[TUESDAY, JULY 21, 1925

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—Richard Hooker.

TUESDAY, JULY 21, 1925.

LAW JOURNALISMS.

We are obliged to the Proprietors of the Law Journal for permission to publish from time to time extracts from their Journal which may be of particular interest to New Zealand lawyers. Whenever we make use of this permission at the end of each note we publish will appear in brackets the date of the publication of the Law Journal from which the note has been taken. It will be found that some of the notes will amplify references in our London Letter, while others will be used on account of their appearing to us to be of particular interest.

THE FORTNIGHTLY NOTES.

To Mr. H. F. von Haast of Wellington we are particularly indebted. He is the author of the capital song which we have printed in this number. The song which he sang himself at the dinner given by the profession at Wellington on the 18th instant evoked great enthusiasm from all who heard it. It is very gratifying to all who are connected with the Fortnightly Notes to know that in the short time since its commencement it has roused sufficient interest to warrant such a Song of Praise and that the profession both Bench and Bar should so enthusiastically mark its appreciation of the Journal. The manner in which the profession have adopted the Journal as its own helps us to an extent which it is difficult to estimate and is most gratifying. Our opinion that the Journal was needed in New Zealand receives confirmation every week. Now that the profession has taken us to its heart we trust that its members will not hesitate to make any suggestions they think likely to improve the production or render it more useful to the profession. The assistance already so generously given has to no small degree contributed to the success that has been ours and with a continuation of such aid there will never be any doubt that the Journal will continue to be the mouthpiece of the New Zealand lawyer. Questions of interest are continually cropping up in all parts of the Dominion and we shall always be pleased to publish them for the information and interest of our readers.

FORENSIC FABLES.

No. 3.

THE YOUTHFUL BARRISTER AND THE EXCEEDINGLY PAINFUL CASE.

A youthful barrister was Briefed at The Assizes to Appear for the Prisoner in an Exceedingly Painful Case. He did not Know Must about That Sort of Thing, and was Naturally Rather Anxious. In particular he Dreaded the Interview which he must have with the Accused. He felt it was Pretty Certain that she would be Overwhelmed with Misery and Shame, and Too Much Distressed to Tell her

Story. And he was Sure that she would Look Just Like Effie Deans or Hetty Sorrel.

The Youthful Barrister had a Pleasant Surprise. When he went down to the Cells he was Confronted by a Smart Young Person who Appeared to be in the Best of Health and Spirits. She wore a Fur-trimmed Coat and Sun-Burn Stockings, and Carried both a "Chubby" and a Vanity Bag. Her Nose was Powdered. It was Clear that she did not Feel her Position Acutely, or View the Forthcoming Trial with Any Great Degree of Apprehension. And her Confidence was not Misplaced. For, although the Youthful Barrister's Speech was Long and Incoherent, the Jury Acquitted the Young Person without Leaving the Box.

Moral. Keep Smiling. O.

Mr. T. E. Henery, LL.B., of Rotorua, was admitted recently as a Barrister of the Supreme Court on the motion of Mr. C. L. MacDiarmid, by His Honour Mr. Justice Herdman.

Consequent upon Mr. L. R. Gilmour's accepting a legal position in the Public Trust Office the partnership hitherto existing between himself and Mr. P. Keesing under the firm name of Keesing and Gilmour has been dissolved. Mr. Keesing is continuing the practice.

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COURT OF APPEAL.

Stout, C.J.
Sim, J.
Herdman, J.
MacGregor, J.
Alpers, J.

July 3, 1925.

PATCHETT ET AL v. HYNDMAN.

Contract—Services rendered by relative in expectation of legacy—No contract proved express or implied—Presumption.

The respondent (plaintiff in the Court below) sued the appellants, who are the trustees and beneficiaries of the will of her father John Patchett, deceased asking for an order that provision be made for her maintenance out of his estate or alternatively for judgment for the sum of £195 for board and lodging supplied to her father, who had lived with her in a house belonging to himself for some five and a half years prior to his death. The total amount claimed for board was £468 but against this an allowance of £273 had been made for the rent of the house which the respondent had occupied free of rent. John Patchett died on 29th September, 1924, and the respondent brought proceedings claiming the above-mentioned relief. At the hearing before Ostler J. the respondent obtained leave to amend her statement of claim to allow her to claim as for services rendered on a quantum meruit. Judgment was given in her favour on this claim for £308 15s the Judge at the same time refusing to make her any allowance under the Family Protection Act. From this judgment the defendants appealed.

Relling for appellants: There was an amendment wrongly allowed at trial. Claim was for board and late in trial plaintiff allowed to amend to claim for services rendered and not for board. No contract was alleged or proved. The findings of the trial Judge negative contract. The law applicable is found at **Halsbury** Vol. 14 p. 306 para. 712. I refer to **Crawshaw v. Public Trustee** (1925) N.Z.L.R. 212, 215. I refer to **Te Ira Roa v. Materi** (1919) N.Z.L.R. 681.

The Court stopped Counsel.

Mills for respondent: I rely on **Te Ira Roa v. Materi** (supra). There was an implied contract and we have evidence of services rendered from which contract could be inferred.

The Court allowed the appeal and delivered their reasons without reserving judgment.

STOUT C.J.: "I am of opinion that this appeal should be allowed upon these grounds:—First, this is a claim against a deceased's estate and it must be shewn that the deceased was liable to make the payments claimed. Now on what grounds can it be said that the decesed was liable? It is averred that he should make payments for food and some attendance while he resided in his own house and his daughter and her husband and their family resided there also. It is said that the payments are due for services rendered. It is quite true that when one man works for another he is entitled to claim for services rendered upon a quantum meruit but that is not this case. Upon Mrs. Hyndman's own evidence there was no demand made for services and no arrangement made between her and her father. All were living in his house and he was supplying the firing and the house was his. She says: 'There was nothing definite about father having the free board and me having the free house. I knew that father was not hard up. I never asked him to pay for board or services rendered. I thought the home was for me.' Well Mrs. Hyndman never made any claim because she thought she would get the house from her father by his will. The testator did leave her the house though it was only for six months but there was no contract as to how long she was to have the house. There was no arrangement. If he had agreed to do something, he did something. He gave her the house for six months. How are we to spell out of what occurred between them a contract to pay for services rendered on a quantum meruit. The reference to the house being left negatives any such implied contract—His Honour Mr. Justice Ostler made no allowance under the Family Protection Act as I suppose it could not be said that the husband has need of aid and the estate was small. There was ample power to make an allowance to a daughter if he had thought an allowance was proper and necessary. I am clear that there was no implied contract. The relationship and the surrounding negative that and the claim was never made on the testator for services rendered and the relationship lasted for five and a half years. There must therefore be judgment for the defendant in the Court below with costs according to scale, and there must be judgment for the appellant in this Court with costs on the lowest scale as from a distance."

SIM J.: "I agree that this appeal should be allowed. The respondent is entitled to succeed only if she can make out a contract express or implied to pay for the services rendered. It is not even suggested that there is an express contract and it is clear that an implied contract cannot be made out."

HERDMAN J.: "I agree. The learned Judge in the Court below states in effect that no contract was made to render services in consideration of use being given of the testator's house. On the contrary he took the view that services were rendered because plaintiff and her husband were led to believe that when testator died he would leave the house to his daughter. There is evidence to support this conclusion and Mr. Mills is constrained to concede that he cannot escape from this finding and so the principle being that one 'who does work for a testator on the understanding that he is to be remunerated by a legacy has no claim against the estate if the testator fails to provide the legacy' (see **Halsbury** Vol. 14 page 306), the respondent cannot succeed and the appeal must be allowed."

MacGREGOR and ALPERS JJ. agreed with the Judgment of the Court without expressing further reasons.

Solicitors for appellants: **Relling and Nathan**, Blenheim.
Solicitors for respondent: **McCallum and Mills**, Blenheim.

Stout, C.J.
Sim, J.
Herdman, J.
MacGregor, J.
Alpers, J.

July 1, 1925.

TARANAKI FARMERS' MEAT CO., LTD., v. MORGAN.

Practice—Representative action—Dismissing all save first plaintiff from action—Application to add others as plaintiffs—Rules 59 and 90.

This is an appeal from an order made by Mr. Justice Ostler on 26th February, 1925, adding as co-plaintiffs one hundred and twelve persons whose names were set out in a letter dated 29th January, 1925, from Morgan to the Company rescinding the contracts to take shares on behalf of himself and the hundred and twelve others. A writ was issued on 5th February, 1925, in which Morgan sued on behalf of himself and the one hundred and twelve others for rescission and other relief. The Company went into voluntary liquidation the next day, 6th February. The defendant Company applied on Summons to have the action struck out as not being properly a representative action, and further applied to have all reference to the hundred and twelve other persons struck out. The summons was heard by Mr. Justice Ostler on 25th February and an order was made "striking out that part of the writ and statement of claim purporting to make it a representative action," but reserving decision on the plaintiff's application to have the one hundred and twelve other persons joined as co-plaintiffs with Morgan. On 26th February, after hearing argument and reviewing authorities, His Honour made an order that the one hundred and twelve persons who joined in the representative action be joined as plaintiffs. By consent the order was made an order of Court. From this order the defendant Company appealed.

Hoggard for the Appellant Company: Two orders were made, one on 25th and the other on 26th February and I do not think any mistake was made by the appellant in drawing up the second order as a separate order.

(STOUT C.J.: Is it not a question as to whether or not this case comes under Rule 59?)

Partly. There was nothing before Mr. Justice Ostler to shew that all the persons mentioned in the writ were relying on the same representations.

(STOUT C.J.: The Statement of Claim said they did. Do you say that the order made on the first day prevents that on the second day from being made?)

I do say that I have a right to rely on the first order as totally excluding the one hundred and twelve.

(MacGREGOR J.: All that the Judge found was that they were precluded from suing in a representative capacity.)

(STOUT C.J.: The question of joinder was expressly reserved.)

