provides that it is an offence to refuse to give a blood sample under s.59C(1), the subsection which allows a traffic officer to ask for a blood sample if a breath test is refused. The case was remitted to the Magistrate's Court to determine whether the defendant had the necessary *mens rea.*

D. J. S. Laing

EQUITY AND THE LAW OF SUCCESSION

Testamentary Promises Act

The case of *Edwards* v. *New Zealand Insurance Co. Ltd.* [1971] N.Z.L.R. 113 is interesting in its interpretation of s.2(1) of the Testamentary Promises Amendment Act, 1961. In this case, the testator had a footwear company which his son, the claimant, had managed efficiently from 1955 to 1962, during which time the testator had vested some of the shares of the company in the claimant. In 1965 the claimant purchased the balance of the shares from the testator at a high price, contending now that the testator led him to believe that the part of the purchase price remaining owing would be forgiven by the testator in his will. The testator died in 1967 without making such provision.

In allowing the claim Speight J. held that,

> . . . if the deceased made this promise intending that it should be believed for purposes which seemed good to him, then in my view it is proper that the plaintiff should be able to make a claim based upon it even though he himself at the time had misgivings as to the promisor's bona fides (*ibid.*, 117).

This is an interesting development in the law. Seemingly a person may claim for services rendered in apparent reliance upon a promise, while not expecting the promise to be honoured in the promisor's testamentary disposition. But since the risk lies with the claimant, it is not an undesirable development.

Secondly, following the wide interpretation that the courts have given to the words "services or work" as being anything of benefit to the testator, Speight J. was able to hold here that the purchase of the shares had benefitted the testator by stabilising, if not increasing, the value of the testator's assets. This again, is a novel application of s.2(1).

Finally, in considering the quantum of the claim, the benefits which the claimant obtained by the purchase of the shares, were taken into account, following the principle laid down in *Jones* v. *Public Trustee* [1962] N.Z.L.R. 363.

Conditions in Wills

One of the problems faced by the Court of Appeal in *Re Cowley (deceased)* [1971] N.Z.L.R. 468 was the position of the doctrine of unreasonable restraint of trade in relation to conditions in testamentary dispositions. The testator had left his farm upon trust to his daughter-in-law to use, possess, and enjoy until her youngest child attained the age of 21, and then to transfer the land to her son (or sons in equal shares) "who shall at that time be actively engaged in farming".

Counsel argued that the words imposed an unreasonable restraint of trade and were therefore of no effect. Admitting that there was no

authority directly on this point the Court of Appeal declined to state whether or not the requirement of public policy could invalidate conditions in wills tending to restrict the freedom of trade of a beneficiary.

Furthermore, recognising that *Esso Petroleum Co. Ltd.* v. *Harper's Garage (Stourport) Ltd.* [1968] A.C. 269 has called for a re-appraisal of the cases where the doctrine should apply, they declined to consider its application to the case of conditions in wills.

The non-committal attitude of the Court of Appeal is, it is submitted, justifiable in this case since the effect of the condition was not to sterilize the abilities of beneficiaries, but rather to absorb them in a trade certainly not contrary to the public policy of New Zealand. However, the position is undecided, and the case leaves another shade of uncertainty in the law.

"Paddock Trusts"

In *Owen Thomas Mangin* v. *Inland Revenue Commissioner* [1971] N.Z.L.R. 591, the Privy Council was faced with an appeal from the Court of Appeal of New Zealand as to the legality of a scheme whereby the appellant endeavoured to reduce his burden of income tax. The scheme entailed the creation of "paddock trusts" whereby the appellant leased a number of acres of his farm to trustees who were to cultivate it. The resulting income was to be held on trust for his wife and children, while the appellant himself was employed to look after the acres in question. The trustees paid him for his labour and expenses and then distributed the income remaining to the beneficiaries. Accordingly part of the appellant's total income became the income of his wife and children who could claim allowances and reduced rates of tax, with the result that less tax was being paid on the profits of the whole farm.

The Supreme Court held the trust void under s.108 of the Land & Income Tax Act 1954 which provides that every arrangement made for the purpose of altering the incidence of income tax or relieving any person from his liability to pay income tax, is void.

The Privy Council, in a majority judgment, dismissed the appeal from the Court of Appeal's upholding of this judgment, but the interesting aspect of the appeal is the strong dissenting judgment of Lord Wilberforce. Having outlined the history of s.108 and levelled criticisms at it, he continues to say

> . . . if the courts are agreed on anything about the section it is that it is a difficult one. Originating in a desire to deal with the simple matter of incidence of land tax, it has found itself confronted, with only minor changes of language, with all the sophistications of modern tax "avoidance" (*ibid.*, 602).

This judgment must be regarded as a warning of difficult problems which will face the courts in the future. One wonders if law reformers will take sufficient cognizance of it and attempt to deal with the inadequacies of s.108.

D. M. Shirley