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SUMMARY OF RECENT LAW.

CRIMINAL LAW.

Evidence—Accomplice—Corroboration—Need of Warning to Jury—"Accomplice"—Particeps Criminis. In July, 1953, a number of youths, including the appellant, attacked four other youths, including B. During the attack a knife was used and subsequently B. died of wounds. The appellant and five others, including L., were indicted for the murder of B., but at the trial the Crown offered no evidence against L. and three others, and the jury returned a formal verdict of "Not Guilty" of murder in respect of them. At the trial of the appellant and the fifth youth the jury disagreed. Later no evidence was offered against the fifth youth, and he was found "Not Guilty" of murder. At the second trial of the appellant L. was called as a witness for the prosecution. In his summing-up the trial Judge did not warn the jury that L.'s evidence was, or should be treated as, the evidence of an accomplice. *Held*, in a criminal trial, where a person who was an accomplice gave evidence on behalf of the prosecution, it was the duty of the Judge to warn the jury that, although they might convict on his evidence, it was dangerous to do so unless it was corroborated; this rule, although a rule of practice, now had the force of a rule of law and where the Judge failed to warn the jury in accordance with it, the conviction would be quashed, even if, in fact, there was ample corroboration of the evidence of the accomplice, unless the appellate Court could apply the proviso to s. 4 (1) of the Criminal Appeal Act, 1907; a person called as witness for the prosecution was to be treated as an accomplice if he was *particeps criminis* in respect of the actual crime charged in the case of a felony; L., if he was to be an accomplice at all, had to be an accomplice to the crime of murder, and, as there was no evidence that L. knew that any of his companions had a knife, he was not an accomplice in a crime which consisted in its felonious use; and, therefore, it was not necessary for the trial Judge to give a warning to the jury. *Per curiam:* In two cases persons falling strictly outside the ambit of the category of *particeps criminis* have, in particular decisions, been held to be accomplices for the purpose of the rule: viz., (*i*) receivers have been held to be accomplices of the thieves from whom they receive goods on a trial of the latter for larceny: *R.* v. *Jennings*, (1912) 17 Cr. App. Rep. 242; *R.* v. *Dixon* (1925) 19 Cr. App. Rep. 36; (ii) when X has been charged with a specific offence on a particular occasion, and evidence is admissible, and has been admitted, of his having committed crimes of the identical type on other occasions, as proving system and intent and negativing accident: in such cases the Court has held that in relation to such other similar offences, if evidence of them were given by parties to them, the evidence of such other parties should not be left to the jury without a warning that it is dangerous to accept it without corroboration: *R.* v. *Mohamed Farid*, (1945) 173 L.T. 68; *Davies* v. *Director of Public Prosecutions* [1954] 1 All E.R. 507 (H.L.)

Privity of Contract. *217 Law Times*, 42, 53.

DIVORCE AND MATRIMONIAL CAUSES.

