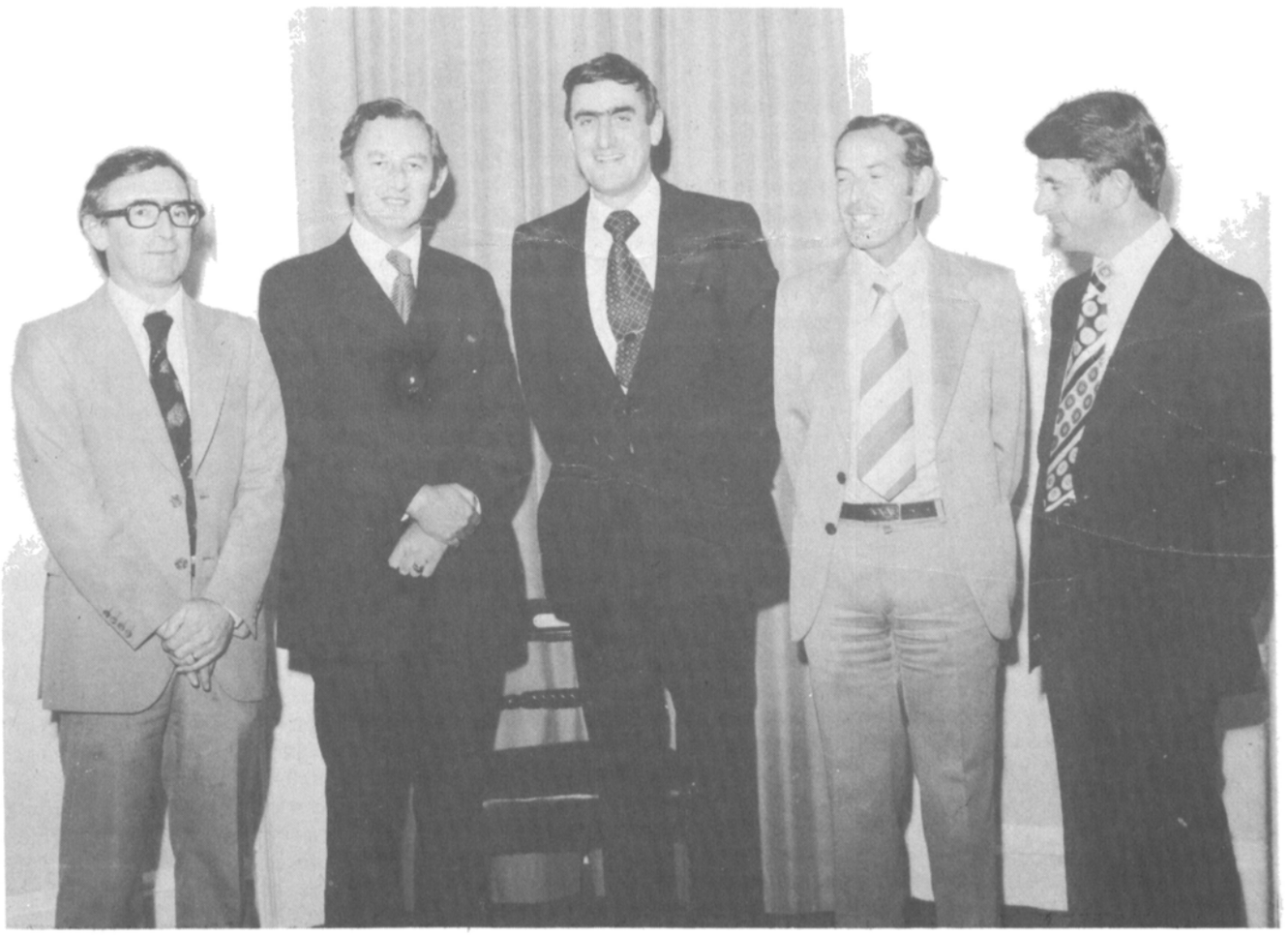
25. *Supra*, fn. 21, at 194.

26. The fictitious element of service was attacked as long ago as the turn of the century: *See Note*, 18 L.Q. Rev., at 14 (1902).

27. In the United States a decision in 1976 held that the tort of criminal conversation no longer existed, on the ground that it would constitute such an unwarranted interference: *Fadgen v. Lenker*, 2 Fam. L. Reptr. 2840 (Pa. Sup. Ct., Pomeroy, J. dissenting, 1976).

28. The Law Reform Commission, *First Programme for Examination of Certain Branches of the Law with a View to Their Reform*, para. 12, Prl. 5984, 1977).

A.C.C. PRESENTATION TO LAW SOCIETY



The General Manager of The Agricultural Credit Corporation, Mr. Michael Culligan (second from left), after having presented a cheque for £5,000 to the President of The Incorporated Law Society of Ireland, Mr. Bruce St. John Blake, (centre), for the restoration of the Law Society's new headquarters at the old King's Hospital, Blackhall Place. Also attending the presentation were Mr. Vincent Phillips (far left), Mr. Dermot Jones (second from right), and Mr. William Moore.

The President's Diary of Engagements:

8th November: Hosted/Presided at Dinner in Blackhall Place.

9th November: Attended meeting of Roscommon Bar Association Meeting in Abbey Hotel, Roscommon.

10th November: Was guest with Mrs. Blake at the Annual Dinner of the Irish Auctioneers & Valuers Institute.

12th November: Attended Annual Dinner of the Institute of Certified Public Accountants in Ireland.

15th November: Hosted/Presided at Dinner in Blackhall Place.

17th November: Chaired meeting of Presidents and Secretaries of Bar Associations in Blackhall Place. Later attended Annual Dinner of the Institute of Chartered Accountants in Ireland.

18th November: Attended Annual General Meeting of Southern Law Association, Cork. Later attended Annual Dinner Dance of the Waterford Law Society, Tower Hotel, Waterford.

22nd November: Hosted/Presided at Dinner in Blackhall Place.

23rd November: Received members of the Scottish Law Commission.

24th November: Was guest of the Chief of Staff, Major General Carl O'Sullivan for lunch at McKee Barracks. Chaired Annual General Meeting of Incorporated Law Society of Ireland. Attended Annual Dinner Dance of the Society.

26th November: Attended Annual Dinner of the Warrington Law Society.

29th November: Hosted/presided at Dinner in Blackhall Place.

1st December: Presented parchments to newly qualified solicitors.

3rd December: Attended Annual Dinner of Insurance Institute of Dublin and responded to toast of guests.

6th December: Hosted/Presided at Dinner in Blackhall Place.

14th December: Attended dinner given for him by the Law Society Council.

LAW SOCIETY NOTES

Re: Office of P. J. Kennedy & Son, Carrickmacross and Dundalk

By Order of the High Court dated the 29th July, 1977, the Society was given leave to close the offices of the firm of P. J. Kennedy & Co., Solicitors, both at Carrickmacross and Dundalk. The Society has nominated Mr. Enda O Carroll, Solicitor, Carrickmacross, to act as its agent in returning files, deeds, wills, and other papers of former clients of the above named firm to these clients or to solicitors whom they may nominate. The position is governed by the Second Schedule to the Solicitors' (Amendment) Act, 1960 and Mr. O'Carroll will hand over the papers on the Society's requirements being met.

To effect a more speedy handing over of it is suggested that solicitors representing former clients of Messrs. P. J. Kennedy & Son should apply direct to Mr. O Carroll who will notify them of the Society's requirements.

EXEMPTION FROM EQUITY EXAMINATION

The Education Committee have decided that apprentices with law degrees from an Irish University are eligible to claim exemption from Paper four, Equity, in the Second Law Examination.

COMMERCIAL LAW

Mr. Hugh M. Fitzpatrick, Solicitor, was appointed Lecturer in Commercial Law on 24th November, 1977.

SOCIETY'S EMPLOYMENT AND PROFESSIONAL REGISTER

Members, Apprentices and students are reminded that the Society is compiling a Register available for inspection at the Society's Buildings, Blackhall Place, Dublin, 7. Insertions are free, but should be made on standard forms available from the Society, on request. The categories in the Register are:—

1. Solicitors seeking employment.
2. Solicitors requiring Assistants.
3. Partnerships and Amalgamations.

The Register will be open for inspection.

LECTURES IN COMMERCIAL LAW FOR THIRD LAW STUDENTS

Mr. Hugh M. Fitzpatrick, Examiner and Lecturer in Commercial Law, will be giving a series of twelve lectures in Commercial Law for third law students commencing on Monday, 16 January 1978, on Mondays 5.00 to 6.00 p.m., and Thursdays, 2.00 to 3.00 p.m., in the Library, Solicitors' Buildings, Four Courts, Dublin 7.

Third Law students who wish to attend these lectures should register at the Law Society's offices, Blackhall Place, on 4/5 January 1978. The registration fee is £5.00. Your current registration card must be produced at registration for the above lectures.

Please note that the Society's examinations will commence on the following dates and the Closing Dates are as shown:

Examination	*Date of Commencement*	*Closing Date*
Preliminary	13/14 July, 1978	15/5/78
First Irish	11 January, 1978	14/12/77
Second Irish	12 January, 1978	14/12/77
Law Examinations	31 March, 1978	22/2/78
Accountancy	14 June, 1978	24/5/78

Entries received after 4.00 p.m. on the specified closing date will not be considered.

All Entry Forms should be accompanied by the appropriate fee as specified in the Solicitors Acts 1954 and 1960 (Apprentices Fee) Regulations, 1977, which are as follows:

Examination		*Repeat Entry*
First Irish	£7.50	£4.00
Second Irish	£7.50	£7.50
First Law (Old Regulations)	£15.00	£15.00
Second Law	£20.00	£15.00
Third Law	£20.00	£15.00
Accountancy	£7.50	£7.50

Applications received without the Entry Fees will not be accepted.

The Education Committee will only consider applications for exemption from sitting the First Law Examination from those who have entered for the examination, paid the prescribed fee and furnished the appropriate evidence of their degree qualification.

December, 1977

JAMES J. IVERS (DIRECTOR GENERAL)

COUNCIL OF SOUTHERN LAW ASSOCIATION MEETING LORD MAYOR OF CORK AT CITY HALL ON 30th SEPTEMBER, 1977

Back Row (Left to right) Grattan Roberts, Nicholas Comyn, Jeremy O'Connor, Robert Flynn, John O'Meara, Michael O'Connell.
*Middle Row:*Brian Russell, Michael Enright, John Moloney, Kevin Keone, Basil Hegarty, John Lee.
Front Row: Frank Daly, President, Southern Law Association, Ald. Gerald Y. Goldberg, Lord Mayor of Cork, F. J. St. J. O'Neill, County Registrar of Cork.
(Photo by courtesy of the Cork Examiner)

SOLICITORS' GOLFING SOCIETY

Autumn Outing—Heath Golf Club, Portlaoise 30th September, 1977

Captain's Prize: John M. O'Donnell (12) 38pts.; Runner-up, Noel O'Meara (8), 34pts. (2nd 9).
St. Patrick's Plate: A. P. Curneen (10) 35pts.; Runner-up, W. R. White (8), 34pts.
Veteran's Cup: Philip Meagher (11), 33pts.; John Bolger (14), 31pts.
Handicaps 13 and Over: P. O'Gorman (16), 34pts.; T. J. O'Reilly (15), 31pts.
30 Miles: R. P. Ballagh (7), 33pts.
1st Nine: F. Johnston (10), 17pts. (last 6).
2nd Nine: Gordon Ross (7), 15pts. (last 6).
LOT: L. Lysaght (19), 20pts.

NOTICE

Section 45, Land Act, 1965

Members should note that the Division of the Land Commission which deals with applications for consent under Section 45 of the Land Act, 1965, is now located at

Agriculture House,
6th Floor Centre,
Kildare Street,
Dublin 2.

The telephone number is (01)789011, Extension 2412.

THE REGISTER

REGISTRATION OF TITLE ACT 1964

Issue of New Land Certificate

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

Dated this 31st day of December, 1917.

N. M. GRIFFITH

Registrar of Titles

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

Schedule

(1) Registered Owner: Patrick Jospeh Corbett; Folio No.: 33841; Lands: (a) Coolatober, (b) Coolatober (1 undivided 8th part), (c) Shanballylosky, (d) Coolatober, (e) Shanballylosky.; Area: (a) 18a. 0r. 39p., (b) 59a. 1r. 0p., (c) 2a. 1r. 3p.; (d) 1a. 0r. 30p., (e) 0a. 3r. 23p. County: Roscommon.

(2) Registered Owner: Caroline Moore; Folio No.: 40807; Lands: Ballyederowen; Area: (a) 5a. 0r. 21p., (b) 10a. 1r. 0p. County: Donegal.

(3) Registered Owner: Mary McAuley; Folio No.: 4177; Lands: Ballinteskin (Part); Area: 0a. 0r. 8p.; County: Louth.

(4) Registered Owner: Charlotte Cornelie Beirens; Folio No.: 179L; Lands: A plot of ground known as 31 Malahide Road in the Parish of Clonturk and County Borough of Dublin.: County: Dublin.

(5) Registered Owner; John Murphy and Delia Murphy; Folio No: 6365; Lands: (a) Kilcurrinard; (b) Kilcurrinard (1 undivided 13th part); Area: (a) 41a. 2r. 14p., (b) 6a. 1r. 20p; County: Galway.

(6) Registered Ownere: Cornelius O'Connor; Folio No.: 19850; Lands: (a) Tonbwee, (b) Killegane; Area: (a) 16a. 2r. 21p.; (b) 14a. 3r. 8p. County: Kerry.

(7) Registered Owner: Jeremiah D. Connell; Folio No.: 2650; Lands: Rowls Longford (South); Area: 99a. 2r. 29p.; County: Cork.

(8) Registered Owner: Francis J. Doherty; Folio No. 445L; Lands: The leasehold estate in the dwellinghouse and premises known as 160 Home Farm Road situate on the south side of the road leading in Drumcondra Parish of Glasnevin and City of Dublin.

(9) Registered Owner: John Harrington (orse. Richard John Harrington); Folio No.: 4023F; Lands: (a) Newtown (Parish of Kilmurray), (b) Killonan, (c) Newtown (Parish of Kilmurray); Area: (a) 1a. 2r. 31p., (b) 15a. 2r. 2p., (c) 14a. 0r. 0p; County: Limerick.

(10) Registered Owner: Arthur Flood; Folio No.: 880; Lands: Killybandrick; Area: 33a. 1r. 2p.; County: Cavan.

(11) Registered Owner: Thomas Vincent Agnew; Folio No.: 476; Lands: Courtbane; Area: 12a. 0r. 0p.; County: Louth.

(12) Registered Owner: Michael Donohue (Junior); Folio No.: 2431; Lands: Shanbally; Area: 29a. 3r. 25p.; County: Galway. This Folio is now closed and the property therein forms the land No. 1 on Folio 30440 County Galway.

(13) Registered Owners: Philip O'Sullivan and Eileen O'Sullivan; Folio No.: 13860; Lands: Shanacloon (part); Area: 26a. 1r. 6p.; ; County: Kerry.

(14) Registered Owner: Agnes MacNeice; Folio No.: 89L; Lands: The leasehold estate in the dwellinghouse and premises known as No. 15 Verona Esplande situate on the south side of the said Esplande; County: Limerick.

(15) Registered Owner: Patrick Fennelly; Folio No.: 14400; Lands: (a) a plot of ground in part of the lands of Ralish with the cottage thereon; (b) Ralish—Area 5a. 2r. 32p.; County: Queens.

(16) Registered Owner: Michael Connolly; Folio No.: 4462; Lands: Minvard Upper; Area: 17a. 3r. 33p.; (This Folio is now closed and the property therein now forms the land No. 1 on Folio 135 f.); County: Carlow.

(17) Registered Owner: Joseph Stephens; Folio No.: 43170; Lands: Ballynamanagh East; Area: (1) 59a. 2r. 37p., (2) 0a. 0r. 26p.; County: Galway.

(18) Registered Owner: John Meer; Folio No.: 9686; Lands: Carrowreagh; Area: 21a. 2r. 20p.; County: Mayo.

(19) Registered Owner: Christabel Bielenberg; Folio No.: 7615; Lands: Money; Area: (a) 467a. 3r. 37p., (b) 3a. 0r. 2p.; County: Wicklow.

(20) Registered Owner: Mary Connor; Folio: 6260; Lands: Brownstown; Area: 13a. 2r. 27p.; County: Mayo.

NOTICES

LOST WILLS

Estate of Walter McDonnell, deceased, late of Clooneen, Cloughjordan, County Tipperary, Farmer, Deceased. Would any Solicitor or other person knowing the whereabouts of a Will made by the above deceased, who died on the 29th October, 1977, at the Regional Hospital, Limerick, please contact Patrick F. Treacy, Solicitor, Nenagh, who acts on behalf of the next of kin of the deceased.

Miss Annie Murray, The Square, Ballincollig, Co. Cork, Deceased. Would any Solicitor or other person knowing the whereabouts of the Will (if any) of Annie Murray, Spinster, of the above address, or care of her sister, Mrs. Eileen O'Donovan, Church Road, Ballincollig, who died on the 15th day of August, 1977, please contact Messrs. Gerald Y. Goldberg, Fleming & Co., Solicitors, Library House, Pembroke Street, Cork.

