> no inducement more likely to lead to a false confession, and I cannot believe that in such a case Patterson, J., would have held it to have been admissible."

It is submitted that this case will be followed in Canada, not only because of the great persuasive value of judgments of the House of Lords, but because it is clearly correct in principle, for as Lord Reid said:—[4]

> "That the alleged rule or formula is illogical and unreasonable I have no doubt. Suppose that a daughter is accused of shoplifting and later her mother is detected in a similar offence, perhaps at a different branch, where the mother is brought before the manager of the shop. He might induce her to confess by telling her that she must tell him the truth and it will be the worse for her if she does not: or the inducement might be that, if she will tell the truth, he will drop proceedings against the daughter. Obviously the latter would in most cases be far the more powerful inducement and far the more likely to lead to an untrue confession; but if this rule were right the former inducement would make the confession inadmissible, and the latter would not. The law of England cannot be so ridiculous as that."

W. E. D. DAVIES*

STATUTORY LIMITATION UPON THE USE OF THE DECLARATION AS MEANS OF ATTACKING MUNICIPAL BY-LAWS

Both British Columbia and Manitoba include provisions within their Municipal Acts which attempt to limit the use of the declaration as a vehicle for attacking a municipal by-law to the same time period as that stipulated for the statutory motion to quash. The relevant sections are as follows:

(i) The Municipal Act, R.S.M. 1954, c. 173, as amended by S.M. 1966, c. 38,

> "s. 392(1) Subject to subsections (2) and (3) where one year has elapsed since the passing of a by-law,
>
> (a) no application under section 391 [i.e. a motion to quash]; and
>
> (b) no application to the court of Queen's Bench for a declaratory judgment or order that a by-law is invalid or void; shall be made to, or entertained by, the Court."[1.2.]

(ii) The Municipal Act, R.S.B.C. 1960, c. 255, as amended by S.B.C. 1962, c. 41,

4. **Ibid.**, at 184.

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> "s. 240A(1) Subject to section 241 no application for a declaratory order relating to a by-law shall be entertained on the grounds of irregularity pertaining to the method of enactment of or the form of the by-law after the expiration of one month after the date of the adoption of the by-law.
> (2) No declaratory order relating to a by-law shall be made unless the application is heard within two months after the date of the adoption of the by-law."[1]

As indicated, the provision of a similar limitation period to that of the statutory motion to quash for the declaration is of rather recent origin, namely 1962 in British Columbia and 1966 in Manitoba. Interestingly, the Manitoba provision followed close on the heels of the case of *Wiswell v. Metropolitan Corporation of Greater Winnipeg* (1965) 51 D.L.R. (2d) 754 S.C.C.) wherein an action for a declaration was used successfully to attack a by-law after the limitation had passed for the statutory motion to quash.

The superior courts have never been sympathetic to legislative attempts to limit or cut-down their inherent jurisdiction to review, as is evidenced by the narrow interpretations which have been placed on so-called private or exclusionary clauses and on the effect to be accorded to the promulgation of municipal by-laws; consequently, the recent decision in *Battistutta et al v. Prince George (City)* (1967) 59 W.W.R. 612 is not too surprising. In this case Mr. Justice Brown of the Supreme Court of British Columbia indicated that s. 240A(2) of the Municipal Act of British Columbia only placed a limitation on the use of the declaration insofar as attacks on by-laws based upon voidable defects were concerned. In other words, one could still use the declaration to attack a by-law on the ground that because of the defect in question the by-law "was in reality a nullity and void ab initio."

It is doubtful whether a Manitoba court could so circumvent or interpret s. 392(1)(b) of The Municipal Act of Manitoba, for s. 392 (1)(b) expressly refers to declarations "that a by-law is invalid or void"; that is to say, that the use of the declaration to attack a by-law is to be limited to one year regardless of whether the alleged defect is one which would render the by-law void or voidable.

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1. Neither subsections (2) nor (3) of s. 392 nor s. 241 is relevant insofar as this note is concerned.
2. See also, The Metropolitan Winnipeg Act, S.M. 1960, c. 40 (as amended by S.M. 1966, c. 79, s. 38), in particular s. 206(5); and The Winnipeg Charter, S.M. 1956, c. 87 (as amended by S.M. 1966-67, c. 92, s. 2), in particular s. 235A. However, no similar provision has been passed insofar as The St. Boniface Charter, S.M. 1953 (2nd), c. 68, is concerned, which is odd, for The Municipal Act does not apply to The Metropolitan Corporation of Greater Winnipeg, The City of Winnipeg or to the City of St. Boniface.

One might be able to find justification for such legislative attempts to limit the availability of remedies by which to make frontal attacks on municipal by-laws in the need for municipal corporations to be able to proceed with impunity to implement their by-laws; however, such legislative limitations ought to be coupled with imperative legislation requiring municipal corporations to promulgate or otherwise bring their by-laws to the attention of their ratepayers and inhabitants.

CAMERON HARVEY*

THE USE OF THE HIGHWAY TRAFFIC ACT, S.M. 1966, c. 29, s. 35(2) TO LIMIT OVERNIGHT PARKING

Until recently,[1] a municipal corporation in Manitoba could only limit the overnight parking of vehicles on the highway[2] within its territorial jurisdiction if it had erected appropriate signs on all such highways (such signs erected only at the points of ingress to the municipal corporation apparently were not sufficient).[3] In an effffort to limit overnight parking without having to make the financial outlay for the signs required by The Highway Traffic Act, at least one municipal corporation has made a rather imaginative use of s. 35(2) of The Highway Traffic Act, which requires "a vehicle when standing upon a highway . . . [inter alia after sunset and before sunrise] to be lighted . . ." so that the light cast is clearly visible from in front of and behind the vehicle from a distance of five hundred feet: Tickets for the alleged violation of s. 35(2) have been handed out in substitution for overtime parking tickets. This presents a nice problem of statutory interpretation. Does one violate s. 35(2) in leaving a vehicle standing or parked off the travelled portion of a highway either alongside the kerb or entirely on the shoulder, as the case may be?

There have been no judicial interpretations of s. 35(2) relating to its use for the purpose in question. Section 35(2) or earlier versions

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1. Although at the time of writing it had yet to be proclaimed, on April 24, 1968 the Legislative Assembly of Manitoba passed Bill 37, clause 12 of which provided for an amendment to s. 113(1) of The Highway Traffic Act by virtue of which municipal corporations would be able in effect to prohibit overnight parking on "highways" without having to erect appropriate signs. The propriety of the amendment is left to the reader.
2. The term "highway" is used in this note as it is used in The Highway Traffic Act to refer to "any place or way . . . which the public is ordinarily entitled or permitted to use for the passage of vehicles . . . and includes all space between the boundary lines thereof . . ." (s. 2(23)). Thus, the term "highway" includes those "ways" in the urban or suburban setting which are usually edged with kerbs and called streets, avenues, roads, etc.
3. This followed from a reading of The Highway Traffic Act, ss. 86, 75(3) and other related sections.