Nullity—Husband's Disability—Adoption of Child—Marriage not consummated—Wife Unaware of Legal Rights at Time of Adoption—Wife later acquiring Such Knowledge and remaining thereafter in Matrimonial Home until filing Her Petition—Recognition by Her of Existence and Validity of Marriage—Such Conduct approbating Marriage—Undefended Nullity Suit—Same Principles applicable as in Defended Suit—Duty of Court to scrutinize closely Evidence of all Matters relative to Adoption And Subsequent Circumstances of Family Life. In an application for nullity, not only does the burden of proof rest heavily on the petitioner, but all matters must be considered by the Court, and the evidence in respect of those matters must be very closely scrutinized. (*Tindall* v. *Tindall*, [1953] 1 All E.R. 139 and *Nash* v. *Nash*, [1940] 1 All E.R. 206, applied.) Where, and where only, in a nullity suit, it could be said that what was done by the spouses as regards the adoption of a child was done without adequate knowledge of the facts and of the law, the result must be taken to be that the marriage has not been approbated. (*W.* v. *W.*, [1952] 1 All E.R. 858, followed.) Although at the time of the adoption of a child, the spouse who later petitions for a declaration of nullity, owing to his or her lack of knowledge of the law, cannot be said to have approbated the marriage, the Court should weigh with considerable care not only the circumstances of the adoption, but the adoption in the light of that which preceded and followed it. Delay, in itself, does not necessarily amount to approbation, but the circumstances subsisting during the continuance of the family life after the adoption must be carefully considered. (*Clifford* v. *Clifford*, [1948] P. 187; [1948] 1 All E.R. 394, referred to.) The principles which must be applied are the same whether or not the proceedings for a declaration of nullity are defended. The parties were married on January 27, 1945; the marriage was never consummated although the husband tried continually to have intercourse and the wife endeavoured to assist him, and such attempts continued until 1949. His inability was due primarily to psychological reasons. On January 30, 1946, a child was adopted by the parties. On April 16, 1947, a second child was adopted by them. The parties continued to live together until the hearing of the wife's petition for a declaration of nullity. *Held*, 1. That, as a fact, the marriage had not been consummated. (*D.* v. *A.*, (1845) 1 Rob. Eccl.; 163 E.R. 1039, referred to.) 2. That at the time of the adoption of the children in 1946 and 1947, the wife knew of her husband's disability, but neither she nor her husband then knew that she could bring a nullity suit, and she did not acquire that knowledge until the beginning of the year 1953. (*Slater* v. *Slater*, [1953] 1 All E.R. 246 and *W.* v. *W.*, [1952] 1 All E.R. 858, referred to.) 3. That following the adoption, and particularly since the time when they admittedly had full knowledge of their legal rights, the parties had for a year lived together in the same house with their adopted children with the status and character of husband and wife and parents. 4. That the inference to be drawn was that the wife, in addition to accepting the status of wife in the last year before filing her petition, had taken material pecuniary and other benefits in her capacity as a wife. 5. That the conduct of the wife, who, after full knowledge of her legal rights, had chosen to continue the family life for her own benefit and the benefit of the adopted children, was a recognition by her of the existence and validity of the marriage; and that such conduct rendered it inequitable and contrary to public policy that her petition to declare the marriage null and void should be dismissed. (*G.* v *M.*, (1885) 10 App. Cas. 171; *Tindall* v. *Tindall*, [1953] 1 All E.R. 139; and *B.* v. *B.*, (to be reported) followed.) (*Slater* v. *Slater*, [1953] 1 All E.R. 246, distinguished.) *L.* v. *L.* (S.C. Christchurch. February 24, 1954. McGregor, J.)

Separation (as a Ground of Divorce)—Presumption of Continuance of Separation during Statutory Period—Allegation of Interruption by Acts of Intercourse between Spouses—Strict Proof by Party so alleging—Analogy with Condonation of Adultery—Standard of Proof of Continuance of Separation—"Wrongful act or conduct"—Divorce and Matrimonial Causes Act, 1928, ss. 10 (i), 18.—Divorce and Matrimonial Causes—Evidence—Separation

—Appeal—Assessment by Trial Judge of Conduct of Parties after having seen and heard Them and Decree nisi granted—Non-interference by Appellate Court with Such Assessment, unless Manifest "wrongful conduct" and Separation thereby brought about—Divorce and Matrimonial Causes Act, 1928, s. 18. Before the Court can grant a decree of dissolution of marriage on a petition on the ground set out in s. 10 (*i*) of the Divorce and Matrimonial Causes Act, 1928, it must be satisfied that there has been an agreement to separate, and, as well, that it is still in full force and has been in full force for a period of three years and upwards.

