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Special Announcement Regardi

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ENGLISH AND

THE Publishers are pleased to be able to announce the publication of Volume 19, the next volume in numerical order, although hardly two months have elapsed since the announcement of Volume 18.

This rate of progress, it is confidently anticipated, will henceforward be maintained, as our arrangements have never been so well in hand, nor our organisation so perfected, as at the present time.

The volume now issued makes a total of seven published during 1924, with nineteen volumes altogether in existence, and though the magnitude of the task renders it impossible for us to forecast definite dates in advance for each successive volume, subscribers can rest assured that no stone is being left unturned to hurry forward this great work to its conclusion.

BUTTERWORTH & COMPANY

(S. S. BOND).

ıe Publication of the 19th Volume

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EMPIRE DIGEST

At the same time the Publishers, recognising the position that THE ENGLISH AND EMPIRE DIGEST must inevitably occupy in the legal library of the profession, reiterate their determination that nothing shall be allowed to mar the exhaustiveness, the accuracy, or the completeness of what is undoubtedly an achievement without parallel in the history of legal publishing.

It is hardly necessary, perhaps, here to dwell on the vast resources, whether considered in terms of money, intellect, or time, which are being expended on the compilation of the Digest. Conceived as only great minds can conceive, planned and carefully developed along each stage by Publishers who have the wonderful experience of "HALSBURY'S LAWS OF ENGLAND" to guide them, each volume as it goes forth is proof of an inflexible resolve to create a work which will rank on a far higher plane than any legal publication, and which may truly merit the title—"MONUMENTUM AERE PERENNIUS."

Bell Yard, Temple Bar, London, W.C.2

Butterworth's Fortnightly Notes.

TUESDAY, APRIL 14, 1925.

Court Sittings for 1925.

COURT OF APPEAL.

THE 2nd DIVISION.
Sits at Wellington on Monday, 16th March, at 11 a.m., and on Tuesday, 29th September, at 11 a.m.

THE 1st DIVISION.
Sits at Wellington on Monday, 29th June, at 11 a.m.

SUPREME COURT.

AUCKLAND.
At 10 a.m. on Tuesday, 3rd February; Tuesday, 5th May; Tuesday, 28th July; Tuesday, 27th October.

HAMILTON.
At 10 a.m. on Tuesday, 24th February; Tuesday, 9th June; Tuesday, 1st September; Tuesday, 24th November.

NEW PLYMOUTH.
At 10.30 a.m. on Tuesday, 17th February; Tuesday, 19th May; Tuesday, 11th August; Tuesday, 24th November.

GISBORNE.
At 10.30 a.m. on Monday, 9th March; Monday, 15th June; Monday, 24th August; Monday, 16th November.

WANGANUI.
At 10.30 a.m. on Tuesday, 10th February; Tuesday, 12th May; Tuesday, 18th August; Tuesday, 17th November.

PALMERSTON NORTH.
At 10.30 a.m. on Tuesday, 3rd February; Tuesday, 5th May; Tuesday, 4th August; Tuesday, 10th November.

WELLINGTON.
At 10.30 a.m. on Tuesday, 3rd February; Tuesday 5th May; Tuesday, 28th July; Tuesday, 27th October.

NAPIER.
At 10.30 a.m. on Tuesday, 24th February; Tuesday, 9th June; Tuesday, 18th August; Tuesday, 10th November.

MASTERTON.
At 10.30 a.m. on Tuesday, 10th March; Tuesday, 8th September.

NELSON.
At 10.30 a.m. on Tuesday, 24th February; Tuesday, 16th June; Tuesday, 24th November.

BLENHEIM.
At 10.30 a.m. on Tuesday, 17th February; Tuesday, 9th June; Tuesday, 17th November.

CHRISTCHURCH.
At 10.30 a.m. on Tuesday, 10th February; Tuesday, 12th May; Tuesday, 18th August; Tuesday, 17th November.

TIMARU.
At 10.30 a.m. on Tuesday, 3rd February; Tuesday, 5th May; Tuesday, 11th August; Tuesday, 10th November.

HOKITIKA.
At 10.30 a.m. on Wednesday, 4th March; Wednesday, 17th June; Wednesday, 16th September.

GREYMOUTH.
At 10.30 a.m. on Wednesday, 4th March; Wednesday, 17th June; Wednesday, 16th September.

WESTPORT.
At 10.30 a.m. on Wednesday, 4th March; Wednesday, 17th June; Wednesday, 16th September.

DUNEDIN.
At 10.30 a.m. on Tuesday, 10th February; Tuesday, 5th May; Tuesday, 4th August; Tuesday, 3rd November.

INVERCARGILL.
At 10.30 a.m. on Tuesday, 24th February; Tuesday, 19th May; Tuesday, 18th August; Tuesday, 17th November.

OAMARU.
At 10 a.m. on Wednesday, 4th February; Wednesday, 2nd September.

COURT OF ARBITRATION.

The following are the appointed sittings of this court—

WELLINGTON—19th March.

AUCKLAND—20th April, at 10 a.m.

WANGANUI—31st March, at 10 a.m.

PALMERSTON NORTH—2nd April, at 2.15 p.m.

NAPIER—4th and 6th April, at 10 a.m.

BANKRUPTCY.

The Supreme Court will sit in Bankruptcy as under—

AUCKLAND—March 27.

HAMILTON—June 9, at 10 a.m.

WELLINGTON—May 4, at 10 a.m.

CHRISTCHURCH—May 11, at 10.15 a.m.

DUNEDIN—May 4, at 11 a.m.

INVERCARGILL—May 19.

EASTER VACATION.

Thursday, 9th April, to Saturday, 18th April. Both inclusive.

BENCH AND BAR.

Mr. E. J. Anderson, who for the last five years has held the position of Managing Clerk to Messrs. Adams Bros., has entered into partnership with Mr. H. H. Walker, Solicitor, Dunedin. Mr. Anderson's earlier training was obtained in the office of the old established firm of Sievwright, James & Nichol. He is an active member of the Dunedin Returned Soldiers' Association.

It is announced that Mr. John Terry, who has been Registrar of the Supreme Court at Auckland since June, 1922, is to retire on the 31st March inst., and that he will be succeeded in that office by Mr. C. J. Hewlett. Mr. Hewlett, since 1922, has held the position of Clerk of the Magistrate's Court at Auckland, where his efficiency and kindliness have gained him a wide popularity. He will carry with him the best wishes of the profession in Auckland in his new office.

Mr. A. S. Scott and Mr. J. A. Ross, both of Wellington, solicitors, have amalgamated their practices and will now practice under the style of Scott and Ross.

Law Societies.

HAWKE'S BAY.

The Annual General Meeting of the Law Society of the District of Hawke's Bay took place in Napier on Monday, 16th March, the following officers being elected for the ensuing year: President, Mr. E. M. Sladden; Vice-President, Mr. Cecil Duff; Council, Messrs. A. B. Campbell, E. J. W. Hallett, H. Holderness, A. E. Lawry, H. B. Lusk and T. B. McNeil; Delegate to Council of N.Z. Law Society, Mr. H. B. Lusk.

SUPREME COURT.

Herdman, J. Dec. 10, 1924; Mar. 13, 1925. Hamilton.

PILKINGTON v. PLATTS AND OTHERS

Commissions of Inquiry Act—Citation—Form necessary — Service of.

