[TUESDAY, AUGUST 4, 1925

Butterworth's Fortnightly Notes

VOL. 1. No. 12. WELLINGTON, N.Z.: AUGUST 4, 1925.

ANNUAL SUBSCRIPTION £2 17 6. IN ADVANCE £2 7/6.] [Registered as a Newspaper at the General Post Office.

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Butterworth's Fortnightly Notes.

"Of Law there can be no less acknowledged than that her seat is the bosom of God, her voice the harmony of the world; all things in Heaven and Earth do her homage, the very least as feeling her care and the greatest as not exempted from her power."

—Richard Hooker.

TUESDAY, AUGUST 4, 1925.

SUPREME COURT.

Stout, C.J. June 22, 24, 1925.
Auckland.

SAYES v. JACKSON.

Agreement—Statute of Frauds—Negotiations in writing—Whether final agreement—Rates not provided for.

This was an appeal from a Magistrate and was dismissed. The facts are sufficiently set out in the short reasons of Stout, C.J.

Anderson for appellant.
Sellar for respondent.

STOUT C.J. said: The claim is based on the breach of an agreement to lease. The first objection is that there was no agreement in writing and no entry into possession of land said to be agreed to be leased. In answer to that objection the appellant says there is writing evidencing an agreement. No such has been produced. There must be an agreement signed by the person to be charged. There is no such writing. There is a reference to negotiations but none to an agreed or executed agreement. On the contrary, the evidence showed that the parties were not ad idem. The question of who was to pay rates was not settled. It was urged that if there was no agreement as to paying rates, there would be implied in the lease that the tenant was to pay rates. There no doubt is such an implied covenant in a document in writing, of a lease or an agreement in writing, but there is no implied agreement as to rates in oral agreement or in the terms in the stage the conversation had reached. The position which the Magistrate has found is that the parties had not reached a final agreement. In my opinion that was the fact. The question as to who was to pay for the rates had not been fixed.

Solicitors for appellant: **Anderson and Sneddon**, Auckland.
Solicitors for respondent: **R. Sellar**, Auckland.

Stout, C.J. July 12, 14, 1925.
Wellington.

OWEN v. ROBINSON, FALSELY CALLED OWEN.

Divorce—Respondent divorced from husband in Reno Nevada—Husband not served in Nevada—New York State not recognising divorce—Effect of Reno divorce on subsequent marriage—Nullity.

The material facts are that petitioner's domicile is New Zealand, and some years ago when on a visit to America he met the respondent, an American lady, domiciled in New York. After his return to New Zealand it was arranged that the respondent should proceed from America to Australia, where the petitioner met and went through a form of marriage with her. They both then came to New Zealand to reside here permanently. Shortly after their arrival in New Zealand the question of the validity of the marriage arose. Prior to the marriage between petitioner and respondent, the respondent was married in Brielle, New Jersey, in United States of America, to a Doctor Robinson, an American citizen domiciled in New York, but she left Doctor Robinson and proceeded to Reno, Washoe, State of Nevada, United States of America, and after a short residence there obtained a divorce against the Doctor on grounds of cruelty and non-support. Reno appears to be a spot favoured by persons desiring an easy divorce. The Doctor, although served, was not served within Nevada and did not enter any appearance or submit to the jurisdiction of the Nevada Court, but remained domiciled in New York.

Stevenson for petitioner: I refer Your Honour to the affidavits filed by Barristers of the American Courts and experts in American law. These establish (1) That New York State, the husband's domicile, will not recognise a divorce granted by the Nevada Courts under the above circumstances as effectual to dissolve in New York the respondent's marriage with the Doctor; (2) that in New York State the respondent is still the wife of the Doctor, and was such when she went through the form of marriage with petitioner and; (3) that the Doctor could now procure in the Courts of New York an absolute divorce from the respondent based upon her marriage with the petitioner herein and such divorce would be binding on the parties in every other State of the United States of America. Each of the 48 States of the United States of America has independent jurisdiction in the matter of divorce within its own boundaries. The Courts of one State will not recognise the validity of divorces granted by other States under certain circumstances. If the Courts of the husband's domicile in America will not recognise the divorce, English and New Zealand Courts will not. Directly in point is **Cass v. Cass** 26 T.L.R. p. 305. I refer also to **Armitage v. Attorney-General** (1906) Probate Division p. 135. **Green v. Green and Anor** (1893) Probate Division p. 89. **Le Mesurier v. Le Mesurier** (1895) A.C. at p. 540.

Respondent did not appear.

STOUT C.J. (Orally): I accept the affidavits filed as to the American law on the subject. The English law is quite clear, and **Cass v. Cass** is directly in point. I declare the marriage between petitioner and respondent null and void. It is not necessary for me to grant a decree nisi in the first instance, and I therefore grant a final decree at once annulling the marriage.

Solicitors for petitioner: **Izard, Weston, Stevenson and Castle**, Wellington.

Ostler, J. July 21, 1925.
Wellington.

HARDING v. HARDING.

Divorce—Wife out of New Zealand—Wife desiring to come to New Zealand to give evidence—Discovery—Whether security to be found before discovery ordered.

In a petition for dissolution of marriage based upon mutual separation for three years, petitioner served papers upon respondent who resided in London, Ontario, Canada. The order fixing time for filing answer was subject to certain prescribed conditions and (inter alia) one in the form of an undertaking by petitioner to pay expenses of respondent in proceeding to New Zealand to defend suit should she decide to come here. Respondent's form of answer was simple denial of allegation relating to mutual separation. Respondent sought security for costs to enable her to come to New Zealand, but petitioner maintained that respondent's evidence should be taken on commission and filed an affidavit that his means were only £4 weekly. He also sought discovery of documents which was opposed on ground that security should first be given and that discovery was only a fishing expedition and, if allowed, would amount to a complete disclosure of defence.

Leicester for respondent.
Luckie for petitioner.

OSTLER J.: In this case, the petitioner is clearly bound by the form of order to which he consented. He must pay the costs of bringing respondent to this country. These I fix at £60. Discovery may be obtained, but before sealing the order he must find the security for respondent's costs fixed by the Court.

Solicitors for petitioner: **Field and Luckie**, Wellington.
Solicitors for respondent: **Leicester and Jowett**, Wellington.