Acts of intercourse between the spouses during the statutory period negative the continuance of the separation. (*Bennett* v. *Bennett*, [1936] N.Z.L.R. 872; [1936] G.L.R. 624, followed.) Where it is alleged by the respondent that the separation was interrupted by acts of intercourse between the spouses, the onus of proof must be decided on general principles, with some guidance from the cases dealing with condonation of adultery. (*Campbell* v. *Campbell*, (1857) Dea & S.W. 285; 164 E.R.578; *Durant* v. *Durant*, (1825) 1 Hagg. Ecc. 753; 162 E.R. 734; and *Tilley* v. *Tilley*, [1949] P. 240; [1948] 2 All E.R. 1113, referred to.) When the petitioner proves the separation agreement and that thereafter the parties lived separate and apart, a presumption analogous to the presumption of innocence in the case of connivance and collusion will arise. This presumption of the continuance in force of the separation, which is one of fact only, can be relied upon by the petitioner unless and until facts appear sufficient to displace it. In the absence of any such facts, there is a *prima facie* case in the sense that continuance in full force of the separation for the required term may be inferred. If circumstances appear which, though falling short of proving that the separation did not continue in full force, yet throw doubt upon whether it did so continue, the presumption of continuance in full force with which the petitioner started is no longer sufficient for him to rely upon. (*Mills* v. *Mills*, (1861) 2 Sw. & Tr. 310; 164 E.R. 1015, and *Tilley* v. *Tilley*, [1949] P. 240; [1948] 2 All E.R. 1113, applied.) (*Bowron* v. *Bowron*, [1925] P. 187; *Sifton* v. *Sifton*, [1939] P. 221; [1939] 1 All E.R. 109, and *Cairns* v. *Cairns*, [1940] N.I. 183, referred to.) If the respondent alleges that the continuance of a separation has been interrupted by intercourse, such allegation requires strict proof, and it lies on the respondent to prove it clearly and distinctly. If the respondent's evidence is credible or convincing, the legal presumption of the continuance of the separation in full effect would thereby be negatived; and the petitioner might find it impossible to discharge the burden of proving that the separation continued in full force during the statutory period. The uncorroborated assertion by a respondent that there had been intercourse ought not to be, and rarely will be, accepted by the Court as sufficient; especially if that evidence is contradicted by the other spouse. (*Tilley* v. *Tilley*, [1949] P. 240; [1948] 2 All E.R. 1113, applied.) Even if the allegation of intercourse is not affirmatively proved, the Court must still, at the end of the case, be satisfied on the whole of the evidence that the petitioner has proved his case. It has not to be satisfied beyond reasonable doubt: it is sufficient if the greater probability is that there had been no interruption of the continuance of the separation through acts of intercourse. Only if there is an exactly even balance on the whole case does the legal burden as to onus come into operation, and require the Court to say that it is not satisfied. (*Robins* v. *National Trust Co.*, [1927] A.C. 515, followed.) (*Redpath* v. *Redpath and Milligan*, [1950] 1 All E.R. 600, referred to.) *So held* by the Court of Appeal, *per totam curiam*, upon an appeal by a wife alleging acts of intercourse as interrupting the period of separation, *Held further*, by *Gresson* and *Hay*, JJ.: (*Fair*, J., dissenting.) 1. That it is not "wrongful conduct" within the meaning of s. 18 of the Divorce and Matrimonial Causes Act, 1928, that a husband who has lost his affection for his wife should frankly tell her so, and propose a separation by agreement; though it may be "wrongful conduct" if, in such a case, his request is accompanied by behaviour of such a nature as to make life with him intolerable. (*Emery* v. *Emery*, [1946] N.Z.L.R. 545; [1946] G.L.R. 258, distinguished.) 2. That an appellate Court should not interfere with an assessment by a Judge of the conduct of parties made by him after having seen and heard them, unless it is manifest that there was conduct which was "wrongful" within the meaning of s. 18 and that such conduct brought about the separation. 3. That, in the present case, the allegation of intercourse made by the wife appellant was counterbalanced by the denial of the respondent; and that, upon the whole case, the allegation of intercourse failed to be established by the one who asserted it, and it was, in fact, neutralized by the contradiction of the other spouse, leaving the presumption of continuance of the separation in full force unrebutted. (*Joseph* v. *Joseph*, [1915] P. 122, applied.) Per *Fair*, J., dissenting, That it was "wrongful conduct" of a grave kind for a man after nearly ten years of happy married life, without any fault of, or cause of complaint against, his wife, to assert his irrevocable decision that they should separate, and to persist over some months in that attitude, substantiating it by reference to his wish to marry a younger woman whom he was meeting and continuing to meet. (*Emery* v. *Emery*, [1946] N.Z.L.R. 545; [1946] G.L.R. 258, and *Schlager* v. *Schlager*, [1924] N.Z.L.R. 1011; [1924] G.L.R. 613, followed.) (*Nicholls* v. *Nicholls*, [1947] N.Z.L.R. 116; [1947] G.L.R. 122, applied.) Appeal from the judgment of *Stanton*, J., [1952] N.Z.L.R. 650, dismissed. *Wright* v. *Wright* (C.A. Wellington. February 26, 1954. Fair, Gresson, Hay, JJ.)

FACTORY.