On 12th February 1924 Mr. Platts, S.M., and Messrs Baker and Adams were appointed a Commission under "The Commissions of Inquiry Act 1908" to hold an inquiry into whether a certain Road Board District should be abolished and other incidental matters. The plaintiffs and others had petitioned His Excellency the Governor-General on the matter. The petitioners were responsible for the creation of the Commission. The Commission sat at Hamilton on the 17th March but the petitioners refused to appear and give evidence as they objected to one of the members of the Commission sitting on the ground that he would be biassed. The Commission adjourned for one day and the petitioners' solicitor who was present but who did not appear for them at the hearing was told that the petitioners' presence was required. The next day the petitioners still refrained from appearing. Prior to sitting on the 17th the petitioners' solicitors had been served with a notice in the following words:

> "re Mangawara River Board. Please take notice that the Mangawara River District Enquiry will be held at the Courthouse Hamilton on Monday the 18th of March 1924 commencing at 2.30 p.m. F. W. Platts, Stipendiary Magistrate."

On the 18th March on the application of persons who had counter-petitioned the Board fixed costs and expenses for them and for the Mangawara River Board and ordered the petitioners to pay these costs.

Ostler for plaintiffs.
N. S. Johnston for River Board.
Northcroft for other defendants.

HERDMAN J. in dealing with the plaintiff's submission that they had not been cited within Sec. 11 of the Commissions of Inquiry Act 1908 held that the notice above referred to was a sufficient compliance with the Act as it had been served on the firm of solicitors who had acted for the petitioners. The learned Judge said that so long as there is a notice to a party to appear he thought that that was sufficient. He added that the document might have been improved upon but for the purposes of the statute it was a good enough citation. On the submission that the notice should have been served on the petitioners personally the learned Judge said the principle stated in **The Queen v. Justices of Oxfordshire** 1893 2 Q.B. 149 at 153 did not apply. In that case there was special provision that a notice in writing should be served on the other party but in this case the statute is silent about the method of serving the citation.

Solicitors for plaintiffs: **Swarbrick & Swarbrick**, Hamilton.
Solicitors for River Board: **Bell & Johnston**, Hamilton.
Solicitors for other defendants: **Earl Kent Massey & Northcroft**, Auckland.

Stout, C.J. Mar. 6, 20, 1925. Wellington.

KARAMEA CO-OPERATIVE DAIRY FACTORY CO. LTD. v. LINEHAM.

Company—Power to take shares in another company—Ship owner—Meaning of.

Originating Summons to determine whether the plaintiff company has power to take, and to apply its funds or any part or parts thereof in payment of shares in a company incorporated under "The Companies' Act, 1908" and formed principally for the following objects:—

> (a) To carry on in the Dominion of New Zealand and particularly between the ports of Karamea and Little Wanganui and other Ports of the said Dominion the business of shipowners and shippers, barge owners, lighters, carriers by land and by water, forwarding agents, warehousemen, wharfingers, dockowners, harbour masters, merchants, traders, importers, and exporters of all kinds of goods, purveyors, underwriters and insurers of ships, merchandise, goods, freight and other property and of dealers in articles, goods and chattels of every kind.
>
> (b) To purchase, charter, hire, build or otherwise acquire one or more steam and other ships or vessels suitable for working the Karamea and Little Wanganui Harbours with all equipments and furniture requisites for same and to employ the same in the conveyance of passengers, mails, produce, merchandise and goods of all kinds between ports in the Dominion of New Zealand.

The paragraphs in the Articles of Association of the Plaintiff Company dealing with shipping are Articles (I), (L), and (P), which are as follows:—

> (I) To enter into partnership or into any arrangement for sharing profits, union of interests, co-operation, joint adventure, reciprocal conversion or otherwise with any person, persons, company, companies carrying on or engaged in or about any business or transaction which this Company is authorised to carry on or engage in or conduct so as directly or indirectly to benefit this Company.
>
> (L) To purchase, charter, hire, or otherwise acquire a vessel suitable for working the Karamea Bar and Harbour together with the requisite equipment for the same.
>
> (P) To carry on the business of a ship-owner in all its branches with respect to the said vessel or substituted vessel but to trade therewith between ports in New Zealand only.

The Company had for some time a vessel of its own, but it had decided if able to do so to take shares in a new Company formed to provide shipping to Karamea and other places.

Kennedy for plaintiff.
O'Regan for defendant.

STOUT C.J. said: "It is admitted that the Company could buy a vessel, or charter or hire a vessel but it is said under (L) that the power to act is limited to these methods of obtaining shipping facilities. The powers under (P) appear to be very wide. They authorise the Company to carry on the business of a ship-owner in all its branches.

"A ship-owner does not mean the sole owner of a vessel. The owning of ships is often acquired by combination with others. And it has been common to hold so many shares in a vessel. Can it be said, then, that it is only as sole owner that the Company can acquire an interest as ship-owner? It has to be noted that ships are usually held in shares—64 shares—and are transferred in that way. There is, moreover, in these Articles, paragraph (I), quoted above, which allows partnership or arrangement or co-operation.

"It appears to me, reading paragraph (I) along with paragraphs (L) and (P), that there is power to take shares in this new company for it is really a partnership, a co-operation to carry out the objects of the Company, namely, to provide shipping facilities so that the goods of the Company may be properly disposed of.

"I am therefore of opinion that these articles taken together are authority to join with other persons or companies in obtaining shipping for the disposal of the company's goods. The shipping, however, must be limited to New Zealand and consequently the shares taken in a shipping company must be in a company that can trade only in New Zealand and that has trading to Karamea as one of its objects."

Solicitors for plaintiff: **Luke & Kennedy**, Wellington.
Solicitor for defendant: **P. J. O'Regan**, Wellington.

Adams, J. Feb. 19, Mar. 13, 1925.
Christchurch.

JACKSON v. JACKSON.

Divorce—Restitution—"Sincerity"—Requirements in letter asking respondent to return.

Petition for order for restitution of conjugal rights, petitioner being the husband.

Cunningham for petitioner.
McCarthy for respondent.

ADAMS J. held on the facts that the petitioner had not satisfied him of his sincerity within the meaning of **Morris v. Morris** 1924 G.L.R. 482 and he made the following observations of interest with regard to the advisableness of the petitioner in his letter asking his wife to return to him giving a definite address for her to come to. The learned Judge said: "Down to the date of hearing the petitioner had taken no steps to provide a home, or to supply an address at which his wife could join him. If a decree were now made the respondent could not obey it, unless, and until, the petitioner made the necessary arrangements. I observe that in Browne and Watt's book on divorce ninth edition page 393 it is said that when the demand for cohabitation is made by a husband it should give the address where he desires his wife to come to him, and that when made by a wife, if she is still residing at the matrimonial home ,she should ask her husband to return home; if otherwise, she should ask him to receive her where he is living at the time, or that he will inform her at what address he is willing to receive her. No authority is cited for that, but it is probably founded upon the practice of the Registrars under Divorce Rule 170 (English), which is in similar terms to our Rule 7. That practice has not been followed in New Zealand, but there is much to be said in favour of it. In my opinion the Registrar, when deciding under Rule 7 whether a petitioner has given a reasonable opportunity for compliance with the demand, ought to take into consideration the question whether there is an address known to the person on whom the demand is made, where compliance is made."

Solicitors for petitioner: **Cunningham & Taylor**, Christchurch.
Solicitors for respondent: **McCarthy & Inder**, Christchurch.

Herdman, J. March 26, 1925.
Auckland.

ATWOOD v. THE THAMES FISHERIES LTD.