Stout, C.J. June 19, 24, 1925. Auckland.

LITTLE v. NEUMEGEN.

Family Protection Act—Son's claim against father's estate—Son's misconduct—Inability to work through intemperance—Estate small.

This was an application by a son for a share of his father's estate on the ground that he was not fit for hard work. The facts revealed that the applicant had four sons. The deceased had left him nothing because his own misconduct had left him poor. In April, 1921, applicant's wife divorced him mainly on the ground of his intemperance.

Munro for plaintiff.
Hogben for executor.
Northcroft for Public Trustee.

STOUT C.J. said: "I do not hold that a drunkard cannot claim for maintenance under the provisions of the Family Protection Act, but in this case the following facts have to be considered: (1) He has wasted his means through drink; (2) very probably he has also injured his health by his indulging to excess in intoxicating liquor; (3) he can do light work and does work occasionally; (4) he has sons whose duty it is to assist him; (5) the estate is small. It was estimated as being worth £1000 but so far it has not been realised and at present there is no chance of it realising £1000. The property is to go to infants. I have considered the case of **In re Fletcher** (1921) N.Z.L.R. 649. The circumstances in that case were very different from the circumstances of this case and only a small amount was ordered to be paid. I think that as the applicant is doing occasional work it will be better to order that the application be adjourned for two years. It will then be seen how he behaves and in what position his family is as to giving him assistance and also how much the property realises. I would not give him any part of the capital but he might get some small share of the income if at the end of two years he can show he is then entitled. Summons adjourned for two years."

Solicitors for applicant: **Bond and Munro**, Auckland.
Solicitors for defendant: **Neumegen and Neumegen**, Auckland.

Ostler, J. June 23, July 6, 1925. Gisborne.

COTTER v. THE KING.

Lease—Arrears of rent—Forfeiture—Petition for relief—Offer of rent in arrear—Exercise of Court's discretion.

Petition under the Crown Suits Act 1908 for relief against forfeiture. Subsequent to the date of two leases of Native land the Crown purchased the land affected and became entitled to the reversion. The lessee became negligent in payment of rent. The Crown treated him with great forbearance. The rent was £86 a year. In February, 1924, there was £220 owing for rent. In December, 1924, £92 6s 4d was the amount in arrear. Lessee was informed that if rent not paid up before December 31, 1924, the Crown would resume possession, and the lease would be forfeited. On December 19 lessee asked the Crown to withhold proceedings till after the holidays. This was agreed to. On January 13 rent was still unpaid and lessee's solicitors were advised that the Crown Ranger had been instructed to resume possession. He did so the next day. On the 15th lessee offered the rent to date but he was told it was too late. His solicitors then wrote offering rent to date. This was also refused. Lessee then on May 12 petitioned claiming relief against forfeiture. Meantime land was let under monthly tenancy for grazing purposes.

Burnard for petitioner.
Nolan for Crown.

OSTLER J. in allowing the petition said: Mr. Nolan admite that under the circumstances of this case the Crown is in no better position to resist the claim for relief than a private lessor would be, and in my opinion that is the position. That being so, I think it is clear that I ought to grant relief upon terms. A right of re-entry for non-payment of rent has from early times been treated in equity merely as security for the payment of the rent, and if the landlord can be put in the same position, no matter how negligent the lessee may have been, the Court in the exercise of its equitable jurisdiction ought to grant the relief. In this case there is no evidence either that the lessee is insolvent or that he has broken the covenants of the leases otherwise than by his failure to payrent. The goodwill of the two leases is worth at least £1500 and probably more. Although the lessee was very much in arrear with his rent, yet he had reduced the arrears very considerably before the forfeiture was enforced, and he would suffer a heavy loss if relief were not granted.

He will, however, have to pay the Crown's costs of the petition, and it is admitted by Mr. Burnard that he will have to take back the leases subject to the temporary tenancy granted by the Crown.

The order will be that on payment to the Crown within 21 days after the date of the order of all arrears of rent in respect of the two leases up to the date of forfeiture and of the Crown's costs of the petition, which I fix at £15 15s, the lessee shall stand and be relieved from the forfeiture of the two leases occasioned by the non-payment of rent, subject to the temporary term already granted by the Crown.

If the Crown can by giving any notice determine the temporary lease earlier than the six months it ought to do so. There will of course be no rent due to the Crown under the leases from January 14, 1925, the date on which the forfeiture took effect, until the date upon which the lessee resumes possession, upon which date the leases will revive, but the rent will have to be apportioned.

Solicitors for petitioner: **Burnard and Bull**, Gisborne.
Solicitors for Crown: **Nolan and Skeet**, Gisborne.

Ostler, J. June 18, 20, 1925. Gisborne.

MOSS ET ALL v. MAHONEY.

Partnership—Dissolution—Appointment of receiver—When one of partners may be appointed.

The plaintiffs and defendant were partners and dissolved as such on October 17, 1924. Term of dissolution was that one of plaintiffs should inter alia get in assets. A mortgage was one of the assets but until now was believed valueless. Defendant now refused to allow one of plaintiffs to act as receiver for purpose of selling mortgage. Plaintiffs therefore applied to Court for declaration of dissolution of partnership and for appointment of one of plaintiffs as receiver. The only point contested was whether one of plaintiffs should be appointed receiver.

Burnard for plaintiffs.
Hill for defendant.

OSTLER J. said: It is true that as a general rule on a dissolution of partnership, unless with the consent of the others the Court will not appoint one of the partners as receiver. But this is not an inflexible rule of law, and the cases show that in some circumstances this can be done: see **Sargant v. Read** 1 Ch. D. 600. Now in this case the defendant agreed that the plaintiffs should get in the assets and pay the debts, and left them to undertake this work, and to act vertually as receivers. They have realised all the assets except this mortgage, and it alone remains to be realised. The evidence called and the admissions made convince me that this mortgage can be sold for a definite sum (offers to purchase it having been made and still being open), and that both parties are satisfied with that sum and are anxious to realise the mortgage at that sum. That being so the only objection put forward by the defendant that neither of the plaintiffs have sufficient experience to undertake the realisation of the mortgage is of no validity. All that has to be done is to accept certain offers that are open, and which both parties are anxious to accept. The defendant has not attempted to show that he will be prejudiced in any other way by the appointment of one of the plaintiffs as receiver. Indeed it is obvious that he will not be prejudiced in any way, and it will probably save the partnership an appreciable sum if the receiver appointed is one of the plaintiffs instead of an outsider. Seeing that the defendant agreed to the plaintiffs exercising the powers of a receiver in winding up the partnership affairs

that the only asset involved is the mortgage mentioned, which can be realised for a sum which both parties are willing to accept; that the plaintiffs are the purchasers of and are carrying on the business, and also own between them two-thirds of the nett proceeds of the liquidation; that the defendant will not only be not prejudiced, but will be saved expense. I am of opinion that I ought to appoint one of the plaintiffs as receiver, and I accordingly make an order appointing Sydney Thomas Moss Receiver, upon his undertaking, if the offers mentioned are still open, to accept them promptly.

