

citizen with an interest could himself apply to the court for a declaration or even an injunction, with the Attorney-General, if necessary, joined as a defendant.

*Mandamus — servant of the crown*

The New Zealand Government Printer is a servant of the Crown and not an agent of statute. It was held by the New Zealand Supreme Court (Wild C. J.) in *Victoria University of Wellington Students Association Incorporated v. Shearer (Government Printer)* [1973] 2 N.Z.L.R. 21 that mandamus will not lie against such a servant of the Crown. Mandamus was sought by the plaintiff to compel the Government Printer to print and supply copies of the whole text of the Judicature Act 1908 including the Second Schedule which contains the Supreme Court Code of Civil Procedure.

B. V. Harris.

## COMMERCIAL LAW

### *Hire Purchase Regulations*

Although "hiring agreements" entered into after 1971 must conform with the Economic Stabilisation (Motorcar Hiring) Regulations 1971, it is now clear that such agreements entered into before that time are not necessarily illegal. This was made clear by the Court of Appeal in *Carroll v. Credit Services Investments Ltd.* [1973] 1 N.Z.L.R. 246, when it held that a leasing agreement (entered into prior to 1971) which contained an express covenant from the lessee that he would not purchase the vehicle at the end of the leasing period would only become illegal under Regulation 8 Hire Purchase and Credit Sales Regulations 1957 if there was extrinsic evidence which established a mutual agreement or undertaking which negates the effect of the covenant that the lessee will not buy. Even if there is such an agreement, it would seem from the decision of McMullan J. in *Robert Northe Carriers Ltd. v. Cord Motors* [1973] N.Z.L.J. 157, that this agreement is separate from the leasing agreement inasmuch as an assignment of the leasing agreement will be held to be valid between the assignee and the lessee, notwithstanding the fact that the original leasing agreement has been made illegal by the agreement of the parties that the lessee will be able to buy, unless the assignee is also a party to the illegal agreement.

### *Illegal Contracts Act 1970*

In *Slobbe v. Combined Taxis* [1973] 2 N.Z.L.R. 651, the Court of Appeal upheld the decision of Wild C.J. (noted 3 Otago L.R. 101-2). It is interesting to note, however, that the Court of Appeal were careful not to endorse the Chief Justice's distinction between contracts which are void or illegal because they are

specifically stated to be so by statute and those which are void or illegal as the result of judge-made law. Wild C. J. felt that the Illegal Contracts Act 1970 could not be applied where a contract was void or illegal as the result of an express statement in a statute and I would respectfully agree with the view expressed in [1973] N.Z.L.J. 383 that the learned Chief Justice's distinction is incorrect and ought not to be followed. If this is in fact the case, it will allow the court to have discretion to alleviate some of the hardship that can result from provisions such as Regulation 10 Hire Purchase and Credit Sales Regulations 1957, where a minor error (see, for example, *Peter Findlay Motors v. Davis* [1964] N.Z.L.R. 820) can invalidate the whole transaction to the detriment of the dealer (who receives nothing at all except the vehicle back) and the advantage of the purchaser (who receives the free use of the vehicle until he returns it).

### *Moneylenders Act 1908*

In *Fahey v. M. S. D. Spiers Ltd.* [1973] 2 N.Z.L.R. 655 the Court of Appeal upheld the decision of Quilliam J. who had held that a decision by Spiers Ltd. to charge 1 per cent a month interest on all accounts that were more than three months overdue was no more than a transaction of sale and purchase which was not altered by the fact of interest being charged. The fact that the interest rate exceeded 10 per cent per annum did not make Spiers Ltd. a moneylender within the terms of s. 2 Moneylenders Act 1908 unless it could be shown that they were engaged in the business of lending money. This decision extends slightly the earlier decision of the Court of Appeal in *Re A. R. Mackay Ltd. (in liq.), Farmers Finance Ltd. v. Craig* [1971] N.Z.L.R. 289 where it was made clear that in determining whether or not a person is a money-lender in terms of the Act, 10 per cent cannot be regarded as a magical figure and that the emphasis is on whether or not the person is carrying on the business of moneylending.

Also of note is the decision of Evans S. M. in *Management Aids v. Asher* (1972) 13 M.C.D. 354 where he held that the proviso to s. 14 Moneylenders Amendment Act 1933 recognises that for the purpose of determining whether an interest rate is excessive different principles apply between substantial loans over long periods on the one hand, and small loans over short periods on the other. Consequently he held that a loan of \$49.50 which was to be repaid by 12 weekly instalments of \$5.40 (giving an interest rate of 160 per cent per annum) was not excessive.

### *Sale of Goods Act 1908*

The Supply of Goods (Implied Terms) Act 1973 (U.K.) is interesting in its rewriting of s. 14 of the original Act (equivalent to s. 16 of the New Zealand Sale of Goods Act 1908), but it mainly serves as an illustration of how far behind commercial practice our Sale of Goods Act has become. For although in 1971 Parliament made it impossible for a seller to evade certain

implied terms where the goods are new goods that are sold on hire purchase (see s. 51 Hire Purchase Act 1971), a seller can by way of an exclusion clause contract out of having to comply with the implied terms laid down in the Sale of Goods Act when the goods are sold other than on hire purchase. The 1973 Act has remedied this defect in the United Kingdom and has provided that in a "consumer sale" (which is basically a sale where the goods are normally and also appear to be in fact bought for the buyer's private use or consumption) a seller cannot contract out of the implied terms, and that in a "non-consumer sale" it is open for the buyer to argue that it is not fair or reasonable in the circumstances for the seller to be able to rely on an exclusion clause. It can be seen even from this brief resume that the British buyer is now considerably better off than his New Zealand counterpart if the latter pays cash for his goods rather than buying them on hire purchase. It is to be hoped that our Parliament will follow the British lead and remedy this situation in the near future.

L. A. Andersen.

## COMPANY LAW

### *Powers and liability of a company*

In *In re Wellington Publishing Company Ltd.* [1973] 1 N.Z.L.R. 133 it was held that the purpose of s. 62 Companies Act 1955 is the protection of minority shareholders and creditors. In this case the Wellington Publishing Company financed a takeover of Blundell Brothers Ltd. by acquiring all the shares in Blundells and using the capital reserves in Blundells to pay a dividend on that company's shares which would then be payable to the Wellington Publishing Company as sole shareholder. The former shareholders in Blundells would then be paid an amount on each share from this amount. A declaration was sought as to whether such method was lawful in terms of s. 62 of the Act as giving directly or indirectly "financial assistance" for the purpose of or in connection with the purchase or subscription made or to be made by any person of or for any shares in the company.

Quilliam J. in his judgment noted that the payment of a dividend is not something which will ordinarily be regarded as giving financial assistance. In looking further into the substance of the above transaction His Honour found that the declaration of the dividend by Blundells was out of money properly available for dividends and the payments by Wellington Publishing Company out of the moneys it had so received to the former shareholders of Blundells was not the giving of "financial assistance" by Blundells for the purchase of its own shares. It was also found that, having regard to the purpose of s. 62, there were no minority shareholders and that the