I rely on the order made on 25th February and set out in the case at page 8.

(STOUT C.J.: But this is not a correct order.)

(SIM J.: The order as sealed by the defendant is clearly defective. It does not follow the Judge's minute.)

I say that the defect is only a verbal one. It was never suggested before Mr. Justice Ostler that these parties were all persuaded to subscribe on the same representations. "The same" must have meant "similar." This action was not commenced until after the notice of the liquidation meeting was issued.

(STOUT C.J.: Is not that a matter for a plea?)

I submit that a party who comes after liquidation and asks to be joined is too late. There was a letter of repudiation but I submit that was not sufficient.

(STOUT C.J.: This amounts to a demurrable plea or declaration.)

I also desire to take the point that the parties not named in the writ should have consented.

(STOUT C.J.: Have you any evidence that they did not consent?)

(Moss: I appeared at the hearing of the summons on their behalf. The Warrant to sue extends to Morgan personally and on behalf of the one hundred and twelve others.)

My friend's warrant would apply only to Morgan.

(STOUT C.J.: He has said it applied to all.)

Very well my submission is that the learned Judge should not have joined these people without their consent under Rule 91.

(STOUT C.J.: But a barrister appears and says he acts for them. Ostler J. accepted the statement and we must assume that Counsel was authorised. You would deprive them of a hearing. It is a question of procedure not of law.)

The second point I desire to take is that the Judge should have ascertained that a common question of fact and law existed under Rule 59. Rules 59 and 90 must both be complied with. The third point is that even if the learned Judge was satisfied that Rules 59 and 90 had been complied with he still had no jurisdiction to add these persons as plaintiffs after the liquidation had commenced.

(STOUT C.J.: But an action had been commenced?)

An action for the recission of an allotment of shares cannot, I submit, be commenced after liquidation.

(SIM J.: Was not the order of Ostler J. merely one remedying a slip in procedure?)

A person cannot be joined as a plaintiff unless both the conditions of Rules 59 and 90 exist. I submit that the Judge should have satisfied himself that a common question of law and fact would arise. The condition of Rule 90 should be complied with. I refer to **Dalton v. The Guardians of St. Mary Abbotts** (47 L.T. 349) as an authority under Rule 90. This case is analagous to the present one. The action was Morgan's action and he was not entitled to represent the other parties. They should have commenced their own actions if they wanted them. I appreciate that Rule 59 has been amended since **Dalton's Case**, but there has been no alteration in Rule 90.

(HERDMAN J.: But in **Dalton's Case** the injury was to his own property alone.)

Rule 59 is now wider than it was. There have been no amendments in Rule 90.

(SIM J.: The effect of the enlargement of Rules 59 and 61 is to enlarge Rule 90.)

(MacGREGOR J.: Do you suggest that **Dalton's Case** would be followed now?)

I submit so.

(MacGREGOR J.: It is significant that it is dropped from the latest edition of the annual practice.)

I proceed to my last point. I submit that the power to add plaintiffs cannot be used to revive remedies that have lapsed.

(STOUT C.J.: How are we to decide whether remedies have lapsed without proceeding on the merits?)

I say that by adding them you will make them in time. The application to join them becomes futile unless it revives their rights and the whole object of joinder is to revive their rights. It is clear that a shareholder loses his right to rescind if he does not take effective steps prior to the winding up. I refer to **Palmer's Company Precedents** 12th Edition at pp. 562 and 565. **Oakes v. Turquand** L.R. 2 H.L. 325. **Whiteley's Case** (1900 1 Ch. 365) is the strongest case in my friend's favour. I submit that the rule in **Oakes v. Turquand** applies here and precludes these parties to a right of joinder.

(The Court intimated that it only desired to hear Moss on the last point raised.)

L. M. Moss for the Respondent: There are further cases than **Whiteley's** in my favour. As to whether or not the application is too late, **Whiteley's** and similar cases shew that the Court will take the surrounding circumstances into consideration. The test is, did the plaintiffs take "active steps" after repudiation? Very short notice was given by the Company when negotiations broke down—practically less than 24 hours before liquidation. There was an attempt to frustrate the shareholders' action until action was too late. The time for bringing these proceedings was extremely short. We could have issued 113 writs had there been time but to do so would have been vexatious and unnecessary under Rule 59. The action was commenced with the consent of the 112 persons. They took "active steps" within the Rule. **Pawle's Case** (4 Ch. App. at p. 497) is strongly in my favour. The Courts discourage a multiplicity of actions. I submit that if joinder had not been possible under the Rules, the Court could have given leave to each of the one hundred and twelve plaintiffs to take a separate action after the winding up had commenced. The hundred and twelve shareholders had not slept on their rights and it was obvious to the Company and to the creditors that they were actively pursuing their rights to rescind.

(Mr. Moss was stopped.)

STOUT C.J.: "I am of opinion that this appeal should be dismissed. A representative action was brought by the plaintiff on behalf of himself and one hundred and twelve other shareholders. It was an action claiming proper relief and otherwise a proper action, although perhaps not in proper form. It seems clear from the authorities that the proper course was for the one hundred and twelve shareholders all to be plaintiffs in the action and that a representative action should not have been brought. The representative action was set aside and leave expressly reserved to join the one hundred and twelve parties as co-plaintiffs. Now the one hundred and twelve other shareholders have been joined as plaintiffs. The Court had ample power to do this, when necessary and I am of opinion that the Court was right in making the order that it did. The appeal will be dismissed with costs on the lowest scale as from a distance."

SIM J.: "I agree that the appeal herein should be dismissed. It is admitted that if the one hundred and thirteen shareholders would have been justified under Rule 59 in joining in one action then the Court had jurisdiction to add them as plaintiffs under Rule 90. The Statement of Claim as it stands makes it clear that these one hundred and thirteen shareholders might have joined in one action. It is alleged that they were all induced by the same misrepresentations to take their shares. Their right to relief thus arose out of the same transactions or series of transactions, and there was a common question of fact to be determined. The Court had power therefore to join them under Rule 90. It is contended however that the Court by adding the one hundred and twelve shareholders as plaintiffs has put them in a better position than they would have been in otherwise, and has taken away from the Company the defence that these shareholders had not taken effective proceedings before liquidation. But **Whiteley's Case** (1900 1 Ch. 365) is an authority for saying that these shareholders had taken legal steps to obtain recission of the contracts. But even if that is not so, I still think that in the circumstances it was a proper exercise of the discretion of the Court, for all that the order did was to correct a slip in procedure and it was an entirely proper order.

HERDMAN, MacGREGOR and ALPERS, JJs. concurred.

Solicitors for the Appellant: **Govett, Quilliam & Hutchen**, New Plymouth.
Solicitors for the Respondent: **Moss & Spence**, New Plymouth.

SUPREME COURT

Alpers, J. June 20, 1925.
Nelson.

ANDERSON v. COLTMAN.

Agreement for sale of chattels and interest in land—Statute of Frauds—Part Performance—Claim for Damages.

This was a claim for damages for non-completion of an agreement to purchase a confectionery business as a going concern consisting of stock in trade, plant and a monthly tenancy of a shop. The vendor, Anderson, did not state the price but the plaintiff alleged possession taken by defendant. The defences pleaded were the Statute of Frauds and misrepresentation.

Kerr for plaintiff.
Fell for defendant.

Fell, for defendant, at the close of plaintiff's case, moved for nonsuit on the grounds:—

(1) Contract related to an interest in land: **Smart v. Harding** 24 L.J. C.P. 76; **Hodgson v. Johnson** 28 L.G.A.B. 88.

(2) Contract was an entire contract part within part without the Statute and was unenforceable: **Winstone v. Mehaffy** (1917) N.Z.L.R. 956.

(3) Acts of part performance of oral contract for sale of interest in land will not support a common law action on the contract: **Wi Rangi v. Sutton** 3 N.Z.J.N.S. Sc. 139; **Allen v. Fairbrother** 9 G.L.R. 329; **McManus v. Cooke** 35 Ch. D 681 at p. 697; **Winston v. Mehaffy** (Supra).

ALPERS J. reserved the nonsuit point and heard the evidence for the defence. In giving judgment the learned Judge stated that the contract related to an interest in land; that the Memorandum did not satisfy the Statute and that acts of part performance did not apply to a common law action for damages so as to take the case out of the Statute. Consequently the defendant was entitled to a nonsuit. The learned Judge then examined the facts as to the misrepresentation and found for the defendant on these.

Solicitor for plaintiff: **J. R. Kerr**, Nelson.
Solicitors for defendant: **Fell and Harley**, Nelson.

Reed, J. Auckland.

IN RE BY-LAW NO. 39 OF AUCKLAND CITY CORPORATION.

By-law—Whether reasonable—Diverting motor traffic from congested street—Amending same at trial as to times diversion reasonable.

By-law 39 of the Auckland City Council purports to fix the routes to be followed by omnibuses plying from in or near Queen Street to various termini and for them running to a fixed timetable. It also provided that no person should drive or conduct any omnibus in through or along that part of Queen Street between Customs Street and Wellesley Street. The by-law was attacked on the grounds of unreasonableness, that it was partial and unequal in its operation, that it was oppressive, disclosed bad faith and was in restraint of trade.

Meredith and **Paterson** for Auckland Omnibus Proprietors' Association in support of motion to quash by law.
Stanton and **McKay** for the City Council.

REED J. on the facts held that the by-law should stand with the amendment that omnibuses could ply etc. along the prohibited area after 6.30 p.m. and on Sundays and holidays. He made the following comments anent the law relating to by-laws:—"It is claimed that the benevolent construction, which, it has been held, Courts should apply to the by-laws of local bodies, has no place here, for the reason that the by-law affects, not only the inhabitants of the City, but the public right of the King's subjects generally to the use of the highway; and that consequently it must be subjected to the closest scrutiny. For this submission the case of **McCarthy v. Madden** 33 N.Z.L.R. 1251 is relied upon. In that case Mr. Justice Edwards, who delivered a judgment on behalf of himself and Mr. Justice Denniston said (p. 1269):—

> 'Where a by-law necessarily affects a public right common to all the King's subjects—e.g. the right to the use of the highway for the primary purposes of traffic—such by-law must be scrutinised with greater care than by-laws which affect only the particular rights of the inhabitants of the locality which is subject to the jurisdiction of the enacting local authority; and a by-law which might be held to be reasonable in the latter case may be unreasonable in the former case.'

