COMMENT ON OFF-SHORE JURISDICTION

By J.D. Merralls, Q.C.

I have come, I am afraid, as a mere private practitioner, unskilled in politics or the political aspects of the questions that have been raised by Mr. Harders, and unlearned in the matters which have been the subject of the delicate discussions that have taken place between the Commonwealth and the States since the High Court's decision in the *Seas and Submerged Lands Act Case*. My comments must therefore be of a somewhat speculative nature and they are unassisted, or inhibited, by the fact that the High Court has not yet spoken on the many difficult questions that are before it in the three cases which Mr. Harders has mentioned.

I wonder if I might make some comments about the Seas and Submerged Lands Act? Most of you will be familiar with that Act, but it might be convenient if I were to summarise some of its provisions. It is an unusual Act, declaratory in form. It contains three main sections which assert that sovereignty in respect of the territorial sea in Australia, sovereignty in respect of the internal waters of Australia and sovereign rights in respect of the continental shelf in Australia is vested in and is exercisable by the Crown in right of the Commonwealth. It recites the obvious fact that Australia is a party to the Convention on the Territorial Sea and the Contiguous Zone and to the Convention on the Continental Shelf, and it adopts the conventional meaning of "continental shelf". It provides for the declaration from time to time by proclamation of the limits of the whole or any part of the territorial sea and of the Australian continental shelf, and in particular for determination, for the purpose of declaring the limits of the territorial sea, of its breadth and the baseline from which any part of it is measured. So it contemplates that the breadth of the territorial sea may change.

Nothing is to affect sovereignty or sovereign rights in respect of any waters of the sea that were waters of or within any bay, gulf, estuary, river, creek, inlet, port or habour and were within the limits of a State at the date of federation and remain within the limits of the State. These are sometimes called the "pre-federation internal waters" of a State. And nothing is to limit sovereignty or sovereign rights in respect of the superadjacent air space or sea bed or superadjacent soil.

The identity of those waters has to be established by proof of State limits at federation. Provision is made for the Governor-General, if satisfied that a bay is an historic bay or waters are historic waters, to declare that fact by proclamation and to define the seaward limits of the bay and the limits of the waters. Those who know far more about this subject than I do tell me that Shark Bay on the Western Australian coast is the only bay that is likely to be declared an historic bay.

It is stated that the Act does not limit or exclude the operation of any Commonwealth or Territory law or any State law in force at the date of the commencement of the Act or later coming into force, except insofar as the State law is expressed to vest or make exercisable any sovereignty or sovereign rights otherwise than is provided by the Act. That is a very difficult section (s.16). And it is also stated not to be taken to vest in the Commonwealth any wharf, jetty, pier, breakwater, building, platform, pipeline, lighthouse, beacon, navigational aid, buoy, cable or other structure or works. That is s.15. I shall come back to that section.

The States challenged the validity of the whole Act in the High Court. The Court held unanimously that the provisions relating to the continental shelf were validly enacted under the extern ' affairs power of the Constitution, and a majority of the Court held that the other provisions were validly enacted under the external affairs power, either because they gave effect to the convention on the territorial sea and the contiguous zone, or because the external affairs power extended to any matter or thing external to Australia or situated outside it and to persons outside Australia and their activities. The ground of the decision may be important in future cases. The majority accepted that the boundaries of the colonies had ended at low water mark and that the colonies, and the States as their successors, had no sovereign or proprietary rights in respect to the territorial sea or its solum or the superincumbent air space. So it is now established that the Commonwealth is capable of exercising all the rights and powers accorded to a coastal state by international law in respect of the territorial sea. Those powers must be exercised by the appropriate organ of government. The executive government has no greater power without parliamentary authority than it has within the land territory. But the rights and powers accorded to a coastal state by international law over the territorial sea and its solum are extensive, and for practical purposes are equivalent to the rights and powers that the state possesses over its land and territory. I use "state" in the sense of nation state. As well as regulating activities within the area, it may assert ownership of the solum and confer interests in it. The sovereign rights that may be exercised in respect to the continental shelf are more limited and consist in essence of the right to explore it and to exploit its natural resources, consisting of the mineral and other non-living resources of the seabed and subsoil and living organisms belonging to sedentary species, and to exclude others from undertaking any of those activities.