Fisheries—Fisheries Act 1908 Sec. 5—Regulations, N.Z. Gazette 11.11.1915—"Have in posession schnapper of a less weight than twelve ounces avoirdupois" — Meaning of "Have in possession."

The information alleged that the defendant company, in breach of the regulations made under paragraphs (j) and (k) of Sec. 5 of the Fisheries Act 1908, did have in its possession schnapper of a less weight than twelve ounces avoirdupois. The facts were as follows: On the 26th August, at 2 p.m., a Police Officer found a quantity of about 5 or 6 cwt. of schnapper on the floor of the defendant's depot at Thames. Amongst such schnapper, there were some 210 of a less weight than 12 ounces each. The fish in question had been delivered by a fisherman to the defendants' carrier between the hours of 2 a.m. and 4 a.m. on the same day, and had been thereupon taken by the carrier to the defendant's depot where they were weighed. The fish were then sorted, and the undersized ones were put aside with certain unsaleable fish as rejects. After this sorting had been completed at about 6 a.m. the rejects were weighed and their weight was deducted from the total weight of fish supplied by the fisherman, and payment was arranged upon the basis of the net weight. The rejected fish were left on the floor of the depot, and in accordance with practice, would be disposed of with the offal at the end of the day. The Magistrate dismissed the information upon the grounds that the regulations should be interpreted reasonably having regard to all the circumstances, that the words "have in possession" should be construed as being "ejusdem generis" with the preceding words in the section, and that upon these grounds there was not in the circumstances a sufficient "possession" to justify a conviction.

Paterson for appellant: We contend that the undersized fish were in fact in the physical possession of the defendant company, and that the words "have in possession" must be given a popular as opposed to a technical meaning. Reference is made to **Webb v. Baker** (1916) 2 K.B. 753. A general rule of construction may be quoted from **Att.-Gen. of Ontario v. Mercer** (1883) 8 App. Cas. 767, 778; and it is contended that the "ejusdem generis" rule cannot be applied in this case: **Halsbury's Laws of England**, Vol. 27, p. 145, pars. 270, 271; **Craies, Statute Law**, 3rd ed. p. 164; **Hedberg v. Woodhall**, 8 Tas. L.R. 66: 15 C.L.R. 531.

Garland for respondent: The interpretation of the words "have in possession" in a broad and popular sense will lead to absurdities. The words must be read as being in a manner controlled by the preceding words. The "ejusdem generis" principle applies. All the previous words in the section refer to such dealings as would imply that a profit was to be made out of the undersized fish. **See Maxwell, Interpretation of Statutes**, 6th ed. p. 409: **Simpson v. Unwin**: 3 B. and Ad. 134. There should be no finding of possession unless and until the defendant company has had a reasonable opportunity of getting rid of the things in question.

HERDMAN J. (orally) held that the object underlying the legislation in question was to be taken into consideration in construing the language of the Act; the words "have in possession" were not general words: nor were general words used in the section after a series of special words. The doctrine of "ejusdem generis" could not be applied. The phrase "have in possession" should be construed in its primary sense unless there was something in the subject matter or context of the section to warrant a departure from such a principle. The undersized fish were in fact in the possession of the defendant company, and that constituted a breach of the regulations made under the section. The appeal would therefore be allowed and the case sent back to the Magistrate to impose a fine.

Solicitors for appellant: **Meredith & Paterson**, Auckland.
Solicitor for respondent: **C. J. Garland**, Thames.

Stout, C.J. Mar. 5, 20, 1925.
Wellington.

MUNRO v. COMMISSIONER OF TAXES.

Land and Income Tax Act—Income—Deductions—Goodwill of unexpired portion of purchased lease—Goodwill of business.

Application by way of case stated under Sec. 35 of the Land and Income Tax Act 1916. The appellant objected to the Commissioner's not allowing him to deduct goodwill in respect of the purchase of a lease and license of a public house. He purchased the lease, license, goodwill and furniture of the New Zealander hotel on 27th July 1921. He made his return for year ending 31st March 1921 and in his appeal states his contention thus: "The appellant claims that the whole of the amount of £5000 paid as such consideration or in the alternative the whole amount paid as consideration for goodwill of lease and/or goodwill of business during the un-

expired term of the lease and a fair allowance for depreciation of the value of the said furniture was expenditure exclusively incurred throughout the unexpired term of the lease purchased by the appellant in the production of the assessable income derived from the business of the hotel purchased."

Levi for appellant.
Fair for respondent.

STOUT J. distinguished the following decisions relied on by the appellant, **The West Lnodon Syndicate Ltd. v. The Commissioners of Inland Revenue**, 1898 2 Q.B. 507; **Reid's Brewery Co. Ltd. v. Male** 1891 2 Q.B. 1; **Ushers Wiltshire Brewery Ltd. v. Bruce** 1915 A.C. 433; **Smith v. Lion Brewery Co.** 1911 A.C. 150, and following and applying In the **City of London Contract Corporation Ltd. v. Styles**, 2 Tax Cas. 239; **Coltness Iron Co. v. Blank** 6 A.C. 315; **Ward and Co. Ltd. v. Commissioner of Taxes** 1923 A.C. 145, dismissed the appeal.

Solicitors for appellant: **Wilford, Levi & Jackson**, Wellington.
Solicitors for Respondent: **Crown Law Office**, Wellington.

Stout, C.J. Mar. 10, 18, 1925.
Wellington.

WAIRARAPA ELECTRIC POWER BOARD v. GOVERNMENT INSURANCE COMMISSIONER.

Reserves and Other Lands Disposal and Public Bodies Empowering Act 1922—Section 82—Local Bodies Loans Act 1913—Section 18—Board's power to expend money raised though not expressly authorised—Effect on Sec. 18.

Originating Summons to determine the meaning of Section 82 of The Reserves and Other Lands Disposal and Public Bodies Empowering Act 1922. The section reads as follows:

"Whereas the Wairarapa Electric Power Board was on the twenty-seventh day of April, nineteen hundred and twenty-one, duly authorised by the ratepayers of the Wairarapa Electric Power District to raise a loan of two hundred and sixty thousand pounds for certain purposes set out in the proposal submitted to such ratepayers: And whereas it is expedient that the Board should be authorised to expend any part or parts of the loan-moneys borrowed or to be borrowed in respect of the said loan in such manner as will also provide for the construction of hydro-generating works in addition to the transmission and distribution of electric energy: Be it therefore enacted as follows:—

"Notwithstanding anything to the contrary in the Local Bodies Loans Act 1913, or in any other Act, it shall be lawful for the said Board to expend from time to time the whole or any part or parts of the sums borrowed or to be borrowed in respect of the said loan, in such manner as the Board may decide, upon works, buildings, land, and equipment necessary in connection with the generation, distribution, and utilisation of electric energy, instead of in the manner provided in the allocation set forth in the proposal to borrow such moneys submitted to the ratpayers of the district."

The plaintiff had been duly authorised to raise a loan of £260,000 under the provisions of the Local Bodies Loans Act 1913. The loan was raised.

T. F. Martin for Power Board.
C. H. Treadwell for Government Insurance Commissioner.

STOUT C.J. said the section allowed the Board to spend some of the loan in the extension of hydro generating works. He added:

"It does not discharge or alter the provision in Section 18 of the Local Bodies Loans Act 1913, which reads:—

"(1). If the amount of any loan authorised to be raised under this Act or under any former Act relating to local bodies' loans is found insufficient to complete the undertaking in respect of which it was raised, the local authority may, for the purpose of completing the undertaking, borrow from the same or any other lender a further sum not being greater than one-tenth of the amount originally authorised by the ratepayers, and in any such case it shall not be necessary to give any notice to or take a further poll of the ratepayers.