"And he quotes **Crater v. Montague** 23 N.Z.L.R. 904. Now the facts in **McCarthy v. Madden** were entirely different from those in the present case, and the observations of Lord Halsbury L.C. in **Quin v. Leatham** (1901) A.C. at 506 are pertinent. He said:—

> 'Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found.'

"In **McCarthy v. Madden** the by-law imposed such conditions in respect of the use of the streets as rendered it difficult for people residing outside the borough to take their cattle to the sale yards situated within the borough. In the present case the persons affected are those holding omnibus licenses from the Council and who carry on business in the borough, and no person can be affected by the by-law who is not in that position. Whether the passengers live outside the borough limits or not is immaterial. Their right to use the fairway is not affected. I think therefore that this by-law affects only the rights of persons who carry on their business within the borough, and the by-law is not

on this particular ground to be subjected to the special scrutiny suggested."

Solicitors for Omnibus Proprietors' Association: **Meredith and Paterson**, Auckland.
Solicitors for City Council: **Stanton, Johnstone and Spence**, Auckland.

Stout, C.J. June 9, 16, 1925.
Auckland.

DEATH v. EYRE.

Practice—Claim under mortgage—Defence admitting being mortgagor pleading notice under Mortgages Extension Act and that assignment of mortgage to plaintiff not notified to him—Covenants of mortgage relief on by plaintiff also denied—Application to strike out defence—Affidavit in support shewing defence untrue not denied.

The defendants mortgaged certain lands to one Hole. The principal sum was due on July 1st, 1923, and interest was payable half-yearly. The mortgagee transferred the mortgage to the plaintiff. The principal was not paid on July 1st, 1923, and interest is due from July 1st, 1922. Rates payable are unpaid. In an action on the mortgage the defendant admitted he "is the mortgagor named and described in the memorandum of mortgage." He denied the plaintiff was assignee and he denied the covenants of the mortgage alleged in the claim. He also pleaded he had not received express notice in writing of the transfer of the mortgage and that he received notice under the Mortgages Extension Act and he also alleged a notice in writing was served by him on the plaintiff objecting in writing as required by the Mortgages Extension Act to the plaintiff's notice. On an application to strike out the defence as an abuse for the Court's procedure.

Rogerson for plaintiff.
Haddow for defendant.

STOUT, C.J. in granting the application said:—"It will be observed that this really admits that he knew and knows that the plaintiff was the assignee else why serve him with such a notice? The affidavit filed on behalf of the plaintiff, which the defendant has not denied by filing an affidavit in reply, shows that his defence is false and can only have been made to obtain delay and is consequently vexatious and an abuse of the procedure of the Court. No affirmative defence has been filed. It is not averred that the mortgage moneys, interest, etc., have been paid or released. The defence is obviously frivolous and vexatious and the authorities are numerous that where no proper defence is disclosed the defence may be struck out. See cases cited in **Stout and Sim's Practice**, page 100.

"The defendant says he wishes to join his purchaser as a third party. This is no answer to the action. He filed a summons on March 24th for leave to issue a Third Party Notice but up to the time of this motion he had not taken any steps to get that summons heard. But that is no answer to a writ against the defendant. He can sue his purchaser. The Court is open to him if he has any claim, but that is no ground for postponing the plaintiff's claim against him. Motion granted, with costs of motion, £4 4s, and costs of action to be settled by the Registrar."

Solicitors for plaintiff: **Nicholson, Gribbin, Rogerson and Gribbin**, Auckland.
Solicitor for defendants: **J. G. Haddow**, Auckland.

Reed J. July 1, 1925.
Auckland.

GRAY v. HARRIS.

Practice—Judgment against married woman as executrix—In error recorded against her personally—Certificate of Judgment—Judgment entered in Supreme Court against her personally—Power of Court to amend or set aside.

The plaintiff received judgment in the Magistrate's Court against the defendant as executrix in an estate. In error judgment was recorded as against her personally. A Certificate of Judgment was filed in the Supreme Court under Sec. 154 (4) of the Magistrates Court Act, 1908, and final judgment was signed against the personal estate of defendant. Plaintiff now moved the Court for an amendment of the judgment for leave to uplift the certificate for the purpose of having same amended by the Magistrate.

Northcroft in support.

REED J. allowed the application and in doing so said: "This Court has an inherent jurisdiction to correct a judgment which, as drawn up, does not express the intention of the Court, but there is no jurisdiction to correct or amend an order or judgment which does in fact express such intention. The only jurisdiction, in that case, is, upon proper grounds, to set the whole judgment aside. Now the judgment cannot be said to not express the intention of the Court; but it is obviously a case where it should be set aside, and it is ordered accordingly. The certificate should be then returned to the Magistrate's Court with an intimation that it is alleged that the judgment there recorded does not express the true intention of the Magistrate, and that the judgment, in this Court, based upon it has been set aside. A Magistrate has jurisdiction to correct a judgment which, as drawn up, does not express his intentions. If, therefore, such is the case here, the Magistrate may have the alleged defective judgment corrected, and a fresh certificate may be issued thereon upon which judgment may be signed in this Court."

Solicitors for Plaintiff: **Earl, Kent, Massey and Northcroft**, Auckland.

Adams, J. June 15th, 1925.
Christchurch.

BLAND v. EMPIRE COSTUME MANUFACTURING COMPANY, LIMITED.

Practice—Defendant company out of judicial district—Cause of action—Affidavit filed with writ—Proper heading—Whether irregularity fatal—Rule 417 whether by summons or motion.

On an application by way of Motion to set aside a Writ of Summons on the ground (1) that the defendant's registered office and its head office are in the Auckland District and that the whole of the cause of action arose there; (2) that the affidavit filed in pursuance of the rule as to service when the defendant is not within the judicial district out of which the Writ issues was irregular inasmuch as it was intituled in the action and not in the matter of a proposed action.

Sim for plaintiff.
Sargent for defendant.

ADAMS J. on the first question referred to the decisions relied on as follows: It was said in **Read v. Brown** 22 Q.B.D. 128 that "the cause of action" included every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. In **Jackson v. Spittall** L.R. 5 C.P. 542 "cause of action" was defined as "the act on the part of the defendant which gives the plaintiff his cause of action," and this definition was approved by the Court of Appeal in **Dillon v. Macdonald** 21 N.Z.L.R. 375; 4 G.L.R. 415. Then in **Northey Stone Coy. v. Gidney** (1894) 1 Q.B.D. 99 (C.A.) it was held that non-payment of the price of goods sold was part of the cause of action. In that case the contract provided for payment in Bath, where the action was brought. Here the contract is for services to be rendered by the plaintiff in Christchurch and the salary and bonus would be payable in Christchurch and this must I think be implied as one of its terms.

On the second question raised the learned Judge said:—"Mr. Sargent raised the further point that the affidavit filed in pursuance of the rule is intituled in the action and not 'in the matter of a proposed action.' The point is not taken in the notice of motion but both parties desire to have that question and also the question of change of venue under Rule 249 determined now, and that is obviously desirable. The rule requires that the affidavit shall be filed before the issue of the writ, and until the will is issued there is no action. The title to this affidavit is therefore wrong. **Blake v. Lever** L.R. Ir. 6 C.L. 476. **Thompson v. Wanganui Herald Company** 8 N.Z.L.R. 653. That is however only an irregularity and may be dealt with

under Rule 599. **Merson and Coy. v. Welsh** 14 G.L.R. 784 (C.A.)

"The defendant has itself committed a breach of Rule 417, which requires that applications to a Judge in Chambers in contentious matters shall be made by summons, and the application in this case is made by notice of motion. The order for trial in Auckland is made, but no costs will be allowed."

Solicitors for the plaintiff: **D. S. Murchison**, Christchurch.
Solicitors for the Defendant: **Goldstine and O'Donnell**, Auckland.

Reed, J. June 15, 16, 17, 18, 24, 1925.
Auckland.

MOXEY v. ACHESON.

Solicitor borrowing from client—Duty to obtain independent advice.

Early in 1924 Mrs. Moxey instructed Mr. Acheson as her Solicitor to obtain certain moneys which were due to her under a deceased estate in England, and acting on these instructions Mr. Acheson received the sum of £197 in May, 1924, and the sum of £195 16s in August, 1924, both of which sums the defendant purported to borrow from the plaintiff without giving any security therefor. The defendant gave receipts for these two sums in which he stated that he borrowed them for a term of five years at 8 per cent. and 6 per cent. respectively. The defendant stated in evidence that the plaintiff desired that he should borrow the money himself, as she was not on good terms with her husband, and that her husband would force her to give him the money if he became aware that she had it. The defendant also stated in evidence that plaintiff's husband had forced her to give him large sums of money.

Kerr for plaintiff.
Defendant in person.

ALPERS J. said that the case was one which clamoured for independent advice and that it was the defendant's clear duty to obtain independent advice for Mrs. Moxey. The fact that the plaintiff could not seek her husband's advice and assistance rendered it doubly necessary for the defendant to obtain independent advice.

Judgment was entered for plaintiff with costs according to scale.

Solicitor for the Plaintiff: **J. R. Kerr**, Nelson.
Defendant in Person.

Stout, C.J. June 10, 16, 1925.
Auckland.

LAURIE v. WYLIE AND OTHERS.

Will—Construction—Aboslute Bequest of Shares to Widow—If Widow Remarries, Shares to go to Children—Absolute Interest Subject to a Defeasance.