The States do not possess the same rights and powers in respect of the territorial sea and its solum that they have in respect of their land territory. They nevertheless have power to make laws which operate outside their land territory in the territorial sea, and even beyond it. The test of the validity of those laws and of their applicability to a particular act, person or thing is whether the law is for the peace, order and good government (or peace, order and welfare) of the State as a polity. There must be an appropriate territorial connection with the State.

It seems that a State law of general application which professes to

operate within the territorial sea adjacent to the state is prima facie a law of that character, and that a law which professes to regulate acts, persons or things only in the territorial sea or in waters beyond the land territory is prima facie not a law of that character. Such laws may nevertheless be valid in particular cases. Any State law otherwise valid will be invalid, that is to say inoperative, to the extent that it is inconsistent with a valid Commonwealth law through the operation of s.109 of the Constitution.

The Seas and Submerged Lands Act does not itself operate as an inconsistent law to render State laws invalid under s.109. It postulates that the subject matters of the Commonwealth laws which are potentially paramount over State laws are not confined by the specific heads of power in s.51 and elsewhere in the Commonwealth Constitution.

The *Seas and Submerged Lands Act Case* recognised the existence of power for the Commonwealth to exercise proprietary rights and to confer interests in the solum of the territorial sea. It did not have to be decided in that case whether the Commonwealth had the sole right to do so. There are statements in judgments of judges who concurred in the decision and also of those who dissented from it that some State laws providing for such things as the construction of wharves, jetties, and breakwaters beyond the territorial limits of the State were sufficiently connected with the States to be within power upon the footing that they were to facilitate the ordering and conduct the activities which had a relevant connection with the State. It will be a nice question in a particular case whether a relevant connection exists. The Act, and the decision of the High Court, did not settle questions about the effect of interests of a proprietary character which had already been conferred under State laws. The Act did not expressly abrogate the Petroleum (Submerged Lands) Acts, although it removed many of the doubts and difficulties that had fathered them, and Commonwealth power stood revealed as the real or ultimate source of much of their legal authority. As Mr. Harders has said, the future of this co-operative scheme will perhaps depend less upon legal than upon political considerations. But while the scheme remains on foot the States have real, not illusory, functions and powers deriving from the Commonwealth Act. If that Act is not amended the arrangements made between the Commonwealth and the States for the exercise of the powers and functions of designated authorities by State officers will continue in full force and effect. The provisions of the Commonwealth Act for the variation or revocation of an arrangement with a State may have the effect that an existing arrangement cannot be varied or revoked without the State's concurrence. Mr. Nicholls will examine this interesting question. If it cannot be varied or revoked without the concurrence of a State, and if a State were obdurate, the Commonwealth Act itself would have to be amended to alter the provisions under which the arrangements were entrenched.

I have mentioned s.15 by which the Commonwealth has disclaimed rights to structures or works which the Act might be taken to have vested in it. It is not clear whether the section applies only to things which were already in

existence when the Act was assented to on the 4th December 1973 or whether it attaches to structures and other works that are constructed or placed in position from time to time. But it may be of limited effect. A person who constructs a fixture on another's land without any claim of right has no interest in the thing constructed unless he does so on the mistaken assumption that the land is his own and the true owner is aware of the mistake and deliberately does nothing to undeceive him, or unless he does so on the faith of an express or implied promise by the true owner that he is to have an interest in the land. In both cases the true owner is estopped from asserting his right to deny the other an interest in the structure or work. This is sometimes referred to as the principle in *Ramsden v. Dyson* (1865) L.R. 1 H.L. 129 and it was applied to the construction of a jetty in a harbour in *Plimmer v. Wellington Corporation* (1884) 9 App. Cas. 699. But in *Attorney-General v. Municipal Council of Sydney* (1919) 20 S.R. (N.S.W.) 46, at p.58, it was said that in a case where the Crown has power to alienate or dispose of Crown lands only in accordance with statutory provisions, no minister of the Crown can by any act create an interest in Crown lands in any manner which is not authorized by law and an interest cannot be asserted by estoppel against the Crown which the Crown is not authorized to confer. It is not clear whether the use and occupation of Crown lands, without alienation, may not be permitted without statutory authority.

The High Court's decision in the *Seas and Submerged Lands Act Case* left in doubt the position of certain rights of a proprietary nature conferred under State law in areas beyond State territory. Rights granted under the Petroleum (Submerged Lands) Acts stand upon a different footing from other rights. I shall mention the Petroleum (Submerged Lands) scheme presently.

