

very material to the weight to be attributed to any reasons he may have given in his lifetime for failing to make provision for a dependant or for making only such provision as he did make for such dependant.

Certainly, in the present case irrational jealousy had no bearing on the amount which the court should order to be made for the plaintiff, except in so far as her moral claim might be said to be enhanced by her endurance of the state of affairs for about a year.

M. J. Grant.

EVIDENCE

Blackie v. Police [1966] N.Z.L.R. 910 illustrates a modern development in the scope of expert opinion evidence. The appellant had been convicted of "driving while under the influence" and one of the questions before the Court of Appeal was whether a traffic officer or policeman was competent to give evidence that in his opinion a driver was sufficiently intoxicated to satisfy the charge. A majority of that Court (North P. and McCarthy J.) answered in the affirmative though noted several restrictions. First, the officer must initially establish that he is sufficiently qualified either by training or experience to express such an opinion and secondly such evidence is not rendered inadmissible by virtue of the witness's close association with the prosecution's case, but this may well affect the weight given to such evidence. In his dissenting judgment Turner J. emphasised that the evidence would tend to usurp the function of the Court by answering the very question that the Court is called upon to decide, but little note was taken of this by the majority Judges, and surely this is the effect of an expert opinion evidence.

Daily v. Police [1966] N.Z.L.R. 1048. Here the novel contention that a blood sample taken from an intoxicated driver without his consent was analogous to an illegally obtained confession and should accordingly be inadmissible was rejected by Wild C.J. in the Supreme Court. In fact the Chief Justice affirmed the advice given by the Judicial Committee in *Kuruma v. R.* [1955] A.C. 197: "If evidence is relevant to matters in issue, it is admissible and the Court is not concerned with how the evidence was obtained". The Committee did make it clear that they were in no way limiting the rules governing the admissibility of confession, but nevertheless it is submitted that this far-reaching advice should be subject to some restrictions.

However support for the Privy Council's view can be found in *Fraser v. Police* [1967] N.Z.L.R. 447 where McGregor J. held that an implied consent to a blood sample being taken existed if it was taken in such circumstances that the persons must have known he was under arrest and the nature of the offence alleged and where the only reasonable inference is that he did consent to the sample being taken. In this case the appellant alleged the sample was taken without his clear unqualified consent.

Both *Fraser v. Police* and *Talbot v. Police* [1967] N.Z.L.R. 879 illustrate the great weight which attaches to the certificate of a qualified analyst as to the alcohol content of the blood of an intoxicated driver. In the former case it was held irrelevant that there was a three day

delay between the time the sample was taken and the time the sample was submitted to the analyst. In the later case *Tompkins J.* held no objection could be taken to production of the certificate to the court being effected by the prosecution merely handing over the certificate to the court. The appellant had submitted that production within the meaning of s. 62 of the Transport Act 1962 should be effected either by the analyst in person or the policeman having proper custody thereof. In addition both cases established beyond doubt that the certificate is evidence of the matters so certified and of the qualifications of the analyst.

In *R. v. McKay* [1967] N.Z.L.R. 139 the Court of Appeal was called to consider the admissibility of statements made by the appellant while under the effect of "Truth Drugs", and it was held by the court that evidence of psychiatrists of such statements, although in the interest of the appellant were inadmissible. Similarly inadmissible was evidence to the effect that the psychiatrists were of the opinion that as a result of their examination the testimony given by the appellant on oath at his trial was true.

Ever since the decision of the House of Lords in *Hollington v. Hewthorn* [1943] K.B. 587 the injustice of the rule in that case has received both academic and judicial criticism and no exception are *Goody v. Oldhams Press* [1966] 3 W.L.R. 460 and *Barclays Bank v. Cole* [1966] 3 All E.R. 948, two decisions of the English Court of Appeal. In the former case a conviction and sentence to thirty years imprisonment was held inadmissible in a civil action as any evidence of justification in a libel action arising out of the incident on which the criminal liability was founded, and, in the second a similar frustration met an action in conversion, although the defendant had been convicted in a criminal court of the relevant theft. However, in *Goody's* case, although this objectionable rule of evidence (and it was there described in similar terms by Lord Denning M.R.) was held binding upon that court, an opening in the law was widened to relieve some of the injustice of the case. It was noted that if a defendant in a libel action fails to establish justification he cannot adduce evidence of the plaintiff's specific misdeeds in mitigation, but the court excluded this rule where the previous misconduct culminated in criminal conviction. Accordingly the defence were able to establish the plaintiff's bad reputation as evidenced by his previous convictions spanning several years, and thus the publication was incapable of causing him any material injury. Although this case did eventually give relief to the innocent defendant it does illustrate the stupidity of a rule of law which to all intents presumes a convicted man to be innocent so far as subsequent civil proceedings are concerned.

I. S. Hurd.

INTERNATIONAL LAW

Fisheries (Agreement with Japan) Act 1967

By this Act the New Zealand Government gives effect to the Agreement on Fisheries between New Zealand and Japan pending its formal ratification by both Governments. This action is consistent with the understanding between the two governments confirmed in an Exchange