"(2). A special rate shall be made by the local authority as security for the interest and other charges in respect of such further loan, and such special rate may be levied as a part of or in addition to the special rate made and levied in respect of the original loan."

"The fact that Section 82 allows the Board to expend part of the sum so raised on works connected with the works, though not expressly authorised by the loan, cannot affect the power given by Section 18. There are two separate and distinct powers and the granting of the wide powers appearing in Section 82 does not in my opinion repeal the powers given by Section 18."

Solicitors for plaintiff: **Martin & Martin**, Wellington.
Solicitors for defendant: **Treadwell & Sons**, Wellington.

Stout, C.J. Mar. 5, 18, 1925.
Wellington.

MAYOR AND OTHERS OF CITY OF WELLINGTON v. COMMISSIONER OF STAMP DUTIES.

Stamp Duties—Memorandum of transfer—Instrument dedicating highway—Sec. 81 of Act of 1923—Sec. 168 (2c.—Whether liable to duty as deed—Whether conveyance duty.

Appeal in pursuance of Secs. 38 and 39 of The Stamp Duties Act 1923 against the contention of the Commissioner that a memorandum of transfer under the Land Transfer Act although "an instrument of dedication of highway" within Sec. 81 of the Stamp Duties Act 1923, was liable to stamp duty under Sec. 168 of the Act, to a duty of 12s. 6d.

O'Shea for appellant.
Fair for respondent.

STOUT C.J. after reciting Sec. 168 of the said Act held that unless the transfer came within the exemption Sec. 168 (2) (c) "Any deed charged with any other stamp duty" it was not exempt. He said:

"Is then, this Memorandum of Transfer charged with any other stamp duty? In my opinion it is not for Section 81 expressly exempts it. There is no other sub-section save (c) under which an exemption can be claimed. No doubt it seems peculiar that in transfers of land to carry out a gift for public benefit stamp duty should be charged. If it had been a transfer of land for an ordinary road it would no doubt have been exempt but the transfer is for a public street and a public street is not owned by the Crown.

"The exemptions in Section 81 are exemptions from 'conveyance duty.' This duty under Section 168, though in reality it is duty chargeable on the dedication of a highway, is not what is called in the Act conveyance duty. It is a deed duty. The insertion of the word 'conveyance' before duty in Section 81, in my opinion, limits the operation of the Section.

"Section 16 of The Stamp Duties' Amendment Act 1924, if it can be looked at and considered, bears out the interpretation of Section 168 I have suggested as being the true interpretation. It was contended that there must be clear and express words to impose a tax and that the assumption of the legislature that a certain rule is law will not make it law in the absence of an express enacting clause. This is true. But this amending Section is to modify the previous law to lessen the existing taxation and the question is, Is there any instrument charged with duty under Section 168 which is exempted from deed duty? In my opinion there is. Section 168 does charge a new kind of duty not a conveyance duty and hence Section 16 is operative. The appeal must therefore in my opinion be dismissed. The case is a small one and will be for the guidance of the Commissioner and local bodies and does not seem to be one for costs.

Solicitors for appellant: **City Solicitor**, Wellington.
Solicitors for respondent: **Crown Law Office**, Wellington.

MacGregor, J. Feb. 18, Mar. 6, 1925.
Wanganui.

IN RE JOHN BALDWIN DECD.
BALDWIN v. BALDWIN.

Will—Person of unsound mind—Capital estate—Income—Which applicable for her maintenance—"As it may be required"—Meaning of.

Originating Summons to determine inter alia what the true meaning was of the words "as it may be required" appearing in the codicil of John Baldwin deceased. The

relevant portion of the codicil read as follows:

> "I revoke the bequest in my said will of all my estate and interest in the estate of my deceased wife the late Elizabeth Baldwin in so far as such bequest affects my interest in the land known at Rotomapua Sections 7 and 8 Block 9 Wangachu Survey District and containing fifty-six acres and in lieu thereof I give devise and bequeath the same to my wife Rubina May Baldwin for her life and from and after her death for my daughters Betsy Margaret Cameron Baldwin and Margery May Cameron Baldwin as tenants in common in equal shares.
>
> "And I also revoke such bequest in so far as it affects the rent of one hundred acres from my share or interest in the said estate of the said Elizabeth Baldwin I direct my trustees to use such rent as it may be required in and towards the maintenance and support of my daughter Sarah Cameron Baldwin during her lifetime and from and after her death then I direct that my interest in the said area of one hundred acres shall revert to my said son Charles Cameron Baldwin as in my said will provided."

The testator's daughter Sarah Cameron Baldwin had for some years been an inmate in a mental hospital and she was entitled absolutely to an estate of about £5600 in capital value from which was derived an income of over £300 annually. This was more than enough to provide for her maintenance and support.

Watt for plaintiffs.
Craig for defendant Charles Cameron Baldwin.
Kelly for Public Trustee.

MacGREGOR J. said: "The question has arisen whether the trustees of the testator are now bound in terms of the codicil to use the 'rent of one hundred acres' referred to therein for the maintenance and support of Miss Baldwin, despite the fact that the income of her own estate is more than sufficient for her present maintenance and support. In my opinion they are so bound. It is distinctly laid down in **In re Weaver** (21 Ch.D. 615) that where a lunatic has property to which he is entitled for life under a settlement, as well as property to which he is absolutely entitled, the Court will apply the life interest in the first place towards his maintenance, unless the trustees of the settled property have an absolute discretion whether or not to employ the whole or any part of the income for the lunatic's benefit. As was said by **Jessel M.R.** in that case (p. 618): 'The rule is applicable that the lunatic's property must be applied as appears to the Court to be most for her benefit. It is clear that it is best for her that her maintenance should be provided out of her life interest, for if she should recover she will have the benefit of what belongs to her absolutely.'

"I think that the principle underlying **Weaver's Case** must govern the present one, and accordingly that the trustees are bound, as directed by the codicil, to use the rent referred to in and towards the maintenance and support of Sarah Cameron Baldwin. The use of the words 'as it may be required' does not appear to me to present any real difficulty in this connection. They might indeed fairly be construed (or expanded) as meaning 'or so much thereof as may from time to time be required' for the maintenance and support of the daughter in question. In my judgment the clause of the codicil now under consideration contains a clear direction to the trustees themselves to apply the rent of one hundred acres in and towards the maintenance and support of the testator's daughter; and I answer the second question accordingly."

Solicitors for the plaintiffs: **Watt & Blennerhassett**, Wanganui.
Solicitor for the defendant C. C. Baldwin: **L. Craig**, Wanganui.
Solicitor for Public Trustee: **Solicitor to the Public Trust Office**, Wellington.

S.M. COURT, AUCKLAND.

"When my jurisdiction is challenged, I should be very loath to do anything that might appear to be snatching at jurisdiction."

Same Court next day, but a different S.M.:

"When the Court's jurisdiction is challenged, I must require the most unequivocal evidence to show that it is excluded."

The solicitor against whom these two rulings were given is now wondering whether his persuasive eloquence would not be better employed if he confined his energies to jury practice.

The Single Judgment System.

by

M. J. Gresson, Esq.

A correspondent in a recent number of "The Law Quarterly Review" cites with approval the following passage from a judgment of Lord Wrenbury in a case in the House of Lords:

> "I find myself in agreement with the judgment delivered by the Lord Chief Justice. In this ultimate Court of Appeal no useful purpose would be served by my repeating at length the reasoning of that judgment even though I added as I could add some further reasoning leading to the same conclusion."