THE INCORPORATED LAW SOCIETY OF IRELAND

GAZETTE

DECEMBER 1977 VOL. 71 NO. 9

The President 1977/78

Mr. Joseph Dundon, Solicitor, has been elected President of the Incorporated Law Society of Ireland for the coming year. Mr. Dundon is a partner in the firm of O'Donnell, Dundon & Co., of Limerick. He has been a member of the Council of the Society since 1967, and is a former Chairman of the Society's Education Committee.

Mr. Dundon was educated at Crescent College, Limerick, Clongowes Wood College and U.C.D., and qualified as a Solicitor in 1962.

He is currently President of the Limerick Bar Association. At 36 he is one of the youngest Presidents in the Society's history, and the second Limerick man to be elected to that office, the first being Mr. Niall S. Gaffney, who was President in 1957.

Mr. Dundon is the youngest son of the late John Dundon, Solicitor, who was Law Agent to Limerick Corporation from 1915 to 1956. His brother, Mr. William Dundon is Law Agent to Dublin Corporation.

Joseph L. Dundon

Vice Presidents

Mr. Gerald Hickey, who has been elected Senior Vice-President for the coming year 1977-78, is a son of the late James Hickey, Solicitor. Educated at Xavier School and Trinity College, Dublin, Mr. Hickey was admitted in 1948. He has been elected a member of the Council since 1967, and has been a partner in the firm of Messrs. Hickey & O'Reilly (now Hickey, Beauchamp, Kirwan & O'Reilly), Dollard House, Wellington Quay, Dublin 2, since 1950.

Mrs. Moya Quinlan has been elected Junior Vice-President for the coming year. Mrs. Quinlan is Principal of Joseph H. Dixon & Co., 8 Parnell Square, Dublin 1. She has been a member of the Council since 1969 and has been Chairman of the Premises Committee since 1975. She has been a member of the Registrars and Public Relations Committees for some years.

Mrs. Quinlan is the only daughter of the late Joseph Dixon. Educated at the Dominican College, Sion Hill, Blackrock, and University College, Dublin, Mrs. Quinlan was admitted in Easter Term, 1946.

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Conveyancing: Investigation of Title

TAXATION REQUISITIONS I

by

Roderick Buckley, Solicitor

Death Duties

Death Duties are defined by Section 13 (3) of the Finance Act, 1894, and Section 30 of the Finance Act, 1971 as meaning Estate Duty, Succession Duty, Legacy Duty and certain additional stamp duties and succession duties specified in the First Schedule to the Finance Act, 1894. Section 47 of the Finance Act, 1975, abolished all of these duties with effect from the 1st April 1975. However, these duties can still be relevant where the title to a property includes a death prior to the 1st April, 1975.

Estate Duty was introduced by the Finance Act 1894 and was a tax on the principal value of all property passing or deemed to pass on the death of any person dying after the commencement of Part 1 of that Act. Estate Duty did not take account of the manner in which the deceased's property was distributed or of the relationship of the legatee to the deceased. It was simply a tax on the total value of the property changing hands or deemed to change hands on the death of the deceased.

Legacy Duty and Succession Duty on the other hand were somewhat similar to the Inheritance Tax introduced by the Capital Acquisitions Tax Act 1976 in that the rate of duty depended on the relationship between the deceased and the legatee or between the predecessor and the successor. The rate of duty was lower between close relatives, and Section 30 of the Finance Act 1965 provided that with effect from 30th July 1965 Legacy and Succession Duty would cease to be chargeable as between husband and wife or lineal ancestor and descendant.

Section 9(1) of the Finance Act 1894 gives the Revenue a "first charge" on property for the Estate Duty payable in respect of that property.

Similarly, Section 42 of the Succession Duty Act 1853 provides that Succession Duty "shall be a first charge on the interest of the successor, and of all persons claiming in his right, in all the real property in respect whereof such duty shall be assessed" and that the said duty shall be a debt due to the State from the successor having, in the case of real property comprised in any succession, "priority over all charges and interests created by him".

In effect the purchaser of any property subject to Succession Duty or Estate Duty may find himself liable to pay the duty, and it is essential therefore that the solicitor acting for any such purchaser should satisfy himself that the property is not in fact charged with Succession Duty or Estate Duty.

Section 72 of the Registration of Title Act 1964 provides that all registered land shall be subject to any claims for Estate Duty and Succession Duty affecting the land, whether those claims are or are not registered.

There are two limitations on the Revenue's charge for Estate Duty and Succession Duty:

Firstly, Section 52 of the Succession Duty Act 1853 provides that "no bona fide purchaser of property for valuable consideration under a title not appearing to confer a succession shall be subject to any duty with which such property may be chargeable under the provisions of this Act, by reason of any extrinsic circumstances of which he shall not have had notice at the time of such purchase". Similarly, the proviso to Section 9(1) of the Finance Act 1894 states that property shall not be charged with Estate Duty "as against a bona fide purchaser thereof for valuable consideration without notice". This limitation is probably not of great practical importance, as a purchaser would almost inevitably have notice of the potential claim for Estate Duty or Succession Duty.

Secondly, Section 12 of the Customs and Inland Revenue Act 1889 provides that real property, or any estate or interest therein, shall not, as against a purchaser for valuable consideration, or a mortgagee, remain charged with or liable to payment of any sum for Succession Duty after the expiration of 12 years from the happening of the event which gave rise to the claim for such duty. This Section is applied to Estate Duty by Section 8(2) of the Finance Act 1894. It is unnecessary therefore to enquire into the position regarding payment of Estate Duty or Succession Duty where the death on the title, or other event giving rise to a charge to tax, occured more than 12 years before the purchase in which you are acting.

The procedure for obtaining a certificate of discharge from Death Duties, in any case where there has been a death on the title prior to the 1st April 1975 and within the 12 years preceding the purchase in which you are acting, is set out in Section 11 of the Finance Act 1894 and Sections 51 to 52 of the Succession Duty Act 1853.

Sub-Section (1) of Section 11 authorises the Revenue Commissioners "on being satisfied that the full Estate Duty has been or will be paid in respect of an estate or any part thereof" to give a certificate to that effect "which shall discharge from any further claim for Estate Duty the property shown by the certificate to form the estate or part thereof as the case may be". Sub-Sections (3) and (4) provide that such a certificate shall exonerate "a bona fide purchaser for valuable consideration without notice", notwithstanding any fraud or failure to disclose material facts on the part of the person applying for the certificate.

Section 51 of the Succession Duty Act provides that the Revenue Commissioners will issue a Certificate of Payment of Succession Duty "to any person interested in any property affected by such duty". Section 52 of the Act then provides as follows:

> "Every receipt and certificate, purporting to be in discharge of the whole duty payable for the time being in respect of any succession or any part thereof, shall exonerate a bona fide purchaser for valuable consideration, and without notice, from such duty, notwithstanding any supression or misstatement in the account upon the footing whereof the same may have been assessed, or any insufficiency of such assessment".

A purchaser in good faith for valuable consideration can therefore place absolute reliance on an unconditional Certificate of Discharge from Succession Duty or Estate Duty and does not have to enquire into the facts behind the certificate to see whether the certificate has been properly obtained.

Conveyancers will not normally be concerned with Legacy Duty, as almost all interests in real property are subject to Succession Duty and not to Legacy Duty. Section 19 of the Succession Duty Act 1853 and Section 21(2) of the Customs and Inland Revenue Act 1888 provide that legacies of "leasehold hereditaments" or of "real or heritable estate" or payable out of "monies to arise from the sale, mortgage, or other disposition of any such real or heritable estate" will be liable to Succession Duty and not to Legacy Duty.

In any event, from a conveyancing point of view, the distinction between Legacy Duty and Succession Duty is not of any practical importance since the application which one makes for a Certificate of Discharge from Death Duties is in respect of all Death Duties as defined by Section 13 (3) of the Finance Act 1894 and Section 30 of the Finance Act 1971.

This application is made in duplicate on a Form KI which sets out the name and date of death of the deceased, whether the property passes by will or intestacy, and full details of the property in respect of which the discharge is sought. The Revenue then return one copy of the form to the applicant having completed the Certificate at the foot of the page certifying that, upon the facts as disclosed, there is no outstanding charge for death duties in connection with the death of the named person affecting the property described in the application.

The printed form of certificate at the foot of the Form KI includes a paragraph stating that in the event of a sale of the property within six years after the death of the deceased, for a price in excess of the value accepted as the value for duty, the amount of duty payable may be re-adjusted. A certificate in this form is normally issued only in cases where an immediate sale is not contemplated and the administrator merely wishes to satisfy himself that the full duty has been paid, subject to the Revenue's right to re-open values within six years. Where a certificate is intended to be absolute, this paragraph is deleted by the Revenue. It is of course essential to the purchaser that the paragraph should be deleted and that the certificate of discharge should be absolute or unconditional.

CAPITAL ACQUISITIONS TAX

The Capital Acquisitions Tax Act 1976 introduced two new taxes, to be called Gift Tax and Inheritance Tax.

Under Section 5 of the Act a person is deemed to take a gift when he "becomes beneficially entitled in possession, otherwise than on a death, to any benefit . . . otherwise than for full consideration in money or money's worth paid by him". Section 4 of the Act provides that a gift is taxable if the date of the gift is on or after the 28th February 1974, the date of publication of the Government White Paper on Capital Taxation.

Under Section 11 of the Act a person is deemed to take an inheritance when he "becomes beneficially entitled in possession on a death to any benefit . . . otherwise than for full consideration in money or money's worth paid by him". Section 10 of the Act provides that an inheritance is taxable if the date of the inheritance is on or after the 1st April 1975.

There can be a liability to inheritance tax in respect of a death prior to the 1st April 1975 if a person becomes beneficially entitled in possession to a benefit on or after the 1st April 1975. An example would be where a person died in 1970 leaving all his property on discretionary trust and the trustees appointed property to a beneficiary in 1977.

If a donor dies within two years after making a disposition, any benefits taken under that disposition are deemed to be inheritances and not gifts.

Section 47 of the Capital Acquisitions Tax Act gives the Revenue a charge over property comprised in a taxable gift or inheritance and the Section is in somewhat similar terms to the corresponding Sections governing Estate Duty and Succession Duty. Sub-Section (1) of Section 47 provides as follows:

> "Tax due and payable in respect of a taxable gift or a taxable inheritance shall . . . be and remain a charge on the property . . . of which the taxable gift or taxable inheritance consists at the valuation date and the tax shall have priority over all charges and interests created by the donee or successor or any person claiming in right of the donee or successor or on his behalf".

Sub-section (2) provides that the property shall not "as against a bona fide purchaser or mortgagee for full consideration in money or money's worth, or a person deriving title from or under such a purchaser or mortgagee, remain charged with or liable to the payment of tax after the expiration of twelve years from the date of the gift or the date of the inheritance".

Sub-Section (3) provides that the tax shall not be a charge "as against a bona fide purchaser or mortgagee of such property for full consideration in money or money's worth without notice, or a person deriving title from or under such a purchaser or mortgagee".

Section 48 deals with the issue of receipts for Capital Acquisitions Tax and certificates of discharge from the tax. Sub-Section (3) provides as follows:

> "The Commissioners shall, on application to them by a person who is an accountable person in respect of any of the property of which a taxable gift or taxable inheritance consists, if they are satisfied that the tax charged on the property in respect of the taxable gift or taxable inheritance has been or will be paid, or that there is no tax so charged, give a certificate to the person, in such form as they think fit, to that effect, which shall discharge the property from liability for tax (if any) in respect of the gift or inheritance, to the extent specified in the certificate".

Sub-Section (4) provides that such a certificate shall not discharge the property from tax in case of fraud or failure to disclose material facts provided however that the certificate shall nevertheless exonerate from liability a bona fide purchaser or mortgagee for full consideration in money or money's worth without notice of such fraud or failure and a person deriving title from or under such a purchaser or mortgagee.

The effect of these Sections is that in any case where there is a death on the title on or after 1st April 1975 and within twelve years prior to the purchase with which you are concerned, it will be necessary to obtain a certificate of discharge from Inheritance Tax. A certificate will also be required in respect of deaths prior to the 1st April 1975 if a person has become beneficially entitled in possession to a benefit otherwise than for full consideration in money or money's worth on or after 1st April 1975 and within the twelve years preceding the purchase. Where there has been a gift inter vivos on or after 28th February 1974 and within twelve years prior to the purchase, a certificate of discharge from Gift Tax will be required.

A transfer of a residence or other property from one spouse as sole owner to both spouses as joint tenants or

tenants in common in consideration of natural love and affection would be an example of a transaction in respect of which a certificate of discharge from Gift Tax would be required. This applies no matter how small the value of the property may be, as the purchaser cannot be certain that there have not been previous taxable gifts sufficient to exhaust the tax-free threshold between the spouses.

It should be noted that there can be a liability to Gift Tax in any case where full consideration has not been paid by the donee, even though there may have been no intention on the part of the donor to benefit the donee. A sale at an undervalue, which both parties mistakenly believe to be the true market value, would give rise to a charge to Gift Tax. In some cases there will be nothing on the title to alert a purchaser to the fact that an earlier sale was at an undervalue. Under Section 47(3) of the C.A.T. Act the purchaser, not having been put on notice of the gift, will take the property free of the charge to C.A.T. However, it is necessary to be careful in any case where there has been a sale between close relatives. The Stamps Branch of the Revenue Commissioners will normally require a conveyance or transfer between close relatives to be adjudicated. In many cases they will maintain that the market value is greater than the sale price, and stamp duty will be payable at 1% on a consideration greater than the consideration stated in the conveyance or transfer. Such a conveyance or transfer will therefore be one under which the transferee becomes entitled "otherwise than for *full* consideration in money or money's worth paid by him" and will give rise to a charge to Gift Tax. It is essential therefore that any subsequent purchaser should obtain a certificate of discharge from Gift Tax.

In all cases the Vendor's Solicitor applies for a certificate of discharge by completing in duplicate a form C.A.11. This form gives full details of the property comprised in the gift or inheritance and specifies the nature and date of the disposition (e.g. will or deed of appointment) under which the benefit was taken. The application is for a discharge from capital acquisitions tax, and the applicant does not have to specify whether gift tax or inheritance tax is the relevant tax. The Revenue then return one copy of the form C.A.11 to the applicant, having completed the certificate at the foot of the form that on the facts as disclosed there is no outstanding charge for gift/inheritance tax (as appropriate).

As in the case of death duties, the printed certificate of discharge from gift/inheritance tax at the foot of form C.A. 11 reserves the right of the Revenue to readjust the taxable value in the event of a sale or compulsory acquisition, although in this case the right applies only if the sale or compulsory acquisition takes place within three years from the date of the gift or inheritance.

In addition, if the property comprised in the gift or inheritance included "agricultural property" to which "agricultural value" applied under Section 19, the certificate reserves the right of the Revenue to re-adjust the taxable value in the event of a sale or compulsory acquisition within six years from the date of the gift or inheritance. The reference here is to the relief given by Section 19 of the Capital Acquisitions Tax Act, which reduces by the lesser of 50% or £100,000 the taxable value of a gift or inheritance taken by an individual who qualifies as a "farmer" under the Section. The relief is lost and the full amount of tax becomes payable if the agricultural property is sold or compulsorily acquired within six years after the date of the gift or inheritance and is not replaced by other agricultural property within one year of the sale or compulsory acquisition.

The Solicitor for the purchaser must ensure that the Revenue have deleted these paragraphs from the certificate and that the discharge from Capital Acquisitions Tax is absolute or unconditional.

(Part II of this Article, which will appear in the next issue, will deal with Wealth Tax and Capital Gains Tax.)

ACTS OF THE OIREACHTAS, 1977

No.	*Name of Statute*	*Signed by President*
1.	Local Government (Water Pollution) Act	19 March 1977
2.	Health Contributions (Amendment) Act 1977	21 March 1977
3.	Social Welfare Act 1977	21 March 1977
4.	Bula Limited (Acquisition of Shares) Act 1977	29 March 1977
5.	European Communities (Amendment) Act 1977	29 March 1977
6.	Worker Participation (State Enterprises) Act 1977	4 April 1977
7.	Protection of Employment Act 1977	5 April 1977
8.	Intoxicating Liquor Act 1977	5 April 1977
9.	Protection of Young Person (Employment) Act 1977	6 April 1977
10.	Unfair Dismissals Act 1977	6 April 1977
11.	Courts Act 1977	10 May 1977
12.	Misuse of Drugs Act 1977	18 May 1977
13.	National Agricultural Advisory, Education and Research Authority Act 1977	24 May 1977
14.	Prisons Act 1977	24 May 1977
15.	Oil Pollution of the Sea (Amendment) Act 1977	1 June 1977
16.	Employment Equality Act 1977	1 June 1977
17.	Friendly Societies (Amendment) Act 1977	1 June 1977
18.	Finance Act 1977	1 June 1977
19.	Breton Woods Agreement (Amendment) Act 1977	1 June 1977
20.	Industrial Credit (Amendment) Act 1977	9 Nov. 1977
21.	Export Promotion (Amendment) Act 1977	9 Nov. 1977
22.	Telephone Capital Act 1977	9 Nov. 1977
23.	Dairy Produce (Miscellaneous Provisions) (Amendment) Act 1977	9 Nov. 1977
24.	Garda Siochana Act 1977	15 Nov. 1977
25.	National Board for Science and Technology Act 1977	16 Nov. 1977
26.	Control of Exports (Temporary Provisions Act 1956) (Continuance) Act 1977	30 Nov. 1977
27.	Ministers and Secretaries (Amendment) Act 1977	6 Dec. 1977
28.	Ministers and Secretaries (Amendment) (No. 2) Act 1977	6 Dec. 1977
29.	Oireachtas (Allowances to Members) and Ministerial, Parliamentary and Judicial Officer (Amendment) Act 1977	8 Dec. 1977
30.	European Assembly Elections Act 1977	9 Dec. 1977
31.	Companies (Amendment) Act 1977	12 Dec. 1977
32.	Finance (Excise Duty on Tobacco) Act 1977	20 Dec. 1977
33.	Gaeltacht Industries (Amendment) Act 1977	20 Dec. 1977
34.	International Development Association (Amendment) Act 1977	20 Dec. 1977
35.	Nitrigin Eireann Teoranta Act 1977	20 Dec. 1977
36.	Appropriation Act 1977	21 Dec. 1977
37.	Industrial Development Act 1977	21 Dec. 1977

Private Acts — None

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

COMPETITION

Case 59/77—**Etablissements A. De Bloos S.p.r.l. v Bouyer, Société en Commandite par Actions**—Reference for a preliminary ruling—14 December 1977—*Competition—Exclusive sales agreement.*

The Cour d'Appel (Court of Appeal), Mons, referred to the Court of Justice for a preliminary ruling a series of questions on the interpretation of Article 173 (application for annulment), Article 177 (reference for a preliminary ruling), Article 85 (3) (competition) and Regulation No. 67/67 (block exemption).

