

only the fundamental theories of tort, but its practical application: and the difficulties that still beset the path of him who sues the Crown in tort.

—G. W. PATON.

### LEGAL REALISM.

If Professor Jerome Frank's conceptions of "realist jurisprudence" become widespread, new terrors may be in store for the law-school examinee. Following are two sample questions and answers from the paper on "Legal Strategy," in Law Finals of March, A.D., 1950. They are based on anecdotes related to me, the first by a very humble litigant, the second by a very famous living judge. For the purposes of the second, it must be assumed that in 1950, Victoria has reverted to the provisions of the Workers' Compensation Act 1928, Schedule 3, as to arbitrations and appeals therefrom in Workers' Compensation claims. (See as to the present position, Act No. 4524, s. 9).

*Question 1.* You are defending the local "rough diamond" on a charge of assaulting the municipal ranger. The charge will be heard by a country Court of Petty Sessions, which normally consists of a visiting Police Magistrate and local Justices of the Peace. The Justices are all Shire Councillors. Advise on procedure.

*Answer.* The Justices will certainly be biased against the defendant, but are likely to insist on sitting, and their bias is unlikely to be such as to justify a reversal of their decision by the Supreme Court. In any case, defendant's means will probably not extend to an appeal. Accordingly, the correct procedure is to serve each Justice with a subpoena to attend court as a witness for the defendant. They will then be unable to sit. Of course, the Justices will not in fact be put in the box. The defendant will then be tried on a proper view of the onus of proof.

*Question 2.* You have obtained a favourable oral decision of an arbitrator at a hearing under the Workers' Compensation Act; the decision cannot be supported on the evidence given, and is likely to be reversed on appeal. How can you retain your award?

*Answer.* By preventing an appeal. To achieve this, refrain from preparing and taking out the formal written award. The other side is certain to serve notice of appeal promptly. After they have done so, take out the formal award, and lie low for fourteen days. An arbitrator's award is made on the date he signs it and not on the date he announces decision; hence you can now set aside the notice of appeal, since when it was served there was nothing to appeal against. But more than fourteen days having now expired from the actual issuing of the award, an appeal will be incompetent. (See County Court Act 1928, s. 74; Rules under Workers' Compensation Act 1928, r. 29; *Clayton v. Jones Sewing Machine Co.*, 1908, W.N. 253).

—GEOFFREY SAWER.