Upon this passage he bases a plea for a single judgment system in Courts of ultimate resort and eulogises the present method which prevails in the Judicial Committee of the Privy Council.

It is submitted that in these days of judicial overwork such a system might with advantage be adopted in our own Court of Appeal. That it is practicable in cases where the Court is unanimous is shown by the fact that at present the decision of the Court often is delivered by a single Judge on behalf of himself and his brethren. In the event of the judgment not being unanimous provision might be made for the delivery of one dissentient judgment so that both views should be on record in the event of an appeal to the Privy Council.

The adoption of such a system would bring with it three material advantages. First: it would greatly lighten the labours of the Judges—a consummation devoutly to be wished in present times. Secondly it would do something to lessen the ever increasing bulk of the Law Reports—a result which would delight every practitioner who keeps his own library and is faced with the difficulty which each year grows more acute of finding space upon his shelves. Annually at the present time he must find room for nine volumes of Law Reports if the New Zealand and the Gazette Law Reports be included and only an effort of the imagination can picture the space occupied by the library of a lawyer in 2025 if the increase in Reports continues at the present rate.

The third advantage is that the course proposed would insure the avoidance of irreconcilable dicta in judgments which apparently agree in the final result. The case of Welsh v. Mulcock (1924 G.L.R. page 169) is a useful case in point. This was an application under the Family Protection Act by a married daughter of the Testator. The applicant was 32 years of age and had no children, while her husband was a farmer 33 years of age passessed of a reversionary interest in a small farm but was able-bodied. The applicant possessed a property the equity in which was worth about £3000. The Testator left an estate worth approximately £21,000 and Adams J. in the Lower Court held that the rent and profits from the farm owned by the applicant and her husband was sufficient to maintain her so long as her husband continued to carry on, and did not feel justified in making an order for present relief. He, however, held that a Suspensory Order should be made in her favour and the residuary estate was charged with the sum of £1000 in order to

meet any payments which might have to be made for the Plaintiff in the future should her position become worse. The Court of Appeal unanimously varied this Order by giving the Plaintiff an immediate grant of £1000. When, however, the individual judgments are looked at it will be seen that they contain apparently irreconcilable dicta.

The judgment of Mr. Justice Herdman contains the following passages:

> "Whether a son or daughter has been dutiful, whether a child or wife has helped in preserving the Testator's Estate, or has assisted to build it up, whether a Testator has behaved indifferently or capriciously towards a child already well provided for are circumstances irrelevant to the question whether the Testator has made adequate provision for the proper maintenance and support of his wife and child."
>
> "Once the door is opened to admit the element of sentiment then the Court drifts away from the principle of adequate provision and maintenance and becomes concerned not with the ways and means of the applicant, and not with the practical duty of the Testator but with some caprice of the latter whose wife or children apart from his estate may be well provided for."

The judgment of the late Mr. Justice Salmond, while agreeing in the result with that of Mr. Justice Herdman, proceeds upon the basis that the word "adequate" in the Act means ethically adequate and not economically adequate as suggested by Mr. Justice Herdman. Thus he says: "The provision which the Courts may properly make in default of testamentary provision is that which a just and wise father would have thought it his moral duty to make in the interests of his widow and children had he been fully aware of all of the relevant circumstances," and further on in his judgment he likens it to the officium pietatis owed by the Roman father to his children.

If the standard to be adopted by the Courts is that of the just and wise father who is to discharge his moral obligation it is difficult to see how the Court can fail to take into consideration the very things which Mr. Justice Herdman rejects. A father cannot be just who ignores the fact that his children have been dutiful and have assisted to build up his fortune.

Mr. Justice Salmond further held that there was no power to make a Suspensory Order such as that made by Mr. Justice Adams and dissented from the cases of Parish v. Valentine 1916 G.L.R. page 367 and Toner v. Lister 1919 G.L.R. page 498.

Mr. Justice Herdman's Judgment is silent upon this latter question and Mr. Justice Reed concurred in the Judgment of Mr. Justice Salmond, while Mr. Justice Hosking "concurred with the other decisions."

Under these circumstances it is difficult to say what Welsh v. Mulcock really decided beyond the fact that in the particular case the applicant was entitled to present relief in the sum of £1000. It is submitted that the Judgment still leaves open to the Court of Appeal the important question whether "adequate provision" in The Family Protection Act means ethically adequate or economically adequate, and also leaves open the question whether the Court has power to make a Suspensory Order. If the Judgment of the Court had been delivered by one Judge an agreement would either have been reached upon these points, or else the Judgment would have been silent upon them. Perhaps some subsequent Court of Appeal will tell the profession what Welsh v. Mulcock really decided.

London Letter.

The Temple,
18th February, 1925.

My Dear N.Z.,

I know how uninviting is the prospect of reading London newspapers, when they arrive over-seas many weeks old and in a portly bundle of the in-between-mails period; but even so I venture to refer you to the "Morning Post" of February 11, 12 and 16, if you would know how legal matters progress with us. "Barristers Without Briefs—Insufficient Work to go Round—The Public and Costly Litigation"; thus run the depressing headlines of an article, in the February 11 issue, which derives its main inspiration from Lord Birkenhead's memorable article, "Costs," in the "Law Journal" of January 17 last. The writer of the "Morning Post" article displays rather the superficial attitude of the journalist than the more deliberate view of the practising lawyer; for all that he is described as a barrister, I suspect the other as his main trade, when I read the sentence: "A famous K.C. remarked to me, the other day . . ." Subject, however, to the modifications which appear in the "Morning Post" digest, February 16, he is not far off the truth of things, when he says that a permanent blight seems to have settled on the Temple; and apart from the fact of a "slump" all over the country, the root of the cause probably lies where he, and the other article writers in the daily Press who have taken the matter up, discern it: that is to say, to re-quote the "Law Journal" article already so much quoted: "It is a matter of grave concern that no prudent man can count the cost of contemplated litigation. Uncertainty breeds reluctance to proceed and a desire to adopt other means to accomplish the result." Enough of a distasteful present! Rather let us contemplate the celebration of a glorious past; the apotheosis of Mr. Asquith as the Earl of Oxford and Asquith, completed yesterday afternoon in the House of Lords and to be the occasion of a gathering of all the ten-thousand-candle-power luminaries of the law at a dinner in Lincoln's Inn on Friday week.