Solicitors for plaintiffs: **Burnard and Bull**, Gisborne.
Solicitors for defendant: **R. B. Hill**, Gisborne.

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

July 20, 1925.

THE KING v. DISTRIBUTORS, LTD., AND OTHERS.

Practice—Court of Appeal—Right to hear three counsel—Printed Case.

The Crown sought to recover penalties of £500 from and injunctions against Distributors, Ltd., and four flour-milling companies for breaches of Section 5 of the Commercial Trusts Act 1910 relating to monopolies. Judgment was given by Mr. Justice Sim in favour of defendants and was appealed from. Leading counsel for Crown did not appear in Court below, and Attorney-General made application to hear third counsel who conducted proceedings in Supreme Court. The evidence and exhibits, constantly referred to by both sides, amounted to some three hundred odd pages.

Sir F. H. D. Bell, K.C. (Attorney-General), **Fair, K.C.**, (Solicitor-General) and **Adams** for appellant.
Skerrett, K.C., Myers, K.C., and **Leicester** for respondents.

The Court of Appeal held that leave should be granted to appellant to address Court by three counsel.

REED J.: A difficulty encountered by the Court is picking out portions of the evidence or the exhibits to which counsel refer. To read whole passages takes up too much time, but it would be a great convenience if the lines on all the pages were numbered.

SKERRETT: That is the practice in the Privy Council appeals, and is highly desirable.

STOUT C.J.: I think that in all cases in the Court of Appeal where there is a mass of evidence to which reference is to be made appellants should follow practice of Privy Council and number the lines.

Herdman, J.

Mar. 24, June 5, 25, 1925.
Auckland.

FRASER v. JAFFERY.

Trust—Not in writing—Statute of Frauds—Fraud—Whether statute applies—Court's equitable jurisdiction.

In an action to restrain the defendant dealing with certain land on the ground that he held it in trust for the plaintiff Herdman J. found that the land was not the property of the defendant and found for the plaintiff as prayed. The facts are immaterial for the small point of law here noted.

Sellar for plaintiff.
Finlay and **Horrocks** for defendant.

HERDMAN J. after disposing of the facts said: The trust is not contained in any writing so there has been no compliance with the Statute of Frauds but as was pointed out by Lindley L.J. in **Rochefoucauld v. Boustead** (1897) 1 Ch. at page 206, the Statute of Frauds does not prevent the proof of a fraud and it is a fraud on the part of a person to whom land is conveyed as a trustee and who knows it was so conveyed to deny the trust and claim the land himself. Then again this Court, as a Court of Equity despite any provisions contained in The Land Transfer Act, can and will enforce a trust against a registered proprietor where the facts warrant the interference of a Court of Equity. In my opinion the plaintiff in the present action is entitled to invoke the assistance of this Court for the purpose of asserting his rights.

Solicitors for plaintiff: **Sellar and Gardiner**, Auckland.
Solicitor for defendant: **H. A. Horrocks**, Auckland.

COURT OF ARBITRATION

Frazer, J.

July 10, 1925.
Auckland.

SEED v. WILSON AND HORTON, LTD.

Workers Compensation—Strain with paralysis supervening—Compensation paid—Work resumed worker unable to continue—Condition no worse than after original strain.

The plaintiff was employed by the defendant company as a packer, wrapping bundles of newspapers and lifting them on to trucks. The lifts were in some cases of a heavy nature. In May, 1924, plaintiff felt he had strained himself while lifting a bundle of newspapers, and accordingly consulted Dr. Tewsley, who diagnosed the trouble as paralysis due to cerebral haemorrhage, which might have resulted from a strain. The defendant company treated the plaintiff well, giving him full pay for one month, and half pay for a further month. Plaintiff was then given light work with no lifting. In about four weeks plaintiff virtually resumed his old work, and carried on for twelve weeks. On or about October 18, 1924, plaintiff felt unwell after lifting a parcel weighing about 100lbs., and could not continue work next day. After rest for the week-end he carried on with difficulty for a day or so, after which he had to give up work altogether, and has not worked since. The defendant company paid plaintiff half wages until the end of 1924.

Dr. Tewsley, the plaintiff's medical adviser, in giving evidence, stated that the plaintiff's present condition had not altered much since May, 1924, also that he had suffered from excessively high blood pressure, about 180 to 190.

Northcroft for plaintiff.
Richmond for defendants.

FRAZER J. delivered his judgment orally saying: "It can be taken, however, that the strain of October 18, 1924, amounted in law to an accident. Now, what was the effect of the accident? It certainly incapacitated the plaintiff for a while, but we cannot get away from Dr. Tewsley's evidence that the plaintiff's condition is not materially worse now than before the accident. The doctor said, in answer to a question from myself, that plaintiff was not allowed to work now, and that that was the only difference. He might go back to work, and have the good fortune to stand it for a while. On the other hand, he might break down almost at once. The fact that he had previously had a haemorrhage would not disentitle him to compensation, but the essential point is that he is really not more unfit for work now than he was in October. There would have been a claim for compensation for the time during which the plaintiff was suffering from the immediate results of the strain. He would have been entitled to compensation for some weeks, but the company has paid him wages up to the end of December, 1924. That would exclude or be a set off to any claim for compensation for added incapacity during that time. Judgment must therefore be for the defendant company."

Solicitors for plaintiff: **Glaister and Ennor**, Auckland.
Solicitors for defendants: **Buddle, Richmond and Buddle**, Auckland.

