LIBRARY OF THE INCORPORATED LAW SOCIETY OF IRELAND
14 OCT 1967

Vol. 58
No. 1

MAY
1964

THE GAZETTE

of the

INCORPORATED LAW SOCIETY OF IRELAND

President
DESMOND J. COLLINS

Vice-Presidents
JOHN MAHER
PATRICK NOONAN

Secretary
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

CONTENTS OF THIS ISSUE

	Page
Meetings of the Council	1
Ordinary General Meeting	3
Admission Ceremony	6
Road Traffic Acts 1933 *and* 1961	7
Cases of the month	7
Examination dates 1964	9
Solicitors' Benevolent Association	9
The Registry	9
Registration of Title Acts	9
Trade Marks Act	10
Obituary	10

MEETINGS OF THE COUNCIL

APRIL 23RD: The President in the chair, also present, Messrs. Ralph J. Walker, D. B. Gilmore, James R. C. Green, Edward J. Dillon, John C. O'Carroll, Joseph P. Black, Thomas A. O'Reilly, D. J. O'Connor, Patrick Noonan, Desmond Moran, Peter D. M. Prentice, R. A. French, Thomas J. Fitzpatrick, Francis J. Lanigan, John Maher, G. G. Overend, Brendan A. McGrath, Gerard M. Doyle, John J. Nash, George A. Nolan, J. F. Foley, Patrick O'Donnell, Rory O'Connor, Peter E. O'Connell, James W. O'Donovan, William A. Osborne, Niall S. Gaffney, Eunan McCarron and Gerard J. Moloney, John Carrigan.

The following was among the business transacted

Examination Failure Rate

The Council referred to the Court of Examiners the consideration of the results at the recent 1st Law Examinations having regard to the higher percentage of failures with instructions to make a further report to the Council.

Circuit Court Costs

The Council considered a report from the deputation which attended the Department of Justice.

Agreement was reached between the Department and the Society's representatives. It was decided that the scale of costs will now be submitted to the Circuit Court Rules Committee.

Compensation Fund

Claims amounting to £9,810 were admitted for payment.

Road Traffic Prosecution Costs

In reply to an enquiry as to whether a solicitor who defends a charge for dangerous and drunken driving is entitled to charge £7 7s. for each summons, the Council stated that the case of a double charge of dangerous and drunken driving is covered by the statement in the circular recently issued that the fee of £7 7s. is a minimum fee and that appropriate additional fees should be charged for cases of special responsibility or difficulty. A case of drunken driving falls within this description and is not included in the minimum fee of £7 7s. An appropriate additional fee should be charged.

Client's access to solicitors' stationery

A member enquired whether he might act for clients in debt collection matters on terms that a supply of his stationery would be used by the client for preparing letters of application which would be carefully checked and signed by the solicitor before mailing. On a report from the committee the Council stated that they would not approve of the suggested arrangement whereby the client should have access to the solicitor's professional stationery.

MAY 14TH : The President in the chair, also present, Messrs. Francis J. Lanigan, John Carrigan, James W. O'Donovan, D. B. Gilmore, R. A. French, Edward J. Dillon, Gerard M. Doyle, Thomas H. Bacon, Peter E. O'Connell, R. Knight, James R. C. Green, Brendan A. McGrath, Eunan McCarron, Peter D. M. Prentice, John J. Nash, R. McD. Taylor, Joseph P. Black, John Maher, Ralph J. Walker, Desmond Moran, Patrick Noonan, and Augustus Cullen.

The following was among the business transacted :

Medical Practitioners fees

The Council considered a report from a committee on difficulties which arise where medical practitioners, particularly those in the health authority service, decline to furnish medical reports or attend court as witnesses. It was decided that a letter should be written to the Irish Medical Association asking them to submit suggestions for an appropriate scale of medical fees which could be submitted to the Superior Court Rules Committee and the Circuit Court Rules Committee and to invite them to discuss with representatives of the Council the difficulties which arise from the point of view of the client, who wishes to institute proceedings whereby the medical practitioner who attended him does not furnish a report and give evidence.

Town Planning Searches

On a report from a committee the Council stated that as a matter of practice no additional fee should be charged over and above the commission scale fee for searches and other work under the Town Planning Act in connection with the sale or purchase of property.

Workman's Compensation Agreement

On a report from the committee the Council stated that there is no objection to the receipt by a solicitor from the employer of a workman, of a sum for costs mutually agreed where a claim is admitted and weekly payments made thereafter without the necessity of instituting proceedings.

Commissioners' Fees on Administration Papers

On a report from a committee of the Council stated that the fees now chargeable in administration matters where a deceased dies intestate and there is one administrator and two private sureties are as follows :—

1. Schedule of Assets 5s.
2. Oath of Administrator 5s.
3. Administration Bond (three parties) 15s.
4. Justification (two sureties 10s.)
5. Affidavit of market value 5s.

Sale—Lease

Members refer to the decision in Simms-Clarke *v.* Ilet Ltd., and ask the Council for their opionion as to the point when the lease ceases to be a lease and becomes a sale for the purpose of costs. The ratio between the annual rent and the amount of the fine varies within wide limits. The Council in reply stated that each case must be considered on its merits having regard to the surrounding circumstances. If there is a substantial fine the transaction is a sale. If the parties agree in advance that the costs of the lease containing the fine shall be paid by the lessee the lessee is bound by the stipulation but the Council disapprove of such stipulations in contracts (Handbook Opinion DR.24).

If the contract contains a stipulation obliging the lessee to pay the lessor's costs the lessee is liable

for these costs calculated on the fine and on the rent. In the absence of such a stipulation each party pays his own costs calculated on the fine and on the rent.

Solicitor-Executor. Privilege

A member drew a will for a client who made a number of pecuniary bequests and devises. Member was solicitor and sole executor. He extracted Probate and completed the administration of the estate a number of years ago. He recently discovered that certain assets were concealed by the testator's widow with the result that there is an undischarged liability for death duties and the residuary legatees were underpaid. Part of the undisclosed assets consisted of deposit receipts in the joint names of testator and his wife and the rest was a substantial amount of cash in the house. Member enquired as to his professional position. The Council in reply stated that member has a duty as solicitor and executor to disclose the new information that has come to his notice both to the Revenue Authorities and the residuary legatees but he should not disclose the source of his information if he obtained it from the widow in a professional capacity.

ORDINARY GENERAL MEETING

An Ordinary General Meeting of the Society was held at The Library, Solicitors' Buildings, Four Courts, Dublin, on Thursday, 14th May, 1964 at 2.30 o'clock.

The President took the chair.

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

The minutes of the Ordinary General Meeting held on 21st November, 1963, were read confirmed, and signed.

Pursuant to Bye-Law 28 the Chairman nominated the following members as the scrutineers of the ballot for the election of the Council for the year, 1964–65 :—

J. R. McC. Blakeney, Thomas Jackson, Brendan P. McCormack, Roderick J. Tierney, and Alexander J. McDonald.

The President addressing the meeting said :—

LADIES AND GENTLEMEN,

Before dealing with the business of your Society, I have to record with regret the death since we last met of the following members of the Society :—

Sean Gibbons and his son, Niall Gibbons, both of 8 Trinity Street, Dublin.
John D. O'Connell, Tralee, Co. Kerry,
Patrick Murphy, Finance Solicitor, 51 St. Stephen's Green, Dublin,
Derek Hurley, 15 St. Stephen's Green,
Herbert J. W. Downey, 22 Kildare Street, Dublin,
Patrick E. Rogers, Ballyshannon, Co. Donegal,
Alan G. Murray, 3 Dawson Street, Dublin,
Edward Minogue, Claremorris, Co. Mayo,
John M. Dudley, Mallow, Co. Cork,
John T. Hannon, Law Commissioner, Land Commission,
Nicholas J. Cosgrave, 39 Nassau Street, Dublin,
Charles S. Doyle, 34 Kildare Street, Dublin.

On behalf of the members of the Council and on my own behalf I would like to express deep sympathy with their relatives and friends.

At each half yearly meeting of our Society it is customary for the President to give a short account of any developments which have taken place since the previous meeting.

You will, no doubt, recall that some time ago your Council arranged for lectures to be given to assist in post-graduate legal education. Three lectures have already been given and further lectures it is hoped will be arranged at a later date.

A few hours after I had been elected as President of the Society on the 5th December last I presided at the first of the three lectures all of which were held here in our law library. The subject matter was Town Planning a subject which interests more and more people as our cities continue to develop and expand. Mr. Matthew Purcell whose knowledge of the subject is apparently unlimited held the attention of an audience of over seventy people and although he appeared to have copious notes he never seemed to refer to them at all during his address which was very cordially received.

The subject of the second lecture which was held on 9th January of this year was Taxation. Once again there was an audience of over seventy people present. Mr. Vincent Grogan, the lecturer, excelled himself. Taxation is nothing new but it is a subject which is becoming more and more important in these competitive days and solicitors appreciate how necessary it is to know everything possible about the subject so that they may advise their clients not only on how to live but how they can afford to die. I think it is safe to say that everyone present at that lecture learned something new and helpful.

On 6th February the subject of the lecture was Company Law and once again there was a very large attendance. Mr. Patrick Kilroy was the lecturer. He

showed us that he had mastered the new Companies Act of 1963 and underlined some of the more important differences between this Act and the previous Acts of 1908 and 1959. Tape recordings were made of all three lectures and may be hired from the Society by any Bar Associations who require them. The lectures will in the near future be printed and published by our Society. I think that we owe a deep debt of gratitude to our three lecturers for their very able work.

Society's Publications

I would like to remind you all that our Society's other publications

Administration of Estates Act, 1959.
The Statute of Limitations.
Married Womens' Status Act, 1957.
Civil Liability Act, 1961.
The Stamp Duty Legislation, 1890–1962.

are all available and can be obtained from the office here in the Four Courts.

I must also pay a tribute to the Provincial Solicitors Association for publishing an excellent booklet under the title of " A Guide to Death Duties ".

Your Society has obtained from counsel a draft of Standard Contract Form Clauses in Sales by Auction and Private Treaty and this draft is at present being studied by the Council.

There are also available now supplies of the new form of stock transfers for the use of our members.

Compensation Fund

It is satisfactory to know that everyone who proved a claim against our Compensation Fund has been paid in full. We have now in reserve a substantial fund over and above the amount provided by the Solicitors Act and whilst at this stage there is no suggestion that the Solicitors Annual contributions may be further reduced, it is, I believe, extremely improbable that the contributions will need to be increased in the foreseeable future.

International Bar Association

In his address a year ago, to the meeting of our Society held at Bundoran, my predecessor, Mr. Frank Lanigan, told you that the next meeting of the International Bar Association would take place this year in Mexico city, and he said that it was open to any member of our Society to go to this conference, and pointed out how necessary it is to retain an active interest in the Association.

In January of this year I spent two days in Madrid as a member of the committee which had the task of arranging the agenda for the conference of the association in Mexico City, which commences on the 26th July and closes on the 31st July. The Law Society of England has chartered a plane to take all the European delegates to Mexico, and I hope to attend this conference with Mr. John Carrigan. I will make a further report when I speak to you next December. The distance to Mexico city from this country has proved too great an obstacle for several other members of our Society who have attended previous conferences. It is hoped that the 1966 conference will be held somewhere in Europe where the problem of distance will not be so great for our members.

Training of Apprentices

Your Council is extremely concerned at the increasing amount of knowledge which solicitors' apprentices must absorb if they are to succeed in qualifying as solicitors. The course is both long and difficult and the percentage of apprentices who pass any of the law examinations at the first attempt is by no means high. The Court of Examiners have been asked to consider the whole position and to report to your Council. I cannot help wondering whether the standard set for the leaving certificate is sufficiently high in these very competitive days. I am aware that a very high percentage of students are successful each year in this examination. I wonder, however, whether the percentage of passes in the open public matriculation examination is equally high. I doubt this extremely. I am aware that some employers are not impressed by a candidate for a position who simply obtained a leaving certificate, but are much more inclined to favour one who has obtained a pass in the open public matriculation examination. The results in this examination do not, of course, get anything like the same publicity as the results of the leaving certificate. The marks are not published, nor is it easy to get particulars of the numbers of candidates who have failed. Your Council will do everything possible to ensure that solicitor's apprentices will be taught comprehensively and adequately, but it is well to realise that our apprentices are usually in an age group of 17½ to 19 years when they enter into indentures, and it is going to be difficult both for them and for us if at that stage their standard of education is insufficient to enable them to undertake the very heavy programme of work which faces them before they finally qualify as solicitors. There is no doubt that now-a-days when a solicitor passes his final examination he is, in my opinion, really well qualified to deal with any and all legal problems which may arise in these very difficult days.

Law Calendar and Directory

By this time you have all, I hope, obtained your copies of the new Handbook of the Incorporated Law Society and the Law Directory for 1964. Your

Council hopes that the new Handbook commends itself to the profession, and in so far as the Law Directory for 1964 is concerned, your Council will welcome any suggestions for improvement or amendment at a later date.

Solicitors' Benevolent Association

I attended the centenary meeting of the Solicitors' Benevolent Association in January of this year. I was very glad indeed to learn that the necessary money had been forthcoming for the new Centenary Annuity. The work of the Society is most important and there is no reason why every member of our profession should not be a member of the Solicitors' Benevolent Association. The annual subscription is still only one pound and that sum must certainly be within the reach of all of us. I renew the appeal made by successive Presidents of our Society to every solicitor, young or old, to send his subscription now to the Secretary of the Solicitors' Benevolent Association.

Bar Associations

Although I have been in office for only five months, I have realised more than ever how important it is to have active and effective local Bar Associations. Such Associations tend to increase harmony and goodwill amongst the members and they deal very efficiently with questions which arise from time to time amongst their members and thereby save a considerable number of matters being referred to your Council for a decision. I do not want you to think that your Council wishes to rid itself of its responsibilities, but there are numerous cases where members of the profession prefer to have any differences or difficulties ruled on by a local body rather than to have the matter referred to your Council here in Dublin.

There are a few counties which lack a local bar association and I think that this is most regrettable. Any one active man with initiative could, I feel confident, organise a local bar association and I have no doubt that once such an association had been formed it would meet with general approval and would help to strengthen our profession.

Legal Education and Training

On the 21st July, 1961 your Council sent a long memorandum on legal education and training to the Commission on Higher Education for consideration. In that memorandum your Council stressed three main defects of the present system and made five general recommendations and six specific recommendations.

The commission has not yet made a report but within the past few days your Council received a notice that the Commissioner on Higher Education wished to meet representatives of your Council presumably to discuss the suggestions and recommendations already referred to. In my next report accordingly, I will be able to tell you the result of that interview.

Legal Aid

Your Council has had meetings with the Department in connection with the Criminal Justice (Legal Aid) Act of 1962 and made it clear that it will co-operate as far as possible in any satisfactory scheme which may be approved. The Department suggested that in order to assist in the introduction of the scheme the solicitors concerned should accept reduced fees and a scale was submitted to your Council. This scale was considered very fully but was found to be unacceptable. However, in an endeavour to meet the Department and to facilitate all persons concerned your Council submitted their suggestions which represent substantially less than the fees which they consider the solicitors concerned should be paid. They notified the Department that they would be prepared to recommend this scale to their members for a trial period of one year on the definite understanding that at the end of that period the scale would be reviewed and increased to a realistic figure. It should be mentioned that at the time your Council submitted their final scale the 9th round wage increase had not taken place nor were they aware of the increase in postage and telephone charges which were subsequently announced. Your Council has not yet heard from the Department since submitting its final suggestions.

Circuit Court Costs

Some years ago your Council raised the question of a new scale for circuit court costs. A scale was approved by the Rules Committee and sent to the Department of Justice. The Minister, however, felt unable to agree to the scale submitted. With the consent of the Rules Committee your Council then entered into direct consultations and negotiations with the Minister regarding the amount of the increases to be allowed. The Minister made it clear that he did not wish to continue the principle of scales of costs in certain jurisdictions being linked to the scales applicable to the High Court. Numerous interviews and consultations with the Department ensued and very recently your Council notified the Department of its acceptance of the final terms which had been provisionally agreed. The fact that final agreement seems now to be in sight is largely due to the work and co-operation of the Minister and his officials and to my predecessor Mr. Lanigan, to all

of whom we owe our thanks. It was, however, made quite clear to the Department, when this approval was given, that the new scale is on the basis of the Society's original application of August, 1961 and does not take account of the altered circumstances since that date, including the ninth round wage increase. The Department has been informed that as soon as the new scale has been approved by the Rules Committee and finalised, the Society will apply at once for a 12% increase.

LAND COMMISSION COSTS

Within the past few weeks we had a long interview with the Minister for Lands and officials of his Department. Agreement was reached in principle on an appropriate commission scale in voluntary sales—with a right of election. The rules to implement this scale are at present being drafted by the Department and they will include provision for the simplification of procedure in connection with title. Our thanks are due to the Minister and his officials for their co-operation and assistance in finalising this matter.

CONCLUSION

At this half yearly meeting I have dealt very shortly with a number of current matters which are of great importance to all of us. I can assure you that during the remainder of my term of office I will do everything possible to carry out my duties in a manner most beneficial to our Society and our Profession. I have received and will I know continue to receive the greatest possible support from Mr. John Maher and Mr. Patrick Noonan, my Vice Presidents and from the entire Council. I would also like to refer to the assistance, help and guidance I have received from our Secretary Mr. Eric Plunkett and I know too that that assistance will continue to be forthcoming for the remainder of my term of office

In general business, Mr. T. D. McLoughlin suggested that instruction should be given to the apprentices on the use of legal text books and also that newly admitted solicitors should be required to wear gowns on receiving their certificates of admission. Mr. R. J. Walker, spoke opposing the last mentioned suggestion. Mr. J. B. McGarry spoke on the question of the difficulty experienced by apprentices in finding sufficient time to attend their offices when taking University degrees. There was no further business and the meeting terminated.

ADMISSION CEREMONY

An admission of new solicitors took place at the Library, Solicitors' Buildings, Four Courts, Dublin on 7th May, 1964. The President addressed the meeting as follows :—

Since my election as President of the Incorporated Law Society of Ireland last December, I have attended a large number of functions and presided at many meetings and before my year ends in December I will I hope attend many more.

I can honestly say that the occasion which gives me the most pleasure is to-days ceremony, short though it will be. You have completed a lengthy and difficult course and you have joined a profession which welcomes you. Wherever you decide to practise whether in Dublin or some other city or in the country your clients will rely on you for advice and guidance and the intensive training which you have completed will enable you to give that advice and guidance with confidence. Some of you may decide to go abroad and in this connection I have noticed advertisements in newspapers recently which appear to offer very attractive terms to young. The younger you are the greener seem the " far off hills " but you must realise that the colour does not always persist when you arrive at the end of your journey. I believe that it will be possible for you to make for yourselves a satisfactory career in this country if you stay here and you can also be reasonably sure that in few other countries will you find the way of life more rewarding and satisfactory. I would like you to remember that if you ever need advice or assistance at any time in the future the Council of the Incorporated Law Society of Ireland will always be ready and willing to help you. That is one of its chief functions.

In conclusion on behalf of the Council and on my own behalf I congratulate you most heartily and wish everyone of you happiness and success in the future.

The following solicitors received their parchments :

H. C. P. Barry, Egmont House, Kanturk, Co. Cork; Brendan Byrne, B.C.L., (N.U.I.) 72 South Hill, Dartry, Dublin; Michael A. Buckley, " Analore ", Castle Road, Blackrock, Co. Cork; Anthony E. Collins, B.A., B.Comm., 5 Waltham Terrace, Blackrock, Co. Dublin; Stuart L. Cosgrave, 94 Sandford Road, Ranelagh, Dublin; Peter B. Fagan, 23 Fitzwilliam Place, Dublin; John F. B. Glynn, B.A., B.C.L., LL.B., (N.U.I.), 91 Terenure Road West, Dublin; George B. Holland, B.A., (Mod.), LL.B., (T.C.D.), 7 Baymount Park, Clontarf, Dublin; Daniel Kelliher, Main Street, Castleisland, Co. Kerry; Patrick Liston, 12 Thomas Street, Limerick; Giles Montgomery, 52 St. Lawrence Road, Clontarf, Dublin; Denis Murnaghan, 66 Wellington Road, Ballsbridge, Dublin; Brendan A. J. Murrin, B.C.L., (N.U.I.), Bridge Street, Killybegs, Co. Donegal; Patrick John MacGrath, 31 Pearse Street, Nenagh, Co. Tipperary; Bryan Michael E. McMahon, B.C.L., LL.B. (N.U.I.),

38 Ashe Street, Listowel, Co. Kerry; James J. Nestor, Dunmore, Co. Galway; William F. O'Driscoll, B.C.L., Bandon, Co. Cork; Michael V. O'Mahony, B.C.L., LL.B., (N.U.I.), 62 Stiles Road, Clontarf, Dublin (Silver Medal); Niall P. O'Neill, Ard Caein, Naas, Co. Kildare; David W. Prentice, 96 Granite Field Estate, Dun Laoghaire, Co. Dublin; Edmond M. Veale, B.C.L., (N.U.I.) 30 St. Kevins Park, Dartry, Dublin.

ROAD TRAFFIC ACTS 1933 AND 1961

Copies of the Department of Local Government circular relative to the above may be obtained from the Department; they contain a statement of the provisions of the law of the Road Traffic Act, 1961 and the Orders, Regulations, Byelaws and rules made thereunder which are now in force; particulars of the provisions of the Road Traffic Act, 1933 and certain other enactments which have been repealed by the 1961 Act, and particulars of Orders etc., made under the 1933 Act which is still in force. The statement covers the position as at 1st April, 1964 and supersedes all previous statements issued by the Department on the subject.

CASES OF THE MONTH

Costs Itemised Bill.

In a recent unreported decision of Kenny J. in the High Court the plaintiffs on a special summons were the solicitors for a limited company and the defendants were the company. The solicitors sought a direction remitting a solicitor and own client bill for taxation, the clients having refused to sign the requisition to tax. The charges related to business done in connection with a number of take over agreements and the bill was drawn at £2,600. The first bill submitted was a lump sum bill for this amount and the clients required particulars under clause 6 of the Solicitors' Remuneration General Order, 1960. In the particulars submitted all the work done was summarised under the heading of instructions running to over 100 pages and the last six pages of the bill comprised itemised charges amounting to a sum of between £300 and £400. Kenny, J. held that the system of solicitors' remuneration for non-contentious business had been fundamentally changed by the Solicitors' Remuneration General Order, 1960. The instructions fee allowed the Taxing Master to give remuneration over and above the total of the itemised charges where having regard to the considerations enumerated in item 1 of the schedule he thought it reasonable to do so. His lordship stated that the charge of £1 for the first hour of an attendance with 15/- for each subsequent half hour might be grossly inadequate. He held however, that the General Order required that in a particularised bill the items should be separately listed and priced under items 2 to 20 of the schedule and that the instructions fee should be shown separately. Any particular items of work which cannot be allocated to items 2 to 20 would be shown under item 21 (J. H. Walshe & Co. *v.* Greenmount Oil Co. Ltd. and Le Brocquy).

Costs. Review of taxation. Debenture. Appeal on quantum.

In a solicitor and own client bill relating inter alia to a debenture securing a sum of £3,900,000 in which no lands were involved a sum of £3,673 was charged for instructions on the basis of one quarter of the scale fee of a mortgage for the same amount. The Taxing Master allowed 1,500 gns. After a review of the bill the Taxing Master in his report referring to item 1 of schedule II stated that he regarded clauses (*a*), (*b*) and (*c*) germane. These relate to (*a*) the complexity, importance, difficulty, rarity of the questions raised (*b*) where money or property is involved its amount or value and (*c*) the importance of the matter to the client. The Taxing Master did not specifically refer in his report to clauses (*d*) to (*g*) of item 1 which have more direct application to the amount of work done and time expended thereon. Budd, J. on an appeal from the Taxing Masters found that the report afforded a ground of objection to the principles applied to the taxation since it appeared therefrom that the taxing master had regard only to some of the matters enumerated in item 1 and the matter was referred back so that the taxing master should have regard to each of the clauses in the item. A further question raised before the Court as to whether it was now open to the Court to consider an appeal on a pure question of quantum by reason of the word amount in order 99 rule 38 of the Rules of the Superior Courts, 1962 was not decided. (Whitney Moore and Keller *v.* Shipping Finance Corporation Ltd.).

Damages—Delay Between Accident and Trial

The plaintiff claimed damages from his employers for injuries suffered in an accident at work in December, 1959. Held: that the plaintiff had not made his case.

Per curiam: It is not right and fair, and makes the Court's task an almost impossible one, that more than four years should elapse between the accident and the trial. For every moment that elapse between memory gets weaker and imagination stronger:

(The Times, March 14th, 1964, Paull J.).

Medical Partnership—Dissolution.

(Partnership Act, 1890 (53 & 54 Vic. C 39) S.26).

In 1948, two doctors A and F entered into partner-

ship expressed to be for their joint lives under a written partnership deed. At the end of 1958 they agreed in principle with another doctor, B., that all three would go into partnership, share profits and losses equally between them, obtain a lease of the premises where A and F had their joint surgery, make a clinic there and equip it at their joint expense. On March 3rd, 1959, a Lease was granted in which A, F. and B. were described as the lessees who would carry on the business of medical practitioners in partnership. A. instructed his solicitors to draft a deed of partnership, which it was agreed would be signed. The draft of the partnership deed was never signed because F. objected to the seniority in holiday provisions in it. From May 11th, 1959, all three had their surgeries at the clinic and also practised at their respective private addresses. On October 10th, 1959, F. and B. wrote to A. that since agreement could not be reached on the above issues the partnership ought to be dissolved as from November 30th, 1959. In proceedings for dissolution of the partnership, held, that the effect of the partnership between A., F. and B. was that it superseeded the partnership between A. and F. Further, where there was no express agreement about the duration of partnership, 26 of the Partnership Act, 1890 applied and the partnership was rendered a partnership at will which could be dissolved by notice of any partner. Accordingly, the partnership between A., F. and B. was dissolved in November, 30th, 1959; Firth *v.* Armslate (1964) 108 S.J. 198 Plowman J.—Current Law.—(1964) 3. C.L.

Professional Negligence

P., an electrician, retained D., a solicitor, to prosecute his claim for damages against his employers, arising from a fall which he sustained at a house where his employers were carrying out subcontracting electrical work. D., negligently allowed P's claim to become time barred. On P's claim for damages, held that P would on the facts have had quite a formidable case against the employers under the Building Regulations, 1948 and that he should accordingly be awarded three-quarters of £2,848 18s. 5d. to which would be added 12% for the resulting delay: (Gregory *v.* Tarlo (1964) 108 S.J. 219; The Times, March 6th, 1964, McNair J., (1964) 3 C.C.).

Practice—Pleadings.

In an action by the plaintiff for damages for personal injuries sustained in a collision between his motor cycle and the defendant's motor car, the defence contained a simple denial of negligence and, although defect in the braking system of the car had been mentioned in correspondence between the parties, contributory negligence was not pleaded and the manufacturers were not joined. At the trial the defendant sought to lead evidence of the defect.

Held: (1) That it was sufficient for the defendant simply to deny that he was guilty of negligence even though he intended to show that the accident was due to the act or neglect of a third person; and

(2) that as the facts raised in *prima facie* case of negligence on the part of the defendant, the defence simply denied negligence, the plaintiff should have been able to anticipate the defendant might rely on the defect which had been mentioned in the correspondence and accordingly could not complain that he had been taken by surprise—(McKnight *v.* McLoughlin (1963) N.I. 34, Black L. J.).

Termination of H.P. Agreement—Detinue.

No one is bound save by contract, to take a chattel to the owner of it. His only obligation is not to prevent the owner from getting it when he comes for it.

A hire purchase finance company re-took from X the car he was hiring from the company. This was unlawful because X had paid one third of the hire purchase price. X wrote to the Company saying he would sue for the return of what he had paid, but before the letter reached the company, the car was returned and left outside his house, and X made some use of it for about five months. About eight months after the return the Company demanded that the rest of the instalments under the hire purchase agreement and later sued for these. X defending and counterclaiming the return of which he had paid, on the footing that the unlawful retaking had terminated the agreement. Later, the Company amended to add a claim in detinue and damages at a weekly rate up to the hearing. Held that X's defence and counterclaim succeeded, as though the return of the car was an offer to restore the agreement it was never accepted, and the claim in detinue failed because X was never under an obligation to return the car, and his use of it was as an implied bailee with the consent of the company—Capital Finance Co. *v.* Bray (1964) 1 W.L.R. 323; (1964) 1 All. E.R. 603, C.A.

Charitable Gift.

A testator gave his studio and the contents, which included paintings by himself and others, furniture, china, glass and bric-à-brac, to trustees and directed that his residuary estate be used to endow the studio as a museum for the display of his collection.

On a summons to determine whether a valid charitable trust had been created, art experts gave evidence that the studio was squalid and that the collection had no educational value whatever and Wilberforce J. held, first, that when determining

whether a gift which was clearly educational was a valid charitable gift, it was not relevant to evaluate the contribution made, but that did not prevent the court from ascertaining, if necessary by evidence, whether a gift had any educational tendency, and that in the present case such evidence must be received; second, that the gift, which included some objects of historical interest and of artistic interest, though slight, might be of public benefit and was, therefore, a valid charitable bequest. The next-of-kin of the testator appealed:—

Held, (Harman, Davies and Russell L.JJ.).

(1) that on the true construction of the will and codicils the testator's intention was that the entire contents of the studio should be exhibited as a whole, the only exception being that articles not of an antique nature might be disposed of so that the selective exhibition, which was essential to the judge's conclusion, was not justified by the terms of the will.

(2) That where the validity of a gift to establish a museum was concerned and the utility of the gift was brought in question, it was essential for the court to know something of the quality and artistic or aesthetic merit of the proposed exhibits in order to judge whether they would be conducive to the education of the public, and for that purpose to hear expert evidence: while the quality and artistic or aesthetic merit of the proposed collection of exhibits was a matter of taste, and tastes differed, there was an accepted canon of taste on which the court had to rely, for it had no judicial knowledge of such matters itself.

(3) That the evidence was overwhelming that the collection of proposed exhibits was worthless as a means of education, and no useful purpose could be served by foisting on the public a "mass of junk" and that, therefore, the gifts did not constitute a valid charitable trust.

In re Pinion, decd. Westminster Bank Ltd. *v.* Pinion & Anor. (1964) 2 WL.R. 919.

THE INCORPORATED LAW SOCIETY OF IRELAND

EXAMINATION DATES 1964

Examination	*Date*	*Last Day for Entry*
Book-keeping	22nd June	1st June
First and Second Irish	3rd July	12th June
First Law	1st & 2nd Sept.	10th Aug.
Second Law	4th & 5th Sept.	12th Aug.
Third Law	1st, 2nd & 3rd Sept.	10th Aug.
Preliminary	1st & 2nd Sept.	11th Aug.
First & Second Irish	11th September	21st Aug.

EXAMINATION DATES 1965

Examination	*Date*	*Last Day for Entry*
First Law	1st & 2nd Feb.	11th Jan.
Second Law	1st & 2nd Feb.	11th Jan.
Third Law	3rd, 4th & 5th Feb.	13th Jan.
Preliminary	2nd & 3rd Feb.	12th Jan.
First & Second Irish	12th February	22nd Jan.
Book-keeping	22nd February	1st Feb.

SOLICITORS' BENEVOLENT ASSOCIATION

Notice of election to vacant annuity

Take Notice that it is intended to hold an Election for the Solicitors' Benevolent Association Centenary Annuity of £100 per annum. Information and application forms are available from the undersigned to whom completed application forms should be returned not later than 10th day of June, 1964. For eligibility attention is drawn to Rules 3 and 31 of the Rules of the Association adopted 26th January, 1962.

Dated this 16th day of May, 1964.

EUNAN MCCARRON, Secretary, Solicitor's Benevolent Association, 18 Hume Street, Dublin.

THE REGISTRY

Register A

DUBLIN Solicitor with well established and thriving Practice would be interested in amalgamation or Partnership with another. Box. No. A.214.

REGISTRATION OF TITLE ACTS, 1891 AND 1942

Issue of New Land Certificate

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

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

Dated the 22nd day of June, 1964.

D. L. MCALLISTER,
Registrar of Titles.

Central Office,
Land Registry,
Chancery Street,
DUBLIN.

SCHEDULE.

1. Registered Owner James Cummins. Folio number 313. County Leitrim. Lands of Lisseeghan in the Barony of Leitrim containing 27a. 2r. 15p.

2. Registered Owner The Offaly Board of Health & Public Assistance. Folio number 8049. County of Kings. Lands of Barnaboy containing 1a. 1r. 36p. and Lands of Kilnagall containing 3a. 2r. 0p. both situate in the Barony of Ballyboy and Lands of Moyclare in the Barony of Garrycastle containing 16 sq. feet.

3. Registered Owner Anne Mahon. Folio number 6. County Louth. Lands of Aclint in the Barony of Ardee containing 8a. 1r. 29p.

4. Registered Owner James Cahalan. Folio number 2040. County Tipperary. Lands of Kyletombrick containing 9a. 2r. 35p. and Lands of Kyletombrick containing one undivided ninth part of 86a. 1r. 14p. both situate in the Barony of Ormond Lower.

TRADE MARKS ACT

Members, please note that section 69, subsection 5 comes into operation as and from the 1st July, 1964. This subsection makes it illegal for anyone, save a registered trade mark agent, to practise under the act. The latest date for applications to be placed on the registrar is 17th June, 1964.

OBITUARY

MR. CHARLES S. DOYLE, Solicitor, died on the 30th day of April, 1964 at St. Michael's Nursing Home, Dun laoghaire, Dublin.

Mr. Doyle served his apprenticeship with the late Mr. Patrick Rooney at 21 Upr. Ormond Quay, Dublin; was admitted in Hilary Sittings 1923, and practised under the style of T. F. O'Connell Rooney & Co., at 34 Kildare Street, Dublin 2.

Printed by Cahill & Co., Ltd., Parkgate Printing Works, Dublin.

Vol. 58
No. 2

JUNE
1964

THE GAZETTE

of the

INCORPORATED LAW SOCIETY OF IRELAND

President
DESMOND J. COLLINS

Vice-Presidents
JOHN MAHER
PATRICK NOONAN

Secretary
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

CONTENTS OF THE ISSUE

	Page
Solicitor acting for employees of firm	11
Photocopies, costs of	12
Conflict of interests, ...	12
Solicitors' Remuneration General Order 1964 ...	12
Deposits paid to Auctioneers	13
Housing Loans	13
Town, definition of	13
Medical Reports	13
Solicitors' Golfing Society	15
Cases of the Month	15
The Registry	18
Superior Courts Costs	18
Missing Land Certificates	18

MEETINGS OF THE COUNCIL

JUNE 11TH: The President in the chair, also present, Messrs. John Carrigan, Francis J. Lanigan, James W. O'Donovan, Gerald J. M. Moloney, Desmond Moran, Peter D. M. Prentice, James R. Green, Dinnen B. Gilmore, Thomas A. O'Reilly, John C. O'Carroll, Joseph P. Black, Thomas H. Bacon, William A. Osborne, Brendan A. McGrath, Peter E. O'Connell, Edward J. Dillon, Patrick O'Donnell, George G. Overend, Gerard M. Doyle, Thomas V. O'Connor, John Maher, Reginald J. Nolan, Patrick Noonan, John J. Nash, Richard Knight, George A. Nolan, Niall S. Gaffney, Ralph J. Walker.

The following was among the business transacted:

Solicitor acting for employees of company

Members enquired whether there would be any professional objection to their acting for employees of a firm introduced by the personnel manager and a trade union representative for the purpose of making wills in connection with a superannuation scheme and charging a reduced fee having regard to the fact that the work involved is standardised. The Council replied that an introduction in the proposed manner

would be objectionable from the professional point of view and that the intervention of a third party should be limited to informing the employees that it is advisable to make a will and that each testator should make his own arrangements for engaging a solicitor of his choice.

Charges for photocopy documents

The Council received a report from the costs committee stating the taxing masters would allow the ordinary folio copying charges for copies of documents made in the photocopying method.

Conflict of interests. Right to hold documents

Members acted for a father and son in a matter which was not completed due to disagreement between the parties. The father subsequently instructed another solicitor and members enquired whether they should hand over the documents even though they still acted for the son. The documents in question were the agreement executed by the parties and an original lease. The Council on a report from a committee stated that if the father originally instructed members they should continue to hold the agreement on his behalf and should also hold the lease on his behalf unless there has been an outright assignment to the son. The son should be supplied with certified copies of the document on payment of the proper charges.

S.I. No. 128 of 1964

SOLICITORS' REMUNERATION GENERAL ORDER, 1964

We, the body in that behalf authorised by the Solicitors' Remuneration Act, 1881, as adapted by the Solicitors' Remuneration Act, 1881 (Adaptation) Order, 1946 (S.R. and O. 1946 No. 208) made pursuant to the Adaptation of Enactments Act, 1922, do hereby, in pursuance and execution of the powers given to us by the said Statute as so adapted, and after due compliance with section 3 of the Solicitors' Remuneration Act, 1881, make the annexed general order.

1. This order may be cited as the Solicitors' Remuneration General Order, 1964, and this order and the Solicitors' Remuneration General Order, 1884, the Solicitors' Remuneration General Order (No. 1), 1920, the Solicitors' Remuneration General Order, 1947, the Solicitors' Remuneration General Order, 1951, and the Solicitors' Remuneration General Order, 1960, shall be read together and may be cited as the Solicitors' Remuneration General Orders, 1884 to 1964.

2. The charges specified in paragraphs 2 to 20 inclusive of Schedule II of the Solicitors' Remuneration General Order 1884 (which Schedule was inserted by the Solicitors' Remuneration General Order, 1960, S.I. No. 165 of 1960) shall be increased by the addition of twelve per cent.

3. This Order shall come into operation on the 1st day of August, 1964, and shall apply to all business transacted on or after that date.

Dated this 27th day of May, 1964.

Signed : Cearbhall Ó Dálaigh, Príomh-Bhreitheamh.
Cahir Davitt, President of the High Court.
Desmond J. Collins, President of the Incorporated Law Society of Ireland.

EXPLANATORY NOTE.

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

This Order authorises an increase of twelve per cent. on specified charges in solicitors' costs for non-contentious business. It does not affect the present commission scale fee on sales, purchases, leases, or mortgages.

The order was laid before Dáil Éireann on 2nd June, 1964, and before Seanad Éireann on 10th June, 1964, pursuant to section 6 of the Solicitors' Remuneration Act, 1881. and will take effect unless a resolution disallowing it is passed in either House within one month from the date on which it was laid before the House.

The effect of the general order when operative will be to authorise an increase of 12% on each of items 2 to 20 of schedule II to the Solicitors' Remuneration General Order 1960 (handbook page 183). It does not apply to items 1 and 21 which are discretionary. Calculation of 12% on the various items would be troublesome and it is suggested in drawing up bills that the items should be entered at the amounts at present standing in schedule II and that 12% should be added at the end of the Bill on the total of all items other than discretionary items. If any of the fixed items are reduced or disallowed on taxation a simple adjustment can be made in the sum added at the foot of the bill.

Illustration :

	£ s. d.
1. Instructions fee	15 0 0
2—20 Fixed items	20 0 0
Total professional charges	35 0 0
Add 12% on items 2—20 ...	2 8 0
Professional fees as submitted ...	37 8 0

PAYMENT OF DEPOSITS TO AUCTIONEERS

The Auctioneers Association has published a notice to its members advising them that they should not make unauthorised payments out of deposits received in connection with the sale of property. Members were reminded that where an auctioneer receives the deposit as stakeholder he is bound to preserve it intact until completion of the sale at which point he gets authority to release it to the vendor. If the sale falls through the auctioneer may be required to return the deposit to the purchaser or otherwise dispose of it as the vendor and purchaser mutually agree or as may be directed by the Court. It is pointed out in the notice that if an auctioneer gives credit to one of the parties to a sale and purchase in anticipation of being repaid out of the deposit following a sale of the property it must be regarded as an ordinary commercial risk and that they cannot rely on the deposit as a definite source of repayment. It is pointed out that when an auctioneer is asked to give credit in such circumstances it will be in his own interests to address an enquiry to the vendor's solicitor as to whether or not there will be a surplus of purchase money on the completion of the sale to refund any monies due to the auctioneer.

The Council think it advisable to inform members having regard to such enquiries that they should be very careful not to give any assurance which could be regarded as an undertaking without (*a*) obtaining the definite and irrevocable instructions of the vendor and (*b*) without ensuring that sufficient monies will come to their hands as vendor's solicitors to satisfy the claim. In fact it is difficult to see any advantage in giving such an assurance and if given it is suggested that there should be a definite disclaimer of any legal or professional liability thereon.

HOUSING LOANS

Members please note that under the Housing Authorities (Loans for Acquisition or Construction of Houses) Regulations, 1964 (S.I. No. 130 of 1964):—

Clause 3 (1) provides that the amount of a loan shall not exceed £2,250 or 95% of the value of the house excluding from that value the amount of any grant under any other enactment.

Clause 3 (2) provides that where the borrower surrenders to the housing authority making the loan the tenancy of a dwelling provided by the housing authority under the Housing of the Working Classes Acts, 1890 to 1958 or under the Labourers Acts, 1883 to 1962 the amount of a loan shall not exceed £2,250 or 99% of the value of the house excluding from that value the amount of any grant under any enactment.

Clause 4 (1) (*a*) provides (inter alia) that in the case of a house occupied for the first time the amount which in the opinion of the housing authority represents the reasonable cost (including all reasonable incidental expenses) of building the house and the value of the interest of the borrower in the site thereof shall be considered as the value of the house. Clause 4 (1) (*b*) the value in other cases is to be considered the amount which in the opinion of the housing authority, the house if sold on the open market might reasonably be expected to realise together with so much, if any, of the legal and other incidental expenses to the acquisition of the ownership of the house as the housing authority may consider proper.

Clause 8 provides that a loan shall be repaid with interest within a period not exceeding 35 years from the date of payment of the loan, or, if the loan is made by instalments, from such date as may be as determined by the housing authority.

Clause 10 provides that a loan may be repaid either by equal instalments of principal or by an annuity of principal and interest combined and all payments on account of principal or interest shall be made at a periods not exceeding a half year may be determined by the housing authority.

Clause 12 sets out the provisions prerequisite to obtaining a loan. There is a schedule to the instruments setting out scale of fees in connection therewith.

STAMP DUTY MEANING OF TOWN

Property situate in a County Borough, Borough, Urban District or town. By section 33 of the Finance Act, 1961, property situated in a County Borough, Urban District or town is relieved from the 25% stamp duty and qualifies for the ordinary rate even when acquired by a non-national. The statutory certificate must be included in the deed. A town for the purpose of this provision is defined by the Interpretation Act, 1937, No. 38 of 1937, paragraph 32 of the schedule to the Act, as follows :—

The word " town " means the area comprised in a town not being an urban district in which the Town Improvement (Ireland) Act, 1854, is in operation.

MEDICAL REPORTS

The following extract is taken from the Journal of the Irish Medical Association, Vol. LII., No. 309, March, 1963:

> " Statement for the guidance of members on the subject of reports of medical examinations as approved by Central Council on 10th Jan., 1963.

It is a breach of professional privilege for a doctor to disclose to an insurance company information concerning a patient obtained as a result of a patient and doctor relationship. The prohibition against disclosing such information clearly applies to any practitioner on the staff of a local authority or other public or private hospital who obtains information concerning a patient in the hospital either by casual observation or in the course of treatment of the patient by virtue of his position on the hospital staff, just as it applies to a doctor who is engaged specifically by the patient to make an examination and report for that patient's use.

Where a doctor conducts an examination of an injured person on behalf of an insurance company for the benefit of the company and disclosed to the patient or his advisers that he is acting in the interests of the insurance company different considerations naturally apply. In cases not within the Workman's Compensation Act the patient's medical adviser will be present at the examination. In examinations under section 33 of the Workmen's Compensation Act, 1934, where the patient attends without his medical adviser the following is a statement of what the Association regard as the proper professional practice —(1) the duty a of medical practitioner who is instructed by an employer or an insurance company under section 33 of the Workmen's Compensation Act, 1934, is to ascertain the medical condition and state of health of the workman, (2) the medical practitioner should not accept instructions from the employer or the insurance company which would oblige him to exceed his professional duty under head (1). (3) Questions put to the workman in the course of the medical examination are in the discretion of the medical practitioner but should be restricted to the workman's physical condition and state of health except inasmuch as it may be necessary to ascertain the surrounding circumstances and background for the purpose of forming an opinion on his medical condition and state of health.

(4) Irrespective of any questions put to the workman in the course of the examination any written or oral report by a medical practitioner to the employer or insurance company should be restricted to the medical issue and any information on the issue of legal liability ascertained in the course of the examination should not be disclosed.

This statement was drawn up after consultation with representatives of the Incorporated Law Society."

Examining Medical Officers.

It often happens that a doctor's patient has to be examined for some particular purpose by a medical officer representing an interested third party. These examinations may occur in connection with life assurance or superannuation, entry into certain employment, litigation, or requests from the police.

The following ethical code governing special situations was approved by the Representative Body in 1957. It does not apply to examinations performed under statutory requirements, and paragraphs (2) and (3) do not apply to pre-employment examinations or to those connected with superannuation, or with proposals for life or sickness assurance. For the purpose of this code an examining medical officer is a practitioner undertaking the examination of a patient of another practitioner at the request of a third party with the exception of examinations under statutory requirements.

(1) An examining practitioner must be satisfied that the individual to be examined consents, personally or through his legal representative, to submit to medical examination, and understands the reason for it. (2) When the individual to be examined is under medical care, the examining practitioner shall cause the attending practitioner to be given such notice of the time, place and purpose of his examination as will enable the attending practitioner to be present should he or the patient so desire.

(Preferably such notice should be sent to the attending practitioner through the post, or by telephone, but in certain circumstances a communication might properly be conveyed by the patient.)

Exceptions to this are :

(*a*) When circumstances justify a surprise visit.

(*b*) When circumstances necessitate a visit within a period which does not afford time for notification. Where the examining practitioner has acted under (*a*) or (*b*) he shall promptly inform the attending practitioner of the fact of his visit and the reason for his action.

3. If the attending practitioner fails to attend at the time arranged the examining practitioner shall be at liberty to proceed with the examination.

4. An examining practitioner must avoid any word or action which might disturb the confidence of the patient in the attending practitioner and must not, without the consent of the attending practitioner, do anything which involves interference with the treatment of the patient.

5. An examining practitioner shall confine himself strictly to such investigation and examination as are necessary for the purpose of submitting an adequate report.

6. Any proposal or suggestion which an examining practitioner may wish to put forward regarding treatment shall be first discussed with the attending practitioner either personally or by correspondence.

7. When in the course of an examination there comes to light material clinical findings, of which the attending practitioner is believed to be unaware, the examining practitioner shall, with the consent of the patient, inform the attending practitioner of the relevant details.

8. An examining practitioner shall not utilize his position to influence the person examined to choose him as his medical attendant.

9. When the terms of contract with his employing body interfere with the free application of this code, an examining medical officer shall make honest endeavour to obtain the necessary amendment of his contract himself or through the Medical Association.

Quotation from B.M.A. Handbook appearing in Journal of the Irish Medical Association, Vol. LII, No. 309, March, 1963.

CIRCUIT COURT—EASTERN CIRCUIT

By order of the President of the Circuit Court the dates for the opening of the Trinity and Michaelmas sittings of the Court at Athy for the Athy Division of County Kildare have been altered as follows :—

Trinity—From 29th July to 27th July.
Michaelmas—From 15th December to 10th December.

On the conclusion of the sittings for the Athy Division the Court will resume at Naas, should the necessity arise and the time be available, for the disposal of outstanding cases from the Naas Division.

SOLICITORS' GOLFING SOCIETY

Spring Meeting at Tullamore on Saturday, the 30th May, 1964.

RESULTS.

Challenge Cup and Captain's Prize :
Cyril Coyle (18) Dundalk, 3 up.
D. Houhlihan (14) Birr, 1 up.

St. Patrick's Plate (handicaps 12 and under) :
J. R. Macken (9) Mullingar, 2 up.
W. A. Menton (11) Dublin, all square.

Veteran's Cup :
Justice J. B. Farrell (14) Tullamore, 3 up.
D. P. Shaw (11) Mullingar, all square.

Member from more than 30 miles away :
P. A. Noonan (13) Athboy, all square.

1st Nine :
L. K. Branigan (14) Dublin, 2 up.

2nd Nine :
D. J. Collins (11) Dublin, 1 up.

Prize by lot :
A. Curneen (9) Dublin, 1 down.

PRACTICE AND PROCEDURE, ETC.

Practice and Procedure in Administration and Mortgage Suits. By John W. Scanlon, Barrister-at-Law, Examiner of the High Court.

More than 350 purchasers now possess this excellent book which deals with the priorities of assets, claims and incumbrances; the descent of realty and the distribution of personalty; the Statute of Limitations; costs; accounts and enquiries, etc. The book contains a table of cases, an index and many forms in current use which are not printed elsewhere. It has been reviewed in the Irish Law Times (7/9/63) and in this journal (Vol. 57 No. 5).

Please enclose remittance of £1 16s. 0d. with order to The Incorporated Council of Law Reporting for Ireland, Law Library, Four Courts, Dublin 7.

CASES OF THE MONTH

Stamp Duty.

In Case stated by the Inland Revenue Commissioners (William Cory & Son, Ltd. *v.* Inland Revenue Commissioners).

C., Ltd., agreed in principle to purchase the issued capital of P group companies. A draft agreement for sale was prepared which fixed the completion date as 1st November, 1957. On 24th October, 1957, C., Ltd., asked P group to give an immediate option to purchase the shares and stated that if the option was not given, the deal was off. P group, by a written agreement, dated 1st November, 1957, granted to C., Ltd., in consideration of the payment of £100, an option, exercisable during the period of thirty days from the date of the agreement, to purchase all the shares for £420,856 3s. 6d. The agreement provided that, on due exercise of the option, the shares would be sold to C., Ltd., free from any liens, charges and incumbrances and together with all rights. It went on to provide for the mode of exercise of the option, and continued: "6. With a view to protecting (C., Ltd.'s) rights arising out of the . . . option the (shareholders) shall forthwith transfer or procure to be transferred the . . . shares to (C., Ltd.) and/or nominees as (C., Ltd.) shall direct. . . .," the shares to be held in trust for the present registered holders thereof. By cl. 7, no transfer of the shares effected in accordance with cl. 6 "shall operate or be deemed to operate to pass a beneficial interest in the shares," and, by cl. 8, in the event of the option lapsing, the shares were to be retransferred to the present registered owners. On the same day eighty-nine transfers of shares in the P group were executed by several vendors and handed to C., Ltd. Each transfer was expressed to be in consideration of 1/- and contained a certificate that the transaction was a transfer where no beneficial interest in the property

passed and was made for the protection of option rights in respect of the shares transferred. C., Ltd., orally exercised the option on 8th November, 1957. The transfers were assessed to *ad valorem* stamp duty under s. 1 of Sched. 1 to the Stamp Act, 1891, as conveyances on sale; alternatively, the agreement was adjudicated liable to *ad valorem* duty under s.59 (1) as an agreement for the sale of an equitable interest. C., Ltd., appealed, contending that the transfers were liable to 10s. duty under the head "conveyance or transfer of any kind not hereinbefore described" and that the duty on the agreement was £2 only.

Pennycuick, J., said that the liability of an instrument to duty must be determined according to its terms and effect at the date of the execution; accordingly, as there was no subsisting contract for sale when the transfers were executed, nor did the transfers themselves effect a sale, they did not constitute conveyances on sale within the 1891 Act. The words of the definition of "conveyance on sale" in s. 54 were not apt to denote a conveyance made with a view to carrying out a contract of sale which the parties intended to make in the future, so that the existence on 1st November, 1957, of a common intention that the vendors should sell and C., Ltd., should buy was insufficient to bring the transfers within the definition. The option agreement dated 1st November, 1957, represented no more than an offer to sell, irrevocable for a specified period, and was not a contract for the sale of the shares. It followed, therefore, that it was not an agreement for the sale of the equitable interest in the shares within s. 59 of the 1891 Act. Appeal allowed.

(1964)—(1 W.L.R. 529).

Negligence in Contract or Tort.

In a recent case in the Chancery Division of the High Court in England—Clark and Another *v.* Kirby-Smith, the question of solicitors' negligence was dealt with. Mr. Justice Plowman in this action by Frank Leonard Clark and Frederick Bertie Mills, for damages for breach of contract and/or negligence by the defendant, Gerald Kirby-Smith, when acting as their solicitor, held that damages against a solicitor for negligence were recoverable in contract and not in tort. Accordingly the plaintiffs were not entitled to damages recoverable in tort, and, there being insufficient evidence on which damages for breach of contract could be assessed, the plaintiffs were entitled to nominal damages of 40s. The Plaintiffs were represented but the defendant solicitor did not appear and was not represented.

His Lordship said that the plaintiffs were formerly in partnership as motor engineers. They were the assignees of a lease dated December 22nd, 1960, of some property in Kent. The lease was for three years, expiring on December 31st, 1962, and containing options to renew. On October 15th, 1962, the options having expired, the lessor served a notice on the plaintiffs under the Landlord and Tenant Act, 1954, stating that he would not oppose an application by the plaintiffs to the court for the grant of a new tenancy. The plaintiffs took the notice to their solicitor, the defendant, and instructed him to apply for a new tenancy in accordance with the directions in the notice. This involved the giving of a notice by the plaintiffs to the lessor not later than December 15th, 1962. The defendant failed to give that notice, and it was this negligence which was relied on by the plaintiffs, and in respect of which there was a claim for damages.

The writ was issued on July 26th, 1963, the defendant failed to enter an appearance, and on August 6th, 1963 the plaintiffs obtained judgment against the defendant for damages to be assessed. The plaintiffs said that in consequence of the defendant's failure to apply for a new lease the plaintiffs had to leave the property, and had had to face a claim by the lessor for dilapidations of £120. In negotiating the settlement of this claim they had incurred costs of £30. The plaintiffs claimed to recover both these sums from the defendant on the basis that this was an action founded in tort. It was argued for the plaintiffs that the effect of Hedley Byrne & Co. Ltd. *v.* Heller & Partners Ltd. (1963) (3 W.L.R. 101: *The Times*, May 29, 1963) was that there was a remedy in tort for negligence whether it arose out of misstatement made by a person not under contract, or whether, as here, it arose out of the contractual relationship of solicitor and client.

His Lordship did not accept that Hedley Byrne & Co. Ltd. *v.* Heller & Partners Ltd. was an authority for saying that a solicitor was liable to his client in tort. There was a line of cases going back for nearly 150 years showing that the client's cause of action was in contract, not in tort. Nor were the two sums recoverable as damages for breach of contract; in any event sums payable for dilapidation and costs had fallen on the plaintiffs as a result of their own breach of their contract with the lessor.

The plaintiffs also claimed damages for the loss of the new lease to which they would have been entitled under the Landlord and Tenant Act. The question arose whether it was possible to value the chance of obtaining a new lease from the Court under the Landlord and Tenant Act, or more accurately, the new lease which the plaintiffs might have obtained. His Lordship had no idea what the new lease would have been. The Act referred to the "open market", so it did not follow that the new

rent would be assessed by the court at a figure set out in options contained in the old lease which had expired. Nor did His Lordship know the length of the new term which might be granted. There was no material before His Lordship on which he could assess damage. In the result the plaintiffs were entitled to nominal damages for breach of contract, namely forty shillings. His Lordship was satisfied that there was sufficient reason for bringing the action in the High Court and accordingly the costs were granted to the plaintiffs on the High Court Scale.

(*The Times*, May 28th, 1964).

Costs : Reprehensible Conduct of Successful Party.

In Jones *v.* McKie and Another, which was an appeal from Liverpool Court of Passage, the facts were as follows :—The first defendant was the driver of a motor lorry owned by the second defendants, his employers, which was involved in a collision with the plaintiff's stationary motor van. The evidence was that the first defendant had at the time been driving the lorry to his home to fetch his key which he had forgotten. In evidence, he said that he always took the lorry home when he went home for dinner in the ordinary way, that nobody had ever told him differently, and that it was common practice for other drivers employed by the second defendants to take their vehicles home for this purpose. The assistant presiding judge, Mr. G. J. Bean, Q.C., found that the first defendant had not been acting in the course of his employment at the time of the accident. He dismissed the plaintiff's case as against the second defendants, but declined to make any order for costs in their favour, saying that " this was a result of allowing the drivers to go home on the second defendants' transport. It seems to me to be unworthy of them and contrary to the justice of the matter if they permit a lax system of control of transport and then seek costs against someone who plainly is innocent." The second defendants appealed.

Willmer, L. J., with whom Harman, L. J., agreed, said that counsel for the second defendants had said, first, that the matter relied on by the judge as a ground for the exercise of his discretion must really be connected with the litigation and not something which might incidentally have arisen in the course of it; secondly, that it must be something which in some sense amounted to reprehensible behaviour on their part; and thirdly, that it must be something which they had had a fair opportunity of dealing with at the trial. His Lordship was not disposed to quarrel with those submissions but, even accepting counsel's first submission, he found it impossible to say that what had been relied on by the judge had not been connected with the litigation as defined by him.

It had, after all, been the second defendants' lorry which they had allowed, or at any rate not forbidden, the first defendant to use and which had been the instrument of the damage. The judge had taken the view that that was reprehensible conduct on the second defendants' part. Although his Lordship might well have exercised his discretion differently, he felt unable to say that the judge had not exercised his discretion judicially.

Russell, L. J., dissenting, said that in his view the practice of the second defendants in allowing their vehicles to be used in this way was neither relevant to the question of costs nor open to criticism. The position would have been the same if they had expressly permitted the first defendant to use the lorry for his own purposes. Appeal dismissed.

(The Solicitors' Journal., Vol. 108, page 442).

Counsels' Fees.

The plaintiffs took out an originating summons in the Chancery Division in connection with the administration of an estate of which they were the executors. The summons, to which one of the respondents was an infant, was opposed, and at the hearing the plaintiffs were represented by leading counsel. The hearing was subsequently adjourned by Cross J. into chambers. Later, it was adjourned in the hope that a compromise might be reached. A compromise was in fact arrived at and was sanctioned by Cross J. in open court on behalf of the infant respondent. The order did not say that the matter had been a chambers matter, and although it provided, *inter alia*, that the plaintiffs' costs should be taxed and paid out of the residuary estate of the testator, it made no express provision for the fees of leading counsel who had been instructed on their behalf. The taxing master, referring to Appendix 2, Part X, para. 2 (3), of the Supreme Court Costs Rules, 1959, took the view that the matter had been a chambers matter and that, as the order did not contain express provision for the fees of leading counsel, he could not allow them. The plaintiffs applied by motion to Cross J., asking either that a certificate for those costs should now be granted, notwithstanding that it had not been asked for at the hearing, or that the order should be amended under the slip rule to provide for them :—

Held, that, the order having been a consent order, it could only be amended under the slip rule to include a provision for the fees of leading counsel if the agreement between the parties upon which it had been based had contained, expressly or by implication, a term to the effect that they should be provided for; and that, even assuming that it was formally possible to issue a " collateral certificate "

without amending the original order, such a certificate could only be given on the same principle; on the facts of the present case, there had been no such term, and the motion must, accordingly, be dismissed.

(Somerset and Anor. *v.* Ley and Anor.) (1964. 1. W.L.R., 1,640).

THE REGISTRY

Register A

DUBLIN SOLICITOR with well established Practice, would welcome Partnership with young Solicitor with smaller but expanding practice. Box A215.

DUBLIN SOLICITOR requires Solicitor competent in Company Law. Excellent prospects and remuneration to right person. Replies treated in strict confidence. Box A216.

SOLICITOR required to manage practice in Midland Town with a view to partnership or sale. Box A217.

WANTED. Qualified Assistant for large provincial town, North Leinster. Some experience desirable but not essential. Apply to Box number A218.

SOLICITOR required for well established busy practice in Leinster, within radius of 60 miles from Dublin. Good salary with prospects of succession. Present owner will continue. Reply to Box No. A219.

Register B

A very experienced young solicitor, returning from abroad, would like to hear of the possibility of the purchase of a practice or of a partnership in a busy office. Will be in Dublin in July, for interview. Box B275.

SOLICITOR, qualified 1953. Extensive experience; would be interested in acquiring an established practice or post as assistant. Box B276.

Register C

Estate of Kathleen Ryan, late of No. 16 Grosvenor Square, Rathmines, Spinster, deceased. Will any Solicitor or other person having any information as to a Will of the above deceased, who died on the 11th day of May, 1963, please communicate with the undersigned.

WILLIAM F. O'CONNELL, Solicitor,
St. Michael Street, Tipperary.

SUPERIOR COURTS COSTS

The Superior Courts Rules Committee has made regulations authorising an increase of 12% in the items in Appendix W, other than items marked discretionary, in relation to business transacted after 1st July, 1964.

REGISTRATION OF TITLE ACTS, 1891 AND 1942

Issue of New Land Certificate

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

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

Dated the 7th day of July, 1964.

D. L. MCALLISTER,
Registrar of Titles.

Central Office,
Land Registry,
Chancery Street, Dublin.

1. Registered Owner Patrick Bourke. Folio number 24029. County Mayo. Lands of Corroy, Carrowkeribly and Carrowmore in the Baronies of Tirawley, Gallen and Tirawley, respectively, containing 14a. 2r. 10p., 2a. 0r. 35p. and 9a. 0r. 26p., respectively.

2. Registered Owner John Hegarty. Folio number 1435. County Cork. Lands of Barnaviddane in the Barony of Imokilly, containing 5a. 3r. 32p., being the lands comprised in Folio 833 County Cork which is now the lands No. 1 in Folio 37846, County Cork.

3. Registered Owner Patrick Flanagan. Folio number 3686. County Westmeath. Lands of Kilkenny West in the Barony of Kilkenny West containing 32a. 2r. 16p.

Printed by Cahill & Co., Ltd., Parkgate Printing Works, Dublin.

Vol. 58
No. 3

JULY
1964

THE GAZETTE

of the

INCORPORATED LAW SOCIETY OF IRELAND

President
DESMOND J. COLLINS

Vice-Presidents
JOHN MAHER
PATRICK NOONAN

Secretary
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

CONTENTS OF THIS ISSUE

	Page
Meetings of the Council	19
Circuit Court Rules (*No.* 1) 1964	20
Rules of the Superior Courts (*No.* 3) 1964 ...	20
„ „ „ „ „ (*No.* 4) 1964 ...	21
Examination Results	21
Cases of the Month	22
Stamp Duty on share deal	22
Motor Insurers' Bureau	22, 23
Respectable and Responsible	23
Covenant in restraint of practice	24
Pretending to be a Solicitor	24
Solicitors' charge in fund recovered	24
Disciplinary jurisdiction over Medical Practitioners	25
Examination Dates	25
The Registry	25
Registration of Titles Acts	26

MEETINGS OF THE COUNCIL

JULY 16TH: The President in the chair, also present, Messrs. George A. Nolan, George G. Overend, Thomas A. O'Reilly, Desmond J. Moran, James R. Green, Ralph J. Walker, Peter D. M. Prentice, John Carrigan, Niall S. Gaffney, Francis J. Lanigan, James W. O'Donovan, Gerard M. Doyle, Reginald J. Nolan, Eunan McCarron, Thomas H. Bacon, Brendan A. McGrath, Robert McD. Taylor, William A. Osborne, Raymond A. French, Rory O'Connor, Edward J. Dillon, Daniel J. O'Connor, Patrick Noonan, John Maher, Thomas V. O'Connor, Richard Knight, Augustus Cullen, John J. Nash.

The following was among the business transacted:

Compensation Fund

The Council admitted applications for payment of grants recommended by the Committee.

Probate Office: Certified copy grants and probate engrossments

It was decided to suggest to the Superior Courts Rules committee that the rules should provide that photocopies of wills might be accepted as probate engrossments. It was also decided to ask the probate

officer to introduce a practice whereby the application for certified copies of grants of probate and administration will be accepted when lodging the application for the grant so that the grant and the certified copies for use with company registrars etc., will be issued at the same time.

Tralee Courthouse

The Secretary stated that the Society had written to the Department of Justice supporting the claim of the Bar Association that the courthouse should be put into proper repair. The attention of the Kerry Law Society was drawn to the provisions of the Courthouse (Provisions and Maintenance) Act 1935 which deals with the obligation of the responsible bodies. It was decided to draw the attention of the Minister for Justice to the general conditions of courthouses throughout the country and the lack of facilities for litigants, witnesses and the profession.

Sub-office in licensed premises

The Council considered an application from a member for permission to set up a sub-office in licensed premises. The application was based upon the fact that the sub-office and the licensed part of the premises would be at different ends of the building with separate doors. The application was refused.

Deposits on sales

Members asked for the views of the Council as to whether stipulations in conditions or contracts for sale should provide for payment of the deposit to the auctioneer or to the solicitor as stakeholder. The Council on a report from a committee stated that this is a matter for instructions from the client. The duty of the solicitor is to draw the contract in accordance with the client's instructions and if no specific instructions are given the solicitor may make provision in the contract for payment of the deposit to the solicitor as the stakeholder.

Mortgagee. Production of mortgagor's title deeds

The solicitors for a mortgagee were asked to lend the title deeds on accountable receipt to the mortgagor's solicitor who had advertised the property for sale without communication with the mortgagee. The mortgagee's solicitor declined to hand over the title deeds but offered inspection at his Dublin office. The Council on a report from a committee stated that the mortgagee was legally correct in his attitude. It was stated that as a matter of good conveyancing copies of the title deeds and of the mortgage should, where possible, be retained by the mortgagor's solicitors to avoid difficulty on the occasion of a sale.

CIRCUIT COURT RULES (NO. 1), 1964

These Rules which may be cited as the " Circuit Court Rules (No. 1), 1964 " shall come into operation on the 6th day of July, 1964. The Order referred to in these Rules as being amended is that contained in the Circuit Court Rules, 1950.

Order 1 :

Rule 6 of this Order is hereby revoked and the following Rule shall be substituted therefor :—

" 6. The Offices of the Court shall be open to the public for the transaction of business on every week-day between the hours of 10 a.m. and 4.30 p.m., with the exception of Saturday and of such days as may be proclaimed by lawful authority to be public holidays. The County Registrar may, however, direct that, instead of Saturday, the Office under his control be closed on whatever week-day is customarily observed as the weekly half-holiday in the town in which such Office is situated."

EXPLANATORY NOTE

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

These Rules amend the Rules of the Circuit Court, 1950 (S.I. No. 179 of 1950) prescribing the days and hours on and during which Circuit Court Offices shall be open for public business. They provide, in particular, for the closing of these offices on Saturdays or on whatever day is the local weekly half-holiday.

RULES OF THE SUPERIOR COURTS (NO. 3), 1964

1. In Appendix W, the scale of costs specified for the several items (other than those marked " Discretionary") in Parts I, IV, V, VI and VII shall be increased by twelve per cent in relation to business done after these rules have come into operation.

2. These Rules shall be construed together with the Rules of the Superior Courts and may be cited as the Rules of the Superior Courts (No. 3), 1964.

EXPLANATORY NOTE

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

These Rules provide for an increase of twelve per

cent in certain costs prescribed in Appendix W (as amended) to the Rules of the Superior Courts (S.I. No. 72 of 1962). The costs affected are the costs (other than "discretionary" costs) set out in Part I (General), Part IV (Costs of judgment in default of appearance), Part V (Non-contentious probate matters), Part VI (Bankruptcy) and Part VII (Appeals from the Circuit Court). The Order is operative as from 1st August 1964.

RULES OF THE SUPERIOR COURTS (NO. 4), 1964

1. In Order 104, rule 1, the words "the Hilary Sittings shall begin on the 11th January and end on the Saturday of the week preceding the Easter vacation" shall be deleted and the words "the Hilary sittings shall begin on the 11th January and end on the Friday of the week preceding the Easter vacation" shall be substituted therefor.

2. Order 104, rule 4, shall be deleted and the following rule substituted therefor :—

"4 (1) The several offices of the Supreme Court and of the High Court shall be open for public business on every day of the year except Saturdays, Sundays, Christmas Day and the seven next following days, St. Patrick's Day, Good Friday, Monday and Tuesday in Easter Week, Whit Monday, the first Monday in August, and the days duly appointed to be observed as public holidays in public offices.

(2) The hours during which such offices are open for public business shall be as follows :—

(*a*) during the sittings, from half past ten o'clock in the forenoon to half past four o'clock in the afternoon ;

(*b*) during the Long vacation, from half past ten o'clock in the forenoon to one o'clock in the afternoon ;

(*c*) during other vacations, from half past ten o'clock in the forenoon to two o'clock in the afternoon."

3. In Order 107, rule 5 (1), the words "or on Saturdays" shall be deleted.

4. (1) In Order 79, rule 84, the word "Saturdays" shall be inserted immediately before the word "Sundays".

(2) In Order 108, rules 2 and 3, the word "Saturday" shall be inserted immediately before the word "Sunday".

5. These Rules shall be construed together with the Rules of the Superior Courts and may be cited as the Rules of the Superior Courts (No. 4), 1964.

Explanatory Note

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

These Rules amend the Rules of the Superior Courts (S.I. No. 72 of 1962) prescribing the days on which the several offices attached to the Superior Courts shall be open for public business and provide, in particular, for the closing of these offices on Saturdays. They also prescribe the hours during which the offices shall be open for public business.

EXAMINATION RESULTS

At examinations held on the 3rd July, 1964 under the Solicitors Act, 1954, the following candidates passed :

First Examination in Irish : John P. P. Aylmer, Roger P. Ballagh, Michael Carrigan, Patrick Coleman, Mary Courtney, Patrick G. Fleming, Denis A. E. Gleeson, John Glynn, Bruno G. Healy, Stephen J. MacKenzie, John T. D. O'Dwyer, Helen Mary Quinn, Avice Redmond, Aveen M. J. Smith.

14 candidates attended ; 14 passed.

Second Examination in Irish : William M. Cahir, Thomas J. Colgan, B.C.L., Michael N. Dolan, Eugene P. Hunt, B.A., Francis B. Keating, Gerard Kirwan, B.C.L., Patrick J. Lavan, Aideen M. O'Keeffe, Josephine M. E. O'Meara, Eleanor A. O'Rourke, Cyril M. Osborne, Michael Reynolds, John R. Sweeney, Brian Woodcock.

14 candidates attended ; 14 passed.

At the Book-keeping Examination for apprentices to solicitors held on the 22nd June, 1964, the following candidates passed :

Passed with merit : John F. M. Darley.

Passed: John G. Black, B.C.L., William M. Cahir, Arthur F. Callanan, Michael G. Daly, B.C.L., LL.B., Thomas W. Enright, Joseph G. Finnegan, John B. Harte, Michael B. Hegarty, Donnchadh D. Lehane, Thomas A. Menton, Robert T. R. McDowell, Josephine M. E. O'Meara, Eleanor A. O'Rourke, Mary Raleigh, B.A., John J. Rochford, John R. Sweeney.

25 candidates attended; 17 passed.

CASES OF THE MONTH

Practice—Parties—adding defendants.

In Fire, Auto & Marine Insurance Co. *v.* Greene (1964), D was a motorist insured by P. D was involved in an accident in which TP suffered injuries. TP claimed damages from D. P claimed a declaration against D that P was entitled to avoid the policy for nondisclosure or mispresentation and, in accordance with s. 207 (3) of the Road Traffic Act, 1960 P served notice of their action on TP, who thereupon became entitled to be made a party to P's action, but failed to exercise this right. Under an agreement with the Minister of Transport, the Motor Insurers' Bureau (MIB) would become liable to satisfy any judgment obtained by TP if it were not satisfied by D or P. When sued by third parties, it was not the practice for MIB to take the point that such parties were not privy to the agreement between MIB and the Minister. MIB applied to be joined as a defendant in the action by P against D. Held, that the court had no power under Rules of Court to add MIB as a defendant.

Stamp Duty on Share Deal.

In William Cory & Sons Ltd. *v.* Commissioners of Inland Revenue (Denning, M.R., Danckwerts, L.J., Diplock, L.J. dissenting). An appeal against the decision of Mr. Justice Pennycuick on December 5th, 1963, who had held that 89 transfers of shares were not liable to *ad valorem* stamp duty as transfers on sale, under Section 1 and the 1st Schedule of the Stamp Act, 1891 was allowed.

In August 1957 Cory's agreed in principle to purchase the issued share capital of the Palmer Group of Companies. In October, shortly before the completion of the final draft of the agreement, Cory's intimated that they "were not prepared to do more than have an option and that, if the vendors would not give it to them, the deal was off." On November 1st the Palmer Group granted an option to purchase for £420,856 and executed 89 transfers of the shares to Cory's. The agreement provided for retransfer if the option was not exercised.

On November 2nd the option agreement and transfers were presented for stamping at £2 and 10s. each respectively on the basis that they had been made for the protection of the option rights and fell under "Conveyance or Transfer of any kind not hereinbefore described" in the 1st Schedule to the Act. The Controller of Stamps directed that they be stamped with *ad valorem* duty on £420,856 in that they were transfers on sale.

The Master of the Rolls said that when the transfers were executed they were intended to effect a sale and were intended to operate on a sale. When the option was exercised the transfer did in fact effect a sale. They were therefore transfers on sale and liable to *ad valorem* duty. Danckwerts, L.J. delivered a concurring judgment.

Lord Justice Diplock, dissenting, said that he was reluctantly driven to the conclusion that these instruments of transfer were not transfers "on sale". They transferred the legal property in the shares but not "on the sale thereof" nor to "a purchaser or any other person on his behalf or on his direction". They were therefore liable to a fixed duty of 10s. and not to *ad valorem* duty.

Leave to appeal to the House of Lords was granted.

(The Times, Friday, June 26th, 1964.)

[See *Gazette*, June 1964, Vol. 58, No. 2, pp. 15, 16.]

Motor Insurers' Bureau. Injury by criminal act.

The plaintiff, the chief security officer of a big metal company, saw a van in a car park near the company's premises on the windscreen of which there was a road fund licence which had been stolen from one of the company's cars. He later stopped the car, which was being driven by P, an employee of the company, on a private road about ten yards from the main road. Standing by the van with one hand on the jamb, one hand on the top of the door and his head and shoulders inside, he asked P to pull into the near side of the road; but P immediately drove off at a fast speed, dragging the plaintiff out into the main road and injuring him. P was convicted of larceny of the road fund licence, of driving a motor vehicle whilst uninsured and of maliciously inflicting grievous bodily harm on the plaintiff. The plaintiff obtained judgment against P for damages for personal injuries, but that judgment was not satisfied. The plaintiff then sued the defendants claiming under their agreement, dated June 17th, 1946, with the Minister of Transport which extended to any judgment "required to be covered by a policy of insurance" under Part 6 of the Road Traffic Act, 1960, for the amount of the unsatisfied judgment against P and obtained judgment. On appeal the defendants contended that P's liability to the plaintiff was a liability for the consequences of his own wilful and deliberate criminal act and was not

required to be covered by a policy of insurance under Section 203 (3) (*a*) of the Road Traffic Act, 1960.

Held: the plaintiff was entitled to recover from the defendants the amount due under the unsatisfied judgment against P, because—

(i) although (per Lord Denning, M.R., and Pearson, L.J.) P's liability to the plaintiff arose out of a felony under S. 18 of the Offences against the Person Act, 1861, yet (*per curiam*) the liability was one "which was required to be covered by a policy of insurance" under Section 203 (3) (*a*) of the Road Traffic Act, 1960, and the plaintiff as the injured third party, could have recovered from the insurers under S. 207 of that Act even though P himself would have been debarred from recovering; accordingly, as P had not been insured, the defendants were liable to the plaintiff. (Hardy *v.* M.I.B., 1964, 2 A.E.R. 742.)

Motor Insurers' Bureau.

In Adams *v.* Andrews the plaintiff aged 21 claimed damages against the defendant for injuries sustained while a passenger in his car. The Court held that the accident was entirely caused by the negligence of an unidentified motorcyclist who had failed to stop causing the defendant to swerve, mount the kerb and overturn his car. The motorcyclist and another motorist who saw the accident drove on and were never traced and the only evidence as to what occurred was a written statement by an R.A.F. corporal to the police. This man had also left the country and efforts to trace him failed. Sachs J., held that on the evidence without the corporal's statements some degree of blame would have attached to the defendant but the corporal's statements showed that the motorcyclist had started up, accelerated to overtake two cars and went in a wide arc well over to the other side of the road and then back into the defendant's path. On this evidence the Court held that the motorcyclist was solely to blame and the action against the defendant had to be dismissed. The case disclosed some interesting points regarding the Motor Insurers' Bureau. Had the findings shown that the motorcyclist was three-quarters to blame and the defendant one quarter the result would have been judgment against the defendant for £15,000. Had there been such a finding the defendant would have been financially ruined as he was not insured against accidents to passengers. Secondly because of that insurance position the plaintiff would probably have received little of the £15,000. Thirdly the Motor Insurers' Bureau would not have even considered making an *ex gratia* payment to the plaintiff. As it was, the present situation was by no means satisfactory. Under the current agreement with the Minister of Transport the Bureau could decline to accept any legal liability for damages suffered by anyone who claimed against a hit and run driver who had not been identified. They could sit back and do nothing. Where, as in this case, there was a reasonable certainty that a motor vehicle was involved and that the claim would have succeeded if the driver had been traced the Bureau would give sympathetic consideration to making an *ex gratia* payment to the victim but it seems that their power of discretion was absolute. It was regrettable that an injured person had no right to recover damages because judgment was against a driver who had not been identified. It merely enabled insurance companies as a whole to have a potential avenue of escape from liabilities which in principle they had accepted. The Judge stated that two matters emerging from the case were worthy of consideration from the legislative point of view. First whether some steps could be taken to oblige motorists and others to give their names to the police after they had witnessed an accident, secondly although he was not prepared to criticise without knowing the full facts, it seemed that the Motor Insurers' Bureau could decline liability for making payments in hit and run cases. Whatever might be the practice it was important that the Bureau should not be in a position wholly to decline liability merely because a motorist or some other person who was under no duty to insure against particular risks was also partly to blame. A claim would be made against the Motor Insurers' Bureau in this case and the Judge instructed the solicitors to report to him in two months as to the attitude which the Bureau adopted in case the Court would wish to bring the matter to the attention of some suitable authority. (Adams *v.* Andrews, The Times Newspaper, 28th July, 1964.)

"*Respectable and Responsible.*"

Mr. Justice Ungoed-Thomas held that the assignment of a lease, made on October 8th, 1963, to the plaintiff, was not vitiated by reason of its being made without the consent in writing of the defendant. His Lordship said that the respondent was the freeholder of the premises which were a workmen's café and a dwellinghouse and the plaintiff claimed that he was entitled to take an assignment of the lease granted to him by the assignor on October 8th, 1963, without the consent of the defendant. The lease, which was made in 1947 for a term of 21 years at a yearly rent of £160 contained a covenant that it would not be assigned without the written consent of the defendant, such consent not to be withheld by him in favour of a respectable and responsible person.

On August 15th, 1963, the lessee applied to the

defendant for his consent to assignment to the plaintiff, but the defendant did not give his consent. The defendant had conceded that the plaintiff was respectable, but questioned whether he was responsible.

The plaintiff obtained several references, including one from his bank, which stated that he was good for £1,000. The defendant contended that there was no trade reference and that "responsible" in this context did not mean only the responsibility to meet financial obligations, but it also indicated the disposition to fulfil the obligations of the lease. He must have business ability.

The Court rejected such interpretation. The plaintiff had satisfied the requirements of the covenants. Since the defendant did not give his consent for a considerable time, the lessee was justified in assigning the lease to the plaintiff without the consent of the defendant. It was not necessary to join the assignor as a party for the relief sought here. It was conceivable that neither the assignment which would be conclusive as between the assignor and assignee nor a declaration such as was sought here which would be conclusive as between assignee and landlord, would necessarily preclude an action for damages for breach of covenant between landlord and tenant. (Theodorou *v.* Bloom, The Times, 19th June, 1964.)

Covenant in restraint of practice.

The Court dismissed this application by the plaintiff, an estate agent, for an injunction restraining until the trial the defendant, a surveyor, from carrying on in breach of the covenant a business of or connected with, or taking employment with any, estate agent, surveyor, valuer or auctioneer within a radius of one mile from the plaintiff's office and soliciting business from any person or building society who were, during the subsistence of partnership between the plaintiff and the defendant, the customers and those becoming so during two years from November 12th, 1963.

His Lordship said that at the date of the partnership agreement the plaintiff was carrying on business from four offices in The Temple, Tooting, Putney and Battersea—and his policy was to specialise as to the property dealt with by each office. The Temple office dealt with properties of a commercial and industrial nature. He entered into partnership with the defendant in 1957 in the firm name of "Rayners" at 205 Lavender Hill. The plaintiff was to be the principal partner, while the defendant became a salaried partner. The partnership was terminated in November, 1963 and the defendant carried on business within the area restricted by the covenant.

The restriction on not soliciting business from those who became customers after two years of termination of the partnership and also the restriction not to carry on the business of estate agent were too wide and no interlocutory relief could be granted for the breaches of such covenant.

(Rayner *v.* Pegler, The Times, 11th March, 1964.)

Pretending to be a solicitor.

The Divisional Court refused this application by an inquiry agent, for the extension of time to appeal against the decision of Essex Quarter Sessions who, on April 26th, 1963 confirmed his conviction on January 21st, 1963, by Essex justices sitting at Clacton-on-Sea that he, on October 8th, 1962, being an unqualified person, wilfully pretended to be qualified to act as a solicitor contrary to section 19 of the Solicitors Act, 1957. On behalf of the applicant it was stated that on October 8th, 1962 at a meeting between his clients and the police, he led the police to believe that he was representing a firm of solicitors. He did not say that he was a solicitor, but called himself a legal adviser. The applicant sought to contend that his conduct did not fall within the scope of section 19; that the section created two offences and that even if his conduct fell within the section, the applicant was not guilty of the offence charged; and that the words in the section "qualified or recognised by law to act as a solicitor" required that the applicant must be proved to have conducted himself or to have acted in such a way as only a solicitor was entitled to act.

The delay was occasioned in the first place by delay in refusing legal aid to the applicant for the purposes of the appeal. Further delay was caused, through no fault of the applicant, in respect of agreeing the terms of the case stated which was not received until January 10th, 1964, and by the fact that counsel for the respondent was not instructed to settle the draft case until about October 15th, 1963. After the Court had considered the matter, Mr. Justice Widgery stated that the Court was not satisfied with the explanations for the considerable delay and would not grant the extension sought.

(Merry *v.* Batson, The Times, March 11th, 1964.)

Solicitors' charge in fund recovered.

In proceedings under s. 17 of the Married Women's Property Act, 1882, a wife, who was legally aided, obtained an order for the sale of property owned jointly, subject to a mortgage, by herself and her husband, and an order for costs was made in her favour. The proceeds of sale were to be paid as to one-half to the wife's solicitors and as to the other half to the husband's solicitors. The wife's costs of the s. 17 proceedings amounted to £191 7s. 8d. and she sought, and obtained, a garnishee order *nisi*

against the share of the proceeds held by the husband's solicitors, which share, after adjustments for arrears of maintenance, rates, etc., eventually amounted to some £217. The order was subsequently made absolute in the sum of £107, the husband's solicitors having at that date received only £110 of the £217. (The fact that the order was made absolute in the sum of £107 rather than £110 was due to oversight.) The husband's solicitors, who were owed £170 12s. 6d. by the husband in respect of their costs of the proceedings, appealed, contending that they had a right of set-off, alternatively a general or particular lien on the funds held by them to the amount of those costs. On the appeal, the wife was not legally aided and did not appear, nor was she represented. The Law Society appeared as *amicus curiæ* at the request of the Court. The husband's solicitors asked that the garnishee order be amended so as to substitute the figure of £47 8s. 9d. (£217 odd less £170 12s. 6d.) for £107.

The Court of Appeal decided that although only £110 had been available to be garnished at the time when the order had been made, this was, in the circumstances, a technicality, and the Court would treat the order as having been properly made in respect of the whole £217. The Court would make the order asked for by the husband's solicitors, the Law Society agreeing that this was a proper order in the circumstances.

Appeal allowed; appellants to have the costs of the appeal (which the Court quantified at £47 8s. 9d., to avoid the necessity for taxation) the right to recover those costs to be set off against the £47 8s. 9d., owed under the garnishee order.

(Walters *v.* Miles-Griffiths, The Solicitors' Journal, Vol. 108, p. 561.)

Disciplinary jurisdiction over medical practitioners.

The Disciplinary Committee of the General Medical Council found proved against the appellant a charge that being a registered medical practitioner he had during a specified period maintained an improper association with a patient, and held that on the facts alleged in the charge, which the appellant admitted, he had been guilty of infamous conduct in a professional respect. His name was ordered to be erased from the medical register. On his appeal to the board it was contended that in all the circumstances his conduct, though reprehensible, was not infamous in a professional respect as defined in Felix *v.* General Dental Council (1960), A.C. 704.

It was submitted that the committee were wrong to erase his name from the Register. Lord Upjohn, giving the judgment, said that the finding of the committee that on the facts the appellant was guilty of infamous conduct in a professional respect could not be challenged. As regard sentence, the board would be slow to interfere with the exercise by the Disciplinary Committee of their discretionary power to impose a sentence of erasure. No general test could be laid down, for each case must depend entirely on its own particular circumstances, but for such a sentence to be set aside it must appear to the board to be wrong and unjustified. Lord Parker C.J., in *in re* a Solicitor (1960) 2 Q.B. 212; might have gone too far when he said that the appellate court would never differ in the matter of sentence in cases of professional misconduct. Their lordships agreed with Lord Goddard C.J., *in re* a Solicitor (1956) 1 W.L.R. 1312, when he said that it would require a very strong case to interfere with sentence because the Disciplinary Committee were the best possible people for weighing the seriousness of the professional misconduct. The present was not a case where the board could properly interfere with the sentence. Appeal dismissed.

(McCoan *v.* General Medical Council, Solicitors' Journal (Vol. 108), p. 560.)

EXAMINATION DATES

The attention of Masters and apprentices is drawn to a slight alteration in the dates for the Law Examinations to be held in September next from those stated in the May issue of the Gazette at page 9.

The new dates for the examinations are as follows:—

Examination	*Date*	*Last day for entry*
First Law ...	1st and 2nd Sept.	10th Aug.
Second Law ...	3rd, 4th and 5th Sept.	10th Aug.
Third Law ...	1st, 2nd and 3rd Sept.	12th Aug.

LEGAL APPOINTMENT

Mr. A. C. P. Ross, Assistant Revenue Solicitor, has been appointed Revenue Solicitor in succession to Mr. W. H. P. England who has retired.

THE REGISTRY

Register A

BRISTOL SOLICITORS require admitted conveyancing assistant, salary not less than £2,150—Pension scheme. Box No. A.220.

SOLICITOR

Young progressive solicitor for busy city practice. Experience of conveyancing and probate essential. Salary £2,000 per annum approximately and prospects of partnership later. State age and full details of experience. Box No. A.221.

Register C

FOR SALE: Dictaphone (Wax Cylinder Type) two dictating machines, one transcriber, and one shaver. Box No. C.178.

WOULD ANY SOLICITOR or person having possession of a will or testamentary document of James Byrne, Carrick, County Donegal, retired national teacher, executed after the 30th day of January, 1943, communicate with Dunlevy & Barry, Solicitors, Donegal. Box No. C.179.

LOST WILL. Re William Burke (otherwise Bourke) late of Carrigal, Ballywilliam, Nenagh, County Tipperary, Farmer, deceased.

We the undersigned are endeavouring to trace the last Will of the above deceased, which was made in the Mater Hospital, Dublin, by a solicitor practicing in Dublin in or about Easter 1916. Any person who can give assistance as to the whereabouts of the said Will please communicate with the undersigned.

Dated this 4th day of August, 1964.

Signed: JAMES O'BRIEN & Co.,
24 Castle Street, Nenagh.

REGISTRATION OF TITLE ACTS, 1891 AND 1942

Issue of New Land Certificate

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

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

Dated the 21st day of August, 1964.

D. L. MCALLISTER,
Registrar of Titles.

Central Office,
Land Registry,
Chancery Street,
DUBLIN.

SCHEDULE

1. Registered Owner, Joseph Breen. Folio number 8073. County Wicklow. Lands of Roscath and Coolacork in the Barony of Arklow containing 66a. 1r. 12p., and 3a. or. 11p., respectively.

2. Registered Owners, John William Hughes, Thomas Jessop Davis. Folio number 10508. County Tipperary. Lands of Garnavilla in the Barony of Iffa and Offa West containing 66a. 1r. 0p.

Printed by Cahill & Co., Ltd., Parkgate Printing Works, Dublin.

Vol. 58
No. 4

AUG.-SEPT.
1964

THE GAZETTE

of the

INCORPORATED LAW SOCIETY OF IRELAND

President
DESMOND J. COLLINS

Vice-Presidents
JOHN MAHER
PATRICK NOONAN

Secretary
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

CONTENTS OF THIS ISSUE

	Page
Finance Act, 1964	27
Certified Copies, Grants of Probate and Administration	29
Commission of Charitable Donations and Bequests, Board Meetings	29
Cases of the Month	29
List of New Members	32
List of Admissions	33
Programme of Lectures, 1964–1965	34
Statutes Passed by the Oireachtas 1964	35
Obituary	38
The Registry	38
Registration of Title Acts 1891 *And* 1942 ...	38

FINANCE ACT, 1964

The following sections of the Act are of interest to members :—

Section 2 introduces, with effect from the current year, a new form of Age Allowance for persons who have reached the age of 65 years. The allowance, which will be given irrespective of the amount of total income, will be one-fourth of unearned income subject to a maximum deduction of £150. But where the person has both earned and unearned income, the combined deductions for Age Allowance and Earned Income Relief are not to exceed £500—the existing limit for Earned Income Relief. (The Age Allowance which is being replaced is confined to incomes not exceeding £600).

Section 3 brings in a new relief for persons with small investment incomes who, because they are under 65 years of age, do not qualify for the Age Allowance provided for in section 2 of the Bill. Where the total income does not exceed £450, a deduction of one-fourth of the income, exclusive of any income receivable under certain kinds of dispositions, will be allowed. There is provision for

Members' Dinner Dance — Thursday, November 19th — Shelbourne Hotel

marginal relief where the total income is somewhat in excess of £450. The new allowance is in substitution for, and not in addition to, any Earned Income Relief claimable by a person having earned income.

Section 7 is designed to counteract avoidance of Sur-tax by means of payments for restrictive covenants. A typical case is where an undertaking is given to a company by a director or senior executive, in return for money or money's worth (such as a block of shares), not to enter the service of a competing concern or to set up on his own account in the same line of business. For purposes of the Sur-tax charge which the section imposes the amount received, which would come out of profits charged to Income Tax, is to be "grossed up" by reference to the standard rate of that tax. Sums paid or other consideration given for undertakings entered into before 14 April, 1964 (Budget Day) are excluded from the scope of the new charge.

Sections 8 *and* 9 and the *First Schedule* are concerned with the taxation of payments of compensation for loss of office and certain other payments connected directly or indirectly with the termination of an office or employment or a change in its functions or emoluments.

Section 8 imposes a charge to tax under Schedule E on the payments referred to, whether they are made in pursuance of a legal obligation or not. Sums paid before 14 April, 1964, however, or paid in pursuance of obligations incurred before that date are excluded from the new charge, as also are payments arising from a termination or change which took place before 14 April, 1964. Payments made on or after 14 April, 1964 in commutation of pensions are, however, not excluded even though the employment ended before that date.

Section 9 and the *First Schedule* provide various exemptions and reliefs from the charge to tax imposed by section 8. Payments on death in service, or on account of injury or disability, and lump sum payments under superannuation schemes are among the payments specifically excluded. Payments not exceeding £3,000 are totally exempt and, in the case of other payments, the charge is limited to the excess over £3,000. For the purpose of this exemption, however, two or more payments from the same employer, or from associated employers, may be aggregated.

Section 10 enables the making of Schedule A assessments on companies to be dispensed with in cases where the assessments, if made, would be allowable as deductions in the computation of trading profits or profits from lettings. The section is designed to secure that the total amount of tax payable will not be altered. In particular, the section preserves for companies the benefit of the allowance of one-third of annual value in the case of industrial buildings which do not qualify for allowances in respect of the capital expenditure on their construction. In certain circumstances, however, the total tax payable for a given year may be somewhat greater or less than it would otherwise have been. Any such increases or decreases will tend to balance over a period of years but, nevertheless, because of this feature, a company is allowed to elect that the new provision shall not apply in its case.

Section 11 authorises the making of arrangements for the payment of ground rents without deduction of Income Tax. Where such an arrangement operates a deduction for the ground rent will be allowed to the payer and the recipient will be charged by direct assessment.

Section 22 is concerned with the case of a trust fund, the life-tenant of which gives up his life-interest at a time when he is neither domiciled nor ordinarily resident in the State. In such circumstances Government and other securities which would have been exempt if the trust had been terminated by the death of the life-tenant may under existing law be liable to Death Duties. The section provides retrospective exemption from Death Duties in such a case.

PART IV

Stamp Duties

Section 23 provides, with effect from 1 August, 1964, for the exemption from Stamp Duty of certain instruments, including letters of allotment and powers of attorney.

Section 24 will replace section 45 of the Finance Act, 1963. It enables the Revenue Commissioners to enter into agreements for the composition of Stamp Duty on cheques and paying orders issued by local authorities and statutory bodies generally.

PART V

Corporation Profits Tax

Section 25 provides that, for the purposes of Corporation Profits Tax, losses arising on or after 1 January, 1962, may be carried forward and set off against subsequent profits.

Section 26 amends section 52 (3) of the Finance Act, 1920, so as to bring private unlimited companies within the ambit of Corporation Profits Tax as respects profits arising on or after 1 January, 1964.

Section 27 raises from £1,500 to £2,500 the limit on the deduction which may be allowed for the remuneration of a director in computing, for the purposes of Corporation Profits Tax, the profits of a director-controlled company. The new limit will apply as respects accounting periods ending after 31 December, 1963.

CERTIFIED COPIES, GRANTS OF PROBATE AND ADMINISTRATION

MEMBERS please note that they may now, when lodging papers with applications for grants and probate, bespeak extra copies of grants for registration with limited Companies etc., This should be done at the same time when lodging the papers for the grant and the extra copies will be available when the grant is taken up. Members are requested not to make separate applications as this may cause delay.

INSURANCE ACT, 1964

THE object of this Act is to provide relief for the policy holders of the Equitable Insurance Company Limited. In May 1963 the Minister for Industry and Commerce petitioned the High Court for the winding up of the Equitable Insurance Company Limited on the ground that it was insolvent; shortly afterwards the necessary winding up order was made by the Court. Though the preparation of the Act was prompted by the failure of this one company, the arrangements which it set up are of a general and continuing nature, so that there will also be suitable machinery for the relief of policy holders in the case of any future insurance insolvency. The main features of this scheme as envisaged by the Act are as follows:—

(*a*) All non-life licensed Insurance Companies will contribute to the fund in accordance with the Insurance Compensation Fund in accordance with their premium income. A non repayable contribution of £30,000 will be made to the Fund by the State with the object of covering the Equitable's Workmens' Compensation Liabilities.

(*b*) Funds will be available to meet claims under policies issued by any insolvent insurance company which is being wound up by the High Court; the eligible classes of insurance will be those for which a licence is needed under the Insurance Acts, other than life; creditors other than those claiming under eligible policies will not have access to the Fund.

(*c*) As the annual contributions envisaged will not be sufficient to discharge the liabilities of the Equitable within a short space of time the Minister for Finance will make loans to the Fund to enable it to cover all outstanding claims without delay; these loans will be repaid to the Minister for Finance in due course.

Section 8 of the Act amends Section 22 of the Act of 1936 so that a deposit of £100,000 shall be required from each insurance company by way of deposit no matter how many classes of business it carries on. Section 12 of the Act deals with the purchase and sale of shares of the Irish Life Assurance Company Limited, by the Minister for Finance while Section 13 makes provision regarding the construction of Articles of Association of the Irish Life Assurance Company Limited. In this connection the observations of the Minister for Industry and Commerce on the second reading of the Bill in the Seanad, should be noted:—"I need hardly mention that these provisions have no connection whatever with the other provisions of the Bill; that they were inserted in this Bill primarily to save the Oireachtas the time and trouble of dealing with a separate measure."
(See Seanad Reports Vol. 57 No. 16 1st July, 1964.)

COMMISSIONERS OF CHARITABLE DONATIONS & BEQUESTS; BOARD MEETINGS

MICHAELMAS TERM—1964

Tuesday	6th October, 1964
"	20th " 1964
"	3rd November, 1964
"	17th " 1964
"	1st December, 1964
"	15th " 1964

CASES OF THE MONTH

Solicitors' right to apply for costs in Divorce application

A HUSBAND and wife each filed petitions for divorce against the other, the wife charging the husband with cruelty, and the husband cross-charging the wife with adultery. Both suits were defended, the wife was granted legal aid in respect of each. The husband was ordered to give security

for the wife's costs. At the hearing the Court was told that there had been a reconciliation and the suits were dismissed by consent. Counsel for the wife then informed the Court that the wife did not intend to apply for costs against the husband. At an adjourned hearing to determine whether, the absence of the wife's application, her solicitor or, in the absence of her solicitor's application, the Law Society, could apply for her legal aid costs:—

Held, that whereas at common law the solicitor's right to costs depended on whether or not the wife had forfeited her agency of necessity by committing adultery, and that issue could not be determined on adjudication on costs, the Divorce Court had a discretion and could award costs in relief of a wife who had been guilty of adultery; that before the advent of legal aid, it was a practice of the Divorce Court to protect the wife's solicitor in respect of costs reasonably incurred in matrimonial proceedings, usually by ordering the husband to provide security, and if the wife failed, or her suit did not proceed, the court would usually but not invariably limit the order for the wife's costs to the amount paid into court as security; and that the Legal Aid and Advice Act, 1949, had left the practice and discretion of the court untouched. Accordingly, since the wife had not applied for her costs, her solicitor could make the application and an order would be made against the husband for the wife's costs not exceeding the sum paid into court as security. (Carter *v.* Carter and Cowan [1964] 2 All ER. 968)

Accountability of Solicitor Trustee

THE extent of which knowledge acquired by a solicitor trustee, in the course of dealing with and for a trust estate, could be used to result in private profit should be given careful consideration. The facts of the case were, a testator left a minority, and quite substantial, holding in a private company. When an approach was made to the executors to sell, the trust solicitor together with a member of the testator's family made investigations and were given proxies to attend a meeting of the company. Saying that he represented the trust share-holding the solicitor obtained a great deal of information about the company's assets, which would otherwise have been denied to him. Resulting from this, he and the member of the family with whom he had acted, bought a considerable number of the shares in the company and, by selling off some of the company's assets, managed to make a capital distribution to the shareholders in access of the price paid. Whereupon another member of the family and a beneficiary under the Will brought an action for a declaration that the shares were held in trust and for an account of the profits. The action came before Wilberforce J., in the Chancery Division, who held that the only thing which had made the purchase of shares possible was that the information in regard to the Company's affairs had clearly been obtained because the Defendents were acting for the trust.

The two main issues for decision in the case were (i) were the defendants in a position of agency towards the trust or the trustees, so as to be accountable to the trust for any profit which they made? (ii) did they obtain a valid consent to the retention of this profit? The first query was one partly of fact and partly of law. The learned Judge pointed out that, in his view, the true interpretation of the initial stage was that the agency of the defendants was continued, its nature being to use and exploit the trust holding and its voting power to obtain information and to strengthen the management of the company, if possible, by securing representation on the board of the trust holding, as well as the intention that the defendants should acquire additional shares with a view to obtaining control. This was no departure from the agency. That still continued to exist though the defendants were now acting in a mixed capacity partly as agents for the trustees and partly on their own account. The defendants were, throughout, in the position of agents for the trustees for the purpose of using the trust shareholding to extract knowledge of the affairs of the company and ultimately to improve the company's profit earning capacity. His lordship made an order for declaration of constructive trusteeship as regards portion of the transaction, for an account of the profits as claimed, assuming the deduction of expenditure and on inquiry as to what was properly allowed for the work and skill of the defendants. (Phipps *v.* Boardman—[1964] 2 All ER. 187).

Libel—Qualified Privileges

THE rule that where two or more persons are sued in respect of a joint libel, proof that one of the defendants was actuated by malice will defeat any plea of privilege on the part of the others was set at nought by Denning, M. R., Harman and Davies L. J. J. The plaintiff brought an action against members of a committee of an unincorporated club and its assistant secretary, alleging libel in a letter written on a privileged occasion. The defendants denied that the letter was defamatory and pleaded privilege. The plaintiff by her reply alleged express malice. The action was first tried in 1963 but the jury disagreed. On the re-trial in 1964 the jury found that the letter was defamatory and awarded the plaintiff £750 damages, but found specifically that three of the committee members and the assistant Secretary were not actuated by malice. The trial

judge following (Smyth *v.* Streatfeild 1930) 3.K.B. 764 entered judgement and ordered costs of both trials against the defendant. The three committee members and the assistant secretary appealed. Denning M. R. intimated that it was a mistake to suppose that on a joint publication the malice of one defendant affected his co-defendant. Each defendant was answerable separately as well as jointly, for the joint publication; and each was entitled to his several defence. If the plaintiff sought to rely on malice to aggravate damages, or to rebut a defence of qualified privilege, or to cause a comment otherwise fair or to become unfair he must prove malice against each person with whom he charged it. A defendant was only affected by express malice if he himself was actuated by it; or if his servant or agent concerned in the publication was actuated by malice in the course of his employment. Three members of the committee and the assistant secretary of the Club were entitled to rely on the defence of qualified privilege. There was no malice on their part such as to defeat the privilege. (Egder *v.* Davies and Others, *Solicitors Journal* (31st July, 1964).

Solicitor—Negligence

THE plaintiff, an assignee under an under-lease of certain premises, instructed the defendant solicitors to negotiate the purchase of the head lease and its resale to G. Both the plaintiff and R. who acted as her agent, told S, a member of the defendant firm, that the plaintiff would not purchase unless an immediate resale could be effected since she did not wish to redevelop the premises in accordance with the terms of the head lease. By September, 1961, S had negotiated a price of £7,500 subject to contract on the purchase, and a price of £10,800 on the resale. R. had agreed to accept a commission of £300 from G. if the deal went through, but did not disclose that fact to the plaintiff. On 16th October, 1961, S inadvertently sent to the head lessors the draft contract between the plaintiff and G in mistake for that between them and the plaintiff. The head lessors thus became aware of the profit of £3,300 the plaintiff hoped to make and therefore demanded an increased price of £9,000. To that the plaintiff had to agree and contracts were exchanged in December, 1961. G paid a deposit of £900 to the head lessors but failed to complete. After notices to complete had been served by the head lessors on the plaintiff, and by the plaintiff on G, a new date was fixed, but G again defaulted and the plaintiff did not provide, and was not asked by the defendants to provide the necessary money to complete the purchase. The whole transaction therefore fell through and the plaintiff sued the defendants alleging negligence and claiming £1,500 damages.

Melford Stevenson, J., said that it was conceded by counsel for the defendants that they were in breach of their duty of care but contended that that had not caused the plaintiff any significant damage since, by failing herself to provide the necessary funds, she had brought the damage upon herself. His lordship was satisfied that the plaintiff not only understood that a notice to complete meant that the money had to be produced but also, by a visit to her bankers, had placed herself in a position to do so should she so desire, but that she had not disclosed this fact to the defendants, in the belief that G would complete at the last moment. He was satisfied that the plaintiff had maintained the attitude that she would not complete unless there was an immediate resale. Accordingly the defendants were not negligent in failing to obtain from the plaintiff sufficient money to complete, as was alleged. Nor did they fail to advise her properly. No doubt they were negligent in sending the wrong draft contract, but any loss the plaintiff had suffered flowed from her own unwillingness to complete. There would be nominal damages of 40*s.* and no order as to costs. Judgement accordingly. (Frank *v.* Seifert, Sedley *Solicitors Journal*—26th June, 1964—page 523).

Director's Defence Costs paid by Company—whether Taxable

THE House of Lords has upheld a decision of the Court of Appeal which restored the original assessment of the Special Commissioners who had held that the amount of £641 spent by the Company for a director's defence at his trial for causing the death of a pedestrian by reckless or dangerous driving was spent for his benefit and was chargeable to income tax under Schedule E. This case was reported in the Gazette for April, 1963, at page 94 and again in the Gazette for July 1963 at page 28.

Lord Reid delivering the judgement of the Court said that the facts made it clear that the company did incur expense in the provision of a legal defence for their director and that that was a benefit within the meaning of s. 161 (1) of the Income Tax Act, 1952. It had been argued that the expense had been incurred solely for the purpose of protecting the company's interests. That might be so. But it could not be doubted that in fact it was a benefit to R. If it had not been provided by the company he would have had to pay for his own defence or take the risk that lack of a proper defence might lead to his being convicted and sent to prison. No one suggested that he could have obtained legal aid. His lordship could find nothing in the Act to support an argument that a benefit in fact provided by the company ceased to be a benefit within the section if it was proved that the company's sole motive was to

protect itself and not to favour its director. Further, there was nothing to suggest that the £641 was extravagantly spent or that the benefit which R actually received could have been got for less. When there was a benefit and, therefore, a perquisite, the Act provided that the measure of the perquisite should be the expense incurred by the company in providing it. Nothing in the facts of the case justified any reduction of the sums in which R had been assessed.

(Rendell *v.* West (Inspector of Taxes)—[1964] 2 All E.R. 464).

LIST OF NEW MEMBERS

From 1st September, 1963 to 31st August, 1964.

Babington, Emerson H. Buncrana, Co. Donegal.
Beatty, Walter, 68 Fitzwilliam Square, Dublin 2.
Binchy, John F., Cavan.
Blake, Bruce F. St. John, 35 St. Stephen's Green, Dublin 2.
Bourke, Sean 9 Clare Street, Dublin 2.
Brennan, Bernard M., Sligo.
Butler, Michael J., 42/43 Main Street, Tipperary.
Byrne, Brendan, 94 Grafton Street, Dublin 2.
Carroll, Bernard J., City Hall, Cork.
Collins, Anthony E., 19 Eustace Street, Dublin 2.
Cosgrave, Stuart L., 39 Nassau Street, Dublin 2.
Creed, Michael B., Macroom, Co. Cork.
Cusack, Thomas F., Solicitors' Dept., G.P.O., Dublin 1.
Devine, James J. Nenagh, Co. Tipperary.
Dickson, Michael G., 31 Fitzwilliam Square, Dublin 2.
Dillon-Leetch, Thomas A., Ballyhaunis, Co. Mayo.
Donnelly, Patrick J., 67 Palmerston Road, Dublin 6.
Downes, Robert A., Mullingar, Co. Westmeath.
Doyle, Ailin A., 8 Trinity Street, Dublin 2.
Drum, Matthew P., 3/4 Foster Place, Dublin 2.
Dudley, James N., 2 Rowe Street, Wexford.
Dundon, Joseph L., 101 O'Connell Street, Limerick.
Early, Fintan, 29 Dublin Street, Carlow.
Egan, John L., 2 Inns Quay, Chancery Place, Dublin 7.
Fagan, Peter B., 22/23 Dawson Street, Dublin 2.
Fanning, John, 4 Cathedral Street, Dublin 1.
Fanning, William G., 32 Nassau Street, Dublin 2.
Farrell, Iain R., 33 George's Street, Waterford.
Fitzgibbon, Patrick, Listowel, Co. Kerry.
Fitzsimons, Michael J., 8 Clare Street, Dublin 2.
Geraghty, William S., 69 Lower Leeson Street, Dublin 2.
Gilvarry, John M., Ballina, Co. Mayo.
Gleeson, Francis P., Thurles, Co. Tipperary.
Glover, Edward R. A., 15 St. Stephen's Green, Dublin 2.
Glynn, John F. P., 20 Westland Row, Dublin 2.
Golding, Graham M., 23 Ely Place, Dublin 2.
Hayes, John L. F., 56 O'Connell Street, Limerick.
Houlihan, Michael P., Bindon Street, Ennis, Co. Clare.
Irwin, William A., 56 Grand Parade, Cork.
Kiely, David O'N., 14 Patrick Street, Kilkenny.
Kingston, Charles B., 32 Bachelor's Walk, Dublin 1.
Kirwan, Helen, M., 25 Wicklow Street, Dublin 2.
Kirwan, William J. P., 25 Wicklow Street, Dublin 2.
Loftus, Dermot, 34 Upper O'Connell Street, Dublin 1.
Loftus, Kevin J., Ballina, Co. Mayo.
Ludlow, Hugh A., Dunmanway, Co. Cork.
Lynch, James, Ballyshannon, Co. Donegal.
Lyons, Brian O., 25 Castle Park, Monkstown, Co. Dublin.
Maguire, Walter P., 68 Fitzwilliam Square, Dublin 2.
Matthews, Neil M., Drogheda, Co. Louth.
Monahan, James, Ennis, Co. Clare.
Moylan, Anthony G., Loughrea, Co. Galway.
Moylan, Peter F., Loughrea, Co. Galway.
Murnaghan, Denis M., 16 Molesworth Street, Dublin 2.
Mac An Aili, Ciaran, 36 Wicklow Street, Dublin 2.
McDonald, Godfrey F., 38 Dublin Street, Carlow.
McDowell, Denis M., 29 Merrion Square, Dublin 2.
McFadden, Laurence, J., 34 Upper Ormond Quay, Dublin 7.
McGiollarnath, Sean F., 41 Eyre Square, Galway.
McHale, Maire, 96 Upper George's Street, Dun Laoghaire, Co. Dublin.
McMahon, Patrick G., Newcastle West, Co. Limerick.
McMahon, Peter J., 33/36 Dame Street, Dublin 2.
Nic Shiomoin, Maire, 13 Bachelor's Walk, Dublin 1.
O'Brolchain, Blanaid, 30 Lower Baggot Street, Dublin 2.
O'Callaghan, Margaret, "Carbery" Silchester Road, Glenageary, Co. Dublin.
O'Connor, James J., 2 George Street, Wexford.
O'Donnell, James R., 8 Glentworth Street, Limerick.
O'Doherty, Edward A., Kilrush, Co. Clare.
O'Dwyer, John A., 15 South Frederick Street, Dublin 2.
O'Flynn, Francis J., 59 South Mall, Cork.
O'Halloran, Carmel, 67 Sandford Road, Ranelagh, Dublin 6.
O'Keeffe, James L. Skibbereen, Co. Cork.

O'Loughlin, Philip O., 20 St. Kevin's Park, Dartry, Dublin 6.
O'Mahoney, Mary C. C., 22 Merrion Square, Dublin 2.
O'Mahony, Frank, 23 Newlands Road, Clondalkin, Co. Dublin.
O'Malley, Desmond J., 10 Glentworth Street, Limerick.
O'Neill, Niall P., Naas, Co. Kildare.
O'Shea, Eleanor C., 155 Seafield Road, Clontarf, Dublin 3.
O'Sullivan, George J. P., Portarlington, Co. Laois.
O'Sullivan, James J., Portarlington, Co. Laois.
O'Toole, Timothy F., Edenderry, Co. Offaly.
Potterton, David A., 8 South Great George's Street, Dublin 2.
Power, Fergus, 5 Colbeck Street, Waterford.
Pratt, Donald, 32 Kildare Street, Dublin 2.
Purcell, Michael F., Mallow, Co. Cork.
Read, Mary P., 43 Pearse Street, Dublin 2.
Reidy, Jeremiah A., Tralee, Co. Kerry.
Reilly, Donal, 29 Manor Street, Dublin 7.
Rice, William St. C., Midleton, Co. Cork.
Riordan, Sylvester W., 13/16 Fleet St., Dublin 2.
Ryan, Mary E., 18 D'Olier Street, Dublin 2.
Ryan, Timothy, 1 Dame Street, Dublin 2.
Sexton, James I., 100 O'Connell Street, Limerick.
Smith, Thomas K., 11 Wellington Quay, Dublin 2.
Smyth, C., Solicitors' Buildings Four Courts, Dublin 7.
Spendlove, Norman T. J., 18 Marine Drive, Sandymount, Dublin 4.
Veale, Edmond M., 6 Lower Baggot Street, Dublin 2.
Walker, Aubrey R., 21 Dawson Street, Dublin 2.
Walsh, John C., 11 Hume Street, Dublin 2.
Ward, Peter J., Donegal.
Warde, Gabriel, 4 Chancery Place, Dublin 7.
Warren, John D. W. Gorey, Co. Wexford.
Woulfe, Eileen M., 14 Lower Mount Street, Dublin 2.

LIST OF ADMISSIONS

From 1st August, 1963 to 31st July, 1964

Name	*Service with*
Barry, Henry C. P. Egmont House, Kanturk, Co. Cork.	Henry Harte Barry, Kanturk, Co. Cork.
Black, John G. J., B.C.L. (N.U.I.) Ardeevin, Clones, Co. Monaghan.	Michael C. Black, Nenagh, Co. Tipperary. Joseph P. Black, Clones, Co. Monaghan.
Boyle, Thomas O., B.C.L. (N.U.I.) Cahirmacnally, Headford, Co. Galway.	Laurence B. McMahon, 5/6 Upper O'Connell St., Dublin 1.
Buckley, Michael A., "Analore", Castle Road, Blackrock, Co. Cork.	Timothy A. Buckley, 52 Grand Parade, Cork.
Butler, Michael J., Fawnagown, Tipperary.	John J. Timoney, St. Michael Street, Tipperary. Francis A. J. O'Hare, 11 Lower Ormond Quay, Dublin 1.
Byrne, Brendan, B.C.L. (N.U.I.) 72 South Hill, Dartry, Dublin 6.	Desmond J. Collins, 19 Eustace Street, Dublin 2.
Collins, Anthony E. B.A., B.Comm. (T.C.D.) 5 Waltham Terrace, Blackrock, Co. Dublin.	William J. V. Comerford, Galway.
Comerford, Henry Owen, 9 William Street, Galway.	William J. V. Comerford, Galway.
Concannon, Malachy F., B.A., B.Comm., LL.B. (N.U.I.), Rockville, Lower Salthill, Galway.	
Cosgrave, Stuart L. 94 Sandford Road, Ranelagh, Dublin 6.	Nicholas J. Cosgrave, 17 D'Olier Street, Dublin 2.
Daly, Michael G., B.C.L., LL.B. (N.U.I.) Carrick House, Carrick-macross, Co. Monaghan.	Eileen Kennedy, Carrickmacross, Co. Monaghan.
Dudley, James N., B.A., The Garland, Mallow, Co. Cork.	Andrew F. Comyn, Mallow, Co. Cork.
Fagan, Peter B., 23 Fitzwilliam Square, Dublin 2.	Bernard J. Seales, 20 Wicklow Street, Dublin 2.
Fanning, John, 1 Clonmore Road, Mount Merrion, Co. Dublin.	Rupert H. Giltrap, 35 Sth. Frederick Street, Dublin 2.
Gleeson, Francis P. 9 Abbey Road, Thurles, Co. Tipperary.	John J. Nash, Thurles, Co. Tipperary.
Glynn, James C. Tuam, Co. Galway,	James P. Glynn, Tuam, Co. Galway.
Glynn, John F. P., B.A., B.C.L., LL.B. (N.U.I.) 91 Terenure Road West, Dublin 6.	Frank B. Meagher, Tuam, Co. Galway.
Golding, Graham M., B.A. (Mod.) LL.B. (T.C.D.), 36 Exchequer Street, Dublin 2.	Lyndon G. Carr Lett, 23 Ely Place, Dublin 2.
Hamilton Daniel J., Church Street, Mitchelstown, Co. Cork	Patrick J. Bergin, 30 Bachelor's Walk, Dublin 1.
Harte, James A., Sunnylawn, Castle Road, Kilkenny.	John A. Harte, 39 Parliament Street, Kilkenny.
Holland, George B., B.A., (Mod.) LL.B. (T.C.D.), 7 Baymount Park, Clontarf, Dublin 3.	Valentine E. Kirwan, 3/5 Suffolk Street, Dublin 2.
Houlihan, Michael P., Cragleigh House, Ennis, Co. Clare.	Ignatius M. Houlihan, Ennis, Co. Clare.
Kelliher, Daniel, Main Street, Castleisland, Co. Kerry.	Daniel J. O'Neill, Denny Street, Tralee, Co. Kerry.
Kelly, Delphine A. C., 45 Upper Leeson Street, Dublin 4.	John M. Dudley, Mallow, Co. Cork.

Name	*Service with*
LISTON, PATRICK, 12 Thomas Street, Limerick.	JOHN J. O'DONNELL, 4 Denny Street, Tralee, Co. Kerry.
LOFTUS, DERMOT, 8 Washington Park, Templeogue, Co. Dublin	THOMAS K. O'CONNOR, 4 Upper Ormond Quay, Dublin 7.
MONTGOMERY, GILES F., 52 St. Lawrence Road, Clontarf, Dublin 3.	WILLIAM B. MONTGOMERY, 29 Wicklow Street, Dublin 2.
MURNAGHAN, DENIS M., 66 Wellington Road, Ballsbridge, Dublin 4.	JOHN S. O'CONNOR, 4 Upper Ormond Quay, Dublin 7.
MURRIN, BRENDAN A. J., B.C.L. (N.U.I.), Bridge Street, Killybegs, Co. Donegal.	TOIRLEACH DE VALERA, 24 Dame Street, Dublin 2.
MACGRATH, PATRICK JOHN, 31 Pearse Street, Nenagh, Co. Tipperary.	JOSEPH M. MACGRATH, Nenagh, Co. Tipperary.
MCMAHON, BRYAN, M. E., B.C.L., LL.B. (N.U.I.) 38 Ashe Street, Listowel, Co. Kerry.	DONAL T. RYAN, Cashel, Co. Tipperary.
NESTOR, JAMES J. Dunmore, Co. Galway.	THOMAS CROWLEY, Dunmore, Co. Galway,
	DENIS R. PEART, 38 St. Stephen's Green, Dublin 2.
O'CONNELL, MICHAEL G. L., B.C.L. (N.U.I.), Alta Villa, Listowel, Co. Kerry.	MICHAEL L. O'CONNELL, Listowel, Co Kerry.
O'DONOGHUE THOMAS J.M. Parkmore, Tuam, Co. Galway.	THOMAS A. O'DONOGHUE, Tuam, Co. Galway.
O'DRISCOLL, WILLIAM F., The Retreat, Bandon, Co. Cork.	EDWARD O'DRISCOLL, Bandon, Co. Cork.
O'MAHONY, MICHAEL V., B.C.L., LL.B. (N.U.I.), 62 Stiles Road, Clontarf, Dublin 3.	LIAM M. COLLINS, Clonakilty, Co. Cork.
O'NEILL, NIALL P., Ard Caein, Naas, Co. Kildare.	MARTIN A. SALMON, Naas, Co. Kildare,
	WILLIAM A. OSBORNE, Naas, Co. Kildare.
PRENTICE, DAVID W., 96 Granite Field Estate, Dun Laoghaire, Co. Dublin.	PETER D. M. PRENTICE, 20 Upper Merrion Street, Dublin 2.
PURCELL, MICHAEL F., Coolehane House, Macroom, Co. Cork.	MRS. TERESA P. PURCELL, Macroom, Co. Cork.
REYNOLDS, MICHAEL, 4 Manor Place, Dublin 7.	DAVID H. CHARLES, 4 Clare Street, Dublin 2.
SPENDLOVE NORMAN T. J., M.A., B.A.I., A.M.I.C.E.I. (T.C.D.), 18 Marine Drive, Sandymount, Dublin 4.	JOHN DENNY STOKES, 14 Molesworth Street, Dublin 2.
TYNAN, JAMES G., Derreen, Ennis Road, Limerick.	CATHERINE T. TYNAN, William Street, Limerick.
VEALE, EDMOND M., B.C.L., (N.U.I.), 30 St. Kevin's Park, Dartry, Dublin 6.	MAURICE E. VEALE, 6 Lower Baggot Street, Dublin 2.

PROGRAMME OF LECTURES 1964—1965

COURSE A.—Company Law. 50 lectures delivered as follows :—

Michaelmas Sittings—20 ; Hilary Sittings—20 ; Easter Sittings—10 ; Lectures each Monday and Thursday at 2.15 o'clock save where otherwise notified.

COURSE B.—Conveyancing Law and Practice and Land Law, 50 lectures delivered as follows :—

Michaelmas Sittings—20; Hilary Sittings—20 ; Easter Sittings—10 ; Lectures each Tuesday and Friday at 9 o'clock save where otherwise notified.

COURSE C.—The Procedure and Practice of the Courts, 50 lectures delivered as follows :—

Michaelmas Sittings—20; Hilary Sittings—20 ; Easter Sittings—10 ; Lectures each Monday and Saturday at 9 o'clock save where otherwise notified.

COURSE D.—Taxation including death duties 50 lectures delivered as follows :—

Michaelmas Sittings—20 ; Hilary Sittings—20 ; Easter Sittings—10 ; Lectures each Wednesday at 9 a.m. and Saturday at 10 a.m. save where otherwise notified.

COURSE E.—Book-keeping, 50 lectures delivered as follows :—

Michaelmas Sittings—20 ; Hilary Sittings—20 ; Easter Sittings—10 ; Lectures each Monday and Friday at 5.15 p.m. save where otherwise notified.

COURSE F.—Probate and Executorship Law and Practice, 50 lectures delivered as follows :—

Michaelmas Sittings—20 ; Hilary Sittings—20 ; Easter Sittings—10. Lectures each Tuesday and Friday at 2.15 o'clock save where otherwise notified.

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

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

For a selection of recommended reading see the published syllabus for the first, second and third law, and book-keeping examinations. The Lecturer

will not necessarily undertake to cover the entire field in each subject, or lecture out of any particular text book. He will advice the class as to its reading and will assume that each student will have read on the lines advised, in advance of each lecture, on the subject matter of the lecture. The aim of lectures will be to guide students in their work and to illustrate, explain and supplement their reading.

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

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

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

INDEX OF STATUTORY INSTRUMENTS published since February, 1964

AGRICULTURE, LANDS AND FISHERIES

SUBJECT MATTER AND REFERENCE NUMBERS.

Agricultural Wages—Minimum Rates revised after 4 May 1964—89/1964.
Bovine Tuberculosis—Control of Movement and Public Sales of Cattle regulated in Counties Kilkenny, Tipperary and Waterford after 20 April 1964—87/1964.
Bovine Tuberculosis—Control of Movement and Public Sales of Cattle extended to Counties Cork, Kerry and Limerick after 22 June 1964—149/1964.
Cork District Milk Board (Minimum prices for Milk) Order 1964—93/1964.
Committees of Agriculture—Allowances to Members for attendances at Meetings increased in June 1964—139/1964.
Dairy Produce Marketing Act 1961 (Forms) Regulations 1964—97/1964.
Dairy Produce Marketing Act 1961—Levy of 9/8 per cwt. payable to Milk Board by Creamery Proprietors for Creamery Butter—63/1964.
Dublin Sale District—Milk fixed at maximum of 7d. per gallon to April 1965—91/1964.
Dublin District Milk Board—Minimum prices to be paid to registered producers by registered retailers for milk—94/1964.
Foras Taluntais (Agricultural Institute)—Nomination of members of the Council by Agricultural and Rural Organisations slightly amended—82/1964.
Pigs and Bacon Commission Insurance Allowance Orders—113/1964.

COMMODITIES, GOODS AND SERVICES.

SUBJECT MATTER AND REFERENCE NUMBERS.

Apprenticeship Act 1959—Engineering and Metal Trade declared a Designated Trade—154/1964.
Apprenticeship Act 1959—Appointment of Statutory Committee in Engineering and Metal Trade sanctioned—155/1964.
Arbitration (Foreign Awards)—New Zealand added to Arbitration (Foreign Awards) Order 1960 after 1 September 1964—148/1964.
Control of Manufactures (1932) Amendment Regulation 1964—98/1964.
Course Betting with Bookmakers and Totalisator exempted from Turnover Tax after 15 June 1964—144/1964.
Dublin District Milk Board—30 November 1964 appointed as Election Day—224/1964.
Gentlemen's Hairdressing Shops in Waterford City—Hours of Trading regulated after 6 August 1964—
Gas Fund Contribution Order 1964—
Greyhound Race Track (Levy Collection) (Amendment) Regulations 1964—170/1964.
Greyhound Race Track (Levy of 5% to Bord na gCon) Regulations 1964—131/1964.
Greyhound Race Track (Totalisator Levy of 12½% to Bord na gCon) Regulations 1964—132/1964.
Greyhound Race Track (Maximum Admission Charges) Regulations 1964—77/1964.
Longford U.D.C.—Hours of Trading regulated in Drapery and Boot Shops after 4 August 1964.
Pigs and Bacon Commission Trading Orders—60/1964, 145/1964, 160/1964.
Pigs and Bacon Commission Minimum Prices Orders—110/1964, 170/1964.
Racecourses—Levy of 5% payable to Racing Board on course bets after 15 June 1964—121/1964.
Tuam, Co. Galway—Hours of Trading regulated in drapery, footwear, hardware and furniture shops.
Turnover Tax—Goods sold or services hired before 1st August 1963 exempt—71/1964.
Wheat Order 1964 setting out prices to be paid to growers for millable wheat of 1964 harvest—194/1964.

CONTROL OF IMPORTS AND EXPORTS.

SUBJECT MATTER AND REFERENCE NUMBERS

Bacon Export Subsidy Orders—150/1964.
Boots and Shoes—Imports limited to 82,500 pairs to 31 December 1964—136/1964.
Brushes, brooms and mops—Import limited to 6,500 articles to 31 March 1965—31/1964.
Laminated Springs—Import limited to £2,420 in value to 31 March 1965—32/1964.
Meat—Importation prohibited from France after 10 August 1964—197/1964.
Metal Screws—Import limited to 36,300 gross to 30 June 1965—135/1964.
Miscellaneous Commodities—Export controlled after 1 March 1964—33/1964.
Pneumatic Tyres for Motor vehicles—Imports limited to 73,000 to 31 January 1965—277/1963.
Pneumatic Tyres—Import limited to 200 articles to 31 January 1965—278/1963.
Rubber Boots and Shoes—Imports limited to 75,000 pairs to 31 December 1964—137/1964.
Silk or Artificial Silk Hose—Imports limited to 690,000 pairs to 28 February 1965—14/1964.
Superphosphates—Imports limited to 605 tons to 30 June 1965—138/1964.
Watches—Export prohibited—80/1964.

COUNTY AND TOWN MANAGEMENT

SUBJECT MATTER AND REFERENCE NUMBERS.

Housing (Loans and Grants) Act 1962—Section 11 providing for making of Loans by Housing Authorities in force from 1 June 1964—129/1964.
Housing Authorities (Loans for Acquisition or Construction of Houses) Regulations 1964—130/1964.

Limerick Co. Council may, under S.103 of the Public Health Act 1878, provide markets within its area—13/1964.
Local Government (Planning and Development) Act, 1963 (Appeals and References) Regulations, 1964—216/1964.
Local Government (Planning and Development) Act, 1963, to come into force on 1 October, 1964, 211/1964.
Local Offices (Irish Language) (Amendment) Regulations 1964—16/1964.
Local Offices (Gaeltacht) (Amendment) Order 1964—15/1964.

CUSTOMS AND EXISE—EMERGENCY AND OTHER DUTIES.

SUBJECT MATTER AND REFERENCE NUMBERS.

Aircraft and Air-Traffic—Customs and Excise Law applied generally thereto after 24 July 1964—189/1964.
Domestic Hollowar, Metal Cuff-Links, Paper Felt, Tools, and Cutlery—Duties amended after 10 March 1964—48/1964.
Iron and Steel Bars, Rods and sections—Customs Duty suspended to 31 December 1964—157/1964.
Meat and Meat Extracts (Specified)—Customs Duty of 5/- per lb. imposed—223/1964.

EMPLOYMENT REGULATIONS AND CONDITIONS OF EMPLOYMENT.

SUBJECT MATTER AND REFERENCE NUMBERS.

Aerated Waters and Wholesale Bottling Joint Labour Committee—New minimum rates and conditions of pay fixed after 9 March 1964—52/1964.
Beer Bottling Industry—Women may work on shift work between 7 a.m. and 11 p.m.—207/1964.
Boot and Shoe Repairing Joint Labour Committee—New minimum rates and conditions of employment fixed after 20 April 1964—85/1964.
Creameries Joint Labour Committee—New minimum rates and conditions of employment fixed *after* 20 April 1964—86/1964.
Dundalk Foremen's Annuity Fund (Amendment) Scheme (Confirmation). Order 1964—62/1964.
Hairdressing Joint Labour Committee established after 8 September 1964—212/1964.
Jute Industry—Women may work on shift work between 7.30 a.m. and 10 p.m.—92/1964.
Law Clerks Joint Labour Committee—New minimum rates and conditions of employment fixed after 11 May 1964—109/1964.
Messengers Joint Labour Committee—New minimum rates and conditions of employment fixed after 4 May 1964—Dublin City and Dun Laoire—84/1964; Waterford City—100/1964; Cork City—101/1964.
Packing of Flower Pots—Women may work on shift work between 7 a.m. and 11 p.m.—233/1964.
Provender Milling Joint Labour Committee—New minimum rates and conditions of employment fixed after 20 April 1964—83/1964.
Raschel Knitting Machines Industry—Women may work on shift work between 6 a.m. and 10 p.m.—208/1964.
Road Transport Act 1932—Private provincial omnibuses may increase fares by 10%—57/1964.
Shirtmaking Joint Labour Committee—New minimum rates and conditions of employment fixed after 13 April 1964—79/1964.
Sugar Confectionery and Food Preserving Trade—New Minimum rates—and conditions of employment fixed after 28th September, 1964—227/1964.
Surgical Instruments Industry—Women may work on shift work between 7 a.m. and 11 p.m.—205/1964.
Coras Iompair Eireann (Members) Superannuation Scheme 1960 (Amendment) Scheme 1964—103/1964.
Tailoring Joint Labour Committee—New minimum rates and conditions of employment fixed after 12 June 1964.
Transport Act 1950—C.I.E. may establish a subsidiary Company to deal with Air freight—95/1964.

FINANCE AND CENTRAL GOVERNMENT.

SUBJECT MATTER AND REFERENCE NUMBERS.

Minister may guarantee borrowings by Aer Lingus to £5 million—185/1964.
Driving Licences (Repayment of Excise Duties) Regulations 1964—88/1964.
Double Taxation Relief (Taxes on Income and Capital) (Republic of Ireland and Royal Danish Government). 203/1964.
Exchange Control Regulations 1964 to extend to Shannon Customs-Free Airport—112/1964.
Exchange Control Regulations 1964 setting out in detail the scheduled Territories to which Sterling may be exported—51/1964.
Electoral (Polling Schemes) Regulations 1964—78/1964.
Oireachtas (Allowances to Members) (Amendment) Regulations 1964 by which members are limited to 20 "Official Paid" envelopes per week—50/1964.
Returning Officers' (Borough and County Constituencies)—Disbursements of counting of votes doubled—134/1964.
Statistics—Provisions for Statutory Census of Industrial Production—105/1964.
State Guarantees Act 1954 (Amendment of Schedule) (No. 2) Order 1964—185/1964.
Superannuation—Civil Servants may claim same if they transfer to "approved organisations"—i.e. Agricultural Credit Corporation, Bord Failte, C.I.E., E.S.B., and Radio Eireann—111/1964.

HARBOURS AND HYDRO-ELECTRIC WORKS.

SUBJECT MATTER AND REFERENCE NUMBERS.

Limerick Harbour Works—Period of Completion extended to 1966—182/1964.
New Ross (Co. Wexford) Harbour Works, as specified, to be completed by August 1969—199/1964.
Waterford Harbour—Revised maximum Cranage rates after 27 July 1964—172/1964.
Wicklow Harbour Works, as specified, to be completed in August 1967—200/1964.

HEALTH.

SUBJECT MATTER AND REFERENCE NUMBERS.

Disabled Persons—Maintenance Allowances to be increased from £1 7s. 6d. to £1 12s. 6d. per week after 1 August 1964—192/1964.
Infectious Diseases (Increases in Maintenance) Regulations 1964—193/1964.
Health Authorities Act 1960 (Wicklow Mental Hospital District) Regulations 1964—74/1964.
Health Authorities Act 1960—Co. Wicklow transferred from Dublin Health Authority to Wicklow Co. Council after 1 April 1964—72/1964.
Mass Radiography Board established to succeed dissolved National Mass-Radiography Association Ltd.—152/1964, Maternity and Child Health Services (Amendment) Regulations 1964 in force from 1 July 1964—158/1964.

Newcastle Hospital Board (Co. Wicklow) (Establishment) Order 1964—65/1964.
Newcastle Hospital Board transferred to Wicklow Co. Council after 1 April 1964—75/1964.
Wexford Co. Dispensary Districts—Old Ross District abolished and incorporated in New Ross District after 18 May 1964—107/1964.
Veterinary Surgeons Annual Fee in respect of Registration fixed at 4 Guineas after 1 April 1964—64/1964.

JUSTICE, EXTERNAL AFFAIRS AND DEFENCE.

SUBJECT MATTER AND REFERENCE NUMBERS.

Business Names Regulations 1964—47/1964.
Childrens Act 1941—Weekly Payments of Local Authorities limited to 29/- per week for each child in reformatories and industrial schools—162/1964.
Circuit Court (Alteration of Circuits) Order 1964—by which Co. Laois is transferred from the Midland Circuit to the South-Eastern Circuit, and Co. Sligo is transferred from the North-East Circuit to the Midland Circuit after 15 September 1964—206/1964.
Companies (Recognition of countries) Order 1964—42/1964.
Companies (Fees) Order 1964—44/1964.
Companies (Stock Exchange) Order 1964—43/1964.
Companies (Forms) Order 1964—45/1964.
Companies Act 1963 in force from 1 April 1964—41/1964.
Copyright (Register of Dramatic Works) Rules, 1964—178/1964.
Copyright (Royalties on Records) Regulations, 1964—179/1964.
Copyright (Publication of Certain Works) Regulations, 1964—180/1964.
Copyright Act, 1963, in force from 1 October, 1964—177/1964.
Gárda Siochána Pay Order 1964—54/1964.
Industrial Property (Amendment) Rules, 1964—176/1964.
Jury Districts—All Co. Laois to be One Jury District after 1 August 1964—102/1964.
Land Purchase Act Rules, 1964—230/1964.
Land Registry and Registry of Deeds (Hours of Business) Order 1964 in force from 6 July 1964—164/1964
Public Record Office (Times of Opening) Rules 1964 in force from 6 July 1964—165/1964.
Registration of Business Names Act 1963 in force from 1 April 1964—46/1964.
Register of Trade Marks Agents Rules, 1964—35/1964.
Rules of Superior Courts (No. 4) 1964—prescribing closure of public Court Offices on Saturdays and times on other days when such offices are open for public business—168/1964.
Rules of Superior Courts (No. 2) 1964 prescribing applications under Companies Act 1963—96/1964.
Rules of Superior Courts (No. 1) 1964—38/1964.
Solicitors' Remuneration General Order 1964—128/1964.
Trade Marks Rules 1963 (Amendment) Rules 1964—76/1964.
Trade Marks Act 1963 in force from 1 April 1964—34/1964.

MISCELLANEOUS.

SUBJECT MATTER AND REFERENCE NUMBERS.

Conservators of Fisheries—Elections to be conducted by Postal Nominations and Postal Ballot—190/1964.
Dungarvan U.D.C. (Co. Waterford)—Sanitary Authority may grant licence for camping—173/1964.
Grain Board—Additional Functions in relation to sale and purchase assigned—108/1964, 196/1964.
Game Preservation Act 1930—Close Seasons prescribed for specified Game Birds in 1964–65—171/1964.
Hares—Killing prohibited in Co. Cork until Agust 1966 save by coursing or beagling under permit—209/1964.
International Convention for the Safety of Life at sea 1948 accepted by Algeria and Cyprus—161/1964.
International Convention for the Prevention of Pollution of the sea by oil 1954 accepted by Algeria, Panama, Philippines, Spain and Venezuela—119/1964.
Merchant Shipping—Recognition of New Zealand Certificates of Competency as Ship's Officers granted—169/1964.
Navan U.D.C. (Co. Meath)—Sanitary Authority may grant licence for camping—49/1964.
River Erne—Special Local Licence Duty for Draft Net to be £15 after 6 July 1964—163/1964.
Standard Mark to be used generally specified—81/1964.
Totalisators—Greyhound Race Track (Totalisator) (Quinella Treble Forecast Pool) Regulations 1964—40/1964.
Vocational Education Committees (Allowances to Members (Amendment) Rules, 1964—226/1964.
Vocational Education (Grants for Annual Schemes of Committees) Regulations, 1964—228/1964.

POST OFFICE.

SUBJECT MATTER AND REFERENCE NUMBERS.

Foreign Parcel Post Amendment (No. 5) Warrant 1964 authorising increases for postage rates for foreign parcel post after 1 June 1964—124/1964.
Foreign Post Amendment (No. 5) Warrant 1964 authorising increases for postage rates abroad for letters and commercial packets after 1 June 1964—123/1964.
Inland Post Amendment (No. 13) Warrant 1964 authorising increases in letter, newspaper and parcel post rates after 1 June 1964—122/1964.
Money Order Amendment (No. 17) Regulations 1964—revising charges for Money Order after 1 June 1964—125/1964.
Newspapers (Special Service for Conveyance by Post Office Mail Vans) Amendment (No. 1) Warrant 1964—127/1964.
Postal Order (Inland) Amendment (No. 8) Regulations 1964 amending poundage on postal orders after 1 June 1964—126/1964.
Savings Certificates—Extension of Third Issue (1933–1946) subject to conditions—142/1964.
Savings Certificates—Extension of Fifth Issue subject to Conditions—143/1964.
Savings Certificates—Limit held by any one individual extended from £1250 to £2500—99/1964.
Telephone (Amendment) Regulations 1964 increasing telephone charges after 1 July 1964—153/1964.
Telegraph (Inland Written Telegram) (Amendment) No. 9 Warrant 1964—115/1964.

SOCIAL SERVICES.

SUBJECT MATTER AND REFERENCE NUMBERS.

Social Welfare (Claims and Payments to Old Age (Contributory) Pensioner) Amendment Regulation 1964—118/1964.
Social Welfare (Overlapping Benefits) Consequential Amendments to Social Welfare (Miscellaneous Provisions) Act 1964 re Widows (Non-Contributory) Pensions—183/1964.
Social Welfare (Modification of Insurance) (Shorefishing) (Amendment) Regulations 1964—202/1964.
Social Welfare (Northern Ireland Reciprocal Arrangements) pursuant to Agreement of 22 July 1964—213/1964.

Unemployment Assistance—Men who have no dependants and are resident in rural areas excluded from assistance from June to November 1964—114/1964.

Unemployment Assistance—Occupiers of Land of more than £4 PLV excluded from assistance from March to November 1964—53/1964.

Workmen's Compensation (Modifications pursuant to reciprocal Arrangements) (Northern Ireland) Order 1964—214/1964.

TRANSPORT AND TRAFFIC.

SUBJECT MATTER AND REFERENCE NUMBERS.

Air Navigation (Operations) Order 1953 revoked and re-enacted with modifications from 1 July 1964—140/1964.

Air Navigation (Airworthiness of Aircraft) Order 1964 in force from 1 July 1964—141/1964.

Carriage of wheat permitted by agents of licensed mills in their own vehicles to 31 August 1965—201/1964.

C.I.E. may operate automatically-controlled half-barriers at Emly, Co. Limerick—157/1964.

C.I.E. may operate automatically-controlled half-carriers at Dromiskin, Co. Louth—220/1964.

Dublin and Dun Laoghaire Traffic (One-way streets). Temporary Rules 1964—55/1964.

Grand Canal Bye-law Confirmation Order allowing firearms and fishing tackle on vessels on the canals, and limiting number of passengers to 12—198/1964.

Mechanically Propelled Vehicles (International Circulation) (Amendment) Order 1964—59/1964.

Road Traffic (Compulsary Insurance) (Amendment) Regulations 1964—58/1964.

Road Traffic (Petroleum) Regulations 1964 allowing 4 gallons of petrol to be kept in storehouse beside building and regulating conditions after 1 August 1964—174/1964.

Road Traffic Act 1961—£1 substituted for 10/- for On-the-Spot fines after 27 July 1964—191/1964.

Road Traffic (Signs) (Amendment) Regulations 1964—56/1964.

Turf Developing Act 1946 (Transport Works) Orders1964

1. *Derrigrenagh Bogs, Co. Offaly*—186/1964.
2. *Boora Bogs, Co. Offaly*—187/1964.
3. *Mountdillon Bogs, Co. Longford*—188/1964.

Wexford Traffic and Parking Bye-Laws 1964—210/1964.

OBITUARY

JAMES FAGAN, Solicitor, died on 25th day of July 1964, at his residence, "Windmere" Ballymun Road, Dublin.

Mr. Fagan served his apprenticeship with the late Mr. Christopher Friery at 52, Rutland Square, Dublin; He was admitted in Trinity Sittings 1917, and practised at 57–58 Parnell Square West, Dublin.

THE REGISTRY

Register A

SOLICITOR'S PRACTICE for sale in prosperous Midland town approximately 50 miles from Dublin. Box A222.

FOR SALE: Old Established Solicitor's Practice, Provincial Town with Branch Office—50 miles from Dublin. Accounts available. Apply Box A. 223.

REGISTRATION OF TITLE ACTS, 1891 & 1942:

Folio 90 (Revised) COUNTY WESTMEATH:

Registered Owner—BERNARD BRAY:

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

A new Certificate will be issued unless notification is received in this Registry within 28 days from the date of this Notice that the Original Certificate is in the custody of a person not the registered Owner. Such notification should state the grounds on which the Certificate is retained.

Dated this 30th day of September, 1964.

D. L. MCALLISTER,
Registrar of Titles.

SCHEDULE.

Land Certificate of Bernard Bray to 13a. 1r. 15p. of the Lands of Stonestown situate in the Barony of Delvin and County of Westmeath, being the lands comprised in said Folio.

REGISTRATION OF TITLE ACTS, 1891 & 1942

Notice.

Folio—3701 (Revised), County Monaghan.
Registered Owner: Thomas J. Wright.

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

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

Dated this 30th day of September, 1964.

D. L. MCALLISTER,
Registrar of Titles.

SCHEDULE

Land Certificate of Thomas J. Wright to 65a. 2r. 0p. of the Land of Mullaghmore West and 6a. 3r. 10p. of the Lands of Killygrallan both situate in the Barony of Monaghan and County of Monaghan being the Lands comprised in said Folio.

Printed by Cahill & Co., Ltd., Parkgate Printing Works, Dublin.

Vol. 58
No. 5

OCT.-NOV.
1964

THE GAZETTE

of the

INCORPORATED LAW SOCIETY OF IRELAND

President
DESMOND J. COLLINS

Vice-Presidents
JOHN MAHER
PATRICK NOONAN

Secretary
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

CONTENTS OF THIS ISSUE

	Page
Meetings of the Council	39
Solicitors' Golfing Society	40
Undutiful Wills	41
Examination Results	43
Circuit Court	43
Pension Advisory Service for Members	44
Adoption Act, 1964	44
Town Planning	44
Agency—Witnesses' Expenses	45
Stipulation as to Costs	45
International Law	45
Land Purchase Acts Rules, 1964	45
Cases of the Month	45
Fermoy Solicitors	46
Dublin Solicitors' Bar Association	46
Obituary	46
Registration of Title Acts, 1891 *and* 1942	47
The Registry	47

MEMBERS' DINNER DANCE
Thursday, 19th November
at
SHELBOURNE HOTEL
from
8.30 p.m. to 2 a.m.
Table Reservations at Hotel only
Dinner 9.30 p.m. sharp

MEETINGS OF THE COUNCIL

SEPTEMBER 10TH: The President in the chair; also present Messrs. Patrick Noonan, Thomas H. Bacon, Rory O'Connor, Augustus Cullen, Francis Armstrong, Edward Dillon, Thomas J. Fitzpatrick, Joseph P. Black, John C. O'Carroll, Robert McD. Taylor, Dinnen B. Gilmore, Eunan McCarron, Desmond Moran, James W. O'Donovan, Peter D. M. Prentice, Thomas V. O'Connor, James R. Green, Patrick O'Donnell, J. F. Foley, R. A. French, Reginald J. Nolan, John J. Nash, George A. Nolan, Francis J. Lanigan, John Maher, Daniel J. O'Connor, William A. Osborne, Richard Knight.

The following was among the business transacted :

Succession Bill, 1964

It was decided that a letter should be sent to each member of the Society explaining the effect of section 37 of the Bill (extraction of grants of representation and administration of estates) and the action taken by the Council to date. A deputation was appointed to meet the Minister for Justice on section 37 and parts IX and X of the Bill (Legal Rights and Unworthiness to Succeed). A draft memorandum on parts IX and X circulated with the agenda was approved. It was decided that the memorandum should not be published until the Society's representatives have been received by the Minister.

Criminal Justice Legal Aid

The Council considered correspondence between the Minister for Justice and the President circulated with the agenda. Further consideration was postponed to await the result of the meeting between the Minister and the Society's representatives.

Family Arrangement

Member acted for the family of a deceased person who were taking over his lands for their market value. Member prepared a deed of family arrangement in which various members took over lands in satisfaction of their shares at declared values with certain money payments for equality. Member sought the guidance of the Council as to whether or not these transactions were sales for which the commission scale fee would be chargeable. On a report from a committee the Council stated that this is a transfer, otherwise than a transfer on sale, by way of family arrangement. As there was no deduction or investigation of title the commission scale fee is not applicable. The appropriate method of dealing with the matter would be to draw one bill of costs under schedule II S.R.G.O., 1882–1964 which would be paid by the various parties in proportion to the value of the shares received.

Sale and purchase : Insurance against possible liability for death duties

On a submission to arbitration by the Council the facts were as follows :

The vendor of registered land acquired title under a voluntary transfer from her husband on 29th May, 1962. The conditions of sale are silent on the question of the possible liability for duties if the voluntary transferor dies within the three years from 29th May, 1962. The purchaser's solicitor asks for an indemnity from an insurance company. The vendor offered an indemnity from the vendor only. The Council stated that vendor should give an insurance bond against any possible liability for death duties.

OCTOBER 8TH : The President in the chair, also present George A. Nolan, Ralph J. Walker, Brendan A. McGrath, James R. Green, Thomas J. Fitzpatrick, Joseph P. Black, Robert McD. Taylor, Gerard M. Doyle, Edward Dillon, William A. Osborne, R. R. Knight, Augustus Cullen, Peter E. O'Connell, Patrick Noonan, John Maher, John Carrigan, George G. Overend, Niall S. Gaffney, R. A. French, James W. O'Donovan, Thomas A. O'Reilly, Gerald J. Moloney, Eunan McCarron, Peter D. M. Prentice.

The following was among the business transacted :

Succession Bill, 1964

The Council received a report from their representatives of a meeting with the Minister for Justice. It was decided to convene a general meeting of the Society to be held on October 29th.

Handbook on Company Law

The Council considered a proposal from the Publications Committee for a handbook on the formation of limited companies. Consideration was postponed to await information as to the progress of the publication of the textbook on company law and practice to be published by the Arthur Cox Foundation under the chairmanship of the Hon. Mr. Justice Kenny.

Professional Negligence Insurance

On a report from committee the Council decided to issue a circular letter and questionnaire to members with a view to obtaining information as to claims experience and other relevant matters for the purpose of exploring the market for the formation of a group insurance scheme.

SOLICITORS' GOLFING SOCIETY

AUTUMN OUTING AT BALTRAY

19TH SEPTEMBER, 1964

President's Prize : J. C. Griffin (Dundalk) 14, 43 pts. ; G. Walsh (Balbriggan) 13, 37 pts.

Ryan Cup (H'caps 13 and over) : J. McGowan (Balbriggan) 17, 39 pts. ; T. B. Adams (Tullamore) 17, 37 pts.

1st Nine : District Justice O'Hagan (Dundalk) 14.

2nd Nine : J. J. Breen (Wexford) 9.

Competitor from more than 30 miles : W. A. Menton (Dublin) 11, 34 pts.

Best score by lot : A. P. Curneen (Dublin) 10, 33 pts.
Visitor's Prize : J. Boston (Belfast) scr., 36 pts.; J. Cleary (Belfast) 10, 36 pts.
Team Match : South 224 pts. beat North 192 pts.

UNDUTIFUL WILLS

The following memorandum has been submitted to the Minister for Justice :

1. The Council of the Incorporated Law Society of Ireland think it right to draw attention to certain aspects of Parts IX (Legal Rights of Spouse and Issue) and X (Unworthiness to Succeed and Disinheritance). Their comments on the Bill are based on the practical experience of members of the profession in dealing with cases of wills and intestacy.

2. It is desirable that legislation should be introduced for the purpose of protecting the family of the eccentric, malicious or otherwise ill-disposed testator who might wish to deprive his widow and family of their natural expectation of sharing in his estate by leaving the bulk of the estate for undeserving objects. The matter, however, should be examined in the light of the size of the problem and the means adopted to deal with it.

In the first place the experience of solicitors and all persons accustomed to dealing with family problems is that cases of inofficious wills form a very small fraction of the total number of wills proved. This is, no doubt, attributable to the generally high standard of family life. Testators who fail to make proper provision for their families are extremely rare. The Bill therefore deals with a marginal problem. It is important to ensure that, in protecting the minority, hardship and injury should not be inflicted on the vast majority of families for whom no problem exists. Legislation should be for the greatest good of the greatest number.

3. The matters to be considered in disposing of an estate may conveniently be summarised as follows :

(1) Fair provision within the testator's means for his or her family and other objects of benefaction.
(2) Regard to the means, needs and circumstances of the claimants on the testator's bounty which naturally vary from one family to another and between different members of the same family.
(3) The taxation aspect and the desirability of mitigating the incidence of income tax and death duties.
(4) Clarity and certainty of disposition in order to avoid litigation between the beneficiaries and next-of-kin.

In the view of the Council Parts IX and X of the Bill fail to satisfy these tests.

4. The problem was dealt with in Great Britain by the Inheritance (Family Provisions) Act, 1938, which proceeds on the assumption that the average testator is the best judge of the needs of his family and the most beneficial disposition of his property and, at the same time, enables the Court on the application of a disinherited spouse or issue to set aside undutiful provisions in a will and to substitute other provisions. The advantage of this legislation is its flexibility which enables the Court to take account of the facts before it and to apply its discretionary powers to those facts. The mere existence of such legislation prevents testators from making unfair wills and where unfair wills are made must induce members of the family to come to a reasonable settlement without litigation. Experience of the working of the Inheritance Act, 1938, has disclosed some defects but they could be remedied by legislation without departing from its basic principles.

The present Bill approaches the problem from the opposite direction by assuming that the State knows better than the individual testator how his estate should be divided and by formulating general rules which apply to all cases where the next-of-kin are a spouse and issue. Any disposition which contravenes these rules is to be null and void. The spouse (husband or wife) is to have a legal right to one third of the estate. The issue (children and more remote issue) are to have a legal right to one third and the testator is to have testamentary power over the remaining one third. If the testator leaves issue but no spouse, or spouse without issue, the issue or spouse as the case may be, will have a legal right to one half of the estate.

5. In the opinion of the Council this *a priori* method of regulating the power of testamentary disposition is unsuited to conditions in Ireland and will cause injury to those for whose benefit it is intended. Its principal and radical defect is that it attempts to legislate for the widely different facts and circumstances of a vast number of cases. The Council submit that the testator is competent to understand and provide for the needs of his own family. If he makes an undutiful will only a court of justice looking at the facts of the particular case is competent to decide in fairness and equity what the testator ought to have done with his property.

6. The following examples of the hardship which will result from parts IX and X are not exhaustive but they do illustrate the type of case which has arisen and will recur if the Bill becomes law.

(1) A wife or husband cannot be appointed universal legatee under the will of a spouse. This will cause hardship in the case of small and medium sized estates where a widow is left with young children and must have recourse to capital to provide for family needs until they cease to be dependent. In many cases the husband bequeaths all his estate to his wife.
(2) Cases will arise of children who are incapacitated by physical or mental infirmity from earning their living. The parent might very well in such cases leave a large portion of his estate for the maintenance of such a child. The Bill takes no account of such a situation.
(3) In many cases a family business or a farm might be driven into bankruptcy if restrictions are placed on freedom to raise working capital. The fragmentation of shares will be contrary to good business and farm management. Cases have been brought to the notice of the Council in which private companies would have been driven into liquidation by a statutory provision enabling next-of-kin to claim two thirds of the share capital with voting rights over the members of the family who managed the business in conjunction with the testator.
(4) It is well known that the number of small and under-capitalised holdings and business concerns is considerable. In such cases part IX will result in the dissipation of capital already insufficient. Stock may have to be sold or left unreplaced in order to avoid splitting the holding or selling the business. This is contrary to social and economic policy.
(5) Improvident, wasteful or absent children will be enabled to claim shares in an estate or farm to the prejudice of the son who has remained at home and built up the farm by his industry and ability.
(6) The bill ignores cases of second marriages with step-children. If the testator has married twice his wife must receive one third of his estate as a legal right. On her death the share will presumably pass to her children (the step-children of the testator) to the exclusion of his own children.
(7) Many testators make tax planning arrangements with professional advice with a view to mitigating the

incidence of death duties and income tax. It should be no part of a Statute which deals with family law to advance the interest of the Revenue at the expense of the citizen but this Bill, if enacted, may do that very thing by tying the hands of the testator in disposing of his property by gifts *inter vivos*. Section 117 which invalidates dispositions made within ten years of the testator's death will shake titles and place insuperable obstacles in the way of raising capital by bank loans. It is also contrary to public policy insofar as it makes it difficult for parents to settle property on the occasion of marriage of their children.

(8) It would be idle to ignore the fact that cases of divorce have arisen in this country where there has been conflict between the civil and the canon law. The wife entitled to the legal rights under part IX may not be the wife recognised by canon law.

(9) The Bill does not take account of cases in which each spouse has a separate estate. The surviving spouse may be better off financially than the testator or any of the issue but will be entitled to a legal right notwithstanding this position.

(10) The restriction of free testamentary disposition may discourage persons with capital from settling in this country and some persons who have already settled here may decide to leave.

These are merely illustrations but they cover a sufficiently wide field to indicate the danger of attempting to deal with this situation by general statutory rules.

7. It has been suggested to the Council that an attempt by the legislature to prescribe general testamentary rules without recourse to the Courts of Justice may be unconstitutional.

8. There are serious objections to part X of the Bill.

Section 119 (2) provides that a decree of divorce *a mensa et thoro* will deprive a spouse against whom the decree has been made of his or her legal rights. Such proceedings seldom reach our Courts. Section 119 (2) may compel the innocent party to seek a Court order for divorce *a mensa et thoro* in order to deprive the erring party of a statutory share in the estate.

The provisions of section 119 (4) are particularly objectionable. Apart from the dissension which will result from the public washing of dirty linen by testamentary provisions of the kind contemplated by sub-section (4) the provisions if they become law will cause difficulties of interpretation and consequent litigation. The onus of proof lies on the executors and may be rebutted by evidence on the part of the disinherited party that at the time of the death of the deceased he had permanently abandoned such conduct. This involves the Court in making an impossible determination as to the intentions and future conduct of the disinherited party. The commonly recognised, effective and most charitable method of disinheriting an undeserving relative is the bequest of a small legacy. It shows the legatee that he has not been overlooked, although he has been quietly relegated, and usually no contention or contest can arise. The Bill seeks to substitute for this time-honoured device a testamentary accusation of bad character against the disinherited spouse or issue. Such declarations will repel testators. Difficult questions will arise in determining (*a*) whether a disinherited person had permanently abandoned dissolute or dishonourable conduct (*b*) the gravity or otherwise of injurious conduct (*c*) whether a disinherited person was or was not in a substantially better position than other issue. The provisions of the whole of Part X are fraught with difficulty and open a vista of litigation and family trouble.

PRACTICAL SUGGESTIONS

(1) Who require protection? It is submitted only a surviving spouse, infant children, and possibly adult children who are dependent through physical infirmity or incapacity. Adult children, merely as such, have no natural right to statutory protection.

They are usually self-supporting, they may not have contributed to the estate and it is no injustice or hardship that they should depend on their parents' generosity.

(2) A testator should have unfettered freedom to bequeath the whole estate to the surviving spouse and in such case no other persons should have statutory legal rights.

(3) The determination of the question whether a will is inofficious should be a matter for a Court of Justice on the facts and circumstances of the particular case.

(4) An application to the Court for an order making proper provision from the estate on the grounds that a testator has made an inofficious will should be made either by the surviving spouse or on behalf of one or more of the testator's infant children. The Court should have discretionary power to make such provision as it thinks fit from the capital or income of the estate, or both, in accordance with natural justice, after taking into account all the relevant circumstances including the wishes of the testator, the provisions of his will, his character and conduct, the amount and nature of his estate and the circumstances, character and conduct of his family. By restricting the jurisdiction to claims by the surviving spouse and infant children it would be possible to avoid abuse of the procedure by nuisance claims by adult undeserving children which would absorb part of the estate in costs.

(5) If the Society's submissions on part IX are accepted section 117 will be unnecessary. This section is open to serious objection because it will raise uncertainty as to titles and make it very difficult, if not impossible, to use the property as security for raising capital.

(6) The jurisdiction to deal with claims under the Act might be given to the Circuit Court.

OTHER PROVISIONS OF THE BILL

Section 9 (4): A testator who makes a will before the commencement of the Act and subsequently becomes mentally incapable will have no opportunity of revising his will in the light of the Act.

Section 63: It is suggested that the doctrine of advancement should apply only to shares on intestacy. The definition of advancement in subsection (6) might be further considered, particularly the second sentence which could cause disputes.

Section 77 (Signing and attestation of wills): It is suggested that the provision in paragraph 2 that the witnesses need not be present at the same time is an undesirable innovation. No reason is suggested for it. The present system has worked well and the change may open the gate to fraud.

Section 80: While recognising that this section is merely a re-enactment it should be reconsidered. Is it wise to provide that attestation by an incompetent witness shall be admissible?

Section 84 (i) (*a*): It is suggested that the fact of contemplation of marriage should be stated in the will.

Section 100 (Prescribed forms for reference in will): It is submitted that this section is undesirable as it involves will making by reference. The President of the High Court may be required to construe will forms drafted by himself. The nature of the forms intended to be prescribed under this section is not clear.

New provision suggested as to vexatious claims against an estate. The administration of estates is often delayed by claimants who will neither sue nor withdraw. The only remedy is the expensive one of Court administration. The Bill might provide that the personal representative could serve notice requiring the claimant to sue within a prescribed time and that the claim would become barred if no action is taken within that time.

19th October, 1964.

Solicitors' Buildings,
Four Courts,
Dublin 7.

EXAMINATION RESULTS

At the preliminary examination for intending apprentices to solicitors held on the 1st and 2nd days of September, the following candidates passed: David Fitzgerald Jr., Aidan J. N. Green, Timothy A. Murphy, John F. Neilan, John Joseph O'Neill, Harold Waterman.

Six candidates attended; 6 passed.