Turning, next, to the future, the creation of New "Silks" is imminent, and any day, now, we may read of the departure of some of our nearest and dearest to a better place . . . in the Courts. It is always amusing to speculate, especially in the belief that we are possessed of "tips straight from the stables"; so here, to put it shortly, goes. In the commercial courts, you will probably read of the advance of S. Loury Porter, of that long line of Editors of "Scrutton" so closely connected in the domestic matter of Chambers as almost to be blood relations-in-law: a charming fellow rather than an overwhelming giant, trading upon his wisdom rather than upon any blinding brilliance. Indeed, he has often told me that, in his view, the latter qualification is not often that of a successful advocate. If the guns he carries are not Big Berthas, they are certainly very useful and very numerous 15-in. howitzers. C.T. le Quesne, in some way his rival, per-

haps, though seven years his junior in call, is also on the High Road; both men are, if this prophecy is correct, abandoning very substantial practices behind the Bar but with many and not very problematical hopes, before the Bar. The Hon. Geoffrey Lawrence, D.S.O., a name probably quite familiar to you and indeed to anyone who has had anything to do with the Judicial Committee of the Privy Council, will almost certainly be in the list. Son of Lord Trevethin, better recollected as "A.T." he has very much in him of that wonderful father's flair for the right construction, the right conclusion, the right point and the right line to take. In his case it will be very curious to note whether the tentacles of the Privy Council practice, which have been so grasping of his time as a Junior, will re-adapt their hold, so that he may fare out, more regularly, into the common world of the Common Law and prove himself the highly effective son (as he is, to those who know him) of that pre-eminently effective father. Rowland Oliver is hardly worth bothering about; his achievements at the Criminal Bar are so indisputable, the position he has made for himself so sure, and his merits, in his own line of business so outstanding, that the question is less how will he gain than how will Sir Henry Curtis Bennett lose by his taking "silk"? Charles Doughty, always with a monocle and always without a hat, has a large knock-about practice and is almost certainly wise to consolidate the advantages he has won for himself by his efficient work. E. F. Spence is known well as a pleader and as the owner of a fine common law practice; he is also known as a particularly regular attendant at "first nights" and his critiques were once familiar in the "Westminster Gazette." D. Cotes Preedy is also, it is gazetted, for the front bench; his venue is the Divorce Court where, to everybody's surprise in as much as he had no particular connection with it and was a late starter, he has developed a premier Junior practice. And no one can grudge it him, for, if he has lost something of his lithe and youthful figure in the process of achieving success (and Heaven, or the other place, alone knows why this should always be so at the Divorce Court Bar?) he has certainly lost none of his bubbling humour and has acquired even more jovial bonhommie than he carried round the Oxford Circuit with him, pre-war. There are also in the list, of rumour, C. M. Pitman, who succeeded Sir Richard Acland, K.C., as Judge Advocate of the Fleet, who has a good all round practice in London and who is Recorder of Rochester; W. P. Spens, W. Copping and D. A. F. Vesey, names as sensational, these days, as anything can be or is permitted to be sensational in the Chancery Division; and H. C. Gutteridge, of the Chamber of Lord Justice Atkin and R. A. Wright, K.C., and Professor of London University.

In the Courts there has been an ugly scuffle over the body of Sir Ernest Wild, K.C., Recorder of the City of London and pronouncer of about as indiscreet a Charge to a Grand Jury as can ever have been uttered. It arose out of the prosecution of one Hobbs, which arose out of a certain civil suit touching a "Mister A."; and it was brought to light by a Rule nisi calling on the Editor and Publishers of the London "Evening News" to show cause why they should not be committed for contempt in respect of their report of Sir Ernest Wild's wildness. I dare to presume that, by some happy chance, the various proceedings to which I have referred have already come to your notice, and that, recalling various Robinsons and a Midland Bank, you will know for yourselves what this matter is all about. The contempt proceedings, however, are reportable as an authority for the several propositions, that a report of a public and reportable matter may not be visited with penalties deserved by the matter and not by the report; that the report need not be in extenso to earn this protection and may even, by compression and curtailment of the context, have increased the mischief; and, more importantly, that reports of preliminary proceedings, such as the Charge to the Grand Jury, are as much privileged as reports of the substantive and decisive proceedings, and that Rex v. Fisher (1811) 2 Campbell 563, to a contrary effect, is no longer good law. I do not think there is anything in the gossip to the effect that Sir Ernest Wild, K.C., is so stung to the quick by the things the Lord Chief Justice said of him, that he is handing or about to hand in his resignation. If Sir Ernest Wild, K.C., is any sort of a Judge at all, then he must no doubt feel that the little the Lord Chief said was much deserved; and he must have very much regretted his ill-advised observations, which, after all, may quite legitimately be included under the heading of the bigger "slips of the tongue."

In the case of Rex v. Bateman the Lord Chief Justice intimated that the questions involved, surrounding a charge of manslaughter against a doctor, were of such grave importance to the world at large that a reserved and carefully considered and worded judgment was essential. The gist of the prosecution was, of course, an allegation of criminal negligence in attending a patient, the matter arising from the death of a woman some time after giving birth to a child. The doctor was convicted, but, although the reasons for the judgment of the Court of Criminal Appeal are to be delivered later, the conviction itself was announced to be quashed and the doctor was discharged. I shall hope to go fully into the judgment, when it is delivered, it being, unless I am very much mistaken, of as much interest to you as it will be to us, in this country. Of other current decisions, the only one worth noting is that of the Court of Appeal (Bankes and Atkin L.J.J. and P.O. Lawrence J.) in the motion to set aside writ and proceedings in the second action in rem as to "The Jupiter." As long ago as June, 1924, the original fully and unwarrantably dispossessed of her by offic-fully and unwarrantly dispossessed of her by officials of the Government of the Soviets, had instituted and were prosecuting their first action in rem. The Soviet Government claimed sovereign rights and refused to submit to the jurisdiction; Hill J. held himself bound to bow to that refusal and to accede to the application to have the proceedings set aside. Thereupon the Soviet Government sold "The Jupiter" to a private Italian firm, giving to the purchaser an indemnity against legal proceedings in British or Italian Courts. The owners instituting their action against the Italian firm, the Admiralty Court was again moved to set those proceedings aside, it being contended that their trial must involve the forcible submission to our Courts of the transactions of a Sovereign State which had expressly refused to submit. The President refused the application, the basis of it being wanting (as he held) in that the Sovereign State was not now impleaded. The above Court of Appeal affirmed his decision, while intimating that the contention might well be

raised again in the hearing of the action itself and would then require grave consideration. The Government of the Soviets is certainly stirring up the stagnant waters of International Law, in its "private" aspect; and we note that the Literary Supplement of the current number of "The Contemporary Review" contains a critical article, headed "Sovereignty," which refers to Sources of Law, being an Inaugural Address by Edward Jenks, Professor of English Law in the University of London, delivered at the London School of Economics and Political Science, October 15, 1924, reprinted from the "Law Journal."

Fraudulent bankruptcies have, in recent years, achieved such a quantity and quality as urgently to call for treatment. Instigated by Chambers of Commerce, various private Members introduced in the last Session of Parliament a bill designed to meet the occasion. Mr. E. W. Hansell's Committee was thereupon appointed, and its report has now been published. It contains few surprises; the proposed measures for the deportation of aliens, rendering themselves undesirable in this respect, were generally expected, and the intensifying of the criminal provisions of the Bankruptcy Act, 1914, follow the lines though they do not achieve the degree, universally anticipated. The reason for this is, probably, that the Committee have found the mischiefs, complained of, to be of a more temporary and, indeed, passing, nature than was generally supposed. I see, for example, that the Official Receiver, in Manchester, has observed: "There is less evidence of dishonest traders in Manchester to-day, than at any time since the collapse of the trade boom." Confirmation of this is to be found in authoritative reports from Liverpool and the North West industrial localities generally. It is further to be remembered that the recently appointed Committee, for the investigation of all matters touching the present exigencies of Company Law, is actually at work; a fact which Mr. Hansell's Committee has recognised explicitly as a reason for not dealing with that aspect of their subject. No doubt a serious state of things must be contemplated, and the observations last year of the Common Sergeant, Sir Henry Dickens, as to the present inability of criminal courts adequately to deal with criminal frauds perpetrated under the aegis of bankruptcy, must not be forgotten. On the whole, however, we may be said to be less dishonest, to-day, than we supposed we were; and the specialists, who have diagnosed our case, recommend less drastic operations than we had feared must be essential.

