position of a contractual licensee as against a purchaser is, as yet, "very far from clear."

Shortly before the Hastings case reached the House of Lords, the Court of Appeal had decided another case (not cited there), similar to Dillwyn v. Llewelyn, above: Inwards v. Baker [1965] 2 Q.B. 29. There a father had allowed and encouraged his son to build a bungalow on the father’s land on the understanding that the son could then occupy the bungalow for so long as he might wish. The son accordingly built it, largely by his own labour, and partly at his own cost, and was still occupying it when the father died. Held (following several nineteenth-century cases, including Dillwyn v. Llewelyn) the son had an “equity” to stay there for the rest of his life. Lord Denning M.R. described it (p. 37) as a “licence coupled with an equity,” which would bind any purchaser, with notice, from the father or his executors or devisees. Danckwerts L.J., however, described it as a kind of equitable estoppel.

S. J. Bailey.

HUSBAND AND WIFE—CONFIDENTIAL COMMUNICATIONS

Excitement mounts when a judgment proclaims at the outset that the case raises “profound questions of the policy of the law, its function in our society and how far it is still capable, if need be, of development to carry out that function”; and there was clearly justification for the use of these words by Ungoed-Thomas J. in Duchess of Argyll v. Duke of Argyll [1965] 2 W.L.R. 790, as the Duchess sought interlocutory injunctions to restrain the Duke (her former husband) from communicating details of her private life, which he had learnt from her while they were married, to a Sunday newspaper, and to restrain the editor and proprietors of the newspaper from publishing them.

There was, surprisingly, no direct authority on this question, though it was clear that an injunction can be granted to prevent a publication which would infringe a right of property (Prince Albert v. Strange (1849) 1 H. & T. 1) or which would involve a breach of contract, whether or not the defendant was a party to that contract (Abernethy v. Hutchinson (1825) 3 L.J.(o.s.)Ch. 209). It appeared furthermore that in equity protection does not depend on the existence of a proprietary or contractual right: for in Prince Albert v. Strange Lord Cottenham L.C. had stated that the Prince’s right to have the defendant restrained from exhibiting copies of his etchings did not depend solely on his right of property, but that the breach of trust or confidence involved also entitled him to a remedy;
and in *Pollard v. Photographic Company* (1889) 40 Ch.D. 845 a professional photographer had been restrained from selling copies of a photograph he had taken of the plaintiff both by reason of an implied term in their contract and because of the breach of confidence that was involved. Thus it seemed to be established that a confidential communication can be protected in equity on the ground simply that publication would be a breach of confidence.

Obviously many marital communications could be regarded as confidential, the recent decision of the House of Lords in *Rumping v. D.P.P.* [1964] A.C. 814 notwithstanding. For although the House had there decided (Viscount Radcliffe dissenting) that an intercepted communication between spouses could be used in evidence in the prosecution of one of them for a criminal offence, all the speeches had recognised that in general the law should respect the privacy of communications between husband and wife.

Ungoed-Thomas J. accordingly concluded that he was entitled to grant injunctions to the Duchess on the purely equitable ground of breach of confidence. But he also held that if that were not so, she would be entitled to rely on her legal rights; for publication of these articles would constitute both a breach of an implied term of the contract of marriage and, in addition (if a dictum of Lord Eldon in 1820 could be relied on as an analogy), an infringement of her right of property in what she had spoken in confidence to her husband (p. 799E).

It may be observed that the general position regarding the protection of confidential communications (whether marital or otherwise) is still not as clear-cut as it might be. In many situations the existence of a legal right, arising from property or from contract, enables relief to be granted on those grounds; but it is suggested that the broader equitable principle that a breach of confidence can be restrained as such, and independently of any proprietary or contractual right, deserves to be emphasised and given full play. For it is highly artificial to speak of rights of property in the spoken word, and it may often be too restrictive to have to rely on an implied term of a contract. Far more satisfactory is the equitable principle expounded by Ashburner, that "information obtained by reason of a confidence reposed . . . cannot be made use of then or at any subsequent time to the detriment of the person from whom . . . it was obtained" (*Equity, 2nd ed.*, p. 374). Such a principle has the great merits of simplicity, flexibility, and comprehensibility to the layman.