At the First Law examination for apprentices to solicitors held on the 1st and 2nd days of September, the following candidates passed: Fergus F. Armstrong, John Baily, Marguerite Joyce Boland, Anne M. T. Coady, Niall P. Connolly, David Cox, Francis D. Daly, B.C.L.; Michael P. A. Farrell, Felicity M. Foley, John B. Harte, Mary M. Harvey, B.C.L.; James Heney, Raphaeline A. E. Hoey, Matthew J. Mitchell, B.A., L.Ph.; Peter F. R. Murphy, Cornelius L. McCarthy, Maire Noonan, Hugh B. J. O'Donnell, Dermot G. O'Donovan, James F. O'Higgins, Gerald B. Sheedy, William B. R. B. Somerville, B.A. (Mod.); Angela M. Sweetman, John J. Tully.

Thirty-eight candidates attended; 24 passed.

The Centenary Prize was not awarded.

At the Second Law Examination for apprentices to solicitors held on 3rd, 4th and 5th days of September, the following candidates passed:

Passed with merit: Anthony G. Hayes.

Passed: Arthur F. Callanan, John F. M. Darley, John H. Dockrell, Michael N. Dolan, Thomas D. Durcan, Yvonne Fagan, B.C.L.; Patrick J. Farrell, B.C.L.; Bartholomew J. Flynn, Sarah M. Gallivan, B.C.L.; John V. Glynn, B.C.L.; Vincent O. Morrin, Robert T. R. McDowell, B.A.; Elizabeth M. J. O'Donnell, Cyril M. Osborne, Anna M. O'Shea, B.C.L.; Ian A. Scott, B.C.L.; John R. Sweeney, Rebecca Sweeney, Brian G. McD. Taylor, Mary P. Tighe.

Twenty-eight candidates attended; 21 passed.

The Patrick O'Connor Memorial Prize for 1964 was awarded to Anthony G. Hayes.

At the Third Law Examination for apprentices to solicitors held on 1st, 2nd and 3rd days of September, the following candidates passed:

Passed with merit: Brian A. Carroll, B.C.L.

Passed: Charles J. Bergin, William M. A. Cahir, B.C.L.; Denis Casey, Laurence Farrell, Thomas Griffin, Michael B. Hegarty, Patrick J. Lavan, Michael B. Malone, B.C.L.; Thomas A. Menton, Colm C. Murphy, Patrick F. O'Donnell, B.C.L.; Brian L. O'Flaherty, B.C.L., LL.B.; Mary B. Raleigh, B.A.; John J. Rochford, B.C.L.; Austin Turnbull.

Thirty-one candidates attended; 16 passed.

On the combined results of the Second and Third Law Examinations, Special Certificates have been awarded to Brian A. Carroll, B.C.L.; Denis J. Casey.

At the examinations held on 11th September, 1964 under the Solicitors Act, 1954, the following candidates passed:

First Examination in Irish: John F. Bolton, Patrick D. M. Branigan, Patrick F. Burke, James Patrick Courtney, Christine McAuliffe Curtin, Clare T. Cusack, Nuala P. Dalton, Columba B. Doherty, Patrick Donaghy, Daniel Fagan, Cairbre Finan, David Fitzgerald, Daniel M. Gahan, Edmund Gavin, Aidan J. N. Greene, Patrick J. Kennedy, Anthony M. D. Kirwan, Marguerite Michelle Linnane, Oliver Robert Macdowal, Francis P. Malone, John Joseph Murphy, Owen A. MacCarthy, Dermot P. O'Brien, Donough Harris O'Connor, Roderick C. J. O'Connor, John A. O'Donnell, Fachtna O'Driscoll, James O'Dwyer, John J. M. O'Neill, Rose Maeve O'Regan, Michael John O'Reilly, Simon C. K. Quick, B.A., B.Comm., LL.B.; Esmond Reilly, James Joseph Ryan, Edmund Seery, Denis F. Shaw, Nicholas P. J. Shee, Anthony J. Taaffe, Jonathan P. Thompson, B.A. (Mod.); Valerie J. M. Walsh, James Patrick Ward.

Forty-one candidates attended; 41 passed.

At the examinations held on 11th September, 1964 under the Solicitors Act, 1954, the following candidates passed:

Second Examination in Irish: Arthur F. Callanan, Robert T. R. McDowell, Dermot J. O'Donovan, Brendan D. Walsh.

Four candidates attended; 4 candidates passed.

CIRCUIT COURT

Please note that the Circuit Court (Alteration of Circuits) Order, 1964 (No. 206 of 1964) is effective as and from 15th September, 1964. By this Order, County Laois is transferred from the Midland Circuit

to the South Eastern Circuit; County Sligo is transferred from the North East Circuit to the Midland Circuit.

PENSION ADVISORY SERVICE FOR MEMBERS

The attention of members is drawn to a service in respect of a Permanent Sickness and Accident Scheme and a Personal Pension Policy Scheme. To date the total amount in premiums paid in respect of personal pensions exceeds £10,800. To the self-employed these schemes should commend themselves and details relating to same will be willingly furnished by the Irish Pensions Trust Limited, 38/39 Fitzwilliam Square, Dublin 2.

ADOPTION ACT, 1964

The Adoption Act of 1952 provides that a child cannot be adopted under the Act unless it is illegitimate or an orphan. The amendments in this Act obviate the need for last minute enquiries by the Adoption Board as to whether the mother who had consented to the adoption had married between the time of consent and the time of the adoption Board's Order.

Section 2 provides that in certain cases where an illegitimate child has been legitimated by the subsequent marriage of its parents, it may be legally adopted. However, the general rule does not permit adoption if the child's birth has been re-registered in accordance with the Legitimacy Act, 1931. Existing law provided that the consent of the mother was unnecessary in the case of an illegitimate child about to be adopted if the mother was incapable by reason of mental infirmity, of giving consent. The present Act makes a like provision for the father as well.

Section 2, subsection (3) provides that where the mother of an illegitimate is incapable of giving consent because of mental infirmity or because she cannot be found and the Board has no evidence that the child's natural parents have subsequently married, the Board may lawfully act on the assumption that the child is still illegitimate at the time that the order falls to be made and they may proceed accordingly without reference to the possibility of there being a legally recognised father. The 1952 Act provides that adoption can only be made in cases of children who are over six months and under seven years. The 1964 Act provides that the upper age limit be extended by two years but only where the child has been with the family since before its seventh birthday. Section 3 of subsection 3 retrospectively enables the decisions of the Board made in the terms of the section generally to be confirmed. The provisions of the 1952 Act were such that only a married couple who had reached the age of 30 years could adopt a child, but subsection (1) of section 5 proposes to allow adoption by a married couple if they are at least three years married and if each of them has reached the age of twenty-five years. Subsection (2) of the section proposes to delete the requirement in the 1952 Act that a person in order to be capable of adopting a child must be an Irish citizen. However, this does not delete the provision that the applicant or applicants must reside in the State.

Section 6 of the Act alters the provisions of section 12 of the 1952 Act in that the religion of the applicant need not be the same as that of the child proposed to be adopted.

(The Act (No. 2 of 1964) is available from the Government Publications Sale Office, G.P.O. Arcade, Dublin 1, price 1/6.)

TOWN PLANNING

Members please note that the following Orders and Regulations have been made by the Minister for Local Government in respect of the new Town Planning Act:

(i) S.I. No. 211 of 1964, the Local Government (Planning and Development) Act, 1963, (Appointed Day) Order, 1964, fixing 1st October, 1964, for the coming into operation of the Act.

(ii) S.I. No. 216 of 1964, the Local Government (Planning and Development) Act, 1963, (Appeals and References) Regulations, 1964, regulating the procedure on appeals to the Minister.

(iii) S.I. No. 217 of 1964, the Local Government (Planning and Development) Act, 1963, (Compensation) Regulations, 1964, prescribing the procedure for claiming compensation under the Act.

(iv) S.I. No. 218 of 1964, the Local Government (Planning and Development) Act, 1963, (Licensing) Regulations, 1964, controlling the granting by Planning Authorities of licences for the erecting of appliances or structures on a public road.

(v) S.I. No. 219 of 1964, the Local Government (Planning and Development) Act, 1963, (Miscellaneous Regulations) 1964, prescribe the documents which a Planning Authority must have in preparing a development plan.

(vi) S.I. No. 221 of 1964, the Local Government (Planning and Development) Act, 1963 (Permission) Regulations, 1964, regulating the granting of Planning Permissions for

development and the retention of structures which are unauthorised structures on 1st October, 1964.

(vii) S.I. No. 236 of 1964, the Local Government (Planning and Development) Act, 1963, (Exempted Development) Regulations, 1964, prescribing classes of development which in addition to those specified in section 4 of the Act are exempted development and which may be carried out without Planning Permission.

The above are available from the Government Stationery Office, G.P.O. Arcade, Dublin 1.

MISCONDUCT IN MISLEADING A COLLEAGUE

The Divisional Court (Lord Chief Justice, Mr. Justice Cassels and Ashworth, J.) dismissed an appeal by a solicitor from the findings and order of the Disciplinary Committee of the Law Society whereby he was ordered to be suspended from practice for one year. The committee found that the solicitor had been guilty of breaches of the Solicitors' Accounts Rules, and that he had been guilty of conduct unbefitting a solicitor in misapplying money held and received by him on behalf of clients. The committee also found that the solicitor had been guilty of conduct unbefitting a solicitor in making a false statement to another solicitor in relation to a professional matter in which he had a personal financial interest and in utilizing funds of which he was a trustee to make payments to himself and to a co-trustee when he knew that the entitlement to these payments was challenged.

The Lord Chief Justice in his judgment stated (*inter alia*)—With regard to the breaches of the Accounts Rules it was right to say that there was no possible element of dishonesty, that no client had lost a penny, that the deficiency had been extinguished as soon as it was discovered, and that there was always cash in the bank to cover it. Nonetheless, this Court had held and stated many times that a breach of the Rules was a serious matter and if it were allowed to go on, public confidence in the profession would be shaken. It was necessary to take a very serious view of it, even where there had been no moral turpitude.

(*The Times, 4th February*, 1960.)

STIPULATION AS TO COSTS

Members are referred to Opinion DR. 24 appearing at page 238 of the *Members' Handbook* which states:

"The Council disapprove of a stipulation in a contract for sale making the purchaser liable for the vendor's costs whether the sale is effected by way of conveyance or lease or by public auction or private treaty in as much as it tends to suggest to the purchaser to retain the vendor's solicitor."

In a recent case member stated that he acted for a client who agreed to take a plot of ground for the purpose of erecting a house thereon. The solicitor acting for the lessor also acts for the builder and has furnished member with a building contract which contains a clause that the employer (i.e., member's client) should be responsible for the builder's solicitor's costs of the building contract. The clause in the building contract read:

"The employer shall be liable for all legal costs and expenses incurred by the builder in connection with this contract and matters incidental thereto including the costs of grant applications in addition to the contract price herein stated."

The Council are of opinion that such a stipulation is analogous to that contained in the previous Opinion and accordingly Opinion DR. 24 is hereby extended to include a building contract. The Council disapprove of any stipulation which imposes on the purchaser the builder's cost of the building contract.

INTERNATIONAL LAW

The Republic of Ireland (Consequential Adaptation of Enactment) Order, 1964 (No. 1200) (3d.), made under the Irish Free State (Consequential Provisions) Act, 1922 (13 Geo. 5, Sess. 2, c. 2), s. 6; came into operation on August 1, 1964. It enables warrants issued in the Republic to be endorsed and executed in Great Britain, the Channel Islands and Isle of Man if transmitted to, and endorsed by, certain specified Irish police officers.

LAND PURCHASE ACTS RULES, 1964

Members please note that the above rules issued by the Irish Land Commission (S.I. No. 230 of 1964) can be purchased from the Government Publications Sales Office, G.P.O. Arcade, Dublin 1, or from any bookseller, price 2/6d. The rules are operative as and from 1st October, 1964. The rules amend the provisional rules under the Land Purchase Act dated 5th February, 1924, with the object of simplifying the existing procedure for obtaining allocation of purchase moneys and other funds to credit in the Land Commission. The rules also prescribe revised scales for legal costs in such cases.

CASES OF THE MONTH

Transcript of evidence

To meet the urgent need of a would-be appellant to have a transcript of the judgement against him in order to consider whether to appeal, the original transcript of the shorthand writer was submitted to

the Judge and corrected by him and was handed to his solicitors, showing the Judge's deletions, alterations and additions to fill gaps made by the deletions. After hearing the appeal it was submitted by the appellant's wife that the revised version differed in a marked degree from the original prepared by the shorthand writer, in particular in regard to the expressions of the findings of fact, that in the original version these accorded ill with the conclusion ultimately reached and that in the circumstances the Court ought not to look only at the revised transcript as approved by the Judge, but also at the original uncorrected version.

HELD—Although the Court would not be slow to censure a judge's rewriting of his own judgement after the drawing up of the order so as to put a completely different complexion on the issues in dispute, and in such a case it would be necessary for the Court of Appeal to look at the transcript in its original form, an application for that purpose would need to be supported by cogent evidence, preferably by somebody who took a note of the judgement. In the absence of evidence to show that a judge deliberately altered his judgement so as to change its whole character, only the transcript approved by the judge could be looked at and not the original version. Appeal dismissed by the Court of Appeal.

(Wilmer, Dankwerts and Davies, L.JJ., Bromley *v.* Bromley: *Law Times*, September 25th, 1954, p. 541.)

Conflict of laws

When a question arises as to the validity of the laws of a foreign country it was the duty of the court to take notice of it; in the circumstances of the case the court would direct a letter to be written to the Foreign Secretary asking whether Her Majesty's Government had granted any recognition to the German Democratic Republic by its government. So held in Court of Appeal (Lord Denning, M. R. Pearson and Salmon L.JJ.), Carl-Zeiss-Stiftung *v.* Rayner and Keeler Limited & Ors.—(*The Law Times*, September 25th, 1964, p. 540.)

Agency

Acting on behalf of his undisclosed principal, the defendant, an agent for a travel agency company (contracting as if he were principal), booked flights from Athens to London with the plaintiffs and received credit from them for the tickets, having previously done business with them on credit terms. The plaintiffs' solicitors wrote letters to both the defendant and the company stating that, failing payment, proceedings for recovery from the recipient of the letter might be commenced. They subsequently wrote further to the travel agency company stating that they had instructions to obtain judgement against the company "to safeguard the plaintiffs' interests", and subsequently they issued and served a writ against the company. Being later informed that the company was insolvent and was going into voluntary liquidation, the plaintiffs did not proceed with the action, but brought an action against the defendant. The defendant contended that there had been a binding election by the plaintiffs to pursue their remedy against the principals, the company. On appeal: HELD—Although the commencement of proceedings by the plaintiffs against the principals was *prima facie* evidence of election, the issue of the writ against them was not necessarily an abandonment of the plaintiffs' cause of action against the defendant, the agent; and, on the facts in the present case, there had not been any final election by the plaintiffs to rely on the liability of the company in exoneration of the defendant. Appeal dismissed by Court of Appeal.

(Willmer, Davies and Russell L.JJ., Clarkson, Booker, Limited *v.* Andjel. *Law Times*, September 25th, 1964, p. 540.)

WEEKLY HALF-HOLIDAY: FERMOY

FERMOY SOLICITORS

Members please note that as and from the first Saturday in October the solicitors practising in Fermoy intend to take the weekly half-holiday on Saturday instead of Wednesday as heretofore.

DUBLIN SOLICITORS' BAR ASSOCIATION

At the Annual General Meeting of the above Association held at the Solicitors' Buildings, Four Courts, Dublin, on Monday the 26th October, 1964, the following Officers and Council were elected for the year 1964/65.

President—Mr. J. M. Farrelly.
Vice-President—Mr. Ernest Margetson.
Honorary Secretary—Mr. Gordon Henderson.
Honorary Treasurer—Mr. Edmond O. Sheil.
Council—Messrs. V. Wolfe, E. Byrne, K. Burke, R. Knight, G. A. Williams, G. Doyle, P. McMahon, A. O'Huadhaigh and M. Kenny.

OBITUARY

MR. ANDREW J. O'FLYNN, Solicitor, died on the 1st July, 1964.

Mr. O'Flynn served his apprenticeship with the late Mr. Patrick O'Flynn, Manorhamilton, Co. Leitrim, was admitted in Easter Sittings, 1924, and practised at 4 Lr. Cecil Street, Limerick, under the style of A. J. O'Flynn & Co.

Mr. Edward B. Williams, Solicitor, died on 14th July, 1964.

Mr. Williams served his apprenticeship with the late Mr. Thomas C. Williams, Dungarvan, Co. Waterford, was admitted in Hilary Sittings, 1933, and practised at Castlebar, Co. Mayo.

Mr. Patrick McDowell, County Registrar, died on 17th August, 1964, at his residence, 65 Pembroke Road, Ballsbridge, Dublin.

Mr. McDowell served his apprenticeship with the late Mr. Joseph G. Fitzgerald, 16 Dawson Street, Dublin, was admitted in Michaelmas Sittings, 1934, and practised at Arklow, Co. Wicklow, up to his appointment as County Registrar for Wicklow in 1955.

Mr. John C. Callan, Solicitor, died on the 11th day of September, 1964, at his residence, Kingscourt, Co. Cavan.

Mr. Callan served his apprenticeship with the late Mr. Francis McBreen, Bailieborough, Co. Cavan, was admitted in the Easter Sittings, 1904, and practised at Kingscourt, Co. Cavan.

Mr. David H. Charles, Solicitor, died on 15th September, 1964 at a Dublin Nursing Home.

Mr. Charles served his apprenticeship with the late Mr. Thomas J. S. Harbison, Cookstown, Co. Tyrone, was admitted in Michaelmas Sittings, 1913, and practised at 4 Clare Street, Dublin, up to his retirement in 1960.

Mr. Seamus O'Connor, Solicitor, died on 1st October, 1964, at his residence, Ikotobo, Strandville Avenue, Clontarf, Dublin.

Mr. O'Connor served his apprenticeship with the late Mr. John Gore, 6 Cavendish Row, Dublin, was admitted in Michaelmas Sittings, 1914 and practised at 30 Bachelor's Walk, Dublin, as senior partner in the firm of O'Connor & Bergin.

REGISTRATION OF TITLE ACTS, 1891 AND 1942

ISSUE OF NEW LAND CERTIFICATE

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

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

Dated the 11th day of November, 1964.

D. L. McALLISTER,
Registrar of Titles.

Central Office,
Land Registry,
Chancery Street,
Dublin.

Schedule.

1. Registered Owner Thomas J. Wright. Folio number 290. County Monaghan. Lands of Carranewy and Kilduff in the Barony of Dastree containing 8a. 1r. 32p. and 11a. 2r. 2p., respectively.

2. Registered Owner William McDonagh. Folio number 5867. County Meath. Lands of Mountainpole or Rochfortsland in the Barony of Kells Upper containing 81a. or. 8p.

3. Registered Owners William O'Brien and Laurence Fenton. Folio number 255. County Limerick. Lands of Breesheen North in the Barony of Kilmallock containing 25a. or. 25p.

4. Registered Owner John Raleigh. Folio number 10558. County Limerick. Lands of Kilbane in the Barony of Clanwilliam containing 79a. 3r. 10p.

5. Registered Owner William Hogan. Folio number 3044. County Tipperary. Lands of Commons of Carney in the Barony of Ormond Lower containing 2a. 1r. 15p.

6. Registered Owner Margaret Carney. Folio number 5162. County Mayo. Lands of Carrowbaun in the Barony of Costello containing 16 perches.

THE REGISTRY

Register A

Solicitor required to manage practice in midland town with a view to partnership or sale Box No. A.217.

Well Established Solicitor's practice for sale in progressive midland town. Box No. A.224.

Register B

Lady Solicitor seeks vacancy in Dublin office. Fully experienced: Conveyancing, Companies, Probate, Local Authority, Court—available March.

Apply: J. J. O'Shee, Murphy & Co., Solicitors, Clonmel.

Printed by Cahill & Co., Ltd., Parkgate Printing Works, Dublin.

Vol. 58
No. 6

DECEMBER
1964

THE GAZETTE

of the

INCORPORATED LAW SOCIETY OF IRELAND

President
JOHN MAHER

Vice-Presidents
ROBERT McD. TAYLOR
EUNAN McCARRON

Secretary
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

CONTENTS OF THIS ISSUE

	Page
Ordinary General Meeting	49
Finance	50
Law Calendar and Directory	50
Bar Associations	50
Legal Education and Training	50
Delays	51
Meeting of International Bar Association	51
The Succession Bill	51
The Solicitors' Benevolent Association	52
Legal Aid	52
Costs Applications	52
The Compensation Fund	52
Conclusion	52
Committees of the Council	53
Opportunities	54
Examination Dates	54
Medical Legal Society	54
The Privilege of Doctors in the Law of Evidence	54
Symposium on Road Safety	55
Cases of the Month	55
Meeting of the Council	56
Admissions	57
The Registry	58

ORDINARY GENERAL MEETING

An Ordinary General Meeting of the Society was held in the Library, Solicitors' Buildings, Four Courts, Dublin, on 19th November, 1964. The President took the chair at 2.30 p.m.

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

The Secretary read the minutes of the Ordinary General Meeting held on 14th May, 1964, which were confirmed and signed by the Chairman.

The Secretary read the report of the scrutineers of the ballot for the Council for the year 1964–65. The President declared the result of the ballot in accordance with the scrutineers' report as follows :—

Provincial delegates returned unopposed :—Ulster, John C. O'Carroll ; Munster, Thomas E. Donnell ; Leinster, Reginald J. Nolan ; Connaught, vacant.

Ordinary members. The following received the number of votes placed after their names :

John Carrigan, 543 ; Desmond J. Collins, 533 ; Francis J. Lanigan, 532 ; Eunan McCarron, 508 ; Niall S. Gaffney, 508 ; Augustus Cullen, 508 ; Patrick Noonan, 505 ; John J. Nash, 497 ; Patrick O'Donnell, 493 ; Peter E. O'Connell, 477 ; Thomas A. O'Reilly, 469 ; William A. Osborne, 468 ; Joseph P. Black, 463 ; Daniel J. O'Connor, 459 ; Robert McD. Taylor, 456 ; Ralph J. Walker, 455 ; Thomas J. Fitzpatrick, 452 ; George A. Nolan, 448 ;

James W. O'Donovan, 448; John Maher, 445; William J. V. Comerford, 443; Thomas V. O'Connor, 427; Thomas H. Bacon, 407; George G. Overend, 403; Brendan A. McGrath, 401; William A. Tormey, 400; Desmond Moran, 384; Peter D. M. Prentice, 374; James R. C. Green, 354; Raymond A. French, 331; Gerald Y. Goldberg, 316.

The scrutineers returned the foregoing thirty-one members as duly elected ordinary members of the Council for the year 1964–65.

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

Edward J. C. Dillon, 308; Charles Hyland, 296; Brendan T. Walsh, 254; Samuel V. Crawford, 253; Robert W. R. Johnston, 250.

The audited accounts and balance sheets for the year ended 30th April, 1964, circulated with the agenda, were adopted. Messrs. Kevans & Sons were re-appointed as the Society's auditors.

The President, moving the adoption of the report of the Council for the year 1963–64, said:

Ladies and Gentlemen: Before my report for the year I have first to record with deep regret the deaths of the members of our Society which occurred since our last ordinary meeting. James Fagan, died 25th July, 1964, late of 57/58 Parnell Square, Dublin. Andrew J. O'Flynn, died 1st July, 1964, late of 4 Cecil Street, Limerick. Mr. Edward B. Williams, died 14th July, 1964, late of Castlebar, Co. Mayo. Mr. Patrick McDowell, County Registrar for Wicklow, died 17th August, 1964. Mr. John C. Callan, died 11th September, 1964, late of Kingscourt, Co. Cavan. Mr. David H. Charles, died 15th September, 1964, late of 4 Clare Street, Dublin. Mr. Seamus O'Connor, died 1st October, 1964, late of 30 Bachelor's Walk, Dublin.

May I, on my own behalf, and on behalf of my fellow council members, express to their relatives and friends our sincere sympathy.

Finance

The Accounts and Balance Sheet of the Society have been circulated to you and they set out very clearly our financial position. Expenditure is still rising and our annual profit continues to decrease.

The Finance Committee meets regularly each month and investigates fully all items of expenditure and revenue and does everything possible to ensure that revenue is maintained and expenditure kept in check. Outgoings, however, continue to rise and in spite of representations made by a number of my predecessors our Society is still bound to make an annual contribution of £530 to the Incorporated Society of Law Reporting. This is a public service which should be financed out of public funds and I look forward to the day when this will be realised and accepted and when we will be relieved of the responsibility of making this annual contribution.

Law Calendar and Directory

The second part of the *Law Calendar and Directory* namely, "The Directory", has now been amended as a result of suggestions made by several members of the profession. We would welcome your views in due course as to whether the *Directory* is now sufficiently complete and meets with general approval.

Bar Associations

I renew the appeal which I made to every solicitor, especially newly qualified solicitors, when I spoke to you last May. Bar associations are still and will always be necessary and vital if unity in our profession is going to continue.

In the year which is now ending I have visited a number of towns in Ireland where there were extremely flourishing bar associations and on the introduction of the Succession Bill almost all bar associations over the country provided inspired and intelligent criticisms which were a great help to the Council when they had to consider and suggest amendments to be made to that Bill. I would like to thank all these associations for the work they have done and for the interest they have shown and in particular I would like to thank them for having sent so many representatives to the special meeting of the Council which was held recently in connection with the Succession Bill.

During the month of October I spent five days at Folkestone as a guest of the Law Society of England and Wales at their conference and while there I learned that the local bar associations in England are becoming more and more important each year and their growth is encouraged and viewed with pleasure by the councils there. Similarly we will always continue to encourage united bar associations and would like to see one in every county in Ireland.

Legal Education and Training

In the month of July, 1961, your Council prepared a memorandum on legal education and training and when later on the Commission on Higher Education was established the Council forwarded a copy of their memorandum to that Commission for consideration.

In the month of May of this year, representatives of your Council were invited to attend before the Commission on Higher Education to amplify and discuss some of the matters mentioned in the memorandum. Reference had been made to certain defects in the then educational system on the grounds that it was too rigid and could not be adapted to suit changing circumstances; this was because of the fact that the system was established by Statutory Enactment and could not be changed except by legislation. The five year term of apprenticeship and some of the other Statutory requirements had been handed down for hundreds of years and the Council took the view that power should be given to the Society to prescribe the whole system of legal education and training for the profession exercisable by Statutory regulations subject to the approval of the President of the High Court.

We had also stated that the system of apprenticeship was unsatisfactory as the course was far too crowded to permit an apprentice to acquire any real acquaintance with the practical aspects of a solicitor's work and that it should be possible for the apprentice to spend more time in the office with his master. The memorandum had also stated that the Council was not satisfied with the quality of instruction in some of the university law schools and drew attention to the fact that there was not one whole time lecturer in the law faculty.

The Council made five main recommendations and submitted six other matters which they considered were specific requirements of the solicitors' profession.

A deputation made up of Mr. James Greene, Mr. Peter

Prentice and myself together with our Secretary, Mr. Eric Plunkett, attended and gave evidence before the Commission. We were very courteously received and suggested certain amendments to the original memorandum which was prepared in 1961. The members of the deputation were questioned at great length by the President of the Commission, His Honour The Chief Justice, Mr. Cearbhaill Ó Dálaig, and by several other members of the Commission. It was very clear that the Commission was extremely interested in what we had to say and appreciated our suggestions. We are looking forward to the report of the Commission which will be published sometime in the future.

Delays

It is with regret that I must draw attention to considerable delays which occur in a large number of the Court and other offices dealing with legal matters. So far as can be ascertained the chief cause of these delays is the failure to obtain sufficient trained staff to deal with the work which keeps increasing.

I do not for one moment wish to blame any particular office or any officials. On the contrary, I have no hesitation in saying that in all the Court offices, solicitors receive every possible courtesy and help but the fact remains that when officials retire it is not always possible to fill the vacancies with experienced qualified staff and whether the reason for this is that the salaries offered are not sufficiently attractive nowadays or whether there are other reasons, I do not know. Delays are very irritating so far as our profession is concerned and it is the general public which suffers most. They, of course, are inclined to blame solicitors for delays in connection with any legal work when the truth of the matter is that the major delays are caused by the time it takes to deal with matters in the Court and other offices. I certainly do not think it right that the Civil Service should be asked to undertake additional functions at considerable cost to the taxpayer when the work can be performed efficiently as part of a professional service and if it was found possible to fill vacancies which occur through the death or retirement of competent officials this would, I believe, remove a lot of the delays in legal matters of which the public and our profession complain.

Meeting of International Bar Association

The meeting of the International Bar Association was held this year in Mexico City from the 25th July to the 2nd August. The Law Society of England and Wales chartered a plane from London to Mexico to take most of the European delegates. I represented the Society at this conference. The President of Mexico attended the formal opening of the conference and later in the week invited all the delegates and guests to a reception in the National Palace. The Mexican Government made available a very substantial grant to ensure its success and the lawyers of Mexico City deserve the greatest credit for the excellence of their organisation. Their task was a difficult one but they dealt with it effectively and with the assistance of wives, relations and friends of their members and a large number of university students, they were able to staff fully the many offices dealing with such matters as the registration of delegates, the issuing of programmes and tickets for the various functions, the provision of coffee and soft drinks to all persons attending the conference and the provision of a huge staff to deal with the simultaneous translations of the various speeches and addresses at the conference itself.

A special programme for the wives and families of the delegates was also prepared. This included a costume show of typical Mexican costume, a visit to four of the colonial homes in San Angel, a visit to the National Institute of Protection of Childhood and a visit to the Pyramids, to mention but a few, and in addition all the delegates and their wives and families were invited to a performance of Mexican folklore ballet at the Palace of Fine Arts. Finally, the Jockey Club of Mexico invited all the delegates and visitors to the races held at the American Hippodrome and subsequently to a cocktail party at the Jockey Club Mexicano. Mr. John Carrigan and his wife were the only people from Ireland who made the long journey to Mexico and his knowledge of procedure gained at previous conferences was an enormous help to me.

All the delegates and their wives were invited to dinner at least once during the week of the conference to the home of either a lawyer or some other well known citizen of Mexico City and it would be quite impossible to exaggerate the hospitality which was extended to everyone.

Mr. Loyd Wright who has been the President of the International Bar Association for the past ten years attended the Annual Meeting at which he tendered his resignation for domestic reasons and this resignation was accepted with great regret. Earlier in the year there had been extended to a large number of the delegates an invitation from the Los Angeles Bar Association to spend four days in Los Angeles as the guests of the Los Angeles Bar Association and sixty of the delegates accepted this invitation and we were all put up in the homes of Los Angeles lawyers and their families. A programme was arranged to cover those four days and this included a visit to the Los Angeles Courts, lunching with a very large number of judges, a visit to Disneyland and to some of the principal motion picture studios. Our short stay in Los Angeles concluded with a dinner given by three of the Los Angeles lawyers and to summarise this short trip, I would like to say that no words could describe the hospitality which was made available for all of us during our stay. I would also like to put on record our thanks to Mr. Loyd Wright and Mr. Glendon Tremaine, the secretary of the Los Angeles Bar Association.

We left Mexico City on our return journey in the chartered plane on August 12th and arrived the same evening in New York. Later that evening, we attended the reception and ball given in the Waldorf Astoria Hotel by the American Bar Association. Mr. Walter Craig, the President of the American Bar Association, and his wife had extended invitations to us and this was a very memorable function. There were, approximately, 7,500 people present.

The venue of the next meeting of the International Bar Association which will be held in 1966 has not yet been settled but it will almost certainly be somewhere in Europe and will take place during the months of July or August. The new president is Dr. jur Bernt Hjejle, who has agreed to act as president for a period of two years.

Once more I would like to remind you all that attendance at these conferences is open to all members of the Incorporated Law Society.

The Succession Bill

As you are aware a Succession Bill was introduced in July of this year and I had intended to speak very fully regarding the Bill. However, circumstances made it necessary for the Council to call for a special meeting of the profession to discuss it and on Thursday, the 29th October, the meeting was held here in the Solicitors' Buildings. It was very well attended and at least one representative of every bar association in the country was present. The personal views of members and in some cases the views of the bar associations which were represented were fully expressed and finally the meeting passed a unanimous resolution approving of the action which the Council had taken. The day after the meeting a deputation from our Society had a long interview with Mr. Brian Lenihan, the Minister for Justice, regarding two memoranda which had been submitted to him by the Council.

He gave us every opportunity of putting our views before him and received us most courteously. It has been announced that various substantial amendments to the Bill will be made but your Council has not, as yet, considered these amendments which will be the subject matter of discussion in Dáil Éireann, and, therefore, I cannot at the present time enter into any more detail about this Bill save to say that I believe that very many of the amendments suggested by your Council, particularly those dealing with undutiful wills in parts IX and X contained in the two memoranda already referred to, have been accepted and that these amendments to the Bill will relieve the very considerable uneasiness, not only of the public but of the solicitors' profession, which the first publication of the Bill evoked. Section 77 of the Bill provides that the testator's signature shall be made or acknowledged in the presence of each of two or more witnesses who need not be present at the same time. The Council recommended that there should be no change in the existing provisions and consider that section 77 will give rise to many difficulties and possibly to unnecessary litigation. It seems that this recommendation has not as yet been accepted.

The Solicitors' Benevolent Association

At the half yearly meeting of our Society I asked that every member of our profession should become a member of the Solicitors' Benevolent Association and I repeat this request. The Association is now in its hundred and second year and once more I draw your attention to the fact that the subscription is the very modest sum of £1 per year. I think that the Association is worthy of all the support that the members of our profession can give it. It would be impossible to overestimate the wonderful assistance which it has given to so many during that period.

Legal Aid

The Criminal Justice Legal Aid Act, 1962, was introduced by Mr. Charles Haughey, then Minister for Justice, who was assured that our profession looked upon legal aid in criminal matters as a substantial advance in the social legislation of the State and my predecessor, Mr. Lanigan, referred to this when he spoke to you in the month of May, 1963. At that time he said that no regulations had been brought into force for setting out the procedure to be followed and the fees to be paid. I consider that Mr. Haughey deserves the greatest possible credit for bringing in this Bill but I think also that the public should know that the proposed service of legal aid is a service rendered by the legal profession for considerably reduced fees. Your Council asked for an escape clause where the Court is of the opinion that the case is of exceptional difficulty. Such provisions apply in Northern Ireland. We have not been able to get the agreement of the Department in this matter. The Minister states that the scheme is experimental and will be reviewed in a year's time.

Costs Applications

During the past year, the 12% increase in the Schedule 2 and High Court costs was granted. The position with regard to the increase in Circuit Court, Land Registration and District Court costs is slightly confused. After many years work, the new scale of Circuit Court costs was approved by the Minister and then came before the Circuit Court Rules Committee. It was intended that when the Circuit Court Rules Committee sent the Rules back to the Department of Justice and received confirmation that we would at once lodge the application for the 12% increase and the Department knew that that was what was intended. However, the Circuit Court Rules Committee took the view that it was quite unnecessary to have two separate applications so they sent to the Minister the new scale of Circuit Court costs as agreed by him for his formal approval and they added to it the 12% increase to which the Minister has not yet intimated his agreement.

The Minister took the view that the two matters should be dealt with separately and refused to concur to the rules submitted by the Committee and that was the position some weeks ago when the Minister became Minister for Agriculture.

The 12% increase in the District Court costs was approved by the Minister and the District Court Rules Committee was asked to supply detailed scales of costs but they took the view that composite scales should be sufficient as they would make future working much more simple especially in the event of increases in outlay. As I understand it, the practical difference is that if detailed scales are insisted on there may be 16 to 18 of these scales whereas if the composite scales are accepted, there would be approximately 6. This question had not been determined either at the time that we were trying to solve the Circuit Court costs problem. Finally, in the case of the Land Registry costs, the 12% increase was approved by the Minister and the Rules Committee was asked to formally submit the application for written approval and they did so approximately one month ago but so far their letter has not been acknowledged.

In view of the unsatisfactory position in these three cases, I asked Mr. Brian Lenihan, the Minister for Justice, if he would see me to discuss these outstanding matters and I had a personal interview with him on Tuesday, the 10th November. I am hopeful that any minor difficulties which exist in finalising these three matters will now be overcome without delay and I will be extremely disappointed if we do not receive official notification to this effect before my term of office ends.

The Compensation Fund

When the Compensation Fund was established in 1954, there were some members of our Society who thought that it was unreasonable that the vast majority of reputable solicitors should have to compensate clients who suffered loss through the dishonesty of a very small minority of defaulters.

This feeling was no doubt sharpened when the annual contribution was raised from £5 to £20 in 1960. I think, however, we must all admit that the Fund is the best public relations activity which could have been undertaken by the Society because it maintains public confidence by assuring clients that losses suffered in the event of dishonesty by any practitioner will be borne by the Fund. The respect and confidence of our clients is the greatest asset which we possess. By accepting corporate responsibility for the honesty of our profession we are preserving that confidence. It is therefore necessary to ensure that the reserve fund is kept at a safe level and to take positive action in time to avoid losses. These are matters which receive continuous attention from the Compensation Fund and Registrars Committees. There are of course statutory provisions which are designed to protect the Fund against losses suffered by clients as the result of their own negligence or where there has been co-operation between the solicitor and the client in unethical practices. When such circumstances are found, the society has a discretionary power to refuse or reduce compensation. The Report of the Compensation Fund Committee has been circulated to all of you and it shows the surplus in the hands of the Committee which makes me hope that this time next year it may be possible to reduce the present contribution of £15 per annum still further. I think we owe a deep debt of gratitude to the Committee for the excellent manner in which they have administered the Fund.

Conclusion

My year of office has been exciting, exasperating, memorable and enjoyable, all of course at different times. The visit to Mexico, Los Angeles and New York in connection with the

International Bar Association meeting was an experience which my wife and I found intensely exciting and most interesting. My inability to bring to a satisfactory conclusion a number of matters which seemed to drag on interminably was exasperating but I think that as my year approaches its end there are not too many of those annoying loose ends remaining untied. The support which the Council and I received from the bar associations and the profession generally during some very difficult times is what I will always remember most vividly. I want to thank them sincerely for their loyalty and help which culminated in the vote of confidence given at the special meeting on the 29th October.

The greater part of my year of office was most enjoyable. I represented our Society at innumerable functions and was the recipient of endless hospitality—as was my wife. I was invited to and thoroughly enjoyed dinners given by a number of bar associations here in Ireland. I also attended a dinner of the Birmingham Law Association. My wife and I spent a most delightful three days at Gleneagles as the guests of the Scottish Law Society and subsequently spent five days at Folkestone as the guests of the Law Society of England and Wales at their Annual Conference. Both in Scotland and England we received the most wonderful hospitality. The honour done to me as president during my year made me feel very proud indeed of our Society and I take this opportunity to say how grateful I am for my election.

I am lost in admiration of the amazing patience and understanding of the Council in dealing with me as president during the year and no one could have expected more support than they gave me. Were it not for them I might have considered at one time that "abdication", was the only solution to "Succession" difficulties. I thank them most sincerely.

Mr. John Maher and Mr. Patrick Noonan, my vice-presidents, were towers of strength and gave every assistance possible.

As usual the heaviest burdens during the year were borne by Mr. Eric Plunkett, our secretary, who dealt so efficiently with a huge number of most difficult problems. It must be realised that there has been in recent years a substantial increase in the work of running our Society and I think that Mr. Plunkett deserves the greatest possible credit for his zeal and the care he takes to bring to the attention of the Council all matters which might affect the interests of the solicitors' profession.

So far as I personally am concerned, I simply state that the assistance he gave to me, during what was at times quite a difficult year, was enormous and I am very grateful to him.

Mr. Smyth, the assistant to Mr. Plunkett, has also helped considerably in the day to day running of the affairs of our Society. I thank him also for the work he has done and the assistance that he has given to me.

To Mr. Gavan Duffy, our librarian, and to the entire staff in the office I give my sincere thanks for their help and courtesy.

William O'Reilly, whose first duty is to look after the Chain of Office, was always available when I had to wear it and his assistance on many occasions in the President's Room after some of the evening lectures was greatly appreciated by me.

Finally, I wish to thank Mr. Charles Haughey, now Minister for Agriculture, for his willingness to meet me personally so many times throughout the year for the purpose of discussing matters about which we were not always *ad idem* and for his personal kindness to me. I wish also to thank Mr. Brian Lenihan, now Minister for Justice, for his understanding of the difficulties of our profession and for being ready and willing, so soon after his appointment as Minister for Justice, to receive a deputation from our Society and to see me personally in an endeavour to finalise some important outstanding matters. I would like to assure Mr. Lenihan that our Council is always anxious to co-operate with and assist him and the Department of Justice if called upon to do so.

I have done my best during the past year in the interest of our profession and if that best was not good enough I am sorry. I do believe, however, that I have made more friends than enemies and I honestly say that I have had a memorable and enjoyable year which my election as president made possible. I am very grateful.

I have pleasure now in moving the adoption of report and I ask Mr. John Maher to formally second it.

The meeting concluded with a vote of thanks to the President for his services to the Society proposed by Mr. Edward Carroll and carried with acclamation.

COMMITTEES OF THE COUNCIL, 1964-65

1. REGISTRAR'S:

Brendan A. McGrath, Chairman; Thomas H. Bacon, Augustus Cullen, Gerard M. Doyle, Raymond A. French, Desmond Moran, William A. Osborne, Ralph J. Walker.

2. COMPENSATION FUND:

Brendan A. McGrath, Chairman; Thomas H. Bacon, Augustus Cullen, Gerard M. Doyle, Raymond A. French, Desmond Moran, William A. Osborne, Ralph J. Walker.

3. FINANCE, LIBRARY AND PUBLICATIONS:

George G. Overend, Chairman; Niall S. Gaffney, John C. O'Carroll, Rory O'Connor, James W. O'Donovan.

4. PARLIAMENTARY:

Senator Thomas J. Fitzpatrick, Chairman; Francis A. Armstrong, Cornelius J. Daly, Senator John J. Nash, Patrick O'Donnell, T.D.

5. PRIVILEGES:

Thomas V. O'Connor, Chairman; Thomas H. Bacon, Joseph Black, William J. Comerford, Raymond A. French, John B. Jennings, Senator John J. Nash, Reginald J. Nolan, Thomas E. O'Donnell.

6. COURT OFFICES AND COSTS:

Francis J. Lanigan, Chairman; Senator Thomas J. Fitzpatrick, John F. Foley, Gerald Y. Goldberg, D. J. O'Connor, Thomas A. O'Reilly, William A. Tormey, Richard Knight, John I. Horgan, Gerald J. Moloney.

7. COURT OF EXAMINERS:

James R. C. Green, Chairman; John Carrigan, Patrick Noonan, Thomas A. O'Reilly, Peter D. M. Prentice.

OPPORTUNITIES

At the request of the Department of External Affairs the Secretary attended a reception in honour of President Kaunda of Zambia at Iveagh House, Dublin, on Tuesday, 24th November, 1964.

The Government of Zambia are desirous of recruiting solicitors and barristers from Ireland for positions as magistrates, administrative officers and law lecturers. Enquiries should be directed to the Secretary, Solicitors' Buildings, Four Courts, Dublin 7.

EXAMINATION DATES, 1965

Examination	*Dates*	*Final date for entries*
1st Law ...	... 1st and 2nd Feb.	11th Jan.
2nd Law ...	... 1st and 2nd Feb.	11th Jan.
Preliminary ...	... 2nd and 3rd Feb.	12th Jan.
3rd Law ...	... 3rd, 4th, 5th Feb.	13th Jan.
1st and 2nd Irish	... 12th February	22nd Jan.
Book-keeping	... 22nd February	1st Feb.

MEDICAL LEGAL SOCIETY

The programme of lectures for 1965 arranged to date:

21st January, 1965: Lord McDermott, Lord Chief Justice of Northern Ireland.

25th February, 1965: The Rt. Rev. Dr. Simms, Archbishop of Dublin, on "Conscience".

25th March, 1965: Mr. Seán MacBride, S.C., on "Human Rights".

THE PRIVILEGE OF DOCTORS IN THE LAW OF EVIDENCE

The Hon. Mr. Justice Kenny, President, gave an inaugural address for the session 1964–65 to the members of the Medico-Legal Society in the Royal Hibernian Hotel on the 29th October, 1964, on the subject of "The Privilege of Doctors in the Law of Evidence". He said that it was a basic principle in the law of evidence in Common Law countries that everyone could be compelled to come to court and to give oral evidence and generally to answer any question asked. The exceptions to this rule were the subject-matter of the doctrine of privilege. Although the relationship of doctor and patient is a very special one which required complete disclosure, there is, under the law of England, no medical privilege as such. Mr. Justice Kenny pointed out that the rule did not suit the public interest, that it was English judge made law and not binding on our Courts and that judges in Ireland were free to apply a better rule and to recognise the right of a doctor to refuse to disclose what his patient had said to him unless the patient consented to this.

As regards the privileges of the legal profession it was emphasised that this was primarily the privilege of the client. All arguments in favour of maintaining this privilege were even more compelling as regards the patient in the case of the medical profession. Other cases of privilege mentioned were those in which a witness gave evidence and need not answer questions incriminating himself and State privilege. Until recently as a result of a misconstruction of the House of Lords decision in Duncan *v.* Cammell-Laird (1942) this appeared to be absolute and had been somewhat modified by the famous judicial dicta of Lord Denning in the Grosvenor Hotel case, (1964) 3 All E.R. 354, where he pointed out that the English rule was followed neither in Scotland nor in the Commonwealth. As Harman L.J. said, p. 363 —"I seem to detect in the official mind a desire to push ever forward the frontiers of secrecy". The position of priests and clergymen still appears to be rather uncertain despite the decision of Mr. Justice Gavan-Duffy in Cook *v.* Carroll (1945).

The jurisprudence of medical privilege in England was then examined and it was pointed out that from the Duchess of Kingston's case (1776) to that of Gardner *v.* Gardner (1920) there was a consistent rule which compelled doctors to answer all questions put to them. While the privilege of doctors should be recognised this privilege should last only as long as the patient was alive. Subject to their not being unconstitutional, certain matters must be disclosed if the Oireachtas decides this should be done—i.e., under the Health Acts. In a sensational case in Australia it was apparently held that a doctor is liable to be sued for breach of secrecy if what he stated injured the reputation of his patient.

The lecturer then discussed the difficult problem which arises when a doctor who is treating a patient becomes aware that a crime has been committed, such as attempted suicide or an illegal operation. In such cases the question was—should the doctor preserve secrecy? The opinion of the British Medical Council was that in such cases the doctor should not disclose anything which was learned professionally. If, however, the offence was a felony, the doctor was guilty of misprision of felony. The recent decision of the House of Lords in Sykes *v.* Director of Public Prosecutions (1961) 3 All E.R. 33, established that a person who knowing that a felony had been committed, did not reveal it to the police was guilty of this offence but it was improbable that

any doctor would be prosecuted for it. Ultimately each doctor should decide what he should do by reference to his conscience.

In the discussion which followed this problem was dealt with by several speakers. Most doctors seemed to suggest that in such cases it was not their duty to report any crime to the Guards, but, in appropriate cases, merely to notify the birth. Junior doctors examining accident cases in hospital were advised by their senior colleagues not to submit a report as to the capability of the patient to drive without the consent of the patient, even if the Guards try to obtain such report almost immediately. Mr. Justice Murnaghan reminded the doctors that in strict law if a person knows that a felony has been committed and does not report it to the authorities, he is an accessory to such a crime.

SYMPOSIUM ON ROAD SAFETY

A Symposium on Road Safety was held at the Intercontinental Hotel, Dublin 4, from 9th to 11th December, inclusive. Morning sessions each day ran from 10 a.m. to 1 p.m. approx., and afternoon sessions from 2.30 p.m. to 5.30 p.m. approx. At each session a principal speaker, generally a foreign expert on the subject, delivered a paper of about one hour's duration. Other experts followed with shorter contributions (approx. half-hour each) and then there was opportunity for questions and general discussions. All the papers to be read by the principal speakers, were available in print in advance of the symposium.

Attendance was mainly by invitation but members of the public also attended.

CASES OF THE MONTH

Negligence in contract or tort

Architects, whose employment by the plaintiff included supervision by the architects of the construction of drains, were sued by the plaintiff for breach of duty to exercise reasonable care and skill in that supervision. The supervision ended more than six years before the writ was issued. The architects admitted that, if the damage (viz., cracking of drain pipes and settlement of the premises) occurred at all, it occurred within six years before the issue of the writ. It was conceded that, if the cause of action lay in contract only, it arose more than six years before the writ was issued. On a preliminary point of law whether the action was statute-barred under section 2 (1) (*a*) of the Limitation Act, 1939.

HELD—The duty of the architects to exercise reasonable care and skill, where the failure (as here) was to do the very thing contracted to be done, arose out of contract alone, and, in cases of professional relationships, such a duty did not arise also independently of contract; accordingly, the action was statute barred.

(Bagot *v.* Stevens Scanlon & Co., *Law Times*, 6th November, 1964, Vol. 235–627.)

Attention of members is also directed to the case of Clarke & Anor. *v.* Kirby Smith, reported in the Society's GAZETTE of June, 1964, Vol. 58, No. 2, at page 16.

Section 11 (1) (*a*) of the Irish Statutes of Limitations is somewhat more circumscribed than section 2 (1) (*a*) 1939 of the English Statute but both refer to actions based on simple contract.

Costs in equity suit

Reserved judgment was delivered by Teevan J. in the High Court in Dublin on the last day of Trinity Term in Mangan *v.* McCarthy and Others, a Circuit Appeal from Co. Kerry. The point in issue was a simple one, but one on which there seems to have been no direct authority. The plaintiff claimed and obtained in the Circuit Court an injunction and £10 damages with costs of action in respect of a private nuisance and the question was whether the proper basis for ascertaining the costs payable by the defendants was to be arrived at by treating plaintiff's land or the defendants' lands as the subject matter of the action. In the Circuit Court Rules, 1954, Order 58 r. 25, of the Rules of the Circuit Court, 1950, is amended by adding "Provided always that in equity suits or proceedings, during the conduct of which any land the subject matter thereof has not been sold, the value of such land shall be taken to be fifty times the Poor Law Valuation".

The action was commenced by an Equity Civil Bill and the principal relief sought was an injunction restraining the defendants from so using their lands as to cause a nuisance to the plaintiff in the ownership and occupation of his lands. The defendants' lands were a rubbish dump, of negligible value: the plaintiff had a valuable farm adjoining. Offensive material from the rubbish dump was on occasions carried to the plaintiff's land by reason of the absence of proper fencing.

The County Registrar taxed the plaintiff's costs by reference to fifty times the poor law valuation of the plaintiff's lands, and the learned President of the Circuit Court approved this taxation. The defendants appealed to the High Court.

Teeven J. affirmed the President of the Circuit Court, holding that, although the acts complained of originated in the user of the defendants' lands, the lands the subject matter of the suit were the

lands adversely affected by such acts: in trespass actions it was the lands trespassed upon which were the criterion and he considered that this case was analogous to a trespass action.

(*I.L.T.* & *S.J.* 5th September, 1964, p. 321.)

Stamp Duties—companies' consideration—negotiable letters

Company A proposed to amalgamate with company B by acquiring all B's issued shares. A conditional offer of shares and cash was made by A to B's shareholders; the cash was less than 10% of the total consideration, which was therefore within the exemption to stamp duty conferred by s. 55 of the Finance Act, 1927. (17 & 18 Geo. V, c. 10.) At the same time it was arranged that a finance house should offer shares in A to preference shareholders in B at a discount, by way of negotiable letters, conditional on A's offer becoming unconditional; if the letters formed part of the consideration for A's acquisition of B's shares, then the consideration for the acquisition offered in a form other than the issue of A's shares would amount to more than 10 per cent. of the total consideration. The Inland Revenue Commissioners assessed the share transfers to A to stamp duty of over £100,000. HELD, allowing A's appeal against the assessment, that on the facts A's offer did not include a promise by them that the finance house would make the offer which they did in fact make, so that no stamp duty was payable and duty already paid was to be returned.

(Central and District Properties *v.* I.R.C., *The Times*, 1st August, 1964, Ungoed-Thomas J.; 8 C.L., p. 456.)

Summing up a trial

D was charged with shopbreaking, the case for the prosecution being that he was found, about an hour and a half after the offence, in a car containing the stolen goods, with two men who were undoubtedly guilty of the offence. During his summing up, the Deputy Chairman read many parts of the evidence, but made no attempt to analyse it or to indicate the strength and weakness of the prosecution and defence cases. D was convicted and appealed. HELD, allowing the appeal, that the jury should have been warned to be careful before they convicted D simply because he was found in the car; that the summing up was unsatisfactory; and that D's conviction could not stand.

(R. *v.* Trimmer, *The Guardian*, 20th August, 1964, C.C.A. (8 C.L. p. 441).)

Criminal law—misdirection

D was charged with offences of false pretences. In the course of his summing up, the Deputy Chairman, directing the jury upon the burden of proof, told them they must be reasonably satisfied, in the way that they would wish to be if taking an important decision of their own, that D was guilty, before they could convict. D was convicted and appealed. HELD, allowing the appeal, that the direction was defective in that the Deputy Chairman had failed to explain what he meant by "satisfied", so that the jury might have thought that they had only to be satisfied on the probabilities of the case.

(R. *v.* Gaunt, *The Guardian*, 20th August, 1964, C.C.A. (8 C.L. p. 442).)

MEETINGS OF THE COUNCIL

NOVEMBER 5TH: The President in the chair, also present, Messrs. James W. O'Donovan, Peter D. M. Prentice, Raymond A. French, Eunan McCarron, Patrick Noonan, Daniel J. O'Connor, Peter E. O'Connell, Edward J. C. Dillon, William A. Osborne, Thomas J. Fitzpatrick, Joseph P. Black, Robert McD. Taylor, James R. C. Green, Ralph J. Walker, Brendan A. McGrath, Gerard M. Doyle, Niall S. Gaffney, George G. Overend.

The following was among the business transacted:

Preliminary investigation of indictable offences

The Council considered a report from a committee on the statement issued from the Department of Justice that the then Minister (Mr. Haughey) intended to introduce legislation based on the minority report that the preliminary hearing should be abolished. The majority report of the Commission on the Courts recommended that the preliminary investigation of indictable offences should be retained and made certain recommendations with a view to expediting and simplifying the proceedings including a suggestion which would enable the District Justice to dispense with oral evidence on certain matters where the accused so consents. The majority report of the Commission on the Courts adopted most of the suggestions made in the Society's memorandum on evidence. The General Council of the Bar have already published a statement urging the Minister to adopt the recommendations in the majority report. It was decided that a similar request should be sent by the Council to the present Minister for Justice.

Succession Bill, 1964

The Council received a report on the present position with regard to section 37 and parts IX and X of the Bill. It was decided to release for press publication the Society's memorandum on parts IX

and X submitted to the Minister for Justice on October 19th.

Trade Union Act, 1941

The Council considered a letter received from the Department of Industry and Commerce indicating that the Minister would not accede to the Society's application for excepted body status under the Trade Union Act, 1941, to enable the Council to carry on negotiations on salaries and conditions of employment for solicitors in salaried employment without registering as a trade union. It was decided to make further representations to the Minister for Industry and Commerce.

Incidence of costs of building agreement

The Council disapproved of the following clause in an agreement between a builder and a lessee-purchaser. The solicitor acting for the lessor-vendor also acted for the builders.

"The employer shall be liable for all legal costs and expenses incurred by the builder in connection with this contract and matters incidental thereto including the costs of grant applications in addition to the contract price herein stated."

PARKING AT THE FOUR COURTS

Members stated that they had experienced difficulty in parking in the West Yard.

The East and West Yards are the property of the Commissioners of Public Works and the Council are informed that the Commissioners have not issued any instructions which would prevent members of the Bar or solicitors from parking in either yard.

ADMISSION CEREMONY

On 25th November, 1964, the President presented Certificates of Admission at a ceremony in the Society's Library. Addressing the newly admitted solicitors and their friends the President said :—

LADIES AND GENTLEMEN,

I welcome all of you here to-day. It is a memorable occasion not only for you, newly qualified solicitors, but also for your families and relations. They know how well you have worked to reach the high standard necessary to become members of our profession. The satisfaction of achieving is always very great and, whilst I congratulate you on having satisfactorily completed a long and difficult course, I am very conscious of the relief and pride which your relations must experience as a result of your success.

Some of you, the majority I hope, will practise here in Ireland, perhaps as assistant solicitors, at first, and later as partners, or on your own. Some of you may go into the office of a parent or other relative. My advice, however, to any newly qualified solicitor is this : do not commence to practise on your own until you have had at least two years' experience in some office. When you do commence, make sure that you have sufficient working capital and remember that in these days it is not easy to acquire and maintain an office and staff without substantial capital reserves. If you intend to practise in Dublin, join the Dublin Bar Association. If anywhere else in the country, join your local Bar association. In that way you will get to know a considerable number of fellow solicitors, and I believe that they will be only too willing to give you advice and help and, what is most important, local knowledge.

The Incorporated Law Society of Ireland is sometimes looked upon as a body which becomes very active should anything irregular occur in the profession, but I can assure you that the Society has to deal with an immense amount of work in a constant endeavour to ensure that any new legislation which may be introduced does not affect adversely the general public or the members of our profession and, whilst this work takes up a great deal of time, the Society is always ready and willing to help its members with its advice if problems arise which cannot be satisfactorily solved by the local Bar association.

Finally, on behalf of the Council and on my own behalf, I repeat my congratulations and wish you every possible success and happiness in the future.

Parchments were presented to the following :—

Charles J. Bergin, Abbey Villa, Kildare ; William M. A. Cahir, B.C.L., " Marian Villa," Cusack Road, Ennis, Co. Clare ; Brian Anthony Carroll, B.C.L., Linden, Fermoy, Co. Cork (*Special Certificate*) ; Michael G. Daly, B.C.L., LL.B. (N.U.I.), Carrick House, Carrickmacross, Co. Monaghan ; Laurence A. Farrell, 10 Sandford Road, Ranelagh ; Michael Basil Hegarty, " Soho Ville," Sunday's Well, Cork ; Michael B. O'Maoileoin, B.C.L. (N.U.I.), Beechpark House, Ennis, Co. Clare ; Patrick Francis O'Donnell, B.C.L. (N.U.I.), Burtonport, Co. Donegal ; Bryan L. O'Flaherty, B.C.L., LL.B., Gortmore, Monkstown Road, Monkstown, Co. Dublin ; John J. Rochford, B.C.L., The Grove, Killiney Hill Road, Killiney, Co. Dublin ; Austin Turnbull, "Marsala," Beaumont Park, Ballintemple, Co. Cork.

THE REGISTRY

Register C

JOHN DERMODY, or Darmody, late of St. Brendan's Home, Loughrea, County Galway, Pensioner, formerly residing in Galway, died 25th May, 1962. Any person having any will of the above deceased, please communicate with the undersigned solicitor. Dated this 11th day of November, 1964. Signed: Florence G. MacCarthy, Solicitor, Loughrea, Co. Galway.

REGISTRATION OF TITLE ACTS, 1891 & 1942

NOTICE

Folio 4095 County Dublin

Registered Owner—MARGARET FINNEGAN

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

A New Certificate will be issued unless notification is received in this Registry within 28 days from the date of this Notice that the Original Certificate is in the custody of a person not the Registered Owner.

Such notification should state the grounds on which the Certificate is retained.

Dated this 9th day of December, 1964.

D. L. MCALLISTER,
Registrar of Titles.

SCHEDULE

Land Certificate of Margaret Finnegan to 12a. 1r. 27p. of the Lands of Burrow (E.D. Malahide) situate in the Barony of Coolock and County of Dublin being the lands comprised in said Folio.

THE PRESIDENT AND VICE-PRESIDENTS

Mr. John Maher of Dublin has been elected President of the Society for the coming year. Mr. Robert McD. Taylor of Drogheda and Mr. Eunan McCarron of Dublin have been elected Vice-Presidents.

Printed by Cahill & Co., Ltd., Parkgate Printing Works, Dublin.

Vol. 58
No. 7

JANUARY
1965

THE GAZETTE

of the

INCORPORATED LAW SOCIETY OF IRELAND

President
JOHN MAHER

Vice-Presidents
ROBERT McD. TAYLOR
EUNAN McCARRON

Secretary
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

CONTENTS OF THIS ISSUE

	Page
Meetings of the Council	59
Practising Certificates 1965–66	60
"The Law of Stamp Duties"	61
District Court Costs	61
Bar Associations	61
Land Purchase Acts Rules of 1964	61
Legal Appointments	61
Book Reviews	62
Estate Duty Office and the Profession	62
Gross Sum Bill	63
Cases of the Month	64
Facsimile Probate Engrossments	66
Obituary	66
Registration of Title Acts	66

MEETINGS OF THE COUNCIL

NOVEMBER 19TH: The President in the chair, also present Messrs. Francis J. Lanigan, George A. Nolan, George G. Overend, John J. Nash, Thomas V. O'Connor, Eunan McCarron, Desmond Moran. James W. O'Donovan, Peter D. M. Prentice, Gerald Y. Goldberg, Thomas A. O'Reilly, James R. C, Green, Ralph J. Walker, Reginald J. Nolan, Peter E. O'Connell, Raymond A. French, Daniel J. O'Connor, Brendan A. McGrath, William A. Osborne, Augustus Cullen, Robert McD. Taylor, William J. Comerford, Thomas H. Bacon, Patrick Noonan, John Carrigan.

The following was among the business transacted:

Bray District Court

A resolution passed by the County Wicklow Bar Association requesting that the Department of Justice should be asked to arrange for the transfer of the District Court area of Bray, County Wicklow, was forwarded to the Dublin Solicitors Bar Association for attention.

Definition of Bank. Solicitors' Act 1954

The Council directed that a case be sent for counsel's opinion as to whether the expression bank

within the meaning of section 66 of the Solicitors Act 1954 and the Solicitors Accounts Regulations 1955–61 is restricted to the associated clearing banks.

DECEMBER 3RD: Mr. Collins and afterwards Mr. Maher in the chair, also present Messrs. Ralph J. Walker, Thomas A. O'Reilly, James R. C. Green, Eunan McCarron, Peter D. M. Prentice, Gerald Y. Goldberg, George G. Overend, George A. Nolan, John Carrigan, Niall S. Gaffney, Francis J. Lanigan, John Maher, Patrick Noonan, Thomas H. Bacon, Augustus Cullen, Francis Armstrong, Peter E. O'Connell, William A. Osborne, Daniel J. O'Connor, Joseph P. Black, Desmond J. Moran, James W. O'Donovan, Robert McD. Taylor, Brendan A. McGrath, Raymond A. French, John J. Nash, Gerard M. Doyle, Reginald J. Nolan.

The following was among the business transacted:

Election of President and Vice-Presidents, 1964-65

Mr. John Maher, Dublin, was elected President. Messrs. Robert McD. Taylor, Drogheda, and Eunan McCarron, Dublin, were elected Vice-Presidents.

The Incorporated Council of Law Reporting

Correspondence received from the Department of Justice on the subject of the reorganisation of the work of law reporting was considered. It is proposed that additional financial resources will be provided to facilitate the speedy production of law reports and the reorganisation of the work of the Council towards that end. The Society's representatives on the Council were instructed accordingly.

Succession Bill 1964

The Council approved a statement for submission to the Minister of Justice and publication dealing with parts IX and X of the Bill.

Extraordinary members of the Council

The Council made the following appointments on nominations by the Dublin Solicitors' Bar Association, The Southern Law Association, and the Incorporated Law Society of Northern Ireland:

The Dublin Solicitors' Bar Association: Messrs. Rory J. O'Connor, Richard Knight and Gerard M. Doyle.

The Southern Law Association; J. I. Horgan, G. J. Moloney, C. J. Daly, J. B. Jermyn, and J. F. Foley.

The Incorporated Law Society of Northern Ireland: E. Malachy Doris, J. Owen Wylie, Robert V. Gregson, Frederick H. Mullan, Brian McK. McGuigan.

Trade Union Act 1941. Excepted body status

The Council considered correspondence received from the Department of Industry and Commerce intimating that the Minister is not disposed on the case submitted to grant the Society's application for excepted body status to enable the Society to negotiate wages and conditions of service for solicitors in the local government and other public services without obtaining a trade union negotiating licence. It was decided to make further representations to the Minister and to ask him to receive a deputation.

PRACTISING CERTIFICATES 1965/66 AND MEMBERS' SUBSCRIPTIONS

1. Members are reminded that practising certificates for the year to end 5th January, 1966 should be taken out on or after 6th January, 1965, and not later than 5th February, 1965, in order to operate as a qualification to practise from January 6th.

2. Under the provisions of the Solicitors Acts, 1954-60, the declaration to be lodged with the Society on applying for a practising certificate shall be completed and signed by the applicant personally unless the Registrar on the grounds of illness or some other sufficient cause dispenses with personal signature of the declaration. Declaration forms have been mailed by the Society to solicitors who held practising certificates for the practice year 1964–65. They should be completed and delivered to the Society by applicants in person or their Dublin agents. Under the provisions of the Solicitors Acts, 1954–60, the Society is not entitled to accept declarations sent in by post.

3. Members' subscriptions for the year 1965–66 are payable on January 6th. A receipt for the subscription will be issued with the practising certificate.

4. The composite amount of the Compensation Fund contribution registration fee and membership subscription is as follows:—

Solicitors admitted three years or more on January 6th: Dublin £22; Country £19.

Solicitors admitted less than three years on January 6th: Dublin £11 10s.; Country £8 10s.

"THE LAW OF STAMP DUTIES" FIRST REVISION

Supplementary pages to the above volume have now been published—price 12/6 (postage 1/6 extra). This *first revision* incorporates the provisions relating to Stamp Duties contained in the *Finance Act*, 1964, the *Companies Act*, 1963 and in other non-Revenue statutes passed in the period from August, 1962 to December, 1963.

The original volume, which contains all prior enactments relating to Stamp Duties, and is in loose-leaf form to permit the insertion of supplements to be issued from time to time as occasion arises, costs 3 guineas (postage 1/9 extra).

Now available from the Government Publications Sale Office, G.P.O. Arcade, Dublin 1.

DISTRICT COURT COSTS

The District Court Rules Committee at their Meeting on 7th December, 1964 with the concurrence of the Minister for Justice, made and signed the District Court (Costs) Rules 1964. The Rules came into operation on the 1st January 1965 and regulate the costs to be awarded in all proceedings instituted in the District Court on or after that date. The Rules authorise a 12 per cent. increase on the amount of the costs heretofore payable in respect of the varying types of proceedings in the District Court.

The Rules are available on sale in the Government Publications Sales Office, G.P.O. Arcade, Dublin, 1.

SOUTHERN LAW ASSOCIATION

The following officers have been appointed for the year 1964–65 by the above-named Society :

President: Mr. John I. Horgan, 50, South Mall, Cork. *Vice-President:* Mr. John F. Foley, 62, South Mall, Cork. *Hon. Treasurer:* Mr. Humphrey D. Kelleher, 20, Cook Street, Cork. *Hon. Secretary:* Mr. Dermot J. Moloney, 44, South Mall, Cork.

COUNTY AND CITY OF LIMERICK SESSIONAL BAR ASSOCIATION

At the Annual General Meeting of the Association the following officers and committee were elected :—

President: Mr. Niall S. Gaffney ; *Treasurer:* Mr. Thomas E. O'Donnell ; *Secretary:* Mr. James G. Tynan ; *Committee members:* Messrs. William Lee, Michael Cussen, Desmond J. O'Malley, Snr., Martin Tynan, Caleb C. McCutcheon.

From 1st January, 1965 all solicitors' offices in the City of Limerick will be open from Mondays to Fridays inclusive but will be closed on Saturdays.

The days of business of offices in the County of Limerick remains unchanged.

LAND PURCHASE ACTS RULES OF 1964

Solicitors should note that the Schedules of Documents which are required to be lodged, with the Title Deeds in the Examiners' Branch or the Records Branch of the Land Commission, as the case may be, under the Land Purchase Acts Rules of 1964 should be on durable paper, should contain sufficient description of the documents to enable them to be easily identified and should be signed by the solicitor who lodges the documents. The Schedules should be entitled as follows:

Court of the Irish Land Commission Land Acts, 1923–1954,

Record No.....
Estate of :.....
Owner: .....
County of:.....

The draft Allocation Schedule which the Rules require to be lodged in the Examiners' Branch with the Affidavit of Title and Title Documents should be prepared in accordance with the directions of the Judicial Commissioner dated 5th February 1924 which will be found annexed to the Provisional Rules of the Land Commission dated 5th February, 1924. The relevant paragraphs are 10 to 19 inclusive. The forms of draft Schedule which can be purchased in any Law Stationers' office should be used and the certificate of the solicitor verifying the draft Schedule as prescribed by paragraph 19 should be carefully completed.

LEGAL APPOINTMENTS

Mr. Thomas M. Costello, solicitor, of 5/6 Upper O'Connell Street, has been appointed County Registrar for the County of Wicklow. Mr. Costello was admitted to the roll on 26th May, 1941.

Mr. Richard Casey Pilkington has been appointed solicitor to The Bank of Ireland at their Head Office in College Green, Dublin. Mr. Pilkington was admitted as a solicitor on 12th February, 1937. Mr. Pilkington succeeds Mr. Dinnen B. Gilmore who has retired from service with the bank.

Mr. Leo Branigan, solicitor, Longford, has been appointed county registrar for the County of

Longford. He was admitted on 15th December, 1941 and practised with his father P. J. Branigan under the name of T. W. Delany & Co., solicitors, Longford.

BOOK REVIEW

A Guide to the Death Duties in Ireland, by M. K. O'Connor, barrister-at-law. Published by the General Council of Provincial Solicitors' Associations. 59 pages. (n.p.).

This booklet is based on a series of lectures given by the author (who is a senior examiner in the estate duty office—although the booklet is written in his private capacity) to the Tipperary and Offaly (Birr Division) Sessional Bar Association. While it does not claim to be a treatise or even a synopsis of the death duties, it is, nonetheless, a most valuable guide to their main features. Its eight chapters deal with : Legacy duty, estate duty, and succession duty, their imposition and the principal exemptions; aggregation, accountability, liability and incidence of estate duty, practice and procedure, and time for payment and payment by instalments. It has three appendices, giving the rates of duties and a memorandum of the estate duty office as to procedure with the estate duty office in case of shares in private companies.

It would be quite unfair to complain about omissions in view of the declared limited intention of the author, but if a further edition is, as we hope, contemplated, it would not add greatly to the size of the booklet—and would add considerably to its value—if he would deal with accountability and payment of legacy and succession duties as he does for estate duty. A short chapter on practice and procedure in regard to these two duties would also be most helpful.

This guide should be of great assistance to the student as well as to the practitioner. It is lucidly and simply written. The chapter on aggregation is particularly valuable.

A few minor corrections may be noted. On p. 14 the author remarks that it has "now been established" that section 2 of the Finance Act 1894 is an expansion of and explanatory of section 1 and is not a separate charging section, contrary to what had hitherto been assumed from the *Cowley Case* (1895) 1 Q.B. It should be emphasised that the case which "established" this proposition is an English decision which need not be followed in this country.

On p. 15, the "and" at the beginning of the third-last line should read "or". The correction alters the sense of the entire statement.

On p. 17, paragraphs (*a*) and (*b*)—giving the two "statutory exceptions" to the rule that foreign property on which no legacy or succession duty is payable is also exempt from estate duty—are misplaced. They should come immediately after the words "two statutory exceptions". On the third-last line of the same page, "under £5,000" should read "not exceeding".

On p. 29, dealing with the 1961 change in aggregation, it should be noted that the new provision applies to persons dying *on or* after 28th July, 1961.

THE ESTATE DUTY OFFICE AND THE PROFESSION

On 26th November, 1964 Mr. M. J. O'Connor, barrister-at-law of the estate duty office gave a talk to members in the Society's library. At the outset the lecturer mentioned that historians and archaeologists had discovered the existence of a form of death duties in ancient Egypt which according to an eminent authority was probably at the rate of ten per cent. The lecturer stated however that in those days it was likely that desk work was of minor importance and that far more attention was given to collection than to assessment. The lecturer traced the course of the death duty code from 1774 to 1894 and the subsequent revenue statutes. He described briefly the organisation of the estate duty office, and the work of the various divisions dealing with affidavits, deeds, wills, accounts and review and certificates. The growth in the importance of the work in the office from the point of the view of the state was illustrated by the fact that the collection had grown from £400,000 in 1896 to £3½m. in the last financial year. The expenses of administration are 3⅛%.

Describing the training of the officials the lecturer quoted from an old manual which stated that the new entrant in addition to his legal course "will find it necessary to learn the customs of the stock exchange and the practice of banking and to acquire facility in reading trust accounts, balance sheets and profit and loss accounts. . . . The new entrant should also make himself acquainted with business and financial methods with the framework of the financial machine and with the ways of the world generally. By doing so, he will help to equip himself to conduct the business of the office with efficiency and economy of effort."

Having described the work of the various divisions Mr. O'Connor dealt with a number of practical points to which attention should be paid in completing affidavits and forms and ways in which unnecessary queries, with consequent delay, may be avoided and illustrated by examples the type of reply which necessitates sending back the form for further information. He also dealt with the question

of share and goodwill valuation and mentioned *en passant* the extent to which the private limited company has replaced the more conventional forms of property in the last twenty-five years. The lecturer also stated that the Revenue Commissioners are at present considering the simplification and amalgamation of a number of estate duty forms. This suggestion was made by the Society some years ago and there is ground for hope that it will be adopted in the near future.

GROSS SUM BILL

The Society recently obtained counsel's opinion as to the essential requirements of a gross sum bill under schedule II of the Solicitors Remuneration General Order 1960 which broadly speaking relates to all non-contentious business other than completed sales, purchases and mortgages for which the commission scale fees are chargeable. The gross sum provisions of S.R.G.O. 1960 provide that remuneration of a solicitor for the work to which it applies may, at the option of the solicitor, be by a gross sum in lieu of detailed charges, provided that within twelve months after delivery of a charge by way of gross sum or within one month after payment, (whichever shall be the earlier date), the client may require particulars of the charges computed in the manner prescribed by the order of 1884, as amended, and the solicitor shall thereupon comply with the requisition and any further bill so delivered shall be subject to taxation as if the gross sum provisions of the order had not been made. In the majority of cases the client either pays the gross sum bill furnished or agrees with the solicitor on an abated sum or exercises his right to call for a detailed bill. If the client adopts none of these courses the solicitor cannot sue for the costs claimed within the period of twelve months unless he brings himself within the terms of section 2 of the Attorneys and Solicitors (Ireland) Act 1849 and he must therefore show that he has delivered or posted to his client "a bill of such fees and disbursements" duly signed by the solicitor and that more than one month has expired after such delivery or posting. The bill so delivered for the purpose of proceedings must be in the usual form and the Court may refer it to taxation. If the client calls for a detailed bill under the provisions of S.R.G.O. 1960 it will replace the gross sum bill and it is the detailed bill so furnished that is liable to be taxed. There is no provision for taxation of a gross sum bill.

The only case in which proceedings can be taken for recovery of the amount of a gross sum bill without delivery of a detailed bill is a case in which the period of twelve months from delivery of the gross sum charge has expired without a request by the client for detailed bill.

As regard the form of a gross sum charge it should at least distinguish between professional charges and disbursements and if there are several main items of business involved separate charges should be shown for each of them. The gross sum bill is suitable only in cases in which it is anticipated that the client will pay or settle or cases in which it is not intended to proceed for recovery of the bill within a period of twelve months. If the solicitor thinks it desirable for any particular reason to proceed for recovery within that period the bill should be drawn in the ordinary form. In this connection the decision of Kenny J. in re: Greenmount Oil Co. Ltd. and Le Brocquy (*see* Society's GAZETTE, May 1964, page 7) is important. In that case a gross sum charge was furnished at £2,600 and the client required particulars under clause 6 of S.R.G.O. 1960. In the particulars submitted all the work done was summarised under an instructions fee running to over 100 pages and the last six pages of the Bill comprised item charges amounting to a sum between £300 and £400. It was held by the Court that in a detailed bill the items should be separately listed and priced under items 2 to 20 of schedule II and that the Taxing Master had authority under the heading of instructions fee to allow remuneration over and above the total of the itemised charges where having regard to the considerations enumerated in item 1 of the schedule he thought it reasonable to do so.

A statement of a gross sum without details contained in a cash account delivered by a solicitor to the client will in general not be a sufficient gross sum charge. If the client pays the amount stated by the solicitor in a proper gross sum charge he may not have the bill referred to taxation after the expiration of one month from payment or twelve months from the delivery of the charge whichever date is earlier. This is subject to section 2 of the Attorneys and Solicitors (Ireland) Act 1849 which remains unrepealed and which provides that payment shall not preclude the Court from referring a bill to taxation after payment in special circumstances.

Accordingly if the client pays the bill he is never absolutely or conclusively barred from re-opening the matter if he can show that the bill was obviously quite unconscienable or in other special circumstances.

The above observations relate to costs chargeable under schedule II S.R.G.O. 1960 and there are complications where all or part of the gross sum bill relates to (*a*) Land Registry work or (*b*) costs of extraction of probate which are regulated by the Rules of the Superior Court 1962. Inconvenient as it may be, the only way in which the solicitor can

be safe in such a case is to furnish separate bills because the provisions of the various rules differ. In the case of Land Registry business the Land Registration (Solicitors' Costs) Rules 1962 provide that the date of expiration of the time for requiring a detailed bill is one month after payment or twelve months after delivery of the Bill whichever date shall be the *later* (not *earlier* as provided by S.R.G.O. 1960). Neither the Solicitors' Remuneration General Orders nor the Land Registration Solicitors Costs Rules have any application to that portion of a bill of costs in an administration matter which relates to the extraction of the grant of probate or administration. The costs for this work are regulated by the Rules of the Superior Courts 1962 as amended and appendix W.

CASES OF THE MONTH

Costs—counsel's fees

The defendant was charged with criminal offences in connection with a play produced by the defendant. At the taking of depositions in the District Court certain police witnesses claimed privilege for reports made by them and instructions given to them. This claim was challenged on behalf of the defendant and the district justice at the request of the attorney general who stated a case for the High Court. The High Court found in favour of the attorney general and ruled that the documents were privileged. The defendant appealed to the Supreme Court and the court held that the district justice had no jurisdiction to grant the case stated. The order of the High Court was accordingly reversed and costs were awarded to the defendant. The amounts claimed in the defendant's bill of costs for senior counsel's fee was £105 on the brief and £42 refresher and the fees of junior counsel were the appropriate amounts. The taxing master allowed reduced fees of £42 to senior counsel on the brief and £26 5s. 0d. refresher with the appropriate fees to junior counsel. He stated that in following this course that he had had regard to the importance of the case to the defendant and to the fact that the substantive point of law argued in the High Court and Supreme Court had been argued in the District Court already and that counsel's work had been accordingly reduced.

HELD (O'Daly and McLoughlin JJ., Maguire C.J. dissenting) reversing Murnaghan J.

1. The case must be looked at from the point of view of both parties in order to correctly assess its magnitude.

2. If the case is observed from the point of view of one party only a distorted and incorrect picture may be presented.

The taxing master was therefore wrong in principle, in having regard only to the importance of the case from the point of view of the defendant. He also erred in principle by having regard to the fact that the substantial point of law had already been argued in the District Court.

The defendant's bill of costs was accordingly remitted to the taxing master for reconsideration. (The Attorney General *v.* Simpson, *I.L.T.R.* Vol. XCVIII, p. 182.)

Costs—common fund basis

The plaintiff, a graduate with a third class honours degree in physics, brought an action against his university college for an order of mandamus for the grant to him of a first-class degree, claiming damages for breach of contract, fraudulent misrepresentation of his examination results, and professional negligence in lacking the necessary skill, or failing to exercise sufficient care and attention to his needs. The action failed, and the defendants applied, under the Supreme Court Costs Rules 1959, r. 28 (3), for an order that costs be taxed on the common fund basis, contending that, although there was little authority, such an order was justified in this case in view of the plaintiff's scandalous and unwarranted allegations and conduct.

Marshall, J., said that, assuming the action to have been put forward by a person who appreciated fully what was happening, the defendants' submission would be a strong one. Since, however, the matter had become an obsession with the plaintiff, and the making of an order was discretionary, an order for only usual costs would be made, and the application for an order of taxation on the common fund basis would not be granted. Application refused.

(Sammy *v.* Birkbeck College, *Solicitors' Journal*, Friday, November 13th, 1964 (Vol. 108, p. 897).

Trusts—inspection of documents—rights of beneficiaries

In re Londonderry's Settlement: Peat *v.* Walsh, Harman L.J. (Danckwerts and Salmon L.JJ. delivering concurring judgments), said that the court had to resolve the apparent conflict between two principles; the first, that trustees exercising a discretion were not bound to disclose to beneficiaries the reasons actuating them in coming to a decision and the second, that documents coming into existence and in the possession of trustees for trust purposes were trust documents and so open to inspection by beneficiaries as a proprietary right. Though it was irregular that the trustees, protected as they were (in this case) by an order of the court, should have brought this appeal, thereby putting on the court the difficult task of trying to define, as it were in the air and without any concrete instances to help them, the obligations of trustees, the court had decided to

attempt an answer. Minutes of meetings and agenda and other documents prepared for trustees' meetings were not, in the absence of an action impugning the trustees' good faith, documents which a beneficiary could claim the right to inspect, for if she did she would at once know their motives and reasons which they were not bound to disclose; further, communications between individual trustees and appointors, or letters to or from a beneficiary, ought not to be open to inspection by another beneficiary, though general letters of the trust solicitors, as, for instance, an *aide-mémoire* by solicitors summarising the state of appointment would seem to be trust documents in which the beneficiary had a proprietary right and therefore a right to inspect. But the judge's order in this case went too far and the appeal should be allowed. A form of declaration which did not cut down the beneficiaries' rights too much should be minuted and considered by the court at a later date.

(*Solicitors' Journal*, Friday, November 13th, 1964 (Vol. 108, p. 896).

"Short interest" taxed

The House of Lords allowed this appeal by the Inland Revenue Commissioners from a decision of the Court of Appeal in which the Court of Appeal held in favour of a taxpayer, Mr. Philip Frere, solicitor, that interest on short-term loans for less than a year was deductible under the provisions of the Income Tax Acts in computing the taxpayer's total income for surtax purposes.

Viscount Radcliffe said that the taxpayer on two occasions borrowed large sums of money for short periods. On the first occasion he borrowed £50,000 which he repaid some eight months later with £2,210 19s. 2d. interest. On the second occasion he borrowed £40,000 for one month, the interest for which was £186 2s. 9d. Those loans were made to the taxpayer by an unlimited company which did not satisfy the description "banker". The taxpayer's claim was that in computing his total income for assessment to surtax the amount of interest he paid on those loans ought to be deducted from the assessable figure. In principle, income assessed to tax was gross income reduced for the purposes of assessment by such deductions only as were actually specified in the tax code or were granted by way of reliefs. It followed that in principle it was irrelevant that some part of a person's taxable income had been expended on what would normally be regarded as his own income account, in paying rent, wages, mortgage interest, rates, insurance, or that the payments he made for such purposes would themselves constitute assessable income in the recipient's hands. The payment of interest whether long or short, would be no more than an "application" of his income.

The taxpayer's argument was that all payments were deductible in arriving at the payer's total income which represented "pure income" in the hands of the payee. Apart from the argument founded on the wording of Schedule G to the Act of 1842, his Lordship could find no trace of an intention to treat part of a person's income as not being taxable merely because he used it to make payments to another person which were themselves taxable directly as part of the income of the recipient. Lord Morris of Borth-y-Test, Lord Guest, Lord Pearce and Lord Upjohn agreed.

(Inland Revenue Commissioners *v.* Frere, *The Times*, Friday, November 20th, 1964.)

Solicitors—negligence

The plaintiffs instructed the defendants, a firm of solicitors, to act for them in purchasing a freehold dwelling-house and an adjoining vacant plot. Before exchange of contracts the plaintiffs instructed the defendants to exchange contracts only if satisfied that there was no building restriction on the vacant plot. There was, in fact, a restriction against building on the plot, but, owing to a mistake arising from different colours on different plans, the defendants exchanged contracts on the erroneous view that the restrictions did not affect the vacant plot. In the circumstances the defendants were liable for negligence, but the market value of the property purchased, that is, subject to the restriction, was equal to the price paid by the plaintiffs. HELD, that the measure of damages was the difference between the cost of purchase and the market value at the time of the sale of the property as it was, that is with the vacant plot subject to the restriction. Accordingly, since the price paid by the plaintiffs was equivalent to the market value of the property as it was at the time of the purchase, the defendants' liability was nil for the plaintiffs had suffered no loss.

(Ford *v.* White & Co. 1964. 235 *L.T.* 345, Pennycuick J. 6 *C.L.*, p. 431.)

Privilege

The Court of Appeal—Denning M.R., Salmon and Harman L.JJ. dealt with the question of Crown privilege and in so doing have narrowed its scope. The Departmental decision that the production of a certain class of documents would be injurious to the public interest was supported by an affidavit of a Minister of State claiming privilege. The affidavit was considered defective and the sufficiency of a subsequent affidavit was questioned. The question was also raised as to whether a claim to Crown privilege is a matter of substantive law in view of the Rule of the Supreme Court relating to production of documents when the statement was made that

production was injurious to public interest. The validity of the Statutory Instrument to which the doctrine of *ultra vires* was applicable was also raised. The court HELD that:

1. Crown privilege, being a matter of substantive law and not mere practice or procedure, R.S.C. Ord. 24, r. 15,* in so far as it purported to alter (not merely to state) the existing law was *ultra vires*.

2. In order that Crown privilege should be successfully asserted, the objection must be sufficient in law and must be taken in proper form, that was, in the ordinary way by the Minister himself, on oath, if need be, after considering the documents himself. Lord Denning stated that if it is not taken in proper form, the court can overrule the objection and order production; but before doing so, it will, as a rule, inspect the documents itself in order to determine whether in point of substance their production would be injurious to the public interest.

3. That the objection of a Minister to the production of a class of documents was not conclusive and if the court was of the opinion that it was not taken in good faith or that there were no reasonable grounds for the claim of privilege it would override the objection and order production, but that residual power of the court would only be exercised in exceptional and rare cases.

4. That where a Minister was objecting to all documents in a particular class even though none of them contained any information which, if revealed, would injure the public interest, he should describe the nature of the class and the reason why the documents should not be disclosed.

5. That, although the further affidavit of the Minister was ambiguous and incomplete, on balance, the interests of justice did not require the production of the documents and that accordingly the Minister's objection to their production should be upheld and the appeal dismissed.

(In re Grosvenor Hotel, London (No. 2) [1964] 3 *W.L.R.*, pp. 992–1029.)

*There is as yet no corresponding rule in this country, as this principle has been incorporated for the first time in the English R.S.C. 1964.

FACSIMILE PROBATE ENGROSSMENTS

The Probate Office will accept engrossments of wills made by the Society's document copying service where the original is in typescript or legible manuscript. Points to be noted:

1. Copies will be made on paper supplied by the Society, dimensions 15"×10" or 13"×8" as appropriate.
2. The engrossment lodged in the Probate Office should be accompanied by an extra paper backing sheet which will be stapled into the grant.
3. The usual certificate that the engrossment is a true copy by the solicitor should either be appended or typed on a separate sheet.

OBITUARY

MRS. MAUREEN A. GALLEN, Solicitor, died on the 2nd December, 1964, at the Bon Secours Hospital, Dublin.

Mrs. Gallen served her apprenticeship with the late Mr. John Hawthorne, 15 Eustace Street, Dublin, was admitted in Easter Sittings, 1934, and practised at 15 Eustace Street, Dublin under the style of Messrs. John Hawthorne & Co.

REGISTRATION OF TITLE ACTS, 1891 AND 1942

Issue of new Land Certificate

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

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

Dated the 7th day of January, 1965.

D. L. MCALLISTER,
Registrar of Titles.

Central Office,
Land Registry,
Chancery Street,
DUBLIN.

SCHEDULE

1. Registered Limited Owner, Mary Anne Kiernan. Folio number 4017. County Longford. Lands of Monaduff in the Barony of Longford containing 32a. 2r. 10p.

2. Registered Owner, Richard Recks (Junior). Folio number 8397. County Kings. Lands of Erry

(Maryborough) in the Barony of Kilcoursey containing 10 perches.

3. Registered Owner, John Alexander Buchanan. Folio number 1183. County Donegal. Lands of Castletown and lands of Moness both situate in the Barony of Raphoe North containing 89a. 1r. 0p. and 18a. 1r. 10p. respectively.

4. Registered Owner, The Cloverhill Co-Operative Agricultural Society. Folio number 10790R. County Monaghan. Lands of Corragarry in the Barony of Dartree containing 19 perches.

5. Registered Owner, Mary Ellen Crean. Folio number 22688. County Roscommon. Lands of Carroenageeloge in the Barony of Ballymoe containing 38 acres 3 roods 16 perches.

6. Registered Owner, Gerald Villiers Stuart. Folio number 124R. County Waterford. Lands of Kilbree East in the Barony of Coshmore and Coshbride containing 13 acres 1 rood 4 perches.

THE REGISTRY

Register C

Lady Solicitor desires part time position, Dublin, preferably conveyancing. Twelve years general experience. Box No. B.277.

THE SOLICITORS' BENEVOLENT ASSOCIATION

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

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

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

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

Address:

SECRETARY,

SOLICITORS' BENEVOLENT ASSOCIATION,

18 HUME STREET,

DUBLIN 2.

Printed by Cahill & Co., Ltd., Parkgate Printing Works, Dublin.

Vol. 58
No. 8

FEBRUARY
1965

THE GAZETTE

of the

INCORPORATED LAW SOCIETY OF IRELAND

President
JOHN MAHER

Vice-Presidents
ROBERT McD. TAYLOR
EUNAN McCARRON

Secretary
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

CONTENTS OF THIS ISSUE

Notice 69
Legal Aid 69
Commissioners of Charitable Donations & Bequests 69
Succession Bill 69
Kerry Law Society 70
County Clare Law Association 70
Multiple Occupation 71
Crown Privilege 71
Taxation of Costs 72
Charging order for Costs 72
Counsels, Admission not binding 73
The Registry 73
Registration of Titles Act 74
Obituary 74

MEETINGS OF THE COUNCIL

JANUARY 14TH: The President in the chair, also present Messrs. Francis J. Lanigan, R. A. French, Peter D. M. Prentice, Thomas A. O'Reilly, James W. O'Donovan, Gerard M. Doyle, Peter E. O'Connell, Augustus Cullen, Eunan McCarron, Ralph J. Walker, Desmond Moran, Thomas V. O'Connor, Gerald J. Moloney, Patrick Noonan, George A. Nolan, Brendan A. McGrath, Reginald J. Nolan, Desmond J. Collins, George G. Overend, R. McD. Taylor, James R. C. Green and Daniel J. O'Connor.

The following was among the business transacted:

Medical reports

The Council considered a report from a committee on difficulties which have arisen in obtaining medical reports from doctors employed by health authorities. It was decided to take the matter up with the appropriate Government Department and with the County Managers' Association.

Public relations

The Council considered a memorandum submitted by the Secretary. It was decided to issue a circular to Bar Associations on matters raised in the

memorandum and that the matter should remain on the Council agenda for continuous consideration.

Road Traffic prosecutions, costs

The Council considered a report from a committee on a matter in which an insurance company refused to pay the minimum fees recommended by the Society for the defence of road traffic prosecutions and furnishing a report. It was decided to inform the local Bar Association that the solicitor for an insured person whose costs are paid wholly or in part is not obliged to furnish a report to the insurance company and that the proper course would be to stipulate for payment of the proper fee by the insurance company before agreeing to furnish a report.

Mining lease and way leave

A mining lease was granted for a period of three years at a fixed rent of £20 per annum plus a royalty of 1/- per to non the minerals taken. The lessors also granted to the same lessees a wayleave by licence for two years at a fixed yearly rent of £10. On a report from a committee the Council stated that the higher commission scale fee under Schedule I part 2 S.R.G.O. 1884–1960 is chargeable separately for (*a*) the mining lease for three years and (*b*) the wayleave granted by way of licence. Where a varying rent is payable the commission scale fee is chargeable on the largest amount of annual rent. If it is possible to ascertain the largest amount of royalty payable in one year it can be added to the fixed rent of £20 for the purpose of charging the commission scale fee on the lease.

Sale through the Court. Purchase of part by vendor

The vendor of property sold through the Court was the owner of two thirds of the property as tenant in common. The property was sold by public auction for £3,500 the vendor buying in the whole by public auction. The order directed payment of £3,500 into Court. The Council on a report from a committee stated that the commission scale fee was chargeable on the whole £3,500.

Costs of leases

By direction of the Council a letter was written to the Department of Justice suggesting that in any legislation introduced on the report of the Ground Rents Commission should contain provisions similar to the English Costs of Leases Act 1958 providing that in the absence of stipulation to the contrary a lessee should not be under any obligation to pay the lessor's costs of negotiating and granting the lease.

Correspondence without prejudice. Withdrawal of offer

Correspondence conducted without prejudice between the solicitor for the plaintiff and the solicitor for the defendant's insurers contained a number of offers and counter-offers. Eventually the solicitor for the insurance company wrote an open letter stating that the insurance company was not prepared to pay the figure mentioned in the last letter from the plaintiff's solicitors and asked for a consent to filing a late defence. This was followed by later correspondence in which the plaintiff's solicitor stated that his client was willing to accept the original sum offered for the defendants with costs, subject to the approval of the Judge. At that stage the defendant's solicitor stated that as advised in previous correspondence the original without prejudice offer had been withdrawn. The matter was submitted for arbitration by the Council. The Council on a report from a committee stated that once the provisional offer was refused the matter was closed and that there was no necessity for any further withdrawal by the defendant's solicitors.

WITNESSES' EXPENSES: OBLIGATION OF SOLICITOR

A solicitor does not incur personal legal liability for witnesses' (e.g., medical practitioners', architects', engineers', accountants' and photographers'), fees or expenses when contracting an agent for a disclosed principal unless he gives an express or implied personal undertaking. Nevertheless the Council consider in the interests of the reputation of the profession and in fairness to the witness a solicitor who engages such witnesses should in all cases endeavour to see that the proper amount of their fees and expenses are paid in full. The Council have received complaints from medical and other experts that this was not done and it has been stated that in a few cases the solicitor concerned did not even notify the medical practitioner of the result of the case. In the interests of good relations between solicitors and other professions the Council advise members that at the outset of the case the client should be informed of his personal liability for expert witnesses' fees and of the possibility that in the event of success the amount of the fees allowed in the party and party bill may be less than the full amount claimed by the witnesses, and that in such event the client may be personally liable for the balance. If the client will not discharge the amount, or authorise the solicitor to do so out of the damages or compensation the professional witness should be advised of the position immediately.

THE LAW DIRECTORY, 1965

NOW ON SALE

NEW FEATURES

- Alphabetical list of practising Solicitors (in addition to local list).
- Alphabetical and local list of Northern Ireland Solicitors.

LEGAL AID

The Criminal Justice (Legal Aid) Act, 1962 will come into operation on 1st April, 1965, Criminal Justice (Legal Aid) Regulations, 1962 (Commencement) Order, 1965 (S.I. No. 13 of 1965).

ROAD TRAFFIC GENERAL BYE-LAWS, 1964

The above which are referable to Dublin will be published by the Stationary Office and are available from the Government Publications Sales Office, G.P.O. Arcade, Dublin 1, price 2s. The Statutory Instrument S.I. No. 294 of 1964 deals with traffic signs and roadway markings, vehicular traffic, cycle traffic, animals on roads, duties of pedestrians and other general provisions.

COMMISSIONERS OF CHARITABLE DONATIONS & BEQUESTS BOARD MEETINGS

Hilary Term—1965

Tuesday	... ...	12th January, 1965
,,	... ...	26th ,, ,,
,,	... ...	9th February, 1965
,,	... ...	23rd ,, ,,
,,	... ...	9th March, 1965
,,	... ...	23rd ,, ,,
,,	... ...	6th April, 1965

J. S. MARTIN, Secretary.

SUCCESSION BILL, 1964

Undutiful Wills

The statement of the Council of the Society dated 19th October, 1964 outlined a number of practical objections to parts IX and X of the Bill. It was made clear that the list was not exhaustive and that it merely illustrated the fundamental objection to parts IX and X viz., that the attempt to legislate by fixed rules for human situations is bound in this case to create more injustice than it remedies. Hard cases make bad law.. The Council agree that the present unfettered power of testamentary disposition should be controlled but not by the method proposed in the Bill. In Northern Ireland, Britain, New Zealand and some provinces in Canada judicial discretion is conferred on the Court to make proper provision for disinherited relatives. This in the opinion of the Council is infinitely preferable and certainly far more suitable to Irish conditions, than the Continental authoritarian principle of legislative direction because the Court has the advantage, which the legislator cannot have, of knowing the facts and family circumstances in each individual case. Furthermore the mere existence of judicial power to alter the provisions in an undutiful will must restrain a testator from making an unfair will because he knows, or will be advised, that undutiful provisions can be set aside.

The chief line of argument in favour of the system of fixed shares and against the system of judicial discretion on the second stage of the Bill was that

(*a*) No system which depends on a Court determination to enforce a legal right can be satisfactory in this instance.

(*b*) Recourse to the Courts would involve raking up family differences.

(*c*) Different judges take different views of what constitutes a fair legal provision.

(*d*) The system of fixed shares follows the Scots law.

These are unproved assumptions. There is no evidence that the existence of judicial power to give relief against undutiful wills has caused excessive litigation elsewhere or that it would do so here. The possibility of litigation in a few cases is a far lesser evil than the injustice to many caused by inflexible rules. It is far better to entrust the duty of doing justice to the testators family to the judiciary who act impartially, sympathetically, and with insight as regards the facts and the needs and characters of the parties than to the State which cannot regard the individual case. Such defects as have become apparent in the working of the Inheritance (Family Provision) Act, 1938 in England and the Inheritance (Family Provision) Act, (Northern Ireland) Act, 1960 are due to the restriction in those Acts of the power of the Court to make provision for maintenance of the dependants. These defects can be remedied by enlarging and clarifying the judicial discretion to make full provision from the capital of the estate giving the Court power to make a fundamental alteration in the terms of the will where it is considered necessary as regards capital or income or both. For every suit which may be prevented by the present Bill if it becomes law there will be at least three by persons driven to the Court to seek relief from the hardship of its cast-iron provisions and litigation of a most undesirable kind will ensue particularly between separated spouses in the cases mentioned below. The argument that the system in the Bill is based on Scots law is unconvincing. The whole system of Scots law is based on the Roman civil law and it is not to be assumed that it should be introduced in Ireland. One important fact however has not been sufficiently stressed viz., that the legal right rules in Scotland do not apply to land. The Succession (Scotland) Act, 1964 came into operation on 10th September last. The legal rights apply to moveables and are inoperative if the testator converts his moveable property into land during his lifetime. The claim will also be defeated if the testator alienates his moveable estate during his lifetime. In this country wills are very largely concerned with land or livestock on land.

The amendments recently proposed meet some of the objections on points of detail advanced in the Society's memorandum of October 19th and by a number of correspondents but the fundamental objection to the Bill's underlying principle remains. The following list contains further examples of the injustice and inconvenience which will be caused by the a priori method of control proposed by the Bill, even as amended. It is no more exhaustive than the list of objections already published. The ill effects of the Bill will not be fully realised except by painful experience if it becomes law.

1. An unfaithful, improvident or otherwise undeserving husband or wife will have a legal right to share in the injured spouse's estate. The power to make a settlement by deed inter vivos will be useless requiring, as it does, the consent of the undeserving spouse.
2. The same position will exist in the case of husbands and wives who have executed separation deeds or who have separate estates of their own and who are amply provided for.
3. The only method of excluding an unfaithful or separated husband or wife will be by a Court order for a divorce a mensa et thoro. This remedy may not be available in every case and the erring spouse will then have an indefeasible claim to share in the estate of the injured partner. Where the remedy is available the Bill may cause an appreciable volume of matrimonial litigation and persons who would otherwise settle their differences peaceably will be driven into the Courts.
4. The principle of prescribing pre-determined fractions for the shares of a spouse and children must lead to fragmentation of estates and bad management. It takes no account of the individual capacity of a spouse and children, whether they are responsible, thrifty and intelligent or wayward, spendthrift and foolish. It treats the intelligent child who would benefit by higher education in the same way as the average or below average child on whom it might be a waste of money, and the child whose education is almost completed as one whose education has hardly begun. A careful testator would take all these matters into account and make provision for them. The statutory will proposed in the Bill takes no account of the personal considerations which are present to the minds of every testator and cannot do so.
5. The Bill will prevent one of the commonest will forms viz., an estate for life to a wife with remainder to the children as she may appoint. The advantages of this disposition are (*a*) family control, (*b*) the saving of death duties on wife's death, (*c*) conservation of the estate.
6. The Bill will prevent the owner of land or a business from leaving it to a dependable and competent son subject to the obligation to support the mother and infant children. This may be imperative where the widow is feeble or unbusinesslike as an inducement to the able son to remain in the farm or business by giving him the prospect of succession.
7. If the Bill becomes law the accepted method of disposing of property in favour of particular members of a family, (to meet the need of the individual case) will be by deed reserving a life interest to the owner with a power of revocation instead of by will. This is permissible under the Bill as amended and many testators will execute deeds instead of wills. Such deeds are however liable to stamp duty at 1% ad valorem. The State will thus collect duty from owners of property for the right of disposing of it as they think best—a tax on will-making in an inverted form.

The Bill proposes to change the present attestation requirements by providing that the witnesses need not sign together. This may facilitate deception and will cause confusion as to

(*a*) the date of execution by the testator
(*b*) the date of final completion by full attestation

and it is not clear how the effective date is to be established or whether the testator is to sign or acknowledge twice or sign once and subsequently acknowledge with separate attestation clauses. The existing method of attestation and the necessity for three signatures at the same time is a valuable safeguard against fraud and having stood the test of time should not lightly be abandoned.

The Minister's programme of law reform issued in 1962 referred to the provisions of various legal systems and stated that if the existing system is to be replaced it should only be replaced by one that will be cheap and effective as well as being in accordance with ordinary standards of justice and fair play for a person's dependants. In 1962 the Council made certain practical suggestions dealing with the present problem. It could not have been inferred from the programme of law reform that the Government intended to substitute a new Continental system of family law for the common law system which has been in operation in this country for generations. The Continental system is based on the Code Napoleon which prescribed general rules to regulate rights obligations and conduct in contrast to the common law system which builds up general rules from particular cases, leaves far more discretion to the judiciary and places far greater emphasis on the rights of the individual as opposed to the State. The profession are unaware of any demand or need for such a change. A basic decision of this kind ought not to be taken without full examination and discussion by practitioners and other experts in this social field and unless it commands a very large measure of support. The Bill has not that support.

The experience of solicitors is that the number of undutiful wills is very small in proportion to the number of wills made. It is not necessary to find a solution for this problem outside the spirit of the legal system in which we operate.

In their memorandum of October 19th the Council made practical suggestions which if accepted would achieve the object of giving protection to the small number of cases which require it without the injustice and inconvenience to many which will follow from the present Bill. The Bill contains a number of progressive provisions which will simplify and modernise our legal system and for which the Minister and his Department should be thanked but parts IX and X contain fundamental defects which cannot be cured by patchwork amendments and should be withdrawn.

1st January, 1965.

The Solicitors' Buildings,
Four Courts,
DUBLIN 7.

COUNTY KERRY LAW SOCIETY

At the Annual General Meeting of the Kerry Law Society held at The Ashe Memorial Hall, Tralee on Saturday 12th December, 1964 the following Officers and Committee were elected for the forthcoming year :

President : G. Bailey ; *Vice-President :* D. E. Browne ; *Chairman :* C. J. Downing ; *Secretary :* D. Kelliher ; *Committee :* F. Baily, D. E. Browne, D. J. Courtney, W. A. Crowley, H. J. Downing, C. J. Downing, J. J. Grace, D. M. King, M. L. O'Connell, J. J. O'Donnell, J. S. O'Reilly, D. Twomey.

THE COUNTY CLARE LAW ASSOCIATION

At the Annual General Meeting held in Ennis on 16th December, 1964 the following officers were elected :—

President : Patrick J. Chambers, Ennistymon ; *Vice-President :* Michael J. Walshe, Ennis ; *Honorary*

Secretary and Treasurer: Michael P. Houlihan, Bindon St., Ennis; *Committee:* Bryan McMahon, Ennis; Daniel O. Healy, Scariff; Thomas A. Lynch, Ennis; T. F. O'Reilly, Ennis; Michael J. McMahon, Kilrush.

BOOK REVIEWS

The Law Officers of the Crown by J. Lloyd Edwards, London, Sweet & Maxwell, 1964, 70/-.

We are already indebted to Dr. Lloyd Edwards, former Lecturer in Law in Queen's University, Belfast, now Director of the Centre of Enminology in Toronto, for many learned articles in the Criminal Law Review, and for a major work on "Mens Rea in Statutory Offences" (1955). In presenting his learned work on "The Law Officers of the Crown", which he modestly calls "A study of the offices of the Attorney General and Solicitor-General of England, with an account of the office of the Director of Public Prosecutions of England", Dr. Edward's considerable reputation as an eminent legal academic writer has been substantially enhanced. Not only has he written a most readable and fascinating book—he tells us for instance that Sir Patrick Hastings considered his short tenure as Attorney-General as his idea of hell—but he has managed to weave his difficult material into a continuous narrative supplemented by interesting foot notes. Some of the chapter headings—The hybrid character of the Law Officers—The organisation and Functions of this Department—Membership of the Cabinet—The Independence of the Attorney-General—The Attorney-General's Fiat—Claims to judicial preferment will doubtless encourage members to read this absorbing volume. It is to be hoped that Dr. Edward's proposed study of the position of the Attorney-General in Ireland and of the Lord Advocate in Scotland will be published soon.

CASES OF THE MONTH

Multiple Occupation

The Divisional Court of the Queen's Bench Division (The Lord Chief Justice, Mr. Justice Ashworth and Mr. Justice Brabin).

In a reserved judgment, dismissed the appeal by way of case stated by the prosecutor, Ealing Borough Council, against the decision of the Middlesex Justices, sitting at Ealing, on May 13th, 1964 dismissing the prosecutors' informations that the defendants, in contravention of an Enforcement Notice under the Town and Country Planning Act, 1947, Section 23, had used and permitted to use 20 Courtfield Gardens, Ealing, W.13, as two or more separate dwellings. Delivering the judgment of the Court Mr. Justice Ashworth stated that the justices also found that the defendants looked after a Mrs. Betts, cooked all her meals and allowed her to live in. There was nothing in the case stated to show what arrangements were made regarding toilet facilities. In fact the crucial question before the justices was whether the property was being used as two or more separate dwellinghouses. Counsel for the prosecutor submitted that the issue was—were the people living separately or are they living together? He went on to submit that if the people were found to be living separately, the dwellings must be separate. His Lordship said that in his judgment a house might well be occupied by two or more persons, who are living separately, without that house being thereby used as separate dwellings. In other words, persons might live separately under one roof without occupying separate dwellings.

The important words in subsection (3) of Section 12 of the Town and Country Planning Act, 1962 were "separate dwellinghouses". Multiple occupation, as it is sometimes called, was not enough by itself, and to bring the subsection into play the dwellinghouses formed out of the building previously used as a single dwellinghouse must in truth be separate. The question was one of fact and degree. The existence or absence of any form of physical reconstruction was a relevant factor; another was the extent to which the alleged separate dwellings could be regarded as separate in the sense of being self-contained and independent of other parts of the same property.

(Ealing Borough Council *v.* Ryan and Another—(1965) 1 All. R. 137.)

Crown Privilege

Court of Appeal (Denning M. R. Harman and Salmon L. J.J.) dismissed an interlocutory appeal by five local authorities in the Black Country. From the decision of Mr. Justice Winn in chambers on July 9th, 1964, affirming Master Jacob, and upholding a claim to Crown privilege made by the Minister of Housing and Local Government, to withhold certain documents relevant to a pending action by the local authorities against the Ministry, on the ground stated in the Minister's affidavit that "each such document belongs to a class which it is necessary for the proper functioning of the public service to withhold from production." Referring to the Local Government Commission set up by the Parliament in 1958 and a local inquiry held under Section 23 (2) of the Local Government Act, 1958, the question arose in the action before their Lordships as to whether the local inquiry was valid or not. The Local Authority said it was invalid for two main reasons:—(1) failure of the inspectors to make recommendations to the Minister; and (2) the

inspector's unwillingness to go into the alternative proposals made by the objectors. Both those points had been taken before the inspectors and reported to the Minister.

The question before the Court arose on discovery as to what documents the Minister should disclose to the plaintiffs which were relevant to the action. When the Minister made a list of the relevant documents he said that he objected to produce in particular three kinds on the grounds set out in his affidavit that it would be injurious to the public interest to produce them, because " each such document belongs to a class which it is necessary for the proper functioning of the public service to withhold from production ". The documents were :—(1) departmental briefs for the guidance of inspectors appointed by the Minister to hold local inquiries under section 23 ; (2) a departmental brief for the guidance of the inspectors appointed in relation to the Black Country ; and (3) correspondence between the Ministry officials and the inspectors in relation to the Black Country inquiry.

Denning M. R. Referred to his judgment in the Grosvenor Hotel case and stated that he stood by all that he had said in that case and that it was quite apparent that the Government Department attached an overwhelming importance to imposing secrecy for their own documents. His Lordship could not accept that contention. In the case where a Minister claimed privilege for a class of documents, he must justify his objection with reasons. He should describe the nature of the class and the reason why the document should not be disclosed, so that the Court itself could see whether the claim was well taken or not. In this case the affidavit in common form was to his Lordship's mind insufficient in itself to carry the protection which the Minister claimed. If a case should come before the Court where the interests of justice did require it and the claim for privilege was not well taken, the Court would not hesitate to order disclosure. This, however, was not such a case. Harman L. J. concurring, said that the right of the Crown to withhold documents from disclosure was a relic from days not far distant when the Crown never had to make any discovery at all ; and not unnaturally they now fought trench by trench in seeking to preserve the system of immunity which they had for so long enjoyed. Salmon, L. J. in concurring said that the Court had been told, and, of course, accepted, that all Ministers always " anxiously considered " the documents when any question of a claim for privilege arose. However, in the present case His Lordship agreed that in view of the nature of the inquiry under the Act of 1958 the Court should not order these documents to be disclosed.

Wednesbury Borough Council & Others *v.* Ministry of Housing and Local Government. (1965) 1 All. R. 186.)

Taxation of costs

The Plaintiff was ordered to pay costs on a party and party basis. The action raised difficult points of law, and the sum at stake was £16,000. Both sides engaged leading counsel. The taxing master allowed the corporation's fees for leading counsel in the Chancery Division and the Court of Appeal. The plaintiff's fees for leading counsel were somewhat less. On taxation in the House of Lords the corporation was allowed less fees for leading counsel. The plaintiff lodged objections to the amounts allowed by the taxing master for fees paid by the corporation in respect of the proceedings in the Chancery Division and the Court of Appeal. The master rejected the objections. The plaintiff applied under the Supreme Court Costs Rules, 1959, r. 35, for a review of the taxing master's decision.

Pennycuick, J., said that in a taxation of costs on a party and party basis under r. 28 (2) of the Supreme Court Costs Rules, 1959, there was no precise standard of measurements of the necessary and proper sum to be allowed for counsel's fees which was applicable to all cases. The taxing master must determine what he considered to be the proper figure, employing his knowledge and experience, and on a review the judge must apply his own knowledge and experience. However, in the present case, the measure applicable was the estimated fee of a hypothetical counsel who was capable of conducting the case effectively but who was unable or unwilling to insist on the particularly high fee sometimes demanded by counsel of pre-eminent reputation. In all the circumstances this case was one which could only have been effectively conducted by leading counsel of high calibre, and the fee paid to the leading counsel was not excessive to the requirements of the particular action and should be allowed. In determining the correct figure the fact that opposing counsel was content to accept a lesser fee and the fact that on taxation in the House of Lords a lower figure was allowed were factors of weight but were not conclusive. It was, however, clear that the corporation could not throw upon the plaintiff any costs incurred for a purpose other than the defence of the particular action. Application dismissed.

(Simpsons Motor Sales (London) Ltd. *v.* Hendon Corporation (No. 2) (1964) 3 All R. 833.)

Charging Order for untaxed costs. Set off.

The wife obtained a divorce from the husband with an order for costs. While the suit was pending,

the husband lent £1,000 to the wife which was acknowledged by the wife's solicitors. The proceedings terminated in March, 1963, and there was then correspondence between the solicitors acting for the parties concerning the costs, with a view to agreeing the amount so as to avoid taxation. Agreement was reached that the husband pay to the wife £1,500 to cover the costs in the divorce suit and another matter which had been discontinued. After that agreement had been reached, the husband's solicitors requested that the £1,000 owed by the wife be dealt with at the same time. The wife's solicitors replied that that was a separate matter with which they were not concerned. The husband's solicitors then sent a cheque for £500 on account of the agreed costs and stated that the balance would be paid when the £1,000 was collected. Davies, L.JJ. said that it was well established that costs ordered to be paid were property recovered in an action, and charging orders might be made upon them: It was submitted that under s. 72 of the Solicitors Act, 1957, the court had no power to make any directions except in respect of taxed costs. Against that it was argued that the court had an inherent jurisdiction and power at common law not limited to taxed costs, and that a solicitor was prima facie entitled to a charging order for the protection of his proper costs. It was unnecessary to decide those points, as any decision to make a charging order must be in the discretion of the court, and in the present case, as the parties were both wealthy persons, a charging order was not necessary. It would be unjust for the court to order the husband to pay the £1,000 or that the solicitors be given a charge on the £1,000.

(Saunders *v.* Saunders (1965) 2 W.L.R. 33.)

Counsel's admission not binding

In the latest edition of Halsbury's Laws of England (vol. 3 at page 62) on barristers it is said that the statements of counsel, if made at the trial of an action or in the course of any interlocutory proceedings in the presence of the client or his solicitors, or someone authorised to represent them, and not repudiated, "bind the client and may be used as evidence against him.". This statement was considered in a recent case before the English Court of Appeal which was of the opinion that it is too wide. The Court held on the particular facts that where an admission had been made by counsel before a District Registrar in the presence of a solicitor's managing clerk, but in the absence of the client, the client was not bound by the admission. The defendant had put certain property up for sale by public auction but changed his mind before the auction and made a communication to that effect which did not get through to the auctioneers who sold the property to the highest bidder. The defendant repudiated the sale and went to other solicitors and the buyers brought an action for specific performance. The contract had been signed by the solicitor acting for the defendant at the time of the purported sale and during the hearing before the District Registrar counsel admitted that the solicitor had authority to sign it. Eventually the matter came before Mr. Justice Pennycuick and affidavits had been filed denying the solicitor's authority to sign. It is established law that a solicitor, unlike an auctioneer, has no ostensible or apparent authority to sign a contract of sale on behalf of a client. Pennycuick, J. decided against the defendant because he held that he was bound by counsel's admission before the District Registrar. On an appeal to the Court of Appeal it was pointed out that the counsel who appeared on the summons before the District Registrar was not the counsel who had been in conference with the defendant and the managing clerk who had been present when the admission was made by counsel was not the solicitor who had been present at a material conference. The Court of Appeal held that an admission made by counsel in the course of proceedings could be withdrawn unless there was something in the nature of a real estoppel in the same manner as an admission made by a party in person if the statement had not been acted on by the other side to their detriment. There was no reason why a man should be any worse off in this respect if instead of making the admission himself it was made on his behalf by counsel. In the event the Court allowed the appeal and gave leave to defend the action.

(H. Clarke (Doncaster) Ltd. *v.* Wilkinson. *The Times*, 27th January, 1965.)

THE REGISTRY

Register A

FOR SALE: Established Solicitor's Practice in progressive Western Town. Apply Box No. A.225.

LADY SOLICITOR required as Assistant for Cork City Office. Reply to Box No. A. 226.

WANTED, Qualified or Unqualified Assistant for busy Solicitor's office in Provincial Town. Particulars to Box No. A. 227.

Register C.

ANNE G. NICHOLS, deceased, 40 Merlyn Park, Ballsbridge, Dublin. Any person having a Will of the above deceased, please communicate with Moore, Keily & Lloyd, 31 Molesworth Street, Dublin 2.

WILL any Solicitor or other person having knowledge of a Will of Susan Elizabeth Keegan, late of 2 Shanganagh Terrace, Killiney who died on the 31st day of January, 1965, kindly communicate with S. G. Rutherford & Co., Solicitors, 31 Lower Leeson Street, Dublin 2.

REGISTRATION OF TITLE ACTS, 1891 AND 1942

ISSUE OF NEW LAND CERTIFICATE

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

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

Dated the 26th day of February, 1965.

D. L. McALLISTER,
Registrar of Titles.

Central Office,
Land Registry,
Chancery Street,
DUBLIN.

SCHEDULE.

1. Registered Owner Patrick Allen. Folio number 907 (Revised). County Wicklow. Lands of Tombreen in the Barony of Shillelagh containing 34a. 3r. 37p.

2. Registered Owner Mary Margaret McMorrow. Folio number 6261. County Mayo. Lands of Kilkelly in the Barony of Costello containing 3½ perches.

3. Registered Owner Francis White. Folio number 15450 County Tipperary. Lands of Ballymacue in the Barony of Ormond Upper containing 8a. or. 20p.

4. Registered Ltd. Owner Patrick Kelly. Folio number 5364. County Kildare. Lands of Mullacash South in the Barony of Naas South containing 11a. 2r. 30p.

5. Registered Owner Gertrude Mary Owens. Folio number 22367. County Mayo. Lands of Thornhill in the Barony of Murrisk containing 1r. 8p.

6. Registered Owner Michael Cunnane. Folio number 34500. County Galway. Lands of Rinmore in the Barony of Galway containing 0a. 1r. 9p.

OBITUARY

MR. JAMES REILLY, Solicitor died on the 29th December, 1964 at Belmont Hospital, Waterford.

Mr. Reilly served his apprenticeship with the late Messrs. Thomas O'K. White and William O'K. White, Edenderry, Co. Offaly, was admitted in Trinity Sittings 1918 and practised as senior partner in the firm of Messrs James Reilly & Son, Clonmel, Co. Tipperary up to his retirement in 1962.

MR. CHARLES MAGWOOD, Solicitor died on the 2nd January, 1965 at his residence, 5 Pembroke Park, Dublin.

Mr. Magwood served his apprenticeship with the late Mr. William G. Bradley 11 Lr. Ormond Quay, Dublin, was admitted in Trinity Sittings, 1917 and practised as senior partner in the firm of Messrs. Charles Magwood & Co., 8/9 Anglesea St., Dublin.

MR. DESMOND EARLY, Solicitor died on the 4th January, 1965 at his residence, 3 Athy Road, Carlow.

Mr. Early served his apprenticeship with the late Mr. Edward B. Williams, Carlow, was admitted in Michaelmas Sittings, 1938 and practised at 13 Dublin Street, Carlow under the style of Messrs. P. J. Byrne & Co.

MR. JOHN M. O'FARRELL, Solicitor died on the 8th January, 1965 at St. Vincent's Private Nursing Home, Dublin.

Mr. O'Farrell served his apprenticeship with Mr. Joseph Barrett solicitor, 15 Eustace Street, Dublin, was admitted in Trinity Sittings, 1944 and practised at 10 Harcourt Street, Dublin.

MR. PHILIP N. SMITH died on the 12th January, 1965 at St. Vincent's Private Nursing Home, Dublin.

Mr. Smith was admitted in Trinity Sittings, 1923 and practised at Cavan, under the style of Louis C. P. Smith & Co.

MR. JAMES F. RAYMOND, Solicitor died at Tralee Nursing Home, Tralee, Co. Kerry.

Mr. Raymond served his apprenticeship with the late Mr. Henry J. Marshall, Listowel, Co. Kerry, was admitted in Hilary Sittings, 1912 and practised at 3 William Street, Listowel, Co. Kerry as senior partner in the firm of Messrs. Matthew J. Byrne & Co.

MR. ALBERT E. ASHTON, Solicitor died on the 6th February, 1965 at a Dublin Hospital.

Mr. Ashton served his apprenticeship with the late Mr. William J. M. Coulter, 30 Upr. Merrion Street, Dublin was admitted in Michaelmas Sittings, 1939 and practised under the style of Messrs. A. E. Ashton & Co., 6 Westmoreland Street, Dublin.

MR. PATRICK J. DONNELLY, Solicitor died on the 4th February, 1965 at his residence, 67 Palmerston Road, Dublin.

Mr. Donnelly served his apprenticeship with the late Mr. Patrick J. Neilan, Roscommon was admitted in Michaelmas Sittings, 1929 and practised at Westport, Co. Mayo up to 1958 when he commenced practice at 67 Palmerston Road, Dublin.

Printed by Cahill & Co., Ltd., Parkgate Printing Works, Dublin.

Vol. 58
No. 9

MARCH
1965

THE GAZETTE

of the

INCORPORATED LAW SOCIETY OF IRELAND

President
JOHN MAHER

Vice-Presidents
ROBERT McD. TAYLOR
EUNAN McCARRON

Secretary
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

CONTENTS OF THIS ISSUE

	Page
Meetings of the Council	75
Legal Aid in Criminal Matters	75, 76
Publican's Licence	75
Registered Trade Mark agents	76
Solicitors. Conflicting claims to money	76
Proceedings under the Solicitor's Acts	76
Rules of the Superior Courts	76
Road Traffic Act, 1961	76
Statutes of the Oireachtas, 1964	77
Index of Statutory Instruments	77
Solicitors' Benevolent Association	79
Solicitors and Auctioneers	80
UNESCO	80
Knock for Knock Agreement	80
Onus of Proof in dangerous driving charge	80
Action for Loss of Services	80
Authority to institute proceedings	81
"The law's delays"	81
Obituary	82
The Registry	82

MEETINGS OF THE COUNCIL

FEBRUARY 11TH: The President in the chair. Also present Messrs. Desmond J. Collins, Reginald J. Nolan, John J. Nash, Desmond Moran, James R. C. Green, Peter D. M. Prentice, James O'Donovan, R. A. French, Gerald Y. Goldberg, George A. Nolan, Niall S. Gaffney, George G. Overend, John Carrigan, Francis J. Lanigan, Robert McD. Taylor, Joseph P. Black, Patrick O'Donnell, John C. O'Carroll, John F. Foley, Gerald J. Moloney, John B. Jermyn, Patrick Noonan, Peter E. O'Connell, W. A. Osborne, W. J. Comerford, Richard Knight, Thomas H. Bacon, D. J. O'Donnor, Eunan McCarron, T. V. O'Connor, Thomas A. O'Reilly and Brendan A. McGrath.

The following was among the business transacted:

Legal Aid

The Council were informed that the Legal Aid (Criminal Justice) Scheme will come into operation on April 1st. A statement on the subject is printed below.

Publicans' Licence. Interim transfer to solicitor

The Council granted permission to a solicitor to apply for an interim transfer of a licence of premises

forming part of an estate in which the solicitor held a power of attorney for the purpose of extracting a grant of administration *de bonis non*. If the premises are not sold before the next annual licensing session the solicitor is to apply for extension of permission.

Registered trade mark agents

The Council on a report from a committee stated that there is no objection to a solicitor's carrying on business as a registered trade mark agent provided that different professional stationery is used for his practice as solicitor and his practice as trade mark agent, neither making any reference to the other.

Solicitor. Conflicting claims to money

A member acted for a lady who recovered damages for negligence. On the instructions of the client member wrote to the solicitor for a third party stating that he had received instructions to pay to the third party any money recovered on foot of the client's claim for personal injuries. On the issue of the cheque for compensation by the insurance company the client's husband persuaded her not to sign any form of receipt and discharge, apparently with a view to avoiding her promise through member to the third party. Member thereupon returned the cheque to the insurance company. Member gave no undertaking and enquired as to his professional obligation. He had since received an application from another solicitor to hand over the papers. On a report from a committee the Council stated that in the absence of any undertaking member was under no obligation arising from his letter to the solicitor for the third party and that he should on receipt of a written authority from the client hand over the papers on payment of his costs.

LEGAL AID IN CRIMINAL MATTERS

The Criminal Justice Legal Aid scheme will come into operation on April 1st. Applications for legal aid will be made to the District Justices. The applicant will be entitled to legal aid in the District Court if the Justice is of the opinion that his means are insufficient to enable him to obtain legal aid from his own resources and that it is essential in the interests of justice that he should have legal aid by reason of the gravity of the charge or of exceptional circumstances. A person charged with murder will be entitled to legal aid as of right on proof of insufficient means. Legal aid will consist of the retainer of a solicitor and (where the accused is charged with murder and the Court thinks fit) counsel. Subject to the conditions already mentioned, legal aid is provided for cases tried summarily and for the preliminary investigation and trial of indictable offences. An application for legal aid on the trial of indictable offences in the Circuit Court or Central Criminal Court may be made either to the District Justice on behalf of the accused on being returned for trial or to the Judge of the Court to which the accused is returned. Provision is also made for legal aid on appeals to the Court of Criminal Appeal or the Supreme Court and for cases stated.

During the discussions with the Council on the proposed regulations the Minister for Justice informed the Council that the scheme is experimental and that the scales of costs and other provisions of the scheme would be reviewed within the next two years. Although solicitors who undertake the work of defending persons charged with serious criminal offences involving detailed and onerous preparation will be doing so at considerable personal sacrifice, the Council request members to co-operate in the working of the scheme and to endeavour to make it a success in the public interest.

The Criminal Justice (Legal Aid) Regulations, 1965 (S.I. No. 12 of 1965) may be purchased at the Government Publications Sale Office, G.P.O. Arcade, Dublin 1. Price 2/–, plus postage.

PROCEEDINGS UNDER THE SOLICITORS ACTS

By order of the President of the High Court dated 12th February, 1965, Mr. Richard J. Elgee, solicitor, who practised under the style of Little and Elgee at George Street, Wexford, was suspended until further order.

RULES OF THE SUPERIOR COURTS

These Rules prescribe Court procedures relating to the registration of Business Names Act, 1963, probate matters, shorthand reporting and revenue, in amendment of the Rules of the Superior Courts. Instrument No. 29 of 1965 may be purchased directly from the Government Publications Sale Office, G.P.O. Arcade, Dublin 1. Price 9d.

ROAD TRAFFIC ACT, 1961

The Department of Local Government issued in January, 1965, a paper relating to the extent of which the Road Traffic Act of 1961 is in force, particulars of the orders, regulations, bye-laws and rules made thereunder and particulars of orders, etc., made under the Road Traffic Act, 1933 which have not been revoked. The statement covers the position as at 1st January, 1965 and supersedes all previous statements issued by the Department on the subject.

STATUTES OF THE OIREACHTAS, 1964

(1) Public Statutes

No.	Name of Act	Signed by President
1.	Firearms Act, 1964	28th January, 1964.
2.	Adoption Act, 1964	5th February, 1964.
3.	Central Bank Act, 1964	3rd March, 1964.
4.	Broadcasting Authority (Amendment) Act, 1964	3rd March, 1964.
5.	Criminal Justice Act, 1964	25th March, 1964.
6.	Central Fund Act, 1964	25th March, 1964.
7.	Guardianship of Infants Act, 1964	25th March, 1964.
8.	Health (Homes for Incapacitated Persons) Act, 1964	10th May, 1964.
9.	Courts (Supplemental Provisions Amendment) Act, 1964	17th June, 1964.
10.	Pensions (Increase) Act, 1964	17th June, 1964.
11.	Courts Act, 1964	24th June, 1964.
12.	Patents Act, 1964	24th June, 1964.
13.	Land Bond Act, 1964	30th June, 1964.
14.	Oireachtas (Allowances to Members) and Ministerial and Parliamentary Offices (Amendment) Act, 1964	30th June, 1964.
15.	Finance Act, 1964	2nd July, 1964.
16.	Registration of Title Act, 1964	4th July, 1964.
17.	Civil Liability (Amendment) Act, 1964	7th July, 1964.
18.	Insurance Act, 1964	7th July, 1964.
19.	Agriculture (Amendment) Act, 1964	7th July, 1964.
20.	Control of Imports (Amendment) Act, 1964	7th July, 1964.
21.	Appropriation Act, 1964	14th July, 1964.
22.	Controller and Auditor General (Amendment) Act, 1964	14th July, 1964.
23.	Fisheries (Amendment) Act, 1964	14th July, 1964.
24.	MacSwiney (Pension) (Increase) Act, 1964	15th July, 1964.
25.	Military Service Pensions (Increase) Act, 1964	15th July, 1964
26.	Connaught Rangers (Pensions) Act, 1964	15th July, 1964.
27.	Army Pensions (Increase) Act, 1964	15th July, 1964.
28.	Social Welfare (Miscellaneous Provisions) Act, 1964	15th July, 1964.
29.	Local Government (Sanitary Services) Act, 1964	29th July, 1964.
30.	Transport Act, 1964	29th July, 1964.
31.	Shannon Free Airport Development Company Limited (Amendment) Act, 1964	3rd August, 1964.
32.	Maritime Jurisdiction (Amendment) Act, 1964	24th November, 1964.
33.	Local Government (Repeal of Enactments) Act, 1964	2nd December, 1964.
34.	Housing (Gaeltacht) (Amendment) Act, 1964	8th December, 1964.
35.	Rates on Agricultural Land (Relief) Act, 1964	9th December, 1964.
36.	State Guarantees (Amendment) Act, 1964	22nd December, 1964.
37.	Industrial Grants (Amendment) Act, 1964	22nd December, 1964.
38.	Local Loans Fund (Amendment) Act, 1964	22nd December, 1964
39.	Imposition of Duties (Confirmation of Orders) Act, 1964	22nd December, 1964.
40.	Control of Manufactures Act, 1964	22nd December, 1964.

(2) Private Acts of 1964

No.	Name of Act	Signed by President
1.	Waterford Harbour Commissioners (Acquisition of Property) Act, 1964	10th May, 1964.

INDEX OF STATUTORY INSTRUMENTS

Published since September 1964

AGRICULTURE, LANDS AND FISHERIES
Subject Matter and Reference Numbers

Committees of Agriculture (Salaries of Officers) Regulations, 1964—239/1964.
Bovine Tuberculosis (Clearance Area) (Special Controls) Order, 1965 regulating the movement of cattle in Counties Cork, Kerry, Kilkenny, Limerick and Waterford—26/1965.
Pigs and Bacon Commission Insurance Allowance (No. 2) Order, 1964—240/1964.

CONTROL OF IMPORTS AND EXPORTS
Subject Matter and Reference Numbers

Assembled Motor Car Chassis Bodies—Import limited to 50 articles each to 31st December, 1965—258/1964.
Boots and Shoes—Imports limited to 30th June, 1965—287/1964.
Electric Filament 'Lamps'—Control of Imports limited to 121,000 articles to 30th November, 1965—251/1964.
Hats, Caps, Hoods and Shapes—Imports limited to 31st December, 1965—288/1964.
Mechanically Propelled Vehicles (assembled)—Imports limited to 26 to 31st December, 1965—272/1964.
Pigeons (Live)—Control of Exports removed after 1st October, 1964—232/1964.
Pneumatic Tyres for Motor Vehicles—Import limited to 73,000 articles to 31st January, 1966—301/1964.
Pneumatic Tyres for Bicycles—Import limited to 200 articles to 31st January, 1966—302/1964.
Silk Hose—Import limited to 690,000 pairs to 28th February, 1966—14/1965.
Sparking Plugs—Imports limited to 9,075 articles to 31st October, 1964—225/1964.
Rubber Boots and Shoes—Imports limited to 75,000 pairs to 30th June, 1965—289/1964.
Sugar Goods—Control of Exports removed from 19th October, 1964—249/1964.
Sugar Syrup—Control of Exports removed from 19th October, 1964—250/1964.
Woven Cotton Piece Goods—Imports controlled to 30th November, 1965—258/1964.
Woven Fabrics of Wool or Worsted—Imports controlled to 28th February, 1965—184/1964.
—Imports controlled to 31st August, 1965—15/1965.

COUNTY AND TOWN MANAGEMENT
Subject Matter and Reference Numbers

Housing (Gaeltacht) General Regulations 1965–41/1965.
Local offices in Gaeltacht—Appointees must have competent knowledge of Irish in 3 years—20/1965.

Local officers (Irish Language) (Amendment) Regulations, 1965—21/1965.
Local Government (Planning and Development) Act, 1965 (Permission for unauthorised structures) Regulations, 1964—221/1964.
Local Government (Planning and Development) Act, 1963 (Compensation) Regulations, 1964—217/1964.
Local Government (Planning and Development) Act, 1963 (Licensing) Regulations, 1964—218/1964.
Local Government (Planning and Development) Act, 1963 (Miscellaneous Development Plan) Regulations, 1964—219/1964.
Local Government (Planning and Development) Act, 1963 (Exempted Development) Regulations, 1964—236/1964.

CUSTOMS AND EXCISE—EMERGENCY AND OTHER DUTIES
SUBJECT MATTER AND REFERENCE NUMBERS

Copyright (Customs) Regulations, 1964 in force from 1st October, 1964—231/1964.
Iron and Steel Bars, Rods, Sections and Sheets—Customs Duty suspended to 30th June, 1965—296/1964.
Remission of Duties—Transfer of certain functions of Revenue Commissioners—282/1964.

EMPLOYMENT REGULATIONS AND CONDITIONS OF EMPLOYMENT
SUBJECT MATTER AND REFERENCE NUMBERS

Calendering of Printed Sheets for Colour View Cards—Women may be employed between 7.30 a.m. and 11 p.m.—283/1964.
Chocolate and Sweets Industry—Women may be employed in packing between 8 a.m. and 11.30 p.m.—263/1964.
Ladies' Clothing and Household Piece Goods—Women and young persons may work in shifts between 7 a.m. and 11 p.m.—261/1964.
Pharmaceutical Industry—Women and young persons may work in shifts between 7 a.m. and 11 p.m.—262/1964.
Provender Milling Industry—Reduced working hours in force from 18th January, 1965—2/1965.
Tobacco Joint Labour Committee—New Minimum Rates of Pay and Conditions of Employment fixed after 9th November, 1964—255/1964.
Tufted Carpeting—Women may work between 7 a.m. and 10 p.m.—25/1965.

FINANCE AND CENTRAL GOVERNMENT
SUBJECT MATTER AND REFERENCE NUMBERS

Exchange Control Regulations, 1964 (S.I. No. 215 of 1964) extended to Customs-Free Airport, Shannon—245/1964.
Exchange Control—Scheduled Territories to include Malta and Zambia after 30th November, 1964—266/1964.
Exchange Control—Substitution of "United Republic of Tanganyika and Zambia" for "Tanganyika", and of "Malasi" for "Nyasaland"—215/1964.
Land Bonds—6% Interest payable on Bonds issued in 1965—7/1965.
Land Bond Order, 1964, creating additional £400,000 of 6% Land Bonds—253/1964.
Oireachtas (Allowances to Members) (Travelling Facilities) Regulations, 1964—281/1964.
Oireachtas (Allowances to Members) and Ministerial and Parliamentary Offices (Amendment) Act, 1964—Section 5 in force from 5th December, 1964—280/1964.
Prize Bonds (Amendment) Regulations, 1964—265/1964.

HARBOURS AND HYDRO-ELECTRIC WORKS
SUBJECT MATTER AND REFERENCE NUMBERS

Cork Port and Harbour—Rates on Refractory Materials increased after 19th October, 1964—242/1964.

HEALTH
SUBJECT MATTER AND REFERENCE NUMBERS

Dublin Dental Hospital (Establishment) Order, 1963 (Amendment) Order, 1964—260/1964.
Dublin Health Authority—Boundaries of Registrar's Districts Finglas No. 1, Coolock No. 2, Howth No. 1 and Howth No. 2 altered on 15th February, 1965—23/1965.
Enniscorthy North and Enniscorthy South (Co. Wexford) Dispensary Districts united into one Dispensary District after 4th January, 1965—293/1964.
Fluoridation of Water Supplies (Athy, Co. Kildare) Regulations, 1964—273/1964.
Fluoridation of Water Supplies (Portlaoise, Portarlington, Mountmellick, Abbeyleix and Mountrath, Co. Leix) Regulations, 1964—274/1964.
Fluoridation of Water Supplies (Drogheda, Dundalk and County Louth) Regulations, 1964—275/1964.
Fluoridation of Water Supplies (Athlone, Mullingar, Moate, Kilbeggan and Castlepollard, Co. Westmeath) Regulations, 1964—278/1964.
Fluoridation of Water Supplies (Tullamore, Birr and County Offaly) Regulations, 1964—776/1964.
Fluoridation of Water Supplies (Clonmel, Tipperary, Carrick-on-Suir, and County Tipperary South Riding) Regulations, 1964—277/1964.
Limerick Health Authority—Changes of Registrar's District in Rathkeale after 21st December, 1964—286/1964.
Local Government (Sanitary Services) Act, 1964, Regulations, 1964—222/1964.
Registration of Births, Deaths and Marriages—Alteration (and Increase) of Fees and Allowances after 22nd February, 1965—24/1965.

JUSTICE, EXTERNAL AFFAIRS AND DEFENCE
SUBJECT MATTER AND REFERENCE NUMBERS

Adoption Rules, 1965—19/1965.
Coroners Act, 1962 (Fees and Expenses) Regulations, 1965 in force after 28th February, 1965—32/1965.
Criminal Justice (Legal Aid) Act, 1962 in force from 1st April, 1965—13/1965.
Criminal Justice (Legal Aid) Regulations, 1965—12/1965.
Defence Forces (Pensions) (Amendment) Scheme, 1964—247/1964.
District Court (Costs) Rules, 1964 in force from 1st January, 1965—279/1964.
Department of Justice—Ministerial Functions delegated to Brian Lenihan, Parliamentary Secretary—248/1964.
Garda Síochana (Representative Bodies) Regulations 1962 (Amendment) Regulations 1965—42/1965.
Garda Síochána (Retirement) Regulations, 1965—34/1965.
Land Purchase Acts Rules, 1964—230/1964.
Waterford Children's Court to sit on fourth Tuesday of month—237/1964.

MISCELLANEOUS
SUBJECT MATTER AND REFERENCE NUMBERS

Salmon Export Levy may be paid by cheque or Postage stamps—292/1964.
Summer Time 1965 in force from 20th March to 23rd October, 1965—257/1964.

Telephone (Amendment) Regulations, 1965—33/1965.
Vocational Education Committees—Allowances to Members increased—226/1964.
Vocational Education—Conditions regulating Contracts after 2nd November, 1964—234/1964.

SOCIAL SERVICES
SUBJECT MATTER AND REFERENCE NUMBERS

Social Welfare—Additional Conditions for receipt of Unemployment Benefit by share Fishermen prescribed—244/1964.
Social Welfare (Disability, Unemployment and Marriage Benefit) (Amendment) Regulations, 1965, which increases to 10/- per day the amount which applicant may receive without affecting unemployment benefit—18/1965.
Social Welfare (Miscellaneous Provisions) Act, 1964—Sections 5, 8, 9 and 10 in force from 1st November, 1964—238/1964.
Unemployment Assistance Employment Period Order 1965—43/1965.

TRANSPORT AND TRAFFIC
SUBJECT MATTER AND REFERENCE NUMBERS

Air Navigation (Eurocontrol) Act, 1963, in force from 1st January, 1965—291/1964.
Air Navigation—Warsaw Convention, 1929, as amended by Hague Protocol—applied to non-international carriage by air after 1st February, 1965—264/1964.
Athlone (Co. Westmeath) Parking Bye-Laws, 1964—17/1965.
Ballina (Co. Mayo) Parking Bye-Laws, 1964—27/1965.
Cavan Traffic and Parking Bye-Laws, 1964—28/1965.
Cork Airport (Parking Fees) Bye-Laws, 1964, in force from 12th October, 1964—241/1964.
Drogheda (Co. Louth) Traffic and Parking Bye-Laws, 1964—267/1964.
Dublin and Dun Laoghaire Traffic (One Way Streets) (Amendment) Temporary Rules, 259/1964—44/1965.
Galway Traffic and Parking Bye-Laws, 1964—235/1964.
Monaghan Parking Bye-Laws, 1964—252/1964.
Mullingar (Co. Westmeath) Parking Bye-Laws, 1964—8/1965.
Navan (Co. Meath) Parking Bye-Laws, 1964—31/1965.
Road Vehicles (Index Marks) (Amendment) Regulations, 1965—30/1965.

SOLICITORS' BENEVOLENT ASSOCIATION

The President of the Society speaking at 101st Annual General Meeting of Solicitors' Benevolent Association said—

Mr. Chairman and Gentlemen, it gives me great pleasure and satisfaction to be able to address you here to-day in my capacity as President of the Incorporated Law Society. Many if not all of my predecessors have expressed the view most earnestly that the Solicitors' Benevolent Association is worthy of the support of all the profession. It seems also that their efforts have not been wholly fruitful. There are a number of solicitors in the country, I use country in its fullest sense, who are not yet members. The Association with its limited funds carries out a charity the merit of which cannot be assessed in words. It gives to the dependants of deceased solicitors some iota of comfort in their old age and destitution. The latter circumstance does not arise from any neglect or default of the solicitor but more from misfortune of various types—the principal one being, I am sure, ill health of him- or herself or of some immediate member of the family. I, from my own experience inside the last few months, know what ill health can cost and I am living in the day when one can insure against such losses. The present donees of the annuities from the Association did not have that opportunity and bills must have weighed heavily upon them and would weigh heavily on them because they still cannot be insured. Former members of our profession or their dependants who get the grants have no source of income or other fund to which they can turn and for this reason alone they deserve help. Another cause for anxiety is the decrease in the value of money. This means that every annuity being paid is becoming of less value and greater hardships are being endured by our less fortunate brethren. I know the Council of the Association have this very much to the fore in their deliberations and have as stated in the report done their best to deal with this but they cannot act without funds. For this reason, I would ask everyone present who is a member of a Bar association to bring the matter up before his association to try and ensure that everyone in it is also a contributor to the Association. I had intended before I read the report suggesting to the Council that they should seriously consider asking the members for an increase in subscription. £1 to-day is very little and if this were doubled I still feel sure no members would lapse, to reduce the mercenary element to its lowest level. I would point out that income tax is allowed by the Revenue Commissioners on contributions. I do not think that we can hope for any great increase in voluntary subscriptions either casual or annual. This is a matter for the directors and I would not presume to interfere. They have the experience of years behind them.

I was surprised to read that an annuity was advertised and only attracted two applicants. Whether this is a good or bad sign, I cannot say but I do feel that somewhere throughout the country there must be some people eligible who are not in dire want but to whom an extra £50 per annum would be a godsend in allowing them to get what I might for want of a better word call " comparative luxuries ". Do we not all want these in our later years whether in a modest or an extravagant degree ? As a corollary to this, might I mention that the Association has for many years been pressing for

legislation to exempt beneficiaries of charities of this nature from the means test. I know they will continue to do this. This would particularly apply where the donees of our annuities have saved over the years and their moderate means might deprive them of getting a State pension if we stepped in to try and help them. This is a grave injustice and we should try to stop it. Any members who have any influence should try to assist the Association in this important matter.

Gentlemen, may I wish the Association the success it so assuredly deserves in this and all its future years.

SOLICITORS AND AUCTIONEERS

The following item of interest appeared in *Business and Finance* (Vol. 1, No. 18, January 22nd, 1965, p. 7) under the heading "Legislation coming to curb auctioneers": "Among practices which members of the Auctioneers Association feel that the disciplinary council should take stronger action on is the growing practice that auctioneers are splitting commission with solicitors, particularly young solicitors who are struggling to become established. . . . There is contemplated legislation whereby money held for clients of auctioneers should be obligatorily lodged in a different account to that of the agency itself."

UNESCO

A vacancy exists for a legal office in the Office of the Director-General in the Bureau of Legal Affairs. Details of the duties and responsibilities, qualifications and experience required, and salary and allowances can be obtained from the Bureau of Personnel, Unesco, Place de Fontenoy, Paris 7e, France. Closing date for receipt of applications is 17th April, 1965.

CASES OF THE MONTH

Knock for knock agreement

The first plaintiff B and his son brought an action in the County Court against the driver and owner of a car which had been in collision with B's car when driven by his son. The cost of making good the damage to B's car was £230 4s. 6d. and this sum was claimed in the action. The driver of B's car was found to be two-thirds to blame so that B recovered only £76 14s. 10d. There was an excess of £10 on B's third party policy and there was a knock for knock agreement between B's insurers and the defendant's insurers. B had claimed and been paid by his insurers the sum of £230 4s. 6d. less the £10 excess. The County Court Judge allowed costs on the scale appropriate to an award of £10 and B appealed claiming costs on the scale appropriate to an award of £76 14s. 10d. The action was really brought to save B's no-claim bonus and the County Court Judge apparently took this matter into account. The Court of Appeal by a majority held that the arrangements between B and his insurers and the knock for knock agreement were irrelevant and that B was entitled to sue for the amount of the damage and to recover costs on the scale appropriate to the actual award. (Bourne and Anor. *v.* Stanbridge and Anor., 1965, 1 All. E.R. 241.)

Onus of proof in dangerous driving charge

In an unreported case stated from a District Justice who had dismissed a summons for dangerous driving, Davitt P. on February 1st, 1963, held that the onus of proof resting on the complainant Garda had been properly discharged and that the defendant, who had subsequently admitted the offence, should have been convicted. The evidence had been that on 2nd March, 1962, a car hit a stationary parked car, damaging it, and did not stop. Judge Deale's decision in Devane *v.* Murphy (1958), Ir. Jur. Repts. 73, dismissing a dangerous driving charge on the ground that the evidence in that case did not establish dangerous driving, but could have equally been the result of an effort on the part of the defendant to avoid a sudden crisis, was not followed. Practice Note of the Queen's Bench Division (1962) 1 All. E.R. 448, followed:—

Per Lord Parker C.J. in Practice Note—A submission that there is no case to answer may properly be made and upheld—(*a*) when there has been no evidence to prove an essential element in the alleged offence, (*b*) when the evidence adduced by the prosecution has been so discredited as a result of cross-examination or is so manifestly unreliable, that no reasonable tribunal could safely convict on it.

Apart from these two situations, a tribunal should not in general be called on to reach a decision as to conviction or acquittal until the whole evidence which either side wishes to tender has been placed before it. If, however, a submission is made that there is no case to answer, if a reasonable tribunal is satisfied at that stage that it might convict on the evidence so far laid before it, there is a case to answer.

(Griffin *v.* O'Reilly (unreported)—judgment of Davitt P., 1st February, 1963.)

Action for loss of services—"Stare Decisis" in Supreme Court

A sergeant in the Irish Air Corps was seriously injured by a motor car driven by a servant of the

defendants in May 1959, and was unable to resume duty until January 1960. The Attorney-General and the Minister for Defence, as plaintiffs, brought a Civil Bill in the Circuit Court claiming on behalf of the people of Ireland £585 for loss of services of this sergeant, while he was incapacitated. The Circuit Judge awarded the full amount claimed, and the defendant appealed to the High Court. The appeal came before Henchy J. who submitted a case stated to the Supreme Court. The unanimous judgment of the Supreme Court was delivered by Kingsmill-Moore J. who stated inter alia :—" The first question to be considered was whether the Supreme Court was to accept and lay down the principle that it was to be bound irrevocably by an earlier decision. . . . There can be no legal obligation on this Court to accept ' Stare Decisis ' as a rule binding upon it just because the House of Lords accepted it as a binding rule. . . . However desirable certainty, stability and predictability of law may be, they cannot in my view justify a Court of ultimate resort in giving a judgment which they are convinced for compelling reasons is erroneous. In my opinion, the rigid rule of ' Stare Decisis ' must in a Court of ultimate resort give place to a more elastic formula." (All former Irish, English, Australian and Canadian cases on loss of services were then fully considered in detail.) " This mass of high authority, though not binding, to my mind is persuasive to the point of conclusiveness that public servants, be they in the armed forces, the police or the civil service, do not fall within the class of servants in respect of whom the action per quod servitium amisit lies. On the other hand, the field of indirect damage is so wide, so vague, and so disputable, that I feel that any change in the present law is a matter for the Legislature and not for the Courts. The Civil Bill therefore discloses no cause of action, and the questions submitted by Henchy J. do not arise, because no sustainable claim for damages has been pleaded."

(Attorney-General and Minister for Defence *v.* Ryan's Car Hire Limited—Unreported judgment of the Supreme Court, 11th December, 1964.)

Solicitors' authority to institute proceedings

In 1951 the Minister for Education of the land of Thuringia purported to appoint Dr. S. to the board of management of an optical works. A document called a power of attorney was signed on behalf of the Ministry of Education whereby the management of Carl-Zeiss-Stiftung and Weimar conferred authority on Dr. S. as agent to represent Carl-Zeiss-Stiftung in law suits. The present passing off action for an injunction to restrain the defendants from using the word " Zeiss " and from selling optical glass instruments under that name unless the goods were those of the plaintiffs, was begun by writ issued on 20th October, 1955 in the name of Carl-Zeiss-Stiftung as plaintiffs. On instructions by Dr. S. on behalf of the foundation, the defendants applied to stay all further proceedings on the ground that the action was brought without the plaintiffs' authority. It was accepted by both sides in the first instance that East German laws were valid either as those of the German Democratic Republic or of the Soviet Government, it being immaterial which gave them validity. Subsequently Her Majesty's Secretary of State certified that the German Democratic Republican Government were not recognised by the Government of the United Kingdom. On appeal :— held (i) that Dr. S. was not authorised by the power of attorney of 20th June, 1951 to cause proceedings to be instituted, because that instrument was really an appointment to act in several spheres, which merely defined the scope of these powers but did not sanction their use except in a properly authorised instance; nor had he authority in 1955, either as a member or mandatory of the Board of Management of the Optical Works, to authorise the action to be instituted. ' (ii) In the circumstances the order as to costs, which was discretionary, would be that there should be no costs below, but that the defendants of the present appeal should be paid by the plaintiff's solicitors on a common fund basis. Appeal allowed on a matter not raised before the Court below (Carl-Zeiss-Stiftung *v.* Rainer and Keeler Ltd. and Ors. (No. 2). (1965) 1 All E.R. 300.

"The laws delays"

Mr. Justice Roskil at the sitting of the High Court —Queen's Bench Division on—February 15th, 1965, stated that in view of the length of his written judgment—203 pages of single spaced typewritten foolscap—he proposed to state at once the conclusions which he had reached. He would cause much extra expense to the parties and occupy much public time were he to read his written judgment at length. In the circumstances of the case he did not propose to do that. A copy had been handed to the shorthand writer and copies were available for the parties. Copies were then handed to the parties " on the usual terms ". If reporters and others concerned wished to have copies, his Lordship stated that he hoped that it would be possible for the necessary arrangements to be made with the help of the parties and their solicitors, for his part his Lordship would gladly do what he could to assist. At the conclusion of his written judgment his Lordship stated that there were two matters he wished to mention. First that it was to be observed that the case, by far the longest in the High Court in

recent years, came on for trial only a little over six months after the writ was issued. The trial itself was concluded only a year and a day after the issue of the writ. That this was possible reflected the greatest possible credit on the solicitors on both sides. The preparation of the massive documents in the case must have indeed cast a very heavy burden on them, the way in which that burden had been discharged deserved acknowledgement. His Lordship would hear counsel as to the form of the judgment and as to all other matters, including interest and costs, which they desired to raise at a convenient date after they had had time to consider the judgment (Helmville Ltd. *v.* Yorkshire Insurance Co. Ltd.—*The Times*, Tuesday, February 16th, 1965.)

OBITUARY

MR. EDWARD M. FITZGERALD, Solicitor, died on the 16th February, 1965.

Mr. Fitzgerald was admitted in Trinity Sittings, 1923, and practised at 12 Clare Street, Dublin, under the style of Messrs. D. & T. Fitzgerald.

He was a member of the Council of the Society from 1927 to 1935 and from 1943 to 1946 and Vice-President for the year 1931-1932.

MR. JOHN DILLON-LEETCH, Solicitor, died on the 23rd February, 1965, at his residence, Ballyhaunis, Co. Mayo.

Mr. Dillon-Leetch was admitted in Michaelmas Sittings, 1920, and practised at Ballyhaunis, Co Mayo, as Senior Partner in the firm of Messrs. T. Dillon-Leetch & Sons.

THE REGISTRY

Register A

QUALIFIED conveyancing assistant required. John P. King, 13 Anne Street South, Dublin.

WANTED, Assistant Solicitor for city office principally conveyancing and probate. Box A.228.

Register B

QUALIFIED lady solicitor seeks position as assistant in Dublin office. Box No. B.278.

Register C

WANTED, set of Irish Statutes, 1922 to date. Reply to Box No. C.180.

SOLICITORS' library for sale including Wylie Judicature Acts (2nd Edn., 1906) and other valuable books. List supplied on request. Apply to Box No. C.181

REGISTRATION OF TITLE ACTS, 1891 AND 1942

Issue of new Land Certificate

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

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

Dated the 30th day of March, 1965.

D. L. MCALLISTER,
Registrar of Titles.

Central Office,
Land Registry,
Chancery Street,
DUBLIN.

SCHEDULE.

1. Registered Owner, Kathleen Egan. Folio number 11129. County Kings. Land of Townsparks in the Barony of Ballybritt, containing 4a. or. 25p.

2. Registered Owner, Michael Eivers (Lands No. 1), Nellie Eivers (Lands Nos. 2 and 3). Folio number 10080. County Longford. Lands of Glannagh of Michael Eivers containing 17a. 1r. 26p. and lands of Newtownbond and Moatfarrell of Nellie Eivers containing 18 perches and 8a. 2r. 10p., respectively, all situate in the Barony of Granard.

3. Registered Owner, John Murphy. Folio number 5423. County Carlow. Lands of Raheenleigh in the Barony of Forth, containing 37A. 3R. 24P. and 1/117 part of 278a or op.

4. Registered Owner, James Gray. Folio number 1711. County Longford. Lands of Ballyduffy in the Bzrony of Granard containing 8a. 3r. 16p. and lands of Farmullagh in the Barony of Longford containing oa. 1r. 23p.

5. Registered Owner, Thomas Power. Folio number 2986. County Waterford. Lands of Ballingarra in the Barony of Upperthird containing 74a. 2r. 12p.

6. Registered Owner, Thomas Taylor. Folio number 6152. County Dublin. Lands of Coolock in the Barony of Coolock containing oa. 2r. 26p.

7. Registered Owner, Peter Brady. Folio number 3246. County Cavan. Lands of Carrick East in the Barony of Tullyhaw containing 18a. 3r. 8p. which are now the lands No. 1 in Folio 23601 County Cavan.

Printed by Cahill & Co., Ltd., Parkgate Printing Works, Dublin.

Vol. 58
No. 10

APRIL
1965

THE GAZETTE

of the

INCORPORATED LAW SOCIETY OF IRELAND

President
JOHN MAHER

Vice-Presidents
ROBERT McD. TAYLOR
EUNAN McCARRON

Secretary
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

CONTENTS OF THIS ISSUE

Notice 83
Meetings of the Council 83
Legal Aid in Criminal Matters 84
Land Act, 1965 84
Increases in Costs 85
Trade Union Act 1941 85
Examination Results 86
Commissioners of Charitable Donations & Bequests Board Meetings 87
The Equitable Insurance Co. Ltd. 87
Cases of the Month 87
Solicitor taking Secret Profit 87
No Tax Advantage 88
Solicitors' Income Tax Allowances 88
Interest on Judgment 88
Tied Garage—Unlawful Restrain 89
Escaping Stamp Duty 90
National Institute of Physical Planning and Construction Research 90
World Peace through Law 91

NOW ON SALE

THE LAW DIRECTORY 1965

Price: 15/-

By Post: 2/- extra

WEEKEND MEETING, ATHLONE
MAY 21ST—24TH.

Members wishing to attend the meeting are required to return the registration slip with fee (£2 per person) to the Society without delay in order to facilitate the arrangements.

MEETINGS OF THE COUNCIL

MARCH 11TH: The President in the chair, also present Messrs. Francis J. Lanigan, John Carrigan, Niall S. Gaffney, Desmond Moran, James W. O'Donovan, Peter D. M. Prentice, James R. Green, Desmond J. Collins, George A. Nolan, Raymond A. French, Joseph P. Black, Thomas J. Fitzpatrick, Francis Armstrong, John J. Nash, Patrick Noonan, Peter E. O'Connell, Patrick O'Donnell, Eunan McCarron, Robert McD. Taylor, George G. Overend, Thomas H. Bacon, Brendan A. McGrath, Gerard M. Doyle, W. A. Osborne.

The following was among the business transacted :

Standard form of building agreement

It was decided to investigate the possibility of having a standard form of building contract settled in agreement with the Builders Associations and the matter was referred to a committee for consideration.

Standard conditions of sale

A draft submitted by a committee was settled for publication and sale to members.

Succession Bill, 1964

The Council considered the bill in the light of the recent press statement by the Minister for Justice. The only remaining vestige of the legal rights in the original Bill will be a legal right of the widow to one third or one half of the estate depending on whether there are children of the marriage. It was decided that the Council should not alter the original views expressed viz., that the determination of legal rights should be a matter for the Court.

April 8th: The President in the chair, also present Messrs. Robert McD. Taylor, Francis J. Lanigan, Desmond J. Collins, George A. Nolan, George G. Overend, John J. Nash, Thomas V. O'Connor, James R. C. Green, Ralph J. Walker, Peter D. M. Prentice, Joseph P. Black, R. A. French, Gerard M. Doyle, Richard Knight, Rory O'Connor, W. J. Comerford, John Carrigan, Niall S. Gaffney, T. E. O'Donnell, James W. O'Donovan, Peter E. O'Connell, Brendan A. McGrath, Gerald J. Moloney, John B. Jermyn, Eunan McCarron.

The following was among the business transacted :

Professional privilege

A member sought guidance from the Society as to his professional obligation in the following circumstances. A clerk in his office interviewed a client who gave instructions for an application for a grant of probate. The client incorrectly instructed the clerk that the deceased had made no gifts *inter vivos* whereas in fact the client had received substantial sums from the deceased shortly before her death. The papers for probate were drawn up on these instructions. Member subsequently ascertained the true facts. The Council, being of the opinion that the client instructed member wrongly with a view to committing a fraud on the Revenue, stated that the case fell within the principles of Cox *v.* Railton, that the communication was not protected by privilege and that member should inform the Revenue Commissioners of the *inter vivos* gifts.

Seanad election

The Council appointed Mr. John J. Nash as the Society's representative for election to the Cultural and Educational panel.

Trade Union Act, 1941

The Secretary stated that the Minister for Industry and Commerce has acceded to the Society's application for excepted body status to enable the Society to carry on negotiations as to salaries and conditions of employment without a licence under the Trade Union Act.

LEGAL AID IN CRIMINAL MATTERS

The Legal Aid Scheme came into operation on April 1st and the Council in the March issue of the Gazette advised members to co-operate in making the scheme a success although many will be doing so at a sacrifice. The Council intend to keep the working of this scheme under review and they are asking Bar Associations and members to co-operate with the Society towards this end. Work record forms will be issued to members in the near future with a request that practitioners on the legal aid lists in each county should keep an accurate record of the hours spent and the fees earned for each item of work. If a sufficiently large number of offices keep the record sheets and return them to the Society the Council will be able to ascertain the average rate per hour earned on legal aid work by members participating in the scheme. The information obtained from the survey will be supplied to members on the legal aid lists. The advantages of the survey will be twofold. (1) The Council will have accurate information for any further discussions with the Department of Justice (2) the profession itself will have accurate information as to the economic and financial aspects of the legal aid scheme.