These questions have been raised in the context of a dispute between the grantee of an exclusive sales concession (De Bloos) and the grantor undertaking (Bouyer) concerning dissolution and an order to pay damages for non-performance of a contract relating to an exclusive sales concession for power-driven cultivators and similar vehicles, in particular for Belgium and the Grand Duchy of Luxembourg, a dispute in which the grantor undertaking alleges in its defence that the contract in question is void because it is incompatible with Article 85 of the Treaty.

Bouyer contests the classification of this contract made by the Commission in its letter of 29 April 1969, according to which that contract is an exclusive dealing agreement which could be granted block exemption within the meaning of Regulation No. 67/67.

The fourth question referred by the national court, which envisages the possibility that the Commission made a mistake in 1969 in considering that the agreement in question could be granted block exemption, asks whether such an agreement may be recognized as provisionally valid because it has been notified and what the effects of such validity are.

The Court, in reliance upon its previous case-law (Case 48/72, **Brasserie de Haecht v. Wilkin-Janssen** [1973] ECR 77 and Case 10/69, **Portelange v. Marchant** [1969] ECR 309) found that although the fact that such agreements are fully valid may possibly give rise to practical disadvantages, the difficulties which might arise from uncertainty in legal relationships based on the agreements notified or exempted from notification would be still more harmful.

Old agreements may not only benefit from exemption retroactive even to the period before their notification but in addition those provisions thereof which were incompatible with Article 85 (1) and could not benefit from Article 85 (3) may be regularized retroactively from the date on which they are amended for the future at the Commission's request. Such a system cannot be reconciled with a power for the courts to find that an agreement is void during the period from notification thereof to the date on which the Commission takes a decision.

The Court accordingly held that during the period from notification to the date on which the Commission takes a decision, the courts before which a dispute is brought relating to an old agreement duly notified or exempted from notification must give such an agreement the legal effects attributed thereto under the law applicable to the contract and that those effects may not be called in question by any objection which may be raised concerning its compatibility with Article 85 (1).

The first two questions referred essentially to proceedings contesting, by recourse to Article 177 of the Treaty, the validity of a decision by a Community institution addressed to an individual, the legality of which decision is contested by a party which is out of time as regards an application for annulment under Article 173.

As it follows from the answer given to the fourth question that an old agreement duly notified or exempted from notification, even if it was wrongly considered by the Commission as benefitting from a block exemption within the meaning of Regulation No. 67/67 and as therefore not needing to be subject to an individual decision of exemption, continues to be valid until the date on which the Commission has taken a decision on the basis of Article 85 and Regulation No. 17, it follows that the fact that such an agreement is in accordance with Article 85 may not be called in question before the national courts during this period, and that the first two questions do not require a reply.

As for the third question concerning the effects of Regulation No. 67/67 after 31 December 1972, it has also become purposeless.

Louis Edmond Pettiti

The election of Louis Pettiti as Batonnier (President) of the Ordre des Avocats of the Paris Bar has particularly delighted the Irish Section of the International Lawyers of Pax Romana.

Me Louis Pettiti has held a leading role in international organisations, which has benefitted the prestige of the French Bar as well as European Bars. As President of the International Movement of Catholic Jurists (Pax Romana), he has been one of the most ardent defenders of the Rights of Man during his various observer missions. In that capacity he was Chairman of the Congresses held in Dublin in 1963 and in 1976. He has also directed or taken part in Pax Romana Congresses in Latin America, Africa (Senegal), and Asia (India, Ceylon and Thailand), where the themes have concerned Fundamental Rights.

As Secretary-General of both the Association of European Jurists and of the International Federation for European Law (first period), he was one of the pioneers of instruction in Community Law. Me Pettiti is also a member of the Union Internationale des Avocats since 1950.

Me Pettiti is well known to the Irish delegation to the Commission Consultative des Barreaux de la Communaute Europeenne where, as a member of the French delegation, he has submitted many reports and drafts relating to the provision of services and establishment of lawyers in the European Community.

Me Pettiti became a member of the Council of the Ordre des Avocats of the Paris Bar in 1967. He was elected Vice-President of the Criminal Law Court Section of the Paris Bar and was Deputy Batonnier of the Paris Bar during 1977.

President Pettiti delivered a magnificent address on Human Rights before a selective representative gathering of French and European Lawyers in the Palais de Justice, Paris, on the occasion of his inauguration as President (Batonnier) on 28 January, 1978, for which he was applauded for more than three minutes. It is hoped to publish an English translation of the text of this address in the March, 1978, *Gazette*.

C.G.D.

Congress of Catholic Lawyers, Dublin, 28 August-3 September 1976

Church, Christian Lawyers and Human Rights

By Maitre Louis-Edmond Pettiti
President of the International Association of Lawyers of
Pax Romana and Batonnier (President) of the Paris
Bar Council (1978-79)

Historical references

The years 1935 and 1945 marked turning points in the new approach by the Church to human rights on the level of definition. The terms *Church, lawyers, human rights* have only been related to each other for a few decades and only appeared lately in theological and juridical literature. The importance of the Universal Declaration of 1948 contributed much to strengthening this tendency.

Of course the Old Testament and the Gospels brought to the world the message of the liberation of man through salvation, the protection of the dignity of men and women and particularly of the humble ones. The Church has never ceased to be the institution which defends the oppressed.

Vittoria and Las Casas were the great doctrinarians of the safeguarding of Fundamental Rights. But the vigilance of many Christian lawyers lessened during the 19th century. They accommodated themselves, alas, to slavery and racism.

The Church continued its action on the theological levels and that of distributive justice and left to laymen the task of positive law, showing by its charitable action its inclination towards the poor and the oppressed. Stimulated by the ICOs and in particular by Pax Romana since 1921, a deepening reflection was made on human rights first in relation with the League of Nations, then with the UN.

Popes Pius XII and Paul VI marked their pontificates by the insertion of the Church in the body of international institutions. From then on the Church became through its congregations and commissions the instrument of juridical promotion of human rights.

The Universal Declaration had the merit of incorporating civil, social and political rights in the international thematic schema. The progression was retarded by uncertainty on the part of lawyers as to the identification of fundamental rights and by the refusal by the government members of the UN beginning in 1957 to create international penal jurisdiction.

Two international institutions, the European Economic Community and the Council of Europe had great merit in creating supranational jurisdictions but they cannot yet come to agreement on the content of the fundamental rights.

Question for Christian Lawyers

In this perspective what should be the attitude of Christian lawyers toward this field of action?

— That of a Christian, a believer who in his task of information takes into consideration first of all the fate of the victims regardless of their appurtenance and of those who accuse and those who defend them.

— An attitude which in the experience of his mission of aid does not hesitate over the origin of temporary allies even if he knows they act with the intention of gaining glory for their party. It is better to act along with those whose orientation one suspects than not to act. Not to take a decision is already a political act. (Ph. Potter).

Errors of vision

The tragic lessons of the First and Second World Wars have accustomed us to class those responsible for genocide, torture and repression by categories and governmental and political systems. The result has been the temptation to attribute all the responsibility to belonging to a particular nation or having a particular political option, and only to see as cause of the violation one's integration into such a system.

Undoubtedly a reading of the history of repression can be made with political philosophies and their intrinsic perversions as a starting point; in the hierarchy of causes, a will to power on the part of the State apparatus is primary. But not to go beyond this leads us to a systematization which calls a halt to all reflection.

We contemplate the torture in Latin America and in the Goulag with the same detachment as we read the Marian chronicles by Bradbury. For us the torturers and tortured are "others". They belong to another sphere.

Added to this there is a certain, possibly unconscious, racism. It is because these are other peoples that such aberrations are possible, and we forget that we have witnessed similar horrors at certain periods of our history without having the heroism to fight against them.

The third error consists of limiting our efforts to setting up an inventory and a catalogue of the violations and tortures, of deploring them and publishing a few communiqués.

New aspects of the problem of torture

But the evolution of torture, the development of the science of human rights, the participation of lawyers believing in the new development have revealed some very different aspects of the phenomenon.

In many countries the practice of violence and torture have lost their alibi of so-called momentary justification, supposedly necessary for immediate security reasons or to uncover proofs. Torture develops independently of its police or political utility.

— The technique tends toward "clean torture" which leaves no physical traces—sensorial privation or isolation being one of these procedures and psychiatric internment being most typical.

— Violence clothes itself in scientific research and uses depersonalization procedures even beyond the need to psychically eliminate the opponent.

— The participation of doctors in the application of treatment and in the perpetration of violence is increasingly frequent.

— The number of men implicated in the system of torture or internment is growing. The torturers belong to all social classes and quickly descend from behaviour becoming to a citizen above all suspicion to that of a sadist. In the past these men were not torturers.

— Elimination of opponents sometimes replaces detention and torture.

These facts are neither unknown nor distant. Even during a non-crisis period in our western countries

psychiatric internment is sometimes arbitrary and often dissimulates elimination of the elderly and the permanent poor.

In each country, part of the population is vulnerable and can, if certain events occur, secrete its own torturers within a very short lapse of time.

Tasks for lawyers of information and knowledge

Lawyers who are believers or who follow a humanist philosophy have a primordial task of information and knowledge, followed by that of denunciation and accusation. Action can develop on three levels:

(1) On the legislative and juridical level in the preparation of work on these problems, the elaboration of conventions, propaganda in favour of international instruments and treaties as safeguards. The practical experience of the European Court of Human Rights is exemplary. It has led several member countries of the Council of Europe to modify their penal legislation so that it accords with the Convention on Human rights.

(2) On the level of public life, the lawyer should take on the particular mission of influencing governmental power. Supranational jurisdiction cannot alone assure controls and sanctions. A State which knows about and covers up the facts of torture or internment is not respecting its own legal texts forbidding such practices. Political weight is such that even where judges and lawyers are independent they cannot call a halt to the installation of torture. The examples are numerous since 1950. The same is true in democratic countries in periods of crisis or peril, in which procedures of exception are started. Obviously, the governments oppose their sovereignity and public order to any control in their administration of justice, even more so when it is a question of violation of fundamental liberties.

(3) Another orientation can be proposed, that of concerted pressure by lawyers and their organizations to bring three western European countries to accept in a Treaty of the Benelux type that in times of peace they would give over their jurisdiction on all cases of police violence to a co-signing government. (See Criminal Law (Jurisdiction) Act 1976).

Such a Convention would have value as an example and could have considerable influence internationally and if necessary be incorporated in a system of application of pacts ratified by the United Nations, the Convention of Helsinki, the Convention for the safeguarding of Europe.

No progress can be made if the abandoning of sovereignty and of the privilege of jurisdiction is not decided *before* the phenomenon of repression is begun, with its fatal consequences of collusion between the authorities and the civil employees responsible for the abuse. Previous acceptance avoids for governments the humiliation of confession and submission.

Presence of Christians in the struggle of human rights

The International Movement of Catholic Lawyers is in relation with laymen in various socio-professional milieux particularly in America and Europe and can measure the real impact of problems concerning human rights better than an official representative.

A new factor has given Human Rights a universal and philosophical dimension. They are identified with the combat for ideals and justice, at a moment when moral principles and beliefs are disappearing as motivations for the young. Young people now tend to show their desire for commitment and their thirst for the absolute by entering into the struggle to safeguard fundamental rights and liberties and against governmental torture and violence. A "quasi-religion" has grown up around Human Rights. Marxists and leftist movements have been able to "recuperate", in part, these tendencies when they noticed the importance the mass-media and the press put on this aspect of social and political life.

Sensitivity was even more accentuated in countries where those responsible for the violations on the humanitarian level were also directors of the dominant economic powers and used their religion to justify their policy.

The hierarchy and the diplomatic circles have not always taken public position in order not to provoke greater persecutions in some countries and to protect the silent Churches.

It was thus up to laymen, and to lawyers and trade union leaders in particular, to "take over the field" and to manifest the presence of Christians in the struggle against torture and injustice, without which, in the event of a change of regime the ex-opponents belonged to extremist groups alone and identified the Christians with the oppressors.

Observation missions and press conferences have given wide publicity to these actions which were preceded by heroic witness by bishops and priests.

Concerning collaboration with non-Christian groups, it was judicious for Catholics to join with all those who worked in favour of Soviet Jews and participate in the campaign of the Sakharov and Plioutch committees, if only to compensate for the silences of yesterday. The passivity of Christians in former years has brought into the forefront the action carried on by non-believers. Today the picture is changing and the International Organizations have noted that in certain countries the Movement of Catholic Lawyers is the only one able to complete missions (Uruguay, Argentina), for the governments' propaganda has already discredited Amnesty International and the Association of Democratic Lawyers.

Positive action habilitates the credibility of the Church's proclamation in favour of justice and the poor. The intervention becomes indispensable when it is a question of exposing the oppression practised by politicians who have the effrontery to point to their adherence to the Church in order to excuse violence perpetrated against Communists and other opponents. This action is all the more necessary to bring an end to the confusion between tyrants and so-called Christians. Authoritarian governments understand the importance of this action since they try to label all Christian opponents as Marxists or Fascists in order to eliminate them.

We should not be spectators in the theatre of violence and torture. By our silence to a certain extent we are in fellowship with our torturers. We should show our solidarity with victims through actions in depth at the assistance level as well as the juridical and institutional levels in liaison with communities and parishes.

We will thus be worthy of being the salt of the earth and will not let hope be buried.

L. Pettiti

FEDERATION OF PROFESIONAL ASSOCIATIONS

Address by the President to the Association's Annual General Meeting

5th May, 1977

Ladies and Gentlemen, Professional Colleagues:

We meet tonight at the Annual General Meeting of the Federation of Professional Associations — a grouping of fourteen Assoications representative of the Professions. Several other groups are interested in joining us, some have left.

What do we represent? By definition we represent professionalism. Professionalism is understood in varying ways in society. To some it represents people in certain occupations who by reason of their occupation achieve a high status. To others it represents membership of an elitist group — a closed shop — membership of which guarantees high financial awards. Some see the professions as secure well-paid employment to be attained by their children, if not by themselves. And yet others see paternalistic groups of nineteenth century origin, irrelevant in today's world. To such a latter group professionals must seem antisocial, and if not to be removed, then surely to be left to themselves to eventually become extinct.

Where does the truth lie? I do believe that there is value in reaffirming the strengths and values of professionalism at this time, when there is so much unclear and incorrect thinking around on the subject. In a society dominated by economic measurement — where the Gross National Product is taken to represent our well-being — where wage increases are expected to solve the problems of workers — where financial awards go to those who produce, irrespective of the need of society for the goods produced — where do we, who offer a personal service, fit? How can our service be measured? Does it have to be related to the Gross National Product? I'm sure that there are some who would attempt to do so — but what we represent does not come off a conveyor belt, and cannot be measured that way. And while some of our Associations may have been founded in the nineteenth century, what we represent is much older than that. From time immemorial men and women have used their skills in the service of other members of the group. Christianity sought to reinforce the value attributed to such service, and in the nineteenth century Professional Associations were formed to re-define professional service relationships and support those who chose to adopt them.

We professionals offer a service within the boundaries of our own discipline. Each professional group guarantees the competence of its members to perform the tasks particular to its discipline. Each member of a professional group subscribes to an ethical Code. The combination of competence and ethical code support the professional person in his task performance. The professional person in turn is enabled to be 'task orientated'. This then is the essence of the service we offer. This is what we mean when we say that we give 'objective' advice. We mean that our advice is governed by the task — by the problem in hand — and not by reasons of comfort for ourselves, whether that comfort is gained by financial remuneration or otherwise. This is not 'pie-in-the-sky' thinking: this is real. While we must be as concerned as anyone to achieve a measure of comfort, while on the job, this is not our prime motivation.

Our professional groups give us an authority structure. An authority structure occurs when members can define their roles and can work collectively in pursuance of the task. I believe that each of us could benefit by being a lot clearer about the roles we take in pursuance of different tasks, whether our role is that of member of a particular profession, that of citizen, that of golf club member, or that of church member. Not that I am suggesting that one should bring less than the whole person to any task, just that one should be clear what each task is and which of one's skills might be called upon. The maintenance of the authority structures of our professional groups is dependent on capability to define our roles and to work collectively in pursuance of the task.