Mr. W. N. Matthews, lately of the firm of Spratt and Matthews, Hawera, has retired from that firm and is going to Wellington to practise on his own account. Mr. Matthews before joining Mr. Spratt was employed in a Wellington firm of solicitors. Mr. Spratt is continuing in practice in Hawera.

SOME PRACTICAL SUGGESTIONS ON THE WILLS OF SMALL FARMERS.

by

J. Glasgow, Esq., LL.B., Nelson.

It is not supposed that these suggestions will be of any value to the experienced practitioner; they are intended to help that rather large class of young Solicitors, who are, under our system of legal education, launched on the public without adequate practical office training. A young man starting in a small country township without much experience will find, when faced with the task of drafting a farmer's will, that the English precedent books alone are hardly a sufficient guide.

The class of farmer whose will it is proposed to discuss is not the large runholder on the one hand, nor on the other hand is it the owner of land corresponding with the school child's definition "A farm is a piece of land covered with mortgages." In dealing with the latter class it is manifestly useless to impose any trusts and the only thing to do is to leave everything absolutely to the widow in the hope that she may be able to pull through somehow.

Take however the very common case of a farm belonging to a working farmer capable of yielding him and his family a fairly comfortable living and only mortgaged (if at all) for such an amount as can easily be raised in the event of the existing mortgage being called. In many such cases if the farmer dies the proceeds of the sale of the land and stock would not produce a sufficient income to keep the widow and family; whereas if they stop on and work it they can at least get the necessities of life. It will probably be suggested that in such a case the best plan is an absolute gift to the widow, and while this may be so in many cases it will be found in practice that the average farmer prefers to leave a life interest only to the widow. It is in regard to such a case that the following suggestions are offered.

As to Trustees.—It is generally advisable that the widow be one of the trustees, and if her interest is to cease on re-marriage it will be advisable to insert a clause terminating her trusteeship also in that event. Appointing grown up sons to act with the widow is not always satisfactory unless they are already established on farms close at hand. If they are young they will be of little use from a business point of view and will also in all probability be wanting to go away and make a start on their own in some other part of the country long before the trusts are ended. If however sons are appointed it should be borne in mind that when the property is eventually sold they may be among the most likely buyers and it may be advisable to give them power to purchase notwithstanding their trusteeship. The writer's experience is that it is better not to appoint as trustee anyone who is a probable buyer. If the testator has a couple of reliable level-headed farmer friends or relations in the neighbourhood they will often be found more satisfactory as trustees than members of the family.

While on the subject of trustees a word of warning may be given; trusteeship is a somewhat thankless task and anyone undertaking it is certainly entitled to reasonable protection. The draftsman should remember however that the primary purpose of the will is to protect the widow and children and not to make the trustees task an easy one, and the clauses empowering and protecting the trustees should not be made so wide as to remove all sense of responsibility from them. One cannot read the recent amendments to the Public Trust Act without a suspicion that they were framed more for the convenience of the Public Trust Office than the advantage of the beneficiaries.

The very usual practice of making the whole estate subject to the trusts of the will is not always satisfactory. While it may be advisable to give the widow a life interest only in the stock and implements this does not apply to the furniture and household effects and as a general rule it is best to make an absolute bequest of these to the widow.

The main scheme of the will remains to be considered. The idea of course is to let the widow, with the help of such members of the family as may be at home, carry on the farm, while the property remains vested in her and the other trustees who are available for advice when required. Assuming the widow to be a capable woman the trustees can be empowered to let her carry on without their intervention if they think fit. Whether this is stated or not, it is what will happen in nine cases out of ten. In whatever way this scheme is carried out it is necessary that there should be a power to sell the land either in the widow's lifetime or afterwards in the case of necessity arising. This can be done either by a trust for sale followed by an indefinite power of postponement, or by a mere power of sale if the trustees deem such a course advisable. If the former is adopted care must be taken to negative the rule in Howe v. Dartmouth (see Hartigan v. Consadine 17 Gaz. L.R. 703 and Public Trustee v. Roskell 1923 Gaz. L.R. 102) and in doing this it is as well to make it clear that the whole of the profits and income go to the widow in the first year as well as subsequently.

If the widow is left in sole possession to carry on, it seems quite possible that the stock and implements may eventually come within the order and disposition clause in the case of her bankruptcy. The case of Re Pharazyn (15 N.Z.L.R. 709) seems to suggest that in such a case it is the duty of the trustees to take a registered bailment before letting the widow into possession, but the writer is not aware of any actual case in New Zealand where a trustee has been held personally liable for not doing so. It is certainly not the practice to take such bailments and it is worth considering whether the will should not either direct that a bailment be taken or else expressly declare that the trustees need not do so. In the latter event an inventory should certainly be signed by the widow and held by the trustees.

The life tenants statutory power of leasing will require to be modified or negatived altogether and in lieu thereof suitable powers of leasing for comparatively short terms given to the trustees.

The framing of the clause giving the trust property to the children after the death of the widow needs some care. In such clauses the word survive is often very loosely used; and in framing clauses substituting grandchildren or remoter issue for deceased children it is quite easy unwittingly to make the whole clause bad for remoteness. The use of

the words "born in my lifetime" in the clause on page 163 of Hayes and Jarman's precedents (14th edition) seems quite arbitrarily and unnecessarily to restrict the object of the testator's bounty and seems to have been introduced to make it clear that the word "survive" is used literally. It is submitted that the better course would have been to use the words "live after" instead of "survive" and then by appropriate words make sure that the gift is kept within the time allowed by the rule against perpetuities. With much diffidence the following clause is suggested to meet the average case:—

> "And from and after the death of my said wife Upon Trust for such of my children as shall survive me and being sons or a son shall have attained or shall attain the age of twenty-one years and being daughters or a daughter shall have attained or shall attain that age or shall have married or shall marry under that age in equal shares as tenants in common and if there shall be only one such child then upon trust for that one PROVIDED ALWAYS that if any son or daughter of mine shall die in my lifetime or if any son of mine shall survive me but die under the age of twenty-one years and in either of such cases such son or daughter so dying shall leave issue born in my lifetime or after my death but in the lifetime of the son or daughter so dying who if male shall have attained or shall attain the age of twenty-one years or if female shall have attained or shall attain that age or shall have married or shall marry under that age such issue shall take and if more than one equally among them (per stirpes through all degrees) the share in my estate which their his or her parent would have taken if such parent had lived to attain a vested interest therein."