LAND ACT, 1965 (Sections 12 and 45)

Land Registry Practice Note

The attention of Solicitors is drawn to the provisions of section 12 of the above Act and the fact that an " agricultural " holding, whether or not subject to a Land Purchase Annuity, cannot be let, sublet, or subdivided, without the consent in writing of the Land Commission. These provisions do not apply to property coming within the provisions of subsection (4) of the section. " Towns " means the following :—Ardee, Balbriggan, Ballybay, Ballyshannon, Bandon, Bantry, Belturbet, Boyle, Callan, Cootehill, Droichead Nua (Newbridge), Edenderry, Fethard, Gorey, Granard, Kilkee, Lismore, Loughrea, Mountmellick, Muinebeag (Bagenalstown), Mullingar, Newcastle, Passage West, Portlaoighise (Maryborough), Rathkeale, Roscommon, Tramore, Tuam.

Subject to this exception, any attempted letting, subletting, or subdivision of property situate in a rural area will require the consent of the Land Commission for the purpose of registration in the Land Registry; unless the Land Commission certify that such consent is not necessary in any particular case.

The attention of Solicitors is also drawn to the provisions of section 45 of the above Act and in particular to the various forms of Certificates which are required to be endorsed on instruments coming within the terms of the section. Failure to obtain such certificates will result in serious consequences; as under the section *no interest vests* unless and until such certificate is forthcoming.

If the requirements of this section are not carried out, this will involve the issue of a great number of requisitions, which will certainly cause grave inconvenience and delay to Solicitors and their clients, and hamper considerably the expeditious completion of dealings in the Registry.

Moreover, it should be noted that in any case where such certificate is required, and is not contained in an Instrument, and the Instrument is returned to the Solicitor to have the relevant certificate endorsed the Instrument will be entered for the purposes of the registration as of the date and priority of its re-delivery at the Registry in accordance with Rule 63 (3) of the Land Registration Rules, 1959.

Members' attention is drawn to the provisions of Section 45 which applies to all property whether registered or unregistered.

The Council will publish a statement with suggested forms of Statutory Certificates in the May issue of the Gazette.

INCREASES IN COSTS

The following is a comprehensive statement of information which has appeared in the Society's Gazette relating to increases in costs which have appeared in various volumes of the Gazette since May 1st, 1964.

(*a*) June, 1964 (No. 2) p. 12—Solicitors Remuneration General Order, 1964 (S.I. No. 128/1964) adding 12% to charges under Schedule II paragraphs 2-20 inclusive (i.e. excluding discretionary fees). The date of operation was 1st August, 1964.

(*b*) July, 1964 (No. 3) p. 20—Rules of the Superior Courts (No. 3), 1964 (S.I. No. 166/1964) adding 12% to the costs of High Court proceedings under Parts 1, 4, 5, 6, and 7 other than those marked "discretionary". The date of operation was 1st August, 1964.

(*c*) Oct-Nov. (No. 5)—Land Purchase Acts Rules, 1964 (S.I. No. 230/1964) authorising commission scale fees in sales to the Irish Land Commission in lieu of the item charges. The rules extinguished the right of election for the item charges so that commission scale fees only are chargeable in respect of all business transacted before the date of operation i.e. 1st October, 1964. However the solicitor, under rules which have been drafted may apply to the Judicial Commissioner for a direction that the fees may be charged on the item basis where the work is done before 1st January, 1965. The rules contain a right of election in respect of business done on or after 1st January, 1965 which must be exercised before undertaking any part of the business.

(*d*) January, 1965 (No. 7) p. 61—District Court (Costs) Rules, 1964 (S.I. No. 279 1964) adding 12% to the previous scales. Date of operation 1st January, 1965.

(*e*) March (No. 9) p. 76—Rules of the Superior Courts (No. 5), 1965 (S.I. No. 29/1965) adding 12% to fees (other than directionary fees) for business in the Supreme Court and High Court. Date of operation 8th February 1965.

No increases have been authorised in respect of Circuit Courts Costs or costs of proceedings in the Land Registry as the Society has failed to reach agreement with the Department of Justice.

S.I. No. 54 of 1965

TRADE UNION ACT, 1941 (EXCLUSION FROM SECTION 6) (No. 1) ORDER, 1965

I, JOHN LYNCH, Minister for Industry and Commerce, in exercise of the powers conferred on me by subsection (6) of section 6 of the Trade Union Act, 1941 (No. 22 of 1941), hereby order as follows:

1. This Order may be cited as the Trade Union Act, 1941 (Exclusion from Section 6) (No. 1) Order, 1965.

2. Section 6 of the Trade Union Act, 1941 (No. 22 of 1941), shall not apply in respect of the body of persons specified in the Schedule to this Order.

SCHEDULE

The Incorporated Law Society of Ireland.

GIVEN under my Official Seal this 29th day of March, 1965.
(Signed) JOHN LYNCH,
Minister for Industry and Commerce.

EXPLANATORY NOTE

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

The effect of this Order is to allow the Incorporated Law Society of Ireland to carry on negotiations for the fixing of wages or other conditions of employment without holding a negotiation licence.

Published by the Stationery Office, Dublin. Price 3d. (Pr. 8222).

EXAMINATION RESULTS

At the Preliminary Examination for intending apprentices to solicitors held on the 2nd and 3rd February the following candidates passed: Jonathan P. T. Brooks, Hugh Byrne, Arthur Comyn, Edward G. Doyle, Andrew W. Healy, Herbert W. Mulligan, James Murphy.

9 candidates attended. 7 passed.

At examinations held on 12th February under the Solicitors Act, 1954 the following candidates passed:

First Examination in Irish: David K. Anderson, Fergus E. Appelbe, Thomas P. A. J. Asquith, Noel J. Bowler, Jonathan P. T. Brooks, John Patrick Brophy, Hugh Byrne, Denis P. Cahalan, Arthur Comyn, Maxwell A. McD. Conry, Pauline Corrigan, Brian V. Crawford, John Daly, Michael J. Delaney, Edward G. Doyle, Ninian Frederick D. Falkiner, Blayney C. Hamilton, Andrew W. Healy, Deborah Kelliher, Thomas R. Kieran, John D. Killen. Richard K. Long, Terence W. Maginn, Oliver Matthews, Brian G. Molloy, Desmond Carroll Moran, Orla M. Muldoon, Herbert W. Mulligan, James Murphy, Patrick Joseph McCarthy, Declan Brian MacDermott, John Moore McDowell, Derek Andrew McVeigh, Daniel W. O'Callaghan, Mary O'Connell, William P. O'Donovan, Fergus McKenna O'Hagan, Gerard O'Keeffe, John J. O'Leary, Mary Rose Adele Quinn, Mary Margaret E. Roche, Niall Edward Sheehy, Ronan O. Siochain, Patrick J. Sweeney, James Michael Timoney, Henry V. Macartan Tighe, Aileen Mary Treacy.

52 candidates attended. 47 passed.

Second Examination in Irish: Philomena Armstrong, Marguerite Joyce Boland, Anne M. Coady, Francis D. Daly, John F. M. Darley, Michael Farrell, Joseph G. Finnegan (B.C.L.), John M. Fitzpatrick, Felicity M. Foley, John B. Harte, Anthony G. Hayes, Matthew J. Mitchell (B.A., L.Ph.), Colm C. Murphy, Cornelius Leo McCarthy (B.C.L.), Michael P. McMahon, Patrick J. McMahon, Maire Noonan, Enda P. O'Carroll (B.C.L.), Elizabeth M. J. O'Donnell, Hugh B. J. O'Donnell, James F. O'Higgins, Anne O'Toole, Mary Raleigh (B.A.), Gordon J. Ross, Rebecca Sweeney, John James Tully.

27 candidates attended; 26 passed.

At the Book-keeping examination for apprentices to solicitors held on the 22nd February the following candidates passed:

Passed with Merit: 1. Brendan D. Walsh; 2. John Paul Hayes B.A., (Mod.) LL.B. (T.C.D.), Maire Noonan, Aideen M. O'Keeffe. (*All equal.*)

Passed: Michael N. Dolan, Thomas D. Durcan, Bartholomew J. Flynn, Finola M. Foley, John Gore-Grimes B.A., Raphaeline A. E. Hoey, Francis B. Keating, Gerard A. Kirwan (B.C.L.), Cornelius L. McCarthy (B.C.L.), Michael Patrick McMahon, Vincent O. Morrin, Colm C. Murphy, Elizabeth M. J. O'Donnell, Dermot G. O'Donovan, Anne O'Toole, Ian A. Scott (B.C.L.), Rebecca Sweeney, Brian G. Mel. Taylor, Mary P. Tighe.

27 candidates attended; 23 passed.

At the First Law Examination for apprentices to solicitors held on the 1st & 2nd days of February the following candidates passed:

Henry C. Blake (B.A.), Maeve T. Ua Donnchadha, Catherine P. V. Doyle, Joseph G. Finnegan (B.C.L.), Garrett P. Gill, Paul D. Guinness (B.A.), Pamela Forrest Hussey, Michael J. A. Kelly, Patrick J. Kevans, Gerard Anthony Kirwan (B.C.L.), James D. Lavery, Joseph Molony, William J. Montgomery, George G. Mullan (B.C.L.), Donal T. McAuliffe, Brendan J. McDonnell, Francis J. O'McGuinness (B.A., H.Dip. in Ed.), Michael M. McMenamin, Thomas G. E. Neville, Aideen M. O'Keeffe, Brendan O'Mahony, Michael J. O'Shea, Brian A. F. Woodcock.

38 candidates attended; 23 passed.

The Centenary Prize was not awarded.

At the Second Law Examination for apprentices to solicitors held on the 1st & 2nd February the following candidates passed:

Passed with Merit: Enda P. O'Carroll (B.C.L.).

Passed: Philomena F. P. Armstrong, William S. Barrett, John M. Fitzpatrick, Finola M. Foley, John Gore-Grimes (B.A.), Mary M. Harvey, John Paul Hayes (B.A., (Mod.), LL.B., (T.C.D.), John B. D. Lacy, Patrick J. McMahon, Gordon J. Ross.

22 candidates attended; 11 passed.

At the Third Law Examination for apprentices to solicitors held on the 3rd, 4th and 5th days of February the following candidates passed:

Thomas J. Colgan (B.C.L.), Ian Q. Crivon, Joseph T. A. Deane, Michael N. Dolan, Thomas D. Durcan, Thomas W. Enright, Bartholomew J. Flynn, John V. Glynn (B.C.L.), John Paul Hayes (B.A., (Mod.), LL.B. (T.C.D.), Eugene P. Hunt (B.A.), Francis B. Keating, Paul W. Keogh, Donnchadh D. Lehane, Vincent O. Morrin, Brian M. McMahon, Michael P. McMahon, Christopher

T. N. O'Meara, Thomas J. O'Reilly, Ian A. Scott (B.C.L.), John R. Sweeney.

31 candidates attended; 20 passed.

COMMISSIONERS OF CHARITABLE DONATIONS & BEQUESTS BOARD MEETINGS

(Easter and Trinity Terms)

Tuesday	...	...	27th	April,	1965
,,	...	...	11th	May,	,,
,,	...	...	25th	,,	,,
,,	...	...	15th	June,	,,
,,	...	...	29th	,,	,,
,,	...	...	13th	July,	,,
,,	...	...	27th	,,	,,

J. S. MARTIN, Secretary.

7th April, 1965.

THE EQUITABLE INSURANCE COMPANY LIMITED—SOLICITORS INDEMNITY AGAINST COSTS

The solicitors for the Official Liquidator have informed the Society that in a recent application by the Official Liquidator to The High Court (Mr. Justice Kenny) entitled 1965 No. 31SP it was established that the undermentioned costs are properly payable out of the Insurance Compensation Fund. Such costs will be paid in the first instance under Court Order to the Official Liquidator under Section 3 (1) *for transmission to the Policyholder.*

(*a*) Costs of Policyholder's solicitor incurred in defending claim against the Policyholder where said solicitor was nominated to represent Policyholder by The Equitable Insurance Company Limited prior to liquidation.

(*b*) Costs of Policyholder's Solicitor incurred in defending a claim against a Policyholder where the solicitor was instructed by the Policyholder to act after the commencement of the Liquidation with the consent of the Official Liquidator.

(*c*) Costs of Policyholder's solicitor necessarily and reasonably incurred in endeavouring to secure payment for the Policyholder out of the Fund of the amount due to him under the policy.

Costs in all or any of the said three categories must be taxed if the Liquidator so requires.

It is understood that the claims against the Fund are under consideration and that the necessary applications to the Court for payment of the appropriate sums will be made in the near future.

Members please note that the Liquidator will make payment in respect of damages and costs by way of one cheque which will be payable to the policyholder. Members ought to take such steps as are necessary to protect their interests as although they will be notified of payment of the amount to the Policyholder the cheques for the amount of the damages and/or costs will be sent to the policyholders dierct.

As to the right of a solicitor to a charging order for costs over property recovered or preserved for a client see the Legal Practitioners (Ir.) Act, 1876 (Members' Handbook, page 171).

CASES OF THE MONTH

Grant of Probate—solicitor's estate

Where a deceased solicitor was at the time of his death in practice, either in his own name or as a sole solicitor under a firm name, the interests of his former clients may be jeopardised if the persons entitled to constitute themselves the solicitor's legal personal representatives fail to apply for and obtain a grant of representation in respect of his estate within a reasonable time after the date of his death. The court has power in the exercise of the discretion conferred upon it by Section 162 of the Supreme Court of Judicature (Consolidation) Act, 1925 (1), as amended by Section 9 of the Administration of Justice Act, 1928 (1), to make an order for a grant in respect of the deceased's estate to issue to a nominee or nominees of the Law Society. The grant will be general or limited as the court thinks expedient in the circumstances.

In the first place the affidavit setting out the grounds of the application must be submitted in draft to a Registrar of the Principal Probate Registry. The latter will thereupon give directions as to whether the application may be made *ex parte* to a registrar, without notice to any other persons, or on summons to a Registrar, or in special circumstances, a judge.

If the application is to be on summons, the registrar will also direct upon whom the summons is to be served. For this purpose the draft affidavit should show who are the persons first entitled to a general grant, so far as it has been practicable to discover their identity within the time available, and should also deal with the practicability of serving them with a copy of the summons.

This practice note which appeared in (1965) 1 All. E.R., p. 924 may be followed in this country under Section 12 of the Administration of Estates Act, 1959.

Solicitor taking secret profit

The decision in Phipps *v.* Boardman and Ors. arrived at by Wilberforce J., in the Court of first instance and reported in the Society's GAZETTE for Aug.-Sept. 1964 at page 30 was confirmed by the Court of Appeal (Lord Denning M.R., Pearson

and Russell L.JJ, late January). The Court held that the defendants were accountable for the whole of the profit they had made when they were acting as agents of a trust using information they had obtained from a trustee to make a profit.

(Phipps *v.* Boardman & Ors. (1965) (All E.R. 849.)

No tax advantage

The English High Court dismissed an appeal by the Revenue against a decision of the Special Commissioners discharging an assessment of tax made under section 28 of the British Finance Act, 1960 The question at issue was whether the sale of certain shares by the taxpayers amounted to a transaction in securities giving rise to a tax advantage, which advantage the section was designed to cancel. Two sisters held the whole share capital of two companies Gleeson Developments Ltd. and M. J. Gleeson Ltd. which carried on business as property holding companies. Gleeson Developments had a balance on profit and loss account of £180,000 of which £130,000 was represented by cash at bank. In July 1961 the sisters sold all the shares in M. J. Gleeson Ltd. to Gleeson Developments Ltd. for full consideration and received £121,000 in cash from the company. It was contended by the Revenue that this sum represented money available for distribution by way of dividend which would otherwise have been subject to tax in the hands of the shareholder and that a tax advantage arose which was caught by section 28. The taxpayers argued that the payment of cash by the company did not amount to a transfer of assets within the meaning of the section. The Court held that one could not look at a complete transfer by way of sale whereby a member transferred shares to a company in return for cash and compare it with a single receipt by the member from the company without consideration. The words "tax advantage" should be given a restricted meaning and clear words were required to justify treating a sale by a member to a company as a gratuitous disposition by the company so as to bring the receipt within the scope of the Act (Commissioners of Inland Revenue *v.* Clery. Commissioners of Inland Revenue *v.* Perrens. (S.J. [Vol. 109] (1965), p. 357.)

Solicitor's income tax allowances

A Lancashire solicitor was accompanied by his wife and went to the United States and Canada to attend the American Bar Association and the Commonwealth and Empire Law Conference. It was a six-week trip and when not actually attending the conferences the solicitor visited several places with his wife, sightseeing and staying with solicitors and examining their methods. In his evidence he stated that his purposes of attending the conferences was to maintain his status as a solicitor and to improve his reputation in the United Kingdom, to increase his clientèle, and to have a holiday with his wife at the same time. He claimed that he had gained much valuable information on studying the methods of other solicitors and had improved his office equipment as a result and was contemplating further improvements. He sought to deduct his own expenses of attending the conferences in computing the profits and gains of the firm for tax purposes. The inspector of taxes disallowed the expenses on the ground that they were not wholly and exclusively laid out or expended for the purposes of his profession. The solicitor appealed against the assessment to the general commissioners and the commissioners allowed the appeal and discharged the assessments. The Inland Revenue appealed, and Pennycuick, J., in his judgment stated that where a person had two distinct purposes in mind when incurring such expenditure and one was a purpose which was wholly distinct from the carrying on of trade or profession, then Section 137 (*a*) of the Income Tax Act, 1952 (*a*) prohibited that expense as a deduction for tax purposes. The solicitor's admission was to the effect that the expenses were incurred for a dual purpose; accordingly on that ground the Commissioners had reached a conclusion which was wrong in law. The Inland Revenue's contention that the expenses were too remote was a question of wide importance and it would be undesirable for him to express any unnecessary observations. Appeal allowed with costs.

(*Solicitors Journal*, Friday, March 26, 1965. (Vol. 109) pp. 254, 255.) (Bowden (Inspector of Taxes) *v.* Russell & Russell.)

Interest on judgment

Order 41, Rule 6 of the Rules of the Superior Court, 1962, provides that every judgment or order when filed shall be deemed to be duly entered and the date of such filing deemed to be the date of entry. Under the 1905 Rules provision was made that interest should run from the time the judgment was entered or the order was made. A similar provision is to be found in the 1962 Rules. The 1905 Rules did not provide that interest on the amount of a judgment should commence to run from the date the order was perfected. There is, however, a difference between the 1905 and 1962 Rules. The former contained a provision (Order 41, Rule 2) that entry of the judgment should be dated as of the date when the judgment was pronounced and the judgment was to take effect from that date. This particular rule does not appear to have been

repeated in the 1962 Rules. The matter is of importance when judgment is given for a large amount where delay may postpone the date from which interest is to run. The remedy, however, appears to lie in the provisions of Order 42, Rule 15 of the 1962 Rules which concluded with the words "unless the judgment otherwise directs". It would therefore appear to be advisable to instruct counsel to ask for a special order directing interest to run from the date of the pronouncement of the judgment and thus restore the position to what it was under the 1905 rules.

Normally there should be no delay between the date of perfection of the judgment and the date of entry save in cases where the procedure is to have in the first instance a Registrar's Certificate which is then followed by an entry of judgment based upon it. In such cases it is a matter for the solicitor as to how soon he wishes to lodge the necessary papers for the purpose of having judgment entered. Very often in cases such as where there is a pending appeal he may not wish to enter judgment until the outcome is determined. In the case of Chancery judgments and orders and on some Common Law orders there may be delay as to perfection of the order in difficult and complicated cases but there will never be any delay between the date of perfection when ultimately arrived at and the date of entry, that is to say filing as per Order 41, Rule 6.

This matter has been referred to the Society's representatives on the appropriate rule making committee for consideration by the committee.

Tied garage—unlawful restraint

Arising out of an agreement dated 1/4/63 between Petrofina (Great Britain) Ltd. and R. H. Martin, the plaintiff company claimed an injunction restraining Mr. Martin, the first defendant and Wallis's (Calow) Ltd., the second defendant, from buying, selling or advertising at the petrol filling and service station known as Motorways (the Garage), Top Road, Chesterfield, the motor fuel or other petroleum products (except lubricating oils and greases) of any person, firm, or company other than the plaintiff company. The plaintiff company had also claimed an injunction restraining the first defendant from disposing of the garage without first offering it to the plaintiff company and from selling or disposing of his interest in the business carried on there to any person, firm or company who should not have previously entered into an agreement with the plaintiff company to observe the obligations of the first defendant under the agreement.

Mr. Justice Buckley directed that Mr. Martin should not dispose of the garage pending the giving of notice of appeal by the plaintiffs, the status quo to be preserved until the time for appeal should expire or be disposed or, the appeal to be prosecuted with all due diligence. In delivering his judgment His Lordship said that the plaintiff company supplied motor fuel and other petroleum products to petrol filling stations in various parts of the country and in many cases entered into solus agreements with distributors of their products whereby for a period of years the distributor would undertake to buy and sell at his petrol filling station none other than the products of Petrofina. In April 1963, Mr. Martin, the first defendant entered into such an agreement with Petrofina, in his own name, for the second defendant company which was to operate the petrol filling and service station had not then been incorporated. By the terms in this agreement, Petrofina was to supply Mr. Martin at the garage at Calow, Chesterfield, with petroleum products as currently marketed by them in consideration for which Mr. Martin undertook to buy exclusively from Petrofina such Petrofina products as he might require for his own use or for resale, to sell retail at Petrofina's published retail prices, to keep adequate stocks on the premises, and to sell only Petrofina's oils and greases from any lubrication bay on the premises. By other clauses of the agreement, Mr. Martin was to order motor fuel in certain defined quantities, to exhibit only the Petrofina advertising materials, and to permit Petrofina to lock and seal tanks to which they delivered on the premises. A positive obligation was imposed on Mr. Martin to carry on the filling station while the agreement remained in force.

It was common ground that the break-even point for petrol sales at this station was at around 50,000 gallons a year. The effect of Clause 10 of the agreement (preventing Mr. Martin from terminating it after the minimum contractual period of 12 years unless he should have taken and paid for a total of 600,000 gallons of Petrofina motor fuel) was consequently that the agreement should remain binding on Mr. Martin for longer than 12 years unless his average sales over this period achieved an annual level of 50,000 gallons. In other words, if, through no fault of his own, he were to fail to sell an average of 50,000 gallons a year and so were to operate at a loss, he would remain tied to Petrofina and be bound to continue trading at this station, selling no petrol but Fina petrol until he had sold 600,000 gallons, no matter how great the loss this might involve for him.

Mr. Martin's predecessors sold only 34,000 gallons at this station in 1961, 31,000 in 1962 and 29,500 gallons during the 12 months ended March 31, 1963. They were in fact operating at a loss. This

was known to Petrofina's manager for the Sheffield district who negotiated the agreement with Mr. Martin but he considered that the sales could quite well be built up to substantially more than 50,000 gallons a year. He attributed the former proprietors' indifferent trading results to lack of capital. Mr. Martin, on the other hand, fairly soon formed the opinion that he could not sell enough Fina petrol at this station to make the trade profitable notwithstanding that the station was kept open for 13 hours a day seven days a week. He started business on the site on April 8, 1963, and on May 30 he changed over to selling Esso petrol and had since then sold that brand only.

As his Lordship understood the law, however, it was against the policy of the common law to enforce the contract unless the contract itself and the circumstances of the case were such as to satisfy the test of reasonableness. In his judgment the circumstances of the present case did not satisfy the test and the agreement consequently was not, and never had been, binding on Mr. Martin. The action failed and would be dismissed.

(Petrofina (Great Britain) Ltd. *v.* Martin & Anor., *The Times*, March 30, 1965.)

Escaping stamp duty

An appeal was brought to the House of Lords to decide whether share transfers could properly be described as conveyances or transfers on sale, in view of the fact that when the share transfers were executed the shares had not been sold, although there was a strong probability of a subsequent sale under an option agreement. The House of Lords ordered that the judgment of Mr. Justice Pennycuick be restored. In 1957, the appellants, Corys, wished to acquire the whole share capital of six companies known as the Palmer group. On October 25th when the parties were nearing agreement, Corys intimated that they wished to have an option to purchase. That was accepted on behalf of Palmers; and on November 1, the parties made an agreement, the essence of which was that, in consideration of £100 paid by Corys, the Palmer shareholders granted an option to purchase this shares within 30 days at a price of £420,856. It was provided that the option could be exercised orally. The option agreement provided, by paragraphs 6, 7 and 8, that the vendors should forthwith transfer the shares to Corys and that Corys would hold them in trust for the present registered holders: that "No transfer of the said shares effected under . . . the last preceding clause hereof shall operate or be deemed to operate to pass any beneficial interest"; and that "in the event of the option lapsing from the non-exercise thereof", the shares "shall be retransferred to the said present registered holders thereof or as they may direct".

On November 1, 89 transfers were excuted and delivered to Corys who submitted the agreement and transfer for adjudication of stamp duty. The Commissioners required that the transfers be stamped as transfers on sale, the total duty paid being £8,418. The transfers were then sent to the various companies and registered by them on November 8. On the same day Cory's orally exercised their option to purchase the shares.

Lord Reid delivered the judgment of the Court and Lord Morris in concurring stated that even if it could be said that an option related to the equitable estate or interest in the shares, it still remained an option, and there was no agreement "for the sale" of any such estate or interest.

Lord Donovan, also concurring, stated that the words "on sale" should receive their natural construction.

(William Cory & Son *v.* Inland Revenue Commissioners. (1965) 1 All.E.R. 917.

NATIONAL INSTITUTE OF PHYSICAL PLANNING AND CONSTRUCTIONAL RESEARCH

The Board of An Foras Forbartha Teoranta are reserving a scholarship for a graduate in law or a member of the profession as part of their plan to induce graduates to undertake a two year course of study in the College of Technology, Bolton Street. There is a serious shortage of qualified town planners and as Planning Authorities throughout the country are obliged by law to prepare development plans for their areas within three years from the coming into force of the Local Government (Planning and Development) Act, 1963, and it is desirable that a number of suitable people properly qualified should be available.

The responsibilities of the Institute include:—

1. The conduct of research.
2. Provision of training and research on
   - (*a*) The physical planning and development of towns.
   - (*b*) The organisation and materials and techniques of building construction and road construction.
   - (*c*) Traffic transportation and design.
3. Co-operation with Planning Authorities by giving advice and by preparing specimen development plans.

4. Conduct of research demonstration, training and other projects for developing countries.

During its first five years the Institute will receive £250,000 from the United Nations Special Fund including the services of eleven International experts who will later be replaced by Irishmen. The address of the Institute is 4, Kildare Street, Dublin. Interested persons should write to J. A. Meagher, Chairman, An Foras Forbartha Teoranta, 4, Kildare Street, Dublin, 2.

WORLD PEACE THROUGH LAW

The World Peace Through Law Centre will sponsor the Washington World Conference on World Peace Through Law at Washington, D.C., U.S.A., on September 12–18, 1965. The highest judicial official and the bar association president of 120 nations will be the Special Honored Invitees. More than 2,000 members of the legal profession are expected to attend and it will be the most important representative and influential international assembly of the legal profession in history.

The purpose of the Conference will be to advance the substantial accomplishments of the First World Conference at Athens in 1963. It was there that lawyers and jurists from more than 100 countries established the Center and adopted a global work program to strengthen law and legal institutions internationally towards the universal acceptance of the Rule of Law in the resolution of disputes between men and nations.

The program will emphasis new legal needs in a changing world to include arbitration, space law, human rights, disarmament, foreign investments, etc.

All lawyers, jurists, legal scholars and interested observers are cordially invited to the Conference with a registration fee of $50 for individuals from the United States and $10 for persons outside the United States. Requests for additional information should be addressed to the World Peace Through Law Centre, 400, Hill Buildings, Washington, D.C. 20006. U.S.A.

LIBRARY ACQUISITIONS

List of Books acquired in the Library since March, 1964.

I—ACQUISITIONS

Abrahams, G.—*Police Questioning and the Judge's Rules*, 1964; Adkin, B.—*Law of Dilapidations*, 6*th Edn.*, 1964; Allen, C. K.—*Law in the Making*, 7*th Edn.*, 1964; Anson, C. J.—*Law of Contracts*, 22*nd Edn.*, 1964; All England Law Reports—Index and Notes-Up, 1963 and 1964; Argent H. D.—*Death Duty Mitigation*, 2*nd Edn.*, 1964; Belfast and Northern Ireland Directory—1964 and 1965. Bingham, L.—*Motor Claims Cases*, 5*th Edn.*, 1964; Bingham, R.—*All the Modern Cases on Negligence* 2*nd Edn.* and *Supplement*, 1964. Blanchard, Jean—*Ecclesiastical Law of Ireland*, 1963; Bowett, T. W.—*The Law of International Institutions*, 1963. Braghouse, H.—*Short forms of Wills*, 8*th Edn.*, 1964. Buckley, J.—*The Companies Acts*, 13*th Edn.*, 1957, bound with Supplement, 1964.

(English) Catholic Directory, 1965.

Cheshire, G. C. and C. H. S. Fifoot—*Law of Contract*, 6*th Edn.*, 1964; Chutty, J. and I. H. Jacob—*Queen's Bench Forms*, 19*th Edn.*, 1965; Chubb, B., ed—*Source Book of Irish Government published by Irish Institute of Public Administration*, 1964; Cordery, W.—*Law relating to Solicitors, Second Cumulative Supplement to* 5*th Edn.* 1964; Cross, R. and N. Wilkins—*An Outline of the Law of Evidence*, 1964; Crotty, J.—*Practice and Procedure in the District Court*, 1961, two extra copies; Current Law Citator, 1947–1963; Current Law Yearbook, 1963; Dias, R. W.—*Bibliography of Jurisprudence*, 1964; Dias, R. W.—*Jurisprudence* 2*nd Edn.*, 1964; Edwards, J. Lloyd—*The Law Officer of the Crown*, 1964; England—*Public General Acts of* 1964, 2 Vols., 1965; English and Empire Digest: Third Cumulative Supplement, including cases from 1952 to 1963, 2 Vols., 1964; English and Empire Digest—*Interim Index*—Vols. 1–36, 1964; English and Empire Digest Replacements—Volume 37 (*Pawns and Pledges to Prize Law*), 1964; Volume 39 (*Receivers to Sale of Goods*), 1964; Volume 43 (*Small Holdings and Solicitor*), 1964; Volume 44 (*Specific Performance to Stock Exchange*), 1965; Erskine-May, *Parliamentary Practice*, 17*th Edn.*, 1964.

Farrand, J. T.—*Conveyancing Contracts*, 1964; Farley, D.—*Social Insurance and Social Assistance in Ireland*, 1964; Fried Mann, J.—*Law in a changing Society*, 1964; Gibson, J.—*Conveyancing*, 19*th Edn.*, 1964; Gledhill, A.—*The Republic of India*, 2*nd Edn.*, 1964; Goode, R. M.—*Hire Purchase Law Supplement*, 1964; Griswold, E. N.—*Law and Lawyers in the United States.* (*Hamlyn Lectures*, 1964); Griffith, J. A. and H. Street—*Casebook of Administrative Law*, 1964; Halsbury, Earl of—*Laws of England*, 3*rd* (Simonds) *Edn.*, Vol. 43—Consolidated Table of Statutes, 1964; Halsbury, Earl of—*Laws of England*—3*rd.* (Simonds) *Edn.*, Cumulative Supplement, 1964; Heuston, R. F. V.—*Essays in Constitutional Law*, 2*nd Edn.*, 1964; Hamilton, R. N.—*Solicitors Guide to Development and Planning*, 4*th Edn.*, 1964; Heward, F.—*Guide to Chancery Procedure*, 2*nd Edn.*, 1964.

Incorporated Law Society—*Law Directory*, 1965; Irish Catholic Directory, 1964 and 1965; Irish Ecclesiastical Record Index, 1918–1963; Ireland—

Statutes (Bound Volume), 1962, Two copies; Ireland—*Report on Ground Rents* (Chairman—Judge Conroy—1964); Ireland—*Statutory Instruments*, 1960, 2 Bound Vols.; Ireland—Revenue Commissioners—*The Law of Stamp Duties*, 1964; Jackson, R. M.—*The Machinery of Justice in England*, *4th Edn.*, 1964; James, P. S.—*Law of Torts*, *2nd Edn.*, 1964; Justice—*Report on Criminal Appeals*, 1964; Kiedy—(T. O'Neill)—*Principles of Equity as applied in Ireland*, 1936.

Law List, 1964; Law Quarterly Review—*Index to Vols.* 1–80, 1965; Leach, T.—*Practical Points on Leases*, First Cumulative Supplement, 1964; Lewin, T.—*Law of Trusts*, *16th Edn.*, 1964; Lloyd, D.—*The Idea of Law*, 1964; Lowe, R. M.—*Commercial Law*, 1964; Madden, D. S.—*Practical Treatise on the Registration of Deeds*, 1901; Major, W. T.—*The Law of Contract*, 1965; Magnus, S. and M. Estrin—*Company Law and Practice*, *3rd Edn.*, 1957 and Second Cumulative Supplement, 1964; McCleary, J.—*County Court Precedents*, Second Cumulative Supplement to *2nd. Edn.*, 1964; Moeran, E.—*Practical Conveyancing*, *3rd Edn.*, 1963 (Two extra copies); Monroe, T. G.—*The Law of Stamp Duties*, *4th Edn.*, 1963.

O'Siochain, P.—*Dli Coruil na h-Eireann*, 1963; O'Siochain, P.—*Outline of Evidence, Practice and Procedure in Ireland*, 1953; Page, Leo—*First Steps in Advocacy*, 1964; Park, W. A.—*Hire-Purchase and Credit Sales*, *4th Edn.* 1964; Pratt D. and A. MacKenzie—*Law of Highways & Supplement to 20th Edn.*, 1964; Redmond P. W.—*Mercantile Law*, 1965; Rees, S.—*Probate Handbook*, *3rd Edn.* 1964.

Sandes, R. L.—*Criminal Law and Practice in Ireland*, *2nd Edn.*, 1964; Sergent, E. G.—*The Law of Stamp Duties*, *4th Edn.*, *with Supplement*, 1963; Stanford, D.—*Tax Planning and the Family Company*, *2nd Edn.*, 1964; Sturge, L. F.—*Basic Rules of the Supreme Court*, *2nd Edn.*, 1964; Tax Cases—*Index to Volumes* 1–40, (1875–1963); Terrell, E.—*Law of Running Down Cases*, *3rd Edn.*, 1965; Tristram, J. and H. C. Coote—*Probate Practice*, *22nd Edn.*, 1965; Tristram, J. and H. C. Coote—*Probate Practice*, *3rd Cumulative Supplement to 21st Edn.*, 1964; Turner, J. W. and A. Ll. Armitage—*Cases on Criminal Law*, *3rd Edn.*, 1964; Vandyk, N. D.—*Tribunals and Inquiries*, 1965; Whitaker, B.—*The Police* (*Penguin Special*) 1964; Whitakers Almanack, 1965; Who's Who, 1965; Wild, D.—*Law of Hire-Purchase*, *2nd Edn.*, 1964; Wilkinson, G. S.—*Road Traffic Offences*, *Supplement to 4th Edn.*, 1964; Wilson, H. A. and F. W. Kelly—*Seventh Supplement to Irish Income Tax incorporating Finance Act*, 1964; Words and Phrases Judicially Defined—1964 *Pocket Supplement*, 5 Vols.; Writers and Artists Yearbook—1964 and 1965; Wortzburg, D. and J. Mills—*Building Society Law*, *12th Edn.*, 1964.

II—DONATIONS AND EXCHANGE.

Dublin University (*Trinity College*) *Calendar*, 1964–65; Chartered Accountants in Ireland—*List of Members*, 1964; *Edinburgh University Calendar*, 1964–65; *International Law List*, 1964; *London University Calendar*, 1964–65; *Manchester University Calendar*, 1964–65; *National University of Ireland Calendar*, 1963; *New South Wales Law Almanack*, 1964; *Royal Institute of Architects of Ireland Yearbook*, 1964; *Queen's University, Belfast, Calendar*, 1964–65; *University College and Cork Calendar*, 1964–65; *University College Dublin Calendar*, 1964–65; *University of Wales Calendar*, 1964–65; *University of Sheffield Calendar*, 1964–65; *Old Testament in Hebrew*; *Scottish Law List*, 1964.

THE REGISTRY

Register A

DUBLIN Solicitors offer first class opportunity to Solicitor with wide experience. Apply Box. A.228.

ASSISTANT Solicitor with experience in Conveyancing and Probate work required by Dublin Solicitors. Apply Box A.229.

Register B

CIVIL SERVANT (recently retired) with experience in legal matters seeks employment in Solicitors Office. Box No. B.279.

Register C

WILL any Solicitor who may have possession of title deeds for premises 90, 91 and 91A Lower Dorset Street, Dublin, the property of Thomas J. Bray and Timothy J. Bray, please communicate immediately with John P. Redmond & Company, Solicitors, 22 Bachelor's Walk, Dublin.

DUGGAN—would any person knowing of the existence of a Will of William Duggan, born 1840 and who married Mary Fogarty in Co. Clare, please communicate urgently with the Public Trustee, New Zealand High Commission, New Zealand House, Haymarket, London, S.W.1.

REGISTRATION OF TITLE ACTS, 1891 & 1942

ISSUE OF NEW LAND CERTIFICATE

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

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

notification should state the grounds on which such Certificate is being held.

Dated the 6th day of May, 1965.

D. L. McALLISTER,
Registrar of Titles.

Central Office,
Land Registry,
Chancery Street,
DUBLIN.

SCHEDULE.

1. Registered Owner Matthew Keeffe. Folio number 1484. County Westmeath. Lands of Craddanstown in the Barony of Farbill containing 141a. 3r. 7p.

2. Registered Owner Susan Byrne. Folio number 3132. County Wexford. Lands of Kiltillahan in the Barony of Scarawalsh containing 87a. 3r. 9p.

OBITUARY

MR. THOMAS HANEFEY, Solicitor, died on 5th April, 1965 at a Dublin Hospital.

Mr. Hanefey served his apprenticeship with Mr. Hugh J. O'Hagan Ward, 62 Dawson Street, Dublin, was admitted in Easter Sittings, 1945 and practised at 8 Parnell Square, Dublin.

MR. JOHN PLUNKETT DILLON, Solicitor, died on 19th April, 1965 at St. Vincent's Private Nursing Home.

Mr. Dillon served his apprenticeship with the late Mr. John L. Scallan, 25 Suffolk Street, Dublin, was admitted in Hilary Sittings, 1911 and practised at 25 Suffolk Street, Dublin as senior partner in the firm of Messrs. John L. Scallan & Co., up to his retirement in 1960.

MR. FRANCIS S. COLLINS, Solicitor, died on 20th April, 1965.

Mr. Collins served his apprenticeship with the late Mr. George M. Collins, 21 St. Andrew Street, Dublin, was admitted in Hilary Sittings, 1911 and practised at 18 Kildare Street, Dublin under the style of Messrs. Casey, Clay & Collins.

MR. ROBERT J. SHEEHAN, Solicitor, died on 26th April, 1965.

Mr. Sheehan served his apprenticeship with the late Mr. Thomas Early, 39 Upper O'Connell Street, Dublin, was admitted in Michaelmas Sittings, 1937 and practised at 130 St. Stephen's Green, Dublin under the style of Messrs. Keating & Keating.

INDEX FOR GAZETTE—Vol. 58

Accountability of Solicitor Trustee 30
Action for loss of services 80
Adams *v.* Andrews 23
Admission—Ceremony 6, 57
" —list of 33, 34
Adoption Act, 1964 44
Agency 46
Agreement (Hire Purchase) 8
Appointment—Legal 5
Apprentices—Training of 4
Assignment without consent 23
Att. Gen. *v.* Simpson, I.L.T.R. Vol. XCVIII p. 182 ... 64
Att. Gen. & Minister for Defence *v.* Ryan's Car Hire Limited 81
Auctioneers—payment of deposits to 13
" —sharing of commission with solicitors ... 80

Bagot *v.* Stevens Scanlon & Co. 55
Bar Associations 5, 50
Book Reviews 62, 71
Bourne & Anor. *v.* Stanbrige & Anor. (1965) 1 All. E.R. 241 80
Bowden (Inspector of Taxes) *v.* Rusell & Rusell 88
Bray District Court 59
Bromley *v.* Bromley 46
Building agreement, incidence of costs 45, 57
" contract—standard form 84

Capital Finance Company *v.* Bray 8
Carl-Zeiss-Stiftung *v.* Rayner & Keeler Ltd. & Ors. 46, 81
Carter *v.* Carter to Cowen (1946) 2 All. E.R. 968 30
Cases of the Month ... 7, 15, 22, 29, 45, 55, 64, 71, 80
Central and District Properties *v.* I.R.C. 56
Certified Copy Grants of Probate 19, 29
Charges for photocopy documents 12
Charging Order for untaxed Costs—set of 72
Charitable Gift 8
Circuit Court—alteration of circuits 43
" " —costs 1, 5
" " —Eastern Circuit 15
" " —Rules (No. 1) 1964 20
Clark & Anor. *v.* Kirby Smith 16
Clarke, H. (Doncaster) Ltd. *v.* Wilkinson 73
Clarkson Booker, Limited *v.* Andjel 46
Client's access to solicitors' stationery 2
Commissioners' fees on Administration Papers ... 2
Commissioners of Charitable Donations & Bequests 29, 69, 87
Commissioners of I. R. *v.* Clery 88
" " I. R. *v.* Perrens 88
Committees of the Council, 1964/65 53
Compensation Fund 2, 4, 19, 52
Conclusion of President's speech 52
Conflict of—interests 16
" " —claims to money 76
" " —laws 48
Corporation Profits Tax 25
Cory & Son *v.* Inland Revenue Commissioners 18
Correspondence without prejudice 62
Costs—applications 54
" —Common Fund basis 64
" —Counsel's fees 17, 67
" —imposition of builder's, on purchaser-lessee 45, 55
" —Increases 55
" —In Equity suit 57
" —Itemised Bill 63
" —of leases 68
" —Reprehensible Conduct of Successful Party ... 17
" —Review of taxation 7
Counsel's—admission not binding 73
Counsels' Fees 17, 64
County Clare Law Association 70
County City of Limerick Sessional Bar Association ... 61
County Kerry Law Society 70

Courts of Examiners 53
Court Offices and Costs Committee 53
Court House—Tralee 20
Covenant in restraint of practice 24
Criminal Law—Misdirection 56
Criminal Justice Legal Aid 5, 40, 52, 69, 75, 76
Crown privilege 71

Dangerous driving charge 80
Death Duties in Ireland 62
Definition of Bank, Solicitors' Act, 1954 59
Delays between accident and trial 7
Delays in official offices 51
Deposits on sales—payment to auctioneers ... 13, 20
Dinner Dance 27
Directory 4
Director's Defence Costs paid by Company 31
Disciplinary jurisdiction over medical practitioners 25
Dissolution of partnership 7
District Court Costs 61
Dublin Solicitors' Bar Association 46

Ealing Borough Council *v.* Ryan & Anor. (1965) 1. All. E.R. 137 71
Eastern Circuit 15
Egder *v.* Davis & Others 31
Election of President and Vice Presidents 60
Elgee, Richard J. 76
Equitable Insurance Co.—Solicitors indemnity against costs 87
Estate Duty Office and the Profession 62
Examination—Dates 9, 25, 54
" —Failure rate 1
" —Results 21, 43, 86
Examining Medical Officers 14
Extraordinary members of the Council 60

Facsimile Probate Engrossments 66
Family Arrangement 40
Finance Act, 1964 27
Finance 50
Finance, Library & Publications Committee 53
Firth *v.* Armslate 8
Ford *v.* White & Co. (1964) 235 L.T. 345 65
Frank *v.* Seifert, Sedley 31

Grant of Probate to Solicitor's Estate 87
Gregory *v.* Tarlo 8
Griffin *v.* O'Reilly (unreported) 80
Gross Sum Bill 63–64
Grosvenor Hotel, London (No. 2) (1964) 3 W.L.R. pp. 992–1,029 65

Handbook on Company Law 40
Hardy *v.* M.I.B. (1964) 2. All. E.R. 742 23
Helmville Ltd. *v.* Yorkshire Insurance Co. Ltd. ... 81
Hire Purchase Agreement—Detinue 8
Housing Loans 13

Incidence of costs of building agreement 57
Income Tax Allowances—solicitors' 88
Incorporated Council of Law Reporting 60
Increases in Costs 85
Index of Statutory Instruments 35
Injury by Criminal Act—M.I.B. 22
Inland Revenue Commissioners *v.* Frere 65
Interest on judgment 88
International Bar Association 4
International Law 45
Insurance Act, 1964 29
Itemised Bill 7

Jones *v.* McKie & Another 17
Jurisdiction—Disciplinary over Medical Practitioners ... 25

Knock for knock agreement 80

Land Act, 1965 (Ss. 12, 45) 84
Land Commission 6
Land Purchase Acts Rules, 1964 ... ... 45, 61
Law Calendar & Directory 4, 50
Law Directory, 1965 69
Law Officers of the Crown 71
Law of Stamp Duties 61
Lease, inclusive of costs 2
Lease, When a Sale 2
Legal Aid in criminal matters ... 5, 52, 69, 75, 76, 84
Legal Appointments 25, 61
Legal Education and training 5, 50
Libel, qualified privilege 30
Library Acquisitions 91
Limited, premises suboffice in 20
List of new members 32

McCoan *v.* General Medical Council, Solr's. J. (Vol. 108) p. 560 25
McKnight *v.* McLoughlin 8
Mangan *v.* McCarthy & Ors. 55
Meaning of Town 13
Medical Partnership—Dissolution 7
Medical Practitioners fees 2
Medical Reports 13, 67
Meetings of the Council 1, 11, 19, 39, 56, 59, 67, 75, 83
Meeting of International Bar Association 51
Members' Dinner Dance 39
Members' Subscriptions 60
Merry *v.* Batson 24
Mining Lease 68
Misconduct in misleading a colleague 45
Mortgagee—production of mortgagor's title deeds ... 20
Motor Insurance Bureau—Injury by criminal act Extent of coverage 22
Multiple Occupation 71

National Institute for Physical Planning 90
No tax advantage 88

Obituary
Ashton, Albert E. 74
Callan, John C. 47
Charles, David H. 47
Collins, Francis S. 93
Dillon-Leetch, John 82
Dillon, John Plunkett 93
Doyle, Charles 10
Donnelly, Patrick J. 74
Early, Desmond 74
Fagan, James 38
Fitzgerald, Edward M. 82
Gallen, Maureen A. 66
Hanefey, Thomas 93
Magwood, Charles 74
McDowell, Patrick 47
O'Connor, Seamus 47
O'Farrell, John M. 74
O'Flynn, Andrew J. 47
Raymond, James F. 74
Reilly James 74
Sheehan, Robert J. 93
Smith, Philip N. 74
Williams, Edward B. 47
Obligation of solicitor—Witnesses' Expenses 68
Onus of proof in dangerous driving charge 80

Opportunities 54
Ordinary General Meeting 3, 49

Parchments—presentation of 57
Parking at the Four Courts 57
Parliamentary Committee 53
Payment of deposits to Auctioneers 13
Peat *v.* Walsh S. J. (Vol. 108) p. 896 64
Pension Advisory Service for Members 44
Petrofina (G.B.) Ltd. *v.* Martin & Anor. 89
Phipps *v.* Boardman 30
Pinion deceased 9
Practising Certificates 1965/66 60
Practice and Procedure in administration of mortgage suits 15
Practice—Parties—adding defendants 22
Preliminary investigation of indictable offences 56
President's speech 3, 50
President and Vice-President—Election of 58
Privilege of Crown 65
Privileges Committee 53
Privilege—Doctors in law of evidence 54
„ —qualified 30
„ —solicitor-executor 3
Probate Office—certified copy grants 19
Professional Negligence Insurance 40
Professional Privilege 84
Publican's Licence—solicitor holding 75
Publications 4
Public Relations 67

Qualified privilegе—libel 30

Rayner *v.* Pegler 24
Registered trade Mark Agents 76
Registrar's Committee 53
Registration of Title Acts, 1891 and 1942 ... 9, 10, 18, 26, 38, 46, 58, 66, 74, 82
Registry 9, 18, 25, 26, 38, 46, 58, 67, 73, 82
Rendell *v.* West 32
Reprehensible Conduct of Successful Party—Costs ... 17
Road Traffic Acts, 1933 and 1961 ... ... 7, 76
Road Traffic General Bye-Laws, 1964 69
Road Traffic Prosecution Costs 2, 68
R. *v.* Gaunt 56
R. *v.* Trimmer 56
Rules of the Superior Courts (No. 3) 1964 20
Rules of the Superior Courts (No. 4), 1964 21
Rules of the Superior Courts (No. 5), 1965 76

Sale by lease 2
Sale and Purchase : Insurance against possible liability for death duties 40
Sale through the Court, Purchase of part by Vendor ... 68
Seanad election 84
Sammy *v.* Birkbeck College, S. J. (Vol. 108) p. 897 ... 64
Saunders *v.* Saunders (1965) 2 W.L.R. 33 73
"Short Interest" tax 65
Simpsons Motor Sales (London) Ltd. *v.* Hendon Corporation (No. 2) (1964) 3 All. R. 833 72
Society's Publications 4
Solicitor—acting for employees of company 11
Solicitor—Authority to institute proceedings 81
„ —charge in fund recovered 24
„ —conflicting claims to money 76
„ —Estate—grant of probate 87
„ —Executor—privilege 3
„ —Income Tax allowances 88
„ —Indemnity against costs 87
„ —Negligence 65
„ —Right to apply for costs 29
„ —taking secret profit 87
Solicitors Acts—proceedings 76
Solicitors' Benevolent Association ... 5, 9, 52, 79
Solicitors and Auctioneers 80
Solicitors' Golfing Society 15, 40
Solicitors' Remuneration General Order, 1964 12
Somerset & Anor. *v.* Ley & Anor. 18
Southern Law Association 61
Stamp Duty 13
Stamp duty on Share Deal 15, 22
Stamp Duties—Companies' consideration—negotiable letters 56
"Stare Decisis" in Supreme Court 80
Stationery, client's access to 2
Statutes of the Oireachtas, 1964 77
Statutory Instruments—Index 77–79
Stipulation as to costs 45
Sub-Office in licensed premises 20
Succession Bill, 1964 ... 40, 41, 42, 51, 56, 60, 69, 84
Summing up at trial 56
Superior Court Costs 18
Superior Court Rules 76
Symposium on Road Safety 55

Termination of H.P. Agreement 8
The Law's delays 81
Theodorou *v.* Bloom 24
Tied garage : unlawful restraint 89
Town Planning 44, 45
„ „ —Searches 2
Trade Marks Act 10
Trade Mark Agency—practice 76
Trade Union Act, 1941—Excepted Body Status 57, 60, 84, 85
Training of apprentices 4
Tralee Courthouse 20
Transcript of Evidence 45
Trusts, right of beneficiaries to inspection of documents 64

Undutiful Wills 41, 69
Unesco 80
Unlawful restraint, tied garage 89

Walshe & V. *v.* Greenmount Oil Co. Ltd. 7
Walters *v.* Miles-Griffiths (Solrs'. J.) (Vol. 106) p. 561 25
Wednesbury Borough Council & Ors. *v.* Ministry of Housing and Local Government (1965) 1. All. E.R. 186 72
Week-end Meeting, Athlone 83
Weekly Half Holiday—Fermoy 46
Whitney, Moore & Keller *v.* Shipping Finance Corp. Ltd. 7
Without prejudice correspondence, withdrawal of offer 68
Witnesses' Expenses : Obligation of solicitor 68
World Peace through Law 91

THE SOLICITORS' BENEVOLENT ASSOCIATION

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

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

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

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

Address :

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

GAZETTE

Printed by Cahill & Co., Ltd., Parkgate Printing Works, Dublin.

GAZETTE

Vol. 59
No. 1
May 1965

THE INCORPORATED LAW SOCIETY OF IRELAND

President
JOHN MAHER

Vice-Presidents
Robert McD. TAYLOR
Eamon McCARRON

Secretary
ERIC A. PLUNKETT

CONTENTS

The Ordinary General Meeting ... 1
Solicitors Benevolent Association ... 2
Land Act 2
Legal Aid 2
Succession Bill 2
Excepted Body Status 3
Compensation Funds 3
Legal Costs 4
Closing Remarks 5
Admission Ceremony 5
Society of Young Solicitors 6
Dail Eireann 6
Dail Debates 7
Adjudication Office 8
Section 6 Certificates 8
Cases of the Month 8
Evidence 9
Practice—Compromise of Action ... 9
Library Acquisition 10
Meetings of the Council 10
Registration of Title Acts 11
Student Exchange 11
The Registory 11

THE ORDINARY GENERAL MEETING

An Ordinary General Meeting of this Society was held at the Prince of Wales Hotel, Athlone, on Saturday 22nd May, 1965 at 11 o'clock.

1. Notice convening the meeting was taken as read.

2. The Minutes of the last Ordinary General Meeting held on 19th November, 1964 were read, confirmed and signed.

3. The President of the Midland Solicitors' Association, Mr. Dermot P. Shaw read an address of welcome to members of the Society.

4. The President addressed the meeting as follows :

Mr. Shaw and members of the Law Society, I feel privileged to be able to rise to reply to the welcome extended to us by Mr. Shaw as President of the Midland Bar Association.

This is the 4th time that the half-yearly meeting has been held outside Dublin. The previous meetings were held in three of the four corners of Ireland, so the Council decided that it was time that the heart of Ireland should have its chance.

The other meetings were very successful and we are all hoping that this venture will not be an exception. The members of the Midland and Roscommon Bar Association have gone to great pains to help to organise the meeting as a whole and in particular have very kindly invited us to a Cocktail party to be held before the Dinner Dance to night.

This is a proud moment for me. It is the first time that I have had the privilege and pleasure of addressing a meeting representing the entire solicitors' profession in the country. I have been entertained by many of you in a typically Irish manner in your own particular parts of the country and am very happy to be able to say that I have made many new friends. You are aware that our profession plays a very vital part in the life of the community. It is our function to protect individuals against wrongs that may be inflicted on them by their neighbours or at times by a department of state, local authority or other large and powerful organisation or corporation. I feel and hope that I am right in thinking that there is a more appreciative reaction in the minds of men nowadays to us. We have often in the past been more likely to obtain publicity for our misfeasances than for the good work we do for our clients in our quiet way. In this connection, I would like to appeal to the Press and indeed to the members of the bench, especially on the criminal side, that when they happen to be dealing with one of our less fortunate brethren that they would impress on their readers and listeners that such a one is the exception and not the rule. This is proved to a great extent by the manner in which applications to the Society under the Compensation Fund have decreased in last year or two. I will speak further about this later.

In another way, dare I say a minor way, the profession has received a boost in the public eye as to the quality of its members. A new Dáil is sitting and many solicitors have been elected to the house. I think I can safely say that the front benches on each side of the house contain more solicitors than ever before. In point of fact, 70% of our solicitors T.D's are on the front bench. We are pleased at this and it is good to know that we have champions to promote our cause whenever legislation is introduced or before it is introduced which might affect us adversely. We are hopeful that the numbers of solicitors in the Senate will not decrease even though one of them has moved to the Dáil.

SOLICITORS' BENEVOLENT ASSOCIATION

Last January, I had the honour of addressing the Annual General Meeting of the Solicitors' Benevolent Association. I said then that many if not all of my predecessors had expressed the view that the Solicitors' Benevolent Association was worthy of the support of all the profession. I make no excuse for repeating that. It does still seem that my predecessors efforts have not been wholly fruitful. There are a number of solicitors in the Country, I use Country in its fullest sense, who are not yet members. I appeal to all solicitors to join. The Association with its limited funds carries out a charity the merit of which cannot be assessed in words. I know that even in the last month, the Association made a payment out of their funds to help a family which ran the danger of becoming destitute. They cannot repeat this should the occasion arise without constant and regular contributions to their funds. All solicitors should join and in conclusion may I remind you of their motto "Bis dat qui cito dat".

LAND ACT

The Land Act, 1965 has become Law since our last General Meeting. It is an Act which our members must study with the greatest care. I do not want to go into the social aspect of its provisions. This side of the bill has been dealt with in the greatest possible detail by both houses of the Oireachtas. It is now law and we have our duty to carry out its provisions and advise our clients on it. Many of the sections need very special study and the Council are preparing a short memorandum to be circulated to all members through the medium of the Gazette.

This may not be sufficient as it can hardly be comprehensive and all the implications cannot be dealt in a short memorandum. For these reasons, I must advise a fully comprehensive study of the Act, particularly by our members outside the city or defined "towns".

LEGAL AID

The Minister for Justice made an Order bringing in Legal Aid in Criminal Cases commencing on April 1st. The Law Society made strenuous efforts to have what we consider were proper fees fixed for work done by the solicitors' profession under the Act. We failed in that but despite this we felt we could not advise the profession not to assist the scheme in so far as they could as a social measure. Many solicitors have joined the panel—whether they joined or not was a matter of free-will for each individual. It is too early yet to know if the Scheme is working or will work. I personally have heard of very few cases at all in which legal aid was assigned. So far as I know, District Justices are loth to embark on the troublesome waves of an uncharted ocean and it looks as if the measure may only be used in some larger crimes and none of these have come to light as yet. We know of course that the Department of Finance will be like the famous Skibbereen Eagle—keeping its eye on the Czar–and though they have no direct control, we feel that they will not be too happy if the overall costs bring a heavy burden on the community. It is very unlikely that it will do so unless the District Justices dispense legal aid with very lavish hands. The figure of £20,000 has been mentioned by the Minister as the sum allocated in the estimate for his Department for free legal aid service. If the trend in the number in crimes is upward as unfortunately it appears to be, this figure may well be exceeded unless the old maxim "Crime does not pay" is still true and I doubt if it is.

The Minister himself has said that he hoped that legal aid would be available to every hard case, by which I presume he meant deserving case but added, quite correctly I think that in no circumstances should we have a situation where legal aid was available to everybody irrespective of circumstances or the person involved. As against this, I do not think that District Justices or Judges should be too strict in dealing with applications. If the Government want the scheme, they must be prepared to finance it.

SUCCESSION BILL

The First Succession Bill was one of the items which caused the Council great concern for a long time. No one outside the Council could conceive the amount of work done in connection with the Bill by my predecessor, Mr. Desmond Collins. As a result of his efforts and those of his colleagues on the Sub Committee, a statement was prepared and issued to the Press shortly after I took office. It would appear that as a result of this and all the other agitation by the Society and outside bodies that the Minister made recommendations to the Government which were accepted and resulted in the radical alteration of the original scheme. This alteration did not go the whole way and certainly did not satisfy the objections to the general principal of the Bill. I and many others still contend that freedom of testamentary power is a natural right which should be left to everybody. If in exceptional circumstances, a relation who should have been the object of a bequest in a Will and was not so, was aggrieved, an Act could be passed giving such person a right to appeal to the Courts.

We awaited with interest the text of the New Bill which could replace the old one. The text of that revised Bill was issued to the Dáil on May 12th.

We will maintain our attitude towards any provisions which do not appear to be in the public interest. Irishmen and women seldom if ever make inofficious Wills if they make a Will at all. I have heard from a reliable source that the number of Grants of Probate and Grants of Administration Intestate are more or less equal in number. I, personally feel that if a man wants his family to share his assets, he can refrain from making a will and achieve the desired effect. If he wants to change this, he can make a will but his power and right to leave his property as he wishes should not be curtailed. If wives or husbands have fixed rights, it really means that every married man or woman must compulsorily die intestate as to part of his estate and this I feel is altogether wrong. My predecessor mentioned in his address that S.77 of the Old Bill dealing with witnessing of wills was being kept. Since then, I believe better counsels have prevailed and I note that the old law in this respect has remained unchanged.

The time has been too short for the Council to make a thorough examination of the New Bill. I only succeeded in getting it last Thursday. I would welcome the views of any solicitors or Bar Associations on the provisions contained in it.

EXCEPTED BODY STATUS

For a long time, agitation was rife among solicitors employed by Corporate Bodies, Local Government authorities and analogous bodies. They had no body which could represent them in any claim or dispute concerning salaries or conditions of employment. They approached the Law Society to help them and I am glad to be able to say that after negotiations had taken place between the Department of Industry & Commerce and ourselves with strong support from Local Government Solicitors' Association that the Minister made an Order on 29th March, 1965 giving the Law Society "exempted body" status under S.6 (6) of Trade Union Act, 1941. This means that if ever a dispute does arise that we can sally forth for the protection of our brethren who may need our help in this matter. We are grateful to the Minister for acceding to our application which we feel in justice was well founded.

COMPENSATION FUND

The Committee dealing with this fund have worked very hard. They have examined every case that came before them and are not in the slightest degree in arrears. All proven cases have been disposed of and the Claimants paid. We have achieved the desired effect proposed by the Solicitors Act. No person who has been defrauded by a Solicitor has been unpaid if he, the applicant, has proved his claim and as well as this we have succeeded in building up a substantial reserve. There is a possibility that the question of reducing the annual contribution may come up for consideration by the Council after the Summer Recess but such reduction might not be possible till next year. I personally feel but I do not now speak for the Council that it might be reduced as the effect of the Solicitors Act and particularly of the Accounts Regulations made under it are now beginning to be felt. There has not been in the last year any really serious defalcation by any solicitor in the entire country and I am proud to be able to say this.

The Council as ever are taking an active interest in the education of apprentices and with the help and co-operation of the Lecturers and Examiners are doing their utmost to keep the curriculum up to date and to ensure that the utmost we can do to help to educate our apprentices is being done all the time. As you have heard, we did submit a Memorandum to the Commission on Higher Education and a deputation attended on the Commission. We await their report eagerly. The number of apprentices seems to have increased this year and we await future developments to see if this continues. Not all qualified solicitors practice as such. The qualification of a solicitor does now seem to be a form of "Open Sesame" to many careers in industry and public life. I could name many persons holding high offices in Public and Semi-State Bodies who are in fact qualified solicitors. This is pleasing and does help to ensure that our profession is not overcrowded. There can only be room for a limited number of solicitors in a small country like ours and despite very common misconceptions to the contrary taken as a whole, solicitors are not a wealthy class of persons unless their incomes are supplemented by other private means.

Mr. Desmond Collins in his address last December said that the Council had obtained a draft Standard Form of Contract for sales by Public Auction and Private Treaty. Many meetings were held by a selected Sub Committee to go into this matter in great detail and the draft was settled, resubmitted to Counsel and reconsidered by the Committee. This Committee had a final special interview with Counsel and all outstanding matters were dealt with and the Council directed publication. In the meantime, the Land Act, 1965 became law and certain extra clauses were considered necessary. As soon as these are settled we will proceed to have the forms printed and made available to the profession in general. If general use is made of them, it should help to ease the negotiation stage a little but it must be borne in mind that the real work is done in preparing the special conditions, space for which will be provided by way of Schedules. The contracts will not have the effect of making conveyancing any easier or less exacting or make for any real simplification of the important and arduous work carried out by solicitors in investigation of title. It will enable them to be relieved of niggling details and allow them to concentrate on the heart of the matter and in this way make for more accurate conveyancing and the general improvement as far as may be possible of the high standard of work already carried out by the solicitors' profession in this field of their activity.

The provision of £225,270 in an estimate for the Land Registry and Registry of Deeds is said to be mainly due to increased remuneration. This may be so but the fact still remains that considerable delays do exist in the services which are being rendered by both places, especially the Land Registry. The Minister hoped he might bring the Registration of Title Act, 1964 into operation before the end of the year. If he does, he must do it in a very limited way unless he creates further space for staff and documents and succeeds in getting the necessary extra staff. I feel that the failure to get staff up to this was due to the remuneration offered not being attractive enough to induce practising lawyers to forego the glamour, if I may use the word, of private practice for the possibly rather monotonous routine of a Government job.

As against this, the Minister has said that he intended to improve the Land Registry by adding two storeys to the office and sought to attract twice the number of staff by increased rates of pay.

I hope he will be successful and that his target of having the extension in operation next year will be achieved but I feel I must voice my doubts in the matter; the arrears must be cleared first.

This question of arrears and lack of sufficient staff in Government offices, particularly in the High Court is a constant source of worry to the Council. Complaints come in regularly to us and representations made to the Department of Justice seem to have little effect. The Accounts Office in the High Court has come in for particular mention recently. There seems no reason why copies of accounts could not be obtained quickly. Banks and Building Societies and Insurance Companies can give out copy account with ease and celerity. Photo copying is the rule everywhere to-day and machines are available in the Courts.

Other offices have merited mention but improvements have been made. It is something however that the Departments of Justice and Finance should look into as the work in many

of the offices has increased many hundreds of per cent and the staffs are not larger in many instances than they were twenty years ago.

LEGAL COSTS

We are living in an age of social and economic planning and as citizens we must accept its necessity and recognise the benefits which it can create in its proper field. We are not opposed to progress, efficiency and reform; on the contrary it is our duty to support them. The State extends its field of influence and power more widely every year. The complexity of economic and financial problems necessitates the transfer of power on an increasing scale from the legislature to the executive and finally from the executive to its administrators and managers. Plans can only be approved in broad outline by the Oireachtas. The real exercise of power is the implementation of the plan by the experts and thus of necessity involves interference with personal freedom. The rights of the small man in the sphere of civil and even criminal law may be brushed aside by powerful interests, even by the State itself and there have been cases of such oppressive action both in this country and in England within recent years. Accepting the necessity for economic planning it must be obvious that an independent legal profession and free press are more essential now than ever before so that the balance may be redressed in favour of the private citizen who would otherwise be defenceless and indeed voiceless. The greatest danger to civilised Society to-day is that anyone who expresses a minority view will be regarded and treated as a crank and that men will be so indoctrinated with plans for material progress that they will lose the ability and even the desire to safeguard their personal freedom.

The solicitors' profession has an important role in this field. We stand between the individual and the State whenever his constitutional rights are threatened and ensure that his case will be adequately presented before independent Courts administering justice in public and freely reported by the Press. In authoritarian States the independence of the legal profession and freedom of the press are not recognised. They must conform to public policy directives laid down by the supreme powers.

The Society and the profession can also help to safeguard the interests of the public by subjecting legislative measures, like the recent Succession Bill to informed and expert criticism so that public opinion will be focussed on any defects while they are under discussion in the Oireachtas. Experience has shown that such criticism must be stated publicly and persistently if it is to be effective. This could not be done by a profession subservient to the State for financial, political or other reasons.

The Minister for Justice in a recent public speech recognised the valuable service given by the profession and praised the work of the Society in maintaining professional standards. At the same time he proposes to make the profession subservient to the State by transferring to his Department the function of determining professional fees at present exercised by committees presided over by the Supreme Court or other judges. These committees have been entrusted with this duty for over one hundred years and have exercised it fairly and impartially. This would be a retrograde and unwise measure. It could only destroy the independence of the profession by substituting control by civil servants for control by the judiciary. Solicitors are officers of the Court. It is not in the public interest that the State should have the final control over the financial affairs of a profession whose function is to protect its clients against the State without fear or favour whenever the necessity arises.

I cannot close this part of my address without referring to another part of the Minister's speech in which he suggests that the scale of solicitors' fees is too high. In property transactions the solicitors' fee is only a minor part of the total expense (over and above the purchase price) particularly in sales by auction. The following examples speak for themselves.

EXAMPLES.

Sales by Auction

	Registered Title	*Unregistered Title*
Sale price £3,000	*Absolute*	*Possessory*	
Auctioneers' commission	£150 0 0	£150 0 0	£150 0 0
Revenue stamp duty ...	90 0 0	90 0 0	90 0 0
Solicitors' fee	50 0 0	100 0 0	87 10 0
Land Registry fees	12 9 0	25 16 0	
Other outlay	2 0 0	2 0 0	5 0 0
Total expenses	£304 9 0	£367 16 0	£332 10 0

	Registered Title	*Unregistered Title*
Sale price £10,000	*Absolute*	*Possessory*	
Auctioneer's commission	£500 0 0	£500 0 0	£500 0 0
Revenue stamp duty ...	300 0 0	300 0 0	300 0 0
Solicitor's fee	102 10 0	205 0 0	200 0 0
Land Registry fees ...	22 16 0	30 0 0	
Other outlay	2 0 0	2 0 0	5 0 0
	£927 6 0	£1037 0 0	£1005 0 0
Sale price £30,000			
Auctioneer's commission	£1,500 0 0	£1,500 0 0	£1,500 0 0
Revenue stamp duty	900 0 0	900 0 0	900 0 0
Solicitor's fee	177 10 0	355 0 0	400 0 0
Land Registry fee ...	30 0 0	30 0 0	
Other outlay ...	2 0 0	2 0 0	5 0 0
	£2,609 10 0	£2,787 0 0	£2,805 0 0

Solicitors' fees in conveyancing unlike the other items, are on a declining scale falling from a maximum rate of 2%, 3½% or 4% (depending on the nature of the title) on the part of the price below £1,000 to ¾%, ½% or 1% on the part of the price exceeding £10,000. If a solicitor carries out ten purchases of registered land at prices in equal steps from £1,000 to £10,000, his average fee will be 2.4% for possessory title with full investigation and 1.6% where the title is absolute. In the £11,000—£20,000 range the average rates are 1.6% and 0.8% respectively. For unregistered titles (broadly speaking urban and town property) the percentages are much the same as for registered property with possessory title, i.e. 2.3% in the £1,000–£10,000 range and 1.6% in the £10,000–£20,000 range and so on regressively. The rate falls as value rises. Revenue stamp duty (trebled in 1947) is charged at a flat rate of 3%. The auctioneers' and house agents' commission is charged at a flat rate as follows; Public auction 5% everywhere payable by the purchaser; Private sale, Dublin, 2½% payable by the vendor, elsewhere 5% payable by purchaser.

A purchaser's non-legal expenses (i.e. expenses other than solicitor's fees) on a sale by auction average 76% of the total expenses (other than price), at £3,000, 83% at £10,000, 89% at £30,000 and so on progressively. Other points which should be emphasised are :—

The ever increasing burden of overhead expenses (rent, rates, salaries, etc.) now at least 50%–60% of fees earned. In an important High Court action total costs might amount to £650. Of this sum £320 is represented by out of pocket payments by the solicitor for counsel's fees, witnesses' expenses and other necessary disbursements. This leaves £330 gross solicitors' fees of which £150–£200 is absorbed by overhead expenses leaving net fees £115–£130 before payment of income tax from a total bill of £650.

The additional expenses of solicitors' offices caused by unsatisfactory service from various Government offices. An hour's counter delay for routine business is not unknown and six months' delay is accepted as normal practice in some departments. Delays of this kind are reflected in wage and salary bills.

The solicitor, unlike counsel, carries liability for negligence if the client suffers financial loss through error or omission in the solicitor's office.

Comparisons with fee scales in England and elsewhere are misleading without taking account of all the circumstances. In England, Scotland and Northern Ireland there is a comprehensive civil legal aid and advice scheme. In England the annual State subsidy is £5,000,000. The cost is less in Northern Ireland and Scotland, but the common feature of the scheme is that solicitors have a State guarantee of their fees for business done for clients in the lower income brackets eligible under the scheme. There are also other differences in the legal system such as the existence of divorce legislation and a heavy volume of industry and trade which make simple comparisons misleading.

Conveyancing and property transactions have been made more difficult in recent years by the revenue stamp duty provisions and more recently by the restrictions in property transfers under the Land Act, 1965. These new Acts have introduced complexity where the law was once simple and clear and a mistake in interpretation may result in payment of the price by a purchaser who will get no title under the deed. Solicitors must also be fully conversant with Town Planning law which was unknown when the fee scales were first fixed.

CLOSING REMARKS

At this Summer Meeting, I have dealt rather briefly with matters of interest to the profession in general. May I close by informing you that during the remainder of my year of office, my every effort will be spent in trying to carry out the duties of that office. I cannot hope to equal the success of my Predecessors but if I do, it will be to a great extent due to the loyal assistance and co-operation of the entire Council of the Society and in a very particular way to the help I will get in every conceivable way from my Vice Presidents, Mr. Robert McD. Taylor and Mr. Eunan McCarron.

Mr. Eric Plunkett is as always a tower of strength and his assistance and guidance over the past half year have been a wonderful help to me in all the work I have had. I know I can always rely on him and also on his staff to go out of their way on any possible occasion if I ask their assistance in any matter however important or trival.

I thank you for listening to me so patiently and with great attention.

5. Messrs. Alexander McDonald, Thomas Jackson, Brendan P. McCormack, Roderick Tierney and John R. McC. Blakney were appointed scrutineers for the ballot of the Council for 1965/66 on the proposition of Mr. Desmond J. Collins seconded by Mr. Dinnen Gilmore.

6. General discussion followed as a result of the President's speech in which the following members took part :—Messrs. A. J. McDonald, F. Armstrong, T. A. Lynch, J. Carrigan, F. Gannon, P. C. Sweeney, J. F. Foley, T. C. G. O'Mahony, P. O'Donnell, J. Jermyn, T. J. O'Keeffe, F. Britain, G. J. Maloney, T. J. Fitzpatrick, D. J. Collins, P. Noonan, H. J. Walker, J. J. Nash, J. Griffin, J. F. Glynn.

The meeting which was attended by representatives from all parts of the country passed a resolution viewing with concern the views expressed by the Minister for Justice in his speech to Tuairim at Cork and supporting the Council of the Society in any action it might take for the protection of the independence of the profession.

ADMISSION CEREMONY

Before presenting Parchments to recently qualified solicitors, the President, Mr. John Maher, spoke as follows :—

Ladies and Gentlemen, it is my privilege to come here to-day and to present to you the certificates of enrollment as newly admitted solicitors and on behalf of the Council of the Law Society to welcome you to the solicitors' profession. You have completed a long and arduous course. To-day marks the end of that struggle but it does not mean that you can sit back and cease to strive. The many hours you have spent in study have more meaning to them than merely learning for the sake of passing an examination. They had a further purpose and that is to prepare you to be able to go out and face the world and help all people, who have recourse to you, to go on their way with the benefit of proper and correct legal advice. You are armed with a great theoretical knowledge of the law but now it behoves you to put that into practice. How will you do this? Some of you may be fortunate in having a father or mother or relative already in practice who is looking forward to having you join them in their already established firm. I had the good fortune to join my dear father, God rest him, who had been in practice at the time for 34 years and in my early days I could always turn to him at any moment and get the benefit of his years of experience and in my later days even up to the time of his death in 1961 I could still go to him and

very often did, to seek his invaluable advice. As I said some of you may be like this. If you are, you are blessed with good fortune.

Others among you may not have the good fortune. To you, I say, (and mark you, this is merely a personal opinion) that it might be as well for you to try and gain some practical experience in some senior solicitor's office for a year or two as an assistant before trying to branch out on your own. No matter how good an apprenticeship you may have served you will not yet have the experience of dealing with the thousand and one minute details of practical work which only comes from time. Do not think I would try to discourage you from opening on your own at once if you feel that is what you want to do. If you have the confidence to do so I would only admire you for it. I would like to point out here that if you launch out on your own, never, never, be afraid to go to an older solicitor and seek advice on some snag in one of your cases. You will find that in this regard no profession is more closely knit and co-operative and as well as this the Secretary and Council of the Law Society are always available and ready to give advice and guidance whenever sought.

You have received lectures on solicitors' accounts and the rights, duties and responsibility of solicitors. If you have absorbed them and taken the key points to your heart, you will be a credit to the profession and people worthy of the name of solicitor. It is a title you should be proud of. People to-day are looking up to us as leaders of men, honest, reliable and trustworthy citizens whose primary concern is the good of those who place their faith in us.

One other piece of advice; at the earliest possible moment join the Law Society and your local Bar Association and attend all the meetings that they hold and especially any talks or lectures on recent legislation or changes in the law. They will keep you up to date.

It only remains for me to wish one and all every success, prosperity and happiness in your future lives.

Certificates of admission were presented to the following solicitors :—Ian A. Crivon, "Simonette", Greenfield Park, Donnybrook, Dublin; Joseph T. A. Deane, Longford; Michael N. Dolan, Bank House, Bundoran, Co. Donegal; Thomas D. Durcan, Clew Bay House, Rosbeg, Westport, Co. Mayo; Thomas W. Enright, Shinrone, Birr, Co. Offaly; Bartholomew J. Flynn, Hartland House, Strokestown, Co. Roscommon; John V. Glynn, B.C.L., Mountpleasant, Ballinasloe, Co. Galway; William B. Glynn, Tuam, Co. Galway; John P. Hayes, B.A. (Mod.), LL.B. (T.C.D.), 40 Belleview Road, Dun Laoghaire, Co. Dublin; Paul W. Keogh, Claremount, Carrickmines, Co. Dublin; Patrick J. Lavan, Bridge Street, Dungarvan, Co. Waterford; Donnchadh D. Lehane, 134 Lr. Kimmage Road, Dublin; Thomas A. O. Menton, The Newtown, Moate, Co. Westmeath; Brian M. McMahon, 42 Abbey Street, Ennis, Co. Clare; Michael P. McMahon, 25 Castle Ave., Clontarf, Dublin; Christopher T. N. O'Meara, "Melrose", Nenagh, Co. Tipperary; Thomas J. O'Reilly, 5 Palmerston Gardens, Rathmines, Dublin; Miss Mary Raleigh, B.A. (N.U.I.), Kilbane House, Castletroy, Co. Limerick; Ian A. Scott, B.C.L., 12 Myrtle Park, Dun Laoghaire, Co. Dublin; John R. Sweeney, Abbey Street, Roscommon.

SOCIETY OF YOUNG SOLICITORS

A meeting was held in Buswells Hotel, Dublin on Thursday, 29th April, 1965 at which the above Society was formally constituted and the following were elected as Committee and Executive Officers :— Bruce St. John Blake, B.A., LL.B., *Chairman*; Norman T. J. Spendlove, M.A., B.A.I., *Treasurer*; Graham M. Golding, *P.R.O.*, B.A. (Mod.), LL.B., Marie T. Donnellan, *Secretary*; John F. P. Glynn, B.A., B.C.L., LL.B., Ian Quentin Crivon, Stuart L. Cosgrave.

The annual subscription was fixed at £1 1s.

A most instructive lecture was given by Miss Thelma King, LL.B., solicitor, on the subject of Hire Purchase Law in Ireland which was followed by a lively discussion.

The next meeting of the Society was held in Buswells Hotel on Thursday, 27th May, 1965. (All future meetings of the Society will be held on the last Thursday of each month.) The Lecture was delivered by Mr. Denis Greene, solicitor, on Office Proceedure and Administration and followed by a discussion.

A short talk was also given by Mr. McLoughlin of the Voluntary Health Insurance Board on the subject of Voluntary Health Insurance.

Further information can be obtained from the Secretary, Marie T. Donnellan, 52 St. Alban's Park, Ballsbridge, Dublin.

DAIL EIREANN

Legal Members of the Dail

The following members of the legal profession were elected to the Dail :—

Senior Counsel and Barristers-at-Law.

Patrick Hogan, (Labour) Clare. Mr. Hogan being the Speaker in the last Dáil was returned unopposed.

Jack Lynch (Fianna Fáil) Cork Borough. Stephen D. Barrett (Fine Gael) Cork Borough.

Sean Collins (Fine Gael) South West Cork.

Vivion de Valera, S.C. (Fianna Fáil) Dublin North Central.

Declan Costello, S.C. (Fine Gael) Dublin North West.

John A. Costello, S.C. (Fine Gael) Dublin South East.

David Andrews (Fianna Fáil) Dun Laoghaire Rathdown.

Liam Cosgrave, S.C. (Fine Gael) Dun Laoghaire Rathdown.

T. F. O'Higgins, S.C. (Fine Gael) Laois-Offaly.

P. J. Lindsay, S.C. (Fine Gael) Mayo North.

J. M. Dillon (Fine Gael) Monaghan.

Brian Lenihan (Fianna Fáil) Roscommon.

Solicitors.

Thomas J. Fitzpatrick (Fine Gael) Cavan.

Patrick O'Donnell (Fine Gael) South West Donegal.

George Colley (Fianna Fáil) Dublin North East.

Richie Ryan (Fine Gael) Dublin South West.

Lionel Booth (Fianna Fáil) Dun Laoghaire Rathdown.

H. P. Dockrell (Fine Gael) Dun Laoghaire Rathdown.

Gerard Sweetman (Fine Gael) Kildare.

Michael Moran (Fianna Fáil) Mayo South.

Sean Flanagan (Fianna Fáil) Mayo South.

M. J. O'Higgins (Fine Gael) Wicklow.

Legal Members of the Government

The following members of the legal profession are members of the Government :—

Jack Lynch, Barrister-at-Law, Minister for Finance.

Michael Moran, Solicitor, Minister for Lands and Gaeltacht.

Brian Lenihan, Barrister-at-Law, Minister for Justice.

George Colley, Solicitor, Minister for Education.

Seán Flanagan, Solicitor, Parliamentary Secretary to the Minister for Local Government.

THE OIREACHTAS

Speaking on the Estimate for Local Government in the Dáil, Deputy P. O'Donnell said : One of the responsibilities of local authorities is the provision of courthouses and this is a responsibility which has been sadly neglected. I do not blame the local authorities because the grants made available are insufficient to encourage local authorities to tackle the serious problem of putting the courthouses in order. I speak from experience. Judges are only human beings, and if a judge becomes irritated and annoyed, one cannot expect the same dispensing of justice that one can expect in normal circumstances.

We know that our judges are sitting and endeavouring to administer justice in courthouses which would not be tolerated in any other country. The other day I was in the town of Drogheda and there was a discussion as to whether the courthouse there should be reconstructed or a new one built, but the judge, I understand, has refused to sit in the present building. The same happens in my own county in Letterkenny. We had difficulty in procuring a reasonable sitting of the court on account of the condition of the courthouse. A courthouse is for the benefit of the country. Judges do not sit for the benefit of lawyers, solicitors or barristers ; they sit to administer justice to Seán Citizen, to everyone, and it is essential that these men be given an opportunity to do so in comfort, not alone for themselves but for the public who have to use these courthouses. I should be glad if the Minister would ensure that local authorities are adequately compensated for any expenditure incurred by them in this connection.

An Leas-Cheann Comhairle : That is not a matter for the Minister for Local Government.

Mr. P. O'Donnell : Quite possibly, it may be more a matter for the Minister for Finance, but, in dealing with the Department of Local Government, we are dealing also with the activities of local authorities. In those circumstances, what I have said would be relevant to the Estimate.

Dáil Debates, 28th April, 1965, cols. 327–8.

Dublin Metropolitan District Courts.

15. *Mr. Ryan* asked the Minister for Justice the reason for the delay in numbering the Dublin Metropolitan District Courts in one sequence ; and when it will be done.

Mr. B. Lenihan : As indicated in my reply on 3rd November last, I propose to make an Order altering the present numbering arrangement in the Dublin Metropolitan District Court at Morgan Place and Chancery Street. It has been necessary to undertake certain consultations which have not yet been completed. However, I expect to be in a position to make the Order in the next few weeks.

Index to Superior Court Rules.

16. *Mr. Ryan* asked the Minister for Justice the reason for the delay in publishing the Index to the Rules of the Superior Courts (S.I. 72 of 1962) ; and when it will be published.

Mr. B. Lenihan : As indicated in my reply on 3rd December last to a similar question from Deputy Barrett, it was hoped to have the Index to the Rules of the Superior Courts published in separate form

early this year. Due to unforeseen difficulties, however, this was not found possible. I am informed that the Index will be placed on sale early next week.

Mr. Ryan : I wonder can we really accept this from the Minister. I have no wish not to accept it but we were promised this over 18 months ago and I do not think we can be blamed if we no longer listen to the cry of "Wolf, wolf." It does not seem that there was any reasonable excuse for the prolonged delay.

Mr. B. Lenihan : It was entirely due to printing difficulties involved in compiling a very detailed index. The Deputy will have it early next week.

The foregoing extracts are taken from the Dáil Debates of 28th April, 1965, cols. 200–1. Members might note that the Index to the Superior Court Rules is now available from the Government Publications Sales Office, G.P.O. Arcade, Dublin 1, price 7/6.

ADJUDICATION OFFICE

Where documents are transmitted through the post the following conditions apply :—

1. All communications must be addressed to—
The Secretary,
Revenue Commissioners,
Adjudication Branch,
Dublin Castle.

2. Postage and in the case of registered packets, registration fees, must be paid by the sender.

3. Each instrument lodged for adjudication must be accompanied by an Adjudication Warrant duly completed.

4. A plain copy or an accurate and complete abstract must accompany each instrument.

5. A conveyance, assignment or transfer for natural love and affection or other instrument operating as a voluntary disposition must be accompanied by a certificate of market value and by the following information—

(i) Rateable valuation of premises and lands (separately) ;
(ii) Area of lands ;
(iii) Amount of Land Commission advance.

6. In the case of a conveyance, transfer or assignment by way of sale there must be confirmation that the consideration represents the full market value of the property and also

(i) a Certificate of the Redemption Value of the Land Commission Annuity, and
(ii) full information as to any other charges.

7. In any other case all relevant information which would facilitate an early decision must be furnished with the instrument for adjudication.

8. On receipt of a notice of provisional assessment, the applicant must remit the amount of the duty by Money Order or guaranteed cheque payable to the Accountant-General of Revenue.

9. Instruments transmitted through the post for adjudication will be returned through the post and will not be available for collection by hand from the Adjudication Branch.

SECTION 6 CERTIFICATE

Following the introduction of the "one taxpayer one charge" system, the Revenue Commissioners propose to charge, (*a*) the vendor to tax in respect of the period from the commencement of the relevant financial year to the date of sale ; and (*b*) the purchaser to tax in respect of the period from the date of purchase to the end of the financial year.

There will be no question of recovering from the purchaser the vendor's tax in respect of the period prior to the date of purchase and, accordingly there will be no need to make provision in the apportionment account in respect of tax on the property. Ground rent, where payable in full, should be apportioned by reference to the gross amount and, where payable under deduction of tax, should be apportioned by reference to the net amount. The Revenue have requested that the co-operation of members be forthcoming in operating this new arrangement.

It is still necessary to obtain a Section 6 Certificate in respect of vendor's tax for years prior to the financial year in which the sale is completed, but we understand that it will be unnecessary after the passing of the Finance Act, 1965.

CASES OF THE MONTH

Unqualified persons acting as Solicitor.

Solicitor—Unqualified person—Pretending to be a solicitor—advertisement containing representation by someone of being recognised by law and qualified to act as solicitor—Advertisement inserted by person intending to carry out the work and if the advertisement is wilfully and falsely made. Conviction should stand. Section 19 of the Solicitors Act, 1957. (Provisions of Section 19 of the Solicitors Act, 1957 in England are equivalent to those of Section 56 of the Solicitors Act, 1954).

Solicitor—Unqualified person preparing instruments—Land Registry official searches—Whether unqualified person can make an application for an official search or for an office copy of a document in relation to land registered under the Land Registration Act, 1925—Solicitors Act, 1957 s.20 (1) (*a*) Land Registration Rules. Held appeal against conviction must be allowed because of the proper construction of Section 20 (1) (*a*) of the Act of 1957—

an unqualified person was not prohibited from making an application under the Land Registration Acts unless the application could be fairly properly described as an application for registration, and an application for an official search or office copies were not applications for registration (Section 58 of the Solicitors Act, 1954 places a restriction on the drawing of documents and were defined in subsection (4) of that Section. The section of the Irish Act states that it applies to the following Acts :—

The drawing or preparing of a document relating to real or personal estate or any legal proceedings, the making of an application or the lodging of a document for registration under the Registration of Title Act, 1891 or any Act amending that Act, at the Land Registry or to or with a local registering authority. The Irish Act would appear to be more comprehensive on this point than the English Act, of 1957.

The appeal against conviction on the second charge was dismissed because on the facts, the appellant had not discharged the onus of proving that his acts in preparing or drafting instruments of transfer under the Land Registration Act, 1925 were not done in expectation of fee, gain or reward within the meaning of Sect. 20 (1) (*a*) of the Act of 1957.

(Carter *v.* Butcher—*The Law Times*, Vol. 236–207, April 9th, 1965).

Evidence ; Postage

The plaintiffs, a finance company, claimed £406 from the defendants, motor dealers, under an indemnity in a recourse agreement in respect of a H.P. agreement which had been terminated owing to the hirer's default. The defendants claimed, *inter alia*, that until the issue of the writ they had not received notice of the termination of the H.P. agreement. It was held in the first instance that in the absence of their postage book the plaintiffs had not strictly proved the posting of the letters giving notice of termination which they alleged had been sent and it was assumed in the defendants' favour that the notices might not have reached them. Judgment was given in favour of the H.P. Company for £156. The plaintiffs appealed.

Denning, M. R., stated that the issue depended upon whether or not the notice was given by the finance company to the dealers of termination of the hiring. The plaintiffs had lost their postage book. If the finance company did not give such notice the dealers and their position was prejudiced, the loss was not to be held against the dealers, but must go in diminution of the finance company's claim. Notice was not given to the dealers until the issue of the writ and detriment had thereby been caused to them.

The appeal should be dismissed.

Danckwerts & Winn L.JJ. agreed.

(Yeoman Credit Limited *v.* Birmingham Commercial Motor & Bodyworks Ltd. *(Solicitors Journal* (Vol. 109), p. 293).

Practice—Compromise of Action

In 1963 the plaintiff began an action claiming relief in respect of architectural work carried out by the defendant company of property developers ; the defendants counter-claimed alleging negligence. In June, 1964 the defendants' solicitors initiated correspondence "without prejudice", with a view to compromise, offering £400 and recognising that as the plaintiff was legally aided they would have to meet his costs to date. By September the offer had been increased to £900. The plaintiff's solicitors then wrote stating that that offer would be accepted on the understanding that the costs incurred to date would be paid, and stated that as the plaintiff was legally aided they would require an order on the costs and therefore proposed to issue a formal summons before the Official Referee that terms of settlement had been arrived at. They requested defendants' cheque in settlement and concluded, that they would prepare a summons and forward it for "your consent to be indorsed thereon". At the hearing of the summons before the Official Referee, the parties were represented only by solicitors' clerks. The clerk for the defendants indicated that he was not happy about the position as to costs but the Official Referee held that, all further proceedings in the action should be stayed save for the purpose of carrying into effect the following items : (1) that the defendants pay the plaintiff the sum of £900 within seven days ; (2) that they pay the plaintiff's costs as between party and party, such costs to be taxed ; and (3) that the plaintiff's costs be taxed on a common fund basis. The defendants appealed on the ground that, as there was no concluded agreement to compromise, there was no justification to make the order which had been made.

Denning, M. R. stated that there was no consent by the defendant's solicitors' clerk to the making of a Tomlin order. He stated that in his view when an action was compromised that gave rise to a new cause of action, and if there was a dispute the plaintiff had to sue on the compromise. In the absence of consent to the order, the court did not have jurisdiction to make it. His lordship allowed the appeal with some reluctance as did Wynn, L. J.

Danckwerts, L. J., dissenting, said that as a matter of construction there was on the correspondence a final agreement to pay £900 and that agreement included a term that the plaintiff's costs should be provided.

Further, his lordship thought that there was also an implied agreement that the action should be brought to an end in the cheapest and quickest way which was by a summons and order in the Tomlin form, so that if any difficulties arose it would be unnecessary to start a fresh action. He would dismiss the appeal.

(McCallum *v.* Country Residences, Ltd. *The Solicitors' Journal* (Vol. 109), p. 294).

LIBRARY ACQUISITIONS

SUPPLEMENTARY LIST TO 15TH MAY, 1965

Anson, J.—*Law of Contract*, 22nd Edn., 1964; All England Law Reports—*Index and Noter-Up*, 1964; *Current Law Citator*—1947 to 1964; *Current Law Yearbook*—1964; *Hawkins and Ryder on the Construction of Wills*, 1965, being the 4th Edn. of Hawkins; Josling, J. F.—*Adoption of Children*, 6th Edn., 1965; Law Quarterly Review—*Index to Vols.* 1–80, Ed. Allsopp, 1965; McNair Lord—*The Law of the Air*, 3rd Edn., 1964; Park, W. D.—*Hire-Purchase and Credit Sales*, 4th Edn., 1965; Scottish Council of Law Reporting—*Annual Digest of Decisions in Scots Cases*—1961–62; Stroud, F.—*Judicial Dictionary*, Second Supplement to Third Edition, 1965; Wheatcroft, G. S., ed.:—*Estate and Gift Taxation—A comparative Study*—1965; Wilkinson, G. S.—*Affiliation Law and Practice*, Second Edition, 1965.

MEETINGS OF THE COUNCIL

APRIL 29TH: The President in the chair, also present Messrs. Ralph J. Walker, Thomas A. O'Reilly, Thomas J. Fitzpatrick, Patrick O'Donnell, Francis Armstrong, Augustus Cullen, William A. Osborne, Rory O'Connor, Daniel J. O'Connor, Robert McD. Taylor, Francis J. Lanigan, Niall S. Gaffney, Thomas O'Donnell, Desmond J. Collins, James R. Green, Desmond Moran, George G. Overend, John Carrigan, George A. Nolan, James W. O'Donovan, John B. Jermyn, Gerald Y. Goldberg, Reginald J. Nolan, Thomas V. O'Connor, Eunan McCarron, Thomas H. Bacon, Gerard M. Doyle, Peter E. O'Connell, Patrick Noonan.

The following was among the business transacted:

Trade Mark Agency

It was decided to reconsider the question of the propriety of the use of the description "Trade Mark Agent" on a solicitors' stationery mentioned in the Society's Gazette, March 1965, and the matter was referred back to a committee for further consideration and report.

Army Legal Service

It was decided that the Society should represent members of the profession in the Army Legal service on the presentation of a pay claim to the Department of Defence.

Gross Sum Agreement. Contentious Business

Member acted for the claimant in an accident case which was settled for an agreed sum and costs after the institution of proceedings. Member had agreed the solicitor and client costs with the client at a sum of £43 5s. 0d. The party and party costs paid by the defendant amounted to £38. Member received the damages and costs and by agreement with the client deducted the agreed solicitor and own client costs from the sum received and forwarded the balance to the client. The client subsequently wrote to member stating that he required a detailed solicitor and client bill. The Council on a report from a committee stated that having regard to the provisions of the Attorneys and Solicitors Act, 1870 acceptance by member of part of the costs before the agreement had been approved by Taxing Master invalidated the gross sum agreement and the client was entitled to have the costs drawn and taxed in the ordinary way. The position would have been otherwise if the business were non-contentious as in that case the position would have been regulated by section 8 of the Solicitors Remuneration Act, 1881 which does not require an antecedent approval of the agreement before receipt by the solicitor of any amount payable thereunder.

Solicitor-trustee. Costs

Member acted as one of the trustees of certain diocesan property. He received instructions to act for the trustees in the sale of this property and also of other diocesan property of which he was not trustee. He asked for guidance as to the position regarding the costs. The Council on a report from a committee stated that neither member nor his firm would be entitled to charge profit costs but the trustee-solicitor could appoint his partner to act with the consent of the other trustees and that solicitor would be entitled to charge the ordinary profit costs provided that the solicitor-trustee is precluded by the contract from receiving or sharing in the costs. The agreement must be in existence before the work is undertaken. The Council expressed no opinion on the question whether the costs of the whole sale could be apportioned between the two properties for the purpose of charge.

Advertising

A firm of solicitors acted as agents for a publishing firm and issued correspondence on printed notepaper

giving the name and professional address of the firm but without using the description solicitors for the purpose of promoting sales of the clients publications. The Council on a report from a committee stated that this was contrary to professional etiquette.

Professional Duty of Disclosure

Member acted for a claimant for damages for personal injuries in a road accident case against the owner and supposed driver of another car. When the case had almost reached the settlement stage, member ascertained that contrary to what was sworn by the defendant and his son in the District Court, the son who did not hold a driving licence was at the wheel of the car when the accident occurred. Member enquired whether he was under any duty to disclose this matter to the defendant's insurers. The Council on a report from a committee stated that members' duty is towards his own client and that he is not under any duty to disclose.

REGISTRATION OF TITLE ACTS, 1891 AND 1942

ISSUE OF NEW LAND CERTIFICATE

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

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

Dated the 18th day of June, 1965.

D. L. McALLISTER,
Registrar of Titles.

Central Office,
Land Registry,
Chancery Street,
Dublin.

SCHEDULE.

1. Registered Owner, Jeremiah Fogarty. Folio number 7126. County Kilkenny. Lands of Tullavoolty in the Barony of Galmay containing 37a. 1r. 30p.

2. Registered Owner, Daniel Lyons. Folio number 204. County Limerick. Lands of Knocknasnaa in the Barony of Glenquin containing 49a. 3r. 10p.

3. Registered Owner, James O'Sullivan, Folio number 56R. County Kerry. Lands of Gortamullen in the Barony of Dunkerron South containing 7a. 3r. 24p.

4. Registered Owner, John J. McManus, Folio number 9174. County Longford. Lands of Drumnacooha in the Barony of Longford containing 17a. 3r. 7p.

5. Registered Owner, William Farrell. Folio number 6159, County Longford. Lands of Grillagh in the Barony of Ardagh containing 16a. 1r. 24p.

STUDENT EXCHANGE

A 19 year old daughter of a German lawyer desires to arrange an exchange during the summer months with the daughter of an Irish lawyer. Interests : horse-riding, swimming, motoring. For information please contact the Secretary of the Incorporated Law Society, Solicitors' Buildings, Four Courts, Dublin 7.

THE REGISTRY

Register C

FOR SALE, 64 volumes Irish Law Times (two copies unbound) years, 1900–1964, also incomplete set of Statutes, 1820–1910. Box No. C. 181.

Printed by Cahill & Co., Ltd., Parkgate Printing Works, Dublin.

GAZETTE

Vol. 59
Nos. 2 and 3
June/July 1965

THE INCORPORATED LAW SOCIETY OF IRELAND

President
JOHN MAHER

Vice-Presidents
Robert McD. TAYLOR
Eunan McCARRON

Secretary
ERIC A. PLUNKETT

CONTENTS

Meetings of the Council 13
Conveyancing Practice 15
Examination Results 15
Solicitors' Accounts Regulations ... 15
Land Act 1965 18
Income Tax Bill, 1965 18
Law Reports 18
Section 6 Certificates 19
U.S. Law Directory 19
Ancient Deeds 19
Cases of the Month 19
Registration of Title Acts 21
Insurance Agency Clauses 22
Society of Young Solicitors 22
Land Purchase Act Rules 1965 ... 22
Obituary 23
The Registry 23

MEETINGS OF THE COUNCIL

July 1st: The President in the chair, also present Messrs Ralph J. Walker, Reginald J. Nolan, Joseph P. Black, John J. Nash, Gerald J. Moloney, Gerard M. Doyle, Richard Knight, Eunan McCarron, Patrick Noonan, Peter E. O'Connell, James W. O'Donovan, Gerald Y. Goldberg, James R. Green, Raymond A. French, Desmond J. Moran, Thomas V. O'Connor, George A. Nolan, Desmond J. Collins, Niall S. Gaffney, John Carrigan, Robert McD. Taylor, Peter D. M. Prentice, Thomas H. Bacon, Brendan A. McGrath, George G. Overend.

The following was among the business transacted:

Tied agency and insurance

The Council considered a report from a committee on the difficulties caused by double insurance covenants under leases and mortgages. A statement on the matter is printed in this issue of the Gazette.

Building Societies: Agents

Members enquired whether there is any professional objection to acting as agents for building societies for the purpose of collection of subscriptions on a commission basis. The building societies concerned propose to appoint solicitors and to supply them with brass plates giving particulars of the agency. The Council stated that it is not in

accordance with proper professional practice that agents for building societies should be so described on name plates outside their office premises. No departure should be made from the present well established practice as regards solicitors' name plates.

Meaning of Bank

The Council considered an opinion from counsel as to the meaning of the term "bank" under the Central Bank Act 1942 and the Solicitors Acts 1954–60 and the Solicitors' Accounts Regulations. Counsel advised that the term "bank" is nowhere defined by statute. Having considered counsel's opinion the Council decided that regulations should be made under the Solicitors Acts 1954–60 defining the term for the purpose of the Regulations.

JULY 22ND: The President in the chair, also present Messrs Francis J. Lanigan, John Carrigan, George A. Nolan, Raymond A. French, Brendan A. McGrath, Daniel J. O'Connor, Desmond J. Collins, Desmond Moran, Peter D. M. Prentice, Gerald Y. Goldberg, Ralph J. Walker, Patrick Noonan, Peter E. O'Connell, Thomas A. O'Reilly, Joseph P. Black, John C. O'Carroll, Richard Knight, Augustus Cullen, Thomas H. Bacon, William A. Osborne, Gerard M. Doyle, George G. Overend, Robert McD. Taylor, Niall S. Gaffney.

The following was among the business transacted :

Notary Public

On a report from the Secretary it was decided that counsel should be briefed to oppose an application to the Chief Justice by an applicant who is not a solicitor for appointment as notary public. The Society in principle takes the view that these appointments should be confined to practising solicitors.

Disciplinary Committee vacancy

The President reported that he had sent a letter to the President of the High Court resigning from the Disciplinary Committee. It was decided to ask the President to appoint a new member to the committee in place of Mr. Maher.

Professional Negligence

A member acting for the purchaser of premises completed the transaction in 1955 on an undertaking by the vendor's solicitor to furnish a section 6 certificate. The vendor's solicitor did not carry out the undertaking and subsequently ceased to practise. In 1962 the purchaser received a demand for schedule A and B income tax which he immediately paid. It subsequently transpired that part of the demand related to a period prior to the closing of the purchase. The purchaser claimed the amount against member on the ground that the latter was negligent and member asked for the guidance of the Council. The Council, on a report from a committee, were of the opinion that the practice of accepting an undertaking from the vendor's solicitor is now universal and in the interests of vendors and purchasers and that the acceptance of such an undertaking without the specific instructions of the purchaser is not negligent unless the purchaser's solicitor knew or had reason to know that the solicitor for the vendor could not be relied on to carry out the undertaking. It was however pointed out that the opinion of the Council is not a legal decision and has no authority beyond the experience of members of the Council as practitioners.

Conflict of interest

Member on the instructions of an intended husband drew up a deed of marriage settlement whereby the intended husband transferred property to himself and his intended wife as joint tenants in fee simple. Member received no instructions from the intended wife. At the date of the transfer the intended husband was the full registered owner in fee simple subject to a right of residence in favour of his mother in part of the dwellinghouse. All necessary parties executed the instrument. The husband and wife after the marriage had a disagreement and are now living apart. The instrument has been sent to the Land Registry but registration has not been effected. Member received a request from the mother of the husband not to proceed with the registration and member asked for guidance from the Council. The Council on a report from a committee stated that (1) member should not take any step to have the dealing withdrawn from registration (2) if the dealing is returned by the Land Registry of their own volition member before handing it over should obtain a discharge from each of the two joint owners (3) member should inform the wife of the advisability of seeking professional advice.

Member acted for the driver of a car which was in collision with another car while carrying a passenger. In proceedings between member's client and the owner of the other car for damage to the respective vehicles blame was apportioned between the two drivers on a 60/40 basis. Member acted on the instructions of his client's insurers in these proceedings. The driver of the other car subsequently sued member's client for damages for personal injuries and other solicitors were instructed by the same insurance company to defend these proceedings. The passenger driven by member's client subsequently instructed member to sue the driver for

personal injuries and the Council was asked to decide whether any conflict of interest arises which would prevent member from accepting instructions from the passenger. The Council on a report from a committee stated that a conflict of interest does arise and that member, having acted for the driver and owner of the car, cannot now accept instructions from the passenger to proceed against his former client.

CONVEYANCING PRACTICE

EXCHANGE OF CONTRACTS

The Council advised members in the Society's Gazette (May 1960) that contracts for sale of property should be engrossed in duplicate and that a copy executed by the vendor should be exchanged for a copy executed by the purchaser, the latter being accompanied by a cheque for the deposit in favour of the vendor's solicitor, where appropriate according to the terms of the contract. A case has been brought to the notice of the Council in which it appears that a serious loss may have been incurred as the result of the failure of the vendor's solicitor to have the contract signed by his client. The contract in that case was accompanied by a cheque for a substantial deposit which was paid in the normal course by the drawer's bank. The Council again bring this matter to the attention of members as one of urgency and advise that an invariable practice should be adopted of obtaining a signed contract in exchange for the deposit just as a duly executed conveyance or transfer is required on completion in exchange for the balance of the purchase money.

EXAMINATION RESULTS

At the Book-keeping examination for apprentices to solicitors held on the 21st June the following candidates passed with merit :—

1. David Cox, Richard V. Lovegrove; 2. Felicity M. Foley, Enda P. O'Carroll, B.C.L.; 3. George G. Mullan, B.C.L., James F. O'Higgins, William B. R. E. Somerville, B.A.; 4. James Heney, Brendan O'Mahony.

Passed : John B. Bailey, Marguerite Joyce Boland, Niall P. Connolly, Francis D. Daly, B.C.L., Catherine P. V. Doyle, Michael Farrell, Mary M. Harvey, B.C.L., Eugene P. Hunt, B.A., John B.D. Lacy, B.C.L., Kiernan McDermott, Patrick J. McMahon, B.C.L., Anna M. O'Shea, B.C.L., Gordon J. Ross, Gerald B. Sheedy, Brian A. F. Woodcock.

29 candidates attended ; 24 passed.

At examinations held on the 9th July, 1965 under the Solicitors Act 1954 the following candidates passed :

First examination in Irish : Mary Judith Baily, Lewis Eric Citron, Kevin P. A. Deane, Terence E. Dixon, Anthony Dunleavy, Anselm A. Enright, Ernest B. Farrell, Michael Foy, Denis G. Hipwell, Charles A. Kelly, Martin A. Kennedy, Michael Larkin, James M. Molloy, Mary Murphy, James A. McCarthy, William C. McCormick, Aidan J. McNulty, Brian P. O'Beirne, Elizabeth A. Purcell, Louise Ryan, Francis E. Sowman, Paul B. Smithwick, Finbar Twohig.

25 candidates attended : 23 passed.

Second Examination in Irish : Fergus F. Armstrong, John B. Baily, Albert D. E. Burke, Niall P. Connolly, David Cox, Catherine P. V. Doyle, Thomas F. Figgis, Paul D. Guinness, James Heney, George G. Mullan, Donal T. McAuliffe, Brendan O'Mahony, Michael J. O'Shea, Gerald B. Sheedy, W. B. R. B. Somerville, Brian G. McD. Taylor.

16 candidates attended : 16 passed.

S.I. No. 163 of 1965

THE SOLICITORS' ACCOUNTS (AMENDMENT) REGULATIONS, 1965

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

1. These regulations may be cited as the Solicitors' Accounts (Amendment) Regulations 1965 and shall come into operation on the 22nd day of July 1965 and shall be read as one with the Solicitors' Accounts Regulations 1955 to 1961 and shall so far as they are inconsistent therewith alter and amend the same.

In these regulations the term "the Principal Regulations" means the Solicitors' Accounts Regulations 1955 (S.I. No. 218 of 1955).

2. The Solicitors' Accounts Regulations 1955 to 1961 and these regulations may be cited together as the Solicitors' Accounts Regulations 1955 to 1965.

3. The Interpretation Act 1937 applies to these regulations in the same manner as it applies to an Act of the Oireachtas except in so far as it may be inconsistent with the Solicitors Acts 1954 and 1960 or these regulations.

4. (1) Regulation 2 of the Principal Regulations

shall be amended by the insertion of the following clause immediately after the definition of the term "Accountant".

"Bank" means any of the banks mentioned in the Schedule hereto.

(2) The following Schedule is hereby inserted after regulation 16 of the Principal Regulations.

SCHEDULE

The Bank of Ireland.	The National City Bank Ltd.
Guinness and Mahon	The Northern Bank Ltd.
The Hibernian Bank Ltd.	The Provincial Bank of Ireland Ltd.
The Munster and Leinster Bank Ltd.	The Royal Bank of Ireland Ltd.
The National Bank Ltd.	The Ulster Bank Ltd.

Signed on behalf of the Incorporated Law Society of Ireland this 22nd day of July, 1965.

JOHN MAHER,
President of the Incorporated Law Society of Ireland.

I concur in the making of the above Regulations.

CAHIR DAVITT,
President of the High Court.

EXPLANATORY NOTE

The term "bank" is not defined in the Solicitors Acts 1954–60 or in the Solicitors' Accounts Regulations 1954–61. As defined in these regulations it will mean any of the associated banks named by the Central Bank Act 1942 together with Messrs. Guinness and Mahon and the National City Bank Ltd.

FINANCE ACT, 1965

Part I. Income Tax.

It is proposed in section 3 to repeal the provisions in sections 162 and 189 of this Income Tax Act 1918 for distraint over the goods of subsequent occupier of lands for tax due by a predecessor and consequently the necessity for section 6 certificates will cease.

Part III. Death Duties.

Section 20 deals with dispositions in favour of certain companies. In the case of a company controlled by a deceased person as defined in the section a disposition of property in favour of the company by the deceased, either before or after the passing of the Act, is to be deemed to be property taken by the company under a disposition operating as an immediate gift inter vivos and any consideration received by the deceased therefore shall not be treated as consideration for the purpose of sections 3 or 7(1) of the Finance Act 1894. Where the consideration received by the deceased for such a disposition made within five years of his death or property representing such consideration is liable to estate duty on his death the value of the consideration or the property representing it on which estate duty is payable is to be deducted for the purpose of calculating estate duty on the property the subject of the disposition in favour of the deceased-controlled company.

By subsection (4) a disposition made before or after the passing of the Act in favour of a deceased-controlled company will be liable for duty where the deceased was at any time within five years before his death in receipt or enjoyment of income or benefits from the company other than dividends or interest on stocks, shares or debentures as property in which he deceased had an interest ceasing on his death within the meaning of section 2(1) (b) of the Finance Act 1894.

Subsection (5) deals with the value for the purpose of death duty of stock, shares, debentures or securities in a non-trading deceased-controlled company.

Subsection (6) deals with the value for death duty purposes of shares in a company controlled by the deceased and relatives of the deceased or any one or more of them.

Subsection (7) deals with value for death duty purposes of a debt due to the deceased by a deceased-controlled company.

Subsection (8) deals with a disposition for the benefit of a relative of the deceased made by a deceased-controlled company where at any time within one year prior thereto the deceased alone had control of the company.

Section 21 deals with discretionary trusts and aims at preventing avoidance of death duties by means of this device by providing that where one or more of a class of person the objects of the discretionary trust dies during its continuance and after the passing of the Act he shall be deemed to have had an interest limited to cease on his death in the property to the extent of the average annual amount of the aggregate payments made to him out of capital or income during the relevant period as defined in the section. This section appears to embrace a discretionary trust whenever created before or after the passing of the Act.

Section 22 amends section 2 (2) of the Finance Act,

1894, by abolishing the exemption from estate duty in respect of foreign immovable property, other than land situate outside the State.

Section 23 is aimed at ensuring that a claim for estate duty will arise on the death of a life tenant who after the passing of the Act terminates a settlement by acquiring directly or indirectly within five years of his death the interest of the person or persons to whom the property would otherwise have passed under the terms of the settlement on the life tenant's death.

Section 24 provides that death benefits under non-contributory superannuation schemes will be liable to estate duty unless the aggregate value of the benefits does not exceed £5,000 and they are payable to the widow or dependent children of the deceased. It will apply to superannuation schemes whenever created in connection with a death occurring after the passing of the Act. There is marginal relief for estate duty where the death benefit exceeds £5,000.

Section 25 aims at ensuring that the proviso to section 4 of the Finance Act, 1894 (non-aggregability of property passing on the death in which he never had an interest) shall cease to have effect as regards property passing or deemed to pass on a death occurring after the passing of the Act unless it is proved to the satisfaction of the Revenue Commissioners that it did not pass directly or indirectly under a disposition made by the deceased (which term includes the payment of money).

Section 26 gives partial relief from estate duty in respect of certain policies of assurance which became indefeasibly vested in a donee more than five years before the death of the assured.

By *section* 27 the existing period of three years prior to death as affecting gifts *inter vivos* is extended to five years where the deceased dies after the passing of the Act with relief on a sliding scale where the death occurs in the third, fourth or fifth years of the period. It will not apply where the gift was made or a release effected three years or more before the passing of the Act.

Section 28 provides that the exemption from estate duty in relation to gifts in consideration of marriage is to be confined to gifts made to the parties to the marriage and to the issue of the marriage.

Section 29 provides that in estates not exceeding £15,000 value estate duty on benefits passing to the widow or dependent children of the deceased is to be abated. The abatement is limited to £150 0s. 0d. in the case of the widow and £100 in the case of each dependent child.

Section 30 abolishes the 1% rates of legacy duty and succession duty payable by a spouse lineal ancestor or lineal descendant and the supplementary 10/-% rate of succession duty payable in certain cases.

Part IV. Stamp Duties.

The Bill contains proposals for relief from capital and transfer stamp duty in the case of reconstructions or amalgamations of companies. Broadly speaking the conditions are (1) a company (referred to as the transferee company) is registered after the passing of the Finance Act, 1965, or the nominal capital of such a company has been increased. (2) The company is registered or established or has increased its capital with a view to the acquisition of the undertaking or of not less than 90% of the issued share capital of a particular existing company. (3) The consideration for the acquisition (except such part as consists in the transfer to or discharge by the transferee company of liabilities) of the existing company consists as to not less than 90% thereof in the issue of shares in the transferee company to the existing company (where an undertaking is to be acquired) *or* in the issue of shares in the transferee company in exchange (where shares are to be acquired). Two kinds of relief are proposed:

(*a*) The nominal share capital of the transferee company for the purpose of computing stamp duty chargeable thereon is to be treated as being reduced in the manner stated in section 30 (1) of the Bill.

(*b*) *Ad valorem* stamp duty will not be chargeable on any instrument effecting the transfer of the undertaking or shares or on the assignment of any debts of the existing company to the transferee company.

The following conditions should be noted:

1. The instrument must be adjudged duly stamped.

2. In the case of an instrument of transfer to a company within the meaning of the Companies Act, 1963, the relief from the *ad valorem* transfer duty will not be given unless the instrument is executed within twelve months from the date of registration of the transferee company or from the date of the resolution for the increase of the nominal share capital thereof or alternatively unless the instrument was made for the purpose of effecting a conveyance or transfer in pursuance of an agreement filed or particulars of which have been filed with the Registrar of Companies within the said period of twelve months.

3. Relief from duty on the release or assignment of debts of the existing company will apply only to debts (other than debts due to banks or trade creditors) which are incurred two or more years

before the proper time for making a claim for exemption under section 30.

4. A company will not be deemed to be a particular existing company unless the memorandum of association or the Act establishing the transferee company provides that one of the objects thereof is the acquisition of the undertaking or shares in the existing company or unless this fact appears from the resolution, Act or other authority for the increase of capital of the transferee company.

5. A claim for exemption must be supported by a statutory declaration made by a solicitor and any other evidence required by the Revenue Commissioners.

6. Where a claim for exemption is supported by a declaration which is untrue or it is subsequently found that any specified conditions are not fulfilled *or* if the existing company ceases within two years from the material date to be the beneficial owner of shares issued to it *or* if the transferee company ceases within a period of two years from the material date to be the beneficial owner of shares acquired *then* the exemption from duty shall be deemed not to have been allowed and an amount equal to the duty remitted shall become forthwith a debt due from the transferee company to the Minister for Finance with interest thereon. This provision raises a question as to stamp duty. As the stamp duty must have been adjudicated under the proviso to section 30 (1) a subsequent purchaser will not be affected.

7. There is provision in section 30 (7) for the repayment by the Revenue Commissioners of duty charged because of failure to satisfy the condition as to acquisition of 90% or more of the issued share capital of the existing company. If this condition is satisfied within six months from the last day of the period of one month after the first allotment of shares for the purposes of the acquisition, or six months from the date of the invitation to the shareholders of the existing company to accept shares in the transferee company, whichever is earlier, the duty may be repaid.

Part VII (profits and gains from dealings in or development of land) and Part IX (taxation of profits arising from lettings of buildings and land) concern practitioners and their clients and will repay careful study.

Abolition of 25% ad valorem *stamp duty*

The Act abolishes in Part VIII of the Third Schedule, save as respects certain instruments consequent upon contracts entered into before the passing of the Land Act, 1965, the 25% stamp duty on acquisition of land by non-nationals. The Land Act, 1965, gave the Land Commission direct control over such acquisitions and the stamp duty provisions are no longer required. Nevertheless the sufficiency of the stamp duty on instruments executed between 30th November, 1947 and the date of abolition of the 25% duty will be a question of title as regards conveyances executed between the dates mentioned and solicitors will still have to refer to the provisions of the repealed Statutes.

The foregoing is merely a summary of certain provisions of the Act and is not complete or comprehensives members should carefully examine the Act which is now available from the Government Publications Sales Office, G.P.O. Arcade, Dublin 1.

LAND ACT, 1965

The Society's booklet *Modern Law Publications* (No. 7) was with the printers when the printers' strike commenced. It will be available for members shortly after the resumption of printing operations. Price 2s. 9d.

INCOME TAX BILL, 1964

The Bill was introduced by the Minister for Finance and ordered by Dail Éireann to be printed on 9th December, 1964. It is on sale through the Government Publications Sales Office, G.P.O. Arcade, Dublin at 10/6, and accompanied by an explanatory memorandum with a table of comparison showing how the provisions of earlier enactments are dealt with in the Bill. It is a consolidating Bill down to and including the Finance Act 1964 and the explanatory memorandum states that every effort has been made to ensure that the Bill does not in any way alter existing law. To facilitate comparison marginal references to the provisions reproduced have been inserted. The Bill lapsed on the dissolution of the Oireachtas and will presumably be re-introduced in due course. Even in its present form it will be of great assistance to practitioners by enabling them to trace legislative provisions without the labour of referring to the Income Tax Act 1918 and subsequent Finance Acts. When re-introduced the Bill will, no doubt, incorporate the tax provisions of the Finance Act 1965.

The Bill including its eighteen schedules contains 390 pages and is good value for 10/6d.

CERTIFIED COPIES OF JUDGMENTS

The following statement was issued on 15th June, 1965 on behalf of the Minister for Justice:

Arrangements have been concluded between the

Minister for Justice and the Incorporated Council of Law Reporting under which the annual grant to the Council from public funds is being increased from £500 to £4,000 in respect of law reporting. This will enable the Council to increase the number of judgments which are reported in the Irish Reports and to provide a more efficient service.

The new arrangements include a change in the method of supplying copies of judgments required for appeal and other purposes. Hitherto, these judgments have been supplied on a fee basis by the Council's reporters. They will now be provided by the Offices of the Supreme and High Court, and the only charge made will be the ordinary scrivenery rates. The change will result in a substantial reduction in the cost of copies of these judgments.

SECTION 6 CERTIFICATES

The attention of members is drawn to the provisions of Section 3 of the Finance Act 1965 which is concerned with meeting the requirements of the "one tax payer one charge" system. It enables separate assessments under Schedules A and B to be made on persons who are entitled to a share in property for the whole or part of the year or who are entitled to the whole interest in property for only part of a year. It also removes the existing power to distrain on property for tax due on it by a former occupier. The Minister for Finance in his budget statement stated *inter alia* :—"The necessity to have regard to tax in preparing apportionment accounts will thus be eliminated. I also propose to terminate the provisions under which an occupier for the time being may be required to pay tax by a former occupier. It will no longer be necessary, therefore, for a purchaser to protect himself by obtaining a certificate under Section 6 of the Finance Act, 1928".

Effect is given to this provision by section 3 (4) and (5) of the Finance Act 1965 in the case of property sold for valuable consideration.

U.S. LAW DIRECTORY

The Martindale-Hubbell Law Directory is published in four volumes and revised annually. The 1965 edition is now available. It provides a complete directory service for and about the legal profession. It is made up of many sections including a geographical section which presents a roster as far as possible of the bar of each city and town in the United States and Canada, showing years of birth and admission to bar, college and law school education, and a list of lawyers and patent lawyers of acknowledged standing in the principal cities of foreign countries whose professional interests are international in scope. The information in this section and in the biographical section when used together could prove most helpful not only in making intelligent selections of associate counsel, but also for any reason where specific information is necessary in connection with certain lawyers. There is a section on banks, law digests, court calendars, uniform and model acts and reports.

The Directory is in four volumes and is very attractively bound. Further information can be had from Martindale-Hubbell, Inc. 1, Prospect Street, Summit, New Jersey, U.S.A.

ANCIENT DEEDS

The Chairman of the Irish Manuscripts Commission has requested the Society to bring to the attention of members the importance of ancient documents. Before disposing of any old documents, members might carry out an examination to ascertain as to whether they are of historical or genealogical value.

CASES OF THE MONTH

Solicitors' Negligence

The plaintiff, who intended to take a sub-lease of a shop from the defendants, inquired of a representative of estate agents instructed by the defendants whether he could use it as a tobacco and confectionery retail shop. The estate agents' representative, who had no actual authority to give any warranties, replied that "that would be all right". Subsequently, the plaintiff's then solicitors wrote to the defendants' then solicitors stating that they were instructed that the plaintiff's intended use of the shop for the business of a retail confectionery and tobacco business was a properly permitted user both by the head landlord and local planning authorities and invited the defendants' then solicitors to reply to that assertion. The defendants' then solicitors never replied to that letter, but two months later submitted a draft sub-lease with a clause permitting the plaintiff to use the premises as a retail tobacco and confectionery shop. There was no covenant in the sub-lease by the defendants that the plaintiff could carry on the business of a confectionery and tobacco retailer. By the head lease the defendants could not, without the consent of the head landlord, use the shop premises for any business other than that of boot and shoe makers and dealers. The plaintiff's then solicitors never called for or inspected the head lease. The sub-lease having been executed, the

plaintiff went into possession and for some time carried on the business of a confectionery and tobacco retailer. The head landlord, in exercise of his powers under the head lease, prohibited the sale of tobacco in the shop as a result of which the plaintiff sustained a considerable loss of business.

In an action by the plaintiff against the defendants for damages for breach of an implied, alternatively an express, warranty that the premises could lawfully be used for the sale of tobacco, the plaintiff relied for the express warranty on *inter alia* the failure of the defendants' then solicitors to reply to the letter of the plaintiff's then solicitors in relation to permitted user. Held *inter alia* that the defendants had not given any express warranty since the failure of the solicitors to reply to an assertion made in the course of negotiation for a sub-lease could not constitute a warranty and that the submission of a draft sub-lease was no more than an offer to negotiate a sublease on the terms of the draft; accordingly, there being no express or implied warranty, the plaintiff's claim failed.

Per Russell L.J. The solicitors then acting for the plaintiff were negligent in not calling for and inspecting the head lease and would be liable to the plaintiff for the same measure of damages as he would have obtained had he established a warranty by the defendants.

Hill v. Harris and Another (1965) 2 W.L.R. p. 1331.

Occupation

The defendant brewers owned a public house; they did not let the premises, but traded directly through a manager. The manager lived in the premises rent free, and as a privilege was allowed to take paying guests in the upper part, to which the public did not have access. One such guest fell and was killed on the "private" part of the premises. On his widow's claim for damages, held that the manager, and not the defendant, was the occupier of the "private" part of the premises for the purposes of the Occupiers' Liability Act, 1957.

(Wheat v. E. Lacon & Co. (1965) 109 S.J. 334 4 C.L. 524).

Receipt for counsel's fees

Practice—Costs—Party and party costs—Taxation—Counsel's fees—Vouching—Whether counsel's fees should be shown to have been paid before taxation—Whether to be shown to be paid on dates in bill of costs—Practice of Office of Taxing Master—Personal responsibility of Taxing Master—Court Officers Act, 1926 (No. 27 of 1926) s. 3, 6, 7, 58—Courts (Supplemental Provisions) Act, 1961 (No. 39 of 1961), s. 55, sub-s. 1, Eighth Schedule paragraphs 2 and 8.

1. On the taxation of a party and party bill of costs it is not necessary to show that counsel's fees were paid on the dates shown in the bill provided the payment of such fees is properly vouched.

2. Where counsel have given a receipt over their signature acknowledging payment of a brief or other fee and have signed vouchers the taxing master should accept such receipts and allow the fees or such part thereof as he thinks proper.

The State v. Judge Durcan (I.L.T.R. Vol. XCIX p.107).

Form of Certificate for Stamp Duty Purposes

The appellant company was duly incorporated on the 15th September, 1943, as a limited liability company, under its original name of "The Dublin Marine Transport Company Limited".

By resolution passed in 1958, the name was changed to "New Forest Estate Company Limited". In November, 1954, certain property was conveyed by V. to D.M.T.C. In March, 1960, the Revenue Commissioners were required to express their opinion as to the duty, if any, chargeable on the executed instrument. The Revenue Commissioners were of the opinion that the certificate contained in the said instrument, was not in compliance with the Finance (No. 2) Act, 1947 and that, accordingly, ad valorem duty was payable. In March, 1962, the Company required the Commissioners to state and sign a case for the opinion of the High Court.

By the Conveyance which was dated the 1st day of November, 1954, the vendor as beneficial owner thereby granted and conveyed unto the appellant company certain premises and lands in fee simple. The conveyance contained the following certificate: "It is hereby certified that the Purchasers are a Body corporate incorporated in the state on or before the 15th day of October, One thousand nine hundred and forty-seven".

Held by Kenny J., that the certificate did not meet the requirements of the Act; because it failed to certify the purchaser-company as the person becoming entitled to the entire beneficial interest in this property conveyed, that the Revenue were under no duty to require further information or to accept an amended certificate, and that the 25% ad valorem stamp duty was payable.

(New Forest Estate Company v. The Revenue Commissioners I.L.T.R. Vol. (XCIC) p. 78)

Retiring partner as consultant. Tax liability.

The tax payer, a solicitor, retired from his partnership with M from 29th February, 1956, on the terms of an agreement of 25th March, 1957. Clause 2 of that agreement provided: "In consideration of the agreement on the part of M hereinafter contained

M shall as from 1st March 1956 be entitled to the book debts, furniture, books, all documents and files, office equipment, credits and effects of the said partnership, including all money at the bankers to the credit of the partnership subject to the claims of clients in respect thereof." By clause 3 M agreed to indemnify the taxpayer against such claims and demands relating to the partnership. It was further provided, by clause 4: "As from 1st March, 1956, M shall pay to the taxpayer for the period of 15 years from such date one equal fourth part of the net profits of the said practice computed before paying any salary to M or his wife and shall furnish him with a certified copy of the audited accounts of the said practice in each year of the said period of 15 years". The clause continued to the effect that the payments to the taxpayer were in consideration of the taxpayer rendering assistance and advice to M in connection with the practice during the period of 15 years and that M would be at liberty to consult the taxpayer on any matter connected with the said practice.

M paid the taxpayer £3,000 in the year 1961–62. The inspector assessed the taxpayer under case VI of Sch. D. on that sum on the basis that it was not earned income within the definition in sect. 525 (1) (a) or (b) of the Income Tax Act 1952. The General Commissioners confirmed that assessment. The tax payer appealed against the refusal of the inspector to grant earned income tax relief, contending: (1) that under the terms of the agreement with M he undertook to act as consultant solicitor; (2) that the quantum of the advice and assistance required to be given to him under clause 4 of the agreement was to be decided by M; and (3) that the amount payable to him under the agreement was, within the meaning of pars. (a) and (b) of Sect. 525 (1) of the Act of 1952, earned income as being remuneration from an office or the emoluments of an office of profit.

The Crown contended that: (1) under the terms of the agreement the taxpayer was laying down a burden rather than assuming one; (2) the payment under the agreement was made substantially in respect of the taxpayer's share of goodwill and the items in clause 2; (3) the relationship of M and the taxpayer after the taxpayer retired from the partnership was not that of employer and employee; (4) that the terms of clause 4 of the agreement did not create any office or employment for the taxpayer; (5) that the sum payable under the agreement was not derived by the taxpayer from the carrying on of any trade, profession or vocation; (6) that the sum was correctly assessed under Case VI of schedule D; (7) that the taxpayer had not ceased to hold any office or employment such that the sum payable under the agreement was an annuity pension or annual payment to which Sect. 376 of the Act of 1952 applied; and (8) that the sum was not earned income within the meaning of the Act.

Buckley J. dismissed the taxpayer's appeal. As he read clause 4, the transfer to M. of the taxpayer's share in the partnership was expressed to be "in consideration of the agreement on the part of M hereinafter contained." He refused to limit those words exclusively to the covenant for indemnity contained in clause 3. The judge rejected the contention that clause 4 was a self-contained clause distinct and separate from the agreement. He considered he had to construe the document as a whole and that the transfer of the assets was made in consideration of everything that M agreed to do under the agreement. M had agreed to indemnify the taxpayer, to pay the taxpayer a quarter of the profits and in certain events to pay the taxpayer's widow an annuity. Buckley J. felt that he was not entitled to come to the conclusion that clause 4 should be treated as though it was segregated from the rest of the agreement. He regretfully reached the conclusion that he must read the document as a whole and treat these payments of a share of profit as being made not only in consideration of such service as the taxpayer might thereafter render to M but also in consideration of the transfer of the taxpayer's share of the assets of the partnership. Towards the end of his judgment the learned judge said: "I reach this conclusion with regret, because I strongly suspect that, in fact, the parties did intend that the payment of a share of the profits should be treated as between them as being in consideration of the services to be rendered by the taxpayer; but I must ascertain their intention from the language they have used, and I do not feel that I can escape from the effect of the terms of clause 2 of the agreement."

The 1964 supplement to the 3rd edition of Encyclopaedia of Forms and Precedents (p. 709) contains a clause which though somewhat verbose, indicates the points which have to be covered. The clause in such form in a deed of retirement should enable the ex partner to claim relief in respect of earned income.

(Hale v. Shea (Inspector of Taxes) (1965) 1 All E.R. 155).

REGISTRATION OF TITLE ACTS, 1891 AND 1942

Issue of New Land Certificate

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

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

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

Dated the 28th day of September 1965.

D. L. McALLISTFR,
Registrar of Titles.

Central Office,
Land Registry,
Chancery Street,
DUBLIN.

SCHEDULE.

1. Registered Owner John Patrick Kelly. Folio number 18965. County Meath. Lands of Warrenstown containing 32a. or. 8p. in the Barony of Deece Upper and Lands of Gaulstown in the Barony of Deece Upper containing 19a. or. 0p.

2. Registered Owner Patrick O'Donnell. Folio number 4988. County Galway. Lands of Moyrus in the Barony of Ballynahinch containing 93a. or. 14p.

3. Registered Owner Joseph Patrick White. Folio numbers 4702 and 18815. County Clare. Lands of Brickhill West containing 26a. 2r. 10p. and Lands of Cratloe and Portdrine containing 68a. 2r. 26p. (1 and 3) and 5a. or. 30p. (2) all the aforesaid lands being situate in the Barony of Bunratty Lower.

4. Registered Owner James Daly. Folio numbers 7144R and 14289R. County Monaghan. Lands of Greaghdrumit comprising 8a. or. 30p. and Lands of Greaghnaroog comprising 46a. 2r. 5p. Situate in the Barony of Faruey.

5. Registered Owner Bridget Phelan. Folio number 9051. County Kilkenny. Lands of Kilmurry in the Barony of Ida containing 0a. 1r. 33p.

TIED AGENCY INSURANCE CLAUSES IN LEASES

It has for many years been the practice for leases to contain provisions for the insurance of the premises against fire risks in an office approved by the lessor and, in some cases, named by him. This is unobjectionable, but within the last few years a practice has developed whereby not only is the insurance company to be approved or named by the lessor, but the insurance is to be effected through the agency of the lessor or a person specified by him, with a view to gaining the agency commission. The new practice goes further than the reasonable protection of the lessor's interests and for that reason alone may be considered objectionable. Mortgagees have a greater stake in the insurance than lessors and, therefore, the greater right to the agency. In the Council's opinion, the advantages to the lessor of insisting on a tied agency clause in his favour do not justify a practice which exposes the leaseholder to real difficulties, or in some cases to substantial needless expense in paying for double insurance, with the problems which that course may bring. The Council, therefore, recommended that on the grant of new leases, lessors' solicitors should, where necessary, urge their clients against the inclusion of tied agency clauses. Where existing leases contain such a clause, the Council expressed the hope that lessors might agree to waive its requirement, at least during the subsistence of the mortgage, without charging for the concession.

The value of the agency from the point of view of a mortgagee is that it enables him to ensure that the fire insurance on the buildings is kept in force. The lessor has not the same concern in the subject matter as his interest is really in the ground rent which normally is adequately secured by the site.

THE SOCIETY OF YOUNG SOLICITORS

A well attended lecture of the Society was held in Bushwells Hotel, Dublin, on 24th June, 1965, and a very enjoyable and instructive lecture was given by Mr. Cyril O'Neill, Legal Costs Accountant, and was followed by a series of questions with which the speaker dealt very capably.

General business commences at 8 p.m. at each meeting and the lecture follows at 8.30 p.m. sharp.

Subscriptions £1 1s. 0d. should be sent to The Hon. Treasurer, 2 Clare Street, Dublin 2.

LAND PURCHASE ACTS RULES, 1965

These rules prescribe the form of notices and the manner of services required by certain provisions of the Land Act, 1965. They also adopt and amend existing rules and title requirements, prescribe the procedure of summonsing witnesses to hearings before the Lay Commissioners. Additionally these rules amend the method of ascertaining legal costs prescribed by the Land Purchase Acts Rules of 1964 (S.I. 230 of 1964).

The Land Purchase Acts Rules, 1965 (S.I. No. 147 of 1965) may be purchased from the Government Publications Sale Office, G.P.O. Arcade, Dublin 1, or through any book-seller. Price 1s.

PROCEEDINGS AGAINST SOLICITORS

By Order of the High Court dated 16th July, 1965, it was directed that no banking company shall without leave of the High Court make any payment out of a banking account in the name of Edward J. Barrett, solicitor, 47 Merrion Square, Dublin, or of his firm.

OBITUARY

Mr. John G. J. Colman, Solicitor, died on the 17th May, 1965.

Mr. Colman served his apprenticeship with the late Mr. Marcus A. Lynch, 12 Lower Ormond Quay, Dublin, was admitted in Easter Sittings, 1935, and practised at 57 Lansdowne Road, Dublin.

Mr. Joseph D. Simon, Solicitor, died on the 21st May, 1965, at the Adelaide Hospital, Dublin.

Mr. Simon served his apprenticeship with the late Mr. Henry MacDermott, Galway, was admitted in Easter Sittings, 1950, and practised at St. Francis Street, Galway.

Mr. Francis L. Scott, Solicitor, died on the 6th June, 1965, at his residence, 12 Myrtle Park, Dun Laoghaire, Co. Dublin.

Mr. Scott served his apprenticeship with the late Mr. Daniel O'Connell, Francis Street, Dundalk, Co. Louth, was admitted in Hilary Sittings, 1937, and practised at 42/43 St. Stephen's Green, Dublin, as partner in the firm of Messrs. Arthur Cox & Co.

Rev. Arthur Cox, Solicitor, died on the 11th June, 1965, in Zambia, Africa.

Father Cox served his apprenticeship with the late Mr. Francis J. Scallan, 25 Suffolk Street, Dublin, was admitted in Hilary Sittings, 1915, and practised at 42/43 St. Stephen's Green, Dublin, as senior partner in the firm of Messrs. Arthur Cox & Co. until his retirement in 1961. He was ordained priest in 1963.

He was a member of the Council of the Society from 1941 to 1961; was Vice President for the year 1944/45 and President for the year 1951/52.

THE REGISTRY

Register A

For Sale. Solicitor's Practice in West. Box No. A230.

Register C

A Mrs. Katherine Kane made a will in Dublin in August 1964. Any person having knowledge of same please contact Box No. C183.

Printed by Cahill & Co., Ltd., Parkgate Printing Works, Dublin.

GAZETTE

Vol. 59
Nos. 4 and 5
Aug./Sept. 1965

THE INCORPORATED LAW SOCIETY OF IRELAND

President
JOHN MAHER

Vice-Presidents
Robert McD. TAYLOR
Eunan McCARRON

Secretary
ERIC A. PLUNKETT

CONTENTS

Meetings of the Council 25
Number of Apprentices 26
Exchange of Contracts 26
Interviewing Opponent's Witness ... 26
Solicitors Golfing Society 27
Commissioners of Charitable Donations 27
Land Registry 27
Housing Loans 28
International Civil Aviation 28
BIRPI 28
Cases of the Month 28
Index of Statutory Instruments ... 31
Society of Young Solicitors 33
The Registry 33
Obituary 34
Vacancies in the Civil Service ... 34

MEETINGS OF THE COUNCIL

SEPTEMBER 23rd: The President in the chair, also present Messrs. Francis J. Lanigan, John Carrigan, James R. C. Green, G. G. Overend, Desmond J. Collins, Peter D. M. Prentice, Desmond Moran, Ralph J. Walker, T. V. O'Connor, D. J. O'Connor, Gerald J. Maloney, Frank Armstrong, Gerard M. Doyle, Rory O'Connor, R. Knight, W. A. Osborne, Peter E. O'Connell, Patrick Noonan, Augustus Cullen, Thomas H. Bacon, Eunan McCarron, John J. Nash, R. A. French, Brendan A. McGrath, Thomas J. Fitzpatrick.

The following was among the business transacted

Legal education and training

It was decided that a copy of the Society's memorandum to the Commission on Higher Education should be sent to the Honorable Society of the King's Inns for consideration by the Benchers.

Lease. Incidence of negotiation fee

Where a solicitor negotiates a lease of unregistered land he is entitled to charge for the negotiation under schedule II in addition to the scale commission fee for preparing and completing the lease. Members enquired whether the lessee is liable for the negoti-

ation fee as well as the commission scale fee. On report of a committee who had taken counsel's advice the committee stated that the negotiation fee, where payable, is payable by the lessor, and cannot be charged against the lessee as part of the lessor's costs.

Retainer in criminal matter

The Council adopted a report from a committee which had considered whether a solicitor who undertakes to appear for a defendant on the preliminary investigation of an indictable offence impliedly accepts a retainer which obliges him to act until the end of the trial if the client is returned for trial. The committee took the view that a solicitor who accepts a retainer to appear on the preliminary investigation does not accept an entire retainer to continue until the end of the trial on indictment and that the retainer extends to the preliminary investigation only. He is entitled to decline the retainer for the trial unless he is put in funds or for any other valid reason.

NUMBER OF APPRENTICES

The Court of Examiners, in view of the considerable number of applications made to them recently by members, wish to draw the attention of solicitors to the provisions of Section 36 of the Solicitors Act, 1954, which reads as follows :—

"(1) A solicitor shall not have more than one apprentice at the same time.

(2) Notwithstanding sub-section (1) of this Section a solicitor may have two apprentices at the same time under a written consent of the Society, but the Society shall not grant any such consent except in special circumstances. Such consent shall not be withheld where the two apprentices are the children of the solicitor or where the second apprentice is the child of the solicitor and the first apprentice has been apprenticed with the solicitor for not less than two years."

EXCHANGE OF CONTRACTS

The opinion of the Council on the matter is expressed at page 249 of the Society's Handbook, which reads as follows :—

"The Council advised members that contracts for sale of property should be engrossed in duplicate and that a copy executed by the vendor should be exchanged for a copy executed by the purchaser, the latter being accompanied by a cheque for the deposit in favour of the vendor's solicitor, where appropriate accordingly to the terms of the contract."

The Council attaches great importance to this recommendation and urges all members of the profession to adopt it. It is pointed out that a solicitor who pays the deposit on a contract without obtaining in exchange a copy of the contract signed by the vendor may be held personally responsible if for any reason the vendor does not sign the contract. If the amount of the deposit paid over by the purchaser's solicitor is not recoverable the purchaser will be a simple not a secured creditor.

INTERVIEWING OPPONENT'S WITNESS

The Society has been informed that in the course of recent proceedings in the Central Criminal Court counsel for the State informed the Judge that he wished to raise a matter concerning the conduct of the solicitor for the accused who had been seen on a number of occasions speaking to two of the principal witnesses for the prosecution. Counsel stated that no notice of any kind had been given to the State about these interviews and no request had been made to the State authorities for the interviews and that he thought that the conduct of the solicitor was improper. Counsel for the accused then informed the Judge that he had specifically requested the solicitor to enquire from one of these witnesses about a certain matter which was of importance to the accused and that he made no apology for it as State witnesses were not sacrosanct. The Judge having asked the solicitor for the accused for information about the matter stated that in his view nothing improper had occurred.

Having regard to the importance of this matter the following extracts from the Society's GAZETTE are reprinted :

"*The Times*, of 15th July last, published an extract from the remarks of Lewis, J. in the course of a criminal prosecution before him during which it transpired that a woman, who had been summoned as a witness by the prosecution, went at the request of the solicitor for the accused, to his office, and was taken through her statement by his clerk. The judge was reported as having said that for a solicitor, or for his clerk, when instructed by a prisoner, to interview a witness for the prosecution was most reprehensible, and he proposed to obtain a transcript of the evidence and send it to the Law Society. His Lordship took a serious view of the girl's evidence if true, and if it

was not true the solicitor ought to be cleared of such a charge. The case does not appear to have been officially reported and, as published in *The Times*, the judge's remarks were divorced from their context. There may have been circumstances connected with this case not disclosed with the report which were the real basis of the judge's condemnation of the conduct with which he was dealing. If such circumstances were not present many will feel that the prohibition laid down by the judge was too wide. Most solicitors would be surprised to learn of any universal rule whereby merely interviewing any witness, whether already sub poenaed or not by another party to the proceedings, is regarded as a breach of propriety. Cases will occur in which common sense will suggest that it would be improper to seek to interview a particular witness. There seems, however, to be no valid reason why a solicitor, preparing instructions for counsel for the defence in a criminal prosecution should be obliged to rely upon depositions or proofs of evidence taken down by the police or someone else if he has reason to believe that they may be incomplete or may omit to deal with matters within the knowledge of a witness which he foresees will be important for his client's defence. The popular term 'witness for the prosecution,' though sanctioned by usage, is really a misnomer. Provided that he scrupulously avoids anything which would constitute an abuse of his privilege the general view of the profession has been that a solicitor is entitled to interview any witness whose evidence may be necessary for the presentation of the facts of his client's case to the court."

(THE GAZETTE, November 1943, page 25.)

"A member has drawn attention to a judicial pronouncement which should be noted in connection with the paragraph under the above heading in the November GAZETTE. In Attorney General *v.* Fitzgerald (68 I. L. T. R. 249) there was an appeal by Fitzgerald, the accused, against an order of the Circuit Judge refusing bail and remanding him in custody. The accused had been tried on charges on which the jury had disagreed and fresh charges were pending against him. One of the grounds on which the State opposed the granting of bail was the allegation that the accused had interfered with State witnesses. Per Hanna, J. 'The next ground was that of interfering with State witnesses. I am not quite clear what "interference" means as suggested by the affidavit. Both accused and his solicitor, if they so desire, may interview witnesses for the State, so long as they do not suborn them to perjury. The mere fact of talking to or having a drink with a State witness is not of itself sufficient to disentitle the applicant to bail.' This dictum of Mr. Justice Hanna should serve to dispel any doubts, if they ever existed in this country, as to solicitors' rights in such cases."

(THE GAZETTE, February 1944, page 44.)

SOLICITORS' GOLFING SOCIETY

SUMMER MEETING AT HEADFORT G.C.

26TH JUNE, 1965

WINNERS

President's Prize : E. J. Dillon (5) (Dublin) 33 pts.; D. P. Shaw (12) (Mullingar) 32 pts.

Ryan Cup : J. McGowan (16) (Balbriggan) 32 pts. (2nd 9); S. M. Mahon (18) (Tullamore) 32 pts.

More than 30 miles : W. A. Tormey (12) (Athlone) 32 pts.

1st Nine : R. Taylor (24) (Drogheda) 17 pts.

2nd Nine : P. A. Noonan (13) (Athboy) 18 pts. (on last 6).

Best card by Lot : T. D. McLoughlin (Dublin) 26 pts.

COMMISSIONERS OF CHARITABLE DONATIONS & BEQUESTS

BOARD MEETINGS

MICHAELMAS TERM, 1965

Tuesday	5th October,	1965
,,	19th ,,	1965
,,	2nd November,	1965
,,	16th ,,	1965
,,	30th ,,	1965
,,	14th December,	1965

J. S. MARTIN,
Secretary.

31st August, 1965.

LAND REGISTRY

HIGH COURT APPLICATIONS

Where the land is subject to the provisions of Section 45 of the Land Act, 1965, the affidavit of the applicant for an Order under Section 52 of the Registration of Title Act, 1891, should contain an averment (if it be the case) that he is a qualified

person by reference to a specified category of the definition of "qualified person" contained in sub-section (1) of Section 45 of the Land Act, 1965.

Where the application is made by the personal representative of a person who, it is claimed, had acquired title to registered property by mere possession the affidavit of the personal representative should contain an averment (if it were so) that the deceased was a qualified person by reference to a specified category in said sub-section (1).

In applications to the Court under Section 21 of the Registration of Title Act, 1942, or Section 22 (2) of the Administration of Estates Act, 1959, if an Order that the applicant be registered as owner of the land is sought a similar averment should be contained in his affidavit, where he is not a "member of the family" as defined in sub-section (2) of Section 45 of the Land Act, 1965.

Where an Order under Section 52, if made, would create a subdivision regard should be had to the provisions of Section 12 of the Land Act, 1965.

HOUSING AUTHORITIES (LOANS FOR ACQUISITION OR CONSTRUCTION OF HOUSES) (AMENDMENT) REGULATIONS, 1965

These Regulations provide for increases in the maximum amount of loans which may be made by Housing Authorities to persons for the purpose of acquiring or constructing houses. They also amend the definition of "ownership" contained in the Housing Authorities (Loans for Acquisition or Construction of Houses) Regulations, 1964 (S.I. No. 130 of 1964).

"Ownership" means such interest or combination of interests in a house as, together with the interest of the purchaser of the ownership, will constitute either a fee simple (including fee farm) interest in possession or a leasehold interest in possession of such number of years unexpired at the date the loan is made, or whether the loan is made in instalments at the date of the payment of the first instalment, as is equal to or greater than the sum of the term fixed for the repayment of the loan and fifteen years.

In cases where the house is situate in the County of Dublin or in the County Boroughs of Dublin, Cork, Limerick or Waterford or the Borough of Dun Laoghaire, the maximum amount of the loan available is £2,700 or 95% of the value of the house excluding from that value the amount of any grant under any enactment whichever is the less.

Throughout the rest of the country the maximum loan is £2,500 or 95% of the value of the house excluding from that value the amount of any grant under any enactment, whichever is the less.

The Statutory Instrument (S.I. No. 137 of 1965) is available from the Government Publications Sales Office, G.P.O. Arcade, Dublin 1. Price 6d.

INTERNATIONAL CIVIL AVIATION ORGANISATION

A vacancy now exists for the post of Legal Officer in the Legal Bureau in the above Organisation whose headquarters are in Montreal. Copies of the Organistion's application for employment form may be obtained on request from the Establishment Division of the Department of Transport and Power, Kildare Street, Dublin 2 (Room 412, telephone extension 19). Applications may be forwarded direct to the Chief, Personnel Branch, International Civil Aviation Organisation, 1080, University Street, Montreal, Canada.

BIRPI

Applications are invited for the post of Legal Assistant in the Copyright Division of the above International Bureau. Candidates should apply to Head of Personnel, BIRPI, 32 Chemin des Colombettes, Geneva, Switzerland, for application forms. These forms duly completed must reach BIRPI before November 1, 1965.

CASES OF THE MONTH

Banking business

The term "Bank" is nowhere defined by statute. United Dominions Trust Ltd., who were not licensed to carry on business as moneylenders lent money to the defendant secured by promissory notes by way of "stocking finance". The bills were dishonoured on presentation. It was conceded by the plaintiffs that they could not recover unless they came within the first limb of exception (*d*) to section 6, Moneylenders Act, 1900, viz., that they were as they maintained "bona fide carrying on the business of banking". It was held that the plaintiffs were entitled to recover. The taking of money on current account, the payment of cheques drawn on oneself and the collection of cheques for customers were matters essential to the legal concept of banking. In determining whether a person bona fide carried on banking business the Court was concerned to see whether the banking business was genuine and, except in a borderline case where genuineness was in doubt, motive was irrelevant. In the present

case the plaintiffs' banking business was a genuine business.

(United Dominions Trust Ltd. *v.* Kirkwood, *Law Times*, 23/7/65.)

Driving without reasonable consideration

The defendant was charged with driving a double-decker bus on August 29, 1964, without reasonable consideration for other persons using the road, contrary to section 3 (1) of the Road Traffic Act, 1960. Five of his passengers gave evidence that during the journey, and particularly at a point where there was a sharp bend, the speed of the vehicle was such as to cause panic and alarm to them and to give rise to a fear that the vehicle would overturn. No evidence was offered by the prosecution that anyone outside the vehicle was treated without reasonable consideration. At the end of the case for the prosecution it was submitted for the defendant that there was no case to answer since, the intention of the section being to prevent misconduct by a driver towards persons outside on the highway, the passengers in a vehicle did not come within the words in this section "other persons using the road". The justices acceded to that submission and dismissed the information.

On appeal by the prosecutor:—HELD, that the words "other persons using the road" in section 3 (1) meant persons other than the driver of the vehicle who was alleged to have driven without reasonable consideration, and included passengers. The prosecution, therefore, made out a prima facie case of driving without reasonable consideration, and the case must be remitted to the justices with a direction to continue the hearing.

(Pawley *v.* Wharldall (1965) 3 W.L.R. p. 496.)

Easement—repair of hedge

A hedge formed the boundary between the farms of the plaintiff and the defendant. Defendant's sheep had trespassed through a gap in the hedge and damaged the plaintiff's farm. The question arose, whether a claim for damages could be successfully resisted on the ground that the defendant had a prescriptive right, in the nature of an easement, that the plaintiff should repair the hedge. If there is evidence that repairs to that part of the hedge had been carried out by the plaintiff or his predecessors in title for fifty years, but no evidence that this had been done on the demand of, or as an obligation to, the defendant or his predecessors in title.

The Court of Appeal held that such claim could not be successfully upheld. The law recognised that there could be a legal obligation for the benefit of a dominant tenement that a boundary hedge should be kept in repair by the occupier of a servient tenement. But there must be proof in one way or another that the repairs had been carried out as a matter of obligation. There might have been some agreement between the parties' predecessors in title whereby each undertook to keep in repair part of the hedge, but such an undertaking or covenant to perform positive acts of repair was not capable of running with the land.

(Jones *v.* Price (1965) 3 W.L.R. 296; (1965) 2 All E.R. 625.)

Larceny—whether finder a bailee

T. found a large bag of rabbit pellets (a food-stuff for rabbits) by the side of the road, and took possession of it. He believed that the owner could be found by taking reasonable steps, but did not then intend to steal the pellets. Later he formed the intention to steal. Is he guilty of larceny on the ground that he had constituted himself a bailee of the property? A Divisional Court (Lord Parker C.J., Sachs and Browne JJ.) held that a finder is not a bailee within the meaning of that term in section 1 of the Larceny Act, 1916.

(Thompson *v.* Nixon (1965) 2 All E.R. 741.)

Insurance—exceptions clauses as to condition of motor vehicle

The policy by which the insured's motor-coach was covered by the insurers provided that "the insured shall take all due and reasonable precautions to safeguard the property insured and to keep it in a good state of repair" and further that the insurers "shall not be liable for damage or injury caused through driving the motor-vehicle in an unsafe condition either before or after the accident." A collision in which the motor coach was involved was caused by inadequate maintenance of the brakes, which was due to the failure of a competent mechanic employed by the insured to carry out his duties. The insured had, however, no proper system for a systematic check on the maintenance of individual vehicles. The question arose as to whether the insurers are liable to indemnify the insured and can they counterclaim for sums paid by them, under the Road Traffic Act, 1960, s. 206 (1)?

HELD by Cumming-Bruce J., that having regard to the wording of the first part of the exceptions clause the second part did not impose an absolute liability on the insured irrespective of intention or negligence. Nor would the first part of the clause be broken if the insurers had only proved casual negligence by an employee, since it imposed only a personal obligation on the insured. But the insured's failure to provide a proper system of maintenance and repair was a breach of this personal obligation, which debarred him from claiming

indemnity and rendered him liable on the counterclaim.

(Liverpool Corporation *v.* T. & H. R. Roberts (A Firm) and Another, Garthwaite, Third Party (1965) 1 W.L.R. 938.)

Trade Dispute

At a factory, some 40 pickets, acting under orders of the appellant, who was the chairman of the strike committee, began to move in a continuous circle outside the main entrance to the premises. This action took place on land forming part of the highway and across the route in and out of the premises. Although the intended procedure was to open the circle for vehicles seeking access to the factory, the practical effect would be to bring approaching vehicles temporarily to a halt, and to cause foot passengers either to thread their way through the circle or to find a way round it. The strike was well conducted and there was never any risk of violence either to vehicles or human beings. A police constable on duty outside the premises informed the appellant that in his view the circling constituted an obstruction and an intimidation, and asked him to stop it. He refused to do so and was arrested and subsequently convicted of wilfully obstructing the constable in the execution of his duty.

HELD (*inter alia*) that the power of the police to interfere with picketing in the course of a trade dispute was not restricted to cases where a breach of peace was anticipated. Dictum of Lord Parker, C.J. in Piddington *v.* Bates ((1960) 3 All E.R. 660, 663) applied. Furthermore the circling was not justified by section 2 (1) of the Trade Disputes Act, 1906, as the number of pickets was far in excess of that required for the purposes of that enactment (viz. peacefully obtaining or communicating information or peacefully persuading people to abstain from working) and the circling hindered, rather than facilitated, the obtaining or communicating of information and its power of persuasion was nil.

(Tynan *v.* Chief Constable of Liverpool (*The Law Times*, August 6th, 1965, Vol. 236, p. 444).)

Agency

In cases in which the principal not only puts an agent in possession of the goods and indicia of title but also expressly authorises him to sell as principal, the question whether the agent sold in the ordinary course of business is relevant only in so far as it throws light on the bona fides of the buyer: Lloyds and Scottish Finance Limited *v.* Williamson ((1965) 1 All E.R. 641) (C.A.—Harman, Danckwerts and Salmon L.JJ.)

Air agents are in the same position as shipping agents. If they arrange for the shipment or air passage, even although they disclose that they are doing so for a principal, even for a named principal, they incur a personal liability to the shipping company for the freight: Perishable Transport Company Limited *v.* N. Spyropoulos (London) Limited ((1964) 2 Lloyd's Rep. 379) (Salmon L.J., sitting as an additional judge of the Queen's Bench Division).

Extract taken from the *Law Times* of Friday, August 6th, 1965.

Road traffic—negligence—skid

Between 10.30 p.m. and 11 p.m. on 25th November, 1962, two cars were approaching each other, going in opposite directions, each on its proper side of a main road, which was some 25 feet wide. It was wet, but there was no other reason for the road to be slippery. When only a short distance separated them the defendant's car skidded across the road into the path of the car driven by the third party, and ended up on its wrong side facing in the opposite direction. The third party's car collided with the back of the defendant's car. The defendant gave no explanation of why the car skidded, but stated in evidence that the car had skidded across the road on an occasion two years earlier, for which also he was unable to give a reason. The third party gave no acceptable explanation of the collision.

HELD—The defendant had failed to prove that the skid happened without his fault and an unexplained and violent skid was itself evidence of negligence; in the circumstances the defendant had not satisfied the court that the third party had contributed to the collision by negligent driving.

(Richley *v.* Faull (Richley, Third Party) (1965) 3 All E.R. 109.)

Evidence—duty of prosecution

R. was attacked at 11 p.m. in a passage leading from a street into a club in Soho. The prosecution's case depended on the evidence of three girls, hostesses at the club. According to their evidence the appellant and another man had jumped on R., kicking and hitting him. H., a doorman at the club, was called to the scene. R. and H. made statements to the police. At the committal proceedings R. initially gave evidence in accordance, substantially, with the girls' evidence. He said that it was the appellant who kicked him. The committal proceedings were adjourned before they were concluded. In the interval R. made a declaration to a solicitor that his statement and evidence had been untrue and that the appellant had not participated in the attack. On the day before the adjourned hearing of the committal proceedings H. similarly made a declaration to a solicitor that the appellant had not attacked

R. At the adjourned committal proceedings R. was recalled, and H. was called. Their names subsequently appeared on the back of the indictment. At the trial of the appellant on the indictment the prosecution declined to call R. or H. R. was called for the defence. He was cross-examined on his previous statement to the police and at the committal proceedings. The trial judge did not direct the jury how they should approach R.'s evidence given at the trial. On appeal by the appellant against conviction :

HELD—(1) The prosecution were entitled to take the view that R. and H. were wholly unreliable witnesses and that the interests of justice would not be furthered by calling them, and were entitled, in the exercise of the prosecution's discretion, to decline to call them.

(2) The jury should have been directed on the proper approach to the evidence given by R. at the trial, and the direction should have included an intimation that his previous statements, sworn or unsworn, did not constitute evidence on which the jury could act; but since in the circumstances the jury must if properly directed, have reached the same conclusion, the conviction should stand.

(Reg. *v.* Golder (1960) 3 All E.R. 457) applied.

Appeal dismissed from the Central Criminal Court.

(Reg. *v.* Oliva (1965) 3 All E.R. 116.)

INDEX OF STATUTORY INSTRUMENTS

Published since February 1965

AGRICULTURE, LANDS AND FISHERIES

SUBJECT MATTERS AND REFERENCE NUMBERS.

Agriculture (Alteration of Names of Department and Title of Minister) Order 1965—146/1965.
Grain Board (Assignment of Additional Function) Order, 1965—65/1965.
Animal Remedies (Control of Certain Anti-Abortion Vaccines) Regulations 1965—112/1965.
Committees of Agriculture (Officers' Travelling Expenses and Maintenance Allowance and Expenses) (Amendment) Regulations 1965—183/1965.
Cork District Milk Board (Election Day 1965) Order 1965—104/1965.
Cork District Milk Board (Minimum Prices for Milk) Order, 1965—139/1965.
Dairy Produce Marketing Act, 1961—7th September, 1965 nomination date.—9/1965.
Dairy Produce (Price Stabilisation) Act, 1935. Maintenance of the Dairy Produce (Price Stabilisation) Fund suspended as from 31st March, 1965—47/1965.
Diseases of Animals (Control of Certain Vaccinations and Extension to Brucellosis) Order, 1965—111/1965.
Dublin District Milk Board (Minimum Prices for Milk) Fixed from 1st October, 1965—138/1965.
Fisheries—Departmental Administration and Ministerial Functions Transferred to Department of Agriculture from 3rd May, 1965—83/1965.
Importation of Meat and Animal Products Allowed from France after 1st August, 1965—148/1965; 200/1965.
Noxious Weeds (Male Wild Hop Plant) Order, 1965—189/1965.
Pigs and Bacon Acts Regulations—113/1965, 123/1965.
River Erne (Special Local Licences) Higher Charges imposed after 14th June, 1965—131/1965.
Sheep Dipping Order—105/1965.
Western Agriculture Consultative Council Established—174/1965.
Wheat Order—1965—159/1965.

CONTROL OF IMPORTS AND EXPORTS

Leather Footwear—121/1965.
Laminated Springs—38/1965.
Brushes, Brooms and Mops—37/1965.
Rubber boots and shoes—120/1965.
Superphosphates—115/1965.
Metal Wood Screws—119/1965.

COUNTY AND TOWN MANAGEMENT

Cork County Borough (Extension of Boundary) Provisional Order, 1965 in force from 1st July, 1965—141/1965.
Housing Authorities (Loans for Acquisition or Construction of Houses) (Amendment) Regulations, 1965—137/1965.
Local Elections Regulations 1965—128/1965.
Local Government (Planning and Development) Act, 1963—Regulations for Licensing the Erection or Construction of Specified Appliances Under the Act—76/1965.
Donegal County—Camping Licences authorised in specified townlands—158/1965.
Trim Urban District (Alteration of Boundary) Order 1965—168/1965.