Situations will arise which put us under stress — both individually and collectively. Under stress we can use our energy solely for survival — developing power tactics rather than maintaining our authority by working at the task. Those operating within an authority structure need not be afraid of conflict, because they can learn how to use it. They can bring to the conflict their own capacities to achieve common goals. A power network can develop when, in attempting to avoid conflict, our energies are diverted from the performance of the task and in the resultant conflict of interests hostile relationships can develop and can be used for the destruction of other parties. On the other hand, an authority structure represents an efficient use of power — that power being our own personal abilities and capacities.

Having established our authority, we might look at our professional relationships. Those relationships which belonged to long-standing forms of service have on the whole been well thought out — and our various Codes of Professional Conduct reflect collective experience. However, many of us find ourselves working within new systems or relatively new systems. Very many of us find ourselves in salaried employment. Many of us find ourselves working in commercial concerns. How are our professional colleagues supporting us in our task performance? Are we keeping our colleagues informed about the kind of stress we experience? Or have our energies been diverted into survival tactics? Can we learn how to use conflict, by together using our power, our capacities, within our authority structure to achieve our common goal — in our case the maintenance of our professional standards.

Again, how are our relationships with our fellow professionals? Sometimes our fellow professionals will be our employers or our employees. Sometimes we may be their client. Sometimes the relationship may not be very close. But in all cases, do we allow them maintain their authority? Or do we introduce power tactics because we are experiencing stress — thereby undermining their authority. Our authority depends on an acceptance of the inter-dependence of our relationships. Power tactics breed a hostility in which we use our capacities inefficiently. We may achieve an objective outside the authority structure. Our achievement must destroy other interests — and in the long term we have a dependency on those other interests. This can apply to the employing professional person who keeps a professional employee in an immature dependency and thereby de-skills him. It can apply to the employee who puts his capacities either into stealing his employer's clients, or conversely meets his employer's supposed wishes, rather than in either case using his capacities in the performance of the given task.

It can apply to those professional people who work together in close relationship within complex and often large organisations: because of difficulties in the performance of a professional task, the temptation is to project one's distress on to others and thereby undermine their capacity to perform their task. What is required is a shared definition of authority — not the use of either authoritarianism or immature dependency. If we cannot come to a shared understanding of our boundaries — we cannot possibly maintain the authority necessary to our professionalism.

The importance of a grouping of the representatives of different Professional Associations, such as the Federation, is that it gives us the Forum within which we can come to definitions of our inter-dependent boundaries, to a definition of our shared professionalism, and to common policy in our relationships with outside bodies. Definitions of our inter-related and inter-dependent boundaries allow those with working relationship to maintain their authority in their performance of their different tasks. Definition of our shared professionalism supports each of us in the maintenance of our professional standards and thereby reinforces the value of professionalism as such. Having come to such shared definitions, we can then develop common policy through the combination of our skills and within the authority structure of a shared task. Common policy would allow us to properly take up our place in society.

It is noticeable that other groups have been able to come to definition of their common aims much earlier than we. Perhaps our concern to maintain the importance of individual responsibility has slowed our efforts to say so with one voice. The Irish Congress of Trade Unions is established as the central authority of the trade union movement a long time. Congress has no authority in the internal affairs of member unions — yet it can represent the Trade Union movement in its relationships with Government and Employer organisations. The Federated Union of Employers represents management in industrial relations in industry and business. The Irish Farmers Association represents farmers within the State and abroad. The members of these groups do not forego their individual aspirations or responsibilities by belonging to the group. They can develop authority structure by the definition of common tasks and by taking roles in the pursuance of those tasks.

Professional people have authority structures within their own Professional Associations — why are we so slow to define our common goals as professional people? When we find ourselves ignored by Governments — is our reaction to waste talents in survival activities, with the accompanying inevitable hostilities and destruction, or can we reassert our authority by agreeing a definition of the particular task in hand and using our many capacities in pursuance of that task? Unfortunately, in my short experience of this Federation, member Associations have shared very little of themselves. The Federation seems to be regarded as a cheap insurance policy — it might never be needed but better keep it there in case of future difficulties. This keeping the FPA in limbo does great disservice to the cause of professionalism — it neither allows the FPA develop a proper authority structure, nor kills it off to allow an alternative arrangement to develop. I put it to you that such activity represents unprofessional behaviour. If professionalism is seen by society to be irrelevant, or even anti-social — we have only ourselves to blame.

But, unfortunately, we bear a responsibility not only to ourselves, but also to society. We are the privileged few who have had opportunities to take up occupations which bring a larger measure of personal satisfaction, which have allowed us take personal responsibility for our actions, and in which human values predominate. We have experience which can be of much value to a society as yet capable of organising itself into fairly sub-divisions: whether these be the Employer/Labour Conference or the Party in Power and the Party in Opposition. What we represent is Diversity organised. We represent the delegation of authority in the pursuance of common aims without the loss of a keenly-felt personal responsibility. We have a responsibility to offer society the example of such authority — both personal and collective. Society is interested.

Communities are struggling with the need to find expression for their individual and neighbourhood identities and responsibilities within existing structures. Churches are struggling with the need to express anew individual and group relationships. Both employers and employees are struggling to find new structures which will allow the development of human potential. Can we affirm our authority, take on the task and give society the benefits of our insights and experience? If we do, there is no doubt that it is we who will ultimately benefit — we who will ultimately be seen to be relevant.

Nuala Kernan, President.

DUBLIN SOLICITORS' BAR ASSOCIATION
District Court No. 1, Morgan Place

District Justice Donnelly, on 8th December 1977, made a Ruling intended to assist Solicitors practising in his Court.

Henceforth, all applications for substituted service of all documents in Justice Donnelly's Court, including Civil Processes, Examination Orders, Instalment Orders and Committal Summonses, will be taken on the first Thursday of each month at 10.30 a.m.

On these dates, all appropriate Civil Bill Officers will be required to attend.

The object of this Ruling is to overcome the difficulty of securing the attendance of Civil Bill Officers who, heretofore, may have been called to attend in Court at least three times a week.

Urgent applications will, as usual, be dealt with at the sitting of the Court on any day.

Justice Donnelly's initiative in this respect is much appreciated and, if the scheme works as well as is hoped, the Bar Association will suggest to the other Justices in the Area that they should make similar Rulings.

LAW REFORM COMMISSION

REPORT ON LAW RELATING TO AGE OF MAJORITY AND AGE OF MARRIAGE

SUMMARY OF PROPOSALS

6.1 This chapter contains a summary of the various proposals that have been made in the Working Paper. The General Scheme of a Bill to implement these proposals and to make certain consequential changes in the law forms Chapter VII.

6.2 The proposals are as follows:

(1)The age of majority should be reduced to 18 and a person under that age should reach majority on marriage. (Paragraphs 2.38 and 2.45).

(2) The term "minor" (instead of "infant") should in future be applied to a person who has not reached majority. (Paragraph 2.38, but see also Note to section 5 of the General Scheme of a Bill in Chapter VII.

(3) The "free age for marriage" should be the same as the age of majority. There should also be "a minimum age for marriage" which could be the same as the "free age for marriage" *or* there should be an "absolute minimum age for marriage" (16) and a "consent age for marriage" (16 to 18). The General Scheme of the Bill is drafted on the basis of the letter option. (Paragraphs 4.2, 4.48 and 4.54).

(4) On the basis of an "absolute minimum age" (16), the marriage of a person under that age should be made null and void and intrinsically or essentially invalid. The marriage of a person during the "consent age for marriage" (16 to 18) should also be made null and void and intrinsically or essentially invalid, unless the consent of the parents or of a Court or other appropriate authority is first obtained. (Paragraphs 4.2, 4.55 and 4.56).

(5) The time at which a person attains a particular age expressed in years should be the commencement of the relevant anniversary of the date of his birth. (Paragraphs 5.3 to 5.7).

(6) The legislation reducing the age of majority should ensure that an order for maintenance may be made under the Illegitimate Children (Affiliation Orders) Act 1930 or under section 11 of the Guardianship of Infants Act or under the Family Law (Maintenance of Spouses and Children) Act 1976 for the benefit of a child receiving full-time education until that child reaches the age of 21. In addition, the age of 18 should be substituted for the age of 16 in the 1930 and 1976 Acts and also in the Social Welfare (Supplementary Welfare Allowances) Act 1975. (Paragraph 5.22).

(7) Legislation reducing the age of majority to 18 years should provide that the payments made under the Social Insurance and Assistance Services (other than children's allowances) provided by the State should continue in respect of a child receiving full-time education at a school, college, university or other educational institution until that child reaches the age of 21. (Paragraphs 5.26 to 5.28).

(8) If the age of majority is reduced from 21 years, the qualifying age for a blind pension should be similarly reduced. (Paragraph 5.30).

(9) The jurisdiction over the person or estate of a ward of court should cease when he or she reaches the new age of majority. (Paragraph 5.35).

(10) If the age of majority is reduced to 18 years, the definition of child in section 3 of the Adoption Act 1952 should be amended so that the reference to twenty-one years becomes a reference to the new age of majority. The minimum age requirement for certain prospective adopters should be changed from 21 years to the age of majority. (Paragraphs 5.38 and 5.42; and see section 4(2) of the General Scheme of the Bill).

(11) Special transitory provisions should be included in the legislation. These provisions will relate to funds in court, wardship and custody orders, powers of trustees during the minority of a beneficiary, limitation of actions, etc. (Paragraphs 3.28 and 5.43 to 5.47).

(12) If the age of majority is reduced as proposed, the new legislation should, in so far as the construction of expressions such as "full age", "infancy" etc. is concerned, apply to all statutory enactments and instruments (no matter when passed or made) but not to deeds, wills and other private instruments made before the commencement date of the legislation. The legislation should also provide that references in any statute to the age of 21 should be read as references to the new age of majority, except where the reference to the age of 21 is not clearly related to the fact that 21 years is the age of majority or where it is desirable for policy reasons (e.g., in the case of maintenance payments and social welfare benefits) to retain the age of 21. (Paragraph 3.28 and 5.48 to 5.52).

Working Paper No. 3 on Civil Liability for Animals

After dealing with the rule of *Searle v. Wallbank* [1947] A.C. 341, there is little doubt nowadays that the immunity which the present law confers on the owners of cattle which stray on the highway should be abolished. The arguments for the removal of this immunity have already been made and need not be repeated here.

If one accepts the need to abolish the immunity confirmed in *Searle v. Wallbank* as the starting point, then the remaining rules dealing with animal liability might be approached in any of the following ways.

First, one could abolish completely the specific rules relating to animals — the *scienter* action and cattle trespass — and allow the general principles of Tort law (principally negligence and nuisance) to handle the injuries caused by animals in the same way as it handles injuries caused by other chattels.

One would, by adopting such a suggestion, reintegrate animals into the ordinary rules of tortious liability. In modern times, it could be argued, there seems to be no good reason for treating animals in a manner different from other chattels. Moreover such an approach would,

in many cases, merely leave the legal determination of the issue to "the familiar calculus of negligence" — an approach, which because of its familiarity, should hold no terror for us. It would reintroduce flexibility into a branch of the law that has become all too rigid and this flexibility would also restore to the factual plane matters which under the special rules have wrongly been treated as questions of law. Finally, such an approach would make the law clearer and more understandable to the lay person, although determination of the rights of parties would not be made appreciably easier in particular cases as can be seen from the amount of litigation that, at present, surrounds motor car accidents determined by Negligence rules.

Against such a solution it could be argued that such a proposal would be a solution which favours the "fault" basis of liability, at a time when modern trends in the law of Torts seem to favour principles of strict liability. See e.g. Draft EEC Directive on Products' Liability, No Fault Automobile Insurance Schemes in U.S.A. and Canada, New Zealand Accident Compensation Act 1972, etc. To suggest the abolition of *scienter* and cattle trespass at a time when the general trend is towards strict forms of liability is therefore regressive.

Second, at the other extreme, one could take the strict liability imposed in the *scienter* action and in cattle trespass as the norm and introduce legislation which would make the keeper of any animal strictly liable for injuries caused by that animal. This strict approach could be supported nowadays by arguments based on the risk theory of liability and by economic arguments which would regard injuries committed by animals which form part of a business (a farmer's cow, etc.) as part of the producer's costs which should be borne by the producer, and lastly, by arguments which suggest in all cases that the owner of the animal is the person best positioned to control the animal and to insure against the risk of injury which such an animal may represent to other persons in society.

Other arguments in favour of a strict liability approach may be mentioned. First, much of the existing law relating to animals is strict in its present form. Under the general principles of law if the plaintiff succeeds in showing that there was a trespass to land or to chattels, damage under *Rylands v. Fletcher* or damage under some forms of Nuisance, the defendant's liability is strict. If the defendant keeps a wild animal or a domestic animal known to have a mischievous propensity, liability is strict. If it is a case of cattle trespass, liability is strict and if it is a case of dogs injuring cattle, liability is strict under the Dogs Act 1906. In all these cases, under the existing law, the defendant is liable even though he was not at fault.

Second, strict liability is not absolute liability. This means that as well as Act of God, the plaintiff's own act of omission could cause, in the appropriate circumstances, the damages for such wrong to be reduced in accordance with the apportionment provisions of the Civil Liability Act 1961. Moreover, even a regime of strict liability should contemplate an exception in the case of a trespasser being injured by an animal. In such circumstances reasonable care would seem to be a more satisfactory standard than strict liability.

Third, strict liability regimes for injuries caused by animals already exist in many other countries — France, Germany, Italy, etc. — without any great legal or social difficulty. Indeed in Canada, the Province of Quebec, following a civil law tradition, has a strict regime and no great difficulties are experienced even though all the other Provinces are in the common law tradition.

Fourth, such a system would provide a clear and simple legal rule which would undoubtedly reduce litigation in this area. The attractions of legal certainty and reduced litigation are powerful arguments in favour of such a strict regime.

It must be admitted that many people in our society might show an initial hesitancy in contemplating such a rule of strict liability, but is is submitted that this reaction is an emotional rather than a rational response to the problem. It stems from the fact that many people personalise the problem and view it from the limited vantage of their own personal circumstances.

This conclusion, of course, although, as already noted, very understandable, is itself wrong. It springs from an incorrect assumption made by the layman that legal liability should be co-extensive with moral culpability. There are many cases, even within the existing rules relating to liability for animals, where this is not so. In these circumstances it could hardly be called unjust to impose liability on the owner of the dog.

Third between these two approaches, the negligence approach or the strict liability approach one could take up an intermediate stance such as that adopted by the Law Commission in England (Law Com. No. 13) and enacted by Parliament in England in the Animals Act 1971. The view of the Law Commission was that the *scienter* principle and the cattle trespass rule have much to recommend them and should be retained. It felt that although these rules should be tidied up and reduced to a statutory form they should not be abolished. Strict liability would remain, therefore, in these cases only; in all other cases, whether the plaintiff had an action or not would depend on the general principles of tort, and in particular on Negligence and Nuisance. The position which the Lsw Commission takes about these special rules — *scienter* and cattle trespass — could also, of course, be taken as regards any one of them alone. One could suggest, for example, that strict liability should be retained in cattle trespass only, but not in *scienter*, or *vice versa*.

The English approach has been criticised (Roberts, (1968) 31 M.L.R. 683; Powell-Smith, (1971) 121 N.L.J. 584; Samuels, (1971) 34 M.L.R. 550) and the difficulties which such legislation can produce are amply illustrated in the recent Court of Appeals decision in *Cummings v. Grainger* [1976] 3 W.L.R. 842, [1977] 1 All E.R. 104. Noted in 40 M.L.R. 590-596. This was a case where the plaintiff was savaged by the defendant's Alsatian dog while trespassing on the defendant's premises at night. Whatever one may say about the outcome of the case (the plaintiff failed to recover) it is very clear that legislation even in the nature of a reforming measure (The Animals Act 1971 in this case) does not always make the law on a particular topic less complicated or more easily understood. Indeed, after reading this decision one is convinced that the retention of a statutory form of *scienter* (Section 2 of Animals Act 1971) is misconceived and unhelpful.

RECENT IRISH CASES

Summaries of judgments prepared by John Buckley, Colum Gavan Duffy, Rory McEntee and Michael Staines.

ESTOPPEL BY WAIVER

Land required by Land Commission to relieve congestion — objection heard by the same Lay Commissioners who earlier certified land required for relief of congestion — Objection dismissed by Appeal Tribunal — Appeal to Supreme Court — against natural justice for two Commissioners who signed Certificate to hear objection — This not raised before Lay Commissioners — waived objection.