Dangerous Machinery—Duty to Fence—Injection moulding Machine—Ram covered by Metal Box with Perspex Lids—Adjustable Nuts inside Box—Lid removed by Operator to Test whether Adjustment Necessary—Injury to Operator—Contributory Negligence—"Wilfully interfere with or misuse any . . . appliance"—Factories Act, 1937 (c. 67), s. 14 (1), s. 116, s. 119 (1), (2). The plaintiff was a mould press operator employed by the defendants in their factory. Part of the machine consisted of a heavy platen used to hold moulds in place, and the position of the platen could be adjusted by nuts on rods connected to it. These nuts were covered by a metal box with sloping sides at back and front. Each of these sides contained a pane of perspex which could be opened by means of a lip attached to it which formed a handle. Passing through the box close to the nuts was also a ram, with yoke attached, which automatically rammed granules of plastic material into a heating cylinder when the machine was in motion. The nuts connecting with the platen occasionally needed adjustment and this adjustment was normally carried out by the assistant foreman at the request of the plaintiff. On one side of the platen was the handle, or lever, for starting the machine. When it was in the neutral position it stood up vertically, and to start the machine it was moved over to the left. Wishing to see whether the nuts needed adjustment, the plaintiff stopped the machine but did not turn off the motor. He then opened the front perspex cover of the metal box and put his hand inside to test the nuts. As he did so, his leg accidentally caught the starting handle and started the machine, and the ram inside the box moved across and crushed his hand against the heating cylinder. The plaintiff claimed damages against the defendants for negligence and/or breach of statutory duty under the Factories Act, 1937, s. 14, s. 15 and s. 16. By their defence the defendants pleaded that the defendant was guilty of contributory negligence and was in breach of s. 119 (1) and (2) of the Act. The Court found as a fact that the plaintiff had an implied licence to test whether the nuts required adjustment and that he was not guilty of contributory negligence. *Held*: (*i*) S. 14 (1) of the Act of 1937 required a dangerous part of machinery to be securely fenced and it was not enough that it was provided with a means of achieving security; the box achieved security so long as the perspex cover was left shut, but, if the handle on the cover was used and the cover was lifted, it ceased to be a guard for anyone who put his hand inside the box; and, therefore, it was not a secure fencing of the machine and the defendants were in breach of s. 14 (1) of the Act. (*ii*) The involuntary action of the plaintiff in setting the machine in motion when the fencing was not in position involved the defendants in a breach of s. 16. (*Cummings* v. *Richard Thomas & Baldwins, Ltd.* ([1953] 2 All E.R. 43), applied. (*iii*) "Wilfully" to "interfere with or misuse" an appliance, within the meaning of s. 119 (1), meant interference which was in the nature of a perverse meddling with the appliance, and did not merely mean an intentional interference, and, therefore, the plaintiff was not in breach of the sub-section. (*iv*) As the plaintiff did not foresee the accidental pressure on the starting handle, and was not negligent in not foreseeing it, he was not, as far as he knew, doing anything likely to endanger himself, and, therefore, he was not in breach of s. 119 (2). *Charles* v. *S. Smith and Sons (England), Ltd.* [1954] 1 All E.R. 499 (Q.B.D.)

HUSBAND AND WIFE.

Deserted Wife in Occupation of Husband's Dwellinghouse—Licence to Occupy—Purchaser acquiring Property with Notice of Licence—Limitation to Licence—Relinquished by Wife of Licensee—Occupation of other Accommodation. In December, 1942, the husband deserted the wife, leaving her at the matrimonial home with the two children of the marriage and his grandmother, and went to live with the plaintiff, with whom he had since resided. In 1943 the wife proposed to move to Portsmouth, but, as that place was unsafe owing to enemy action, the husband

