of a deposit on signing the contract and payment of the balance on conveyance. The Court expressed the view that a contract would be covered by the Act only where payment of the balance was to be made in more than one amount and where the postponement of payment was made for the accommodation of the purchaser.

The decision thus confines the Act within more tolerable limits, but it is clear that a complete re-drafting of the Act is long overdue.

*ROSS ANDERSON*

## CRIMINAL LAW

*Escape from legal custody*

In the case of *Hans v. The Queen* [1955] A.C.378, the Privy Council had to consider the meaning of the words "lawful custody" used in section iii of the Criminal Code of Bermuda, the language of which section is practically identical with that of section 142(1) of the Queensland Criminal Code. Hans, a Bermudan civilian, had been convicted of unlawfully aiding a sailor of the United States Navy "to escape from lawful custody" contrary to section iii, and based his appeal, unsuccessfully, on the ground that the section only applied to cases where the person whose escape was aided was in custody for an offence cognizable by a Bermudan Court. Under section 9(1) of the United States Bases (Agreement) Act 1952—a Bermudan Statute—United States Service Courts and the Authorities of the United States of Americia were empowered to exercise in Bermuda "in relation to members of the United States Forces, in matters concerning discipline and internal administration all such powers as are conferred upon them by or under the law of the United States of America." The sailor in question was "absent over leave" and was arrested by a U.S. naval shore patrol on territory not included in any area leased to the United States under the abovementioned Act. Such an arrest was lawful under United States law and was in respect of a matter concerning discipline. The sailor was placed in custody in a naval patrol wagon the door of which was secured by a wire hook on the outside. Hans released the sailor by opening the door.

In the course of delivering their Lordships' judgment Lord Tucker said:- "Although the language of the Criminal Code standing alone is clearly designed primarily to deal with such cases arising under the Bermudan criminal law and the words "lawful custody" would not include, for example, the custody of an infant by his parents or guardian, their Lordships can see no reason for restricting their meaning in the manner for which the appellant contends. If Bermudan law at any time authorises arrest for any reason by the military of civilians or service personnel it is difficult to see why the person so arrested and kept in confinement should not be considered in lawful custody within the meaning of sections 110 (equivalent to our section 143) and 111, or why the status of the particular person authorised to make the arrest should be the criterion for deciding whether or not it is lawful within the meaning of these sections."

*Self defence*

In Queensland it has long been accepted that where the evidence discloses a possible defence of self defence the onus is on the Crown to negative such a defence and this view of the law is now confirmed by the authoritative statement made on the matter by the Privy Council in the case of *Chan Kau alias Chan Kai v. The Queen* [1955] A.C.206. In that case their Lordships stated that "in cases where the evidence discloses a possible defence of self defence the onus remains throughout upon the prosecution to establish that the accused is guilty of the crime of murder and the onus is never upon the accused to establish this defence any more than it is for him to establish provocation or any other defence apart from that of insanity. Since the decisions of the House of Lords in *Woolmington v. Director of Public Prosecutions* [1935]A.C.462 and *Mancini v. Director of Public Prosecutions* [1942] A.C.1, it is clear that the rule with regard to the onus of proof in cases of murder and manslaughter is of general application and permits of no exceptions save only in the case of insanity, which is not strictly a defence. It has been expressly so decided in the case of self defence in Scotland and Canada, cf. *H.M. Advocate v. Doherty* 1954 S.L.T. 169 and *Latour v. The King* [1951] 1 D.L.R. 834. It is unfortunate that in Archbold's Criminal Pleading, Evidence and Practice, 33rd ed., at p.942, a passage is quoted from the summing up in the case of *Reg. v. Smith* (1837) 8 C. & P.160, 162, where dealing with self defence, these words occur: "Before a person can avail himself of that defence,

he must satisfy the jury that that defence was necessary." This actual passage was quoted by the trial judge in the course of his summing up in the present case. It clearly needs some modification in the light of modern decisions.

*Sentences*:

On an appeal against a sentence of imprisonment with hard labour for four years imposed by the Supreme Court at Port Moresby on a charge of stealing as a servant the sum of £3620.13.6 being the amount of a general deficiency, the High Court reaffirmed, in the case of *Harris v. The Queen* (1954) 90 C.L.R. 952, the principles laid down in *Cranssen v. The King* (1936) 55 C.L.R. 509 at pp.519-520, as the principles governing the High Court's exercise of its jurisdiction to revise the discretionary act of the Court responsible for the sentence.

The High Court stated that before it would interfere with the discretion exercised by the trial judge, it must be satisfied that in some way his discretion miscarried or the exercise of it was unsound or unreasonable and pointed out that it was not sufficient to show that the sentence was substantially greater than would have been imposed by a court sitting in Australia or by the High Court. It was not enough to justify interference with the sentence that the members of the Court would themselves have imposed a less or different sentence or that they thought the sentence was over-severe.

Sir William Webb referred to the provisions of Sections 19 and 656 of the Queensland Criminal Code which empower a trial judge to suspend the whole or part of the sentence and suggested certain matters which might justify such a course on a charge of stealing as a servant.

*Joinder*

The Court of Criminal Appeal held in *R. v. Young* [1955] Q.W.N. 38, that a count of indecently dealing with a girl under seventeen years (Section 216 of the Criminal Code) may properly be joined in the same indictment with a count of attempted rape (Section 349 of the Code). In the course of his judgment, with which Stanley J. and Hanger J. agreed, Mansfield S.P.J. said: "It is my opinion that the same acts or omissions may constitute the offence of attempted rape and also the offence of indecently dealing . . . . . It depends upon the view the jury takes of the acts or omissions whether they find the prisoner guilty or not guilty of attempted rape or

guilty or not guilty of indecently dealing and I am of the opinion that it was justifiable for the Crown to join the charges of attempted rape and indecently dealing in the same indictment as provided by Section 567 (of the Criminal Code)."

It was also contended for the appellant that Section 216 only applies in cases where there has not been any lack of consent involved and that such section could only cover an offence in which lack of consent was not alleged against the accused, because the Section states that "the term 'deal with' includes doing any act which if done without consent, would constitute an assault as hereinafter defined" (i.e. in Section 245 of the Criminal Code). The Court, however, did not accede to this proposition.

*R. F. CARTER**

## *LAND LAW*

The Landlord and Tenant Acts Amendment Act of 1954 extends the definition of lease to include a licence for valuable consideration to occupy any prescribed premises or any part thereof for the purpose of residence, otherwise than as a bona fide lodger or boarder. This provision meets attempts to avoid the application of the Acts by the giving of a licence to occupy instead of a tenancy. But it clearly does not extend to certain kinds of licencees, for example, a gratuitous licensee, a boarder or lodger, or a person who occupies premises purely for business purposes or other purposes not involving residence. Questions may arise as to what constitutes "valuable consideration." The Act provides that such consideration shall for the purposes of the Act be deemed to be rent, and this may have the effect of limiting the scope of the term valuable consideration. For example, does it extend to the obligations of an occupier who holds rent free, but on the terms of painting and keeping the premises in repair (see the definition of "rent" in the Principal Act), or to the payments made by the occupier in *Errington v. Errington* ([1952] 1 K.B. 290)?

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