Dr. Corrigan, an Irish doctor practising in Canada purchased lands in Meath and hoped to retire there. Within days of completion of the purchase the Land Commission served a Statutory Notice of Inspection intimating that their Inspector would inspect the lands for the purpose of reporting as to their Compulsory Acquisition. Some months later the two Lay Commissioners certified that the land was required for the relief of congestion in the immediate area. Following this Certificate a provisional list of land issued relating to Dr. Corrigan's holding and he entered an objection. His solicitors were notified of the date of hearing and of the identity of the Commissioners who would hear the objection. The Commissioners who heard the objection were the same two Commissioners who certified that the land was required for relief of congestion. Dr. Corrigan and his advisers were aware of this fact at all times. The hearing proceeded without objection by Counsel for Dr. Corrigan as to the composition of the tribunal. Uncontroverted evidence that the lands were required for relief of congestion was furnished by the Land Commission and the objection was dismissed. An Appeal was made to the Appeals Tribunal on grounds which did not include the claim that the Commissioners were disqualified by Natural Justice from hearing the objection by reason of their having signed the Certificate. On the morning of the hearing before the Appeals Tribunal new Counsel was instructed and given leave to amend the Notice of Appeal by striking out all stated grounds and substituting a new and single ground that the hearing before the Lay Commissioners was invalidated by the fact that the two Lay Commissioners who conducted that hearing were the two Lay Commissioners who had earlier certified under Section 25 of the Land Act, 1936, that the lands were required for the relief of congestion in the immediate neighbourhood. It was not suggested that the two Lay Commissioners were in any way actuated by bias or that they went outside the evidence given at the hearing. Counsel's argument was that they left themselves open to the suspicion of bias, suspicion that they might have brought to the hearing opinions or preconceptions unfavourable to the Land Owner which they might have formed when dealing with the material for the purpose of the issue of the Certificate. Counsel complained of a situation in which actual bias might reasonably be suspected.

Butler J. ruled that notwithstanding this point the hearing was not invalidated. An Appeal against Butler J.'s ruling was made to the Supreme Court.

Held (per Henchy J.) that it was not necessary to decide whether the hearing by the two Lay Commissioners was against Natural Justice as the composition of the Tribunal was consciously and knowingly accepted by Counsel for Dr. Corrigan and it was settled law that if with full knowledge of the facts alleged to constitute disqualification of a member of the Tribunal the party expressly or by implication acquieses at that time in that member's taking part in the hearing and in the decision, he will be held to have waived the objection on the grounds of disqualification which he might otherwise have had. This was a waiver of a right by conduct in the course of the trial. The litigant cannot blow hot and blow cold by concealing a complaint of that nature and hoping that the Tribunal will decide in his favour when reserving to himself the right, if the Tribunal gives an adverse decision, to raise the complaint of disqualification.

A party who knowingly and willingly accepts the jurisdiction of a Tribunal notwithstanding his knowledge of a valid objection to its constitution is deemed to have waived that objection and is estopped from later raising that objection on appeal.

It was also not necessary to decide whether the hearing by the two Lay Commissioners was against Natural Justice as the practice has been discontinued by the Land Commission and in any event, as there was uncontrovertable evidence as to congestion, the remitting of the case to two other Lay Commissioners for a fresh hearing would be merely a postponement of the inevitable.

Laurence Corrigan v The Irish Land Commission — Full Supreme Court — Separate judgments delivered by Henchy J., Griffin J., and Kenny J. — Unreported — 29 July, 1977.

GUARDIANSHIP OF INFANTS

Aunts awarded custody of four children following death of mother, in preference to father.

The plaintiff, a non-practising Anglican husband, was married to a Catholic wife in a Catholic Church in London in September, 1962. There were four children of the marriage — three girls and a boy. M. (born 1963), G. (born 1965), T. (born 1968) and A. (born 1972). All the children were brought up as Catholics. The husband, 35 years of age, worked as a foreman. Since his marriage, the husband had lived at six different addresses in London. In July, 1973, the wife and the four children went to her father's house in Ireland, and the husband paid the fares. The wife then informed the husband that she did not intend to return to England. The husband met his father-in-law in Ireland in September, 1973, and told him that his relationship with his wife was over. He then returned to England and never subsequently got in touch with his wife and children. The husband subsequently associated in London with another married woman with four children. The husband of the other woman obtained a decree of divorce against his wife in May, 1974, naming the husband in this case as co-respondent. In July, 1974, the other woman changed her name to that of the plaintiff.

The wife died in October, 1975, and the three defendants, aunts of the children, were all sisters of the wife. The two eldest children, M. and G. (both girls) had been living with the

first defendant and her husband since December, 1973. The next child, T. (a boy) had been living with the third defendant and her husband (and three daughters), and the youngest child, A. (another girl) had been living with the second defendant and her husband since the mother's death in October, 1975. The children of the plaintiff saw one another once a week, usually on Sundays. Each of the children was attending a Catholic school. The plaintiff married the other woman in the case, in December, 1976, and then claimed custody of all his children. The High Court Judge (Murnaghan J.), in considering the facts, had stated that the paramount consideration must be the welfare of these children. He had not been satisfied that the plaintiff was competent to look after the religious and moral welfare of the children as Catholics. The High Court also found that the plaintiff's second wife, from the manner in which she treated her own children, did not appear to be a suitable person to look after the children. The High Court had accordingly rejected the plaintiff's application and ordered that the children were to remain with their respective aunts, and further ordered that, as the mother was dead, the three aunts of the children should, respectively with the father, be joint guardians of the children in this case. The plaintiff appealed to the Supreme Court.

Held (per O'Higgins C. J.) that in this case there were complicating factors of such a nature as to drastically alter the father's right as parent. First, the infants had been living away from the father in Ireland for years. The girls, M. and G. had been living with one aunt for three and a half years since December, 1973, and would grow up in domestic comfort and security. The boy T. had been living comfortably with another aunt since the mother's death in October, 1975; as he suffered from asthma, he was receiving special care. The girl, A., had been living with a third aunt since October, 1975, and she was happy and contented. It was clear that from September, 1973, the father had virtually abandoned his children to whatever fate would have in store for them.

Per Kenny J. (in a separate assenting judgment) "It would be monstrous to hand them over to their father: they have roots, a settled way of life and a feeling of security where they now are and unless I was compelled by the law to give them to their father, I would not do so. I have no doubt that giving them to their father would cause permanent psychological damage to them.

"Counsel for the plaintiff relied strongly on the decision of the Irish Court of Appeal in *Re O'Hara* [1900] 2 I. R. 233 in support of his contention that there is a prima facie parental right to custody. I deny that there is any natural or prima facie right of a parent to custody of his children: there is a rule of prudence that in most cases the best place for a child is with its parent *(Reg. v Gyngall* 1893 2 Q. B. 243). It seems to me that *Re O'Hara* [1900] 2 I. R. 233 supports our decision in this case.

...."The Constitution has not in my opinion altered this. Article 41 deals with the Family: the children are part of that unit and the authority of the Family referred to Art. 41 section 2 is that of the parents and children considered as a unit. It does not alter the principles stated by Lord Justice Holmes in disputes relating to custody. Counsel for the plaintiff when asked whether he wished to argue that s.3 of the Guardianship of Infants Act, 1964, was repugnant to the Constitution, said that he did not".

Parke J. concurred, affirming the High Court Judgment of Murnaghan J. Appeal dismissed.

J. v. D. and others — Supreme Court (O'Higgins C. J., Parke and Kenny JJ.) — unreported — 22 June, 1977.

LANDLORD AND TENANT

Landlord and Tenant Act 1931 — Definition of Tenement — Premises not "in" Village

The Applicants held the premises (described in the Lease as "lands with the out-offices erected thereon") under a Lease dated 18 October, 1966, for a period of 10 years from the 13 August, 1966. The land comprised 2.29 acres, on part of which were the remains of old gravel pits. The Applicants had changed the out-offices into a canteen, built a toilet, four bays to store aggregate, two aggregate bins, a batching office and a concrete plant on the lands. The premises were close to the village of Palmerstown in County Dublin. There is a group of houses and other out-buildings properly called "The Village" of Palmerstown. At its centre and running at right angles to the main road there is a short cul-de-sac known as Waterstown Avenue. At the end of it are entrance gates leading to a Driveway, which passes through agricultural land to a house called Waterstown House. The premises comprised in the Lease are just off the driveway and from their nearest point to the nearest house on Waterstown Avenue is a distance of 175 yards.

Having considered *Hardman v Jones* [1964] 1 I.R. 1, *Edmonson v Earl of Pembroke* [1910] 2 I.R. 76 and *Waterpark v Fennell*, (5 I.C.L.R. 120, 7H.l. 650), *held* (Costello J.) that the mere fact that the entrance was "in" the village did not result in the premises being so situated, and that the premises did not constitute a tenement within the meaning of Section 2(a) (i) of the Landlord and Tenant Act, 1931, not being situate in an Urban Area.

The Court did not have to rule on a further submission that the premises did not constitute a "tenement" within the meaning of the 1931 Act because the land demised by the Lease was covered only in part by buildings, and that the part not so covered was not subsidiary and ancilliary to the buildings.

Readymix Limited (formerly Readymix (Eire) Limited) Applicants — Liffey Sandpit Company Limited, Respondents — High Court — Costello J. — unreported — 8 June, 1977.

Landlord and Tenant: Right to new Lease — Rent to be fixed by Court — No power to insert rent reviews — Power to fix rent so as to allow for future inflation.

The High Court in a Circuit Court Appeal in Cork found as a fact that at the present time a Landlord would not willingly make a Lease of a business premises in Cork for a term of 21 years without inserting in the Lease a Clause for periodic review of the rent throughout the continuance of the term. The High Court Judge (Murnaghan J.) asked the Supreme Court to determine two questions:

(1) Whether in view of his aforesaid finding of fact and of his decision that he was not empowered

to direct the insertion of a Rent Review Clause in the Lease that he can now legally fix a rent in this case;

(2) If he can, when fixing the rent to be reserved by the new Lease, is he legally entitled by increasing the rent which he would consider to be appropriate to present conditions, to endeavour, in so far as is possible, to provide an aggregate amount of rent over the term of 21 years equal to the total of the rents a willing Landlord would obtain by granting a Lease for 21 years with a Clause providing for periodic rent reviews.

The facts were that the Tenant had been held to be entitled to a new Lease under Part III of the Landlord & Tenant Act, 1931, the parties had not been able to agree upon a rent, the Circuit Court had fixed a rent of £10 per week for the entire of the 21 year term of the new Lease and the Landlord had appealed to the High Court.

The Supreme Court *held* (Kenny and Parke JJ.) that the Circuit Court had no power under the Act of 1931 to insert a Rent Review Clause in any Lease which it orders to be given. The answer to the first question asked was "yes" and the answer to the second question was "that the Judge was legally entitled to increase the rent to the amount which he considers appropriate in certain conditions to endeavour, in so far as is possible, to provide an aggregate amount of rent over the term of 21 years, equal to the total of rents which a willing Landlord would obtain by granting a Lease for that period with a Clause providing for periodic rent reviews, provided that there is evidence to support his finding".

In a dissenting judgment Griffin J. agreed that the Courts could not insert a Rent Review Clause in a new Lease granted under the Act, but doubted whether in fact it was possible to endeavour to estimate what rent a willing Landlord would be likely to obtain over the next 21 years under a Lease which contained a Clause providing for periodic rent reviews.

Joan Byrne v John Loftus — Supreme Court (Griffith, Kenny and Park JJ.) — unreported — 28 July, 1977.

Landlord and Tenant — Right of Unincorporated Club to New Lease, Compliance with Terms of Act.

Applicants were tenants from year to year of a field with a Sports Pavilion (erected by the Applicants or their predecessors in title) as Trustees for Belgrove Football Club following on the expiry of a Lease for a term of 10 years from 1953 granted by a Lease of 1951. The Lease had originally been granted to a Company which had assigned its interest in the Lease to the then Trustees of the Club in 1957. The Trustees had been specifically elected by the members of the Club to take the Assignment. One of them had retired and been replaced by a new Trustee, but no Assignment of the interest to the new Trustee had ever taken place.

The Applicants applied to the Landlord for a Sporting Lease under Section 3 of the Landlord & Tenant (Amendment) Act, 1971. In response the Landlord served a Notice to Quit on 5 July, 1973, expressed to expire on 9 September, 1974. The Club had expended more than £1,200.00 on the buildings now on the field. The Club's Application was dismissed in the Circuit Court and on Appeal to the High Court the Judge stated two questions for the Supreme Court to answer.

(1) Where the Sports Club or Organisation within the meaning of Section 2 (1) of the Landlord & Tenant (Amendment) Act, 1971, is unincorporated can such a Club or Organisation avail of the provisions of the said Section?

(2) Is it a condition of entitlement to a sporting Lease under Section 2 (2) (i) (sic) of the Landlord & Tenant (Amendment) Act, 1971, that the lands must have been held for the purpose of carrying on a sport under the Lease for a term of not less than 21 years"?

The Supreme Court *held* that the answer to the first question was "yes". Few Clubs are incorporated and the effect of the contention that a Club with its fluctuating membership not being a legal person was not capable of requiring or holding an estate in land would be to exclude about 98% of the Clubs in the Republic of Ireland from the benefits of the Act of 1971. The property of the Club is invariably held by Trustees to hold in Trust for the members for the time being of the Club. Statute Law has already allowed the Club despite its fluctuating membership to be registered under the Registration of Clubs (Ireland) Act of 1904. The meaning of Section 2 of the Act of 1971 is that a Club has become entitled to the beneficial interest in the term of years created by the Lease to be granted even when the legal estate is vested in trustees. This concept already known to our law gives effect to the main purpose of the Act of 1971 and so should be adopted.

The answer to the second question depends on the exact wording of Sub-Section (2) of Section 2 of the Act of 1971, which is:

"2. (2) The following are the conditions to be complied with:

(a) that—

(i) the land is held for the purpose of carrying on the sport under a lease for a term of not less than twenty one years,

(ii) the land has been continuously occupied by the sports club for that purpose for the period of not less than twenty one years immediately preceding the date of the application for a sporting lease, or

(iii) the land has been continuously in the possession of the sports club for that purpose for the period of not less that twenty one years immediately preceding the date of the application for a sporting lease".

The omission of "or" at the end of Sub-Clause (i) is a matter of style. The meaning of the whole sub-section is that compliance with any one of the three sub-clauses is sufficient to entitle the applicant to a Sporting Lease. The answer to the second question should be "not necessarily so". It is sufficient if the Applicant complies with any one of the three conditions set out in Section 2. (2) (a).

Thomas P. Corley, Raymond McLoughlin and Albert D. Camrani v. John Gill — Supreme Court — Judgment of Kenny J. — unreported — 21 July, 1977.

OFFENCES AGAINST THE STATE ACT 1939 — INADMISSIBLE EVIDENCE

Extension of 24-hour detention period, under Section 30 of the Offences Against the State Act 1939, by a Superintendent, unlawful, unless evidence produced that Garda Commissioner authorized the Superintendent to so extend detention period.

George Farrell was convicted in the Special Criminal Court of causing an explosion contrary to Section 2 of the Explosive Substances Act, 1883. The only evidence connecting him with the explosion was certain verbal and one written statement made by him. On appeal to the Court of Criminal Appeal, he contended that these statements ought not to have been admitted. Eleven grounds of appeal were put forward.

Grounds 1 to 3 were concerned with his alleged right to be informed of his right to consult a solicitor and his alleged right to a medical examination before he was subjected to interrogation. The Court rejected these first grounds. There was no authority for the proposition that every person under suspicion of or faced with a charge of a criminal offence had a constitutional right to have the services of a solicitor and doctor before being questioned by Gardai. There is a constitutional duty on the Court of trial to be vigilant to ensure that the trial be in all respects fair and just. The various rights of an accused are all related to his particular circumstances. The trial Court had ample evidence in relation to the physical and mental capacity of the appellant and its rulings on the matters raised in these first grounds of appeal were made in the proper exercise of its discretion and were correct.

The sixth and seventh grounds of appeal related to the failure by the Gardai to record what was said by the accused after the caution. These grounds were also rejected. The Trial Court has a judicial discretion whether to admit or reject a particular statement. If the Judges rules are breached, each of such breaches calls for adequate explanation. Before exercising its discretion, the Trial Court must consider the breaches, and explanations of them, if any, in the context of the entire circumstances of the case. Here, again, the discretion was properly utilized.

The fourth and fifth grounds of appeal were concerned with the place of detention under Section 30 (3) of the Act. Under that sub-section, an accused must be detained "in a Garda station, a prison, or some other convenient place". During his first period of detention Farrell had consented to accompany two Gardai in a patrol car for a couple of hours to point out various places to them. The Court of Criminal Appeal accepted the contention that there must be continual detention in a recognized "place". Furthermore, it held that a vehicle was not a convenient place under the sub-section. However, it further held that detention is not ended if, for some understandable reason, a temporary absence of the detainee in the care and custody of the Gardai becomes necessary. The detention continues to be the Garda Station. These grounds of appeal, therefore, also failed.

The final ground of appeal concerned the extension of Farrell's detention after the first twenty-four hours had elapsed. The detention was extended not by a Chief Superindendent as required under Section 30 (3) of the Act but by a Superintendent. Under Section 3 (3) a Superintendent may exercise any power conferred by the Act on a Chief Superintendent provided he is so authorized to do so in writing by the Commissioner. The extension direction served on Farrell stated that the Superintendent had, in fact, been authorized to extend the period. This direction was later exhibited in Court. The Court of Criminal Appeal held that this was not sufficient. There was no evidence that the Commissioner had authorized the Superintendent. The recital in the extension direction had no evidential value whatsoever. The written authorization was not produced in Court nor, indeed, was there even any evidence that the authorization had been made. The Offences Against the State Act must be strictly construed. The power in this case was one not normally given to a Superintendent. No presumptions could, therefore, be made. The second period of detention was, therefore, unlawful. Since all the incriminating statements made by the accused were made during this second period, they ought not to have been admitted and the decision in the *State (D.P.P.) v Madden* (unreported — 16 November, 1976,) applies. The Appeal is, therefore, allowed.

D.P.P. v Farrell — Court of Criminal Appeal (per O'Higgins C.J. with Gannon and D'Arcy JJ.) — Unreported — 29 July 1977.