I am afraid I have so much delayed reference to the new Administration of Justice Bill, discussed in the House of Lords last night, that now I have only space to mention that the Jury system is, if the bill becomes law, to resume its old predominance, and, more immediately, the application for a new Judge in the Admiralty Court, so urgently made by the whole business community, is to be granted. I must deal with this subject later on; for the present let me make good, by giving you some more unofficial intimations. Personally, I doubt if there is any foundation for the following forecast, but I have it on good authority of a "back-stairs" character:—The present President of the Probate, Divorce and Admiralty Division (now Lord Merrivale, once Sir Henry Duke) to become a Lord of Appeal in Ordinary, for which promotion there is a vacancy; the present Solicitor General, Sir Thomas Inskip, to become President, and Sir Leslie Scott to become Solicitor General; and the new Judge, of the Admiralty Division, to be A. D. Bateson, K.C., R. H. Balloch, now Junior Counsel to the Treasury in Admiralty matters, N. Raeburn, K.C., or R. A. Wright, K.C. It is the most foolish audacity on my part to anticipate an event which will probably have happened, by the time this reaches you, and will have happened differently. Let me return to perfectly safe ground, in my last sentence, and say that everybody has united to congratulate Sir Edward Clarke on achieving his eighty-fourth birthday, last Sunday, February 15, and on showing every sign of a firm intention to celebrate his hundred and fourth birthday (with more to follow) in due course.—Yours ever,

INNER TEMPLAR.

Protection of Accident Insurance Policies.

A learned contributor has supplied us with the following note on the recent decision of His Honour Mr. Justice Herdman on the question of the protection of Accident Insurance Policies in London and Lancashire Insurance Co. Ltd. v. Fisher 1924 N.Z. L.R. 1286. He writes:—

"The decision of Herdman J. in London & Lancashire Insurance Co. Ltd. v. Fisher 1924 N.Z.L.R. 1286 is certainly open to comment. In the case in question a bankrupt after his adjudication effected a policy against accident, sickness and death. It is to be presumed from the report, though it is not so stated, the death of the assured, which was the result of an accident, occurred while the bankruptcy was still pending. I say nothing about the man's right to the policy, which was paid for out of his earnings, and to which he was apparently entitled as his own property, though it was not so treated by the Court. The Judge, however, held that the proceeds of the policy passed to the Official Assignee, and that the policy was not protected from creditors because although it was "dependent on the contingencies of the life of the policy holder himself" within the meaning of Section 66(1) of "The Life Insurance Act, 1908," yet it did not comply with the other terms of that Section inasmuch as "the payments . . . to the Company issuing the same" were not "by the policy provided to be made during the lifetime of the assured or during 7 years at least."

An examination of the decision of Cooper J. in Thompson v. Blythe 31 N.Z.L.R. 1053 shows that that learned Judge held on the construction of the policy involved in that case that the protection afforded by the Act extended to a policy insuring against accident, sickness and death, as the policy in the present case did. The very point upon which Herdman J. decided the present case in favour of the Official Assignee was expressly decided the other way so long ago as 1886 by Richmond J. in Mitchell v. Scott 5 N.Z.L.R. S.C. 274, a decision to which the attention of the learned Judge was not directed. Referring to Section 2 of the Life Assurance Policies Act 1884 Amendment Act 1885 which is the same as the words I have italicised Richmond J. pointed out that they did not describe even an ordinary life policy which contains no contract for payment of premiums. He proceeds "the clause must therefore be interpreted as includ-

ing all policies under which the liability of the insurer is made conditional on the due payment of premiums during the life of the insured." He then dealt with the question of the power of the insurer to refuse to renew the policy contract beyond a current period of insurance and held that that did not constitute an essential distinction." The decision in Mitchell v. Scott has always been considered as correctly laying down the law with reference to the protection of accident insurance policies, and it seems a pity that the attention of Herdman J. was not drawn to that case. Curiously enough, as the writer is aware, Cooper J. did not know of the existence of the decision in Mitchell v. Scott when he delivered his judgment in Thompson v. Blythe."

Privy Council Decision.

UNITED STATES OF AMERICA v. MOTOR TRUCKS LTD.

"The effect of the well-known case of Stansell v. Easton (30 N.Z.L.R. 974) and Elliott v. Williams (33 N.Z.L.R. 122) has been seriously impaired by the decision of the Privy Council in the above mentioned case (1924 A.C. 197) while we may no longer regard the decision of Woollam v. Hearn (2 Wh. & T.L. Cas. 513) as sound in law," writes a learned contributor from Auckland.

The case is so important to the profession in New Zealand that we publish our contributor's note to us of the decision in question.

"The facts are as follows: The parties entered into a formal contract wherein it was provided, inter alia, that a previously existing contract between the parties should be superseded; it was also agreed that the appellant Government should pay to the respondent a stipulated sum in full settlement of the latter's claims under the original contract, and there was also a clause to the following effect: 'Title to all property specified in Schedule A hereto annexed and made a part hereof shall vest in the United States immediately upon execution of this agreement.' In point of fact the land and buildings intended to be dealt with by the contract were not included in the Schedule; and the Respondents subsequently denied the right of the appellant Government to possession of such land and buildings. A suit was accordingly instituted in the Supreme Court of Ontario in which the appellant claimed rectification of the Schedule by the inclusion of the land and buildings, and specific performance of the contract as so rectified.

The trial Judge found in favour of the appellant Government but his decision was reversed by the Appellate Division. Upon appeal to the Privy Council the judgment of the trial Judge was restored. The Earl of Birkenhead delivered a brief but concise judgment on behalf of their Lordships. We quote the following observations from that decision. 'If the parties intended that the lands and buildings should be included in Schedule A so that the omission in the instrument was accidental, rectification ought undoubtedly to be decreed. . . . Their Lordships have reached the conclusion that both the appellants and respondents intended that the land and buildings should be included in Schedule A. . . . The respondents contend that a plaintiff was not allowed to sue in the old Court of Chancery for the specific performance of a contract with a parol variation. There seems no reason in principle why a Court of Equity should not at one and the same time reform and enforce a contract: the matter, however, has been much discussed in the Courts and the balance of distinguished authority not unequally maintained. But the difficulty has been, in the view of the Board, removed by the provisions of the Judicature Act 1873, section 24 which are reproduced in section 16 (h) of the Judicature Act of the Province of Ontario.'

Upon a consideration of these provisions, their Lordships held that the Court has jurisdiction to entertain an action in which combined relief will be granted simultaneously for the reformation of the contract and for the specific performance of the reformed contract.

The statutory provisions relevant to this decision are the same in New Zealand as in Ontario and it may therefore be fairly claimed that the decision of the Privy Council is of great importance."

REVIEWS.

TRIAL OF HENRY FAUNTLEROY.

NOTABLE BRITISH TRIAL SERIES.—Butterworth & Co.

The inclusion of the trial of Henry Fauntleroy in the Notable British Trial Series will be cordially welcomed.

This volume might well be termed the Forger's Volume, for not only is the famous case of Henry Fauntleroy included, but there are also noted in the appendices at the end, ten other famous forgery trials.

The case aroused at the time the most extraordinary interest, and even before the trial commenced, Henry Fauntleroy had been most thoroughly condemned and almost hanged, drawn and quartered by the newspapers. Strangely enough, however, no protest was made by the Law Officers or the Judge against what would be considered in these days a most flagrant breach of justice.