The testator bequeathed to his wife a house property and the furniture therein. He then directed his business to be sold to a company and bequeathed to his widow 6000 of the shares resulting from such sale. Following upon the attestation clause there was an addendum duly signed and witnessed: it provided as follows:—"In the event of Elsie Marguerite Laurie (testator's widow) marrying again the house Laurie Avenue and furniture to be hers absolutely . . . . but the 600 pref. shares in the business to be equally divided among my children then surviving." An originating summons was filed to determine the true meaning of the will as regards such shares.

Paterson for plaintiff: The gift of the shares is an absolute one subject to a defeasance, or else it is merely a life estate. We say it is the former. The following cases are in point: **McLean v. McMorran**, 11 N.Z.L.R. 1; **Madill v. Madill** 26 N.Z.L.R. 737; 9 G.L.R. 478; **Russell v. Durie** (1920) N.Z.L.R. 91; (1920) G.L.R. 67; **McCulloch v. McCulloch** 3 Giff 606; **Chia Khwee Eng v. Chia Poh Choon** (1923) A.C. 424.

Finlay for defendants: The Court must find from the will itself the demonstrated intention of the testator. The true construction may be that the widow takes only a life estate.

STOUT C.J.: "In my opinion the wording of the will does not lend itself to the interpretation that the widow takes the shares only for her life. . . . The case of **In re Mourad** 27 N.Z.L.R. 633 was much relied upon. . . . This case seems to me at variance with the case of **McLean v. McMorran and Another** 11 N.Z.L.R. 1 . . . in which case it was held that the widow took a vested interest in the capital subject to its being diverted in the event of her marrying again. . . . The present case . . . gives, without limitation, the shares. Then in the addendum it provides especially for the holding of the 6000 preference shares saying that in the event of re-marriage they go to the children. There is no disposition made of the shares to anyone save the widow should there be no re-marriage and the words used are not in my opinion sufficient to cut down the gift to her of the shares to a gift for life only."

The Court answered the questions in the originating summons by holding that the gift of the shares to the widow was absolute subject to its being diverted on her re-marriage.

COURT OF ARBITRATION

Frazer, J. May 27, June 19, 1925.
Christchurch.

STONE v. UNION STEAM SHIP CO. LTD.

Workers' Compensation—Accident—Diplopia supervening—Assessing compensation—Whether for total loss one eye or not.

Claim for compensation under the Workers' Compensation Act. The plaintiff was struck by a derrick and severely injured in the head. He recovered from the injuries except that he had developed diplopia or double vision. He also suffered from traumatic neurasthenia which however was disappearing. The only permanent effect of the accident was the diplopia. Both eyes were perfectly sound but he could use only one at a time. When working he will always have to keep one of the eyes covered, unless he learns to disregard the functioning of one eye.

Hunter for plaintiff: Compensation should be based on the total loss of one eye.
Sim for defendant.

FRAZER J. said with regard to plaintiff's contention that the Court could not acceed to that contention inasmuch as the plaintiff did not come within the words of the schedule for he had not lost the sight of one eye and also in the event of any strain or injury affecting one eye he had another sound eye to make use of.

Solicitors for plaintiff: **Hunter and Ronaldson**, Christchurch.
Solicitors for defendant: **Duncan, Cotterill and Coy**, Christchurch.

Alpers, J.

Nelson.

LAW JOURNALISMS.

DEFENDING THE GUILTY.—An old controversy is revived in Judge Bowen Rowland's reminiscences: Should an advocate defend a man whom he knows to be guilty? The Liverpool "Daily Post" observes that a precedent is to be found in the decision of Courvoisier's counsel, approved by Baron Parke, to continue their defence of Courvoisier notwithstanding the latter's private admission that he had murdered his master, Lord William Russell. A Welwyn Garden City paper, the "Pilot," expresses horror at the approval given to such a decision by Hawkins, J., and observes that lawyers, if they in general agree with that approval, deserve the worst that is ever said of them; and there is no doubt that many laymen are of the same way of thinking. Yet Hawkins, J., it is submitted, was obviously right and merely gave utterance to what is a fundamental rule of the profession. Indeed, it is within the experience of most of us that a judge has ordered a case to be tried out notwithstanding that the accused has tendered from the dock a plea of guilt, and counsel has been requested to undertake the defence. The principle is an elementary one

to lawyers, that every subject is entitled to have his case argued and is entitled to demand of the advocate, whom he selects, that this advocate should state his case in the most favourable way possible and should not assume, uninvited, the attributes of the judge or the jury. If the client is so unhelpful as to state, rightly or wrongly, that he is guilty, then the advocate may not call him as a witness of his own innocence, but must confine himself to the putting of the prosecution to strict proof. Even in the rare and extreme case when the advocate is thus embarrassed, no serious damage is done to the cause of justice, which is adequately represented by others, who may be relied upon to note the fact that the accused person maintains a non-committal silence. It is a principle, universally and gladly accepted, that every man is presumed to be innocent until his guilt is proved. How comes it, then, that so many intelligent people are amazed that advocates make it their first duty to act upon that principle? (25:4:1925.)

CROSSWORD PUZZLE RESTRICTION.—Our contemporary the "Scots Law Times," oppressed somewhat by the topic of the day, publishes the text of what it is pleased to call the Cross-Word Puzzle Restriction (Scotland) Bill, 1925. The preamble states, inter alia, that "the continued prosperity of the United Kingdom is wholly dependent on the industry and contentment of the inhabitants of Scotland," and clause 3 (1) provides as follows:—

> "No person shall publish or cause to be published a cross-word puzzle in any journal, newspaper, magazine, poster, book, or publication of any kind whatsoever, without having first obtained . . . a license in the form contained in Schedule A appended to this Act, and hereinafter referred to as a puzzler's license"; the penalty for the first infringement of the section being "a fine not exceeding £100"; for the second infringement "penal servitude for a period not exceeding life"; and for "the third and all subsequent infringements death."

And clause 4 (1) provides:—

> "No person shall attempt the solution of a cross-word puzzle without having first obtained . . . a license in the form contained in Schedule B appended to this Act, and hereinafter referred to as a puzzlee's license"; such license being issuable only to persons who have attained the age of eighteen years and who have been approved by "a board composed of a judge of the Court of Session, a minister of religion, and a doctor of medicine with nt less than five years' experience in lunatic asylums." Provision, too, is made in the Bill for a triennial poll of the country in the form provided by the Temperance (Scotland) Act, 1913 (3 and 4, Geo. 5, cap. 33), the alternatives to be presented to the voters at such polls being: (a) No change; (b) Limiting Resolution; and (c) No License Resolution (that is, that "no licenses shall be granted in the area except to peers, lunatics, paupers, and Members of Parliament)."

We fear the cross-word puzzle habit is becoming too strong for Parliamentary control. (9:5:1925.)

NOTER UP, &c.

(A full note of each of the cases referred to hereunder will be found in the Law Journal for Jan. 31, 1925, and many of the cases will be reported later in the Law Reports.)

DEPENDENCIES, COLONIES, AND BRITISH POSSESSIONS.—Canada—Powers of Dominion Parliament—Industrial Disputes.—Toronto Electric Commissioners and Others v. Snider and Others L.J. p. 100.

Held, that Industrial Disputes Investigation Act, 1907, passed by the Dominion Parliament is ultra vires the Dominion Parliament because dealing with property and civil rights within a province and as such within the exclusive jurisdiction of Provincial Legislatures under British North America Act, 1867, Sec. 92, Sub-sec. 13, nor can the Dominion Parliament make it otherwise by imposing penalties.

As to the respective powers of the Dominion and Provincial Legislatures: see **Halsbury**, Vol. 10, Title "Dependencies, Colonies, and British Possessions," Part II, Sec. 2, Pars. 929-938.

HUSBAND AND WIFE.—Maintenance—Desertion—Constructive Desertion—Time limit.—Bowron v. Bowron L.J. p. 100.

Held, that there is no time limit applicable to proceedings under Summary Jurisdiction (Married Women) Act, 1895, Sec. 4, founded on "constructive" desertion, which is presumed to continue until rebutted and the fact that the evidence relied on by the wife is the same as she would adduce in asking for maintenance on the ground of persistent cruelty cannot be used to deprive her of her remedy.

As to what constitutes desertion: see Halsbury, Vol. 16, Title "Husband and Wife," Part XI, Sec. 14, Par. 1215.

..INTERPLEADER.—Summary decision by district Registrar—Right of appeal to Divisional Court.—Williams Deacons Bank, Ltd. v. Bradshaw L.J. p. 103.

Held, that a right of appeal to the Divisional Court is given by Order LIV, r. 22a from a summary decision in interpleader, made by a district Registrar under Order LVII, r. 8; and that the decision of such Court is final and conclusive.

As to appeals from summary decisions in interpleader actions: see **Halsbury**, Vol. 17, Title "Interpleader," Part II, Sec. 6, Par. 1249.

As to appeals from orders of a district Registrar: see **Halsbury**, Vol. 23, Title "Practice and Procedure," Part I, Sec. 1, Par. 231.

MINES, MINERALS AND QUARRIES.—Settled land—Trust for sale—Tenant for life entitled to income until sale—Not unimpeachable for waste—Unopened mines—Lease—Rents and royalties.—Hodgkinson, In re; Hodgkinson v. Hodgkinson L.J. p. 101.

Held, that an equitable tenant for life of the proceeds of sale of land subject to a trust for sale and to the rents until sale, not being unimpeachable for waste under the will, must set aside, as capital money under Settled Land Act, 1882, Sec. 11, three-fourths of the rents and royalties payable under a lease of mines unopened at the time of testator's death.

As to the powers of limited owners to grant leases of mines: see **Halsbury**, Vol. 20, Title, "Mines, Minerals and Quarries," Part IV, Sec. 2, Pars. 1345-1353.

POLICE.—Riot—Military camp—Damage to private property—Claim for compensation—Limitation of action.—Jarvis v. Surrey County Council L.J. p.102.