SOCIETY OF YOUNG SOLICITORS

ASSOCIATION INTERNATIONALE DES JEUNES AVOCATS

The Association Internationale Des Jeunes Avocats is an international organisation composed of young lawyers who are keen to foster a continuous exchange of ideas between lawyers in different countries.

One of its programmes is to encourage young lawyers to spend a short time working in an office abroad.

Contact between young lawyers of all countries has made obvious the differences in professional education and practice in each country. This difference in system is an obstacle to the internationalisation of the profession and the lawyer, confronted with a procedure or a problem to resolve abroad, is generally not sufficiently well informed to deal with it. Usually he will consult a lawyer in the country where the problem has arisen but it is obviously an enormous advantage if he has at least some general knowledge of the manner in which the legal system in that country works.

The best means of gaining such knowledge is to spend some time working in a legal office in that country. It is only at the beginning of his career that a lawyer can allow himself an absence of two or three months or more to work in an office abroad, but it is precisely at this time that he normally lacks the necessary contacts to put this into effect.

The AIJA has established a Permanent Secretariat for the Exchange of Stagiaires (SPES) in the hope that it can provide the necessary contacts for young lawyers wishing to work abroad.

Aim of the Stage

The aim of SPES is to introduce young lawyers to the daily professional practice of other countries and to put them in contact with colleagues who will welcome them.

It is important for the office receiving the young lawyer to benefit from his visit; in practice this will happen only if the visiting lawyer has already acquired some practical experience which will allow him to explain the way the law and the legal profession works in his own country.

The working of SPES

SPES is organised by delegates in each country which participates in the exchange of Stagiaires. The delegates are members of the AIJA and will help young lawyers to find suitable offices in the country they wish to visit. They will introduce the Stagiaires in professional circles and assure him of contact with colleagues of his own age. AIJA has members in all of the countries in Europe, North Africa, the Middle East and North and South America and it is therefore able to put together a network of correspondents who are well placed to organise the exchange of young lawyers.

SPES works in the following manner

1. A young lawyer makes a request for a stage abroad to an AIJA delegate, a delegate of SPES or by any other means which makes any delegate of SPES aware of his request.
2. The candidate fills in an application form containing all useful details for the requirements of the stage and has a meeting with the SPES delegate in his own country.
3. The request thus completed is transmitted by the SPES delegate to his SPES correspondent in the country requested and the latter endeavours to find an office which meets the requirements.
4. The result is notified directly to the candidate as well as to the SPES delegate in the country of origin of the candidate.
5. The candidate makes direct contact with the office which has accepted him in principle and they agree the practical arrangements for the stage.
6. The candidate informs the SPES delegate originally consulted as well as the SPES delegate in the country to be visited of the arrangements which have been made. SPES in the country being visited will undertake to arrange all necessary introductions and contacts in legal circles there.
7. At the end of the stage the young lawyer is required to make a report to SPES on the stage giving full details of his stay with his suggestions, recommendations and criticisms. This report is designed to improve the system for the future and is essential for the proper functioning of SPES.
8. The office which is being visited in its turn gives its observations and suggestions in a similar report to SPES.

Duration of stage abroad

The aim of SPES is to familiarise the young lawyer with the practice of the profession in another country and to enable him to see how the system works. This knowledge, which arises specifically from the daily practice of the host office, can be acquired in the course of a very short period; a stage of three months is normal, as this period will not in any way prejudice the professional training or career of the young lawyer in his own country.

General

The exchange is principally of interest to the young lawyer who has the opportunity to round off his professional education. However SPES also seeks to ensure that the host office will also benefit from the visit and, in order to realise this aim, the young lawyer will only be allowed to undertake a stage abroad if he has acquired some practical experience in his own country.

MEETING WITH THE JUNIOR ORGANISATION OF CHARTERED SURVEYORS

The Society held an informal eveningdiscussion with members of the Royal Institution of Chartered Surveyors in the Central Hotel, Dublin on Tuesday 6 December, 1977.

The topic discussed concerned Covenants in Leases with special emphasis on Insuring Clauses and repairing Covenants. The meeting opened with a short address by Mr. Bill Nolan of Irish Life, who put forward the view point of the Chartered Surveyors. He made many interesting and informative observations. He stressed the importance of having well prepared Maps which should show the premises being demised in detail and with great accuracy. Such Maps should show exactly what is being demised and what is being retained by the Landlord. It was even suggested in the discussion that followed that for important lettings it would be beneficial for the Solicitor drafting the Lease to inspect the property himself and to acquaint himself with the problems that might be involved. The Landlord it was felt must retain ownership of the conduits or passage ways carrying power, drains or other such services, which pass through the demised premises, in order that any repairs can be effected with the minimum of delay.

Mr. Anthony Dudley explained the Solicitors point of view with his usual erudition and wit. He was very concerned about the Insurance Cover on the premises. He pointed out that the premises must be insured to its full reinstatement cost which is totally different from the premise's Market Value and is significantly higher. The reinstatement cost must take into account the Professional Fees involved when reinstating or repairing the premises and should allow for inflation where possible. He also pointed out that the concept of "fair wear and tear" has now become so widely interpreted by the Courts that it can almost be treated as obsolete. Dealing with the question of Insurance Cover on the premises, the "insured risks" should be clearly and comprehensively set out in the Lease.

Some participants in the meeting felt that it was better and more beneficial for the Landlord to take upon himself the burden of keeping the premises insured, and then to look for a contribution towards the Insurance Cost from the tenant. Although this gives rise to extra work for the Landlord, it nevertheless ensures that the premises are covered by the appropriate insurance at all times. In framing such Insuring Clauses there must be some flexibility as it may be impossible to get cover on certain risks from time to time and in this respect the Landlord should not require an absolute covenant to keep the premises insured against all the insured risks but against only those risks for which cover is available from time to time.

There were many other points raised and discussed in detail by the participants and all in all it was felt that the meeting which was quite well attended was very worth while. It is the intention of the Society to hold more of these meetings with the Surveyors and other Professional Bodies and anybody wishing to be notified of these meetings should contact the Chairman of the Society, Miss Clare Cusack, telephone 686130.

Announcement
to all Trustees.

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LAW SOCIETY NOTES

CORRESPONDENCE

Office of the Revenue Commissioners
Dublin Castle,
Dublin 2.
2 December, 1977

Mr. J. J. Ivors,
Director General,
The Incorporated Law Society of Ireland,

A Chara,

I am directed by the Revenue Commissioners to refer to previous correspondence and to the recent meeting which you attended in this office to discuss the failure of a number of solicitors to furnish the statutory returns which are required in accordance with the provisions of Section 176 of the Income Tax Act, 1976.

As indicated at that meeting the results of a recent survey to ascertain the extent to which solicitors have complied with their statutory obligations in relation to the two years ended 5 April, 1977, have been disappointing.

The Commissioners now have no alternative but to consider the question of instituting proceedings against defaulting solicitors for recovery of the penalties provided by law for failure to make the returns required by Section 176. However, in view of the representations made by you on behalf of those members who will now find themselves faced with such proceedings the Commissioners are prepared to defer action in the matter until after 1 February, 1978 in order to afford a further opportunity to the defaulting solicitors to comply with the obligation imposed by section 176. Cases in which the statutory returns for the two years ended 5 April, 1977, are still outstanding on 1 February, 1978, will regrettably, become the subject of penalty proceedings without further notice. It is considered that adequate warnings have already been issued to the solicitors in question by their inspectors of taxes.

Mise, le meas,
A. B. NÍ GHEALBHÁIN

Note: The Council of the Society at its meeting on 27 March, 1975, agreed that it was not prepared to go further than had been agreed between the Society's representatives and the Chairman of the Revenue Commissioners, i.e. that information would be limited to monies paid in respect of rents, dividends, and interest on clients' accounts.

FAMILY LAW CASES

The Master of the High Court has kindly arranged with the Society that Family Law Cases will be specially listed for hearing by him on Wednesday morning of each week during the Court Term. The Bar is aware of and concurs in the foregoing arrangement.

NEW NOTARY PUBLIC

The Chief Justice, the Honourable T. F. O'Higgins has appointed Mr. Gerard M. Doyle, Solicitor, a Notary Public. Mr. Doyle, who is also a Commissioner for Oaths, is Senior Partner in the Firm of Rutledge, Doyle & Co., Solicitors of 50 Lower O'Connell Street, Dublin, and is a Past President of The Dublin Solicitors Bar Association and presently a Member of the Council of the Incorporated Law Society of Ireland.

Conditions of Sale/Requisitions on Title

Regretfully, due to increases in printing costs, it is necessary to amend selling prices as follows:—

Conditions of Sale

Packets of 50 — £4.50.
Packets of 100 — £8.00.
Packets of 10 — £1.00.
(Postage extra)

Requisitions on Title

Packets of 50 — £6.00.
Packets of 100 — £1.30.
(Postage extra)

Director General.
26 January, 1978.

LAW SOCIETY

THREE-DAY CONFERENCE

Dunloe Castle Hotel, Killarney

**FRIDAY, 5th MAY—
SUNDAY, 7th MAY 1978**

Programme subjects will include—

"The Abolition of the Scale Fee?"
"Have the Courts failed the Family?"
"Should Single Practitioner Offices be Abolished?"
"Child Criminals?"

This is *not* a Seminar. This is *not* the old Half-Yearly Meeting. This is *an opportunity* for the profession to express their views on important issues both legal and social.

Full programme will be circulated shortly.

LAW EXAMINATION RESULTS, AUGUST 1977

FIRST LAW EXAMINATION

Finbar A. Allen; Peter M. Allen; Benjamin R. Ashe; Frederic J. Binchy; John Blake; William M. Boland; Ian Kenny Boyd; Gerard W. Butler; Jennifer Caldwell; Michael Collins.

Claire M. Callinan; Stephen P. Cloonan; Patrick A. Crowley; Darach L. Connolly; John B. Connolly; Katherine A. Counihan; Peter Cranwell; Bernard A. Crevin; Michael J. Crowe; Michael J. Curneen;

Margaret M. Donovan; Finnian G. Doyle; Monica M. Duff; Fiona M. Dungan; Evelyn Egan; Mary K. Egan; Katherine A. Elliott; Lucille C. Fahy; Andrew Finkel; Peter D. Finlay; Dennis Fitzsimons;

Peter M. Fortune; Joseph D. Gallagher; Conor Gearty; Frank Gearty; Joseph K. Gilsenan; Felicity J. Hogan; Mary Hughes; Rose Bridget Hynes; Peter D. Jones; Carol Keenan;

Paul V. Kelly; Michael J. Kennedy; John G. King; Henrietta Lane; Philip P. Lee; Niall Lombard; John Lysaght; Declan Madden; Ciaran Mangan; James Mannion;

Rossa Martin; Henry Matthews; Mary Molloy; James F. Moran; Barbara Morris; David Murphy; Mary F. Murphy; Lonan McDowell; Thomas J. McGrath; Patrick J. McMahon;

James P. McMorrow; John McMullin; Neil P. McNelis; Catherine O'Brien; David P. O'Beirne; Richard E. O'Brien; Michael J. O'Connor; Peter A. O'Connor; Francis G. O'Reilly; Dermot J. O'Rourke;

Mary P. O'Shea; Paul F. O'Shea; Edward O'Sullivan; Alexander J. Owen; Mark Pearson; Una Power; Rory J. Quighley; Patrick J. Quinn; William Ruttledge; Gerard W. Sandys;

Tressan Scott; Elizabeth Shannon; Michael J. Sheil; Ronan Smith; Laurence K. Steen; Mary Sweeney; Mary Tierney; Edward G. Timmins; Ann M. Toal; John C. Walsh;

John S. Walsh; James Whelan; Thomas J. G. Williams; Mary Rose Woods; Gerard P. Yelverton.

234 Candidates attended the examination and 96 candidates passed.

SECOND LAW EXAMINATION

Elizabeth A. Baker; Sine N. Barry; Malachy Boohig; Ursula Bowman; Brid Brady; Helen F. Burke; Gerard W. Butler; Bernadette Cahill; Patrick Callanan; Michael J. Carter;

Mary Cashin; Brian J. Chesser; David Clayton; Kevin W. Cleary; Alma Clissmann; Niall P. Colfer; Thomas D. Collins; Cornelius M. Corbett; Vivienne Crowe; Daniel Crowley; Michael P. Coghlan;

William J. Cunningham; Mary Dillon; Eithne Egan; James E. Farrell; Clare Flanagan; Margaret M. Friel; Eugene Glendon; Joseph Griffin; Mary P. Griffin; Anthony Hanahoe;

Vincent P. Harrington; Alan Harrison; Denis A. Hart; Martin A. Harvey; Jeremiah F. Healy; Frank Heffernan; Michael Higgins; Daniel V. Horgan; Rosemary Horgan; Brendan L. Johnson; Emer Joyce;

Veronica P. Kearney; William J. Kennedy; Margaret M. Kenny; Matthew G. Keogh; Paul Kerrigan; Michael King; Nat Lacy; Randal N. Lamb; P. M. Law; Maurice Leahy;

Mary Linehan; Pauline Lowry; Elizabeth M. Lydon; Raymond V. Mahon; Stuart P. Margetson; Mary Meagher; Patrick J. Mulryan; Eugene J. Murphy; Kate A. Murphy; Sean Gerard Murphy;

Domhnall F. Murray; Rowena M. McAllister; Fachtna J. McCarthy; Philomena McCarthy; Peter G. McDonnell; Walter MacEvilly; Edward McGarr; Helen McGovern; Patrick J. McMyler; Paul McNally;

Denis McSweeney; Padriaghin N. Mí Shuibhne; Joseph M. Noonan; Margaret Noonan; Helen O'Boyle; Jerry O'Brien; Kevin M. O'Brien; Owen F. O'Connell; Brendan O'Connor; Julie G. G. O'Connor;

John O'Donoghue; Marian O'Donovan; Kiran P. O'Duffy; David O'Hagan; Seamus L. O'Kelly; John P. O'Malley; Robert Potter-Cogan; Winifred A. Raftery; Donal A. Roche; Michael Ryan;

David Sanfey; Amanda Scales; John M. Schutte; Peter Shee; Thomas Sheridan; Maurice J. Spillane; John Tracy; Patrick M. Turley; Valery Vahey; Andrew P. Walker;

Owen G. Wilson; Anne Wiseman.

236 Candidates attended the examination and 104 candidates passed.

THIRD LAW EXAMINATION

Noeline Mary Blackwell; Paul P. Brady; Philomena Brady; Elizabeth Bruton; John Kieran Brennan; Paul Buggy; Fionnuala M. Casey; Ronald J. Cleary; Evanna Clinton;

John Kieran Collins; Michael M. Condon; Jean Elizabeth Corrigan; Vivienne Crowe; Gerard Cummiskey; Kevin Curran; Stephen J. Daly; Margaret Dargan; Andrew James Lloyd Davidson; Joseph Patrick Davies;

Paul F. Diamond; Mary Dillon; Kevin Andrew Doherty; Patrick Duffy; Sylvester Duane; Colette M. Egan; Frances Mary Egan; Anne Fagan; Gerard P. M. Fanning; John Marcus Farrell; William P. S. Fleming;

Desiree N. E. Flynn; Desmond P. Flynn; Bryan F. Fox; Frank Friel; John Gleeson; Catherine Mary Gray; Martin P. B. Grogan; Daniel J. P. Hanley; Barbara Anne-Marie Hanna; Emer M. Harnett;

Desmond Gerard Hickey; Pauline Mary Horgan; Eric Olann Kelleher; Thomas J. Kelly; Patrick Kennedy; Conor M. F. Killeen; Mel Kilrane; John David Lavelle; James Vincent Long; Thomas Loomes;

Charles J. M. Louth; James Lucey; Elio Malocco; Michael Damien Martyn; Gerald Meaney; Pierce Meagher; Michele Mellotte; Denis Molloy; Patrick Monahan; Terence C. Moran; Daniel Morrissey;

Michael A. Mullane; Joseph Murphy; Thomas A. Murran; Mary Mylotte; Peter F. X. McDonnell; Patrick Joseph McGovern; Michael McInerney; Anne McKenna; Brian McLoughlin; Denis McMahon;

Mark McParland; Edward McPhillips; M. J. A. Nagle; John G. Naughton; Terry O'Boyle; Deirdre Anne O'Connor; Clifford O'Donnell; Ciaran O'Donohoe; John Kieran O'Driscoll; Ursula M. M. O'Dwyer;

Michael Francis O'Gorman; Terence Gerard O'Keeffe; Deirdre M. O'Mahony; Michael O'Malley; Michael J. O'Reilly; Peter F. O'Reilly; Patrick P. O'Sullivan; John Purcell; Noel Anthony Quinn; Jacqueline Quirke; Celine Roisin Reilly;

Kieran Anthony Ryan; Jane Stewart; James M. Sweeney; Brian F. G Toolan; Roisin Walsh; Rosamond Walsh; Anne P. Woods.

167 candidates attended the examination, 99 candidates passed.