To some extent the attitude of the public can be understood when we learn that Fauntleroy was one of the most prominent private bankers in England at the time. The Berners Street Bank was controlled by four partners, Sir James Sibbald, William Marsh, Mr. J. H. Stracey and Henry Fauntleroy. The three other partners did not appear to be in a position to take any active interest in the conduct of the bank, which fell on the shoulders of young Henry Fauntleroy, who at the age of 23 succeeded his father. The Fauntleroys came from some of the finest old stock in the country and implicit trust was placed in young Henry both by his partners and the clientele of the bank. It would appear, however, that difficulties arose in the course of trading, chiefly owing to the failure of Brickwood & Co., in 1810, which involved the Berners Street Bank in the loss of £60,000 and it was during this period that Henry Fauntleroy commenced his career which ultimately led to the gallows at Tyburn.

While outwardly Henry Fauntleroy was a devout son and inflexible man of business, secretly he plunged from one amour to another, always maintaining some expensive mistress, but owing to his great carefulness this was only known to a small pleasure loving band of boon companions.

About the time of the Battle of Waterloo, owing to the bank being called upon to fulfil certain obligations, the position appears to have become so acute that the only way out of it was bankruptcy. To a man of Fauntleroy's temperament, however, this course was unthinkable. He could not tolerate the humiliation of sacrificing his position and the prospect of losing his substantial income must have filled him with dismay. In any event he decided to use without scruple the financial resources at his command. The plan he adopted was that whenever it was necessary to supplement the funds of his house, he forged the name of one of his customers upon a power of attorney, imitated the handwriting of two of his clerks as witnesses, and presented the fraudulent document, which authorised the transfer of the particular investment to his own brokers at the proper office in the Bank of England. In every case the device was successful. The stock was transferred to the broker

who sold it in the open market, and the proceeds were placed to the credit of the Berners Street Bank. All the persons concerned in the affair regarded it as an ordinary business transaction.

The defrauded proprietor of the stock was never allowed to discover the theft. As his dividends became due, he was credited with them as usual in his pass-book. If he gave instructions for the sale of his stock, the exact amount was replaced by Fauntleroy. It was the same if one of the customers happened to die. Before the executors took charge of the estate the dexterous forger had repurchased the requisite holding of consuls or annuities which were registered once more in the name of their former owner in the books of the Bank of England.

How he carried out these forgeries, the amazing knowledge he had of the customers' signatures, the private ledgers and the wonderful system of private accounts which he himself kept are all revealed in a very interesting manner in this volume. His ultimate downfall was unquestionably the outcome of his reckless private expenditure. His dances were notorious, his country place at Hampton-on-Thames and later his house at Weston Place, Brighton, became the scenes of the most amazing episodes. At first this was confined to week-ends, but later it became that every night as soon as the bank was closed he was obliged to seek the distraction of the play, the ball or the hilarious dinner party.

At last in September 1824 after ten years of crime, his defalcations were discovered in regard to one account and he was arrested. Then gradually the whole of his trafficking in stock and his life generally became public property. It is very rare that so much data of the public excitement has survived and full use of all the details has been made by the author in his excellent introduction.

The trial itself was one of amazing interest and the ultimate verdict of guilty was hailed with great satisfaction to the public. It is extraordinary to relate, after the sentence both the feelings of the press and the public veered round completely and many attempts were made to obtain a respite of the sentence, without success. Henry Fauntleroy paid the penalty of his misdeeds and was hanged at Tyburn.

Altogether the Bank of England had to face a debt of £350,000 on account of Henry Fauntleroy's defalcations.

One of the most amazing incidents during the trial was that a certain Hammersmith magistrate who had been defrauded, used his legal position to enable him to get access burst into the room at the Old Bailey where Henry Fauntleroy was sitting and soundly abused the prisoner telling him to look to his soul as he would shortly be hanged.

Unquestionably the trial of Henry Fauntleroy is one of the most interesting volumes which has appeared in this eminently National series of crime. The details of the other forgeries which appear in the remaining pages of the volume are equally amazing in their variety and interest.

DIGEST AND NOTER UP FOR HALSBURY'S "LAWS OF ENGLAND."

(A full note of each of the cases referred to hereunder will be found in the Law Journal for Jan. 10, 1925, and many of the cases will be reported later in the Law Reports).

INSURANCE.—*Accidents to third persons*—Master and servant—Disease contracted during period of insurance—Disablement not till after period—Liability of insurer.—Victoria Insurance Co. v. Junction North Broken Hill Mine 1925 L.J. p. 32. **Held, that where the words of a policy were "if during the period of a policy" the assured would be "liable to pay" the insurer was liable for a disablement occurring to a workman, employed by the assured, after a period of insurance was over if the disease was contracted during the period.**

As to insurance against liability for accidents to workmen: See **Halsbury**, Vol. 17, Title "Insurance," Part V., Sec. 2, Par. 1141.

PRACTICE AND PROCEDURE.—Service of writ out of the jurisdiction—Discretion of court—Forum conveniens.—Rosler and others v. Hilbery and Carvey 1925 L.J. p. 32.

Held, that when leave to serve notice of a writ out of the jurisdiction is applied for under Order XI., r. 1 (f) and (g), the Court must, in the exercise of its discretion, consider whether the claim for an injunction ought to have been made and must have regard to the convenience of proceeding in England, or in the place of residence of the person sought to be served.

As to service of writ or notice of writ out of the jurisdiction: See **Halsbury**, Vol. 23, Title "Practice and Procedure," Part I., Sec. 1, Pars. 208-213.

SHIPPING AND NAVIGATION.—Collision — Statutory duty to assist—*Failure of salving operations*—Claim to salvage.—S.S. "Melainne," Owners of, v. S.S. "San Onope," Owners of, 1925 L.J. p. 32.

Held, that success in salving operations being necessary for a salvage award, services which leave a vessel in a position of as great danger as that from which she was rescued do not give any claim for salvage.

As to rendering assistance after collision: See **Halsbury**, Vol. 26, Title "Shipping and Navigation," Part XI., Sec. 1, Par. 518. As to the right to salvage award: See **Halsbury**, Vol. 26, Title "Shipping and Navigation," Part XIII., Sec. 1, Par. 841.

WILLS.—Construction—Gift to "my brother and sisters"—Whether class gift or gift personæ designatæ—"Securities"—Interpretation of term.—Scorer, In re; Burtt v. Harrison 1925 L.J. p. 33.

Held, (1) that a bequest to "my brothers and sisters," not named in the will, was a class gift and that it was intended that survivors of the body should take the gift between them; (2) that, in the circumstances, the word "Securities" was intended to include all investments.

As to class gifts: See **Halsbury**, Vol. 28, Title "Wills," Part XI., Sec. 2, Pars. 1203-1207. As to meaning of the word "Securities": See **Halsbury**, Vol. 28, Title "Wills," Part XIV., Sec. 4, Par. 1330.

WILLS.—Instructions for codicil—Reference to former will—*Construction*—Evidence.—In re White; Knight v. Briggs 1925 L.J. p. 33.

Held, that a codicil in the form of instructions, referring to a former will made by testator, must be construed as a referential disposition, the document referred to therein being ascertainable by proper evidence, and the bequest taking into effect as if a codicil had been prepared and executed according to the instructions.

As to the character of the evidence admissable: See **Halsbury**, Vol. 28, Title "Wills," Part XIII., Sec. 2, Pars. 1255, 1256. As to grant of probate to documents of a testamentary character complying with statutory requirements: See **Halsbury**, Vol. 14, Title "Executors and Administrators," Part II., Sec. 2, Pars. 307-314.