I think it would be hard to contend that the Commonwealth was estopped from denying rights under leases which the States had no power to grant and I think it doubtful whether the Commonwealth would be estopped from asserting rights of ownership over structures and works constructed by the purported lessees. But the facts in particular cases may support the setting up of an estoppel of a limited nature. It may also be contended that the States do have power to confer rights less than interests in property by virtue of their general constitutional powers, for example licences to dredge channels and place navigational aids within territorial waters.

If the views I have suggested are correct, the terms of s.15 will not probably prevent the Commonwealth from asserting rights of ownership over any structures and works to which it refers and further legislation may be required if the Commonwealth does not want to disturb the rights of those who have constructed those works.

It is doubtful, in my opinion, whether the Commonwealth could abrogate proprietary rights conferred under the Petroleum (Submerged Lands) Acts without being liable to provide just terms of compensation under s.51(xxxi.) of the Constitution. Hence it is most unlikely that the Commonwealth will enter into similar arrangements with the States concerning offshore minerals other than petroleum. But this will depend upon matters of a

political character which are beyond my ken.

The powers of the Commonwealth to control land operations connected with mining in areas offshore are constrained by the terms of the Commonwealth Constitution. Because the Commonwealth's plenary power does not extend back to the land territory, the States have a complementary role in relation to important things such as pipelines, wharves, ports and other storage and transport facilities. The Commonwealth Parliament has power under s.51(i.) of the Constitution to make laws with respect to Australian commerce with other countries and among the States. Section 98 provides that the Parliament's power to make laws with respect to trade and commerce extends to navigation and shipping and to railways to property of any State. Section 98 does not confer power but rather explains the conception of trade and commerce in s.51(i.). The power is to make laws with respect to navigation and shipping and things ancillary to trade and commerce. But the Commonwealth has extensive powers under s.51(i.) which would probably enable it to make laws concerning ports and harbors used exclusively for exporting goods or materials abroad or interstate, which s.109 would make paramount over State laws. The Commonwealth can acquire land within a territory for the purpose of establishing wharf and port facilities for the export trade, but it has first to acquire the land from the State or from private ownership and to provide the just terms which s.51(xxxi.) requires. Under the trade and commerce power the Commonwealth can control the export of goods and materials from Australia by export licensing and otherwise. And in exercising this power it has been held that the Commonwealth may make a right or liberty to export goods or materials depend upon matters which are not considerations of trade or commerce or trading policy, and it may impose conditions which relate to a wide range of matters. The effect on the environment of the operation by which goods are manufactured or materials are won is one matter upon which conditions may be prescribed or the relaxation of a prohibition may be made to depend.

The provisions of the Act adopting the rules of the convention on the territorial sea are not self-executing, and the baseline which is referred to may in many localities depend upon the adoption of the special rules for drawing straight baselines enclosing as internal waters what would otherwise be called the territorial sea. Mr. Harders has mentioned the discussions that are proceeding between the Commonwealth and the States at the Law Officer level about these matters. If one assumes that the Commonwealth will adopt or suggest baselines which will extend the outward limits of the territorial sea as far as possible from the coast, some interesting questions may arise. The maritime limits of the States are not affected by the prescription of a baseline beyond the line of low water mark. It is theoretically possible to extend the territorial limits of a State to the baselines of the territorial sea or even to the outer limit of the sea, but to do so would require agreement between the Commonwealth and a State and the approval of a referendum of electors in the State. That is provided by s.123 of the Constitution.

By s.10 the Commonwealth asserts sovereignty over those parts of the Australian internal waters which are waters of the sea lying on the landward side of the baseline for measuring the territorial sea. There are problems here, because the rules for determining the inner limits of the territorial sea and for identifying the bays recognised as internal waters are modern rules which were not accepted rules of international law, either customary or conventional, at the date of the Australian federation. Where the new rules for describing bays apply, the internal waters and solum affected by s.10 will include waters which would otherwise be part of the territorial sea, providing they are encompassed by the phrase "waters of the sea". Section 14 is a saving provision which sets limits upon the operation of the general words of s.10. Like s.10 it is confined to waters of the sea and it has the effect that the Commonwealth does not assert sovereignty by s.10 over any internal waters of the kind or character described, which were "colonial internal waters", that is pre-federation internal waters, and which have remained internal waters of the States. But it is perhaps easier to describe the internal waters of which the Commonwealth does not claim sovereignty than to identify them. And bays present special problems, because the exercise is somewhat anachronistic. There were no universally accepted principles of international law in 1900 for determining whether a bay was part of the internal waters of a State. There were various tests which were propounded and some new tests have been propounded since then.