Held, that the words in Civil Procedure Act, 1883, Sec. 3, "actions for sums of money given to the party grieved by any statute" refer to penal action and no statute of limitation applies to an action for compensation for loss actually suffered as the result of a riot.

As to compensation for damage to property ensuing from a riot: see Halsbury, Vol 22, Title "Police," Part IX, Pars. 1044-1049.

RATES AND RATING.—Water undertaking—Rateable value—Basis of valuation.—Metropolitan Water Board v. Kingston Union Assessment Committee and Teddington Overseers; Same v. Same and Hampton Overseers; Same v. Same and Hampton Wick Overseers L.J. p. 102.

Held, that in calculating the rateable value of hereditaments occupied by a public body subject to statutory restrictions, the task of the assessing authority is to ascertain the rent of the property which a reasonable hypothetical tenant might be expected to pay, looking, for that purpose, at the receipts of the body and not by applying a remunerative rate of interest to the capital value of the hereditaments.

As to basis of valuation of a water undertaking: see **Halsbury**, Vol. 24, Title "Rates and Rating," Part II, Sec. 2, Pars. 59-63.

SHIPPING AND NAVIGATION.—Salvage—Vessel under Government requisition salved—Liability of owners for salvage reward.—The "Meandros" L.J. p. 103.

Held, that an owner who has the benefit of service whereby his ship is salved is bound to remunerate those who have conferred the benefit, although the vessel is at the time of salvage under Government requisition and control.

As to recovery of salvage reward: see **Halsbury**, Vol. 26, Title "Shipping and Navigation," Part XIII, Sec. 6, Pars. 884-886.

WILLS.—Construction—Whether imperative direction or precatory trust disclosed—Charitable intent—Death before testator of person appointed to distribute property.—Campbell, In re; Public Trustee v. Attorney-General L.J. p. 101.

Held, that where a testator left property to C. . . . "who will at her death dispose of it in such charitable ways . . . ," the words "who will at her death" constituted an imperative direction and not merely a desire or wish, and, a good charitable intent being expressed, the death of C. before the testator did not make the gift to charities fail.

As to the leading principle in construction of wills: see Halsbury, Vol. 28, Title "Wills," Part XIII, Sec. 3, Pars. 1257-1259.

As to application of cy-pres doctrine where machinery for effectuating charitable intention fails: see **Halsbury**, Vol. 4, Title "Charities," Part IV, Sec. 4, Par. 340.

(A full note of each of the cases referred to hereunder will be found in the Law Journal for Feb. 7, 1925, and many of the cases will be reported later in the Law Reports.)

CROWN PRACTICE.—Writ of certiorari—Central Criminal Court—Order of Justices and Judges.—Rex. v. Justices of the Central Criminal Court; ex parte The London County Council L.J. p. 121.

Held, that a writ of certiorari cannot be directed by the High Court to the justices and judges of the Central Criminal Court for the purpose of quashing an order made by them.

As to the Courts to which the writ of certiorari may issue: see **Halsbury**, Vol. 10, Title "Crown Practice," Part III, Sec. 7, Pars. 331-332.

DISCOVERY, INSPECTION AND INTERROGATORIES.—Shipping—Collision—Interrogatories—Where allowed.—"The Nedenes" L.J. p. 122.

Held, that where, in an action for collision, there is a strong contest between the parties, interrogatories should be allowed as to matters which are in conflict, and which it is necessary should be answered before the case can properly be determined.

As to what interrogatories are allowable, and leave to administer interrogatories: see **Halsbury**, Vol. 11, Title "Discovery, Inspection, and Interrogatories," Part V, Sec. 2, Pars. 159-181.

PRESS AND PRINTING.—Publishing printed paper without printer's name and address—Court of summary jurisdiction—Information in name of police officer—Fiat of Attorney-General—Jurisdiction of justices to amend.—Key v. Bastin L.J. p. 122.

Held, (1) that where an information under Newspapers, Printers and Reading Rooms Repeal Act, 1869, Section 1, Schedule II (re-enacting 2 and 3 Vict., Ch. 12, Sections 2, 4) is not filed in the name of a Law Officer, the proceedings are void, and the justices have no power to amend the information; (2) that it is insufficient that the Attorney-General has given his fiat, or that the information is preferred in the name of a police officer "on behalf of the Attorney-General."

As to the obligation to print the name and address of the printer: see **Halsbury**, Vol. 23, Title "Press and Printing," Part 1, Sec. 2, Par. 390.

RAILWAYS AND CANALS.—Charges—Remuneration on additional capital "raised and provided"—Capital expenditure out of reserve funds.—Railways Act, 1921, and Schedule of Standard Charges, In re L.J. p. 120.

Held, that sums obtained by railway companies by drawing upon accumulations of undistributed profits, pension funds, and other reserves, and spent upon capital undertakings are not "additional capital raised or provided" within Railways Act, 1921, Section 58 (1) (b).

As to adjustment of charges to revenue: see **Halsbury**, Vol. 23, Title "Railways and Canals," Part VIII, Sec. 4, Par. 1552.

WORK AND LABOUR.—Insurance—Unemployment—National Health—Failure to pay employer's contribution—Conviction—Order to pay arrears—Recovery—Civil debt.—Fishwick v. Gyani L.J. p. 121.

Held, that where an employer is convicted for failure to pay contributions in respect of unemployment insurance and national health insurance, and an order is made for the payment of arrears of unpaid contributions, such arrears can only be recovered as a civil debt and not as part of the penalty imposed by the Court.

As to payment of contributions for unemployment insurance: see **Halsbury**, Vol. 28, Title "Work and Labour," Part IV, Sec. 2, Pars. 1576-1580.

As to payment of contributions for national health insurance; see **Halsbury**, Vol. 28, Title "Work and Labour," Part V, Sec. 4, Par. 1619.

As to penalties for non-payment of contributions: see **Halsbury**, Vo. 28, Title "Work and Labour," Part V, Sec. 13, Par. 1789.

REGISTRATION OF VOID DOCUMENTS UNDER LAND TRANSFER ACT.

by

W. M. Hamilton, Esq.

The decision in the case of Boyd v. Mayor etc. of Wellington (1924) G.L.R. 489 involves questions of considerable interest in relation to the effect of registration under the Land Transfer Act. According to the opinion of the majority of the Court the rule of indefeasibility of title through registration appears to invest the mere official act of registration with power of actual creation as distinguished from registration of rights. This seems to suggest that the Court regards the Land Transfer System as something more than a mere registration system and that it considers that the Statute contemplated placing more power in the hands of the Registration Official than the recording of and certifying to rights submitted to him for registration. The view expressed by the late Mr. Justice Salmond who dissented from the decision was that the rule of indefeasibility of title "does not mean that he who wrongly however honestly procures the registration of a void instrument or other void transaction thereby succeeds in validating that instrument or other void transaction in his own favour and so acquiring an indefeasible title with the result that he by his own wrong obtains the land and leaves the Crown to compensate the true owner out of the Assurance Fund. On this interpretation the whole law as to the validity and invalidity of conveyances and other transactions inter parties would be set aside and rendered inoperative so soon as either party succeeded however negligently in inducing the District Land Registrar to register the transaction. I find nothing in the Act or in the public policy which underlies it sufficiently to justify so remarkable extension of the doctrine of indefeasibility of title. On the contrary it seems to me that Gibbs v. Messer is a direct and binding authority to the contrary." Mr. Justice Stringer who also dissented from the decision of the majority agreed with this view and said that but for the supposed effect of the decision in Mere Roihi's case he would have thought it unanswerable.

In view of the far-reaching effect of such an extension of the doctrine of indefeasibility which the decision in Boyd's case appears to suggest and the fact that the Court was divided the case appears to be of sufficient interest to warrant more than passing notice. It seems difficult to reconcile the decision that a Proclamation even if invalid confers a valid title when registered with the judgment in Gibbs

v. Messer (1891 A.C. 248) which says "that there is no enactment which makes indefeasible the registered right of the transferee or mortgagee under a null deed." The Court however appears to have been influenced by a difficulty in reconciling Gibbs v. Messer with the Mere Roihi case (1905 A.C. 176) for otherwise it seems hard to see how the decision could have been arrived at in the face of Gibbs v. Messer.

If such difficulty is the explanation of the decision it is respectfully suggested that the difficulty is more apparent than real and that a close examination of the two cases does not disclose anything irreconcileable. In the Mere Roihi case the question did not relate to a null document. It was held that the documents were irregular but not invalid "To treat the Memoranda of Transfer as waste paper appears to their Lordships to go a great deal too far. They were not valid as transfers but they were the first step for obtaining such transfers . . . . There may have been irregularities in the procedure adopted but their Lordships are of opinion that the Act of 1894 put matters right and there was nothing wrong in substance—nothing to affect the validity of the final certificate and registration of the Company as owner." Surely this indicates that if the document had been an absolute nullity such as a forgery or a document executed by say a lunatic or otherwise invalid the decision would have been the other way. Yet in the Boyd case the decision was that the Proclamation even if invalid would confer a valid title. It is suggested that in both of the cases of Gibbs v. Messer and the Mere Roihi there was a recognition of this principle that rights must exist before registration in order that the title created by registration is immune from attack.

It has to be borne in mind that the Land Transfer Registration System although it differs from the Deeds Registration System in that it registers rights and not merely documents is still only a registration system "The essential feature is that transactions in land are effected by their being registered or recorded in a public office instead of being effected solely by the execution of instruments or the occurrence of events." Hogg on Australian Torrens System page 2.

The functions of the Registration Official in the Deeds System is merely to record documents which are the evidence of rights. His act has no effect on the transactions. His function under the Land Transfer System is however to give effect to the transaction and to certify as to the rights created by it. Now it is plain that if a document is a nullity and there is no transaction there are no rights and there is nothing to register. So in Gibbs v. Messer where there had been no transactions and no rights created there was nothing to register and this explains the passage "Forgery is more than fraud and gives rise to considerations peculiar to itself." The document in that case was mere waste paper but in the Mere Roihi case it was held that the documents in question were not waste paper but valid as evidence of rights. In the one case there were no rights to register. In the other case there were. There is no magic in the Registration Officer's signature to create rights where none existed but only to evidence the rights that do exist.