asked her to remain in the matrimonial home, saying that she could stay there so long as she had the children and the grandmother with her. In September, 1950, the husband found alternative accommodation to which the wife agreed to move, and in reliance on that agreement he contracted to purchase the alternative accommodation. Nothing, however, was arranged between the spouses as to whether the wife should go into the alternative accommodation as licensee of the husband or as owner of the freehold, and on October 25, 1950, she refused to move. On November 7, 1950, she wrote a letter making it clear that she had decided that the husband's grandmother should no longer reside at the matrimonial home. On January 14, 1952, the husband conveyed the title to the matrimonial home to the plaintiff who now sued for possession. *Held*, The wife had an irrevocable right to remain in possession of the matrimonial home and this right was enforceable against the plaintiff who had acquired the property with full knowledge of the facts: observations of Denning, L.J., in *Bendall* v. *McWhirter* [1952] 1 All E.R. 1315), applied; unless and until the terms on which the wife was to occupy the alternative accommodation had been agreed, there was no concluded agreement between her and the husband whereby she was bound to give up her right to remain in possession; the husband could not limit this right by purporting to make it a condition that she should allow his grandmother to reside with her, and her refusal to allow the grandmother so to remain could not amount to a breach; and, therefore, the plaintiff's claim failed. *Street* v. *Denham*, [1954] 1 All E.R. 532.

INFANTS AND CHILDREN.

Negligence—Trespasser—Demolition of House—Liability of Demolition Contractors—Site easily Approached from Open Space—Wall in Unsafe Condition—Interference with Wall by Child—Collapse on Child. The defendants were a demolition company who were carrying out the demolition of certain houses under a contract with the owners of the premises. Behind the houses was an open, cleared site where people were allowed to walk and children were accustomed to play. By the end of September, 1950, all the houses had been demolished except one which had been taken down to the level of the first floor ceiling. The rear wall of this house, which was over one hundred years old, had been damaged by bombing. On a Sunday afternoon, when none of the defendants' servants was on the site, the plaintiff, aged twelve, with other boys went on the site, and, having picked up some gas piping, started to pull away loose bricks from a window opening in the rear wall, with the result that the wall fell and the plaintiff was injured. In an action for negligence, His Lordship, having found that the plaintiff was a trespasser and that the wall was in an unsafe condition, *Held*, Although the plaintiff was a trespasser on the land the presence of children on the site was so likely an occurrence that the plaintiff came within the class of "neighbour" to whom the defendants owed a duty of care, and, therefore, they were liable in negligence to the plaintiff for failing to take precautions to prevent his suffering injury through the unsafe condition of the wall. (Dictum of Lord Atkin in *M'Alister (or Donoghue)* v. *Stevenson*, [1932] A.C. 580), applied.) *Davis* v. *St. Mary's Demolition and Excavation Co., Ltd.* [1954] 1 All E.R. 578 (Q.B.D.)

As to the Degree of Care required in Relation to Children, see *23 Halsbury's Laws of England, 2nd Ed.*, p. 584, para. 836; and for Cases, see *36 E. & E. Digest*, pp. 114-122, Nos. *565-619*.

TORT.

Joint Tortfeasors—Contribution—Jurisdiction to Apportion Blame without Special Application—Plaintiff's Claims against both Defendants settled in full by Second Defendant before Trial—One Plaintiff's Name left on Record—No Evidence offered by Plaintiff at Trial—Jurisdiction of Court to try Issue between Defendants as to Contribution. In an action arising out of a motor-car accident, the plaintiffs, a husband and wife, sued two defendants for damages for negligence. Before the trial the parties agreed a sum which would satisfy the plaintiffs' claims in the action, and the second defendant paid this sum, in full, to the plaintiffs together with an agreed sum for costs. The name of one plaintiff was left on the record, as the defendants were still at issue on the question of the ratio of contribution and wished to obtain the decision of the Court on the matter. When the action came on for trial, counsel for the plaintiff said that the action had been settled and offered no evidence. Counsel for each of the defenhants then asked for the question of contribution to be determined. *Held*: As the plaintiffs had been paid in full their damages and costs, the action was in reality dead notwithstanding that the name of one plaintiff had been kept on the record for the convenience of the defendants, and, therefore, the Court had no jurisdiction to determine the issue between the defendants. (*Croston* v. *Vaughan*, [1937] 4 All E.R. 249, distinguished.) *Calvert and Another* v. *Pick and Another*. [1954] 1 All E.R. 566 (Q.B.D.)

As to Contribution between Tortfeasors, see *32 Halsbury's Laws of England*, 2nd. Ed., p. 190, para 284.

TRUSTS AND TRUSTEES.

Costs, Charges, and Expenses. *104 Law Journal*, 67.