CUSTOMS AND EXCISE—EMERGENCY AND OTHER DUTIES

Customs (Land Frontier) Regulations, 1965—84/1965.
Iron and Steel Products—Customs Duty Suspended to 31st December, 1965—140/1965.
Relief from Customs Duties (Fairs, Exhibitions and Similar Events) Under Brussels Convention of June, 1961—143/1965.
Relief from Customs Duties (Professional Equipment) Order, 1965—144/1965.
Woven Woollen, Synthetic and Artificial Fabrics Order, 1965—187/1965.

EMPLOYMENT REGULATIONS AND CONDITIONS OF EMPLOYMENT

Electric Motors (Exclusion) Regulations—181/1965.
Excepted Body Status Trade Union Act, 1941.
Incorporated Law Society of Ireland—54/1965.
Royal Institute of Architects of Ireland—55/1965.
Veterinary Association of Ireland—56/1965.
Flax Spinning Industry—Women may be employed to 10 p.m. —151/1965.
Ice Cones and Wafers—Women may be employed to 10 p.m. —160/1965.
Plastic Moldings—Women may be employed to 11 p.m.—53/1965.
Polythene Film Bags—Women may be employed between 6 a.m. and 10 p.m.—152/1965.

FINANCE AND CENTRAL GOVERNMENT

6% Exchequer Loan (1985–1990)—Conditions under which this stock may be accepted in payment of death duties—62/1965.
Electoral Act, 1963—Part 6 in force from 10th June, 1965—124/1965.
Exchange Control Regulations 1965—First National City Bank and Authorised dealer—150/1965.
Gaeltacht Ministerial Agency Order, 1965—158/1965.
Oireachtas (Allowances to Members) (Amendment) Regulations, 1965—180/1965.
Returning Officers' (Borough and County Constituencies) Charges Order, 1965—60/1965.
Seanad Electoral (Charges of Returning Officers in University Constituencies) Order, 1965—145/1965.
Statistics (Census of Production) Order, 1965—107/1965.
Stock Transfer (Recognition of Stock Exchanges) Regulations 1965—191/1965.

HARBOURS AND HYDRO-ELECTRIC WORKS

Docks (Safety, Health and Welfare) (Forms) Regulations, 1965—63/1965.
Harbour Rates (Sligo Harbour) Order, 1965—136/1965.
" " (New Ross Harbour) Order, 1965—192/1965.

HEALTH

County Mayo (Dispensary Districts) Order, 1965—51/1965.
County Mayo (Registrars' Districts) Order, 1965—57/1965.
Disabled Persons (Maintenance Allowances) (Amendment) Regulations, 1965—176/1965.
Dublin Health Authority Area (Registrars' Districts) (Number 3) Order, 1965—77/1965.
Fluoridation of Water Supplies Regulations :
—Carlow—88/1965.
—Cavan—89/1965.
—Clare—90/1965.
—Donegal—69/1965.
—Galway—91/1965.
—Kerry—92/1965.
—Kilkenny—93/1965.
—Leitrim—94/1965.
—Limerick—95/1965.
—Longford—96/1965.
—Mayo—70/1965.
—Meath—71/1965.
—Monaghan—97/1965.
—Roscommon—98/1965.
—Sligo—72/1965.
—Tipperary North Riding—99/1965.
—Waterford—100/1965.
—Wexford—101/1965.
—Wicklow—102/1965.
Infectious Diseases (Maintenance) Regulations, 1965—175/1965.
Institutional Assistance Regulations, 1965—177/1965.
The Blood Transfusion Service Board (Establishment) Order, 1965—78/1965.
The Hospital Sterile Supplies Board (Establishment) Order, 1965—(Amendment) Order, 1965—157/1965.
The Medico-Social Research Board (Establishment) Order, 1965—80/1965.
Waterford Health Authority Area and Kilkenny County (Registrars' Districts) Order, 1965—73/1965.

JUSTICE, EXTERNAL AFFAIRS AND DEFENCE

Criminal Justice (Legal Aid) Regulations, 1965—12/1965.
District Court Areas (Alteration of Place) Order, 1965—134/1965.
District Court Areas (Amendment) Order, 1965—106/1965.
District Court Areas (Variation of Days) Order, 1965—85/1965.
District Court Areas (Variation of Hours) Order, 1965—103/1965.
Extradition Act, 1965 (Commencement) Order, 1965—161/1965.
Garda Síochána Pensions Order, 1965—149/1965.
Hague Protocol to the Warsaw Convention (High Contracting Parties) Order, 1965—184/1965.
Land Purchase Acts Rules, 1965—Prescribing the form of notices and the manner of service required by certain provisions of the Land Act, 1965—147/1965.
Solicitors' Accounts (Amendment) Regulations, 1965—163/1965.

MISCELLANEOUS

Apprenticeship Act (Designated Trade)—(Trade of Building and Construction) Order, 1965—117/1965.
Apprenticeship Act (Trade of Building and Construction)—(Apprenticeship District and Apprenticeship Committee) Order, 1965—118/1965.
Dental and Aural Appliances Regulations, 1965—190/1965.
Game Birds Protection Order, 1965—153/1965.
Greyhound Race Track (Racing) (Amendment) Regulations, 1965—133/1965.
Hiring Order, 1965—156/1965.
Hire-Purchase and Credit Sale Order, 1965—155/1965.
Milk (Retail Price) (Dublin Sale District) Order, 1965—82/1965.
Oil Pollution of the Sea (Convention Countries) (Italy and Malagasy Republic) Order, 1965—Declaration that the International Convention has been accepted by Italy and Malagasy Republic —126/1965.

SOCIAL SERVICES

Social Welfare (Absence from the State) (Amendment) Regulations, 1965—64/1965.
Social Welfare (Crediting of Contributions) Regulations, 1965—193/1965.
Social Welfare (Disability, Unemployment and Marriage Benefit) (Amendment) (No. 2) Regulations, 1965—52/1965.
Social Welfare (Miscellaneous Provisions) Act, 1965 (Appointed Day) Order, 1965—172/1965.
Social Welfare (Old Age (Contributory) Pension) (Amendment) Regulations, 1965—173/1965.
Social Welfare (Overlapping Benefits) (Amendment) Regulations, 1965—61/1965.
Social Welfare (Overlapping Benefits) (Amendment) (No. 2) Regulations, 1965—178/1965.
Unemployment Assistance (Second Employment Period) Order, 1965—114/1965.

TRANSPORT AND TRAFFIC

Appointed Stands (Street Service Vehicles) Bye-Laws, 1965
—Cork—179/1965.
—Dundalk—171/1965.
—Ennis—162/1965.
—Galway—109/1965.
Carriage of Commodities Order, 1965—132/1965.
Carriage of Commodities Order 1965 (Revocation) Order, 1965—135/1965.
Carriage of Wheat Order, 1965—164/1965.
Collision Regulations (Ships and Seaplanes on the Water) Order, 1965—185/1965.
Córas Iompair Éireann Amending Superannuation Scheme for Regular Wages Staff (Confirmation) Order, 1965—48/1965.

Customs-free Airport (Extension of Laws) (No. 2) Regulations, 1965—122/1965; (No. 3)—196/1965.
Great Southern Railways Company Pension (Amendment) Scheme for Regular Wages Staff (Confirmation) Order, 1965—49/1965.
Great Northern Railway Company (Ireland) Pension Fund for Wages Staff (Amendment) Scheme (Confirmation) Order, 1965—50/1965.
Motor Vehicles (Temporary Importation) Regulations, 1965—87/1965.
Parking Bye-Laws—Bray—59/1965.
" " —Killarney—165/1965.
" " —Nenagh—182/1965.
" " —Clones—170/1965.
" " —Tullamore—127/1965.
Road Traffic (Construction, Equipment and use of Vehicles) (Amendment) Regulations, 1965—79/1965.
Road Traffic (Speed Limits) (Amendment) Regulations, 1965—86/1965.
Road Traffic (Speed Limits) (Amendment) (No. 2) Regulations, 1965—116/1965.
Road Traffic (Speed Limits) (Amendment) (No. 3) Regulations, 1965—142/1965.
Signals of Distress (Ships and Seaplanes on the Water) Rules, 1965—186/1965.

SOCIETY OF YOUNG SOLICITORS

A meeting of the Society was held in Buswell's Hotel, Molesworth Street, Dublin, on 30th September.

The speaker was Mr. Patrick Bergin Solicitor who delivered a paper on the subject of "Building Contracts and Allied Matters". The First Annual Dinner of the Society will be held at the Intercontinental Hotel, Ballsbridge, Dublin, on Saturday, 30th October, 1965 at 8.30 p.m. Subscription, 25/- each. Tickets available to solicitors and friends from the Treasurer, 2 Clare Street, Dublin, 'Phone 64463. Dress formal.

All enquiries regarding the Society should be addressed to Miss Marie Donnellan, Solicitor, c/o. 2 Clare Street, Dublin 2.

THE REGISTRY

Register A

EXECUTORS of deceased Dublin Solicitor wish to dispose of Practice. Box No. A. 231.

WANTED qualified Solicitor for practice in large town, North Leinster. Some experience desirable. Replies to Box No. A. 232.

Register C

ARTHUR J. PALMER, deceased. Customs and Excise Officer. Will anybody who knows of a Will of the above-named deceased late of 6 Leeson Park, Dublin and formerly of Castleblaney, Lifford and Monaghan please communicate with:—P. P. O'Sullivan, Solicitor, 24 Dame Street, Dublin 2.

IN the Goods of Peter McGloin, Doostrock, Largydonnell P.O., Co. Leitrim, deceased.

The above deceased died on the 2nd day of August, 1965. Would any Solicitor or person having a Will or Testamentary Document dated after the 19th day of October, 1964, communicate with the undersigned. Dunlevy & Barry, Solicitors, Donegal.

JOSEPH HARAN, deceased, late of 47 Cabra Park, Phibsboro', Dublin, Commercial Traveller (retired).

Any person knowing of the existence of a Will executed by the above-named (who died on 7th October, 1960) is requested to communicate with the Chief State Solicitor, Dublin Castle.

JOHN MCCOURT, late of 134 Thomas Street, Dublin, Pensioner, formerly residing at Ballykillageer, Avoca, Co. Wicklow, died 1st April, 1957. Any persons having any Will of the above deceased please communicate with MacMahon, Russell & Co., Solicitors, Clanbrassil Street, Dundalk.

FOR SALE, eight unbound volumes of the All-England Reports, 1955-1962 (inclusive) together with Digests. Excellent condition. Offers to Box No. C. 184.

REGISTRATION OF TITLE ACTS 1891 AND 1942

Issue of New Land Certificate

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

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

Dated the 15th day of October, 1965.

D. L. McALLISTER,
Registrar of Titles.

Central Office,
Land Registry,
Chancery Street,
Dublin.

SCHEDULE.

1. Registered Owner, Patrick Lucey. Folio number 23540. County Cork. Lands of Duinch in the Barony of Duhallow, containing 9a. 2r. 10p.

2. Registered Owner (Ltd.) Edmund Alexander Mansfield. Folios (*a*) 745, (*b*) 3598. County Kildare. Lands of (*a*) Barrettstown, containing 1a. 2r. 30p. and lands of (*b*) Barrettstown and Tankardsgarden, containing 35a. 1r. 24p. in the Barony of Connell.

3. Registered Owner Lucan Spa Hotel, Limited. Folio number 3053. County Dublin. Lands of Lucan, containing 12a. 3r. 6p.

4. Registered Owner, Richard O'Connor. Folio number 214R. County Wexford. Lands of Coolcots in the Barony of Shelmaliere West containing 5a. 1r. 16p.

5. Registered Owner Donough J. Doyle. Folio number 13723. County Wexford. Lands of Enniscorthy in the Barony of Scarawalsh containing 10a. 1r. 3p.

6. Registered Owner, Ellen Moore. Folio number 662. County Westmeath. Lands of Coolvin in the Barony of Kilkenny West containing 16a. 1r. 1p.

7. Registered Owner, John Kelleher. Folio number 5414. County Cork. Lands of Clonmult in the Barony of Barrymore containing 82a. 2r. 28p.

OBITUARY

Mr. Cecil G. Stapleton, Solicitor, died on the 22nd July, 1965 at his residence, Fareham, Glenageary, Co. Dublin.

Mr. Stapleton served his apprenticeship with the late Mr. George C. Stapleton, 29 Molesworth Street, Dublin, was admitted in Trinity Sittings, 1910 and practised at 29 Molesworth Street, Dublin as a senior partner in the firm of Messrs. E. & G. Stapleton.

He was a member of the Council of the Society from 1936–1946 and Vice-President for the year, 1939–40.

Mr. David R. Pigot, Solicitor, died on the 10th August, 1965 at his residence, 53 Claremont Road, Dublin.

Mr. Pigot served his apprenticeship with the late Mr. John M. Maxwell, 40 Nth. Great George's Street, Dublin, was admitted in Trinity Sittings, 1923 and practised at 21 Kildare Street, Dublin, as senior partner in the firm of Messrs. D. R. Pigot & Co.

Mr. Kevin J. O'Shaughnessy, Solicitor, died on the 12th August, 1965 in London.

Mr. O'Shaughnessy served his apprenticeship with the late Mr. Edward O'Shaughnessy, 7 Gladstone Street, Waterford, was admitted in Hilary Sittings, 1944, and practised at 7 Gladstone St., Waterford.

Mr. John F. Connolly, Solicitor, died on the 29th August, 1965 at his residence Compass Hill, Kinsale, Co. Cork.

Mr. Connolly served his apprenticeship with the late Mr. Arthur H. Julian, 43 South Mall, Cork, was admitted in Michelmas Sittings, 1931, and practised at Kinsale, Co. Cork.

Mr. Daniel P. King, Solicitor, died at his residence, Tralee, Co. Kerry.

Mr. King served his apprenticeship with the late Mr. Terence J. Liston, Tralee, Co. Kerry, was admitted in Michelmas Sittings, 1914 and practised at Tralee, Co. Kerry up to his appointment as County Registrar in 1926.

VACANCIES IN THE CIVIL SERVICE

1. *Third Assistant Solicitor in the Office of the Revenue Commissioners. Essential:* At least two years' practice as a Barrister in the State or have been admitted and enrolled as a Solicitor and have at least two years, satisfactory experience of legal work.

2. *Assistant Solicitor in the Department of Lands. Essential:* Have been admitted and be enrolled as a Solicitor for at least two years.

For both posts: Salary Scale (Man): £1,000–£2,060, entry up to £1,420 depending on qualifications and experience. Maximum age-limit: 40 years. Successful candidates appointed to these posts will, in due course, be eligible for promotion to posts carrying higher scales of remuneration. Application forms, etc., from Secretary, Civil Service Commission, 45 Upper O'Connell Street, Dublin 1. *Latest time for receiving completed application forms: 5.30 p.m. on 21st October, 1965.*

Printed by Cahill & Co., Ltd., Parkgate Printing Works, Dublin.

GAZETTE

Vol. 59
Nos. 6 and 7
Oct./Nov. 1965

THE INCORPORATED LAW SOCIETY OF IRELAND

President JOHN MAHER

Vice-Presidents ROBERT McD. TAYLOR, EUNAN McCARRON

Secretary ERIC A. PLUNKETT

CONTENTS

	Page
Meeting of the Council	37
Town Planning Appeals ...	37, 38
Road Traffic Acts	39
Circuit Court Rules	39
Social Welfare (Occupational Injuries) Bill, 1965	39
Apprenticeship Regulations	42
Section 52 Applications	43
Insurance on Unfurnished Letting ...	43
Secretary/Solicitor	43
Solicitors' Golfing Society	44
Mayo Bar Association	44
Examination Results	44
The Registry	45
Cases of the Month	45
Diseases of Animals Bill, 1965 ...	46
Industrial and Commercial Property ...	46

MEETINGS OF THE COUNCIL

OCTOBER 21ST: The President in the chair, also present, Messrs. Robert McD. Taylor, Francis J. Lanigan, Niall S. Gaffney, John Carrigan, Gerald Y. Goldberg, James W. O'Donovan, Gerald J. Moloney, James R. C. Green, George G. Overend, Daniel J. O'Connor, Thomas A. O'Reilly, John C. O'Carroll, Joseph P. Black, Peter D. M. Prentice, Brendan A. McGrath, Patrick Noonan, Richard Knight, Rory O'Connor, Augustus Cullen, Thomas H. Bacon, Eunan McCarron, Gerard M. Doyle, Peter E. O'Connell, Desmond J. Collins, Ralph J. Walker.

The following was among the business transacted:

Planning appeals. Oral hearings

The attention of the Council was drawn to a circular issued by the Department of Local Government outlining the procedure in planning appeals. It appears from the circular that the policy of the Department is to discourage appellants from engaging legal representation. The Council directed that a letter be written to the Department asking that the circular should be withdrawn. A copy of the letter is printed in this issue of the GAZETTE.

Disciplinary inquiry. Legal representation

Members of the Society acted for an employee in the Department of Posts and Telegraphs who sought

their advice following his suspension from duty as an employee of the Department on the ground of alleged indiscipline. Members forwarded copies of correspondence to the Department from which it appeared that the policy of the Department is to refuse to consider representations or to supply information to solicitors acting for employees of the Department. In the case in question members had unsuccessfully applied for copies of the relevant regulations. They were informed that they would be supplied only to the client direct. The Council decided that representations be made to the Department.

London agency allowance

The solicitors, London Agents' Association wrote to the Society concerning the question of the agency allowance expected from London agents by solicitors practising in the Republic. The point raised by the Association concerns the amount solicitors in Ireland require as agency allowance. It would appear that criticism is made of the allowance if less than 33⅓% is given by the London Agent. This Association carried out a survey to ascertain the allowances granted by London Agents to the profession and clients practising in England. The survey showed that the average allowance granted by the members of the Association was approximately 13%. A significant number of leading agency firms gave little or no agency allowance which should mean that the average allowance received by the professional client in the country would be considerably less than 33⅓%. It was stated that the Association do not recommend a particular allowance as a condition of membership but it states that it reflects the opinion of a number of London agents namely that agency is something of an anachronism which in the course of the next five or ten years will probably disappear. The Secretary of the Association sought the views of this Society so that when individual members of the Association are negotiating with solicitors in Ireland they will be aware of the attitude of the Law Society here. The matter was referred to a Committee.

TOWN PLANNING APPEALS

The following is the text of a letter of 22nd October, 1965, addressed by the Society to the Department of Local Government in connection with the above.

Dear Sir,

The attention of the Council has been drawn to the memorandum on the procedure at oral hearings of planning appeals issued by the Department in July 965. After referring to the provisions in the Regulations dealing with planning appeals (S.I. No. 216 of 1964) the memorandum contains statements which, in the opinion of the Council, are seriously prejudicial to the legal profession. The Council are obliged to take exception to the general impression sought to be given by the memorandum and in particular to the following paragraph:

> *There is no obligation on any party to an appeal to be represented by counsel or solicitor.* Any party may appear in person or, if he wishes, be represented by any other person e.g. a relative or a technical or professional adviser. The inspector will afford any assistance required by a party appearing on his own behalf. The planning authority will have such officials in attendance as may be required to deal with issues likely to arise.

The whole emphasis and tenor of this paragraph is tendentious. When a statement of this kind is issued under the name of the Minister, who decides the appeal, it can only be understood by the public as the expression of a wish by the deciding authority that the parties should not be legally represented. The Council note the distinction drawn between appearance by counsel or solicitor, which is discouraged, and representation by "a technical or professional adviser", which is apparently unobjectionable. The Council are at a loss to understand why a distinction should be made between different professions or why the Minister should think it appropriate to give advice of this kind. The public are well aware of their rights and the issue of this memorandum had only one purpose viz., to influence parties against the legal profession when choosing their professional advisers and representatives.

Apart from purely technical issues involved in planning appeals, it is important for an appellant that his case should be properly presented and argued. An engineer, architect, or other professional technical adviser is not normally the best qualified advocate. The inspector conducting the appeal cannot represent any of the parties. The impression sought to be given by the circular that the interests of all parties will be adequately safeguarded by the inspector and officials of the planning authority is contrary to the basic principle that the inspector is acting in a judicial capacity to consider the arguments of all parties and to give an objective decision.

Legal advice and representation need not detract from procedural informality. The same informality is achieved at arbitrations where the parties are legally represented. The fact that a planning appeal is divested of the trappings of a Court does not mean that the interests of the parties at the inquiry are the same.

The planning authorities of the administrative areas of Dublin city and county and elsewhere instruct their law agents to represent them at appeals. If there are any authorities which do not at present use the services of their law agents they may and no doubt will do so whenever they think it desirable. If the advice given by the Department to individual appellants is followed they may be placed at a disadvantage in the presentation of their cases where the planning authority is legally represented.

Solicitors and counsel are precluded by the accepted rules of professional conduct from seeking professional business by advertisement or other improper means. In the submission of the Council it is wrong that the State or any Government Department should seek to influence the public to forego their legal rights of obtaining professional assistance where their private rights are vitally affected. Much as the Council regret to have to say it, this memorandum, in its effect, is propaganda against the profession. As such, it is not in the interests of the public who rely upon the profession for the protection of their constitutional liberty and rights.

The Council are seriously concerned at the issue of this memorandum and the policy on which it is based. They have instructed me to seek an interview for their representatives with the Minister for the purpose of explaining their views and of having it withdrawn.

Yours faithfully,
ERIC A. PLUNKETT,
Secretary.

ROAD TRAFFIC ACTS, 1933-1961

The Department of Local Government issued a further statement as to the Orders, Regulations, Bye-laws and Rules made under the above Act and enforced for the time being. The statement covers the position as of 1st October, 1965, and supersedes all statements issued by the Department on the subject. The statement outlines the provisions of the Road Traffic Act, 1961, which are now in force. Particulars of the previous provisions of the Road Traffic Act, 1962–1963, still in force are also included. Copies of the statement may be obtained on application to the Secretary, Department of Local Government, Road Traffic Section, O'Connell Bridge House, Dublin 2.

CIRCUIT COURT RULES

Mr. Richard Ryan, T.D., asked the Minister for Justice if he will have steps taken to bring the rules and practice of the Circuit Court relating to orders of that Court into line with those of the Superior Courts so that copies of the orders will be prepared by the Court Registrars without requiring drafts of such orders to be prepared by solicitors and submitted by them to the Court offices for approval and subsequent collection, engrossment and resubmission for signature. In reply the Minister for Justice stated that the matter is one in the first instance for the Circuit Court Rules Committee. Mr. Lenihan stated that he would be prepared to consider any proposals which the Rules Committee might make in the matter.

SOCIAL WELFARE (OCCUPATIONAL INJURIES) BILL, 1965

1. The object of the Bill is to introduce a system of occupational injuries insurance similar to the National Insurance (Industrial Injuries) insurance system in England and Northern Ireland in substitution for the present workmen's compensation scheme. This is being done by extending the existing State social insurance scheme to include provision for compensation for disablement or loss of life following occupational injury. The scheme will apply compulsorily to persons now covered by the Workmen's Compensation Acts, and persons who are compulsorily insurable under the Social Welfare Acts including non-manual workers with a remuneration not exceeding £1,200 per annum.

2. The benefits to be provided under the scheme are as follows:

Injury benefit at a weekly rate equivalent to £299 os. od. per annum for a period up to twenty-six weeks. In addition benefit at the rate of £108 os. od. per annum will be paid for an adult dependant with £33 16s. od. per annum for each of the first two qualified children and £20 10s. od. per annum for each subsequent child (Section 8).

Disablement benefit which is not related to incapacity for work but requires only loss of physical or mental faculty (including disfigurement) i.e. impairment of the power to enjoy normal life. Disablement benefit will take the form of a pension or a gratuity depending on the degree of disablement. Where disablement is assessed at 20% or higher a pension will be payable at a maximum rate of £299 os. od. per annum. Where disablement is assessed at less than 20% a lump sum will be paid subject to a maximum of £380 os. od. (Section 9).

Constant attendance allowance will be provided for a recipient of disablement benefit where it is necessary as the result of loss of faculty. The maximum rate is £2 os. od. per week or £4 os. od. per week in extreme cases. (Section 13).

Death benefit. The widow of an insured person

who dies as the result of an occupational injury will receive a pension of £240 os. od. per annum with £33 16s. od. for each of the first two qualified children and £20 10s. od. for each other qualified child. (Section 17).

Medical care. The reasonable cost of medical care incurred by a workman as the result of an occupational injury or disease will be met from the Occupational Injuries Fund to the extent of which it is not met under the Health Acts or the Mental Treatment Acts. (Section 26).

3. *Alternative remedies:* Provision is made in Section 34 of the Social Welfare Act 1952, for the disregard, in assessing damages in any action at common law in respect of injury or disease, of any benefit under that Act. Provision is also made in Section 2 of the Civil Liability (Amendment) Act 1964, that in assessing damages in an action to recover damages in respect of a wrongful act resulting in personal injury not causing death, account shall not be taken of, *inter alia*, any pension, gratuity or other like benefit payable under statute or otherwise in consequence of the injury. At present, however, where there is an action for damages, any amounts actually paid as workmen's compensation are deductible from any damages awarded. It is not intended as a result of this scheme, to remove a person's right to claim damages under the Civil Liability Acts, 1961 and 1964, or otherwise at common law, in respect of injuries caused by the negligence of an employer or a third party, or that benefits under this scheme will be reduced as a result of any award of such damages. However, to prevent double payment for the same need, it is provided in Section 38 of the Bill that, notwithstanding Section 34 of the Social Welfare Act, 1952, and Section 2 of the Civil Liability (Amendment) Act, 1964, the amount of injury benefit or disablement benefit (disregarding any increase in respect of the need for constant attendance) which has accrued or probably will accrue to the injured person over the period of five years from the cause of action will be taken into account in assessing damages under the Civil Liability Acts, 1961 and 1964, or otherwise at common law. The limit of five years over which the value of benefits is to be calculated is necessary as it would be generally impracticable for a Court or Jury to estimate equitably the probable value of occupational injury benefits, account of possible variations in degrees of disablement, dependence, incapacity for work, cost of living etc. over a longer period. Provision is already made in Section 50 of the Civil Liability Act, 1961, that in assessing damages in a case in which death occurs account shall not be taken of any pension, gratuity, or other like benefit, payable under statute or otherwise in consequence of the death of the deceased. It is not proposed to interfere with this provision, except to provide that death benefit by way of a funeral grant may be taken into account in assessing damages. Provision accordingly is made in Section 38.

It is suggested that this section should be carefully considered both by the Council and the Bar Council. It differs in some respects from the corresponding sections in the English Law Reform (Personal Injuries) Act, 1948, and the Law Reform (Miscellaneous Provisions) Act. (Northern Ireland), 1948. In England and Northern Ireland only *one half* of the value of any statutory rights under the Industrial Injuries scheme is to be taken into account in assessing damages at common law. Under the present Bill the whole value of any rights which have so accrued for a period of five years is to be taken into account against common law damages. The relevant sections are appended for comparison. The present Bill is less favourable to an injured workman than the corresponding legislation in Northern Ireland and Great Britain.

Social Welfare (Occupational Injuries) Bill, 1965, Section 38.

(1) Notwithstanding section 2 of the Civil Liability (Amendment) Act, 1964, and section 34 of the Principal Act, in an action for damages for personal injuries (including any such action arising out of a contract), there shall in assessing those damages be taken into account, against any loss of earnings or profits which has accrued or probably will accrue to the injured person from the injuries, the value of any rights which have accrued or probably will accrue to him therefrom in respect of injury benefit or disablement benefit (disregarding any increase thereof under section 13 of this Act in respect of constant attendance) for the five years beginning with the time when the cause of action accrued.

(2) The reference in subsection (1) of the section to assessing the damages for personal injuries shall, in cases where the damages otherwise recoverable are subject to reduction under the law relating to contributory negligence or are limited by or under any Act or by contract, be taken as referring to the total damages which would have been recoverable apart from the reduction or limitation.

(3) Notwithstanding section 50 of the Civil Liability Act, 1961, in assessing damages in respect of a person's death under Part IV of that Act account may be taken of any death benefit, by way of grant under section 22 of this Act in respect of funeral expenses, resulting from that person's death.

Law Reform (Miscellaneous Provisions) Act (Northern Ireland), 1948, Section 3:

Section 3—(1) On a claim for damages for personal injuries (including any such claim arising out of a contract), or on an application for compensation for such injuries, there shall in assessing those damages or that compensation be taken into account, against any loss of earnings or profits which has accrued or probably will accrue to the injured person from the injuries, one half of the value of any rights which have accrued or probably will accrue to him therefrom in respect of industrial injury benefit, industrial disablement benefit or sickness benefit for the five years beginning with the time when the cause of action accrued.

This sub-section shall not be taken as requiring both the gross amount of the damages or the compensation before taking into account the said rights and the net amount after taking them into account to be found separately.

(2) In determining the valueof the said rights there shall be disregarded any increase of an industrial disablement pension in respect of the need of constant attendance.

(3) The reference in sub-section (1) of this section to assessing the damages for personal injuries shall, in cases where the damages otherwise recoverable are subject to reduction under the law relating to contributory negligence or are limited by or under any Act or by contract, be taken as referring to the total damages which would have been recoverable but for the reduction or limitation.

(4) On a claim for damages for personal injuries (including any such claim arising out of a contract), or on an application for compensation for such injuries, there shall be disregarded, in determining the reasonableness of any expenses, the possibility of avoiding those expenses or part of them by taking advantage of facilities available under the Health Services Act (Northern Ireland) 1948 or of any corresponding facilities in Great Britain.

(5) In assessing—

(*a*) damages on any claim under the Fatal Accidents Acts 1846 to 1908, or under the Carriage by Air Act, 1932, in respect of the death of a person; or

(*b*) compensation on any application for compensation in respect of the death of a person;

there shall not be taken into account any right to benefit resulting from that death.

(6) For the purposes of this section—

(*a*) the expression "application for compensation" means an application under any enactment, in respect of a criminal injury to the person, for compensation payable out of rates;

(*b*) the expression "benefit" means benefit under the National Insurance Acts (Northern Ireland), 1946, or any corresponding Act of the Parliament of the United Kingdom;

(*c*) expressions used in the National Insurance Acts (Northern Ireland), 1946, for any description of benefit under those Acts have the same meanings as in those Acts except that they include also the like benefit, if any, under any corresponding Act of the Parliament of the United Kingdom;

(*d*) an industrial disablement gratuity shall be treated as benefit for the period taken into account by the assessment of the extent of the disablement in respect of which it is payable.

Law Reform (Personal Injuries) Act, 1948 (England), Section 2.

(1) In an action for damages for personal injuries (including any such action arising out of a contract), there shall in assessing those damages be taken into account, against any loss of earnings or profits which has accrued or probably will accrue to the injured person from the injuries, *one half* of the value of any rights which have accrued or probably will accrue to him therefrom in respect of industrial injury benefit, industrial disablement benefit or sickness benefit for the five years beginning with the time when the cause of action accrued.

This subsection shall not be taken as requiring both the gross amount of the damages before taking into account the said rights and the net amount after taking them into account to be found separately.

(2) In determining the value of the said rights there shall be disregarded any increase of an industrial disablement pension in respect of the need of constant attendance.

(3) The reference in subsection (1) of this section to assessing the damages for personal injuries shall, in cases where the damages otherwise recoverable are subject to reduction under the law relating to contributory negligence or are limited by or under

any Act or by contract, be taken as referring to the total damages which would have been recoverable apart from the reduction or limitation.

(4) In an action for damages for personal injuries (including any such action arising out of a contract), there shall be disregarded, in determining the reasonableness of any expenses, the possibility of avoiding these expenses or part of them by taking advantage of facilities available under the National Health Service Act, 1946, or the National Health Service (Scotland) Act, 1947, or of any corresponding facilities in Northern Ireland.

(5) In assessing damages in respect of a person's death in any action under the Fatal Accidents Act, 1846, as amended by any subsequent enactment, or under the Carriage by Air Act, 1932, there shall not be taken into account any right to benefit resulting from that person's death.

(6) For the purposes of this section—

(*a*) the expression "benefit" means benefit under the National Insurance Acts, 1946, or any corresponding Act of the Parliament of Northern Ireland.

(*b*) expressions used in the National Insurance Acts, 1946, for any description of benefit under these Acts have the same meanings as in these Acts, except that they include also the like benefit, if any, under any corresponding Act of the Parliament of Northern Ireland.

(*c*) an industrial disablement gratuity shall be treated as benefit for the period taken into account by the assessment of the extent of the disablement in respect of which it is payable.

4. *Decisions and Appeals.*

Decisions on applications for benefit will be made by deciding officers appointed by the Minister under section 41 of the Social Welfare Act, 1952. An appeal will lie to Appeals Officers appointed by the Minister from his officials. (Section 43 Social Welfare Act, 1952). Where a question is referred to an Appeals Officer the Minister may refer the question for a decision of the High Court and if a question is decided by the Appeals Officer any person who is dissatisfied with his decision may appeal therefrom to the High Court on any question of law but this provision for appeal does not apply to a question arising (*a*) in relation to a claim for benefit, (*b*) as to whether a person is disqualified for benefit, or, (*c*) as to the period of any disqualification for benefit (section 45 Social Welfare Act, 1952).

12th November, 1965.
Solicitor's Buildings, Four Courts, Dublin 7.

SOLICITORS ACT, 1954 (APPRENTICESHIP AND EDUCATION) (AMENDMENT) REGULATIONS, 1965

(S.I. No. 201 of 1965)

The Incorporated Law Society of Ireland in exercise of the powers conferred on them by sections 4, 5 and 40 of the Solicitors Act, 1954, and of every other power thereunto them enabling hereby make the following Regulations.

1. These Regulations may be cited as the Solicitors Act, 1954 (Apprenticeship and Education) (Amendment) Regulations, 1965, and shall be read together with the Solicitors Act, 1954 (Apprenticeship and Education) Regulations, 1955 (S.I. No. 217 of 1955) (hereinafter referred to as "the Principal Regulations") and the Solicitors Act, 1954 (Apprenticeship and Education) (Amendment) Regulations, 1956 (S.I. No. 307 of 1956) which may be cited together with these Regulations as the Solicitors Act, 1954 (Apprenticeship and Education) Regulations 1955 to 1965.

2. These Regulations shall come into operation on the 23rd day of September, 1965.

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 Act or with these Regulations.

4. The following sub-paragraph shall be substituted for sub-paragraph (2) of paragraph 16 of the Principal Regulations:

(2) The subjects for the first law examination shall be the law of real property, the law of personal property (restricted to bailments and liens, the rights, duties and liabilities of common carriers, innkeepers and hotel proprietors, the Sale of Goods Acts, gifts, mortgages and pledges of goods and bills of sale), the law of contract and the law of tort.

5. The following sub-paragraph shall be substituted for sub-paragraph (3) of paragraph 20 of the Principal Regulations:

(3) The subjects for the third law examination shall be the law of wills, probate and administration of estates (contentious and non-contentious), tax law, criminal law and practice, the law of evidence, commercial law (the Bills of Exchange Acts, Sales of Goods Acts, Hire Purchase Acts and insurance, excluding marine insurance, the law of patents, trade marks and

copyright) and the practice of the Circuit and District Courts.

Signed on behalf of the Incorporated Law Society of Ireland, this 23rd day of September, 1965.

JOHN MAHER,
President of the Incorporated Law Society of Ireland.

EXPLANATORY NOTE.

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

The effect of these Regulations is to define the law of personal property for the purpose of the first law examination and to transfer the subject of the law of patents, trade marks and copyright from the first law examination to the third law examination held under the Solicitors Act, 1954.

CIRCUIT COURT ORDERS UNDER SECTION 52 OF THE REGISTRATION OF TITLE ACT, 1891

It is desired to draw attention to the frequent omission in affidavits grounding applications to the Court under the above Section of averments which may be required in view of the provisions of the Land Act, 1965.

Where property is subject to the provisions of Section 45 of the Land Act, 1965, and it is necessary, for the purpose of proving that an interest referable to a possession has been acquired, to show that the applicant is a qualified person within the meaning of this Section his Affidavit should contain an averment that he is a qualified person within the meaning of this Section by virtue of his being an Irish citizen or otherwise. Where the application is made by the personal representative of a person who, it is claimed, had acquired an interest referable to a possession and it is necessary, for the proof of such acquisition, to show that such person was a qualified person the Affidavit of the personal representative should contain a similar averment that the deceased was a qualified person within the meaning of the Section.

In the event of the applicant being Transferee under a Deed of Transfer and seeking an Order under Section 52 declaring that at the date of the Deed the Transferor had acquired an interest referable to possession and directing that the applicant be registered as full owner the Deed, if executed on or after the 9th of March, 1965, would appear to be an Instrument within the meaning of Section 45 (3) and should contain the appropriate certificate if, in fact, the applicant is a qualified person.

Attention is also drawn to the provisions of Section 12 of the Land Act, 1965, where a Section 52 Order, if granted, would create a sub-division and to the necessity of obtaining the consent of the Land Commission thereto (except in cases covered by the proviso to Section 12 (6)).

INSURANCE COVER FOR HOUSE LEFT UNFURNISHED

A note appeared in the English Law Society's *Gazette* of August, 1965, under the above heading which may be summarised as follows:

"Most householders' comprehensive policies do not provide cover, where a house is left unfurnished, against burglary, housebreaking, larceny or theft or attempts thereat or certain types of malicious damage, nor against bursting or overflowing of water tanks, apparatus or pipes or breakage of fixed glass or sanitary fittings. Losses from these causes may well arise if a vendor vacates a house before the purchaser goes into occupation. Experience has shown that these particular contingencies involve additional risk and, depending on the circumstances, extra cover would only be granted for an additional premium. It appears that the practice of individual insurance companies, whether tariff or non-tariff, varies in some degree as to the grant of cover in respect of the above mentioned risks and that where cover is offered, the additional premium required also varies. Where it is the practice of a company to consider offering cover, it appears that each case is a matter for consideration on its merits, such as the length of time during which the house will be unfurnished or unoccupied, the type of premises and the locality, and other circumstances affecting the risks in question."

SECRETARY/SOLICITOR

The Ontario Housing Corporation requires a Corporate Secretary/Solicitor: $9,500—$11,500. Responsibility would include general corporate secretarial functions as well as acting in an administrative capacity under the direction of the managing director.

Legal functions would include the preparation of

legal documents, including contracts, and advising on corporate matters generally.

Persons interested in the above post should communicate with

V. R. E. Perry, Esq.,
Haines, Thompson, Rogers, Macaulay, Howie & Freeman,
Barristers and Solicitors,
85, Richmond Street West,
Toronto,
ONTARIO.

or Mr. H. W. Suters,
Ontario Housing Corporation,
950, Yonge Street,
Toronto 5,
ONTARIO.

SOLICITORS' GOLFING SOCIETY

CAPTAIN'S PRIZE AT TULLAMORE

25th September, 1965

Winner: W. R. White (7), 1 up; *Runner Up:* B. Donnelly (10), 2 down.

Veteran's Cup: E. Walshe (13), 5 down; *Runner Up:* W. J. Ryan (13), 6 down.

Patrick's Plate: T. D. Shaw (1), 2 down; *Runner Up:* J. Bolger (10), 3 down.

Best 1st Nine: A. G. Sheedy (12), 1 down; *Best 2nd Nine:* K. C. McGilligan (17), 1 up.

Competitor from more than 30 miles: M. A. O'Carroll (8), 4 down.

Best card by lot: T. B. Adams (18), 6 down.

Gross: T. D. Shaw, 72.

H. N. ROBINSON,
Hon. Secretary.

MAYO SOLICITORS' BAR ASSOCIATION

At the Annual General Meeting of the above Association held on May 25th, 1965, the following officers were elected:

President: Patrick J. Durcan, Castlebar. *Vice-President:* Lorcan Gill, Westport. *Hon. Treasurer:* Miss Bea Hynes, Castlebar. *Hon. Secretary:* Joseph Gilmartin, Castlebar. *Committee:* Sean Flanagan, Edmond Corr, William Dillon-Leetch, Patrick J. McEllin, T. V. O'Connor.

On 24th June, 1965, the Association held a dinner to mark the occasion of Mr. Alfred V. G. Thornton's 50th year in practice as a solicitor. The dinner was held in Breaffy House Hotel, Castlebar, and a boat was presented to Mr. Thornton.

EXAMINATION RESULTS

At the Preliminary Examination for intending apprentices to solicitors held on the 6th and 7th days of September the following candidates passed: John K. Bolton, John F. Brooks, Anselm A. Enright, John L. Jermyn, Bernard J. Kelly, Andrea McAllister, Paul T. McCormack, Francis McLoughlin, William O'Donovan.

11 candidates attended; 9 passed.

At examinations held on 17th September under the Solicitors Act, 1954, the following candidates passed:

First Examination in Irish: David Russell Anderson, John K. Bolton, Adrian P. Bourke, Ernan F. Britton, John F. Brooks, Joseph G. M. Chambers, Murrough B. Connellan, Cornelius Cronin, B.A.; George Crowe, Oonagh M. Dowling, Bridget T. Downey, Marie N. Doyle, Maurice A. Dunne, Martin N. Egan, Geraldine M. Fitzpatrick, John D. Berchmans Gannon, Brian G. M. Geraghty, B.A., B.Comm., H.Dip.; Peter S. Harrison, Henry P. Hunt, Carline M. E. Hurley, Margaret T. N. Keating, B.A., LL.B.; Bernard Joseph Kelly, Daniel Kenny, Ciaran Keys, Elizabeth Lacy, Peter M. Maguire, Paul L. Malone, Christopher G. J. Meehan, John T. Miniter, Raymond T. Monahan, James Paschal Mulhern, B.A., Francis J. Murphy, Patrick L. Murphy, Brendan D. McArdle, Patrick T. McEvoy, Francis McLoughlin, Timothy O'Driscoll, Timothy N. O'Hanrahan, James D. J. O'Reilly, Dudley A. G. Potter, B.A.; James J. Power, B.A., Mary T. J. Ryan, John A. Sheedy, B.A.; Thomas Tobin, Louis P. Turley, Ernest F. S. Williams, Robert P. C. Williams, Margaret Woulfe.

48 candidates attended; 48 passed.

The Seán Ó hUaidhaigh Memorial Prize for 1965 was awarded to James Paschal Mulhern, B.A.

Second Examination in Irish: Henry St. J. Blake, B.A.; Denis J. Casey, John H. Dockrell, Pamela F. Hussey, Patrick J. Kevans, John B. D. Lacy, B.C.L.; Joseph Molony, Donnchadh Ó Buachalla.

8 candidates attended; 8 passed.

At the First Law Examination for apprentices to solicitors held on the 6th and 7th days of September the following candidates passed:

Passed with merit: Simon C. K. Quick, M.A., LL.B., B.Comm.

Passed: John P. Aylmer, B.A.; Eric H. W. Bradshaw, Eric Brunker, Albert D. Burke, B.C.L.;

Oliver D. Byrne, John McC. Cussen, B.C.L.; Thomas F. Figgis, B.A.; Patrick Fitzgibbon, Jnr.; Robert M. Flynn, William O. H. Fry, Brian Gartlan, Derek H. Greenlee, James W. Houlihan, Michael J. D. Mangan, Paul M. McLaughlin, Donnchadh Ó Buachalla, Michael O'Driscoll, Malachy J. O'Kane, B.A.; Stephen T. Strong, Jonathan P. Thompson, B.A. (Mod.), D.P.A.

35 candidates attended; 21 passed.

The Centenary Prize was awarded to Simon C. K. Quick, M.A., LL.B., B.Comm.

At the Second Law Examination for apprentices to solicitors held on the 6th and 7th days of September the following candidates passed:

Passed with merit: 1. William B. R. B. Somerville. 2. Brendan J. McDonnell. 3. Brian J. Magee. 4. Hugh B. J. O'Donnell.

Passed: Francis D. Daly, Felicity M. Foley, Paul D. Guinness, B.A.; John B. Harte, Richard V. Lovegrove, Matthew J. Mitchell, B.A., L.Ph.; Joseph P. Moloney, Cornelius L. McCarthy, B.C.L.; Kieran McDermott, John C. O'Donnell, Dermot G. O'Donovan, Joseph M. B. O'Meara, B.C.L.; Eleanor A. O'Rourke, B.C.L.; Anne R. O'Toole, John James Tully.

33 candidates attended; 19 passed.

The Patrick O'Connor Memorial Prize for 1965 was awarded to Francis D. Daly.

At the Third Law Examination for apprentices to solicitors held on the 8th, 9th and 10th days of September, 1965, the following candidates passed:

William S. Barrett, Arthur F. Callanan, John F. M. Darley, Yvonne Fagan, B.C.L.; Patrick J. Farrell, B.C.L.; Finola M. Foley, Sarah M. Gallivan, B.C.L.; John Gore-Grimes, B.A.; Anthony Gordon Hayes, John B. D. Lacy, B.C.L.; Robert T. R. McDowell, B.A.; Dermot G. O'Donovan, Cyril M. Osborne, Anna M. O'Shea, Gordon J. Ross, Rebecca Sweeney, Brian G. McD. Taylor, Brendan D. Walsh.

24 candidates attended; 18 passed.

By Order,
ERIC A. PLUNKETT,
Secretary.

Solicitors' Buildings,
Four Courts, Dublin 7.
15th October, 1965.

THE REGISTRY

Register C

Lost Will. Information is sought as to the whereabouts of the Last Will and Testament of Mrs. Kathleen O'Driscoll, 8 Rockgrove Terrace, Lower Road, Cork who died on or about July 18th, 1965. Please apply to the undersigned.

Gerald Y. Goldberg & Son, Solicitors, Library House, Pembroke St., Cork.

Mary Rice, late of 66 Reuben Avenue, South Circular Road, Dublin, Widow, died on the 16th September, 1965. Would any person holding a Will of the deceased please communicate with Ernest Keegan, Solicitor, 66 Fitzwilliam Square, Dublin.

CASES OF THE MONTH

Evidence—contemporaneous statement by plaintiff to third party

It is not the law that the credibility of a witness's statement can be confirmed by evidence of a statement to the same effect made by him during the continuance of the events to which it relates.

In an action in which the question arose whether X had agreed to accept £3,500 to buy her out of a partnership or had merely accepted it on account of what was due to her out of the proceeds of the partnership assets, held that as her intention in accepting £3,500 of the money was not an issue in the case, a statement by her to her daughter, not in the other party's presence, but during the alleged transaction, was not admissible.

(Spittle *v.* Spittle (1965) 1 W.I.R. 1156, Pennycuick J.)

Collision of ships—apportionment

A collision occurred in the narrow entrance channel to the port of Dublin between the plaintiffs' and the defendants' vessels, both inward-bound. The plaintiffs' motor-vessel, the *Monte Arucas*, overtook the defendants' steamship, the *Slieve More*, and proceeded towards the bar buoys where its engines were stopped for about four minutes. As soon as the pilot boarded her, the engines were put full ahead and the *Monte Arucas* continued up channel in or about mid-channel. The *Slieve More* maintained speed and in attempting to overtake came so close to the *Monte Arucas* that its bows sheared into the motor-vessel's side. Held, (1) that in the absence of a port of Dublin by-law providing for it, the *Slieve More* was not obliged to signal when overtaking; that the *Slieve More* should have reduced speed when she saw the pilot boarding the *Monte Arucas* and stopped her engine when the vessels were partially overlapping or before; that the *Monte Arucas* was not in fault in increasing speed; (2) that, although the look-out on the *Monte Arucas* could be criticised, the real cause of the collision was the *Slieve More*'s attempt to pass at too close a distance and the defendants were solely to blame.

The *Slieve More* (1965) 2 Lloyd's Rep. 138, Hewson J.

Contract—intention to create legal relations

A general contract, proposing to tender for the construction of a highway, negotiated with a subcontractor for excavation work. There was an oral

agreement on the definition of "rock" but the general contractor was to confirm this by letter. No letter was sent and subsequently the sub-contractor wrote quoting prices for the contract. When the general contractor had been awarded the highway contract he sent to the sub-contractor the standard form of sub-contract involving a possible difference in the definition of "rock". As a result the sub-contractor refused to sign the form and withdrew from the job. The general contractor sued for damages for breach of contract. On appeal, held, that no contract had been made and the general contractor's submission of the standard sub-contract was a mere counter offer which had not been accepted. The letter confirming the definition of "rock" was a condition going to the root of the offer and not a mere incident of the contract.

Pigott Structures *v.* Keillor Construction Co. (1965) 50 D.L.R. (2d) 97, Ontario C.A.

Assessment of damages—duty to mitigate loss

The plaintiff was unable, for financial reasons, to reconstruct living accommodation above his store premises and it was consequently necessary for him to acquire a new home. Held, that the defendant's liability must be limited to the cost of living accommodation comparable to that destroyed, and for a period of time reasonably required to replace the original building.

Bischoff *v.* Sams (1965) 50 D.L.R. (2d) 179, Alberta Supreme Court.

Personal injuries—assessment—punitive damages

In an unprovoked and vicious assault, the defendant stabbed the plaintiff in the back, damaging the spinal cord and causing the plaintiff to be a paraplegic for life. Held, that punitive or exemplary damages should not be awarded in addition to the general and special damages because the case did not fall within the categories described by Lord Devlin in Rookes *v.* Barnard and because the defendant had already been punished for his act by conviction and imprisonment.

Schuster *v.* Martin (1965) 50 D.L.R. (2d) 176, British Columbia Supreme Court.

Cheques—contractual—conditions—written on cheque book

A notice on a cheque book cover sent to an existing customer of a bank that "the cheques . . . in this book will be applied to the account for which they have been prepared" does not prevent the customer from validly changing the name of the branch on a cheque.

Per curiam: The position might be different where the cheque book was the first issued to the customer on his opening the account and would be different if the notice was on the cheque.

P had for some years had accounts at both the X and Y branches of a bank. Then the bank issued him with cheque books which stated on the cover that "the cheques in this book will be applied to the account for which they have been prepared". P changed the name of the branch from X to Y on a cheque from such a book and later stopped it by giving notice to branch Y. The cheque was electronically sorted by a computer which could not read the alteration and went to branch X, which paid it. In an action by P against the bank for the amount of the cheque, held that the bank should not have debited it to his account and the action succeeded.

Burnett *v.* Westminster Bank (1965) 3 All. E.R. 81, Mocatta J.

DISEASES OF ANIMALS BILL, 1965

Attention of members is drawn to part five of the above Bill which deals with offences and legal proceedings. An offence under the Act may be prosecuted by the Minister. Section 48 provides that offences are punishable by fine only, unless the offence is repeated within twelve months. General provisions as to procedure are contained in Section 52 which states where the owner or person in charge of an animal or bird is charged with an offence under the Act in relation to disease or any illness of the animal or bird, he should be presumed to have known the existence of the disease or illness, unless he shows to the satisfaction of the Court that he had not, and could not with reasonable diligence have obtained such knowledge.

There is a departure from customary thought relating to evidence and form of service of instruments, Section 53 of the Bill provides that in any proceedings under the Act no proof should be required of the appointment or handwriting of an inspector or other officer of the Minister or of the Secretary or an inspector or other officer of the Local Authority. Any notice under the Act or under any order or regulation made under the Act must be in writing.

INDUSTRIAL AND COMMERCIAL PROPERTY

The thirty-seventh report of the Controller for the year ended 31st March, 1965, has been laid before both Houses of the Oireachtas and is available from the Government Publications Sale Office, G.P.O. Arcade, priced at one shilling and sixpence. Members may be interested to note that three candidates sat for examinations conducted by the Board nominated under the prescription by the Minister for Industry

and Commerce, dated 31st May, 1963, as amended 4th May, 1964, and of Rule 7 of the Registrar of Patents and Trade Marks Rules, 1927. The name of one of the candidates was entered in the Register of Patent Agents.

The report states that the Minister appointed a Board consisting of Professor Kevin M. Kenny, B.A., LL.B., S.C., and Martin F. McCourt, with Dr. J. J. Lennon as Chairman to consider applications for registration in the Register of Trade Mark Agents. The Board, which was appointed under Rule 6 of the Registrar of Trade Mark Agent Rules, 1964, considered applications from sixty-three persons in ten partnerships. The numbers registered were fifty-seven persons in eight partnerships. One person who ceased to be eligible was removed from the Register under Sections (69) of the Trade Marks Act, 1963. At the end of the year under review there were fifty-six persons and eight partnerships entered in the Register.

Printed by Cahill & Co., Ltd., Parkgate Printing Works, Dublin.

GAZETTE

THE INCORPORATED LAW SOCIETY OF IRELAND

President
ROBERT McD. TAYLOR

Vice-Presidents
PATRICK O'DONNELL
JAMES R. C. GREEN

Secretary
ERIC A. PLUNKETT

CONTENTS

Meeting of the Council 48
President and Vice-Presidents 49
The Ordinary General Meeting ... 49
Solicitors Benevolent Association ... 50
Land Act 50
Legal Aid 51
Succession Bill 51
Admission Ceremony 53
Committees of the Council 1965-1966 54
Examinations 1966 54
Banking Business 55
Interest on Judgment 55
Meath Solicitors Association 55
Package Divorce Service 56
Tipperary and Offaly Bar Association 56
Dublin Solicitors' Bar Association 56
Cases of the Month 56
Lease by Solicitor-Lessor 59
Client Advised to Sue Solicitors ... 59
Duty of Solicitors in Legal Aid Cases 59
International Society for Military Law 60
The Registry 60

Vol: 59
No. 8
December
1965

MEETINGS OF THE COUNCIL

December 2nd: The President in the chair; also present Messrs John Maher, Gerald Y. Goldberg, Francis J. Lanigan, Ralph J. Walker, J. F. Foley, R. A. French, George A. Nolan, James W. O'Donovan, Gerald J. Moloney, John J. Nash, Thomas A. O'Reilly, Peter D. M. Prentice, James R. Green, Desmond J. Collins, Thomas V. O'Connor, Reginald J. Nolan, Thomas J. Fitzpatrick, Peter E. O'Connell, Brendan A. McGrath, T. E. O'Donnell, Patrick Noonan, Gerard M. Doyle, Rory O'Connor, Patrick C. Moore, William A. Osborne, Francis Armstrong, Thomas H. Bacon, Augustus Cullen, Eunan McCarron, John Carrigan, George G. Overend, Daniel J. O'Connor, Patrick O'Donnell.

The following was among the business transacted:

Social Welfare (Occupational Injuries) Bill 1965

A resolution was received from the Midland Solicitors Bar Association:

"That the Midland Solicitors Association in general meeting do strongly object and protest that the appeals officers in workmens compensation cases under the new Industrial Injuries

Act will be civil servants and strongly recommend to the Law Society that if this is so immediate representations should be made that the final decision in workmen's compensation case should be referred to a judicial tribunal."

By direction of the Council a memorandum already prepared was sent to the solicitor members of the Oireachtas and a copy to the Department of Local Government.

Legal Aid

The following resolution was received from the Midland Solicitors Bar Association:

"That the Midland Solicitors Association at annual meeting do strongly protest against the inadequate scale of fees awarded in legal aid criminal cases."

Consideration of the matter was adjourned.

Accountant's Certificates

The following resolution was unanimously adopted:

"That the Council approve in principle of the recommendation in the report of the Policy and Compensation Fund Committees for the bringing into operation of the accountants' certificate provision under section 31 of the Solicitors (Amendment) Act 1960."

Client's Right to Documents on Change of Solicitor

The following are the authorities on the right of a client to correspondence and other documents on termination of the solicitor's retainer.

A solicitor is not bound to deliver to his client on the termination of his retainer letters addressed to him by his client nor copies in his letter book of his own letters to his client (re: Wheatcroft—1877 6.Ch.D.97).

On payment of a solicitor's bill client is entitled to the possession of letters written to the solicitor by third parties but not to copies of letters written by the solicitor to third parties, unless they are paid for by the client in re: Thomson (1855. 20. Beav. 545). The Court of Appeal of New Zealand held that the defendants a firm of solicitors practising in New Zealand were liable to surrender to the plaintiff the carbon copies of letters which they had written to the plaintiff's behalf. In re Thomson was distinguished on the grounds that while a solicitor could not be expected to mutilate a letter book kept for his own protection by tearing out pages and delivering them to the client he could and should hand over copies kept in the case file (Marshall v. McAllister—1952 N.Z.L.R. 257). Marshall v. McAllister is a New Zealand decision and might not be followed by our Courts. As a solicitor would normally keep carbon copies of letters written by himself for his own protection it seems to imply that he should keep two carbon copies one for the client and one for himself. This is not a general practice.

The Council adopted a report of a committee which stated that on the authority of in re Thompson a solicitor is not obliged to supply letters from his file written to third parties on behalf of the client unless the copies are paid for by the client. The committee did not regard the New Zealand decision in Marshall v. McAllister as a binding authority in this country.

President and Vice-Presidents

Mr. Robert McD. Taylor, Drogheda, has been elected President of the Society. Messrs Patrick O'Donnell, Dungloe, and James R. C. Green, Dublin, have been elected Vice-Presidents.

ORDINARY GENERAL MEETING

An Ordinary General Meeting of the Society was held in the Library, Solicitors' Buildings, Four Courts, Dublin, on 18th November, 1965. The President took the chair at 2.30 p.m.

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

The Secretary read the minutes of the Ordinary General Meeting held on 22nd May, 1965, which were confirmed and signed by the Chairman.

The Secretary read the report of the scrutineers on the ballot for the Council for the year 1965-66. The President declared the result of the ballot in accordance with the scrutineers report as follows:

Ordinary Members

John C. O'Carroll (Ulster), Reginald G. Nolan (Leinster), Thomas E. O'Donovan (Munster), Francis A. Armstrong (Connaught).

Provincial Delegates Returned Unopposed

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

Desmond J. Collins	563
John Carrigan	545
Eunan McCarron	541

Francis J. Lanigan	523
John Maher	515
Augustus Cullen	511
Thomas A. O'Reilly	508
Patrick Noonan	497
Peter E. O'Connell	497
Daniel J. O'Connor	489
Robert McD. Taylor	484
Ralph J. Walker	478
John J. Nash	472
Patrick O'Donnell	467
Niall S. Gaffney	465
William A. Osborne	465
George A. Nolan	457
Patrick C. Moore	442
Thomas J. Fitzpatrick	433
Joseph P. Black	427
James W. O'Donovan	426
Thomas H. Bacon	422
Brendan A. McGrath	422
George G. Overend	415
Desmond J. Moran	408
Thomas V. O'Connor	397
Peter D. M. Prentice	387
Gerald Y. Goldberg	386
Timothy J. C. O'Keeffe	365
James R. Green	359
Raymond A. French	356

The scrutineers returned the foregoing as duly elected members of the Council for 1965-66. The following candidates also received the number of votes placed after their names:

Robert W. R. Johnston	338
Samuel V. Crawford	283
Thomas Jackson (Jnr.)	273
Francis A. Gibney	250
Edward J. C. Dillon	248
Norman A. Pielow	197

The Chairman declared the result of the ballot in accordance with the scrutineers report.

On the proposal of Senator J. J. Nash seconded by Mr. G. M. Doyle the audited accounts and balance sheet for the year ended 30th April, 1965 circulated with the agenda were adopted. The President signed the accounts.

On the proposal of Mr. P. C. Moore seconded by Mr. J. W. O'Donovan, Messrs Kevans and Sons were reappointed auditors.

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

Ladies and Gentlemen: This is a solemn moment for me. It is the second and probably the last time that I will have the honour of addressing a General Meeting of the Incorporated Law Society of Ireland. Before I proceed further with my address, I have to record with sincere regret the demise of the many members during the last year. First of all, I must refer to the tragic death of Father Arthur Cox whose brilliant career was cut short earlier this year in a most tragic fashion. To try to enlarge on his merits or even list his many achievements would take more time than I have at my disposal. Suffice it is to say that he was our President during our Centenary Year, the year on which I first was fortunate enough to become a member of the Council. That year was outstanding in the history of the Society and its success was in a very great way due to the efforts and ability of the President, Arthur Cox. Even his resignation some years later from the Council was a hard blow. May he rest in peace. Another loyal member of the Society who passed away was Mr. Cecil Stapleton of Dublin who was a member of the Council from 1936-46 and Vice-President for the year 1940. Mrs. Maureen Gallen (nee Hawthorne) of Dublin perhaps the first lady to succeed to her father's practice and carry it on successfully for many years. She occupied the position of Lecturer in Practice for the Society for some years. Other members were James Reilly, Clonmel, Charles Magwood, Dublin, Desmond Early, Carlow, John M. O'Farrell, Dublin, Philip Smith, Cavan, James Raymond, Listowel, Albert E. Ashton, Dublin, Patrick J. Donnelly, Westport, Thomas Hanefey, Dublin, John Plunkett Dillon, Dublin, Francis Collins, Dublin, Robert Sheehan, Dublin, John Colman, Dublin, Joseph D. Simon, Galway, Francis L. Scott, Dublin, David R. Pigot, Dublin, Kevin J. O'Shaughnessy, Waterford, Daniel P. King, Tralee, John F. Connolly, Kinsale and Owen Binchy, Charleville.

You will have noticed that two of our former colleagues on the Council have not felt able to go forward again for re-election, Mr. William Comerford, Galway, and Mr. William Tormey will be sadly missed. May I take this opportunity of thanking them for all their efforts and Mr. Tormey in particular for his efforts to make the May Weekend in his home town a successful outing.

SOLICITORS BENEVOLENT ASSOCIATION

Last January, I had the honour of addressing the Annual General Meeting of the Solicitors Benevolent Association. I said then that many if not all of my predecessors had expressed the view that the Solicitors Benevolent Association was worthy of the support of all the profession. I make no excuse for repeating that statement. It does still seem that my predecessors' efforts have not been wholly fruitful. There are a number of solicitors who are not yet members. I appeal to all of them and especially our young members to join. The Association with its limited funds carried out a charity the merit of which cannot be assessed in words. I am not very kindly disposed to appeals by charities for funds by way of legacies but I do know that the Association has benefitted and does benefit that way at times. Sometimes, an opportune word might do no harm to a suitable prospective testator. I would again appeal to the Government to give all the Association's donees the benefits of every possible relief from taxation and to except any contribution given by the Association from any means test for any pension being paid out of Government funds.

LAND ACT

The Land Act has become Law and it is one of the most troublesome Acts which any Government could conceive. It has given all the profession many headaches and has undoubtedly increased the already overtaxing complexities of conveyancing. We are alleged to make money from that part of our practices but we certainly earn it. Even one simple little example illustrates this—every mortgagee of every property outside an urban area has to sign a certificate of compliance

with the terms of the Act before any interest in the property vests in him. This entails a special attendance on the mortgagee as well as drawing up and preparation of the appropriate certificate. The Booklet prepared by the Council was unfortunately delayed by the printing strike but even though it has appeared I must again warm all practitioners to study the Act itself thoroughly so that we can advise our clients in all detail.

LEGAL AID

The Minister for Justice made an Order bringing in Legal Aid in criminal cases commencing on April 1st. The Law Society made strenuous efforts to have what we consider were proper fees fixed for work done by the solicitor's profession under the Act. We failed in that but despite this we felt we did not advise the profession not to assist the scheme in so far as they could as a social measure. It is time now to consider if the Scheme is working or will work. District Justices in the course of conversation have told me that it is seldom applied for and I have heard of a case in which a successful applicant for legal aid and a successful defendant to boot came to the solicitor afterwards and asked what fees he owed saying at the time that he, the defendant, and a fair representative of public feeling knew what fees were allowed and realised that they were hopelessly inadequate. One might even risk saying that the public do not avail of it because they feel that if they take legal aid that their case cannot be properly presented for such small fees and if a Solicitor takes on the case he will not give it his whole-hearted attention. The public are completely wrong in the latter assumption. If a solicitor has gone on the legal aid panel, every prospective defendant can rest assured that he or she will get 100 per cent attention from that solicitor, who will regard it as his absolute duty to give of his best. He has joined the panel with open eyes and as a measure of public spirit and he will *not*, I repeat *not* default in his duty. This is merely an extension of the enormous amount of unpaid service to the public by solicitors in every city, town and village in Ireland. The image created at times in the Press of solicitors being grabbers is utterly false. Every solicitor in the country meets cases where the person consulting him cannot pay the usual fees and is sometimes unable to pay the fees. Might I instance the case of a poor widow who is forced to extract a Grant of Probate or Administration because her deceased husband had over the minimum amount payable out of a Bank or the Post Office Savings Bank without representation being raised. In the case of intestacy, the solicitor often has to arrange for a bond through an Insurance Company and when this and the other outlay for Commissioners fees and Court fees are paid, it is not easy to charge the full and proper fees to a poor widow possibly with no or hardly any means of support.

SUCCESSION BILL

The first Succession Bill was one of the items which caused the Council great concern for a long time. A statement was prepared and issued to the Press shortly after I took office. This statement was based on Society's view on the social aspect of the bill and its possible effects on family affairs. As you will see from the Council's report other statements were prepared and had the result of improving the Bill but not as entirely as we had hoped. The Bill is before the Senate but I doubt if they will be able effectively to alter the Bill as passed by the Dail. The Report stage was started yesterday but reading the accounts of the earlier stages only lead one to expect very minor changes.

The Commission on the Courts is sitting and a request was made to the Council early in the Summer to indicate its reactions and opinions on the suggested increase in jurisdiction in the District and Circuit Courts. A special committee dealt with this. This committee had before them details of suggested increases prepared by the Department of Justice. They were fully analysed and the committee which was composed of the most expert practitioners available for this class of work drew a report which was submitted to the Commission. Broadly speaking, the recommended jurisdiction of the District Court was placed at £100 and the Circuit Court at £1,500. A report in the newspapers earlier this month suggested much higher figures but I feel they were too high. If they were adopted, the recruitment of extra judges and District Justices would have to be very large if the work was to be done. Even with the present jurisdiction arrears in the Dublin Circuit are altogether out of hand.

This report whether it was inspired officially or not I cannot say did also suggest that the Minister for Justice was anxious not so much that there should be a fusion of the professions of barristers and solicitors but that each should have the power to act as one or the other. I cannot speak for the bar but as a conservative solicitor so called in the Article, I am completely opposed to the idea. *There may be nothing in these reports and I am led to this belief by the fact that the Council has no official notice of any contemplated steps or proposals nor have they been consulted in any way as to their views on the matter. In this and in all matters affecting the public first and second professional interests I feel that we should be consulted on every conceivable occasion.* The Minister and his predecessors cannot but admit that over the years the Society has always sought improvement in the lot of everybody and we feel that we are the people who have the practical experience to give such advice. Theoretical lawyers are all very well but in any matter that comes down to real hard facts, it is the practising lawyer of either branch of the profession who is best equipped to give the final touch to any question of importance.

Such contact and consultation did take place in connection with the new Criminal Justice Bill or rather its objects. Time has been a bit too short to enable us to comment in detail but we hope that the general tenor of our recommendations has to a large extent been followed.

To get back to the District and Circuit jurisdictions if and when these changes are made, new costs rules will have to be made to meet the changed circumstances. This end of the matter will receive the most urgent and active attention from the Council as we do not want a repetition of what has happened in the past when all applications were blocked or sidetracked with the result that the new rules never came into being or took so long to do so that the profession suffered to an unwarranted extent.

I said last May that the Council were taking an ever increasing interest in the education of apprentices. This is still true. The numbers entering into apprenticeship is growing. Perhaps as I said before the qualification of a solicitor is regarded as a step to other positions. It does seem true very often. Our primary concern is to see that the solicitor who practises is able to do so in the most proficient way. Our lectures and instructions are geared

to meet this object and in many ways a well qualified solicitor now is better equipped than perhaps some of us older members were when we started. I feel that a more valid effort is now being made by apprentices to avail in full of the facilities for learning actual practice in their masters' offices than there was in my time. This is essential particularly in view of the increased complexity of modern legislation and the modern way of life. We are not complacent about our system and feel it can be improved but concrete steps are being held up till the Commission on Higher Education makes its report.

While on this subject of education I would like to say a word in praise of the founders of the Society of Young Solicitors. This is an Association which only came into being in my term of office. They have organised a series of lectures and discussions on wide ranges of topics as is in keeping with the primary object of the Association. I would recommend all young solicitors to join this Association which apart from the lectures encourages the younger members of our profession to meet one another and exchange ideas and methods on various matters of common practice. Each solicitor may be working in offices doing or specialising more in certain types of practice than others and most useful hints can be exchanged and this in the long run does enable us to give a better service to our clients which is our primary function as solicitors. However, I would as I have already done before warn them to be careful not to cut across the work of the Law Society or the Bar Associations. They must try and work in the closest collaboration with these organisations and under their imprimatur. I do also think that they might be well advised to change their title so that no one will even contemplate that there is any iota of a rift in the professions. They might call themselves the Young Solicitors Group and make it clear in their publications, etc., that they are in every way subsidiary to the Law Society and I do attach importance to the word "Young" as I feel that the group should adhere closely to their original objective to promote knowledge and practical experience among the more recently admitted members of the profession at the early stage of their career.

I said in my last speech to you that the Council had prepared Standard Form of Contract for sales by Public Auction and Private Treaty. At that time, it was intended that one document would be used. As a result of later meetings and further consideration and particularly after a meeting with a special committee of the Dublin Solicitors Bar Association, it was decided that it would be better to have two separate forms. These were prepared and now the printing strike is over, we hope to have the documents available soon.

With the growth of building of new houses, there have arisen many and varied forms of building agreements and agreements for leases. These varied to an amazing extent and the Council in an effort to achieve uniformity and fair dealing between all parties have asked the Southern Law Association and the Dublin Solicitors Bar Association to prepare and submit drafts. The new Council will do its utmost to have this important document circulated at the earliest practical moment. A draft has been prepared and is practically settled but it has to undergo further scrutiny by the appropriate committee before the Council finally approves of it.

That hardy annual delay in government offices keeps cropping up every year. I commented in May on the Registry of Deeds. From my own experience, this office is working well though, I see no valid reason why Searches should not be issued faster. The offices coming in for most comment now are the Land Commission and the Land Registry. Lack of staff and the reluctance of recruits to come forward on present salary scales seem to be the main trouble. Some appointments boards have sat recently and there is a hope that the former body will improve in the new year when the new appointees take up their positions. The Land Registry need more and more staff and the delays there seem to be getting worse and worse. An improvement had been effected but this has vanished. I have heard of cases where it took the best part of a year to register a freehold; there may have been queries but even if there were it should not take so long. The Land Registry is supposed to be cheap and quick. It is neither. In all cases of transfers of a house or land over about £300 in value, the fees are higher than in the Registry of Deeds and it need only take two days to register a dealing there or quicker if any special urgency arises. Transfers on sale and leases are to my own certain knowledge taking months to register. The faults can only be corrected by proper staffing and there seems to be no possibility of the new Act coming into force anywhere unless there is a vast improvement. The building programme envisaged by the Minister for Justice some time ago would probably have to come first and we can only hope that it is one of the miscellaneous items referred to in the objects which the new Government Loan is to cover.

The prime purpose of this section of my address is to try to bring it home to the general public that much of the alleged delay in the law is in no way whatsoever due to any default or neglect of the lawyers but is due to the lack of facilities in the public services which still have to be brought up to a sufficient pitch of efficiency to cope with the increasing demands of our modern way of life and the general improvement in standards of living even compared with that of only 30 years ago. The Council will as always keep on pressing for proper service in all public departments.

As you all know, every member of the Council receives a copy of the *Gazette*. This document in many instances is probably put aside with an inward thought—"I must look at that when I have time"—time never comes and so it must often happen that the *Gazette* is never read unless another colleague says—"did you read that article in the *Gazette*—it settled such and such a point and has cleared up a doubt that has hoevered in my mind for a long time". I would appeal to all of you to make a special effort to read the *Gazette* every time you receive it. The Council and its committees and the Secretary and his staff and the Librarian have put many active and hard working hours into the decisions and matters discussed in the *Gazette* and in the compilation of articles and recommendations. Every solicitor should read it. I feel that possibly criticism of the Council might be lessened and the true value of its work realised if the *Gazette* receives the attention it deserves. One very important fact of its work is the way it pinpoints recent legislation and important decisions in the Court. We are always learning and why not avail of a document that makes this learning easy for us.

Of course, circulars come from the Council from time to time and these being specially prepared should be read at once. I think I can validly quote, in conclusion on this point of apathy, the report of Scrutineers of the Ballot already read to you—out of a possible voting strength of 1,320 only 711 members returned their voting papers completed in time. Can the non-voters validly complain about the Council or its work if they

were not sufficiently interested to vote on the composition of that Council?

It may be that I have omitted some item which has caused anxiety or been discussed by the Council during the year but my function here is to ask the Society for approval of the Report of the Council. This Report has dealt with nearly all or if not all of the matters raised before us and I do not want to bore you with repetition On a personal note, I would like to thank the many Bar Associations throughout the country who entertained me so lavishly and kindly. I hope that my inner feelings of having made many friends may continue to be true for the rest of my days.

May I close by expressing the hope that I have not failed the Society in any of the duties that were imposed upon me. I tried to do my best for the Society on all occasions and if I did not succeed it was not because of want of effort but perhaps because I was not blessed with the ability of some of my predecessors. I wish to thank the Council, my Vice-Presidents, Mr. Robert McD. Taylor and Mr. Eunan McCarron and indeed the entire profession for the help tendered to me and I will try to carry out my duties for the remainder of my office at least as well as I hope I have done heretofore.

The staff of the Society and particularly Mr. Eric Plunkett deserve a special note of praise. No President, no matter how capable, could carry on even for a few days if he had not the helping hand, guiding force and friendly co-operation of Eric Plunkett of whom it has been said that he has no thought for anything in his daily working life than the well being of the Law Society. He has the co-operation of a loyal and hard-working staff. They will do anything for you any time and still make you feel that it is a pleasure to do it. They will pardon me I am sure for not mentioning each individually by name.

I thank you for your patience.

Messrs John Carrigan, E. O. Sheil, J. B. McGarry, S. V. Crawford, J. J. Nash, Andrew Curneen, Maurice Kenny, J. V. Buckley, Ernest Margetson spoke on matters arising from the report.

The motion for the adoption of the report was seconded by Mr. Taylor and carried unanimously.

Thursday 24th November 1966 was appointed as the date of the next annual general meeting.

Mr. Margetson proposed a vote of thanks to the President for his valuable services to the Society during the year which was carried with acclamation. The President having replied the proceedings terminated.

ADMISSION CEREMONY

On Thursday 25th November, 1965, the President presented Certificates of Admission at a ceremony in the Society's Library. Addressing the newly admitted solicitors and their friends the President said:

Ladies and Gentlemen, one of the most pleasant duties that falls to the lot of the President of the Law Society during his year of office is to present to newly admitted solicitors their certificates of enrolment and to welcome them to the profession. It is difficult for a President to break new ground in this speech of welcome. What I have to say to you has been said by my predecessors on some occasion before but the saving factor from my point of view is that you have not heard it before now, at least from me.

It is customary for the President to stress some particular aspect of a Solicitors practice or method of life. I feel that I cannot do better than give you the advice that above all things you should ensure that you keep proper accounts particularly of your client's money. You should start your career by installing a proper set of books so that you will always be in a position to be able to ascertain your indebtedness to your clients and at a moment's notice be ready to give them a full account of all the money you have in hand for them and be prepared to vouch such account with all necessary vouchers. If you do this and always keep it in the forefront of your mind there is little possibility of your going astray. I do not for one moment wish to convey that I have the remotest idea or fear that you would go astray but it is an old saying that prevention is better than cure. I feel that in the past that some unfortunate men who have fallen by the wayside because of comparatively small defaults have done so because they failed in this one very essential aspect of our way of work. You have had the advantage of a series of lectures on methods of book-keeping and you have shown sufficient proficiency in this to pass an examination designed to test the way you have absorbed the instructions imparted to you. Those of us who are older never had this opportunity and we had to work out our own salvation. I merely had to answer one or two questions on book-keeping as part of my Intermediate and I fear that if I had not done quite well in my real property paper that I might not have passed that examination at the first attempt.

I hope that I always have been and am in a position to carry out what I said you must always be able to do. Even if you do not launch out on the wild seas of practice on your own behalf it would be well for you to study working methods of an established practice on this entire question of keeping books. If you take a position as an assistant or go to work in a family practice, my remarks still hold good—some day, please God, you yourself will be a partner or outright owner of a practice and that is not the point of time for you to learn how to apply practical methods in dealing with your clients money. The accounts regulations were not drawn up just for fun. The wisdom of more than one generation of solicitors went into the concept of their being drawn up and promulgated to the profession as something that it was the bounden duty of all its members to observe and maintain carefully.

One more point before I close—the growth of legislation and the changing pattern of Laws nowadays makes it difficult to keep up to date on all matters. Use every means in your power to maintain the knowledge you have acquired. The Council of the Law Society issues from time to time booklets on current topics and tries in its *Gazette* so far as it can in that limited journal to indicate changes in laws and tell the profession where and when such Acts of Dail or new sets of Rules or Statutory regulations can be found or were made. Study these aids closely, join your local Bar Association, attend its meetings, join the Law Society and follow its work through its publications and attend any lectures given by any legal body having the Council's approval.

May I wish you every success in your chosen career

and say how pleased I am to welcome you one and all into the ranks of our profession.

Parchments were presented to the following: William S. Barrett, Windsor Lodge, Lanesville, Dun Laoghaire, Co. Dublin. Arthur F. Callanan, Esq., 4 Perrott Avenue, College Road, Cork. Thomas J. Colgan, (B.C.L., N.U.I.), Glenwood, Lucan, Co. Dublin. Yvonne Fagan, (B.C.L., N.U.I.), 151 Howth Road, Dublin. Patrick J. Farrell, "Danagh", 41 Nutley Lane, Dublin 4. Finola M. Foley, Tyrconel, Perrott Avenue, Cork. Sarah M. Gallivan, (B.C.L., LL.B., N.U.I.), 6 Waltham Terrace, Blackrock, Co. Dublin. Thomas P. Griffin (Jnr.), Parnell Street, Thurles, Co. Tipperary. Eugene P. Hunt, (B.A., N.U.I.), 6, The Brook, Enniskillen, Co. Fermanagh. Francis B. Keating, Amogan, Rathkeale, Co. Limerick. John B. D. Lacy (B.C.L., N.U.I.), Willowfield, Kells, Co. Meath. Colm C. Murphy, Jigginstown, Naas, Co. Kildare. Robert McDowell, (B.A., T.C.D.), "Shanagarry", Milltown, Dublin 6. Dermot G. O'Donovan, "Rossio", Castletroy, Co. Limerick. Cyril M. Osborne, Emily Square, Athy, Co. Kildare. Anna M. O'Shea, (B.C.L., N.U.I.), Roslyn, Bishopstown Park, Model Farm Road, Cork. Gordon J. Ross, Rosslyn, Millmount Road, Mullingar, Co. Westmeath. Rebecca Sweeney, Abbey Street, Roscommon. Brendan D. Walsh, "Imaal", St. Thomas Road, Mount Merrion, Co. Dublin.

COMMITTEES OF THE COUNCIL 1965-66

1 and 2—Registrar's and Compensation Fund
T. H. Bacon, *Chairman*
W. A. Osborne
J. P. Black
Augustus Cullen
Gerard M. Doyle
Raymond A. French
Thomas J. Fitzpatrick
Richard Knight
Brendan A. McGrath

3—Finance
R. A. French, *Chairman*
C. J. Daly
R. J. Nolan
J. C. O'Carroll
Rory O'Connor
George G. Overend
R. J. Walker

4—Parliamentary
Patrick O'Donnell, T.D., *Chairman*
F. A. Armstrong
C. J. Daly
T. J. Fitzpatrick, T.D.
Senator J. J. Nash

5—Privileges
D. J. Moran, *Chairman*
F. A. Armstrong
John Carrigan
J. F. Foley
H. J. Kelleher
P. C. Moore
Peter O'Connell
D. J. O'Connor
T. V. O'Connor
J. W. O'Donovan

6—Court and Offices
R. Knight, *Chairman*
G. Y. Goldberg
J. B. Jermyn
G. J. Moloney
G. A. Nolan
T. E. O'Donnell
T. O'Keeffe
R. J. Walker

7—Court of Examiners
P. J. Noonan, *Chairman*
T. H. Bacon
N. S. Gaffney
T. A. O'Reilly
Peter Prentice

8—Disciplinary
J. R. Green
Eunan McCarron
G. A. Nolan
P. J. Noonan
P. E. O'Connell
D. J. O'Connor
G. C. Overend
P. D. Prentice
D. P. Shaw
D. J. Collins

EXAMINATIONS 1966

Examination	*Last Day for Entry*	*Date of Examination*
First Law	Jan. 17	Feb. 7, 8
Second Law	Jan. 17	Feb. 7, 8
Preliminary	Jan. 18	Feb. 9, 10
Third Law	Jan. 19	Feb. 9, 10, 11
First and Second Irish	Jan. 28	Feb. 18
Book-keeping	Feb. 7	Feb. 28
Book-keeping	May 31	June 20
First and Second Irish	June 10	July 1
First Law	Aug. 15	Sept. 5, 6
Second Law	Aug. 15	Sept. 5, 6
Preliminary	Aug. 16	Sept. 7, 8
Third Law	Aug. 17	Sept. 7, 8, 9
First and Second Irish	Aug. 26	Sept. 16

CORRECTION

Under the heading "Increases in Costs" appearing at page 85 (Vol. 58, No. 10) of the April 1965, issue of the *Gazette* S.I. No. 29 of 1965 was referred to adding to fees (other than discretionary fees) for business in the Supreme and High

Court. In fact this instrument deals with the registration of business matters and does not contain any reference to costs. We apologise to members for any inconvenience caused by our error.

BANKING BUSINESS

In the August/September 1965 issue of the *Gazette* a report of the case United Dominions Trust Ltd v. Kirkwood extracted from the Law Times 23rd July, 1965, was published. A member has written and suggested that a wrong impression of the effect of the judgment may have been given in the note published in the *Gazette*. *The* member states that it was a defence submission that the matters in question (i.e. the taking of money on current account, the payment of cheques drawn on oneself and the collection of cheques for customers were matters essential to the legal concept of banking) were essential to the carrying out of the banking business. The Judge adopted that for the limited purpose of the case before him. It seems a fair inference that he only did so to enable him to make the point that if they were definite requirements to a banking business they had been fully satisfied by the plaintiffs in the case.

In an earlier part of his judgment he reviewed various authorities and deduced from them that it had not been clearly established that the requirements in question were essential. The Judge expressly declined to define a banking business or to say that it was not possible to carry on a banking business without at least taking money on current account, paying cheques drawn on oneself or collecting cheques for customers.

INTEREST ON JUDGMENT

The following information appeared under the above heading in the April 1965 issue of the *Gazette*. The matter is of importance and is republished lest overlooked on the previous occasion :

"Order 41, Rule 6 of the Rules of the Superior Court, 1962, provides that every judgment or order when filed shall be deemed to be duly entered and the date of such filing deemed to be the date of entry. Under the 1905 Rules provision was made that interest should run from the time the judgment was entered or the order was made. A similar provision is to be found in the 1962 Rules. The 1905 Rules did not provide that interest on the amount of a judgment should commence to run from the date the order was perfected. There is, however, a difference between the 1905 and 1962 Rules. The former contained a provision (Order 41, Rule 2) that entry of the judgment should be dated as of the date when the judgment was pronounced and the judgment was to take effect from that date. This particular rule does not appear to have been repeated in the 1962 Rules. The matter is of importance when judgment is given for a large amount where delay may postpone the date from which interest is to run. The remedy, however, appears to lie in the provisions of Order 42, Rule 15 of the 1962 Rules which concluded with the words 'unless the judgment otherwise directs'. It would therefore appear to be advisable to instruct counsel to ask for a special order directing interest to run from the date of the pronouncement of the judgment and thus restore the position to what it was under the 1905 rules.

Normally there should be no delay between the date of perfection of the judgment and the date of entry save in cases where the procedure is to have in the first instance a Registrar's Certificate which is then followed by an entry of judgment based upon it. In such cases it is a matter for the solicitor as to how soon he wishes to lodge the necessary papers for the purpose of having judgment entered. Very often in cases such as where there is a pending appeal he may not wish to enter judgment until the outcome is determined. In the case of Chancery judgments and orders and on some Common Law orders there may be delay as to perfection of the order in difficult and complicated cases but there will never be any delay between the date of perfection when ultimately arrived at and the date of entry, that is to say filing as per Order 41, Rule 6.

This matter has been referred to the Society's representatives on the appropriate rule making committee for consideration by the committee."

MEATH SOLICITORS ASSOCIATION

At the Annual Meeting of the above Association held on 28th October, the following officers were elected: Donal Kearney, Oldcastle, President; Thomas Noonan, Kells, Hon. Secretary and Treasurer; Patrick Noonan, Athboy, Provincial Delegate.

Committee: Nathaniel Lacy, Stephen Keaveny, Frank Reilly, Frank Thornton, Alan Donnelly and Michael Smyth.

PACKAGE DIVORCE SERVICE

A member of the Society has received an unsolicited communication from an overseas firm of lawyers, indicating the type of service available for clients seeking quick divorce. Part of the letter reads as follows:

"The service that we offer starts when we meet your customers upon their arrival at the X airport, or in their lodging places; bring them over to Y, secure their lodging in this city; also, to appear before Court in order to expedite their matters. They will be returned to their lodging places. This service will be rendered in special automobiles driven by reliable and responsible chauffeurs, whose background is very well investigated by the local Authorities. They will be ready to assist you at your entire satisfaction; that is, in regard to any additional information without extra charge to you; nor to your clientele." . . . "If our offer failed, to suit you in any respect, we would be very glad to have you inform us in order that we may improve our fees so as to be more acceptable."

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

At the half yearly General Meeting of the Tipperary and Offaly (Birr Division) Sessional Bar Association held on November 17th, 1965 the following two resolutions were proposed and passed:

1. With a view to restricting as far as possible claims against the Compensation Fund, the Law Society shall require all solicitors to furnish an accountant's certificate as envisaged by Section 31 of the Solicitors' Act, 1960 with their application for a practising certificate.

2. With a view to restricting as far as possible claims against the Compensation Fund, the Law Society shall employ auditors to examine the accounts of solicitors from time to time.

The Honorary Secretary of the Association was instructed to bring these resolutions to the immediate attention of the Law Society, so that action might be taken without delay.

The Officers and Committee of the Association for the year 1965-66 are: President, Patrick F. O'Connor, Roscrea; Honorary Secretary, John Carrigan, Thurles; Honorary Treasurer: Martin T. Butler, Thurles; Committee, Michael C. Black, Henry F. Hayes, Michael O'Meara, Patrick F. Treacy, John J. Nash, Donal Binchy, Francis Murphy, Kevin Nugent, Robert Frewen, T. J. O'Reilly, N. J. O'Donnell, R. D. Kennedy and Patrick J. McCormack.

DUBLIN SOLICITORS' BAR ASSOCIATION

At the Annual General Meeting of the above association held on 25th October, 1965 the following Officers and Council members were elected: President, Ernest J. Margetson; Vice-President, Eamonn O. Sheil; Honorary Treasurer: Patrick P. MacMahon; Honorary Secretary, Gordon A. Henderson; Honorary Auditors, P. Glynn and E. Crowley; Council members, Messrs R. Knight, E. Byrne, G. A. Williams, M. Kenny, V. Wolfe, G. Doyle, A. O hUadaigh, Miss T. King and Mr. P. Golden.

CASES OF THE MONTH

Solicitor: Disciplinary Committee

On the 2nd September, 1965 the Disciplinary Committee of the Law Society found that a solicitor, aged seventy-three, had: (1) failed to comply with the Solicitors' Accounts Rules; (2) failed to comply with the Solicitors' Act, 1957 and the Accountant's Certificates Rules, 1946-56, in that the accounting periods delivered by him on 12th July, 1962, and 24th September, 1964, terminated more than six months before the date of delivery of such respective certificates; and (3) had been guilty of conduct unbeffitting a solicitor in that he had: (a) utilised for the purposes of certain clients, money held and received on behalf of other clients; (b) utilised for his own purposes, money held and received by him on behalf of other clients; (c) made, for the purpose of obtaining practising certificates, declarations which he knew, or ought to have known, to be untrue. The committee accepted that here had been no suggestion that he had been guilty of any dishonesty and stated that the breaches of Solicitors' Accounts Rules and his conduct in using clients' money for wrongful purposes could both, in the circumstances of the particular case, be regarded as primary technical offences but were, however, indicative of his unbusinesslike methods. The committee having referred to the fact that twenty-three years ago, on 7th April, 1942, the Disciplinary Committee had found him guilty of a number of breaches against the Solicitors' Accounts Rules and suspended him from practice for three years, ordered that his name be struck off the roll of solicitors of the Supreme Court. The solicitor appealed and the court received fresh evidence in the form of three witnesses.

Parker, C. J., said that the appeal was centred round mitigating factors which could have persuaded the committee, had they heard them in full, to impose a lesser penalty. The appellant had been in practice on his own account, alone with one clerk and one secretary. He had, on the evidence before the court, always borne a very high reputation in his profession. The court was loth to interfere, in a case of professional misconduct, with the penalty of the Disciplinary Committee. His Lordship thought that, on analysis, that something had gone wrong here. Was the extreme penalty necessary in the case of a man of nearly seventy-four, unable one way or another to conduct his office in a businesslike way, but throughout a credit to his profession? Was it necessary, for the honour of the profession, to safeguard the public and to act as a deterrent, that he should end his life struck off the roll? Bearing that in mind, it seemed that the sentence was not warranted; the honour of the profession would be preserved, the public safeguarded and it would be a sufficient deterrent to others if this man, of no dishonesty, was suspended, bearing in mind that he had already once been suspended for a period of three years. If, at the end of three years, he was still minded to practise, it was open to the Law Society to grant a conditional licence on terms, maybe that he should not practise on his own account, but that was a matter for the Law Society.

Ashworth and Widgery, J. J., agreed. Appeal allowed. Suspension for three years substituted accordingly. (re a solicitor—Solicitors' Journal (Vol. 109), p. 853.

Untaxed Bill of Costs Including Sum for Taxation

WH had acted as solicitor to JH prior to the latter's death in 1959. Some costs were due to the solicitor by JH at his death and the solicitor presented a bill of costs for these items to the deceased's personal representative. The bill included charges for taxing the bill. The personal representative paid the bill in March, 1961, and in December, 1961, petitioned the High Court for an order that the bill be referred for taxation. Held by Kenny, J., that the payment by a client of his solicitor's bill of costs which includes charges for taxation of the bill is a "special circumstance" which requires the Court to refer the bill for taxation (in re: Horan, I.R. 1964, p. 263).

"Court Rate" of Interest

There is no statutory provision or rule of Court which compels the Court to adopt the rate of interest of 4 per cent on the purchase money in Court sales or proceedings in a specific performance. This is a decision of Mr. Justice Kenny in Law and Anor. v. Robert Roberts and Co. (No. 2) I.R. 1964, p. 306.

Estate Agent's Authority

"The defendants by letter, offered leasehold premises for sale through estate agents, H. Ltd. O'H. (an assistant employed by H. Ltd.) showed the premises to the plaintiff G., and his solicitor L. A copy of the lease was furnished to L., and L. was informed that the vendors would accept £5,000 for the premises. L., from previous experience, knew that the lessor held a good title. L., informed O'H. that he had instructions to offer £4,500 but would go to £4,750 and auctioneers fees of 2½ per cent. O'H. telephoned C.G. the defendant's managing director who instructed O'H. to accept £4,750 and fees. O'H. then telephoned L. and told him that the defendants would accept the figure. He subsequently telephoned C.G. and told him that L. had agreed to give that figure and that he O'H. would write to both parties and confirm the offer. C.G. then told O'H. he would have to consult his other directors. Later the same day C.G. telephoned O'H. and told him that his directors had agreed to the sale. On 7th November, 1960 a director of H. Ltd., wrote to L. to confirm the offer and added: 'We have asked Messrs R to have the contract forwarded to you immediately". On the same day he wrote a corresponding letter to C.G. and added: "Would you please be good enough to instruct your solicitors to forward a contract direct to Mr. L." C.G. on the same day wrote to the defendant's solicitors saying: "We have today sold the above premises . . . " On 9th November, C.G. wrote O'H. to express regret that his directors have to call the sale off.

In an action for specific performance it was held by Kenny, J. and affirmed by the Supreme Court (O'Dalaigh, C.J., Lavery, and Haugh, J. J.) that (1) O'H had been authorised by the defendants to accept an offer of £4,750 and auctioneer's fees; (2) the reference to a contract letter of 7th November, 1965 was not intended to create a term or condition of the agreement between the parties; (3) the correspondence between the parties constituted a sufficient note or memorandum of agreement under the Statute of Frauds.

Per Kenny, J.: The cases seem to establish the following propositions—

"(1) When a contract for a sale is made between a purchaser and an estate agent retained by the owner, the onus for proving that the estate agent had authority to make a contract is on the purchaser.

(2) An estate agent as such has no implied authority to conclude a contract for sale.

(3) An owner who puts his property on the books of an estate agent and authorises him to find a purchaser and to negotiate a sale does not thereby authorise him to complete a contract.

(4) An owner who puts his property on the books of an estate agent and informs him of the lowest price he will accept does not thereby authorise him to conclude a contract.

(5) An estate agent who is instructed to sell at a defined price has authority to conclude a contract for sale, at that defined price if the contract is an open contract.

(6) The estate agent may be expressly authorised to accept on behalf of the owner an offer made to the agent and, in that event, has authority to conclude a contract.

(7) If an offer is made to an estate agent and if he communicates it to the owner and is authorised to accept it or if the owner states that he will accept it the agent has authority to make an open contract with the purchaser."

(Law and Another v. Robert Roberts & Co. [Ireland] Limited [1965] I.R., p. 292).

Estate Duty—Passing of Property

On various dates between February 28th and April 28th 1952 K. affected 14 single premium policies on his life, each under section 11 of the Married Women's Property Act 1882 for the benefit of Mrs. K. if she should survive him for more than one month. If she should not so survive him, the policies were to be for the benefit of the two sons of K. in equal shares. The trusts thus created were trusts of the policies, not merely of the moneys to arise from them. The provisions of the trusts showed that the trustees were under no obligation to retain the policies in specie; and it was in K's. contemplation that the policies might be sold or surrendered or money raised on them for the purpose of investment and that the trust fund might come to consist of or include income producing securities. K. died in October 1961. All the policies were subsisting at his death and an aggregate sum of £66,638-19-2 became payable thereunder. Mrs. K. was living at the expiration of one month from his death. The Crown claimed estate duty on the policies or their proceeds under Section 2(1) (d) of the Finance Act, 1894. It was common ground that the policies were "interests provided" by the deceased within section 2 (1) (d). The Crown would be entitled to some duty if a beneficial interest in the policies of any measurable value arose either on K's. death or at the expiry of one month from his death in view of Section 22 (1) (l) of the Finance Act, 1894. Held: No estate duty became payable on the death of Mrs. K. in respect of the policy moneys because:

(1) Under the trust declared by Section 11 of the Married Women's Property Act 1882, Mrs. K. took a vested interest in the policies liable to be divested on her death before the expiry of one month from K's. death, and this vested interest would entitle her to receive any income arising from the policies before they vested indefeasibly, with the consequence that her beneficial interest was not changed in any way by K's. death.

(2) Even if the mere change from defeasibility to indefeasibility rendered applicable Section 2 (1) (d) of the Finance Act, 1894, the difference in value between Mrs. K's. interest immediately before the expiration of one month from K's. death and its value immediately thereafter (when it became indefeasible) was admittedly nil.

(In re. Kilpatrick's Policies Trusts. Kilpatrick and Another v. Inland Revenue Commissioners, Law Times, July 2, 1965 [Vol. 236] p. 375).

Receiving Stolen Property

The appellant was charged with others with conspiring to steal bricks, and also with receiving (contrary to Section 33 (1) of the Larceny Act 1916), stolen property, viz. two separate sums of £7, the proceeds of the sale of two loads of the bricks stolen pursuant to the conspiracy. The prosecution case rested substantially on voluntary statements made by the appellant admitting the receipt of the money; but there was no evidence that he had either seen or been near the two stolen loads or was aware that these particular bricks had been stolen before the theft was completed. On appeal on the ground that the appellant, a party to the conspiracy to steal, could not also be convicted of receiving the two sums of £7 being property into which the stolen bricks were converted within the definition of "property" in Section 46 (1) of the Larceny Act 1916.

Held: There was no evidence from which an inference that the appellant was constructively present at one or other or both of the thefts

could be drawn so that he was not a principal in the second degree and, thus not being an actual thief, there was no inconsistency in his being convicted of receiving as well as of conspiracy to steal; accordingly the convictions should stand. (Reg. v. Froggett, The Law Times, July 2, 1965 [Vol. 236] 374).

LEASE BY SOLICITOR-LESSOR

The relationship between a solicitor and his client rests upon the retainer which represents the contract between them. Without a retainer no such relationship exists. If the solicitor is a member of a firm the client retaining the firm is entitled to the services of all its members unless the retainer is given individually to one member of the firm in his personal capacity.

In the absence of a special contract the owner of land who himself is a solicitor is not legally entitled to require the lessee to whom he grants a lease to pay him costs or legal charges for drawing the lease. Because the solicitor lessor is not acting upon any retainer he is not providing professional services in the circumstances which would entitle him to recover costs.

The question also raises problems relating to the standard of professional conduct as well as difficulties of legal relationship. The relationship between a solicitor and his client created by a retainer is of a fiduciary character imposing special obligations more extensive than that merely of principal and agent. Not only must a solicitor give his client the benefit of his professional skill and judgment, but his advice must be wholly dis-interested, and he may not use the relationship to derive some personal benefit or remuneration over and above proper professional remuneration. If he cannot give disinterested professional advice he must disclose to his clients sufficiently fully and honestly all material and relevant facts and circumstances known to him (opinion of counsel).

CLIENT ADVISED TO SUE SOLICITORS

The Court of Appeal dismissed with costs the appeal of Mr. John Edward Street of Atwood Road, Hammersmith, from a decision of Mr. Justice Stephenson, setting aside a writ claiming damages for injuries sustained in a road accident, in which Mr. Street broke a leg in January, 1961. Lord Justice Danckwerts said that when Mr. Street's solicitors served the writ against the motorist earlier this year, the claim was clearly barred by the Statute of Limitations. Lord Justice Salmon said that he (Mr. Street) would have a "strong prima facie case" for receiving substantial damages. Lord Justice Russell said: "I hope, by some means or another, it will come to Mr. Street's knowledge that in my view he would seem to have at least a prima facie case of getting exactly the same amount of money out of his solicitors, on the ground of their negligence, as he would have got in the action."

(*Daily Telegraph,* Tuesday, July 6, 1965).

DUTY OF SOLICITORS IN LEGAL AID CASES

Judgment was given on 23rd February, 1964 for the defendants with costs, after the plaintiffs' case had been withdrawn. The plaintiff was legally aided. An application was made by the defendants that the solicitor personally should pay the defendants' costs and the solicitor agreed to pay £2,000 towards their costs. An application was made for the plaintiffs' costs to be taxed under the Legal Aid and Advice Act, 1949.

Mr. Justice Lyell, on December 15th, 1964, directed that this question should be referred to a Taxing Master for inquiry and report. An inquiry was held and a report was made in which the Taxing Master concluded "that there was sufficient evidence of costs having been incurred without reasonable cause or wasted by undue delay in respect of all heads of the plaintiffs' claim on and from March 1st, 1962, or alternatively at or prior to March 5th, 1963".

Having seen the Master's report, Mr. Justice Lyell was satisfied that the solicitor's failure had been of a serious and fundamental kind. It was implicit from the judgment of Lord Maughan in Myers v. Elman (1940 A.C. 282 at p. 287) that a solicitor who without any investigation of his client's claim allowed or encouraged a client to pursue a claim which proper investigation would at an early stage have shown to have been a hopeless one was in breach of his duty to his client for he would be causing his client to incur costs without reasonable cause.

His Lordship said he wished to add some general observations with regard to the duty of the legal profession where the client was legally aided. Legal aid in civil cases had been granted for some 15 years and there would be general agreement that it had conferred great benefit on the public at large and incidentally on the legal profession. But it was well to recall that it was a form of maintenance and that as the law had long recog-

nised that maintenance if abused could become an engine of oppression. There was a heavy duty on counsel and solicitors to test their client's case with the same anxious care as they would bring to one where they looked to their client for the costs. The sanction of the client's displeasure where money was spent in fruitless litigation was not so present as in the case of a private client—the absence of that sanction should not be an excuse to exercise a lesser degree of care. In the present case his Lordship felt that no costs should be allowed to the solicitor after March 1st, 1962.

INTERNATIONAL SOCIETY FOR MILITARY LAW AND LAW OF WAR

The Society will award its Scientific Prize for the second time in 1967. The prize has been founded to reward the author of any substantial and original study dealing with military penal law, military disciplinary law or law of war. The works may be entered in a manuscript form or as a printed work edited either in 1964-65 or 1966. Admitted languages: Dutch, English, French, German, Ialian or Spanish. Five copies of the work must be lodged with the president of the jury, Mr. Gilissen, Auditorat general, Palais de Justice, Bruxelles 1, Belgium. Final date for lodging the works—1st September 1966.

THE REGISTRY
Register C

ZAMBIA (formerly Northern Rhodesia)

Young Solicitor either sex with English, Irish or Northern Ireland qualification required in the Livingstone Office of Ellis & Company. Commencing salary by arrangement but not less than £1,500 per annum. Apply in the first instance by letter to Arthur Cox & Company, Solicitors, 42 St. Stephen's Green, Dublin 2, enclosing photograph and stating age, marital status, qualifications, previous experience and current occupation.

RETREAT

Enclosed Retreat for Solicitors (1966). Jesuit House of Retreats, Milltown Park, Dublin. Saturday night 5th March to Monday morning 7th March. For reservation apply John B. McCann, Wakefield House, York Road, Dun Laoghaire, Co. Dublin.

REGISTRATION OF TITLE ACTS, 1891 AND 1942

ISSUE OF NEW LAND CERTIFICATE

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

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

Dated the 20th day of December, 1965.

D. L. McALLISTER,
Registrar of Titles.

Central Office,
Land Registry,
Chancery Street,
Dublin.

SCHEDULE

1. Registered Owner, Owen Carroll. Folio number 5562. County Louth. Lands of Castletown in the Barony of Dundalk containing 0a. 1r. 0p.

2. Registered owner, Margaret Maguire. Folio number 4362. County Wexford. Lands of Ballynakill (C.D. Ballymore) in the Barony of Scarawalsh containing 74a. 2r. 27p.

GAZETTE

Vol. 59
No. 8A
January
1966

THE INCORPORATED LAW SOCIETY OF IRELAND

President
ROBERT McD. TAYLOR

Vice-Presidents
PATRICK O'DONNELL
JAMES R. C. GREEN

Secretary
ERIC A. PLUNKETT

CONTENTS

Meeting of the Council 61
The Missing Link 62
Local Bar Associations 62
Commissioners of Charitable Donations and Bequests 63
Housing Loans 63
Agricultural Credit Corporation Loans 63
Payment of Purchase Price in Land 64
Professional Privilege 64
Bonds 64
Workmen's Compensation 65
Jury Service 67
Valuation for Rating 68
Cases of the Month 69
Correspondence 71
The Registry 73
Registration of Title Acts, 1891 *and* 1942 73
Schedule 73
Obituary 73

MEETINGS OF THE COUNCIL

January 6th: The President in the chair, also present Messrs Desmond J. Collins, George A. Nolan, Raymond A. French, Patrick Noonan, Desmond Moran, Thomas V. O'Connor, Gerald J. Moloney, George G. Overend, Niall S. Gaffney, John Carrigan, Francis J. Lanigan, Robert McD. Taylor, James R. C. Green, Thomas H. Bacon, Augustus Cullen, Eunan McCarron, Patrick C. Moore, Brendan A. McGrath, John B. Jermyn, James W. O'Donovan, Peter E. O'Connell, Thomas J. Fitzpatrick, John J. Nash, Joseph P. Black, Thomas A. O'Reilly, Thomas E. O'Donnell, Peter D. M. Prentice, William A. Osborne, John Maher, Ralph J. Walker, Gerard M. Doyle, Daniel J. O'Connor.

The following was among the business transacted :

Standard form of Building Contract

A draft form of contract was submitted by a committee of the Council for approval. It was decided to send the draft to the Dublin Solicitors' Bar Association and the Southern Law Association and to ask them to submit a joint report.

Agency Allowance

Correspondence received from the Solicitors' London Agents Association was considered in which it was suggested that agency commission is no longer economic and that it should be discontinued or allowed at a reduced rate. It was decided that there should be no general recommendation in this matter. The allowance of agency or the amount of the agency commission is a matter for arrangement between individual solicitors. It is recommended that the position should be made clear in the initial correspondence between the solicitors concerned.

Circuit and District Courts Dun Laoire

Correspondence was received from the Department of Justice asking for the views of the Council on a suggestion that permanent Circuit and District Courts should be established in Dun Laoire. It was decided to deal with the matter in the context of the organisation of business generally in South County Dublin and Bray and the matter was referred to the Dublin Solicitors' Bar Association and the Wicklow Bar Association with the request that the matter should be discussed between them and the Dun Laoire solicitors.

Acceptance of Lodgment. Costs

The Council considered a report from a committee on the costs allowed which are at present limited to the costs incurred down to time of payment into Court. It was thought reasonable that where a plaintiff accepts a lodgment he should be entitled to the costs of the opinion of counsel and a medical report to enable the client to determine the adequacy of the lodgment having regard to his injuries. The matter was referred to the Society's representatives on the Superior Courts Rules Committee.

THE MISSING LINK

Members who might be interested in binding old copies of the Society's Gazette or who through oversight or accident may have lost back numbers of the GAZETTE may have same by applying to the Secretary of the Society, Solicitors' Buildings, Four Courts, Dublin, 7. Copies of Volume 59 (1965) and earlier Volumes in so far as they remain available, will be furnished on request.

LOCAL BAR ASSOCIATIONS

At a meeting of the Waterford Law Society recently the following resolution was passed :—

"The members of the Waterford Law Society being reluctant to pay increased contributions to the Compensation Fund until effective means are taken to eliminate recurring defalcations by Solicitors, it was resolved that the Incorporated Law Society be strongly urged to implement forthwith the Accountants Certificate provisions of Section 31 of the Solicitors' Act."

STANDARD CONDITIONS OF SALE

Public Auction and Private Treaty, Parcels of 50 @ £2-10-0 per parcel plus 2/6 postage per parcel are available and may be purchase only from the Society. Orders discharged as received.

COUNTY AND CITY OF LIMERICK SESSIONAL BAR ASSOCIATION

At the Annual General Meeting of the above Association, the following Officers were elected : President : Niall S. Gaffney; Hon. Treasurer, T. E. O'Donnell; Hon. Secretary, Dermot O'Donovan (Jnr.). Committee—Messrs C. C. McCutcheon, W. Lee, M. C. Tynan, J. Dennison, J. Dundon.

COUNTY KERRY LAW SOCIETY

At the Annual General Meeting of the above Society held at the Ashe Memorial Hall, Tralee, on Saturday, 4th December, 1965 the following Officers and Committee were elected for the forthcoming year : President, G. Baily; Vice-President, D. E. Browne; Chairman, C. J. Downing; Secretary and Treasurer, D. Kelliher. Committee—G. Baily, D. E. Browne, D. J. Courtney, W. A. Crowley, H. J. Downing, C. J. Downing, J. J. Grace, M. L. O'Connell, J. J. O'Donnell, J. S. O'Reilly, M. O'Sullivan and D. Twomey.

SOUTHERN LAW ASSOCIATION

The following Officers have been elected for the forthcoming year for the above Association : President, J. F. Foley; Vice-President, J. B. Jermyn; Hon. Treasurer, H. P. Kelleher; Hon. Secretary, D. J. Moloney.

MEATH SOLICITORS' ASSOCIATION

At the Annual Meeting on the 28th October, Mr. Donal Kearney, solicitor, Oldcastle, was elected President and Mr. T. Noonan was elected Hon. Secretary and Treasurer for the coming year. The following Committee was elected, N. Lacy, S. Keaveny, F. Reilly, F. Thornton, A. Donnelly and M. Smyth. P. Noonan was appointed Provincial Delegate.

COMMISSIONERS OF CHARITABLE DONATIONS AND BEQUESTS

BOARD MEETINGS

Hilary Term — 1966

Tuesday:	11th January, 1966
„	25th January, 1966
„	8th February, 1966
„	22nd February, 1966
„	8th March, 1966
„	22nd March, 1966
„	5th April, 1966

LAND ACT 1965 — Section 45 (2) (a)

A form of application for consent of the Land Commission to the vesting in non-qualified persons who have an interest in land lots situated in a County Borough, Urban District or town is now available. Copies of this form (N.Q. 1) may be obtained on application to the Secretary, Land Commission, 24 Merrion Street, Dublin, 2.

In future, form (N.Q. 1) must be completed in all cases in which the consent of the Land Commission under section 45 (2) (a), Land Act 1965 is required, and it is hoped that the adoption generally of the standard application form will permit applications to be disposed of more speedily. Attention is drawn, however, to the necessity to answer correctly all the questions set out in form (N.Q. 1); failure to do so will result in decisions in individual cases being held up.

HOUSING LOANS

The following information which appeared in the June, 1964 issue of the GAZETTE is repeated for the guidance of members who have raised queries in connection herewith recently:—

"Members please note that under the Housing Authorities (Loans for Acquisition or Construction of Houses) Regulations, 1964 (S.I. No. 130 of 1964):—

Clause 3 (1) provides that the amount of a loan shall not exceed £2,250 or 95 per cent of the value of the house excluding from that value the amount of any grant under any other enactment.

Clause 3 (2) provides that where the borrower surrenders to the housing authority making the loan, the tenency of a dwelling provided by the housing authority under the Housing of the Working Classes Act, 1890 to 1958 or under the Labourers Acts, 1883 to 1962 the amount of a loan shall not exceed £2,250 or 99 per cent of the value of the house excluding from that value the amount of any grant under any enactment.

Clause 4 (1) (*a*) provides (*inter alia*) that in the case of a house occupied for the first time the amount which in the opinion of the housing authority represents the reasonable cost (including all reasonable incidental expenses) of building the house and the value of the interest of the borrower in the site thereof shall be considered as the value of the house. Clause 4 (1) (*b*) the value in other cases is to be considered the amount which in the opinion of the housing authority, the house if sold on the open market might reasonably be expected to realise together with so much, if any, of the legal and other incidental expenses to the acquisition of the ownership of the house as the housing authority may consider proper.

Clause 8 provides that a loan shall be repaid with interest within a period not exceeding 35 years from the date of payment of the loan, or, if the loan is made by instalments, from such date as may be as determined by the housing authority.

Clause 10 provides that a loan may be repaid either by equal instalments of principal or by an annuity of principal and interest combined and all payments on account of principal or interest shall be made at a periods not exceeding a half year may be determined by the housing authority.

Clause 12 sets out the provisions prerequisite to obtaining a loan. There is a schedule to the instruments setting out scale of fees in connection therewith."

AGRICULTURAL CREDIT CORPORATION LOANS

The attention of members is directed to the difficulties arising from the withdrawal by the Corporation of sanctions for loans where loans are not taken up within the time named in the letter of acceptance from the Corporation. Generally, the offer is subject to immediate acceptance and in the absence of a specified arrangement

lapses if the Corporation's conditions are not fulfilled within three months. Since the recent credit squeeze the Corporation have been insisting strictly on the time limit and they withdraw the loan when the time limit expires. The result is that some clients have been unable to get credit which is sometimes due to the solicitor's delay. In one case which has come to the attention of the Society the Corporation offered to grant the loan after the term of three months lapsed but at a new rate of interest to wit 7¼ per cent instead of 6 per cent. Members ought to be aware of these circumstances as there is the danger of negligence actions arising out of cases such as that referred to.

PROFESSIONAL PRIVILEGE

The following is the text of a letter of 27th October, 1965 addressed by the Society to the Department of Local Government in connection with provision of Section 4 of the Housing Bill 1965.

"The Council of this Society are somewhat concerned at the provisions of Section 4 of the Housing Bill 1965. This section would apparently enable the Housing Authority to require a solicitor to furnish confidential information regarding a client's affairs without that client's consent. This is contrary to the accepted law and the recognized right of clients to professional secrecy on the part of their solicitors. The Council wish to submit that the section should be amended to protect that right. If necessary, they are prepared to attend on the Ministers to supply further information." The Society received the following letter in reply from the Department of Local Government on the 22nd November, 1965 :—

"I am directed by the Minister for Local Government to refer to your letters (EAP. L/5/65) of 27th October, and 5th November about section 4 of the Housing Bill, 1965, which enables a housing authority to require certain information and to point out that the section is similar to section 30 of the Housing (Miscellaneous Provisions) Act, 1931, which was, in turn, made applicable by section 10 of the Local Government (No. 2) Act, 1960, to the compulsory acquisition of land by a local authority for the purpose of any of their powers and duties. It is also similar to section 9 of the Local Government (Planning and Development) Act, 1963, about which you wrote to the Department on 2nd January, 1963.

The section as included in the Bill does not propose any serious modification in these long established precedents and it will, further, be used in more or less the same way and for the same purposes as the earlier sections. In the circumstances, it would not appear that an amendment of section 4 on the lines suggested in your letters is necessary."

PAYMENT OF PURCHASE PRICE IN LAND BONDS

Solicitors acting for owners whose lands are compulsorily acquired by the Land Commission are expressing increasing concern at the fact that clients are finding difficulty in realising their security on the Stock Exchange. It is an accepted consitiutional and legal principle that where the State compulsorily acquires property of the citizen it should be on terms of full compensation in money or money's worth. The principle underlying the land purchase scheme since its inception has been that the owner of the land on making title receives payment in Land Bonds instead of cash. Payment by bonds applies to the price of the land as fixed or agreed and the owner's legal costs of the transaction. By an agreement made between the Minister for Lands and the Auctioneers' Association some years ago auctioneers who are instrumental in negotiating a sale between the owner and the Land Commission receive their commission in cash instead of Land Bonds.

The amount of 6 per cent Land Bonds now in issue is £5,168,000. During the years 1958-60 the price varied between 101⅛ and 102. Between 1961 and 1962 the price varied between 99 and 93¼. Market value recovered to around par in the year 1964 but for the last twelve months the price has been steadily dropping and now stands at 87½. Market values are no doubt affected by the recent Government 6¾ per cent Loan which has tended to depreciate the value of stocks bearing a lower rate of interest.

The present position is that an owner whose lands are compulsorily acquired for say £10,000 is receiving payment in bonds depreciated by almost 13 per cent of the purchase price. The bonds are not redeemable on any fixed date, redemption depending upon drawings for payment at par in cash on the lottery principle.

An even more serious aspect of the present system is that there is a very small and unsatisfactory market for the sale of these bonds on the Stock Exchange and owners whose lands have been acquired for payment in bonds have found

it impossible or very difficult to convert their securities into cash.

It is understood that at the present time the Government broker is not bidding for the stock and that there are numerous sellers who cannot get a bid at all. The Society has made representations to the Department of Lands for the immediate issue of Land Bonds bearing interest at not less then 6¾ per cent with not less favourable terms of issue and redemption than those which attach to other Government securities offered to the public for voluntary subscription. It has been suggested that this and all future issues of Land Bonds should have a reasonably proximate date for redemption (otherwise than by drawings), that the bonds should have the privilege of the right to tender in satisfaction of death duties and income tax due to the State and that they should be issued free of income tax at source as in the case of other Government securities. There is a strong case for the issue of bonus bonds to the holders of the present issues to compensate them for the loss in value of their holdings due to Government action.

There is a greater moral obligation on the State to maintain the market value of securities which must be accepted by the citizen in exchange for his property compulsorily acquired than in the case of Government securities issued for voluntary subscription.

WORKMEN'S COMPENSATION

It is inherent in the system of multi-party parliamentary democracy that governments (irrespective of their particular affiliations) tend to advance schemes which appear superficially at least, to confer financial benefits on sections of the population which are numerous and consequently have strong voting power. The man in the street experiences an instinctive favourable reaction on learning that a particular bill proposes to confer financial benefits on him if they are to be paid for by somebody else. He seldom if ever reflects on the long term effects of such benefits and that financial gains, even when paid out of some other pocket often have a tendency in the long run to reach his own—usually in a much inflated form. Neither does he reflect on the equitable distribution of benefits and costs as between himself and other members of the community. On its face the Social Welfare (Occupational Injuries) Bill is attractive from the workman's point of view. It proposes substantially increased injury benefit and disablement benefit payable in the form of weekly income, payments with attendance allowance, cost of medical care and death benefit at prescribed rates. The scheme is to be administered by the Department of Social Welfare and financed by weekly payments *made by the employer only* at a rate equivalent to £5-8-3d. per annum for each male employee and £3-18-0d. per annum for each female employee. Neither the State nor the employee contribute to the cost of the benefits.

The first thing that strikes the unprejudiced mind about the scheme is the inequitable principle of obliging all employers to contribute at the same rate to benefits for injured or disabled workmen and employees irrespective of the degree of risk attaching to the particular occupation or employment. Under the existing private enterprise system of workmen's compensation insurance each employer is rated at the risk appropriate to his trade or business. The industrialist, the shopkeeper and the professional or domestic employer are all rated as different risks. This is in accordance with a sound principle of social justice. The effect of the principle of uniformity of payment proposed in the Bill is that the same annual premium £5-8-3d. (or £3-18-0d. for females) will be paid in respect of employees in low risk professional, clerical or domestic employments as in highly hazardous trades and industries, such as building and engineering where dangerous equipment and machinery is in constant use. The State with the aid of ensuring the solvency of the scheme, which could not be done without the contributions of the employers of comparatively risk-free workers has chosen to disregard their interests and to compel them to subsidise large employers in the building, engineering and similar industries.

The removal, in 1955, of certain employers' defences has caused a substantial growth in the numbers of claims for damages and negligence. This growth will not be affected by the substitution of a Social Insurance Scheme for the Workmen's Compensation system claims in negligence are more likely to increase. In the event it will mean that every prudent employer will continue his insurance policy with an insurance company and will in addition make a payment to the State scheme. Because the outgo on negligence is more likely to increase than reduce it will mean that the majority of employers can hardly expect material reductions in the amounts which they will continue to pay to the insurance companies. Because of the iniquity of the fixed contributions which will be made to

the State scheme there will develop the following effect on the large employers whose risk exposure is small. The present cost of insurance for Common Law and Workmen's Compensation for say 200 office or shop employees is approximately £215. That may be reduced to £100, if at all, but in addition that employer will now be required to pay between £750 and £1,000 extra to the State scheme.

From the point of view of the workman all State schemes are attended by a number of undesirable features. Every solicitor in country practice knows of the delays by State Departments in investigating claims under the Social Welfare Acts. The workman has no remedy for such delay except to go through the tedious procedure of the Social Welfare regulations. Payment of sick benefit is frequently delayed for as long as six to eight weeks and applicants depend upon the assistance of shopkeepers and friends. Under the Workmen's Compensation Acts which it is proposed to repeal an injured workman can speedily enforce his claim against his employer, if necessary, by recourse to his solicitor. In many cases solicitors have assisted workmen by advancing payments until the claim is dealt with. Insurance companies have always been prompt to make payments in workmen's compensation once the cause and nature of the injury is established. The procedure will be entirely different under the new code. If there is unreasonable delay by the State Department in investigating and dealing with his claim, the workman will have no remedy or recourse to any external authority. The human relations which exist between employees and their legal advisers will be replaced by the rigid bureaucratic procedure of a State Department.

One of the principal objections to the State scheme is that matters which heretofore have been regarded as part of the administration of justice to be decided coram publico will now be decided in secret by civil servants. At present, claims to workmen's compensation are decided judicially with skilled legal advice and exposed to the criticism of public opinion and judicial comment which is a salutory remedy for oppression of individual rights. Under the new code a claim by an injured workman will be investigated in the first instance by a field officer who will make private enquiries and listen to any amount of hearsay and possibly unreliable evidence. He will not be trained in the judicial methods applied in determining the truth between conflicted testimony. Mistakes can be covered up without exposure. An application by the workmen will go to a deciding officer; if unfavourable may be referred to an appeals officer who is also shielded by anonymity. An appeal to one state official from the decision of another where all the deciding and appellate authorities are trained in the same code and represent the same interest does not satisfy the standards of objectivity and fairness which characterise the present procedure. Presumably the practice of all State authorities of refusing to give reasons for their decisions will apply under the proposed Act.

Under the present workmen's compensation code an injured workman may obtain a lump capital sum which will enable him to set up in business or rehabitilitate himself in some other way. There is no provision for a lump sum under the State scheme and workmen will resort to the alternative remedy of an action for common law damages where there has been negligence on the part of the employer in providing a safe system of work. The availability of lump sum settlements and common law rights is an important feature in medical rehabilitation. It is common knowledge that the psychological effects of injuries and incapacity for work continue far longer and very often from perfectly genuine causes where a lump sum payment cannot be arranged in a speedy and satisfactory manner. There are part and parcel of the workman's compensation code and the additional difficulties imposed by the proposed legislation in recovering a capital sum may have the effect of delaying recovery and result in undesirable social effects both as regards the individual and industry and the community as a whole.

The Workmen's Compensation Committee by a majority (which included the representative of the Department of Industry and Commerce but not of the Department of Social Welfare) were in favour of retaining the present Workmen's Compensation scheme with improvements. The Minister has disregarded the majority report and given effect to the recommendations of the minority. In all genuine schemes of Social Insurance the contributions are made by employer, employee and State. Each of the three contributing parties are also given some control and say over the administration and over the amounts being paid out of the fund. In this proposed scheme of pseudo-social insurance the employer pays all and the civil servant is given free rein to pay out what he likes both in administration costs and claims costs. It is somewhat ineffectively stated in support of the present Bill that the cost of

administration will be kept low but there is no evidence in support of it and if forecasts prove incorrect additional revenue can be obtained by a simple turn of a screw and raising the employers weekly payment.

The public who have recourse to the Estate Duty Office, Land Registry and other Government Departments are well aware of the chronic shortage of civil service staff. Delays of six, nine and twelve months in these Departments are by no means unusual and representations though well received have no effect. It is at least questionable that at a time of mounting public expenditure a greater part of which is required for the cost of the civil service that a measure such as this which will expand the size and cost of the service are justifiable on public grounds.

Criticism by lawyers of this proposed legislation will of course be decried as stemming from self interest. In point of fact Workmen's Compensation is not a large part of the average solicitor's practice and no vital private interest arises in the particular case taking the profession as a whole as distinct from individuals. What is of serious concern is the never ceasing efforts by the civil service to take over the functions of the judiciary and the legal profession of which the present Bill is only a single instance. Other examples occur in planning procedure and the suggestion that the appelate jurisdiction of the Circuit Court in valuation matters should be abolished. The public should be well aware that the rule of law administered by the Courts with the assistance of lawyers is their only protection against bureaucracy. The real purpose of a written Constitution is to protect the individual against the State and constitutional freedom is in practice unreal without a strong and independent legal profession to protect the individual by taking his case before the Courts. All history shows that the rights and freedoms of the individual cannot be secured unless he can bring his grievance to a properly constituted independent Court sitting in public where justice can be seen to be done. This Bill is further evidence of an anti-democratic tendency in the civil service to interpose itself between the individual and the courts of law provided by the Constitution for his protection and to arrogate to itself the functions and powers of judges to be exercised anonymously and in secret instead of publicly and by persons in the employment of and dependent upon the State.

JURY SERVICE

The following is a summary of the recommendations appearing in the Second Interim Report of the Committee on Court Practice and Procedure :—

1. The property qualification for jurors should be abolished and inclusion in the electoral register should be the only qualification test for jury service.
2. The following categories should no longer be exempt from jury service :
   Civil Servants (with certain reservations),
   Local Government Employees (with reservations),
   Women,
   Peace Commissioners,
   Corporate members of the Institution of Civil Engineers of Ireland engaged in the active practice of their profession.
3. An addition should be made to the categories exempt by making provision for the exemption, on application, of persons employed in the Accident Offices of Insurance Companies.
4. Persons sworn as jurors should receive remuneration at the rate of £2 per day.
5. Jurors should not be summoned for a longer period than two weeks at a time. These two weeks should be consecutive.
6. The fine for non-attendance as a Juror should be in the discretion of the presiding Judge, subject to a maximum of £10.
7. At least two weeks notice of service should be given.
8. Jurors should receive written instructions as to their duties and functions.
9. Jurors should be entitled to choose their own foreman.
10. The disqualification contained in Section 4 of the Juries Act, 1927, should be continued.

Section 4 of the Juries Act, 1927, reads as follows :—

> "Any person who has been or shall be convicted of treason or treason felony or of any felony or of perjury shall, unless he has or shall have obtained a free pardon therefor, be absolutely disqualified from serving as a juror."

The Report is available from the Government Publications Sales Office, G.P.O. Arcade, Dublin 1, or through any bookseller. Price 2/6.

VALUATION FOR RATING

The "Report on Valuation for Rating Purposes" (Stationery Office 2/-) is the first fruit of the deliberations of a Committee of Officials of the Departments of Agriculture and Fisheries, Education, Finance, Health and Local Government set up by the Minister of the last named Department to examine the system of financing local authorities and to recommend any desirable changes. It is worthy of study both for what it contains and what it portends.

Under the Valuation (Ireland) Act, 1852, which envisaged "one uniform valuation of lands and tenements . . . . for all public and local assessments." Griffith, with the help of the maps produced by the Ordinance Survey, in the years 1853-1865 valued all rateable hereditaments (including buildings, lands, mines, commonage and other profits, railways, canals) in the thirty-two counties, valuing land by its net annual value based on its capacity to yield the then staple crops and agricultural produce, the tenant paying outgoings other than tithe rent charge, and valuing buildings and other hereditaments by their annual letting value over and above rates, insurance and maintenance. Complaint has been made that Griffith's valuations of land, admirable in meticulous attention to every detail affecting value in accordance with the formula chosen, did not achieve the desired uniformity because standards varied as experience was gained and because the valuations of the counties surveyed in the early years reflected the chaotic condition of agriculture immediately following the Famine.

By Section 34 of the Act of 1852 a County Council and by Section 65 of the Local Government Act, 1898 a County Borough may apply for a general revision of valuation of all property in the jurisdiction. Few such applications were made, but Dublin was revalued in 1908-1915 on the basis of 1913-14 rental values less 10 per cent resulting in a 15 per cent increase in valuations; Waterford was revalued in 1924-26 on such rental values without deduction of 48 per cent increase effected; in 1946 building in built-up areas of County Galway were revalued at 1914 letting values, which were about a third of those ruling at the time of revision and valuations increased by 52 per cent in Galway City, by 18 per cent in Tuam, by 12 per cent in Ballinasloe, whilst a similar general revision in Buncrana gave a 50 per cent increase in the total valuation of that Urban District. Since there has been no general revaluation of the country and the "annual revision," now to be mentioned, does not apply to land, in general, land in the State still holds Griffith's valuation of over a century ago.

The Commissioner of Valuation can revise no valuation of his own accord, but rating authorities must submit annual lists of tenements and hereditaments the valuation of which require revision, their collectors having a duty to furnish the necessary information. From the revision effected in consequence a "first appeal lies to the Commissioner himself, and from his decision a "second appeal" goes to the Circuit Court. The Report complains that collectors were not too assiduous in the discharge of this unpopular duty, and that in practice buildings were rarely listed for revision save when they necessarily came to the notice of the local authority because they were new or because a planning permission was sought, or a loan or reconstruction grant made in respect of them. Notwithstanding lack of zeal for revision, the Committee calculates that more than half the 676,000 houses in the State have been revalued in the past thirty years.

In these annual revisions, successive Commissioners of Valuation encountered first the general rise in the value of property at the end of the last century and then the steep increases due to two world wars. Revaluing current values would have created a sharp disparity between the valuation of properties revalued and those not revalued, and consequently the Commissioner "made deductions to make relative," in other words scaled down his valuation—until 1947 under the influence of the Rent Restrictions Acts on the basis of the estimated 1914 rent—in an attempt to relate it fairly to other similar property in the neighbourhood. Since 1947 the Commissioner has valued unrented buildings at 3 per cent to 4 per cent of their capital value and rented buildings at one-third of their reasonable current rent, ignoring inflated capital value or rent due to post war conditions.

The net result of lack of revision in respect of land and of partial revision on different principles in respect of buildings is that valuations are often out of date, frequently inconsistent and irrelative and consequently inequitable as between one rate or taxpayer and another. The Commissioner complained too, that the appeal decisions of Circuit Court Judges have resulted in disproportion between the valuations of different types of property in the same area and between the same types of property in the same area and between the same types of property in different areas.

Rejecting as expensive, time-wasting and inefficient a progressive revision of building valuations so as to bring all building valuations into fair relation with those of buildings valued in accordance with the post-1947 practice, the committee opts for a general revaluation of all buildings in the State. The Commissioner of Valuation fully approves though one questions who the prime mover is. Whilst indicating that the more expensive county services e.g., health and roads are county at large charges so that if land valuations are low as compared with building valuations, and that already the taxpayer through the Agricultural Grant pays 64 per cent or £12½ million of all rates on land, the committee recommends that lands outside the boroughs of Dublin, Cork, Limerick, Waterford and Dunlaoighaire should not be revalued. It argues that occupation of land is less evidence of ability to pay than occupation of buildings of equal annual value, and that the incidence of rates on occupiers of land can be adjusted through the Agricultural Grant. Does this latter consideration imply that when buildings have been revalued at, as the committee estimates, five times their present valuations, the Agricultural Grant may be reduced or discontinued and still more of the burden of subsidising rates on agricultural land passed from the Exchequer to the occupiers of buildings and particularly to ratepayers in the urban areas? It is only fair to record that the committee recognises the problem of the relative incidence of rates which would be created by a revaluation of buildings without revaluation of lands, and it suggests that the formula for assessing county at large charges as between the county health district and urban districts in a county could easily be varied and the land valuations in a county health district could be automatically scaled up in proportion to building valuation increases.

In the opinion of the committee revaluation of buildings should be on the basis of full current values but it counsels the setting up of a study group to examine alternative bases before the legislation for revaluation is drafted. About one thing it has no doubt. To spare the appellant expense and to end the inconsistencies in valuation arising from lack of uniformity in Judges' decisions, appeals to the Circuit Court must end, revaluation or no revaluation. "Normally an appellant to the Circuit Court will be expected to engage legal aid . . . . and possibly other professional aid"; those lawyers who query the official mind—the Courts, must have nothing to say on the quantum of valuation; far better for the ratepayer to close his eyes, open his mouth and cough up as the officials intend him. Let the Commissioner for Valuation keep his appellate jurisdiction but on a two tier system, his subordinates making the original valuation and he or a designated senior official exercising the appellate function. From the decision of the Commissioner on appeal the further appeal should go to "expert arbitrators or tribunals." There is no suggestion that such tribunals should, like the Lands Tribunal in England, have lawyers as well as surveyors amongst their members. The labours of the committee are directed to advising valuation arrangements inspiring public confidence in the system.

The Inter-departmental Committee' Report under review presages a general revaluation of buildings in the State and its recommendations in view of their providence will no doubt be reflected in the Valuation Bill which is to be expected. Accordingly it behoves solicitors to refresh their memories on existing legislation and practice, to acquaint themselves with the outlook and real difficulties of the Commissioner of Valuation and the civil servants who prepare the enactment to be sponsered by the Minister for Local Government to be alive to the content of that measure so as to exert their influence against undesirable features including the denial of access on the quantum of valuation to uncommitted Judges of the Circuit Court, subject to such reform of the procedure as experience may show the public interest to require, and in general to be prepared and equipped to protect the interests of clients who are wise enough "to engage legal aid" during the critical years of the revaluation of the buildings in the Republic.

MATTHEW PURCELL

CASES OF THE MONTH

Assignment of Copyright

A clause in a contract stating that "the publisher shall during the legal term of copyright have the exclusive right of publishing" would constitute an assignment of the coypright under section 37(1) of the Copyright Act, 1956, as soon as it comes into existance. Such an assignment if completed by an infant, is valid even though he may be entitled to avoid the contract itself on the ground that it is not for his benefit (See Halsbury; Statutes 36, 107; Laws 21, 138, 140).

In Chaplin v Leslie Frewin (Publishers) Ltd., and Another, the plaintiff who was nineteen, had signed a contract giving the publishers the exclusive rights during the period of coypright of publishing his autobiography. Later he sought to avoid the contract on the ground that he was an infant and that it was not for his benefit as it was detrimental to his reputation and liable to expose him to actions for defamation. He applied for an interlocutory injunction to restrain them from publishing it on the ground that the copyright was still vested in him.

It was held (Court of Appeal; Lord Denning M.R., Danckwerts and Winn L.JJ.) that the grant of the injunction should be refused (though the publishers afterwards undertook not to publish the book pending an appeal to the House of Lords). The contract constituted an assignment of copyright in a future work for the purpose of s.37 (1) of the Act of 1956, and (Lord Denning M.R., dissenting on this point) the assignment could not be revoked, whether or not the contract as a whole was for the benefit of the infant. A contract made in good faith could not be avoided because it turned out that the benefits were not as great as expected. (1965) 3 all E.R. 764.

Section 37 of the English Act, deals with prospective ownership of copyright, similar provisions appear in the Irish Copyright Act of 1963.

Provision for Dependants

By s.2 (1A) (c) of the Inheritance (Family Provision) Act, 1938, as amended, the Court has power to extend the time for application for maintenance by a dependant where the six-month limitation period "would operate unfairly . . . . in consequence of some . . . . circumstances affecting the administration or distribution of the estate," but there is no jurisdiction to extend the time where the delay is due to extraneous causes (see Halsbury; Statutes 32, 142; Laws 16, 485).

In K. Henry Kay (deceased), K. V. West, the plaintiff applied for provision to be made out of her deceased husband's net estate under the 1938 Act, as amended, and for the period in which she could so apply to be extended. The originating summons had been issued one day out of time, partly due to inadvertence of her solicitors and partly due to a Post Office work to rule.

It was held (Ch. D.; Russell L.J., sitting as an additional judge; July 9th, 1965), relying on Greaves (deceased), (Greaves v Greaves [1954] 2 All. E.R. 109), dismissed the claim, on the ground that the Court had no jurisdiction to extend the time because neither the lack of diligence of the post office, nor that of her solicitors were "circumstances affecting the administration or distribution of the estate" within s.2 (1A) (c) of the Act of 1938. The limitation period had operated unfairly because of these extraneous circumstances and not in consequence of "circumstances affecting the administration or distribution of the estate." (1965) 3 all. E.R. 724.

Caravan Site—Condition in Licence

In Esdell Caravan Parks, Ltd. v Hemel, Hampstead Rural District Council, the local authority appealed against a decision of the Divisional Court (reported at [1965] 2 All. E.R. 1011) that the Justices were not entitled in law to hold, on the facts set out in the case stated, that a condition limiting the number of caravans which could be kept on a site under a caravan site licence issued to the respondent company by the appellant's local authority (acting as the site licencing authority) was not unduly burdensome and that the local authority had not acted *ultra vires* in imposing that condition.

The site which was let to the respondent company in June, 1962 for twenty-one years had been regularly used as a caravan site for some years before the Town and Country Planning Act, 1947 came into force, and had been the subject of deemed planning permission, unrestricted to any particular number of caravans, under section 17 (3) of the Caravan Sites of Control and Development Act, 1960. A site licence issued to the company in July, 1964 by the Site Licencing Authority restricted the number of caravans on the site to twenty-four.

It was held (C.A.; Lord Denning M.R., Harmen and Winn, L.JJ.; November 4th, 1965) that the site licencing authority had jurisdiction under s.5 (1) (a) of the Act of 1960 to impose a condition restricting the number of caravans on a site (the Minister for Housing and Local Government v Hartnell [1965] 1 All. E.R. 490 distinguished); and that in determining whether a particular condition was unduly burdensome was a question of fact not law. Factors that were solely planning factors (e.g., that the land concerned was green belt land) should not be taken into account, though other relevant considerations of public health, public service, etc., might properly be considered. (1955) 3 All. E.R. 737.

Solicitor Acting as Principal

The defendant and the plaintiff attended at the office of the solicitor for the defendant on

the 14th September, 1962 for the purpose of arranging terms of sale of certain freehold registered lands of which the defendant was the registered full owner. As to some of the lands the registration was subject to certain rights of support and maintenance reserved to her mother during the latter's life. At the meeting the plaintiff was acting as solicitor for and under the instruction from a Mr. S. and Miss S. The terms agreed upon at the meeting were embodied in a letter dated 16th February, 1962 "re sale of her lands to the writer in trust for a client" and accepting the terms of sale set out in that letter and asking for delivery of a contract. No form of contract was delivered or executed, it being subsequently agreed between the plaintiff and the solicitor for the defendant that the terms of the agreement were fully set out in the letter of 16th February, 1962. The plaintiff forwarded a cheque to the solicitor for the defendant for the amount of the agreed deposit and his letter was headed: "Miss B. T. Walsh to Self (in Trust)." The agreement made between the plaintiff and Mr. S. and Miss S. *inter se* was that the plaintiff should act independently of them until such time as the matter had progressed to the stage when a conveyance was being executed. The plaintiff was to act as a trustee for Mr. S. and Miss S.

Held: by Budd J., 1. That on the facts of the case the plaintiff contracted as principal and was entitled to institute and prosecute the proceedings in his own name.

2. That the letters constituted a note or memorandum of the contract sufficient to satisfy the provisions of the Statute of Frauds. (Martin J. Lavan v Bridget T. Walsh, I.L.T.R. Vol. XCIX p. 147).

Immunity of Advocate

Mr. Justice Lawton recently dismissed an appeal by Mr. Norbert Fred Rondel, at present detained in H.M. Prison, Wandsworth, against the order made by Master Lawrence, in Chambers in May 1965 ordering that his statement of claim against Mr. Michael Dominic Lawrence Worsley, barrister-at-law, be struck out and the action dismissed. In June, 1965 the Plaintiff appealed against the order to the Judge in Chambers (Mr. Justice Browne), who adjourned the matter into open court and invited the Official Solicitor to instruct counsel as *amici curiae* since the appeal raised a point of public interest, namely, whether an action for negligence can lie against a barrister at the suit of a client for negligence in and about the conduct of the client's case in court.

It was held that any advocate, be he barrister or solicitor, who appeared for a client before a Court of law was an officer of justice just as the Judge was, and, as in the case of a Judge, public policy required that he be protected from law suits brought by disgruntled litigants. Otherwise a number of evils would follow. First, Judges would no longer get from barristers and solicitors acting as advocates the help which they got. Instead of thinking how best to help their clients and justice, they would think of how to protect themselves. Secondly, unpleasant clients would have difficulty in finding advocates to represent them. Thirdly the Courts would be burdened with cases well-nigh impossible to try. Plaintiffs might allege, as this plaintiff did, that counsel had been negligent in cross-examining as he did. To try such an issue would mean a re-trial of the first case. Worse would be cases in which the allegation was an omission to ask questions. Many convicted of criminal offences, after having exhausted all rights of appeal, would seek years later to get re-trial by an action of negligence against their advocate. There would be no end to litigation.

His Lordship set out at length why advocates could not be sued for negligence in and about the conduct of their client's cases in Court and had used the word "advocate" not "barrister" because immunity from suit arose from the part played by an advocate in the administration of justice, not from membership of an Inn of Court.

Rondel v Worsley, *The Times* (December 22nd 1965).

CORRESPONDENCE

The following correspondence has arisen as a result of the introduction of the Housing Bill in Dail Eireann. On 5/11/65 the Society wrote to the Minister for Local Government as follows:—

"Dear Minister,

In the report in the *Irish Times* of November 3rd on the debate in Dail Eireann on the Housing Bill Mr. Mark Clinton, T.D., is reported as having made certain statements on the subject of solicitors' costs, auctioneers' fees and stamp duty. I enclose a copy of a letter to Mr. Clinton of this date for your information.

In the same report you are reported as having said that you offer no apology for the 1 per cent tax revenue when the "Boyos" were taking a good deal more. In fact the stamp duty charged by the State is usually considerably more than the amount of the solicitors costs. The newspaper report mentioned conveys a completely wrong impression to the public and I am bringing this matter to your attention to remove any wrong impression on your part.

The Council will be obliged for your comments."

The Society also wrote to Deputy Mark Clinton on 5/11/65:—

"Dear Deputy,

In the *Irish Times* of November 3rd you were reported as having stated during the debate on the Housing Bill that the legal expenses of a house costing £3,500 are £450, and the auctioneer's fees about £175 for the privilege of buying one's own house. If you are correctly reported you have been badly misinformed. Solicitors' costs for the purchase of a house costing £3,500 are £97-10-0 where the title has not been registered. If the title has been fully registered the costs are £53-15-0. The stamp duty charged by the State is £105-0-0 except in the case of a house bought with the assistance of a housing grant from the Department of Local Government. In the latter case the stamp duty is £35-0-0. These are the purchaser's solicitors costs. The only other costs chargeable would be the mortgagee's costs if the property is bought with a Building Society Loan. The total amount could not remotely approach the figure quoted.

In the common case of a new house where a lease is taken of an underdeveloped site the costs are usually lower than the figure which I have given for a sale for £3,500 or unregistered land.

Auctioneers' fees are not in the control of the solicitors profession but if the property were sold by public auction the auctioneer's fees would be £175, payable by the purchaser. If the property is in Dublin and the sale is by private treaty the house agent's fees will be £87-10-0. Outside Dublin the house agents fees on a private sale would be £175-0-0. If you require any further information I shall be glad to supply it and I hope you will take the opportunity of correcting the wrong impression created by the report if you have the opportunity of doing so."

In 22/11/65 the Society received the following letter from Deputy Clinton:—

"Dear Sir,

You wrote to me some time ago in relation to figures quoted by me in the Dail while discussing the Housing Bill.

These figures were supplied to me by a firm of House Purchase Loan Specialists, and I naturally accepted them as correct. The document I received was headed "Charges on Purchase of House valued £3,500," and underneath the following figures were given:

	£	s.	d.
Stamp Duty	105	0	0
Purchaser's Solicitors Fees	105	0	0
Purchaser's Solicitor's Fees dealing with Mortgage	45	0	0
Mortgage Solicitor's Fee on Loan of £3,000	45	0	0
TOTAL:	300	0	0
Vendor's Solicitor's Fee	105	0	0
	£405	0	0

I cannot understand why a firm of this kind would have any interest in exaggerating the position in relation to fees and I very much regret if these figures are not accurate, and, at the earliest opportunity, I will quote the figures given to me by you."

On 8/12/65 the society received the following letter from the office of the Minister for Local Government:—

"A Chara,

I am directed by Mr. Neil T. Blaney, Minister for Local Government, to refer to your letter of 5th November, 1965, about a report in the *Irish Times* of 3rd November on the Housing Bill, 1965, in which references were made to the costs of house purchase.

During the course of the debates in the Dail, Deputy Clinton stated that the cost of purchasing a £3,500 house was about £450. This caused a general discussion on the incidental costs of house purchase, particularly in the case of new houses with which the Housing Bill is primarily concerned. It was in this context that the Minister stated that he was not making any apology for the stamp duty charged by the State. His remarks are reproduced in the Dail Debates for 2nd November, 1965, at column 946.

The stamp duty on a new grant house bought by way of lease of the site, as is the common practice, would generally not exceed £3. If, as is the less usual case, stamp duty is charged on the purchase price after completion of the house, it would amount to £35. Stamp duty on old or non-grant houses or other property costing over £2,500 is, as you say, charged at the rate of 3 per cent. The same arguments for a concessionary rate of duty do not, however, apply here as in the case of new houses.

The Minister is very conscious of the fact that legal fees on house purchase in England are considerably lower than here and that those in Scotland are lower still. The English Incorporated Law Society have carried out an investigation directed at simplifying the whole business of house conveyancing with the possibility of a further reduction in costs and fees. The Minister would be glad to know if your Society would be willing to institute a similar investigation here."

On 20/12/65 the Society wrote the following letter to the office of the Minister for Local Government:—

"Dear Sir,

I acknowledge receipt of your letter of December 8th. Deputy Clinton has acknowledged that the figure of £450, with which he was supplied as the legal costs of the purchaser of property for £3,500 with a mortgage of £3,000, was incorrect. The Council fail to see why attention is always focussed on solicitors' charges in considering the overall cost of conveyancing and investigation of title. There are other far more important elements in the total, including auctioneer's fees and stamp duty. A solicitor acting for a vendor or purchaser carries a very heavy responsibility for negligence and in effect guarantees the client against loss in connection with the transaction. In the present case the impression created by the discussion in Dail Eireann was that stamp duty at 3 per cent is solicitor's remuneration and the costs of the vendor's and purchaser's solicitors and the stamp duty were added together and represented as the legal fees of the purchaser's solicitor.

The Council are satisfied that short of the establishment of a comprehensive system of registration of title proposed under the Registration of Title Act, 1964 there is no method of simplifying the title investigation part

of conveyancing work which would not cause serious danger to defective titles with consequent liability of solicitors for professional negligence. Apart form the investigation of title the solicitor carries responsibility for a great deal of extra work such as arranging bridging finance, undertakings to banks and lending institutions on which he is personally liable, safeguarding the client's rights under the building contract against defective materials or workmanship, pre-contract searches for planning restrictions or permissions and complications introduced by the stamp duty legislation 1947-65 and the Land Act 1965. For all this work and responsibility the fees charged are moderate. The solicitors' profession is not a safe or sheltered occupation. While overhead expenses continually increase the solicitor's gross earnings from which such expenses are paid is subject to fluctuations caused by restriction of credit and other causes. Taken over, a period it is the opinion of the Council that the incomes of solicitors have not risen comparably with those of civil servants and of other professions and with the change of the value of money since 1939 and they can see no justification for the suggestion in your letter either that conveyancing costs are too high or that solicitors' earnings are excessive at a time when incomes in all other occupations and solicitor's working expenses are continuously rising."

THE REGISTRY

Register A

Assistant Solicitor required urgently by established Dublin office.Experience of litigation, Circuit and District Courts desirable. Salary commensurate with experience. Reply with references to Box A233.

Register C

Louie Toner Deceased—Will any person knowing of the existence of a Will of Louie Toner late of "Glencar," Marlborough Road, Glenageary, Co. Dublin, and late employee of the Department of Social Welfare, Dublin, please communicate with Monks & Gaynor, Solicitors, 27 Molesworth Street, Dublin, 2.

For Sale Law Books. Particulars to—Box No. C185.

Re: Louis Christopher Finlay late of No. 41 Grosvenor Square, Rathmines, Dublin (and formerly of No. 2 Merrion Row, Dublin), Civil Servant. Deceased. —Will any person having knowledge of the whereabouts of any Will of the above-named Deceased, kindly communicate with Mr. Alphonsus Farrell, Solicitor, Portarlington, County Laoighis.

RETREAT—Enclosed Retreat for Solicitors (1966). Jesuit House of Retreats, Milltown Park, Dublin. Saturday night 5th March to Monday morning 7th March. For reservation apply John B. McCann, Wakefield House, York Road, Dun Laoghaire, Co. Dublin.

REGISTRATION OF TITLE ACTS, 1891 and 1942

ISSUE OF NEW LAND CERTIFICATE

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

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

Dated the 28th day of January, 1966.

D. L. McALLISTER, Registrar of Titles

Central Office,
Land Registry,
Chancery Street,
Dublin.

SCHEDULE

1. Registered Owner—PATRICK CASH. Folio number 9957. County Tipperary. Lands of Pollanorman in the Barony of Ormond Upper, containing 31a. 0r 13p.

2. Registered Owner—LAURENCE BUTLER. Folio number 1782. County Dublin. Lands of Murphystown in the Barony of Rathdown, containing 1a. 1r. 0p.

3. Registered Owner—TIMOTHY FLANAGAN. Folio number 5050. County Roscommon. Lands of Portobello in the Barony of Frenchpark, containing 9a. 2r. 0p.

4. Registered Limited Owner—KIERAN McGRATH. Folio number 3303. County Kilkenny. Lands of Palmerstown in the Barony of Crannagh, containing 20a. 1r. 22p.

OBITUARY

Mr. Owen Binchy, solicitor, died on the 30th October, 1965, at his residence Gortskeagh, Charleville, Co. Cork.

Mr. Binchy served his apprenticeship with the late Mr. James Binchy, Charleville, Co. Cork, was admitted in Hilary sittings 1914 and practised at Charleville as senior partner in the firm of Messrs James Binchy & Son and Messrs James T. Liston & Co.

Mr. Desmond J. O'Malley, solicitor, died on the 8th December, 1965, at St. John's Hospital, Limerick.

Mr. O'Malley served his apprenticeship with the late Mr. Thomas O'B. Kelly, 8 O'Connell Street, Limerick, was admitted in Michaelmas sittings 1930 and practised at 10 Glenworth Street, Limerick.

Mr. Richard Ryan, solicitor, died on the 13th December, 1965, at a Dublin Nursing Home.

Mr. Ryan served his apprenticeship with the late Mr. John O'Hagan, 9 Harcourt Street, Dublin, was admitted in Hilary sittings 1907 and practised a 9 Harcourt Street, Dublin, as senior partner in the firm of Messrs Arthur O'Hagan & Son up to his retirement two years ago.

Mr. Patrick M. O'Dwyer, solicitor, died on the 18th

December, 1965, at his residence Abbey Street, Ballyhaunis, Co. Mayo.

Mr. O'Dwyer served his apprenticeship with the late Mr. James J. Mooney, 48 South Mall, Cork, was admitted in Michaelmas sittings 1963 and practised at Ballyhaunis, Co. Mayo under the style of Messrs. Crean & O'Cleirigh.

Mrs. Monica MacGinley, solicitor, died on the 30th December, 1965, at her residence The Mall, Ballyshannon, Co. Donegal.

Mrs. MacGinley served her apprenticeship with Mr. Eugene Gallagher, Ballyshannon, Co. Donegal and was admitted in Hilary sittings 1955.

Mr. Laurence Kirwan, solicitor, died on the 31st December, 1965, at St. John of God Hospital, Stillorgan, Co. Dublin.

Mr. Kirwan served his apprenticeship with the late Mr. Bernard J. O'Flaherty, Enniscorthy, Co. Wexford, was admitted in Trinity sittings 1924 and practised at 1 Rowe Street, Wexford, as senior partner in the firm of Messrs Kirwan & Kirwan up to his retirement a few years ago.

GAZETTE

Vol. 59
No. 9
February
1966

THE INCORPORATED LAW SOCIETY OF IRELAND

President
ROBERT McD. TAYLOR

Vice-Presidents
PATRICK O'DONNELL
JAMES R. C. GREEN

Secretary
ERIC A. PLUNKETT

CONTENTS

Meeting of the Council 75
The County Clare Law Association 76
International Faculty of Comparative Law 77
County Kildare Solicitors' Bar Association 77
Mayo Solicitors' Bar Association ... 77
International Bar Association 77
The Society for Young Solicitors ... 77
The Land Act 1965 78
Position Vacant 78
Parliamentary Proceedings 78
Third Party Procedure 79
Admissibility of Evidence — Agent Provocateur 80
Joint Seminar Week-end 80
Legal delay and Law Reform 81
The Land Commission 82
The Registry 83
Registration of Title Acts 84
Obituary 84

MEETINGS OF THE COUNCIL

February 3rd: The President in the chair, also present Messrs Thomas A. O'Reilly, Desmond J. Collins, Gerald J. Moloney, James W. O'Donovan, George A. Nolan, John J. Nash, Gerald Y. Goldberg, Niall S. Gaffney, John Carrigan, Francis J. Lanigan, Patrick O'Donnell, Desmond Moran, George G. Overend, John Maher, Raymond A. French, Ralph J. Walker, Thomas O'Donnell, Joseph P. Black, Peter E. O'Connell, Timothy J. C. O'Keeffe, John B. Jermyn, Raymond A. French, Eunan McCarron, Rory O'Connor, Augustus Cullen, Thomas H. Bacon, James R. C. Green, Thomas V. O'Connor, Thomas J. Fitzpatrick, William A. Osborne, Peter D. M. Prentice, Brendan A. McGrath, Patrick C. Moore, Gerard M. Doyle.

The following was among the business transacted:

Circuit and District Courts, Dun Laoire

Correspondence was received from the Department of Justice on proposals to establish permanent Circuit and District Courts in Dun Laoire Borough. It was decided that the matter should be considered in the context of the general organisation of business in South County Dublin

and Bray and a copy of the correspondence was sent to the Dublin Solicitors' Bar Association and the Wicklow Bar Association with a request that they should consider the matter jointly with the solicitors practising in Dun Laoire and report back to the society.

Unqualified person, debt collection

Members of the Society directed attention to the form of letter issued by the Irish Finance Corporation Ltd., in debt collection matters signed by an official of the company over the words "Legal Action Department." The letter was considered objectionable and the matter was taken up with the company who submitted an amended form of letter meeting the objection of the Council.

Solicitor's Undertaking

A member gave an undertaking on behalf of a purchaser to lodge the conveyance with the bank on completion as security for a loan to the client. After execution and delivery of the conveyance by the vendors the purchaser for personal reasons refused to sign the deed and member enquired whether he should stamp the deed at the 25 per cent *ad valorem* rate in the absence of a certificate by the client that he was an Irish citizen and also how he could deal with the difficulty caused by the necessity of an application to the Land Commission under section 45 Land Act 1965. The committee having considered the terms of the undertaking advised that member having made provision for his costs should forward the deed to the bank together with such funds as he had received in respect of stamp duty and registration fees.

Collusive Transaction

A member was asked to prepare a deed of gift of £3,000 from an old lady to one member of her family resident in London which raised in his mind a suspicion that the transaction might not be genuine and that the deed might possibly be used for the purpose of accounting for monies received from the donee from some entirely different source. He satisfied himself that the sum of £3,000 was in fact paid over in cash on the execution of the deed and enquired as to his professional duty. The Council on a report from a committee advised member that he was under no professional obligation to enquire further into the bona fides of the transaction but that he should not give any certificate or further assurance which could be used as of later date in support of its genuineness otherwise than verifying his signature as an attesting witness.

Accountants' Certificates

The Council considered the replies received in response to the recent circular issued to 1,320 members in which the Council informed the profession of their intention to ask the Minister for Justice to bring section 31 of the Solicitors (Amendment) Act 1960 into operation unless they receive letters from a majority of the members objecting to such proposal. The Secretary stated that he had received 60 letters in reply to the circular. Of these 32 stated that the section should not be brought into operation without the support of the majority of the profession by a vote taken at a general meeting of the Society or by a postal ballot. Letters were received from 28 members expressing support for the introduction of accountants' certificates immediately. The Secretary stated that he had received letters from the Bar Associations in Tipperary, Waterford and Donegal expressing support, and from the Southeren Law Association, the Midland Bar Association and Mayo, Roscommon and Limerick requesting that a General Meeting should be held before bringing the section into operation. The Cavan Bar Association was equally divided. Consideration of the matter was deferred and it was decided that further action should not be taken at present without further notification to members.

Compensation Fund

The Council admitted for payment claims amounting to £35,357.

THE COUNTY CLARE LAW ASSOCIATION

At the Annual General Meeting of the above Association held at the Courthouse, Ennis, on the 16th December, 1965, the following officers were elected: President, Mr. Bryan McMahon; Vice-President, Mr. P. J. Chambers; Honorary

STANDARD CONDITIONS OF SALE

Public Auction and Private Treaty, Parcels of 50 @ £2-10-0 per parcel plus 2/6 postage per parcel are available and may be purchased only from the Society. Orders discharged as received. Please specify Private Treaty or Public Auction or both.

THE LAW DIRECTORY 1966
will be on sale about 1st March.
Order your copy now. Price 15/- plus 2/- postage.

Secretary and Treasurer, Mr. Michael P. Houlihan. Committee—Mr. T. A. Lynch, Mr. Michael J. McMahon, Mr. Daniel O. Healy, Mr. John Casey and Mr. James Monahan.

INTERNATIONAL FACULTY OF COMPARATIVE LAW

The Spring Session 1966 will be held in Luxembourg between 28th March and 23rd April, and Summer Session from 25th July to 6th September. Closing dates for entry are 1st March (Spring Session) and 15th June (Summer Session). Further particulars may be obtained from the Secretariat of the International University of Comparative Sciences, 13, Rue due Rest, Luxembourg.

COUNTY KILDARE SOLICITORS' BAR ASSOCIATION

At the Annual General Meeting of the above Association held in Naas on 15th November, 1965, the following officers were elected: President, Robert A. Osborne; Secretary/Treasurer, Patrick J. Farrell. Committee—B. G. Donnelly, B. O'Flynn, P. V. Boland, B. Price, J. J. Kinnerk and M. C. Murphy.

MAYO SOLICITORS' BAR ASSOCIATION

The above Bar Association held their annual Dress Dance at Belclare House Hotel, Westport, on 26th January, 1966, the function was attended by District Justices McGahon, Loftus and Gilvarry, Mayo County Registrar Mr. Bernard Daly and upwards of 100 members and their guests. The function marked the 60th year of the Association's continued existance.

INTERNATIONAL BAR ASSOCIATION

The Eleventh Conference of the Association will be held in Lausanne, Switzerland from 11th to 15th July, 1966. Amongst the topics for discussion are: Restrictions on Lawyers Qualified in one county and Practising in another county; the Practice of the Law by Persons who are not Lawyers; the Role of Lawyers in a Developing Country.

Further particulars may be obtained from Gerald J. McMahon, Secretary General, I.B.A., 501, Fifth Avenue, New York, N.Y. 10017, U.S.A.

THE SOCIETY OF YOUNG SOLICITORS

A lecture on Bankruptcy was delivered to an Ordinary Meeting of the Society on the 25th November, 1965, by Mr. Desmond J. Collins, solicitor.

As is well known, Bankruptcy is a subject in which Mr. Collins is very interested, and on which he is a recognised authority. This was clearly shown by the interesting and informative manner in which the lecture was presented. A very lively and stimulating discussion followed the lecture.

A lecture on Probate Office practice was delivered to the Society on the 6th January, 1966 by Mr. P. R. Higgins, Probate Registrar. In the course of the lecture, the effects of the Succession Act 1965 were discussed, and integrated with existing practice and legislation.

The discussion which followed showed the interest of members in the changes resultant on the Succession Act being passed and general practical difficulties consequent on the passing of this Act.

Transcripts will be available shortly.

A lecture was delivered to the Society on the 27th January, 1966 on Registration of Title, by Mr. Desmond McAllister, Registrar of Title.

This lecture was delivered in a detailed manner tracing the development of the present law, and quoting decisions thereon, the whole being presented in a most interesting and informative manner. Again, a lively and far ranging discussion followed on this very wide subject.

Transcripts of this lecture will be available shortly.

Intending members should send subscriptions to the Hon. Treasurer. The subscription is £1-1-0 per year and remittances should be made in favour of the Society of Young Solicitors.

Transcripts of the following lectures are now available of the following lectures :—

1. Hire Purchase by Miss Thelma King, B.A., Solicitor.
2. Office Administration by Mr. Denis Greene, Solicitor.

3. Building Contracts by Mr. Patrick Bergin, B.A., Solicitor.
4. Bankruptcy by Mr. Desmond Collins, B.A., Solicitor.
5. Discussion on Bankruptcy.

All these transcripts are available from the Hon. Treasurer.

A lecture will be held on Thursday, 31st, March, 1966, at 8 p.m., at which Mr. P. C. Kilroy, M.A., will deliver his paper on "Companies and the Finance Legislation."

An announcement regarding the Seminar Week-end in which the Society will be participating is contained elsewhere in this GAZETTE. Transcripts of these proceedings will be available in due course from the Society. Members will be fully circularised later regarding this.

