court refused to follow that case on the ground that it could no longer stand in the face of *Luxor (Eastbourne) Ltd. v. Cooper*.[37] It is to be observed that Denning L.J. in *Dennis Reed Ltd. v. Goody*[38] treated *James v. Smith* as still authoritative.

R.A.

CRIMINAL LAW

Bail.

Principles governing admission to bail were considered by the Supreme Court in the cases of *R. v. Snow* [1950] St.R.Qd. 1 and *R. v. Lythgoe* [1950] St.R.Qd. 5.

In *Snow's Case,* Philp J. had to consider an application made by motion to the Supreme Court for the granting of bail where the applicant was on remand on a charge of breaking and entering a store with intent to commit a crime therein. The only deposition then taken was that of the police officer who had given formal evidence of arrest. The Stipendiary Magistrate in remanding Snow for one week had refused an application for bail. Philp J. held that he had power, under Section 555 of the Criminal Code, to grant bail in the circumstances but he pointed out that in exercising his discretion he was in no sense sitting on appeal from the decision of the Stipendiary Magistrate. In refusing the application His Honour stated that in his opinion the Supreme Court should exercise its power to grant bail, to a person under remand, only in unusual circumstances. His Honour cited a passage from the judgment of Russell L.C.J. in *R. v. Spilsbury* [1898] 2 Q.B. 615 at p. 622, as being a proper exposition of the general law.

In *Lythgoe's Case,* Mansfield S.P.J. restated the general principles applicable in the granting of bail after an accused person has been committed for trial. The applicant had been committed for trial on a charge of wilfully murdering his wife. After referring to the fact that the object of bail is to secure, by a pecuniary penalty, the appearance of the prisoner at the trial, His Honour summarised the three main tests of the probability of the prisoner appearing at his trial as being (a) the nature of the crime charged; (b) the probability of a conviction; (c) the severity of the punishment which may be imposed. He then pointed out that in murder cases the prisoner will generally be refused bail except in rare cases where exceptional circumstances are shown to exist. *Vide* Halsbury's Laws of England 2nd ed. vol. 9 p. 121. His Honour also stated that "other circumstances which are relevant to consider in appropriate cases, but which do not outweigh the general principles enunciated, include (a) the prisoner's property; (b) the state of his family; (c) his character and antecedents; (d) the state of his health; (e) in rare cases the state of his business; (f) the probability of his tampering with Crown witnesses; (g) the fact that the Crown does or does not oppose the application; (h) the fact that the accused might be prejudiced in the preparation of his defence may have some weight but the case would be an exceptional one." After considering the evidence as disclosed in the depositions, His Honour refused the application.

37. [1941] A.C. 108.
38. [1950] 2 K.B. 277, 284, 285.

Bona fide Claim of Right.

The distinction between the two concepts of the *bona fide* claim of right which ousts the jurisdiction of justices and the *bona fide* claim of right which may be a defence to a criminal or quasi-criminal charge was considered by the Full Court in the case of *Clarkson v. Aspinall* [1950] St.R.Qd. 79. The Court reviewed several earlier reported cases in which individual judges had expressed opinions which, as Macrossan C.J. said, "were not always vital to the decision of the Court." The case under appeal arose from a prosecution under Section 445 of the Criminal Code for unlawfully using cattle. The Court (Macrossan C.J., Philp and Townley JJ.) unanimously held that the defence of a *bona fide* claim of right to property, which is provided for in Section 22 of the Criminal Code, is a defence to a criminal or quasi-criminal charge and does not relate to a claim of title which would oust the jurisdiction of justices. The members of the Court, however, differed on the question whether under Section 445 of the Criminal Code, a *bona fide* claim of title ousted the jurisdiction of justices to determine the question of the ownership of the cattle concerned in the charge. Macrossan C.J. and Townley J. held that such a *bona fide* claim did not oust jurisdiction while Philp J. held that it did. However, in the circumstances of the particular case he held that no reasonable magistrate could, on the evidence, hold that the claim was *bona fide*. An application to the High Court, for special leave to appeal, was unsuccessful.

