purchase of the plaintiff's capital. The plaintiff claimed that in addition to the amounts stated in the heads of agreement he was entitled to be paid for "work in progress" at the time of the dissolution of the partnership.

Wilson J. held that the plaintiff was not entitled to payment for work in progress. In the circumstances of this case, the expression was used to denote professional work for which instructions had been received by the firm but which had not been completed when the plaintiff retired. His Honour said that in a solicitor's practice the giving and accepting of instructions gives rise in each case to a contract for professional services for which (in the absence of special arrangement) no payment is due by the client until the services have been rendered. Therefore, in regard to uncompleted work, no monys were owing and it followed that no asset was then in existence; all that existed was a probability of future income which would not become income until the work was finished.

On the basis of this case it would seem that practitioners should make special provision for work in progress if they wish it to be taken into account in the event of dissolution. On the other hand, it may be sufficient that as a matter of accounting practice work in progress is valued, for this may amount to an implied term in the partnership agreement.

G. S. MacAskill

CONSTITUTIONAL LAW

Section 3D Police Offences Act 1927

The appellant in *O'Connor* v. *Police* [1972] N.Z.L.R. 379 had been convicted in the Magistrate's Court under s. 3D Police Offences Act 1927 on the charge of behaving in a disorderly manner. While the appellant was in a bottle store making a purchase, a girl companion, who was with him, was questioned as to her age by a police sergeant. It was revealed that the girl was aged eighteen; consequently the police sergeant warned her that her presence on the premises was illegal and told her to leave. The couple left the hotel and with another companion joined a group of people waiting to cross at an intersection. Unknown to the appellant the police sergeant followed them and heard the appellant remark in a loud voice "officious bastard", upon which remark the sergeant took the appellant into custody and subsequently charged him under s. 3D.

The Supreme Court, following *Melser* v. *Police* [1967] N.Z.L.R. 437, held that conduct, in order to be disorderly within the meaning of s. 3D, does not have to be such as is calculated to provoke a breach of the peace, but has to be something more than just fitting the description of disorderly. The court has to apply an objective test and determine, as a matter of time, place and circumstances, whether it was likely to cause serious annoyance or disturbance to some person or persons. There was no evidence to show that the appellant knew the sergeant was in a position to overhear the remark and the appellant said in evidence that he had addressed the remark to his girl companion "by way of consolation to the girl who was still embarrassed." Rich-

mond J. allowed the appeal against conviction since he was satisfied that the appellant did not think there was any likelihood of the remark being overheard by the one and only person to whom it could have been of serious annoyance. His Honour being of the opinion that the remark would not be of serious annoyance to any members of the public who might have been listening.

Search and seizure

In *McFarlane* v. *Sharp* [1972] N.Z.L.R. 838 the Court of Appeal refused to overrule its previous long-standing decision in *Barnett and Grant* v. *Campbell* (1902) 21 N.Z.L.R. 484. Police officers were searching the premises of the appellant for apparatus used in a robbery when they came across documents which it was contended could help to support a charge of bookmaking against the appellant. These documents were seized by the officers and taken into police custody notwithstanding that the search warrant was not directed either to the offence of bookmaking or to the material used in such an offence.

In *Ghani* v. *Jones* [1970] 1 Q.B. 693, Lord Denning M. R., in a situation similar to the above, said, 706: "If in the course of their search they come upon any other goods which show him to be implicated in some other crime, they may take them provided they act reasonably and detain them no longer than is necessary". The Court in *McFarlane* v. *Sharp* realised the direct conflict between the statement in *Ghani* v. *Jones* and the decision in *Barnett and Grant* v. *Campbell*, but decided to follow their earlier decision in holding that since the documents were seized under a warrant issued for the search of other items and since there had been no arrest of the appellant, the seizure was unlawful. Turner P. in delivering the judgment of the Court did suggest, however that the principle in *Barnett and Grant* v. *Campbell* should be subject to some consideration by the legislature.

The Court of Appeal reaffirmed the remedy provided by White J. His Honour refused to issue a writ prohibiting the Magistrate's Court from proceeding with the hearing of a charge of bookmaking on the basis of the evidence thus obtained and held that the remedy for unlawful seizure of documents in the present case must be limited to damages as was the remedy in *Barnett and Grant* v. *Campbell*.

Race Relations Act 1968 (U.K.)

In England the Race Relations Act 1968 has recently come before both the Court of Appeal and the House of Lords.

In *Ealing London Borough Council* v. *Race Relations Board* [1972] 2 W.L.R. 71 a local housing authority maintained a waiting list of applicants for housing and adopted a rule that a condition of acceptance on the list was that "an applicant must be a British subject within the meaning of the British Nationality Act 1948". Housing was awarded in accordance with a points scheme which included points awarded for the length of time spent waiting on the list. M., a Polish national, was not accepted on the waiting list in accordance with the rule. On a complaint, the Race Relations Board concluded that the council had unlawfully discriminated against M. on the grounds of his "national origins" within sections 1(1) and 5(c) Race Relations Act 1968. The council sought declarations against the board and M. that their exclusion of M. from the list was not unlawful. The board argued that the juris-

diction of the Court to grant declarations had been ousted by s. 19 of the Act of 1968.