Powers of Trustee—Power of Advancement—Trusts arising on Exercise of General Power of Appointment—Power of Appointment conferred by Testamentary Instrument—Death of Testator before January 1, 1926—Power exercised after January 1, 1926—Trustee Act, 1925 (c. 19), s. 32 (3). By a codicil dated June 6, 1919, to his will a testator who died on March 6, 1921, conferred on his wife a general power of appointment over a fund of personalty exercisable by will or codicil. By her will dated August 26, 1926, the wife, who died on September 14, 1934, directed the trustees of her will to hold the property over which she had the said general power of appointment on the trusts therein declared of and concerning her residuary estate. Under the trusts declared in respect of her residuary estate infants became entitled contingently on their surviving their parents. On the question whether the power of advancement conferred by the Trustee Act, 1925, s. 32 (1), was exercisable in favour of the infant beneficiaries by the trustees of the will of the wife in respect of the appointed fund, *Held*, The trusts in favour of the infants were not constituted before the commencement of the Act of 1925 within s. 32 (3) thereof, and, therefore, the power was so exercisable. (*Re Batty*, [1952] 1 All E.R. 425, explained and distinguished.) *Re Bransbury's Will Trusts. Grece and Others* v. *Bransbury and Others*, [1954] 1 All E.R. 605 (Ch. D.)

WORKERS' COMPENSATION.

Worker recovering Damages against Person other than Employer—If No Finding of Contributory Negligence, Employer entitled to Full Indemnity for Compensation Payments—If Worker Guilty of Contributory Negligence, Employer's Indemnity limited to Proportion of Compensation paid commensurate with Degree of Worker's Fault as found by Jury—"Sum recoverable"—Workers' Compensation Act, 1922, ss. 49 (3), 50—Contributory Negligence Act, 1947, ss. 3 (2), 4 (3). When contributory negligence has been found on the part of a worker in a common-law claim against his employer, the "sum recoverable" within the meaning of that term as used in s. 49 (3) of the Workers' Compensation Act, 1922, from which the deduction of the workers' compensation payments made by the employer is to be made, is the reduced amount of damages in terms of the jury's verdict; and the same applies where the defendant is a person other than the employer of the worker. In both cases, the worker receives, in compensation and damages combined, the exact amount of damages he would have got if there had been no payment of compensation. Where an action for damages is brought by a worker who has received compensation payments from his employer, against a person other than his employer (herein termed "the third party"), and there is no contributory negligence on the worker's part, s. 50 of the Workers' Compensation Act, 1922, enables the employer to recover from the third party the precise amount which has been deducted in pursuance of s. 49 (3) in entering judgment against the third party. If, however, in such an action, the worker is found to have been negligent, and the award of damages is reduced by virtue of the Contributory Negligence Act, 1947, s. 4 (3) of that statute affects the operation of s. 50 of the Workers' Compensation Act, 1922, with the result that the employer's right of indemnity is limited to such proportion of the compensation payment made by him as the part of the sum payable as damages by the third party bears to the total damages which would have been recoverable if the worker had not been at fault. In the present case, the worker claimed damages against the third party, and the jury found in the worker's favour and assessed general and special damages (inclusive of the loss of wages), but found that the worker had been guilty of contributory negligence, and fixed his share of the responsibility at 50 per cent. It followed that the employer's right of indemnity was limited to one-half of the compensation payment, although the negligent third party would have the full amount of that payment deducted from the damages. *Jespersen* v. *Shaw Savill and Albion Co., Ltd.* (S.C. Christchurch. February 22, 1954. F. B. Adams, J.)

IN YOUR ARMCHAIR—AND MINE.

By Scriblex.

Costs Collection.—A Christchurch solicitor who has been making his way through the Holmes-Laski Letters with much more difficulty than he found with the Holmes-Pollock ones tells Scriblex that his efforts have been rewarded with at least one good story. It seems that a busy practitioner, irritated by the fact that certain costs had been outstanding for over a year and being about to leave on his long weekend, sent for a newly-joined member of his staff and said: "Here, you have a try at collecting these costs. Send them a stiff letter." To his surprise on returning the following Tuesday, he found that the costs had been paid. He sent for the letter that had evidently worked the miracle and found it to be as follows:—"Dear Sir, Unless we receive payment of our costs by Monday next, we shall at once commence such proceedings as will truly astonish you." It seems that it was the solicitor who was astonished, and the client who was truly surprised.

