the proprietor to act for their benefit. With commendable promptitude another amending Act has been passed bestowing a remedy whenever a person "pays any money or consideration . . . on the strength of any entry in the register book",[15] and provides specifically for the payment of a sum of money to F.[16]

The second point of interest in the judgment is that D also claimed damages from the Registrar of Titles for breach of duty in registering a forged transfer of D's land. Dean J. dismissed the claim: the Registrar has no Common Law duty in this regard, nor is any duty set out in the Act. This result is satisfactory from the Registrar's point of view,[17] but it shows that however much the Torrens System lightens the burdens placed on the purchaser of land he dare not relax his watchfulness.

J. H. BROOK

[15]Transfer of Land (Forgeries) Act 1951, s.2 (1).
[16]*ibid.* s. 3.
[17]It is understood that the signatures of parties to dealings were formerly checked by the Titles Office with those already held, to detect forgeries, but that in 1950 this practice was discontinued.

TORT—DEFAMATION—FACTS NEED NOT BE INCLUDED IN STATEMENT WHEN FAIR COMMENT IS PLEADED

IN *Kemsley v. Foot and Others* [1952] 1 All E.R. 501, the House of Lords had to decide a point regarding the defence of "fair comment" on which there appears to have been no previous clear authority. Newspaper proprietor Lord Kemsley had brought an action for libel against the writers and publishers of the *Tribune*, in respect of an article printed in that paper headed "Lower Than Kemsley"; the article went on to attack vigorously as dishonest journalism an article on Strachey, Secretary of State for War, which had appeared in a newspaper with which Kemsley was unconnected, and contained no further reference to him. The respondents pleaded "fair comment made in good faith and without malice on a matter of public interest namely the control by Kemsley of the newspapers . . . mentioned in paragraph one of the statement of claim". The appellant sought to have this paragraph struck out as vexatious. The House of Lords, affirming the decision of the Court of Appeal —[1951] 2 K.B. 34—which had reversed a finding for the appellant, held that as the words complained of were a sufficient indication of the facts on which they were based, it was unnecessary for the facts to be actually stated therein, and the paragraph should not be struck out. The main judgment was given by Lord Porter. He

admitted that a statement of Fletcher-Moulton L.J. in *Hunt v. Star Newspaper Co. Ltd.*[1] could be interpreted as contrary to this view, but he believed that an analysis of that case showed that the learned Lord Justice was not considering the point now in issue, but was merely emphasizing that the facts alleged, if true, must warrant the comment made. Lord Tucker and Lord Oaksey concurred in very short judgments, and Lord Goddard and Lord Radcliffe concurred without delivering opinions.

In his judgment Lord Porter also gave an opinion on a matter not directly raised in the appeal, but which could have been raised later in interlocutory proceedings. This was that while a defendant must prove all facts which he sets out in an alleged libel, because such facts may be regarded by the public as themselves derogatory to the plaintiff, a defendant who sets out no facts but merely alleges facts to justify his comment in pleadings need only prove sufficient for that purpose; dicta in *Joynt v. Cycle Trade Publishing Co.*[2] and *Campbell v. Spottiswoode*[3] to the effect that comment to be fair must be on facts truly stated, are to be interpreted as meaning that the facts *as stated* in the libel must not be *untruly* stated. On this point also the rest of the House concurred.

The Court of Appeal had distinguished between comment on, e.g., a play, book or exhibited work—to which a newspaper was regarded as analogous—where facts need not and cannot always be set out, and comment on, e.g., the honesty of some public figure, where it may be necessary to set out the facts on which it is based; they regarded a South African case of 1909, purporting to follow Fletcher-Moulton L.J. in *Hunt's* case, and much relied on by the appellant, as an example of this latter class. The House of Lords did not emphasize this distinction to the same extent, and the rule they laid down seems adequate to cover both classes of cases; a comment imputing dishonesty to a public figure may very well be unable to indicate a sufficient "substratum of fact" to form a basis for it without actually stating the facts or some of them therein.

On the major point of this case (the second point is subsidiary to it) the previous state of the law was vague though not unfavourable. The question never seems to have been directly considered. The interpretation of the House does not appear to conflict with any specific statement in the cases (Eng. and Emp. Digest, 32, 141–153; Aust. Digest, 7 369–394), nor with the opinions of the major text writers. (On Libel and Slander—Odgers (6th edn. 1929) 161–168, Gatley (3rd edn. 1938) 371–382, Fraser (6th edn. 1925) 159–175, Button, (2nd edn. Ch. 9); on Tort—Clerk and Lindsell (10th edn.

[1][1908] 2 K.B. 309, 319. [2]1904[2 K.B. 292. [3](1863) 32 L.J.Q.B. 200.

1947) 756–759, Salmond (10th edn. 1945) 411–414, Pollock (15th edn. 1951) 190–193, Winfield (5th edn. 1950) 277–280). Salmond (413) for example, does say that when a statement can be interpreted either as fact or comment, then to be regarded as comment the facts on which it is based must be "stated or referred to", but he does not say that the facts relied on must be stated in every case. Halsbury (2nd edn., 20, art. 599) seems to justify Lord Porter's treatment of *Hunt's* case, *Joynt's* case and *Campbell's* case—not that the facts must *all* be set out, but that there must be no misstatement of the facts *as* set out.

On the whole, it seems a perfectly reasonable inference from discussions in cases and texts on the defence of fair comment on matters before the public, particularly from the discussions on literary criticism, that where such matters are indicated with sufficient clarity in the comment complained of, there is no need for the actual facts on which it is based to be set out therein, and it is surprising that specific statements to this effect should have been practically non-existent. However, several supporting dicta are to be found—per Kennedy L.J. in *Peter Walker and Son Ltd. v. Hodgson*[4] and per Ferguson J. in *Myerson v. Smith's Weekly*[5]; see also *O'Brien v. Salisbury*[6] (cited in the Court of Appeal). The Court of Appeal placed considerable reliance on *McQuire v. The Western Morning News Co.*[7], in which comment on a musical play was upheld as fair, although (in their opinion) it contained no facts on which it was based; but the point of the present appeal was not then in question.

The decision of the House, though not of major importance, has clarified satisfactorily a point which had been necessarily uncertain because virtually unconsidered.

R. L. SHARWOOD

[4][1909] 1 K.B. 239, 256.
[5](1923) 24 S.R. (N.S.W.) 20, 26–27.
[6](1889) 6 T.L.R. 133.
[7][1903] 2 K.B. 100.

CROWN—POLICE—LOSS OF SERVICES CAUSED BY TORTFEASOR—ACTION *PER QUOD SERVITIUM AMISIT* DOES NOT LIE FOR THE CROWN

Attorney-General for New South Wales v. Perpetual Trustee Coy. Ltd.[1] raises again the question of liability for injuring a servant of the Crown. A member of the police force of New South Wales was injured by the negligence of the defendant. As a result of the injuries

[1][1952] A.L.R. 125.