It may be objected that Gibbs v. Messer says that forgery may be the root of a title under the Act and that therefore the Registration Officer's signature can create rights. In answer to that it is submitted that this objection is based on a misconception and a want of appreciation of the scope and purpose of the Act. Admitting that the Act does contemplate that the rule of indefeasibility of title shall have the effect of making forgery to be the root of a title by enabling a bona fide purchaser without notice from a registered proprietor who has procured his title through a forgery then that purchaser acquires rights, not through the signature of the Official but by virtue of the rule created by the Statute. If he gets a transfer from a registered proprietor he gets something which in itself confers rights upon him which he is entitled to have registered and if the Registrar refused to register that transfer the purchaser could go to the Court to compel registration, just because he had right arising out of a transaction which it was the duty of the Registrar to give effect to by registration. Incidentally it may be observed however that an interesting question might arise if the purchaser had only an agreement and no transfer. The agreement cannot be registered. The bona fide purchaser could presumably compel specific performance from the registered proprietor notwithstanding the title is obtained through the forgery of his vendor.

The writer ventures to submit that if the signature of the Registration Officer is allowed to have the effect of actually creating rights it is going further than was contemplated by the legislature and further than is necessary or desirable for the carrying out of a registration system. It seems unfair that a rightful innocent owner should in such a way be dispossessed of his property in exchange for a mere right of action. Even money may be an inadequate compensation for as His Honour the Chief Justice himself has truly said "The taking of a man's land cannot always be compensated for in money." Stevens and Anor v. Mayor etc. of Carterton (8 G.L.R. at p. 353). In that case he also says "It may be that following out the decision of the Assets Company v. Mere Roihi to its logical conclusion may lead to great injuries being inflicted on innocent people. That practically is not a matter for this Court. If the Legislature thinks that the decision should be modified it must apply the remedy."

These remarks indicate that His Honour was not convinced of the justice of what he took to be the effect of the Mere Roihi case and no wonder, for why should the owner and possessor be liable to have his vested rights disturbed and exchanged for a claim against the Assurance Fund? Why should it not be the purchaser who should look to the fund. Surely the fund was intended rather as a security for the person who parts with his money on the faith of the Register than on the person who finds himself dispossessed and taken off the Register involuntarily.

WELCOMING NEW JUDGES.

In a paragraph which appeared in our issue of the 9th June under the heading of "Bench and Bar" referring to the welcome given by the Taranaki District Law Society to Mr. Justice Alpers at New Plymouth, His Honour was reported to have made a jocular reference to his understanding that quite recently the New Zealand Law Society had passed a resolution deprecating welcomes to Judges. His Honour's informant was in error, we now learn, in attributing such a resolution to the New Zealand Law Society. We understand that the Council of the Wellington District Law Society passed a resolution on the subject, but that no such action has been taken by the New Zealand Law Society.

LONDON LETTER.

The Temple, London,
13th May, 1925.

Dear N.Z.,

Politically speaking, we have thought of little but the Budget since I last wrote to you. I believe I promised you (or, promised myself) further expansion on this topic; but I think I had better refrain, inasmuch as the horizon is now obscured by internal conflicts of the party, or its press, and it is a little hard for a simple lawyer to discover whether the new insurance scheme is to be the beginning or the end of our industrial greatness? Naturally we expected a good deal of trouble about silk, every other leg in London and the provinces being now adorned with champagne-coloured stockings of the taxable material. At any rate, the inspectors should have an easy task of knowing the amount of it in use!

We are, of course, concerned in the industrial recovery of this country and we cannot be indifferent to the question of the effect of the insurance outlay upon it. I can only offer two observations: the present condition of the engineering trades is as bad as it ever has been and the sources of future hope are not as yet disclosed. Whatever be the rights of insurance schemes, there is no doubt that industry generally is in no mood or state to be further burdened in any but the most urgent cause. On the other hand, the budget is said to be as much Mr. Baldwin's as Mr. Churchill's; and Mr. Baldwin is an intimate of the engineering trades and cannot be blind to, or unmindful of, the dire extremity and needs of industry. We may, therefore, presumably, have faith. No doubt we shall ultimately recover, but it is my opinion that we shall be a long time doing it and that the "slump," which is as visible in the Temple as anywhere, will last another two years, the worst months of which are yet to come. Sixpence off the income tax, and a larger remission as to earned income, are meanwhile temporary consolations.

Legally speaking, we have had a positive crop of cases in the last fortnight. The "Industrial and Provident Societies" case (which I mentioned in my last letter, was very fully reported on May 9th. It looks as if your Fortnightly Notes will be ahead of our Weekly Notes in recording the over-ruling of Dibble v. Wilts and Somerset Farmers Ltd. (1923) 1 Ch. 342, if the latter is not careful! I fancy that your view will be that the matter is of considerable importance; as I write it is not apparently known whether the point will be carried to the decision of the House of Lords. Next, though I have suffered considerable pain over the appellants' name already, I suppose I should be failing in my duty if I did not here again refer to the case of Forsikringsaktieselskabet National (of Copenhagen v. Attorney-General (1924) 1 K.B. 366, in which the House of Lords has upheld the Court of Appeal; which upheld Branson J., who gave a judgment as to the liability of a foreign insurance company to make a deposit under our Assurance Companies Act, 1909, notwithstanding that its only business in this country was re-insurance; which judgment, lastly, caused a stir in the foreign insurance world and gives rise, as it is said, to the serious possibility of reprisals! The upsetting of Rowlatt J. by the Court of Appeal, in Buerger v. Cunard Steamship Co., Ltd., has left the experts in some doubt as to who is right, the upsetters or the upset? Of that case, fully reported in the "Times" of 30th April, a sufficient reminder will be the headnote from the "Morning Post" "legal digest" of January 26th, Coram Rowlatt J., and May 4th, Coram the Court of Appeal: "Bill of Lading—Condition requiring declaration of value of goods over £50 and payment of extra freight—Bill handed to owner of goods after sailing of ship—Liability of shipowner." The moot point is as to "deviation"; and the difference of opinion between the two courts was as to the inclusion under that head of a journey to a destination other than that named in the bill, the substitution having been effected of necessity and by agreement. In Southport Corporation v. Birkdale District Electric Supply Company the limitation of a public undertaking's powers to charge consumers for electricity, by the self-imposition of a maximum price, was discussed and held not to be ultra vires its statutory constitution; in In re a Deed of Arrangement, No. 9 of 1924, the claim of a creditor, who had not assented to a deed of arrangement, to have resort to the summary procedure of Sec. 23 of our Deeds of Arrangement Act, 1914, was negatived: and in In re Gibbs and Houlder Brothers Lease: Houlder Brothers v. Gibbs, the question was gone into, as to the reasonableness or unreasonableness of a lessor's refusal to consent to its lessee's proposed assigning of a lease, the grounds and motive of the refusal being that the proposed assignee was already a lessee of the same lessor and that the latter, by consenting to the assignment would, in a short time, have changed two lessees into one lessee. The point arose, of course, upon a covenant in a lease, not to underlet, etc., except with consent, such consent not to be "unreasonably withheld." It was obviously reasonable behaviour, in common parlance, for the lessor to have objection to a course which would reduce the number or certainty of his own lessees; but in law, and from the point of view of the covenant, it was equally obvious that the refusal, to be "reasonable," must have some application to the unfitness, as lessee, of the proposed assignee. The latter view was, the Court held, the relevant one; and a refusal, in no way depending upon or suggesting the undesirability of the assignment or assignee proposed, was held to be necessarily "unreasonable" in the circumstances and for the purposes in question.

It is the concern of the City rather than of the Law Courts that Rowlatt J. was upheld by the Court of Appeal, in his judgment in the Smyrna Fire cases (American Tobacco Company v. Guardian Assurance Company, and others). Unless you are contemplating wars or civil commotions in your own country, I doubt if you will discover any interest, other than the financial, in them. I suspect, moreover, that our much canvassed Sutton judgment in the House of Lords, turning upon the war-service remuneration of civil servants and now applied, though with reluctance, by the Court of Appeal in last week's case of Druce v. Railway Clearing House, is of too particular a nature to affect you; though, not knowing all the circumstances touching the recruiting and service overseas of your gallant officers, non-commissioned officers and men in the late war, I may be wrong. Reference to the London papers of May 8 last, will, in any case, fully inform you. Somewhat akin is the case of Dewhurst v.

Salford Guardians (1925) 1 Ch. 139, in which the judgment of Astbury J., there appearing in the Law Reports, was on the last day of April reversed by the Master of the Rolls, Warrington and Sargant L.JJ.: "Poor Law Officers Superannuation Act, 1896—Deduction from remuneration for superannuation benefit—War Bonus—Contracting out." The Court of Appeal said that there must and could be no contracting out.

