CORRESPONDENCE

FROM SIR LIONEL BRETT

The Editor,
Journal of African Law.

Sir,

I have read Chief F. R. A. Williams' article on "Legal Development in Nigeria 1957-67" in [1967] J.A.L. 77 with interest, but I cannot entirely agree with him as to the significance of three of the judgements he mentions.

In *Dawodu* v. *Danmole*, [1962] 1 W.L.R. 1053 the Judicial Committee did not hold that "under Yoruba native law and custom, property on intestacy *is not to be* distributed equally among the deceased's children". The Federal Supreme Court had held that on the evidence the other was the universal method of distribution, but with the important qualification that where there was a dispute the family head was empowered to decide which of the two methods should be adopted, and that his decision was final. The Judicial Committee affirmed this finding.

In *Ezeani* v. *Njidike* [1965] N.M.L.R. 95 the trial judge awarded as damages for conversion not only the value of the chattels but an unexplained additional sum of £132 13s. as general damages. When asked to justify this, counsel for the plaintiff submitted that it was exemplary damages. After mentioning a passage in the 12th edition (1961) of Mayne & McGregor on Damages the Supreme Court pointed out that any question about exemplary damages needed reconsideration in the light of what was said in *Rookes* v. *Barnard*, [1964] A.C. 1129, and went on:—

> "It is not necessary in the present case to decide whether the courts in Nigeria should adopt this decision *in toto*, but as a warning against the over-free award of exemplary damages it is of strong persuasive value. On the facts of this case we do not consider that this Court could properly assume that the trial judge intended to award exemplary damages, or hold that this was a case where they were justifiable when he did not so hold."

This hardly amounts to following the principles laid down by Lord DEVLIN in *Rookes* v. *Barnard*.

In *Benson* v. *Ashiru* S.C. 405/1965, delivered 9.6.67, the Supreme Court did accept the decisions on various points in *Koop* v. *Bebb* (1951), 84 C.L.R. 629 as applicable in Nigeria, but what it said was probably *obiter* since in the end the judgement rested on the fact that the plaintiff had on any view no standing to sue. A more important decision on internal conflict of laws was given in *Amanambu* v. *Okafor* S.C. 278/1965, delivered 1.7.66, where plaintiff and defendant both resided in Eastern Nigeria and the Supreme Court held that an action would not lie in the High Court of

Eastern Nigeria under the Fatal Accidents Law of that Region in a case where the fatal accident and the death had taken place in Northern Nigeria. Of the three different approaches adopted by the members of the Court of Appeal in the more recent case of *Boys* v. *Chaplin*, [1968] 2 W.L.R. 328, the Supreme Court thus rejected that which would treat the *lex fori* as applicable *proprio vigore*, and it did not even consider that which would look to the proper law of the tort. The plaintiff expressly declined to invoke the *lex loci delicti* and the Supreme Court did not pronounce on whether the High Court of Eastern Nigeria could have entertained a claim under the Fatal Accidents Law of Northern Nigeria. The obiter dictum in *Benson* v. *Ashiru* suggests that it could.

Yours faithfully,

L. BRETT

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