It is submitted that this clause negatives the construction of "issue" as limited to "children" and lets in remoter descendants but at the same time provides against the risk of making the limitations too remote.

Before using this clause it should be ascertained whether or not at the date of the will any child of the testator has died leaving issue (see re Tarbutt 1922 Gaz. L.R. 139 and the cases there cited).

Of course in small estates such as are the subject of this article the shares of grandchildren would be so small as to be hardly worth considering and in such cases a testator might prefer to leave the estate to such of his children as are living at his death and attain twenty-one without providing for the children of any dying in his lifetime.

BENCH AND BAR.

Mr. George Alexander Eddows of the staff of Mr. Gatenby, Auckland, has been admitted as a Solicitor of the Supreme Court on the motion of Mr. W. J. Gatenby by His Honour Mr. Justice Reed.

Mr. Harrison Nutter Spencer of the staff of Messrs. Spencer and Spencer, Auckland, has been admitted as a Solicitor of the Supreme Court by His Honour Mr. Justice Reed on the motion of Mr. N. B. Spencer.

Mr. Rowland Ashley Otira Hayman has been admitted as a Solicitor of the Supreme Court by his Honour Mr. Justice Reed on the motion of Mr. Cocker. Mr. Hayman is on the staff of the Lands and Deeds Department at Auckland.

Messrs. Spencer Smith and Charles W. Thorp have entered into partnership as Barristers and Solicitors at Motueka in the Nelson District. Mr. Smith has been practising in Motueka for some little time and Mr. Thorp has purchased the branch business at Motueka of the Nelson firm of Messrs. Fell and Harley, of which he was manager.

LAW DINNER

A dinner was given at the Hotel Cecil, Wellington, by the profession of the Wellington District at which there was a large gathering of the profession from all parts of the Dominion. The Bench was present with the one exception of His Honour Mr. Justice Adams who has not yet recovered from his indisposition. Mr. Robert Kennedy presided by virtue of his office of President of the Wellington District Law Society. There were about 90 members of the profession present and it was gratifying to see that leaders and juniors of the Bar attended in such large numbers. The speeches were excellent, that of the President being full of interest and humour. The response to the toast of the Judges was made by the Chief Justice and Mr. Justice Alpers. The former in advising the younger members of the profession of the way to proceed and succeed suggested that each should read at least five books a month. The interpretation of the word "books" was not to include novels the reading of which the Chief Justice did not recommend. Mr. Justice Alpers imported humour of a rare quality into a speech which shewed there was no deep gulf between the Bench and the Bar at any time. At the same time there was that respect due from each to the other which was material to the retention of the high standard in the administration of Justice. Sir John Hosking toasted the Legal Profession to which Sir John Findlay replied. The songs were sung by Messrs von Haast, White and Barker. Mr. von Haast's song "The Fortnightly Notes" complimentary of this Journal and which in our last number we published at length was received with the greatest enthusiasm both Bench and Bar joining in the chorus.

LONDON LETTER.

The Temple, London,
27th May, 1925.

My Dear N.Z.,

Greetings at or about Empire Day! The occasion was duly celebrated at this end, there being a noticeable sentiment abroad that, under the stress of our own economic difficulties of the moment which, however they may worry us, certainly tend to draw class and class together in a common effort, things go more favourably as to Imperial consolidation. May it be so! which being said devoutly, let us get our noses down to our proper business, the Law.

Coming at once to the authorities, there are first four judgments of the House of Lords to be cited: Sorrell v. Smith and Others, Mackenzie Brothers v. The Admiralty, Harnett v. Bond, Eccott v. Aramayo Francke Mines Ltd. To take the last first, and to be rid of formidable complexities with the detail of which I will not worry you but for the generality of which I may refer you to the judgments of the Court of Appeal to be found in the reports of the grouped cases, Attorney General v. Avelino Aramayo and Co.; Avelino Aramayo and Co., v. Ogston: Eccott v. Aramayo Francke Mines Ltd. (1925) 1 K.B. 86; this was a battle proper between the wits of a Limited Company and those of the Inland Revenue, the latter seeking to impose the liability to income tax, which the former most ingeniously were attempting to avoid by re-

arrangement of their internal management in relation to their external operations. The Company being mainly engaged in working mines abroad and marketing their produce at home, and with joy and hope observing the effect of the Egyptian Hotels case (1915) A.C. 1022, created a local Board abroad to carry on the business in co-operation with a selling agent at home, and, by excluding the Board of Directors in England, to become untaxable as not carrying on their trade in the United Kingdom. You will probably recall the circumstances of a case which, having regard to that ever-threatening problem of double taxation, is no doubt of considerable importance in your affairs; and, by reference to the reports, you may easily refresh your memory as to the technicalities which so much plagued Bankes L.J., Scrutton L.J. and (although he does not complain so audibly of them) Atkin L.J. also. My friend R. P. Hills, Junior Counsel to the Inland Revenue, warns me to be chary of stating a broad principle too readily as established by this very peculiar case. Subject to that, you may accept the "Morning Post's" digesting of the point, May 25, as accurate enough: "An English Company working mines in a foreign country, through the instrumentality of a local board in that foreign country, and marketing the products through a firm of agents in the United Kingdom, is a company carrying on business in the United Kingdom and liable to be assessed for income tax."