THE LAND ACT 1965

A simplified form of application (Form N.Q.2.) for a Certificate of Qualification, pursuant to section 45 (1) (IX), Land Act 1965, in respect of the acquisition of an interest for private residential purposes in land not exceeding five acres in extent, has now been settled. Copies of this Application Form are available to solicitors, from the Office of the Land Commission, Upper Merrion Street, Dublin, 2.

POSITION VACANT

A vacancy exists on the Secretariat of the Hague Conference on Private International Law. Information in connection therewith may be had on application to the Secretary of the Society, Solicitors' Buildings, Four Courts.

The Secretary General of the Hague Conference is interested in the possibility of an Irish lawyer acting as "precis writer" at the forthcoming Conference in April, 1966 to be held at the Hague concerning the enforcement of foreign judgments. It is intended that if the candidate should be interested in a permanent post at the Hague he might, after the forthcoming conference, and if suitable, be appointed to the permanent staff. Please note that a knowledge of French is important in this post as the candidate's work will apparently be simultaneous summarising of speeches for the records of the conference. Further details may be obtained by writing direct to the Secretary General of the Hague Conference, Permanent Bureau, La Haye.

PARLIAMENTARY PROCEEDINGS

The following extracts are taken from Dail Debates of November, 1965, the information was also published in the *Irish Law Times* and *Solicitors' Journal* of January 8th, 1966, at pages 19 and 20.

Amalgamation of Legal Professions

Mr. Andrews asked the Minister for Justice if he will state in view of recent reports on the amalgamation of the legal professions and the specualtion caused thereby (a) whether he authorised such reports, and (b) whether he intends to introduce legislation in the matter.

Mr. B. Lenihan: The Committee on Court Practice and Procedure are actively engaged in considering the wide range of problems that fall within their terms of reference, which have already been published and which are wide enough to enable the Committee to inquire into any professional practices which tend to make litigation unduly expensive and less efficiently conducted.

The question of a possible amalgamation of two branches of the legal profession is one of the matters I have specifically requested the Committee to consider.

I have no responsibility for the newspaper reports referred to by the Deputy.

Mr. M. J. O'Higgins: I think the Minister did not reply to part (b) of Deputy Andrews's question.

Mr. B. Lenihan: The matter is under consideration. I shall introduce legislation, after consideration of the reports which are coming to me now from the Committee on Law Reform. Legislation will follow in due course, after full consideration of the reports and my own views and the views of the Government in the matter.

Mr. M. J. O'Higgins: Is the Minister tying himself to introduce legislation, irrespective of the outcome of the consideration? The Minister says he will introduce legislation after considering the reports. It may be that, on considering the reports, the Minister will decide legislation is not worth while.

Mr. B. Lenihan: Apart from the matter referred to in the question, there is a very wide range of aspects concerned. It is inevitable that there will be legislation which will be introduced, following consideration of the report and my own and the Government's views.

Mr. M. J. O'Higgins: Will the Minister give

an assurance that, before legislation of they type indicated is introduced, he will ascertain the views of the governing bodies of both branches of the legal profession?

Mr. B. Lenihan: Yes. Both branches of the legal profession can have that assurance that only after the fullest consultation with them will the new legislation be introduced.

Note—*It is understood that the Minister at a Meeting of Tuarim (Limerick Branch) in January stated he had changed his mind about fusing both branches of the legal profession.*

Stamp Duty on Property Sales

Mr. Cosgrave asked the Minister for Finance if he is aware of the substantially higher rate of stamp duty payable on a conveyance or transfer on sale of property in this country compared with that prevailing in Britain; and if, as an incentive towards encouraging an increase in number of owner-occuriers of houses, he will consider revising the stamp duty payable in such cases.

Mr. Childers: The answer to the first part of the Deputy's question is in the affirmative.

The matter raises in the second part of the question is one which would require Finance Bill legislation and the Deputy will appreciate that I cannot indicate in advance what proposals the next Budget Statement may or may not contain.

Mr. Cosgrave: Can the Minister say whether this will be sympathetically considered as an incentive towards owner-occupiers buying their own houses?

Mr. Childers: I think the Deputy can be assured that the Minister for Finance will consider all such cases in the light of the Budget conditions as they will arise in the coming year.

Free Legal Aid

Mr. M. J. O'Higgins asked the Minister for Justice if he will state in relation to the free legal aid scheme the number of applications granted to the latest available date (a) in Dublin city and county, (b) in Cork city and county, and (c) in the rest of the country.

Minister for Justice (Mr. B. Lenihan): The number of certificates granted in the half-year ended 30th September, 1965 is as follows: (a) Dublin city and country 28; (B) Cork city and county 20; (c) remainder of the country 14.

Mr. M. J. O'Higgins: What is the total then?

Mr. B. Lenihan: Sixty-two.

Mr. P. O'Donnell asked the Minister for Justice the number of cases in each District Court area throughout the State where legal aid has been granted since the passing of the Criminal Justice (Legal Aid) Act, 1962.

Mr. B. Lenihan: The statistics which are available relate to districts of the District Court and cover the first six months of the operation of the scheme, that is the period up to 30th September, 1965. The information is in the form of a tabular statement which, with your permission, a Cheann Comhairle, I propose to have circulated with the Official Report.

Following is the statement:—

Criminal Justice (Legal Aid) Act, 1962
Criminal Justice (Legal Aid) Regulations, 1965

Number of legal aid certificates granted in Districts of the District Court during the period from 1st April to 30th September, 1965.

District	Number of Certs. Granted
No. 2 (Manorhamilton	2
No. 5 (Cavan)	2
No. 6 (Dundalk)	2
No. 7 (Galway)	1
No. 8 (Ballinasloe)	2
No. 14 (Limerick)	1
No. 18 (Bandon)	2
No. 19 (Cork)	15
No. 21 (Clonmel)	2
Dublin Metropolitan	19
Total ...	48

Mr. Sweetman: Will the Minister give us some idea of the total number?

Mr. B. Lenihan: Again, this will require some quick mathematics; it is 48.

Mr. Sweetman: If it is 48, I cannot see why you have to have a tabular statement.

Mr. B. Lenihan: It is because of the different numbers in regard to the particular districts.

Mr. Sweetman: I do not believe, if it is set out in the tabular statement for each area, that the total was calculated by the Minister off the cuff. I expect it was sitting there waiting.

THIRD PARTY PROCEDURE

The provisions of the Rules of the Superior

Courts dealing with third party procedure are not limited in their application to a party which is a third party in the numerical sense but give the court jurisdiction to grant to a third party leave to join a fourth party, and, where appropriate, to direct that the defendant shall pay to the third party the costs for which the third party has become liable to the fourth party.

In an action for damages for negligence and breach of contract, brought by a customer against a retailer in respect of coal supplied by the retailer which was alleged to have been defective and dangerous, the retailer joined as third party the firm from whom he had obtained the coal, and the third party in turn joined as fourth party the National Coal Board.

Before the hearing of the action, the defendant agreed to pay a sum for damages to the plaintiff, together with his costs. The defendant did not pursue his claim against the third party and accepted liability for the third party's costs. The third party claimed in addition to his own costs the costs for which he had become liable to the fourth party.

Held that the court had jurisdiction under Rules of the Court, to order that the defendant should pay to the third party the costs of the fourth party; but that in the circumstances of the case no such order should be made. (Kelly v McCurdy (1965) N.I. p. 124).

ADMISSIBILITY OF EVIDENCE — AGENT PROVOCATEUR

The appellant, a soldier serving in the Army, was charged before a district court-martial with the offence of disclosing information useful to an enemy. The substance of the case against him was contained in the evidence of police officers who had posed as members of a subversive organisation with which the authorities suspected the appellant to have sympathies, and had elicited the information the subject of the charge by asking the appellant questions concerning the security of his barracks. The appellant was convicted, but appealed to the Courts-Martial. Appeal Court against his conviction, on the ground that the Court-Martial which heard the case ought in its discretion to have rejected the evidence of the police officers because of the manner in which it was obtained.

At the opening of the hearing of the appeal the Crown, on security grounds, sought an order that the proceedings be heard in camera, the application being bases on the submission that the court had inherent jurisdiction to make such order rather than on any of the provisions of the Army Act, 1955. The court held that it had such jurisdiction, and ordered accordingly.

Held, (i) that in criminal proceedings evidence which has been improperly obtained is not thereby rendered inadmissible; Kuruma v The Queen, (1955) A.C. 195 applied ;

(ii) that the court has nevertheless a discretionary jurisdiction to reject evidence which, though admissible, would operate unfairly against the accused; and this discretion is not spent at the time when the relevant evidence has been admitted ;

(iii) that in the present case the court-martial which tried the appellant was entitled in its discretion to admit the evidence of the police officers, and in the circumstances it had been right in doing so. (Regina v Murphy (1965) N.I. 138).

JOINT SEMINAR WEEK-END

General Council of Provincial Solicitors and Society of Young Solicitors

The General Council of Provincial Solicitors has invited the Society of Young Solicitors to run a Joint Seminar Week-end. At discussions between the representatives of the two bodies, it was decided to hold this seminar on Saturday and Sunday, the 26th and 27th March, 1966, in the Midlands.

By the kind permission, with the assistance, of the Midland Bar Association, the week-end will be held in the Greville Arms Hotel, Mullingar.

The subjects will include the Succession Act, 1965, the Finance Act, 1965, Companies and Finance Legislation, Registristration of Title and the Land Act, 1965. Lecturers will be announced at a later date, and full details of the week-end will be given at the same time.

All applications for bookings should be sent to Mr. T. Shaw, Solicitor of c/o J. A. Sahw & Co., Solicitors, Mullingar, Co. Westmeath. Enquiries regarding the week-end can be made to any of the following :—

Patrick Noonan, Hon. Treasurer, General Council of Provincial Solicitors, Athboy, Co. Westmeath.

T. Shaw, Hon Secretary, Midland Bar Association, Mullingar, Co. Westmeath.

Norman T. J. Spendlove, Hon. Treasurer, Society of Young Solicitors, 2 Clare St., Dublin 2.

LEGAL DELAY AND LAW REFORM

The Minister for Justice has recently been active both in the Dail and in a recent address to Tuairim at Limerick in answering suggestions that there is unreasonable delay in Government Departments under his control in the dispatch of public business and on the general question of law reform. It is common knowledge among members of the solicitors profession that there is serious and long standing delay in a number of Government Departments particularly in the Land Registry which is under the control of the Department of Justice. A member of the Society recently wrote that he had achieved a new record in reaching the twelve months' anniversary of lodgment of an application in the Land Registry without any action on the part of the Department. The dealing was still pending. Another member informed the Society that he had threatened to take legal action against the Department of Justice and the Land Registry for failure to issue a map having been informed by the officials that there was little prospect of issuing it because of shortage of staff. The result of the solicitor's letter was that the map was produced on the following day. This must be one of hundreds of cases in which such delays occur and the member who threatened legal action no doubt had his case taken in special priority. The statement of these facts does not of course imply any adverse criticism of the officials of any of the departments concerned who are making valiant efforts to overcome staff shortages and other difficulties.

The Minister in reply to a question in Dail Eireann on November 30th suggested that a substantial part of the delay is due to defects in the presentation of applications to the Registry. While the Council do not claim that every application presented is one hundred per cent in order and that no queries can arise there is no justification for this suggestion either that the number of defective applications are substantial or abnormal or that they contribute in any significant way to the serious state of public business due to understaffing in the Land Registry for which the Minister and the Department of Finance are responsible. The matter has been the subject of numerous communications from the Society to the Department and the Registrar of Titles. No improvement whatever has resulted in the general position.

Again on November 30th the Minister for Justice stated in reply to a question asked by Mr. Belton in Dail Eireann as to the reason for delay in the Accountant's Office in the High Court that there is no undue delay on the part of the Accountant's Office adding that he was informed that *such delays as do occur arise in cases where documents are incorrect or incomplete.* On January 19th the Society wrote to the Department of Justice stating that complaints have been made by the profession during recent years of delays in the Accountant's Office and that they were concerned that such delays should be attributed to default on the part of the profession. The Department was asked to supply information as to the present state of arrears in the Accountant's Office and for information as to any defects in presentation of applications by solicitors with details of a number of cases so that the Society might take the matter up with the solicitors concerned. The Department in their reply, a copy of which is printed on page 82 mentioned a number of defects which occur in applications for payment out of Court and which cause delay in making payments.

The procedure for making a payment into the High Court may be cited as one example as the need for overhauling and simplifying the machinery in the Court Offices. There are six steps :

1. Purchase of the form (3d.) at the nearest post office. Unlike most Government offices the necessary forms are not provided free at the counter of the receiving office.
2. The form must be taken to the Stamp brought back to the Accountant's Office and checked and then sent down to the Office in a different part of the Four Courts to be impressed with a 3/- stamp.
3. The stamped form when filled up is Central Office on a different floor involving a day's delay.
4. The form initialled by an official in the Central Office is brought back to the Accountant's Office who issue what is known as the Privity.
5. The Privity with the defence and cheque is brought to the Bank of Ireland College Green, for lodgment.
6. The defence impressed with 7/6d. stamp duty is taken to the Central Office for filing.

If Court procedure were designed on business lines the defence, notice of lodgment with a bank draft or guaranteed cheque would be sent by post to the Central Office to carry out the

remaining internal mechanical work. In the Circuit Court when filing a defence with lodgment it is merely necessary to send the defence by post with a cheque to the County Registrar. There is no reason why the same procedure should not be adopted in the High Court. In the normal case where an order is made for payment out of Court there is at least a month's delay before the draft is issued. The solicitor or his assistant calls on numerous occasions to take up the draft before it is ready. The absence of modern facilities for communication is a defect which pervades the entire machiner of the High Court Offices.

The matter goes further than the offices under the control of the Deaprtment of Justice. For some years the Society have made continual representations about serious delays in the Estate Duty Office and the Valuation Office with which solicitors are in continual communication on behalf of their clients. The authorities admit that there is serious delays in these Departments due again to shortage of staff, sick leave and other reasons. The public should know that the speed with which solicitors can conduct their client's business depends to a very large extent upon cooperation from Government Departments. Under staffing in these Departments leads to delay, unnecessary correspondence and additional expense. A solicitor has to keep his file open for months longer than is necessary and efficient office organisation is disrupted. The responsibility for delay does not rest on the under-staffed offices or on the profession who suffer equally with their clients from under-staffing or outdated methods in Government Departments. In July 1960 the Society submitted to the Departments of Justice and Finance a memorandum on organisation and methods in solicitors' and government offices with a view to speeding up business by the introduction of up to date business methods in the public offices with which the solicitors have to deal. The greatest single obstacle to efficiency in the conduct of legal business is the time spent in attendance and waiting as distinct from being gainfully occupied at various public offices and departments in different parts of the city. These wasteful and time consuming methods absorb an altogether disproportionate amount of the time of solicitors and their staffs and the Council in their memorandum suggested among other things that much of the business now transacted by personal attendance at various Court offices could be done by telephonic communication and by correspondence. There is no reason by Government Departments and particularly the Court Offices should be less progressive than business management in the introduction and provision of telephones, dictaphones, correspondence clerks and other aids to speed and efficiency. No reply beyond an acknowledgment was received by the Society to their memorandum.

THE LAND COMMISSION

The following is the text of a letter addressed by the Society to the Secretary of the Department of Lands, on 7th December, 1965, which the Society consider will be of interest to members:—

DEAR MR. O'BRIEN,

I refer to our meeting when you received Mr. Shaw and myself to make representations on various difficulties experienced in Land Commission matters:

1. **Payment of the purchase price of lands in depreciated land bonds.**

Solicitors throughout the country are finding great difficulty in explaining to their clients whose lands are compulsorily acquired the justification, if any can be said to exist, for the payment of the price in land bonds standing below par. This has become very serious during the past twelve months. The price of 6 per cent land bonds during the year 1965 has varied between 88 and 98 and now stands near the lower figure. The Land Commission are obliged by statute to pay the owners for the market value of lands compulsorily acquired. In effect at the present time the Land Commission are paying market value less 12 per cent. There is a moral duty on the State when acquiring lands to compensate owners fairly. This is not being done and the time lag between the issue of new land bonds carrying interest at the same rate as other Government securities has resulted in effect in confiscation of the purchase price of an appreciable number of owners.

There appears to be no reason why Government securities issued to persons whose lands are compulsorily acquired should be any less advantageous both in regard to the rate of interest and the terms of issue as Government loans issued for public subscription from time to time. The effect of the terms attached to the issue of land bonds is that they have become to a large extent unsaleable. Instances were quoted at our meeting of owners whose lands have been acquired and who cannot realise the purchase price through the sale of the land bonds on the stock exchange. This is common knowledge among stockbrokers in Dublin. It is the submission of the Society that the Department of Finance and the Department of Lands should take whatever steps are necessary to ensure that land bonds issued to owners on compulsory acquisition will be readily saleable on the stock exchange and will maintain par value. Remedies suggested are (1) payment of a cash bonus to existing holders of land bonds which have depreciated in market value; (2) the immediate issue of a new series of bonds at not less than 6¾ per cent rate of interest, on favourable conditions as to redemption (otherwise than by drawings) which would make them readily saleable; (3) granting the privilege of availablity for tender in discharge of death duties and income tax to all existing land bond issues.

It is a bad thing that Government securities should be difficult to realise or realisable only at depreciated

prices shortly after issue and damaging to national credit as well as to the interests of individual holders. The Council would be obliged for information as to the steps which can be taken to remedy the present position.

As a subsidiary point it was mentioned that the costs of solicitors acting for owners are paid in land bonds which are subject to the same disadvantages. In many cases the solicitors costs include substantial elements of outlay for counsels' fees and other disbursements. It is noted that in contrast to this position auctioneers' commission at 5 per cent on a sliding scale is paid in cash.

2. **Delays in the Irish Land Commission examiner's branch.**

The Society has received complaints from a number of members as to delays in dealing with title matters. The most recent complaint is concerned with a case in which our members lodged the documents of title in April last and received a reply stating that the matter would be referred to an examiner as soon as possible. They wrote to the Society on September 6th stating that they had within the previous six weeks sent a reminder asking for rulings on title. They received a reply dated September 3rd regretting that the case had not been reached in its turn for reference to an examiner for investigation. It appears to be altogether unreasonable that four to five months should pass before the title can be referred to an examiner and it is rather a sad commentary on the new scheme recently set up following joint consulatation between the Department and this Society. We feel that this is not an isolated case. The Council would be obliged for full information on the position.

3. Solicitors have experienced difficulties where undertakings are given to banks and other bodies on behalf of clients who expect to receive payment in land bonds for lands compulsorily acquired. In one case which is probably fairly typical an old client of a solicitor agreed to sell his lands to the Commission and in order to give possession bought a house in the adjoining town to take up immediate residence. He had no ready means of financing the purchase and obtained and advance from a bank who required an undertaking from the solicitor that the loan would be repaid. The solicitor gave his undertaking and relied for repayment on the land bonds to be issued in due course.

In cases such as this the land bonds are issued in the names of the client care of the solicitor. Cases may occur in which the client may emigrate or may have no further financial interest in the land bonds after he has obtained the necessary financial facilities and the solicitor may be in difficulty in obtaining control of the bonds for the purpose of sale in order to carry out his undertaking.

It will be appreciated that in a number of cases owners who sell out to the Land Commission subsequently emigrate. In a certain number of cases there is a risk that they may not facilitiate the solicitor in realising the bonds.

The Council will be obliged if the Land Commission could find some method which would enable the solicitor in such a case to obtain control of the bonds for the purpose of realising his security. Were it not for the facilities given by solicitors in such cases clients would be placed at a serious disadvantage and it is in the public interest that solicitors should be facilitated in providing these guarantees. Banks throughout the country look to solicitors rather than to the client and needless to say the Society holds a solicitor strictly responsible on a personal undertaking of this kind.

The Society will be obliged for a full reply when these matters have been considered.

Yours faithfully,

ERIC A. PLUNKETT,
Secretary.

"THE LAW OF STAMP DUTIES"

SECOND REVISION

Further supplementary pages have now been published — price 12/6 (postage 2/- extra). This SECOND REVISION incorporates the provisions relating to Stamp Duties contained in the **FINANCE ACT, 1965,** and in **non-Revenue Statutes** passed in the year 1964. Section 45 of the **Land Act, 1965,** which restricted the vesting of interests in agricultural land, has also been included.

A further appendix has been added of tables of the *ad valorem* duties on conveyances, transfers and leases of lands, etc., chargeable since the 1st January, 1892, when the Stamp Act, 1891, came into operation.

The original volume and the First Revision, which together contain previous enactments relating to Stamp Duty, cost 75/6 (postage 3/3 extra).

AVAILABLE

from the Government Publications Sale Office, G.P.O. Arcade, Dublin, 1.

THE REGISTRY

Register A

Qualified Assistant wanted for general practice in Dundalk. Replies with details of experience to—Box A234.

Register C

RETREAT—Enclosed Retreat for Solicitors (1966) Jesuit House of Retreats, Milltown Park, Dublin. Saturday night, 5th March to Monday morning, 7th March. For reservation apply—John B. McCann, Wakefield House, York Road, Dun Laoghaire, Co. Dublin.

Dunne—William J. Dunne late of Main Street, Abbeyfeal, County Limerick and formerly of New York, died on the 12th October, 1965. Will any person knowing the whereabouts of a will made by the above deceased please communicate with—Maurice J. Woulfe & Son, Solicitors, Abbeyfeale, County Limerick.

REGISTRATION OF TITLE ACTS, 1891 and 1942
ISSUE OF NEW LAND CERTIFICATE

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

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

Dated the 28th day of February, 1966.

D. L. McALLISTER, Registrar of Titles.

Central Office,
Land Registry,
Chancery Street,
Dublin.

SCHEDULE

1. Registered Owner—JOHN EAGER. Folio number 6544. County Wicklow. Lands of Athdown in the Barony of Talbotstown Upper, containing 46a. 1r. 30p.
2. Registered Owner—MARY McDONNELL. Folio number 6975. County Wicklow. Lands of Killegar in the Barony of Rathdown, containing 3a. 1r. 1p.
3. Registered Owner—JOSEPH ROSE. Folio number 1719. County Carlow. Lands of Ballintrane in the Barony of Forth, containing 14a. 1r. 19p.
4. Registered Owner—MICHAEL JOSEPH FLYNN. Folio number 3736. County Kings. Lands of Cloghal More in the Barony of Garrycastle, containing 19s. 2r. 32p.
5. Registered Owner—JOHN MONAHAN, PHILIP MONAHAN and DENIS MONAHAN. Folios 4349, 4350, 4351. County Meath. Lands of Dolanstown and Clarkstown in the Barony of Deece Upper, containing 155a. 3r. 39p.

OBITUARY

Mr. Charles J. Downing, solicitor, died on the 24th January, 1966, at the Bon Secours Home, Tralee, Co. Kerry.

Mr. Downing served his apprenticeship with the late Mr. Francis H. Downing, Tralee, Co. Kerry, was admitted in Michaelmas sittings 1922, and practised at Tralee, Co. Kerry as senior partner in the firm of Messrs. F. & C. Downing.

He was a member of the Council of the Society from 1952 to 1960, and Vice-President for the year 1956-57.

Professor Patrick Gallagher, solicitor, died on the 28th January, 1966, at Galway.

Professor Gallagher served his apprenticeship with Mr. Michael J. Allen, Galway, was admitted in Trinity sittings 1930 and practised at Eglinton Street, Galway.

Mr. Timothy J. Kirwan, solicitor, died on the 31st January, 1966, at Merrion Nursing Home, Dublin.

Mr. Kirwan served his apprenticeship with the late Mr. John P. Collins, 16 South Frederick Street, Dublin, and practised at 25 Wicklow Street, Dublin.

Mr. James J. Hickey, solicitor, died on the 31st January, 1966, at his residence 7 Rathdown Park, Terenure, Dublin.

Mr. Hickey served his apprenticeship with the late Mr. Thomas B. Dunbar, Enniscorthy, Co. Wexford and the late Mr. Daniel P. Blayney, Naas, Co. Kildare, was admitted in Hilary sittings 1927 and practised at 8 Clare Street, as partner in the firm of Messrs Hickey & O'Reilly.

GAZETTE

Vol. 59
No. 9A
March
1966

THE INCORPORATED LAW SOCIETY OF IRELAND

President
ROBERT McD. TAYLOR

Vice-Presidents
PATRICK O'DONNELL
JAMES R. C. GREEN

Secretary
ERIC A. PLUNKETT

CONTENTS

Meetings of the Council 85
The Pros and Cons of Fusion—I 86
Medico Legal Society in Ireland ... 88
County Laois Solicitors' Bar Association 89
Society of Young Solicitors 89
Land Act, 1965 89
Land Charges 89
Land Bond Order, 1966 90
Program in American Law 90
Compulsory Purchase Area 90
Criminal Justice Compensation Board 90
Housing 91
Contract and Frustrations 91
Correspondence 91
Statutes of the Oireachtas, 1965 ... 92
Index to Statutory Instruments ... 92
The Registry 96
Registration of Title Acts 96

MEETINGS OF THE COUNCIL

February 25th: The President in the chair, also present Messrs George A. Nolan, R. A. French, Peter D. M. Prentice, Gerald Y. Goldberg, James W. O'Donovan, Francis J. Lanigan, Gerard M. Doyle, Desmond Moran, Ralph J. Walker, Desmond Collins, Joseph P. Black, John C. O'Carroll, Richard Knight, J. F. Foley, W. A. Osborne, John B. Jermyn, Rory O'Connor, Peter E. O'Connell, Eunan McCarron, F. Armstrong, James R. C. Green, John Carrigan, Patrick Noonan, John J. Nash, Patrick O'Donnell.

The following was among the business transacted:

Compensation Fund

Claims amounting to £1,175 were passed for payment.

Accountants' Certificates

The President, Vice-Presidents, and the Secretary were appointed as a committee to meet representatives of the Institute of Chartered Accountants to discuss the practical effect of the introduction of the Accountants' Certificate Provisions in section 31 of the Solicitors' (Amendment) Act, 1960.

Standard of the Preliminary Examination

The Council approved in principle of a report from a committee recommending that the standard of the Preliminary Examination should be raised to the standard of the open public Matriculation Examination and that applicants for exemption from the Preliminary should be required to satisfy the Society that they have achieved an equivalent standard of education. As from June 1967 the universities will cease to accept the Leaving Certificate for the purpose of Matriculation unless the candidate has secured honours in at least one subject, as from June 1968 honours in two subjects will be required. The Council have under consideration the question of limiting exemption from the Society's Preliminary Examination to candidates who have obtained the open public Matriculation of a university without credit for any subjects passed at the Leaving Certificate or other non-university examination.

THE PROS AND CONS OF FUSION—I

1. There is already fusion of function (but separation of status) in about 80 per cent of the whole field of practice viz., litigation in the Circuit and District Courts, probate work, conveyancing and all advisory work. A solicitor may engage in this type of work without counsel. Counsel is equally entitled to practise in these fields but because of separation of status he does so as a member of the Bar and will not take instructions from the client or from any other professional adviser except a solicitor. He has no legal redress for his fees and he is not liable for negligence. The existing field of fusion of function will be extended if the jurisdiction of the Circuit Court is increased. As regards the type of work mentioned in this paragraph the only remaining step would be fusion of status so that barristers and solicitors would practise on equal terms with the same right to accept instructions from a client or from an accountant or other professional adviser of the client. Fusion of status from the practical point of view if applied literally in practice would widen the functions of the Bar more than the solicitors' profession.

2. *Superior Courts*

As regards advocacy in the Supreme Court and High Court there is separation of function and status. With trivial exceptions, solicitors have no right of audience. Counsel accepts instructions only from a solicitor. He is not legally liable for negligence and he has no legal right to recover his fees. In a fused profession the solicitor would be entitled to act as advocate in these Courts either carrying out the preparatory office work himself or having it done by a partner or assistant. The existing corps of barristers would be entitled to accept instructions from a client or an accountant or other professional expert direct, either forming partnerships among themselves or joining firms of solicitors. Solicitors and barristers would have equal status and priority in Court and for appointment as judges, Attorney General, Taxing Masters, Court Registrars and other legal appointments. Possibly under a fused system the present rule that an advocate is not liable for negligence might be changed so that all members of the profession, advocates and officer lawyers alike, would be liable to the client for negligence in performing their duty. There are two recent English cases on the law of professional negligence which are relevant. The case of Hedley Byrne v. Heller casts some doubt on the long-standing immunity of counsel from liability as regards purely advisory work. In the particular case the defendant was a bank but the reasoning behind the decision might conceivably have wider application. In Rondel v. Worsley the English High Court recently held that an advocate (which it thought would include a solicitor as well as counsel) is immune from liability for negligence *qua advocate*. This decision is under appeal.

Inferior Courts and Non-Contentious Business

Although there is at present fusion of function in the lower Courts and for non-contentious business many solicitors do not exercise their rights, either because they have not the time or inclination to conduct Court cases as well as office work or because they wish to obtain the protection against liability for negligence which may result from engaging the services of a member of the Bar. It is unlikely that any practical result would emerge from fusion unless the existing organisation of the solicitors' profession were changed so that large partnerships would become the prevailing pattern of the profession. In small units it is unlikely that there would be sufficient and sustained demand for advocacy in a firm to justify the retention of a wholetime advocate and to ensure that he would not become redundant if the volume of litigation declined. One advantage of the present system is that the demand of a particular solicitor or firm for advocates can be tailored to the requirements of his clients at any particular time. At the date of the last annual report there were 1,111 self-employed solicitors in the State grouped in 929 principal offices. Of

these 748 were one man offices and the remaining 363 were grouped in 154 partnerships most of them being family firms.

3. *Arguments for and against Fusion*

There are arguments both for and against fusion from the point of view of the public and the profession. In the last resort it must be considered and will be considered by the competent authorities in the light of the public interest and its practicability.

Those who favour fusion urge that

(a) it is a natural process for the same individual to handle cases from beginning to end. The lawyer who deals with the case in this manner obtains a more intimate and thorough knowledge of the facts than the barrister who must absorb a brief submitted to him by an instructing solicitor;

(b) fusion would effect economies of time and work from the constant presence and availability of one or more advocates in the office. In smaller cases it would no longer be necessary to prepare a brief. The advocate could work from the office file and there would be speedier communication between the client, the office lawyer and the advocate. The new system would also facilitate fixing special dates for trial of actions, at least where the advocate is engaged in a number of cases before the same judge;

(c) fusion would avoid the present bottleneck which results from 60 per cent of advocacy being done by 20 per cent of the Bar. A greater spread of advocacy work would avoid unnecessary adjournments and save time;

(d) there would be a saving of the expense which arises from the present method of payment of barristers' fees. One advocate could handle most cases. It would no longer be necessary to brief two senior and one junior counsel in most High Court cases;

(e) cases would be more easily settled if all the advocates were grouped in offices and responsible directly to the client;

(f) fusion would facilitate specialisation by the organisation of the profession in larger firms;

(g) the system works on the continent, U.S.A., Canada and some Australian States.

The opponents of fusion urge that

(a) there must be division of function even if there is fusion of status. No man can be a jack of all trades, combining the duties of office lawyer, adviser, taking instructions, carrying out legal research and advocacy;

(b) under the present separated system the poor client and small litigant can obtain the services of the best advocates of the Bar if he has an arguable case. Even in the absence of civil legal aid the litigant with a real grievance can obtain the services of leading counsel. If the Bar were absorbed into firms of solicitors the leading advocates would be drawn into wholetime partnerships in the large firms whose main clientèle consists of corporations, companies and wealthy clients. The State would seek to enlist the services of the best advocates on a wholetime basis. The result would be that the best legal talent would be drawn into the service of the State, insurance companies and other clients with substantial financial resources. This would be bad for the administration of justice;

(c) the independence of the legal profession is better ensured by the present system. A barrister who looks for his livelihood to the whole body of solicitors is more likely to assert an independent view, where it is necessary, on a matter of law or conduct than one who fears to lose a client whose business is valuable or who has only one client. It would apply with particular force to lawyers employed by the State in civil and criminal work who would find it more difficult to be independent of the administrative civil service and policy makers if the Attorney General was not a practising member of the Bar. There would be no corps of independent advocates in general practice to act as prosecutors. State prosecution would become a whole time salaried speciality;

(d) professional conduct *vis à vis* the Court and colleagues in advocacy is better ensured in a small group where each member is constantly under the eyes of his colleagues and the Court. Misleading the Court or deceiving a colleague is more speedily known and punished;

(e) the standard of legal research and advocacy is maintained at a higher standard than when it is combined with case preparation and business problems which is the particular function of the solicitors' branch;

(f) the application of a fresh mind to problems already analysed by the solicitor often brings new aspects of the case to light. If the advocate as a member of the firm has permanent relations with the client the same result is not achieved;

(g) a better and more confident relationship is established between the Bar and Bench where the number of advocates is limited, because the Court more readily accepts statements from a small body of counsel whom it knows. The present system in the Bar library is a valuable help to the training of young barristers who have free access to the experience of the most eminent members of the Bar.

(h) the statement that fusion reduces expense is disputed. Time and skill of the advocate must be remunerated whether he practises independently or as a member of a firm. Opponents of fusion point to the United States as a country in which fusion has not reduced expense. In some other countries where there is fusion *de jure* there is separation *de facto;*

(i) in common law countries fusion depends on large firms and a high degree of specialisation. In continental countries it is linked with a codified legal system and a different judicial system. In West Germany for instance there are about 12,000 judges and magistrates which *pro rata* would correspond to about 600 in the Republic of Ireland. Under the civil law of the continental countries the judge does a great deal of the work performed by advocates under the common law system;

(j) the supposed economies of fusion would largely disappear unless each law firm had its own law library or unless law libraries were established throughout the country. There would be serious difficulties for the country practitioner who at present through counsel has access to the Bar library in the Four Courts;

(k) if all solicitors may practise as barristers the converse position also holds. The large number of non-practising barristers in the civil service, administration, education, etc., would have the right to practise and there might be overcrowding and difficulties of control.

There are other arguments on both sides but these seem to be the most important looking at the problem from the point of view of the public interest and the administration of justice.

E.A.P.

A further contributed article will be published in our next issue.

MEDICO LEGAL SOCIETY OF IRELAND

A meeting of the Medico Legal Society was held in the Royal Hibernian Hotel on Thursday, 24 February 1966, when a symposium was held on the subject of "Juries in Civil Trials".

The first speaker was Mr. P. C. Moore, solicitor, who referred to the case of Ward v. James decided by the Court of Appeal in England, in January 1965 and particularly to Lord Denning's judgment. Mr. Moore emphasised that there had only been jury trials in civil cases until 1854 but that at present the opposite tendency—trial by judge alone prevailed in England. In fact 98 per cent of actions for personal injuries are tried by a judge alone. The advantage of having a judge alone is that definite standards are laid down in respect of awards and that there is a uniformity of decisions. The element of predictability in awards is thus established whereas there is neither uniformity nor predictability in awards by juries. Another objection to trial by jury in civil cases is that it is well nigh impossible to upset a verdict of a jury on appeal unless it is perverse. In any event in such a case the appellant court only normally orders a new trial. In civil cases trial by jury is a time consuming process and it results in an expensive undertaking for a middle-class plaintiff as the average case lasts three days instead of one. In his view therefore juries in civil trials should be abolished.

The next speaker was an eminent psychiatrist Dr. McLoughlin. The speaker was broadly in favour of the retention of juries in civil cases save in the case of inquisitions by juries as to whether a particular person was insane or not. The speaker gave instances of various such inquisitions in order to prove that in such a case a jury would be unsuitable. In cases under the Mental Treatment Act, he advocated an independent assessment by two doctors.

The next speaker was an eminent surgeon Mr. O'Connell who stated that he and many of his colleagues agreed that juries in civil actions should be abolished. He agreed that a judge alone should find the facts of the case but he suggested that the assessment of damages should be done by an expert panel composed of doctors, engineers, surveyors, etc. Once the rights and wrongs of the case had been established the judge should refer the case to the panel for expert assessment and this panel should report back to the judge, who would then assess the appropriate damages.

The final speaker was Mr. Niall McCarthy, Senior Counsel, who referred to the seventh amendment to the Constitution of the United States in which anyone was entitled to a jury in a civil case if the claim exceeded 20 dollars. He stated that the Committee on Court Procedure had rejected the idea of juries in civil trials by a narrow majority of seven votes to five. In his view, a judge would be unable to judge the truth in any better way than twleve reasonable men. A judge was liable to place a particular interpretation upon the evidence as he had to give reasons for his decisions whereas a jury did not give any reasons for their verdict but merely answered specified questions. If cases of personal injuries were heard before a judge alone this would multiply the work of the Supreme Court fivefold because judges would have to give reasons for their decisions. In his view, on the whole jury verdicts could be forecast by insurance companies with accuracy and he wondered whether the

abolition of the jury, like the abolition of trials in valuation appeals and in workmen's compensation cases was but yet another way for the civil service to takeover the work of the courts. He noted that juries in civil trials had not been abolished in Northern Ireland and in his view such a system which had existed for hundreds of years had received the confidence of the public.

COUNTY LAOIS SOLICITORS BAR ASSOCIATION

The following are the Officials and Committee of the above Association for the current year: President, J. E. B. Skelly; Hon. Treasurer, W. J. Ryan; Hon. Secretary, W. R. White; Committee, J. G. Bolger, A. Farrell, P. T. Meagher and H. Turpin.

SOCIETY OF YOUNG SOLICITORS

A lecture was delivered to the Society on the 24 February 1966 on the "Practice of the Office of Wards of Courts" by Mr. George G. King, B.L., Registrar of Wards of Court.

The lecture was delivered in a highly informative and interesting manner by the lecturer, who dealt with the practice of his office in a manner best calculated to assist the solicitor who is not accustomed to dealing with the Wards of Court Office.

The discussion which followed showed the great interest of the audience in this little known branch of professional activity.

The next lecture will be given to the Society on Thursday, 28 April 1966 by the President of the District Court, on "The Practice of the District Court".

Other forthcoming lectures include:

26 May: "Preparation and Presentation of a Case for Counsel" by a Senior Counsel.

30 June (provisionally): "Land Commission Practice".

28 July: "Criminal Law Practice" by Herman

29 September: "Office Accounts Systems and Good, Esq., B.A., LL.B., Solicitor.

Finance Control" by an Accountant.

27 October: "Insurance and Estate Duty" by an Insurance Specialist.

24 November: "Commercial Law Practice".

Intending members should send subscriptions of £1-1-0 to the Hon. Treasurer, 2 Clare Street, Dublin 2. Remittances should be in favour of the Society of Young Solicitors.

LAND ACT—1965

Meaning of Interest

Section 45 (2) of the Land Act 1965 provides that no interest in land to which the section applies shall become vested in a person who is not a qualified person except with the written consent of the Land Commission. The word "interest" is expressed by sub-section 1 to *include* (a) an estate, (b) a leasehold interest or tenancy (including an interest under a grant for a term of years whether or not reserving a rent), (c) an interest of a mortgagee (including an equitable mortgagee) or chargeant, (d) an interest referable to a person's having contracted to buy or having contracted to take a lease or tenancy, (e) an interest referable to a right to become registered under the Registration of Title Acts 1891 and 1942 or the Registration of Title Act 1964, (f) an interest consisting of a right to ratify a contract or other transaction conferred by sub-section (1) of section 37 of the Companies Act 1963 and an interest comprises equitable and beneficial interests as well as legal interests. In a case which is brought to the attention of the Society members acted for the owners of land who held under a lease for 999 years from 1831. The clients' predecessors in title mortgaged the lands in 1860 and members were instructed to pay off the mortgage and obtain a release from the mortgagees who were domiciled and resident in England. Members were advised that it would be imprudent to proceed with the release of the mortgage without the consent of the Land Commission, having regard to the terms of section 45 (1) (c) of the Act.

LAND ACT, SECTION 45 (2) (a)

The attention of members is drawn to an article which appeared under the above heading in vol. 59, no. 8A—the January issue of the GAZETTE in which reference is made to the form of application for the consent of the Land Commission to the vesting in unqualified persons who have an interest in lands situated in a County Borough, Urban District or Town. It is to be noted that the form of application is available for non-qualified persons who have an interest in land not situated in a County Borough, Urban District or Town as they have no need to obtain consent in respect of lands purchased within the areas so specified.

LAND CHARGES

Arising out of enquiries made by a member of the Society the following information has kindly

been made available by the Registrar of Titles. The following burdens affect registered lands without registration:

(1) The burdens set out in Section 47 of the Registration of Title Act 1891;
(2) Estate duty—Finance Act 1894, section 8 (2);
(3) The powers and rights incident to mining purposes, not created by express grant or reservation after the first registration of the lands—Registration of Title Act 1891, section 48 (2);
(4) The rights and equities arising from the interest of a tenant purchaser under the Land Purchase Acts being deemed to be a graft on his previous interest in the land, so long as there is a note of the existence of such rights in the register—Registration of Title Act 1891, section 29 (3) (4);
(5) The provisions of any Act by which the alienation, assignment, sub-division or subletting of land is prohibited or restricted e.g. Registration of Title Act 1891, section 38 (1);
(6) The burdens set out in section 16 of the Registration of Title Act 1942;
(7) The burdens set out in section 19 (5) and 21 (3) of the Labourers Act 1936;
(8) The burdens set out in section 72 of the Registration of Title Act 1964, *not yet in operation.*

The attention of members is also drawn to the Land Reclamation Act 1949, section 3, sub-section 7. Members should also bear in mind the provisions of Rule 161 of the Land Registration Rules 1959 (96 of 1959). No solicitor should rely on the Land Certificate for the purposes of ascertaining what is registered on a folio. A copy folio of the register written up-to-date should be required. It will be observed from Rule 161, such matters as judgment, mortgages, cautions, inhibitions, lites pendentes, etc., are registered on a folio without production of the Land Certificate.

LAND BOND ORDER, 1966

The main purpose of this Order (S.I. No. 18 of 1966) is to fix the rate of interest (7 per cent) on bonds payable in respect of lands acquired by the Land Commission, where the purchase prices are agreed or fixed or deemed to be fixed between 1st January 1966 and 31st December 1966.

The Order also prescribes the redemption arrangements specifying a sinking fund rate of ¼ per cent and an annuity rate of 7¼ per cent to provide therefor.

The Statutory Instrument is available from Government Publications Sales Office, G.P.O. Arcade, Dublin 1, price 6d.

PROGRAM IN AMERICAN LAW

The Board of Directors of the Leyden-Amsterdam-Columbia Universities have arranged to provide a general introduction to the American legal system with emphasis on areas of particular interest to European lawyers. The school lasts from 27th June to 22nd July, 1966. The Secretary of the Incorporated Law Society has a copy of the prospectus which may be inspected at the office on request. Those interested should apply for further details to: Professor R. Feenstra, Executive Director of Summer Program, Faculty of Law, University of Leyden, "Gravensteen", Pieterskerkhof, 6, Leyden, The Netherlands. Please note applications for admission should be submitted before 29th March 1966.

COMPULSORY PURCHASE AREA

Members practising in the Dublin area ought to be aware of the procedure adopted by the Local Authority in acquiring premises by compulsory purchase order.

The acquiring Authority on compulsory acquisition are obliged to pay compensation for the disturbance and expense of the vendor as the result of the threat of compulsory acquisition in addition to paying his costs of deducing title. The costs of negotiating prices and valuer's fees are included in the disturbance costs. This does not arise in the case of voluntary sale for the vendor offers the property for his own convenience. Where the property is offered to the Corporation the vendor's rights depend entirely on the contract and if he fails to provide it the Corporation pay his solicitor's costs and valuer's fees he will recover nothing except the agreed price.

CRIMINAL INJURIES COMPENSATION BOARD

On 3rd August 1965 the Home Secretary, in a written answer said that there were a few applications for compensation, e.g. where it was a question of the victim's responsibility for the circumstances leading to the injury, which can be dealt with only by a hearing attended by the applicant.

At present the initial decision on an application is taken, without a hearing, by a single member of the Criminal Injuries Compensation Board, and the case comes to a hearing before three other

members of the Board only if the applicant is dissatisfied with the initial decision and asks for a hearing.

The scheme will be amended to enable the single member, where he considers that he cannot reach a just and proper decision, himself to refer the application to three other members of the Board for hearing. To give effect to this alteration in the procedure, paragraph 17 of the scheme (full text of which was given in columns 90-94 of the official reports for 24th June 1964) will be amended to read as follows:

"17. The initial decision whether the application should be allowed (and if so, what amount of compensation should be offered), or should be rejected will normally be taken by one member of the Board, who will communicate his conclusions to the applicant; if the applicant is not satisfied with that decision, whether because no compensation is offered or because he considers the amount offered to be inadequate; he will be entitled to a hearing before three other members of the Board, excluding the one who made the initial decision. It will, however, also be open to single member, when he considers that he cannot reach a just and proper decision, himself to refer the application to three other members of the Board for hearing." (Public Law, Winter 1965).

HOUSING
(Clearance Area)

Tenement houses are "houses and not other buildings" within section 42 (i) of the Housing Act 1957, and if they are unfit for human habitation the area can be declared a clearance area under that section.

Per Curiam: The "other buildings" referred to are buildings erected or used primarily for some purpose other than human habitation.

Slum landlords questioned by originating Notice of Motion the validity of a clearance order on an area of tenement houses unfit for human habitation, arguing that they were not "houses" but "other buildings": Held, that the appeal should be dismissed. (Quillotex Co. v. Minister of Housing and Local Government (1965) 2 All. E.R. 913, Salmon L.J. sitting as an additional judge in the Q.B.D.).

CONTRACT AND FRUSTRATION

On 8th December 1962 the plaintiff, then sixteen years old, entered into an agreement with the defendants whereby they agreed to employ him, and he agreed to serve them as drummer in their band, and to devote the whole of his time and attention to their business. The contract provided that the plaintiff might be summarily dismissed without notice in the event of his committing any breach of his obligations thereunder. The basis of the agreement, as the plaintiff knew, was that he should be available to perform on seven nights a week and sometimes more than once a night, if the group had engagements. The work in fact involved appearing on seven nights a week, sometimes twice nightly, and the plaintiff had to live away from home, and travel from place to place. The group was not merely a musical band but gave acting performances, the drummer being a key figure in the timing. In January 1963 the plaintiff collapsed and was admitted to a mental hospital, where he was detained for a few days. The doctor attending him informed the defendants that continuance of such conditions of work would render the plaintiff liable to a more serious breakdown than that which had occurred and that he should not perform on more than four nights a week. The defendants considered that owing to the difficulty of obtaining substitutes for the plaintiff with sufficient reputation, and to the rehearsing difficulties with their synchronised act, it would not be possible to employ the plaintiff for four nights a week only, and they dismissed him.

In an action by the plaintiff, who considered that he was fit to perform on seven nights a week, for damages for wrongful dismissal: Held, that fitness to perform such a contract required the ability not only to carry out the work in accordance with its terms but with the continuity contemplated by the contract; and that, since there was a likelihood that the plaintiff would suffer damage to his health or another breakdown within a short time if he continued to work for the defendants for seven nights a week, it was in a business sense impossible for him to continue to perform or for the defendants to have him perform the terms of the contract, and there was no wrongful dismissal. (Condor v. The Barron Knights Ltd. [1966] 1. W.L.R. p. 87).

CORRESPONDENCE

"Dear Sir,

We take the liberty of drawing to your attention the British Court of Appeal Case of Hill v. Harris briefly reported on p. 60 of the issue of *The Irish Law Times and Solicitors' Journal* dated 5th February 1966.

In this case the sub-lessee under a sub-lease of a shop permitting same to be used for the business of retail confectioner and tobacconist, after taking the sub-lease, and using the premises for these purposes, found himself prohibited from continuing to use the premises as a

tobacconist by the head lessor, under a covenenat in the head lease.

The sub-lessee failed in this action against the sub-lessor, but we draw your attention to the following note of one of the judgments:

> 'Russel L.J. concurring said that at the moment it was impossible to see what conceivable defence the solicitors then acting for the plaintiff would have in an action for negligence in that they had failed to take the ordinary conveyancing precaution of inspecting the head lease and seeing what covenants restrictive of user were contained in it.'

We believe that the normal conveyancing practice of most solicitors acting for a lessee taking an occupation lease or sub-lease at a rack rent is merely to approve of the lease or sub-lease on behalf of the lessee, without investigating the title of the lessor to grant such lease, or inspecting any superior lease or leases to ascertain what covenants they contain.

If the judgment of Russel L.J. represents the law in Ireland, then it seems to us that we, and numerous other solicitors would have to revise completely the procedure at present adopted in taking an occupation lease or letting agreement.

If the above judgment were followed to its logical conclusion would it not be the duty of the solicitor for the lessee to inspect each and every superior lease up to the freehold interest in the property to ensure that none of them contained an adverse user covenant. This would surely be absurd.

Would the Society consider it worth while to obtain the opinion of Counsel on this point for the guidance of the profession.

Yours faithfully,
Ellis and Moloney.

Dublin, 8th February 1966."

(Note: The matter is under consideration by a Committee of the Council.)

STATUTES OF THE OIREACHTAS, 1965

(1) Public Statutes

No.	*Name of Act*	*Signed by President*
1.	Oil Pollution of the Sea (Amendment) Act, 1965	2/3/1965
2.	Land Act, 1965	8/3/1965
3.	Control of Exports (Temporary Provisions) Act, 1965 (Continuation) Act, 1965	8/3/1965
4.	Central Fund Act, 1965	18/3/1965
5.	British and Irish Steam Packet Company Limited (Acquisition Act, 1965	18/3/1965
6.	Air Navigation and Transport Act, 1965	30/3/1965
7.	Mines and Quarries Act, 1965	11/5/1965
8.	Cork City Management (Amendment) Act, 1965	29/6/1965
9.	Turf Development Act, 1965	29/6/1965
10.	Protection of Animals (Amendment) Act, 1965	30/6/1965
11.	Trustee Savings Bank Act, 1965	30/6/1965
12.	Agricultural Credit Act, 1965	6/7/1965
13.	Pensions (Abatement) Act, 1965	13/7/1965
14.	Shannon Free Airport Development Company Limited (Amendment) Act, 1965	13/7/1965
15.	Electricity Supply (Amendment) Act, 1965	13/7/1965
16.	Imposition of Duties (Confirmation of Order) Act, 1965	13/7/1965
17.	Extradition Act, 1965	19/7/1965
18.	Gaeltacht Industries (Amendment) Act, 1965	20/7/1965
19.	Local Elections Act, 1965	20/7/1965
20.	Social Welfare (Miscellaneous Provisions) Act, 1965	29/7/1965
21.	Appropriation Act, 1965	30/7/1965
22.	Finance Act, 1965	30/7/1965
23.	Precis (Amendment) Act, 1965	10/8/1965
24.	Labourers Act, 1965	3/11/1965
25.	State Guarantees (Transport) Amendment Act, 1965	8/12/1965
26.	Central Fund (Permanent Provisions) Act, 1965	21/12/1965
27.	Succession Act, 1965	22/12/1965

Private Acts of 1965

1.	Royal College of Surgeons in Ireland Charter (Amendment) Act, 1965	29/6/1965
2.	Local Government Provisional Order Confirmation Act, 1965, confirming County Borough of Cork (Extension) Order 1965	29/6/1965

INDEX OF STATUTORY INSTRUMENTS

Published since August 1965

LABOUR COURT RECOMMENDATIONS

No. *Subject*

1675—British and Irish Steam Packet Company Limited—Claim for 20 per cent production bonus.
1873—Rowntree Mackintosh (Ireland) Limited—Miscellaneous matters.
1874—Dillon & Sons, Cork—Order of re-employment of disengaged workers.
1861—Waterford Health Authority—Remuneration of engineering foreman and general foreman.
1878—Dunne & Co. Ltd.—Order of lay-off of workers in a case of redundancy.
1927—Oldcastle Co-operative Creamery Ltd.—Dismissal of worker.
1935—Undertakers branch of the Federated Union of Employers—Conditions of employment.
1937—British Railways—Promotion arrangement.
1941—British Railways—Annual leave and service pay.
1942—Wavin Pipes Ltd.—Overtime payment.
1949—James McMahon Ltd. Limerick—Revision of salary scale.
1950—Ballina Sawmills—Wages of general workers, drivers and sawyers.
1951—Bray, Wicklow and Arklow Urban District Councils—Dirty money for workers engaged on refuse and sewage disposal.
1952—Drogheda Corporation and Dundalk Urban District Council—Wages of general workers.
1953—Dublin hotels and restaurants—Wage rates for food barmen.
1954—John Player & Sons—Conditions of employment.
1955—Magee & Co. Ardee—Claim for five-day forty-two and a half hour week.
1956—Philip Halpenny Ltd. Ardee—Claim for a five-day forty-five hour week.

1957—International Meat Company Ltd.—Hours of work and overtime.
1958—Cork Corporation—Remuneration of clerical workers.
1960—Bord na Mona—Remuneration of bog greasers and blacksmith fitters.
1961—Federation of Builders, Contractors and Allied Employers of Ireland—Prohibition on the use of rollers and spray guns.
1963—City of Cork Steam Packet Company Ltd.—Remuneration of stores and transport staff.
1965—Cavendish & Co. Ltd.—Claim for five-day week.
1966—Dundalk Urban District Council—Wages of assistant store-keeper.
1967—Royal Insurance Group—Salary increases and large town allowance.
1969—Dublin Port & Docks Board—Working week of electricians.
1970—Roadstone Ltd.—Working hours, wage rates and differentials.
1971—Irish National Insurance Company Ltd.—Wages of clerical staffs.
1972—Dublin and district bakery trade—Manual workers and drivers.
1973—J. & L. F. Goodbody Ltd. Waterford—Wages of general workers.
1974—Cork Corporation—Wages and working conditions of waterworks attendants.
1975—Cork Retail Drapery Trade—Service pay and extended annual leave.
1977—The Ivy Trust—Plus payments.
1979—Radio and television manufacturers—Revision of agreement.
1980—Irish Sugar Company & Erin Foods Ltd.—Shift rate, annual leave and weekly working hours.
1981—Commissioners of Irish Lights—Remuneration of seamen.
1982—Waterford Corporation—Wages of permanent firemen.
1983—Clare County Council—Remuneration of boilermen in the County Hospital, Ennis.
1984—Cork Corporation—Service pay and annual leave of general workers.
1985—Cork Corporation—Dirty money allowance for certain cleansing department workers.
1986—Joseph Bellew & Co. Ltd. Drogheda—Five-day forty-hour week.
1987—Ostlanna Iompar Eireann—Wage rates and weekly working hours of lorry crew and filler men.
1988—Messrs Ruigroks Arais Co. Dublin—Wages and hours of work.
1989—David Pattons Ltd. Monaghan—Working week and overtime rates.
1990—Tullamore Drapery and Footwear Trade—Earlier closing and three weeks holiday.
1991—Petroleum Employers Association—Extra pay for work performed at weekends by airport re-fuelers.
1992—Ault & Wiborg (Eire) Ltd.—Wage claim.
1993—Ceimci Teo—Reduction of shift hours.
1995—Various County Councils—Shorter working week.
1996—Foras (Institute) of Agriculture—Revised salary scales and retrospection.
1997—Limerick Motor Traders—Operation of five-day week.
1999—Nitrigen Eireann Teo—Dismissal of fitter.
1998—Cemore Ltd. and Weatherwell Ltd.—Wages and shift rates.
2001—British Railways—Overtime rates for supervisory staff.
2002—Irish Motor Traders Association—Abolition of improvership yard.
2003—Dublin Health Authority—Forty-two and a half hour week, night and Sunday allowances and service payment operative to date.
2004—Swift Brook Paper Mills Ltd.—Working hours of day workers.
2005—Arigna Colleries Ltd.—Claim for a five-day week.
2007—Dublin Deep Sea Dock—Working week.

AGRICULTURE, LANDS AND FISHERIES

Subject Matter and Reference Numbers

Agricultural wages (minimum rates) Orders of 1963 and 1964 revoked—74/1965.
Agricultural wages (minimum rates) in force from 24th May 1965—75/1965.
Bovine Tuberculosis (conditions of attestation cancelled) Order declaring all the State to be an attested area in which Bovine Tuberculosis is virtually non-existant and Regulations resulting therefrom—211/1965.
Committees of Agriculture (salaries of officers) Regulations 1965—67/1965.
Fishing Nets (Regulation of Mesh) Order 1965—231/1965.
Millable Wheat Regulations 1965—213/1965.
Mink may not be kept under Musk Rats Act, 1933, save under licence—199/1965.
Livestock (artificial insemination) (pigs) Regulations 1965—255/1965.
Pigs and Bacon Commission—Bacon Pig Production Levy Order—206/1965, 270/1965.
Sheep Dipping Order 1965—105/1965.
Western Agriculture Consultative Council Order 1965—174/1965.
Warble Fly Order 1965—246/1965.

COMMODITIES, GOODS AND SERVICES

Subject Matter and Reference Numbers

Carriage of commodities allowed under Road Transport Acts from 23rd to 29th June 1965—132/1965.
Carriage of Commodities Order 1965 revoked—135/1965.
Hydro Carbon Heavy Oil—Warehouse keepers must keep account of invoices received into and delivered from the warehouse after 8th November 1965—219/1965.
Maximum prices (Intoxicating liquor and Non-Alcoholic Beverages) Standstill Order 1965—253/1965.
Pigs and Bacon Acts—Minimum prices fixed for bacon—200/1965.
Prices (Amendment) Act, 1965—Minister may exercise all the powers provided under this Act for the investigation and control of prices and charges—208/1965.
Prices Advisory Body established to enquire into proposals to increase the price of beer—265/1965.

CONTROL OF IMPORTS AND EXPORTS

Subject Matter and Reference Numbers

Control of Exports Order, 1966—33/1966.
Cotton piece goods—Quota imposed until 30th November 1966—217/1965.
Electric Filament Lamps—Quota imposed to 30th November 1966—214/1965.
Importation of all footwear save rubber footwear prohibited after 1st January 1966—261/1965.
Leather footwear of boot and shoes—Quota imposed to 30th June 1966—235/1965.
Importation of meat and animal products allowed from France after 1st August 1965—148/1965.

Importation of meat and animal products allowed from Austria, Belgium, Denmark, The Federal Republic of Germany, France, Italy, Luxembourg, Netherlands, Norway, Sweden and Switzerland not permitted after 8th February 1966—27/1966.
Motor-Car body parts—Limited quota until 31st December 1966—243/1965.
Substantially assembled motor-car chassisimited until 3
Substantially assembled motor-car chassis—Limited quota until 31st December 1966—240/1965.
Completely assembled motor-vehicle chassis without a body attached thereto—Limited quota until end of 1966—241/1965.
Completely assembled mechanically propelled vehicles—Limited quota during 1966—244/1965.
Completely assembled road vehicle bodies—Limited quota in 1966—242/1965.
Imports from Southern Rhodesia prohibited except under licence after 21st January 1966—10/1966.
Sparking Plugs restricted quota to 31st October 1966—207/1966.
Woven Fabrics of Silk, Cotton and Jute—Restricted quota during 1966—238/1965.
Textile Yarns and Bedding—Restricted quota in 1966—237/1965. This restricted quota of 100,000 applies to Eastern European Countries, Soviet Russia and China only.
Women's felt hats, caps and hoods—Restricted quota during 1966—234/1965.

COUNTY AND TOWN MANAGEMENT

Subject Matter and Reference Numbers

Cork Corporation—Boundaries extended by Provisional Order of 1965 after 1st July 1965—141/1965.
Kildare Co.—District Electoral Divisions of Cloncurry and Lullymore transferred from Clane County Electoral Area to Kildare County Electoral Area—48/1966.

CUSTOMS AND EXCISE—EMERGENCY AND OTHER DUTIES

Subject Matter and Reference Numbers

Agricultural Machinery—Customs Duty revoked after 1st March 1966—41/1966.
Agricultural Machinery—Duty imposed—34/1966.
Bedspreads (tufted)—Minimum duty of 15/- each imposed after 24th December 1965—254/1965.
Ceramic Sanitary Ware—Customs Duty revoked after 1st March 1966—42/1966.
Ceramic Sanitary Ware—Duty imposed—35/1966.
Customs and Excise Tariff—Amendments made in classification—216/1965.
Footwear—Duty of 67½ per cent (foot) and 45 per cent (preferential) imposed after 1st January 1966—262/1965.
Fur Felt Hat Forms and Hoods—Duty revoked after 26th November 1965—228/1965.
Iron and Steel Bars, Rods, Sheets and Plate—Customs Duty suspended to 30th June 1966—267/1965.
Man-made Fibres—Customs Duty reduced—36/1966.
Metal Frames, Fluorescent Light-Fittings, Aluminium Foil Containers, Wood and Plastic Articles, Electric Motors, Car Radios and Watch-straps, Amendments to existing Customs Duty—225/1965.
Motor Vehicle Tyres—Duty imposed—37/1966.
Packings temporarily imported in connection with the importation or exportation of goods exempted from duty after 16th December 1965—223/1965.
Special Import Levy imposed on miscellaneous goods from 2nd November 1965 to 31st March 1966—220/1965.
Stockings of Man-made Fibre—Duty imposed—38/1966.
Twine—Duty imposed—39/1966.

EMPLOYMENT REGULATIONS AND CONDITIONS OF EMPLOYMENT

Subject Matter and Reference Numbers

Building Industry—Apprenticeship Committee appointed—118/1965.
Building Industry—Arrangements for the recruitment and training of apprentices brought under Statutory Control—117/1965.
Curtain Materials (weaving of) and Bedspreads—Women may work between 7.00 a.m. and 11.00 p.m. on shift work—215/1965.
Dental Craftsmen—Arrangements for the recruitment and training of apprentices brought under Statutory Control—194/1965.
Dental Craftsmen—Statutory Apprenticeship Committee appointed.
Drapery and Footwear Shops in Athlone, Co. Westmeath—Hours of training on weekdays regulated.
Electronic Components Industry—Young persons may work on shift work between 7.00 a.m. and 10.00 p.m.—29/1966.
Electronic Components Industry at Shannon Industrial Estate, Co. Clare—Women may work on shift work between 7.00 a.m. and 12.00 midnight.
Engineering and Metal Trade—Circumstances under which apprentices in this trade may be dismissed—???
Engineering and Metal Trade—Period of apprenticeship fixed at five years.
Hairdressing Shops in Dundalk, Co. Louth—Hours of trading on weekdays regulated.
Hotels Joint Labour Committee established after 23rd April 1965—81/1965.
Paper Bags Industry—Sole persons cannot be employed until eleven hours have expired from the time such person ceased to do industrial work on the previous day—247/1965.
Plastic Moulding Industry—Women may be employed between 7.30 a.m. and 11.00 p.m. on shift work—254/1964.
Plastic Moulding Industry—Young persons may be employed on shift work between 8.00 a.m. and 10.00 p.m.—20/1966.
Printing Industry—Women may be employed between 6.00 a.m. and 10.00 p.m. on shift work in machine-checking and wire-stitching—222/1965.
Printing Industry—Apprenticeship Committee established in industry—25/1966.
Printing Trade—Recruitment and training of apprentices brought under Statutory Control—24/1966.
Rubber Soles—Trimming and packing—Women may be employed on shift work between 7.00 a.m. and 11.00 p.m.—259/1965.
Toilet Rolls (manufacture of)—Women may be employed between 8.00 a.m. and 11.00 p.m. on shift work—260/1965.
Women's Clothing and Millinery Joint Labour Committee—Rates of wages fixed for skilled workers employed in the mantle and costume section from 7th February 1966—17/1966.

FINANCE AND CENTRAL GOVERNMENT

Subject Matter and Reference Number

Exchange Control (3) Regulations, 1964, to apply to Shannon Customs Free Airport—36/1965.
Exchange Control (2) Regulations, 1965, to extend to Shannon Customs Free Airport—196/1965.
Exchange Control (3) Regulations, 1965, to extend to Shannon Customs Free Airport—271/1965.
Exchange Control Regulations 1965—66/1965.
Exchange Control (3) Regulations, 1965—230/1965.
Exchange Control Regulations, 1966—11/1966.
Exchange Control Regulations 1966 extended to Shannon Free Airport—50/1966.
Civil Service Pensions increased by 5 per cent as from 1st October 1964 by Pensions (Increase) Regulations, 1966—4/1966.
State Guarantees Act, 1954—Aer Lingus may increase its borrowing from £6,000,000 to £6,700,000—25/1965.
State Guarantees Act, 1954—Institute of Public Administration may be given maximum guarantee of £30,000—257/1965.
Statistics—Census of Population to be held on 17th April 1966—40/1966.
Savings Banks Disputes—Powers of Registrar of Friendly Societies extended—19/1966.
Savings Certificates (Seventh Issue) Rules 1966—52/1966.

HARBOURS AND HYDRO-ELECTRIC WORKS

Subject Matter and Reference Numbers

Dublin Port and Docks Board may charge revised maximum ware-housing rates in Dublin Port after 26th April 1965—68/1965.
Foynes Harbour Trustees, Co. Limerick, may construct a new deep-water jetty at Foynes Harbour—26/1966.
New Ross Harbour, Co. Wexford—Revised rates charged after 15th September 1965—192/1965.

HEALTH

Subject Matter and Reference Numbers

Animal Remedies (control of certain anti-abortion vaccines) Regulations 1965—112/1965.
Health (Homes for Incapacitated Persons) Act 1964 in force from 1st April 1966—43/1966.
Homes for Incapacitated Persons Regulations 1966—44/1966.
Rathdrum and Wicklow Water Supplies—To be fluoridated—102/1965.
Vaccination Certificates against Smallpox may be required from any person disembarking from a ship or aircraft whose journey commenced in a place to which the Regulation applies—23/1966.

JUSTICE, EXTERNAL AFFAIRS AND DEFENCE

Subject Matter and Reference Numbers

Aliens (Amendment) Order 1966—12/1966.
Circuit Court Rules (1) 1965—202/1965.
Defence Forces (Pensions) (Amendment) Scheme, 1965—154/1965.
Drumkerin, Co. Leitrim, substituted as District Court area for Dromahair, Co. Leitrim, from 1st February 1966—252/1965.
Garda Siochana Allowances Order, 1947-1961, consolidated—218/1965.
Gards Siochana Pensions Order, 1965.
Jury Districts (2) Order 1927 (County Cork) (Variation No. 3) Order 1965—266/1965.
Land Purchase Acts Rules, 1964—230/1964.
Pageant's Rules, 1965—268/1965.
Solicitors' Act, 1954 (Apprenticeship and Education [Amendment] Regulations, 1965)—201/1965.
Workmen's Compensation Act, (certifying surgeons and medical referees) Order, 1934 (Amendment) Order 1965—269/1965.

MISCELLANEOUS

Subject Matter and Reference Numbers

Certified Schools—Payments to be made from April 1965 by Local Authorities to the Managers of Certified Schools for the maintenance of children and youthful offenders—58—1965.
Children's Act, 1941 (Section 21) Regulations, 1965—58/1965.
Erin Foods Ltd. (Form of Balance Sheet and Profit and Loss Account) Regulations, 1965—195/1965.
Factories (Fees of Certifying Doctors) Regulations, 1965—205/1965.
Fines and Penalties (Disposal) Order, 1966, stating that fines under the Pharmacy Acts should be paid to the Pharmaceutical Society of Ireland—6/1966.
Department of the Gaeltacht—Transfer of Departmental Function—108/1965.
Restrictive Trade Practices (prohibition of collective action by groups of traders in regard to the selling prices of intoxicating liquor and soft drinks) Order, 1965—232/1965.
Housing Authorities (loans for acquisition or construction of houses) (Amendment) Regulations, 1965—137/1965.
Regulations regulating the hours of business of the office of the Chief Registrar of Births, Deaths and Marriages—227/1965.
Totalizator (multiple event) Regulations, 1966—7/1966.
Vocational Education (Borrowing) (Amendment) Regulations, 1965—209/1965.
Vocational Education (Grants for Annual Schemes of Committees) Regulations, 1965—5/1966.

POST OFFICE

Subject Matter and Reference Numbers

Foreign Post Amendment (8) Warrant, 1965, reducing rates for foreign post for letters and sample packets from 1st January 1966—253/1965.

SOCIAL SERVICES

Subject Matter and Reference Numbers

Social Welfare (Crediting of Contributions) Regulations, 1965—193/1965.
Social Welfare (Disability, Unemployment and Marriage Benefit) (Amendment) (3) Regulations, 1965—229/1965.
Social Welfare (Contributions) (Amendment) Regulations, 1965—258/1965.
Unemployment Assistance (Employment Period) Order 1966—49/1966.

TRANSPORT AND TRAFFIC

Subject Matter and Reference Numbers

Carriage of Wheat Order, 1965—164/1965.
Coras Iompar Eireann amending superannuation scheme for regular wages staff (confirmation) Order, 1965—48/1965.
Great Southern Railways Company Pension (Amendment) Scheme for regular wages staff (confirmation) Order, 1965—49/1965.
Great Northern Railway Company (Ireland) Pension Fund for wages staff (Amendment) Scheme (confirmation) Order, 1965—50/1965.

Parking Bye-Laws

Athy, Co. Kildare—9/1966.
Cavan—8/1966.
Cork City Traffic (One-Way Streets) Temporary Rules, 1966—15/1966.
Dublin and Dun Laoghaire Traffic (One-Way Streets) Temporary Rules 1966—51/1966.
Clonmel, Co. Tipperary—31/1966.
Dundalk, Co. Louth—212/1965.
Dungarvan, Co. Waterford—210/1965.
Navan, Co. Meath—31/1965.
Tralee (Co. Kerry) Appointed Stands (Street Service Vehicles) Bye-Laws 1965—203/1965.
Youghal, Co. Cork—256/1965.
Road Vehicles (Registration and Licencing) (Amendment) Regulations, 1966—13/1966.
Road Traffic Act, 1961—Extent to which the Road Traffic Act, 1961, is in force (this statement covers the position as at 1st October 1965 and supersedes all previous statements).
Road Traffic (Licensing of Drivers) (Amendment) Regulations 1965—47/1965.

THE REGISTER

Register C

In the goods of **Patrick Diver, Ballyloughan, Bruckless, Co. Donegal,** deceased. Will any person or solicitor having possession of a Will (dated 8th February 1938, or later date) of the above deceased who died on the 16th day of December 1940, or give any information regarding its whereabouts, please communicate with the undersigned without delay. Reward offered for the Original Will or information leading to its production. Dunlevy & Barry, Solicitors, Donegal.

REGISTRATION OF TITLE ACTS, 1891 and 1942

ISSUE OF NEW LAND CERTIFICATE

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

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

Dated the 29th day of March 1966.

D. L. McALLISTER
Registrar of Titles

Central Office,
Land Registry,
Chancery Street,
Dublin.

SCHEDULE

1. Registered Owner, **Patrick Butterly.** Folio number 4871. County Dublin. Lands of Rush in the Barony of Balrothery East containing 0a. 3r. 16p.

2. Registered Owners, **Edward Brady and Mary Ellen Brady.** Folio number 1010. County Longford. Lands of Drumard containing 30a. 2r. 4p.

3. Registered Owner, **Frank J. Collopy.** Folio number 9326. County Limerick. Lands of Ballysheedy West in the Barony of Clanwilliam containing 4a. 3r. 12p.

4. Registered Owner, **Elizabeth Flynn.** Folio number 8617. County Meath. Lands of Woodlands containing 33a. 0r. 7p., and lands of Pelletstown containing 6a. 3r. 5p., both situate in the Barony of Ratoath.

5. Registered Owner, **William Kilbride.** Folio number 40. County Dublin. Lands of Ballymaice in the Barony of Uppercross containing 39a. 1r. 35p.

6. Registered Owners, **Robert Moore and Emily Moore.** Folio Number 187. County Cavan. Lands of Leighin (orse. Leighins) in the Barony of Tullygarvey containing 14a. 2r. 2p.

7. Registered Owner, **James Sharkey.** Folio number 4763. County Roscommon. Lands of Knockroe in the Barony of Boyle containing 16a. 1r. 10p.

GAZETTE

Vol. 59
No. 10
April 1966

THE INCORPORATED LAW SOCIETY OF IRELAND

President
ROBERT McD. TAYLOR

Vice-Presidents
PATRICK O'DONNELL
JAMES R. C. GREEN

Secretary
ERIC A. PLUNKETT

CONTENTS

Meeting of the Council 97
Examination Results 98
The Pros and Cons of Fusion—II 99
Commissioners of Charitable Donations and Bequests 102
Weekend Seminar in Mullingar 102
Car Parking 103
Israeli Law Conference 103
Solicitors' Benevolent Association 103
Interim Award of Damages 104
Proceedings under the Solicitors Acts 104
Land Registry Delays 105
Society of Young Solicitors 105
The Land Act and the Land Registry 105
Cases of the Month 105
Court of the Irish Land Commission 108
The Registry 108
Registration of Title Acts 108
Obituary 108
Index to Volume 59 of GAZETTE 109

MEETINGS OF THE COUNCIL

March 24th: The President in the chair, also present Messrs Peter D. M. Prentice, Desmond Moran, R. A. French, Gerard M. Doyle, Thomas A. O'Reilly, Brendan A. McGrath, Thomas J. Fitzpatrick, William A. Osborne, Ralph J. Walker, Patrick Noonan, G. G. Overend, John J. Nash, James R. C. Green, Eunan McCarron, Thomas H. Bacon, Frank Armstrong, G. J. Moloney, John B. Jermyn, John Maher, James W. O'Donovan, Patrick O'Donnell, Peter E. O'Connell, Jorn Carrigan, Niall S. Gaffney.

The following was among the business transacted:

Preliminary Examination Standard

On a report from the Court of Examiners it was decided that the standard for the preliminary examination should be raised to the level of the open public matriculation examination, and that the Court of Examiners should be directed not to exempt any candidate from the preliminary examination unless he produces evidence which would be accepted as a substitute for the open public matriculation examination in subjects including English, Mathematics and Latin.

Accountants' Certificates

The Council considered a report of a meeting between representatives of the Society and of the Institute of Chartered Accountants. It was recommended that instead of requesting the Minister for Justice to bring section 31 of the Solicitors' (Amendment) Act 1960 into operation the Society should itself make regulations dealing with accountants' certificates under section 66 of the Solicitors' Act 1964.

The Council decided to circulate a draft of the regulations and of the proposed accountant's certificate with the agenda for the ordinary general meeting, to be held on 19th May, and that no vote will be taken at the meeting, the matter being open for discussion to ascertain the opinion of the members present.

Absolute Liability in Road Accident Cases

A working party consisting of the following members was appointed: Messrs E. O. Knapp, Francis A. O'Hare, Rory O'Connor and T. A. O'Reilly, with power to co-opt.

Law of Evidence, etc.

The following members were appointed as a working party to prepare a memorandum for the commission on the courts: Messrs Francis J. Lanigan, G. Y. Goldberg and Rory O'Connor.

Landlord and Tenant Commission

The following members were appointed as a working party: Messrs P. C. Moore, John Maher, Thomas A. O'Reilly.

Members of the Society are invited to write to the Secretary with any suggestions for consideration by the above mentioned working parties.

Leasehold Interest on Registered Land: No. L Folio

A lease was registered as a burden on a freehold folio. The freehold folio bore no equity note and there was no separate L folio for the leasehold interest. The lease was also registered in the Registry of Deeds. The original lessee sold his interest, the title furnished being a copy of the freehold folio and a copy of the lease. The purchaser made a search in the Registry of Deeds from the date of the lease down to date of completion and enquired as to the appropriate scale of the purchaser's costs. On a report from a committee, and after considering the definition of registered property in clause 2 of the Land Registration Rules 1959 and clause 6 of the Land Registration (Solicitors) Costs Rules 1962, the Council stated that the costs are chargable on the commission scale under the Solicitors' Remuneration General Orders 1884 to 1960.

EXAMINATION RESULTS

At the Preliminary Examination for intending apprentices to solicitors held on the 9th and 10th February the following candidates passed:

Ernan F. Britton, Patrick Carroll, Anthony B. Dunleavy, Brendan D. McArdle, John H. V. Wood.

8 candidates attended; 5 passed.

First Examination in Irish

Brian Berrills, Peter Brady, Geoffrey J. Browne, Patricia J. Burke, Francis O. Callanan, Patrick Carroll, Mary K. A. Carey, Daniel Chambers, David J. Clarke, Martin N. Clarke, William Harrison Clarke, Nicholas G. Comyn, Michael E. Cusack, Patrick J. Cusack, Peter J. Cusack, Francis R. Doris, Niall Durnin, Rosemary Finn. Mary M. Flanagan, Bertrand G. French, Raymond A. Frost, Paul G. Gilligan, Michael E. Hanahoe, Ciaran Harte, Caren Healy, Matthew N. Hickey, John L. Jermyn, William T. Liston, Ellen M. Lynch, Leo J. Malone, Colm P. Mannin, Patrick N. Meenan, Mary E. Minch, James M. Mohan, John Morrissey, Eugene Murphy, Andrea McAllister, Brendan McAllister, Francis G. McArdle, Paul McCormack, Michael F. McNicholas, Bernadette M. O'Brien, Daniel E. O'Connor, Domnic C. O'Kelly, Amhlaoibh O Loinsigh, Daniel O'Neill, Edward O'Neill, Patrick J. O'Neill, Raymond M. O'Neill, Garrett A. O'Reilly, Michael D. Peart, Patrick J. Reidy, Oran Ryan, Sean M. E. Sexton, Ann M. Sweetman, Patrick O. Synnott, Miriam S. Toomey, John H. V. Wood, Alan J. Woods.

59 candidates attended; 59 passed.

Second Examination in Irish

John P. Aylmer, B.A., Eric Brunker, Colm Cavanagh, Seán P. Corrigan, John McC. Cussen, B.C.L., Patrick Fitzgibbon (Jnr.), Conor C. Foley, William C. Gavin, B.A., Garrett P. Gill, Michael Gleeson, B.C.L., Derek H. Greenlee, Desmond J. Houlihan, Alan V. Kelly, James D. Lavery, B.C.L., Richard V. Lovegrove, Michael A. Lucas, Michael J. D. Mangan, B.C.L., William J. Montgomery, Brendan J. McDonnell, Francis J. O. McGuinness, B.A., B.C.L., H.Dip., Paul McLaughlin, Michael O'Driscoll, Simon Quick, M.A., B.Comm. LL.B., Stephen T. Strong, Jonathan P. Thompson, B.A. Mod., D.P.A.

25 candidates attended; 25 passed.

At the Book-keeping Examination for apprentices to solicitors held on 28th February the following candidates passed:

Passed with merit: 1. Anthony C. Hayes, 2. William O. H. Fry, 3. Brian J. Magee. *Passed:* Henry C. Blake, B.A., John H. Dockrell, William C. Gavin, B.A., Matthew J. Mitchell, B.A., Brendan J. McDonnell, Francis J. O. McGuinness, B.A., B.C.L., H.Dip. in Ed., John J. Tully.

16 candidates attended; 10 passed.

At the First Law Examination for apprentices to solicitors held on the 7th and 8th days of February the following candidates passed:

Roger Ballagh, James S. Baylor, Colm A. Cavanagh, Sean P. Corrigan, Joan E. M. Daly, Rosemary Durcan, Laurence R. Egan, Thomas F. Farrell, Thomas D. Fleming, Conor C. Foley, Michael H. Gleeson, B.C.L., John McMahon Glynn, Anthony T. Hanahoe, John F. Hayes, Elizabeth Heffernan, Desmond J. Houlihan, Henry Murphy, B.A., Kieran M. F. Murphy, James M. O'Dwyer, Anthony F. O'Rourke, Avice Redmond, Esmond Reilly, Aveen M. J. Smith, Charles C. R. M. de Lacey Staunton.

47 candidates attended; 24 passed.

The Centenary Prize was not awarded.

At the Second Law Examination for apprentices to solicitors held on the 7th and 8th days of February the following candidates passed:

Passed with merit: 1. Joseph G. Finnegan, B.C.L., LL.B., 2. Niall P. Connolly, B.C.L. *Passed:* Fergus Armstrong, B.C.L., Marguerite Boland, B.C.L., Ann M. T. Coady, B.C.L., David Cox, B.C.L., Catherine P. V. Doyle, B.C.L., Michael P. A. Farrell, B.C.L., John P. Gaffney, B.C.L, James Heney, B.C.L., Raphaeline A. E. Hoey, Pamela Forrest Hussey, Alan V. Kelly, Michael J. A. Kelly, Gerard Kirwan, B.C.L., George G. Mullan, B.C.L., Peter F. R. Murphy, Oliver D. McArdle, Donal T. McAuliffe, Francis J. O. McGuinness, B.A., B.C.L, .H.Dip. in Ed., Marie Noonan, Brendan O'Mahony, Michael J. O'Shea, Gerald B. Sheedy, B.C.L., Angela M. Sweetman, B.A.

37 candidates attended; 25 passed.

At the Third Law Examination for apprentices to solicitors held on the 9th, 10th and 11th days of February the following candidates passed:

Philomena Armstrong, B.C.L., Francis D. Daly, B.C.L., John H. Dockrell, John M. Fitzpatrick, Mary M. Harvey, B.C.L., Michael A. Lucas, Matthew Mitchell, B.A., L.Ph., Joseph Molony, B.C.L., Patrick J. McMahon, B.C.L., LL.B., Elizabeth M. J. O'Donnell, Thomas A. O'Donnell, Josephine M. E. O'Meara, B.C.L., Eleanor O'Rourke, B.C.L., Ann O'Toole, Mary P. Tighe, B.A.

20 candidates attended; 15 passed.

By Order

ERIC A. PLUNKETT
Secretary

Solicitors' Buildings,
Four Courts,
Dublin 7.
24th March 1966.

THE PROS AND CONS OF FUSION—II

There has been a good deal of discussion and controversy in recent months on the "reform" of the legal professions by amalgamating the two professional bodies so that solicitors can practise as barristers and vice versa. In my view, if any legislation is introduced by the Government to effect amalgamation, it would bemost irresponsible as any benefits resulting from amalgamation would be far outweighed by the disadvantages.

I have had a number of years' experienc of both systems; in Ireland as a solicitor and in Canada, where the professions are united, as a barrister and solicitor. There are advantages and disadvantages of the fused system and in Canada the system works satisfactorily. It is a fallacy to suggest, however, that because the system works in Canada and other parts of the New World, that it would be better in Ireland.

In Canada, as in the United States, the professions have always been united and in the earlier pioneer days it was neither economical nor practical to have two professions. In many parts of North America this position is still true today as specialisation is not warranted in areas of sparse population. In some of the smaller cities of Canada, there is specialisation in some fields of law but in the larger centres there is a high degree of specialisation. For example, there are many firms in Toronto that take counsel work by reference only, likewise there are tax specialists, company law experts and so on. In effect, there is a greater division of the legal professions in many parts of Canada than exists in Ireland.

One of the features of specialisation in them North American system is the high cost to the public. This is true in both the medical and legal professions. Professional men tend to form large partnerships and while the medical or legal skill that is available to patients or clients is of the highest order the fees are extremely high.

One of the effects of fusion of the professions in Ireland would be to substantially increase the income of the larger and efficient city firms whose services would be sought by industry, wealthy clients and so on. On the other hand, the one man firm or small partnership would have to try and cope with all branches of the Law and the attractions of large partnerships would tend to reduce the number of such small firms to the great detriment of the less wealthy class of clients.

In Canada, I practised for almost eight years in what was considered a small firm as the number of lawyers engaged in it were four or five over the period. Prior to that I spent two years as legal adviser to a Government Department. I think I realise both the advantages and disadvantages of the united profession and will try and set them down.

Advantage to Client in Superior Court Proceedings

In the smaller firms where there is not specialisation, the client selects his own lawyer who conducts all interviews with the client and witnesses and who handles the correspondence, all preliminary proceedings, motions, examinations for discovery and the trial. The client, if he had confidence in his lawyer, knows that all the facts of his case can be considered and put to the Court.

On the other hand, in a larger firm where there is specialisation, the client may be interviewed by one lawyer and perhaps have the initial stages of his case dealt with by him and Court proceedings dealt with by another who acts as counsel for the firm.

In either event, the client has only one fee to pay.

Disadvantages to Client in Superior Court Proceedings

A person tends to consult his own lawyer no matter what type of proceedings are contemplated or he makes a selection of lawyer on the basis of reputation or recommendation and he may have his case dealt with by someone inexperienced or with little ability for the type of work involved. In the case of the firm with its own counsel this situation occurs, for it is unlikely that any one counsel is equally expert in such diverse matters as will suits, paternity suits, admiralty law or running down actions.

Where the one man acts as solicitor and counsel (and the two functions are acknowledged in Canada) it is extremely difficult for him to deal with the case on the basis of the relevant facts only and dismiss the irrelevant from his mind. Likewise, he finds it extremely difficult to take a detached view of the facts and make decisions and give opinions unpopular to his client.

In the smaller firms it is unusual to find lawyers with good court technique and because of inexperience in court work, the average lawyer has to be concerned with too many incidental details such as rules of evidence, procedure and so on and his attention from the issues is distracted. Also, the lawyer who infrequently appears in court will not do his client's case full justice because of his relative inability at examination and cross-examination of witnesses.

Advantages and Disadvantages to Client in Non-Litigious Matters and Lower Court Proceedings

I do not think that any real difference exists between the two systems so far as non-litigious matters are concerned except in the matter of cost. In the fused profession, the lawyer is first a solicitor and, with the exception of a specialist, most lawyers are as competent as Irish solicitors to carry on a general practice. Again, the problem arises in matters requiring specialist skill which are outisde the competence of the general practitioner, for he does not have the choice of highly skilled experts as are available in the Bar Library in Ireland to advise and guide him.

In proceedings in the lower courts, the client is probably given better service in Canada than is generally available to him in Ireland. For the average Canadian lawyer, because of his training in law school and his experience in practise, is more competent in this field than the average solicitor in this country. There are, of course, many very competent solicitors practising in the District and Circuit Courts and on the other hand many Canadian lawyers never set foot in a court, although they call themselves barristers, so my comments are only intended to apply to the general situation.

Advantages and Disadvantages of Fusion to Lawyers

The principal advantage to lawyers resulting from fusion is the substantially higher earning power of a large firm. The trend in North America is towards large partnerships and, as a result, there is a wide range of specialist service in all or many branches of the law. Allied to this, one firm can earn all the fees payable by a client in respect

of different classes of legal service, whether court work or some other speciality is involved.

In the smaller firms where there is a lesser degree of specialisation and where the tendency is for one man to do all types of work, the opportunity exists to become reasonably proficient in many fields of law. The difficulty arises when he takes on a complex case or one in which he is inexperienced but this problem is less important in Canada than it would be in Ireland for the legal publications in Canada are vastly superior to those here. In my experience, careful preparation in the office library enabled me to tackle problems or cases in Canada that I would find an impossibility here.

The great disadvantage of the combined profession in a practice where court work and office work is done is the chaotic state in which office work becomes after a day or two in court. Office work must be done in the morning, at the midday adjournment and again in the afternoon when the court rises. At the same time, further preparation for court is often necessary and either this or the office work must suffer. This is an unsatisfactory way to run an office for appointments have to be cancelled, correspondence remains unanswered, telephone calls accumulate, typists cannot be kept busy and clients' business generally suffers. If there are other lawyers in the office, urgent work can be apportioned but this upsets their routine and is not acceptable to clients. It is quite impossible in fact to carry on efficiently the two types of practise.

The only way of dealing with office work and court work at the same time is by night or weekend work when cases can be prepared after normal office hours. This expedient is only satisfactory for the lawyer who takes the occasional case, if health and family life is not to suffer.

Canadian Solution to Difficulties of amalgamation

In all the larger centres in Canda the professions have artificially split and, as mentioned, many firms have full time counsel who do no office practice at all. As previously mentioned, there are several firms in Toronto, to my knowledge, and likely elsewhere, that do counsel work only and they are briefed by other law firms who do not engage in court work or who require the services of a specialist. Apart from specialisation in the sphere of court work, there is a higher degree of specialisation in other matters. For example, I know several taxation lawyers, mining law experts and corporation and insurance law specialists.

In the provinces of smaller population, specialisation is not developed to the same degree. As a result, clients sometimes are obliged to seek expert assistance in Toronto or Montreal and sometimes counsel are admitted especially to conduct a case in a province other than their own.

The amalgamated profession works quite well in Canada as a sort of compromise but subject to the limitations and disadvantages mentioned. However, supporters of fusion of the professions here cannot, I think, baldly cite that fact in support of their views because there are many differences between Canada and Ireland particularly in the tremendous area of Canada and its relatively small population. As already pointed out, the profession tends to divide itself into barristers and solicitors and indeed into different types of solicitors in areas of more dense population.

One of the factors which eases the problem of practising as a barrister and solicitor in Canada and being a jack-of-all-trades is the excellent system of law reporting and the wide range of legal publications available. Law reports of all judgments of any significance are available within a matter of weeks of the decision (although I have heard this criticised as being too long) and the reports are abridged annually. Likewise, the federal and provincial statutes are available within a short time after the Parliamentary Sessions and the statutes are revised every ten or fifteen years. The frequent revision of the statutes enables the law to be ascertained quickly and easily, as all one has to do is refer to the latest revision and possibly one or two amending statutes during the period following such revision.

The Canadian lawyer who is faced with a court case can turn to his library for assistance and, even if he has only the vaguest idea of the subject with which he is dealing, can by a few hours' application ascertain the relevant statute law and case law. One can then at least face the court with some knowledge of the principles involved in the case.

Conclusions

In my view, fusion of the professions in Ireland would be an artificial contravention of the natural evolution. If it is effected, it is certain that specialisation would have to continue and as law and practice continues to become more complex, as evidenced by increased statute law and regulation over the years, further specialisation is inevitable. The present separation of the professions enables the public to obtain legal services at moderate cost from a general practitioner in the first

instance. Where special advice or service is needed from an expert in a particular field, this is now available with a wide choice from the Bar and also at modest cost.

A united legal profession is no more practical than a united medical profession for I do not think that a lawyer can fill the role of barrister as well as solicitor any more than a doctor can be both a general practitioner and a surgeon. The only way in which a united legal profession could work is in large partnerships where general practitioners and specialists work together. This would only have the effect of increasing the cost of legal services and cutting off from all but wealthy clientèle the top experts.

There is nothing inherently wrong in having more than one legal profession. After all, France has three distinct legal branches—the avocats, the avoués, and the notaires. The avocat is a barrister, the avoué a restricted form of solicitor and the notaire combines a judicial function with that of a solicitor in conveyancing and probate practice. In Quebec, while there is fusion of the barristers' and solicitors' professions, the notaire still belongs to a separate profession.

The only significant defect in our present system of which I am aware is the multiplicity of our law schools but fusion would only eliminate one of them. If specific defects do in fact exist, it would be more satisfactory to rectify these individually.

I am satisfied from my own experience that the destruction of our present system and the creation of one legal profession would create many more difficulties than it could possibly cure.

C.A.L.

COMMISSIONERS OF CHARITABLE DONATIONS AND BEQUESTS BOARD MEETINGS

(Easter and Trinity Terms)

Tuesday, 26th April 1966
Tuesday, 10th May 1966
Tuesday, 24th May 1966
Tuesday, 14th June 1966
Tuesday, 28th June 1966
Tuesday, 12th July 1966
Tuesday, 26th July 1966

J. S. MARTIN
Secretary

WEEKEND SEMINAR IN MULLINGAR

A seminar weekend was held at The Greville Arms Hotel, Mullingar, by the Society of Young Solicitors in-association and with the co-operation of the General Council of Provincial Solicitors' Association and the Midland Bar Association on the 26th and 27th March. The attendance at the seminar was so far in excess of the original estimate that all accommodation in Mullingar was completely booked out, and some members attending had to stay overnight as far away as Kinnegad and Longford.

This was the first convention of its kind ever to be held in this country. There were four sessions, and each session consisted of a lecture, after which the members formed discussion groups of fifteen to twenty members each, and these groups then discussed the lecture. After half an hour, the chairman of each discussion group was invited to put up to three questions, selected by his group, to the lecturer, who answered the queries raised on his subject.

The first lecture, on the Saturday afternoon, was given by Mr. A. J. O'Dwyer, Deputy Registrar of Title, on the subject of Registration of Title. Mr. William McGuire, solicitor, delivered his paper on the Succession Act, 1965, on the Saturday night. On Sunday morning Mr. Vincent Grogan, B.L., travelled from Dublin to deliver his paper on the Finance Act, 1965, and on Sunday afternoon Mr. Patrick Kilroy, M.A., gave his lecture on Companies and Finance Legislation.

The seminar could not have been a success without the co-operation of each of the lecturers, who, without exception, showed that they had studied their subjects thoroughly, and proved this by the very able manner in which they coped with the series of questions at the end of each session.

The brunt of organisation of the weekend was borne by Tom Shaw, Secretary of the Midland Bar Association, who dealt with hotel bookings and on the spot arrangements, and Norman Spendlove, Treasurer of the S.Y.S., who must be singled out for their mammoth work.

Socially, members took advantage of the opportunity of meeting their brethren who came from as far away as Donegal, Cork, Kerry, Glaway, Waterford and Louth, and the Saturday night session stretched far into the early hours of Sunday morning. Despite this there was full attandance at the Sunday morning session.

Another seminar will be held in Cork on the

22nd and 23rd October 1966. The hosts will be the Southern Law Association, who will be co-operating with the General Council of Provincial Solicitors' Association, and the S.Y.S. in this venture.

CAR PARKING

Members are requested not to park their cars outside the Solicitors Buildings in such a way as to prevent cars already properly parked from leaving the courtyard.

On several recent occasions it has been necessary for some members to move three or four cars already parked in order to drive away from the premises. If there is insufficient parking space in the courtyard members are requested not to drive into the yard.

ISRAELI LAW CONFERENCE

The Law Society of Israel are holding a conference in Haifa in the month of August. The American Express and Swissair Companies have arranged two tours one from Monday, 22nd August to Tuesday, 6th September, the other from Monday, 29th August to Tuesday, 13th September, to coincide with the conference. Members who are interested in attending the conference should note that tour prices are as follows: 'A' grade hotels £184; 'B' grade hotels £164. The price includes air transportation from London Airport back to London Airport. Members wishing to make arrangements to travel should contact Felix O'Neill, Esq., Swiss Air Transport Co. Ltd., Grafton Buildings, 34 Grafton Street, Dublin 2. (Phone 78173).

SOLICITORS' BENEVOLENT ASSOCIATION

102nd Annual Report of the Association December 1965

The directors have pleasure in presenting their report for the year ending 30th November 1965 together with receipts and expenditure account for that period.

The directors extend their sincere sympathy to the relatives and friends of the following members who died during the year, namely: Mrs. Maureen A. Gallen, James Reilly, Charles Magwood, Desmond Early, Edward M. Fitzgerald, Thomas Hanafey, Francis S. Collins, Francis L. Scott, Rev. Arthur Cox, Owen Binchy, Richard Ryan, Cecil G. Stapleton and David R. Pigot. Both Mr. Stapleton and Mr. Pigot gave many years of devoted service as officers of the Association, being most regular in attendance at the monthly meetings. Their ever wise and helpful advice will not be easy to replace.

The number of annual and life members has fallen to a small extent and this is all the more distressing when it is noted that almost £4,000 has been distributed in relief which is the highest figure in over one hundred years.

The number of persons relieved is not unusually high but it should be noted that all applications are carefully considered and only the most deserving receive assistance. The changing cost of living has progressively necessitated an increase in the average grant including annuitants, who in recent years, receive an extra £25 at Christmas and in July each year.

An analysis of twenty recipients of grants made during the year shows as follows:

(a) Average age—61 years.
(b) Status—14 widows of solicitors; 3 solicitors; 2 solicitors' wives; 1 daughter of a deceased solicitor.
(c) Average income per annum £180 exclusive of Association's Grant.
(d) Ill-health—7.

In 1966 one must need pause to wonder how these once reasonably circumstanced members of the community can survive at an average age of 61 years on an average annual income of £3-9-2 per week! This should awaken those in the profession who have failed to join the Association to do so for the modest annual subscription of one guinea.

Were it not for the continued watchful activity of your directors on the finance committee in maintaining the income of our portfolio in these difficult times it would not be possible to maintain the average level of the grants.

To facilitate members to appreciate the directors' problems, particulars of one grant application, taken at random, are as follows: Applicant was aged 59 and the widow of a solicitor. One daughter just commencing in commercial life and residing with applicant, who herself was a shop assistant at £7 per week. No other income. Rent of flat £11 per month towards which daughter has just commenced to contribute. Rent, electricity and gas cost approximately £2 per week and taking everything into consideration applicant has £2-10-0 per week to live upon.

Once again attention is drawn to the possibility

that there are many deserving qualified persons whose plight has not been brought to the notice of the directors. Even though further demands may necessitate a realisation of some capital (a course which the directors would feel fully justified in taking) members are requested to bring every such case known to them to the attention of the directors.

The vote on a resolution to increase subscriptions (effective from 1967 inclusive) in the terms of the resolution printed earlier in this report may result in an easing of the general position.

"The secretary has recently written to all provincial directors requesting them in particular to seek new members in their area. A list of the provincial directors appears in the recent Annual Report which was sent to every solicitor on the rolls and the secretary would appreciate if members would co-operate with the provincial directors in every way possible."

Meetings of the metropolitan directors for the remainder of this year will be held on the following dates: 4th May; 8th June; 6th July; 5th October; 2nd November; 7th December; and application forms for grants are available from the secretary. These applications are dealt with promptly and cash grants are made of varying sums up to about £175 depending on circumstances. Grants have frequently been made to assist in the education of the children of applicants or to defray some special item of expense. The directors do not interview applicants or visit them in their homes.

"At the recent general meeting the following change of rule was adopted:

> Members of the Association shall have the option of becoming life or annual members. A payment of fifteen guineas shall constitute a life member, and an annual subscription (in advance) of two guineas, or in the case of apprentices and those admitted less than three years, half a guinea, shall constitute an annual member. An annual member may at any time constitute himself a life member by increasing his current year's subscription to the sum of fifteen guineas.

"One reason why this rule was not pressed forward until now was because of the laready poor response from the profession, but it is sincerely hoped that with the active support of the provincial directors and the members in their locality that the Association may experience a change for the better so that they can continue and increase the good work for what is a small but most deserving section of the community."

INTERIM AWARD OF DAMAGES

The following is an extract taken from a report which appeared in the *Daily Telegraph* on Thursday, 10th March 1966 under the heading "Lawyers Plan to Reduce Delays in Crash Claims".

Steps to reduce the delays of trials for damages arising out of road accidents are outlined in a report published yesterday by Justice, the all-party group of lawyers.

As an immediate measure the report recommends that trials should be split into two stages. The first stage would be held as soon as possible after the accident to decide who was responsible.

The court would then have power to make an interim award of damages. But the final assessment of damages would come at the second stage when the extent and effect of the victim's injuries were precisely known.

The report, prepared by a committee of practising barristers and solicitors and academic lawyers, says that the victim of a road accident might be 'at his wits end' to keep up mortgage instalments and to meet other family commitments while awaiting the trial.

Anxiety might induce him to accept a settlement for far less than he would have received if he could have afforded to wait for the court's award. A two-stage trial would avoid the hardship and inefficiency of the present system.

The time gap between the date of the accident and the date of judgment in the High Court varied from between about eighteen months and nine years. The majority of cases came to trial after about three years.

Some cases were delayed because of the difficulty in making a firm medical prognosis of the lasting effects the injuries were likely to have on the plaintiff. Memories of witnesses faded which made it more difficult for the judge to deduce who was to blame for the accident.

PROCEEDINGS UNDER THE SOLICITORS ACTS

By Order of the President of the High Court of 1st April 1966 the name Richard J. Elgee, Solicitor, George Street, Wexford, has been removed from the roll of solicitors and his bank accounts frozen.

By Order of the President of the High Court of

1st April 1966 Mr. Patrick J. Hennigan, Solicitor, Ballina, Co. Mayo, has been suspended until further Order and his bank accounts frozen.

LAND REGISTRY DELAYS

The following question was asked by Mr. Gerard Sweetman in the Dail:

"To ask the Minister for Justice when he expects the necessary buildings and staff to be made available to the Land Registry so that dealings can be completed within a reasonable time of lodgment."

The Minister for Justice replied as follows:

"As indicated in reply to a question on 1st December last, delays in the Land Registry are mainly due to the inability to recruit and retain the necessary technical and clerical staff.

"The over-all position continues to be difficult. A recent competition for posts as legal assistant failed to attract a sufficient number of qualified candidates, and I am at present considering what can be done to secure adequate legal staff.

"I expect that a sufficient number of clerical officers will be assigned to the Land Registry within the next month or so. Because of complications arising from a review of salary scales, it is unlikely that vacancies for draughtsmen will be filled for some months.

"All possible steps, including the working of overtime by legal, clerical and technical staffs, are being taken to reduce delays to a minimum.

"While the existing accommodation is not regarded as ideal for present requirements, it does not contribute in any significant degree to delays in the discharge of current business of the Land Registry. Arrangements to erect a two-storey extension over the Public Record Office building to provide additional accommodation for the Land Registry have been brought to an advanced stage and I am informed that the Office of Public Works hope to place the contract within the next month or two."

SOCIETY OF YOUNG SOLICITORS

An ordinary meeting of the Society of Young Solicitors took place on the 31st March 1966 in Buswells' Hotel, when Mr. Patrick Kilroy repeated his very absorbing lecture on Companies and Finance Legislation. There was a large attendance present and a very lively and penetrating discussion followed the lecture.

A lecture was given by District Justice Cathal O Floinn, President of the District Court, in Buswells' Hotel, Molesworth Street, on Thursday, 28th April.

THE LAND ACT AND THE LAND REGISTRY

The attention of members is drawn to the omission of appropriate certificates in the following applications by solicitors which compel the legal staff of the Land Registry to issue Requisitions which would otherwise be unnecessary. The cases are as follows

Responsibility Attaching to Undertaking

(a) Transmissions both on testacy and intestacy.
(b) Transfers which include charges. In this instance a certificate will be included in respect of the transferee but invariably no certificate in relation to the chargee is included.
(c) Settlements: where settlements create life estates, e.g. in favour of the settlor and/or his wife. Certificates in relation to such estates are very often omitted.

CASES OF THE MONTH

An action was taken by the National Union Bank of Cavendish Square, London, to commit Mr. Ellis Lincoln, a solicitor of the Supreme Court of Judicature and sole partner in the firm of Messrs Lincoln & Lincoln of Knight's House, Hatton Wall, E.C.1., to prison for the alleged breach of certain undertakings given to the Bank, or for leave to issue a writ of attachment.

Counsel for the Bank in addressing the Court stated (*inter alia*): "the jurisdiction of the Court is not limited to a solicitor's undertaking to hold money. The purpose of the jurisdiction is to enforce honourable conduct on the part of officers of the Court. It was not limited merely to ordering the fulfilment of the undertakings, but was unlimited. He submitted that one method of enforcing an undertaking by a solicitor, although not given to the Court but to a third party, was to make an order in a contempt of Court proceedings. The proper procedure was the issue of a writ of attachment, or a motion to commit. The Court could enforce its disciplinary powers by either proceedings. The fact that it was a managing clerk and not the solicitor who had given the undertaking was irrelevant." (In re Ellis Lincoln, a solicitor, *Times* newspaper, England, 9th March 1966).

Rights of Minority

A bank, formed in England in 1835, which had its head office in London and was a member of the committee of London clearing banks, had always been associated with Ireland; 72 per cent of its shareholders having registered addresses in Ireland and two-thirds of its business being carried on there. That had given rise to difficulties subject to the policies of English Chancellors of the Exchequer which differed sometimes from those of the Irish Republic. The Board of the Band therefore concluded that it would be best for the bank's business both in England and Ireland if the Irish part of the business were freed from that control and re-patriated to Ireland. As part of that process a scheme was formulated involving the division of the Bank's business into two, whereby the assets and liabilities attributable to the Irish business were to be transferred to a new Irish company the National Bank of Ireland, and the assets and liabilities of the English business would remain with the bank. The National Bank of Ireland would be acquired by the Bank of Ireland and the Bank would become a wholly owned subsidiary of the National Commercial Bank of Scotland. By a petition the Bank sought the Court's approval to the scheme which was opposed by the holders of just over 5 per cent of the issued capital on the grounds that the circular explanatory of the scheme did not disclose fully and fairly all material facts, particularly the value of the bank's assets and the amount of its liabilities and that where an arrangement under s. 206 of the Companies Act, 1948, was in essence a scheme of contract for the purchase by an outsider of all the issued shares of a company, the Court should not approve it unless the petitioning company prove, on full disclosure that the scheme was approved by 90 per cent majority referred to in s. 209.

Plowman, J., approving the scheme, said that the extent of the disclosure required must depend on the nature of the scheme. Here, the scheme was based on the withholding of exempt information and the evidence showed that the scheme was fair. Therefore it should be sanctioned. It should not be treated as a s. 209 case because that would impose a limitation or qualification either on the generality of the word "arrangement" in s. 206, or on the discretion of the Court under that section. The Legislature had not seen fit to impose any such limitation in terms and there was no reason for implying any order accordingly. (In re National Bank, *Solicitors' Journal*, 25/3/1966, vol. 110, p. 266).

Trade Dispute

In a case which came before the Court of Appeal in England, the Court was asked to consider conduct intended to procure a breach of contract with a third party; a *quia timet* injunction was refused in the High Court. Lord Denning, M.R., delivering the judgment of the Court of Appeal stated that an injunction pending the trial would be granted following the form set out by Lord Upjohn in A. T. Stratford & Son, Ltd. v. Lindley (1965) A.C. 269, 339, which governed this case, namely, restraining the defendants and each of them until further order from attempting (whether by themselves or their servants, agents or workmen or otherwise howsoever) to bring about a termination of contractual relations between the plaintiffs and the main contractors in breach of contracts made now or hereafter. (Emerald Construction Co. Ltd. v. Lowthian & Ors. *Solicitors' Journal*, 25/3/1966, vol. 110, p. 227).

Action against University Misconceived

An action was brought against the University of London by an examination candidate at the Intermediate and Final LL.B. degrees for negligently misjudging his examination papers and for a Mandamus ordering the University to award the plaintiff the grade at least justified.

The action was dismissed in the High Court on the ground of lack of jurisdiction to deal with a dispute of this kind, and an appeal was taken by the plaintiff.

The main ground of the appeal was that an unconditional appearance by the defendant had the effect of waiving any objections he could take to the jurisdiction of the Court.

The Court of Appeal, per Diplock, L. J., giving judgment said that the plaintiff sat for the examination in the Criminal Law, Trusts and Evidence papers of the LL.B. Degree of the University.

He received notice that he had failed in the Trust and Criminal Law papers, and he claimed that his failure was the result of negligence on the part of the examiners.

There was clear authority in R. Dunsheath Ex Parte Merides (1951 1 K.B. 127) that actions of this kind in question relating to domestic disputes between members of a university were judicible only by the Visitor to the university, and that the High Court had no jurisdiction to entertain them. Regulations and disputes as to the holding of examinations and the granting of degrees were matters exclusively within the jurisdiction of the Visitor to the university.

Thorn v. University of London (*Times* newspaper, 18th March 1966).

Acting for both Parties/Professional Negligence

An action, claiming damages for professional negligence was brought by the purchaser of a lease-hold interest against a solicitor who acted for vendor and purchaser.

After discussing the proposed transaction with the vendor and leaving a deposit of £100 with him, the plaintiff had an interview with the defendant and told him that he was anxious to get into the premises immediately to complete some repairs.

The defendant, in the presence of the plaintiff, phoned the vendor and upon the latter's instructions informed the plaintiff that he was free to take possession on payment of £100 balance and £38 costs.

The plaintiff paid the sum requested, entered into possession and spent about £1,000 on repairs. No contract had been signed and the defendant was then told by the vendor that he did not wish to proceed with the transaction.

The plaintiff's case against the defendant was that he was negligent in not warning him of the risks he took when he started the repairs before ensuring that there was a signed contract, and in failing to obtain from the vendor his signature to a contract at once.

The defendant replied that the plaintiff ought to have mitigated his damages specifically by bringing an action for specific performance against the vendor, on which he was bound to succeed.

The defendant further stated that he had advised the plaintiff as to his rights in the matter but the Court did not accept this evidence.

Under the circumstances the Court held that it was the plaintiff's duty to mitigate his damages and to act reasonably in doing so, but it had been said that the standard of reasonableness was not high.

The plaintiff in this case could not be held to blame because as soon as he could he took his affairs out of the defendant's hands and instructed other solicitors and thereafter proceeded to act on their advice.

The defendant claimed indemnity against the vendor as third party, but the Court found that no instructions as to permission to the plaintiff to take possession and do repairs were given by the vendor to the defendant. Further it was difficult to see how the defendant could claim indemnity from a client for his own negligence when dealing with another client of his, and accordingly the claim against the third party was dismissed.

Judgment on the issue of negligence was given against the solicitor. (Attard v. Samson, Poister, Third Party. *The Times* newspaper, 23rd March 1966).

STATUTORY NOTICE TO CREDITORS

(22 and 23 VICT. C.35 S.29)

Stuart v. Babington (1891) 27 L.R.I. 551

In considering the question of sufficiency of notice regard is had to the place of residence of the deceased and his position in life. In 1891 the Court practice was to direct publication "in two local papers, never less, and in one paper having a general circulation" (see above report at p. 557).

Since the 1920s the examiner's practice has been to direct publication in one local paper and one national paper, twice in each, allowing about one month from the first publication to send in claims. That, of course, is a *general* practice subject to variation either way. Because of extended commercial activity publication may be necessary in English or continental papers. On the other hand publication may be curtailed, e.g. a deceased small farmer in Glenmalure Valley. dead over six years —one publication in *Wicklow People* or *Independent* or *Press* (but not *Times*) might suffice. The Schedule of Assets is used as a rough guide. Because of its limited circulation the examiner never directs publication Iris Oifigiuil.

The cost of publication cannot be used as a factor. If cost has gone up so has the value of assets. This argument was used, unsuccessfully, by auctioneers seeking a higher percentage on sales of properties. The Statutory Notice is for the protection of personal representatives. Accordingly they should, after perusal of the deceased's papers and accounts (if any), decided the scope of publication—if it is reasonable the Court will, no doubt, uphold them.

If an estate is being administered in Court the assets (often the liabilities too) must be substantial and also the status of the deceased—publication is measured accordingly.

In administration outside the Court—particularly in rural areas with limited assets and liabilities—the personal representative should not consider himself bound too rigidly by the Court practice. In general such publication should be less than the general rule in Court—it is all a question of what is reasonable notice and to give a yardstick on that would be impossible.

COURT OF THE IRISH LAND COMMISSION

Land Acts 1923-1965

Distribution of Purchase Money

The Minister for Lands, with the consent of the Judicial Commissioner, has made Orders pursuant to Section 15, Land Act, 1965, authorising all Examiners of the Land Commission to exercise the powers and functions of the Judicial Commissioner and the Land Commission in relation to the distribution of Purchase Money (including the certifying under sub-section (2) of Section 5 of the Land Act, 1923, of sums out of the Costs Funds established under that section).

Commencement of Title

The Judicial Commissioner has directed the Examiners of the Land Commission pursuant to Section 16, Land Act, 1965, to accept as the period of commencement of title which the owner, tenant or other claimant shall be required to deduce a period of not less than:

(a) Twelve years beginning on the date of a conveyance, transfer or assignment for valuable consideration of the land or holding, and ending on the date on which the land or tenant's interest therein vested in the Land Commission, or

(b) Thirty years ending on the date on which the land or tenant's interest therein vested in the Land Commission,

whichever is the shorter.

Dated this 4th day of March 1966.

M. GAVAGAN
Secretary

THE REGISTRY

REGISTER A

Solicitor required for well established busy practice in Leinster, within radius of sixty miles from Dublin. Good salary with prospects of succession. Present owner will continue. Reply to Box A234.

Solicitor, Kampala, Uganda—Well-known firm of solicitors with Irish partner require assistant solicitor with three to five years' general experience and preferably a university degree. Initial term three years: salary £2,000 with 14 days local leave per year and one month per year of service paid leave at end of term. Fare paid each way London-Entebbe, and accommodation supplied. Partnership at end of term considered. Interview Dublin. Interested applicants please write to Box A235.

REGISTER C

Browne—Martin Browne, late of Killenure, Dundrum, Co. Tipperary, and formerly of 44 Harrington Street, Dublin, and 10 Windsor Terrace, Dun Laoghaire, died on the 25th Day of March 1966. Will any person knowing the whereabouts of a Will made by the above deceased, please communicate with: Matthew MacNamara, Solicitor, Cashel, Co. Tipperary.

Will—Miss Margaret (Maud) Somers, late of Highfield Hotel, Highfield Road, formerly of 3 Templemore Avenue, Rathgar, and 2 Ashdale Road, Terenure, Dublin, who died on 14th March 1966. Will any solicitor having information as to a Will of above-named deceased please communicate with: J. G. O'Connor & Co., Solicitors, 9 Clare Street, Dublin 2.

For Sale—10 volumes (79-88) *The Law Journal* 1935-1939. Well bound, good condition, first offer accepted. Box C186.

REGISTRATION OF TITLE ACTS, 1891 and 1942
Issue of New Land Certificate

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

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

Dated this 6th day of May 1966.

D. L. McALLISTER
Registrar of Titles

Central Office,
Land Registry,
Chancery Street,
Dublin.

SCHEDULE

1. Registered Owners James and Ellen Ward. Folio number 862. County Meath. Lands of Tullaghanstown in the Barony of Navan Upper containing 59a. 3r. 2p.

2. Registered Owner John Dillon. Folio number 13602. County Cavan. Lands of Muff in the Barony of Tullygarvey containing 24a. 0r. 34p.

3. Registered Owner Thomas Egenton. Folio number 4317. County Meath and Folio number 5106 County Westmeath. Lands of Tubbrid containing 11a. 1r. Op. and Lands of Hammondstown and Tonaghmore containing 18a. 2r. 27p. both situate in the Barony of Fore and Counties of Meath and Westmeath respectively.

OBITUARY

Mr. Edward Treacy died on the 24th February 1966 at his residence, Ard-Caoin, O'Connell Avenue, Limerick.

Mr. Treacy served his apprenticeship with the late Mr. John J. Dundon, 101 O'Connell Street, Limerick, was admitted in Trinity sittings 1929, and practised at 92 O'Connell Street, Limerick.

He was a member of the Council of the Society as provincial delegate for Munster from 1957 to 1964.

Mr. Edmund A. Corr died on the 25th February 1966 at St. Joseph's Hospital, Ballina, Co. Mayo.

Mr. Corr served his apprenticeship with Mr. Patrick T. J. Mulligan, Ballina, was admitted in Michaelmas sittings 1924, and practised at Ballina, Co. Mayo, under the style of Messrs Rutledge and Corr.

INDEX TO VOLUME 59

Abolition of 25 per cent *ad valorem* stamp duty ... 18
Absolute Liability in Road Accident Cases 98
Acceptance of Lodgment—Costs 62
Accountant's Certificates 49, 76, 85, 98
Acting for both parties 107
Action against University 106
Action Compromised—Practice in 9
Adjudication Office 8
Admissibility of Evidence—Agent Provocateur 80
Admission Ceremony 5, 53
Advertising 10
Advocate's Immunity 71
Agency 30
Agency—Allowance 38, 62
Agency—Insurance included in leases 2
Agent's—Authority 57
Agent's—Building Societies 13
Agricultural Credit Corporation—Loans 63
Amalgamation of legal profession 78
Ancient Deeds 19
Apprentices—Number of 26
Army Legal Service 10
Assessment of damages—Duty to mitigate loss 46
Assignment of copyright 69
Bank—Meaning of 14
Banking business 28, 55
Bar Associations 62
Bar Association, Solicitors 2
BIRPI 28
Bischoff v. Sams (1965) 50 D.L.R. (2nd))179, A.S. Court 46
Building contracts. Standard form of 61
Building Societies—Agents 13
Burnett v. Westminster Bank (1965) 3 All E.R. 81 46
Caravan Site—Condition in Licence 70
Car Parking 103
Carter v. Butcher 9
Cases of the month 8, 19, 28, 45, 56, 69, 105
Certificate for stamp duty purposes 20
Certificates—Section 6 19
Certified copies of judgments 18
Chaplin v. Leslie Frewen (Publishers) Ltd. 1965, 3 All E.R. 764 69
Cheques — contractual — conditions — written on cheque book 46
Circuit and District Courts, Dunlaoire 62, 75
Circuit Court Orders under section 52 of the Registration of Title Act, 1891 43
Circuit Court Rules 39
Civil Service—vacancies in 34
Clearance Area—Housing 91
Client advised to sue solicitors 59
Client's right to documents on change of solicitor ... 49
Collision of ships—apportionment 45
Collusive Transactions 76
Commissioners of Charitable Donations and Bequests —Meetings 27, 63, 102
Committees of the Council 1965-66 54
Compensation Fund 3, 76, 85
Compensation Fund Committee 54
Compromise of Action—Practice 9
Compulsory Purchase Area 90
Condor v. The Barron Knights Ltd. (1966) 1, W.L.R. p. 87 91
Conflict of Interests 14
Contentious Business—Gross sum agreement 10
Contracts—exchange of (Conveyancing and Practice 15, 26
Contract and Frustration 91
Contract—intention to create legal relations 45
Correction 54
Correspondence 71, 91
Costs—acceptance of lodgment 62
Costs—including sum for taxation 57
Costs—legal 4
Costs—Solicitor Trustee 10
County Clare Law Association 76
County Kerry Law Society 62
County Kildare Solicitors' Bar Association 77
County Laois Solicitors' Bar Association 89
County and City of Limerick Sessional Bar Association 62
County Tipperary and Offaly Bar Association 56
Court of Examiners 54
Court Officers and Costs Committee 54
Courts—Inferior and Non-contentious business 86
Courts—Superior 86
"Court Rate" of Interest 57
Criminal Injuries Compensation Board 90
Criminal Justice (Legal Aid) Act, 1962 79
Dail Eireann, Legal members of 6
Death Duties 16
Defendants, provision for 70
Disciplinary Committee 54
Disciplinary Committee—alteration of finding 56
Disciplinary Committee—vacancy 14
Disciplinary Inquiry, Legal representation 37
Diseases of Animals Bill, 1965 46
District Court. Dun Laoire 75
Documents, clients' and solicitors' rights 49
Driving without reasonable consideration 29
Dublin Metropolitan District Courts 7
Dublin Solicitors' Bar Association 56
Duty of Disclosure 11
Duty of Solicitors in Legal Aid Cases 59
Easement—repair of hedge 29
Esdell Caravan Parks, Ltd. v. Hemel Hempstead Rural District Council (1965) 2 All E.R. 1011 70
Estate Agent's Authority 57
Estate Duty—Passing of Property 58
Evidence—Admissibility of 80
Evidence—Contemporaneous statement by plaintiff to third party 45
Evidence—duty of prosecution 30
Evidence; postage 9
Examination results 15, 44, 98
Examinations 1966 54
Excepted Body Status 3
Exchange of contracts (conveyancing practice) 15, 26
Exchange—Student 11
Fees—Counsel's receipt for 20
Finance Act, 1965 16
Finance Committee 54
Form of certificate for stamp duty purposes 20
Free Legal Aid 79
Fusion of Profession 86, 99
General Meeting 49
Government, legal members of 7
Gross sum Agreement—Contentious business 10
Hale v. Shea (Inspector of Taxes) (1965) 1 All E.R. 155 21
Hill v. Harris (1965) 2 W.L.R. p. 1331 20
Horan, I.R. 1964, p. 263 57
Housing Authorities (loans for acquisition or construction of houses) (Amendment) Regulations 1965 28
Housing Bill, Correspondence 71
Housing (Clearance Area) 91

Housing Loans 63
Immunity of advocate 71
Income Tax 16
Income Tax Bill, 1964 18
Index of Statutory Instruments 31, 92-96
Index to Superior Court Rules 7
Industrial and Commercial Property 46
Inferior Courts and Non-Contentious Business 86
In re: Horan, I.R. 1964, p. 263 57
In re: Kilpatrick's Policies Trusts, Kilpatrick anor. v. I.R.C. 58
Insurance—cover for houses left unfurnished 43
Insurance—exception clauses as to condition of motor vehicle 29
Insurance—tied agency 13, 22
Interest on Judgment 55
Interim Award of Damages 104
International—Bar Association 77
International—Civil Aviation Organisation 28
International—Faculty of Comparative Law 77
International—Society for Military Law and Law of War 60
Interviewing opponent's witness 26
Israeli Law Conference 103
Joint Seminar Weekend 80
Jones v. Price (1965) 3 W.L.R. 296; (1965) 2 All E.R. 625 29
Judgments—certified copies of 18
Jury service 67
Kay, K. Henry (deceased) (1965) 3 All E.R. 742 70
Kelly v. McCurdy (1965) N.I., p. 124 79
Land Act, 1965 ..... 2, 18, 50, 63, 78, 89
Land Bond Order, 1966 90
Landlord and Tenant Commission 98
Land Charges 89
Land Commission 82, 108
Land Purchase Acts Rules, 1965 22
Land Registry—High Court Applications 27
Land Registry Delays 106
Larcency—whether finder a bailee 29
Lavan v. Bridget T. Walsh, I.L.T.R., vol. 99, p. 147 71
Law and Another v. 58
Law and Another v. R. Roberts & Co. (2) I.R. 1965 58
Law Directory, 1966 77
Law Directory—U.S. 19
Law of Stamp Duties 83
Leasehold Interest on Registered Land 98
Lease—Incidence of negotiation fee 25
Lease—by Solicitor-Lessor 59
Legal Aid 2, 59, 79
Legal Costs 4
Legal Delay and Law Reform 81
Legal Education and Training 25
Legal Members of—Dail 6
Legal Members of—Government 7
Library Acquisitions 10
Lincoln, in re 105
Liverpool Corporation v. T. & H. R. Roberts and Another, Garthwaite, Third Party (1965) 1 W.L.R. 938 30
Local Bar Associations 62
Mayo Solicitors' Bar Association 44, 77
McCallum v. Country Residences, Ltd. 10
Meaning of Bank 14
Meath Solicitors' Association 55, 63
Medico Legal Society of Ireland 88
Meetings of the Council 10, 13, 25, 37, 48, 61, 75, 85, 97
Missing link 62
Negligence—Professional 14
Negligence—Solicitors' 19
Negotiation fee, lease 25
New Forest Estate Company v. The Revenue Commissioners I.L.T.R. Vol. (XCIC) p. 78 20
Notary Public 14
Number of Apprentices 26
Obituary
Binchy, Owen 73
Coleman, John G. J. 23
Connelly, John F. 34
Corr, Edmund A. 108
Cox, Rev. Father Arthur 23
Downing, Charles J. 84
Gallagher, Patrick 84
Hickey, James J. 84
King, Daniel P. 34
Kirwan, Laurence 74
Kirwan, Timothy 84
MacGinley, Mrs. Monica 74
O'Dwyer, Patrick M. 73
O'Malley, Desmond J. 73
O'Shaughnessy, Kevin J. 34
Pigot, David R. 34
Ryan, Richard 73
Scott, Francis L. 23
Simon, Joseph D. 23
Stapleton, Cecil G. 34
Treacy, Edward 108
Occupational Injuries Bill, 1965 48
Occupation of premises defined 20
Oireachtas, debate 7
Ordinary General Meetings 1, 49
Package Divorce Service 56
Parliamentary Committee 54
Parliamentary Proceedings 78
Passing of Property—Estate Duty 58
Pawley v. Sharldall (1965) 3 W.L.R. p. 396 29
Payment of purchase price in Land Bonds 64
Personal injuries—assessment of punitive damages 46
Pigott Structures v. Keillor Construction Co. (1965) 50 D.L.R. (2d) 97, Ontario C.A. 46
Planning appeals, procedure 37
Position Vacant 78
Postage—Evidence of 9
Practice—comprise of action 9
Preliminary Examination Standard 97
President and Vice-Presidents 49
Privileges Committee 54
Procedure (Third Party) 79
Proceedings against Solicitors 23, 104
Professional—duty of disclosure 11
Professional—negligence 14, 107
Professional—privilege 74
Program in American Law 90
Property Sales—Stamp duty on 79
Pros and Cons of Fusion—I 86
Pros and Cons of Fusion—II 99
Provision for dependants 70
Re a solicitor (S.J.)) (Vol. 109) p. 853 57
Receipt for Counsel's fees 20
Receiving Stolen Property 58
Reg. v. Froggett, *The Law Times* (1965) (Vol. 236) 59
Regina v. Murphy (1965) N.I. p. 138 80
Reg. v. Oliva (1965) 1 All E.R. 116 31
Registrar's Committee 54
Registration of Title Acts, 1891 and 1942 11, 21, 33, 60, 73, 84, 96, 108
Registry 11, 23, 45, 60, 73, 83, 96, 108

Retainer in criminal matter 26
Retiring partner as consultant—tax liability 20
Richley v. Faull (1965) 3 All E.R. 109 30
Rights of Minority 106
Road Traffic Acts, 1933-61 39
Rondel v. Worsley (*Times* 22/12/1965) 71
Schuster v. Martin (1965) 50 D.L.R. (2d) 176 ... 46
Secretary/Solicitor 43
Section 6 Certificates 8, 19
Slieve More (1965) 2 Lloyd's Rep. 138 45
Social Welfare (Occupational Injuries) Bill, 1965 39-42, 48
Society of Young Solicitors 6, 22, 33, 77, 89, 105
Solicitor—acting as principal 70
Solicitor—Costs while acting as Trustee 10
Solicitor—Disciplinary Committee 56
Solicitor—Duty in Legal Aid Cases 59
Solicitor—Undertaking 76, 105
Solicitors' Accounts (Amendment) Regulations, 1965 15
Solicitors' Accounts (Amendment) Regulations, 1966
Solicitors' Act, 1954 (Apprenticeship and Education) (Amendment) Regulations, 1965 42
Solicitors' Benevolent Association 2, 50, 103
Solicitors' Golfing Society 27, 44
Spittle v. Spittle (1965) 1 W.L.R. 1156 45
Stamp Duties 17
Stamp Duty on Property Sales 79
Standard Conditions of Sale 62, 76
Standard Form of Building Contract 86
Standard of Preliminary Examination 86
State v. Judge Durean (I.R.L.R., Vol. XCIX, p. 107) 20
Statutes of the Oireachtas, 1965 92
Statutory Instruments—Index 31, 92-96
Statutory Notice to Creditors 107
Stolen Property—receiving 58
Student Exchange 11
Succession Bill 2, 51
Superior Courts 86
Tax liability of consultant partner 20
Thompson v. Nixon (1965) 1 All E.R. 741 29
Tied Insurance Agency (conveyancing practice) 13, 22
Town Planning Appeals 38
Trade Dispute, ... 30, 106
Trade Mark Agency 10
Trade Union Act, 1941 3
Transaction (Collusive) 76
Tynan v. Chief Constable of Liverpool 30
Undertaking by Solicitor 76
United Dominions Trust Ltd. v. Kirkwood, *Law Times* 23/7/1965 29
Unqualified person acting as solicitor 8
Unqualified person debt collection 76
U.S. Law Directory 19
Untaxed Bill of Costs, including sum for taxation ... 57
Vacancies in the Civil Service 34
Vacant Position 78
Valuation for rating 68
Weekend Seminar in Mullingar 102
Wheat v. Lacon & Co. (1965) 109 S.J. 334; 4 C.L. 524 .....
Workmen's Compensation 65
Yeoman Credit Ltd. v. Birmingham Commercial Motor and Bodyworks Ltd. 9
Zambia—legal appointments 60

GAZETTE

Vol. 60
No. 1
May
1966

THE INCORPORATED LAW SOCIETY OF IRELAND

President
ROBERT McD. TAYLOR

Vice-Presidents
PATRICK O'DONNELL
JAMES R. C. GREEN

Secretary
ERIC A. PLUNKETT

CONTENTS

Meetings of the Council 1
The Ordinary General Meeting ... 2
Complaints 5
Reciprocity in Practice 5
Masters and Apprentices 7
Society of Young Solicitors 7
"The Law and the Profits" 8
Correspondence 8
Rules of the Superior Courts 10
Case Law 10
Positions Vacant 12
Library Acquisitions 12
Interim Report of Working Party on Landlord and Tenant Law ... 14
The Registry 15
Obituary 15
Coming Events 15
Patent Act 15
Landlord and Tenant Bill 1965 ... 15
Mayo Solicitors Bar Association ... 16
Irish Society for the Prevention of Cruelty to Animals 16
Registration of Title 16

MEETINGS OF THE COUNCIL

April 21st: The President in the chair, also Messrs. R. McD. Taylor, Patrick O'Donnell, Niall S. Gaffney, Peter D. M. Prentice, Desmond Moran, Gerard M. Doyle, Thomas A. O'Reilly, Desmond Collins, Joseph P. Black, Thomas J. Fitzpatrick, W. A. Osborne, John Maher, Daniel I. O'Connor, P. C. Moore, Rory O'Connor, Thomas H. Bacon, James R. C. Green, G. G. Overend, George A. Nolan, Gerald Y. Goldberg, T. V. O'Connor, John J. Nash, James W. O'Donovan, Gerald J. Moloney, Peter E. O'Connell, Eunan McCaron, Francis J. Lanigan, Reginald J. Nolan, John Carigan, Patrick Noonan, J. Foley, Richard Knight.

The following was among the business transacted:

Applications under the Land Act 1965

Members enquired whether an additional fee ought to be charged by solicitors in connections with applications to the Land Commission required by the Act. The Council are of the opinion that no further charge should be made at present and that the business should be treated as covered by the commission scale fee.

Income Tax—assessments on solicitors under Section D

A member enquired whether the proper basis of assessment of professional earnings under Schedule D is on the costs earned or costs received basis. The Council are of the opinion that while a number of Inspectors of Taxes will accept returns on the baisis of costs received, or costs furnished, this appears to be concessionary.

Situation of Estate Duty Office

The Counci were informed that it is proposed to transfer the Estate Duty Office from St. Stephen's Green to Griffith Barracks, and it was decided to make immediate representations to the Department against this proposal, on the ground of the consequent inconvenience to solicitors and their clients. The Society have proposed to the Department that if a change is necessary the Estate Duty Office should be located in the Sugar Company Building in Lower Leeson Street or in Mespil House, Mespil Road.

THE ORDINARY GENERAL MEETING

An Ordinary General Meeting of the Society was held at the Library, Solicitors' Buildings, Four Courts, Dublin 7, on Thursday, 19th May, 1966 at 2.30 o'clock.

The notice convening the meeting was taken as read.

The Minutes of the last Ordinary General Meeting held on 18th November, 1965, were read, confirmed and signed.

Pursuant to Bye-Law 28 the Chairman nominated the following members as the scrutineers of the ballot for the election of the Council for the year, 1966-67: J. R. McC. Blakeney, Thomas Jackson, Brendan P. McCormack, Roderick J. Tierney and Alexander J. McDonald.

The President addressed the meeting as follows:—

Ladies and Gentlemen,

Before I deal with the business of the Society, I would like to refer to the loss which the profession has sustained through the deaths of the following:—

Mr. Desmond J. O'Malley of Limerick;

Mr. Richard Ryan of the firm of Messrs Arthur O'Hagan & Son, Dublin;

Mr. Patrick M. O'Dwyer of Ballyhaunis;

Mrs. Monica McGinley of Ballyshannon, Co. Donegal;

Mr. Laurence Kirwan of Wexford;

Mr. Charles J. Downing of Tralee, Co. Keery: member of the Council of the Society from 1952 to 1960 and Vice-President for the year 1956-57;

Professor Patrick Gallagher of Galway;

Mr. Timothy J. Kirwan of Dublin;

Mr. John S. Morris of the firm of Messrs Porter Morris & Co., Dublin;

Mr. James J. Hickey, a partner of our colleague Mr. Thomas O'Reilly, of the firm of Messrs. Hickey & O'Reilly, Dublin.

Mr. Edward Treacy of Limerick;

Mr. Edmund A. Corr of Balilna, Co. Mayo.

So far, this has been an eventful year. The solicitors profession has been at times the target for unfair and unjustified poblicity, a fact which has caused the Council considerable concern. For some time past we have realised that our relations with the public conveyed through the Press have not been presented in a favourable light and that accordingly the standing of the profession has suffered. For this reason we have at present under serious consideration the appointment of a suitable person who will keep the public in touch with what is happening and thus present a true picture of the profession and what it stands for. It cannot be emphasised too strongly that the profession itself has seen to it that no member of the public will suffer financial loss as a result of the default of any Member of this Society.

Law Reform

We are at present in the throes of Legal Reform. This is a matter which was long overdue and which is therefore to be welcomed. In various speeches which I have made since I took office I have stressed the desirability of prior consultation before the introduction of new legislation. Surely the practical knowledge and long experience of members is entitled to some consideration and would be of great value in the framing of such legislation. Your Society has indicated over and over again that such is readily available. In those few cases where it has been availed of I think I can claim with confidence that much better legislation has resulted and many pitfalls have been avoided. The Succession Act and the Local Registration of Title Act await the fixing of the date upon which they are to come into force. I would appeal to the Minister not to fix the date until he is fully satisfied that the machinery exists through the organising of departments and the training of staffs to make the Acts work smoothly and thus avoid exasperating delays in the carrying out of legal transactions. The Suc-

cession Act as passed is vastly different in form to that of the Bill as introduced. This is an example of what can be achieved by intelligent public criticism. In passing may I say that I welcome the abolition of the law of primogeniture but I am at a loss to understand why it was found necessary to alter the law relating to the execution of Wills which had worked so well and for so long. With regard to the Registration of Title Act; this is a very far-reaching and ambitious piece of legislation.

In view, however, of the delays already being experienced in connection with Land Registry dealings, due in large part to lack of accommodation and scarcity of trained personnel, I cannot for the life of me see how the Act can be made to work unless steps are taken at once to recruit and train staff and to extend the accommodation. The coming into force of the Act should be deferred until both these matters have been completed.

Fees

Recently and without prior warning the profession found itself faced with new Fees Orders resulting in increases of as much as one hundred per cent. in the fees payable to the State on the institution of proceedings and in Land Registry proceedings. Basically this is an agricultural country and most of the land is held by the owners by virtue of the Land Acts.

Dealings with this land are necessarily within the province of the Land Registry and it is the expressed intention of our legislators that all land will be registered there in the not too distant future. To have increased therefore all the fees payable in the Land Registry in such a manner and, in my opinion, without justification, is a matter which affects vitally the commercial life of the community and one of which most of that community is, I am satisfied, quite unaware. The effect of the provisions of the Finance Act 1965 and of the recent Land Act are only now being felt by the profession and by the public. Amendment of many of the provisions of both Acts is called for and will, I trust, not be long delayed. I may say that a wachful eye is kept by Special Committees of the Society on all legislation introduced. There is, however, a limit to what these Committees can achieve but I would like to pay public tribute to the vast amount of work they do and the time they spend purely volunatrily and often without recognition or appreciation.

Legal Education

Legal education is another matter receiving careful attention from your Council. That the present system leaves a lot to be desired is fully recognised. At the moment a sub-Committee appointed by the Council is meeting a similar sub-Committee appointed by the Bar Council to discuss ways and means whereby a common programme for both professions, at least to a certain stage, can be worked out. Apart from this, the whole question of legal education is under review. We are living in an age of specialisation and accordingly the work of the family solicitor is becoming more and more difficult. This fact is recognised both by the Society, its lecturers and examiners, and it is hoped that a way may be found whereby a newly admitted solititor will be equipped in the future with a far greater practical knowledge of the matters involved in the everyday practice of his profession than is the case at present. In this connection I feel I should refer to the Society of Young Solicitors which forms a very welcome adjunct to the efforts of the Society and its Council. Among its other activities it holds a series of lectures on new legislation and also on such varied subjects as Solicitors Accounts, Death Duties, the organisation and running of a solicitor's office, etc. Recently, in conjunction with the Provincial Solicitors Association it organised a most successful Seminar in Mullingar. All who attended were loud in their praise of the excellent manner in which the lectures were arranged and delivered, the efficiency and thoroughness of the organisation and the great benefit which resulted from the group discussions and the questioning which followed the lectures. With such enthusiasm and enterprise being displayed by its younger members the profession need have no fears for the future.

Jurisdiction

The increased jurisdiction of the District and Circuit Courts has, I am aware, been the subject of an inquiry by a Committee set up for the purpose. I understand that a report has been made but nothing definite has yet been decided upon. It seems obvious, however, that substantial increases will be made in the jurisdiction of both Courts. I trust that in order to avoid what has happened in the past no change will be brought into force until such time as necessary changes in the rules and scales of costs have been made to take effect at the same time. Other matters which I am aware are under discussion and in respect of which legislation is contemplated are such and the principle of Absolute Liability at Common Law and, of course, there is at present before the Dail the new Landlord and Tenant Bill. About the former I do not propose to com-

ment further at this stage save to say that both are receiving careful consideration by Committees set up by the Council. The latter, however, seems to be rather like the Curate's egg—good in parts! It displays, however, a trend which I have found it necessary to comment on and to criticise on a number of occasions since I became President, namely, the transfer of power away from the Courts and into the hands of permanent officials. The independence of our Judiciary and of the Courts over which they preside is something of which we are justly proud.

Here let me depart from the text of my speech for a few moments to tender my most sincere apologies to the members of our Judiciary for the uncalled for attack made recently upon them by a member of the profession. Making all due allowance for the fact that a body of students comprised the audience, the language used was so intemperate as to verge upon vulgar abuse. An individual is entitled to hold and voice his or her opinion but I would have thought that a trained lawyer would have learnt to express that opinion without being offensive to a body debarred from controversy and denied the right of reply. I feel I cannot emphasise too strongly that the views expressed were those only of the individual concerned and are entirely repudiated by your Council, this Society and its members.

It is a matter of grave concern for every citizen that a significant feature of recent legislation is the taking away from the Courts and into the hands of officials, no matter how competent, matters affecting the material welfare and the freedom of the individual. As I have said earlier, reform of the law is to be welcomed but I do urge the Minister to afford at least a reasonable breathing space to enable us to assimilate the changes which have taken place and in many cases to unlearn what has been the practice and procedure of a legal lifetime. At the present time we are experiencing a rush of students seeking to embark upon legal careers. If this is to continue for any lenght of time it could only result in serious overcrowding in the profession with all its resulting hardships. I do therefore want to issue a warning to those parents whose children may be contemplating taking up law that the profession offers no easy way of life and that its members are confined to the Republic in the practice of their profession.

Delay in Government Departments

I and my fellow members are only too well aware of those exasperating delays in various Government departments which make life so difficult for all of us. Representations on these matters are being made constantly and interviews taking place with departmental heads. It is clear, however, that inadequacy of trained staff is a main factor and that this results from two causes, namely, the inadequacy of remuneration provided by the Department of Finance and the drain away to more remunerative employment in commercial fields.

Standard Conditions of Sale and Building Contracts

During the past six months standard conditions of sale relationg both to sales by private treaty and public auction have been introduced. The copyright of these is held by the Society. They have proved generally satisfactory but members views as to any desireable amendments are invited and will be considered when printing the 1967 edition.

A Committee of the Council has had under consideration a standard form of building contract for use by the profession.I am aware that in the past advantage was taken of boom conditions to impose restrictive conditions on purchasers both as regards title and the normal warranties and conditions as to workmanship and materials. A standard form of building contract has now been drawn up and will shortly be available to members of the Society and is recommended for general use. I hope that practitioners will adopt it.

Benevolent Association

There is one matter to which I must refer and that is to appeal to all of you to give your loyal support to the Benevolent Association. The work of this Association is far too seldom publicised. The help given to those less fortunate members of the profession, their widows and relations through the medium of the Association reflects the greatest credit upon those devoted and dedicated members who administer its funds. The numbers of members of the Society who do not subscribe to the Benevolent Fund is far too large and I feel sure that if it is only brought to their notice the really charitable work that is being done they will no longer defer becoming subscribers. In this connection I would appeal to the Secretary of each Bar Association to endeavour to ensure among his members 100 per cent membership of the Benevolent Association.

Bar Associations

Although I have been in office only a matter of five months, already I have seen enough of the

work being done by local Bar Associations to make me realise more than ever what an essential part they play in our professional life. I know how much your Council appreciates the advice and opinions and the constructive criticism received from this source. In addition, they foster among their members that spirit of comradeship and goodwill which makes professional life so much more pleasant and worthwhile.

Conclusion

Of necessity I have dealt very briefly with matter which affect us all. I hope, however, I have said enough to reassure you that the members of your Council are fully alive to the difficulties which lie ahead. For my part I will do my best during the remainder of my term to carry out my duties in the best interests of the profession. In doing so I have the great advantage of having the support of two excellent Vice-Presidents, Mr. Patrick O'Donnell, T.D., and Mr. James Green backed up by a loyal Council. The encouragement and assistance given by our Secretary Mr. Eric Plunkett is beyond praise and I know I can rely upon him and his staff for its continuance during the remainder of my year.

A discussion followed on the proposed Accounts Regulations and a further report thereon will appear in the next issue of the GAZETTE.

COMPLAINTS

The Society in the ordinary course receives a number of letters from clients with complaints about solicitors, and has a settled procedure for dealing with them.

It is better, in the interest of clients and their solicitors, that complaints should be dealt with in this way rather than by representations to Government Departments and outside bodies, who have not the advantage of knowing the particular circumstances of a solicitor's practice.

The great majority of such letters either disclose no reasonable cause for complaint, or make charges which are found unsubstantiated as a result of the Society's inquiries.

The practice of the Society is to sent a copy of the letter of complaint to the member concerned, even where it seems to disclose no reasonable cause of complaint. In such circumstances the member is asked for his comments and normally a copy of his reply is sent to the Society's correspondent.

The attention of members is drawn to the fact that the issue of such a letter does not mean that the matter has been prejudged in any way, and that the object of the Society is to obtain sufficient information to enable the Society to answer the complaint, and, where appropriate, to clear the member concerned from any unjustified accusation.

Where, as happens in the majority of cases, there is no question of misconduct the matter is dealt with by the Society's secretariat without reference to the Council or any Committee.

In cases in which, having regard to all the circumstances and the correspondence, there appears to be an unsatisfied cause for complaint the matter is referred to the appropriate Committee of the Council.

RECIPROCITY IN PRACTICE

Occasionally the Society receives enquiries from members as to the possibility or otherwise of solicitors who qualify and are admitted to the roll of solicitors in Ireland practising abroad. Queries most often raised refer to Australia and Canada. From information supplied to the Society from the appropriate authorities the following information is available :—

In Western Australia a person admitted as a solicitor in Ireland is not eligible for admission unless he shall qualify or further qualify in Western Australia, nor is he exempt from taking the examination of the Barristers Board of Western Australia. In South Australia an applicant who has been admitted as a solicitor of the Courts in the Republic of Ireland would not be able to rely on that qualification to support his admission as a practitioner. If, however, he has also been called to the English Bar or admitted as a solicitor of the Supreme Court of Judicature in England, that qualification will make him eligible for admission. Supreme Court Examination Rules, 1935, which were revoked by the Supreme Court Admission Rules, 1955-62, did provide for the admission of a person who had attained the age of twenty-one years, and was either a natural born or naturalized British subject, but who was a member of the Bar of the Irish Free State or had been admitted as a solicitor of the Supreme Court of the Irish Free State. It may well be that credit would be given by the University of Adelaide to an Irish solicitor for examinations passed by him in Ireland but this is a matter in which the Academic Registrar of the University of Adelaide has final jurisdiction.

The Legal Practitioners Act, 1955 and the Legal Practitioners Rules govern the position in Tasmania. Sections 8 and 9 of the Act deal with the admission of barristers and solicitors from

outside Australia. Section 8 is confined to the admission of barristers entitled to practise in the High Court of Justice in England, Northern Ireland and Scotland. Section 9 relates to the admission, subject to compliance with certain conditions, of practitioners of Superior Courts of other parts of Her Majesty's dominions. As Ireland is not part of Her Majesty's dominions the section can have no application to Irish practitioners; accordingly there would appear to be little possibility of entering the roll of solicitors without starting legal education *de novo*. Having made enquiries regarding the position in New South Wales we have been informed that persons who have been admitted as solicitors of the Supreme Court of England, or Northern Ireland or who have been admitted as solicitors in Scotland are eligible for admission in that State without further examination or period of articles or clerkship. Such an application cannot be made until the intending applicant has been resident in the State for at least three years. In Victoria an Irish solicitor (or barrister) may be admitted to practice on complying with the Rules of the Board of Examiners for barristers and solicitors. Three months' notice is required and the procedure is set-out in the Rules of the Board referred to. The Rules state that three months notice must be given and qualification proved by producing the appropriate certificates. A fee of £65 is also payable. Points which cause difficulty are mainly :—

(a) applicant must establish that he is a British subject;
(b) he must be vouched for by two barristers and solicitors of the Supreme Court of Victoria. If he knows no such persons, a certificate as to character from the persons with whom he had been in practice are usually accepted as sufficient;
(c) admission days are the first day of every month except January, February and one of the winter months, usually July.

Qualification as an Irish solicitor does not entitle a person to any special consideration under the Practitioners Admission Rules which govern the operation of the Commonwealth Practitioners Board. However, if an Irish solicitor is admitted to practice in the Supreme Court of one of the Australian States on the basis of his qualification as an Irish solicitor, he would be able (under the Judicature Act of the Commonwealth and the Territory Laws) to practise in the Australian Federal and Territory Court by virtue of his being entitled to practise in the Supreme Court of one of the Australian States.

In Canada the position is as hereinafter outlined:—

(1) The Province of Ontario: The Law Society of Upper Canada have regulations governing transfer to practice in Ontario of United Kingdom solicitors. Formally all that is necessary is that an applicant must simply show a current practising certificate as a solicitor in the United Kingdom to be eligible to enter the Bar Admission course. The regulation has been construed to include solicitors of the Republic of Ireland.
(1) In Vancouver before a person may be admitted as a solicitor or barrister he must be a Candadian citizen or a British subject. The authority responsible for admission is the Law Society of British Columbia who operate under the Canons of Legal Ethics and Rules of the Law Society of British Columbia.
(3) Saskatchewan: A person can only practice law in Saskatchewan after he has been admitted as a barrister and solicitor in the Law Society of Saskatchewan. This admission entitles him to practise both as a barrister and as a solicitor. The profession is Saskatchewan is not split. Applicant has to be a British subject and has to pass prescribed examinations and his academis qualifications must be such as are acceptable to the Benchers of the Law Society of Saskatchewan.
(4) Newfoundland: There is no exemption from examinations and every candidate for admission must write examinations in Practice and Procedure and Newfoundland Statutes.
(5) Manitoba: There is no provision for the admission of solicitors from the Republic of Ireland. The Law Society requires that all persons admitted as solicitors in Manitoba must be British subjects and must take the oath of allegiance in open Court. If an Irish solicitor qualifies as a British subject his admission is governed by the Rules of the Law Society, the particular rule to wit, Rule 46 of the Society provides that permission in each case is determined on its own particular circumstances.
(6) Alberta: the position in Alberta is at present uncertain as a new Legal Profession Act is under consideration. Generally speaking solicitors from other countries are treated exactly the same as solicitors from other provinces in Canada in so far as examinations are concerned but the co-ordinating Council of the University of Alberta may

require an applicant from an country other than Canada to write special examinations in Substantive Law. These are usually examinations on land title system which is based on the Torrens system and on Canadian constitutional law. Solicitors who have been in practise in England for three years prior to making their application in Alberta are not required to serve under articles but are required to write all the various examinations.

(7) Nova Scotia: The Qualification Committee of the Nova Scotia Barristers' Society is governed by the provisions of the Barristers and Solicitors Act, Ch. 19 R.R.N.S. 1954 and Amendments and Regulations made thereunder. On admission to the Bar an individual is entitled to practice both as a barrister and solicitor. It is necessary that an applicant prove that he was in active practice preceding his application for any length of time as a solicitor in any of Her Majesty's Superior Courts of England, Northern Ireland, a State of Australia, New Zealand, or as a law agent in Scotland, or as a solicitor in the Republic of Ireland.

(8) New Brunswick: It would appear that all that is necessary for any solicitor to be transferred from practice in Ireland to practice in New Brunswick is to take the necessary examinations and pay the required fees.

MASTERS AND APPRENTICES

The Society frequently receives enquiries from prospective apprentices seeking the names of solicitors who would be willing to act as their masters. The number of enquiries received in the Dublin area is particularly marked and with a view to facilitating both masters and apprentices the Society are anxious to maintain lists of solicitors:

(a) Who are willing to accept apprentices;
(b) Who require assistant solicitors;
(c) Who require employment either as assistants or with a view to prospective partnership.

The lists are required for reference only—not recommendation.

SALARIED SOLICITORS' GROUP

The formation of an Association to be known as the "Salaried Solicitors' Group" has been announced. Membership is confined to solicitors of the State, Commercial Enterprises, Banks, Local Authorities, Statutory Bodies and Semi-State Bodies who shall be members of the Incorporated Law Society of Ireland. The objects of the Group are to promote the welfare of members, advance their interests and privileges and to consult from time to time on matters of professional and mutual interest for the better discharge of their duties and to uphold the rights and privileges of the profession.

The following officers were elected for 1966 at a General Meeting of the Group which was largely attended and which was addressed by the President of the Incorporated Law Society, Mr. Robert McD. Taylor:

Chairman, Brendan A. McGrath; Hon. Secretary, Michael J. Leech; Hon. Treasurer, Charles Hyland (acting); Committee—Henry Murray, Patrick Kiely, William S. Conway, E. Rory O'Connor, Charles Hyland.

The Incorporated Law Society is now a negotiationg body within the Trade Union Act, 1941.

SOCIETY OF YOUNG SOLICITORS

A very well attended ordinary meeting was held as usual in Buswell's Hotel, Dublin, on 28th April, 1966, when the President of the District Court delivered his paper on the Practice of the District Court. In the course of his address, the President pointed out the pitfalls into which solicitors fall when pleading in the District Courts, outlined *inter alia*, the best methods in which a solicitor should handle an examination in chief. or a cross-examination of a witness. He stated that many solicitors are too verbose in court, and not conversant with their cases when they go into court. Much time spent in court could be saved by solicitors pleading on the facts in issue, and not by digressing or superfluous matters.

The lecture was followed by a most lively and stimulating discussion, in which many salient matters were dealt with.

A lecture was delivered in Buswell's Hotel, Molesworth Street, Dublin, on the 26th May, 1966, when a Senior Counsel spoke on the Preparation and Presentation of a Case for Counsel.

Voting papers for the elections of the Executive Committee to take office next October have been sent out. Scrutineers and time and place of counting of votes will be announced in the next issue of the GAZETTE.

The next Joint Seminar to be held will take place in Cork on the 22nd/23rd October, 1966

again jointly with the General Council of Provincial Solicitors and with the kind permission and co-operation of the Southern Law Association. The subjects will be the Succession Act, 1965, Landlord and Tenant, Town Planning Law and Practice.

Further details will be announced later. All our members will be fully circularised in due course.

The following are detqils of forthcoming lectures :—

June 30th—Land Commission Practice by Mr. M. G. Gavagan, Chief Examiner of Titles and Public Trustee.

July 28th—Criminal Law Practice by Mr. Herman Good.

September 29th—Office accounts systems for Solicitors.

October 27th—Insurance and Estate Duty by Mr. A. K. Burns, A.C.A., an Insurance expert.

COUNTY CAVAN SOLICITORS

The following are the Officers and Committee of the above Association for the year 1966/67 :—

President, George V. Maloney; Hon. Secretary and Treasurer, Patrick H. O'Doherty; Committee, Thomas J. Fitzpatrick, Patrick Cusack, Stephen J. Gannon, James Smith, Patrick J. O'Reilly, T. C. Vance.

"THE LAW AND THE PROFITS"

Mr. Patrick O'Donnell, solicitor, T.D., asked the Minister for Justice to state the actual expenditure for the years 1939-40 and 1965-66 and the estimated expenditure for 1966-67 in respect of (1) Courts of Justice (a) total receipts from fee stamps, percentages and othe appropriations in aid, (b) total expenses (other than judical salaries and expenses), and (c) judicial salaries and expenses; and (2) Land Registry and Registry of Deeds (a) total receipts from fee stamps and other appropriations in aid, and (b) total expenses.

The Minister for Justice, in reply, stated that pending the completion and audit of the Appropriation Account for the year 1965-66, it is not possible to furnish final figures in respect of that year and approximate figures only of expenditure and receipts for that year are included in the statement.

The following is the statement :—

		1939/40	1965/66	1966/67
1. Courts				
(a)	Receipts from fee stamps, percentages and other appropriations in aid of Vote	£ 101,160	£ 283,222	£ 430,250
(b)	Expenses (other than judical salaries and pensions)	166,346	587,489	623,450
(c)	Judicial salaries and pensions	92,136	225,058	235,000
(d)	Expenses borne on other Votes (estimated)	78,237	128,167	125,686
2. Land Registry and Registry of Deeds				
(a)	Receipts from fee stamps and other appropriations in aid of Vote	31,910	204,078	315,000
(b)	Expenses	45,527	204,768	257,930
(c)	Expenses borne on	15,462	107,838	124,567

CORRESPONDENCE

SALE TO THE FORESTRY DEPARTMENT ...

The following letter was received by the Society from a member :

There is a matter that we would like to bring to the notice of the Council of the Law Society, and that is the practice of the Department of Lands when purchasing mountain land for reafforestation purposes of getting the Vendor to sign an agreement to sell to the Department of Lands, and in such agreement accepting responsibility for his own costs of making title.

The reason we are writing about this is that lately a client of ours entered into an Agreement with the Department of Lands to sell for the sum of £40 a piece of mountain land. He undertook to be responsible for his costs of making title. The Department of Lands were not satisfied with a straight transfer from the Vendor to the Minister, they required the note as to equities to be discharged, or evidence given to them to enable them discharge the note as to equities. We protested to the Department of Lands about this, and stated that having regard to the smallness of the purchase money the Minister should agree to pay our costs of making title as if we had to charge our client a proper fee for making title to the lands in question he would get very little out of his purchase money. Of course it boils down to the fact that we cannot charge him a proper fee at all, and it means that we do about 99 per cent of the work in this sale for nothing.

We think that the Department should not get a Vendor to enter into a contract for the sale of any land for any purpose without giving the Vendor an opportunity of discussing the matter with his solicitor. And in fact we

think that they should go further and insist on the Vendor consulting his solicitor first and that the Agreement in question should be submitted to the Vendor's solicitor.

As you know the price paid by the Department of Lands for mountain land which is required for reafforestation is ridiculously low in any case, and it is certainly putting a great burden on the Vendor to make him be responsible for showing title. We pointed out to the Chief State Solicitor, who is acting for the Minister for Lands, that when a Local Authority acquires land for the purpose of the Labourer's Acts or for road widening, etc., they agree to pay the Vendor's costs of making title. We think that a similar situation should exist with the Department of Lands.

We would be glad if you would bring this matter before the Law Society and have their views thereon. We have told the Chief State Solicitor and that we intended asking the Law Society to take up the matter with the Department of Lands.

A copy of the above letter was forwarded to the Secretary of the Irish Land Commission enquiring as to whether our member's objection was well-founded. In reply the Society received the following letter from the Department of Lands (Forestry Division) :—

As to your point that in compulsory acquisitions the invariable practice is that the acquiring Authority pays the owners' costs, this is, of course, accepted. Compulsory proceedings under the Forestry Acts are no exception to this rule and, in all cases in which such proceedings are resorted to, the practice is for the Minister to bear the costs incurred by the vendor in deducing, evidencing and verifying title. The Minister is required to do so by Section 18, Forestry Act, 1946. Ordinary voluntary sales are, however, in a different category and in such sales it is the practice of the Department to require vendors to bear their own costs. We see no grounds in existing circumstances for changing this practice.

The particular case referred to by your member appears to relate to the pending purchase by the Forestry Division for £40 of 4½acres in the townland of AB. in the County of CD. (comprising 217 acres, 3 roods, 27 perches). This small division was voluntarily offered for sale to the Forestry Division by EF. The negotiations with EF (including all relevant conditions) were carried out freely by correspondence—one of the conditions being that the vendor would be liable for his own costs in the sale. During such correspondence it was open to the vendor, if he so wished, to seek whatever advice he needed from his solicitor or anybody else. It was not until agreement had been reached that the vendor furnished the name and address of the solicitor, who would act for him in showing title. There was no formal contract.

There can be no suggestion that this particular vendor or any other vendor of lands to the Forestry Division has been denied his right or refused an opportunity to consult a solicitor at any stage of negotiations. The Department cannot, however, accept the proposition that they should insist on vendors consulting solicitors. That is a matter, as you will no doubt appreciate, which is entirely for each vendor himself.

As regards your correspondent's reference to the Department's insistence, in the case quoted, on having evidence furnished to enable the note as to equities to be dischareged, I must say that the problem of disproportionate costs in cases involving small purchase monies is one that cuases considerable concern in the Forestry Division and in an effort to lessen the burden of costs the practice is to dispense with the requirement to discharge equities in sales where the purchase money does not exceed £500 and the lands have been registered for 20 years or more. Unfortunately this concession could not be applied in the case of your member's client as his lands were only registered in 1957.

On 3rd March, 1966 the Society wrote to the Assistant Secretary of the Department of Lands as follows : :—

Thank you for your letter of February 21st. I think my Council will object to the practice of obtaining the signature of a vendor without legal advice. The effect of the practice in this case is that the vendor may incur legal costs exceeding the amount of the compensation paid by the Department. If he had known this it is unlikely that he would have signed the contract and if he had an opportunity of consulting a solicitor before signing he would have been so advised.

In these circumstances the Council think that the practice of the Department of dealing with vendors, many of them being persons of little education or business acumen, and getting them to sign contracts without professional advice is open to objection.

A further letter was sent to the Secretary of the Irish Land Commission on 4th March, 1966 by the Society which stated *inter alia* :—

I have been directed by the Council to request that where contracts are placed before respective vendors by the Department of Lands (Forestry Division) the acquisition of land for afforestation, that the contract contain a provision that the Department will be responsible for the vendor's costs.

LAND ACT 1965

Dear Sir,

We have read with interest the article under the heading "Land Act 1965" at page 89 of the March 1966 issue of the GAZETTE and it would seem to us either that Members have not sufficiently informed your reporter of the circumstances of their case or that they were incorrectly advised.

From our reading of the Land Act 1965 it would appear that Land Commission Consent is only required to enable an "interest" in land to which the section applies to become vested in a person who is not a "qualified person" within the meaning of the Act. It does not seem to be material whether the person *from* whom "interest" passes is a "qualified person".

In the circumstances reported in the GAZETTE the "interest" was passing from mortgagees domiciled and resident in England and the report does not mention either the domicile or residence of members client to whom the interest was passing. Presumably their client was a "qualified person".

It would appear therefore, that in the circumstances as set out in your report Land Commission consent need not be obtained.

Yours faithfully,

Messrs. McMahon & Tweedy.

The Secretary,
The Incorporated Law Society of Ireland,
Four Courts,
Dublin 7.

PROFESSIONAL NEGLIGENCE — HILL v HARRIS

Dear Sir,

The problem referred to by Messrs. Ellis & Moloney (GAZETTE, Vol. 59, No. 9A, March, 1966) arising out of the British Court of Appeal case of Hill v Harris could have quite a simple solution, as regards *new* occupation leases or sub-leases at rack rents.

If the Council of the Incorporated Law Society would recommend that all such leases contain a warranty that the grantor is entitled to grant the tenancy which he purports to grant, then in the case of a lease with such a warranty an action for damages would lie by the grantee if the warranty were broken. This would obviate the necessity of investigating the title of the lessor.

New legislation would of course be required to deal with existing leases. May I suggest that a similar warranty be *implied* by law in such cases, notwithstanding any agreement to the contrary.