There are also possible questions of whether the terms "bay", "gulf", "estuary", "river", "creek", "inlet", "port" and "harbor" in s.10 are all geographical terms, or whether some such as "port" and "harbour" are legal terms, and if so whether they are terms of art or terms which depend upon the provisions of colonial or State laws. The better view seems to be that they do not depend upon the designation of a place under State law, whether or not they are terms with an accepted legal connotation.

Section 16 saves the operation of certain Commonwealth, Territory and State laws. It protects the operation of Commonwealth and Territory laws in force at the commencement of the Act or coming into force thereafter, and it provides that the Act does not limit or exclude the operation of any State law in force at the commencement of the Act or coming into force thereafter "except insofar as the law is expressed to vest or make exercisable any sovereignty or sovereign rights otherwise than is provided by the Act". If the Act is merely declaratory of the rights and powers of the Commonwealth in respect of the areas concerned, s.16 has no effect other than as a supplementary statement made for greater caution of the effect of the other provisions. The lawful operation of Commonwealth and State statutes existing at the commencement of the Act depended upon the constitutional powers of the parliaments that enacted them. The common law applied to the areas affected by the Act either because of the identity of persons or the nature of the activities or their connection with the land territory or because it was made to apply by Imperial statutes such as the Merchant Shipping Acts or Australian statutes such as the Petroleum (Submerged Lands) Acts. The continued operation of State statutes

existing at the commencement of the Act and the lawful operation of statutes coming into force after its commencement would not be affected by the Act unless it were treated as inconsistent with Commonwealth law for the purposes of s.109 of the Constitution. A question would then arise whether by exercising power under the external affairs power or the sovereign powers accorded by international law and fundamental constitutional law, the Commonwealth could render a State law invalid under s.109 without effectively dealing with the subject regulated by the State law which the Commonwealth purported to exclude. The basis of the ordinary rule that a bare attempt to exclude State concurrent power from a subject the Commonwealth parliament has not effectively dealt with is that such a Commonwealth law lacks constitutional subject matter. But the powers asserted by the Seas and Submerged Lands Act are different in character and kind from the concurrent powers with which the operation of s.109 is normally concerned, and a Commonwealth law which merely excludes all State laws or State laws upon particular subjects from the sea or solum beyond the limits of land territory may not be beyond power. There is a special problem, of course, in connection with fisheries because of the constitutional limitation or restriction on the Commonwealth's power in respect of fisheries to "Australian waters beyond territorial limits".

Section 16 appears to have been intended to provide against the accidental creation of a legal vacuum by the Act's being interpreted as an expression of the Commonwealth's intention to exclude State laws which have a relevant territorial connection with a State. The purpose of the exception of laws expressed to vest or make exercisable sovereignty etc. otherwise than is provided by the Act appears to be to ensure that the Commonwealth concedes to State laws only an operation founded upon a relevant territorial connection. But the effect of the provision is obscure, because many State laws upon which it may operate are not laws like the Seas and Submerged Lands Act itself, declaring or asserting rights or powers, but laws which merely exercise them. The answer may be that the words "is expressed to vest or make exercisable" apply only to a law or part of a law which cannot be sustained by the territorial connection test. But this is far from clear.

The exception made by s.16 is not of laws vesting sovereignty or sovereign rights or making them exercisable, but of their being vested or made exercisable otherwise than provided by the Act. It is only if a State law that has a relevant territorial connection with the State is inconsistent with the Commonwealth sovereignty that the exception from the saving provisions is needed. State laws concerning a wide range of activities and conduct will continue to apply offshore unless the Commonwealth passes inconsistent laws. The State laws include laws regulating the use of harbors outside pre-federation internal waters and their facilities, and laws concerning pollution. There are already some Commonwealth statutes dealing with marine pollution, as Mr. Harders has mentioned, and I understand that further legislation is being considered to give effect to international conventions to which Australia has adhered.

Claims that the Commonwealth may make in the future of power to control resources zones beyond the limits of the territorial sea or to extend the limits of the territorial sea will not affect the distribution of powers between the Commonwealth and the States. The extension of the territorial sea may have the effect of enlarging the waters which have a relevant territorial connection with a State, supporting the application of State laws there. This view was suggested by one of the judges in *Pearce v. Florenca* (1976) 9 A.L.R. 289, 50 A.L.J.R. 670. Whether it does have that effect in respect of State laws generally, or of some classes of laws, the courts will have to decide in particular cases.