You will next recall last year's sensational case of Harnett v. Bond turning upon the confinement of a plaintiff in a lunatic asylum by, as he alleged, the defendant doctors' negligence. The technical point of the case turns only upon the question of damages and the element of direct chain of causation between the original injury and the ultimate damages. The House of Lords affirmed the Court of Appeal, which decided that the periodical inspections and certificates, required by the Lunacy Acts at the hands of independent doctors and officials and as essential conditions to the continuance of the detention of persons placed in the asylums, are anything but mere formalities, and that the event of them in this case constituted a novus actus interveniens between the original act of the doctors placing the person in the asylum and the continuance of the restraint. Newspapers, recalling the public excitement in the case, refer to it as Mr. Justice Lush's case; so I may suitably shed my tears, in this context, that Lush J. is to be no more with us, as a Judge of first instance. We loved him on the circuits; he is such an essentially charming and courteous man; good manners are ingrained in him. And yet with his kindness goes no sort of weakness. As a young man, it was one of my chief business-combined-with-pleasure occupations to listen to his cross-examinations, over the way in the Courts. It was simply incredible how that gentle enquiring, politely inquisitive, readily sympathetic King's Counsel used to lead the most profound and habile liars to their utter destruction. In cases where there were a number of co-plaintiffs or co-defendants, and consequently a number of counsel to cross-examine the same witness and have their methods compared in my attentive ear, it was particularly startling to observe how terrific, overwhelming, devastating attacks upon witnesses would be void and of no effect, whereas a humble, unassertive and at the very most slightly pained question or two from Montague Lush K.C. would bring the whole fabric of the witness' evidence clattering to the ground, all the audience being thrilled at the debacle but Lush seeming to be entirely unaware of what had happened! It was indeed a touch of genius: he took it with him from his advocate's business to his Judge's functions. Oft-times determined, myself, to confound a lying witness, but making no progress with any confusion except perhaps my own, I have experienced the wonder of it as Lush J., craning forward from the Bench to catch every word of the questions and the answers and to see that the utmost consideration should be shown for witness by counsel and by witness for counsel, has joined in, apologetically: "But, Mr. Witness (whatever his name might be), do you mean to say that . . . .?" which was the smooth beginning of a sticky end for that same witness. However, our loss is your gain; and I really think you may be entirely happy at the prospect of his presence at the table of the Judicial Committee of the Privy Council.

Mackenzie Brothers v. The Admiralty dealt with one of those essentially interesting points which have arisen from the emergency orders and operations of the war. A distillery was occupied as a mine-filling depot by the Admiralty, and meanwhile the business of distilling was, in general, prohibited temporarily pending overbearing needs of the State of the requisite materials, etc., of the trade. The distillery was retained after the prohibition was removed, and the owners of it were further excluded from the use of their property by a fire which took place during its requisitioned services. Meanwhile, with the remission of the prohibition came an opportunity to make abnormal profits upon the resumption of their business; but this opportunity had come and gone, by the time the owners regained the use of their distillery. It was suggested that the loss was "Simply and solely" due to the war, for that the opportunity of abnormal profits was "simply and solely" a creature of the war. The House of Lords rejected that ingenius argument, and held the true interpretation of the events to be that the requisition and the fire had caused the loss of opportunity, whatever might be the origin of that opportunity; and the matter was remitted to the War Compensation Court to assess what the value of the thing lost might be. I think this is a useful principle to bear in mind? It has an analogous bearing upon many of those questions with which we are puzzled on the subject of damages; and I shall be curious to see if the editors of Mayne on Damages agree with me, and note it in their next edition.

As to Sorrell v. Smith, a case arising upon the battle of two federations, the one retail newsvendors and the other wholesale, and brought to issue by the pressure brought upon a certain wholesaler to cease supplying a certain retailer, I advise you to retire into a quiet corner with a copy of last week's Law Journal (May 23) and the appropriate volume of Smith's Leading Cases. The point is a simple enough one: Allen v. Flood has no doubt remained at the back of your mind since your legal childhood. But the solution of it, and the reconciliation of the trilogy, Allen v. Flood (1898) A.C. 1, Mogul Steamship Company v. McGregor (1892) A.C. 25 and Quinn v. Leathem (1901) A.C. 495, are most

intricate and difficult matters, not lightly to be approached in a correspondence essentially friendly and admittedly, or rather undeniably un-academic. I may tell you that the case has not attracted very great attention, among lawyers in practice, as yet; but probably that is due to our ignorance and lack of foresight, and it may well be, as is hinted, that in history it will take a very memorable place. I pass the warning on to you; and descending from the House of Lords to the Police Court, I remind you that the telling of fortunes from cards is necessarily a "deceiving," though you, in adopting that profession, may be the first to be deceived by your own art! You will be a vagrant, if you are caught doing it, however profound your honesty; and you may even become an incorrigible rogue and vagabond if you go on doing it. In other words Stonehouse v. Masson (1921) 2 K.B. 818 has been extended to even stronger circumstances of ostensible innocence and our old Vagrancy Act of 1824, Section 4, is declared to have the widest scope and apply to the most innocuous necromancers.

Our Criminal Justice Bill is, in committee, providing much cause for contention to our lawyers who sit upon it: the Attorney General, the Solicitor General, their respective and immediate predecessors in title and Curtis Bennett, Cautley, Nield (Sirs and K.C's) and others. The struggle seems to be round the words which, on summary proceedings (be they final trial of minor offences or preliminary enquiries of major offences) shall be put to the person charged. Again I confess to the ignorance and failure to understand these nice distinctions which is found in the man who merely practises the law: for what purpose on earth they want to change the present words, I am unable to comprehend? The words in use are a longish rigmarole, but an intelligible one, in my experience: and everybody seems to understand them and the Clerk is always so used to the business as to be sure of preventing the accused committing any indiscretion in his own cause. On indictable offences, the result is always explicit and utilitarian: either the accused has made it clear that he definitely shows no sort of fight, never has, never will, in the matter, or else, on the depositions and in the ears of the Jury it is known only that "I reserve my defence." There, however, it is: if we will insist upon maintaining and paying six hundred odd legislators, we must, I suppose, forego the luxury of maintaining any old and tried institution at the same time.

Lastly as to our new Judges. Bateson J. is an excellent, but from a gossiping point of view an intolerably dull, appointment. These promotions of Treasury Counsel always are: it is impossible to rouse oneself over an event which has, for years, been going to happen. I think I dealt with this particular Judgeship in a former letter, informing you, as a "tip", of the name of the new Judge but putting in half a dozen or so other names, to cover myself. Wright J. is a romantic appointment. He was a pupil of Rowlatt J., as was I. (This seems to add enormous value and merit to Wright J? His association, I mean, not with Rowlatt J. but with me.) The former told me that from his first moment at the Bar, R. A. Wright's merit was outstanding and impossible not to see at a glance. And yet for innumerable years, as they must have seemed to Wright J., not a solicitor nor a brief came his way. His first appearance of any moment was before Rowlatt J., himself, as it happened; you will remember that whereas Wright J. was called in 1900, Rowlatt J. came to the Bench in 1912, only. And Rowlatt J. thought to himself, as he told me: "Well, thank goodness for the sake of English common-sense and the discrimination of our profession, that someone has at least had the sense to give one brief to R. A. Wright before he disappears from among us and is no more seen!" Within a twelvemonth or so of that first appearance, he had a large and certain practice, and became the giant of the Commercial Court and of such repute that his promotion to the Bench in 1925 is regarded as a very belated recognition!—Yours ever,

INNER TEMPLAR.