Book Reviews

The European Communities and the Rule of Law

Mackenzie Stuart (Lord), *The European Communities and the Rule of Law*. London: Stevens, 1977. £1.95 Paperback. (Hamlyn Lectures, 29th series)

The impact of European Community Law is gradually being felt even in Ireland, as a result of the Fishery cases, and the case against France prohibiting the importation of Irish lamb. Lord Mackenzie Stuart, the Scots Judge, representing Britain, has himself made an outstanding impression on the European Court, as the Continental Judges thought at first that British Judges would not adjust to the procedures of the Civil Law, but were soon disabused. The learned author reminds us that already 14 years ago, in the *Van Gend* case, the Community was declared to be a new legal order; he reminds us that specialist writing on Community Law is vast, but is normally only read by specialists. The Schuman Declaration of 1950 introduced the notion of the integration of European frontiers as a vital part of the national economy. The rule of the Conseil d'Etat required that the public interest and the legitimate private interests should be balanced against each other. The primacy of Community Law, and its direct effect on decisions of National Courts are underlined. The *Van Gend* case, which applied Article 12 of the Treaty directly to National States is fully described. The Treaty of Rome cannot be amended unless the amendments are ratified by the Parliaments of the nine Member States.

The "law" which Article 164 of the Treaty imposes upon the Court to observe included the Treaties, Directives and Regulations. The following are the main characteristics of Community Law:–

(1) The written law of the Community is *not* all of equal weight. At their apex stand the Treaties, which may be interpreted by the Court, but whose substance is unchallengeable. But all subordinate legislation can be challenged on the ground that it does not conform to the Treaty. The unity of Community Law through the Member States, though nowhere expressed, must be implied.

(2) Apart from written Community Law, there is also unwritten Community Law, which consists in (a) The principle that assurances relied upon in good faith should be honoured, (b) The principle of the necessity to protect legitimate expectations. In order to illustrate this the Court, in *C.W.T.A. v. Commission* (1975) ECR, ruled that the Community would be liable if it abolished, unannounced, certain financial provisions without adopting transitional measures, unless overriding public interest prevailed. In considering the judicial process, it must be remembered that many terms bear a much broader interpretation in French than a similar word in English. In assisting a National Court to interpret the Treaty correctly, the European Court may sometimes be faced with difficulty by giving either too broad or too limited an interpretation.

As the European Treaties cover a large part of the economic life of the Member States, the Court must decide how far it is proper to concern itself with matters involving policy and administrative choice. In particular a Court can always consider whether a Minister had a sufficient basis for a decision in fact to justify his decision; this is an unchallengeable principle of Continental Law.

In considering a case the European Court always applies the following Continental principles:–(1) The separation of the Judiciary from the Executive and the Legislature, (2) The concepts of "Public Law" and of "Private Law". Any action against an administrator is always deemed part of "Public Law". (3) It is a denial of justice not to apply formulated rules – a plaintiff cannot be non-suited. (4) In Federal Germany, Italy, and Ireland, judicial decisions must ultimately conform with the Constitution. (5) There are different attitudes to control administrative action in France and Germany. For instance, if in Germany a student is refused a room in a college hostel, the Court would hold the decision invalid without considering whether the trustees of the hostel had used their discretion properly. In so far as the individual needs protection, there must be judicial machinery available to provide that machinery, and this is called judicial control.

Note that the Treaties do not speak of "legislation" but only of "acts" of the Council of Ministers or of the Commission. In the *Eurocontrol* case 14th October, 1976, the Court held that matters affecting Civil or Commercial Law pertained to private law. The learned author refers to difficulties of translation. The well known French "ordre public" is not "public policy" but "public order". In view of the well known horse trading in the Council, the Court tends to avoid a minute textual analysis of the relevant document.

Some external factors arise from the changes, political and economic, which have taken place since the Treaty of Rome in 1957.

(1) Political developments affecting the decision process of the Community.

(2) Failure to take Community action where action is required, which produced absence of relevant guide lines.

(3) The Treaty was founded on a number of economic premises which were then true, but are no longer so. There was an unjustified assumption that the principal economic currencies would remain stable, and that real earnings would increase at a steady rate!

It will be seen that Lord Mackenzie Stuart has in a masterly fashion drawn attention to the serious difficulties that confront the European Court in construing the Treaties and the secondary legislation. All in all, it must be admitted that the Court has faced up to its responsibilities with courage and determination.

LAWYERS' LAW BOOKS

RAISTRICK, Donald, and John Rees—Lawyers' Law Books: a Practical Index to Legal Literature. London: Professional Books, 1977, xii, 576p. £9.00.

This is the first volume of Professional Books Law Reference Library, and has set a notable headline for its successors. The volume consists of three parts. The first part (28 pages) consists of Subject Headings and Cross References, which a small law library might find useful as a Subject Index.

The main part of the work is contained in Part II (452 pages). This consists of a bibliographical listing of books under general subject headings. Each heading consists of a list of references of books, encyclopaedias, precedents, etc. as well as of a list of specialised reports and journals. For instance, the entry "European Communities" has been subdivided into General Topics, Agriculture, Establishment, Competition, Institutions, European Parliament, and European Court. It is amazing the number of books published in English. The heading "Ireland" is fairly complete, although more of the publications of the Irish Institute of Public Administration could have been included.

Part III (90 pages) consists of an author and short title Index. You can for instance note that Mr. G. W. Hinde has not merely produced a Law Dictionary, but is also the author of a book on Equity and on the Torrens Land System.

The learned authors are to be congratulated upon producing such a valuable work. The industry and efficiency they have displayed in producing this volume cannot be estimated.

It is noted that subsequent useful volumes in this Reference library will include: (1) A Dictionary of Legal Abbreviations, (2) An Index to Twentieth Century Government Reports, and (3) an Index to the Law Commission Working Papers and Reports. Professional Books deserve the gratitude of practitioners for initiating such a useful Reference Library.

DISTRICT COURT GUIDE

WOODS, James V. District Court Guide in 2 vols. Vol. 1, A District Court Guide in Offence Cases. 338p; vol. II, A District Court Guide in Civil, Licensing and Family Law. 289p. Published privately and available only from the Author, Mr. James Woods, 35 Hollywood Park, Naas, Co. Kildare. Price, £8.50 per volume or £17 for the set.

The Profession and the public are very much indebted to Mr. Woods, District Court Clerk, Naas, for his two recent publications. It would be unfair to compare this with "Crotty" as both publications rather than competing are complimentary to each other.

Mr. Woods explains for the benefit of the student and public how the District Court was set up, its powers and most interesting, the position of the Justices and how to remove them. The seasoned practitioner in the District Court finds answers to problems which had evaded him for years.

Mr. Woods is fully up to date, he deals with the decisions of the rights of accused in custody and most interestingly what rights pertain in relation to goods in possession of accused when arrested, the taking of fingerprints, the Judges Rules together with the rights of access of solicitors to persons in custody.

There is a msss of information on the conduct of proceedings, matters such as interpreters fees, rights to seperate trials, rights of audience, rights to bail, producing witnesses who are in custody, questioning of hostile witnesses, admissibility of fingerprint evidence, evidence illegally obtained, proving prior convictions, restitution of stolen property, petitions to the Minister and warrants for arrest.

A full chapter on the Probation Act and power to bind to the Peace will be of great benefit to the Judiciary and regular practitioners. The portion on indictable offences, the position, detention and sentencing of children, the working of Customs Laws, notes on the Road Traffic Acts, Extradition Appeals and State Side Work are a masterpiece.

Book 2 is devoted to the Civil Side of the Court and Licensing Jurisdiction. Not since O'Connor's Licensing Laws was published so many years ago has there been such a massive codification of technical detail covering all aspects of liquor licences. Also covered are gaming licences, salmon licences, Bookmakers, Auctioneers, General Dealers, Moneylenders, Pawnbrokers, Clubs, Dance Licences, slaughter house permits, street collections and licences under the Wildlife Act 1976.

A long chapter on Family Law ends a publication which if produced and edited by the Supreme Court itself could not be more clear, concise and to the point.

I repeat Mr. Woods is to be congratulated. He has done for the District Court what Mr. Wylie has done for Irish land Law.

Laurence Cullen

BOOKS RECEIVED

Where to Look for Your Law: Bi-Monthly Bulletins, London: Hammick, Sweet and Maxwell. Containing full bibliographical details, and a synopsis of the legal books published during the preceding two months. Price: £20.00 a year for 6 Bulletins, 2 cumulative indexes and binder.

Capital Taxation by Norman Bale, *A Summary of Income Tax and Corporation Tax in the Republic of Ireland* by Terry Cooney, Jim McLaughlin and Paschal Taggart, and *Stock Relief: a practitioner's handbook: the law codified* by Jim McGranaghan. Three booklets published by the Institute of Taxation in Ireland, 3 Fitzwilliam Place, Dublin 2.

Estate Planning through Life Assurance by Peter Harris. London: Sweet & Maxwell, 1977, Price £12.75.

Arbitration in Sweden published and distributed by the Stockholm Chamber of Commerce, P.O. Box 16050, S-10322 Stockholm, Sweden. Price: 25 U.S. Dollars.

A First Book of English Law. 7th edition by O. Hood Phillips and A. H. Hudson. London: Sweet & Maxwell, 1977. Price: Hardback £7.50; Paperback £5.25.

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List of Book Aquisitions to December 1977

Adkin (J.T.) — The Law of Landlord and Tenant, 17th Edn. by Walton and Essayan — London: Estates Gazette, 1973.
Aldridge (Trevor) — Service Agreements, 3rd Edn. Oyez Practice Notes No. 52, 1976.
Annual of Industrial Property Law 1975 — Shepheard Walwyn, London, 1975.
Archbold (J.) — Criminal Pleading, Evidence and Practice, 39th Edn. by S. Mitchell. Sweet and Maxwell, 1976.
Atiyah (P.S.) — The Sale of Goods, 5th Edn. Pitman 1975.
Barnard (David) — The Civil Court in Action. Butterworth, 1977.
Bevan (H.K.) — Law Relating to Children. Butterworth, 1973.
Bighan (D. Alistair) — The Law and Administration relating to Protection of the Environment, 1973 — with Supplement 1975, Oyez.
Boland (G.) and J. Sayer — The Law of Oaths and Affirmations, 2nd Edn. by W. J. Fell and A. G. Keats. Stevens, 1961.
Borrie (Gordon J.) — Commercial Law, 4th Edn. Butterworth, 1975. (Two copies).
Brandreth (Charles) — Parking Law. David and Charles, London, 1977.
Bromley (P.M.) — Family Law, 5th Edn. Butterworth, 1976.
Brown (Harold J.) — The English Land Compensation Act 1973. Sweet and Maxwell, 1973.
Brown (W.J.) — Cases and Statutes on Company Law. (Concise College Case Notes). Sweet and Maxwell, 1976.
Brownlie (Ian) — Principles of Public International Law, 2nd Edn. Oxford, Clarendon Press, 1973.
Buying a House — (Hancock and Berrigan). B.B.C. Publications.
Carver (T.G.) — Carriage by Sea. 2 Vols. 12th Edn. by Raoul Colinvaux — Stevens, 1971. British Shipping Laws, 2 Vols.
Charlesworth (T.) and T. E. Cain — Company Law, 11th Edn. Stevens, 1977. (Two copies).
Charlesworth (T.) — Mercantile Law, 13th Edn. by Clive Schmitthoff and David A. G. Sale. Stevens, 1977. (Two copies).
Cheshire (G.C.) — Private International Law, 9th Edn. by P. M. North. Butterworth, 1974. (Two copies).
Cheshire (G.C.) — and C. H. S. Fifoot — Law of Contract, 9th Edn. by M. P. Furmiston. Butterworth, 1976. (Three copies).
College of Europe, Bruges — University and Society — 1973 Lecture.
Council of Europe — The Practical Guide to the Recognition and Enforcement of Foreign Judicial Decisions in Civil and Commercial Law — Strasbourg, 1975.
Cracknell (D.G.) — Law relating to Charities. London, Oyez, 1973.
Current Law Case Citator — 1974 — 1976. Sweet and Maxwell, 1977.
Curzon (L.) — Law of Succession. Macdonald and Evans Handbook, 1976.
Dalton (Patrick J.) — and Robina Dexter — Constitutional Law, Oyez, 1970.
Day (Martin) — and Paul Harris — Unit Trusts, Oyez, 1974.
De Smith (S.A.—Constitutional and Administrative Law, 3 Edn. (Foundations of Law). Penguin Books, 1977. (Two copies).
Drake (Charles) — Labour Law, 2nd Edn. (Concise College Texts). Sweet and Maxwell, 1973.
Dias (R.W.M.) — Jurisprudence, 4th Edn. Butterworth, 1976.
Edwards (Richard) and Brian Langstaff — Cases and Statutes on Equity and Trusts. (Concise College Notebooks). Sweet and Maxwell, 1975.
Farrand (J.T.) — Contract and Conveyance, 2nd Edn. Oyez Publishing, 1973.
Farrand (J.T.) — The English Rent Act 1974. Sweet and Maxwell, 1974.
Farrar (John) — Introduction to Legal Method. Sweet and Maxwell, 1977.
Field (David) — Hotel and Catering Law, 2nd Edn. Sweet and Maxwell, 1976.
Fisher (W.R.) and J. M. Lightwood — Law of Mortgages, 9th Edn. by E. L. Tyler. Butterworth, 1977.
Franks (John A.) — The Company Director and the Law. (It's Your Law). London. The Law Society, 1973.
Freeman (M.D.) — Family Law, 2nd Edn. Cracknell's Law Students' Companion. Butterworth, 1976.
Fundamental Rights — being Essays to commemorate the 50th Anniversary of the Law School of Exeter, ed. by J. W. Bridge, D. Lasok, F. O. Plender and D. L. Perrott. Sweet and Maxwell, 1973.
International Institute for Legal Terminology. No. 13 — Law of Establishment — German/English Glossary. No. 14 — Local Government — German/English Glossary. No. 18 — Regional Policy — German/English Glossary.
Garner (J.F.) — Alteration or Conversion of Houses, 4th Edn. Oyez Practice Notes No. 47, 1975.
George (E.F.) and A. George — The Sale of Flats, 3rd. Edn. Sweet and Maxwell, 1970.
Goff (Robert) and Gareth Jones — The Law of Restitution. Sweet and Maxwell, 1966.
Gorman (Liam) Ruth Hand, Terry Moynihan and Roderick Murphy — Managers in Ireland, Dublin, Irish Management Institute, 1976.
Guyenot (J) — The French Law of Agency and Distributorship Agreements (European Commercial Library No. 4). Oyez, 1976.
Hall (L.E.) — Company Secretarial Practice. Macdonald and Evans, 1974.
Halpern (Lionel) — Taxes in France, 2nd Edn. Butterworth Taxbooks, 1976.
Hoggett (Brenda) — Mental Health (Social Work and Law). Sweet and Maxwell, 1976.
Hopkins (F) — Formation and Annulment of Marriage. Oyez Practice Notes No. 64, 1976.
Ind (Ronald) — Capital Transfer Tax. Macdonald and Evans Handbooks, 1977.
Irish Institute of Public Administration — Administration Yearbook, 1978.
Ivamy (E.R. Hardy) — Casebook on Insurance Law, 3rd Edn.
Jackson (Joseph) — The Formation and Annulment of Marriage, 2nd Edn. Butterworth, 1969.
Jackson (Paul) — Natural Justice (Modern Legal Studies). Sweet and Maxwell, 1973.
James (D. E. Howell) — Notes on the Need for Planning Permission, 2nd Edn. Oyez, 1977.
Josling (J.F.) — Execution of a Judgment, 5th Edn. Oyez Practice Notes No. 4, 1974.
Josling (J.F.) — Powers of Attorney, 4th Edn. Oyez Practice Notes No. 7, 1976. (Three copies).
Josling (J.F.) and Lionel Alexander — The Law of Clubs, 3rd Edn. Oyez, 1975. (Two copies).
Jowitt (Lord), ed. Dictionary of English Law, 2nd Edn. by John Burke. 2 vols. Sweet and Maxwell, 1977.
Jolowicz (J.A.) — ed. — The Division and Classification of the Law. Papers submitted to the Birmingham Conference of the Society of Public Teachers of Law, 1969. Butterworth, 1970.
Kahn Freund (Otto), Claudine Levy and Bernard Rudden—A Source Book of French Law — System and methods, Oxford, Clarendon Press, 1973
Keeton (G.W.) and L. A. Sheridan — A Casebook on Equity and Trusts, 2nd Edn. Professional Books, 1974.
Keeton (G.W.) and L. A. Sheridan — Equity, 2nd Edn. Professional Books, 1976.
Kerse (C.S.) — The Law relating to Noise. Oyez, 1975.
Kirk (Harry) — Portrait of the Solicitor's Profession. Oyez, 1976.
Lauwaars (R.H.) — Lawfulness and Legal Force of European Communities (Euopean Aspects) — Leyden, Sijthoff, 1973.
Law Commission — Working Paper No. 70. Elimination of Parol Evidence Rule in Contract. H.M.S.O., 1976.
Lowe (Robert) — Commercial Law, 5th Edn. Sweet and Maxwell, 1976. (Three copies).
McCarthy (Charles) — Trade Unions in Ireland (1894-1960) — Dublin, Institute of Public Administration, 1977.
MacGillivray (E.J.) and Michael Parkington — Insurance Law, 6th Edn. Sweet and Maxwell, 1973.
Mackenzie — Stuart (Lord) — The European Communities and the Rule of Law — (Hamlyn Lectures, 29th series) — Stevens, 1977.
Mackintosh (John P.) — The British Cabinet, 3rd Edn. Stevens, 1977.
McNae (L.J.) — Essential Law for Journalists, 6th Edn. by R. M. Taylor, London, Crosby Lockwood, 1975.
Maudsley (R.H.) and E. H. Burn — Trusts and Trustees, Cases and Materials. Butterworth, 1972.
Mellows (Anthony R.) — The Trustee's Handbook, 3rd Edn. — London, Oyez, 1975.
Matthews (E. J.) and A. D. Oulton — Legal Aid and Advice under the Legal Aid Acts 1949 to 1964. Butterworth, 1971.
McGilvray (James) — Social Statistics in Ireland — Dublin, Institute of Public Administration, 1977.
Moeran (Edward) — Practical Conveyancing. Oyez Practice Notes No. 44. 6th Edn. Oyez Publishing, 1974. (Four copies).
Moeran (Edward) — Practical Legal Aid, 2nd Edn. Oyez Practice