Two other cases of some popular interest may, however, be discussed, the first being Bridges v. Griffin or "What is Milk?" I, personally, hold very strong views on the treatment of milk-dealers, at law. True, there is about the trade to-day more than a suspicion of profiteering; and I may well be wrong in letting my love of the countryside lead me into a too warm defence of the farmers, in this matter, and a too ready assertion that the iniquity (such as exists) lies with the wholesalers and the retailers in the towns. In parenthesis I may say that my conscience does not trouble me unduly, even if I am wrong: heaven knows that rural interests in England to-day need every advocate they can get, in the face of the overwhelming, utterly selfish and not a little dangerous claims of the towns. But I class all dealers in milk together, when I protest, with all the violence permissible, against an unscrupulous system of law which assumes (under the Sale of Food and Drugs Act, 1875, the amending Act of 1879, and the Milk Regulations of 1901) that the dealer is guilty of abstraction or dilution, when the milk is not up to a good standard, unless and until he can establish his innocence; and, the cause of my annoyance, persists in that assumption even after the dealer has proved his individual innocence up to the hilt but has necessarily left an interval uncovered the events of which are not susceptible of such proof? The common instance is the period while the milk is on rail, travelling in unlocked churns because the companies insist that the churns shall not be locked; and the case in which all the authorities are quoted, and the law illustrated, is, of course, Hunt v. Richardson (1916) 2 K.B. 446. Having worked off my feelings thus I may revert to the case of the moment. A retailer keeps his milk in a churn, with a tap-outlet at the bottom. The cream rises to the top; the milk drawn off at the bottom is as good as skimmed. Is it, for the purposes of the law and convictions thereunder, as bad as skimmed? Considerable excitement was displayed by the townsfolk. At one moment the Court said that by omitting the obvious expedient of stirring, the permission of the natural process amounted to an active abstraction. This seemed very hard on a retailer, whose milk was conceived to be turning itself into something else all the time he was selling it? Still harder did it seem, when Shearman J. pointed out that the very process of stirring might turn it into butter, or buttery milk? Eventually it was decided that the permission of the process constituted an offence, and that the milkman must stir or be damned. Up rose the leader-writers to protest that if the milk of London is to be thus stirred during its rounds, what dirty milk it will be upon delivery! I feel some confidence that you, with your wider knowledge of these matters, will agree with my rusticated views: none of them seem to know very much about milk? Hardly could cream be accidentally thus separated, during process of sale; still less could it be turned into anything like butter, by an occasional stir on the rounds? And as for the dirt, about which there is so much fuss, the means for stirring, without removing the top of the churn, is quite easy to provide and is quite familiar apparatus.

A case much more worthy of attention is Rex v. General Commissioners of Income Tax: ex parte English Crown Spelter Co. Ltd. In Whelan v. Henning (1925) 1 K.B. 387, it had, as you know, been held, in respect of dividends in a company out of England and assessed on a three years' average, that there could be no tax when there was no dividend. To get at this decision, the House of Lords judgment in Brown v. National Provident Institution (1921) 2 A.C. 222 was construed as ruling not merely that there could be no tax unless the source of income existed during the year of charge, but further that there could be no tax unless the income itself existed during the year of charge. A bold but entirely justifiable attempt was now made to carry this to its logical conclusion. Profits had been estimated for the year of charge, at the beginning of that year upon the three years' average; the Commissioners had made their assessment upon that estimate and their demand upon their assessment, which had, of course, gone unappealed. The year meanwhile coming to a conclusion, enough at any rate to demonstrate that the actual profits were a loss (if I may be permitted that Irishism), but the process of assessment being complete and the time for appeal gone, the taxpayer moved for a writ of prohibition to prohibit the commissioners from acting on their assessment! What do you think of that? To me it sounded startling but entirely logical, and I was not satisfied by the mere emphasis with which the Lord Chief Justice expressed the judgment of the Divisional Court despising and rejecting Sir Patrick Hastings' forcible argument. I obtained sight of the papers. The transcript shows that Sir Douglas Hogg treated the contention with a much greater respect that did the Judges, thereby shewing himself to be the more able and the wiser lawyer in my view. If you read the judgments in the two cases cited, and reported as above, you will probably feel dissatisfied with the reasoning of the Divisional Court and will anticipate, with an open mind, hearings higher up.

And by now I must surely have exceeded my space, and so must withdraw, reminding you hastily as I do so that Whelan v. Henning, above-mentioned, is on the verge of review itself, in the House of Lords.—Yours ever,

INNER TEMPLAR.

DOMICIL AND DIVORCE.

"Hard cases make bad law" is a legal maxim not to be found in Broom but one nevertheless which has far greater force than many another to which the Bench shows infinite respect.

The decision of the Chief Justice in Olsen v. Olsen, of which a summary is given on p. 93 of the present volume of B.F.N. may be in a hard case, or it may not. Undoubtedly, however, it is bad law.

The result of the decision is that where a wife has been deserted by her husband all she has to do is to come to New Zealand to obtain relief from the bonds of matrimony. Marriage and a matri-

monial offence seem to be the only matters material to her obtaining release a vinculo matrimonii—It does not matter what the husband's domicil was or is—Our courts can, according to the learned Chief Justice, give his wife relief.

As mentioned by Stout C. J., the Divorce and Matrimonial Causes Act 1908 S. 21 (3) retains to a deserted wife her N.Z. domicil for the purposes of the Act notwithstanding that her husband may have since the desertion acquired any foreign domicil. The effect of this enactment was discussed in Poingdestre v. Poingdestre 28 N.Z.L.R. 604, where the Full Court decided that the enactment was within the competence of our Legislature though the divorced persons might still remain after their divorce in New Zealand man and wife in another Country. It should be remembered that this legislation was based on the domicil of the wife, a domicil which she derived from her husband's being or having been in New Zealand and that the Statute purports to grant no relief to a deserted wife whose husband was never docimiled here. Denniston J. in Poingdestre's case cites a long note from Dicey on the Conflict of Laws 2nd Edition, Page 805, on which the learned Judge based the conclusion that the tendency of modern judicial authority was to hold that a wife deserted by her husband who had also changed his domicil might for the purpose of obtaining a divorce possess a domicil different from that of her husband. Denniston J. may have had a prescience of the judgment in the case under discussion. It is, however, significant that the passage referred to is omitted in the 3rd Edition of Dicey v.p. 846. This Edition, to the editing of which the Author was a party, refers to Keyes v. Keyes & Gray 1921 p. 204, where Duke P. held that the Indian Councils Act 1861 did not extend to the making of a law to empower Indian Courts to decree the dissolution of marriages of persons not domiciled within their jurisdiction. An examination of this Act 24 and 25 Vict. C. 67 S. 22, shows that the powers of legislation conferred on the Governor General in Council are more extensive, being almost unlimited in their terms, than those conferred by the New Zealand Constitution Act. Referring to Keyes's case Dicey proceeds in the following words—

"Though some doubt is possible as to the precise ratio decidendi of the case there seems no real doubt as to the impossibility of English Courts recognising save under statutory authority divorces granted on any other basis than that of domicil. The rule has inconvenient results with regard also to divorces granted by Courts in the Dominions in which jurisdiction is recognised to exist not merely in the case of persons domiciled but in the case of wives whose husbands have deserted them and changed their dimicil. . . . . But without legislation for the purpose it does not seem that such divorces can properly receive recognition from English Courts."

We conclude that the jurisdiction of the Court to grant divorces to deserted wives is founded on domicile, (Le Mesurier v. Le Mesurier 1895 A.C. 517,) and on that only, except in so far as the Amendment Act of 1913 has enacted the limited relief it has provided in their favour.

We take it the Chief Justice dealt with this application in the way he did on the basis of the Court's having jurisdiction to grant the wife relief and not with the idea merely of giving the husband the opportunity of objecting to the jurisdiction. On that basis we have dealt with the judgment.

There are two statements of the law in the Chief Justice's remarks to which we must demur. He says—referring to the husband—"It may be that he has no domicil. He may have abandoned his domicil and he may not have got any other domicil." This is clearly wrong—Dicey's Rule 2 is "No person can at any time be without a domicil"—3rd Edition p. 98. The statement is repeated time after time in the judgments of the Law Lords in Udny v. Udny L.R. 1 Sc. App. 441, cited with approval by Stout C. J. in Browne v. Browne 1917 N.Z.L.R. 425 at p. 429.

Secondly, the Chief Justice says as a reason for granting leave to issue the Citation "He (the husband) may admit the jurisdiction of the Court and if he admits it then the Court would undoubtedly have power to grant a divorce." We have yet to learn that consent can create a jurisdiction which does not exist. Consent may undoubtedly be effective to bring parties within the scope of the Court's jurisdiction for the purpose of determining their rights in cases where such a jurisdiction exists but not for the purpose of enabling the Court to exercise a jurisdiction it does not, apart from the consent, possess. Cf. 9 Hals pp. 13, 14.

EVIDENCE?

In his lengthy reasons Reed J. made a curious statement in Re Bylaw No. 39 Auckland City Council: Ex parte The Auckland Omnibus Proprietors Association. The decision has not been reported yet but there appears a note of the case in the present number of this Journal. In reference to the question whether there was any necessity for the diversion of the traffic from Queen Street, Auckland, he said "I am satisfied that, before the omnibuses were excluded from Queen Street, the congestion was such that action by the Council to relieve it was justified. **I feel supported in this conclusion by the fact that both the Auckland Daily Papers expressed that opinion at the time.**"

If the learned Judge allowed the admission of those paper reports in evidence or himself introduced them then he has departed to an alarming extent from the well-known rules of evidence and unless he satisfied himself of the position independently altogether of the Press opinions then he has not done justice to the case as relied on by the Bus Proprietors.

Laxity of the rules of evidence is frequently to be noticed and as often is Justice flirted with. We ought to know what class of evidence is available in most cases, but we venture to say that not even the imagination of a K.C. would have warned him of the possibility that the expression of opinion of a daily paper on a matter of fact would weigh in the smallest degree with the serious deliberation of a Judge.

Mr. Stephen Hugh Moynagh, of Nelson, Barrister and Solicitor, has been admitted into partnership in the firm of Messrs. Glasgow, Hayes and Rout. The firm will be carried on hereafter under the style of Glasgow, Rout and Moynagh.

Mr. W. H. Carson has been admitted as a Solicitor by Mr. Justice Sim on the motion of Mr. E. J. Smith.

FUSION or SEPARATION ?

by

H. F. von Haast, Esq.

Mr. Harold Johnston in his thoughtful article on "Fusion" does not make quite clear the position of the profession in Victoria. As a "leading case" on the admission of practitioners of other countries to that State, may I explain? In law and in theory the professions are amalgamated. There is only one set of qualifications required and a man having qualified, is admitted both as barrister and solicitor. But in practice the two branches of the professions are really as much separated as they are in New South Wales. Barristers congregate together in Chambers by the Courts and do not practise as solicitors. Solicitors have their offices in the City and do not practise as barristers. For a few years after the amalgamation, a few practitioners endeavoured to practise both as barristers and solicitors, "amalgams," as they were called. They were frowned upon by the Bench and by both branches of the profession, became a sort of legal pariahs, and the "amalgam" before long ceased to exist.