To sum up, Commonwealth sovereignty over the territorial sea and part of the internal waters has now been established and the Commonwealth is seen as the polity in which the sovereign rights of Australia as a coastal State in respect of the continental shelf is vested, but it may fairly and truly be said that in a federation no unit of government is entire of itself and State laws as well as Commonwealth will continue to have a bearing upon the exploitation of offshore resources.

COMMENT ON OFFSHORE JURISDICTION

By R.C. Nicholls

Now the questions I would like to canvass briefly are these, first of all what is the present legal status of the State and the Commonwealth Petroleum Submerged Lands legislation. In other words such legislation which is sometimes misleadingly, I suggest, referred to as The Common Mining Code. Secondly, what laws apply to govern exploration, and development operations in off-shore areas apart from those laws relating to the granting of permits and the like. Now when we come to look at the Seas and Submerged Lands Act, and although I know as a lawyer we are not allowed to do this, we look at what the then Minister for Minerals and Energy said about it in the second reading speech in the House in introducing the bill, we find that section 16 of the Seas and Submerged Lands Act is not such a mystery any more. What the Minister at that time suggested to the Parliament was that the passage of the Seas and Submerged Lands Act would have no effect upon the continued existence of the Petroleum Submerged Lands legislation of the Commonwealth and the States. Now I am not so sure that is right. The first point that I would make is that the Seas and Submerged Lands Act, as Mr. Merralls has pointed out, and as the High Court pointed out in *Pearce v. Florenca* is basically declaratory legislation and proclaims that the Commonwealth has sovereignty in respect of territorial waters and sovereign rights in respect of the continental shelf.

Now the second point is that in *Pearce v. Florenca,* which was a case involving the application of the state fisheries legislation, the majority of the High Court (with the exception of Murphy J.) took the view that there was no question in that case of any inconsistency, because there could only be inconsistency for the purposes of s.109 of the Constitution when the Commonwealth passed further legislation in exercise of the sovereignty which the Seas and Submerged Lands Act said the Commonwealth had and which the High Court in the *Seas and Submerged Lands Act Case* upheld. Now here of course in the context in which we are considering it, we have a different type of case because we do have existing Commonwealth and state legislation. Therefore I would suggest the question of inconsistency is squarely raised.

Now if you have a look at the Petroleum Submerged Lands legislation you see that this is very much concerned with the exercise of powers which are related to sovereignty and sovereign rights. I would therefore suggest that if you are looking at the question of whether the state Petroleum Seas and Submerged Lands legislation is still alive you will not get any comfort from s.16(b) of the Seas and Submerged Lands Act, despite what Mr. Connor may have said or implied in the House. The question becomes one whether, as Mr. Harders puts it in his paper, the legislative attempt in s.150 of the Commonwealth Petroleum Submerged Lands legislation is effective to avoid the operation of s.109 of the

Constitution. He refers to one of the cases in which the High Court has reserved its decision, the *Credit Tribunal of South Australia Case:* a case involving, as I understand it, a question of what effect s.72 of the Trade Practices Act has on the continued operation of state consumer credit legislation. That question was of course canvassed in an article in 49 A.L.J. 539, and the writers of that article refer to all the cases. There is a suggestion that you can spell out of the cases that although there is direct inconsistency, if you can find intent on the part of the Commonwealth legislation that it is to act in a manner which is complimentary or supplementary to the state legislation or vice versa, then you do not have inconsistency of the type to which s.109 of the Constitution applies. Now of course in the context of the Petroleum Submerged Lands legislation, one could say that this is the sort of legislation which is obviously intended to be supplementary or complimentary – or to use the expression which was used about it – mirror image legislation. But as was pointed out in evidence before the Senate Select Committee, an Off-Shore Petroleum Resources, the Commonwealth legislation was intended to stand on its own.