Factual Separation.—Section 7 of the Divorce and Matrimonial Causes Amendment Act, 1953, permitting divorce on the ground of seven years' factual separation, is not nearly so revolutionary a measure as the ground of separation under mutual agreement. Western Australia in 1918 made provision for divorce if the parties had been living separately for five years and there was no reasonable likelihood of the resumption of cohabitation; but there was an absolute bar if the petitioner had been guilty of adultery, or in default in payment of maintenance under any maintenance order or any maintenance agreement for wife or child. The nearest that any Australian State seems to get to our mutual agreement for separation as a ground for divorce is to allow it where the husband respondent has habitually and wilfully failed to pay the maintenance due under any Court order or any private agreement. This is the position in Western Australia and in South Australia. The latter State recognizes as a ground a continuous period of five years' separation immediately preceding the commencement of an action for divorce, provided that the separation is pursuant to an order for judicial separation.

Compensation Delays.—The observations in the *New Zealand Medical Journal* of Dr. Morris Axford, a well-known Auckland orthopaedic surgeon, are of some interest to practitioners. He asserts that much of the delay in getting an injured workman back to his occupation is unnecessary and could be avoided. There is a tendency, he considers, to prolong delays in order to give greater support to compensation claims, thus increasing the patient's physical and mental suffering and imposing an avoidable financial strain on industry. In his view, failure to remove an injured man's fear of permanent disability often deters recovery in accident cases. He says:

> It is not always possible for a patient to regain full physical strength and vigour before resuming work, yet how often do we find his employer, his union secretary, and sometimes even his solicitor, refusing to allow the man to rehabilitate himself, physically, financially and psychologically, by denying him the opportunity to work before, as they say, "he has fully recovered".

Scriblex has heard of a case of a workman aged eighty-four who, after a comparatively light injury, was told by his medical adviser that he could not work again—advice, in the circumstances, difficult to fault. There does not appear, however, any appropriate statutory provision for terminating the ancient workman's weekly compensation which he is presumably entitled to receive until the total of £2,300 is exhausted. It is to be hoped that by this time, if his needs are simple, he will have saved sufficient to make adequate provision for his old age.

A Lawyer's Digestion.—The late Viscount Simon, in a lighter moment, attributed a great measure of his success at the Bar to his ability to eat his lunch in ten minutes without being a victim of duodenal ulcers. In a discussion upon this intestinal topic, Richard Roe, in the *Solicitors' Journal*, revives a story told by Lord Justice Somervell that, when he was a boy thinking of becoming a barrister, his father took him to ask the advice of some distinguished "silk" whom he knew. The great man only asked him what sort of digestion he'd got, and he answered that it was good. "All right," said the leader, "you'll do for the Bar. There's more guts than brains in this profession."

The Harried Profession.—The ceaseless competition and the rise in the cost of living have forced barristers to undertake more work with the result that they now (on the common law side) spend much more time in travel than formerly. The coming of the railways tended to alter the old circuits by dividing counsel into metropolitan and circuit practitioners (for the Courts sat in town at the same time as on circuit: formerly they did not), but the introduction of the telephone has blurred this division. Nevertheless, a great deal of time is spent in travel (which, with accommodation, is vastly more expensive), and the melancholy result of that is that counsel are not so well read and informed—in a word, so well educated—as they used to be. They cannot be blamed; the age is against them. Like the educated men of other walks of life they know more of science, but less of philosophy. They have a smattering of economics, but little knowledge of history or the classics and none at all of theology. And the prospect is rather bleak. How can there be great Judges, men of the stamp of Blackburn or Bowen, in the future when the majority of those whose ranks fill the Bench have not communed with the great minds of the past and learned something of the meaning of wisdom?

It is a sobering thought and a sad one that this age which has been so prodigal of its gifts of leisure and economic stability to its handworkers has practically destroyed the leisure of its professional classes. And with leisure goes culture and love of letters, and manners, and taste, and time for reflection. There is no doubt that all those attributes have practically gone, and with them has passed that quality of expansiveness of mind which they generated. Looking back over the history of the Temple one realizes that the elegance of the Elizabethan age has gone and has not been replaced. So, too, the age of learning and culture which we associate with Johnson has gone and finds no parallel today. (Time and the Temple, (1953) *216 Law Times*, 506.)