PROTECTION OF ACCIDENT INSURANCE POLICIES.

(A Reply.)

I have read with interest the notes on the Protection of Accident Insurance Policies in your issue of 14th April last. While I feel indebted to your contributor for drawing attention to the matter, I am unable to agree with either his reasoning or his authority. A decision is hardly open to comment merely because it does not agree with a prior decision which was not cited in argument and which is itself a doubtful if not an incorrect exposition of the law.

In the first paragraph of your contributor's note he seems to imply that if the policy in question were paid for out of the Bankrupt's earnings (in this case it was not) it became his property. This however is not a correct statement of the law. Since the case of In re Roberts (1900) 1 Q.B. 122, it is definitely settled that the personal earnings of a bankrupt pass like any other property to his trustee except such part as is necessary for the maintenance of himself and family. In re Bennett (1907) 1 K.B. 149 the Court held that not only did life policies acquired by an undischarged Bankrupt pass to his trustee but also that the trustee could recover the proceeds from his personal representatives who had already received them.

It is unfortunate that the case of Mitchell v. Scott 5 N.Z.L.R. S.C. 274 mentioned by your contributor was not brought under the notice of the Court. In The London and Lancashire Insurance v. Fisher (1924) N.Z.L.R. 1236 none of the Counsel engaged in the case were aware of that decision which is unfortunately listed in the New Zealand Digest, and I personally had made a careful search for authority. After due consideration of Mitchell v. Scott I maintain with all due respect to Richmond J. that his decision is not in accordance with the Law. Briefly put his reasons are these:—

(1) That because a life insurance policy imposes no obligation on the assured to pay the premiums during his lifetime therefore payments for the insurance "are not by the policy provided to be made during the lifetime of the insured or 7 years at least" and to be payable by equal instalments at intervals of not more than a year" within the meaning of these words in the statute.

(2) That the power of the insurer in the case of an accident policy to refuse to renew the contract beyond the current year is not an essential difference.

But are these reasons valid? Just in passing I might point out that Richmond J. overlooked altogether Endowment Policies and that the words of the Act are expressly designed to include these. It is true that a life Insurance policy does not in so many words bind the assured to continue to pay the premiums but it does expressly provide for the payment of the premiums for life, or a term of years in the case of an endowment policy, and binds the insurer to accept them for that period. These are express

terms of the contract. What precisely is the contract between the parties? I cannot do better than quote the definition given in Dalby v. India and London Life Assurance Co. 15 C.B. 387 "The contract called Life Assurance is when properly considered a mere contract to pay a certain sum on the death of a person in consideration of the due payment of a certain annuity for his life . . . . The stipulated amount of the annuity is to be uniformly paid on the one side and the sum to be paid in the event of death is always . . . . the same on the other." See also Sir Geo. Jessel's definition in Fryer v. Moreland 3 Ch.D. at 685.

What on the other hand is the essential nature of an accident insurance policy? In terms it is expressed to be for one year only. At the end of each year it may be renewed by consent but each renewal in effect constitutes a new contract and not a renewal of the original contract. Stokell v. Heywood (1897) 1 Ch. 459.

In the case of an accident policy each premium is the consideration for the cover for the year in which it is paid while in the case of a life policy each premium is a part only of the whole consideration and cannot be specifically related or appropriated to any particular year.

It will therefore be seen that there is an essential difference between the two forms of policy. This very distinction was drawn by our Court of Appeal in Johnston v. The Ocean Accident Corpn. 34 N.Z.L.R. at 369 where Chapman J. delivering the unanimous decision of the Court said: "In the one case the duration of the risk generally coincides with the life of the assured, in the other it expires with the current year."

The object of the Act is to make these same distinctions and the interpretation placed upon it in Official Assignee of Albretson v. L. & L. Fire Insurance Co. is rational and in accordance with authority and avoids that straining of the words necessary to support the decision in Mitchell v. Scott.

[In order to enable a reply to the above criticism to be printed contemporaneously with the criticism we sent a copy to the original contributor who replied thus.—Ed.]

"I am glad of the opportunity of perusing notes on my remarks as to the decision of Herdman J. in London and Lancashire Insurance Co. v. Fisher (1924) N.Z.L.R. 1286. I still prefer the decisions in Mitchell v. Scott 5 N.Z.L.R. S.C. 274 and Thompson v. Blythe 31 N.Z.L.R. 1653. Your correspondent's notes do not seem to me to throw any light on the position. It is quite easy to extract sentences from reports of cases which have some affinity to the matter under discussion and this seems to be all your correspondent has done. All that the Court of Exchequer Chamber did in Dalby v. India and London Life Assurance Co. 15 C.B. 365 2 Bigelow's Life Insurance Cases 371 was to over-rule Godsall v. Boldero 9 Ea. 72 which had decided that a life insurance policy was a contract of indemnity and it was in doing this that Parke B. made use of the language quoted by your correspondent.

"Stokell v. Heywood L.R. (1897) 1 Ch. 459 is not a case which can be considered of much authority, though probably a correct decision on the point actually involved in it. It was not treated with much respect in University of N.Z. v. Standard Insurance Company (1916) N.Z.L.R. 509.

"With reference to your correspondent's remarks on the rights of an undischarged bankrupt to his earnings, it can scarcely be conceived, notwithstanding the remarks of the Master of the Rolls in Re Roberts (1900) 1 Q.B. 122, that the decisions referred to confine the bankrupt's rights to a bread and butter allowance for his support. If the bankrupt under an ordinary accident policy for sickness and death would be entitled to the weekly allowance for sickness as he, no doubt, would, would not his widow be equally entitled to the payment in respect of his death were he accidentally killed?"

DOMICIL AND DIVORCE.