What then is the position of the state legislation if it is inconsistent with the Commonwealth legislation? The answer, of course, on the face of it, is that s.109 would operate to strike the state Act down. But wait. Section 109, of course, only operates to strike down state legislation where you have a valid law of the Commonwealth. Now surely you are going to say to me: "Well, after the *Seas and Submerged Lands Case* there can surely be no question that the Commonwealth had power to pass the Petroleum Submerged Lands Act and, therefore, the Commonwealth legislation is surely valid?" My answer is I do not believe that is necessarily so. I can assure Mr. Harders that to use the words, or the expression which was used by the Solicitor-General of Victoria before the Senate Select Committee in talking about Victoria's position regarding the territorial sea, the views which I am about to express are views which are not held by me lightly, facetiously or fraudulently. Now the point to which I refer is a point which I will not seek to elaborate on, but it is a point which was brought out by Professor Richardson in evidence before the Senate Select Committee: the *Boilermakers* doctrine ((1956) 94 C.L.R. 529) establishes quite clearly the separation of powers among the three arms of federal government under the Constitution. In that case, of course, the emphasis was on the judicial arm. Professor Richardson's argument suggests that the doctrine also requires separation of executive power, and that the executive power of the Commonwealth (like the judicial power of the Commonwealth) may only be exercised validly by an officer of the Commonwealth. Now when you come to look at the existing offshore petroleum legislation, you find a situation in which the day-to-day administration of the legislation is vested in somebody who, in the case of the adjacent areas adjacent to states, is a state official, and Professor Richardson says that under the way the legislation is set up, that state official remains a state official, he is not a Commonwealth officer, and therefore the legislation could be invalid on the basis of the doctrine laid down by the High Court in the *Boilermakers Case.* Now there have been suggestions in recent times

that the High Court may be contemplating retreating from *Boilermakers.* I have caused enquiries to be made and from what I could ascertain that is not quite so. In the cases that the High Court invited counsel to re-argue *Boilermakers,* that invitation was made in the context of re-arguing the question of what did or did not constitute judicial power. There has been no retreat at all from the basic thrust of *Boilermakers* which is that there must be separation of powers maintained. If this argument was upheld it would be ironic indeed; because you would then have a situation in which the Commonwealth Petroleum Submerged Lands legislation was invalid because of *Boilermakers,* not because the Commonwealth did not have power to make a law on the subject.

Secondly, on the basis of the majority view in *Pearce v. Florenca,* the state legislation is not struck down since the Seas and Submerged Lands Act requires the passage of further legislation before the question of s.109 applies. And finally, the state legislation is valid because although the offshore areas are outside state territorial limits, there would be, on the basis of *Johnson v. Commissioner of Stamp Duties (N.S.W.)* [1956] A.C. 331) and the other cases on extra-territorial operation of state legislation, sufficient nexus. If you have any doubt about that I would suggest that if there is sufficient nexus for state parliaments to pass laws regulating fisheries offshore from their state, then I cannot see why there would necessarily be any difference in the case of petroleum legislation.

Now having examined the possibility, and I do not rate it any higher than a possibility, that the Commonwealth legislation may be invalid, let us proceed on the basis: "What is the legal position if the Commonwealth legislation is valid but the state legislation is not?" Then you have this extraordinary situation. The Commonwealth would have its legislation, which would be the only legislation in the field, being administered by a state official who was no doubt paid by, and one might expect owed his allegiance to state government. The Senate Select Committee felt that even if you had concurrent Commonwealth and State legislation, the situation was most objectionable.

Now I would like to mention briefly (in view of the time) the question of what laws are applicable, particularly in the context of workers compensation legislation and other legislation affecting operations offshore. I have asked a number of other people involved in the practice in this area and I am told that the problem never comes up. I think it probably will one of these days. We do after all have different workers compensation legislation in different states, and in case you think that it could not happen, it did happen in a slightly different context and had to be considered by the English Court of Appeal in *Sayers v. International Drilling Co. N.V.* [1971] 1 W.L.R. 1176, 3 All E.R. 163. The case involved an English oil rig worker who entered a contract of employment in England with an English representative of a Dutch company which was in turn a subsidiary of a Texan oil drilling company situated at the Hague and engaged in recruiting European personnel to work on oil rigs overseas. The printed form was in Americanised English with blank spaces for insertion of the recruit's country of origin. In any event, this poor unfortunate was sent to work offshore Nigeria

and something fell on him I think and he was injured and the question was which law was applicable to his claim for compensation. Ultimately the whole court decided it was Dutch law and the man's case went down the drain. His main problem was that he was commended by the judges for his honesty in evidence – he said that he had relied on his employer and the judges expressed the view that no doubt his employer would take that into account when considering the amount of ex gratia payment they would make him.