Such an implied warranty would also have the effect of ameliorating the tenant's position where a tenant pays rent to a mortgagee creating a yearly tenancy. The provisions of the mortgagee's own lease are not automatically included, so that the lessee may lose possession if the mortgagor has the right to possession against the mortgagee.

Again, if a mortgagor grants a lease not under his statutory power and without the consent of the mortgagee, on the latter taking possession the tenant will have to vacate. The suggested warranty, if implied, would give him a remedy.

Finally, implication of the warranty would also give the tenant a remedy when an underlease is determined due to it having been granted out of a lease for a longer term than the lease.

Yours faithfully,
G. M. Golding.

RULES OF THE SUPERIOR COURTS (No. 1), 1966

These Rules prescribe procedures in respect of the winding up of companies and replace Order 74 and Appendix M of the Rules of the Superior Courts (S.I. No. 72 of 1962). The Rules also amend Order 77 of the same Rules in addition to inserting additional Rules in that Order which deals with funds in Court. The Statutory Instrument No. 28 of 1966 is available from the Government Publications Sales Office, G.P.O. Arcade, Dublin 1, price 4/6d.

INCOME TAX, SUR-TAX AND CORPORATION PROFITS TAX

A booklet summarizing the Statutory Provisions relating to the allowances for capital expenditure on scientific research and mining development and temporary relief in respect of taxation of mining profits is available from the Revenue Commissioners. The booklet does not purport to be a legal interpretation of the provisions but it is intended to be of assistance to solicitors, accountants and others who have to deal with the subject. The booklet may be obtained free on application to the Office of the Revenue Commissioners, Dublin Castle, Dublin 1, or any Inspector of Taxes. The booklet was published in February, 1966 and is known as Leaflet No. 11.

CASE LAW

Order in which Witnesses may be Called

On the hearing of matrimonial proceedings by a wife before a metropolitan stipendiary magistrate, the magistrate refused to allow counsel for the husband to call a witness until he had first called the husband.

Held: the discretion lay with counsel to call what witnesses he chose in what sequence he chose, and accordingly in the case would be remitted for re-hearing before another magistrate. Briscoe v. Briscoe (1966) 1 All E.R. p. 465.

Ministers of State may now be sued without obtaining beforehand the fiat of the Attorney-General

The plaintiff sought a declaration that the defendant Minister was under an obligation to provide an efficient and proper telephone service to his residence in Co. Wicklow. There was a lengthy indeterminate correspondence between the plaintiff's solicitors and the Attorney-General between June 1963 and February 1964. Finally, in February 1964, a plenary summons was issued against the Minister in which the plaintiff sought a number of declarations.

In May 1964, Kenny J. ordered that the preliminary issue whether Section 2 (1) of the Ministers and Secretaries Act 1924 is repugnant to the Constitution in so far as it requires the fiat of the Attorney-General to be obtained before the proceedings be validly instituted against a Minister of State be tried. After argument, Kenny J,. in delivering judgment on this issue, first stated:—

(a) The Constitution of the Irish Free State 1922 did not contain any provisions about an Attorney-General;

(b) Section 6 of the Ministers and Secretaries Act 1924 vested in the Attorney-General of Saorstat Eireann the business, powers, authorities, duties and functions formerly vested in or exercised by the Attorney-General and Solicitor-General for Ireland;

(c) Article 30 of the Constitution of 1937 deals with the present position of the Attorney-General.

Kenny J., subsequently held :—

1. The office of Attorney-General established by the Ministers and Secretaries Act 1924 was a new office created by an Act of the Oireachtas and was not a legacy from the functions of the Law Officers of the Crown.

2. The powers conferred upon the Attorney-General by Article 30 of the Constitution of 1937 include the powers conferred on him by virtue of the Ministers and Secretaries Act 1924.

(3) The concept of granting the fiat may have come from the royal immunity from being sued in Courts of Law, but it is *not* the same fiat.

4. The cause of action given by the Ministers and Secretaries Act 1924 is *not* a new cause of action, even though henceforth proceedings are instituted by summons or civil bill instead of by petition, as the essential nature of the remedy is unchanged, and therefore the citizen is not obliged to take it subject to the condition imposed.

5. The necessity to obtain the fiat of the Attorney-General is *not* inconsistent with Article 40, Section 1 of the Constitution which provides that—"All citizens shall, as human persons, be held equal before the law." Although it was contended that the State was in a privileged position, the guarantee given in this Article relates only to the position of a citizen as a human person, and not as a person in an official capacity like a Minister.

6. The function of the Attorney-General in granting or withholding the fiat is *not* an administration of justice, as he has complete and unfettered discretion.

7. The contention that the requirement of a fiat for an action against a minister of State was a denial or an unnecessary interference with the rights of the citizens to have recourse to the Courts to vindicate their rights was justified, on the following grounds :—

(a) Article 40 Section 3 of the Constitution provides :

1. The State guarantees in its laws to respect, and, as far as practicable by its laws to defend and vindicate the personal rights of the citizens.

2. The State shall, in particular, by its laws, protect as best it may from unjust attack and, in case of injustice done, vindicate the life, person, good name and property rights of the citizen.

(b) This guarantee applies to all laws passed by the Oireachtas since the foundation of the State in 1922.

(c) The very nature of the fiat is a power at the unfettered discretion of the Attorney-General to give or withhold a right to have recourse to the Courts to assert or vindicate a right.

(d) The guarantee in Article 40 Section 3 of the Constitution is not limited to the rights mentioned specifically in the Constitution but extends to other personal rights of the citizen which flow from the Christian and democratic nature of the State—because many personal rights of the citizen —such as the right to free movement, and the right to marry—are not specifically mentioned in Article 40.

(e) If the High Court has full original jurisdiction to determine all matters under Article 34, Section 3 (1) of the Constitution, it must follow that the citizens have a right to have recourse to that Court to question the constitutional validity of any law, or to assert or defend an unspecified constitutional right.

(f) Section 2 (1) of the Ministers and Secretaries Act 1924 does not respect the personal right of the citizen to have recoruse to the High Court when he wishes to bring proceedings against a Minister of State.

(g) The necessity to obtain the fiat before instituting proceedings against a Minister of State is a failure by the State to defend and vindicate one of the personal rights of the citizen.

(h) It follows that Section 2 (1) of the Ministers and Secretaries Act 1924 is repugnant to the Constitution in so far as it requires the fiat of the Attorney-General to be obtained before proceedings in the High Court can be validly instituted against a Minister of State.

(Macaulay v. The Minister for Posts and Telegraphs—unreported decision of Kenny J., 14th February 1966).

Note—It is understood that no appeal against this decision will be made to the Supreme Court.

Solicitor's Negligence

The plaintiff employed the defendant to act as her solicitor in the conduct of a matrimonial suit brought against her by her husband for divorce on the ground of desertion. In October, 1961, the husband obtained a decree nisi, the suit being heard as undefended notwithstanding that his solititors had given the defendant some particulars of adultery on the husband's part, which had caused him to amend his petition to ask for the exercise of the court's discretion, and that the plaintiff had instructed the defendant to obtain disclosure of the adultery so that she could pray for divorce. The court found negligence

proved, because the defendant's failure to take any steps to prevent the cause being heard undefended amounted to a breach of an agreement, made with the plaintiff orally in June, 1960, to defend the divorce petition. A month after the hearing the defendant received a legal aid certificate, for which he had sent the plaintiff application forms in August, 1961; the scope of the certificate was to defend the husband's suit and to cross-pray for relief. A month later, the defendant having drafted instructions to counsel, a conference with counsel was arranged which took place in January, 1962, the plaintiff being present. Counsel advised the plaintiff that she was in desertion, that there was no point in defending, if that were possible, but that she should claim maintenance for herself and her son. The plaintiff accepted this advice. In consequence no application was made to set aside the decree nisi. The decree nisi which was subsequently made absolute.

The plaintiff brought an action against the defendant for damages for negligence on the basis that a decree of divorce had thereby been pronounced wrongly against her, that she had lost the right to pray for divorce herself and claim maintenance for her son and herself, and that she had suffered in health. The defendant contended that counsel's advice given in conference had broken the chain of causation of damage.

Held: (i) counsel's error in advising did not break the chain of causation of damage resulting from the defendant solicitor's prior negligence.

(ii the plaintiff had lost (a) maintenance for her son, which would probably have been ordered but for the defendant's negligence at a rate of about 40s. weekly for eighty weeks (£160), (b) chances of protecting a future maintenance claim for herself when she ceased to be able to work (£750) and of successfully defending the divorce suit against her and of herself obtaining a divorce (£200); but she was not entitled to damages for mental distress, as her claim to damages lay in contract, not in tort. (Cook v. S. (1966) 1 All E.R. 248).

Agency Commission

The plaintiff agents accepted instructions "to sell" the defendants' business on the basis of false statements as to its financial condition. A prospective purchaser was introduced who refused to go through with the transaction when the true facts became known to him. Upon the plaintiff's action to recover their agree commission from the defendants, held that in the absence of fraud their claim could not succeed. (Bradley-Wilson (1954) v. Canyen Gardens (1965) 52. D.L.R. (2d.) 717, British Columbia C.A.).

POSITIONS VACANT

Switzerland

Applications are invited for a post of Deputy Director in the United International Bureaux for the Protection of Intellectual Property at Geneva in Switzerland. The duties of the post consist, in general, of assisting the Director in organizing and implementing the tasks of Birpi. Candidates should have:—

(a) a wide experience in the field of industrial property law and in the field of copyright law—particularly in their international aspects—or at least in one of these two fields, preferably with some experience in the other;

(b) a University degree in law or equivalent professional qualification;

(c) an excellent knowledge of one of the official languages (English and French) and at least a good knowledge of the other. Knowledge of additional languages would be an advantage.

Age limit for persons other than officers of Birpi; 55 as of January 1, 1967. The annual salary will be 86,184 Swiss francs subject to a deduction of approximately 9 per cent in respect of pension fund schemes.

Persons wishing to apply should write to the Head of Personnel, Birpi, 32, Chemin des Colombettes, Geneva, Switzerland, for application forms. These forms, duly completed, should reach Birpi not later than June 15, 1966.

Canada

A good law clerk or junior solicitor is required urgently by a Canadian firm of lawyers who deal in Real Estate. Initial salary is $6,000.00 a year. Persons interested should communicate forthwith and directly with John L. McDowell, Esq., Messrs. McCann, Fitzgerald, Roche & Dudley, Solicitors, 51 & 52 Fitswilliam Square, Dublin 2.

LIBRARY ACQUISITIONS

TO APRIL 1965

Section A—NEW ACQUISITIONS

Albridge (C. T. M.): Service Agreements, 1964.
Blanchard (Jean): The Church in Contemporary Ireland 1963.
Blundell (L.) and G. **Dobry:** Town and Country Planning, 1963.
Boulton (A. Harding): The Making of Business Contracts, 1965.
British Institute of Comparative Law: Symposium on European Convention of Human Rights, November 1964.

Brown (Harold): Practitioner's Guide to Hire-Purchase Law, 1965.
Byles (Sir J.): Law of Bills of Exchange, 12th Edn., 1965.
Butterworth's Costs: Third Cumulative Supplement to Second Edition, 1965.
Butterworth: Six Year Digest of Income Tax Cases Classified (1959-1964), 1965.
Charter-Ruck (P. F.): and E. P. Skone-James: Copyright (Modern Law and Practice), 1965.
Cheshier (G. C.): Private International Law, 7th Edn. 1965.
Cheshire (G. C.) and C. H. Fiefoot: Cases on the Law of Contract, 4th Edn. 1965.
Copinger (W. A.): Law of Copyright, 10th Edn. 1965.
Cordery (J.): Law relating to Solicitors, 3rd Cumulative Supplement to 2nd Edition, 1965.
Cracknell (D.G.): Law Students Companion of Cases in Contract, 1965.
Cross (R.): and N. Wilkins: Outline of the Law of Evidence, 1965 (Three Copies).
Curtis (G.) and T. B. Ruoff: 5: E
Curtis (G.) and **T. B. Ruoff:** The Law and Practice of Registered, 2nd Edn. 1965.
Delany (V. T. M.): Law of Charities in Ireland, 1962 (Two additional copies).
Oymond (R.): and A. K. Johns: Law of Death Duties, 14th Edn. 2 Vols, 1965.
England: Public General Acts, 1965, 2 Vols.
English Catholic Directory: 1966.
Encyclopaedia of Forms and Precedents English and Empire Digest:
(a) Thire Cumulative Supplement, 1965.
(b) Continuation Volume A (1952-1964), 1965.
Encyclopaedia of Forms and Precedents, Fourth Edition:
(a) Vol. 1—(Acknowledgment to Animals, 1964).
(b) Vol. 2—(Annuites to Banking Documents, 1964).
(c) Vol. 3—(Bills of Exchange to Building Societies, 1965).
(d) Vol. 4—(Burial and Cremation to Clubs, 1965).
(e) Vol. 11—(Landlord and Tenant, Part 1, 1966).
English and Empire Digest Replacement Volumes:
(a) Vol. 41—(Sewers and Drains to Shipping and Navigation), Part 1.
(b) Vol. 42—(Shipping and Navigation, Part II).
(c) Vol. 45—(Street Traffic to Trade and Labour).
(d) Vol. 46—(Trade Marks to Trover and Detinue).
Hames (J. H.): Applications under Sect. 17 of the Married Women's Property 1882, 2nd Edn. 1965 (Oyez Practice Notes, No. 42).
Hardy-Ivamy (P.): Casebook on Sale of Goods, 1966.
Harrison (P.): Book-keeping and Accountancy for Solicitors, 2 Vols, 3rd Edn. 1965.
Heap (C. D.): Encyclopaedia of the Law of Town and Country Planning, 2 Vols. 1965.
Heuston (R. F. V.): Lives of the Lord Chancellors (1885-1940), 1965.
Hill (W.) and **J. Redman:** Law of Landlord and Tenant, 14th Edn. 1964.
Ireland: Directory of State Services 1966.
Ireland: Estimates for Public Services, 1966-67.
Irish Catholic Directory: 1965 and 1966.
James (P.): Law of Torts, 2nd Edn, 1964 (Extra Copy).
Josling (J. F.) and **L. Alexander:** Law of Clubs, 1965.
Josling (J. R.); Naturalisation, 3rd Edn, 1965.
Justice: Shawcross Report of Working Party on the Law and the Press 1965.
Kahn-Freund (O): Law of Carriage by Inland Transport, 4th Edn. 1965.
Kemp (J.) and **S. Kemp:** The Quantum of Damages, First Supplement to 2nd Edn. 2 Vols. 1965.
Keeton (G. W.): Introduction to Equity, 6th Edn. 1965.
Lowe (R.): Commercial Law, 1965. (Two extra copies).
Lockwood (Sir John): Report on Higher Education in Northern Ireland, 1965—bound together with Professor Wilson's Report on Economics Development in Northern Ireland, 1965.
Marriott (E. G.): Outline of Personal Property, 1965.
Mellows (A. R.): The Preservation and Felling of Trees, 1964 (Oyez Practice Notes No. 42).
McCleary (J.): County Court Precedents, Third Cumulative Supplement to 2nd Edn. 1965.
McGuffie (K. C.) ,P. A. Fugeman and **P. V. Gray:** Admitalty Practice, 1934.
Mueller (G. O.) and **E. M. Wise:** International Criminal Law, 1965.
Moore (H.): Practical Agreements, 10th Edn. 1965.
O'Connell (D. P.): International Law, 2 Vols. 1965
O'Connor (M. K.): Guide to Death Duties in Ireland, 1963. (Two extra copies).
Pfretschner (P. A.): The Dynamics of Irish Housing, 1965.
Picarda (H. A.): Study Guide to Evidence, 1965.
Piesse (E. L.) and **J. Gilchrist Smith:** The Elements of Drafting, 3rd Edn. 1965.
Rideout (R. W.): Trade Unions, some Social and Legal Principles.
Robb (G. G.) and **J. P. Brookes:** Outline of the Law of Contract and Tort, 3rd Edn. 1965.
Russell (Sir W.): The Law of Crime, 12th Edn., 2 Vols. 1964.
Salmond (Sir John): The Law of Torts, 14th Edn. 1965.
Sim (R. S.): Casebook on Company Law, 1965.
Simon (Viscount): The Law of Income Tax; replacement Vols. 1 and 2 (1964-65).
Smith (J. C. and **B. Hogan:** Criminal Law, 1965 (Three copies).
Smith (K.) and **D. J. Keenan:** Essential of Mercantile Law, 1965.
Stephens (T. M.): Mercantile Law, 14th Edn. 1965.
Swinfen-Green (E.): How to go about passing the Bar and Law Society Examinations, 1965.
Tangley (Lord): New Law for a New World (Law Reform) Hamlyn Trust Lectures, 1965.
Telling (A. E.): Planning Law and Procedure, 1963.
Terrell (E.): Law of Patents, 11th Edn. 1965.
Thurston (G.): Corner's Practice, 1958.
Wade (E. C. S.) and **G. Phillips:** Constitutional Law, 7th Edn. 1965.
Waters (D. M.): The Constructive Trust, 1964.
Wheatcroft (G. S. A.): The Law of Income Tax, Surtax and Profits Tax, 1962, with First Supplement, 1964.
Whitakers Almanack: 1966.
Who's Who: 1966.
Wilb Erforce (R. O.) , A. Campbell and **N. P. Elles:** The Law of Restrictive Trade Practives and Monoplies, First Cumulative Supplement, 1962.
Writers and Artists Year Book: 1966.

Section B—DONATIONS AND ECXHANGES

American Bar Association: International Directory of Bar Association, 1964.
Bryce (James): Studies in History and Jurisprudence, 2 Vols., 1901.
Burdette (F. L.): Readings for Republicans, 1960.
Dublin University (Trinity College): Calendar, 1965-1966.

Food and Agricultural Legislation: Vols., 12 (1964) and 13 (1965).
International Law List: 1966.
Irish Institute of Chartered Accountants: List of Members, 1964.
Ireland: Symposium on Road Safety, 1964.
Ireland: Statutory Instruments, 2 bound Vols. 1961.
Jenks (E.): The New Jurisprucence, 1933.
London University Calendar: 1965-66.
Manchester Unviersity Calendar: 1965-66.
Martindale-Hubbell: Law Directory, 4 Vols. 1965.
National University of Ireland Calendar: 1965-66.
Newman (E. S.): The Hat Reater, 1964.
New South Wales Law Almanack: 1965.
Queens University, Belfact: Calendar 1965-66.
Reed (E.): Readings for Democrats, 1960.
Sheffield University: Calendar 1965-66.
University of Wales: Calendar 1965-66.
University College, Dublin: Calendar 1965-66.
Graham-Green: Criminal Costs, including Legal Aid.

INTERIM REPORT OF WORKING PARTY ON LANDLORD AND TENANT LAW

We have considered the provisions of the Landlord and Tenant Bill 1965 which is based on the provisions of the Ground Rents Commission of 1964 and we make the following preliminary recommendations:—

1. **Notice of Intention to Claim Relief under Section 24 Landlord and Tenant Act 1931:** Under the provisions of this section no claim for relief under the Act shall be maintained unless the Applicant serves a notice on the Landlord of his intention to claim relief within a period of not less than three months before the termination of the tenancy where the letting is for a term of years.

Section 45 of the 1931 Act also provides for an extension of such period upon such terms as the Court thinks proper.

The judicial interpretation of Section 45 is to the effect that no extension of time for serving a Notice of Intention to Claim Relief will be granted except for the most compelling reasons and, as a consequence, considerable hardship has been inflicted on a number of tenants who have been deprived of their rights under Part III of the 1931 Act because of their failure to serve Notice of Intention to Claim Relief within the specified time because of a bona fide, ommission, error or oversight and, as a consequence, were compelled to vacate their business premises or alternatively pay such rent as the Landlord demanded and such further terms as the Landlord might deem it fit to impose.

It is recommended that provision be made in the Landlord and Tenant Bill 1965 to rectify this situation by including provisions therein similar to Section 12 and 15 of the Landlord and Tenant Revisionary Leases Act 1958.

Section 12 of the Landlord and Tenant Act of the 1958 Act, Sub-Section 1 (b) provides that the Lessee shall be entitled on application to obtain from the immediate Lessor a Reversionary Lease at any time subject to limiattions therein provided on the expiration of three months from the service on the tenant by his immediate Lessor or any Superior Lessor of notice of the expiration of his Proprietory Lease and otherwise as therein.

Section 13, Sub-Section 4 is in the following terms: "Where a Lessee fails to apply for a Reversionary Lease within the time specified in Sections II or Section 12 of this Act the Court may on such terms as the Court thinks proper extend such time where it is satisfied that the failure was occasionsed by disability, mistake, absence from the state, inability to obtain requisite information or any other reasonable cause."

It is generally recommended that an obligation should be placed upon the Landlord to give notice to the tenant of the fact that his Lease is about to terminate or has terminated and that the tenant should have a certain specified time to serve Notice of Intention to Claim Relief under the Act and in addition liberty to apply to the Court for an extension of time on the basis provided in Section 13, Sub-Section 4 as aforesaid.

Powers vested in County Registrar—Section 17 of Bill: Novel provisions have been introduced into this Bill making the County Registrar an Arbitrator under the provisions of the Arbitration Act 1954 for the purposes of determining certain disputes and difficulties that are certain to arise in the administration of the Act. Section 17 indicates that any person may apply to the County Registrar for the area in which the land to which the Application relates is situate to have certain amtters determined by his arbitration and the County Registrar shall make such award as justice shall require.

Certain powers are vested in the County Registrar under the provisions of Sub-Section 3 of Section 17 of Sub-Section 4 excludes certain Sections of the Arbitration Act 1954 as being inapplicable to an Arbitration under this Landlord and Tenant Act.

Under Section 19 of the Bill power is given to the County Registrar to determine in what manner the costs of the Arbitration shall be paid and he has also power to tax and settle the amount of the costs to be so paid.

Sub-Section 4 of Section 19 also indicates that

the costs shall be on a party and party basis only, that Counsel will not be permitted except at the expense of the party retaining him unless in the opinion of the County Registrar a question of law is involved which must be argued before him.

Section 22, Sub-Section 1 provides that an Appeal shall lie to the Court from an award, order or decision of a County Registrar in an arbitration under this Act.

Sub-Section 3 of Section 22 also provides an Award of a County Registrar in an arbitration under the Act may, by leave of the Court, be enforced as a Judgment or Order to the same effect and where leave is so given judgment may be entered in the terms of the Award.

It is our view that the provisions of the Landlord and Tenant Bill 1965 may be unconstitutional in so far as the County Registrar will in effect be exercising judicial functions notwithstanding the attempt to bring his functions within the provisions of the Arbitration Act 1954.

Apart altogether from the constitutionality of the provisions referred t, it is felt that the administration of the provisions of this Act by the County Registrar is not a workable proposal. These provisions may be defended as being in the public interest for the purpose of keeping down the costs and expenses.

It is anticipated that the decisions of the County Registrar will be appealed in a large number of cases for review by the Court and that the public interest may not be served by substituting the County Registrar as the Court of first instance.

It is apparent that the costs intended to be awarded will be on a party and party basis only at the lowest level and then only of such sum as the County Registrar in his discretion shall think fit.

The above are the preliminary observations of your Working Party and further recommendations will be submitted as soon as possible.

P. C. Moore
John C. Maher
T. A. O'Reilly

Dated this 21st day of April, 1966.

THE REGISTRY

Register C

Small ground rents required. Send particulars to—Box No. C187.

Will any person holding a will of **Thomas Patrick Reidy,** late of 67 Drumcondra Road Upper, Dublin, who died on the 4th of December, 1965, please contact John Dundon & Son, Solicitors, 101 O'Connell Street, Limerick.

In the goods of **John P. Doyle late of 47 Capel Street,** Dublin, deceased. Will any person or solicitor having possession of a will of the above deceased who died on the 14th day of February, 1966, or give any information regarding its whereabouts, please communicate with Kennedy & McGonagle, Solicitors, 34 Upper O'Connell Street, Dublin.

James Costello, deceased, late of 179 Phibsboro Road, Dublin. Will any person or solicitor having possession or knowledge of a will made by the above deceased who died on 19th day of March, 1966, please communicate with Messrs James W. LAne & Co., Solicitors, 98 Upper Leeson Street, Dublin 4.

OBITUARY

Mr. John S. Morris, solicitor died on 12th May, 1966, at his residence 12 Glenvar Park, Blackrock, Co. Dublin.

Mr. Morris served his apprenticeship with the late Mr. Henry G. Morris, 8 Clare Street, Dublin, was admitted in Easter Sittings 1934 and practised at 10 Clare Street, Dublin, as senior partner in the firm of Messrs Porter, Morris & Co.

COMING EVENTS

Cast Their Shadows Before?

SOLICITORS' FEES INQUIRY?

Chesterfield Rural District Council, Derbyshire, is planning to refer to the Prices and Incomes Board the subject of fees charged by solititors for conveyancing work. In an attack on legal costs it is also considering setting up a co-operative legal department for use by a group of local authorities in the north-east Derbyshire area.

(*The Observer,* May 1, 1966)

PATENTS ACT 1964

Members please note that this Act comes into operation as and from 1st July next.

LANDLORD AND TENANT BILL 1965

Functions of County Registrars

Lawyers were surprised to read the provisions in the Bill proposing to confer compulsory judicial powers on the County Registrars who will act as arbitrators in fixing the price of ground rents if the parties fail to agree. This appears to be essentially a judicial function, comparable with the jurisdiction of the Circuit Judge to fix the rent of a new lease under the existing Landlord

and Tenant Acts. It is surprising to find that this new jurisdiction is conferred not on the Circuit Judges, as might be expected, but on the County Registrar.

County Registrars are solicitors who are held in high esteem by their colleagues, but essentially they are officers attached to the Circuit Court. It seems wrong in principle that a judicial function of this kind should be conferred on an officer of the Court, even with the right of appeal to the Judge.

There is a prevalent tendency in legislation to erode the functions and jurisdiction of the Courts established under the Constitution, which, in the long run, must injure the judicial process and respect for the rule of law and the Courts. A citizen depends upon the Courts and judiciary for the protection of his rights. The proper person to try a judicial issue coming before the Circuit Court is the Judge.

The majority of the County Registrars are solicitors who were formerly busy practitioners, often in the area of the Courts which they now serve, and many of the parties coming before them in their capacity as arbitrators under the new Bill will have been former clients of theirs, or, at any rate, will be well known to them by reason of their local connections. They may therefore find themselves at times in an embarrassing position between the parties.

The Circuit Judge, on the other hand, will not be affected by such circumstaces. Justice should be seen to be done, and it is strange that the Bill should propose to confer a judicial function to determine property rights on officials of the Court who may be closely connected by former professional relationships with one or other of the parties.

MAYO SOLICITORS' BAR ASSOCIATION

The Annual General Meeting of the Association held on 16th May, 1966, at which the following Officers and Committee were elected for the coming year :—

President, Patrick J. Durcan, Castlebar; Vice-President, Lorcan Gill, Westport; Hon. Treasurer, Miss Bea Hynes, Castlebar; Hon. Secretary, Joseph Gilmartin, Castlebar. Committee : William Dillon Leetch, T. V. O'Connor, John McHale, Kevin Loftus, Patrick J. McEllin.

THE IRISH SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS

The headquarters of the above Society is at 128 St. Stephen's Green, Dublin 2. Each county and city in Ireland has its own Society, having primary responsibility within its area for the prevention of cruelty to animals. It is felt that normal testators would wish their bequests to further the work of the Society in the county or district in which they reside. If the Testator also wished the ISPCA to benefit it is considered better that this take the form of a separate specific request, as the ISPCA has a constitutional sphere of its own.

REGISTRATION OF TITLE ACTS, 1891 and 1942

ISSUE OF NEW LAND CERTIFICATE

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

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

Dated the 13th day of June, 1966.

D. L. McALLISTER
Registrar of Titles

Central Office,
Land Registry,
Chancery Street,
Dublin.

SCHEDULE

1, Registered Owner, **Denis O'Sullivan.** Folio number 28829. County Kerry. Lands of Ballydonohoe in the Barony of Iraghticonnor containing 51a. 3r. 38p.

2. Registered Owner, **Anita Clinton.** Folio number 3724. County Dublin. Lands of (No. 1) Baltrasna in the Barony of Balrothery East containing 22a. 2r. 23p.

3. Registered Owner, **Bruree Estate Limited.** Folios (a) 5440, (b) 16823. County Limerick. Lands of (a) Garroose containing 1a. 3r. 35p and lands of (b) Bruree containing 4a. 0r. 14p. both situate in the Barony of Connello Upper.

GAZETTE

Vol. 60
No. 2
June
1966

THE INCORPORATED LAW SOCIETY OF IRELAND

President
ROBERT McD. TAYLOR

Vice-Presidents
PATRICK O'DONNELL
JAMES R. C. GREEN

Secretary
ERIC A. PLUNKETT

CONTENTS

Meetings of the Council 17
Circuit Court Rules 1966 19
Society of Young Solicitors 19
Land Registry Practice 19
Land Registry 20
Land Act 1965 20
Requisitioning of Documents 20
Admission Ceremony 20
Dail Debates 21
Mod Conveyancing 21
Faculty of Notaries Public in Ireland 22
Professional Negligence for Taking Defective Leases 23
Natural Justice 24
Unqualified Persons Acting 26
Book Review 26
Correspondence 27
Donegal Solicitors 28
The Registry 28
Notice 28
Registration of Title Acts 1891 and 1942 28

MEETINGS OF THE COUNCIL

May 19th: The President in the chair, also present Messrs. Francis J. Lanigan, Niall S. Gaffney, Desmond J. Collins, Peter D. M. Prentice, Patrick Noonan, Gerard M. Doyle, Thomas A. O'Reilly, John J. Nash, Brendan A. McGrath, G. C. Overend, Desmond Moran, Joseph P. Black, John Maher, Augustus Cullen, T. J. O'Keeffe, Peter E. O'Connell, Rory O'Connor, Thomas H. Bacon, Patrick C. Moore, Eunan McCarron, James R. C. Green, James W. O'Donovan, John Carrigan, George Nolan, Thomas E. O'Donnell.

The following was among the business transacted:

Landlord and Tenant Commission

It was decided to send a memorandum to the Department of Justice, suggesting that the Landlord and Tenant Bill should contain a section abolishing the common law rule that a lessee is liable for the lessor's costs, and that the section should contain a provision against contracting out.

Location of Estate Duty Office

It was reported that following representations made by the Society the proposal to transfer the Estate Duty Office to Griffith Barracks has been abandoned and that it is likely that in the near

future the Estate Duty Office will be moved to the new office buildings at present in course of erection near Iveagh House in Stephen's Green.

Finance Act 1965

A special sub-committee, consisting of the President with Messrs. G. G. Overend, P. C. Moore and the Secretary, was appointed to receive communications made from members of the Society on difficulties experienced in the operation of the Finance Act 1965, and in particular in relation to the special provisions for taxation of property development.

Members of the Society are requested to send communications to the Secretary.

Adverse Reference to a Solicitor in the Dail

The attention of the Council was drawn to a statement made by the Minister for Lands in Dail Eireann, as reported in the Dail debates of May 25th. In a reply to a question by an opposition deputy it was suggested that payment of land bonds to a widow had been delayed due to the default of a solicitor.

It was decided that the Secretary should make enquiries as to the facts and the identity of the solicitor, that if the solicitor is at fault the Society ought to reprimand him for the unfavourable publicity given to the profession, that if he is not at fault the matter should be taken up by the Society with the Minister for Lands.

June 16th: The President in the chair, also present Messrs. Richard Knight, Ralph J. Walker, Brendan A. McGrath, Joseph P. Black, Gerard M. Doyle, W. A. Osborne, Thomas H. Bacon, Rory O'Connor, Peter E. O'Connell, James R. C. Green, Francis J. Lanigan, G. J. Moloney, T. V. O'Connor, George A. Nolan, James W. O'Donovan, Patrick Noonan, Thomas J. Fitzpatrick, John Maher, Peter D. M. Prentice, G. G. Overend, Desmond J. Collins, Reginald J. Nolan, Eunan McCarron, P. C. Moore, R. A. French, John J. Nash, John Carrigan.

The following was among the business transacted:

Accountants' Certificates

Draft regulations submitted with explanatory memorandum and ballot paper ware approved. It was decided that the draft regulations and ballot paper should be issued immediately with a covering letter to each member from the President.

Valuation Appeals

The following resolution was adopted:—

> That the Council of the Incorporated Law Society being of opinion that the proposal to transfer the present jurisdiction of the Circuit Court in relation to appeals against the decisions of the Commissioner of Valuation to non judicial tribunals or arbitrators is contrary to the public interest, requests the Minister for Local Government not to accept the proposal. The Council urge the Minister to retain the present system whereby the Circuit Court having jurisdiction where the property is located should continue to exercise final appellate jurisdiction on questions of fact arising out of valuation appeals, with a further right of appeal from the Circuit Court limited to questions of law only.

Medical Witnesses' Expenses

A deputation was appointed to ask the Irish Medical Association for a conference to discuss difficulties arising out of the attitude of certain medical practitioners in relation to furnishing medical reports and attendance as witnesses in Court proceedings.

PROCEEDINGS IN DAIL EIREANN — REFERENCE TO SOLICITOR

The Dail reports of May 25th contain references made by the Minister for Lands to a solicitor who acted for an owner of property which was acquired by the Irish Land Commission for the sum of £11,000. According to the report the Land Commission took possession of the lands on 1st February, 1965, and placed £11,000 6 per cent Land Bonds to credit. The bonds had not been allocated by 25th May, 1966 and the owner was stated to have lost about £1,000 as a result of a subsequent fall in the market of the bonds.

In reply to questions raised by a deputy in which adverse statements were made by the deputy affecting the Land Commission, the Minister for Justice was reported as having said, *inter alia*, "The purchase money in this case could have been allocated by the owner in February, 1965. At the time 6 per cent Land Bonds were quoted at 98. They did not fall substantially until the following June. In many ordinary transactions between solicitors rulings on title totalling from 25 to 42 had to be entered. In this case there were only four rulings which had to be answered. What is the owner's solicitor paid to do? He is

paid to answer requisitions on title. The requisitions asked for were the provision of the copy folios, the showing of a discharge of outgoings, the production of evidence that there was no claim for death duties and whether there were any lay-tithes payable out of the estate. The rulings were issued on September 10th 1964 and with the exception of the sending in of the copy folios nothing has been done. It was a matter in which any experienced clerk in a solicitor's office could deal with. It might be that the Land Bonds had falled in the meantime and that this woman had suffered. If she had she might have redress and recoup her loss but not in any action against the Minister or Land Commission. That woman's £11,000 plus the accumulated interest would be lying there until Tibs Eve until her solicitors did what every single solicitor must do in any similar case."

The Council of the Society asked the solicitor concerned for an explanation of the position and, with his client's permission, he sent a copy of his file to the Society. An examination of the file clearly shows that the owner's solicitor was active and diligent in the conduct of his client's business, that no part of the delay was attributable to him and that allocation could not have taken place in February, or even in May, 1965, having regard to the difficulty of obtaining a certificate of clearance from death duties from the Revenue Commissioners.

Immediately on receipt of the Examiners' rulings on 10th September, 1964, the owner's solicitor applied to the Estate Duty Office for a certificate of discharge from death duties, which was the only matter of difficulty; since then he had been in constant communication with that office, and he had since then received not only one but a whole series of different queries at different times on different points which were duly answered. The latest additional queries from the Estate Duty Office were received on 26th May, 1966.

The facts have been brought to the attention of the Minister by a letter from the President and he has been requested to withdraw the allegations made against the solicitor.

CIRCUIT COURT RULES 1966

'These Rules' which came into operation on 13th June, 1966 provide for an increase in costs in debt and liquidated claim cases settled before entry. The Rules are available from the Government Publications Sales Office, G.P.O. Dublin, 1, or through any book-seller, price 6d. (S.I. No. 128 of 1966).

SOCIETY OF YOUNG SOLICITORS

A meeting was held as usual in Bushwell's Hotel, Molesworth Street, Dublin, on Thursday, 26th May, when a Senior Counsel delivered a lecture on "the preparation and presentation of a case for counsel." The lecture appealed to solicitors to try, where possible, to prepare a written case when presenting a relevant file to counsel, rather than to merely give an entire file, containing other matters relating to the querist's affairs, and asking counsel, verbally, to give an opinion. By doing this counsel's time is wasted, as is indeed the solicitor's, when counsel has to sort the file out, and send queries to the solicitor concerned.

The lecture was followed by a lively discussion.

At the private business, held prior to the lecture, a sub-committee was formed to look into the proposed new Solicitors' Accounts (Ammendment) Regulations.

The next lecture will be delivered by Mr. M. Gavagan, Chief Examiner and Public Trustee, of the Land Commission, and will be dealing with *inter alia,* Land Commission practice.

Current publications, available to members only, include :—

Hire Purchase and Credit Sales
Building Contracts
Office Procedure
Lecture and Discussion on Bankruptcy
Registration of Title.

Lecture on :

"Succession Act."
"Probate Office Practice."

LAND REGISTRY PRACTICE
Section 18 Land Act 1965

Certain sporting rights which have not been exercised for the twelve year period referred to in the Section may be cancelled on the register provided the Registrar of Titles is satisfied that the rights have not been exercised in such period.

In the interests of conformity the Reigistrar has in consultation with the Land Commission drafted a form of Affidavit and Advertisement for insertion in the local paper. The form of Affidavit and Advertisement is as set our hereunder. If solicitors use these forms in any application they make under the section, provided there are no sustainable claims, there will be little

difficulty in having the sporting rights cancelled on the register.

LAND REGISTRY

Cancellation of Sporting Rights

A. B. ..... of ..... at the expiration of 14 days from the date hereof intends to apply pursuant to Section 18, Land Act 1965, to the Reigistrar of Titles, Land Registry, Dublin, 7, for cancellation of certain sporting rights reserved to ..... on Folio No. ..... County .....

LAND ACT 1965—SECTION 18

Affidavit Re Sporting Rights (Other than Fishing Rights)

I ..... of ..... aged 21 years and upwards make oath and say as follows:—

1. I am the registered owner or occupier of the lands in Folio ..... County ..... or otherwise interested as follows:

2. I refer to the sporting rights (other than fishing rights) reserved to the Earl of ..... his heirs and assigns registered on first registration of said lands.

3. To the best of my knowledge and belief the said sporting rights so reserved have not been exercised for at least 12 years before ..... (the date here should be 9th March 1965 or a date subsequent thereto).

4. I refer to advertisement in (..... Herald) dated the ....day of ..... annexed hereto. No claim has been received by me in response thereto.

5. I hereby apply pursuant to Section 18 of the Land Act 1965 for the cancellation of the said entry of sporting rights (other than fishing rights) on the said Filio.

Sworn before me, this ..... day of ..... 19.....

REQUISITIONING OF DOCUMENTS

Land Registry—requisitioning of documents: The practice for many years in the Land Registry in dealing with a requisition for a copy of an instrument has been to issue all the papers, including the application for registration, correspondence, etc., as being part of that instrument unless the solicitor desires to apply for specified extracts only.

Some members have been puzzled at receiving copies of correspondence and apparently extraneous documents when they have requisitioned a copy of a deed.

If the solititor applies for a specified deed he will receive that document without the additional papers at the appropriate fee.

ADMISSION CEREMONY

On Thursday, 9th June 1966, the President presented Certificates of Admission at a ceremony in the Society's Library. Addressing the newly admitted solicitors and their friends the President said:

Ladies and Gentlemen, this is a most happy occasion for all of us. For those of you who are to receive certificates it represents the culmination of many years of really hard work and study, and for parents the happy conclusion of years of anxious planning and often of sacrifice. To the successful ones I offer my heartiest congratulations, at the same time sparing a sympathetic thought for those less fortunate who have not yet made the grade.

Each one of you is now embarking on a career in a most exacting profession. The highest standards of professional conduct are expected of you and I know you will do your utmost to live up to them. This will not always be easy but you will find that to do so will make the practice of your profession a much happier and more pleasant experience.

Some of you will be joining a family business, others may contemplate taking up assistantships to gain experience. In whichever direction your activities may lie I do want to impress upon you, in those difficulties you will encounter do not hesitate to seek guidance and advice from the more senior members of the profession. Nothing teaches like experience and I feel sure that I speak for all senior members when I tell you that we will be only too glad to give what help we can, remembering when we, like you, were in need of just such help. In addition, Mr. Plunkett is always available for consultation if called upon.

In conclusion, let me leave this advice with you:

(1) Join the Society which exists to look after your professional interests and to help you.

(2) Join your local Bar Association, which you will find invaluable in ironing our many difficulties and problems.

(3) Join the Solicitors Benevolent Association, which devotes its efforts to helping those less fortunate members and their families who have fallen upon evil days.

Thank you for listening to me so patiently and once again all good wishes and the best of luck.

Parchments were presented to the following:

Miss Philomena Armstrong (B.C.L.), Ballyweelin, Rosses Point, Co. Sligo.

Denis J. Casey, 5 Endsleigh, Douglas Road, Cork.

Francis D. Daly, "The Glade," Montenotte, Cork.

John F. M. Darley, Lisnabo, Kilmainhamwood, Kells, Co. Meath.

Miss Mary Margaret Harvey (B.C.L.), "Belrose," Bishopstown Ave., Cork.
Bishopstown Ave., Cork.

Anthony G. Hayes, "Glenburn," Sutton, Dublin.

Patrick J. McMahon, 15 Church Street, Athlone, Co. Westmeath.

Vincent O. Morrin, Foxford, Co. Mayo.

Miss E. M. Jacqueline O'Donnell, "Brooklands," Tralee, Co. Kerry.

Thomas A. O'Donnell, St. Mary's Road, Galway.

Miss Josephine M. E. O'Meara, Killough Castle, Thurles, Co. Tipperary.

Miss Eleanor A. O'Rourke, (B.C.L.), Idrone House, Blackrock, Co. Dublin.

Brian G. McD. Taylor, Dublin Road, Drogheda, Co. Louth.

Miss Mary Pamela Tighe (B.A., N.U.I.), 45 Sandymount Ave., Dublin.

DAIL DEBATES

(1) Court Fees

Mr. Donegan (for Mr. Lindsay) asked the Minister for Justice the sum collected in Circuit Court fees in connection with litigation (a) in the Dublin Circuit Court, and (b) in the rest of the country in the financial year ended 31st March 1965, or for another convenient 12 month period.

Mr. Donegan (for Mr. Lindsay) asked the Minister for Justice the amount of fees collected (a) in connection with litigation in the High Court for the last convenient annual accounting period, and (b) in probate fees.

Mr. B. Lenihan: Fees payable in court offices are taken by way of stamps. Figures of the actual sales of these fee stamps indicate that, in the year ended 31st March, 1965, the amount of fees collected in the Circuit Court offices was £29,355 and in the various offices attached to the Supreme and High Court £139,000. Of the latter figure, it is estimated that £1,000 is attributable to the Supreme Court. The sales figures which I have mentioned are lower than the figures in the finance accounts for 1964-65, i.e., £33,212 for the Circuit Court and an aggregate of £162,424 for the Supreme and High Courts. The figures in the finance accounts are based on stamps issued for sale.

In the case of fees payable in Circuit Court offices, it is not possible to apportion the total sales of stamps between litigation in the Dublin Circuit Court and in the rest of the country.

Of the total sales of stamps in respect of fees payable in the offices attached to the Supreme and High Court, it is estimated that about £85,000 relates to fees payable in the Principal and District Probate Registries.

Mr. Dowling: In view of the fact that Deputy Ryan is not in the House, I should like to give someone an opportunity to ask this question.

Mr. Donegan: I ask the question.

Mr. Dillon: The Deputy should know by this that that is a matter for the Chief Whips. If he does not know it, he should be taken out and told it.

To ask the Minister for Finance if, having regard to the growing difficulty being experienced by the legal profession during the current bank strike in obtaining cash with which to pay stamp duties and Court and other fees in the Courts, Land Registry, Registry of Deeds and other institutions of the State, he will have arrangements made to have cheques accepted in lieu of cash.

—Richie Ryan

Reply

On the cessation of banking facilities instructions were issued by the Revenue Commissioners to the members of their staff concerned that unguaranteed cheques may be accepted from members of the legal profession in payment of the stamp duties and fees mentioned.

I understand that the Minister for Posts and Telegraphs has now issued similar instructions in relation to inland revenue and fee stamps purchased at Post Offices and documents which are handed in for transmission to the Revenue Commissioners for stamping.

MOD CONVEYANCING

Type Right

A suggestion to improve the efficiency of conveyancing work done in solicitors' offices is made by Mr. E. W. Eastman, senior O. and M. officer of the Inner London Boroughs' (O. & M.) Committee, writing in the July issue of *Business Equipment Digest*. It involves the introduction of an

electric automatic typrwriter. At least one professional firm has adopted the idea with apparent success. There are, he explains, three ways in which it can be of assistance.. First, standard clauses can be recorded on punched cards, available for use in drafts. Material peculiar to the document in hand can be interpolated at will. The advantages of using the cards are that there are no inaccuracies, and the machine types automatically at three times the speed of a competent human typist. The other two advantages from the machine arise from the fact that whenever the typewriter is in use it can, at the same time as typing, punch a card of what it is typing. So, in matters where two engrossments are needed, lease and counterpart being the commonest example, the first can be typed manually and a guaranteed identical second one produced automatically in one-third of the time. It is even more interesting that, with a machine with the right facilities, insertions and depletions can be made without difficulty in a complete document being produced automatically. This allows one to make a punched card of the draft, and then engross automatically using that punched card, with the occasional intervention of the typist to cope with amendments to the draft. This substantially cuts out two-thirds of engrossing time, while leaving all the advantages of a clear top copy engrossment. How much does it cost? The cheapest machine now available offering all these facilities is £1,375.—(*I.L.T.* and *S.J.*, 4/6/66).

FACULTY OF NOTARIES PUBLIC IN IRELAND

Scale of Revised Charges and Fees

Approved by The Honourable Chief Justice with effect as from 10th day of March, 1966

	£	s.	d.
1. Deeds, Affidavits and the like:			
(a) For attesting or witnessing any document without Certificate	1	5	0
(b) Duplicate of document without Certificate		12	6
(c) The like where Certificate required, one party	1	15	0
For each additional party at the same time		10	0
For each additional party at a subsequent time, with additional Certificate	1	5	0
(d) Duplicate or triplicate of document with Certificate	1	5	0
(e) Marking exhibits, each		4	0
(f) Each attendance at consulate, legation or embassy or in a Government Office in connection with legalisation of signature and seal, within City	1	5	0
Outside City	1	15	0
Stamp Duty, consular and other fees paid and taxi-fare if outside City additional. The City in this Schedule means the pre 1900 City (within the Canals).			
2. Bills of Exchange, etc.:			
(a) Noting Bill of Exchange of Promissory Note		12	6
(b) Same outside City, plus taxi-fare	1	5	0
(c) Protesting Bill or Note under £20 or equivalent		17	6
£20 or equivalent and upwards ...	1	1	0
3. Ships' Protests, etc.:			
(a) Noting Protest		15	0
(b) Certified copy thereof, in addition to stamp duty	1	1	0
(c) Extended Protest time taken not exceeding 1 hour	6	6	0
Each additional hour up to 6 hours	2	2	0
[Fees for subsequent day, for attending outside notary's office, for legalisation, etc., as in Section 1 (f)].			
Fee for Declaration where required		12	6
4. Commissions to take Evidence:			
(a) For day or part of a day, minimum fee	10	10	0
Each succeeding day or part of a day, fees as in Section 8.			
5. Translations:			
(a) From a foreign language into Irish or English, where Notary makes and certifies translation, per folio of 72 words, (in the Irish or English), 4/- with a minimum of	2	2	0
(b) From Irish or English into foreign language, where Notary makes and certifies translation, per folio of 72 words in the Irish or English 5/- with a minimum of	3	3	0
(c) In either of above cases if Notary has to obtain an interpreter, the latter's fees to be charged together with fees for certificate as per Section 1 (a) to (f)			
6. Double Taxation Relief Documents:			
(a) Verifying execution of Tax or Duty refund claim, a maximum fee of ...	1	1	0
7. Power of Attorney to sell Stock inscribed outside the State:			
(a) Amount involved not exceeding £100 nominal or equivalent		12	6
£100 to £500 or equivalent		17	6
Over £500 or equivalent	1	10	0

8. **The following charges may be added where applicable in addition to the fixed fees and charges as set out above in numbers 1 to 7 inclusive:**

(a) Attending to attest, execute, witness or generally notarise any document outside notary's office, up to 1 mile distance and within City	1	5	0
Over 1 mile or outside City, time going and returning not over 1 hour	1	15	0
Over 1 hour and up to 3 hours	3	10	0
Over 3 hours	6	6	0
Over 6 hours	8	8	0
Second day or part of a day:			
Up to 3 hours	6	6	0
Over 3 hours	8	8	0
(b) Add all other outlay properly and necessarily incurred by way of Stamp Duty, Taxi-fares, Travelling expenses, etc.			

9. (a) (i) Writing, signing and transmission of letter not exceeding one folio — 15 0

(ii) Exceeding one folio — 1 0 0

(b) (i) Each attendance not hereinbefore provided and in the Office of the Notary — for each subseqeutn half hour occupied — 1 2 5

(ii) Each attendance not hereinbefore provided and in the Office of the Notary — for each subsequent half hour occupied — 16 10

(c) Each attendance outside the Office of the Notary for each half hour necessarily absent from Office of Notary — 1 5 0

(d) Mileage and/or travelling expenses (1/- per mile minimum).

10. Any other work for advice—appertaining to Notarial matters not hereinbefore mentioned—such fee as may be fair and reasonable having regard to all the circumstances of the matter.

Dated 10th March, 1966.

Issued by and with the authority of the Faculty of Notaries Public.

EDWARD J. MONTGOMERY Dean.

TOIRLEACH DE VALERA Registrar.

PROFESSIONAL NEGLIGENCE FOR TAKING DEFECTIVE LEASES

The attention of the Council was drawn to the English case Hill v. Harris (1965 2 All E.R. 358) in which the plaintiff was a sub-lessee and the defendant a sub-lessor of premises which were let for a term of thirteen and a half years at the yearly rent of £206 subject to a convenant by the sub-lessee not to carry on in or upon the premises the trade or business of a licenced victualler, publican or any dangerous or noisy trade or business or any business whatsoever other than that of a confectioner or tobacco retailer.

During the course of the negotiations with the Estate Agents the plaintiff, Hill, informed them that he wanted the premises for the purposes of a confectionery and tobacco business and was informed in reply that this would be alright.

The plaintiff's solicitors informed the defendant's solicitors that their client intended to use the premises for a confectionery and tobacco business and that they were instructed that this was a properly permitted use.

The sub-lessor's solicitors never gave any specific reply, but in due course they sent the sub-lessee's solicitor a draft sub-lease containing the covenant against user other than that of a confectionery and tobacco retailer.

In point of fact the lease from the freeholder contained a covenant by the lessee not to use the premises other than for the purpose of boot and shoe makers and dealers, and not to use the upstairs rooms for any purpose other than living accommodation.

The sub-lessee brought an action against the sub-lessor for breach of warranty and the action failed. The Court of Appeal in England held that neither the correspondence nor the conversations nor the terms of the sub-lease containing the covenant as to user for confectionery and tobacco business, amounted to a warranty that the user was aouthorised by the superior lease. These were merely matters of conversation during the progress of negotiations.

In the course of his judgment, dismissing the Appeal, Russell, L. J., stated, by way of *obiter dictum,* that he could not see what conceivable defence the solicitors acting for the Plaintiff would have to claim for equivalent damages for negligence on their part in that they did not take the ordinary conveyancing precaution before allowing their client to take a sub lease of finding out by inspection of the head lease what were the covenants restrictive of user or otherwise contained therein.

This case raises serious implications for solicitors. A lessee, in the absence of stipulation to the contrary, is not entitled to investigate the lessor's title, neither has it been common practice, on taking a lease for a short term, to require production of all superior leases to ascertain the existence or otherwise of restrictive covenants.

The Council have taken the opinion of counsel who has advised that while the decision of the English Court of Appeal is special to the facts

of the case under consideration as set out in the report, and while it is not possible to say that an Irish Court would arrive at precisely the same conclusion upon the same set of facts, it is highly probable that they would do so.

It is the business of the tenant if he does not protect himself by an express warranty to satisfy himself that the premises are fit for the purpose for which he wants to use them, whether that fitness depends upon the state of their structure, the state of the law, or any other relevant circumstances. Accordingly, on this view, there is no warranty or guarantee by the lessor or sub-lessor of the premises that there are no restrictive covenants which would prevent the lessee or sub-lessee from using the premises in the manner desired.

As regards the position of the solicitor, having regard to the *obiter dictum* of Russell, L. J., counsel advises that it is the duty of the solicitor for an intending sub-lessee to acquaint himself with the purposes for which his client requires the property and to ensure that there are no defects of title or otherwise which would prevent his client from using it for the purpose for which he requires it. The discharge of this duty may require the solicitor for the intending sub-lessee to inspect, or make inquiry as to the existence and nature of any restrictive covenants under which the sub-lessor holds. If the solicitor for the lessee has an opportunity of negotiationg the terms of the contract with the intending sub-lessor. he should ensure that provision is made to enable him to obtain all appropriate and necessary information in the circumstances of the case. He would be negligent if he were to permit a client wishing to acquire and lay out money on a property to enter into a contract for a sub-lease which would preclude him from acquiring the appropriate information, including, if necessary, an investigation of the lease under which the sub-lessor holds the property without warning him of the possible consequences.

If the solicitor for the intending sub-lessor, on being asked by the solicitor for the intending sub-lessee as to the existence or otherwise of restrictive covenants, should give a reckless and untrue answer he could be held liable for damages, whether he gives an express warranty or not. This would appear to follow from the recent English decision in Hedley Byrne v. Heller and Company, where it was held that a bank issuing a reference for a customer being aware that the reference would be used for the purpose of obtaining credit from a third party would be liable for any financial loss arising from the bank's negligence, in the absence of a express disclaimer.

It appears to follow therefore, from the *obiter dictum* of Russell, L. J., and counsel's opinion thereon, that the sub-lessee's solicitor may be liable for negligence if he fails to make proper enquiries as to the existence of restrictive covenants in the head lease, and that the sub-lessor's solicitor may be liable for damages to the sub-lessee if he recklessly gives a false answer to an enquiry by the sub-lessee's solicitor.

Counsel advises that if the information obtained as a result of enquiries by the sub-lessor's solicitor shows that the intended sub lease would be void the solicitor acting for the sub-lessee should inform his client and should not proceed with the transaction. If the information received shows that the intended lease, or sub lease, would be liable to forfeiture because of breach of covenant by the intended sub lessor the sub-lessee's solicitor should explain this to his client, bearing in mind the possibility of getting a waiver or the covenant or relief against forfeiture. If, despite proper enquiries and information obtained, the client proceeds contrary to advice and thereby sustains damage he cannot hold his own solicitor liable. If the solicitor for the intending sub-lessee is unable, notwithstanding enquiry, to obtain any information as to the existence or otherwise of restrictive covenants in the superior lease, he should likewise inform the client of the risk which he takes in proceeding without information. If the client, having been properly advised as to the risk, proceeds on his own judgment the solicitor will not be liable for negligence.

Having regard to the importance of the matter the Council have brought it to the attention of the Commission on Landlord and Tenant Law.

NATURAL JUSTICE

In Ceylon, every school falling with a certain category, had, *inter alia,* (a) to pay its teachers salaries by the 10th of the month immediately after that in respect of which they were paid, and (b) had to satisfy their Director of Education that it had sufficient funds to maintain the school. If any school failed to satisfy these requirements the Minister for Education could make an Order providing, in effect, for the school to be taken over by the State. On one occasion salaries for July were not paid until August 18th. The Director drew attention of the school to obligation (a) above, but not to (b), and then an Order was made taking over the school. In a public broadcast the Minister justified the Order on both the above grounds. The Privy Council quashed the

Order as the Minister was acting judicially or quasi-judicially and should have notified the school of the charges against it. The Minister's broadcast (which was in evidence) shows that the Ministerial Order rested largely on ground (b), of which the school had not notice.

Maradana Mosque v. Badi-ud-Din Mahmud (1966) 1 All E.R. 545.

Conflict of Laws

The plaintiffs brought an action in England on a judgment for payment of money obtained against the defendant in the State of New York. The defendant did not reside in England and the writ was issued and served upon him whilst he was staying in a London hotel for a few days for reasons not connected with the litigation. Lyell J. held that such service gave the English Court jurisdiction to hear the action.

Colt Industries Inc. v. Sarlie (1966) 1 All E 673.

Negligence—Collision at Road Junction

The Court of Appeal held that although there is no rule as to the priority of traffic at a difficult road junction, "it is a well-recognised and conventional practice, rather than a rule, that where vehicles are approaching . . . in risk of collision or where there is doubt as to the priority, the vehicle which has the other on its right-hand side is the vehicle to give way." The deceased motorcyclist having failed to do so, his widow's action against the driver, of the lorry which knocked him down failed, the deceased having ridden straight in front of the lorry the driver of which had given a proper signal and was using due care.

MacIntyre v. Coles (1966) 1 All E.R. 723.

Restraint of Trade

The Court of Appeal in a recent case followed the decision of Petrofina (Great Britain) Ltd. v. Martin (quoted in an earlier issue of the GAZETTE). He considered that some restraint may be reasonably in order to protect petrol company's continuity of outlet in an area. But (1) as to the garage on which there was no mortgage to the petrol company, the restraint for four years and five months, having reagard to all its terms, was void as being in unreasonable restraint of trade. (2) As regards the garage on which the solus agreement was linked to a loan agreement and a mortgage, the doctrine of restraint of trade applied to covenants in a mortgage as well as to agreements merely for the sale of goods. In the case under consideration the mortgagor was prohibited from redeeming except by the specified instalments, and the solus agreement operated for twenty-one years. The tie for so long a period was unreasonable and void, and the mortgagor should be allowed to redeem although that period had not expired.

Esso Petroleum Co. Ltd. v. Harper's Garage (Sourport) Ltd. (1966) All E.R. 725.

Infant—Rights of Putative Father—Religious Education

The father, a married man with two children by his first wife who had divorced him, had an affair with the mother as a result of which the father's second wife instituted proceedings and obtained a decree nisi. The father and mother decided to marry, but after the mother had become pregnant differences arose and the mother informed the father that she would not marry him. The father was subsequently reconciled with his second wife and the decree nisi was rescinded. When the child was born to the mother, she placed it with an adoption society for adoption by a Roman Catholic family, and when the child was a few weeks old it was sent to the adopters, a childless couple. The father was at all times anxious to bring up the child, and his wife, who was deeply in love with the father, was also very anxious to bring up his child. The father applied for custody and although he and his wife were not Roman Catholics, they were prepared to give an undertaking to bring up the child in that faith. The adopters applied for an adoption order. At the date of the hearing the child was eighteen months old, the father and his wife were forty-seven, and the adopters were thirty-seevn. The Coury of Appeal held that custody should be granted to the father.

Re C. (M.A.) (An Infant) (1966) 1 All E.R. 838, 849.

In the Matter of the Solicitors' Acts 1954 *and* 1960

Members please note that the Society have in their possession deeds and documents formerly held by Mr. Richard J. Elgee of George Street, Wexford. Members acting for clients of the former clients by communicating with the Secretary of solicitor may obtain documents on behalf of the Society.

Struck by Lighting

The Judicial Committee of the Privy Council dismissed the appeal brought from the judgment of the High Court of Australia dated November 22, 1963, which allowed the respondents' appeal and set aside the Order and judgment of the

Supreme Court of Western Australia date January 9, 1963, and held that in certain circumstances the owner of a tree which had been set on fire by lightning was liable for the damage caused by the consequential spread of fire.

It was considered that the case was not one where a person had brought a source of danger on his land, nor one where an occupier had so used his property as to cause a danger to his neighbour. It was one where an occupier faced with a hazard accidentally arising on his land, failed to act with reasonable prudence so as to remove the hazard. The issue was therefore whether in such a case the occupier was guilty of legal negligence, which involved the issue whether he was under a duty of care, and if so, what was the scope of that duty with regard to his neighbours, as to hazards arising on his land.

(Allan William Goldman v. Rupert William Edeson Hargrave and Another, *Times*, 14/6/66).

UNQUALIFIED PERSONS ACTING

The Leiscester Mercury for May 6th, 1965, reports a case at Market County Court heard before His Honour Judge D. H. Robson on May 5th. British Colonial Furnisher, Ltd., of Nottingham Street, sued for a debt owing to the company and were represented by Mr. Frederick Overton, an accountant. The learned Judge told Mr. Overton that an official company should be represented by a solicitor and, receiving no reply, said he would overlook it on this occasion, adding that there were three local solicitors, each able to represent the company, and yet an accountant was sent all the way from Nottingham to Market. Judgment was given for the company, payable at ten shillings a month, and the Judge remarked: "It will take a month or two to pay your fare down here no doubt it will and rightly so." We should have thought this rule was well understood and we see no reason why the rule should be broken.

On May 26th, 1965 the *Surrey Comet* reported that Robert E. Burns, of Esker, appeared at Marborough Street, Magistrates Court on May 24th, 1965 in answer to a summons issued at the instance of the Law Society for preparing, as unqualified person, the assignment of a flat at Weybridge. The defendant was a senior clerk with a co-operative society, and the assignee of the flat had paid him sums of £81-18-0 and £128-19-0, the bill including an item of five guineas for "assignment of lease." Evidence was given by the assignor's solicitor who described a telephone conversation and a discussion with the defendant who said he had included the five guineas because he thought he would have to pay that fee to the assignor's solicitor, but had not been asked for payment. He pleaded not guilty and denied attempting to act as a solicitor, but the Magistrate, Mr. Edward Robey, held that the case was so plain that it was beyond any argument at all and fined him £10-0-0 with ten guineas costs, and giving two months to pay, with an alternative of two months in prison.

BOOK REVIEW

DICKERSON (R.W.V.)—*Accountants and the Law of Negligence.* Toronto, Canadian Institute of Chartered Accountants, 1966. (Royal 8vo, pp. XV, 648). Price not stated.

Mr. R. W. Dickerson, of the Faculty of Law in the University of British Columbia at Vancouver, has writ University of British Columbia at Vancouver, has written an interesting, comprehansive and instructive boom on the intricate legal problems which accountants meet on such problems as: duty of care, standard of care, measure of damages, contributory negligence, duty to third parties, etc. The book is preceeded by a table of cases, which is unfortunately incomplete, as it only refers to the pages in the tedt, and does not give the customary references; however, generally speaking, the cases are dealt with very fully in the text, and the most important extracts from the leading judgments have been inserted therein. It is evident that the law of negligence as applied to accountants has evolved largely out of cases in which accountants have been engaged as auditors, and obviously the auditor's duty to his client must be found in the terms of the contract, which should be preferably in writing. However, under such statutes as the Companies Acts 1963, the duties of auditors are clearly set out, and based on the statute. As Lord Denning has so clearly stated, in the Fomento Case (1958) "An auditor is not to be confined to the mechanics of checking vouchers and making arithmetical computations. His vital task is to see that errors are not made, be they errors of computation, or errors of omission, or downright untruths." The auditor must therefore come to his task with an inquiring mind! The legal circumstances in which an auditor will have to disclaim responsibility for certain figures in the financial statements is fully explored.

The text relating to the intricate subject covers 100 pages, while there are no less than 500 pages of cases reproduced in Appendix A while an additional 35 pages covers the official statements and opinions of counsel in Appendix B. The cases covered are tested alphabetically, and are thus easily traceable; they cover decisions from South Africa, England, India, Canada, and Australia. The only Irish cases listed are: (1) *Cork Mutual Benefit Society v. Atkins' Churnside & Co.* (1911) in which Wright J. held that the defendant auditors had acted with all reasonable care and skill; (2) *Irish Woollen Co. v. Tyson* (1900) in which the Irish Court of Appeal held that the auditor had been negligent in not detecting frauds, and (3) *Ross & Co. v. Wright, Fitzsimons and Mayes* (1896) in which Lord Justice Fitzgibbon held that the auditors were negligent in failing to detect errors and falsifications, and had to pay £50 damages. The

extracts from the judgments are so complete that prospective readers who will patiently read through the cases will appreciate which pitfalls to avoid. The third part of the work contains a clear statement on the duties and responsibilities of auditors, issued by the Public Accountant's and Auditor's Board of South Africa in 1965, a lengthy opinion of 25 pages by counsel on an Auditor's Liability for Negligence, requested by the Cape Society ofAccount ants and Auditors in 1959, and finally an opinion by Mr. Pritt and Mr. Bonnier on the Duties of Auditors requested by the London Association of Accountants in 1932.

The Canadian Institute of Chartered Accountants in Toronto, who published this comprehensive volume of nearly 650 pages, are to be congratulated on the wide field surveyed and Mr. Dickerson in the first 100 pages has admirably and fully covered the principles of negligence as affecting accountancy, there is a first class summary of the leading case of *Hedley v. Heller* (1963). The print is clear, but perhaps a large print could have been used for the cases, even at the expense of increasing the size of the book.

C. GAVAN DUFFY

CORRESPONDENCE

THE LAND COMMISSION

Land Bonds

The following was the text of a letter addressed by the Secretary of the Commission to the Secretary of the Society on 11th May, 1966. The letter should be read in conjunction with previous correspondence in this matter which appeared in the February issue of the GAZETTE (Vol. 59, No. 9) under the same title.

Dear Mr. Plunkett,

I have now fully considered our recent correspondence on the general subject of Land Bonds and have decided to adopt the alternative course suggested in your letter o 13th ultimo. Accordingly, I append herewith the following more up-to-date and comprehensive material in amplification of my letter to you of 8th December last in reply to yours of the 7th idem, later published in the GAZETTE.

Payment of purchase moneys in Land Baonds

The terms under which Land Bonds are issued in payment of the purchase price of land acquired by the Land Commission are laid down in the Land Bond Act. 1934, the Land Act 1953, and the various Land Bond Orders thereunder. The rate of interest to be borne by each series of land bonds is fixed with a view to securing that the market price of the bonds shall remain at or near par for a reasonable time after they have been created. Land Bonds are guaranteed by the State as to payment of interest and ultimate redemption at par but, as in the case of other Government securities, such guarantee does not extend to day-to-day prices on the Stock Exchange. The Land Commission have no power to compensate owners for losses through fluctuation in the Stock Market, or to alter the conditions under which Land Bonds are created and issued so as to make them available for tender in discharge of death duties and income tax.

The current series of Land Bonds, created by the Minister for Finance under the Land Bond Order 1966 (S.I. No. 18 of 1966) carries an interest rate of 7 per cent which, it should be noted, is ¼ per cent higher than the interest rate applying to the latest National Loan issue.

Examination of title to purchase moneys

During 1965, some arrears developed in this work due largely to a depletion in the number of Examiners which could not be made good until the end of the year. The back-log has since been cleared and the reading of titles lodged has been brought right up-to-date.

New procedures have recently been introduced with the object of simplifying and expediting the examination of title. The Land Purchase Acts Rules 1964 (S.I. No. 230 of 1964) of 23rd September 1964, which were formulated after detailed discussion and consultation with the Incorporated Law Society, prescribe simplified arrangements for the allocation of purchase moneys. Orders have been made pursuant to Section 15, Land Act 1965, authorising all Examiners of the Land Commission to exercise the powers and functions of the Judicial Commissioner and the Land Commission in relation to the distribution of Purchase Money (including the certifying under sub-Section (2) of Section 5 of the Land Act 1923, of sums out of the Costs Fund established under that Section). Under Section 16, Land Act 1965, the Examiners of the Land Commission are now authorised to accept as the period of commencement of title which the owner, tenant or other claimant shall be required to deduce a period of not less than:

(a) Twelve years beginning on the date of a conveyance, transfer or assignment for valuable consideration of the land or holding, and ending on the date on which the land or tenant's interest therein vested in the Land Commission, or

(b) Thirty years ending on the date on which the land or tenant's interest therein vested in the Land Commission, whichever is the shorter.

Control over Bonds by Solicitors in certain cases

You referred to the fact that solicitors, in their efforts to facilitate clients, occasionally involved themselves in financial undertakings which, without the co-operation of the clients, may be difficult to resolve at a later stage. Having regard to the provisions of the Land Purchase Acts and Rules thereunder and in particular to the Land (Finance) Rules 1925, no fully effective method can be suggested which would enable a solicitor in such cases to obtain control of the bonds for the purpose of realising his security. It is, of course, always open to a solicitor to obtain a formal request from the person or persons entitled to the residue of the bonds that the said residue be paid to the person entitled in care of the solicitor and to embody it in the Vouching Certificate. It would be a matter for the solititor himself to take what further measures he would consider appropriate in the particular circumstances to realise his security.

In your letter of 5th ultimo you referred to a property acquired last year by the Land Commission in which the purchase money was agreed in 6 per cent Land Bonds and you enquired if the purchase money could now be paid in 7 per cent bonds. As you know, this point is governed by Section 26, Land Act 1965, but the case in question is unfortunately outside the ambit of the section as the lands concerned became vested in the Land Commission on 5th August 1965. In fact, the 6 per cent bonds representing the purchase money in this particular case were allocated early this month.

Allocation of purchase money

From the Examiners Branch of the Irish Land Commission the Society received a communication in the

terms following in relation to the above:

"Having regard to the provisions of the Land Purchases Acts and Rules thereunder and in particular to the Land (Finance) Rules 1925, I can suggest no method which would enable the solicitor in cases such as that referred to in your letter to obtain control of the bonds for the purpose of realizing his security unless by obtaining a fomal request from the person or persons entitled to the residue of the bonds to be embodied in the Vouching Affidavit that the said residue be paid to the person entitled in care of the solicitor.

In the case to which you refer I would suggest that the solicitor concerned make such application as he considers advisable to the Examiner with a view to meeting his problem."

DONEGAL SOLICITORS' ASSOCIATION

At the Annual General Meeting of this Association on 11th June, 1966 the Officers and Council were re-elected for 1966/7, as follows:—

President, J. A. Osborne (Milford) who qualified in the year 1894; Vice-President, Francis Gallagher (Donegal); Secretary and Treasurer, T. A. Morrow (Raphoe); Other members of the Council: P. A. O'Donnell (Dungloe), J. G. Sweeney (Ballyshannon), P. J. O'Doherty (Carndonagh), B. J. McDermott (Ballybofey), M. R. Regan (Letterkenny).

At the conclusion of the meeting an address was given by Mr. William J. McGuire, solicitor, Dublin, a member of the Society of Young Solicitors, on the Succession Act 1965 and a vote of thanks was passed to Mr. McGuire, who was made a Honorary Member of the Donegal Association.

Resolution

At the Annual General Meeting of the above Association on 11th June, 1966 the question of Conditions as to Planning Permission in Letters of Consent to subdivision was discussed and the following Resolution was unanimously passed "That Solicitors in this area object to a condition requiring Planning Permission being inserted in Letters of Consent to Subdivision, in cases where a small area is involved and it is obviously the intention to use same as a building site, although not in the immediate future."—Signed: T. A. Morrow, Hon. Secretary.

THE REGISTRY

Registry A

FOR SALE: Solicitor's office and practice. Galway city. —Box No. A236.

WANTED: Competent Assistant Solicitor with possible view to partnership.—Thomas O'Brien, Solicitor, Clonmel, Co. Tipperary.

NOTICE

Change of Address

Owing to fire damage at No. 60 Dawson Street, MALCOMSON & LAW, Solicitors, have been compelled to transfer their offices temporarily to 27 Merrion Square, to which all future correspondence should be addressed. The new telephone number is 6 4 8 0 9.

REGISTRATION OF TITLE ACTS 1891 and 1942

ISSUE OF NEW LAND CERTIFICATE

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

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

Dated the 7th July, 1966.

D. L. McALLISTER
Registrar of titles

Central Office,
Land Registry,
Chancery Street,
Dublin

SCHEDULE

1. Registered Owner, **Thomas Murray.** Folio number 15992. County Westmeath. Lands of Bogganfin in the Barony of Athlone South containing 1a. 0r. 0p.

2. Registered Owner **Timothy T. Sheehan.** Folio number 10195R. County Kerry. Lands of Cappagh in the Barony of Clanmaurice containing 9a. 2r. 4p.

3. Registered Owner **Maurice Costello.** Folio number 431. County Kerry. Lands of Castletown in the Barony of Clanmaurice containing 65a 2r. 4p.

4. Registered Owner **Marria Coen.** Folio number 4911. County Galway. Lands of (a) Ballyglass containing 5a. 1r. 0p.; (b) Lands of Attemany containing 2a. 2r. 0p. both situate in the Barony of Tiaquin.

5. Registered Owner **Patrick Hoare.** Folio number 22988. County Limerick. Lands of Kilbane in the Barony of Clanwilliam containing 0a. 1r. 35p.

6. Registeres Owner, **Michael Beatty.** Folio number 25030. County Galway. Lands of Moanmore in the Barony of Loughrea containin 31a. 3r. 17p.

7. Registered Owner, **Edward Ward.** Folio number 3168. County Donegal. Lands of (a) Trllyloskan containing 41a. 1r. 10p.; (b) Drumcroagh containing 1a. 0r. 39p, both situate in the Barony of Tirhugh.

OBITUARY

Mr. Denis F. O'Shea, solicitor, died on the 23rd May, 1966, at his residence 15 Henry Street, Kenmare, Co. Kerry.

Mr. O'Shea served his apprenticeship with the late Mr. Timothy O'Shea, Killarney, Co. Kerry, was admitted in Trinity Sittings 1931 and practised at Killarney, Co. Kerry.

GAZETTE

Vol. 60
No. 3
July
1966

THE INCORPORATED LAW SOCIETY OF IRELAND

President
ROBERT McD. TAYLOR

Vice-Presidents
PATRICK O'DONNELL
JAMES R. C. GREEN

Secretary
ERIC A. PLUNKETT

CONTENTS

Weekend Meeting at Cork 29
Meetings of the Council 29
Conditions of Sale 30
Circuit Court Fees 30
Dail Eireann 30
Solicitors' Golfing Society 30
Tipperary and Offaly (Birr Division) Bar Association 30
The Society of Young Solicitors 31
House Agents' Fees Investigated 31
Scale of Minimum Fees for Counsel for Conveyancing and Advice on Title 31
Examination Results 32
Legal Education and Training 32
Commissioners of Charitable Donations and Bequests 32
Joint Seminar in Cork 32
Out of Date Jury System 33
Practice Direction 33
Cases of the Month 33
Office Rules for Dictators 37
Correspondence 38
Registration of Title Acts 39
Obituary 39
The Registry 40

WEEKEND MEETING AT CORK, 1967

Members should note that the date of the above meeting will take place at the weekend 19th to 22nd May, and not 26th to 29th May as already notified.

MEETINGS OF THE COUNCIL

July 28th: The President in the chair, also present Messrs Desmond J. Collins, Desmond Moran, T. V. O'Connor, Niall S. Gaffney, Patrick O'Donnell, P. C. Moore, James R. C. Green, Augustus Cullen, W. A. Osborne, F. Armstrong, Dan O'Connor, Eunan McCarron, Peter E. O'Connell, John B. Jermyn, John Maher, Ralph J. Walker, John J. Nash, Brendan A. McGrath, Patrick Noonan, Gerrard M. Doyle, Francis J. Lanigan, James W. O'Donovan, R. A. French.

The following was among the business transacted :

Accountants's Certificates

The Secretary read the report of the scrutineers on the postal ballot. Seven hundred and eighty-three valid ballot papers were received before 15th July 1966, of which six hundred and forty-

nine voted "yes" and one hundred and thirty-four voted "no". There were fifty-five late votes. The scrutineers reported that they had not opened the envelopes or counted these late votes.

The Council, having considered all suggestions received from members and Bar Associations, decided to make the Solicitors' Accounts (Amendment no. 2) Regulations 1966 in the form circulated to members with the postal ballot subject to one amendment, viz.: the substitution of six months for three months as the period within which a solicitor is to lodge with the Society his account's certificate after the balancing date.

Standard Building Contract

A committee of the Council considered a standard form of building contract for use by members of the profession. It was decided to send the draft contract to counsel for his consideration and subject thereto to discuss the matter with the Builders' Federation.

Entries in Directories

The Council, on a report from a committee, ruled that an entry in an International Law Directory by a firm of solicitors containing the words "established over eighty-five years" was contrary to proper professional practice, and the member was requested to have all future entries amended by the deletion of these words.

CONDITIONS OF SALE

The attention of the Society was drawn to a form of proposal subject to contract used by Dawsons Sales Limited, Auctioneers, 26 Westmoreland Street, Dublin, bearing a statement at the foot that the proposal has been approved by The Incorporated Law Society of Ireland.

The auctioneers were requested to delete this endorsement from the form. The firm of auctioneers have agreed to discontinue the endorsement.

CIRCUIT COURT (FEES) (2) ORDER, 1966

Members please note that this Order (S.I. No. 142 of 1966) restricts the amount of Circuit Fees prescribed in the Circuit Court (Fees) Order, 1966 (S.I. No. 53 of 1966). S.I. No. 53 of 1966 shall have effect as if "(but the additional fee chargeable in respect of this item shall not in any case exceed £2)" were inserted in the first column of Part II of the Schedule to that Order at reference number 6 after "in excess of £50."

DAIL EIREANN

Question:

To the Minister for Justice

To ask the Minister for Justice the fees payable to the Land Registry in respect of each item separately chargeable on the 1st January, 1965 and at the present time; the amount of the increase in each case and the percentage of such increase; and the percentage average increase in Land Registry fees.

—GERARD SWEETMAN

Answer:

The fees payable in the Land Registry on 1st January, 1965 and at the present time are set out, respectively, in the Land Registration Fees Order, 1959 (S.I. No. 157 of 1959) and the Land Registration Fees Order, 1966 (S.I. No. 57 of 1966), to which I would refer the Deputy.

The average increase in fees effected under the provisions of the 1966 Order is of the order of 75 per cent.

SOLICITOR'S GOLFING SOCIETY

Spring outing at Milltown Golf Club on 2nd June, 1966.

Results:

Challenge Cup and Captain's (W. A. Menton) Prize: Denis McDowell (18) Dublin, 3 up.
Runner-up: R. B. McConnell (17) Dublin 2 up.

St. Patrick's Plate (Handicaps 12 and under): R. J. Downes (7) Mullingar, all sq.
Runner-up: D. Lynch (8) Dublin, all sq.

Veteran's Cup: F. X. Burke (14) Dublin, 1 up.
Runner-up: P. Glynn (22) Dublin, all sq.

1st nine: D. P. Shaw (13) Mullingar, 2 up.

2nd nine: C. J. Bergin (5) Tullow, 2 up.

Competition from more than 30 miles: T. D. Shaw (1) Mullingar, 1 down.

Prize by lot: Barry Doyle (17) Dublin, 2 up.

COUNTY TIPPERARY AND OFFALY (BIRR DIVISION) BAR ASSOCIATION

At the Annual General Meeting of the Association held in Thurles on 14th June, 1966 the following were elected as officers and committee: President, John Shee; Hon. Secretary, John Corrigan; Hon. Treasurer, Martin T. Butler. Committee, Michael C. Black, Henry Hayes, Patrick F. Treacy, John C. Devitt, Patrick F. O'Connor, A. I. Cunningham, Donal G. Binchy, Francis Murphy, Kevin Nugent, Thomas J. O'Reilly, Robert A. Frewen, Patrick J. McCormack, Edgar J. Ryan.

THE SOCIETY OF YOUNG SOLICITORS

A meeting was held in Buswell's Hotel on Thursday, 30th June, when Mr. Myles P. Gavagan, Chief Examiner in the Land Commission, delivered a very interesting and illuminating paper on the Land Commission. Mr. Gavagan outlined the practice and procedue in the Land Commission with a view to giving a clear picture to solicitors as to how to deal with Land Commission transactions. The meeting was told that the staff and officers in the Land Commission would help solicitors at all times, but solicitors were requested to have their papers in order before they presented any application to the Land Commission.

The sub-committee appointed to report on the new Solicitors' Accounts Regulations, presented their report at private business on 30th June, and having been passed by the meeting, it has been circulated to members for their consideration. All members have been earnestly requested to consider the principle of these proposed regulations, and to vote thereon.

Membership subscription of £1-1-0 and orders for transcripts of lectures should be sent to the Treasurer at 15 Braemor Park, Dublin 14. Cheques and Postal Orders should be in favour of the Society. The membership year 1965-66 terminates on the 30th September 1966.

At the last ordinary meeting held in Buswells Hotel on 28th July Mr. Herman Good, B.A., LL.B., solicitor, delivered a very informative and enjoyable lecture on Criminal Legal Practice, which was followed by a lively and interesting discussion.

There will be no lecture in August. The next lecture will be on the subject of Accounts Systems by an accountant which will be held in Buswells Hotel on Thursday, 29th September.

The attention of solicitors is drawn to the notice appearing elsewhere in the GAZETTE about the forthcoming joint seminar, this is the second venture of this kind, the first was held in Mullingar on 26th and 27th March 1966 and was very successful.

The attendance was such that hotels within a radius of ten miles were filled. It is anticipated that there will be an attendance of between 300 and 400 at Cork, accommodation has been arranged for about 200 as it is anticipated that there will be a local attendance of about 80.

Early bookings will facilitate Mr. D. Moloney of 44 South Mall, Cork, in getting people suitably accommodated and arranging for extra accommodation as required. Bookings open on 1st September 1966.

HOUSE AGENTS' FEES INVESTIGATION

The President of the Board of Trade stated in a written parliamentary reply that he proposes to ask the Monopolies Commission to investigate the arrangements whereby estate agents and others charge commission at standard rates for services in selling and leasing house property.

The Government are empowered by the Monopolies and Mergers Act, 1965 to enable the Commission to investigate restrictive arrangements in the provision of services. This is the first major reference under those powers.

Such a reference does not prejudge the question whether the matter to be investigated is contrary to the public interest. It is for the Commission to report when they have established the facts.

The comment of the Royal Institution of Chartered Surveyors was that estate agency was not a monopoly. Their spokesman stated that agents did much abortive work; many buyers, for instance, failed to raise sufficient capital to complete the sale. The scale was far lower than most in America and on the Continent. Bona fide estate agents had nothing to fear and nothing to hide from the Commission. The Institution would submit evidence to the Commission—*London Times*, 25/6/66.

SCALE OF MINIMUM FEES OF COUNSEL FOR CONVEYANCING AND ADVICE ON TITLE

(1) Advising on title, requisitions and deed and directing searches :

Where the consideration is

under £1,000	£7	7	0
between £1,000 and £2,000	£9	9	0
between £2,000 and £3,000	£12	12	0
between £3,000 and £4,000	£15	15	0
between £4,000 and £7,000	£21	0	0
between £7,000 and £10,000	£26	5	0

exceeds £10,000 : £1-1-0 per additional £1,000.

(2) Advising on title, settling requisitions and directing searches (without settling deed) : deduct £2-2-0.

(3) Where counsel is required to give further advice on any point arising from the requisitions on title or replies thereto or otherwise : £4-4-0.

(4) Advising vendor on title and settling contract or conditions of sale : the scale set out at (1) above shall apply.

(5) Considering requisitions on title, settling answers thereto and approving draft conveyance on behalf of vendor.

(a) Where counsel has not settled the contract or conditions of sale: Such fee as shall be appropriate having regard to the scale set out at (1) above.

(b) Where counsel has settled the contract or conditions of sale: £5-5-0.

(6) Settling any deed: £6-6-0.

Note—The above fees are *minimum* fees and apply only in simple cases.

The existence of any of the circumstances set out below justify charging a fee in addition to that chargeable under the foregoing scale:

1. Difficulty in the title.
2. The perusal of an unusual number of documents.
3. Absence of proper abstract or precis of title.
4. Furnishing of original documents or copies in a form other than typewritten copies.
5. The time within which the work is required to be completed.

EXAMINATION RESULTS

At examinations held in July under The Solicitors Act 1965 the following candidates passed.

Second Examination in Irish: James S. Baylor, Maeve T. Ua Donnchadha, Robert M. Flynn, John McMahon Glynn, Anthony T. Hanahoe, James Houlihan, Michael J. A. Kelly, Brian J. Magee, Angela M. Sweetman. Nine candidates attended; nine passed.

First Examination in Irish: Anthony T. Burke, David Seymour Cresswell, Deirdre Dargan, Eileen Mary Doyle, Hugh Duff, Patrick D. Fitzpatrick, Terence Grant, James J. M. Green, Edmund D. Hickey, Francis Hickey, Thomas J. Kelly, Diarmuid A. Kilcullen, Thomas A. Murphy, Roger W. A. McGinley, B.A., Peter J. G. McKenna, Jacinta Noonan, J. M. Stephanie O'Connor, Joan O'Mahony, Thomas W. Vance, James O. Walsh. Twenty-one candidates attended; twenty passed.

Book-keeping Examination: Albert D. E. Burke, Ann M. Coady, Maeve T. Ua Donnchadha, T. F. Figgis, John M. Fitzpatrick, Robert M. Flynn, Garrett Gill, Derek H. Greenlee, Paul D. Guinness, Anthony T. Hanahoe, Elizabeth A. Heffernan, Pamela F. Hussey, Mary Carmel Kelly, Michael J. A. Kelly, Patrick J. Kevans, Joseph Molony, Paul M. McLaughlin, Michael McMenamin, Donnchadha O Buachalla, Michael O'Shea, Simon C. K. Quick, Angela M. Sweetman, Jonathan Thompson. Twenty-six candidates attended; twenty-three passed.

LEGAL EDUCATION AND TRAINING

The current issue of the *Journal of the Society of Public Teachers of Law* contains a comprehensive survey by Professor J. F. Wilson of Southampton University of legal education in the United Kingdom. It is worth recording that, of the 1,250 solicitors who replied to the questionnaire which Professor Wilson sent out as an insertion to the Law Society's Gazette, 53 per cent thought that existing facilities for legal education were inadequate and "it soon becomes evident that the major problem existing in the minds of solicitors was the provision of an adequate system of training in articles". Making every allowance for the fact that this method of accessing public opinion is unsatisfactory, and that the tendency is for the dissatisfied to speak and for the satisfied to stand mute, the investigation provides substantial support for the concern which the Council of the Law Society have felt for several years. It is a pity that we have not yet had the views of the Council on the report of Sir Arthur Driver's Special Committee, that too many people and bodies have fingers in the pie without enough co-ordination between them. The time has come for someone on a high level to grip the situation. (*Solicitors' Journal*, 8/7/1966).

COMMISSIONERS OF CHARITABLE DONATIONS AND BEQUESTS

The Commission will hold a vacation meeting on the 6th September 1966.

JOINT SEMINAR, CORK, 1966

Held Jointly by the General Council of Provincial Solicitors and the Society of Young Solicitors with the co-operation and assistance of the Southern Law Association

The Second Joint Seminar will be held in Cork in the Imperial Hotel, South Mall, on Saturday and Sunday the 22nd and 23rd of October 1966.

The programme is as follows:

Saturday, 2.45 p.m.: *Succession Act* by William Maguire, Solicitor.

Sunday, 10.15 a.m.: *Reversionary Leases and Ground Rents Acquisition* by His Honour Judge Conroy.

Sunday, 2.15 p.m.: *Town Planning Practice* by Brendan Kiernan, B.L., Legal Adviser to the Department of Local Government.

Special travel arrangements have been made with C.I.E., whereby people travelling by train will be able to obtain the return ticket for the single ticket rate. Hotel bookings will be handled by Dermot Moloney of the Southern Law Association, at 44 South Mall, Cork. Bookings will commence on the 1st September and close on 10th October. Full details and registration forms will be sent to all solicitors by post. As it is anticipated that the attendance will be double that of Mullingar, those intending to participate should book early.

OUT OF DATE JURY SYSTEM

Lord Parker when addressing officers passing out from the senior staff course in Basingstoke, stated that under the present system far too many guilty men were discharged, and this was largely due to the jury system. He expressed the opinion that many were of opinion that the jury stystm had outlived its usefulness. He said that there was much to be said for giving a man's previous convictions during a case and not withholding them until or unless he was convicted. Speaking of the composition of juries he stated that at one session 15 per cent of the jury were found to have had criminal convictions. He added: "I sometimes wonder how anyone gets convicted."

PRACTICE DIRECTION

The Hon. Mr. Justice Murnaghan has given the following practice direction :—

A. The following practice shall be observed henceforth in applications for approval of settlements in which infants are involved in order to avoid the disclosure in open court of the strength or weakness of the plaintiff's case.

1. That where there shall be exhibited in the grounding affidavit:
   (a) a short opinion on the issue of liability of the one of the counsel retained on behalf of the plaintiff containing a concise statement of the reasons for such opinion;
   (b) plain typed copies of manuscript reports by doctors or surgeons (with the originals).
2. No such opinion or report shall be read aloud in Court at the hearing of the application.

B. If the plaintiff seeks the Court's decision as to whether a sum lodged in Court by the defendant should be accepted, or the action should go to trial, or waiver by the defendant of notice of acceptance of the lodgment should be proved at the hearing. An application may be made so that the appropriate ancillary directions may be given by the Court at such hearing in the event of a decision that such sum should be accepted.

—*The Irish Law Times and Solicitors Journal*, June 27th, 1964.

CASES OF THE MONTH

Contract—Fundamental Breach

The respondents agreed in December 1965 to charter a vessel from the appellants for the carriage of coal from the United States to Europe, the charter to remain in force "for a total of two years consecutive voyages." The vessel was to sail and proceed "with all possible dispatch" to a port in the United States and there load on each voyage a cargo of coal and being so loaded, proceed "with all possible dispatch" to a port in Europe. Demurrage of 1,000 dollars a day was payable for detention beyond the days fixed for loading and unloading. In September 1957 the appellants considered themselves entitled to treat the charterparty as repudiated by reason of delays in loading and unloading, but it was agreed that the contract should continue without prejudice to the dispute. The appellants claim to be entitled to freight for nine, or alternatively six, additional voyages which they said the vessel should have completed less demurrage payments received. The respondents claimed that their liability was limited to the demurrage payments. The appellants maintained that the delays amounted to a fundamental breach entitling them to treat the contract as repudiated and that the demurrage provisions therefore did not apply.

Held by the House of Lords that there is no rule of law that no exceptions clause can excuse a fundamental breach of contract or breach of a fundamental term. The expression "fundamental breach" means neither more nor less than the type of breach which entitles the innocent party to treat the contract as repudiated. On the facts of the case, assuming there was a fundamental breach, the appellants had elected to affiirm the contract and their claim was limited to the agreed sums for demurrage. Karsaces Co. v Wallis (156) Reversed.

(Suisse Athlantique Societe D'Arment Maritime S.A. v N.V. Rotterdamsche Kolen Centrale (1966) 2 W.L.R. 944; 2 All E.R. 61).

Contract—Injunction against Procuring Breach

The main contractors for the building of a large power station employed the plaintiff company as sub-contractors to erect the brickworks on a "labour only" basis, i.e., they were to supply the labour for the work and the main contractors the materials. The defendants were three officers of a trade union which strongly objected to this form of contract, although it was authorised (subject to safeguards) by National Working Rule 8 of the National Joint Council, and this rule, being agreed by a majority on both sides, became binding on the industry. The union threatened the main contractors on May 18, 1965, union members would be advised not work on the site, and there was an official stoppage of work as from that day. After unsuccessful discussions the union officials further threatened to withdraw all bricklayers employed by the main contractors, declared the job "black" and picketed the entrance gates. Many men left their work without proper notice. The plaintiffs appealed against refusal of an interlocutory injunction restraining the defendants from attempting to bring about the termination of the "labour only" contract.

Held by the Court of Appeal that "labour only" contract was not a "contract of employment," so that the defendants were not protected from liability by the Trade Disputes Act 1906, s. 3. There was no defence that the defendants were ignorant of the precise terms of that contract. An injunction was granted to the plaintiffs.

(Emerald Construction Co. Ltd. v Lowthian and Others (1966) 1 All E.R. 1013).

Vendor and Purchaser

A contract for sale of a sub-underlease (wrongly described as an underlease) provided that "the vendor's title which has been accepted by the purchaser shall commence with an underlease dated December 28, 1963, and the purchaser shall raise no requisition or objection thereon." Completion was fixed for December 23, 1964, but the purchaser took possession on October 26, the purchase-money being deposited in the joint names of the vendor and purchaser. On October 28 the purchaser's solicitors were informed by the reversioner on the underlease of breaches of covenants to pay rent, not to underlet without consent, and not to make unauthorised alterations. Could the purchaser rescind?

The Court of Appeal held that in the circumstances the purchaser could rescind the contract. The special condition restricting objections was not a bar to rescission where the purchaser discovered from other sources defects which were liable to make her title worthless, unless the vendor disclosed defects of which he knew or ought to have known. The vendor was entitled to compensation for use and occupation of the flat, but could not rely on the purchaser's remaining in possession as affirming the contract as he had not pleaded this and the purchaser had had no opportunity to explain the reason for her remaining in possession.

(Becker v Partbidge (1966) 2 All E.R. 266).

Damage for Breach of Option

An option to purchase land was granted by the defendant to the plaintiff, to be exercised as soon as reasonably possible after the plaintiff should have obtained planning permission and modification of a tree-preservation order to enable him to carry out development. The defendant, in breach of the option agreement, sold the land to a third party shortly after the plaintiff had already obtained agreement in principle to planning permission and modification of the tree-preservation order. Should the damages recoverably by the plaintiff be assessed by reference to the profits the plaintiff would have made by carrying out his porposed development?

Elwes J., applying Diamond v Compbell-Jones (1961) Ch. 22 decided in favour of the plaintiff. The defendant knew the plaintiff intended to develop the land for profit, and therefore special circumstances were established which entitled the plaintiff to have damages assessed by reference to the profits which both parties contemplated he would make.

(Cottrill v Steyning and Littlehampton Building Society (1966) 2 All E.R. 295).

Dangerous Driving—Absolute Offence

The defendants, who were civilian drivers for the Territorial Army, appealed against their convictions, under S. 1 (1) of the Road Traffic Act 1960, in the case of Ball, of causing death by dangerous driving, and in the case of Loughlin, of aiding and abetting that offence. On the occasion on which the offences were comitted Ball was at the controls of a Ferret scout car. Because a driver's vision is restricted to the rear and at the sides while driving a vehicle of this type, an observer, standing in the turret, gives directions to the driver by intercom. The defendant, Loughlin, was acting as observer on the occasion which gave rise to the offences charged. Ball, the driver, halted the scout car at a cross-roads, coming out of a minor road into a major road, and Loughlin

instructed him to proceed as the road was clear. A motor-cyclist who was approaching collided with the scout car and was killed.

It was held (C.C.A.: Lord Parker, C.J., Fenton Atkinson and James J.: June 15, 1966) that the appeals should be dismissed since the offence was an absolute offence. A driver could not escape liability, even though he was completely blameless, or delegate any part of his responsibility to a third person. The only possible defence where a driver could establish that he had been deprived of control of a vehicle by reason of some sudden affliction of his person (e.g. an epileptic fit) or some defect in the car suddenly manifesting itself without blame on his part. The expression "all the circumstances" in the Act of 1960 referred to circumstances arising outside a vehicle and not pertaining to the driver himself.

(R. v Ball, R. v Loughlin. *The Times* 16, 1966).

Negligence—Vicarious Liability

The respondent was one of a party of boys returning to Glasgow from a summer camp with luggage. He was being transported in a lorry belonging to the appellants, and driven by one of their servants, when the lorry was involved in an accident and the respondent sustained serious injuries. The Court of Session held that the appellants were vicariously liable for the negligence of their driver. The appellants appealed on the ground that the driver was acting outside the scope of his employment with them, in that at the time of the accident he was driving along a road he would not have been had he followed the instruction they had given him; that instruction was to transport the boys and their baggage to Glasgow which meant by implication by the shortest route to Glasgow. The driver had in fact made a considerable detour at the request of his passengers and for purposes of theirs.

It was held (H.L.: Lord Reid, Lord Guest, Lord Pearce, Lord Upjohn and Lord Pearson; June 22, 1966) that the transport of the boys and their baggage to their destination was the dominant purpose of the journey which the servant was, qua servant, required by his employers, the appellants, to carry out, and it remained the dominant purpose of the journey even though the passengers had been transported deviously. Had the lorry been empty, or had what it carried been of little importance, so substantial a deviation might well have constituted a "frolic of his (the driver's) own," but the presence of the passengers meant that the deviation was not undertaken by the driver for his own purposes alone. In spite of that deviation, the appellants remained liable for their driver's negligence.

(A. & W. Hemphill Ltd. v Williams, *The Times*, June 23, 1966).

Contract—Third Party Rights

The appellant, a widow suing personally and as administratrix of her late husband, appealed from the decision of the Vice-Chancellor of the Chancery Court of the County Palatine of Lancaster that she was not entitled to enforce a promise made to her late husband by the respondent, her husband's nephew, and incorporated in an agreement in writing between them, to the effect that in part consideration for the handing over to him of the husband's coal merchant's business, the nephew would, as from the husband's death, pay to his widow an annuity of £5 a week for life out of the business.

It was held (C.A.: Lord Denning M.R., Danckwerts and Salmon L.JJ.; June 22, 1966) that by virtue of S. 5 (6) of the Law of Property Act, 1925 where by a person was entitled "to take an immediate or other interest in land or other property . . . . although he may not be named as a party to the conveyance or other instrument," the widow was entitled to claim the benefit of the agreement by the nephew to pay her an annuity, even though she was not herself a party to the agreement. The general rule that "no third person can sue or be sued on a contract to which he was not a party" was a rule of procedure going to the form of remedy but not to the underlying right. When a contract was made for the benefit of a third person who had a legitimate interest to enforce it, it could be enforced by that their person.

(Beswick v Beswick, *The Times*, June 23, 1966).

Private prosecutor may bring prosecution for an indictable offence in the District Court.

1. The complainant, Jeremiah Crean, issued a summons in November, 1964 charging the defendant Patrick Ennis with fradulent conversion of the sum of £312-10-0 received for the complainant as sole proprietor of Savoy Motors Ltd., Rutland Place, Dublin. The said summons was returnable before District Justice Farrell on 23rd December 1964.

2. After argument, the District Justice ruled, that notwithstanding Section 9 (1) of the Criminal Justice (Admininsttion) Act 1924, which provides that all criminal charges prosecuted upon indictment shall be prosecuted at the suit of the

Attorney General, the rights of a common informer were preserved, and that he could take depositions in the case, but that he (Justice) had no power to proceed further, or return the defendant for trial, if the Attorney General did not take over the proceedings. After lengthy and protracted legal submissions, in January 1965, the Justice adjourned the case to 24th February, 1965 for the taking of depositions.

3. On 22nd January, 1965 the defendant obtained from Mr. Justice McLoughlin a conditional order of prohibition directed to the District Justice upon the ground that, by reason of the previously cited provision of the Criminal Justice (Administration) Act 1924, the District Justice had no jurisdiction to take depositions or hear or entertain any further proceedings in the case.

4. On 21st July, 1965 Mr. Justice McLoughlin disallowed the cause shown by the complainant and made absolute the conditional order of prohibition.

5. The complainant appealed to the Supreme Court on the single issue whether the effect of Article 30, Section 3, of the Constitution, which states that "All crimes and offences prosecuted in any Court constituted under Article 34 of this Constitution other than a Court of summary jurisdiction shall be prosecuted in the name of the people and at the suit of the Attorney General or some other person authorised in accordance with law for that purpose"—has been to bar the right of an individual, whether citizen or not, to initiate by information or summons a prosecution in respect of an indictable misdemeanour which the accused objects to being dealt with summarily and in respect of which he is unwilling to plead guilty—and further bars his right to maintain such prosecution by way of preliminary investigation of the offences charged up to the point where the District Justice either refuses informations or returns the accused for trial.

6. On the 6th May, 1966, the Supreme Court (O Dálaigh, C.J., Lavery, Haugh, Walsh and O'Keefee JJ.) unanimously, per O Dálaigh, C.J., held that the valuable right of private prosecution still subsists under Article 30, Section 3, of the Constitution, and the plain meaning of that section left the existence of private rights undisturbed. However, a prosecution on indictment must be conducted by the Attorney General in accordance with Section 9 (1) of the Criminal Justice (Administration) Act 1924. Consequently a private prosecutor may only conduct a prosecution to the point where the District Justice receives informations, and returns the accused for trial. From that point, the Attorney General must take over the case. Consequently the appeal was allowed, and the order of the High Court granting an absolute order of prohibition was reversed.

(The State (Patrick Dudley Ennis) v District Justice Farrell (Jeremiah Crean, Applicant). Unreported.

Solicitor's negligence—Failure to have witnesses available at trial

The plaintiff was charged with robbery with aggravation and was at his trial represented by the defendant solicitors by virtue of a defence certificate. Before the trial he had told them that at about 9.20 a.m. on 15th March 1960, the day of the robbery, he had been at Penge and had there asked a bus conductor and a chimney sweep the way to Hither Green. The robbery took place at 9.30 a.m. some six miles distant at Mottingham and it was agreed that if he had been at Penge he could not have taken part in it. Neither the conductor nor the sweep gave evidence at his trial and on 12th May 1960 he was convicted. An appeal to the Court of Criminal Appeal was dismissed and was further referred to the Court of Criminal Appeal by the Home Secretary. Subsequently the plaintiff brought an action for damages against the solicitor alleging that he had informed the solicitor's managing clerk of his conversation with the conductor and the sweep and had requested him to trace and call them at the trial and that in breach of duty the solicitors were guilty of negligence as a result of which the conductor and sweep were not present and did not give evidence at his trial and that he was convicted and sentenced to nine years' imprisonment.

Melford Stevenson, J., said that after reading the evidence at the trial and the evidence and findings of the Court of Criminal Appeal, he too, had come to the same conclusion as the Court of Criminal Appeal that, even if the conductor and the sweep had given evidence at the trial, the jury would have come to the same verdict. Although the plaintiff had failed to prove that it was probable that he would have been acquitted, there was still the question whether the solicitors were in breach of duty. The solicitors had taken reasonable and successful steps to trace the sweep and had come to the decision that his evidence was valueless. Events had proved that that decision was right. The conductor was easy to trace and the arrival and departure times from Penge were a matter of record. The plaintiff's conversation with the conductor was a matter of vital importance to his case. Because the managing clerk had come to the decision that it would be a waste of

time to call the conductor, he was unable to inform counsel what the conductor could say. One was brought to the conclusion that the failure to call the bus conductor was a breach of duty, albeit a technical breach, the plaintiff having wholly failed to satisfy the court that, if the conductor had been called, he would probably have been acquitted. The managing clerk knew from the depositions that two police officers' evidence was that the plaintiff had made a plain confession and that that evidence had been shaken before the plaintiff could have been acquitted. The court was satisfied that no harm had been done. There would be damages of £2 to the plaintiff. (Scudder v. Prothero & Prothero, *Solicitors' Journal*, 1st April 1966).

Restraint of trade—petroleum products

A term of a "solus agreement" which requires a garage proprietor to obtain his supplies of petroleum products only from a particular supplier for a period of seven and a half years is unenforceable unless it can be shown to be reasonably necessary to protect the supplier's legitimate business interests for so long a period.

A supplier obtained an interlocutory injunction against a garage proprietor for contravention of the restriction in such a "solus agreement". On motion to discharge the injunction, held, in the absence of evidence showing that the restriction was necessary for such a period to protect the supplier's legitimate business interests, that the period was too long and the restriction was unenforceable, as it was an unreasonable restraint of trade; accordingly the injunction would be discharged. (Regent Oil Company v. J. T. Leavesley (Lichfield) (1966) 2 All E.R. 454, Stamp, J.).

Master and servant—loan of servant

The plaintiff was injured when travelling as passenger in a lorry when a collision occurred through the negligence of the driver. The driver was in the general employment of a partnership who were engaged in sawing timber for the defendant company. The lorry belonged to the company and the plaintiff was picked up while the lorry was being driven on company business. The plaintiff was picked up at the direction of one of the partners in the partnership and he was expected to become employed by the partnership in doing work for the company. Held, that the driver was *pro hac vice* in the employment of the company and that the company was liable but not the partnership. (McGregor v. J. S. Duthie & Sons & Co. 1966 S.L.T. 133).

OFFICE RULES FOR DICTATORS

1. Never start work first thing in the morning. Typists much prefer a terrific rush in the late afternoon.
2. Please smoke while dictating. It assists pronunciation.
3. Do not face the typist while dictating. This would be too easy for her.
4. Hours for dictation : during the lunch hour, and at any time between 4.30 and 5.30 p.m.
5. When dictating please parade up and down the room. Typists can understand what is said more distinctly.
6. Please call in typists for dictation, and then proceed to sort papers, look up old files, telethone and receive calls, etc.
7. Please lower the voice to a whisper when dictation names of people, places, etc., and under no circumstances spell them to the typists. Typists are sure to hit upon the right way of spelling them, they know the name of every person, firm and place in the world.
8. When typists do not hear a word and dictators are asked to repeat it, shout it as loudly as possible. The typists find this most gentlemanly. Alternatively, dictators should refuse to repeat them at all. The typists have second sight and it may come to them.
9. Whenever possible, dictators should endeavour to keep the typists late. Typists have no homes and are only too thankful for somewhere to spend the evening.
10. Should a letter require a slight alteration after it is typed, score the word heavily through and through about four times and write the correct word beside it preferably in ink or heavy pencil, and always make the alteration on the top copy.
11. Should a typist be too busy or too lazy to take down dictation, please write letters with a blunt pencil in the left hand, whilst blindfolded. Incorrect spelling, balloons, arrows and other diagrams are very helpful to typists.
12. With regard to statements, do not on any account use lined paper. If figures are altered, please write heavily over those previously inserted, the correct figure in each case being the one underneath.
13. Should work be required urgently (a most unusual occurrence) it aids the typist considerably if the dictator rushes in at intervals of 30 seconds to see if it is done.

14. If extra copies of a letter are required, this desire should be indicated after "Yours sincerely", or overleaf so as to ensure that it is the last thing the typist will see when the letter is completed.
15. If a typist is making a tricky alteration requiring concentration and precision, always stand over her and breathe down her neck while she does it.

CORRESPONDENCE

Re: Succession Act 1965

Dear Sir,

I do not know if attention has been called to some of the anomalies which may arise from a strict interpretation of Section 115 (4) of the above Act limiting the period for election by the spouse as between a devise or bequest in the will and his (or her) legal right.

The right of election may be exercised within six months of the spouse *receiving notice* of his right from the personal representative, or within one year from the date of the issue of the Grant of Probate *whichever is the later.* I wish to emphasise the importance of the words "whichever shall be later" as creating the crux which, as I see it, rightly or wrongly, the Section may give rise to in practice.

Although it is declared to be the duty of the personal representative to give the notice to the spouse of his right of election, there is nothing in the Section which specifies *when* he is obliged to give the notice. He may give the notice a year after the issue of the Grant, or two years after, or in fact at any time, and whenever it may be that the spouse receives the notice (unless he has already taken it on himself to elect) the provision giving him six months from the date of the notice to exercise his right of election comes automatically into force. As I will point out, the consequence of this could be far-reaching.

It is necessary first of all to make clear that, although a hasty reading of the Section 115 (4) might give the impression that, in the absence of notice being served on the spouse by the personal representative, the right to elect would then be governed by the date of the Grant and would automatically lapse on the expiration of one year from that date, this is not so; the year after the Grant has to be the "later" date provided for in the Section, before it can be the limiting date and there is no way of determining whether it is in fact that "later" date so long as there is a possibility of the notice being served on the spouse by the representative. Furthermore, a simple calculation shows that if the words "whichever is the later" are to have the effect (which of course they are inteded to have) of making the expiration of the six months period following the notice a *possible* "later" date the words can only operate to have such effect if the notice by the representative is served more than six months *after* tthe issue of the Grant. That being so it is clear that the Section contemplates and therefore authorises the service of the notice at least *more* than six months after the Grant if it is to have any meaning, and if six months, why not twelve months, or a year, or two years, since, as stated, there is no time limit in the Section for service of the notice? An instance will show what I mean:

The deceased dies, say on January 1st, 1967.

The Grant of Probate issues on January 1st, 1968.

Subject to a possible service of the notice by the representative therefore the spouse has a right of election up to the 1st of January, 1969 (a year after the Grant).

If the notice by the representative is served *earlier* than the 1st of July,1968 then the 1st of January, 1969 will still be the "later" date.

It follows therefore that the only case in which the notice can operate to create a "later" date for the election will be if it is served *after* the 1st of July, 1968 —if, say, it is served on the 1st of August, 1968, then the period of election will be extended for one month after the period of a year determined by the issue of the Grant.

It does not cure the position to say that in practice the solicitor for the representative will of course advise him on the necessity of giving the notice to the spouse as soon as possible so as to put a definite period of his right of election. The solicitor may fail to do so, through oversight, or negligence or even ignorance. The solicitor might for instance, through a misinterpretation of the Section, assume that on the expiration of a year from the date of the Grant the right of election has lapsed and that no notice to the spouse was necessary. Be that as it may, that would not deprive the spouse of his right of election, should the representative take it into his head at some indefinite date later to give him notice of that right. The spouse would then have six months within which to exercise his right, although the estate might in the meantime have been administered and distributed on the assumption that the right of election has lapsed. It is not necessary to point out the serious situation which would be created in such an eventuality and the confusion and litigation to which it would give rise. Requisitions on title in future will certainly have to take care of this point.

These undesirable results would of course be avoided if the Section were amended by providing that the right of election would have to be exercised within a year from the Grant or within six months form the notice whichever date is the *earlier*—and not whichever is the later. Such a provision however might cause injustice in so far as it could deprive the spouse of his right to make a choice between the bequest and his legal right through his not being made aware of his right of election by notice before the expiration of the year from the date of the Grant, nor would such a provision avoid this injustie even if it was coupled with a condition making it obligatory on the representative to give the notice in time to enable the spouse to make his choice, since it would make him dependent on the representative performing his duty and at the best leave the spouse with nothing but a right of action against him for his failure to do so.

There may be other ways of attaining the desired object of securing to the spouse his right of election, whilst at the same time definitely limiting the period when it has to be exercised, but it occurs to me that one way would be to provide that the notice to the spouse should be served on him by the Probate Registrar immediately on the issue of the Grant, informing him of his right of election and naming a definite period within which it would have to be exercised.

Yours faithfully,

JOHN J. DUNNE,

Kildare.

Re: Land Acquired for Afforestation

The following is the text of a letter from the Secretary to the Secretary of the Department of Lands:

11th July, 1966

Dear Mr. O'Brien,

The Society has been in correspondence with the Forestry Department about the procedure of the Department in getting owners of small holdings to sign contracts for sale to the Department without legal advice. The correspondence has been published in the Society's GAZETTE and for easy reference I enclose a copy of the relevant pages.

The position is that in a number of cases of small holdings with complicated titles and small purchase monies the negotiator from the Department approaches the owner, gets his signature to a contract, under which he must make full title, and only then is the matter referred to the owner's solicitor. The result is that either the whole or most of the purchase price is absorbed in costs, or the solicitor must do the work for nothing, or next to nothing. This is clearly inequitable.

The expense content of making title is a necessary element in the transaction. If the Department want the land they should be prepared to pay the necessary costs. There is no reason why an owner should sign a contract which contains no advantage to himself, and all the advantage to the Department.

The practice of the Department in sending sale negotiators to get owners to sign contracts of this kind is clearly inequitable, and is taking an unfair advantage of the owners. I am accordingly directed by the Council to refer to the Society's letter of 4th March last, and to request a definite reply to the Society's objection.

The third paragraph in the Forestry's Department letter, that the Department cannot agree that they should insist on vendors consulting solicitors, does not meet the point. The Council has always objected to Government Departments getting owners to sign contracts without legal advice, and they regard the practice adopted by the Forestry Department as nothing more than a deliberate attempt to obtain the signatures of vendors to contracs which he Department well know will result in no benefit to the vendor and, in many cases, result only to his disadvantage. If the vendors were fully aware of the facts, and they would be aware if they consulted their legal advisors, they would refuse to sign such contracts.

I trust therefore, that this matter will receive the favourable consideration of the Minister in the light of the Society's representations. It should be added that the practice of the Forestry Department in this connection is not in line with that of other Departments acquiring lands.

Yours sincerely,
E. A. PLUNKETT.

REGISTRATION OF TITLE ACTS 1891 and 1942

ISSUE OF NEW LAND CERTIFICATE

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

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

Dated the 29th day of July, 1966.

D. L. McALLISTER,
Registrar of Titles

Central Office,
Land Registry,
Chancery Street,
Dublin.

SCHEDULE

1. Registered Owner, **James Quintivan.** Folio number 629. County Clare. Lands of Garruragh in the Barony of Tulla Upper, containing 56a. 1r. 4p.

2. Registered Owner, **Jessica Florence Heath.** Folio number 8079. County Cork. Lands of Gully (E.D. Ballymodan) in the Barony of Kilnameaky, containing 1r. 14p.

3. Registered Owner, **Charlotte E. Whitmore.** Folio number 1617. County Wicklow. Lands of Coolalug in the Barony of Ballinacor South, containing 71a. 0r. 0p.

4. Registered Owner, **Patrick Roddy.** Folio number 24604. County Donegal. Lands of Linsfort and Ballycennan in the Barony of Inishowen, containing 19a. 2r. 0p.

OBITUARY

Mr. William H. Fry, solicitor, died on the 30th June, 1966, at his residence "Aureen", Merrion Road, Dublin.

Mr. Fry served his apprenticeship with his father the late Sir William Fry, Lower Mount Street, Dublin, and was admitted in the Trinity Sittings 1902 and practiced at 14 Lower Mount Street, Dublin.

Mr. William A. White, solicitor, died on the 4th March 1966 at his residence, 68 Rathdown Avenue, Terenure, Dublin.

Mr. White served his apprenticeship with the late Mr. Henry H. Bonass, City Hall, Cork Hill, Dublin, was admitted in Hilary Sittings 1925 and practised at 68 Rathdown Avenue, Terenure, Dublin.

Mr. John R. Macken, solicitor, died on the 24th July 1966 following a motor accident.

Mr. Macken served his apprenticeship with the late Mr. John J. Macken, Mullingar, Co. Westmeath, was admitted in Hilary Sittings 1957 and practised at Mullingar under the style of J. J. Macken & Co.

Mr. Cyril H. Hardman, solicitor, died on the 1st August 1966 at his residence, Villa Nova, Merrion Avenue, Blackrock, Co. Dublin.

Mr. Hardman served his apprenticeship with the late Mr. Hunt W. Hardman, 14 Molesworth Street, Dublin, and practised at 14 Molesworth Street, Dublin, up to his retirement in 1965.

Mr. Joseph J. Little, solicitor, died on the 4th August 1966.

Mr. Little served his apprenticeship with the late Mr. John E. Cullen, 48 Upper Sackville Street, Dublin, was admitted in Michaelmas Sittings, 1922, and practised at 6 Victoria Road, Rathgar, Dublin.

Mr. Henry J. Shanahan, solicitor, died at Monkstown, Co. Cork.

Mr. Shanahan served his apprenticeship with the late Mr. James J. McCabe, 17 South Mall, Cork, was admitted in Trinity Sittings, 1931, and practised at Library House, Pembroke Street, Cork.

Mr. Robert Brown, solicitor, died at his residence, Winne Ville, Evergreen Road, Cork.

Mr. Brown served his apprenticeship with Mr. Daniel F. Williams, 71 South Mall, Cork, was admitted in Trinity Sittings, 1950, and practised at 71 South Mall, Cork.

THE REGISTRY

Register B

Solicitor—experienced probate and conveyancing, desires post. City firm preferred. Box. B.280.

Register C

Re: Mrs. Mary Kathleen Thorp, deceased

Will any person knowing of the existence of any Will or Codicil made by the abovenamed Mary Kathleen Thorp, late of "Capri", 5 Brighton Terrace, Monkstown, Co. Dublin, widow, who died on the 1st day of July, 1966, please communicate immediately with Messrs. Hickey & O'Reilly, solicitors, 8 Clare Street, Dublin 2.

GAZETTE

Vol. 60
No. 4
Aug.-Sept.
1966

THE INCORPORATED LAW SOCIETY OF IRELAND

President
ROBERT McD. TAYLOR

Vice-Presidents
PATRICK O'DONNELL
JAMES R. C. GREEN

Secretary
ERIC A. PLUNKETT

CONTENTS

Land Act, 1965 — Section 45 41
Registration of Title Act, 1964 42
Succession Act, 1965 42
Rules of the Superior Court (No. 2) 1966 42
Rules of the Superior Courts (No. 3) 1966 42
District Court (Civil Bill Officers Fees) Rules, 1966 42
Solicitors' Accounts (Amendment) Regulations, 1966 43
Solicitors' Accounts (Amendment No. 2) Regulations 1966 43
Absolute Liability in Road Accident Cases 45
Dail Debates 46
Cases of the Month 47
Correspondence 51
Local Authorities Solicitors' Association 52
The Registry 52
Obituary 52

LAND ACT, 1965 — SECTION 45

As the home demand for Irish farm land far exceeds the supply, general policy requires that such land will not ordinarily pass into the control of non-citizens. The Land Act, 1965, has taken this factor into consideration and accordingly it may be assumed generally that Land Commission consent, under Section 45 (2) (a) of the Act, to the sale of farm land to non-citizens is unlikely to be granted except in very exceptional circumstances. Sales of land which would, in the opinion of the Land Commission, be useful for present or future land settlement schemes, and sales which would interfere with State afforestation schemes or with existing land settlement schemes would fall within the same category.

All decisions under Section 45 are ultimately in the hands of the Land Commissioners and are so specifically stated in the Section to be "an excepted matter". The following are categories within which there may be reasonable prospects of consent being forthcoming:

(a) Parcels of land not of any significant size having regard to the quality of the land and local conditions generally.
(b) Large mansions which have become insupportably expensive for the ordinary purchaser, i.e. "white elephant" properties.

(c) Remote estates of low agricultural value, unsuitable for afforestation, i.e. "snipe grass".
(d) Existing bona fide stud farms being sold as going concerns, with reservations as to acreage.

Each case, however, will be judged individually and no assurance can be given that every property in the above categories will be readily saleable to non-citizens.

Apart from the machinery of consent, there is a specific provision in Section 45 for the issue of a certificate covering a purchase "for private residential purposes where the land involved does not exceed five acres in extent". It is not necessary that there should be a residence on the land; a bona fide intent to build a residence suffices. In respect of all other non-urban properties, vendors should not assume that sales to non-citizens will be authorised. In this way, wasted effort, delays and disappointments can be brought to a minimum.

As far as possible, application for consent should be accompanied by completed Contract for Sale (either provisional contract or the soceity's standard conditions of sale), but where there is evidence of serious possibility of agreement between vendor and purchaser, the Land Commission will be prepared to deal with bona fide pre-contract applications.

The question of land sales to non-citizens is a very contentious one, however, and, lest objectionable sales should slip through, the public interest requires the Land Commission to make local enquiries in every case.

Members may experience certain difficulty where lands are being sold by auction and they have been instructed by a non-citizen. As conditions of sale are seldom ready earlier than a fortnight before the auction and as the Commissioners have many other urgent matters to attend to, it would be impracticable for them to make the enquiries to assess applications from prospective (non-citizen) purchasers within the short time intervening between advertisement and auction.

REGISTRATION OF TITLE ACT, 1964

The Commencement Order in respect of this Act (S.I. No. 167 of 1966) brings the Act into operation on the 1st day of January 1967. The Act consolidates and reforms the law relating to the registration of the title to land and provides for the gradual extension of compulsory registration to all land in the State.

SUCCESSION ACT, 1965

The Commencement Order (S.I. No. 168 of 1966) brings the Succession Act, 1965, into operation on the 1st day of January 1967. The Act will apply to the distribution of the estates of all persons dying, whether testate or intestate, on or after that date.

RULES OF THE SUPERIOR COURTS (No. 2) 1966

This Statutory Instrument (169 of 1966) makes necessary amendments in the Rules of the Superior Courts, 1962 (S.I. No. 72 of 1962) and in the Rules of the Superior Courts (No. 1), 1964 (S.I. No. 38 of 1964). The rules effect the fees and in a minor way the entering of an appearance, filing and entry of Judgment; Guardianship of Infants Act, 1964; the Insurance Act, 1964.

RULES OF THE SUPERIOR COURTS (No. 3) 1966

These Rules which were signed by the Minister for Justice on 28 July 1966 provide for revision of the costs allowed in judgment by default cases as prescribed by the Rules of the Superior Courts, 1962 (S.I. No. 72 of 1962). The revision is in consequence of the increase in court fees effected by the Supreme Court and High Court (Fees) Order, 1966 (S.I. No. 62 of 1966).

In Appendix W, Part IV (3) the sums of £15-5-6, £15-11-9 and £15-18-0 (together with the twelve per cent increase provided for by the Rules of the Superior Courts (No. 3), 1964) shall be altered respectively to the sums of— £20-18-0, £21-5-0 and £21-12-0 (inclusive of the said increase).

DISTRICT COURT (CIVIL BILL OFFICERS FEES) RULES, 1966

The above Rules have been made by the District Court Rules Committee with the concurrence of the Minister for Justice to provide the remuneration to be paid to a summons server for the service of any summons, civil process, originating document or other court document shall be 6/- payable on proof of each separate service effected. These Rules will come into operation on the 1st day of October 1966 and should be read together with the District Court Rules, 1948, now the District Court Rules for the time being in force.

As from the 1st October 1966 the amount of the costs of the varying proceedings in the District Court will be increased by the amount of the increase in the summons servers fees.

SOLICITORS' ACCOUNTS (AMENDMENT) REGULATIONS, 1966

Members please note that these Regulations were required as a result of the passing of the National Bank Transfer Act, 1966, and the statutory substitution of the National Bank of Ireland Limited for the National Bank Limited as one of the associated branches of the Central Bank Act, 1942. The Statutory Instrument (No. 75 of 1966) is available from the Government Publications Sales Office, G.P.O. Arcade, Dublin, or through any bookseller.

SOLICITORS' ACCOUNTS (AMENDMENT No. 2) REGULATIONS 1966
S.I. No. 193 of 1966

1. (1) These regulations may be cited as the Solicitors' Accounts (Amendment No. 2) Regulations 1966 and shall be read together with the Solicitors' Accounts Regulations 1955 (S.I. No. 218 of 1955), the Solicitors' Accounts Regulations 1956 (S.I. No. 308 of 1956), the Solicitors' Accounts (Amendment) Regulations 1958 (S.I. No. 193 of 1958), the Solicitors' Accounts (Amendment) Regulations 1961 (S.I. No. 51 of 1961), the Solicitors' Accounts (Amendment) Regulations 1965 (S.I. No. 163 of 1965), and the Solicitors' Accounts (Amendment) Regulations 1966 (S.I. No. 75 of 1966), which may be cited collectively with these regulations as the Solicitors' Accounts Regulations 1955 to 1966.

(2) In these regulations unless the context otherwise requires :

"accountant's certificate" has the meaning given to it by paragraph 2 (2) of these regulations;

"accounting period" means the period of one year ending on the balancing date;

"balancing date" means the date in each year on which a solicitor's books are balanced and which is notified to the society pursuant to paragraph 2 (1) of these regulations.

(3) The Interpretation Act, 1937, applies to these regulations in the same manner as it applies to an Act of the Oireachtas except in so far as it may be inconsistent with the Solicitors Acts 1954 and 1960 or with these regulations.

(4) These regulations shall come into operation on the 10th day of February 1967.

2. (1) Every solicitor to whom these regulations apply shall balance his books at least once in each practice year. The balancing date (or, where the books are balanced more than once in each year, one of such balancing dates) shall be a fixed date in each practice year and the solicitor shall, within three months from the date on which these regulations apply to him, notify the society of such date. The balancing date shall also be stated in the annual declaration made by a solicitor for the purpose of obtaining a practising certificate.

(2) Every solicitor to whom these regulations apply shall deliver to the society within six months of the balancing date in each practice year, or within such further period as the society may permit, a certificate by an accountant (in these regulations referred to as an accountant's certificate) in either Form A or Form B in the schedule hereto, or in such other form as may be approved by the society, in respect of the accounting period.

3. In order to enable him to issue an accountant's certificate in Form A in respect of a solicitor an accountant shall not normally be required to do more than :

(a) make a general test examination of the books of account of the solicitor;

(b) satisfy himself that a client account, and where appropriate, a trust bank account, is kept;

(c) make a general test examination of the bank pass books, bank statements and deposit receipts kept in relation to the practice;

(d) make a comparison, as of not fewer than two dates not less than three months apart, in the period covered by the accountant's certificate and selected by the accountant, between the liabilities of the solicitor to his clients as shown by the books of account and the balance, standing to the credit of the client account and where appropriate, the trust bank account and satisfy himself that such balance or balances are not less than the total of the sums required to be kept on client account or trust bank account in accordance with the Solicitors' Account Regulations in operation for the time being;

(e) obtain such information and explanations as he may require arising out of such examination.

4. In order to enable him to issue an accountant's certificate in Form B an accountant shall make such audit, inquiry and investigation of the books, accounts and documents of the solicitor or his firm as will enable him to issue the certificate.

5. An accountant's certificate shall not be required in the case of :

(a) a solicitor in the whole time service of the State, or,

(b) a solicitor who has satisfied the society that he has at no time during the accounting period held or received client's money or trust money or,

(c) any other solicitor who satisfies the society that an accountant's certificate is unnecessary.

6. The Council may, in any case on cause satisfactory to them being shown, extend the period of six months within which an accountant's certificate is required following a balancing of books.

7. The minimum books which a solicitor shall keep in connection with his practice are :

(a) a cash book, or books, showing monies received and paid, ruled with two separate principal money columns on each side, one for transactions on client account and one for transactions on office account, or, alternatively, at the solicitor's option, two separate cash books, one for transactions on client account and one for transactions on office account;

(b) a ledger or ledgers kept so as to distinguish clearly between transactions on client account and transactions on office account;

(c) a record of bank lodgments of monies received by the solicitor in connection with his practice, distinguishing between lodgments made to client account or trust bank account and lodgments made to other accounts.

8. Where:

(a) an accountant has been found guilty by the disciplinary tribunal of his professional body of professional misconduct or dishonourable conduct, or,

(b) the Council are of the opinion that an accountant has negligently issued a certificate which is untrue in any material respect or which fails to draw attention to any matter which ought to be brought to the attention of the Council

the Council may, at their discretion, refuse to accept further accountants' certificates given by him. In coming to their decision the Council shall take into consideration any observations or explanations made or given by such accountant or made on his behalf by a professional body of which he is a member.

9. The registrar shall not issue a practising certificate to a solicitor who has failed to comply with these regulations unless directed to do so by the Society.

10. Subject to the provisions of these regulations, these regulations apply to every solicitor who receives client's money or trust money.

Schedule

ACCOUNTANT'S CERTIFICATE
FORM A

To(a)

Dear Sir(s),

Having made a general test examination of the books of account, bank passbooks, bank statements and deposit receipts kept in relation to your practice as solicitor(s) carried on at(b) ..... as produced to me/us for the accounting period beginning on the ..... day of ..... 19..... and ending on the ..... day of ..... 19..... I am/we are satisfied, subject to the matters set out on the back hereof

(1) that the said books appeared to be properly kept and written up in compliance with the Solicitors' Accounts Regulations now in operation.

(2) that as at the(c) ..... day of ..... 19..... and the ..... day of ..... 19... ...so far as appears from the said books, statements and deposit receipts the sum or the total of the sums at credit of the designated client account or accounts and designated trust bank account or accounts as as defined in the said regulations kept by you was not less than the total of the sums required to be so kept in conformity with the provisions of the said regulations.

Dated this .....: day of ..... 19.....

Signature .....

Professional Qualification .....

Address .....

Notes

(a) State full name of the solicitor or firm of solicitors in respect of whom the certificate is issued.

(b) When the solicitor has two or more places of business he may at his option lodge a separate certificate for each office or one certificate to cover all. All addresses should be stated in the certificate, if only one certificate is issued.

(c) These may be any dates, selected by the accountant, during the accounting period covered by the certificate.

ACCOUNTANT'S CERTIFICATE
FORM B

To(a)

of(b)

Dear Sir(s),

I/we certify in compliance with paragraph 4 of the Solicitors' Accounts (Amendment) Regulations, 1966, I/we have examined the books, accounts and documents kept in relation to your practice as solicitor(s) for the accounting period

beginning on the ..... day of ....19.....
and ending on the ..... day of ..... 19.....
and that I am/we are are satisfied, subject to the matters set out on the back hereof from such examination and from the information and explanations given to me/us that during the said accounting period you/your firm have complied with the provisions of the Solicitors' Accounts Regulations now in operation, and further that the sum or the total of the sums at credit of the designated client account or accounts and designated trust bank account or accounts as defined in the said regulations kept by you/your firm, was not less than the total of the sums required to be so kept in conformity with the provisions of the said regulations.

Dated this ..... day of ..... 19.....
Signature .....
Professional Qualification .....
Address .....

Notes

(a) State full name of the solicitor or firm of solicitors in respect of whom the certificate is issued.

(b) When the solicitor has two or more places of business he may at his option lodge a separate certificate for each office or one certificate to cover all. All addresses should be stated in the certificate, if only one certificate is issued.

Dated this 28th day of July 1966.
Signed on behalf of the Incorporated Law Society of Ireland.

ROBERT McD. TAYLOR
President

I concur in the making of the above regulations.

CAHIR DAVITT
President of the High Court

Explanatory Note

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

The regulations oblige each practising solicitor to lodge an accountant's certificate each year with the Incorporated Law Society of Ireland and define the minimum books of account to be kept by solicitors.

ABSOLUTE LIABILITY IN ROAD ACCIDENT CASES

The German Position

The following information was received from a German referendar at present studying comparative law in Dublin for his doctorate of law. He specialises in the law of road traffic and negligence.

The German system is based on the law of strict liability, i.e. the owner of a mechanically propelled vehicle is strictly liable for damage to third parties while it is in normal use. The definition of normal use of a mechanically propelled vehicle is a question of law on which there has been litigation in the German courts. A car which is permanently parked is not in normal use for the purpose of strict liability of the owner. On the other hand if the car is stopped or moving slowly in traffic it is in normal use so that third parties injured by collision by the vehicle can claim against the owner on the basis of strict liability. The principle is that the presence of a motor vehicle on the highway while in normal use creates a risk to the public for which the owner is responsible in damages. A person injured as the result of a collision with a mechanically propelled vehicle in normal use has a right of action in the courts against the owner. The principle of strict liability applies only to the extent of damage suffered up to a limit of 50,000 DM (about £4,000). The right to damages in an amount exceeding £4,000 depends upon proof of negligence by the plaintiff on the part of the defendant. In calculating the damages for the purpose of strict liability it is understood that compensation for pain and suffering will not be taken into account. Damages for the purpose of strict liability will be composed of medical and other expenses, loss of earnings actual and potential and other financial loss capable of ascertainment.

There is compulsory insurance against third party liability under German law. Insurance is effected through private enterprise companies, not through the State. Therefore the majority of claims are defended by insurance companies. The injured party will negotiate through his lawyer with the insurance company or their lawyer and failing agreement may resort to the courts. As their is strict liability in law on the part of the owner of the vehicle all that the plaintiff or claimaint need prove is that he was injured as the result of an accident or collision with the owner's mechanically propelled vehicle while it was in normal use. This will usually be admitted. The only question then arising is the quantum of damage. Here there is an important principle. The conduct of the parties is taken into account in assessing the amount of damage. On a principle similar to our apportionment of blame under the Civil Liability Act 1961 if the defendant can show that the conduct of the plaintiff was largely responsible for the accident blame will be appor-

tioned and the damages may be reduced. Therefore it seems that under German law, and it is thought that the same legal principle applies throughout continental Europe, the difference between our law and the continental law is largely onus of proof. The acceptance of the principle of strict liability means that there is no onus of proof on the plaintiff as to the cause of the accident even in the absence of witnesses or failure of proof on the part of the plaintiff due to, e.g. amnesia; the principle of strict liability means that the owner of the vehicle is legally responsible for the accident. Evidence may be called on the question of apportionment of blame but as the onus rests upon the defendants or owners of the vehicle it seems that he will be responsible for the entire damage up to a maximum of £4,000 unless he can produce witnesses to prove that the plaintiff was substantially culpable. Insurance companies take advantage of this position and they negotiate from strength or weakness as to the quantum of damages depending upon the evidence which they can produce as to the degree of culpability of the injured party.

There are no juries in Germany for either civil or criminal cases. Witnesses' statements may be recorded in the local court before a magistrate and, if the parties agree, the record of the evidence so taken may be produced in trial before the court where the action is heard. This saves expense, if the parties are agreeable, by avoiding the necessity of bringing witnesses from long distances. Medical reports are submitted by each side and in practice there is full disclosure by each side to the other of his evidence. A party who seeks to introduce evidence which has not been disclosed to the other side may be discredited and adjournments are readily granted to avoid the element of surprise by the introduction of evidence which has not been disclosed.

DAIL DEBATES

Increased Court Fees

Mr. Donegan asked the Minister for Justice (a) whether any interested parties, apart from the Department of Finance or any other Department, were consulted before he recently made the various fees orders, increasing fees payable by the general public in the Land Registry, Probate Office, Supreme Court, High Court, Circuit Court, and the District Court; (b) if he had any consultations with any outside bodies, and, if so who these outside bodies were; (c) if he had such consultations, what the reaction of such outside bodies were; and (d) if he will state in view of the fact that it once appeared to be the policy of the Government, in the light of various statements by members of the Government and in particular by the Minister himself and his predecessor in office to bring down the cost of litigation, the cost of land and in dealings in connection with the Probate Office, whether that policy has now changed; if he will comment fully on this; and if the policy has not changed, how he can justify these increases.

Mr. B. Lenihan : The answer to the first two parts of the question is in the negative. It has never been the practice or policy to have such consultations and when previous fees orders were made in 1956 there were no such consultations.

With regard to the final part of the question, it is settled Government policy to keep down as far as possible the cost of litigation, the cost of dealings in land and the cost of taking out grants of probate and administration. The official fees which are payable in connection with these matters constitute only a small proportion of the total legal costs involved.

The increase in court and Land Registry fees effected as from 1st April last were necessitated by increased operational costs. I may add that in the case of the Land Registry there is a statutory obligation on me to ensure that registration fees are sufficient to cover expenses incurred under and incidental to the working of the Registration of Title Act.

Mr. Donegan : Surely the Minister knows these fees have increased out of all knowing and that his justification that it is to meet increased costs cannot hold water?

Mr. B. Lenihan : On average, they are increased every ten years. They were increased ten years ago by Deputy Sweetman.

Mr. Donegan : Maybe they were justified then.

Mr. Ryan : Will the Minister say whether he has yet made the necessary orders affecting Circuit Court costs so that increased court fees may be recovered against the unsuccessful party?

Mr. B. Lenihan : I am on the way to doing that.

Mr. Ryan : At the moment the successful litigant has to bear the fees the Minister has increased.

Mr. B. Lenihan : That matter is under discussion.

Mr. Ryan : Can the Minister say when the discussion will end?

Mr. B. Lenihan : I am actually meeting the Incorporated Law Society in the next few days.

Mr. Ryan : Can the Minister say what is the difficulty? It should be an easy thing.

Mr. B. Lenihan : There are difficulties.

Land Registry Fees

Mr. Donegan asked the Minister for Justice

what fees were payable as at 1st June (a) 1965 and (b) 1966 to the Land Registry on the lodgment of a transfer of registered land for valuable consideration, the price being (1) £5,000 and (2) £10,000.

Mr. B. Lenihan: On 1st June 1965 the Land Registry fee payable on the registration of a transfer of land for valuable consideration was £15 6s. in the case of a holding priced £5,000 and £22 16s. in the case of a holding priced £10,000.

The corresponding fee on 1st June 1966 was £27 2s. 6d. in the case of a holding priced £5,000 and £40 17s. 6d. in the case of a holding priced £10,000.

Mr. Donegan: Does the Minister not think this is a rather disproportionate increase that cannot be justified by the increase in costs?

Mr. B. Lenihan: It follows the pattern of increases in 1956, ten years before that and ten years before that again.

Mr. Donegan: It seems to me to be far too high.

[22 June 1966]

CASES OF THE MONTH

Family Provision Applications

The following extract from *The New Law Journal* of 4 August 1966 in relation to the Inheritance (Family Provisions) Act, 1938, is of interest having regard to the letter which appeared from Mr. Dunne, solicitor, Kildare, in the July issue of the *Gazette*:

"Failure to report a case which deserves to stand as a precedent for the future is a very serious matter—and fortunately one of rare occurrence. An example of such failure is, however, provided by the decision of the Court of Appeal in re Hodgkinson (1957), which was concerned with s. 2 (1 a) of the Inheritance (Family Provision Act, 1938, as amended by the Intestates' Estates Act, 1952. Section 2 of the Act of 1938, as amended, prescribes a time-limit of six months from the date on which a grant of representation is first taken out, for the purpose of making an application to the court for provision for a dependant out of the estate. However, the section also empowers the court to extend that limitation period, if not to do so 'would operate unfairly' in consequence of, inter alia '. . . circumstances affecting the administration or distribution of the estate'. Re Hodgkinson was concerned with the scope of these words. In that case the deceased, who had deserted his wife and given her to believe that he had no income, left a considerable estate to his mistress and made statements to his executors which caused him to believe that the testator was a bachelor. The Court of Appeal decided that these were not 'circumstances' within the meaning of the section. The widow knew of her husband's death about the time of probate and her ignorance of his financial circumstances in no way affected 'the administration or distribution of the estate' by the executor. The decision of Mr. Justice Roxburgh in re Greaves (1954) 2 All E.R. 109, and that of Mr. Justice Ungoed-Thomas in re McNare (1964) 3 All E.R. 373 conflicted with the decision in Hodgkinson and the Court of Appeal (Harman, Russell and Winn L. J. J.) indicated in the most recent case on the subject, Re Bluston, that neither could stand."

Counsels' Fees Allowable on Taxation of Costs as Between Party and Party

Stanley v. Phillips was a running down case which commenced in the County Court and was subsequently transferred to the Supreme Court where, following an admission of liability on the part of the defendant, the matter was to proceed as an assessment only. Queen's Counsel was engaged on behalf of the plaintiff and the defendant objected to payment of his fee when the bill was taxed. The Taxing Master disallowed the objection, upon the defendant appealed to a judge of the Supreme Court who upheld the objection. The plaintiff then appealed to the Full Court of the Supreme Court which by a two-one majority allowed the appeal and disallowed the defendant's objection. It was from the decision of the Full Court of the Supreme Court of Victoria that the defendant subsequently appealed to the High Court.

The High Court ruled in favour of the defendant by a four-one majority, the dissentient being McTiernan J. In his judgment the Chief Justice of the High Court, Sir Garfield Barwick, said: "It is of radical importance in my opinion to identify the question which is presented to the Taxing Master upon objections such as were made in this case. That question concerns the allowance of the fees of more than one counsel. It is not concerned, certainly not directly concerned, with the question of the relative competence of members of the Bar or of sections of the Bar. It is fundamentally concerned with the attainment of justice which expended into its own elements of law in such manner and to such extent that a just result is able to be achieved. As it is to be supposed that the success of the party incurring the fees of counsel will involve the opponent in their payment, the expenditure must be confined to what is necessary, which means reasonably necessary, or proper to ensure such a presentation of the case."

[*Law Institute Journal*, Victoria and Queensland Law Society, July 1966, p. 272.]

Enforcement of Solicitor's Undertaking

The National Union Bank, Ltd., sought an order that a solicitor (Mr. L.) stand committed to Brixton Prison for failing to comply with personal undertakings in writing given by him or on his behalf in his capacity as a solicitor of the Supreme Court on or about January 18, 26 and 27, 1965, to hold to the sole order of the bank the leases of the five several properties referred to in the written undertakings and to account to the bak or its order for £19,500 out of the proceeds of sale of the properties; and in the alternative that the bank might be at liberty to issue a writ or writs of attachment against the solicitor on the grounds aforesaid. During the hearing the bank abandoned its claim under the first heading and obtained leave to amend the notice of motion by asking for the following orders against the solicitor: that he be ordered, first, forthwith to deliver to the bank the leases of the properties known as and situate at 287 Gray's Inn Road, and 7 Plender Street, both in the County of Greater London, referred to in the undertakings, and second, forthwith to account for and pay to the bank the sum of £2,950 being the aggregate of the sums paid by the purchasers of the several properties referred to in the undertakings by way of deposit and part payment.

Held (Pennycuick, J.): (1) (a) the court would not make an order on L. to do something which it was not possible for him to carry out, and accordingly the court would not order L. to hand over, in effect, the lease of No. 7 Plender Street; (b) as L. could obtain the lease of No. 287 Gray's Inn Road by paying off the mortgage, the court would order him to hand that lease over to the bank.

(2) On the true construction of the undertakings they did not cover the deposits in the event, which had happened, of the contracts not being completed, and accordingly the court would make no order relating to the deposits.

Per Curiam: In exercising jurisdiction over solicitors as officers of the court what the court has in practice always done is first to make a mandatory order on the solicitor to perform his undertaking, and, if that is disobeyed, application for a committal order may follow and then the order would be made.

[Re A Solicitor (1966), 3 All E.R., p. 25.]

Consequences of Solicitors' Undertaking

In Vol. 59, No. 10, of the *Gazette* (i.e. April issue, 1965, at page 105) the case of the National Union Bank of Cavendish Square, London, against Mr. Ellis Lincoln was reported. The matter subsequently came before the High Court Queen's Bench Division on Thursday, 28 July 1966. The Divisional Court (the Lord Chief Justice, Mr. Justice Ashworth and Mr. Justice James) dismissed with costs the appeal of Mr. Ellis Lincoln, solicitor, against the order of the Disciplinary Committee of the Law Society, on 16 June 1966 that his name be struck off the Roll of Solicitors of the Supreme Court.

The Lord Chief Justice in his judgment said that the allegations were that Mr. Lincoln had failed to comply with the Solicitors' Accounts Rules, 1945 to 1959, in certain respects—there was an allegation in regard to a practising certificate, but that had disappeared from the case—that he had been guilty of misconduct unbefitting a solicitor in a number of respects some of which followed from his failure to comply with the accounts rules, namely, utilising money, received and held by him on behalf of clients for his own purposes and purposes of other clients, and failing adequately to supervise conveyancing clerk, Bertram Hall, aged 60.

In October 1965 after Mr. Lincoln had been interviewed by an assistant to the Law Society's investigation accountant and an investigation of the books had been made, it was found that the clients' ledger contained no entries in respect of clients' banking account transactions later than 5 April 1965—and that delay certainly influenced the Disciplinary Committee, since they treated the books as being thereby "disastrously in arrears".

The total amount due to clients was some £20,900 whereas the cash available on that account was some £7,237. Although there was that shortage Mr. Lincoln had left a "cushion" of some £6,000 which he would have been entitled to have transferred into office account on account of bills of costs. On analysis, £3,000 was the total of some 61 withdrawals not posted to any clients ledger account and which could not be, and even today had not been, justified; £10,270 was excess withdrawals creating debit balances contrary to Rule 7 was really concealing the true position.

In July 1965 Bertram Hall left; he just did not turn up, and thereafter—and one had great sympathy with Mr. Lincoln in this respect—he discovered that Mr. Hall had been occupying his position in the office to make money for his own benefit and had landed Mr. Lincoln in potential liabilities (it was too early to ascertain them) running into tens of thousands of pounds, largely due to undertakings Hall handed out in the name of the firm. There was no doubt that a sub-

stantial amount of the deficiencies were caused by Bertram Hall. It might be that, as the Law Society said, while he had to allow a measure of independence to a very skilled conveyancing clerk, aged 60, yet Mr. Lincoln failed to exercise even a measure of supervision, but it was unnecessary to go into that matter and his Lordship would treat this as a case where no effective supervision could possibly have disclosed what was occurring. His Lordship was content to deal with the matter in regard to the delay in the keeping of the accounts and the fact that a very considerable deficiency was disclosed quite apart from any that resulted from Hall's actions.

It had been said more than once in this court that where professional misconduct was concerned —that is, misconduct in the profession—this court would not readily interfere with the penalty which the Disciplinary Committee thought appropriate.

Having considered all the matters, and, in particular, the strong mitigation put forward, his Lordship was constrained to say that not only would he not readily interfere but that he entirely agreed with what the Disciplinary Committee had ordered.

Mr. Justice Ashworth and Mr. Justice James agreed.

[Re A Solicitor (Ellis Lincoln); *The Times*, Friday, 29 July 1966.]

Termination of Solicitors Retainer

Negotiations being in progress between the defendants and others with a view to developing a London building site through the medium of a building agreement and subsequent lease, a partner in a firm of solicitors concerned, who had long acted for B., one of the parties to the negotiations, wrote to the defendants on 11/3/1959, a letter confirming the basis of the agreement between the defendants and B The letter included the following paragraph: "May we please take this opportunity of placing on record the understanding that all the legal work of and incidental to the completion of the development and the grant of the leases shall be carried out by us."

At the time of the letter there was no existing agreement, so the court found, between the solicitors and the prospective client (the defendants) for employment in legal business. The solicitors in fact transacted some legal work in connection with the development and with fringe properties. In 1962 the solicitors enquired of the defendants whether they should call for a lease in pursuance of the building agreement and as to the method of disposing of flats built on the site, and the defendants replied that they had by then their own legal department, and that they were unable to instruct the solicitors.

By further letter, dated 5/11/1962 the defendants wrote to the solicitors saying that they had acquired B's interests in 1959 and had established their own legal department and that it was desirable that their legal work should be carried out by their own solicitor. The solicitors brought an action against the defendants claiming damages for breach of contract to employ them.

Held: the claim for damages failed because:

(1) The letters of March 1959 did not amount to a legal binding contract, but at most produced confirmation on behalf of the defendants of a present intention to instruct the solicitors to do legal work as and when it arose;

(2) Even if, however, there were a binding contract of retainer, it was a retainer for non-contentious business and was not an entire contract; the defendants were entitled to terminate the retainer at any time on giving notice to the solicitors, and had terminated it by their letters in 1962.

[J. H. Milner & Son v. Percy Bilton, Ltd. (1966), 2 All E.R. 894.]

Legal Aid in Criminal Cases

The accused was convicted of the offence of rape. An application was made on his behalf to the Circuit Judge pursuant to the Criminal Justice (Legal Aid) Act, 1962, s. 4, for the purpose of obtaining a legal aid (appeal) certificate in relation to an intended appeal against the sentence of seven years' imprisonment imposed on the accused by the Circuit Judge. His application was refused. The accused served notice of intention to apply to the Court of Criminal Appeal for liberty to appeal against the sentence imposed. An application for a legal aid (appeal) certificate was then made to the Court of Criminal Appeal seeking legal aid for the hearing of the application for leave to appeal against sentence. On hearing of the application it was agreed that the accused had no means.

It was contended on behalf of the Attorney General that the provisions of section 4 (3) of the Courts of Jsutice (Legal Aid) Act, 1962, only applied to cases where the appeal was against conviction, but did not apply when the appeal was against sentence and no more.

The Chief Justice delivering the judgment of the court stated that the court was satisfied that, under the powers of the Criminal Justice (Legal Aid) Act, 1962, the court had power to assign counsel to a solicitor where an accused person who wished to appeal against the sentence im-

posed upon him the court assigned to him counsel and solicitor.

[The People (at the suit of the Attorney General) v. Thomas Anthony Morrissey; I.L.T.R. and S.J. (Vol. C), 1966, p. 128.]

Mental Distress—Death of Son

The provisions of the Civil Liability Act, 1961 (No. 41 of 1961) s. 49 were considered in a case which came before Lavery, J., in Glaway in October of 1965. The plaintiff was the mother of John Cubbard who was a worker employed by the second named defendant, who was killed while discharging cargo from a ship, the property of the first named defendants at Galway. The deceased was aged fifty-five and a bachelor and he lived with the plaintiff, a sister Margaret, a brother Patrick, and a niece Mary V. McMahon, to whom he was in loco parentis. Other members of the family were three brothers and one sister, Sarah McMahon, who did not live in the family home.

Held (1) the Act did not intend to provide large compensation for every member of the family. (2) Compensation should be awarded only to those who have some real intense feeling or have been grieviously affected by the death.

[Mary Cubbard v. Rederij Viribus Unitis and Glaway Stevedores Ltd.; I.L.T.R. (Vol. C), 1966, p. 40.]

Meaning of Public Place—Onus of Proof

R. was charged in the District Court with offences under sections 49 and 52 of the Road Traffic Act, 1961, in connection with the driving of a motor car. The essence of each offence was that it should have happened or been committed in a "public place" as defined in section 3 (1) of the Road Traffic Act, 1961, as meaning "in a street, road or other place to which the public have access with vehicles whether of right or by permission or whether subject to or free of charge". The only evidence deduced by the State as to the place where the said offences were alleged to have happened or been committed was that it was described by one of the witnesses for the prosecution as a private car park: that it was situate near licensed premises known as Mill House: and that near the defendant's motor car there was situate a motor taxi and at least one other motor car. At the close of the State case, a direction having been applied for on behalf of the defendant on the grounds that no evidence had been deduced to show that the offences had been committed in a public place, the District Justice submitted a case with questions of law to the High Court.

Held by Davitt, P., (1) that the onus was on the prosecution to establish by proper evidence that the offences were committed in a public place as defined by section 3 of the Road Traffic Act, 1961, and (2) that the prosecution had not proved that the place in question was one to which the public had access and thus failed to prove an essential element of each offence.

[The Attorney General (at the suit of Supt. Patrick G. McLoughlin) v. Thomas Rhatigan; I.L.T.R. (Vol. C), 1966, p. 37.]

Duty of Local Authority to Maintain Highway

In January or February 1965 when a highway authority inspected the pavement of a busy road, all the flagstones were in a good, sound, level condition. In June 1965 the plaintiff fell over a ridge of a flagstone which projected half an inch above the adjoining flagstone. The time when the defect occurred and its cause were unknown. The plaintiff brought an action against the authority for damages for personal injruies, alleging, *inter alia,* non feasance. There was evidence that the flagstone was potentially dangerous, that three-monthly inspections of the highway were desirable but that no such systematic inspection was carried out because, although the authority could employ more labourers who might be trained to carry out such inspections, they could not obtain the necessary skilled tradesmen to do the repairs and that a labourer could have repaired the flagstone. The County Court Judge found that the flagstone was a potential danger and that, although a system of inspection could have been devised, it would in fact have resulted in no practical improvement of the condition of the roads in the area and that it was pure speculation whether the defect existed in March 1965 and, therefore, whether a systematic inspection would have disclosed it. He considered that in order to establish their defence under section 1 (2) of the Highways (Miscellaneous Provisions) Act, 1961, the authority had to prove that they had employed the standard of care reasonably required of all highway authorities and, since they had merely proved that they could not comply with that standard, their defence failed. He awarded the plaintiff £75 damages. The authority appealed on the ground, *inter alia,* that the judge had misdirected himself in that he considered that he should not take into account their inability to obtain an adequate labour force, but they did not appeal against the finding that the flagstone was dangerous.

The Court of Appeal, dismissing the appeal (Sellers, L. J., dissenting), held that since there

was a finding of fact that the flagstone was dangerous and there had been no appeal from that finding the authority were, irrespective of negligence, absolutely liable to the plaintiff unless they proved, under section 1 (2) of the Highway (Miscellaneous Provisions) Act, 1961, that they had taken "such care as in all the circumstances was reasonably required to secure that the part of the highway to which the action relates was not dangerous to traffic". The authority had not to prove that they had taken all steps "reasonably necessary to secure" that result but that they had taken such steps as were "reasonably required of them as the highway authority" and, although the number of skilled tradesmen available was a factor to be taken into consideration, the authority, who could have employed a larger number of unskilled labourers, had failed to prove that a labourer would not have detected the danger and either repaired the flagstone or fenced it off [Per Salmon, L. J.].

Sellers, L. J., Section 1 (2) and (3) of the Highways (Miscellaneous Provisions) Act, 1961, made negligence the essential and ultimate basis of a claim against a highway authority for non-feasance, as it has always been and still is in the case of mis-feasance, and on the highway authority is placed the burden of proving that it has taken reasonable care to maintain. The statute does not set up an artificial and unattainable standard of care and it recognises the different circumstances of highway authorities throughout the country, the particular character of the highway and its normal user and the state of repair in which a reasonable person would expect to find the highway. "In all the circumstances", in section 1 (2) of the Act, embraces all the facts in a specific case and includes the capacity of a highway authority acting reasonably to remove the danger. The judge expressly or impliedly held that in all circumstances the authority had taken reasonable care and, accordingly, the authority had discharged their burden and the appeal should be allowed.

Per Diplock, L. J., The common law duty to maintain a highway was not based in negligence but in nuisance and it was an absolute duty to maintain the highway and the statutory duty, which supersedes the common law duty, is also an absolute duty. The statutory defence under section 1 (2) is not available to a highway authority unless it proves that it has taken reasonable care.

[Griffiths v. Liverpool Corporation; *The Weekly Law Reports* (1966), 3 W.L.R., p. 467.]

Section 60 of the Civil Liability Act, 1961, in this country was originally intended to be brought into operation not before the 1st April 1967. It proposed that absolute liability be placed on local authorities for all accidents arising out of the non-maintenance of roads and footpaths. The section was the subject of discussion in the Dail on 17th February 1966. In reply to a question from Deputy Richard Ryan (F.G.), the Minister for Local Government, Mr. Blayney, stated "I would not like to be very dogmatic as to whether it will ever be brought in at all."

CORRESPONDENCE

Re/Land Commission Sales

Dear Sir,

I have read the statement in the *Gazetts* about the references by the Minister for Lands to a member of the society.

I am prompted to suggest that it might be opportune for a serious effort to be made by the society with a view to forcing a change of attitude by the Land Commission examiners to their Estate Duty requirements, which in every case become a matter of course, irrespective of the date of death of any deceased, who may have had a remote interest in the title, whether that interest may not have been already declared barred by a Section 52 Order on the same title. I have had numerous such instances and it is my understanding that this particular form of requisition by the examiners arises solely as a result of a direction from the Department of Finance, so much so that on one occasion, it had occurred to me to question by litigation the propriety at all of such a requisition, especially in cases of deaths over twelve years. It is quite obvious that the examiner, through no fault whatever of his, has become converted into a tax gatherer and I cannot understand why a title, acceptable to an ordinary purchaser for value finds himself precluded from going back to deaths beyond twelve years should not be equally acceptable to the Land Commission, but the reason is, of course, obvious.

I feel rather strongly that something should be done in that particular regard, and if the examiner will not be allowed to relax that form of requisition altogether, it occurs to me that the Society might well consider recommending to all its members that in no case should we agree to Land Commission Acquisition, other than for cash and by a contract which would preclude any such requisition. Indeed apart altogether from the aspect to which I have referred, I am now more or less declining to consider Land Commission acquisition, save for cash, by reason of the Land Bond value problem. In compulsory cases, how-

ever, such a course would not appear to be capable of being adopted, with the result that the examiner will still continue to insist on the Estate Duty letter, which, of course, so far as deaths are concerned, can easily extend back sixty years.

Yours faithfully,

FRANCIS J. GANNON

Mohill.

LEGAL AUTHORITIES SOLICITORS' ASSOCIATION

The annual general meeting of the Association will be held on Tuesday 11th October, 1966, at 3.00 p.m. in the Solicitors' Buildings, Four Courts, Dublin. All members are requested to attend.

THE REGISTRY

Register A

Established Dublin solicitor interested in amalgamation with another in like position or with a firm. Box no. A237.

Solicitor retiring from practice in South of Ireland, offers same with splendid offices. Box no. A238.

Register B

Solicitor—experienced probate and conveyancing, desires post. City firm preferred. Box no. B280.

REGISTRATION OF TITLE ACTS, 1891 and 1942 NOTICE

Folio 4077 County Dublin

Registered Owner: Matthew Lamb

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

A new certificate will be issued unless notification is received in this Registry within 28 days from the date of this notice that the original certificate is in the custody of a person not the registered owner. Such notification should state the grounds on which the certificate is retained.

Dated this 21st day of September 1966.

D. L. McALLISTER
Registrar of Titles

Schedule

Land Certificate of Matthew Lamb to 1r., 21p., 21 sq. yds., of the lands of Kingstown situate in the Barony of Rathdown and County of Dublin being the lands comprised in the said Folio.

OBITUARY

Mr. Horace Turpin, died on the 9th September 1966, at his residence "Greystones", Maryborough, Co. Laois.

Mr. Turpin served his apprenticeship with the late Mr. Charles G. Gamble, 39 Fleet Street, Dublin, was admitted in Hilary Sittings, 1927, and practised at Protlaoise, Co. Laois, under the style of Horace Turpin and Son.

Mr. Laurence J. McFadden, died on the 14th Sept., 1966, at his residence, 4 Royal Tce. East, Dun Laoghaire, Co. Dublin.

Mr. McFadden served his apprenticeship with the late Mr. James Malseed, Letterkenny, Co. Donegal, was admitted in Easter Sittings, 1933, and practised at 34 Upper Ormond Quay, Dublin.

GAZETTE

THE INCORPORATED LAW SOCIETY OF IRELAND

President
ROBERT McD. TAYLOR

Vice-Presidents
PATRICK O'DONNELL
JAMES R. C. GREEN

Secretary
ERIC A. PLUNKETT

CONTENTS

Meetings of the Council 53
Society of Young Solicitors 54
Examination Results 55
International Bar Association 56
Committee on Irish and Comparative Law 58
Land Commission 58
Land Act 1965 58
Commissioners for Oaths Prohibited from Acting where Interested 59
Registry of Deeds Memorials 59
Commissioners of Charitable Donations and Bequests 59
Lord Gardiner Defends Legal Fees 59
Point of Practice — Minor Matters 60
Solicitor's Remuneration in Legal Aid Matters 60
Cases of the Month 61
Joint Seminar Weekend 63
Distinction without Difference 63
The Registry 64
Index of Statutory Instruments 64

Vol. 60
No. 5
Oct.-Nov.
1966

MEETINGS OF THE COUNCIL

September 29th: Mr. Green, Vice-President, in the Chair, also present Messrs F. J. Lanigan, R. J. Walker, J. Carrigan, J. W. O'Donovan, Patrick Noonan, G. J. Moloney, G. M. Doyle, G. Y Goldberg, P. D. M. Prentice, J. J. Nash, J. P. Black, P. E. O'Connell, T. E. O'Donnell, P. C. Moore, A. Cullen, W. A. Osborne, T. H. Bacon, E. McCarron, R. J. Nolan, D. J. O'Connor, G. A. Nolan, N. S. Gaffney, T. J. Fitzpatrick, B. A. McGrath.

The President was unavoidably absent attending the Conference of The Law Society at Eastbourne.

The following was among the business transacted :

DINNER DANCE

THURSDAY, 17th NOVEMBER

at

SHELBOURNE HOTEL

from 8.30 p.m. to 2 a.m.

Table reservations at Hotel only.

Dinner 9.30 p.m. sharp.

Registry of Deeds

It was reported that the Society had made proposals to the Department of Justice for amending the statute law relating to the registry of deeds with a view to bringing the present practice into line with modern conditions.

Succession Act, 1965

Correspondence received from a member was published in the Society's GAZETTE pointing out that section 115 (4) of the Act affects the completion of the administration of an estate as the right of election of a spouse to take a legal right share instead of a bequest could be exercised within six months from the receipt of the spouse of statutory notification or one year from the first taking out of representation, *whichever is the later*. If the personal representative forgot to give notice there would be no point of termination of the right of election.

It was decided to bring the matter to the attention of the Department of Justice.