False Pretences

In the case of *Greene v. The King* (1949) 79 C.L.R. 353, the High Court considered, upon an application for special leave to appeal, the question whether a false statement or a false representation implied from words or conduct as to the existence of a present intention in the mind of the person who makes the statement or representation can be a false pretence so as to justify a conviction for obtaining property by false pretences. Greene had been indicted under the provisions of Section 179 of the Crimes Act 1900-1946 (N.S.W.), that "on the 24th December 1946 he falsely pretended to Percival Thomson that he then intended and was in a position to supply and deliver to Thomson within a period then agreed upon certain venetian blinds by means of which false pretences he did then obtain from Thomson with intent to defraud a valuable security the property of Thomson to wit a cheque for payment of the sum of £11."

The New South Wales Court of Criminal Appeal in dismissing Greene's appeal had stated the law in the same manner as the Supreme Court of Western Australia in the case of *R. v. Dah Ram* (1901) 3 W.A.L.R. 111, but the High Court by a majority (Latham C.J., Rich, Dixon and Webb JJ., McTiernan J. dissenting) held that that decision was wrong and that in relation to the offence of false pretences a representation of the existence of a present intention to perform a promise is not a representation of an existing fact. Latham C.J., in the course of a review of several reported cases, expressly approved of the statement made by Macfarlan J. in R. *v. Sawyer* [1936] V.L.R. 1 at p. 5, where the latter said: "In my opinion it has been settled law for more than a century that the allegation or proof of a false representation

by the accused of his present intention to do a future act is not sufficient to found or prove the false pretence or representation of an existing fact which is a necessary ingredient in the crime of obtaining money or goods by false pretences." Dixon J. in the course of his judgment stated the law as follows: "A promise to do something in the future is not a pretence for the purposes of this crime. The promise may import an assertion of a presently existing intention to do the thing but that does not make it a pretence. This was settled law early in the nineteenth century. . . . But a contract or promise as to a future act or future conduct may itself be based upon or accompanied by a false statement as to a past fact or present state of things and if by means of the false statement the prisoner obtains the property it would form a foundation for a charge of false pretences notwithstanding the contract or promise." Thus a married man who obtains money from a single woman by a promise of marriage in circumstances where he really represents himself to be a single man may be successfully prosecuted for obtaining money by false pretences.

R.F.C.

EQUITY

Charitable Trusts.

The attention of the Courts has recently been directed in a large measure to the extent to which a trust in order to be charitable must possess a public element. In this connection trusts for the relief of poverty have caused the main difficulty, owing largely to a line of cases in which trusts for "poor relations" of the testator have been held to be charitable. In *Gibson v. South American Stores*[1] the Court of Appeal had to consider the validity of a trust created by a Company vesting a fund in trustees to be used for granting pensions or allowances for all persons who should in the opinion of the board of the Company be necessitous and deserving and who were or had been in the Company's employ or the dependants of such persons. Whilst affirming the decision of the trial Judge in favour of the validity of the scheme as a charitable trust, the Court of Appeal did not give approval to the wide remarks of Harman J. in the Court below[2] to the effect that the explanation of the poverty cases was that a much narrower benefit may in them be considered to work a public benefit than in the other categories. It preferred to follow an unreported decision of *Re Laidlaw* in 1935 in which a trust substantially similar to that in the instant case was held valid. The decision therefore is not particularly illuminating as to the grounds on which it is based. It was followed in *Re Coulthurst deceased*.[3]

It is clear that these decisions do not apply beyond the case of trusts for the relief of poverty. In *Oppenheim v. Tobacco Securities Trust*[4] the trust was to apply certain income for the education of children of employees or ex-employees of a certain company. In other words the scheme was substantially the same as in *Gibson's case* with the difference that there was no reference to necessitous circumstances. The House of Lords held the trust non-charitable and hence as it created a perpetuity it was bad. Their Lordships regarded the fate of the "poor relations" cases as being in doubt.

1. [1950] 1 Ch. 177.
2. [1949] Ch. 572.
3. [1951] Ch. 193.
4. [1951] A.C. 297.