Notes No. 62, 1976.
Mostyn (F.K.) — Marriage and the Law — It's Your Law. London, Law Society, 1976.
Neyloh (Ted) and Frank Dunlop — Guide to the 21st Dail and Seanad. Platform Press, Blackrock, 1977.
Oliver (Mary) — Cases in Company Law. Macdonald and Evans Handbooks, 1972 and 1976.
O Siochain (P.A.) — The Criminal Law of Ireland, 6th Edn. Dublin, Foillsioncain Dli, 1977. (Three copies).
Oxford Essays in Jurisprudence, ed. A. W. Simpson — Second Series — Clarendon Press, 1973.
Palmer (Sir Francis Beaufort) — Comfpany Law. 2 Vols (Vol. 2 — Looseleaf) — 22nd Edn. by Clive Schmitthoff, M. Kaye and G. Morse — Stevens, 1976. (Two copies).
Park (W. D.) — Notes on the Discovery and Inspection of Documents, 2nd Edn. ed. by Gatenby — Oyez Practice Notes No. 58, 1975.
Parris (John) — Casebook of Arbitration Law. London, George Goodwin Ltd., 1976.
Pennington (Robert) — Companies in the Common Market, 2nd Edn. Oyez, 1970.
Phipson (Sidney L.) — The Law of Evidence, 12th Edn. by John H. Buzzard, Richard May and M. N. Howard. Sweet and Maxwell, 1976. (Common Law Library No. 10).
Pinson (Barry) — Revenue Law, 10th Edn. Sweet and Maxwell, 1976.
Pollock (Seton) — Legal Aid: The First 25 Years. Oyez, 1975.
Porter (David S.) — Profitable Management of a Solicitor's Office. Oyez, 1976.
Powell-Smith (V.) — Contract, (4th Edn. 1973) Cracknell's Law Students (5th Edn. 1977) Companion, Butterworth.
Pritchard (John) — Personal Injury Litigation. Oyez Practice Notes. No. 63. Oyez Publishing, 1976. (Two copies).
Puissochet (J. P.) — The Enlargement of the European Communities — (European Aspects) — Leyden, Sijthoff, 1975.
Radcliffe (G. R. W.) and Lord Geoffrey Cross — The English Legal System, 6th Edn. by G. T. Hand and D. J. Bentley. Butterworth, 1977.
Ridall (J. G.) — The Law of Trusts. Butterworth, 1977.
Ridall (J. G.) — Equity and Trusts. (Cracknells Law Student's Companion), 2nd Edn. Butterworth, 1974.
Roberts (G) and W. T. Major — Commercial and Industrial Law, 2nd Edn. 1972. Macdonald and Evans Handbooks.
Rosen (Lionel) — Matrimonial Offences, 3rd Edn. Oyez, 1975.
Samuels (Roger) — Equity and Succession (Concise College Texts). Sweet and Maxwell, 1974.
Sanctuary Gerald and Constance Whitehead — Divorce and After. Oyez, 1976.
Sanders (P.) — Dutch Company Law. (European Commercial Library No. 6). Oyez, 1977.
Saunders (M. Roy) —Tax Planning for Businesses in Europe. Butterworth, 1977.
Schwarzenberger (Georg) — International Constitutional Law. Stevens, 1976.
Seageant (E. G. and B. J. Sims — The Law of Stamp Duties and English Capital Duty, 7th Edn. Butterworth, 1977.
Shaw (Sir Sebay) and Dennis Smith — The Law of Meetings, 4th Edn. Macdonald and Evans, 1974.
Sheldon (N. J. P.) — Practice and Law of Banking, 10th Edn. by C. B. Drover and R. W. Bosley. Macdonald and Evans, 1972.
Sheridan (J. A.) — Rights in Securities (Securities over Chattels and Ships and Mortgages) — London, Collins, 1974.
Shetreet (Simon) — English Judges on Trial — Oxford, North Holland Publishing Co., 1976.
Slater (J. A. — Mercantile Law, 17th Edn. by Lord Chorley and O. C. Giles — Pitman, 1977.
Smith (F. E.) — Company Law, 2nd Edn. Cracknells Law Student's Companion. Butterworth, 1976.
Smith (J. C.) and J. A. Thomas — A Casebook on Contract, 6th Edn. Sweet and Maxwell, 1977.
Staubach (Fritz) — The German Law of Agency and Distributorship Agreements (European Commercial Library No. 7). Oyez, 1977.
Stratton (I. G.) and I. S. Blackshaw — Partnership, 2nd Edn. Oyez Practice Notes No. 60, 1972.
Statute Law — The Key to Clarity — London, Statute Law Society, 1972.
Taylor (Noel Leigh) — Doctors and the Law (It's Your Law) — London, The Law Society, 1976.
Telling (A. E.) — Planning Law and Procedure, 5th Edn. Butterworth, 1977.
Temperley (R.) — The Merchant Shipping Acts, 7th Edn. by M. Thomas and O. Steel. Stevens, 1976.
Terry (Jennifer) — A Guide to the English Children's Act, 1975 (Social Work and Law). Sweet and Maxwell, 1970.
Tolley ( ) — Taxation in the Republic of Ireland, 1976-77 by Harvey and Lambert.
Treitel (G. H.) — The Law of Contract, 4th Edn. Stevens, 1975.
Twining (William) and David Miers — How to do Things with Rules. Law in Context. Weidenfeld and Nicholson, 1976.
Thomas (Patricia) — Evidence. Butterworth, 1972. (Cracknell's Law Students Companion).
Tyas (J. G.) — Law of Torts, 3rd Edn. Macdonald and Evans, 1977. (Three copies).
Underhill (A. W.) — Law of Partnership, 10th Edn. by Hardy Ivamy. Butterworth, 1975.
Vandyk (Neville) — Accidents and the Law. (It's Your Law). London, The Law Society, 1975.
Wilkinson (H. W.) — A Commentary on Standard Conditions of Sale of Land, 2nd Edn. Oyez, 1974.
Wilkinson (H. W.) — Pipes, Mains, Cables and Sewers, 3 rd Edn. Oyez Practice Notes, No. 57, 1976.
Williams (Donald) and Melvyn Stein — A Solicitor's Introduction to Solicitor's Accounts. (Concise College Texts). Sweet and Maxwell, 1975.
Williams (T.) — The Law of Title — 1st Supplem. to 4th Edn. Butterworth, 1977.
Witchell (Rowland) — ed: Practice and Procedure, 6th Edn. Oyez, 1977. Volume 1; Volume 2 — Conveyancing; Volume 3; Volume 4 — Matrimonial Proceedings; Volume 5 — Non-contentious Probate and Private Limited Companies.

S.A.D.S.I.

Committee of the Society for the 94th Session 1977-78

Michael D. Murphy . Auditor
Janet Doherty ..... Treasurer
Adrienne Grant ..... Correspondence Secretary
Declan Sherlock ..... Records Secretary
Murrough O'Rourke . Junior Ordinary Member
Ciaran B. O'Mara .... Ex-Auditor *(ex officio)*
Miriam Keane ..... Social and Dress Dance Secretary
Maria Durand ..... Debating Captain
Eugene Tormey ..... Parties

OBITUARIES

Mr. George Eason died on 17th June, 1977. Mr. Eason was admitted in Trinity Term, 1942, and practised in Fermoy, Co. Cork.

Mr. Patrick J. Groarke who died on 2nd September, 1977, was admitted in Easter Term, 1934, and practised in Athlone, Co. Westmeath.

Mr. Frederick Conway who died on 11th November, 1977, was admitted in Trinity Term, 1931, and practised in Claremorris, Co. Mayo.

Mr. Dermot Curran died on 22nd October, 1977. Mr. Curran was admitted in Easter Term, 1950, and was a partner in the firm of Mason Hayes & Curran, 6 Fitzwilliam Square, Dublin 2.

Mr. George Joseph Geraghty died on 11th November, 1977. Mr. Geraghty was admitted in Michaelmas Term, 1930, and was a partner in the firm of Geraghty & Co., Eyre Square, Galway.

RECENT ENGLISH CASES

Irish Statute of Frauds — 1695

A concluded unilateral contract whereby the parties agreed to enter into a contract for the sale of land was *held* to be unenforceable. The unilateral contract was subject to the 1695 Act since it was a contract for a "disposition of [an] interest in land." The interest, which could be a future one, derived from the equitable interest that would arise from the contract for sale and the specific enforceability of that contract. There was no written note or memorandum sufficient for the 1695 Act. Nor were there sufficient acts of part performance. The purchasers relied on the acts done by them to satisfy the conditions of the unilateral contract, but none of those acts pointed to a contract between the parties. They could only be regarded as part performance if looked at in the light of the terms of the oral contract, but *Steadman v. Steadman* [1974] C.L.Y. 3968 forbade such an enquiry. Buckley L.J. made (avowedly obiter) observations on the true ratio of *Law v. Jones* [1973] C.L.Y. 3457 and the extent to which that case was in conflict with *Tiverton Estates v. Wearwell* [1974] C.L.Y. 3952: **Draulia v. Four Millbank Nominees,** *The Times,* December 3, 1977, C.A.

Solicitors—fees—review of conveyancing fees

[Solicitors Remuneration Order 1972 (S.I. 1972 No. 1139).] The Department of the Environment sought a review of solicitors' professional charges of £9,000 in connection with the preparation, settlement and completion of a lease of offices. The value of the land was £1m, and the cost of redevelopment amounted to a further £1m. The lease was for 40 years at a rental of £190,035 per annum. The taxing master had ordered that the costs be reduced to £6,900. *Held,* that (1) an hourly cost rate applied to recorded time only indicated the minimum figure the solicitor must charge, and was only one of a number of cross-checks on the reasonableness of the final figure; (2) it was reasonable to the client that remuneration should not be disproportionate to the value of the property; ½ per cent. on the first £250,000 in a major transaction and thereafter regressing, provided a reasonable method of assessment, but this figure should not be added to the remuneration for other elements; it is merely a check that the provisional figure bears a reasonable relationship to the value of the property; (3) the nature of the client's interest in the property was irrelevant; what mattered was the effect which that nature had on skill, work, complexity, etc. The court substituted a figure of £8,000. (*Property and Reversionary Investment Corp. v. Templar* [1975] C.L.Y. 3292 considered): **Treasury Solicitor v. Regester,** *The Times,* December 23, 1977, Donaldson J.

Solicitors — practising certificate — failure to renew — whether "unqualified" person bars firm from recovering costs

[Partnership Act 1890 (c. 39), s. 34; Solicitors Act 1957 (c. 27), ss. 18, 23.] While a firm of solicitors was acting in litigation for W, one of their partners neglected to renew his practising certificate; under ss. 18 and 23 of the Solicitors Act 1957, W resisted payment of the costs which would otherwise have been due from him. Held, Bridge L.J. dissenting, that the partnership had been dissolved by force of law under s. 34 of the Partnership Act 1890 when the solicitor ceased to be qualified and, since all the work done for W had been the responsibility of another solicitor, the solicitors could recover their costs: **Hudgell, Yeates & Co., v. Watson,** *The Times,* December 6, 1977, C.A.

Planning Acts – planning permission — refusal to renew temporary permissions — Secretary of State's decision *ultra vires*

The applicants used premises in Mayfair for office use under temporary planning permissions. When these expired the Council refused to renew them and the Secretary of State upheld this refusal even though evidence called before the inspector showed that they could not be economically converted to residential use at the present and the inspector recommended an extension of five years for the permissions. The Court concluded that the Minister had not acted in accordance with his policy as laid down in the development plan of permitting such extensions and so had acted ultra vires, and his decision was quashed: **Niarchos (London) v. Secretary of State for the Environment,** *The Times,* December 16, 1977, Sir Douglas Frank Q.C.

THE REGISTER

REGISTRATION OF TITLE ACT 1964

Issue of New Land Certificate

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

Dated this 31st day of January, 1978.

N. M. GRIFFITH

Registrar of Titles

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

Schedule

(1) Registered Owner: Thomas Patrick Conroy; Folio No.: 2780; Lands: Drumman Beg; Area: 12a. 0r. 18p.; County: Roscommon.

(2) Registered Owner: Owen Greene; Folio No.: 16398; Lands: Carrickykelly; Area: 27a. 0r. 30p., County: Monaghan.

(3) Registered Owner: John Joseph Davey; Folio No.: 3453; Lands: Carrowkeel; Area: 33a. 0r. 7p., County: Sligo.

(4) Registered Owner: Thomas Martin; Folio No.: 8092; Lands: Bunnamayne; Area: 71a. 0r. 29p., County: Donegal.

(5) Registered Owner: Thomas Martin; Folio No.: 29802; Lands: Bunnamayne; Area: 1a. 3r. 11p., County: Donegal.

(6) Registered Owner: Thomas Martin; Folio No.: 42470; Lands: Bunnamayne; Area: 1a. 0r. 0p., County: Donegal.

(7) Registered Owner: Daniel C. Lynch and Mary Lynch; Folio No.: 19418; Lands: Drombeg; Area: 33a. 1r. 36p., County: Cork.

(8) Registered Owner: William Lynskey; Folio No.: 15528; Lands: Lustown; Area: 86a. 1r. 10p. and 21a. 1r. 10p., County: Meath.

(9) Registered Owner: Thomas Martin; Folio No.: 35796; Lands: Bunnamayne; Area: 0a. 2r. 17p., County: Donegal.

(10) Registered Owner: Jeremiah C. Browne; Folio No.: 32223; Lands: Ash-Hill; Area: 3a. 0r. 15p., County: Kerry.

(11) Registered Owner: William Finbarr Kearney; Folio No.: 36245; Lands: Knocknahorgan; Area: 2a. 0r. 18p., County: Cork.

(12) Registered Owner: Michael Sheehan; Folio No.: 37181; Lands: Barryscourt; Area: 39a. 0r. 33p., County: Cork.

(13) Registered Owner: Patrick Coffey; Folio No.: 735F; Lands: Ullid; Area: 0a. 3r. 0p., County: Kilkenny.

(14) Registered Owner: John Grady; Folio No.: 4913; Lands: (a) Ballyglass (b) Clogh; Area: (a) 56a..1r. 20p., (b) 3a. 0r. 0p., County: Galway.

(15) Registered Owner: Michael Morrissey; Folio No.: 37141; Lands: Knockanpierce; Area: 0a. 0r. 3p., County: Tipperary.

(16) Registered Owner: Fleet Holdings Limited; Folio No.: 3187; Lands: A plot of ground with the houses and premises thereon known as No. 9, College Street situate in the Parish of St. Mark and City of Dublin.

(17) Registered Owner: Daniel Harrold; Folio No.: 4595; Lands: Hynestown (E.D. Newcastle); Area: 1a. 2r. 19p., County: Dublin.

(18) Registered Owner: John Power; Folio No. 1213; Lands: Carrickavrantry; Area: 32a. 0r. 5p.; County: Waterford.

(19) Registered Owner: Catherine Quinn; Folio No.: 17640; Lands: Cornanagh; Area: 36a. 0r. 0p.; County: Monaghan.

(20) Registered Owner: John Walshe; Folio No.: 7437; Lands: Kiltimagh; Area: 11¼p.; County: Mayo.

(21) Registered Owner: Thomas McKee; Folio No.: 5480; Lands: Erinagh More; Area: 21a. 1r. 17p.; County: Clare.

(22) Registered Owner: Margaret Ryan; Folio No.: 3069; Lands: Grange Lower; Area: 79a. 3r. 30p.; County: Kilkenny.

(23) Registered Owner: Brigid Mary Byrne; Folio No.: 4443: Lands: The lands of Broghan in the County of Dublin; Area: (a) 79a. 2r. 10p., (b) 28a. 2r. 35p.; County: Dublin.

NOTICES

Assistant Solicitors are required for Conveyancing, Probate, Litigation, etc. by Nolan Farrell & Goff, Newtown, Waterford.

Patrick Ruxton, Auctioneer, deceased, 17 Upper Gardiner Street, Dublin 1. A reward of £10.00 is offered for information leading to the recovery of the Will of the above deceased, who died on the 30th day of October, 1976. James P. McD. Concannon, Solicitor, 44 Essex Street East, Dublin 2.

Old share, bond and stock certificates wanted — Please write with details or forward for best offer to: Mr. D. Scott, 4 Strathmore Park, Antrim Road, Belfast.

Mrs. Mary Elizabeth Prunty, also known as May, late of Newtownforbes, County Longford, deceased. Anybody having any knowledge of any Will of the above named deceased, please contact Messrs. George V. Maloney & Co., Solicitors, 6 Farnham Street, Cavan.

Molloy Fayle Tyndall & Co.

Solicitors

David R. Felton has recommenced practice under the above style at 9, Mount Street Crescent, Dublin 2. Telephone Numbers: 761152 and 761153.

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NOTE: Nearly all these entries refer to the separate numeration in the green pages.