Commissioners for Oaths

A case was brought to the attention of the Council by member in which a commissioner for oaths was asked to take an affidavit prepared by another solicitor, a large part of it being in blank apparently to be filled in later by the deponent or his solicitor.

The Council, on a report from a committee, stated that this practice was entirely irregular and that compliance would be a serious breach of professional conduct.

Professional Privilege — Conflict of Interest

A member came upon the scene of an accident in which the driver of one of the cars involved was a client of his for other business. He brought the drivers of both cars to his residence, telephoned the Gardai to the effect that they were not required, apparently at the wish of each party. They had already been summoned to the scene of the accident before member arrived. Member had formed an opinion as to the liability of one of the parties for negligence and had expressed this opinion in the presence of both parties. He was subsequently invited to act for one of them and enquired as to whether he should accept instructions and whether he could claim privilege if called upon to give evidence.

The Council, on a report of a committee, answered both questions in the negative.

Landlord and Tenant Commission

A report from the Society's working party was approved to be submitted to the Commission immediately.

Apprenticeship and Education Regulations

New regulations dealing with the Preliminary Examination were made. They will be published in the next issue of the GAZETTE.

SOCIETY OF YOUNG SOLICITORS

A most interesting meeting was held in Buswell's Hotel, Molesworth Street, Dublin, on 29th September when an Accountant delivered his paper on Office Accounts systems. In the course of his talk, the lecturer dealt with the setting up of a proper accounts system which would enable an auditor to audit a solicitor's books in the quickest possible time. The systems suggested by the lecturer would also facilitate the issuing of the certificate required under the new Solicitors' Accounts Regulations.

The lecture was followed by a very lively discussion during which many accounting problems were solved.

Members were reminded that the new subscription year commenced on the 1st October. Members who have not yet forwarded their subscription for 1966/67 should do so now. Subscription is £1-1-0.

Cheques for membership subscription and transcripts should be sent to the Treasurer of the Society, 15 Braemor Park, Rathgar, Dublin 14.

Future lectures will include :—

Mortgages by Mr. P. C. Moore, Solicitor,
Rents Acts by His Honour Judge Conroy,
A Series on Cost Drawing by a Cost Drawer,
Social Welfare (Occupational Injuries) Bill,
Motor Claims,
Licencing Regulations and Practice,
Estate Duty,
Investment Portfolios Analysis.

The following transcripts of lectures are now available :—

1	Hire Purchase and Credit Sales	4/–	by post	4/9
2	Office Administration ...	5/6	„	„	6/3
3	Building Contracts	3/–	„	„	3/9
4	Bankruptcy	3/6	„	„	4/3
4D	Bankruptcy Discussion ...	3/–	„	„	3/9
6	Registration of Title	7/6	„	„	8/3
7	Wards of Court	3/6	„	„	4/3

7D Wards of Court Discussion	4/6	„	„	5/3
8 Succession Act	10/6	„	„	11/3
8D Succession Act Discussion	3/6	„	„	4/3
9 Companies and Finance Act Legislation	7/8	„	„	8/6
10 Finance Act 1965	5/–	„	„	5/9
13 Land Commission Practice	5/–	„	„	5/9
13D Land Commission Practice Discussion	2/6	„	„	3/3
14 Criminal Legal Practice ...				
14D Discussion on Criminal Legal Practice				
15 Office Accounts System ...	7/6	„	„	8/3
16 Ground Rents and Reversionary Leases	7/6	„	„	8/3
17 Town Planning	8/6	„	„	9/3
18 Occupational Tenancies ...	(price to be announced).			

There is only limited supply of Nos. 1, 2 and 3 available and they will not be reprinted.

It is hoped to release, very shortly, some of the earlier discussions not yet available before the end of the year.

EXAMINATION RESULTS

At Examinations held in September 1966 under the Solicitors Act, 1954 the following candidates passed.

FIRST EXAMINATION IN IRISH

Paul N. Beausang, Vivienne Byrnes, Patricia R. Canavan, Michael E. de L. Clifford, Mary J. Comiskey, Rory F. Conway, Stephen M. E. Coghlan, William E. B. Crowley, John A. Cullen, David J. C. Curran, John J. Daly, Gerard D. Diamond, Susan L. Donnelly, Joan M. Eustace, Ciaran Feighery, Agnes J. Fleming, William Forde, Siubhan A. M. Gavin, Joseph Gilsenan, John J. Gordon (Jnr.), William J. Hamill, John Hannon, Avril Forrest Hussey, Alan Jacks, Declan Jordan, Eugene S. B. Kelly, John Oliver Kelly, Sean T. Kennedy, Margaret R. O'N. Kiely, Clare T. Leonard, Timothy Lucey, John C. M. Ludlow, Geraldine Lynch, Brian J. Mahon, James Malone, Patrick T. Moran, Dermot H. Morris, Conor B. Murphy, Michael D. Murray, Roderick F. McCarthy, Ellen I. McCormick, Patrick A. McMorrow, Edward B. Neilan, Patrick C. Neligan, Caroline M. O'Connor, Jeremy Blake O'Connor, Michael T. O'Connor, Michael J. O'Donnell, Kevin P. O'Flynn, Michael A. O'Hanrahan (B.A.), Kevin B. O'Herlihy, Nicholas J. O'Keeffe, Paul O'Reilly, Thomas F. O'Sullivan, Gyllian I. Peart, Michael S. Roche, John Ross, Rosary Waldron, Olivia C. Ward, John M. G. Power.

60 candidates attended; 60 passed.

The Sean O hUadhaigh Memorial Prize for 1966 was awarded to Mary Flanagan.

SECOND EXAMINATION IN IRISH

Kieran M. F. Murphy.

1 candidate attended; 1 passed.

THE FIRST LAW EXAMINATION

The following candidates passed: Fergus E. Appelbe, Patrick D. M. Branigan, Patrick Cafferky, Cornelius Cronin (B.A.), Clare T. Cusack, Michael J. Delaney, Daniel J. Fagan, Patrick D. Fallon, Cairbre Finan, David J. M. FitzGerald, Edmund D. Gavin, Brian G. M. Geraghty (B.A., B.Comm.), Gerard M. Halley, Denis Hipwell (B.A.), Desmond P. Hogan, William A. James, Deborah Kelliher, Mary C. Kelly, Francis P. Malone, John H. Matthews (B.C.L.), Oliver G. Matthews, James M. N. Molloy, James Mulhern (M.A., L.Ph.), James A. Murphy, Edward P. McCarthy, Owen A. MacCarthy, Patrick J. McCarthy, Stephen J. MacKenzie, John F. Neilan (Jnr.), Mary V. G. O'Connell, John T. D. O'Dwyer, Timothy N. O'Hanrahan, Gerard O'Keffe, James D. J. O'Reilly, Robin A. Peilow (B.A.), Dudley Potter (B.A.), Elizabeth A. Purcell, Mary R. Adele Quinn, Mary M. E. Roche, Edmund F. Seery, John A. Sheedy (B.A.), Niall E. Sheehy, Valerie J. M. Walsh.

64 candidates attended; 43 passed.

The Centenary Prize was not awarded.

THE SECOND LAW EXAMINATION

The following candidates passed:

Passed with Merit

William O. H. Fry (B.A.), Simon C. K. Quick (M.A., LL.B., B.Comm.).

Passed

Eric H. W. Bradshaw, Albert D. Burke (B.C.L.), Maeve T. Ua Donnchadha (B.C.L.), Thomas F. Figgis (B.A.), Brian Gartlan, Garrett P. Gill, Derek H. Greenlee, Declan J. Howley, Patrick J. Kevans, William J. Montgomery, Michael

O'Driscoll, Aiveen M. J. Smith, Stephen T. Strong, Jonathan P. Thompson (B.A.[Mod.] D.P.A.).

31 candidates attended; 16 passed

The O'Connor Memorial Prize was awarded to William O. H. Fry (B.A.).

THE THIRD LAW EXAMINATION

The following candidates passed:

Passed with Merit

Enda P. O'Carroll (B.C.L., LL.B).

Passed

Marguerite Joyce Boland (B.C.L.), Ann M. T. Coady (B.C.L.), David Cox (B.C.L.), Catherine P. V. Doyle (B.C.L.), Michael Farrell (B.C.L.), Joseph G. Finnegan (B.C.L., LL.B.), Felicity Mary Foley, Paul D. Guinness (B.A.), John B. Harte, Richard Lovegrove, Brian J. Magee, George G. Mullan (B.C.L.), Oliver D. McArdle, Donal T. McAuliffe, Kieran McDermott, Brendan J. McDonnell, Francis J. O. McGuinness (B.A., B.C.L., H.Dip. in Ed.), Brendan O'Mahony, Gerald B. Sheedy (B.C.L.), William B. R. B. Somerville (B.A., Mod.), Angela M. Sweetman (B.C.L.), John J. Tully.

32 candidates attended; 23 passed.

On the combined results of the Second and Third Law Examinations the Council has awarded special Certificates to Enda P. O'Carroll (B.C.L., LL.B.) and Joseph G. Finnegan (B.C.L., LL.B.).

THE PRELIMINARY EXAMINATION

The following candidates passed: Anthony Brady, Vivienne Byrnes, Mary C. A. Carey, Damien F. Cassidy, Andrew Dillon, Patrick Fitzpatrick, Siubhain A. M. Gavin, Olivia C. Ward.

16 candidates attended; 8 passed.

By Order,

ERIC A. PLUNKETT,
Secretary

Solicitors' Buildings,
Four Courts,
Dublin, 7. 29th September, 1966.

INTERNATIONAL BAR ASSOCIATION

The eleventh biennial conference of the International Bar Association, recently held at Lausanne, was attended by representatives from the United States, Europe, and Australasia. The Society was represented by the President, Mr. R. McD. Taylor, with Messrs. Patrick O'Donnell, Vice President, John Carrigan, Henry W. McCormack and Eric A. Plunkett, Secretary.

The estimated attendance at the conference, including wives of participants, was about eleven hundred. Most European capitals are very well organised for a conference of this kind and the governments, or municipalities, have built conference headquarters in many cities which are fully equipped for working sections with large numbers of participants.

There is considerable competition between member countries to attract IBA conferences with governmental or local support with a realisation of the valuable tourist and economic potential of meetings of this kind.

Members from thirty-seven countries attended the Lausanne Conference, comprising a representative cross section of the lawyers of the world. This afforded valuable opportunities of comparing the legal systems of common law in continental countries.

The following were among the topics discussed at the conference :—

Restrictions on Lawyers against practicing in their Jurisdictions

The answers to a questionnaire circulated, and the discussion at the meeting, revealed a considerable variation, ranging from a fairly all-embracing monopoly with only a limited legal exception (Germany) to monopolies which are restricted for example to appearances in certain courts, conveyancing and the preparation of legal documents (England, Ireland, France, the Netherlands) and even the entire absence of any monopoly (Finland and Sweden). In the latter case members of the bar are distinguished from laymen who engage in legal practice mainly by their exclusive right to the title of advocate or lawyer, or whatever other title is borne by members of the profession. This however, does not imply that a foreign lawyer could easily set up practice in these countries.

The discussion on the topic revealed the serious concern in a number of continental countries about the activities of American law firms, who set up offices in Europe. Such offices may be established for the purpose of advising American citizens on continental law. European lawyers are however, understandably concerned about a practice of American firms, which is becoming more common, of establishing offices in continental capitals,

staffed by local salaried lawyers who practise in the local courts. Questions arising under this head include :—

Whether a foreign firm should be entitled to open an office in another jurisdiction;

If such a practice is permissible whether a foreign firm should be entitled employ local lawyers or associate with them in partnership;

Whether the scope of its activities should be restricted to advising citizens of its own country on local law;

Whether a foreign firm should have an unrestricted or limited right to represent its clients before a local tribunal.

As might be expected, many different views were expressed on these subjects. In continental countries the topic is a fluid state, having regard to the developing law of the EEC countries.

Unauthorised Practice of the Law

In every country, with the possible exception of Finland and Sweden, the practice of the law is restricted to persons possessing recognised legal professional qualifications. Even in Finland and Sweden, where there is no statutory prohibition against the practice of the law by laymen, it is more *de jure* than *de facto*. In practice all important legal business is conducted by lawyers.

The law in the Republic of Ireland, generally speaking, follows the lines of English and Scottish law. In Germany the prohibition against practice by unqualified persons extends to all legal activities, including the giving of advice or dealing in any way with the legal affairs of another person for a reward. In France, on the other hand, the position of the avocat, corresponding to Counsel in this country, and the avoue who performs some of the duties of a solicitor, is not coextensive with the legal profession in England or Ireland. The avocat and avoue engage almost exclusively in court proceedings and this has given rise to the proliferation of conseils juridiques and agents d'affaires, who perform many of the business functions of solicitors in England and Ireland.

It was generally agreed that the justification for the exclusive practice of the law by lawyers must be found in the public interest. Lawyers must serve the public and justify their position by that test. There was general agreement among the national correspondents that the ultimate test must be whether the protection afforded to a member of the public against the incompetence of unqualified persons outweighs the commercial principle that there should be a free market for services.

Limits and Restrictions of Public Reporting on Criminal and Civil Court Proceedings

The discussion on this matter dealth with such topics as :—

prohibition against the conduct of legal proceedings in camera;

the right of the Press to attend all court proceedings;

limitations on publication of court cases in the interest of the accused or public morality;

auto-censorship by the Press;

proceedings in juvenile courts, and

contempt of court in publication of court proceedings.

An important feature of the control of court proceedings in the Republic of Ireland is that it is exercised by the court over its own procedure, and in the interests of the parties, that the State has no authority to prohibit Press publication of court proceedings. This is an important safeguard, because the court, in the exercise of its statutory powers, is bound to have regard to the important constitutional principle that justice is to be administered in public. Any exceptions to this principle must be directed by the courts not by any govermental agency.

The contributions by the various countries to this topic revealed a common respect for this principle. The conference also discussed the necessity for a Press Council, or other disciplinary body, to which newspapers would be amenable for unprofessional practice and improper intrusion and oppresive conduct affecting individuals in their private and family affairs. It was pointed out that in the Republic of Ireland these abuses do not generally exist and that auto-censorship by the Press itself is sufficient to protect the public. In practice this works well due to the fact that the population is small, the absence of very large and powerful newspapers compared with England and the United States, and the climate of public and Press opinion.

The next conference of the International Bar Association will be held in July, 1968, in Dublin.

COMMITTEE ON IRISH AND COMPARATIVE LAW

A meeting of the above Committee was convened by Mr. A. G. Donaldson, Belfast, whose book on Irish and Comparative Law is well-known to members. Mr. Vincent Grogan, S.C., who is the Honorary Treasurer of the Committee presided. The attendance included the Chief Justice the Hon. Cearbhall O Dalaigh, Mr. Justice Brian Walsh and Mr. Justice John Kenny. The meetings of the Committee afford an opportunity of lawyers in practice in the two jurisdictions in Ireland (i.e. the Republic and Northern Ireland) to come together and discuss problems of mutual interest. On this occasion Northern Ireland was represented by a much bigger contingent than from the Republic. The Law Schools in Trinity College, Dublin and Queen's University, Belfast were represented but only one representative came from the constituent Colleges of National University. The matters for discussion were :—

(i) the work of the World Peace Through Law Centre; whose work was explained to the meeting by Mr. T. A. Doyle, S.C., Chairman of the Bar Council, Dublin;

(ii) report on the International Congress of Comparative Law held at Uppsala in August, 1966 by Mr. J. B. McCartney, Lecturer in Law, Queen's University, Belfast.

There was a dinner after the meeting and in a very informal and congenial atmosphere problems touching the professions and the law were discussed at length.

Mr. T. C. Smyth and Mr. C. Gavan Duffy represented the Society.

LAND COMMISSION

The following Orders have been made by the Minister for Lands regarding the payment of solicitors' costs :—

WHEREAS under subsection (1) of section 15 of the Land Act, 1965, notwithstanding any other provision of the Land Purchase Acts, the powers and functions of the Judicial Commissioner and the Land Commission in relation to the distribution of purchase money (including the certifying under subsection (2) of section 5 of the Land Act, 1923, of sums out of the Costs Fund established under that section) may be exercised by such Examiners of the Land Commission as the Minister, with the consent of the Judicial Commissioner, may authorise for the purpose, Now, I, Micheál O Móráin, Minister for Lands, pursuant to the said subsection (1) of section 15 of the said Act, with the consent of the Judicial Commissioner, hereby authorise each of the officers named in the Schedule hereto to exercise the aforesaid powers and functions.

SCHEDULE

Name	*Official Designation*
M. P. Gavagan	Chief Examiner of the Land Commission
G. L. Collins	Examiner of the Land Commission
M. G. O'Beirn	Examiner of the Land Commission
P. Byrne	Examiner of the Land Commission

Given under my hand this 9th day of November, 1965.

MICHEAL O MORAIN,
Minister for Lands.

By a similar order dated 8th February the name of Mr. D. M. G. Slattery, Examiner of the Land Commissioner, was added to the above schedule.

LAND ACT 1965

Pursuant to the powers conferred on me by Section 16 of the Land Act 1965 and any other power in that behalf otherwise enabling I hereby direct the Examiners authorised for the purpose of sub-Section (1) of Section 15 of the said Act by the authorisation of the Minister for Lands dated the 9th day of November 1965 to accept, as the period of commencement of title which the owner, tenant or other claimant shall be required to deduce, a period of not less than :—

(a) 12 years beginning on the date of a Conveyance, Transfer or Assignment for valuable consideration of the land or holding and ending on the date on which the land or tenant's interest therein vested in the Land Commission, or

(b) 30 years ending on the date on which the land or tenant's interest therein vested in the Land Commission, whichever is the shorter.

Dated this 19th day of November 1965.

Signed : THOMAS TEEVAN,
Judicial Commissioner

The Judicial Commissioner gave a like direction on 25th February 1966 in respect of the Ministerial authorisation dated 8th February, 1966 referred to above.

COMMISSIONERS FOR OATHS PROHIBITED FROM ACTING WHERE INTERESTED

Section 1 (3) of the Commissioners for Oaths Act (52 Vic. 10) provided that a Commissioner for Oaths shall not exercise any of the powers of a Commissioner in any proceeding in which he is solicitor to any of the parties to the proceeding, or clerk to such solicitor, or in which he is interested.

A Commission to administer oaths remain in force only while the solicitor holds a practising certificate, see 102.L.T. (1896), pp. 65, 188.

A Commissioner for Oaths is forbidden to take affidavits by his client in any proceedings in which he or his firm are acting, and this prohibition extends to the client's local solicitor although such local solicitor is not the solicitor on record in the proceedings, Duke of Northumberland v Todd 7 Ch. D.777; Parkinson v Crawshay, W.N. (1894) 85. It is not considered proper for a Commissioner for Oaths to take any affidavit or declaration in connection with any matter in which the solicitor or his firm is or are acting for the person making the Affidavit of declaration. A Bill of Sale under the Bills of Sale Act sworn before a solicitor acting for the grantor grantee has been held to be void, Baker v Ambrose (1896), 2 B 372; 65 M. J. 2 V 589. This matter has been brought to the attention of members of the Society as apparently some solicitors or firms of solicitors consider that it is quite in order to complete memorials for registration in the Registry of Deeds on behalf of their clients or the clients of their firm. The matter has come to the attention of the Registrar of Titles.

REGISTRY OF DEEDS MEMORIALS

The Dublin Solicitors' Bar Association wrote to the Society drawing attention to the difficulty in obtaining memorials for the registration of deeds.

It was pointed out that memorial parchment is becoming unobtainable and is expensive. The Society wrote to the Department of Justice drawing attention to the position.

On August 16th the Department replied stating that enquiries made from the trade have elicated that while there is some delay in the importation of parchment there does not appear to be any danger of supplies drying up, as envisaged by the Dublin Solicitors' Bar Association. The Department mentioned that under Section 6 of Anne Ch. 11 a memorial is required to be put in writing in vellum or parchment and, from enquiries mentioned, there would appear to be no shortage of vellum which, incidentally, is cheaper than parchment.

The Department is at present working on the preparation of a comprehensive Registry of Deeds Bill to consolidate and reform the existing law in which it is proposed; *inter alia,* to provide for the presentation of memorials on paper.

COMMISSIONERS OF CHARITABLE DONATIONS AND BEQUESTS

BOARD MEETINGS

Michaelmas Term — 1966

Tuesday	—	4th October, 1966
„	—	18th October, 1966
„	—	1st November, 1966
„	—	15th November, 1966
„	—	29th November, 1966.
„	—	13th December, 1966

LORD GARDINER DEFENDS LEGAL FEES

The professions, and lawyers in particular, were stoutly defended yesterday by the Lord Chancellor, Lord Gardiner, against "brash and ill-informed criticisms" that they are addicted to restrictive practices.

Addressing Cambridge University Labour Club, he pointed out that the Bar had recently chosen to abolish their circuit special fees and the "two-thirds rule" by which junior counsel could charge two-thirds as much as the fee marked on their leader's brief.

The abolition of these practices, Lord Gardiner said, would substantially reduce the fees earned by barristers. "Show me any other example in modern times of a body of men voluntarily reducing their earnings for the same amount of work in what they believe to be the interests of the public."

As for solicitors, the fees they could charge for actions in the county court were restricted to those in force 11 years ago.

Fewer solicitors

"Show me any other body of men in the country who, with rising overheads and staff on whom they now have to pay Selective Employment Tax, have not been allowed to increase some of their charges for 11 years."

Referring to complaints of delay in the despatch of clients' business, Lord Gardiner said: "The fact is that there are simply not enough solicitors to go round.

"There are 30 jobs waiting for every newly-qualified solicitor to choose from, and the Law Society, after a careful survey, concludes that we are about 5,000 solicitors short."

Mr. Charles Hilary Scott, President of the Law Society, said yesterday that the conclusion about a shortage of solicitors was the result of a survey carried out two or three years ago. This represented roughly 25 per cent but the shortage was greater in some areas than others.

"There is a drift to London. The younger men feel they must come and you get the shortage in the smaller localities. If one solicitor dies, or retires, the gap is felt.

"In private practice, it is indisputable that many firms complain that they cannot get competent young men to join them."

He wholeheartedly supported Lord Gardiner's remarks on charges. Some firms find it hard to make enough money to go round because the charges were so low, and they could not "stand" another partner.

Complaints about delays in solicitors' offices were sometimes justified, but not always. Sometimes the delays were caused by difficulty in getting necessary facts and figures.

—*The Daily Telegraph*, 17th October, 1966.

POINT OF PRACTICE — MINOR MATTERS

Solicitors when making applications for payment of Minors' monies out of Court should seek in addition to the professional fee, the sum incurred in outlay as the present position is not entirely satisfactory. In one case reported to the Society where payment of the sum of £15 each to two minors was sought out of monies standing to their credit, instructions were received by a solicitor. Two certificates of funds were bespoken and arrangements were made for the next friend to attend Court when application was made for payment out. As the Master was not anxious to disturb the corpus of the amounts to the credit of the minors and there was some cash available, he ordered payment of the sum of £11-4-0. approximately in each case and allowed a sum of £1-1-0. Costs in each of the applications.

The position from the point of view of the solicitor resulted as follows:—

	£ s. d.	£ s. d.
Amount of Costs received by Solicitor ...		2 2 0
Paid Court Fee 2 Certificates of Funds	10 0	
Fee on Master's Order	1 0 0	
Fee for two directions to pay monies	10 6	2 0 6
Balance on Hands:		£– 1 6

SOLICITOR'S REMUNERATION IN LEGAL AID MATTERS

A member of the Society whose name is included in the Panel under the Criminal Justice (Legal Aid) Act, 1962 has reported the following experiences:—

(i). In October, 1965 the solicitor received word by telephone (which was confirmed later by notice in writing) that a man has been charged with:

(a) obtaining a sum of £10-0-0 by false pretences;
(b) obtaining a sum of £6-2-0 by false pretences;
(c) obtaining a sum of £10-0-0 by false pretences;
(d) obtaining a sum of £7-15-4 by false pretences;
(e) receiving certain goods to the value of £45-0-0 by false pretences;
(f) receiving a sum of £314-0-0 by means of a forged cheque; by uttering same with intent to defraud and obtaining a sum of £285-0-0 therefrom.

The solicitor inspected the charge sheets and took particulars thereof. The defendant was in custody and the solicitor wrote to the Governor of the prison and told him to acquaint the defendant of the solicitor's appointment. The solicitor attended Court where he interviewed the defendant for 1½ hours before the hearing, which was adjourned, no evidence being taken and the defendant was remanded in custody.

As a result of the defendant's instructions the solicitor wrote to certain English solicitors concerning funds which the client alleged he

had and obtained from another solicitor in Ireland for the file in connection with the case.

In view of the evidence and information received by the solicitor he advised the defendant to plead guilty and the Attorney General was prepared to allow the matter to be dealt with in the District Court where the solicitor appeared for the defendant; he pleaded guilty and sought clemency on the sentences. A sentence of twelve months imprisonment was imposed, but, was suspended on defendant undertaking to repay the sum of £320 within twelve months.

On the other charges sentences of six months each to run concurrently with the foregoing sentence were imposed, but were also suspended.

The defendant was an Englishman with no means here and the solicitor understands that the defendant left the country afterwards.

The solicitor returned the file to the Irish solicitor and had some further correspondence with the client's English solicitors. He then completed the necessary forms for signature by the defendant and also completed the necessary application for payment of his fees, which he received promptly. The amount received by him as £6-6-0.

(ii) The solicitor received notice of appointment from the Circuit Court Office as it was an Appeal from the District Court by two itinerants on various charges, including wandering abroad, child neglect and malicious damage, causing a child unnecessary suffering.

The solicitor attended at the Circuit Court Office and took particulars of the charge and made arrangements to interview the clients on the morning of the hearing. The solicitor then took instructions and in view of the evidence he advised a plea of guilty. The defendants had been in custody at that time three weeks. Having pleaded guilty before the Circuit Court Judge who affirmed the convictions but reduced all the sentences, which had been up to six months, to one month, which is effect meant their release within a few more days.

The amount of the fees allowed in this case, in which the solicitor was paid promptly were £8-16-6.

CASES OF THE MONTH

Obsession with Motor Vehicles

The defendant pleaded guilty to stealing a motor car and driving whilst disqualified. He was sentenced to three and one years' imprisonment concurrent. *Previous convictions*: Eight including six relating to motor vehicles; approved school, detention, borstal (twice). The accused who was a young man aged twenty was before Lord Parker, C. J. Fenton Atkinson and James J. J. on June 14, 1966 and it was considered that he was obsessed with motor vehicles. *Decision*: Although prison would provide no cure for his obsession, if released he would probably soon commit further motoring offences. Sentence upheld.

(R. v. Richards, Crim. L.R. (1966) p. 515).

False Pretences

The defendant, a man aged 38 years of age appealed to the Court of Crminal Appeal consisting of Lord Parker, C.J., Fenton Atkinson and James J.J. *Facts*: Pleaded guilty on two counts of obtaining money by false pretences and asked for eighty-three similar offences to be taken into account. He obtained £3,000 from widows by pretending that their late husbands had been in arrears under insurance policies from which they would benefit if the arrears were paid. Sentenced to nine years' imprisonment. *Previous convictions*: Eight for dishonesty including three for false pretences (118 cases); sentences up to seven years' preventive detention. *Decision*: Although severe the sentence was not wrong in principle.

(R. v. Keen, Crim. L.R. (1966) p. 514, *Times* June 23, 1966).

Question by Jury Indicating new View of the Facts — Need for Direction

W. was convicted of wounding with intent. The case against him was that he pushed a broken tankard into I's face. His defence was an alibi and accordingly the Judge did not give any detailed direction about the alternative possible finding of unlawful wounding. After retiring the jury indicated that they thought I's injuries might have been caused by a fist. The Judge told them that it was still open to them to convict of wounding with intent. W. appealed on the ground that once the jury had indicated their view of the facts the Judge should have dealt fully with the alternative finding.

Held: the Court felt there was substance in the ground and the Crown did not seek to uphold the conviction. Accordingly a verdict of unlawful wounding would be substituted.

Comment: The fact that the direction given by the Judge in his summing up was correct seems to establish that the evidence was that W. injured I. with a broken glass or that he did not injure him at all. But decisions of fact are for the jury and, however overwhelming the evidence that a glass was used, the Court of Criminal Appeal could hardly do other than proceed on the assumption that it was not used when some, at least, of the jury may have returned their verdict on the assumption that the damage was caused by a fist. Indeed, it might have been argued that, since the jury—or some of them—may have founded their verdict on a fact of which there was no evidence, the conviction could not stand at all. Perhaps, however, it is not true to say that there was no evidence of injury by a fist, the jury being entitled to infer this fact from the nature of the injuries.

(R. v. Weston, Crim. L.R. (1966) p. 512-513).

Proceedings against Receiver

A company was formed to take over the assets and business of a company of insurance brokers, and shares in the new company were issued to the directors of the old company. Subsequently, by an order of the Court, by consent a motion by, *inter alia,* the old company, a receiver and manager of the old company's business was appointed. Receipts by him totalling some £7,800 he described as premiums received on behalf of the new company which he has paid over to that company. The old company challenged the propriety of that payment and issued a writ against the new company.

On a motion by the old company for, *inter alia,* leave to proceed against the receiver for recovery of the £7,800, notwithstanding that the old company was a party to his appointment.

Held, that a person at whose instance a receiver had been appointed could, provide that the leave of the Court was obtained bring an action against the receiver; and that, the best course of disposing of the present issue involving the receiver being for it to be tried by action, leave would be given to join the receiver as party to the action.

(L.P. Arthur (Insurance) Ltd. (in Liquidation) v Sisson and Others (1966) 1 W.L.R. p. 1384).

Picketing Crime — Obstruction of Police

The Trade Disputes Act 1906, s.2, authorises attendance at or near a place where a person works if the purpose is merely for the purpose of peacefully obtaining or communication information or of peacefully persuading any person to work or abstain from working. Accordingly, if the object of pickets is in part to seal off the highway and to cause vehicles approaching the premises to stop, they are doing something beyond what is authorised by s.2 of the 1906 Act, and the offence of obstructing a police constable in the execution of his duty is committed if they refuse to desist at the constable's request.

(Tynan v. Balmer (1966) 2 W.L.R. 1181; (1966) 2 All E.R. 133).

Costs

The plaintiff was deprived of part of his costs under r.7 of the Supreme Court Costs Rules, 1959, where the defendant was willing to settle the case but the plaintiff's solicitors would not deliver the medical report until just before the trial. Disclosure at an earlier stage would not have harmed the plaintiff in any way. Lyell J. emphasised that he decided the case entirely on its facts. (Vose v Barr (1966) 2 All E.R. 226).

Company Law: Extension of time for Registration of Charge

Where there is evidence that an equitable charge has been created by a company, the Court has power, under s.101, Companies Act 1948, to extend the time for registration of the charge if satisfied, *inter alia,* that the omission to register was due to inadvertence. His Lordship could not see what possible explanation there could have been for not registering the charge in this case except inadvertence and therefore expressed himself as satisfied on this point and exercised his discretion to extend the time for registration, despite the fact that an action was proceeding in which the validity of the charge was in issue. The risk of injustice to the company alleged to have created the charge by allowing registration was far less than the risk of injustice to the chargee by refusing to do so.

(Re Heathstar Properties, Ltd. (No. 2) (1966) 1 All E.R. 1000).

Section 106 of the Companies Act, 1963 in Ireland corresponds with the provisions of section 101 of the Companies Act, 1948 of England.

Planning Permission Ultra Vires

Even assuming that the planning permission granted by a local authority to build a school is *ultra vires,* the owners and occupiers of adjoining houses are not entitled to a declaration that permission is *ultra vires.* The plaintiffs have no legal rights as against the trustees who are erecting the school, and they cannot interfere by maintaining that a valid permission must be obtained from the local planning authority before the school can be built.

(Gregory and Another v London Borough of Camden (1966) 1 W.L.R. 899; (1966) 2 All E.R. 196).

JOINT SEMINAR WEEKEND

On Saturday and Sunday, the 22nd and 23rd October, Cork suffered an avalanche of solicitors, and despite the weight of legal opinion, extension of closing hours was not available. Notwithstanding this, there was a much more learned, very exhausted exodus from Cork on Sunday.

The weekend commenced with Mr. William Maguire, solicitor, who spent all of Saturday afternoon and evening explaining the Succession Act and its implications to the gathering. This mammoth job was carried out by Mr. Maguire in his usual precise and highly informative manner.

On Sunday morning, His Honour Judge Conroy delivered a very interesting paper on Reversionary Leases and the Ground Rents Bill. In the afternoon Mr. Brendan Kiernan, B.L., delivered his paper on Town Planning.

It was thanks to the work and co-operation of the three joint organisers, the Council of Provincial Solicitors Association, the Southern Law Association, and the Society of Young Solicitors, that the weekend was such a success. There were some 270 solicitors present, representing every one of the 26 counties. It is to be hoped that future seminars will be as great a success as this one.

The next joint seminar will be held next spring, and it is hoped that the venue will be in the mid-west, or west, of Ireland. Suggestions for topics for this seminar are requested and you should send these to the Secretary, the Society of Young Solicitors, 15 Braemor Park, Dublin 14.

The Position of Solicitors

DISTINCTION WITHOUT DIFFERENCE

Not the least anomalous consequence of *Rondel* v *Worsley* is the distinction it draws between barristers and solicitors vis-à-vis immunity from negligence claims. In the court below Mr. Justice Lawton held [1966] 1 All E.R. 467, at 480, that it was qua *advocate* that a barrister enjoyed immunity in conduct of a case in or about the court, and that, accordingly, a solicitor-advocate enjoyed that immunity too. In the Court of Appeal the word "advocate" was not used, and the immunity of solicitors was denied. Only by Mr. Justice Salmon was the issue not closed: he was, he said, "not at present convinced that the learned judge's [Lawton J's.] view was wrong on this point." Under no head of public policy enunciated by their Lordships is it possible to find any rational basis for distinguishing between counsel and solicitors as advocates. Indeed, in two precisely similar actions, whether counsel or a solicitor appears may depend on no more fundamental, or vis-à-vis liability in negligence, relevant issue than the amount at stake since that alone may determine whether the High Court or County Court has jurisdiction. In this respect at least we are at a loss to see how, in Lord Justice Danckwerts' phrase, barristers "face hazards quite unknown" to solicitors.

On drafting the advisory work a majority of the Court of Appeal likewise held that a barrister could not be liable for negligence. Lord Justice Salmon gave a strongly dissenting judgment. Here at any rate usage is of little consequence, for, as Lord Justice Salmon said, it is inconceivable that "barristers, any more than any other professional men, would write 'without legal responsibility for negligence' above their doors." As the law now stands, solicitors are liable for negligence in relation to paperwork and advising. We do not suggest that there is any ground of complaint on that score. We wish merely to make the point. For of counsel Lord Justice Danckwerts said that "sitting in the quiet contemplation of his chambers," were he not able to accept a case to advise or instructions to draft a document "on the footing that the result will not be open to proceedings by the client for negligence," counsel might be "alarmingly anxious." Are the thoughts which disturb a solicitor's quiet contemplation any less alarmingly anxious ones? Or those that occur to the surgeon at the operating table? Their anxiety is perhaps mitigated by the realisation that the law provides reasonable protection for those harassed by unmeritorious claims. Could it not do so for all? The answer to this question is, we think, largely one of approach. In the Court of Appeal much was made of the historical grounds for the differences between the two branches of the profession. The function of historical enquiry is, however, merely to explain how such differences came about, not to justify them. Yet in *Rondel* v *Worsley* their Lordships were concerned to justify them—in one particular context. To us it does not appear that they did so very convincingly, or that the repercussions of the decision in *Rondel* v *Worsley* will be to the ultimate benefit of the Bar. Not that it is likely to be very ultimate for, as the *Financial Times* has noted, it has "a curiously fragile look about it." Fragile certainly, but scarcely curiously so.

—*New Law Journal*, 27th October, 1966.

REGISTRATION OF TITLE ACTS, 1891 and 1942

ISSUE OF NEW LAND CERTIFICATES

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

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

Dated the 7th day of November, 1966.

D. L. McALLISTER
Registrar of Titles

Central Office,
Land Registry,
Chancery Street,
Dublin.

SCHEDULE

1, Registered Owner, **Irish Mosaics, Ltd.** Folio number 31112. County Roscommon. Lands of Lisnacroghy or Gallowstown in the Barony of Ballintober South containing 0a. 2r. 6.2p.

2, Registered Owner, **D. E. Williams, Ltd.** Folio number 641. County Kings. Lands of Loughroe in the Barony of Ballycowan containing 4a. 2r. 19p.

3, Registered Owners, **Michael Phelan** and **Julia Phelan.** Folio number 2513. County Kilkenny. Lands of Rathgarvan or Clifden in the Barony of Gowran containing 38a. 3r. 8p.

4, Registered Owner, **Michael M. Lynch.** Folio number 17208. County Clare. Lands of Leagard South in the Barony of Ibrickan containing Oa. 0r. 16p.

THE REGISTRY

Registry B

Solicitor thoroughly experienced, Probate and Conveyancing, desires post. City firm preferred. Refs. available.—Box B.281.

Solicitor admitted 1964 with Conveyancing and general experience seeks Dublin assistantship.—Box B.282.

Registry C

Re/ Very Rev. Patrick J. Veale, P.P., deceased late of St. Mary's Presbytery, Horwich, Bolton, Lancashire and formerly of Clonea, Dungarvan, County Waterford.

WILL any person having knowledge of the whereabouts of a Will of the above deceased please communicate with the undersigned:

J. F. WILLIAMS & CO.,
Solicitors,
Dungarvan, Co. Waterford.

Re/ Melanie Neuron deceased:

WILL any solicitor knowing the whereabouts of the Will of the above named deceased late of 70, Willow House, Mespil Flats, Mespil Road, Dublin, please contact—Quentin Crivon, Solicitor, 30 Bachelors Walk, Dublin, 1.

INDEX OF STATUTORY INSTRUMENTS

published since February 1966

LABOUR COURT RECOMMENDATIONS

1A—Guide lines for the negotiation of claims concerning wages and conditions of employment dated 21st April, 1966.
2010—Player and Wills (Ireland Ltd.): Merit Award Scheme for artisan's (male).
2011—Rowntree-Mackintosh (Ireland) Ltd.: Remuneration of Sheet Metal Workers.
2012—Dublin Port and Docks Board: Overtime and service pay for certain tradesmen.
2013—Fry-Cadbury (Ireland) Ltd.: Overtime rates for tradesmen's helpers.
2014—Unidare Ltd.: Remuneration and conditions of employment of general unskilled and semi-skilled workers.
2015—Dublin Port Milling Co. Ltd.: Salary scales.
2016—Cork Dental Laboratories: Working week.
2017—City of Cork Steam Packet Co. Ltd.: Pensions for Constant Dockers.
2018—Coras Iomapir Eireann: Remuneration of Skilled Shopworkers.
2019—Cavan County Council: Remuneration of Fitter.
2020—Drogheda Corporation: Conditions of employment of Waterworks Caretaker.
2022—North Eastern Cattle Breeding Society Ltd.: Remuneration and conditions of employment of Inseminators and Clerical Workers.
2024—Irish Agricultural Organisation Society Ltd and Dairy Disposal Co. Ltd.: Wages and conditions of Cattle Breeding Assistants.
2025—Waterford Health Authority: Wage Rates and service pay.
2026—Coras Iompair Eireann: Working week of Road Freight Workers.
2027—C.I.E. Road Freight Workers: Operation of a 5-day working week in Dublin.
2028—Ennis Urban District Council: Remuneration of Water Inspector and Town Hall Caretaker.
2029—Tralee Fashion Knitwear Ltd.: Working hours of Male Shift Workers.
2030—Commissioners of Irish Lights: Claim for appointment of Lighthouse Technicians (Mechanical) to Grade III Technical Works Group.
2031—British and Irish Steam Packet Co. Ltd.: Wage increases.
2032—Dublin Voluntary Hospitals: Working week and service pay for Male General Workers.
2033—Irish Ale Breweries Ltd.: Wages and conditions of employment.
2034—Coras Iompair Eireann: Parity of Pay between Woodcutting Machinists in the Inchicore Works and in the Spa Road Works.
2035—Wexford County Council: Wage rates.
2036—Dublin Milk Branch of Federated Union of Employers: Service pay for General Workers.
2037—British and Irish Steam Packet Co. Ltd.—Service pay for General Workers.
2039—Dublin Sugar Confectionery and Food Preserving Industry: Wages, service pay and holidays for General Workers.
2040—Irish Raleigh Industries Ltd.: Service pay for General Workers.

2041—Bacon Curing Industry: Wages, holidays and pensions of General Workers.
2042—Dublin County Council: Service pay for General Workers.
2044—Dublin Port and Docks Board: Working week.
2045—Building Maintenance Workers employed in certain Industrial and Commercial concerns: Weekly working hours.
2046—University College, Dublin: Working week of Maintenance Workers.
2049—Ceimici Teoranta: Claim for regrading of certain Clerical Staff.
2050—Clover Meats Ltd.: Wages and conditions of employment of a Provender Mill Operator.
2052—Cork City Hotels: Remuneration and condition of employment of Male and Female Staffs.
2051—Henry Denny & Sons (Ireland) Ltd.: Wages and conditions of employment of Van Salesmen.
2053—Cork City Restaurants: Remuneration and conditions of employment of Male and Female Staffs.
2054—Kilkenny Products Ltd.: Wage rates.
2069—Goulding Fertilisers Ltd.: Manning, incentive payments and work study.
2070—Jewellery and Metal Manufacturing Co.—Wages and working hours.
2071—Coras Iompair Eireann: Abolition of Invoicing for Local Traffic of one ton and under.
2072—Cork Dockers: Wages and conditions of employment.
2073—Alliance and Dublin Consumers Gas Co.: Remuneration of Continuous Process Shift Workers.
2074—Alliance and Dublin Consumers Gas Co.: Remuneration of Prepayment Meter Collectors.
2075—Coras Iompair Eireann: Appointment of Bus Drivers in the provincial services; compensation for one-man bus operation and meal allowances.
2076—Coras Iompair Eireann: Non-filling of certain graded clerical posts.
2077—Bord na Mona: Salary scales of Draughtsmen and Allied Technician's Association.
2078—Electricity Supply Board: Grading of Minor Clerks.
2079—Racing Board: Remuneration of Casual Clerical Totalisator Staff.
2080—Associated Irish Cases Ltd.: Salary scales.
2081—Coras Iompair Eireann: Salaries and conditions of Temporary Clerks.
2082—Sugar Confectionery and Food Preserving Industry: Ex-gratia payments.
2083—Rowntree Mackintosh Ltd.: Compensation for loss of earnings.
2043—Aer Rianta: Dismissal of Fitter.
2060—Dublin Newspapers: Remuneration of Journalists.
2061—Irish Containers Ltd.: Machine differentials.

AGRICULTURE, LANDS AND FISHERIES

SUBJECT MATTER AND REFERENCE NUMBERS

Bruscellosis: Vaccination of cattle against disease prohibited save with consent of Minister; general regulations to prevent disease—120/1966.
Bruscellosis: Conditions under which cattle may be vaccinated against disease in non-clearance areas imposed—199/1966.
Bruscellosis: Co. Donegal declared a clearance area for purpose of eradicating this disease—121/1966.
Committees of Agriculture: Officers travelling expenses and maintenance allowance expenses increased after 1st January, 1966—126/1966.
Dairy Produce Marketing Act 1961: Regulations re Butter Levy Form—137/1966.
Dairy Produce (Price Stabilisation) Act 1935: Butter, cheese and dried milk may be imported without licence after 1st July, 1966—150/1966.
Diseases of Animals Act 1966: Certain parts in force from 22nd May, 1966—119/1966.
Diseases of Animals Act 1966: Minister may make regulations for importing animals and poultry—200/1966.
Diseases of Animals Act 1966: Minister may make regulations relating to the movement of animals in markets and fairs—209/1966.
Pigs and Bacon Committee Grading Order (No. 1) 1966—74/1966.
Sheep Dipping: Commencement changed from 1st July to 1st June for the first dipping, and from 1st October to 15th September for second dipping—98/1966.
Warble Fly: Order prescribing form of certificate of treatment and exemption certificate which must accompany cattle—210/1966.
Wheat Order 1966: Prices to be paid to growers of millable wheat of the 1966 harvest—182/1966.

COMMODITIES, GOODS AND SERVICES

SUBJECT MATTER AND REFERENCE NUMBERS

Agricultural Wages: New minimum rates partly in force on 6th June, 1966 and partly in force from 1st October, 1966—103/1966.
Agricultural Wages (Minimum Rates) Order 1965: Revoked as from 6th June 1966—102/1966.
Committees of Agriculture: Retrospective salaries of officers as from 1st January, 1964—187/1966.
Cork District Milk Board: Minimum Prices for milk to be paid to registered producers after 28th May, 1966 123/1966.
Dairy Produce Marketing Act 1961: Butter levy of 37/9 per cwt. payable to Milk Board by Registered Cream per cwt. payable to Milk Board by Registered Creamery Proprietors after 4th June, 1966—124/1966.
Dublin District Milk Board: Minimum prices for milk to be paid to registered producers after 28th May, 1966—122/1966.
Dublin Gas Co.: Miscellaneous powers granted after 26th July, 1966.
Intoxicating Liquor (Specified) and Non-Alcoholic Beverages: Maximum prices fixed after 14th June, 1966—131/1966.
Milk: Retail price of 7d. per pint sold in Dublin Milk District after 1st May, 1966—85/1966.
Milk: Retail price of 8d. per pint sold in Dublin Milk District from October, 1966 to February, 1967—170/1966.
Motor Bicycles and Television sets exempted from Hiring Order 1965—198/1966.
Motor Bicycles and Television sets emepted from restrictions in Hire-Purchase and Credit Sale Order 1965 after 1st August, 1966—197/1966.
Arts Council may provide grants for specified purposes —155/1966.
Prices Stabilisation Order 1965 continued in force until 6th October, 1966—73/1966.
Pigs and Bacon Acts: Minimum prices fixed for carcases after 11th April, 1966—65/1966.
Public Sales of Greyhounds Regulations 1966 which prescribe detailed conditions under which such sales may be held after 2nd May, 1966—76/1966.
Stout: Maximum prices increased by 1d. per pint if sold in bottle after 22nd June, 1966—136/1966.

CONTROL OF EXPORTS AND IMPORTS

SUBJECT MATTER AND REFERENCE NUMBERS

Air-tight Container defined under the Importation of Meat and Animal Products (Amendment) (No. 2) Order 1966—194/1966.

Artificial Silk and Silk Hose: Quotes imposed—109/1966, 110/1966.

Beet Pulp and Animal Feeding Mixtures: Unrestricted export to Britain allowed after 1st July, 1966—138/1966.

Broiler Chickens, Turkeys and Eggs: Import prohibited save under Licence after 1st July, 1966—154/1966.

Brushes (Miscellaneous) Brooms and Mops: Quotas imposed—45/1966, 114/1966, 115/1966, 116/1966. 117/1966.

Butter, Cheese and Powdered Milk: Import generally prohibited save under licence after 1st July, 1966——149/1966.

Carcases, Meat and Meat Products: Import generally prohibited save under licence after 6th September, 1966—201/1966.

Fresh, Chilled or Frozen Fish: Import generally prohibited save under licence after 1st July, 1966—148/1966.

Fruit Juice and Pulp: Import Restrictions from Britain removed after 1st July, 1966—143/1966.

Grass Seeds: Import restrictions from Britain generally removed after 1st July, 1966—144/1966.

Laminated Springs: Quotas imposed—46/1966, 112/1966.

Leather Footwear: Quota imposed—111/1966.

Meat: Import restrictions from Britain removed after 1st July, 1966—146/1966.

Motor Tyres, Motor Cars, Motor Vehicle Chassis and Bodies, Wollen and Synthetic Piece Goods, Ladies and Girls Felt Hats, Cotton Piece Goods and Commercial Road Vehicles: Import restrictions removed after 1st July, 1966—106/1966.

Rye and Flowering Bulbs: Export licensing control removed after 1st July, 1966—140/1966.

Salmon and Trout may not be exported save under licence unless packed in Air-tight containers—86/1966.

Sparking Plugs: Quota imposed—113/1966.

Superphosphates: Quotas imposed—108/1966.

Superphosphates: Quota restrictions do not apply if manufactured or produced in Britain—107/1966.

Wheaten Products can be imported without restrictions after 1st July, 1966—141/1966.

COUNTY AND TOWN MANAGEMENT

SUBJECT MATTER AND REFERENCE NUMBERS

Dun Laoghaire Borough divided into three Electoral Areas of five members each for Local Elections—83—1966.

Kildare County Council: District Electoral Divisions of Cloncurry and Lullymore transferred from Clane to Kildare County Electoral Area—48/1966.

Local Government (Planning and Development) Act 1963: List of authorities to be consulted prior to making orders concerning Flora or Fauna for town planning purposes—72/1966.

CUSTOMS AND EXCISE — EMERGENCY AND OTHER DUTIES

SUBJECT MATTER AND REFERENCE NUMBERS

Agricultural Machinery: Customs Duty suspended after 1st March, 1966—41/1966.

Agricultural Machinery including Ploughs and Harrows —Substituted Customs Duty imposed after 1st March, 1966—34/1966.

Ceramic Sanitary Ware: Customs Duty suspended after 1st March, 1966—42/1966.

Ceramic Sanitary ware including Sinks, Wash Basins and Cisterns: Customs Duty of 45 per cent full (30 per cent preferential) imposed after 1st March, 1966—35/1966.

Control of long list of miscellaneous articles of export after 1st March, 1966—33/1966.

Footwear: Imports subject to 67 per cent full duty (45 per cent preferential) after 1st January, 1966—262/1965.

Irish Wine Duty Regulations 1966—160/1966.

Iron and Defined Steel Products: Customs Duties suspended during 1966—152/1966.

Iron or Steel Bars, Rods, Plates, etc.: Miscellaneous suspensions of duties after 1st July, 1966—153/1966.

Ironing Boards of Wood: Customs Duty suspended after 1st April, 1966—60/1966.

Man-made Fibres: Customs Duty reduced to 9/- per square yard full after 1st March, 1966—36/1966.

Matches: Customs and Excise Duty simplified after 21st May, 1966—101/1966.

Motor Vehicle Tyres: Flat Rate Duty of 12/6 per tyre imposed after 1st March, 1966—37/1966.

Special Import Levy continued with minor exceptions to 30th June, 1966—59/1966.

Special Import Levy continued 30th September, 1966—145/1966.

Twine, Cordage, Ropes and Cables: Extension of scope of existing duty imposed after 1st March, 1966—39/1966.

Imposition of Duties (Custom's Duties and Form of Customs Tariff) Order 1966—159/1966.

N.B.—This Order comes into effect on 1st July, 1966 and reimposes duties to give effect to the Free Trade Agreement with Britain. It provides Special Tariff Concessions for some goods from Northern Ireland, and prescribes a Revised Form of Customs Tariff for classifying goods. It amends Customs Duties on miscellaneous products, and attaches new or amending Licensing Provisions to various Customs Duties. This Order contains 328 foolscap pages, and costs 10/6.

EMPLOYMENT REGULATIONS AND CONDITIONS OF EMPLOYMENT

SUBJECT MATTER AND REFERENCE NUMBERS

Building and Construction Trade: Age of Entry Rules 1966 under Apprenticeship Act, 1959.

Building and Construction Trade: Apprenticeship Classification Rules 1966 under Apprenticeship Act 1959.

Building and Construction Trade: Educational Qualification Rules 1966 under Apprenticeship Act 1959.

Aerated Waters and Wholesale Bottling Joint Labour Committee—Minimum rates of pay and statutory conditions of employment from 1st August, 1966—171/1966.

Brush and Broom Joint Labour Committee: Minimum rates of pay and conditions of employment from 18th July, 1966—156/1966.

Button-making Joint Labour Committee—Minimum rates of pay and conditions of employment from 1st August, 1966—172/1966.

Electronic Components Industry: Women may work on shift work between 7 a.m. and 11 p.m.—81/1966.

Engineering and Metal Trade: Dismissal Rules 1965 under Apprenticeship Act 1959.

General Waste Materials Reclamation Joint Labour Committee: New minimum rates of pay and conditions of employment from 1st August, 1966—173/1966.

Hairdressing Joint Labour Committee: Minimum rates of pay and conditions of employment in Dublin city and county, Dun Laoghaire and Bray as from 1st August, 1966—174/1966.

Handkerchief and Household Picce Goods Joint Labour Committee: Minimum rates of pay and statutory conditions of Employment from 18th July, 1966—157/1966.

Law Clerks Joint Labour Committee: Minimum rates of pay and conditions of employment from 1st August, 1966 —175/1966.

Messengers (Dublin City and Dun Laoghaire) Joint Labour Committee: Minimum rates of pay and conditions of employment from 1st August, 1966—176/1966.

Messengers (Waterford City) Joint Labour Committee: Minimum rates of pay and conditions of employment from 12th September, 1966—204/1966.

Messengers (Cork City) Joint Labour Committee: Minimum rates of pay and conditions of employment from 12th September, 1966—203/1966.

Packing Joint Labour Committee: Minimum rates of pay and conditions of employment from 1st August, 1966 —177/1966.

Printing Industry: Statutory Apprenticeship Committee appointed—208/1966.

Printing Industry: Recruitment and Training of Apprentices brought under Statutory Control—207/1966.

Printing Industry: Apprenticeship Act (Printing Trade Designated Trade) Order 1966 revoked from 26th August, 1966—206/1966.

Provender Milling Joint Labour Committee: Minimum rates of pay and conditions of employment from 1st August, 1966—178/1966.

Shirtmaking Joint Labour Committee: Minimum rates of pay and conditions of employment from 18th July, 1966—158/1966.

Sugar Confectionery and Food Preserving Joint Labour Committee: Minimum rates of pay and conditions of employment from 12th September, 1966—203/1966.

Tailoring Joint Labour Committee Minimum rates of pay and conditions of employment from 18th July, 1966—159/1966.

FINANCE AND CENTRAL GOVERNMENT

SUBJECT MATTER AND REFERENCE NUMBERS

Appropriation Act 1962: Section 5 which provides for simplified procedure for making declarations to pensioners in force from 1st July, 1966—135/1966.

Commemorative Coin of 10/- for Easter Rising 1916—Designed and dimension prescribed—71/1966.

Death Duties: Arrangements for Payment in Stock of the 6¾ per cent National Loan, 1986-1991—82/1966.

Corporation Profit Tax: Assessment and Collection transferred from Revenue Commissioners to Inspectors of Taxes after 1st April, 1966 under Section 28 of Finance Act 1964—58/1966.

Department of Labour: Many ministerial functions transferred from the Department of Industry of Commerce to this Department—164/1966.

National Bonds: Regulations instituting these under Section 4 of Central Fund Act 1965—55/1966.

National Bonds 1966-67: Regulations re conduct of draws under Section 4 of Central Fund Act 1965—56/1966.

Pensions Declaration Rules 1966 under Section 5 of Appropriation Act 1962—134/1966.

Pensions Declaration Rules 1966 under Section 5 of Appropriation Act 1962—134/1966.

Public Service Pensions increased by 9 per cent from 1st August, 1965—147/1966.

Presidential Elections: Maximum charges of Local Returning Officers prescribed—97/1966.

Saving Banks: Powers of Registrar of Friendly Societies extended in connection with disputes—19/1966.

Saving Certificates and Rules regulating seventh issue—52/1966.

Statistics: Census of Population to be held on 17th April, 1966—40/1966.

Statistics: Statistical Index of Industrial Production during 1965 to be undertaken—129/1966.

Turnover Tax: Cargo Boats exempted—190/1966.

Turnover Tax: Specified Agricultural Machinery exempted during importation—189/1966.

Wholesale Tax Regulations 1966 in force from 23rd August 1966—195/1966.

Wholesale Tax: 25th August, 1966 is the appointed day for registration of persons subject to it—196/1966.

HEALTH

SUBJECT MATTER AND REFERENCE NUMBER

Cork Hospitals Board established—133/1966.

General Institutional and Specialist Services available as from 1st April, 1966 to persons with income up to £1200 per annum—69/1966.

Health (Homes for Incapacitated Persons) Act 1964 in force from 1st April, 1966—43/1966.

Health and Mental Treatment (Amendment) Act 1966 in force from 1st April, 1966—64/1966.

Homes for Incapacitated Persons Regulations 1966 in force from 1st April, 1966—44/1966.

Maternity and Child Health Services available as from 1st April, 1966 to persons with income up to £1200 per annum—70/1966.

Maternity and Child Health Services (Amendment No. 2) Regulations 1966—105/1966.

Mental Treatment Services available as from 1st April, 1966 to persons with income up to £1200 per annum —68/1966.

National Drugs Advisory Board established under Health (Corporate Bodies) Act 1961—163/1966.

JUSTICE, EXTERNAL AFFAIRS AND DEFENCE

SUBJECT MATTER AND REFERENCE NUMBERS

Circuit Court Rules 1966 prescribes an increase in costs in liquidated claim cases after 13th June, 1966 —128/1966.

Circuit Court (Fees) Order 1966 prescribes revised fees payable from 1st April, 1966—53/1966.

District Court (Fees) Order 1966 prescribes revised fees payable from 1st April, 1966—54/1966.

District Court (Summons Server Fee) Rules 1966 prescribes a fee of 6/- payable to Summons Servers after 1st October, 1966—211/1966.

Garda Siochana Pay Order 1966 prescribes new salaries for the six most senior officers from January, 1964—88/1966.

Garda Siochana Pay (No. 2) Order 1966 prescribes new salaries for ordinary ranks from 30th June, 1965—92/1966.

Garda Siochana Pay (No. 3) Order 1966 prescribes new salaries for Chief Superintendents and Superintendents of the Guards from 30th June. 1965—186/1966.

Land Registration Fees Order 1966 prescribes revised fees payable in the Land Registry from 1st April, 1966—57/1966.

Solicitors' Accounts (Amendment) Regulations 1966: National Bank of Ireland Ltd., substituted for National Bank Ltd.—75/1966.

Solicitors' Accounts' (Amendment No. 2) Regulations 1966 prescribing Annual Accountant's Certificate from January, 1967—193/1966.

Superior Court Rules (No. 1) 1966 replacing Order 74 and Appendix M relating to Companies—28/1966.

Superior Court Rules (No. 2) 1966 make miscellaneous amendments to former rules—169/1966.

Superior Court Rules (No. 3) 1966 provide for revision of costs in judgment by default cases—185/1966.

Supreme Court and High Court (Fees) Order 1966 prescribes revised fees in the various offices attached to the Superior Courts after 1st April, 1966—62/1966.

District Court Areas (Amendment) Order 1966 provides for the inclusion in the District Court Area of Cork City of the areas added to the County Borough of Cork—212/1966.

District Court Areas (Variation of Hours) Order, 1966 amends the existing provisions with regard to the times of commencement of District Court sittings in County Kerry—213/1966.

MISCELLANEOUS

SUBJECT MATTER AND REFERENCE NUMBERS

Dublin Port and Docks Board: Harbour rates for watching dangerous or combustible goods revised from 24th June, 1966—130/1966.

Dundalk Pilotage District extended seawards—100/1966.

Game Preservation Act 1930: Annual Close Seasons prescribed for specified game birds in 1966-67—166/1966.

Garda Siochana: Statistics of Road Accidents in Ireland in 1965 resulting in death or injury—

Greyhound Race Tracks: Conditions applicable to betting on Twin-Double Pool at Totalisators—89/1966.

Greyhound Race Tracks: Revised Conditions applicable to betting on the Quinella Treble Forecast Pool at Totalisators—90/1966.

Institute of Chartered Accountants in Ireland: Charter Amendment Act 1966 in force from 5th August, 1966—180/1966.

Mines and Quarries Act 1965: Advisory Council set up by Department of Labour—183/1966.

National Bank Transfer Act 1966 in force from 26th March, 1966—63/1966.

Road Traffic Act 1961: List of Regulations, Orders, Bye-Laws and Rules made thereunder to 1st October, 1965.

Secondary Teachers' Superannuation (Amendment) Scheme 1966: Service given as Secretary of the Association of Secondary Teacher or as Professor of a Training College to be counted for Pensionable Purposes—125/1966.

Totalisator (Multiple Events) (Amendment) Regulations 1966—151/1966.

Vocational Education: Regulations providing for Grants for Annual Schemes of Committees—66/1966.

SOCIAL WELFARE

SUBJECT MATTER AND REFERENCE NUMBERS

Insurance (Intermittent Unemployment) Act. 1942: Regulations revising rates for Supplemental Benefits from 15th August, 1966—188/1966.

Social Welfare (United Kingdom Reciprocal Arrangements) Order 1966 scheduling as from 4th April, 1966 the agreement between the Irish and British Governments dated 28th February, 1966—67/1966.

Unemployment Assistance: (Employment Period) Order 1966—49/1966.

Unemployment Assistance (Second Employment Period) Order 1966—118/1966.

TRANSPORT AND TRAFFIC

SUBJECT MATTER AND REFERENCE NUMBERS

Air Companies Act 1966 in force from 30th March, 1966—61/1966.

Air Navigation and Transport Act 1965: Parts 9 and 10 of Air Navigation and Transport Act 1936 repealed as from 1st June, 1966 and Air Services may be restricted—94/1966.

Air Navigation and Transport Act 1965: Minister of Transport may in his absolute discretion grant or refuse to grant the right to operate a specified Air Service: Regulations regulating this in operation from 1st June, 1966—96/1966.

Carrick-on-Suir (Co. Tipperary) Parking Bye Laws 1966—79/1966.

Clonmel (Co. Tipperary) Parking Bye Laws 1966—31/1966.

Coolnamona Railways, Co. Laois to be used in connection with Turf Development—93/1966.

Exchange Control Regulations 1966 to be extended to Shannon Customs Free Airport—50/1966.

Dublin and Dun Laoghaire Traffic (One-Way streets) Temporary Rules 1966 in force from 18th March, 1966—51/1966.

Dublin and Dun Laoghaire Traffic (One-Way Streets) (Amendment) Temporary Rules 1966 in force from 25th May, 1966—104/1966.

Dublin and Dun Laoghaire Traffic (One-Way Streets) (Amendment No. 2) Temporary Rules 1966 in force from 16th August, 1966—192/1966.

Limerick City Parking Temporary Rules 1966 in force from 2nd August, 1966—181/1966.

Road Traffic (Licensing of Drivers) (Amendment) Regulations 1966—47/1966.

Road Traffic: Speed limits prescribed on roads in Limerick City and County from 1st May, 1966—80/1966.

Mechanically Propelled Vehicles: Holders of Foreign Driving Licences qualified persons to accompany driving holders of Provisional Licences—99/1966.

Mechanically Propelled Vehicles (International Circulation) (Amendment) Order 1966—99/1966.

Port Laoighise Parking Bye Laws 1966—179/1966.

Shallee, Co. Tipperary: Railway Works Order for construction of Branch Railway under Transport Act 1963—84/1966.

Waterford City Traffic and Parking Bye Laws 1965—87/1966.

Carriage of Wheat Order 1966—184/1966.

GAZETTE

Vol. 60
No. 6
Dec.
1966

THE INCORPORATED LAW SOCIETY OF IRELAND

President
ROBERT McD. TAYLOR

Vice-Presidents
PATRICK O'DONNELL
JAMES R. C. GREEN

Secretary
ERIC A. PLUNKETT

CONTENTS

Meetings of the Council 69
Committees of the Council 70
Ordinary General Meeting 70
Admission Ceremony 74
Medico-Legal Society of Ireland 75
Solicitor's Golfing Society 75
County Kildare Solicitors' Bar Association 75
County Meath Solicitors' Association ... 75
Dublin Solicitors' Bar Association 75
County Registrars' Association 76
Law Reform Advisory Committee 76
Book Review 78
Jurisdiction of the District and Circuit Courts 78
Society of Young Solicitors 76
Memorandum from the Incorporated Law Society of Ireland 77
Road Traffic Act 1961 79
Road Traffic Bill 1966 79
Legal Aid Act Works Out as Dead Letter 79
Cases of the Month 80
The Registry 82

MEETINGS OF THE COUNCIL

October 27th: The President in the chair, also present Messrs. Desmond Moran, W. A. Osborne, Augustus Cullen, Thomas H. Bacon, Eunan McCarron, James R. C. Green, Peter E. O'Connell, John C. O'Carroll, John Maher, Ralph J. Walker, Desmond J. Collins, Peter D. M. Prentice, Brendan A. McGrath, Patrick Noonan, Humphrey P. Kelleher, James W. O'Donovan, George Nolan, Patrick O'Donnell, Gerard M. Doyle, Reginald J. Nolan, George G. Overend and John J. Nash.

The following was among the business transacted:

International Bar Association

The Secretary reported that the Council of the International Bar Association have accepted the Society's invitation to hold the next conference of the I.B.A. in Dublin during the week commencing 8th July, 1968.

Trade Union Act 1941: Excepted Body Status

It was decided to make immediate representations to the Minister for Labour that the Society's position as a body with excepted status and entitled to negotiate for members without a trade union licence should not be prejudiced by any new legislation affecting trade unions.

November 24th: The President in the chair, also present Messrs. George Nolan, Gerald Y. Goldberg, Thomas Jackson, Desmond Collins, Timothy J. C. O'Keeffe, Patrick O'Donnell, Reginald J. Nolan, James R. C. Green, Thomas H. Bacon, Augustus Cullen, Eunan McCarron, Peter D. M. Prentice, P. C. Moore, Bruce St. J. Blake, John Maher, James W. O'Donovan, Peter E. O'Connell, Thomas A. O'Reilly, Desmond Moran, Patrick Noonan, Ralph J. Walker, T. V. O'Connor, John Carrigan, Francis J. Lanigan, George G. Overend, W. A. Osborne, Gerard M. Doyle, Daniel J. O'Connor.

The following was among the business transacted :

Extraordinary Members of the Council

The Council appointed the following extraordinary members pursuant to their bye-laws :

Dublin Solicitors' Bar Association —

Gerard M. Doyle, Richard Knight, Rory O'Connor.

Southern Law Association —

John B. Jermyn, Cornelius J. Daly, Gerald J. Moloney, John F. Foley, Humphrey P. Kelliher.

The Incorporated Council of Law Reporting

The President reported that the Minister for Justice had agreed to relieve the Society of the annual payment of £500 to the Incorporated Council of Law Reporting, which has been paid under an arragement made the Department of Justice in 1954 but without any statutory or contractual obligation. He had subsesuently received a letter from the Minister suggesting that the matter should first be discussed between the Society and the Incorporated Council of Law Reporting. He had replied that as the Incorporated Council of Law Reporting were not a party to the arrangement and the Society had no contractual or other obligations towards that Council such a course would be inappropriate.

COMMITTEES OF THE COUNCIL 1966/67

1. **Registrars Committee :**
   Gerard M. Doyle, Chairman; Thomas H. Bacon, Augustus Cullen, Thomas J. Fitzpatrick, Richard Knight, Francis J. Lanigan, Brendan A. McGrath, Patrick C. Moore, William A. Osborne.
2. **Compensation Fund Committee :**
   Gerard M. Doyle, Chairman; Thomas H. Bacon, Augustus Cullen, Thomas J. Fitzpatrick, Richard Knight, Francis J. Lanigan, Brendan A. McGrath, Patrick C. Moore, William A. Osborne.
3. **Finance, Library and Publications Committee :**
   Reginald J. Nolan, Chairman; Desmond J. Collins, John Maher, Patrick C. Moore, Senator John J. Nash, Peter D. Prentice, Ralph J. Walker.
4. **Parliamentary Committee :**
   Senator John J. Nash, Chairman; Bruce St. J. Blake, Thomas J. Fitzpatrick, T.D., Thomas J. Jackson, Patrick O'Donnell, T.D.
5. **Privilages Committee :**
   John Carrigan, Chairman; Joseph P. Black, Bruce St. J. Blake, Gerald Y. Goldberg, James R. C. Green, John Maher, Desmond J. Moran, Peter E. O'Connell, Thomas E. O'Donnell, George G. Overend.
6. **Court Offices and Costs Committee :**
   John C. O'Carrill, Chairman; Francis A. Armstrong, Thomas Jackson George A. Nolan, Daniel J. O'Connor, Rory O'Connor, Thomas V. O'Connor, Timothy J. O'Keeffe, Thomas A. O'Reilly, James W. O'Donovan, Ralph J. Walker.
7. **Court of Examiners :**
   James W. O'Donovan, Chairman; Desmond J. Collins, Eunan McCarron, Desmond J. Moran, George G. Overend.
8. **Disciplinary Committee :**
   James R. C. Green, Eunan McCarron, George A. Nolan, Patrick Noonan, Peter E. O'Connell, Daniel J. O'Connor, George G. Overend, Peter D. M. Prentice, Dermot P. Shaw, Robert McD. Taylor.

ORDINARY GENERAL MEETING

An Ordinary General Meeting of the Soceity was held in the Library, Solicitors' Buildings, Four Courts, Dublin, on 24th November, 1966. The President took the chair at 2.30 p.m.

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

The Secretary read the report of the scrutineers on the ballot for the Council for the year 1966-67. The President declared the result of the ballot in accordance with the scrutineers report as follows :—

Provincial Delegates returned unopposed :

John C. O'Carroll (Ulster), Reginald J. Nolan (Leinster), Thomas E. O'Donnell

(Munster), Francis A. Armstrong (Connaught).

Ordinary Members:

The following received the number of votes placed after their names.

John Carrigan	606
Robert McD. Taylor	598
Eunan McCarron	587
Patrick C. Moore	583
Desmond J. Collins	574
Patrick Noonan	586
Francis J. Lanigan	560
Patrick O'Donnell	544
John J. Nash	539
Augustus Cullen	636
John Maher	531
Thomas Jackson (jnr.)	531
Thomas J. Fitzpatrick	520
Thomas A. O'Reilly	519
Ralph J. Walker	514
Peter E. O'Connell	509
James W. O'Donovan	497
William A. Osborne	493
George A. Nolan	478
Daniel J. O'Connor	471
Joseph P. Black	468
Thomas H. Bacon	464
James R. C. Green	463
Peter D. M. Prentice	440
Brendan A. McGrath	450
Desmond J. Moran	439
Gerald Y. Goldberg	436
Thomas V. O'Connor	422
George G. Overend	392
Bruce Blake	374
Timothy J. C. O'Keeffe	352

The scrutineers returned the foregoing as duly elected members of the Council for 1966-67. The following candidates also received the number of votes placed after their names:

Raymond A. French	347
James G. Lyons	342
William B. Allen	338
Norman T. Spendlove	321
Thelma King	308
Kevin Nugent	299
Walter Beatty	297
Patrick J. Bergin	250
Ian Q. Crivon	191

The Chairman declared the result of the ballot in accordance with the scrutineers report.

On the proposal of Mr. John Maher seconded by Mr. Desmond J. Collins the audited accounts and balance sheet for the year ended 30th April, 1966 circulated with the agenda were adopted. The President signed the accounts.

On the proposal of Mr. P. C. Moore seconded by Mr. J. W. O'Donovan, Messrs. Kevans and Sons were reappointed auditors.

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

Ladies and Gentlemen,

I am following precedent when as your President I move the adoption of the Report of the Council for the year 1965/66.

Before dealing with that report I record with sincere regret the loss through death of the following members of the Society which has occurred since I addressed you at the half-yearly meeting last May: Denis F. O'Shea, Solicitor, Killarney; William H. Fry, Solicitor, Mount St., Dublin; William A. White, Solicitor, Dublin; John R. Macken, Solicitor, Mullingar; Cyril Hardman, Solicitor, Dublin; Joseph J. Little, Solicitor, Dublin; Henry J. Shanahan, Cork; Horace Turpin, Solicitor, Co. Laoise; Laurence McFadden, Solicitor, Dublin; Martin Kelly, County Registrar, Carlow; Michael Noyk, Solicitor, Dublin; Robert Brown, Solicitor, Cork.

In that list most of us will find the names of friends and collegaues who served their clients with loyalty and ability and thereby helped to maintain the reputation of this honourable profession. We mourn their loss and tender our sympathy to their families and relatives.

Finance

The Accounts and Balance Sheet have been before you for some time. They show the present financial position of the Society and reflect the familiar pattern of increasing expenditure to meet increasing costs. The position is kept under constant review by the Finance Committee and I do not think that any item calls for particular comment or explanation from me.

Compensation Fund

In common with all of you I deplored the levy of £40 which your Council found it necessary to impose upon each of the members last year. I am hopeful that it will be possible to lighten this burden somewhat this year and that with the steps which have been taken by the Council the need for such an imposition will not recur.

Jurisdiction

As you are aware, the report and recommendations of the Committee set up by the Minister to investigate the question of increased jurisdiction for our District and Circuit Courts is now in his hands. We await his decision with interest and I trust that on this occasion suitable scales of costs acceptable to the profession will accompany the bringing in of any order increasing the respective jurisdictions. Representations in that regard have already been made by me to the Minister on your behalf and I believe were sympathetically received.

The Succession Act

On the 1st January next the Succession Act will come into force. This will have very far-reaching effects both for our profession and for the members of the public. I would like to take this opportunity to remind all persons who have made wills prior to that date to review the position with their solicitors in the light of the provisions of the Act. I feel I cannot stress this too strongly as it would be placing an impossible burden on the profession to expect its members to notify each individual testator. I would ask the members of the press present to draw particular attention to this matter.

In connection with this Act and other Statutes which have been passed recently or are in process of being enacted I would like to pay an appreciative tribute to the work and enterprise of the Society of Young Solcitors in arranging two seminars—one in Mullingar and the other in Cork—both highly successful and splendidly attended, at which lectures were given and study groups held dealing in detail with the new legislation. In addition, a series of lectures on various legal topics are being held. The dearth of text books is becoming more and more evident and is to be deplored. Due to the size of this country publication of such books is quite uneconomic and unless something is done very soon by the Government in the form of a subsidy a serious situation will result. Efforts such as those I have referred to help in some measure to fill the need but of necessity they must be limited. I do, however, thank most sincerely those responsible and congratulate them on the success already achieved.

Legal Education and Training

The Council is very conscious of the disadvantages and shortcomings of the present system of legal education of apprentices. A memorandum dealing with this subject was submitted to the Commission on Higher Education and to the Department of Justice some years ago but so far has produced no results. This question of legal education and training is a matter that is receiving constant attention and is being dealt with by a special committee. If nothing concrete has emerged since last I addressed you it must not be assumed that nothing is being done. The work is of necessity slow, entailing as it does consultation with other bodies including the Bar.

My personal view is that we should try to achieve a common system of basic legal education with the Bar and that students having passed a certain stage would then specialise in one of the two branches. New regulations have been made dealing with the Preliminary Examination to bring it into line with the entrance examination to the Universities. Three subjects, viz., Mathematics, English and Latin, are necessary together with any two of four optional subjects. The rush of students seeking apprenticeship continues and is a source of deep concern to the Council. Overcrowding of the profession could lead to many and varied abuses, all of them detrimental, and steps will have to be taken to prevent such a situation from arising.

Solicitors' Benevolent Association

Once again I commend to you all the excellent work performed voluntarily by the Solicitors' Benevolent Association. The charitable help dispensed quietly and unostentatiously by the Association to our less fortunate brethren and their relatives too often passes unnoticed. No words of mine should be necessary to exhort every member to become a subscriber.

Costs

Your Council is fully alive to the need for proper remuneration if services are to be satisfactorily and properly rendered. Overhead expenses which all of us have to face are increasing relentlessly year by year. The difficulty of meeting these commitments is increased by inadequate scales of costs which have failed to keep pace with the rise in expenses. I would like to assure you all that it is not through any neglect or default on the part of the Council that such a position exists and that the pressure to have the matter remedied is constant and continuing.

International Bar Association

Your Society is a member of the International Bar Association and as your representative along with the Senior Vice-President Mr. O'Donnell and your Secretary Mr. Plunkett I attended the bi-annual meeting of that Association in Lausanne last July. The topics dealt with were most interesting and informative and gatherings of this

kind which are truly international and non-political can do a lot to promote good relations and a better understanding of the difficulties and problems which beset mankind. I am very proud to be able to inform you that our country has been selected as the venue for the next meeting of the Association, which will be held in Dublin in July 1968.

The task of providing accommodation for about 1200 delegates and their wives who it is anticipated will be coming here on the occasion is in itself a formidable one. In addition, a tremendous amount of organisational work will have to be done to ensure that everything runs smoothly and rebounds to the credit of your country and this Society. Already a Committee has been set up to work out the preliminary details and it is hoped to call upon the energies of the younger members of the profession and of the apprentices to assist with the many and varied problems which we will be faced.

I am happy to be able to tell you that we have received nothing but the greatest encouragement from both Bord Failte and the Government. The former has promised help both organisational and financial and the latter will provide suitable hospitality for the delegates.

Nevertheless the success of the meeting will in the final result depend upon the co-operation and support of all our members and the hard work of our Secretary and his excellent staff. I feel sure that both of these requirements will be forthcoming in full measure.

General

As this will be the last occasion upon which I will have the opportunity of addressing you as your President I feel I should in a general way tell you of some of the matters which have caused me considerable thought and anxiety during my year in office.

The practice of our profession entails the giving of practical advice—often outside the field of strict law—on any of the problems confronting the citizen in domestic or business affairs. The relationship of a client and his professional adviser is of necessity personal and strictly confidential. It falls to his lot in times of family tragedy and in matters such as the making of wills and administering of estates to be there to help and often relieve a burden which a client might find it difficult to bear alone. In business matters made ever more involved by Finance Acts a solicitor finds himself called upon for expert advice and the drafting of complicated documents.

Very often we are subjected to criticism—most of it unfair and undeserved. Constructive criticism is and should be welcomed. The interest of the client is paramount and it is for us to see that the service we offer is adequate to fulfil his requirements. What does the future hold in store for our profession? We are in the throes of a flood of complicated and important legislation. More and more it is becoming obvious that specialisation, at least to some degree, will be necessary. However, I think it would be a tragedy if, through widespread specialisation, the old concept of the family solicitor was to become outmoded and lost.

In this age of control by the State the encroachment on the rights and liberties of the individual is a gradual but increasing process. Many and varied promises and inducements are offered to lull the misgivings and quiet the fears of the citizens that their freedom is being restricted.

An independent legal profession is the greatest bulwark against despotic use of power. Proof of this, if proof was needed, is the fact that in Communist countries one of the first targets for destruction is the legal profession. I cannot stress too strongly that in this country of ours, which no one could accuse of being Communist, the process is at work and steadily and surely the rights of the individual are being restricted either under the guise of Town Planning, Workmen's Compensation, control of land purchase or in some other seemingly innocent form. Our profession must be ever vigilant to seek out and to warn our citizens of such threats to their rights and liberties.

Law Reform

On the question of Law Reform I would appeal to the Minister and his advisers to reform and clarify the tax laws. These laws, which affect virtually every citizen, are often completely incomprehensible even to lawyers and I feel sure often to those who are called upon to administer them. Do our legislators really comprehend the effect of some of the Statutes they enact and which are sometimes in need of reform before they reach the Statute Book. Is there a danger that Parliamentary democracy may be threatened by dictatorship from behind the scenes by a strongly entrenched Civil Service? I pose the question but will not attempt the answer.

Conclusion

There are many other matters which I would like to have touched upon but with the time at my disposal they must remain unsaid. My year of office is drawing to its close. It has been a wonderful experience leading a loyal team and

flanked by two such excellent Vice-Presidents as Mr. P. A. O'Donnell and Mr. James R. C. Green. If I stress the help I have received throughout from our Secretary Eric Plunkett and his very competent staff it is because without their help no President could hope to weather the storms of office or to avoid the many pitfalls into which inexperience could lead. Thank you all most sincerely for the support and encouragement you have given to me.

Accountants Certificates Provisions

As all of you are aware, a postal ballot taken in the autumn on the question of the introduction of an Accountant's Certificate as a condition for the granting or renewal of a practising certificate resulted in an overwhelming majority in favour of its introduction. Pursuant to the mandate received, regulations have been framed which will come into force on the 10th February 1967 and take effect so far as the practising certificates are concerned in the following year.

In this connection it would not be out of place to refer to the Compensation Fund. New claims during the year amounted to over £68,000—which is more than the total revenue received from the £40 levy. I should add that a very considerable amount of the £68,000 arises our of three serious cases which were pending last year and it is hoped that the losses during the coming year will show a very considerable reduction. If this should prove to be the case I would hope that the levy could be substantially reduced.

Attacks on Profession

During the year prompt and I trust appropriate action was taken by the Society to deal with mis-statements concerning the profession. One by the Minister for Lands, consisted of a personal attack on a member made in and covered by the protection of the Dail. In this case, notwithstanding correspondence from the Society and from me personally as President, the Minister has not had the graciousness to withdraw or to amend his statements. This is particularly disappointing as he is a member of our profession.

The motion for the adoption of the report was seconded by Mr. G. G. Overend and carried unanimously.

Thursday, 23rd November, 1967 was appointed as the date of the next annual general meeting.

Messrs. E. O. Sheil proposed and Mr. Bruce Blake seconded a vote of thanks to the President for his distinguished service to the Society during his year of office. The motion was carried with acclamation. The President replied and the proceedings terminated.

ADMISSION CEREMONY

On Thursday, 1st December, 1966, the President presented Certificates of Admission at a ceremony in the Society's Library. Addressing the newly qualified solicitors and their friends the President said :—

"It falls to the lot of the President on two occasions during his year in office to present the certificates to those candidates who have been successful in the Final Examination. I have found it to be one of my pleasantest duties and something to which I have looked forward. Not so very many years ago such little ceremonies were unknown and what is really one of the very big occasions in the life of a student passed virtually unnoticed. I personally am delighted this has been changed and that an opportunity is given to students, parents and members of the Council to meet informally and voice their congratulations. On such occasions it has also become the practice for the President to address briefly the successful ones on matters which he thinks they may find helpful in their future careers. Will you therefore bear with me if I strike a serious note for just a few moments remembering that I entered practice before most of you were born. You are now solicitors, members of a most honourable profession and with a great tradition to uphold. On you will depend the future and the reputation of that profession. Of necessity your relationship with your clients is strictly confidential and a great deal of your hard work and worry will be taken for granted and pass unnoticed. Do not let this dishearten you. There is wonderful satisfaction and reward in a job well done. Remember that the interest of your client is paramount but that this need not and should not prevent you from being strictly fair and considerate towards your professional colleagues. Never take a mean advantage and do not let over anxiety to win or to achieve a successful result blind your better judgment or your sense of fair play. If you find yourself in a difficulty or faced with a serious problem do not hesitate to consult some of your older colleagues or our Secretary, remembering that experience teaches what is not to be found in text books and that they, as you will find, will be only too glad to help.

Certain regulations exist regarding the keeping of accounts and other professional matters. These have been framed and introduced not to restrict but to help and guide you. Do play your part by observing them both in the letter and the spirit. By so doing you will find that the practice of your profession will be a much more pleasant and rewarding experience.

Finally, may I congratulate you who are parents on the successful outcome of your hopes and plans and may I wish you who were students and are now colleagues every success, happiness and health in the future.

Parchments were presented to the following:— Marguerite Joyce Boland, B.C.L., 2, McElwain Terrace, Newbridge, Co. Kildare; Anne Coady, B.C.L., Friar Street, Thurles, Co. Tipperary; Catherine P. V. Doyle, Rosbercon, New Ross, Co. Wexford; Michael Farrell, B.C.L., "Glenaulin," Foster Ave., Blackrock, Co. Dublin; Joseph G. Finnegan, B.C.L., LL.B., 193 Tyrconnell Road, Inchicore, Dublin (Special Certificate); John M. Fitzpatrick, Villa, Maria, Cootehill, Co. Cavan; Felicity Mary Foley, Tyrconel, Perrott Avenue, Cork; John B. Harte, "Sunnylawn," Castle Road, Kilkenny; Brian Joseph Magee, 19 Albert Place E., Lower Grand Canal Street, Dublin; Matthew J. Mitchell, B.A., L.Ph., Baggotstown House, Bruff, Co. Limerick; Joseph Patrick Molony, B.C.L., 72 O'Connell Street, Ennis, Co. Clare; George Gerrard Mullan, B.C.L., Stragreenan, Drogheda, Co. Louth; Oliver Donal Gowan McArdle, Highfield, Dundalk, Co. Louth; Kieran MacDermott, Riverstown, Co. Sligo; Francis J. O. McGuinness, B.A., H.Dip, in Ed., B.C.L., Main Street, Roscommon; Enda P. O'Carroll, B.C.L., LL.B., Farney Street, Carrickmacross, Co. Monaghan (Special Certificate); Anne O'Toole, 171 Howth Road, Sutton, Co. Dublin; Gerald B. Sheedy, B.C.L., Sungare, Mountrath, Co. Laois; John James Tully, "Iona," Laytown, Co. Meath.

MEDICO-LEGAL SOCIETY OF IRELAND

The following officers were elected for the 1966/67 session of this Society: Patron, Dr. J. P. Brennan, Coroner for County Dublin; President, James A. Kelly, Solicitor; Past President, Professor Maurice Hickey, M.D., M.Sc., F.R.C.P.I.; Council, The Honourable Mr. Justice Murnaghan; The Honourable Mr. Justice John Kenny; Dr. H. Jocelyn Eustace; Professor P. N. Meenan, M.D., F.C.Path., D.C.P, Barrister-at-law; Dr. Desmond McGrath; Brendan McGrath, Solicitor; Dr. J. S. Shanley; Honorary Treasurer, M. B. Daly, Barrister-at-law; Honorary Secretary, Miss Agnes B. Cassidy, Barrister-at-law.

The opening meeting was held on 27th October, when Mr. M. B. Daly, B.A. (Sen. Mod.), LL.B., Barrister-at-law, addressed the Society on "Putting the Law in Motion."

On the 26th January, 1967, Brendan McGrath, Solicitor, will read a paper entitled "Liability Without Fault." Professor P. N. Meenan will speak on "The Medical History of the Irish Famine" on the 23rd February, 1967, and a symposium "Rehabilitation of the Injured Worker" will be held on the 30th March, 1967.

The annual dinner of the Society will be held in April in the King's Inns, by kind permission of the Benchers of the Honourable Society of the King's Inns.

Meetings are held in the Royal Hibernian Hotel, Dawson Street.

For further particulars application should be made to the Honorary Secretary: "Barnaree," Butterfield Avenue, Templeogue, Co. Dublin. Telephone 905850, or at Law Library, Four Courts, Dublin.

SOLICITOR'S GOLFING SOCIETY

Society ties in blue or black are now available and may be obtained at the Law Society's General Office at the Four Courts. Price: £1 1s. 0d.

COUNTY KILDARE SOLICITORS' BAR ASSOCIATION

At the Annual General Meeting of the above Association held in Naas on the 29th November, 1966 the following officers and committee were elected:—

President, Patrick V. Boland; Secretary/Treasurer, Patrick J. Farrell; Committee: B. G. Donnelly, B. O'Flynn, B. Price, J. J. Kinnerk and M. C. Murphy.

COUNTY MEATH SOLICITORS' ASSOCIATION

At the Annual General Meeting of the above Association held on the 26th October, 1966 the following officers were elected:—

President, Thomas Noonan; Secretary and Treasurer, Stephen Keaveney; Committee: Messrs. Frank Reilly, Frank Thornton, Alan Donnelly, Michael Smith, Barry Steen and Donal T. Kearney. Mr. Patrick Noonan, Solicitor, Athboy, was appointed as delegate to the Provincial Solicitors Association.

DUBLIN SOLICITORS' BAR ASSOCIATION

At the Annual General Meeting of the above Association held on 17th October, 1966 the following officers and council were elected:—

President, Eamonn O. Sheil; Vice-President, Edward H. Byrne; Honorary Secretary, Gordon

A. Henderson; Honorary Treasurer, E. Rory O'Connor; Honorary Auditors, P. Glynn and E. Crowley. Council Members: Messrs. V. Wolfe, G. A. Williams, R. Knight, G. M. Doyle, M. Kenny, A. O hUadhaigh, P. Golden, D. R. Pigot and Miss T. King.

COUNTY REGISTRARS' ASSOCIATION

It may be of interest to members to know of the existence of the above Association, of which all the County Registrars' in Ireland are members. The Association is, always, prepared to consider representations from the Incorporated Law Society, or any Bar Association, on matters affecting the legal profession in so far as the Circuit Court and the general functions and duties of County Registrars, is concerned.

The officers for the year 1966/67 are as follows:—

Chairman, Thomas G. Crotty, Kilkenny; Honorary Treasurer, Patrick J. O'Sullivan, Tipperary; Honorary Secretay, J. R. O'Neill, Cork. Committee: Messrs. N. P. Shee, Limerick; Thomas Clarke, Kerry; Louis Walsh, Donegal; Leo Branigan, Longford and Thomas Costello, Wicklow.

LAW REFORM ADVISORY COMMITTEE

This Committee under the Chairmanship of the President of the High Court is a voluntary body which has been set up to consider proposals for law reform. The membership of the Committee consists of representatives of both branches of the legal profession, the law schools of the universities and the Benchers of the Honourable Society of King's Inns. Proposals for the reform of legal procedure are being considered by an official committee under the Chairmanship of the Honourable Mr. Justice Brian Walsh and accordingly the Law Reform Advisory Committee intends to confine its deliberations to proposals for the improvement of the substance or content of our laws as distinct from the reforms in legal procedure.

At this stage the Committee is concerned with drawing up a list of topics for investigation and an order of priorities and it wishes to ascertain the views of organisations which may be prepared to assist it in this task.

To illustrate the matters with which the Committee may deal it has been proposed that it should investigate improvements in the law relating to the sale of goods, judicial control of administrative action, occupiers liability and liability for animals.

The Committee would find it very helpful if suggestions for alterations in the law were accompanied by a brief statement of the grounds for the proposal.

In conclusion I would add that it is proposed to complete the preliminary list of topics for investigation at the January meeting of the Committee and that it will be necessary for suggestions to be received by the undermentioned on or before the 7th day of January, 1967 to enable me to bring them before the Committee at that meeting.

K. P. GAY,

Law Reform Advisory Committee,
Four Courts,
Dublin 7.

SOCIETY OF YOUNG SOLICITORS

Since the last issue of the GAZETTE two ordinary meetings of the Society have been held in Buswell's Hotel, Molesworth Street, Dublin. The first such meeting was held on Thursday, 27th October and His Honour Judge Conroy delivered a comprehensive lecture on "Occupational Tenancies." Mr. P. C. Moore, Solicitor, delivered a lecture on "Mortgages" on Thursday, 24th November, 1966.

There was no lecture in December, instead in January, 1967 there will be two lectures, the first will be on the 5th and the second on the 26th of that month, and the subjects will be "Occupational Injuries" and "The Rent Acts."

To date the publications of the Society number twenty and there are a further seven awaiting approval. The Committee of the Society have decided to print a limited number (480) of each transcript and when stocks are exhausted to withdraw the publication and it is anticipated therefore, that very shortly publications 1, 2, 3 and 8 will be out of print as these have each been printed to the maximum number and only a small supply remains in stock. The Society supplied with their circular for November, 1966 a separate list of all publications issued.

Subscriptions (£1-1-0) for the 1966/67 year became renewable on 1st October and should have been paid prior to the 1st January, 1967 to the Treasurer at 15 Braemor Park, Dublin 14. Remittances for subscriptions and transcripts should be drawn in favour of the Society of Young Solicitors.

Memorandum from the Incorporated Law Society of Ireland on the annual payment of £500 to the Incorporated Council of Law Reporting.

The annual payment of £500 made by the Society to the Incorporated Council of Law Reporting is a relic of the discriminatory taxes imposed on solicitors for the first time in the eighteenth century. Down to the year 1954 a stamp duty of £80 was paid to the Revenue Commissioners on each apprentice's indentures and a duty of £9 in the case of a city solicitor and £3 in the case of a Dublin solicitor was paid to the Revenue Commissioners on the annual issue of a solicitor's practising certificate. These were war taxes imposed by Pitt to meet the expenses incurred by Great Britain following the American War of Independence. In 1784 Pitt sought to raise a loan on new taxes and in introducing his budget stated that he found himself at a disadvantage in having to propose unpopular taxes. He proposed taxes on servants, retail shops, gloves, pawnbrokers, sale and an additional tax on post horses. A backbencher is said to have suggested a tax on attorneys instead of the shop tax and by 25 Geo. III c. 80 the practising certificate duty was imposed for the first time. The stamp duty on solicitors' apprentices' indentures was first imposed by the Stamp Act 1790. It was varied by successive stamp acts and eventually was fixed at £80 of which £14 was appropriated by the Revenue Commissioners to the Honourable Society of King's Inns. The Council of the Incorporated Law Society of Ireland continually protested against the imposition of these taxes on one branch of the profession without any countervailing benefit and the records of the Society show that deputations were sent to England to interview members of the British Government, including Mr. Gladstone when Prime Minister, in an effort to have the taxes removed. They were imposed at a time before income tax had been thought of when discriminatory taxation such as the newspaper tax was used as a means of raising revenue. The newspaper and other discriminatory taxes were long since removed but the tax on solicitors remained.

Eventually in 1954 when the Solicitors Act 1954 was introduced the certificate duty was removed and the £80 stamp duty was reduced to £14 stamp duty on each deed of apprenticeship which continued to be paid by the Revenue Commissioners to the Society of King's Inns. This remaining vestige of the tax was removed by the Finance Act 1964 and the solicitors' profession was thereby relieved of the obligation to contribute to the maintenance of the King's Inns.

By the Solicitors Acts 1954 and 1960 the Society accepted the obligation to establish and maintain a Compensation Fund for the benefit of the public. The normal annual contribution made by each solicitor to the Compensation Fund on taking out a practising certificate was fixed at £5 by the 1954 Act. This was raised to £20 by the 1960 Act and the Society was empowered to raise it. In order to ensure the financial stability of the fund the Council raised the contribution to £40 for the practice year 1965/66. As a further protection for the public and the Compensation Fund, the Council recently made the Solicitors' Accounts (Amendment No. 2) Regulations 1966, obliging each practising solicitor to lodge each year with the Society an accountant's certificate that he has complied with the provisions of the Accounts Regulations.

The annual payment of £500 to the Incorporated Council of Law Reporting arose in this way. The Department of Finance in agreeing in 1954 to the abolition of the duty on practising certificates and the reduction of the stamp duty on solicitors' apprentices' indentures requested the Council to make an annual payment of £500 to the Incorporated Council of Law Reporting. The Society unwillingly accepted this arrangement in order to have duties removed. There is no statutory or other legal obligation on the Society to make the payment but it has been made since 1954 in pursuance of the arrangements mentioned. Neither the Society or the King's Inns or the General Council of the Bar make any payment to the Incorporated Council of Law Reporting. The main revenue of the Incorporated Council of Law Reporting is an annual subsidy from public funds of about £4,000 together with revenue from the sale of law reports. The subsidy from the Law Society is a comparatively insignificant part of its revenue. The Law Society and the members of the solicitors' profession have always regarded this payment of £500 to the Incorporated Council of Law Reporting as an unfair burden on the solicitors' profession.

Since 1954 there have been several important changes in the financial position, all of which resulted in the imposition of further burdens on solicitors.

1. The change in the stamp duty position under the Solicitors Act 1954 relieved solicitors of stamp duties amounting to about £14,000 per annum while the profession undertook a statutory obligation to contribute about £6,500 per annum to the Compensation Fund. Following the enactment of the Solicitors (Amendment) Act 1960 the

annual contribution by the profession to the Compensation Fund was raised to about £25,000 and in the past 12 months was raised to £48,000. The statutory contribution from solicitors to the fund between 6th January 1965 and 30th September 1966 amounted to £199,578. It will be seen that the financial obligations undertaken by the profession now far exceed the reliefs given by the abolition of the stamp duty.

2. The new obligation to furnish annual accountants' certificates will impose further expense on many solicitors and will also require the expenditure of additional monies by the Society in administering and enforcing these provisions. In the last resort these expenses must all fall upon the members of the profession.

The Council therefore submit that it is inequitable that the Society should continue to contribute the sum of £500, or any sum, to the Incorporated Council of Law Reporting. If necessary the Incorporated Council should raise the price of their publications to a level which will be sufficient to meet their expenses.

3rd November 1966
Solicitors' Buildings.
Four Courts,
Dublin 7.

BOOK REVIEW

O'Higgins (Paul)—A Bibliography of Periodical Literature Relating to Irish Law. 8vo., pp. xvi, 401. Belfast, Northern Ireland Legal Quarterly, 1966. £5.

As a law librarian, this reviewer has frequently been faced with intricate legal problems and more particularly with the question whether he could lay his hands on a suitable article in answer to his query; up to now, he often had to admit defeat, as there was no handy reference book available to supply a suitable answer. Dr. Paul O'Higgins has produced a monumental work of Irish legal periodical reference which will make the task of finding 5000 articles culled from 130 legal periodicals exceptionally easy. The industry and patience and skill which Dr. O'Higgins has displayed in digging out this vast material is truly remarkable and beyond praise, and librarians in particular will appreciate the tedious labour which this task involved.

Dr. O'Higgins has first listed all the periodicals —Irish, English, Scottish and American—from which he has abstracted the titles of the legal articles, and given an appropriate abbreviation in respect of each periodical—e.g., 'A.B.A.J.—American Bar Association Journal. The Bibliography itslef covers the bulk of the work—368 pages—and is subdivided alphabetically into subjects extending from "Administration on Assets" to "Workmens' Compensation." In every title, there is a suitable cross reference to titles of similar content—e.g., "Administration of Estates —see Executors, Probate, Succession—and Wills." Every article in every title is numbered for the purpose of facilitating cross-references to articles. If there is no definite author, the fact that it is an anonymous leading article is indicated. Then follows the title of the article, the volume number of the series from whence it has been extracted, the year of publication, and the number of pages in the particular volume devoted to the article.

Example: (II) *l* (leading article), "Executors according to the tenor"—(Vol.) 22 (of) I(rish) L(aw) T(imes) and S(olicitors) J(ournal), (1888), Pages) 191-192.

The inexhaustible industry required to list nearly 5,000 articles can hardly be appreciated. Dr. O'Higgins has carried out this arduous task with enthusiasm and skill. The Northern Ireland Legal Quarterly in Belfast are to be congratulated upon the print and format of the work, as well as upon undertaking so successfully the risks of publishing this *magnum opus* which has deservedly sold so well throughout the world. The pusillanimous attitude of legal publishers in the Republic deserves castigation and censure.

C. G. D.

JURISDICTION OF THE DISTIRCT AND CIRCUIT COURTS

The Fifth Interim Report of the Committee on Court Practice and Procedure (Pr. 8936) is now available from the Government Publications Sale Office, G.P.O. Arcade, Dublin 1, price 2/6. The report deals with the increase of jurisdiction of the District and Circuit Court and should be of considerable interest to members. Two nominees of the Society were amongst the members of the Committee. Amongst the matters dealt with were recommedations as to alterations in civil jurisdiction limits of the District Court and jurisdiction of the Circuit Court in civil cases. The possibility of consent jurisdiction in civil cases was reviewed and a proposal as to unlimited consent jurisdiction was recommended by the majority of the Committee. A very interesting note of dissent by the Hon. Mr. Justice John Kenny is attached to the report. A minority report was submitted by Dr. C. S. Andrews and Justice Cathal O Floinn who recommended, as a minority, in regard to the civil jurisdiction of the

District Court that the upper limit for the new jurisdiction, i.e., £500, be adopted and for the following reasons :—

1. The District Court meets a public need for inexpensive litigation.
2. It meets a public need for speedy litigation.
3. It has, since increased jurisdiction was conferred upon it by the Courts of Justice Act, 1953, functioned well and smoothly and is completely up-to-date in its business. No arrears of any kind have accumulated.
4. The fall in the value of money and the general increase of the amount of money in circulation have raised the practical ceiling of jurisdiction enormously.
5. The District Court sits throughout the year and this continuity makes for rapidity in the disposal of legal business.

Of particular note are the observations of Mr. Justice Kenny in his dissenting report in which he states (*inter alia*) :

> 'Our system of Government and all our fundamental rights are based on the administration of justice according to law and not according to the views held by the person hearing the case as to what the law should be. An individual who brings a claim for £100 has the same right to have his case decided according to law as has the individual who brings a claim for £10,000. Speedy, summary or rough justice is usually injustice.'

ROAD TRAFFIC ACT 1961

The Department of Local Government made a statement as of October, 1966 which covers the position as at 15th October, 1966 on this subject and supersedes all previous statements issued by the Department on the subject. The paper refers to the extent to which the Road Traffic Act 1961 is enforced, particulars of the orders, regulations, bye-laws and rules made thereunder, and particulars of orders, etc., made under the Road Traffic Act 1933 which have not been revoked. For members engaged in Court Practice this document should prove a very useful reference for road traffic cases.

ROAD TRAFFIC BILL 1966

This Bill was introduced by the Minister for Local Government and ordered by Dail Eireann to be printed on 21st June, 1966. It is now available from the Government Publication Sales Office, G.P.O. Arcade, Dublin 1, price 2/6. An explanatory memorandum to the Bill states that the main objects of the Bill are as follows :—

(a) to ensure a higher standard of roadworthiness or vehicles and their equipment and to improve the effectiveness of enactments protecting public roads from damage (Part II);
(b) to secure better standards of driving and driving instruction and to modify the existing provisions relating to disqualifications for driving (Part III);
(c) to extend and amend the law relating to speed limits (Part IV);
(d) to modify the law in relation to serious driving offences and, in particular, to recast the law on driving while under the influence of drink or a drug so as to make it an offence to drive or be in charge of a vehicle while there is present in the body a quantity of alcohol such that the concentration of alcohol in the blood, then or within three hours, will exceed 125 milligrammes per 100 millilitres (Part V);
(e) to amend in certain respects the law on compulsory motor insurance (Part VI); and
(f) to amend in certain respects the law relating to the control and operation of public service vehicles and the regulations of traffic (Parts VII, VIII and IX).

LEGAL AID ACT WORKS OUT AS DEAD LETTER

An act, passed two years ago, to enable successful opponents of legally aided litigants to recover costs from the legal aid fund has worked out in practice as almost a dead letter.

Despite the generous intention expressed in the title to the Act, its provisions are so restrictive and its interpretation by the courts had been so unbending, that only a few litigants are deriving any benefit.

The purpose of the Legal Aid Act, 1964, says the title, is "to provide for the payment out of the legal aid funds of costs incurred by successful opponents of legally aided litigants."

Yet Section I of the Act declares that no order shall be made for costs incurred in a court of first instance, such as a County Court or the High Court, unless the unassisted party can show that he would suffer "severe financial hardship."

An indication of how effective the Act has been in curing the injustice of the successful opponent having to pay the costs of defending an action brought against him because of the facilities of legal aid can be seen from an examination of claims so far.

£48,000 Provided—only £56 paid

The Law Society, which administers the legal aid fund, set aside £48,000 for claims in 1964. Although the Act came into operation halfway through the financial year for legal aid accounts, only £56 was paid out.

The Law Society, expecting claims to gather momentum as the Act became more widely known, retained the estimate for 1965-67 at about £48,000. Successful claims for that year reached less than £300.

In all, about 30 people have made claims under the Act, and only eight have been successful. Total payments since the Act came into force in October, 1964, are still less than £500.

Yet it is estimated that about 8,400 parties are successful each year in defending actions brought against them by legally-aided litigants.

Insurance Firms—pressure to settle

Although it is arguable that insurance companies, firms, and other similar bodies do not suffer hardship in paying costs, it is equally arguable that they should not be under pressure to settle an action because they know there in no hope of recovering costs.

In a case decided by the Court of Appeal last year, a husband who successfully defended a divorce petition by his legally-aided wife, applied for costs under the Act.

These were refused on the grounds that it was not the practice of divorce courts before legal aid to award costs to a husband, and that the husband had had two Continental holidays and had bought a car.

It was argued that he had not suffered severe financial hardship and that it was not "just and equitable" in the circumstances to order costs from public funds.

It was also held that in deciding what was "just and equitable," a court should consider what contribution to costs the respondent would have had to make if his income was lower and he had received legal aid.

A person with a disposable income of not more than £700 a year is entitled to claim legal aid, and the maximum contribution under the scheme is £150.

So where costs are not more than £150, it is said that the unassisted party cannot have suffered as he would have had to make this contribution to the legal aid fund anyway.

Somewhat ironically, the courts have now also decided that where an unsuccessful but assisted litigant takes his case to appeal the unassisted party can recover the costs of the appeal from the legal aid fund under the Act without showing "severe financial hardship."

The Law Society has been well aware of the deficiencies of the Act since it came into force. But it recognises that it is a matter for Parliament to put right.

As the *New Law Journal* commented recently, the title to the 1964 Act could well be amended at present to read: "An Act to provide exceptionally for the occasional payment out of the legal aid fund of . . ."

—(*Terence Shaw, Daily Telegraph Legal Correspondent, The Daily Telegraph, Monday, November* 21, 1966).

CASES OF THE MONTH

Bog of Technicality

This was a simple case of libel. It took 15 days to try; the summing-up lasted a day; the jury returned 13 special verdicts; the notice of appeal set out 7 separate grounds why the appeal should be allowed and 10 more why a new trial should be granted—the latter being split up into over 14 sub-grounds. The respondents' cross-notice contained 15 separate grounds. The costs must be enormous. Lawyers should be ashamed that they had allowed the law of defamation to become bogged down in such a mass of technicalities that this should be possible.

Diplock L. J. (Boston v. W. S. Bagshaw and Sons).

Planning Permission — Notice to Applicant

The appellants applied for planning permission to enable them to erect a building on their land in connection with the processing of chemicals. Planning permission was refused by the local authority and on appeal the refusal for permission was confirmed by the Minister. The company appealed against the Minister's decision.

It was held (Q.B.D.; Megaw J. May 5, 1966) that the letter giving the Minister's decision was so obscure and would leave in the mind of an informed reader such real and substantial doubt as to the reasons for that decision and as to the matters the Minister did and did not take into account that it did not comply with Rule I (II) of the Town and Country Planning Appeals (Enquiries Procedure) Rules, 1962 which requires the Minister to notify an appellant, *inter alios,* of his decision and the reasons for it.

(Givaudan & Co. Ltd., v. Minister of Housing and Local Government and Another).

Negligence — Defective Tool

A workman was injured in the eye by a splinter of steel from a hardened chisel that had been

fashioned by manufacturers to the specification of the workman's employers. It had been returned after fashioning to the suppliers of the steel for hardening. Some three or four weeks before the accident the workman's leading hand had been slightly injured by a splinter from that chisel. The workman brought an action against his employers and the manufacturers for damages for personal injuries.

It was held (Birmingham Assizes: Baker J: December 13, 1965), finding for the plaintiff against the employers but not against the manufacturers, that the keeping of the chisel in use after the prior mishap was culpable as regards the employers, but that it broke the chain of causation of any negligence by the manufacturers. There was further no personal negligence by them, and having got a competent hardener to carry out the process of hardening the chisel they were entitled to assume that the work had been properly done and were not responsible for negligence on the part of the hardeners, whether they were agents or independent contractors (dictum of Lord Morton of Henryton in Davie V. Now Merton Board Mill Ltd. (1959) 1 All E.R. 346 at p. 357 followed).

(Taylor c. Rover Co. Ltd, and Others (Richard W. Carr & Co. Ltd., Third Party) [1966] 2 All E.R. 181).

Public Liability Insurance Policy

A telephone cable was damaged when a hole was dug by a workman employed by a company who had taken out a public liability policy. The company went into liquidation so the Post Office contended, as a preliminary point of law, that they could pursue an action against the Insurance company under the Third Parties (Rights against Insurers) Act, 1930, s.1. The policy provided, *inter alia*, that the company would indemnify the insured "against all sums which the insured shall become liable to pay." The company contended that they were under no liability to the insured or to the Post Office unless the precise amount of the liability of the insured to the Post Office had been determined. No judgment had been obtained by the Post Office against the insured, nor had there been any agreement as to the amount of any liability been reached between the Post Office and the liquidator of the insured.

It was held (Q.B.D.: Donaldson J.: November 8, 1966) that the Post Office was entitled to pursue their action against the company. The word "sums" meant "sums whether or not liquidated or ascertained."

(Post Office v. Norwich Union Fire Insurance Society Ltd. *The Times*, 9/11/66).

Fundamental Breach of Contract

The owners of some packages entered into a contract with some carriers to carry them from Melbourne to various destinations in Australia. The carriers employed a sub-contractor to collect the packages. Normally the sub-contractor would have taken them to the carriers' depot in Melbourne for onward transmission, but when he arrived at the depot, it was locked. So he drove the lorry, with the packages still on board, to his own house, and left the vehicle in a garage there. A fire broke out, and some of the packages were destroyed. The owners sued the carriers, who pleaded that they were not liable in view of a clause in the contract of carriage which purported to exempt them from liability.

It was held by the High Court of Australia that the action succeeded. There had been a fundamental breach of contract, for the presumed intention of the parties was that, when the goods had been collected, they would be taken to the carriers' depot, and not to the sub-contractor's private premises. Accordingly, the carriers were not entitled to rely on the exemption clause (Suisse Atlantique Sciete d'Armement Maritime S.A. v. N. V. Rotterdamsche Kolen Centrale (1966) 2 All E.R. 61, H.L., applied ..... reported in Vol. 60, No. 3, July 1966 of the GAZETTE at page 33).

(Thomas National Transport (Melbourne) Pty., Ltd. and Pay v. May & Baker (Australia) Pty., Ltd. (1966) 2 Lloyd's Reports page 347).

Sale of Goods — Defective Title

The plaintiff advertised his car for sale. A man calling himself Colonel Robinson agreed to buy it subject to a satisfactory report from an engineer. The plaintiff permitted him to drive the car away. After Robinson had left, the plaintiff missed the registration book and he had not consented to Robinson's possession of it. A month later, Robinson sold the car to the defendant, who bought it in good faith. The plaintiff claimed the value of the car. He had not been paid by Robinson and had never seen him again.

It was held (Q.B.D.: Megaw J.: November 7, 1966) that the action succeeded. The Factors Act 1889, protected an innocent purchaser if (1) there had been an agreement by the seller (i.e. the plaintiff) to sell; (2) the original purchaser (i.e. Robinson) had obtained possession of the goods with the consent of the seller, and (3) the ultimate purchaser (i.e. the defendant) had acted in good faith. Conditions (1) and (3) were fulfilled. Condition (2) had been fulfilled as far as the car itself was concerned. But there was no consent as to the possession of the registration

book. Consequently the defendant did not get a good title. (Pearson v. Rose & Young Ltd. (1951) 1 K.B. 275, C.A., applied).

(George v. Revis, *The Times*, 8/11/66).

Bailment — Duty of Care

A case of dresses was stolen from a dock shed whilst in the custody of a firm of master porters. The owners of the case brought an action against them alleging that they were guilty of negligence in that they had failed to take reasonable care of it.

It was held (C.A.: Sellers, Danckwerts and Salmon L.JJ.: June 8, 1966) (affirming the decision of Judge Stansfield given at Liverpool County Court) that the master porters were liable. It was not sufficient for them to prove that the system of looking after the goods was impeccable. Part of the system was to have a watchman on duty in the shed. They had to show that the watchman had carefully performed his duty and this they had not done. There was ample evidence to justify the finding that the watchman had not been sufficiently vigilant.

(Global Dress Co. Ltd. v. W. H. Boase & Co. Ltd. (1966) 2 Lloyd's Reports, page 72).

Costs for Removal of Fallen Tree

In Williams v. Devon County Council the appellant highway authority claimed a sum of £30-10-10 from the respondent, that being the cost to the appellants of removing a tree which had been blown down in a high wind from the respondent's land and had fallen across the highway. Section 9 (1) (c) of the Highway (Miscellaneous Provisions) Act, 1961 entitles a highway authority to recover the cost of removing an obstruction of a highway from the owner of the obstructing thing, except where the owner "proves that he took reasonable care to secure that the thing in question did not cause or contribute to the obstruction." The respondent had regularly inspected the tree and was satisfied that it was not likely to fall.

Held—an owner of a tree which fell on a highway was not to be liable to pay the highway authority for its removal merely because the highway authority, in fulfilment of their clear duty, removed it before the owner could do so.

(Williams v. Devon County Council, *The Times*, November 9, 1966).

Compensation Arising from Road Works

Exeter Corporation wished to construct a ring road and for that purpose the Minister of Transport, at their instigation, confirmed a compulsory purchase order over property in the line of the ring road and made an order stopping-up a number of streets. In one of the streets concerned, Coombe Street, the plaintiff had his garage, and after the stopping-up of Coombe Street, and the carrying out of roadworks there, the plaintiff's premises came to be situated at the end of a cul-de-sac, part of his garage frontage was lost and one exit from his forecourt was blocked. That adversely affected his business and the value of his premises as premises. The plaintiff sought a declaration that he was entitled to compensation under s.63 of the Land Clauses Consolidation Act, 1945. The defendants contended that the premises had not been injuriously affected, or that if they had this was the result, not of the defendants' roadwords, but of the stopping-up of the highway by order of the Minister, and that if compensation was in fact payable, it was the Minister, not they, who should pay it.

It was held, that the step taken by the Minister was only because the defendants sought him to take such measures, and the defendants were responsible in all for the consequences of that step. By reason of that responsibility the defendants were liable to pay compensation to the plaintiff as one whose premises had been injurisouly affectetd by the authorised street works carried out by the defendants in the course of which the stopping-up of Coombe Street was merely an incident and from which it could not be isolated.

(Jolliffe v. Exeter Corporation, *The Times*, November 11, 1966).

THE REGISTRY

Registry B

Solicitor in practice seeks assistantship conveyancing or otherwise. West or Midlands preferred, to continue in practice.—Box B283.

Registry C

In the Goods of ANNIE C. WHOOLEY, late of 11, Lower Friars Walk, Cork, Spinster, Deceased.

WILL any solicitor having knowledge as to the existence or otherwise of any Will made by the above-named deceased, who died on the 6th November, 1966, please communicate with the undersigned.

DANIEL G. McCARTHY,
Solicitor,
SKIBBEREEN, CO. CORK.

Re EDWARD DOLAN, deceased, late of Feevaghmore, Taughmaconnell, Ballinasloe, Co. Roscommon.

WILL any Solicitor (and in particular any Solicitor in Athlone, Roscommon, Ballinasloe or Galway City) knowing the whereabouts of the Will of the above named deceased. please contact:

OLIVER A. MACKLIN,
Solicitor,
Society Street. Ballinasloe,
COUNTY GALWAY.

ENCLOSED RETREAT FOR SOLICITORS 1967

A week-end Retreat for Solicitors will take place at the Jesuit House of Retreats, Milltown Park, Dublin, during week-end commencing Saturday the 25th February next. (Time for arrival 9 p.m.).

Please write for reservations to:

JOHN B. McCANN,
Wakefield House, York Road,
Dun Laoghaire, Co. Dublin.

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

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

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

Dated the 30th December, 1966.

D. L. McALLISTER
Registrar of Titles

Central Office,
Land Registry,
Chancery Street,
Dublin.

SCHEDULE

1. Registered Owner, **John Farrell.** Folio number 2869. County Louth. Lands of Townsparks in the Barony of Ardee containing 1a 1r. 18p.

2. Registered Owners, **Mary and Eliza Mulivhill.** Folio number 1213. County Longford. Lands of Ballyrevagh in the Barony of Rathcline, containing 4a. 2r. 16p.; 20a. 0r. 20p. (one undivided eleventh).

3. Registered Owner, **Delia Hoade.** Folio number 27861. County Galway. Lands of Townparks (Dwellinghouse on New Road West shown as plan 55 edged red on the Registry map) in the Barony of Galway.

4. Registered Owner, **Mary Heffernan.** Folio number 18428. County Limerick. Lands of Newcastle in the Barony of Clanwilliam, containing 0a. 0r. 34p.

5. Registered Owner, **Matthew Reilly.** Folio number 1362. County Galway. Lands of Lackalea in the Barony of Loughrea, containing 102a. 1r. 3p.

6. Registered Owner, **Patrick Joseph Kelly.** Folio number 31851. County Mayo. Lands of Cong North in the Barony of Kilnaine, containing 0a. 0r. 25p.

7. Registered Owner, **James Benedict O'Flynn.** Folio number 633L. County Cork. Lands of Moneygurney in the Barony of Cork, containing 0a. 1r. 36p.

8. Registered Owner, **Edmond Murphy.** Folio number 5655. County Cork. Lands of Boycetown and Ballynaneening, containing 44a. 3r. 29p. and 51a. 3r. 8p. respectively, both situate in the Barony of Kerrycurrihy.

9. Registered Owner, **James O'Callaghan.** Folio number 11931. County Cork. 66a. 2r. 28p. Derryleigh; 2r. 27p. (one undivided fifth share) Derryleigh; 63a. 0r. 6p. Derrygortnacloghy; 1a. 2r. 0p. Derryleigh, all situate in the Barony of Muskerry West.

10. Registered Owner, **Lilian Mary Grandy.** Folio number 4166. County Wexford. Lands of Slievebaun, situate in the Barony of Gorey, containing (a) 22a. 2r. 23p., (b) 1a. 3r. 24p.

11. Registered Owner, **John Teeling.** Folio numbers 1026 and 14472. County Meath. Lands of Clavenstown, situate in the Barony of Skreen, containing 9a. 3r. 39p.

12. Registered Owners. **Edward and Bridget Ryan.** Folio number 5245. County Tipperary. Lands of Roan, situate in the Barony of Kilnamanagh, containing 113a. 0r. 31p.

13. Registered Owner, **Alexander D. McCambridge.** Folio number 10124. County Kildare. Lands of Brownstown Great, situate in the Barony of Offaly East, containing 0a. 0r. 10¾p.

OBITUARY

MR. MARTIN KELLY, County Registrar, died on the 23rd September, 1966, at his residence, 35, Parliament Street, Kilkenny.

Mr. Kelly served his apprenticeship with Mr. Leo F. Trainor, Waterford, was admitted in Michaelmas Sittings 1935 and practised in Kilkenny up to his appointment as County Registrar for Carlow in 1951.

MR. MICHAEL NOYK, Solicitor, died on the 22nd October, 1966, at Lewisham Hospital, London.

Mr. Noyk served his apprenticeship with the late Mr. Edward M. Blood, 53, Dame Street, Dublin, was admitted in Michaelmas Sittings, 1912, and practised at 12, College Green, Dublin.

MR. PATRICK J. FLYNN, County Registrar, died on the 28th November, 1966, at his residence Hartland House, Strokestown, Co. Roscommon.

Mr. Flynn served his apprenticeship with the late Mr. James J. F. Lalor, 16, Lower O'Connell Street, Dublin, was admitted in Trinity Sittings, 1931, and practised at Strokestown, County Roscommon up to his apponitment as County Registrar for Roscommon in 1955.

GAZETTE

Vol. 60
No. 7
Jan.
1967

THE INCORPORATED LAW SOCIETY OF IRELAND

President
PATRICK O'DONNELL

Vice-Presidents
PATRICK NOONAN
AGUSTUS CULLEN

Secretary
ERIC A. PLUNKETT

CONTENTS

The President and Vice-Presidents ... 87
Commissioners of Charitable Donations and Bequests ... 87
Meetings of the Council ... 87
Thoughts about an Office System ... 88
Society of Young Solicitors ... 90
Dail Proceedings ... 91
Land Registration Rules ... 91
Land Registration Fees ... 91
The Finnish Legal System ... 91
The Wisdom of Others ... 92
Cases of the Month ... 92
Correspondence ... 95
The Local Authority Solicitors' Association ... 97
Sittings of the Circuit Court 1967 ... 98

COMMISSIONERS OF CHARITABLE DONATIONS AND BEQUESTS

Board Meetings

Hilary Term — 1967
Tuesday — 10th January, 1967
„ — 24th January, 1967
„ — 7th February, 1967
„ — 21st February, 1967
„ — 7th March, 1967
„ — 21st March, 1967

THE PRESIDENT AND VICE-PRESIDENTS

Mr. Patrick O'Donnell, T.D., Dungloe, Co. Donegal has been elected President of the Society. Messrs Patrick Noonan, Athboy, and Augustus Cullen of Wicklow have been elected Vice-Presidents.

MEETING OF THE COUNCIL

15th December, 1966: Mr. Robert McD. Taylor and subsequently Mr. O'Donnell in the chair, also present Messrs Reginald J. Nolan, Desmond Collins, Ralph J. Walker, John J. Nash, Peter D. M. Prentice, Thomas J. Fitzpatrick, John F. Foley, Gerald J. Moloney, James W. O'Donovan, Thomas V. O'Connor, Patrick Noonan, Thomas

Jackson, James R. C. Green, George A. Nolan, Desmond Moran, Gerard M. Doyle, John Carrigan, Thomas A. O'Reilly, Francis J. Lanigan, Bruce St. J. Blake, Joseph P. Black, Peter E. O'Connell, D. J. O'Connor, Gerald Y. Goldberg, Brendan A. McGrath, John Maher, Patrick C. Moore, Richard Knight, William A. Osborne, Thomas H. Bacon, Augustus Cullen, Eunan McCarron, George G. Overend.

The following was among business transacted:

Compensation Fund

The Council passed a resolution fixing the statutory contribution at £30 for the practice year 1967/68.

Medical Witnesses Expenses

The Council heard a report from the Secretary of his meeting with the Secretary of the Irish Medical Association and considered a list of suggested fees prepared for the I.M.A. It was decided that the Secretary should write to the I.M.A. stating that the question of medical witnesses expenses is a matter for the Association and the Superior Courts Rules Committee and that the Association should take the matter up with that Committee.

Committee on Court Practice and Procedure

The Council considered correspondence received from the committee dealing with Sittings, Vacations and Associate matters together with a report received from the Southern Law Association. Further consideration was postponed to await a reply from the Dublin Solicitors' Bar Association.

THOUGHTS ABOUT AN OFFICE SYSTEM

The following suggestions for a modern office system are not put forward as comprehensive or even as the best suggestions. Furthermore any system must be adapted to the size and other circumstances of each practice. Members are invited to criticise these proposals and to send in their general comments for publication.

1. Filing systems are various and everyone has his own particular ideas or prejudices about them. Furthermore most individuals are either unable or unwilling to change a system already in operation. The main thing is to have a system and to operate it to the limit of its efficient use. For those who are about to install a filing system, or who find it possible to change a system already in operation, it is suggested that reference numbers combined with a card index will be found to be the simplest and most efficient. The main advantage of a card index over a book index is its flexibility.

2. Each new case that justifies opening a file should be given a new number. File numbers should be in consecutive series. Two identical cards should be prepared for each case and two card index boxes should be provided. Each card shows the name of the client, title of case, name of operator and case reference number. The cards are stacked numerically in one box and alphabetically in the other, so that the reference numbers of a particular client's files can be traced from the alphabetical box and the name of the client in a matter of which the file number is known can be traced from the numerical box. The relevant files are kept in strict numerical order in the filing room or space. As all the cards of each client are stacked together in the alphabetical box the operator knows all the cases in hands for that client at any given time. This is better than keeping all the files together because individual files, unlike individual cards, grow and cards are easily handled. The place of each file in the filing system is ascertainable immediately from its number on the card.

SPECIMEN CARD

Client: John Doe — File No. 1002
200 N.C. Road, Cork.
John Doe v Richard Roe.
File opened: 3/2/66
Person in charge of Case: Mr. Jones

If desired, details of the progress of a case may be recorded in its card. This however is merely incidental, the purpose of the card index being to identify and locate all files and papers in the office.

3. An instruction should be given and *enforced* that every letter or document relating to a case should bear the file number, date and initials of the persons dictating or preparing it. This applies to attendance dockets, and memos of all kinds. Such documents should also bear the title of the case as a double check against misfiling.

4. The initials or name of the person in charge of a case should be stated on both cards. It is his duty to keep the case moving.

5. Someone should examine the system regularly to ascertain the progress been made in each case and find out the reason if satisfactory progress is not being made. This is primarily the duty of a principal or partner. The live card index shows all uncompleted cases in the office.

6. When a case is finished the costs and outlay should be prepared and when paid the "dead" cards should be transferred to a filing box for

completed cases, keeping two boxes one alphabetical the other numerical for ease of refcrence in tracing completed cases.

7. The "dead" files relating to completed cases in the office should be removed from cabinets and shelves and stored (if not destroyed) in cardboard filing cases which can be bought at any law stationers. When starting a new system based on reference numbers the existing completed files might be put away in alphabetical order if that is the system already in use. As from the installation of the new system the completed files should be put away in numerical order and this filing system should be kept separate from the old one.

8. The cardboard filing cases for completed case files should be kept somewhere away from the general office. The only papers and files in the general office and principals' rooms should be those in current use.

9. Stop using brief paper. All paper used in the office should be a maximum standard size i.e. foolscap sheets which can be photocopied easily. It is up to solicitors to organise their own office systems for maximum efficiency and practices, however hallowed by tradition, which interfere with efficiency and service to clients generally should be discontinued.

10. As far as possible all documents should be filed daily, as produced or received, on the case file. This will be facilitated by adopting a standard maximum size for office paper. If bundles of documents cannot be avoided they should be given the same reference numbers and title as the case files and stored in numerical order in a place specially arranged, or if possible with the case files.

11. The files and documents should *not* be in the partners' or assistants' rooms–except files and documents immediately required. Files and documents not immediately required should be returned to their place in the filing room or space so that principals' rooms will be clear. This is of course subject to some exceptions–but they should be exceptions.

12. (a) It is important that all letters and documents should be filed immediately. When a letter comes for attention it should be accompanied by the file. The files should go out to the typist in the Out basket with the dictabelts containing replies etc., and the typist should initial and file the carbon copy before the file goes back to the filing space. Instructions should be given on the dictabelt as to the disposal of the file, e.g., returned to the dictator or returned to filing room.

(b) When opening a file for a case which has a number of aspects, e.g., a fairly heavy administration, it is advisable to break it into subfiles, e.g., death duties, income tax, debts and funeral expenses, property sales, stocks and shares, rentals, etc. No folder should be allowed to become overloaded. Breaking down the files into special subfiles facilitates control of the case.

(c) Filing clerks and typists should be instructed on the most efficient filing methods. If the typist starts the first line of the continuation sheet of a letter right at the top edge of the page part of the first few lines will be covered when the letter is filed. Therefore, a continuation sheet should commence at least 1½ to 2 inches from top of the sheet. Manuscript letters continuing on the top of the back page require special filing methods.

13. All this involves the creation of a *remainder system* for the person dealing with each case. This could be a dictated memo of each matter requiring attention with the target date. The memo slips are returned to the dictator and kept on his desk until the appropriate action has been taken. Obviously new memo slips will be prepared from time to time in each case.

14. The person who has dealt with a case is best qualified to decide when the papers may be destroyed. With a view to avoiding the accumulation of old files etc., the operator should as soon as it has been completed decide when it may be destroyed, failing delivery to the client. This date depends on the nature of the case–it might be 12 months, 3 years, 6 years or even longer. A list should be kept of such files showing the dates on which they are to be reviewed for disposal. The files should be looked at again at the operative dates and appropriate action taken. In this way the disposal of old papers will be continuous not cummulative. The date of final disposal of the file, etc., should be noted in its card.

15. The practice of holding clients' title deeds and valuable documents should be critically reviewed. Solicitors today can hardly afford to maintain free private record offices for their clients. The old idea was that by holding the title deeds you held the client. This idea is out of date and involves so many disadvantages from the point of office organisation that it should be changed. The best way to retain clients is to do their work promptly and efficiently. As soon as a case is finished the valuable documents should be listed and returned to the client or deposited in

his bank in exchange for a receipt. This is subject to variation if costs are due and the solicitor wishes to preserve his lien. Perhaps it should not be applied to wills. If wills are retained they should be promptly registered and kept in a fire-proof safe.

16. **Costing System:** In small cases the operator should assess the costs and include the outlay immediately on completion, mark it on the file and arrange to send a memo to the client at the expiration of an arranged time. This should be settled by the principals and adopted as a normal practice–subject to variation for any *exceptional reason.* A costs book should be kept. There are standard books for this purpose. In the costs book is entered the name of client, title and file number of each case, with spaces for

date received;
date of completion;
date file sent for costing;
amounts of costs and outlay separately;
date furnished;
date paid;
name of operator.

An effort should be made to keep records of time of principals or assistants spent on each case and this might be recorded daily in the files. If a solicitor works 1300 hours in a year he must earn about £2600 gross professional fees to net £1,300 p.a. on basis of 50 per cent overheads. If overheads exceed 50 per cent of gross earnings he must earn and receive proportionally more.

A continual check must be kept on

costs unfurnished;
costs furnished and unpaid;
outlay for clients.

To receive £2,600 gross professional fees (maximum £1,300 net) a solicitor must earn and receive £2 per hour on the basis of 1300 working hours per annum. In present day circumstances £2 per hour is not an adequate valuation of the costs value of a solicitor's time.

17. **Office Hours:** With the five day week 9 a.m. to 5.30 p.m., Monday to Friday, allowing 1¼ to 1½ hours for lunch represents only 35 hours per week. Allowing for holidays, illness and administrative work and unproductive engagements it is reckoned that a solicitor can hardly work more than 1300 gainful hours per annum. It has been put as law as 1000 to 1250 hours.

18. **Bookkeeping:** There are improved methods of solicitors' manual book-keeping which are suitable for a medium sized office and avoid duplication of entries, e.g., the three-in-one system. A display was given in the Law Society on November 24th.

19. **Undertakings:** A duplicate copy of every personal undertaking given should be made and kept in a special folder by the operator of the case in the same manner as the reminders in paragraph 13 until the undertakings have been carried out. Failure to keep an undertaking leaves the firm or solicitor personally responsible. The client's written authority should be obtained for any important undertaking and before giving it you ought to be sure that you will be able to perform it.

20. In some offices a great deal of time is taken up in recording all outgoing mail in a letter book which is also a check on expenditure on postage stamps. This can be saved by (a) typing a second carbon copy of each letter; (b) using a stamp franking machine. All the second carbon copies are filed in a special folder daily and constitute a record in chronological order of outgoing mail. The stamp-franking machine is quicker than stamp-licking and has other obvious advantages from the cash security viewpoint.

21. Before having any document copy typed the operator should consider the advantage of having it photo-copied which is usually quicker and often cheaper. It pays to give continual thought to mechanisation. For instance an adding machine is a time-saver in any office in which long accounts are often required.

22. A memorandum of instructions on the office system should be given to each member of the staff so that he or she will understand what is required–and why.

23. Efficiency in solicitors' offices depends on co-operation. Obviously when writing to colleagues, government departments or anyone else their references numbers should be cited as well as your own. There are other methods of co-operation which will be dealt with in a further article.

ERIC A. PLUNKETT.

SOCIETY OF YOUNG SOLICITORS

A Northern Ireland solicitor, Mr. Vincent Hanna delivered a paper to the Society on the Social Welfare (Occupational Injuries) Act, 1966 on 5th January, 1967. The lecturer expressed concern with the methods by which claims will be determined under the new system of Workmen's Compensation to be administered by the State.

The Council of Provincial Solicitors in association with the Society propose holding a Seminar in Galway on 8th/9th April, 1967, in the Great Southern Hotel. Bookings will be accepted from

members from 16th February and for non-members from 1st March next. Booking forms will be sent to members prior to that date giving full particulars of the subjects to be dealt with at the Seminar.

The Society's latest publication, *Building Society Law and Practice* is now available to members at 9/- or 9/9 per post.

Mr. M. K. O'Connor, Barrister-at-Law will deliver a lecture on 23rd February next on Estate Duty Practice.

DAIL PROCEEDINGS

Mr. G. Sweetman (F.G.), T.D., enquired of the Minister for Justice what is the present average delay in the issue by the central office of the Land Registry after the receipt of a requisition in proper order of (1) a copy folio, (2) a land certificate, (3) a copy map and (4) a copy instrument. The Minister for Justice in reply stated that the present average delay in each case, is—copy folio, 8 days; land certificate, 3 weeks; copy map, 5 weeks, and copy instrument, 8 days. Priority is, however, given to requisitions of a particularly urgent nature, and the delay in such cases is considerably less.

Deputy Sweetman raised the question with the Minister for Justice as to whether the Minister intends to make any order under Section 24 of the Registration of Title Act, 1964, in the near future; and, if so, in respect of what county or county borough. The Minister in reply stated that he did not intend to make an order under Section 24 of the Act for the present. He proposes to allow the Act to operate for some time before making such an order. This will enable the Land Registry to gain experience of the changes made by the Act in the registration of title system and to overcome staffing and accommodation problems.

LAND REGISTRATION RULES

In reply to a question by Mr. Gerard Sweetman, T.D. (F.G.) to the Minister for Justice on 29th September, 1966, the Minister stated that new Land Registration Rules under Section 126 of the Registration of Title Act, 1964, would be brought into force on the same date as the Act. The Act becomes operative on 1st January, 1967.

LAND REGISTRATION RULES, 1966
STATUTORY INSTURMENTS
S.I. No. 266 of 1966

These Rules are general rules for carrying into effect the objects of the Registration of Title Act, 1964, which comes into operation on the 1/1/1967. They rescind the Land Registration Rules 1959, and the Land Registration (Solicitors Costs) Rules, 1962. This Statutory Instrument is available from the Government Publications Sales Office, G.P.O. Arcade, Dublin 1, and is priced at 6/6.

LAND REGISTRATION FEES (No. 2) ORDER 1966
STATUTORY INSTRUMENTS
S.I. No. 276 of 1966

The purpose of this Order is to prescribe the fees chargeable in the Land Registry as from the 1st January, 1967, under the Registration of Title Act, 1964 (No. 16 of 1964), which comes into operation on that date. The present fees are prescribed in the Land Registration Fees Order, 1966, which is revoked by this Order. This Order is available from the Government Publications Sales Office, G.P.O. Arcade, Dublin 1, and is priced at 1/6.

THE FINNISH LEGAL SYSTEM

The Union of Finnish Lawyers have very kindly forwarded to us their booklet entitled "The Finnish Legal System." The book is published for foreign readers and its object is to provide a general description of the Finnish system of law. If members wish to obtain a copy for their own use same may be had from Pentti Ajo, Manager, Suomen Lakimieslitto, Finlands Juristforbund, RY. Helsinki 10, Finland, price £2. The book provides a historical background of the Finnish legal system, the system of government, fundamental rights of citizens and language legislation. Amongst the matters discussed are Court organization and procedure, the administrative system and the legal safeguards in administration, and self government. The law of contracts and torts, the modes of land utilisation are dealt with at length. It is to be noted that in an article entitled "Principles of the Law of Succession" the following comment is interesting (in view of the coming into operation of the Succession Act on January 1, 1967 of the Succession Act, 1965):

> A spouse will inherit if the deceased leaves no issue. On the death of the surviving spouse the whole estate with only a few exceptions will be divided in half between the heirs in law of each of the spouses, but not to those heirs of the pre-deceased who

are more and more the nephews and nieces. The right of succession of a spouse is not in the nature of "a forced share," and consequently it can be superseded by a will.

The freedom of the individual and his rights under the law are, it will be seen a reality.

Members may be particularly interested in the chapter on Labour Law by Antti Suviranta, LL.D.; in view of the proposed Trade Union Legislation. The book contains 363 pages, has a useful index and is good value at the price.

THE WISDOM OF OTHERS

Good notes are of inestimable value in meeting any criticism that may arise and in preparing a defence to an allegation of negligence (Medical Defence Union, annual report 1966).

Has not the time come to stop looking at our own costs and consider fees and prices charged by others? According to a news item in the *Times* on 27th October a camera with a landed price of £100 is sold retail for £295. The retailer's profit is stated to be £80. Investigation of other peoples charges must surely put our own charges into the correct perspective (letter in the *Solicitors' Journal*).

I cannot understand why so few solicitors specify in contracts that the deposit should be held by them instead of by the estate agent. Many estate agents are most un-cooperative and suggest that I am doubting their honesty by insisting that the deposit should be held by my firm. In many cases there is a simultaneous sale and purchase and the solicitor has to calculate accurately and in a short space of time the exact amount needed to balance the transaction. When a deposit is held by an estate agent it remains in the hands of the estate agent for several days after completion and the solicitor either has to ask the client to provide more money or to advance the money himself. There is no reason at all why this should be necessary. (Letter in the *Solicitors' Journal*).

CASES OF THE MONTH

Solicitor Accountable for Personal Profit

The English Court of Appeal affirming Wilberforce J. held that the appellants were liable to account for profit attributable to the respondents share in the Trust Fund less the expenditure incurred to enable it to be realised and making a liberal allowance for professional skill and work in earning it of the solicitor's appellants. The appellants (purchasers) were solicitors who had acted as agents in an initial approach to the Company and as proxies for the trustees at an annual general meeting of the Company. The respondent, a benificfiary under the will claimed an account of profits made as a result of the purchase by the solicitor and his co-appellant of shares in the company in which the trust had a substantial holding. The appellants having made the initial approach to the Company as proxies for the trustee had obtained valuable information about the company's affairs and, acting personally, they bought a substantial majority of shares in the company. This purchase was made without the knowledge of one of the trustees, an old lady, but with the acquiescence of the two other trustees and it resulted in a large profit to the appellants and a benefit to the trustees' shareholding in the company. The Court of Appeal affirming Wilberforce J. held that the appellants were liable to account. An appeal to the House of Lords was dismissed by a majority. Viscount Dilhorne said that liability to account must depend on there being some breach of duty, some impropriety of conduct on the part of those in a fiduciary position. On the facts of the present case he did not consider that there was any breach of duty of impropriety of conduct on the part of the appellant and he would allow the appeal. Lord Upjohn also delivered an opinion in favour of allowing the appeal. Lords Coyne, Hodson and Guest delivered opinions in favour of dismissing the appeal basing their decision largely on Regal (Hastings) Ltd. v Bullover (1942 1All. E.R. 378).

(Bordman and others v Phipps).—*Times*, 4th November, 1966.

Professional Negligence

The Court of Appeal in England allowed an interlocutory appeal by Mr. Ellis Lincoln, solicitor, from an order made by the Judge in Chambers on appeal from Master Lawrence. The Master had given unconditional leave to the defendant Mr. Lincoln to defend an action for damages, for alledged negligence brought by the National Union Bank Ltd., and the Judge on appeal by the Bank had made leave to defend conditional on payment of £5,000 in to Court by the defendant. The facts as stated to the Court of Appeal were that the plaintiff Bank which was incorporated in the Bahamas, sued Mr. Lincoln for negligent misrepresentation in certain letters written by Mr. Lincoln's managing clerk which had the effect of inducing the Bank to lend money to a client of Mr. Lincoln who wanted to obtain a bridging loan. It was alleged that the managing clerk wrote to the bank manager referring to certain properties and stating, "we have

exchanged contracts for the sale of these securites. Completion should take place within a short period and we undertake to hold the leases to your sole order and to account to you for the proceeds, £13,000." Mr. Lincoln himself was said to have written a personal confirmation of that to the bank manager. The bank said that on the faith of these letters they advanced £15,000, part of which had been lost and that there was a duty on Mr. Lincoln and his clerk to take reasonable care in writing these letters, having regard particularly to the recent decision of the House of Lords in Hedley Byrne & Co. Ltd. v Heller (1964. AC. 465). Mr. Lincoln in his affidavit alleged that the bank were money lenders, not registered as such, and he denied the misrepresentations alleged and the interpretation put on these letters by the bank. The Court of Appeal held that the question of damages and liability were so interconnected that they could not be dealt with separately and accordingly granted leave to defend unconditionally.

(National Union Bank Ltd. v Lincoln, *Times* newspaper, 10/11/66).

Vendor and Purchaser: Clause Excluding Objections to Title

By an underlease dated 28th December, 1963, S. who had an assignment of a lease of three floors of a London house, sublet the second floor flat to P ("the vendor") for a term ending in July, 1972. Despite his right at law to call for the lease out of which his underlease was granted, P did not do so, but his solicitors accepted instead an assurance from the husband of S that no consent was required for the underlease. In fact the lease required consent in writing to any underletting. By an agreement made on 26th October, 1964, the vendor agreed to sell and B ("the purchaser") agreed to buy the residue of his underlease, completion to take place on 23rd December, 1964. Clause 3 provided that "The vendor's title which has been accepted by the purchaser shall commence with an underlease dated 28th December, 1963 and the purchaser shall raise no requisition or objection thereon." The purchaser went into possession on 26th October. Two days later, on 28th October, the purchaser's solicitors were informed by the reversioner's solicitors that the rent under the lease was overdue and that there were outstanding breaches of covenant. After further correspondence and inquiries the purchaser, on 8th January, 1965, informed the vendor that the contract must be treated as discharged; and proceedings were started for rescission of the agreement and return of the purchase money on the ground, *inter alia*, that as no consent to the vendor's underlease had been obtained, the title accepted by the purchaser was bad as liable to forfeiture. The vendor by his defence claimed, *inter alia*, that even if there were defects in his title, cl. 3 of the agreement precluded objections; and he counter-claimed for specific performance. The County Court Judge (Sir Alun Pugh) dismissed the claim for rescission and ordered specific performance and consequential relief. The purchaser appealed.

Danckwerts, L.J., giving the reserved judgment of the Court, said that the vendor's failure to inspect the lease out of which his own underlease was granted was a terrible mistake. As a result of that, he was affected by constructive notice of the requirement of consent to the underletting to him and the consequent liability to foretiture. Though no steps to enforce forfeiture had been taken, the superior landlords were alive to the point; and if an interest in leasehold was subject to determination for breaches of covenant which had already been committed, the title was not good. The important question was whether the purchaser was precluded from taking objections by reason of cl. 3. Assuming that that clause precluded objection to the vendor's title, the purchaser having discovered by other means a vital defect in that title which meant that the purchaser was being asked to accept something which might be made worthless, could the clause prevail? There was no doubt that by a clearly drawn special conditions in a contract put in by a vendor who acted in good faith, and disclosing a possible defect in the title, the purchaser might be compelled to accept the title offered by the vendor. But the vendor must have disclosed the defects of which he knew. In this case the vendor did not know the breaches which would give rise to forfeiture. But he ought to have known that such breaches might exist.

His solicitors ought to have insisted on seeing the underlease assigned to S out of which his own underlease was to be created, as they were entitled to by law. The vendor's solicitors accepted instead an untrue statement by the husband of S, who was not a lawyer anyway. The position was covered by the decision in Re Haedicke & Lipski's Contract (1901) 2 Ch. 666, that a purchaser had a right to assume, when a condition of this kind was inserted, that the vendor had disclosed what it was his duty to disclose. The vendor could not rely on this clause in this case, and the purchaser was entitled to rescind. Appeal allowed.

(Becker v Partridge I.L.T.R. & S.J.—*Journal*, Vol. C., page 373).

Solicitor's Liability — Acting for Both Parties

The Old Wisdom enunciated by Scrutton, L.J., in Moody v Cox & Hatt (1917) 2 Ch. 71 that "solicitors who try to act for both vendor and purchaser must appreciate that they run a very serious risk of liability to one or the other" was applicable to a recent case in England. The plaintiff sought damages for negligence in the conduct of her business by the senior partner of the defendant's solicitors. She contended that he should have advised her against lending money to a man he knew to be untrustworthy, which knowledge he had, because the man in question was also a client of his. Lyell J. held that the solicitors were under duty to advise on the basis of all the knowledge that they in fact had. The proper course of action would have been to refuse to act for one or other of the clients where conflict of interests entered the transaction.

(Neushal v Mellish and Harkavy—*Solicitors' Journal,* October 21, 1966, p. 792).

Dissolution of Solicitors in Partnership

In January, 1958 the plaintiff and the defendant, who had been partners in a firm of solicitors, dissolved the partnership, one of the terms of dissolution being that all costs relating to work done or in progress for individual clients be estimated as at that date. Thereafter the defendant continued to practise in a new firm bearing the same name as the old firm, and the plaintiff set up on his own. No estimation of costs at the date of dissolution was made. Each party carried on work in progress in respect of "his" clients in accordance with an agreed list, which split the various clients between the former partners. Each collected the amounts due in respect of that work, allocating to the old firm the portion he estimated to be appropriate to the work done up to the date of dissolution. The defendant kept a ledger in which were entered in separate columns the details of (i) serial number, (ii) client's name, (iii) the total amount of the bill of costs, (iv) the amount allocated to the old firm, and (v) the amount allocated to the defendant in respect of the new firm. Certain bills related wholly to the period before dissolution, others to the period wholly after dissolution and some to the period straddling the dissolution. Disputes having arisen the plaintiff issued a writ on 31st December, 1962. By his summons he sought discovery of the figures in the defendant's ledger relating to bills paid in respect of the period up to or straddling the date of dissolution.

Pennycuick J., said that on the face of it the total figure appeared to be relevant to him to find out if a fair proportion had been allocated to the plaintiff. The plaintiff was willing to accept an extract from the ledger showing both the pervious and the straddling items, certified by the defendant's accountant, and that dealt with the practice difficulties involved. The defendant's second ground of objection was that the figures were privileged and ought to be disclosed, the privilege being that of the clients. While it was not contended that the plaintiff was entitled to discovery of any communication between the defendant and his clients, it was contended that the privilege did not protect the totals. That on the face of it seemed right. A bill of costs normally contained a record of events and was privileged on that account, but his Lordship could not see on what ground privilege could be claimed where the bill did not relate to particular transactions or afford a record of privileged occasions. In the present case the plaintiff only sought the totals of bills paid by the various clients, and there was no reason why discovery of those figures should reveal any confidential information or communication between the defendant and his clients. He therefore concluded that there was no privilege as to the totals and discovery should therefore be given. Order accordingly.

(Lewthwait v Stimson, I.L.T.R. & S.J. (Vol. c) –*Journal,* p. 317.

Statue of Limitations—issue of writ within period

On February 11, 1960 a stevedore sustained injuries as a result of a dock accident. Within a month of the accident the matter had been put in the hands of the Union of which the stevedore was a member. However, the solicitors were not instructed until January, 1963, the writ being issued on February 1, 1963, shortly before the limitation period in personal injury actions expired. Mr. Justice Mocatta said that he was not altogether certain on the authorities whether it would be a proper exercise of his discretion to deprive the plaintiff of some of his costs in the action by reason of the delay that occurred in issuing the writ and in giving the defendants the first indication that a claim was pending. He was inclined to think that he would be exercising his discretion properly if he did so, but he could not overlook the fact that counsel did not know of any previous case where a Judge had taken that view.

Mr Justice Mocatta said that he felt, therefore, that the proper course to take in the present instance was to issue as solemn a warning as possible so that trade unions would in future, act in these matters with expedition. It was not for him to say, how they could resolve the problem. It might be that they ought to employ profes-

sional advisers at an earlier stage in the proceedings so as not to leave their investigation and preparation in unskilled hands. The present case and the experience which he had had in other cases indicated that delays of this character were very much too frequent in cases sponsored by trade unions. He felt, however, that if this matter was drawn to the attention of the unions and they realized, that the Courts were fully appreciative of the value of the work which they did in these circumstances on behalf of their members, they would take steps to put the matter right. If there were no improvement in the conduct of the unions in the matter, it might well be that the Courts would be compelled to deprive a successful plaintiff of some part of his costs.

It is likely that this case should be of interest to solicitors who are concerned in personal injury actions where the plaintiff is a member of a trade union and proceeds with the support of his union.

(Horsler v Alexander Bruce (Grays) L.T.D. (1966) 1 Lloyd's Rep. 30 and I.L.T.R.S.J. (Vol C)—*Journal,* p. 345).

Fugitive Offender—Irish Warrant

A warrant was issued by a Justice of a District Court in Ireland for the arrest of the applicant who was charged with wilfully neglecting his children contrary to certain statutes. A judicial authority certified that the warrant was a warrant of arrest, and that the offence of child neglect was an indictable offence in Ireland. On production of the warrant and proof that the person named therein was believed to be within his area, an English magistrate automatically endorsed the warrant for execution, exercising his powers under Section 1 (1) of the Backing of Warrants (Republic of Ireland) Act, 1965. The applicant was arrested by the metropolitan police and brought before the magistrate, who ordered him to be detained with a view to being returned to Ireland. The applicant, who was granted bail, applied for leave to move for a writ of habeas corpus, contending, *inter alia,* that the order for his detention was invalid by reason of irregularities in the procedure laid down by the Act of 1965, in particular that the requirements of paragraph 3 of the Schedule in regard to safeguards of the person accused had not been complied with :—

Held (1) that the magistrate was under an obligation to endorse the warrant once the matters in Section 1 (1) were proved, subject only to the exceptions specified in subsections (2) and (3) and, that subsection (4) was not an exception to that obligation but merely stated that effects of the endorsement once it was made and that, accordingly, no inquiry into the merits had to be held as to whether there was a strong and probable presumption of guilt of the alleged offence.

Reg. v Metropolitan Police Commissioner, Ex parte Hammond (1965) A.C. 810; applied.

(2) That the words "corresponding with any offence" in Section 2 (2) referred to the ingredients of the offence and not to its classification as indictable, summary and indictable, or summary only, so that there was jurisdiction to make the order notwithstanding that the offence of child neglect was indictable only in Ireland whereas in England it was both an indictable and a summary offence, and that the procedure adopted complied with the provisions laid down in paragraph 3 of the Schedule; and that therefore, the order was valid.

(3) That the Court was in a position to entertain the application nothwithstanding that the applicant was on bail, having regard in particular to section 5 (3).

Regina v Metropolitan Police Commissioner, Ex Parte Arkins (1966) 1 W.L.R., p. 1593).

CORRESPONDENCE

LAND ACT 1965 S.12

Commissioner John Kelly,
Irish Land Commission,
Upper Merrion Street,
Dublin 2.

Dear Commissioner Kelly,

I have been directed by the Council to make further representations against the recent practice of the Land Commission of attaching a condition of obtaining planning permission when giving consent to subdivision under Section 12 of the Land Act 1965. It is provided by subsection (2) of the Section that the power of the Land Commission to withhold their consent shall be exercised solely to prevent the creation or continuance of holding which in the opinion of the Land Commission are not economic holdings. While sub-section (1) of Section 12 does authorise the Land Commission to attach conditions to their consent it is submitted that any such condition must be relevant to the exercise by the Land Commission of their power under sub-section (2). It is no function of the Land Commission to concern themselves with, or enquire regarding the question of planning permission. It seems to the Council that the power of the Land Commission to withhold their consent should be exercised solely to prevent the creation or continuance of uneconomic holdings and is strictly limited to such cases.

Apart from the above legal arguments which we think are perfectly valid ones it seems to us that the enormous practical difficulties would exist if Land Commission consents are to be conditional on planning permission being obtained. The preparation of plans, etc., to support an application for planning permission might take some considerable time. A further period must necessarily elapse while the appropriate local authority is considering the application and if the application is refused by

the local authority and an appeal taken to the Minister a further period of time must necessarily elapse before a decision is finally obtained, particularly in cases where objections to the proposed plan may have been lodged by adjoining owners or occupiers. In such cases it would presumably be necessary for the Department of Local Government, not only to inspect the plans or the site but also to communicate with and consider the submission of objectors. In the view of the Council it would be impossible for a purchaser to have his deed of transfer registered in the Land Registry during all this period because the consent of the Land Commission would not become operative until the planning permission was obtained and indeed would not be operative at all if the application for planning permission proved to be unsuccessful.

The application for subdivision is made by the vendor. He is not concerned with, nor has he any knowledge of the use which the purchaser proposes to make of the property when sold. It is unreasonable that an application by a vendor for consent to subdivision should be affected by or conditional upon something which may or may not arise after he has sold the property. Surely the question of planning permission is a matter for the purchaser. Both he and his legal advisors must be assumed to know the law relating to development and planning.

The Council would be obliged if you would give this matter your favourable consideration as we are receiving a number of letters from members.

Yours sincerely,

ERIC A. PLUNKETT,
Secretary.

NEW COSTS AT THE PROBATE OFFICE
IRISH FARMERS' JOURNAL DECEMBER 12th

When the owner of a farm dies it is advisable to take out a grant of representation. This term covers the situation whether there is a will made or no will made.

It can be safely presumed that when the new Succession Act becomes law in about a month there will be a lot of publicity about succession and people will be asking themselves questions about this business of taking out grants of representation.

The biggest question that will have to be answered is: What is it going to cost? This year, costs were increased and a new scale of fees, payable in the Probate Office and District Probate Registries, has been published. The scale of fees is related to the net value of the estate. This means to the final value of both land and personal valuables.

If the net estate does not exceed:

100	.....	2	10 0
200	.....	3	10 0
300	.....	4	10 0
450	.....	6	0 0
600	.....	7	10 0
800	.....	9	10 0
1,000	.....	11	10 0
1,500	.....	12	10 0
2,000	.....	13	10 0
3,000	.....	15	10 0
4,000	.....	17	10 0
5,000	.....	19	10 0
6,000	.....	20	10 0
7,000	.....	21	10 0
8,000	.....	22	10 0
9,000	.....	23	10 0
10,000	.....	24	10 0
15,000	.....	27	0 0
20,000	.....	29	10 0
Where the net estate exceeds the value of £20,000 on the first £20,000 a fee of	.....	29	10 0
On every £1,000 or fraction thereof by which the value exceeds £2,000 an but does not exceed £100,000, an additional fee of	.....	15	0 0

These fees are simply what you would pay to the Probate Office. They do not include what you would pay to your family solicitor.

However, from January 1, the new Succession Act becomes law, there will be new emphasis on personal application to the Probate Office. In effect, the Act provides added incentive for people to handle their own business in this regard by going direct to the Probate Office in Dublin or to one of the District Probate Registries, providing all the information that is required and leaving it to the officers there to prepare the necessary documents for them.

Where the grant is sought by personal application there is in addition to any other fee, a charge as follows: Where the net estate does not exceed the value of:—

250	.....	2	0 0
500	.....	3	0 0
750	.....	4	0 0
1,000	.....	5	0 0
1,500	.....	6	5 0
2,000	.....	7	10 0
Where the net estate exceeds the value of £2,000 but does not exceed the value £10,000 on the first £2,000 a fee of	.....	7	10 0
On every £1,000 or fraction thereof by which the value exceeds £2,000 an additional fee of	.....	1	10 0
Where the net estate exceeds the value of £10,000	.....	A fee equal in amount to the fee listed in the first table of charges.	

In 95 per cent of cases the cost ends there, but the other 5 per cent may, because of complications, have to go to Court, and this must be kept in mind as another expense for the unfortunate few.

The Society replied to the Editor of the *Farmers' Journal* as follows:—

Dear Sir,

The article in your issue of December 12th under the title "New Costs at the Probate Office" may be misleading, without clarification. The figures given as to the fees payable at the Probate Office, i.e., fees collected by the Government (not solicitors' costs) are correct. It is of interest to compare the fees payable in 1965 with the new fees imposed in 1966. The 1965 fees on a farm of £5,000 were £9-10-0. These were increased to £19-10-0 by the 1966 Order and in addition if the applicant applies in person for the grant there is a further fee of £12 making a total of £31-10-0. Your contributor, however has not mentioned the fact that death duty is also payable, and before the grant of probate or administration can be issued the schedule of assets must be passed at the Estate Duty Office and

the duty paid unless the Revenue Commissioners can be satisfied that the estate is exempt. There is a conflict of interest here between the State and the taxpayer.

On an estate over £5,000 the duty is charged at 1 per cent making £50; over £6,000 the duty is 2 per cent, making £120; over £7,000 the rate is 3 per cent, making £210 and so on progressively. These rates are subject to certain marginal reliefs but the general picture is as indicated. In addition legacy and succession duty may be payable at rates of 5 per cent to 10 per cent depending on the relationship of the beneficiaries to the deceased owner. When a deceased person leaves property, whether it be a farm, family business, or stocks and shares, it is necessary to negotiate and agree the value with the Revenue Commissioners and the Commissioners of Valuation. This is one of the most important services given by the solicitor who takes out the grant. Its importance will be realised by the foregoing illustration which shows that an increase of £1,000 in the value of the estate for probate results in an increase in 1 per cent of the rate of duty chargeable over the whole estate.

When your correspondent refers to the incentive for people to handle their own business in this regard by going direct to the Probate Office in Dublin or the District Probate Registry he seems to assume that the Probate Registrar, who is a civil servant can negotiate with other civil servants in the Revenue Commissioners Office and the Valuation Office to fix the value of property on which estate and possibly legacy and succession duty will be payable. No man can serve two masters. Only the family solicitor can adequately protect the estate against heavy liability for death duties which might otherwise be avoided.

Apart from considerations of death duties the provisions of the Succession Act 1965 relating to the administration of the estate requires expert professional advice to ensure that the estate is distributed in accordance with the provisions of the Act. The work connected with the administration of an estate does not begin or end with the issue of the grant of probate or administration. Apart from the important matters already mentioned the title of the personal representatives and the beneficiaries to the property comprised in the estate must be registered and these matters will require legal professional services.

Yours faithfully,
ERIC A. PLUNKETT,
Secretary

THE GENERAL COUNCIL OF THE BAR OF IRELAND

Dear Mr. Plunkett,

The following notice was posted in the Law Library on the 25th October following the meeting of the Joint Consultative Committee:—

> In 1953 the Incorporated Law Society complained to the Bar Council regarding the intervention of Insurance Officials in litigation and in particular regarding their consulting with counsel at the Law Library in the absence of solicitors. On August 1st, 1953 the Bar Council passed the following ruling and posted it in the Law Library:—
> "The attention of members is drawn to the view of the Bar Council that it is undesirable for counsel to consult with or accept instructions from a client or his representative in contentious matters unless the solicior instructing him is present or has instructed him to do so."

The Incorporated Law Society has recently complained about a renewal of this practice. The Bar Council therefore reminds members of the foregoing ruling.

Yours sincerely,
G. D. COYLE,
Secretary

THE LOCAL AUTHORITY SOLICITORS' ASSOCIATION

The following officers were elected at the annual general meeting of the Association held on 11th October, 1966 :—

Chairman : D. M. R. Walsh, Law Agent, Dublin Corporation; Hon. Secretary and Treasurer : M. J. Leech, Law Agent, Dun Laoghaire Corporation.

Committee : Messrs. M. Purcell, County Solicitor, Dublin County Council; T. Murphy, County Solicitor, Kerry County Council; D. Brilley, Assistant Law Agent, Dublin Corporation.

Mr. Robert McD. Taylor, then President of the Incorporated Law Society, attended the meeting, which was largely attended, and addressed those present.

Mr. E. A. Plunkett, Secretary, Incorporated Law Society, also attended.

Also present were Mr. Brendan A. McGrath, Chairman of the Salaried Solicitors Group, and Mr. F. O'Sullivan, LL.B., Secretary of the Federation of Professional Organisations.

The President in the course of his address complimented the Association on a most successful year's work and said he noted with pleasure that there was a 100 per cent membership and that all members were also members of the Incorporated Law Society. Dealing with the Solicitors' Accounts Regulations, the President said that while it was unfortunate that these regulations had to be introduced, it was also necessary in the interest of the profession and the profession had voted 5 to 1 in favour of their introduction. Arrangements had been made in the regulations to provide for wholetime solicitors who on application to the Registrar of Solicitors may be exempt from the obligation to keep books and to produce an accountant's certificate to the Registrar of the Society.

The President referred to the continued absence of suitable legal textbooks and said that despite the willingness of the Council of the Law Society to help members in the publishing of books on suitable subjects, there was very little response. He suggested that wholetime solicitors who were specialists in various fields should seriously consider publishing books on subjects within their work.