The House of Lords (Lord Kilbrandon dissenting) held that nothing in the Race Relations Act 1968 ousted the jurisdiction of the court to make a declaration. It was declared by the House that "national" in "national origins" in s. 1(1) of the Act meant national in the sense of race and not citizenship and that consequently there was no discrimination by the housing authority on the grounds of race within the meaning of the Act. Discrimination on the grounds of citizenship did not come within the ambit of theAct.

The Race Relations Act 1968 came before the Court of Appeal in *Race Relations Board* v. *Charter* [1972] 2 W.L.R. 190 when an Indian was not allowed to become a member of a local Conservative Club. The club was a political club, its object to maintain and advance Conservative principles, whilst providing the usual facilities and services of a club (including facilities for entertainment, recreation and refreshment) to its members and visitors at the club premises.

According to the club rules any man of eighteen or over was eligible for membership providing he was a Conservative. The process of becoming a member involved being proposed and seconded and then elected by the committee. S. was born in India and had been in England for about nine years. He was a Conservative and had joined the local association in 1966. In April 1969 S. applied to join the club and was proposed and seconded. When S's application came before the committee, the Chairman considered S's colour relevant to the application and his application was rejected on the Chairman's casting vote.

S. complained to the Race Relations Board which was of the opinion that the club had acted unlawfully in the light of s. 2 of the Race Relations Act 1968. The Race Relations Act 1968 makes discrimination against a person unlawful. Section 1(1) defines "discrimination" as follows:

> . . . a person discriminates against another if on the ground of colour, race, or ethnic or national origins he treats that other, in any situation to which section 2, . . . applies, less favourably than he treats or would treat other persons, . . .

Section 2(1) prohibits discrimination in general:—

> It shall be unlawful for any person concerned with the provision to the public or a section of the public (whether on payment or otherwise) of any goods, facilities or services to discriminate against any person seeking to obtain or use those goods, facilities or services by refusing or deliberately omitting to provide him with any of them or to provide him with goods, services or facilities of the like quality, in the like manner and on the like terms in and on which the former normally makes them available to other members of the public . . .

The Court of first instance found no discrimination in the action of the club. Judge Herbert of the Westminster County Court was of the opinion that the club could not be regarded as being concerned with the "provision of facilities or services" within the meaning of section 2 of the Act. The Race Relations Board appealed to the Court of Appeal which allowed the appeal holding that the club provided "facilities" for its members who, sharing the impersonal quality of Conservatism, were a "section of the public", and S. was a person "seeking to obtain or use those facilities" within the meaning of s. 2 of the 1968 Act. Thus s. 2 applied to the application for election to membership of the club and the refusal to elect on the grounds of colour, where the candidate would otherwise be acceptable, was held to be unlawful.

On further appeal, recently reported as *Race Relations Board* v. *Charter* [1973] 2 W.L.R. 299, the House of Lords held (Lord Morris of Borth-y-Gest dissenting) that there was no public element where a personally selected group met in private premises. The club which they constituted did not provide services to the public or any section of the public within the meaning of the words "a section of the public" in section 2 of the Act, these being words of limitation. The decision of the Court of Appeal was reversed and the refusal of the club to elect on the grounds of colour was not regarded as unlawful.

Legislation

The only recent legislation affecting constitutional law is the Electoral Amendment Act 1972 which amended the Electoral Act 1956 by inserting section 82(1A). The effect of the amendment is to prevent potential Parliamentary candidates from changing their names within the six months immediately preceding the day of nomination. There is a provision that the section will not apply and nomination will be accepted by the Returning Officer where the name has been adopted by the candidate "in good faith and for good reason and is not indecent or offensive or likely to deceive or cause confusion".

B. V. Harris

CONTRACT

Offers

In *British Car Auctions Ltd.* v. *Wright* (*The Times*, July 13th 1972) which was a case arising in the context of criminal law (as did *Pharmaceutical Society of Great Britain* v. *Boots Cash Chemist (Southern) Ltd.* [1953] 1 Q.B. 401, *Fisher* v. *Bell* [1961] 1 Q.B. 394, and *Partridge* v. *Crittenden* [1968] 1 W.L.R. 1204) the Court accepted the meaning of offer developed in the field of contract and applied it in the interpretation of a statute establishing a criminal offence. This result was as unhappy as in the earlier cases. The Road Traffic Act made it an offence to "offer to sell . . . a motor vehicle" under certain conditions. The company here, according to the Divisional Court, in putting the car up for auction did not "offer to sell" it; they were, in accordance with the long accepted ruling in *Payne* v. *Cave* (1789) 3 T.R. 1893, merely inviting the public to make offers. The purpose of the statute was surely clear enough, but in the light of this ruling it is difficult to imagine anyone being prosecuted successfully under it.

The same court in *Doble* v. *David Grieg Ltd.* [1972] 1 W.L.R. 703 was able to adopt a more realistic approach. The Trade Descriptions Act (U.K.) 1968 s. 6 provides: "A person exposing goods for supply shall be deemed to offer to supply them". In the light of this section the Court found that displaying goods in the shelf of a selfservice store was "offering to supply" goods within the meaning of the Act. Thus in certain circumstances the display of goods may amount to an offer at criminal law, while at the same time it remains an "invitation to treat" in the law of contract. The decision of course in no way weakens the authority of the *Pharmeceutical Society* case (supra).