I do not agree with the Editor and Mr. Johnston that there are indications of a separation in New Zealand. The reverse is the case. After all these years only one barrister has been found bold enough to practise as a barrister only in Wellington, and two, I am told, have recently taken a similar step in Auckland. But the practice of briefing senior counsel that was almost universal when I came to Wellington in 1903 has been here at all events largely replaced—except in cases of special difficulty—by the tendency for one of the partners of the firm, if he either has or thinks he has any ability as an advocate, to conduct the litigation arising out of that firm's business. This is noticeable in the country since the circuit work was extended as well as in the cities. The late Sir John Salmond not long before his death commented to me on this tendency, and the large number of juniors who were conducting their own cases. This tendency seems likely to grow for these reasons. The desire to keep the business in the firm and to get the profits of the barrister's work as well as those of the solicitor's. The saving of expense to the client. There is no question that the employment of outside counsel to conduct litigation is more costly to the client. Anyone who has seen two or perhaps three counsel and the solicitor all in the Supreme Court together and who knows the fees paid for consultations with counsel cannot fail to realise how costly under these circumstances a law suit is to a client, and how many clients must be deterred from litigation by the expense of briefing counsel. Moreover, the practitioner who undertakes the common law work of his firm and does both the solicitor's work and the barrister's work in connection with cases is generally better instructed as to the nature of the evidence and the peculiarities of the witnesses than counsel whose knowledge is confined to the brief in his hands. Then the art of advocacy has been considerably simplified. Instead of the technicalities formerly required in pleading, almost any slip-shod form of pleading passes muster, and Judges properly amend freely so as to try the real issues between the parties. Most of the rules of evidence have been gradually whittled away, eloquence is at a discount and makes little impression on juries, who in any event in cases against a Government Department, a big firm or company whatever the skill with which the counsel conducts his case generally give a verdict against him. Generally speaking, the conduct of a case in the Supreme Court is a much more free and easy affair than it used to be. The clients, the people who want a run for their money in the law courts, seem satisfied with the present system, and the probability is that it makes for simplification and economy in litigation. As our cities grow, it may be that more practitioners will be emboldened to practise as barristers only and even to specialise, as they do in England, in special branches of the law, but that time is not yet.

REVIEWS.

THE PLEA OF JUS TERTII IN EJECTMENT.

We have read the article under the above title appearing in the last number of the Law Quarterly. It is excellent. We take this opportunity of congratulating the author, Mr. S. A. Wiren, who is a Barrister in practice in Wellington. Mr. Wiren has dealt with the subject exhaustively and his conclusions are based on premises which he clearly states. Perhaps he is correct in his opinion that the plea of jus tertii is admissible though the matter is not free from doubt. Whether he be right or not he has produced an article worthy of close study and reference. The class of matter finding expression within the covers of the Law Quarterly is well known for its high quality and the Journal loses nothing in this respect from having accepted Mr. Wiren's article. That Mr. Wiren's article should have attracted the attention of our contemporary The Law Journal is also strong evidence of the high standard and usefulness of the article.

THE SALE OF GOODS ACT 1893.

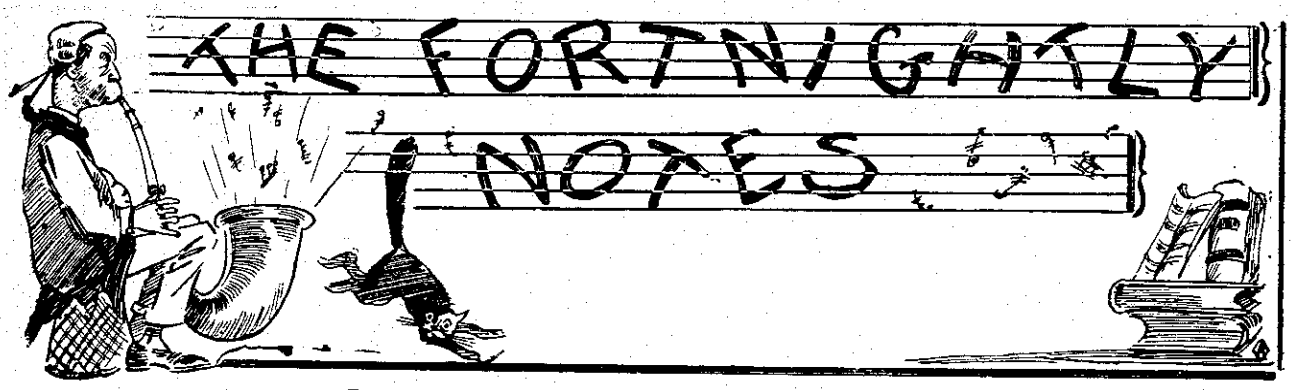
BY Sir M. D. Chalmers, K.C.B., C.S.I.

The tenth edition of this work is again available in the Dominion. In this edition the notes have been revised and some new illustrations have been added to the sections of the Act. Since the last edition (1922) there has been no legislation directly affecting the provisions of the Act, except as regards Ireland, but a good many cases of interest and importance have been decided. For example, Sumner, Permain and Co. v. Webb and Co. illustrates Lord Wrenbury's dictum (in a marine insurance case) that illegality according to Foreign Law does not "affect the merchant." Callot v. Nash discusses the liability of a husband for "necessaries" supplied to his wife when the wife has ample separate estate. British and Benington v. N. W. Cachar Tea Co. further develops the complicated rule that, although a written contract cannot be varied by parcel, it may yet be abrogated by a subsequent oral agreement. S. Sanday and Co. v. Keighley, Maxted and Co. shows that words of expectation may nevertheless constitute a binding condition. Sterns Ltd. v. Vickers Ltd. shows that when the buyer delays to take delivery, goods may be at his risk before the property in them has been transferred to him. The history of this Text Book through its ten editions is interesting. The author originally drafted the Bill in 1888. He then settled it in consultation with Lord Herschell, who took charge of it. He introduced it in the House of Lords in 1889 to get criticisms on it. In 1890 there was no opportunity to proceed with it but in 1891 the Bill was again introduced into the Lords and referred to a Select Committee comprising Lords Herschell, Halsbury, Bramwell and Watson. A question arose as to the Bill's extension to Scotland so it stood over until 1892. It passed through the House of Lords 1893. It was amended by a select committee of the House of Commons and finally became law in 1893. Sir M. D. Chalmers completed his first edition in 1894 when he was a County Court Judge at Birmingham. The book has reached ten editions in thirty years. This is not surprising seeing that each edition has been the work of the author who was himself the original draftsman of the Act.

CHARTER-PARTIES AND BILLS OF LADING.

By Sir T. E. Scrutton and F. D. MacKinnon, K.C.

The twelfth edition of this work was published in London in April.



By H. F. von HAAST, Esq. (Tune: "Father O'Flynn.")

1.
You may talk of the Law Times, Law Journal, Law Quarterly,
Boast of their learning and progress quite haughtily,
WE have a Journal that's started off sportily;
Here is success to the Fortnightly Notes!
Letters from London, law suits near and far,
Wisdom of Judges and wit of the Bar
Archie's collecting, and then he's selecting
What's worth recollecting for Fortnightly Notes.

CHORUS.
Here's success to the Fortnightly Notes
Help with your pens, and your purse and your throats
Send in to Archie, stuff spicy and starchy,
Quips benchy and barchy for Fortnightly Notes.

"—Into the bar disallowed their intrusion, etc."

4.
When Hosking kept busy on Mortgage Extension
Into the Knighthood received his ascension,
All the delight of the lawyers finds mention,
Duly recorded in Fortnightly Notes.
When Francis Harrison bids us good-bye,
And we're not ashamed of a tear in each eye,
Archie is telling how at his farewelling,
Our sorrows is swelling in Fortnightly Ntoes.

5.
When Algie explains that our Law Education
Badly requires complete reformation
And Stephens and von Haast express approbation
Their views are worth study in Fortnightly Notes.
How Hawkins, whose suavity nothing can mar
Became secretary, resigned Registrar,
Archie's narrating,
Us congratulating
On him nominating
In Fortnightly Notes.

6.
When von Haast is singing a song that is topical
Audience trusting 'twill not be too tropical
Is it from motives he thinks philanthropical
Or has he a Brief from the Fortnightly Notes?
Is there now dawning a different day,
When lawyers express their ideas without pay?
Archie is smiling, it is his beguiling
That sets us compiling for Fortnightly Notes.

"Archie's collecting and then he's selerting."

2.
If Alpha J. makes a jest that is cynical
Though to his dignity slightly inimical,
Archie extracts it with surgery clinical,
Makes an appendix to Fortnightly Notes.
If Omega Justice, when "Clubs" is the play,
Fails to discard in the recognised way,
Archie's revealing how Micky appealing
Demands a fresh dealing, in Fortnightly Notes.

3.
When Harold declares that he doesn't like Fusion,
Solicitors should be kept in seclusion,
Into the Bar disallowed their intrusion,
You'll read his opinions in Fortnightly Notes.
When Treadwell C.H. in an argument strong,
Shows how the Court of Appeal has gone wrong,
When Archie has read it, well, you'll hardly credit,
His father he'll edit in Fortnightly Notes.

"When lawyers express their ideas without pay."

7.
Then fill up your glasses and drink the toast merrily
Whiskily, portly, champagnely or sherrily,
Show that the enterprise you esteem verily
Of those who have founded the Fortnightly Notes.
Better worth Butterworth surely can't give give
Like the bay may it flourish, and long may it live,
Legal news stating, our views ventilating, weak judgments berating
The Fortnightly Notes.

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