SITTINGS OF THE CIRCUIT COURT, 1967

Circuit	County	Place of Sittings	Date of Commencement			
			Hilary Term	Easter Term	Trinity Term	Michaelmas Term
Dublin	Dublin ... (Co. Borough and County)	Dublin	11 January	3 April	24 May	2 October.
Cork	Cork ... (Co. Borough and County)	Midleton (Appeals and Civil Business)	10 January	—	23 May	—
		Macroom (Appeals and Civil Business)	12 January	—	13 July	—
		Fermoy (Appeals and Civil Business)	17 January	—	—	19 October
		Clonakilty (Appeals and Civil Business)	24 January	—	11 July	—
		Mallow (Appeals and Civil Business)	19 January	—	18 July	—
		Cork (City and County Criminal Business other than Appeals)	31 January	4 April	6 June	7 November
		Cork (City and County Appeals and Civil Business)	14 February	18 April	20 June	21 November
		Bandon (Appeals and Civil Business)	7 March	—	—	17 October
		Youghal (Appeals and Civil Business)	9 March	—	—	24 October
		Skibbereen (Appeals and Civil Business)	—	11 May	—	31 October
		Kanturk (Appeals and Civil Business)	—	9 May	—	26 October
		Bantry (Appeals and Civil Business)	—	—	30 May	3 October
Northern	Leitrim ...	Carrick-on-Shannon ...	7 February	—	23 May	3 October
		Manorhamilton	—	16 May	—	10 October
	Donegal ...	Letterkenny	10 January	4 April	4 July	17 October
		Donegal	31 January	—	25 July	7 November
		Buncrana	—	21 April	20 July	—
		Ballyshannon	—	—	28 July	—
	Cavan ...	Cavan	14 February	2 May	27 June	21 November
		Bailieborough	28 February	25 April	—	5 December
	Monaghan ...	Monaghan	7 March	—	30 May	14 November
		Castleblayney	13 March	—	20 June	12 December
Midland	Roscommon	Roscommon	10 January	7 March	30 May	10 October
		Boyle	17 January	4 April	20 June	17 October
	Longford ...	Longford	24 January	11 April	4 July	24 October
	Sligo ...	Sligo	14 February	2 May	27 June	14 November
	Westmeath ...	Mullingar	28 February	16 May	25 July	5 December
		Athlone	—	23 May	—	12 December
	Offaly ...	Tullamore	31 January	18 April	11 July	31 October
		Birr	7 February	25 April	18 July	7 July
Eastern	Louth ...	Dundalk	5 January	15 March	30 May	4 October
	Meath ...	Trim	18 January	5 April	20 June	18 October
		Ceanannus Mór ...	25 January	12 April	26 June	25 October
	Wicklow ...	Wicklow	31 January	19 April	30 June	1 November
	Wexford ...	Wexford	15 February	4 May	11 July	15 November
	Kildare ...	Naas	27 February	15 May	20 July	29 November
		Athy	9 March	24 May	28 July	12 December

SITTINGS OF THE CIRCUIT COURT, 1967—Continued

Circuit	County	Place of Sittings	Date of Commencement			
			Hilary Term	Easter Term	Trinity Term	Michaelmas Term
South Western	Limerick ... (Co. Borough and County)	Limerick	3 January (Civil Business)	4 April	30 May	10 October (Civil Business)
			10 January (Criminal Business)	4 April	30 May	17 October (Criminal Business)
	Kerry	Listowel	14 February	2 May	20 June	21 November
		Killarney	7 February	25 April	13 June	14 November
	Clare ...	Ennis	28 February	9 May	11 July	5 December
		Kilrush	2 March	11 May	13 July	7 December
South Eastern	Tipperary ...	Nenagh	10 January	14 March	6 June	10 October
		Thurles	17 January	4 April	13 June	17 October
		Clonmel	14 February	2 May	11 July	14 November
		Tipperary	21 February	9 May	18 July	21 November
	Kilkenny ...	Kilkenny	24 January	11 April	20 June	24 October
	Carlow ...	Carlow	31 January	18 April	27 June	31 October
	Waterford ... (Co. Borough and County)	Waterford	28 February	23 May	25 July	28 November
		Dungarvan	7 March	30 May	28 July	5 December
	Laois ...	Portlaoise	7 February	25 April	4 July	7 November
Western	Galway ...	Galway	10 January	7 March	23 May	3 October
		Loughrea	—	4 April	6 June	—
		Clifden	—	5 April	—	10 October
	Mayo ...	Castlebar	7 February	18 April	4 July	7 November
		Westport	10 February	21 April	7 July	10 November
		Ballina	21 February	25 April	13 July	21 November
		Swinford	23 February	—	25 July	—

THE REGISTRY

Register A

Solicitor required for well established busy practice in Leinster, within radius of sixty miles from Dublin. Good salary with prospects of succession. Present owner will continue. Reply to—Box A239.

Registry B

Solicitor nine years in practice seeks assistantship or opening in firm. General practice, probate, conveyancing. Dublin firm preferred, but other offers considered.—Box No. B284.

Registry C

ENCLOSED RETREAT FOR SOLICITORS 1967

A week-end Retreat for solicitors will take place at the Jesuit House of Retreats, Milltown Park, Dublin, during week-end commencing Saturday the 25th February next. (Time for arrival 9 p.m.).

Please write for reservations to:—

JOHN B. McCANN,
Wakefield House, York Road,
Dun Laoghaire, Co. Dublin.

In the Goods of:

Lillie orse Lily Sheridan ob. 27th Nov. 1953.
Catherine Sheridan ob. 7th Oct. 1964.
Margaret Sheridan ob. 22nd July, 1966.
Frances Sheridan ob. 5th Dec. 1966.

all late of the Cottage, Tonagh, Mountnugent, Co. Cavan.

Will any Solicitor having knowledge of the existence of a Will of any of the above deceased please communicate with the undersigned.

LYNCH & NOONAN,
Solicitors,
Kells, Co. Meath.

REGISTRATION OF TITLE ACTS, 1891 and 1942

ISSUE OF NEW LAND CERTIFICATE

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

A new Certificate will be issued in each case, except a case in respect of which notification is received in

this Registry within 28 days from the publication of this notice, that the Certificate of Title is still in existence, and in the custody of some person other than the registered owner. Any such notification should state the grounds on which such Certificate is being held.

Dated the 1st day of February, 1967.

D. L. McALLISTER,
Registrar of Titles

Central Office,
Land Registry,
Chancery Street,
DUBLIN.

SCHEDULE

1. Registered Owner, **Michael O'Shea.** Folio number 7881. County Kerry. Lands of Erneen in the Barony of Glanarought, containing together 169a. Or. 35p. and one undivided one third of 228a. and undivided moiety of 196a. 3r. 4p. and undivided moiety of 25p.

2. Registered Owners, **Michael O'Shea** and **Mary O'Shea** (his wife). Folio number 7882. County Kerry. Lands of Erneen in the Barony of Glanarought, containing together 72a. 0r. 26p. and one undivided third of 228a. and undivided moiety of 196a. 3r. 4p. and undivided moiety of 25p.

OBITUARY

Mr. Francis A. Gibney, Solicitor, died on the 25th December, 1966 at Hazeldene Nursing Home, Sandymount, Dublin.

Mr. Gibney served his apprenticeship with the late Mr. John Q. Hanrahan, 42 St. Stephen's Green, Dublin, was admitted in Trinity Sittings 1937, and practised at 22, Merrion Square, Dublin.

Mr. J. Allan Osborne, Solicitor, died on the 16th January, 1967 at his residence, Knocknagreana, Milford, Co. Donegal.

Mr. Osborne was admitted a solicitor in Hilary Sittings 1894 and practised as senior partner in the firm of Messrs. Osborne & Co., Milford, Co. Donegal.

Mr. Bernard McDermott, Solicitor, died on the 17th January, 1967 at the Meath Hospital, Dublin.

Mr. McDermott served his apprenticeship with the late Mr. Vincent P. McMullin, Ballybofey, was admitted in Michaelmas Sittings 1946 and practised as partner in the firm of Messrs. V. P. McMullin & Son, at Ballybofey, Co. Donegal.

GAZETTE

GAZETTE

THE INCORPORATED LAW SOCIETY OF IRELAND

President
PATRICK O'DONNELL

Vice-Presidents
PATRICK NOONAN
AGUSTUS CULLEN

Secretary
ERIC A. PLUNKETT

CONTENTS

Meetings of the Council 104
Succession Act, 1965 105
Death Duties and Chain of Executorship 105
District Probate Register 106
The High Court 106
The Criminal Jurisdiction of the High Court 107
Appeals from Conviction on Indictment 107
Position Vacant on the Secretariat of UNESCO in Paris 108
Spanish and Irish Law 108
Fourth International Congress of Military Penal Law and Law of War 109
County Kerry Law Society 109
Accountant's Certificate 109
Commissioners for Oaths Prohibited from Acting where Interested 110
Cases of the Month 110
Correspondence 112
Irish Statutes and Statutory Instruments 1966 112

Vol. 60
No. 8
February
1967

NOTICE

Information regarding the weekend meeting in Cork, 19-21 May, is enclosed with this issue. Members wishing to participate are advised to make hotel reservations without any delay.

MEETINGS OF THE COUNCIL

5th January 1967: The President in the chair, also present Messrs Patrick Noonan, Francis J. Lanigan, John Carrigan, George G. Overend, George A. Nolan, Bruce St. J. Blake, Thomas Jackson, Robert McD. Taylor, Peter D. M. Prentice, James R. C. Green, Thomas V. O'Connor, James W. O'Donovan, Desmond Moran, Ralph J. Walker, Reginald J. Nolan, John Maher, John J. Nash, Thomas J. Fitzpatrick, Daniel J. O'Connor, Patrick C. Moore, Gerard M. Doyle, Rory O'Connor, Thomas A. O'Reilly, Peter E. O'Connell, Richard Knight, William A. Osborne, Thomas H. Bacon, Eunan McCarronn, Augustus Cullen, Timothy J. O'Keeffe.

The following was among the business transacted.

The Council passed the following resolution: The Council wish to place on record their appreciation of the services to the profession of Mr. Niall S. Gaffney who did not offer himself for re-election in November last. Mr. Gaffney was elected as an ordinary member of the Council in November 1946 and served continuously from that date until November 1966. He was Senior Vice-President of the Society in 1955-56 and served as President in 1956-57. During his long period on the Council Mr.

Gaffney rendered distinguished service for which he deserves the best thanks of the profession.

Court Procedure

A working party consisting of Messrs T. A. O'Reilly, Rory O'Connor, E. O. Knapp, Niall McLaughlin and James Fagan was appointed to consider the possibility of the adoption of a pre-trial procedure in the High Court and Circuit Court with allied questions including agreed medical reports.

Conflict of Interests

Members were consulted by an insurance company who forwarded their file with a High Court summons served on the insured arising out of an accident. The company instructed members to interview the insured and fully investigate the circumstances of the accident. At that stage the company had not decided whether or not to cover the insured under his policy in respect of the accident. Members subsequently interviewed the insured and in reply to questions they stated that they had been consulted by the insurance company with instructions to make the investigation and that in the event of cover being confirmed under the policy they would be acting for the defendant in the proceedings. They then took full particulars of the accident which disclosed certain matters which would be material to the company if any question of disclaiming cover under the policy arose. The insured subsequently wrote to members claiming that the statement which he had given to them was of a confidential nature and objected to its being submitted to the company on the ground that the company might use his statement to deprive him of cover under the policy. On a request from members for guidance the Council stated that it appeared from the facts stated that they were acting for the insurance company only. If they had made it absolutely clear to the insured that they acted on behalf of the company and were making investigations on behalf of the company as to whether or not the insured was covered by the policy they would be entitled to supply the information to the company. If they had any doubt that the insured appreciated his position the Council took the view that it would be improper for the members to disclose the contents of the statement to the company.

Lease, Varying Rent

By lease dated 4th September 1965 under the long resident equity under the Landlord and Tenant Acts a dwelling house demised to the lessee for 21 years subject to the yearly rent of £20 and if and when the lessee should cease to reside therein subject to the yearly sum of £224. The lease contained a covenant by the lessee not to assign or sub-let without the lessor's consent at a rent less than £240 per annum. The lessor submitted a bill of costs drawn under the rack rent scale on the annual rent of £240. The lessee submitted that the costs should be charged under the long lease scale on the yearly rent of £20. The Council on the report from a committee on the submission to arbitration stated that the cost should be charged on the rack rent scale on the rent of £240.

SUCCESSION ACT, 1965

The Succession Act, 1965 (Form of Administration Bond) (No. 2) Rules, 1967 (S.I. No. 18 of 1967), prescribe the form of administration bond to be used, as from the 1st day of April 1967, under section 34 of the Succession Act, 1965. The Instrument is available from the Government Publications Sale Office, G.P.O. Arcade, Dublin 1, price 9d.

DEATH DUTIES AND THE CHAIN OF EXECUTORSHIP SUCCESSION ACT 1965

Members of the Society acted for an English bank which was executor of the will of a deceased, who died domiciled in England in 1964 and whose only asset in the Republic of Ireland was a holding of 3½ per cent War Stock on the Bank of Ireland register. The deceased had been executrix during her lifetime of the will of a previous testator. The Estate Duty Office in the Republic forwarded a claim to the executors of the last deceased for an account for death duties arising on the death of the original testator, maintaining that the ultimate testator was personal representative by virtue of the chain of executorship of the original testator and was therefore primarily responsible accountable for all claims for duties arising on the first death. At the time of taking out the grant the bank had no knowledge whatever of the fact that their testator was executor of any other will or that any claims for duties were outstanding. No assets came to their hands from the first estate and in the circumstances they refused to admit or deal with the revenue claims. As they were a bank domiciled outside the Republic of Ireland they were in a position to ignore the claims. The position would have been different in the case of an executor domiciled within the Republic.

After some correspondence the Revenue Commissioners agreed with the view that the accountability of the last testator for duty in connection with the original death is limited by the amount of the assets of the latter which he has received *or might but for his own neglect or default have received.*

Under the law as it existed down to the 1st January 1967 when the law as to the chain of executorship was changed the following position arose. If A died on 6th July 1941, appointing B his executor, B died on 17th August 1956 appointing C his executor, C died on 17th September 1960, appointing D his executor and D died on 25th March 1966 appointing E his executor, then E became executor of A and indeed all the subsequent estates if the testators died in the order indicated and the executors took out grants in that order. If B had failed to account for death duties on property passing on A's death, the question of accountability for duties arose. The Estate Duty Office agree that the accountability of A is limited by the amount of the assets of the previous estates which he has received or might but for his own neglect or default have received. If B had got in all A's estate and had distributed the assets without regard to the outstanding estate duty claims, then presumably E would be absolved on the ground that it was not due to his neglect or default that assets of A had not come to his hands. A difficulty might well arise as to how the accounting party is to ascertain whether or not there are assets which should be got in. Presumably the onus of showing that E is guilty of neglect or default would rest on the Revenue Commissioners.

Section 19 of the Succession Act 1965 terminated representation by change of executorship. Section 10 (5) of that Act, however, should be borne in mind. Under this section it would appear that unadministered estate vested in a personal representative who has died, will vest in his own personal representative as trustee and the latter as such trustee may be liable under Section 8 (4) of the Finance Act 1894 to any claim for duty affecting that property. As in such a case he will have property vested in him to answer the claim. He will suffer no personal loss provided that he does not part with the legal estate in the property while any claims for duty are outstanding. This is a serious inconvenience and still leaves an acting executor under the risk of becoming liable for duties on property of which he is unaware and which may become vested in him automatically without his knowledge.

Apart from the above considerations a further liability for duty may affect a personal representative of a personal representative independently of any chain of executorship. A person who is made accountable for duty, whether as executor, trustee, beneficiary, alienee of a beneficiary or otherwise becomes a personal debtor to the State. If he dies without discharging the liability the debt with all the other debts of his own testator, falls to be discharged out of his assets by his executor or administrator in the proper order. There is some authority for the proposition that the State is not bound by the statutory notice to creditors as Section 49 of the Succession Act 1965 makes no reference to State claims. It may well therefore happen that the executor of a deceased administering the assets of the estate after the expiration of the statutory notice to creditors might find himself faced with a claim by the State for duties for which his own testator was accountable in his capacity as trustee of a previous testator.

DISTRICT PROBATE REGISTER

The District Probate Registries (Places and Districts) Order, 1966, S. 1, No. 274 of 1966 contains a list of fourteen District Probate Registries. The Registries were appointed for the purpose of Section 129 of the Succession Act, 1965, and are situated throughout the country. The Order takes effect from 1st January 1967.

THE HIGH COURT

As and from the week commencing 30th day of January 1967 the Master will sit on Tuesday, Thursday and Friday of each week instead of Monday, Wednesday and Thrusday as heretofore. Cases already adjourned to a Monday or a Wednesday subsequent to 30th January 1967 will be listed for hearing on the following Tuesday or Thursday respectively.

In future all Motions in Common Law, Wards of Court, Minors, Probate and Bankruptcy Matters ordinarily taken on Fridays will be taken on Mondays.

Any such Motions at present standing adjourned to or returnable for a Friday will be listed accordingly for hearing on that day, but in the event of no appearance in Court will be adjourned to the following Monday.

(Extract from The Legal Diary: Tuesday, 17th January 1967)

THE CRIMINAL JURISDICTION OF THE HIGH COURT

This subject has been taken as the matter for the Sixth Interim Report of the Committee on Court Practice and Procedure which is now available from the Government Publications Sale Office, G.P.O. Arcade, Dublin 1, or through any bookseller price 1/6. Amongst the proposals and recommendations are the abolition of the term Central Criminal Court on the basis that the High Court whether exercising its civil or criminal jurisdiction should be known simply as "The High Court". The Committee further considered that a dock is not an essential part of courtroom equipment for a criminal trial.

In regard to the transfer of criminal trials in indictment the Committee recommend :

(1) that the present position under Section 26 of the Courts (Supplemental Provisions) Act, 1961, as to transfer from one venue to another in the same circuit should continue;

(2) that otherwise transfers from venues outside Dublin should be to the Dublin Circuit Court, save in cases dealt with in recommendation (5);

(3) that the transfer of trials to the High Court be restricted to cases originally returned for trial in the Dublin Circuit Court save in cases dealt with in recommendation (5);

(4) that the present position under Section 6 of the Courts Act, 1964, as to giving seven days notice of the making of an application for a transfer should be extended to cover all applications for transfers under head (1), (2) and (3) above;

(5) that the trial judge, in a Circuit Court venue other than Dublin, should have a discretionary power to order a transfer to the High Court in the event of certain matters being raised at the trial in the form of a plea in bar or in some other preliminary point or even during the trial itself.

APPEALS FROM CONVICTION ON INDICTMENT

The Seventh Interim Report of the Committee on Court Practice and Procedure has been published by the Government Publications Sale Office, and is available from that office at the G.P.O. Arcade, Dublin 1, or through any bookseller, price 1/6. The recommendations of the Committee are as follows :

(1) that the functions of the Court of Criminal Appeal be transferred to the Supreme Court and that the Court of Criminal Appeal be abolished;

(2) that the Supreme Court be the only court of appeal from convictions on indictment;

(3) that on the determination of a criminal appeal each member of the Supreme Court be free to give a separate opinion except on sentence on which one opinion only should be pronounced;

(4) that every convicted person should have the right to appeal without the preliminary requirement of obtaining a certificate from the trial judge for leave to appeal to the court of appeal and that the present distinction between an application for leave to appeal and an appeal be abolished;

(5) that the present period of seven days for lodging a notice of appeal be enlarged to twenty-one days to conform with appeals in civil actions;

(6) that the present provision for having interlocutary matters heard by a single judge be continued and (in the event of the Court of Criminal Appeal being abolished) be applied in the Supreme Court;

(7) that (in the event of the above recommendations numbered (1) to (4) not being adopted) Section 32 of the Courts of Justice Act, 1924, be amended so as to confer jurisdiction on the Court of Criminal Appeal to admit an applicant to bail pending the determination of an application for leave to appeal;

(8) that in criminal trials on indictment a mechanical or electronic recording (in addition to the short hand note) be made of the judge's charge to the jury and that such recording be furnished to the appeal court, and that provision be made by statute or by rules of court that the trial judge be at liberty to furnish a separate report on what he considers to be errors in the transcript prepared by the official stenographer and that the appeal court be enabled to receive and use such report or a report from any other source.

The recommendations are those of the members of the Committee save for a reservation by Mr. E. C. Micks which is annexed to the report. The views of the Society were sought in the matter and are acknowledged as having been in the report. The case of the People v. O'Connell (1963) I.R. III was considered by the Committee as an example of the multiplicity of appeals and the case of the Attorney General v. Cashell (1928) 62 I.L.T.R. 31 was considered under the heading of the jurisdiction of the Court to grant bail under Section 32 of the Court of Justice Act, 1924.

POSITION VACANT ON THE SECRETARIAT OF UNESCO IN PARIS

A vacancy exists for the post of Assistant Chief of Social Security Division, Bureau of the Comptroller. The duties and responsibilities of the post consist in ensuring the co-ordination within the Division, of the work of the Rules and Procedure Unit; to deal with disputed claims and reference of claims to insurers under policies held by UNESCO for this purpose; to assist the Chief of Division in providing secretarial service to the UNESCO Staff Pension Committee. The post gives wide scope for initiative and personal judgment. The qualifications and experience required are a good legal training, with degree or equivalent qualification, and a thorough knowledge of the principles and practice of administration together with professional experience (international if possible) as an administrative official. The successful applicant will have ability to draft accurate and concise letters and reports and have a perfect knowledge of either French or English and a good writing knowledge of the other language. The gross salary will be equivalent to U.S. $11,270 which, after deduction for the UNESCO staff assessment, corresponds to a net salary equivalent to U.S. $8,889 per annum. The closing date for receipt of applications is 10th March 1967. Applications should be addressed to the Recruitment Division, Bureau of Personnel, UNESCO, Place de Fontenoy, Paris 7ème, France. Please quote : BOC-A

Applications for the post should be forwarded so as to be received at least ten days before the closing date, by The General Secretary, Irish National Commission for UNESCO, Department of Education, Marlborough Street, Dublin 1. Candidatures should be accompanied by detailed biographical information in either English or French, and names of person from whom reference may be obtained. The information should include date and place of birth, present nationality, university education, present position and positions over the past ten years at least, fields of special competence, publications, knowledge of languages, and, in particular, degree or ability to write, speak and understand English and French. UNESCO hopes that among the proposed candidates there will be women as well as men.

Each candidate should show clearly the date on which the candidate could begin work in UNESCO, for what length of appointment (two years or longer) he would be available, and if he would be able to obtain secondment or special leave of absence from his present employer.

SPANISH AND IRISH LAW

Memorandum in respect of the Laws of Spain and of the Republic of Ireland, in respect of a proposed contract of adoption in Spain, of a child born in Spain to an unmarried mother of Irish Nationality and where the proposed adoptors are a married couple of North American Nationality.

This Memorandum has been prepared by Mr. Thomas Maguire, solicitor of the firm of Michael Larkin and County Solicitors, 3 Eden Park, Sandycove, Co. Dublin.

(a) A child born in Spanish Territory to an unmarried mother of Irish Nationality is of Irish Nationality.

(b) The contract for the adoption of the said child when entered into in Spain will be governed by Spanish Law.

(c) In accordance with Irish Law, a person of Irish Nationality becomes of age at 21 years and thereafter has full juridical and contractual powers.

An unmarried mother of Irish Nationality who is of age, is likewise fully empowered to enter into a contract for the adoption of her infant provided however, that if she makes the contract in the Republic of Ireland that she does not receive or agree to receive, or pay, or give, or agree to pay or give any payment or other reward in consideration of the adoption.

(d) In the present case (as set out in paragraph [h] hereunder) the Irish Law does not in any way prohibit the proposed adoption, and it does not stipulate any requirements or conditions in respect of the age of the adoptors, or of their race, religion, or economic circumstances, or such matters.

(e) The proposed contract between the unmarried mother and the adoptors in this case will have the status of a private contract in so far as the Irish Courts may be concerned.

(f) The obligations and rights of the parties will be such as are contained in the contract.

The said contract will be enforced by the Irish Courts in so far as the contract coes not violate any provisions of The Adoption Act 1952 as amended, and in so far as the contract operates to the best interests of the child, in case the assistance of the Irish Courts should ever be sought to enforce any matters in respect of the contract.

(g) The Irish Courts will respect and enforce the regulations and conditions which Spanish Law may impose in respect of the said contract of adoption, provided however that such regulations and conditions do not violate any provisions

of the Adoption Act 1952 as amended, and are considered by the Irish Courts as being in the best interests of the child, and whose best interests are the paramount consideration with the Irish Courts.

(h) In respect of paragraph (e) hereof it is to be noted, that the conditions and such like matters therein mentioned, do not apply to the present proposed adoption contract, as the parties and child do not come within the terms and application of the Irish Adoption Acts (No. 25 of 1952 and No. 2 of 1964).

(i) The said Acts set out the conditions which entitle persons to enter into adoption contracts pursuant to the said Acts and likewise sets out the resultant rights and obligations. The said Acts however are not applicable to the parties or to the child in this present case as the said parties and child are not entitled to come within the terms of the said Acts.

FOURTH INTERNATIONAL CONGRESS OF MILITARY PENAL LAW AND LAW OF WAR

Madrid, from 9th to 12th May 1967

The International Society of Military Penal Law and Law of War will organise its Fourth International Congress in Madrid from 9th to 12th May 1967. This will be a continuation of the previous meetings which have taken place in Brussels, Florence and Strasbourg.

The general theme of the congress will be as follows: "The Military Offences: Charges and International Incidents".

Colonel Moran, Deputy Judge Advocate, has informed the Society that members who wish to participate at this congress will be welcome. Applications for registration may be obtained from the secretary, and should be sent to: Escuela de Estudios Turidicos, Tambre 35, Madrid 2, Spain; if possible before 1st April next. The application form should be accompanied by a registration fee of 150 pesetas (52/- approximately). It is understood that there will be 700 delegates at this congress.

COUNTY KERRY LAW SOCIETY

At the annual general meeting of the above society the following officers were elected for the forthcoming year: President, Gerald Baily; Vice-President, Donal Browne; Chairman, M. L. O'Connell; Treasurer and Secretary, Donal Kelliher; Committee, Messrs G. Baily, D. Browne, Creagh Downing, D. Courtney, W. A. Crowley, J. J. Grace, D. Kelliher, M. L. O'Connell, J. S. O'Reilly, J. J. O'Donnell, M. O'Sullivan and D. Twomey.

ACCOUNTANT'S CERTIFICATE

FORM A.

To(a)

Dear Sir(s),

Having made a general test examination of the books of account, bank passbooks, bank statements and deposit receipts kept in relation to your practice as solicitor(s) carried on at(b) ..... as produced to me/us for the accounting period beginning on the ..... day of ..... 19..... and ending on the ..... day of ..... 19..... I am/we are satisfied, subject to the matters set out on the back hereof

(1) that the said books appeared to be properly kept and written up in compliance with the Solicitors' Accounts Regulations now in operation.

(2) that as at the(c) ..... day of ..... 19... ...and the ..... day of ..... 19..... so far as appears from the said books, statements and deposit receipts the sum or the total of the sums at credit of the designated client account or accounts and designated trust bank account or accounts as defined in the said regulations kept by you was not less than the total of the sums required to be so kept in conformity with the provisions of the said regulations.

Dated this ..... day of ..... 19.....

Signature .....

Professional Qualification .....

Address .....

Notes

(a) State full name of the solicitor of firm of solicitors in respect of whom the certificate is issued.

(b) When the solicitor has two or more places of business he may at his option lodge a separate certificate for each office or one certificate to cover all. All addresses should be stated in the certificate, if only one certificate is issued.

(c) These may be any dates, selected by the accountant, during the accounting period covered by the certificate.

FORM B

To(a)

of(b)

Dear Sir(s),

I/we certify in compliance with paragraph 4 of the Solicitors' Accounts (Amendment) Regulations, 1966, I/we have examined the books, ac-

counts and documents kept in relation to your practice as solicitor(s) for the accounting period beginning on the ..... day of ..... 19..... and ending on the ..... day of ..... 19..... and that I am/we are satisfied, subject to the matters set out on the back hereof from such examination and from the information and explanations given to me/us that during the said accounting period you/your firm have complied with the provisions of the Solicitors' Accounts Regulations now in operation, and further that the sum or the total of the sums at credit of the designated client account or accounts and designated trust bank account or accounts as defined in the said regulations kept by you/your firm, was not less than the total of the sums required to be so kept in conformity with the provisions of the said regulations.

(a) State full name of the solicitor or firm of

Signature .....

Professional Qualification .....

Address .....

Notes

(a) State full name of the solicitor or firm of solicitors in respect of whom the certificate is issued.

(b) When the solicitor has two or more places of business he may at his option lodge a separate certificate for each office or one certificate to cover all. All addresses should be stated in the certificate, if only one certificate is issued.

COMMISSIONERS FOR OATHS PROHIBITED FROM ACTING WHERE INTERESTED

An article under the above heading appeared in the *Gazette* (Vol. 60, No. 5, Oct.-Nov. 1966, at p. 59) which has given rise to a considerable number of queries with the Society.

An affidavit is insufficient if sworn before the solicitor acting for the party on whose behalf the affidavit is to be used, or before any agent, correspondent, clerk or partner of such solicitor. Under the Commissioners of Oaths Act, 1889, S. 1 (3), a Commissioner shall not administer oaths in any proceedings in which he is acting as solicitor or solicitor's clerk to any of the patries. Proceeding in this context is not confined to contentious business see in re Bagley, (1911) 1 K.B. 317 (see Cordery on Solicitors fifth edition, page 132).

A view already expressed in the *Gazette* is further endorsed by Stringer on Oaths and Affirmations (second edition at pages 35 and 140).

In Madden on Registration of Deeds (second edition at pages 138-139) liabilities of attorneys for defects in affidavits of ownership are clearly set out. Furthermore the Rules of the Superior Courts (S.I. NO. 72 of 1962) contain provisions similar to those already set out. In Order 40, Rules 17 and 18. Order 40. Rule 17, states as follows:

"No affidavit shall be sufficient if sworn before the solicitor acting for the party on whose behalf the affidavit is to be used, or before any agent or a correspondent of such solicitor or before the party himself."

Rule 18 states as follows:

"Any affidavit which would be insufficient if sworn before the solicitor himself shall be insufficient if sworn before his clerk or partner."

CASES OF THE MONTH

Omission from Statement of Claim — Solicitor's Negligence

The plaintiff was involved in a motor accident and sustained multiple serious injuries for which she was treated by the first-named defendant, who is a surgeon, and in respect of which she retained the second-named defendant as her solicitor to prosecute a claim for damages for negligence in the High Court on her behalf. One of the injuries sustained by her was a fracture of the left calvicle. This injury was omitted by the first-named defendant from his medical reports furnished for the purpose of the proceedings, and, although the second-named defendant was aware of the injury, it was not specifically brought to the attention of counsel for the plaintiff until the morning of the hearing. The defendants had lodged in Court with their defence the sum of £1,255 and offered £1,500 in settlement which offer was refused. The case went to hearing on the injuries as pleaded and the jury awarded the plaintiff £1,000 for general damages and £235 for special damages making in all the sum of £1,235. The usual consequential order as to costs was made and the plaintiff became liable to pay a total sum of £597 for costs.

The plaintiff thereupon brought proceedings against both defendants, claiming damages in negligence and breach of contract alleging that if the fractured clavicle and the consequent pain and suffering had been pleaded and considered by the jury she would have been awarded a sum in excess of that lodged in Court and also claiming as damages the costs for which she had been liable.

Held by Henchy J. 1. That each defendant was in breach of his contract with the plaintiff; that the plaintiff suffered damage thereby, and that this damage was not too remote;

2. That if the fractured clavicle had been pleaded, the defendants would probably have lodged £1,500 with their defence and that if the case had proceeded to trial before the same jury, with the fracture of the clavicle taken into account as one of the items of injury, the jury would probably have awarded the plaintiff £1,335 damages;

3. That, accordingly, the plaintiff had lost an estimated sum of £100 through the failure of the defendants to perform their contracts with her and she was therefore entitled to a decree for £100 against them both.

[Margaret McGrath v. Patrick Kiely and Michael Powell (1965) I.R. p. 497].

Solicitors' Letters

Enquiries have been received by the Society from time to time from solicitors regarding the practice to be observed when handing over documents to a colleague pursuant to the authority of a client. The following appears to be the legal position in the matter:

On payment of a solicitor's bill a client is entitled to the possession of letters written to the solicitor by third parties, but not to copies of letters written by the solicitor to third parties unless they are paid for by the client (in re Thompson 1855, 20 Beav. 545).

A solicitor is not bound to deliver to his client, on the termination of his retainer, letters addressed to him by his client, nor copies in his letter book of his own letters to his client (in re Wheatcroft 1877, 6 Ch. D. 97).

In Mater v. Macalister (1952) N.Z.L.R. 257, the Supreme Court of New Zealand held that the defendant's firm of solicitors practising in New Zealand, were liable to surrender to the plaintiff carbon copies of letters which they had written to third parties on the plaintiff's behalf. In re Thompson was distinguished on the ground that, while a solicitor could not be expected to mutilate a letter book kept for his own protection by tearing out pages and delivering them to the client, he could and should hand over carbon copies kept in the case file.

Town Planning

A local planning authority served on the defendant an enforcement notice under Section 45 of the Town and Country Planning Act, 1962, requiring him to remove from his land caravans which had been placed thereon without the permission required by Part III of the Act. The defendant failed to comply with the notice within twenty-eight days of its taking effect and an information was preferred against him. The notice had been sent to the defendant by prepaid registered post and a certificate of delivery, purporting to be signed by him was produced at the hearing of the information before the Justices, but his signature was not identified, nor was the certificate of delivery put in documentary form to him when he gave evidence to see whether he identified or acknowledged it. The defendant denied that he, or any agent of his, had received the notice and it did not appear that he was cross-examined or challenged on that assertion. The justices were of opinion that since the notice was posted by prepaid A.R. registered post properly addressed to the defendant as evidenced by the Post Office delivery receipt, service of it was effected in accordance with Section 214 (i) (c) of the 1962 Act and they convicted the defendant. The defendant appealed.

James J., said that since the requirements of Section 214 (i) (c) of the Town and Country Planning Act, 1962, had been complied with, the enforcement notice had been duly served and the defendant rightly convicted. An enforcement notice was not notice of a forthcoming event, such as the hearing of the appeal or an intended prosecution under the Road Traffic Acts, and proof of its receipt was not necessary to support proceedings for non-compliance, provided that a reasonable time was given between the date of its posting and the date by which compliance with its terms was required.

Lord Parker, C.J., and Marshall J., agreed. Appeal dismissed. [Moody v. Godstone Rural District Council, *Solicitors' Journal*, Friday 9th September 1966 (Vol. 110) p. 687, the case coming before the Queen's Bench Division on 5th May 1966 and a case stated by the Surrey Justices Sitting at Dorking]

Safe System of Work

The plaintiff, a dock worker, was employed in stacking some bundles of plywood. The system adopted by the gang of which he was a member was to build a stock of three bundles horizontally, and then lean further bundles against the stack. Some of the stacks slipped and he was injured. He claimed damages for negligence from his employers, alleging that the system of working was unsafe.

It was held that the action failed. Although it might have been possible to have built the stack higher, and so have provided a firmer support for the other bundles, the gang thought it was unnecessary to do so. It was therefore not a negligent act on their part, and was shown that it had been the cause of the collapse. [Kelly v. Manchester Ship Channal, I.L.T.R. & S.J. (Vol. C) p. 308].

Time for Serving a Writ

Cases where a plaintiff is claiming damages for personal injuries ought to be brought on for trial as soon as is reasonably possible, while the facts are fresh in peoples minds. Consequently if a plaintiff delays, where a limitation period is running, until the very last minute to issue his writ, he has only himself to thank if by some mistake the writ is not effectively served in time. If the delay, or the mistake which makes it irreparable, is the fault of a solicitor, he will bear the consequences of that. Where an application to extend the validity of a writ is made in such circumstances, it will be for the plaintiff to show sufficient reason for the extension to be granted. The fact that a lot of time was actually spent in obtaining legal aid is unlikely to evade the plaintiff. Baker v. Bowketts Ltd., case, which was reported before the Court of Appeal on 16th March, illustrates this well [I.L.T.R. and S.J. (Vol. C) p. 307]

Negligence: Injury to Employee

An employer has, both by the system of working and by his servants in the course of working, to take reasonable care to protect each of them from unnecessary danger. A case, which came before the Court of Appeal on 16th December 1965, concerned itself with a stevedore who was injured whilst unloading some tea-chests from a barge. Some of them overhung the hold. He walked backwards, stepped on one of the overhanging chests and fell into the hold. He claimed damages against his employers on the grounds that they were liable for the injuries which he had suffered because the other members of the gang working with him had not warned him of the overhanging.

It was held (confirming the decision of Thompson J. [1965] 2 Lloyd's Rep. 304) that the employers were not liable, for the other members of the gang were entitled to assume that he had seen the overhanging and that he would not walk backwards. They were accordingly under no duty to warn him of the danger. [Richards v. Brooks, I.L.T.R. and S.J. (Vol. C)–Journal, p. 317].

CORRESPONDENCE

Sealing by Council of Releases of Mortgages

Questions were recently raised at a meeting of the Council about delays experienced in obtaining releases of Local Authority mortgages. The Secretary took up the matter with the appropriate authorities and the solicitor for the Dublin Co. Council replied to the Secretary's enquiry as follows :

January 1967

Dear Mr. Plunkett,

Further to my letter of 22nd ultimo, on the same date I wrote to the Secretary of the Dublin County Council advising him of the complaint which had been made to the Council of the Incorporated Law Society and reminding him that over the years I had impressed upon him the desirability of overcoming the statutory difficulties which tend to delay the sealing of deeds and documents by the Council. The Statutes require that the seal be affixed in the presence of three persons. Two are wholetime officials and no difficulty arises in their regard but the third is an elected member of the Council and such member is not always available. Moreover, there are an immense number of documents to be sealed and this too makes for delay. Nevertheless, I requested the Secretary of the County Council to empower me to give the Council of the Incorporated Law Society an assurance that members of the Society would be given no further cause for complaint.

I have today received a letter from the Secretary referring to my communication and stating "arrangements have been made for the expeditious sealing of documents as requested".

I may say that I personally have always appreciated the importance of this matter to practitioners and will at all times do everything in my power to expedite their business in this connection.

Yours sincerely,

MATTHEW PURCELL.
County Solicitor.

IRISH STATUTES 1966

1. Electoral (Amendment) Act, 1966 [18 January 1966]
2. Health and Mental Treatment (Amendment) Act, 1966 [18 January 1966]
3. Tourist Traffic Act, 1966 [8 February 1966]
4. Air Companies Act, 1966 [16 February 1966]
5. Coinage (Amendment) Act, 1966 [28 February 1966]
6. Diseases of Animals Act, 1966 [1 March 1966]
7. Broadcasting Authority (Amendment) Act, 1966 [8 March 1966]
8. National Bank Transfer Act, 1966 [9 March 1966]
9. Patents (Amendment) Act, 1966 [15 March 1966]
10. Houses of the Oireachtas (Laying of Documents) Act, 1966 [15 March 1966]
11. Restrictive Trade Practices (Intoxicating Liquor and Non-Alcoholic Beverages) (Confirmation of Order) Act, 1966 [31 May 1966]
12. Industrial Grants (Amendment) Act, 1966 [1 June 1966]
13. Electricity Supply (Special Provisions) Act, 1966 [30 June 1966]

14. Tea (Purchase and Importation) (Amendment) Act, 1966 [9 June 1966]
15. Local Government (Reduction of Valuation) Act, 1966 [5 July 1966]
16. Social Welfare (Occupational Injuries) Act, 1966 [6 July 1966]
17. Finance Act, 1966 [7 July 1966]
18. Ministers and Secretaries (Amendment) Act, 1966 [12 July 1966]
19. Credit Union Act, 1966 [12 July 1966]
20. Merchant Shipping Act, 1966 [12 July 1966]
21. Housing Act, 1966 [12 July 1966]
22. Finance (No. 2) Act, 1966 [13 July 1966]
23. Imports (Miscellaneous Provisions) Act, 1966 [13 July 1966]
24. Social Welfare (Miscellaneous Provisions) Act, 1966 [19 July 1966]
25. Funds of Suitors Act, 1966 [19 July 1966]
26. Transport Act, 1966 [19 July 1966]
27. Exchange (Continuance) Act, 1966 [1 November 1966]
28. Local Elections Act, 1966 [15 November 1966]
29. Appropriation Act, 1966 [28 December 1966]

PRIVATE ACTS 1966

1. Local Government Provisional Order (Waterford County Borough Extension of Boundaries) Confirmation Act, 1966 [23 March 1966]
2. The Institute of Charterd Accoutants in Ireland (Charter Amendment) Act, 1966 [22 June 1966]
3. The Huguenot Cemetery Dublin (Peter Street) Act, 1966 [22 June 1966]

INDEX OF STATUTORY INSTRUMENTS
Published since August 1966

LABOUR COURT RECOMMENDATIONS

2088 C.I.E.—Claim by electricians for one day's pay.
2089 Condensed Milk Company Ltd.—Remuneration of office staff.
2090 Irish Tapestry Company (Drogheda Ltd.)—Dismissal of two workers.
2091 Tullamore U.D.C.—Wages of town-water inspector and waterworks caretaker.
1092 Engineering Services Ltd. and R. Pulvertast and Sons (1942) Ltd.—Bonus payment for semi-skilled engineering workers.
2093 Cement Ltd.—Re-instatement of a fitter.
2096 Dublin Port—Remuneration of fork lift truck driver.
2097 Kildare County Council—Conditions of employment of sewerage and water caretakers and overseers.
2100 Lipton Ltd.—Remuneration of supermarket staff.
2101 Dublin County Council—Service pay.
2102 All County Councils—Travelling allowance for road overseers.
2103 Drinagh Co-operative Society Ltd.—Working hours of distributive workers.
2106 New Ireland Assurance Company Ltd.—Remuneration of agents.
2108 Local Authorities—National wage scale for engineers office assistants.
2109 University College Dublin—Five day week and reduced working hours.
2110 Collier Brothers Ltd., Bunclody—Remuneration of tradesmen, apprentices and general workers.
2111 Smiths Garage Ltd., Cavan—Claim for increased wage rates for garage workers.
2112 C.I.E.—Salaries of road passenger inspectors.
2114 County Donegal Railways (Joint Committee)—Salaries of clerical staff.
2115 Lincoln and Nolan Ltd.—Remuneration of clerical staff.
2116 Goulding Fertilizers Ltd., Waterford—Four shift working on granulating plant.
2117 Cork Health Authority—Claim of hospital stokers.
2113 Cork Health Authority—Remuneration of part-time assistance officers.
2119 Cunniffe Brothers Ltd., Kilkelly, Co. Mayo—Dismissal of union members and unsatisfactory conditions of work.
2121 Irish Sugar Company Ltd.—Remuneration of clerical staff.
2120 Cork Harbour Commissioners—Remuneration of certain floating plant engineers.

AGRICULTURE, LANDS AND FISHERIES

Subject Matter and Reference Number

Brucellosis in cattle—Counties Cavan, Leitrim, Monaghan and Sligo declared to be clearance areas after 1st December 1966—249/1966.
Brucellosis in cattle—Minister may specify conditions in clearance area—250/1966.
Homegrown wheat—National percentage for cereal year 1967-68 fixed at 75 per cent—272/1966.
Ink used for stamping horseflesh for export need not be green—17/1966.
Warble Fly Order 1967—6/1967.

COMMODITIES, GOODS AND SERIVCES

Subject Matter and Reference Number

Children's nightdresses may not be manufactured or sold unless they comply with the prescribed flammability requirements—4/1967.
Electricity Prices Advisory Body established—232/1966.
Flour and Bread Prices Advisory Body established—224/1966.
Flour and Wheatmeal—Maximum Prices at which the holder of a milling licence may sell—2/1967.
Flour—Maximum Prices fixed at levels which obtained before 1st September 1966—264/1966.
Gilbeys Dry Gin and Smirnoff Vodka—Price increased at 2d. per glass after 23rd November 1966—255/1966.
Manufactured Goods—Conditions prescribed which imports must satisfy in order to qualify as of United Kingdom or Northern Ireland origin—202/1966.
Prices Stabilization Order 1965 continued for six months from 7th October 1966—223/1966.
Straight-Run Flour (prescribed percentage of 72 per cent of Wheat) Regulations, 1967—3/1967.

CONTROL OF IMPORTS AND EXPORTS

Subject Matter and Reference Number

Cement and Watches—Export Control removed from 2nd January 1967—281/1966.
Cycle Tyres—Imports limited to 200 articles to 31st January 1968—290/1966.
Electric Filament Lamps—Imports limited to 121,000 articles to 30th November 1967—245/1966.
Boots and Shoes—Imports limited to 82,500 articles to 30th June 1967—263/1966.

COUNTY AND TOWN MANAGEMENT

Subject Matter and Reference Number

Ballymartin and Castletown, Co. Limerick—Boundaries altered—238/1966.

Local Electoral Boundaries Order, 1967.
Dundalk—23/1967.
Galway—21/1967.
Limerick—11/1967.
Sligo—20/1967.
Waterford City—12/1967.

Housing Act, 1966 (Acquisition of Land) Regulations, 1966—278/1966. (Prescribed forms to be used where Local Authority propose to acquire land compulsorily.)

Housing Act, 1966, in force from 31st December 1966—277//1966.

Housing (Gaeltacht) General Regulations, 1966—227/1966.

Local Officers — Irish Language — Regulations, 1966—221//1966.

CUSTOMS AND EXCISE—EMERGENCY AND OTHER DUTIES

Subject Matter and Reference Number

Iron and Steel Bars, Sections, Sheets and Plates—Customs duty suspended until 30th June 1967—280/1966.

EMPLOYMENT REGULATIONS AND CONDITIONS OF EMPLOYMENT

Subject Matter and Reference Number

Boot and Shoe Repairing Joint Labour Committee—New minimum rates of pay and conditions of employment after 10th October 1966—219/1966.

Creameries Joint Labour Committee—New minimum rates of remuneration and statutory conditions of employment after 30th January 1967—10/1967.

Messengers (Limerick City) Joint Labour Committee—Minimum rates of remuneration and statutory conditions of employment fixed after 5th December 1966

Women's Clothing and Millinery Joint Labour Committee—Minimum rates of remuneration and statutory conditions of employment fixed after 10th October 1966—220/1966.

Tobacco Joint Labour Committee—New minimum rates of pay and statutory conditions of employment from 7th November 1966—240/1966.

FINANCE AND CENTRAL GOVERNMENT

Subject Matter and Reference Number

Death Duties—7½ per cent National Loan, 1981-1986 may be accepted in payment of death duties—5/1967.

Exchange Control Act—Burma excluded from sterling area but Guyana, Botswana and Lesotho are included—American Express Co. and Investment Bank of Ireland Ltd. added to list of authorised dealers in foreign exchange—252/1966.

Exchange Control (No. 2) Regulations, 1966, extended to Customs-free Airport in Shannon—279/1966.

Gaeltacht Department—Transfer of Ministerial Functions—made on 29th November 1966.

Labour Department (Transfer of Departmental Administration and Ministeral Functions) (No. 2) Order, 1966—214/1966.

Land Bond—7½ per cent fixed as rate of interest on bonds payable in 1967—28/1967.

National Bonds, 1966-67 (Draws for Redemption) (Amendment) Regulations, 1966—282/1966.

5½ per cent National Loan, 1966 (Conversion) Regulations, 1966—248/1966.

Returning Officers'—Revised rates for fees and disbursements in respect of Dail By-Election—262/1966.

State Guarantee Act, 1954—Church of Ireland training college may receive guarantee up to £535,000—246/1966.

Stock Transfer Act, 1966—Belfast, Greenock, London, Midlands and Western, Northern, Scottish and Provincial Brokers Stock Exchange to be recognised Stock Exchanges—251/1966.

Superannuation of Civil Servants—Service in the Central Bank, Coras Trachtala, The Economic Research Institute, Gaeltarra Eireann, and The Institute for Industrial Research and Standards, declared to be approved services—231/1966.

Trustee Savings Banks—Interests payable by Minister for Finance on monies deposited with him by the Trustee Savings Bank increased to four and one-tenth per cent from 21st December 1966—283/1966.

Religious newspapers and periodicals exempted from wholesale tax after 1st January 1967—285//1966.

Wireless sets sold to societies operating for the welfare of the blind exempted from wholesale tax—271/1966.

HARBOURS AND HYDRO-ELECTRIC WORKS

Subject Matter and Reference Number

Dublin Harbour Works Order, 1966—242/1966.

New Ross Harbour, Co. Wexford—Rates for containers and goods in containers fixed after 4th January 1967—270/1966.

HEALTH

Subject Matter and Reference Number

Disabled persons maximum maintenance allowance increased to £2-7-6 week after 1st November 1966—244/1966.

Flouridation of Water Supply Amendment Regulations, 1966.
Dublin—268/1966.
Kilkenny—269/1966.

Infectious Diseases—Maintenance allowances increased after 1st November 1966—243//1966.

Medical preparations—Numerous further medical substances controlled after 2nd January 1967—261/1966.

JUSTICE, EXTERNAL AFFAIRS AND DEFENCE

Subject Matter and Reference Number

Administration Bonds—Forms issued under Succession Act, 1965—1/1967, 18//1967.

Banagher and Eyrecourt, Co. Galway—Changes in District Court Sittings—after 1st January 1967—254/1966.

Clane District Court Area, Co. Kildare, abolished and distributed between Naas and Kilcock District Court Areas—13/1967.

District Court Summons Servers—Fee of 6/- payable in respect of each service after 1st October 1966—211//1966.

Garda Siochana—Increased rates of pay for ordinary men and women members from 1st June 1966—239/1966.

Garda Siochana Pensions—Pensions Order in relation to abatement of pensions amended—236/1966.

Garda Siochana—Changes in educational subjects in the examinations for promotion to the rank of sergeant and inspector—222/1966.

Garda Siochana—Compulsory retiring age may be extended in certain circumstances—275/1966.

Land Registration Fees (No. 2) Order, 1966, in force from 1st January 1967—276/1966.

District Probate Registries—Places and districts stipulated after 1st January 1967—274/1966.

Land Registration Rules 1966 in force from 1st January 1967—266/1966.

Land Act 1965 (Section 6)—New scheme for payment by the Land Commission of a life annuity—27/1967.
Land Act, 1965 (Section 5)—Regulations under which the Land Commission may make loans to progressive farmers in congested areas to enable them to purchase alternative holdings of their choice—26/1967.
Solicitors' Act, 1954—Apprenticeship and Education (Preliminary Examination Amendment) Regulations, 1966—230/1966.
Solicitors' Accounts (Aemndment No. 2) Regulations, 1966, prescribing Accountants' Certificates after 10th February 1967—193/1966.

MISCELLANEOUS

Subject Matter and Reference Number

Diseases of Animals Act, 1966—Minister may make orders in relation to dogs—228/1966.
Dogs must wear collars bearing owner's name in public places after 1st January 1967—229/1966.
Hares—Killing or taking prohibited in Co. Cork save for coursing or beagling—226/1966.
Periodical Lotteries Regulations extended to bingo—32/1966.
Street Trading Regulations, 1966
Clonmel, Co. Tipperary—284/1966.
Listowel, Co. Kerry—288//1966.
Vocational Education Act, 1930 (Temporary Grants Under Section 109) Regulations 1939 (Amendment) Regulations, 1966—287/1966.

SOCIAL WELFARE

Subject Matter and Reference Number

Claims and Payments (Amendment) Regulations, 1966—289/1966.
Overlapping Benefits (Amendment) Regulations, 1966—247/1966.
Social Welfare (Miscellaneous Provisions) Act, 1966—Sections 5, 6, 7, 11 and 12 in operation from 31st October 1966—225/1966.
Unemployment Benefit (Contributions and Additional Condition) Regulations, 1966—241/1966.
Widows' and Orphans' (Contributory Pensions) Regulations, 1966—235/1966.
Widows' and Orphans' (Contributory Pensions)—Transitional Amendment Regulations, 1966—234/1966.

TRANSPORT AND TRAFFIC

Subject Matter and Reference Number

Air Navigation—Regulations for personnel licencing modified after 1st September 1966—165/1966.
Air Navigation—Rules of the Air amended after 12th January 1967—273/1966.
Coras Iompair Eireann—Superannuation scheme of members amended by new scheme—286/1966.
Coras Iompair Eireann—Amended superannuation scheme for regular wages staff confirmed and in operation from 19th January 1967—7/1967.
Cork City Traffic (One-way Streets) Temporary Rules in force from 2nd February 1967—15/1967.
Great Northern Railway Company (Ireland)—Amended scheme in respect of pension fund for wages staff confirmed and in operation from 19th January 1967—9/1967.
Great Southern Railways Company—Amended superannuation scheme for regular wages staff confirmed and in operation from 19th January 1967—8//1967.
Loughrea (Co. Galway) Traffic and Parking By-Laws—16/1967.
Merchant Shipping—Increased fees payable for various services in relation to shipping after 29th December 1966—265/1966.
Road Traffic Act, 1961—Particulars of Orders, Regulations, etc., made under the Act as at 15th October 1966—Additional signs provided—233/1966.
Shannon Airport—Control of exportation of aircraft and aircraft parts abroad—25/1967.

SOCIETY OF YOUNG SOLICITORS

A large attendance at Buswells Hotel, Molesworth Street, Dublin, on the 26th of January heard His Honour Judge Conroy deliver a paper on the Rent Act. Judge Conroy dealt at length with the changes which will be made to the existing Rent Acts by the new Rent Restrictions Bill. However, he contemplates that a great deal of change will be made to the Bill as introduced when it passes its final stages.

The next lecture was held, as usual, at Buswells Hotel, Molesworth Street, Dublin, on the 16th of February when the subject was on Estate Duty Practice.

The following lecture will be held on 23rd March and the subject will be Costs Drawing, No. 1. This is part of a series of lectures on Cost Drawing which will be delivered to the Society.

Members of the profession have been circulated with details of the forthcoming Joint Seminar Weekend to be held on the 8th and 9th April in Galway. Applications for registration should be sent in immediately as it is expected that there will be a very heavy booking for this weekend.

Details of the Society's publications have also been circulated to all members of the profession and should be retained for future reference.

REGISTRATION OF TITLE ACTS, 1891 and 1942

Issue of New Land Certificate

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

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

Dated the 27th day of February 1967.

D. L. McALLISTER
Registrar of Titles.

Central Office, Land Registry, Chancery Street, Dublin.

SCHEDULE

1. Registered Owner, **Rose Anne Griffin.** Folio number 3215. County Louth. Lands of Collon in the Barony of Ferrard containing 3a. 2r. 19p.

2. Registered Owner **Myles McCabe.** Folio number 15121. County Kilkenny. Lands of Warrenstown in the Barony of Galmoy containing 2a. 1r. 33p.

THE REGISTRY

Register C

In the Goods of **Annie C. Whooley,** late of 11 Lower Friars Walk, Cork, Spinster, Deceased.
Will any solicitor having knowledge as to the existence or otherwise of any Will made by the above-named deceased, who died on the 6th November 1966, please communicate with the undersigned.

DANIEL G. McCARTHY,
Solicitor, Skibbereen, Co. Cork.

GAZETTE

THE INCORPORATED LAW SOCIETY OF IRELAND

President
PATRICK O'DONNELL

Vice-Presidents
PATRICK NOONAN
AGUSTUS CULLEN

Secretary
ERIC A. PLUNKETT

CONTENTS

Meetings of the Council 117
Chain of Executorship 118
The Future Pattern of the Profession 119
Circuit Court Rules, 1967 123
A Major or Minor Matter 123
Professional Negligence—Solicitors ... 123
Words of the Wise 123
Assistant Required 123
Liability of Apprentices for Social Welfare Contributions 124
Examination Results 124
American Law 125
Cases of the Month 126
Correspondence 127
The Registry 127
Obituaries 128

Vol.
No. 9
March 1967

MEETINGS OF THE COUNCIL

February 2nd, 1967: The President in the chair, also present Messrs Patrick Noonan, Francis J. Lanigan, James R. C. Green, Demond Moran, Desmond J. Collins, John J. Nash, Joseph P. Black, Peter D. M. Prentice, Gerard M. Doyle, Daniel O'Connor, William A. Osborne, Peter E. O'Connell, John Carrigan, Thomas Jackson, George G. Overend, Bruce Blake, Robert McD. Taylor, James W. O'Donovan, Ralph J. Walker, Thomas A. O'Reilly, Reginald J. Nolan, John Maher, Gerald Moloney, Patrick C. Moore, Eunan McCarron.

Conveyancing, Land Registry Map

The purchaser in requisitions on title required a Land Registry map as evidence of identity. The vendor refused to supply the map on the grounds that the identity was adequately established by the land certificate and that the purchaser could inspect the map in the Land Registry. The conditions of sale provided that the only document of title to be furnished was a certificated copy of the folio. The conditions further provided that the purchaser should not require any evidence of identity beyond the muniments of title. The matter was submitted to the Council as arbitrators for a ruling. The Council decided that the vendor was not bound to furnish a copy of the map and that it was open to the purchaser himself to obtain a copy from the Land Registry.

Lessee's Solicitor doing Lessor's Solicitor's work

An agreement for a lease provided that the lease and counterpart were to be prepared, stamped and registered by the lessor's solicitor at the expense of the lessee. The lease was granted in consideration of a substantial fine and a rent. The lease and counterpart were in fact prepared by the lessee's solicitor and approved by the lessor's solicitor but there was no formal agreement as to the reversal of the work. Members referred to Opinion C.52 of the Council and ask for a ruling as to the amount of the costs and to whom they should be paid.

The Council decided that:

(i) The decision in Clarke v Simms-Ilet would have applied had it not been displaced by the stipulation in the contract as to payment by the lessee of the lessors costs.

(ii) If the lessor did not carry out all the work specified in the S.R.G.O. his costs would be chargeable under Schedule 2.

(iii) In order to bring Council Opinion C.52 into operation it must be shown that there was agreement between the solicitors that the usual work would be reversed and likewise the costs.

March 2nd: The President in the chair, also present, Messrs George A. Nolan, Eunan McCarron, John Carrigan, John Maher, Francis Armstrong, John C. O'Carroll, Thomas H. Bacon, Brendan A. McGrath, Desmond Moran, Ralph J. Walker, Peter D. M. Prentice, T. E. O'Donnell, Desmond J. Collins, John J. Nash, Daniel J. O'Connor, Robert McD Taylor, Geralld Y. Goldberg, John B. Jermyn, James W. O'Donovan, T. V. O'Connor, T. J. C. O'Keeffe, William A. Osborne, Thomas Jackson, Bruce St. J. Blake, George G. Overend, Francis J. Lanigan, Patrick O'Donnell, P. C. Moore, Gerard M. Doyle, Reginald J. Nolan, Peter E. O'Connell, James R. C. Green, Gerald J. Moloney, Rory O'Connor.

The following was among the business transacted:

Solicitors' Accounts Regulations 1967

The Council made the above regulations consolidating all the Solicitors' Accounts Regulations to date including the accountants' certificate provisions. All the previous regulations have been revoked. A copy of the new regulations is enclosed with this issue of the GAZETTE. To avoid confusion members should discard the Solicitors' Accounts (Amendment No. 2) Regulations 1966 (S.I. No. 193 of 1966) enclosed with the last issue of the GAZETTE.

Debt Collecting

The Council have approved a new commission scale in debt collecting matters in substitution of existing scale. A circular will be issued to members in the near future.

WEEK-END MEETING

Members wishing to attend the week-end meeting in Cork from 19th to 21st May are advised to book their accommodation immediately.

CHAIN OF EXECUTORSHIP

Death Duties

An article in the last number of the GAZETTE pointed out that while the law as to the chain of executorship was changed by Section 19 of the Succession Act 1965, Section 10 (5) of that Act provides that unadministered estate vested in a personal representative who has died will vest in his own personal representative as trustee and that the latter as such trustee will be liable under Section 8 (4) of the Finance Act 1894 to any claim for duty affecting that property. The following correspondence has passed between the Society and the Assistant Secretary, Estate Duty Branch, Revenue Commissioners:

31*st January* 1967, *Society to Revenue Commissioners* –

Liability for Duty

Thank you for your letter of January 10th. There appears to be two areas of risk where an executor takes out a grant to his testator without ascertaining whether the latter was during his lifetime executor or trustee.

(a) The last executor may be accountable for duty on the original estate if he neglects or fails to get in any outstanding assets on which duty has not been paid.

(b) Any unpaid duty on the original estate is a debt due by the executor and his executor should provide for it out of the assets which he is administering.

It would obviously be impracticable and inconvenient for an executor before deciding to act in that capacity to make enquiries as to any es-

tates of which his deceased was executor or trustee and the position of the administration of these estates, if any. Is it likely that the Revenue Commissioners would seek to hold the last executor responsible for duties payable out of previous estates of which he knows nothing at the time of taking out the grant to his testator? I should be obliged if you will summarise the statutory provisions under which estate, legacy and succession duty become barred by lapse of time, because this is a material consideration in connection with the present problem. Will the Revenue Commissioners be barred if they fail to put in a claim for outstanding death duties in reply to a statutory notice to creditors on behalf of the executor of testator B, the death duties being chargeable on the estate of testator A of whom B was executor?

15*th February* 1967, *Revenue Commissioners to Society*:

Reference to your letter of 31st January.

I think it reasonable to assume that the papers of a deceased executor would contain inditia which would alert his own executor to the existence of the previous estate. The latter would naturally have examined these for the purpose of the extraction of his own grant. It seems to me improbable that he would be entirely unaware of the position.

In a case in which section 8 (3) of the Finance Act 1894, might operate so that liability would be limited to assets which the executor by chain of representation has received or might "but for his own neglect or default" have received, if there had been assets which he might have got into his own possession it would be a question of fact whether his failure to do so was a consequence of his own neglect or default. If he had been, through no fault of his own, genuinely unaware of the matter, and was no longer in a position to get in the assets it appears to me that he could rely on the section.

Debts due to the State are not bound by Lord St. Leonard's Act and the Revenue Commissioners are accordingly not affected by the publication of a statutory notice to creditors. You may recall that, in May 1960, this was the subject of a discussion between your Society and the Revenue.

The following are the provisions which put a time limit on claims for death duties:—

Legacy Duty and Succession Duty

Section 12 of the Customs and Inland Revenue Act, 1889 protects purchasers and mortgagors against claims for Succession Duty after the expiration of six years from the date of notice to the Commissioners of the death which lets in the succession or, in the absence of such notice, after the expiration of twelve years from such death.

Section 12 of that Act bars a claim for duty under a document (other than a testamentary document) after the lapse of six years from date of notice to the Commissioners of the fact which gives rise to a claim for duty under the document if an attested copy of the document has been deposited with the Commissioners.

Section 14 of the same Act relates to claims under a testamentary document admitted to probate or under letters of administration. Under this section the limit is also six years from the date of the settlement of the account in respect of which duty is payable, provided the account is a full and true one and is correct to the best of the knowledge and belief of the accountable party.

Estate Duty

The above provisions are applied to Estate Duty by Section 8 (2) of the Finance Act, 1894.

Generally

An accountable party is also, of course, protected in respect of specified property by the issue of a certificate of discharge in respect of that property. The relevant sections are Section 12 of the Customs and Inland Revenue Act 1880 (as to Legacy Duty and Succession Duty) and Section 11 of the Finance Act, 1894 (as to Estate Duty).

Correction

In the article of similar title in the last number of the GAZETTE p. 106, col 1, line 22 for A read **E.**

THE FUTURE PATTERN OF THE PROFESSION

Part I

By SIR THOMAS LUND, C.B.E.
(Secretary to the Law Society, England)

Introduction

Gazing into the crystal ball is not to be recommended except when the vision is of the so far distant future that the soothsayer can safely rely upon having passed on by the time that the truth is revealed. Nevertheless, the writer proposes

in this paper to forecast both the probably and possible shape of events as they may develop over the next forty to fifty years. Except where otherwise indicated, the pattern outlines will be that of the legal profession in England, and the developments forecast are an amalgam of what he thinks will happen, what may happen and, perhaps, even what should happen, however unlikely this day seem at the present time.

The extent to which civilization has advanced or regressed throughout the world today may be gauged in each country by the respect paid to the law and its administration. The legal profession, which is largely responsible for that administration, must therefore continue to command public respect and to that end must be ready, at all times, to meet the public's requirements for a legal service.

These requirements change and will continue to change as social and economic changes take place, new scientific discoveries are made and world conditions alter, and it is therefore incumbent upon each successive generation of lawyers from time to time to take stock of its position and make sure that the services which it offers are those that are required and that the next generation of lawyers is trained in the appropriate fields of legal activity.

The trends from which one may deduce what the future pattern of the profession is likely to be derive from a wide variety of factors, some of which influence the nature of the legal business to be done, others the volume of that business and yet others the deployment of lawyers upon it and the organisation of their firms.

Some Factors

The redistribution of wealth, the improved standards of general education and ever-growing multiplicity and complexity of the laws, coupled with their incursion into the lives of the ordinary man and woman, have created over comparatively recent years a very substantial new body of clients, actual or potential.

The business of the legal profession is as to about nine-tenths concerned with matters affecting the daily life of the community outside the courts, and the remaining one-tenth which attracts the great public attention, is litigation and criminal business.

The comparatively few great landowners of the early days of the century have been replaced by countless thousands of home-owners, following upon large estate development schemes and the erection of hugh blocks of flats. The steep rise in and the spread of taxation have led to the virtual elimination of strict settlements, once so popular, and to a decrease in trust business, but at the same time they have imposed the need to consider the tax position in almost every kind of legal transaction and especially in the disposition of estates.

The effects of company and commercial development, the extension of international trade and the vastly increased speed of communication and tempo of life have created a demand for a very different type of family lawyer from that of earlier days, peacefully engaged as he was very largely upon settlements, trusts and the administration of estates. Legislation controlling town and country planning, the popular appeal of hire purchase schemes and the establishment of administrative tribunals are but a few of the factors that have widened the scope of legal activity.

The considerable breakdown in family life and responsibility has led not only to a great increase in divorce business and ancillary reliefs, but to a great rise in juvenile crime, and two major wars have also made their contribution towards the increase in crime generally.

The advent of the motor car, made increasingly faster and, because of full employment, now almost universally owned, has resulted in the court lists being choked with actions for personal injuries. Where will this lead when, as the car replaced the horse, so the plane of spaceship replaces the family car? Will the introduction of some provision for 'absolute liability' on the part of the motorist effect a meteoric fall in a number of 'personal injury' cases for trial?

Meanwhile the policy has been to withdraw judges more and more frequently from their normal tasks to preside overy royal commissions and public inquiries. In consequence, partly, no doubt, the number of judges steadily increases and changes in practice and procedure are made to meet an altered situation in the courts. In civil litigation juries have in effect been replaced by a judge alone. The clear tendency is generally to decentralise the business of the courts, and experiments are being made by mechanisation to speed up the trial of actions with the ultimate object, presumably, of providing an early hearing on a fixed day, which will avoid waste of time by litigants, witnesses and lawyers alike in waiting to come on for trial.

The creation of the welfare state itself has had a major effect upon the public outlook towards their rights and duties. Obligations previously regarded as being family ones are now considered to be those of the taxpayer in general. If anyone

suffers a hurt or a loss, someone else is expected to pay and the first reaction of the man-in-the-street today is 'Whom do I sue?' This has meant a change in the public approach to the law, a more critical attitude towards the profession and, at the same time, a growing inclination to make use of the legal services, themselves made more readily available by the legal aid and advice schemes, by those who previously might have felt unable to afford the risk of bringing their cases before the courts. Contemporaneously, there has developed a disinclination by the public to pay for professional services. If medical services are provided free for all, why should not legal, accountancy, surveying and other professional services be provided free—or, if not free, at a much lower cost? The labourer may be worthy of his hire, but not the progessional labourer!

Within the profession itself significant changes have taken place. New professions have sprung up, which encroach upon the work previously regarded as being within the exclusive domain of the lawyer. Full employment has led to an acute shortage of recruits in legal offices, whether or not holding legal qualifications. Pressure of work and the continual demand for speed have been followed by a degree of mechanisation and specialisation by solicitors which has resulted in a general increase in the number of partners in legal firms.

Members of the profession themselves are much more aware today than ever before of the need to supply an efficient legal service. There is a continually growing demand for 'continuing education' by lecturers, 'films, pamphlets and so on and a consciousness of a collective professional duty to the public which, for example has been manifested in many countries by the acceptance of the responsibility to make good losses caused through dishonesty and of the obligation to administer legal aid and advice schemes.

A further respect in which the outlook of the profession has changed since the war years is in relation to the part which it should play in the field of law reform. No one is as well qualified as the practising lawyer to know the respects in which the law needs reforming, not only because of his detailed knowledge of it, but because of his practical experience of its effects upon the public and of their reactions to it. A postwar development within the profession has been its willingness to incur considerable expenditure of time and money upon law reform measures and the undertaking of research in this field.

In yet another way the profession has moved with the times. Partly, no doubt, because of ill-informed attacks which have been made upon legal procedures and partly because public interest in the law seems to be second only to interest in medicine, lawyers, despite their traditionally conservative approach, have accepted the inevitable need for public relations and made use of modern techniques. Long-standing rulings, for instance, on the propriety of 'advertising' have been interpreted broadly so as to admit in the professional interest of the use of such media as television and radio, in order to lay before the public the services which are available to them and the reasons why criticised procedures have to be retained.

Finally, as regards 'fusion' or 'no fusion' of the profession, a subject raised repeatedly and discussed at the first of the Commonwealth Law Conferences held in London in 1955, there appear at the present time to be indications that some members of the Bar and some solicitors are in favour of it, but the demand does not appear to be sufficient to make it likely that the generally accepted view that two separate branches provide a better legal service, if they can be supported economically, will be reversed within the foreseeable future. Changes may no doubt take place in the respective functions of the two branches of the profession, but it seems to be highly desirable that there should be a separate branch of the profession to which the lawyer in general practice and particularly the sole practitioner can turn for specialist advice and assistance.

Some Trends

Bearing all these and other factors in mind it seems probable, looking ahead, that litigation as a whole will tend to increase in the field of common law and crime but to decrease in Chancery matters and that there will be a tendency for the courts themselves to specialise; for example, special 'traffic courts' may be estabilshed.

In the courts of criminal jurisdiction there may be a tendency, as in civil cases, to dispense with a jury, except in certain types of case, or at least substantially to reduce the size of the jury. Lawyers and the courts alike are acquiring a better knowledge of the forensic sciences, so that full use may be made of scientific evidence and proper weight be given to the views of medical and scientific witnesses.

New scientific discoveries, particularly in the period immediately after the experimental stage, may well lead to new causes of action and, unless and until strong remedial steps are taken in connection with the use of the motor car or there is substantial unemployment or a general fall in the national wealth, the number of motor cars in

use is likely to increase and therefore traffic accident cases as well as actions for industrial injuries are likely to continue to increase also. There must, therefore, be a continuing and increasing demand for men and women capable of conducting litigation and of acting as advocates.

As regards non-contentious business, the probability seems to be that far less time will be devoted to the transfer of property and much greater importance will be attached to a knowledge of commercial and company law and practice and especially of revenue law.

For economic reasons, as well as because of the public need for greater expertise from the profession and speed of execution, lawyers in general practice will have to specialise to a much greater extent than at present. Even now, indeed, it is doubtful whether any one lawyer should properly hold himself out as being prepared to advise on the whole of the law. Certainly for a lawyer with a general practice in a wide variety of subjects, it must be completely uneconomic to endeavour to acquire that expertise in some new subject, which his client has a right to expect him to possess, sufficient to enable him fairly to compete with a firm on the other side in which some partner practises almost exclusively in that particular subject.

The days of the single practitioner, therefore, except in the more remote districts, appear to be numbered and in England there is already a steady decline in the number of solicitors practising alone. The existence of a separate Bar certainly assists the one-man practitioner, by enabling him to obtain expert advice, but this must be more costly from the client's point of view and is inevitably slower.

The most valuable public service has been supplied for generations by the family lawyer who has been familiar with his client's family, history and private affairs. He has been able to give wise guidance by reason of his background knowledge of the family as a whole.

So, the need today of the public is emerging for lawyers in general practice (as is certainly so in the case of those engaged in commerce and industry) to acquire a good working knowledge of their clients' business affairs, if their advice is to be of maximum benefit. Time simply will not permit of this if the lawyer is endeavouring to practise in many fields of law at the same time and there are the clearest signs of increased specialisation.

As regards the 'set up' of law offices, the likelihood appears to be that, for reasons of status among others, legally unqualified clerks upon whom the profession has relied so largely in the past will over the years be replaced by qualified lawyers, as is the case extensively in the United States today. Certainly law offices are becoming mechanised in order to meet the staff position.

The need for keeping up to date, while new laws emerge from Parliament with great rapidity and every day sees the delivery of dozens of judgments interpreting the law in some new way, has already involved the general acceptance of the need for 'continuing education.'

As regards the training of the future lawyer, its object must continue to be to produce at its end a man or woman well grounded in legal principles and well versed in the practice and procedure of his or her chosen subject, competent both to accept and to meet his or her obligations to and in contemporary society.

This means that the standard of intelligence and of general knowledge of a candidate for entry as a law student must remain high. He must acquire a sound knowledge of legal principles, receive a good practical training and reach a proper vocational level of legal learning, as distinct from the level set for a university degree in law, designed to be taken as a discipline by persons who by no means necessarily intend to embark upon the law as a career.

As regards the practical training of the future solicitor, it is debatable whether the time-honoured system of service under articles of clerkship will remain adequate—certainly without careful 'vetting' of the offices in which students are to serve. One of the most serious defects in the system of articled service is that the student can only receive practical training in the types of work undertaken by the principal to whom he is articled and even then the extent of the training provided varies from office to office.

Sooner or later courses of practical training are likely to have to be provided, possibly on the lines of an administrative staff college—at least for those who may be unable to secure a place as an articled clerk with one of the approved firms of practising lawyers.

It will no doubt, always be debatable at what stage in his chosen profession the young lawyer should start to specialise. In the law one remains a student and it is thought that few would deny that a lawyer, before he starts to specialise, must have a good general knowledge of the law and practice. It seems likely, therefore, that the young lawyer of the future will be required to undergo a period of restricted practice after qualification.

(To be continued)

CIRCUIT COURT RULES, 1967

These Rules (S.I. No. 37 of 1967) came into operation on 20th February, 1967 and provide for revision in the amount of fee payable to Summons Servers. Service fee is now 10/- and not 7/6 as heretofroe. The instrument may be purchase directly from the Government Publications Sales Office, G.P.O. Arcade, Dublin, or through any bookseller. Price sixpence.

SOLICITORS' ACCOUNTS

S.I. No. 44 of 1967 consolidates all previous Solicitors' Accounts Regulations from 1955-1966 and makes certain necessary amendments therein.

Members please note these regulations supersede those set out in S.I. No. 193 of 1966 and circulated with the February issue of the GAZETTE.

A MAJOR OR A MINOR MATTER?

A member recently made an application for payment out of Court of monies to a former infant on the infant attaining his majority. Member was astounded to be awarded costs of only £2. This figure included outlay of 10/- on the copy Circuit Court Order and 7/6 on the Notice of Motion. The solicitor had to interview his client in the first instance and correspond with the client on a date being fixed for the hearing of the Notice of Motion. The solicitor had to attend the Court and make the application and thereafter have further necessary correspondence. His profit costs on the transaction were £1-2-6.

PROFESSIONAL NEGLIGENCE — SOLICITORS

The case of Neushal v Melish and Harkavy reported in the January issue of the GAZETTE (Vol. 60, No. 7) at page 94 has given rise to enquiries. Lest there was any lack of clarity as to the report contained in the previous issue of the GAZETTE the Judge, in fact, ruled that the solicitor should have disclosed knowledge of his client's character to another client or have taken alternative action. This suggests that professional secrecy is no defence to a charge of negligence where a solicitor acts for several parties with opposite interests in the same transaction.

WORDS OF THE WISE

"Whenever law reform is in the air, the legal profession is in the doghouse. For lack of belief in the lawyer's ability to put the house of the law in order is a familiar and reassuring phenomenon amongst laymen."—The Hon. Mr. Justice Scarman.

"There would be an end to the degrading form of bingo session which we now describe as a civil jury trial, in which the tribunal is invited to guess how long the present disability is to last, and to capitalise the value of it by multiplying by some figure—any figure, except, as the judge will always direct, such as could be justified on actuarial principles.

Most of us would be glad to see the end of the really horrible spectacle, so popular in Scotland —and in other countries, too— of grief-stricken parents asking juries for cash payments in lieu of their dead children."—Lord Kilbrandon reported in *The Glasgow Herald*.

"Possibly lawyers inevitably set up a barrier between themselves and the world because their training involves them in so many of these double phrases—'will and testament,' 'assault and battery.' The rhythms ring in their ears till they really think that nothing is clear unless you've said it twice."—Katherine Whitehorn.

ASSISTANT REQUIRED

1. During an economic slump, thus displaying a business acumen for 'slave labour'—the fact that turnover is reduced and overheads increased is purely academic.
2. Due to pressure of business (i.e. necessary attendance at race meetings and such like).
3. Due to inability to make the office before 10.30 p.m. If the early bird catches the worm why should the principal spoil the market.
4. Necessity is the brother of intention–two typists pre World War I—two typewriters pre World War II will consider changing both prior to World War III.
5. Opportunity afforded to act as teacher to disciple — The fact that the disciple is more familiar with the tablets of the law shows he has no practical experience.
6. On demise of Dickensian law clerk a more youthful lackey will give the office standing—things may even stand still—but justice will seem to be done.
7. Experience in conveyancing will be essential–if contracts are carefully drawn closing dates postponed and a ready list of excuses for delay

at hand — This qualification may be disposed of.

8. An accumulation of files on a longe finger necessitates a 'fall guy', get one quickly—preferably just qualified.

LIABILITY OF APPRENTICES FOR SOCIAL WELFARE CONTRIBUTIONS

We have received the following information from the Department of Social Welfare affecting solicitors' apprentices. In accordance with the provisions of the Social Welfare Acts solicitors' apprentices are considered to be within the provisions of the Social Welfare (Employment of Inconsiderable Extent) (No. 2) Regulations 1953 (S.I. No. 290 of 1953), which are still in force, the employment of a solicitor's apprentice is not insurable under the Acts unless:

(1) it involves 18 or more hours service in the week, or

(2) the apprentice is mainly dependent for his livelihood on the remuneration derived from the employment where less than 18 hours service is rendered in the week.

EXAMINATION RESULTS

PRELIMINARY EXAMINATION

The following candidates passed:—

Donal V. Carroll, Gerard D. Diamond, William C. J. Hamill, Thomas W. Vance, Robert P. C. Williams.

10 candidates attended: 5 passed.

FIRST EXAMINATION IN IRISH

The following candidates passed:—

John Blake, Anthony Brady, Fergus William Canning, Declan Christopher Carroll, Donal Vincent Carroll, John Carty, Terence F. Casey, Damien F. Cassidy, Niall Brian Clancy, Helen J. Cullen, Helen Dawson, Aidan Deery, Jeremiah Desmond, Paula Desmond, Andrew Dillon, Lewis C. Doyle, (Lucius) James P. Farrell, Bernard L. Gaughran, Samuel J. Gill, Gerard J. Hayes, Margaret Heney, Anthony D. P. Forrest Hussey, Donal C. V. Jackson, Dermot Kavanagh, Brian A. Kelly, Cyril Lavelle, James Maguire, Daniel T. Maher, Patrick J. Maher, B.C.L., Nigel H. Martin, Carol F. Millett, Kenneth A. Millington, Joseph E. Mills, Michael E. Molloy, Hugh Mullon, C. McGeehan, James McGillion, Patrick C. McIntyre, Laura M. McMahon, Owen D. McMahon, Ellen McPhillips, Eamon M. O'Beirne, Hugh O'Donnell, Dermot J. P. O'Neill, Michael Owens, Francis J. Purcell, Richard Grattan M. D'Esterre Roberts, Patrick J. Silke, Anne E. Tierney, Hilary Wardrop, Andrew de Burgh Whyte.

52 candidates attended: 51 passed.

SECOND EXAMINATION IN IRISH

Eric Bradshaw, Patrick Cafferky (B.C.L.), Cornelius Cronin (B.A.), Rose Mary Durcan, Daniel John Fagan, Patrick Declan Fallon, David Maxwell Fitzgerald, William O. H. Fry (B.A.), Brian Gartlan, Brian Gabriel Geraghty (B.A., B.Comm.), Cormac P. Glynn, Gerard Maxwell Halley, Denis G. Hipwell (B.A.), Raphaeline A. E. Hoey, William Anthony James, Mary Carmel Kelly, John M. T. King, Francis P. Malone, James Mulhern (M.A., L.Ph.), Owen A. MacCarthy, Stephen S. MacKenzie, John F. Neilan (Junior), John T. O'Dwyer, Malachy J. O'Kane (B.A.), Anthony F O. O'Rourke, Robin A. Peilow (B.A.), Dudley Potter (B.A.), Avice M.A. Redmond (B.C.L.), Esmond Reilly, John A. Sheedy, Aveen Mary Jainta Smith, Valerie J. M. Walsh.

32 candidates attended: 32 passed.

BOOK-KEEPING EXAMINATION

The following candidates passed:—

Passed with Merit

Stephen T. Strong (B.A., (Mod.) LL.B.), John H. Matthews (B.C.L.), Aveen M. J. Smith.

Passed

Fergus Armstrong (B.C.L., LLB.), John P. Aylmer (B.A.), Eric Bradshaw, Eric Brunker (B.A.), John McC. Cussen (B.C.L.), Joan E. M. Daly (B.C.L.), Patrick D. Fallon, Patrick Fitzgibbon (B.C.L.), Conor C. Foley (B.C.L.), Michael H. Gleeson (B.C.L.), John F. Hayes (B.C.L.), William A. James (B.C.L.), William Montgomery, John F. Neilan (Jnr.), Hugh O'Donnell (.B.A.), Michael O'Driscoll, James M. O'Dwyer, John T. O'Dwyer, Charles C. R. N. de Lacy Staunton.

28 candidates attended: 22 passed.

FIRST LAW EXAMINATION

The following candidates passed:—

Passed with Merit

Michael A. Foy, Matthew N. Hickey (B.A.).

Passed

David R. Anderson, Hugh P. J. Byrne, Mary Courtney (B.C.L.), Terence E. Dixon, Catherine M. L. Harrington (B.C.L.), Martin A. Kennedy, Anthony Kirwan, Marguerite Michelle Linnane, Peter Martin Maguire, Michael Martin, John Patrick Matthews, Orla M. Muldoon, Timothy A. Murphy, Roderick C. J. O'Connor, John O'Leary, Nicholas P. J. Shee, Garrett Sheehan, Miriam S. Toomey, Harold Waterman.

56 candidates attended: 21 passed.

The Centenary Prize was not awarded.

SECOND LAW EXAMINATION

The following candidates passed:—

Passed with Merit

John F Hayes (B.C.L.).

Passed

John P. Aylmer (B.A.), John B. Baily (B.C.L.), James S. Baylor, Henry C. Blake (B.A.), Eric Brunker (B.A.),

Rose Mary Durcan, Laurence R. Egan, Thomas Desmond Fleming (B.C.L.), Robert M. Flynn, Anthony T. Hanahoe, Elizabeth A. Heffernan (B,C.L.), Desmond J. Houlihan (B.C.L.), Paul McLaughlin, Thomas G. E. Neville, Donnchada O Buachalla (B.C.L.), James F. O'Higgins (B.C.L.), Charles C. R. M. de Lacy Staunton, Brian Woodcock.

35 candidates attended: 19 passes.

THRID LAW EXAMINATION

The following candidates passed:—

Passed with Merit

Niall P. Connolly (B.C.L., LL.B.).

Passed

Fergus Armstrong (B.C.L., LL.B.), Eric Brunker (B.A.), Albert D. E. Burke (B.C.L.), Thomas F. Figgis (B.A.), Pamela Hussey, Alan Vincent Kelly, Michael J. A. Kelly, Patrick J. Kevans, Gerard Anthony Kirwan (B.C.L.), William James Montgomery, Peter F. R. Murphy, Cornelius Leo McCarthy (B.C.L.), Máire Noonan, Maeve T. O'Donoghue (B.C.L.), Hugh B. J. O'Donnell (B.A.), John C. O'Donnell, Michael O'Driscoll, Michael O'Shea (B.C.L.).

25 candidates attended: 19 passed.

On the combined results of the Second and Third Law Examinations the Council has awarded a Special Certificate to Niall P. Connolly (B.C.L., LL.B.).

AMERICAN LAW

The Leyden-Amsterdam-Columbia Summer Programme in American Law will be offered at the Amsterdam Law School, from July 3 through July 28, 1967. The course is designed to provide a general introduction to the American legal system with emphasis on other areas of particular interest to European lawyers. There are four compulsory courses to wit, Introduction to the American Legal System, Civil Procedure, Constitutional Law and Contracts. There are four elective courses namely, The Legislative Process, Criminal Law, Law of Evidence, and Trust Law. Participation in the compulsory courses is required; in addition, each participant must attend at least two of the elective courses. Ten hours of classroom discussion are scheduled for each course. Study materials will be distributed in advance, and adequate preparation for classroom discussion is expected of each participant. The courses will be taught in English. Classes will meet both in the mornings and in the afternoons.

The programme is open to lawyers and advanced law students who are proficient in English. Tuition for the whole programme including study materials is 150 Dutch guilders. All participants are required to live in Amsterdam for the duration of the programme. Accommodation at non-profit rates are available. A limited number of scholarships covering all or part of the expenses of attending the programme, will be provided. Applications for admission and scholarships should be directed to Professor G. J. Scholten, Executive Director, Juridisch Instituut, Oudemanhuispoort 4, Amsterdam, The Netherlands.

CASES OF THE MONTH

Payment of Deposit to Estate Agents — Personal Liability of Vendor

The English Law Society's GAZETTE of February 1967, Vol. 64, Number 2, at page 69 under the general heading of Practice Section, contains the following note:—

The Council have recently considered the case fo Goding v Frazer (1966) 3 All. E.R. P. 234.

In that case, an estate agent arranged a sale of land subject to contract' and accepted a deposit from the potential pourchaser on that basis. No contract was ever entered into between the purchaser and the vendor, and subsequently the estate agent became insolvent. The purchaser sued the vendor for the amount of the deposit. It was held that the vendor was liable to repay the purchaser the amount of the deposit, since the deposit had been accepted by the estate agent as agent for the vendor; but the judge went on to say that even if the estate agent had been regarded as a stakeholder, the risk of his insolvency while retaining the deposit in his hands would still fall on the vendor.

The attention of the profession is drawn to this decision, so that it may be borne in mind when advising vendor-clients. The Council appreciate that vendors often do not consult their solicitors until after a deposit has been paid to an estate agent, in which case it will be too late for the solicitors to advise."

The Incorporated Law Society's Standard Conditions of Sale provide that deposits should be paid to the vendor's solicitor to be held by him on exchange of contracts as stakeholder. If the Society's recommendations were followed, then the risk of loss referred to in the above case would not arise.

Solicitor — Name and Style of Practice

On 1st August, 1955, the plaintiff David Lee, commenced practice as sole 'partner' as a solicitor under the firm name of 'Tringhams'. His evidence on affidavit was that 90 per cent of the goodwill which he had built up attached to his own name of 'David Lee,' and only 10 per cent to that of 'Tringhams'. On 1st January, 1967, the defend-

ants, two young solicitors, set up in practice in the West End of London, the same area as the plaintiff's practice under the firm name of 'David Leigh & Co.' On 26th January, 1967, the plaintiff issued a writ claiming an injunction to restrain the defendants from continuing to practise under that style, or under any other style or name which included the names 'David Leigh' or 'David Lee' or so nearly resembled the same as to be calculated to deceive the public or induce the belief that the practice carried on by the defendants was the same as that carried on by the plaintiff, or was in any way connected therewith. By this motion the plaintiff sought an interim injunction in similar terms. The defendants, in their affidavits, stated, *inter alia,* that they had originally contemplated using their respective Christian names, adopting the style 'David Leon & Co.', but had finally decided against it, because they felt that the style was 'more suggestive of a ladies' hairdressing salon than of a firm of solicitors' and that before registering the name which they eventually chose they had checked *inter alia,* the 'Law List' and had concluded that the name chosen could not be confused with other firms, but that they had not checked the names of individual solicitors in practice.

Ungoed-Thomas, J., said that there seemed to be no overwhelming urgency, and therefore despite the strong *prima facie* case made out, on balance of convenience it was not right to grant an interim injunction, but every facility should be given for a speedy trial. Order accordingly. By consent the motion was treated as the trail of the action, the action being dismissed on the defendants' undertaking to change their name to 'Leigh David & Co.' or such other name as the plaintiff should agree so as not to be likely to deceive.

(Lee v Popeck and Another—*The Solicitors' Journal,* Vol. III, p. 114.

Restraint of Trade

The council of a society founded by royal charter, the objects of which included maintaining the honour and safeguarding and promoting the interests of the members 'in exercise of the profession of pharmacy,' proposed by motion in special general meeting a new rule binding on members as part of their code of ethics. The effect of the rule would be that, except with the approval of the council, new pharmacies would have to be situated in physically distinct premises and their trading activities confined to pharmaceutical and traditional goods as defined by the council; and that existing pharmacies selling 'non-traditional' goods, as defined, would not be able to extend the range of those goods. Registered pharmacists had to be members of the society under Acts of Parliament the disciplinary body was a statutory committee with power to strike off the register any member guilty of 'misconduct'; and in considering misconduct the committee had regard to the code of ethics laid down by the society. There were 29,000 members, but only 6,000 attended the meeting which passed the motion by 5,026 to 1,346. The plaintiff, a member of the society, brought an action against the society and its president asking for a declaration that the proposed new rule was outside the society's powers and would operate as a restraint of trade contrary to public interests. The society claimed that the matter was not justiciable in the courts save on appeal by a member from a decision of the statutory committees and that the rule was within the society's objects. They did not plead that if a restraint of trade the rule would be reasonalbe as between the parties. Pennycuick, J., held that though the rule was within the society's powers it would operate as an unreasonable restraint of trade; and he granted the plaintiff an injunction. The Society and President appealed.

The Court of Appeal consisted of Denning, M.R., and Danckwerts, and Sachs, J. J. The Court of Appeal dismissed the appeal.

(Dickson v Pharmaceutical Society of Great Britain and Another—*Solicitor's Journal* (Vol. III), p. 116).

Hire Purchase Option Clause 'An Absolute Trap'

A waterman who put down a deposit of £219 on a Jaguar car he was buying on hire purchase and then took it back after less than two months when he could not pay the first instalment because of a dockers' strike, was held not to be liable to the finance company for an additional £709-10-8 under the minimum payment clause in the agreement. The court held that a hirer could not exercise an option which had the result of making him liable for a tremendous additional payment unless he knew what the option involved.

The Master of the Rolls said it was another case of a minimum payment clause in a hire purchase agreement, providing for a two-thirds payment by way of "agreed compensation for depreciation." The County Court Judge had decided that the finance company were entitled to sue on the clause.

Lord Justice Salmon concurring with Denning M.R., and Mr. Justice Harman, siad that the option clause purported to confer a benefit on the hirer. It was a snare and a delusion, for if

the hirer elected to exercise his option to terminate the agreement under one clause he would find himself liable under another clause to pay the company a sum equal to two-thirds of the total hiring cost outstanding at the date of termination.

(United Dominions Trust (Commercial) Ltd. v Ennis—*The Times*, February 21, 1967).

CORRESPONDENCE

Embassy of the Federal Republic of Germany
Dublin
March 1, 1967.

The Secretary,
The Incorporated Law Society of Ireland,
Solicitors Building,
Four Courts,
DUBLIN 7.

Dear Sir,

Two young German junior barristers, having completed their law studies at a German university and preparatory service at German Law Courts, would like to come to Ireland and work for the period of four months with an Irish lawyer thus being given the opportunity to gain practical experience of the Irish judicial system. These gentlement would perfer to be in Ireland from May to August, 1967.

The German Embassy would be very grateful, if you could enquire with the members of your Society, whether Irish lawyers in Dublin or in any larger city of Ireland would be prepared to take in these German gentlemen, to enable them to gain the desired experience. Messrs Heinrich Müller and Dietmar Nebe have informed the Embassy that they have the necessary command of the English language and possess a fair knowledge of the English law system. The Irish lawyers, who would be prepared to employ these gentlemen in their offices, would suffer no expenses, as these will totally be borne by them. They also do not expect any remuneration during their stay at the office.

I would be much obliged, if you could inform me at your early convenience, whether a possibility could be found for the two gentlemen to work in an Irish lawyer's office for the requested time.

Yours faithfully,
DR. J. KOENIG
Counsellor.

THE REGISTRY

Register A

Assistant Solicitor required for old established practice in town in Leinster. Future partnership considered. —Box No. A240.

Dublin Solicitors considering possibility of merger with a view to increasing efficiency and further expansion invite confidential discussions with colleagues similarly interested.—Box No. A241.

Old established solicitors practice in seaside town South of Ireland for sale owing to death of Principal. Apply—Box No. A242.

Assistant Solicitor. Extensive general practice in North West of Ireland requires assistant Solicitor with a view to partnership. All replies treated in confidence. Apply—Box No. A243.

Vacancy for Solicitor in Cork. Commencing remuneration of £1,500 is envisaged. This position calls for an energetic and competent man who can when necessary, supervise an office and has an interest in early partnership. Strict confidence.—Box No. A244.

Register B

Solicitor willing to undertake probate work, etc., for other practitioners from his private residence on part-time basis on terms to be arranged. Enquiries to—Box No. B285.

Solicitor seeks Assistantship.—Box No. B286.

Register C

PATRICK J. HENNESSY, 39 Redesdale Road, Mount Merrion, Dublin. Deceased.

Will any Solicitor who holds a Will or Title Deeds of the above please communicate with P. C. L. Halpenny & Son, 96 Upper George's Street, Dun Laoghaire, on behalf of the next-of-kin.

In the Goods of JOHN DEVANE, late of Farran or The Mail Road, Dingle, Co. Kerry, fisherman, and formerly of Greys Lane, Dingle, ob. 7th February, 1967.

Will any Solicitor having knowledge of the existance of the Will of the above named deceased please communicate with the undersigned.

M. E. BURKE & CO.,
Solicitors,
DINGLE, CO. KERRY.

PATRICK FOX, late of Derradda. Ballinamore, in the County of Leitrim, Cooper, deceased.

Will any Solicitor knowing of a Will of the above named who died on the 11th August, 1966, please contact the undersigned.

M. J. MAGUIRE & CO.,
Solicitors,
LONGFORD.

NOTICE OF PARTNERSHIP

NOTICE is hereby given that, as and from the 6th day of April, 1967, the practice heretofore carried on by Gerald F. O'Flynn, Michael C. O'Driscoll and Francis J. O'Flynn under the style or firm of "O'Flynn & O'Driscoll," Soclicitors at 59, South Mall, Cork, and Brian W. Russell, at 85, South Mall, Cork and Carrigaline, Co. Cork, will merge and henceforth be carried on by the said Gerald F. O'Flynn, Michael C. O'Driscoll, Francis J. O'Flynn and Brian W. Russell under the style or firm of "O'Flynn, O'Driscoll & Russell," at 59, South Mall, Cork, branch office at Carrigaline, Co. Cork, and for a limited time at 85, South Mall, Cork.

REGISTRATION OF TITLE ACTS, 1891 and 1942

Issue of New Land Certificate

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

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

Dated the 14th day of April, 1967.

D. L. McALLISTER
Registrar of Titles.

Central Office,
Land Registry,
Chancery Street,
DUBLIN.

SCHEDULE

1. Registered Owner, **George Beary.** Folio number 7215. County Tipperary. Lands of Longstone in the Barony of Clanwilliam, containing 13a. 0r. 0p.

2. Registered Owner, **James Beirne.** Folio number 1448. County Westmeath. Lands of Wooddown in the Barony of Farbill, containing 11a. 0r. 10p.

3. Registered Owner, **William Finlay.** Folio number 12823. County Cavan. Lands of Killynebber in the Barony of Loughtee Upper, containing 9a. 2r. 10p.

OBITUARY

Mr. Dermot McDowell, died on the 16th February, 1967, at St. Vincent's Hospital, Dublin.

Mr. McDowell served his apprenticeship with the late Mr. John M. McDowell of 188, Great Brunswick Street, Dublin, was admitted in Hilary Sittings 1925 and practised as senior partner in the firm of Messrs John M. McDowell & Co., 29, Merrion Square, Dublin.

Mrs. Beatrice Elyan, died on the 11th February, 1967, at St. Joseph's Hospital, Glenmire, Cork.

Mrs. Elyan served her apprenticeship with the late Mr. Andrew J. O'Flynn, Gort, Co. Galway, was admitted in Trinity Sittings 1944, and practised at Ballincurrig Estate, Douglas Road, Cork.

Mr. Michael J. Dunne, Soilcitor, died on the 7th February, 1967, at St. Vincent's Hospital, Dublin.

Mr. Dunne served his apprenticeship with Mrs. Dorothea M. O'Reilly formerly of 66, Dame Street, Dublin, was admitted in Hilary Sittings, 1934 and practised under the style of Thomas Crozier & Son, 14, Ely Place, Dublin.

Mr. Aubrey R. Walker, died on the 26th February. 1967, at his residence 4, Prince Edward Terrace (Lower) Blackrock, Co. Dublin.

Mr. Walker served his apprenticeship with the late Mr. Frederick G. Sharpe, 6, Dawson Street, Dublin, was admitted in Hilary Sittings 1930 and practised under the style of Lane Joynt & Walker, 21, Dawson Street, Dublin.

Dr. Joseph Jackson Wolfe, of 17, Mount Pleasant, Cockfosters, Barnet, Herts., died on the 20th December, 1966.

Dr. Wolfe served his apprenticeship with the late Mr. Jasper T. Wolfe, Skibbereen, Co. Cork, was admitted in Michaelmas Sittings, 1899 and practised at Skibbereen, before being called to the English Bar by Lincoln's Inn in July 1908.

GAZETTE

THE INCORPORATED LAW SOCIETY OF IRELAND

President
PATRICK O'DONNELL

Vice-Presidents
PATRICK NOONAN
AGUSTUS CULLEN

Secretary
ERIC A. PLUNKETT

CONTENTS

Meetings of the Council 129
The International Bar Association ... 130
Road Traffic Prosecutions 130
The Future Pattern of the Profession 131
Society of Young Solicitors 133
Cases of the Month 134
The Law of Stamp Duties 137
Library Acquisitions 137
The Registry 138
Obituary 138
Registration of Title Acts 139
Correspondence 139
Index to Volume 60 140

Vol. 60
No. 10
April
1967

MEETINGS OF THE COUNCIL

April 6th: The President in the chair also present Messrs Patrick Noonan, Francis J. Lanigan, John Carrigan, George G. Overend, George A. Nolan, Bruce St. J. Blake, Thomas Jackson, Robert McD. Taylor, Peter D. M. Prentice, James R. C. Green, Thomas V. O'Connor, James W. O'Donovan, Desmond Moran, Ralph J. Walker, Reginald J. Nolan, John Maher, John J. Nash, Thomas J. Fitzpatrick, Daniel J. O'Connor, Patrick C. Moore, Gerard M. Doyle, Rory O'Connor, Thomas A. O'Reilly, Peter E. O'Connell, William A. Osborne, Thomas H. Bacon, Eunan McCarron, Augustus Cullen, Timothy J. C. O'Keeffe, Richard Knight.

The following was among the business transacted:

Road Traffic Bill 1966

It was decided that a statement should be given to the press and a letter sent to the Minister for Justice and the leaders of the opposition parties drawing attention to the provisions in the Bill, giving the Minister for Justice power to mitigate or remit the disqualification of a driving licence imposed by a District Justice and stating that in the view of the Council this provision of the Bill is not in the public interest.

Local Authorities — Title Requirements

Members of the Council stated that certain local authorities are now requiring solicitors act-

ing for borrowers on the security of registered property to give personal undertakings to comply with any requirements of the local registering authority as a condition precedent to the discharge of equities. It was pointed out that this practice has never been adopted in the past on the sale of registered property and that solicitors should not be required to give such undertakings. It was decided to advise members for their own protection not to give such undertakings and to write to the solicitors acting for local authorities pointing out that it is a question for the local authority solicitor to decide whether or not the title is satisfactory and that if it is not the application for a loan can be refused but that solicitors should not be required to give personal undertakings in such cases.

Succession Act 1965: Ante-Nuptial Marriage Settlement

Members enquire whether the parties should be separately advised in the following circumstances. They acted for the intended husband in connection with an ante-nuptial marriage agreement executed by the intended husband and wife whereby each party would renounce their legal rights under the Succession Act, 1965. Members further enquired whether, if the wife should be independently advised the husband should pay the wife's costs. The Council on a report from a committee stated that the wife was entitled to be separately advised and should be informed of her right to obtain separate legal advise and that it would be preferable that she should have it. On the facts as given the Council are of the opinion that the husband should pay the costs of the wife of obtaining independent legal advice. Reference was made to the judgment of Budd J. in Gregg v. Kidd (1956 I.R. 183).

THE INTERNATIONAL BAR ASSOCIATION

The International Bar Association was formed at the instance of the American Bar Association in October 1946. It is an association of associations consisting of the Law Societies and Bar Associations from every continent. Biennial conferences are held in different cities. Next year, will be the 21st anniversary of the foundation of the association and our Society will be the host organisation for the conference in Dublin from July 8th to 12th, 1968.

The headquarters of the conference will be the Royal Dublin Society premises at Ballsbridge and it is expected that the conference will bring about 1,200 people to Dublin. A general committee, with Mr. John Carrigan as chairman has been set up to make the arrangements for the conference and the work is already well in progress. The committee have obtained offers from a number of volunteers to assist in the arrangements for the conference and any further offers both from solicitors and from apprentices will be welcome. Those interested should write to the secretary.

The business programme of the conference is as follows:

1. Procedure for the enforcement of Antitrust Laws and other laws regulating business transactions.

2. Proposed Code of Conduct to ensure Free Trial and Free Press.

3. The Legal Profession:

   (a) What steps can be taken to ensure that the profession keeps up to date;
   (b) The role of the Bar Association in the changing world.

4. Warranties for the protection of Consumers.

5. International Human Rights Year.

6. Family Law.

The social programme of the conference is being arranged by the committee and details will be published in due course.

The International Bar Association publishes half-yearly the *International Bar News*. Any member interested can obtain a copy from the Editor, c/o The Law Society, 113, Chancery Lane, London W.C. 2.

Conference registration forms will be issued in the autumn. Members who propose to attend the conference should write to the Secretary so that registration forms may be issued to them in due course.

At a meeting of the Council of the International Bar Association on 22nd April, 1967 Mr. Patrick Noonan, Solicitor, Athboy, Co. Meath, was elected President of I.B.A.

ROAD TRAFFIC PROSECUTIONS

In the Society's GAZETTE, February 1964, the Council drew the attention of members to the

position with regard to the contribution by an insurance company to the costs incurred by the insured in defending proceedings under the Road Traffic Acts. The usual third party policy contains a clause providing that the company will make a contribution to the costs so incurred by the insured with the consent of the insurers. The Society stated that the minimum fee which should be accepted by a member for attending a coroner's inquest or a Court of summary jurisdiction or attending to observe proceedings is 7 gns., with an increase where proceedings are conducted in a town other than the town where the solicitor has his principal office including an addition for time and travelling expenses. The fee includes the preparation and submission to the insurance company of a proper report of the proceedings. A proper report is defined as a report giving the names of the witnesses, with a summary of the evidence given by each and an appreciation of the effect of the evidence on the question of civil liability for damages. It was further pointed out, the minimum fee would not be sufficient in cases of special difficilty or responsibility.

Apart from the fact that financial and economic conditions have changed since 1964 there are many cases in which the fee of 7 gns. would be insufficient.

Difficulties have arisen between insurance companies and members on the question of the apporiate fee in individual cases. In order to avoid such difficulties the Council recommend that a solicitor should agree the fee with the insurance company before forwarding the report.

The attention of members is also drawn to the fact that some of the companies regard a claim for contribution to the legal costs under the policy as a claim which will affect the no claim bonus. The consent of the client should be obtained before forwarding the report to the company and the position of the no claim bonus should be clarified. In some cases it would pay the client better to pay his own costs and to keep his no claim bonus.

Questions have also arisen from time to time as to information elicited from statements made by the insured or from the evidence given in Court which might prejudice his claim to indemnity under the policy. In such cases questions of privilege may arise and if the solicitor is acting professionally for the insured he is not entitled without the client's consent to disclose information received from the insured to a third party which would include the insurance company.

THE FUTURE PATTERN OF THE PROFESSION

Part II

By Sir Thomas Lund, c.b.e.
(Secretary of the Law Society in England)

And so, what will be the position of the profession in or about the year AD 2000?

Becoming a Lawyer

The time spent in preparation for entry into the profession will inevitably be longer because of the higher standard required and law students will be financed by the State during their period of pupillage as are trainees now in other walks of life. The standard of general education required of those seeking to have graduated from a university and they will be required to have satisfied examiners in at least two foreign languages. They will also be required, before entering upon their vocational course of studies as law students, to have acquired a knowledge of the basic principles of the law at the level set for a university law degree. During their period of training as law students they will be required to attend whole time at an Academy of Law where they will receive both teaching in the law and practical training. After satisfactory attendance at this course and the passing of any requisite practical examinations, which will no longer be largely a test of memory but will be conducted under normal working conditions with a library available, they will be required, after adminission to the profession, to undergo a period of restricted practice during which they will not be entitled to practise on their own account or except under supervision. Part of this period during which the young lawyer's practice is restricted may be spent in the legal department of some industrial or commercial concern or, under reciprocal arrangements, in the office of a lawyer overseas specially approved for the purpose, where he will obtain a working knowldege of the law and procedures of the courts and of the commercial and business practice of the country.

In a shrinking world the lawyer will be required more and more to assist his clients in difficulties encountered or business undertaken in countries other than his own and the lawyer of the future must be equipped to know how best to set about providing such advice and assistance.

Practising as a Lawyer

Law firms will have become associations of lawyers each specialising in particular branches of legal business. It will be no rarity for firms in the big cities to consist of fifty or more lawyers as do many legal firms in the United States.

Partners will practise in certain specific subjects only. Certificates to practise will be issued in respect of certain broad fields of legal activity, for example: (i) company, commercial and revenue business; (ii) family business—covering conveyancing, trusts, will and the administration of estates; (iii) criminal law or (iv) civil litigation. The larger firms will have in partnership accountants, surveyors and even doctors and other professional men, while smaller firms will work in the closest association with members of such other professions, in order to provide an efficient service for their clients.

All lawyers will be expected to possess a knowledge of finance and taxation in all their branches and those in general practice concerned with commercial and company activities will have a considerable knowledge of their clients' businesses.

Many firms will have offices overseas and most of the larger firms concerned with international business will have lawyers qualified to appear before national courts other than their own and before international courts of law. The lawyers so qualified to practise before such courts will have undergone special training and will be subject not only to their national code of ethics but to special rules laid down by an international law society or bar association.

The proportion of lawyers employed wholetime in commerce and industry will have increased substantially as more and more of the major industries will have found it advantageous to have lawyers familiar with their business readily available wholetime and as a result many more lawyers than at present will be found in management and on the boards of directors of companies.

Lawyers in commerce and industry will properly be regarded as practising with but a single client and, as members of the profession, will be bound by the normal rules of professional ethics and will preserve their proper professional independence.

Office staff generally will consist of assistant lawyers, secretarial assistants and machine operators. The telephone and telex will be supplemented by private television which will enable documents to be seen and photographed immediately in other offices, so reducing the need for copy-typing and avoiding time wasted in postal exchanges of drafts.

Continuing Education

The need to be completely familiar with their subject will be so generally accepted that members of the profession will set aside a fixed period, weekly or monthly or for a week or so a year, for high level refresher courses. These courses will be supplemented throughout the year by instructional pamphlets which will be made available to those practising in each particular field of law. Advanced courses of longer duration will be provided for those wishing to enter or occupying the higer positions in local government or industry on such subjects as management and business efficiency.

All those concerned with criminal practice and procedure will be trained and kept up to date in the forensic sciences and, generally, members of the profession will be *au fait* with current affairs, the availability of social services, labour conditions and so on.

Contentious Business

In the field of litigation both civil and criminal cases will be undertaken in a number of local circuit courts throughout the country. One appeal only will lie, except that the appeal judges may refer a case raising a point of law to general importance, at the expense of the State, for determination by the House of Lords of ultimate Court of Appeal. There will be separate courts or divisions for crime, civil litigation, divorce and matrimonial problems generally, traffic cases and so on.

The costs of all successful appeals in civil litigation will be borne by the State and not fall on the party who succeeded in the court of first instance. The Indemnity Rule will have disappeared and each party will bear his own costs except where the court otherwise directs for good cause.

Legal aid in civil cases will be available in all courts and before all tribunals without any means limits being imposed. The control over the availability of legal aid will be exercised only by the provisions regulationg the amount of the contribution to be paid out of income and capital respectively. The legal aid procedure in criminal cases will be in line with that in civil cases and those obtaining assistance under it will be required to make contributions on the same basis as civil litigants, those convicted being required to pay out of earnings from work undertaken while serving prison sentences.

The Relationship of Solicitor and Barrister

All lawyers will have undergone the same practical and theoretical training and have passed the same vocational examinations. All those who obtain a certificate to practise in criminal law or in civil litigation will be entitled to appear as advocates before all the appropriate courts (or divisions) in the country. The relationship between solicitors and barristers will approximate very closely to that at present existing between the general medical practitioner and the consultant or surgeon.

Lawyers will decide when they wish to specialise at 'the Bar' and it will be on the basis that, whether acting as consultants or pleaders, they accept instructions only through members of their own profession and, if they elect to return to general practice, as they may freely do, they will not act as a general practitioner for any lay client introduced to them whilst practising at the Bar.

The Professional Bodies

Membership of the legal profession will carry with it the generally accepted obligation to play a full part in the work of the professional organisations. Through various standing committees, the law societies and bar associations will have a major task to fulfill in the discharge of the profession's duty to provide public services and to assist the practising lawyer. In addition to the administration of legal aid and advice schemes, such bodies will be responsible or a planned national programme of law reform through standing committees of the profession dealing with particular subjects in which they are expert. All proposed legislation will be submitted in draft to these standing committees before the Bill is laid before Parliament to ensure that the practising lawyers agree—not on policy, but that the provisions are practicable and will work no accidental injustice, as is the position to-day in Western Germany.

The professional bodies will continue to regard it as a public duty to recruit and train the future generation of lawyers and to maintain the standard of efficiency of the practising profession and will accordingly accept the responsibility for providing educational facilities and the advanced courses of the continuing education programme. Not only will they ensure the integrity and efficiency of the profession through their disciplinary procedures and the administration of compensation or indemnity funds, but they will administer an insurance scheme to cover liability for professional negligence. Negligence and unnecessary delays will be regarded as incompatible with professional status.

Research will figure largely in each year's programme and this will extend not only to legal research for the purposes of law reform, but to 'consumer' needs, so that the educational scheme may meet public requirements, and to 'professional earnings' so that a constant watch may be kept to ensure that the profession, is fairly and adequately remunerated.

Without suitable rewards it will be impossible to attract into a profession, where the responsibilities are so heavy, men and women of the calibre essential if a vital public service is to be maintained.

There remains a heavy burden to be borne in supplying to the profession itself the services which it will expect and need. The law societies will retain the supporting staff for legal offices and no doubt operate employment agencies to help to fill vacancies for personnel. They will make arrangements for the availability of mechanical aids to efficiency of all kinds including computers for the use of the profession collectively in so far as they may be too expensive to be acquired by individual firms for use in their offices, computers being used for a wide variety of purposes including law libraries.

Then there will be the responsibility for carrying out an active and well-planned public relations programme to ensure that the public are kept fully informed of the legal services available to them, that the profession itself may know what is being done and may know the respects in which they may be any changes in the public demand for them.

Finally, at the risk of ensuring that the writer does not survive to see the extent to which these forecasts are fulfilled, he suggests that by the year AD 2000 a serious effort will be made to combine the respective laws, practices and procedures of England and Scotland so that the best of each will have been incorporated in some uniform system which will have led to the raising of the present iron curtain which prevents the lawyers of one part from practising in the other part of the 'United' Kingdom.

(Concluded)

SOCIETY OF YOUNG SOLICITORS

An Ordinary General Meeting was held on 15th February at Buswells Hotel, Molesworth Street. Mr. M. K. O'Connor delivered an instructive

lecture on Estate Duty Office Practice. The practical problems were dealt with in the discussion that followed.

There was a lecture given on April 27th on Pension Schemes. The lecture following will be held on 25th May on Motor Claims Practice.

The Society's A.G.M. will be held on 29th June, 1967 at 8 p.m., at Buswells Hotel, Dublin.

The latest releases from the Transcript Service are as follows:

8D (2) Cork Discussion of Succession Act 6/-, by post 6/9.
22 Lecture on Estate Duty Office Practice 7/- by post 7/9.

Orders for available Transcripts and Subscriptions (£1-1-0) should be sent to the Treasurer, 15, Braemor Park, Dublin 14.

CASES OF THE MONTH

Solicitor's Negligence

On June 30, 1960, the defendant, a solicitor, agreed with the plaintiff to act on her behalf in defending divorce proceedings brought against her by her husband on the ground of desertion. He failed to put in an answer as he should have done. Subsequently the husband applied for leave to amend the petition by adding a prayer for the exercise of the court's discretion, and the defendant failed also to cross-petition for dissolution on the ground of the husband's adultery as the plaintiff desired. As a result, the husband's petition was heard as an undefended suit and a decree nisi pronounced in his favour. A month later the defendant consulted counsel, who advised that there was no point in the plaintiff trying to reopen the decree, that she should approach the husband's solicitor for maintenance for her son, then aged 16. The plaintiff accepted that advice and as a result no application was made to set aside the decree nisi, on January 24, 1962, the husband's decree was made absolute. No application for maintenance was ever made.

In 1963, the plaintiff obtained legal aid and brought the present action against the defendant for negligence. Some two weeks before the trial, the defendant paid £1,500 into court. Lawton J. held that had the petition been defended, the probabilities were that the court would have adjudged the plaintiff the party whose conduct was the substantial cause of the breakdown of the marriage, to which the husband had contributed, and pronounced a decree in favour of the husband. He found that the defendant had been negligent and held that the plaintiff was entitled to recover damages (a) for the loss of her chance of obtaining maintenance for her son, which he assessed at £160; (b) for the loss of her chance of obtaining a more favourable outcome of the divorce suit, which he assessed at £200; and (c) for the loss of her chance of obtaining maintenance for herself, which he assessed at £750; but he held that she was not entitled to damages in respect of her ensuing ill-health and loss or earnings, since they were too remote. He assessed the sum of £200 as the plaintiff's contribution to the defendant's costs after the date of payment into court.

On appeal by the plaintiff and cross-appeal by the defendant on the issue of damages alone:

Held, dismissing the appeals, (1) that the plaintiff was entitled to recover damages under heads (a), (b) and (c) and there was no reason to interfere with the assessments of the trial judge under these heads.

(2) That the plaintiff was not entitled to damages in respect of her breakdown in health, since that was not a reasonably foreseeable result of the plaintiff's failure in the litigation, owing to the solicitor's negligence, and was therefore too remote.

(3) That ordinarily a defendant who made a payment into court ought to be awarded the costs incurred after such payment, even though he failed on liability; but there was a wide discretion in the case of a plaintiff who was legally aided, and the judge could take into account the fact that the plaintiff had an award of damages in her favour; that account had to be taken of the Legal Aid Fund's charge on the damages to cover their costs in fighting the case, and since in this case the whole of the damages would be absorbed by the costs incurred by the Legal Aid Fund, it was really a contest between the Legal Aid Fund and the defendant, who should have his costs from the date of payment in; and there should be a set-off against the damages and costs awarded to the plaintiff, who, having a nil contribution, should not be ordered to pay personally any of the excess.

(Cook v Swinfen [1967] 1 W.L.R.).

Solicitor struck off the Roll — Justified

On 24th October, 1966, at a hearing postponed from 22nd August, 1966 a solicitor appeared before the Disciplinary Committee of the Law Society. The allegations against him were that his conduct was unbefitting as a solicitor in relation, *inter alia,* to a divorce case, in which it was allegeded that he had taken matters into his

own hands in his endeavours on behalf of his client, cited as co-respondent, in order to get the husband to abandon the action. The solicitor asked for an adjournment on the ground that evidence and witnesses he wished to have available could not be put before the committee on that date. The committee refused an adjournment, whereupon the solicitor, protesting that he had not had a chance fully to prepare his case, walked out, and the committee concluded the hearing in his absence, found that his course of action in attempting to cause the abandonment of the divorce proceedings against his client was deplorable, and ordered that his name be struck off the Roll. The Divisional Court, expressing the view that even if there had been an adjournment, the committee's findings with regard to the divorce suit would have been the same, dismissed his appeal. The solicitor applied for leave to appeal.

Lord Denning, M.R., said that if the solicitor had stayed he would have had a perfectly fair hearing and had only himself to thank for leaving as he did. The Master of the Rolls further stated that leave to appeal should be refused on the ground both of the adjournment and the request for a review of the order with further evidence.

Harman, L. J., concurring, said that there was ample material to justify the committee's decision. The solicitor did not think any holds were barred. He was prepared to go to any length: tape recorders under the table, every kind of chicanery and bluff, suggestions of blackmail by the other solicitor, any suggestions that might stifle the proceedings. His behaviour showed that he was not fit to pursue the honourable calling of a solicitor. Salmon, L.J., also concurring, said that it was clear from the transcript of the tape recording that the solicitor was uttering naked threats with a view to advancing his own client's interest, regardless of the ordinary standards of propriety. His lordship would have been surprised if the Law Society had not taken the view that anyone capable of that conduct was not fit ot remain on the Roll. Application refused.

(Glick v The Law Society. *The Solicitors' Journal,* March 17th, 1967 [Vol. III] p. 215).

Certiorari — When Applicable to Statutory Board

A board which is set up by statute to determine zoning orders may, contrary to the general rule of law that a person should not be judge in his own cause, determine zoning orders even though it has pecuniary interest. But though a writ of certiorari does not apply to the above, it does apply if a committee appointed by the same board to investigate and report on the zones does not state in the report the evidence heard, and at the public hearing did not consider written evidence. Accordingly the zoning order was quashed.

(Jeffs and Ors. v New Zealand Dairy Production and Marketing Board and Ors. (1966) 3 All E.R. p. 863).

Insurance — Public Liability Policy

A telephone cable was damaged by a workman employed by Potter & Co. Ltd., which had taken out a public liability policy with the Norwich Union. Potter & Co. Ltd., went into liquidation, so the Post Office contended as a preliminary point of law that they could pursue an action against the insurance company under the Third Parties (Rights against Insurers) Act 1930, s. 1. The policy provided that the insurance company would indemnify the insured "against all sums which the insured shall become liable to pay." The insurance company contended that they were under no liability to the Post Office unless the precise amount of liability of the insured to the Post Office had been determined. No agreemnet as to the amount of any liability had been reached between the insured and the Post Office, nor had there been an agreement between the Post Office and the liquidator of the insured.

It was held (C.A.: Lord Denning, M.R., Harman and Salmon L.JJ.: January 18, 1967) (reversing the decision of Donaldson J.: N.L.J. November 17, 1966, p. 1544) that the Post Office were not entitled to pursue their action against the insurance company. The right procedure was for the Post Office to sue the wrongdoer, and having got judgment against the wrongdoer, they could then make a claim against the insurance company. But to sue the insurance company direct, before liability had been ascertained, was not correct.

(Post Office v Norwich Union Fire Insurance Society Ltd.—*The Times,* January 19, 1967).

Arbitration — Extension of the time Limit

Ship-owners and charters had entered into a charter-party containing an arbitration clause, which provided that: "Any claim must be made in writing and claimant's arbitrator appointed within three months of final discharge and where this provision is not complied with, the claim shall be deemed to be waived and absolutely barred." A fire broke out on board the chartered vessel, and this led to delay and final discharge of the cargo did not take place until March 26, 1966. Accordingly, all claims would have to be made by June 26. The shipowners and charters, who were both victims of the fire, met and agreed to their

representatives "putting their heads together to dispose of all their troubles." A meeting was arranged for June 27, i.e., one day after the time limit for arbitration had expired. At that meeting it was felt that one side or the other would make an offer to settle the outstanding disputes. No offer was made on either side and on July 6 when the shipowners applied to the charterers for arbitration, the charterers contended that the application was time-barred. So the shipowners asked the court to extend the time for arbitration under the Arbitration Act 1950 s. 27.

It was held (C.A.: Lord Denning M.R., and Salmon L.J.; Harman L.J., dissenting: January 19, 1967) that the time should be extended because "undue hardship" would otherwise be caused to the shipowners. If there was an excusable mistake and no prejudice to the other side, it might also be too harsh to deprive an individual of ever making his claim, all the more so if the mistake were contributed to or shared by the other party. Though, when the charterers went to the meeting on June 27 they did not intend to mislead the shipowners, nevertheless their conduct in going on with the negotiations at that date put the shipowners off their guard. Leave to appeal to the House of Lords was granted.

(Liberian Shipping Corporation v A. King & Sons Ltd.—*The Times,* January 20, 1967).

Rating — Residential Caravan

In this case, the Court of Appeal upheld the decision of the Lands Tribunal that a caravan in residential use was in exclusive occupation of the caravan owner for rating purposes. The caravan in question was occupied as a permanent residence throughout the year. Although it was mobile and still on wheels and the site owners had power to move it, having control of access to the site, the caravan had remained on the same site for over four years, with electricity and drainage connections. The caravan and its pitch constituted one unit of occupation which was a rateable hereditament; a chattel, although not rateable per se, might become so if enjoyed with the requisite degree of permanence. Moreover, the Lands Tribunal had correctly determined that the owner of the caravan was in exclusive occupation of the caravan and pitch.

(Field Place Caravan Park Ltd. and Ors. v Harding (Valuation Officer) (1966) 3 A.E.R. p. 247).

Meaning of Factory and Manual Labour

Behind the appellants' radio shop was a backroom where an engineer in their employ repaired and adjusted television and radio sets. Part of his job was the diagnosing of faults, but on an average day he spent most of his time repairing the sets and replacing faulty parts. This was done by hand. It was held that the fact that in doing work with his hands a man used technical knowledge did not prevent the work being manual work, so long as it was not primarily work of a different kind (e.g. intellectual activities) to which work with the hands was merely accessory. The engineer was therefore 'employed in manual labour' for the purposes of the definition of s. 175 of the Factories Act 1961, and the premises where he was employed were a factory.

(J. and F. Stone Lighting and Radio Ltd. v Haygarth (1966) 3 All. E.R. p. 539).

Local Authority's Right to Erect Dual Carriageway

On Thursday, March 9, 1967 Mr. Justice Kenny ruled in the High Court that there is staturory authority for the building of dual carriageways. The plaintiff had claimed that the Dublin County Council intended to erect a division along the centre of the Dublin to Naas road which would deprive him and his customers of free access to his premises, would constitute an unlawful violation of his rights and an unlawful obstruction.

The County Council had the power and the duty to maintain and construct main road and "maintain" included widening. It also included reasonable improvements. If the new road, when finished, would form one public road and if the existing public road would then form another public road, so that there would be two roads, the defendants had not erected any obstruction to either road by leaving a division in the middle because the passage of the public would not have been interfered with.

In delivering his reserved judgment the Judge stated, *inter alia,* that "when completed the two roads would together form one road, the right of passage would not arise until the new road had been opened to the public and the obstruction created by the raised division would be there when the road was made available to the public. The public would thus get the right of passage over the widened road with the division there already, and he was not satisfied that such a raised division in the road, created before the road had been given over to public passage, could be a nuisance or an obstruction.

The plaintiff's claim, in essence, was a claim to a right of uninterrupted and unobstructed right of passage over a public road which was not yet a public road and in the Judge's opinion such a right did not exist. When the road becomes a public road, it will be a public road with a division in it which was there before it was opened for public passage.

Mr. Justice Kenny said that, moreover, he thought that there was a statutory authority for the building of a new road, divided from but near an existing road.

The widening was authorised by the Act of 1925 which defined "maintenance" as including widening, and the division together with the building of another road was, in his view, a reasonable improvement and therefore, also, within the difinition of "maintenance", and the County Council had both the right and the obligation to maintain public roads.

"It is, in my view, an improvement because (1) this makes it possible for traffic going in either direction to move more quickly; (2) it makes passing a slow-moving vehicle much safer; (3) it reduces the risk of head-on collision, and (4) the divided road can carry much more traffic than an undivided road.

"It is, therefore, in the year 1967, in my opinion, a reasonable improvement and it is, in my opinion, authorised by the Local Government Act, 1925.

"It follows that the plaintiff's claim in this action failed because (1) in so far as the plaintiff claims a right of access as a private right, what the County Council propose to do, and have done in part, will not have interfered with it in any way by the proposed division, (2) in so far as the plaintiff claims his right as a member of the public to pass and re-pass, the division will not, in my opinion, be a nuisance because it will have been put in the road before the road becomes a public road. Moreover, it is, in my opinion, justified by statutory authority.

"In so far as it interferes with the plaintiff's right as a member of the public to pass and re-pass, Section 85 of the Road Traffic Act, 1961, justifies the imposition on members of the public of the obligation, on a dual carriageway, to travel on one side only when travelling in a particular direction."

(Francis Holland v the Dublin County Council. *The Irish Times,* Friday, March 10, 1967).

THE LAW OF STAMP DUTIES

THIRD REVISION

Further supplementary pages have now been published — Price 5/- (postage 10d. extra). This **Third Revision** incorporates the provisions relating to Stamp Duties contained in the **Finance Act, 1966,** and in non-Revenue statutes passed in the year 1965.

The original volume and the First and Second Revisions, which together contain previous enactments relating to Stamp Duty, cost 88/- (postage 3/3 extra).

AVAILABLE

from the Government Publications Sale Office, G.P.O. Arcade, Dublin, 1.

LIBRARY ACQUISITIONS

Books received in Library since March 1966

(a) Books purchased

Adamson (A. V.)and M. G. Coorey: The Valuation of Company Shares and Businesses, 4th edn., 1965.
Beattie (C. W.): Elements of Estate Duty, 5th edn., 1966.
Baynes (J. Hamilton): Share Valuations, 1966.
British Institute of International and Comparative Law: Parental Custody and Matrimonial Maintenance (Hull Symposium, 1967).
Bromley (. M.): Family Law, 5th edn., 1966.
Carroll (P.): Garda Siochana Guide, 4th end., 1966.
Cooper (M.) and J. Wood: Outlines of Industrial Law, 5th edn., 1966.
Cross (C. A.): Principles of Local Government, 3rd edn., 1966.
Current Law Citator: 1947-1965.
Current Law Yearbook: 1965.
Coutts (J. A.): The Accused (A Comparative Study), 1966.
Devlin (Lord): Trial by Jury, 1966.
Encyclopaedia of Forms and Precedents: Fourth Edition, Vol. 5 and 6 (Company Law), 7 (Commons to Easements), and 12 (Landlord and Tenant, Part II).
English and Empire Digest: Replacement Volumes 47 (Trusts to Weights and Measures) and 48 and 49 (Wills)—1966.
English and Empire Digest: Third Cumulative Supplement — 1966.
Gibson (W.): Probate Law, 17th edn., 1966.
Glaister (J.) and E/Rentoul: Medical Jurisprudence. 17th end., 1966.
Grunfeld (Cyril): Modern Trade Union Law, 1966.
Guest (A. G.): The Law of Hire-Purchase, 1966.
Hallett (V. G. H.): Conveyancing Precedents, 1965.
Halsbury (Lord): The Laws of England, Third (Simonds) edn., Cumulative Supplement, 2 vols. 1966.
Hardy Ivamy (E. V.): General Principles of Insurance Law, 1966.

Heward (E.): Guide to Chancery Practice, 3rd edn., 1966.
Houseman (D.): Law of Life Assurance, 6th edn., 1966.
Ireland: Index to the Statutes, 1922-1963 and 1964-65 Supplement.
Ireland: Index to Statutory Instruments, 1961-1963.
Ireland: Investment in Education Report — Annexes and Apprendices — 1966.
Ireland: Bound Statutes, 1963 (2 vols.) and 1964.
Kahn-Freund (O.) ed.: Labour Relations and the Law, 1965.
Keeton (G. W.): Introduction to Equity, 6th edn., 1965.
Kennard (C.) and J. Dutton: The (English) Building Regulations 1965, 1966.
Kerly (D. M.); Law of Trade Marks, 9th edn., 1966.
Law Commission (England): First Annual Report, 1965-1966.
Law Reform Committee Reports (Chairman, Lord Pearson):
(a) Twelfth Report—Transfer of Title to Chattels. April 1966.
(b) Thirteenth Report — Hearsey Evidence in Civil Proceedings, May 1966.
Criminal Law Revision Committee Reports (Chairman, Lord Sellers): First, Second, Third, Fourth and Seventh Reports, 1959-1965.
Law Reports (England): Index. 1961-1965.
Megarry (R. E. and H. W. Wade: The Law of Real Property, 3rd edn., 1966. (Two copies).
Morgan (B.): Estate Duty Saving and Capital Gains Tax, 3rd edn., 1966.
Munkman (John): Employer's Liability at Common Law, 6th edn., 1966.
Morris: Report of the Departmental Committee on Jury Service, April 1965.
Odgers (W. B.): Principles of Pleading and Practice, 19th edn., 1966.
O'Donnell (J. D.): How Ireland is Governed, 1966.
O'Higgins (Paul): Bibliography of Periodical Literature Relating to Irish Law. 1966.
Parker (D. B.) and A. Mellows: The Modern Law of Trusts, 1966.
Parry (Sir David): The Law of Succession, 5th edn., 1966.
Paget (J.): Law of Banking, 7th edn., 1966.
Phipson (S. L.): Manual of the Law of Evidence, 9th edn., 1966.
Potter (D. C.) and H. H. Monroe: Tax Planning, 5th edn., 1966.
Redgrave (A.): The Factories Acts. 21st edn., 1966.
Robertson (A. H.): European Institutions, 2nd edn., 1966.
Saorstat Eireann: Private Acts, 1924-1926.
Scarman (Sir Leslie): A Code of English Law, 1965.
Salmond (Sir John): Jurisprudence, 12th edn., 1966.
Schmitthoff (C.): The Sale of Goods, 2nd edn., 1966.
Snell (E. H.): Principles of Equity, 26th edn., 1966 (Two copies).
Statesman's Yearbook, 1966-67.
Treagus (J.) and W. Rainbird, ed.: Butterworth's Costs, 3rd edn., 2 vols. 1966.
Treitel (G. H.): Law of Contract, 2nd edn., 1966 (Two copies).
Tristram and Coote: Probate Practice — Second Cumulative Supplement to 21st end., 1966.
Underhill (Sir Arthur): Principles of the Law of Partnership, 8th end.. 1966 (two copies).
Wall (E. H.): The Court of Justice of the European Communities, 1966.
Wheare (K. C.): Modern Constitutions, 1966.
Whittaker's Almanack: 1967.
Wilberforce (Lord), A. Campbell and N. Elles: The Law of Restrictive Trade Practices and Monopolies, 2nd edn., 1966.
Wilson (Geoffrey); Restrictive on Constitutional and Administrative Law, 1966.
Widgery: Report of Departmental Committee on Legal Aid in Criminal Proceedings, March 1966.
Who's Who: 1967.
Writers and Artists Pearbook: 1967.
Words and Phrases Judicially Defined: 1966 Pocket Supplement, 5 vols.

(b) Donations and Exchanges

(1) from author—John Temple Lang: The Common Market and the Common Law, 1967.
(2) from Finnish Bar Association—J. Votila, ed.: The Finnish Legal System. 1966.
(3) Exchanges from Universities:
Dublin University (Trinity College) Calendar, 1966-67.
London University Calendar, 1966-67.
Manchester University Calendar, 1966-67.
Queen's University, Belfast, Calendar, 1966-67.
International Law List, 1967.
New South Wales Law Almanack, 1967.
National University of Ireland Calendar, 1966-67.
University Colleges—Cork, Dublin Galway: Calendars, 1966-67.
(4) Messrs. McMahon and Tweedy, Dublin.
Ruddall and Creig: Trustee Act, 1893.
Daly and Healy: Criminal Justice (Administration) Act, 1914.
Barton: Analysis of Irish Criminal Law. 1862.
Levinge: Justice's Manual, 1853.
Dogherty: Crown Circuit Assistant, 1788.
Millin: Petty Sessions Digest, 1898.
Humphreys: Criminal Law and Procedure (Ireland Act, 1887.

THE REGISTRY

Registry C

Re/ Patrick Raymond Byrne, B.L., late of 2 Stradbrook House, Blackrock, County Dublin. (Eaminer of Titles, Irish Land Commission).

Will any person having knowledge of the whereabout of a Will of the above deceased, please communicate with the undersigned:

GORE & GRIMES,
Solicitors,
6, CAVENIDSH ROW, DUBLIN 1.

OBITUARY

Mr. William T. Nicholl, solicitor, died on the 9th March, 1967 at a Dublin Hospital.

Mr. Nicholl served his apprenticeship with Mr. Edward H. Byrne, 7, Lr. Ormond Quay, Dublin, was admitted in Trinity Sittings, 1956 and practised at 7, Lower Ormond Quay, Dublin.

Mr. Kevin Nugent, solicitor, died on the 13th April, 1967 at the County and City Infirmary, Waterford.

Mr. Nugent served his apprenticeship with Mr. James A. Binchy, Clonmel, Co. Tipperary, was admitted in Hilary Sittings, 1944 and practised under the style of Messrs, Henry Shannon & Co., 2, Brighton Place, Clonmel, Co. Tipperary.

REGISTRATION OF TITLE ACTS, 1891 and 1942

Issue of New Land Certificate

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

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

Dated the 2nd day of May, 1967.

D. L. McALLISTER,
Registrar of Titles.

Central Office,
Land Registry,
Chancery Street,
DUBLIN.

SCHEDULE

1. Registered Owner, **John O'Keeffe.** Folio number 2278R. County Limerick. Lands of Garrane in the Barony of Glenquin, containing 21a. 2r. 5p.

2. Registered Owner, **Nicholas Fennelly.** Folio number 4007. County Kilkenny. Lands of Grangecuffe and Brownstown in the Barony of Shillelogher, containing 11a. 3r. 23p.

3. Registered Owner, **John Maguire.** Folio number 5573. County Louth. Lands of Haggardstown in the Barony of Dundalk Upper, containing 0a. 1r. 0p.

4. Registered Owner, **Patrick O'Connor.** Folio number 36054. County Tipperary. Lands of Lisheen in the Barony of Eliogarty, containing 72a. 3r. 35p.

5. Registered Owner, **John Keating.** Folio number 2833. County Wexford. Lands of Ballyboy in the Barony of Forth, containing 12a. 1r. 8p.

CORESPONDENCE

40 Dawson Street,
Dublin, 2.
8th March, 1967.

Dear Sir,

We are writing to draw your attention to a practice which is frequently adopted in the profession and upon which the Society may think it appropriate to give its recommendations:—

(1) It is, or has become, customary on selling property by auction to offer a title commencing with a recent Lease or Sub-Lease and to preclude all investigation of prior title. In recent cases where we were acting for prospective purchasers the title offered consisted of a Lease about ten years old and the conditions precluded investigation of the prior title, notwithstanding the fact that perfectly good and acceptable prior title appeared to be available.

(2) We suggest that this practice is unfair to the Vendor who may lose a sale or suffer a loss in price. We suggest that it is unfair to the Purchaser who must either refuse to bid or take a chance on the title. We suggest that it is unfair to the Purchasers solicitor who is precluded from securing adequate title for his client and compelled to carry out a superficial and rushed examination of title prior to auction.

(3) May we suggest that the Society should issue a recommendation as to the minimum title which should be offered on a sale by Public Auction in a case where documents shwoing adequate title are in the possession of the Vendor.

Yours faithfully,
ELLIS & MOLONEY.
Solicitors.

Note:

The attention of members is drawn to the statement of the Society at page 248 of the Members' Handbook disapproving of unduly restrictive practices on the sale of property and stating that it is the professional duty of a solicitor to see that the client receives a proper marketable title. Attention is also drawn to the decision of the Court of Appeal in England in Hill v Harris and another (1956 2All E.R. 358) in which the Court stated that it was not easy to see what conceivable defence a solicitor acting for a purchaser would have to a claim for damages for negligence for failing to take the ordinary conveyancing precaution before allowing the client to take a sub-lease or finding out by inspection of the head lease whether there were any covenants restrictive of user. The Council has taken the opinion of senior counsel who advise the Society that this decision would to his opinion be followed in the Irish Courts and that accordingly a solicitor for an intending lessee or sub-lessee should ensure that any unusual covenants are disclosed and brought to the attention of his client.—*Editor.*

re: Succession Act, 1965

Dear Mr. Plunkett,

I would be obliged if you would draw the attention of your members to:—

(1) the provisions of section 54 of the Succession Act, 1965 and particularly to subsection 2(c);

(2) to the notes at the foot of the forms in the Land registration Rules, 1966 in relatnon to transmissions on the death of the registered owner **on or after the 1st June, 1959.**

Solicitors should adhere strictly to the prescribed forms. Failure to use them will result in application being returned.

No Will, Settlement or Deed of Release on such deaths will be read or interpreted by the Land Registry Legal Staff. This is now the sole responsibility of the applicants legal advisers.

Yours faithfully,
D. McALLISTER,
Registrar.

Land Registry, Central Office,
Chancery Street,
Dublin 7. 9th March, 1967.

INDEX TO VOLUME 60

Absolute Liability in Road Accident Cases 45
Absolute Offence—Dangerous Driving 34
Accident Cases—Absolute Liability 45
Accountability of Solicitor for Personal Profit 92
Accountants' Certificates 18
Accountants' Certificates, ballot 29
Accountants' Certificates—Form of 44, 109
Accountants' Certificates Provisions 74
Accountants and the Law of Negligence 26
Accounts Regulations 43
Admission Ceremony 20, 74
Adverse Reference to a Solicitor in the Dail 18
Afforestation, Land Acquired for 39
Agency Commission 12
Allan, William Goldman v Rupert William Edeson Hargrave and Anor. 25
Allocation of Purchase Mooney 27
American Law 125
Appeals from Conviction on Indictment 107
Applications under the Land Act, 1965 1
Apprenticeship and Education Regulations 54
Apprentices Liability for Social Welfare Contributions 124
Arbitration—Extension of Time Limit 135
Arthur (Insurances) Ltd. (in Liquidation) v Sisson & Ors. (1966) 1 W.L.R. p. 1384 62
Assistant Required 123
Attacks on Profession 74
Att.-Gen. (McLoughlin) v Rhatigan I.L.T.R. (Vol. C) 1966, p. 37 50

Bailment—Duty of Care 82
Baker v. Bowketts Ltd. 112
Bar Associations 4
Becker v Partridge (1966) 2 All E.R. p. 226 ... 34, 93
Benevolent Association 4
Beswick v Beswick 35
Bibliography of Periodical Literature Relating to Irish Law 78
Bog of Technicality 80
Bonds (Land) 27
Book Review 26, 78, 91
Bordman and Ors. v Phipps 92
Boston v W. S. Bagshaw and Sons 80
Bradley-Wilson (1954) v Canyen Gardens (1965) ... 12
Briscoe v Briscoe (1966) 1 All E.R. p. 465 10
Building Contract, Standard Form of 30
Canada—Position Vacant 12
Cancellation of Sporting Rights 20
Cases of the Month ... 33, 47, 61, 80, 92, 110, 125, 134
Certificate of Accountant, Forms of 109
Certiorari—When Applicable to Statutory Body ... 135
Chain of Executorship 105, 118
Circuit Court—Fees (No. 2) Order, 1966 30
Circuit Court Jurisdiction 78
Circuit Court Rules, 1966 19
Circuit Court Rules, 1967 123
Circuit Court Sittings, 1967 ..... 98, 99
Civil Liability Act, 1961 51
Clause Excluding Objections of Title 93
Collision at Road Junction—Negligence 25
Colt Industries Inc. v Sarlic (1966) 1 All. E.R. p. 673 25
Coming Events 15
Commission on Irish Comparative Law 58
Commissioners for Oaths 54, 59, 110
Commissioners of Charitable Donations & Bequests 59, 87
Committees of the Council 70
Committee on Court Practice and Procedure 88
Company Law—Extension of Time for Registration of Charge 62
Compensation Arising from Road Works 82
Compensation Fund 71, 88
Complaints 5
Conclusion of President's Speech 5
Conflict of Interest—Professional Privilege 54
Conditions of Sale 30
Conflict of Interest—Professional Privilege ... 54, 105
Conflict of Laws 25
Consequences of Solicitors' Undertaking 48
Contract—Fundamental Breach 33
Contract—Injunction against Procuring Breach of, ... 34
Contract—Third Party Rights 35
Conveyancing, Land Registry Map 117
Cook v S. (1966) 1 All E.R. p. 248 11
Cork, Joint Seminar 1966 32
Cork Weekend Meeting 1967 ..... 29, 104, 118
Corporation Profits Tax 10
Correction 119
Correspondence 8, 27, 38, 51, 95, 112, 127, 139
Cottrill v Steyning and Littlehampton Building Soc. (1966) 2 All E.R. p. 295 34
Costs 62, 72
Costs—Allowable on Taxation 47
Costs—For Removal of Fallen Tree 82
Costs—Probate Office 96
Council of Law Reporting 70
Counsels' Fee Allowable on Party and Party Bill 47
Counsels' Fee in Conveyancing Matters 31
County Cavan Solicitors' Association 8
County Kildare Solicitors Bar Association 75
County Meath Solicitors' Association 75
County Tipperary and Offaly Bar Association 30
County Registrars Association 76
Court Fees 21
Court Fees—Increase 46
Court of Criminal Appeal 107
Court Procedure 105
Criminal Cases, Legal Aid 49
Criminal Jurisdiction of the High Court 107
Cubbard b Rederij Viribus Unitis and Galway Stevedores 50

Dail Debates 18, 21, 30, 46, 91
Damage for Breach of Option 34
Dangerous Driving—Absolute Offence 34
Death Duties 118
Death Duties and Chain of Executorship 105, 118
Debt Collecting 118
Defective Title—Sale of Goods 81
Defective Tool—Negligence 80
Delay in Government Departments 4
Deposit—Liability of Vendor 125
Dickson v Pharmaceutical Soc. of G.B. & Anor 126
Dictators—Office Rules for 37
Dinner Dance 53
Direction in Practice of Minor Matters 33
Direction—Need for 61
Directories, Entries in 30
Dissolution of Solicitors in Partnership 94
Distress—Mental, Death of Son 50
District Court Jurisdiction 78
District Court (Civil Bill Officers Fees) Rules, 1966 42
District Probate Register 106
Donegal Solicitors' Association 28
Dublin Solicitors' Bar Association 75
Duty of Local Authority to Maintain Highway 50

Education and Apprenticeship Regulations 54
Education and Training, Legal 32
Elgee, Richard J.—Proceedings Against 25
Ellis Loncoln 48
Emerald Construction Co. Ltd. v Lowthian and Ors. (1966) 1 All E.R. 1013 34
Enclosed Retreat for Solicitors 83
Enforcement of Solicitor's Undertaking 48
Ennis v Crean 35
Entries in Directories 30
Esso Petroleum Co. Ltd. v Harper's Garage (Southport) Ltd. (1966) 1 All E.R. p. 725 25
Examination Results 32, 55, 124
Expenses—Medical Witnesses' 18, 88
Extraordinary Members of the Council 70

Factory, Defined 136
Faculty of Notaries Public in Ireland 22
False Prentences 61
Family Provisions Act, 1938 47
Family Provisions Applications 47
Fees 3
Fees—Inquiry 15
Fees to Counsel in Conveyancing Matters 31
Fiat of the Attorney-General—No Longer Required ... 10
Field, Place, Caravan Park & Ors. v Harding (Valuation Office) (1966) 3 All. E.R. p. 247 136
Finance 7
Finance Act, 1965 18
Finnish Legal System 91
Forestry Department—Interviewing Clients 8, 39
Fugitive Offender—Irish Warrant 95
Fundamental Breach of Contract 33, 81
Future Pattern of the Profession 119, 131

Gardiner (Lord), Defends Legal Fees 59
General Council of the Bar of Ireland 97
George v Revis 81
Givaudan & Co. Ltd. v Minister for Housing and Local Government and Anor. 80
Global Dress Co. Ltd. v W. H. Boase & Co. Ltd. (1966) 72
Goding v Frazer (1966) 3 All E.R. p. 234 125
Gregory and Anor. v London Borough of Camden (1966) 1 W.L.R. p. 899 62
Griffiths v Liverpool Corporation (1966) 3 W.L.R. p. 467 51

Heathstar Properties Ltd. (No. 2) (1966) 1 All E.R. p. 467 51
Hemphill Ltd. v Williams 35
High Court 106
High Court Hearings 106
High Court Criminal Jurisdiction 107
Hill v Harris 10, 23
Hire Purchase Option Clause 126
Horssler v A. Bruce (Grays) Ltd. (1966) 95
House Agents' Fees Investigation 31
Income Tax—Assessment on Solicitors under Section D 2
Income Tax and Sur-Tax 10
Incorporated Council of Law Reporting 70, 77
Increased Court Fees 46
Index of Statutory Instruments 64, 113
Infant—Right of Putative Father re Religious Education 25
Infant—Settlement—Practice Direction 33
Injunction against Procuring Breach of Contract ... 34
Injury to Employee—Negligence 112
Insurance Firms—Pressure to Settle 80
Insurance Official Interviewing Counsel 97
Insurance—Public Liability Policy 81
Interim Report of Working Party on Landlord and Tenant Law 14
International Bar Association 56, 69, 72
International Congress of Military Penal Law 109
Irish and Spanish Law 108
Irish Society for the Prevention of Curelty to Animals 16
Irish Statutes 1966 112

Jeffs & Ors. v New Zealand Dairy Production and Marketing Board & Ors. 135
Joint Seminar Cork, 1966 ..... 32. 63
Joliffe v Exeter Corporation 82
Jurisdiction of Circuit and District Courts ... 3, 72, 78
Jurisdiction of Court of Appeal 107
Jurisdiction of the High Court in Criminal Matters ... 107
Jury System—Out of Date? 33

Kelly v Manchester Ship Channel 111
Kerry Law Society 109

Land Acquired for Afforestation 39
Land Act, 1965 ..... 1, 9, 19, 20, 41, 58, 95
Land Bonds—Payment in 27
Land Commission Sales 51
Land Registration Fees (No. 2) Order, 1966 91
Land Registration Rules 1966 91
Land Registry Map Conveyancing Practice 118
Land Registry Practice 19
Landlord and Tenant Commission 17, 54
Landlord and Tenant Bill 1965 15
Landlord and Tenant Law—Report of Working Party 14
Law and the Profits 8
Law Reform 2, 73
Law Reform Advisory Committee 76
Lease, Varying Rent 105
Lee v Popeck and Anor. 126
Legal Aid 79
Legal Aid in Criminal Cases 49
Legal Aid—Solicitors' Remuneration 60
Legal Education and Training 3, 32, 72
Legal Fees Defended 59
Lessee's Solicitor doing Lessor's Solicitor's Work ... 118
Letters, Solicitors' 111
Lewthwait v Stimson 94
Leyden-Amsterdam-Columbia Summer School 125
Liability in Road Accident Cases 45
Liability of Apprentices for Social Welfare Contributions 124
Liability of Solicitor-Advocate 63
Liability, Vincarious for Negligence 35
Liberian Shipping Corporation v King & Sons Ltd. 135
Library Acquisitnons 12
Lightning—Fire Arising from 25
Limitation of Period within which to Issue Writ ... 94
Local Authority Solicitors' Association 52, 97
Local Authority's Right to Erect a Dual Carriageway 136
Location of Estate Duty Office 17
Lord Gardiner Defends Legal Fees 59
L.P. Arthur (Ins.) Ltd. (in Liquidation) v Sisson and Ors. (1966) 1 W.L.R. p. 1384 62

Macaulay v The Minister for Posts and Telegraphs ... 10
MacIntyre v Coles (1966) 1 All E.R. p. 723 25
McGrath v Kiely and Powell (1965) I.R. p. 497 ... 11
McGregor v J. S. Duthie & Sons & Co. (1966) S.L.T. p. 133 37

Maradana Mosque v Badi-ud-Din Madmud (1966) 1 All E.R. 545 25
Master and Servant—Loan of Servant 37
Master v Macalister (1952) N.ZL.R. p. 257 111
Mayo Solicitors' Bar Association 16
Meaning of Public Place 50
Medical Witnesses Expenses 18, 88
Medico-Legal Society of Ireland 75
Meetings of the Council 1, 17. 29, 53, 69 70, 87. 104, 117, 118, 129
Mental Distress—Damages Recoverable for 50
Milner & Son v Percy Bilton (1966) 2 All E.R. 894 49
Minimum Fees of Counsel in Conveyancing Matters 31
Minor Matters 123
Minor Matters—Points of Practice 60
Minor Matters—Practice Direction 33
Mod Conveyancing 21
Moody v Godstone Rural District Council 111

Name and Style of Practice of Solicitor 125
National Union Bank Ltd. v Lincoln 93
Natural Justice 24
Negligence—Collision at Road Junction 25
Negligence—Defective Title 93
Negligence—Defective Tool 80
Negligence in Connection with Lease 23
Negligence—Injury to Employee 112
Negligence—Professional 10, 92, 123
Negligence—Professional Re Leases 23
Negligence—Solicitor's 11, 110
Negligence—Vicarious Lnability 35
Notaries Fees 22
Notice of Change of Address 28
Notice of Partnership 127

Obituary

Brown, Robert, ... 40
Dunne, Michael J. 128
Elyan, Beatrice 128
Flynn, Patrick 83
Fry, William H. 39
Gibney, Francis A. 100
Hardman, Cyril H. 39
Kelly, Martin 83
Little, Joseph J. 39
Macken, John R. 39
Morris, John S. 15
McDermott, Bernard 128
McDowell, Dermot 100
McFadden, Laurence J. 52
Nicholl, William J. 138
Noyk, Michael 83
Nugent, Kevin 138
O'Shea, Denis F. 28
Osborne, J. Allan 100
Shanahan, Henry J. 40
Turpin, Horace 52
Walker, Aubrey R. 128
White, William A. 39
Wolfe, Joseph Jackson 128

Objections to Title—Clause Excluding 93
Obsession with Motor Vehicles 61
Office Rules for Dictators 37
Office Systems 88
O'Higgins (Paul)—Bibliography of Periodical Literature Relating to Irish Law 78
Omission from Statement of Claim 110
Option. Damages for Breach of 34
Order in which Witnesses may be Called 10
Ordinary General Meeting 2, 70

Patents Act, 1964 15
Pattern of the Profession in the Future 119
Payment of Deposit to Estate Agents 125
People v Morrissey I.L.T.R. (1966) p. 128 49
Personal Liability of Vendor for Deposit 125
Petroleum Products—Restraint of Trade 37
Picketing Crime—Obstruction of Police 62
Planning Permission—Notice to Applicant 80
Planning Permission—Ultra Vires 62
Planning, Town 111
Point of Practice—Minor Matters 60
Position Vacant 12, 108
Post Office v Norwich Union Fire Ins. Soc. Ltd. ... 81
Practice Direction, Infant Settlements 33
Practice in Land Registry 19
President's Speech 71
President and Vice-Presidents 87
Private Prosecutor's Right Persists under Constitution 35
Proceedings against Receiver 62
Proceedings in Dail—Reference to Solicitor 18
Professional Negligence 10, 23, 92, 123
Professional Privilege—Conflict of Interest 54
Prohibition on Commissioners for Oaths ... 54, 59, 110
Provisions for Family 47
Public Liability Insurance 81
Public Place, Meaning of 50
Purchaser and Vendor 34

Question by Jury Indicating New View of the Facts 61

Rating—Residential Caravan 136
Reciprocity in Practice 5
Regent Oil Company v J. V. Leavesley (Lichfield) (1966) 2 All E.R. p. 454 37
R. v Ball & Loughlin 34
R. v Keen, Crim. L.R. (1966) p. 514 61
R. v Metropolitan Police Commissioner 95
R. v Richards, Crim. L.R. (1966) p. 515 61
R. v. Weston, Crim. L.R. (1966) p. 512 61
Registration of Title Act, 1964 42
Registration of Title Acts 1981 and 1942 ... 16, 28, 39, 52, 64, 83, 99, 115, 128, 139
Registry 15, 28, 40, 52, 64, 82, 99, 115, 127, 138
Registry of Deeds 54
Registry of Deeds Memorials 54, 59, 110
Remuneration of Solicitors in Legal Aid Matters ... 60
Rent, Varying of by Lease 105
Requisitioning of Documents in Land Registry 20
Residential Caravan—Rating 136
Restraint of Trade 25, 126
Restraint of Trade—Petroleum Products 37
Retainer—Termination of Solicitor's 49
Re C. (M.A.) (An Infant) (1966) 1 All E.R. 838, 849 25
Re A Solicitor (1966) 3 All E.R. p. 25 48
Re A Solicitor (Ellis Lincoln) 49
Richards v Brooks 112
Right of Third Party in Contract 35
Right to Private Prosecution for Indictable Offences 35
Road Traffic Act, 1961 79
Road Traffic Bill 1966 79
Road Traffic Prosecutions 130
Rondel v Worsley 63
Rules of the District Court (Civil Bill Officers Fees) 1966 42
Rules of the Superior Courts (No. 1) 1966 10

Safe System of Work 111
Salaried Solicitors' Group 7
Sale of Goods—Defective Title 81
Sale of Land to Forestry Division 8
Scale of Counsel's Fees in Conveyancing Matters ... 31
Scale of Notarial Charges 22
Scudder v Prothero & Prothero 36
Sealing of Mortgage Releases by Dublin Co. Council 112
Servant, Loan of 37
Service of Writ, Time for 112
Sittings of the Circuit Court 1967 98-99
Situation of Estate Duty Office 2
Society's Contribution to Incorporated Council of Law Reporting 77
Society of Young Solicitors 7, 19, 31, 76, 90, 115
Solicitor Accountable for Personal Profit 92
Solicitors' Accounts Regulations 1966/7 ... 43, 118, 123
Solicitors' Benevolent Association 72
Solicitors' Fees Inquiry 15
Solicitors Golfing Society 30, 75
Solicitors' Letters 111
Solicitor's Liability as Advocate 63
Solicitor—Name and Style of Practice 125
Solicitor's Negligence 11, 36, 110, 123
Solicitors' Remuneration in Legal Aid Matters 60
Solicitor's Retainer, Termination of 49
Solicitor's Undertaking, Enforcement and Consequences of 48
Spanish and Irish Law 108
Standard Building Contract 4, 30
Standard Conditions of Sale 4
State v District Justice Farrell 35
Statute of Limitations—Issue of Writ Within Period 94
Statutes, Index of 112
Statutory Instruments Index 64
Stone, J. & F. Lighting & Radio Ltd. v Haygarth (1966) 3 All E.R. p. 539 136
Subdivision Application, Condition of Planning Permission 95
Succession Act 1965 ..... 38, 42, 54, 72, 105
Suisse Athlantique Societe D'Arment Maritime S.A. v N.V. Rotterdamsche Kolen Centrale (1966) 2 W.L.R. 2 All E.R. 33
Superior Court Rules 1966 (Nos. 2 and 3) 42
Sur-Tax and Corporation Profits Tax 10
Switzerland—Position Vacant 12
Systems in Solicitors' Offices 88

Taylor v Rover & Co. Ltd. and Ors. 81
Third Party Rights in Contract 35
Thomas National Transport (Melbourne) v May & Baker (Australia) Ltd. 81
Thoughts About an Office System 88
Title—Clause Excluding Objections 93
Time for Serving a Writ 112
Tipperary and Offaly Bar Association 30
Town Planning 111
Tynan v Balmer (1966) 2 W.L.R. 1181 62

Undertaking, Enforcement and Consequences of Solicitor's 48
United Dominions Trust (Commercial) Ltd. v Ennis 126
Unqualified Persons Acting as Solicitors 26

Valuation Appeals 18
Varying Rent under Lease 105
Vendor and Purchaser 34
Vendor and Purchaser—Clause Excluding Objections to Title 93
Vicarious Liability 35
Bose v Barr (1966) 2 All E.R. p. 226 62

Warrant, Irish—Fugitive Offenders 95
Weekend Meeting, Cork 29, 118
Williams v Devon County Council 82
Wisdom of Others 92
Witnesses Expenses, Medical 88
Words of the Wise 123

THE LAW SOCIETY'S

STANDARD GENERAL CONDITIONS OF SALE

PUBLIC AUCTION and PRIVATE TREATY

Specimen copies herewith

- avoid unnecessary delay in examining general clauses for unusual stipulations.
- make for speed and easy reference by placing variable matters and alterations in schedules at the end.
- include clauses required by the Registration of Title Act, 1964 and Land Act, 1965.
- will be kept up to date.
- sold to members in parcels of fifty.

Price per parcel £2 10s. plus postage 2/6.

ORDER FORM

Please supply parcels of the Society's Conditions of Sale as follows:—

Public Auction.....parcel(s)

Private Treaty.....parcel(s)

by post/to be collected at the Society's Offices

Remittance £.....herewith.

Date

Name (block letters or type).....

Address.....

To The Incorporated Law Society of Ireland.

SOLICITORS' GOLFING SOCIETY

OFFICERS FOR YEAR 1966:
President: Robert McD. Taylor (Pres. I.L.S.I.).
Captain: William A. Menton.
Hon. Treasurer: David Bell.
Hon. Secretary: Henry N. Robinson.

94 MERRION SQUARE,
DUBLIN 2.
'Phone 64587.

September 1966

The Autumn Meeting of the Society will be held at Bettystown Golf Club, Bettystown (by kind permission) on Saturday, 15th October, 1966, when the following Competitions (18 holes Stableford) will be played:

1. (*a*) President's Prize (Mr. Robert McD. Taylor). Winner will also receive the Incorporated Law Society Challenge Cup (Holder: Edward J. Dillon).
   (*b*) Prize for Runner-up.
2. (*a*) The Ryan Challenge Cup (with prize presented by the Golfing Society). Limited to Members with Club Handicaps of 13 to 24 (Holder: Joseph McGowan).
   (*b*) Prize for Runner-up.
3. Sweepstake 2/6 to be divided between the Winners of the Cups.
4. Prizes will also be presented for:
   (*a*) Best Score First Nine Holes.
   (*b*) Best Score Second Nine Holes.
   (*c*) Best Score by Competitor resident more than 30 miles from Bettystown.
   (*d*) Best Score of Three Cards drawn by lot.
5. No Competitor will be awarded more than one Prize.
6. Competitors may arrange Partners and start from 9.00 a.m. onwards but not later than 2.30 p.m.
7. The Annual General Meeting of the Society will be held in the Clubhouse at the conclusion of the Competition.
8. Dinner will be served in the Neptune Hotel at 7.30 p.m. sharp at which the President, Mr. Robert McD. Taylor, will preside.
9. Non-Playing Members of the Society will also be welcome to the Dinner.
10. Members will appreciate it is essential that the Committee should know in advance the exact number to cater for; accordingly, please sign and return the Slip attached hereto at the earliest opportunity.
11. All members please wear the Society's Tie. Ties will be on sale, price £1.

H. N. ROBINSON,
Hon. Secretary.

AUTUMN MEETING AT BETTYSTOWN

15th October, 1966

(*a*) I will play in Competition.
(*b*) I will attend Dinner.

Signed.....

Address.....