because of the children, the marital state could not really be said to have been resumed. It is respectfully submitted that the two cases are not in conflict but were both decided correctly on their own particular facts.

M. G. Appleby.

LAND LAW

In 1968 the outstanding developments pertaining to land law have arisen out of legislation rather than case law. The principal new statute law is found in the Water and Soil Conservation Act 1967, Maori Affairs Amendment Act 1967 and Maori Purposes Act 1967, all of which came into effect on 1 April 1968.

The Water and Soil Conservation Act aims at combining the existing laws relating to water rights. It also has a far reaching effect on rights concerning the use of natural water, found in the common law, and is examined in detail elsewhere in this *Review*.

The Maori Purposes Act 1967 has two sections which are of particular interest. Section 4 refers to meetings of owners under the Maori Affairs Act 1953; it amends by opening the class of proxy to include any person not disqualified by age and it reaffirms the principle that three persons with voting capacity should always attend a meeting. Section 4 also permits courts to fix a quorum.

Section 5 adds a further section to the Maori Trustee Act 1955 so that money held by solicitors, public accountants or landagents for payment to Maori owners is permitted within six years to be paid to the Maori Trustee. If the person entitled to the money is not found the money will go to the Maori Education Foundation. However, this section does not apply to money held as a trust.

The Maori Affairs Amendment Act 1967 touches most areas of Maori property law. The following points indicate the principal effects of the legislation:

Part One requires the Registrar of the Maori Land Court to issue a status declaration for land owned by up to four owners. Upon its registration at the Land Transfer Office, the land is no longer in the legal position of Maori land. This means it can be dealt with without the Maori Land Court supervision. This aims at Europeanising Maori land which will then be liable for debt and to other general law, which was not so previously. However, if one owner holds his land under a trust or is a person under disability this part does not apply.

Part Two gives statutory authority to the Department of Maori Affairs to carry on "title improvement" operations.

Part Three provides that when partitioning, issuing and consolidating orders, or laying off roads the Maori Land Court is now to be bound by the general law as to planning.

Part Four (which became effective 1 April 1969) repeals and replaces Part twenty-two of the Maori Affairs Act 1953. This change relates to bodies corporate which are owners of Maori land. Instead of the equitable interest in land which is, as it is now, possessed by members of an incorporated owner, any shareholder will have, under the new system, shares such as those of a company in the incorporation.

Part Five alters completely the law relating to Maoris who died after 1 April 1968 (the law relating to Maoris who died before that date will be governed by the law almost as it was previously for a period of five years). In the case of intestacy the estate, including Maori land interests, will pass according to the Administration Act 1953. By s. 76 illegitimate relationships are recognised. Section 77 provides that interests in Maori land will be available for payment of debts, and by s. 78 Maori land interests will be subject to duty as part of the estate.

The granting of probate and the administration of deceaseds' estates have been restricted to the Supreme Court. The limitation on the disposition of Maori land to non-Maoris has now been removed. Another change is in the interpretation of "child", previously interpreted as meaning legitimate or illegitimate: this word is now governed by the general law.

Part Six relates to alienation of Maori lands. Now owners of Maori land if they are ten in number or less can alienate their land by a signed instrument. Transfers and agreements to transfer need the consent of the court. Where land is owned by more than ten persons they can deal with their land by the assembled owners procedure only. In the case of transfers only the consideration will be subject to certain limitations.

Part Seven makes some changes in the law relating to conversion, that is the process whereby uneconomic interests, worth less than $50, can be compulsorily acquired by the Maori Trustee to be disposed of to Maoris or for Maori purposes. Now public money may be used for this purpose and in some cases the land may go to the Crown for certain purposes.

Three other noteworthy sections are firstly, s. 136 which requires the application for investigation of Maori title or customary land to be lodged by 31 December 1970 and for investigation on it to be concluded by the end of 1971, and ss. 146 and 147 which amend the previous law by which the interests in Maori land of a Maori were protected from bankruptcy.

Section 231 of the 1953 Act has been repealed. Now all monies, except mortgage money, which are the proceeds of alienation are to be paid to the Maori Trustee. There is no provision for an order covering the Maori vendor's costs.

The Maori Affairs Amendment Act also makes amendments to the Maori Vested Lands Administration Act 1945 and the Maori Reserved Land Act 1955 by codifying the power of an equitable owner to deal with his interest and by providing the means for assignment of the equitable interest as a security. Freehold or leasehold portions of these lands can now be sold if a sufficient number of equitable owners agree to do so.

Most of the new provisions attaching to Maori land indicate an important change in policy so that now it will be less difficult to bring what was once Maori land, and protected by special law as such, under European and the general law. The result may be that increasing areas of land will be removed from the Maori of the future.

Two cases worth noting are, first, *Sinclair* v. *Connell* [1968] N.Z.L.R. 1186. In that case the vendor agreed to sell her property below its value subject to the purchaser's agreeing to allow her to occupy the property as tenant free from rent during her life. This agreement was evidenced by two letters which when read together did constitute a

valid and enforceable agreement to let the property to the vendor free for the rest of her life subject to her right to determine it upon vacating the premises. The letters were also a sufficient memorandum for the purposes of s. 2 Contracts Enforcement Act 1956. After the buyer died the administratrix of his estate claimed possession of the premises but the principle in *Walsh* v. *Lonsdale* was reaffirmed: that is that where there is an "agreement to lease" the court will specifically enforce it according to its terms and the tenant holds the same terms as if a lease had in fact been granted.

A second decision of interest is *Paparua County* v. *District Land Registrar* [1968] N.Z.L.R. 1017. This case illustrated Regulation 16 of the Land Transfer Regulations 1966. This regulation requires the District Land Registrar to refuse to accept an instrument tendered for registration which is contrary to a law already in force. In this case the instrument presented for registration contravened s. 50A of the Town and Country Planning Act 1953, and the Registrar was held entitled to refuse to register it.

R. M. Carrig.

TORTS

Defamation

In *Eyre* v. *N.Z. Press Association* [1968] N.Z.L.R. 736 McGregor J. held that a plea of qualified privilege will not stand if the communication is an incorrect report of what was said, for there is no duty to communicate a factually incorrect report. It was further held that the publication of a defamatory statement by a newspaper and the communication by a press agency to its associates of the same statement are separate acts and do not make the two parties liable as joint tortfeasors. Accordingly the release of the former from liability for the defamatory statements does not release the latter from similar liability.

In *Cohen* v. *Daily Telegraph Ltd.* [1968] 1 W.L.R. 916 it was held that facts relied on to support a plea for fair comment must be facts existing at the time of the comment and that future facts are evidential only and may not, under the rules of pleading, be pleaded. Lord Denning M.R. at 919 stated:

> In order to make good a plea of fair comment it must be a comment on facts existing at the time. No man can comment on facts which may happen in the future.

In *Slim and Others* v. *Daily Telegraph and Others* [1968] 2 W.L.R. 599 the question of fair comment was once more discussed. Lord Denning in his judgment stated at 607:

> The important thing is to determine whether or not the writer was actuated by malice. If he was an honest man expressing his genuine opinion on a subject of public interest then no matter that his word conveyed derogatory imputations: no matter that his opinion was wrong or exaggerated or prejudiced . . . nevertheless he has a good defence of fair comment.

False Imprisonment

Blundell v. *Attorney-General* [1968] N.Z.L.R. 341. Here the trial judge had ,inter alia, informed the jury that if they thought such action as was taken by the police was, in the circumstances reasonable, they