The next point to arise in the *Argyll* case concerned the principle that he (or she) who seeks the equitable remedy of an injunction
must come with clean hands. It was argued that the Duchess should be refused relief both because she had herself already written articles about their marriage in another Sunday newspaper and because her attitude towards the sanctity of marriage was, in the words of the judge who had heard the divorce proceedings, "wholly immoral." But these objections failed: the Duke's proposed articles were "of an altogether different order of perfidy," and it was not right that the Duchess's adultery "should have retrospective operation . . . and not only break the marriage for the future but nullify it for the past" (p. 810H). Few, if any, would dissent from this last conclusion.

A quite distinct point of law was also raised in this case, for in addition to seeking the injunctions so far considered the Duchess sought injunctions to restrain publication of certain details of the earlier divorce proceedings on the ground that this would contravene the Judicial Proceedings (Regulation of Reports) Act, 1926. But would civil as distinct from criminal proceedings lie to enforce that Act? Basing himself on Solomons v. R. Gertzenstein Ltd. [1954] 2 Q.B. 243, Ungoed-Thomas J. applied the test of whether the Act "was intended only for the protection of the public at large or also for the benefit of a class of persons" (p. 817G) and, the latter being the case, he granted the injunctions requested. But it may be mentioned in passing that as a means of ascertaining whether an action for damages will lie for breach of a statutory duty, the above test, though supported by two members of the Court of Appeal in the Solomons case, has serious limitations. It was strongly criticised by Atkin L.J. in Phillips v. Britannia Hygienic Laundry Co. Ltd. [1923] 2 K.B. 832 at p. 841, and modern textbooks on tort either regard it as invalid (Winfield, 7th ed., p. 820) or as inconclusive (Salmond, 13th ed., p. 448; Street, 3rd ed., p. 275).

Probably the most significant aspect of Argyll v. Argyll is the reinforcement it has supplied, on a broad view, to the venerable but crumbling doctrine of the unity of husband and wife. Increasingly the law has come to regard spouses as separate individuals— as regards ownership of property (since 1882), as regards actions in tort (since 1962) and as regards intercepted communications for the purpose of criminal prosecutions (since 1962). Welcome though this development is in many ways, there is good reason for not carrying it too far; and the movement in the other direction in this case probably accords well with contemporary feeling. What is ironical, however, to the historian is that it should now prove to be the turn of equity (if breach of confidence is accepted as the real basis of the
decision on the major point) to bolster the sagging doctrine of unity; for it was equity which, with its introduction of the married woman's separate estate, first seriously undermined it.

J. C. Hall.

**THE REDUNDANCY PAYMENTS ACT, 1965**

Professor Meyers wrote of the Contracts of Employment Act, 1963 (in his *Ownership of Jobs: A Comparative Study, 1964, p. 42*), that however "weak, unsatisfactory, and ambiguous the . . . Act may be, it is evidence of substantial concern over the problem of insecurity in employment, and proposes a first, hesitant step toward the recognition that solutions in the way of unemployment compensation, full employment policies, and the rest of the traditional legislative baggage are insufficient." The Redundancy Payments Act, 1965 (which comes into force on December 6 of this year), marks a second hesitant step in this direction. The Act is an extremely complicated one, as can be seen from the Ministry of Labour's *Guide to the Redundancy Payments Act, 1965*, and it is not possible here to do more than consider it in very general terms. (The best short account of the detailed provisions of the Act is to be found in *Labour Research*, Vol. LIV (1965), pp. 72–78.) It marks the first stage in recognising as a matter of law that a worker's interest in his job is far more than a purely contractual one, and that loss of a job may give rise to social problems such as the need for retraining and relocation of employees which cannot be dealt with by purely contractual remedies and require intervention by the State to provide some system of insurance. It must be recognised, however, that the Act makes provision only for loss of employment "wholly or mainly" due to redundancy (s. 2 (2)). If an employer dismisses his employee with or without notice because he disapproves of the colour of his eyes or of his membership of a trade union the Act has no application. Thus there still is wanting in British labour law—and it is a lack which one feels will be filled over the next decade—a general right not to be dismissed for arbitrary reasons and to be compensated for such dismissal. The Government has accepted the I.L.O. *Recommendation concerning the Termination of Employment at the Initiative of the Employer* of 1963 which is based on the principle that "termination of employment should not take place unless there is a valid reason . . . connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service." The Recommendation provides for an appeal against arbitrary dismissal. According to a statement on behalf of