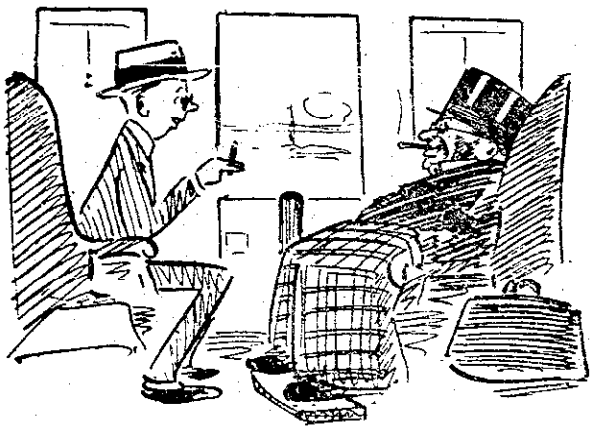
At page 130 1st column 6th and 7th lines from the bottom the words "the Amendment Act of 1913" should of course read "the Act of 1908 Sec. 21 (3)."

FORENSIC FABLES.

No. 4.

THE CIRCUITEER AND THE NICE OLD BUFFER.

A Circuiteer, Recently Elected to the Bar Mess, Determined to Try his Luck at the Assizes. Arriving at the Railway Terminus Rather Late, he Just had Time to Fling himself into a Carriage as the Train Steamed Out. It was Occupied by an Elderly Party, whom the Circuiteer Diagnosed as a Nice Old Buffer. He had a Rug over his Knees and he wore a Top Hat. He was Smoking an Excellent Cigar. The Nice Old Buffer Appeared to be Rather Sur-



prised at the Circuiteer's Intrusion; but the Latter, being of a Chatty and Affable Disposition, Soon Put him at his Ease. Before Long the Nice Old Buffer had offered him a Cigar and they were Getting on Like a House on Fire. The Circuiteer Told him about his University Career, his Uncle Thomas, the Man he had Read with in Chambers, and a Lot of Other Things. Turning to the Object of his Travels, he Mentioned to the Nice Old Buffer that he was Going to the Assizes; that Mr. Justice Stuffin was the Presiding Judge; but that the Profession did not think much of him. Stuffin, said the Circuiteer, would never have got a Justiceship on his Merits; but he had Married a Woman with a good Deal of Money and had a Safe Tory Seat. He was just going to tell the Nice Old Buffer what the Court of Appeal had Said-the Other Day about One of Stuffin's Judgments when the Train Arrived at its Destination. There were Javelin-Men and Trumpeters on the Platform, together with the High Sheriff of the County and his Chaplain. They had Come to Meet the Judge. Sick with Horror, the Circuiteer became Aware from their Demeanour towards his Travelling Companion that the Nice Old Buffer was Stuffin, J. He Made up his Mind Then and There that he had Better Adopt Some Other Profession, and Caught the First Train Back to London. He is now a Stockbroker, and Doing Very Well Indeed in the Industrial Market.

Moral. Take Care.

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

(A full note of each of the cases referred to hereunder will be found in the Law Journal for May 2, 1925, and many of the cases will be reported later in the Law Reports.)

CONTRACT—Building contract—Arbitration clause—"Completion of works"—Construction—Premature reference.—Smith v. Martin and another L.J. p. 347.

Held, that where a contract for the erection of thirty-six houses contained an arbitration clause which provided that the reference to arbitration should not be opened until after the completion of the work, a reference before the completion of the whole of the contemplated works was premature and the arbitrator had no jurisdiction and leave to enforce the award summarily should not be granted.

As to reference to arbitration of a dispute arising out of a contract: see **Halsbury**, Vol. 7, Title "Contract," Part V, Sec. 4, Par. 938.

COUNTY COURTS.—Residence of defendant outside jurisdiction—Security for costs—Order of Registrar—Appeal—Jurisdiction of County Court Judge.—Warwick v. Butler and Lauritzer L.J. p. 349.

Held, that under County Court Rules, Order 12, Rule 11 (8), a County Court Judge has jurisdiction to entertain an appeal from an order of the Registrar for security for defendant's costs.

As to security for costs: See **Halsbury**, Vol. 8, Title "County Courts," Part V, Sec. 8, Par. 1443.

DEPENDENCIES, COLONIES AND BRITISH POSSESSIONS.—Canada— Legislative powers of the Provinces—Taxation—Whether direct or indirect—Grain Futures Taxation Act, 1923 (Manitoba)—Ultra vires—Attorney-General for Manitoba v. Attorney-General for Canada and Others L.J. p. 347.

Held, that applying the test whether a tax would be in fact paid by the person from whom it was demanded or whether he would be indemnified at the expense of the ultimate purchaser, the Grain Futures Taxation Act (Stat. Manitoba, 1923, c. 17) is indirect taxation, and, therefore, ultra vires the Provincial Legislature.

As to distribution of legislative powers in Canada between the Dominion and the Provinces: see **Halsbury**, Vol. 10, Title "Dependencies, Colonies and British Possessions," Part II, Sec. 2, Pars. 929, 930.

EXECUTORS AND ADMINISTRATORS.—Will—Personal property undisposed of—No next of kin—Executor taking beneficially—"Contrary intention"—Bona vacantia.—Jones, In re; Johnson v. Attorney-General L.J. p. 348.

Held, on the facts, (1) that where a gift of personalty lapsed and there was no next of kin, there were circumstances indicative of an intention contrary to the claim of the executor to be beneficially entitled, and that the executor was by the will made a trustee; (2) that, on failure of a cestui que trust, the beneficial interest vested in the Crown as bona vacantia.

As to the presumption against executors taking beneficially, where there are no statutory next of kin: See **Halsbury**, Vol. 14, Title "Executors and Administrators," Part IV, Sec. 6, Par 660.

INCOME TAX.—Deductions from gross profits—Loss in trade—Bad debt—Defactions by manager.—Curtis v. J. and and G. Oldfield, Ltd. L.J. p. 348.

Held, that (1) where, through the negligence or dishonesty of an employee, the receipts of a business are not included in the accounts, the resulting loss is a loss in trade; (2) defalcations by a manager cannot be deducted as a bad debt under Income Tax Act, 1918, Schedule D, Cases I and II, Rule 3.

As to adjustment of duty to meet the case of a loss in trade: See **Halsbury**, Vol. 16, Title "Income Tax," Part VI, Sec. 2, Par 1309.

As to deductions in respect of bad debts: See **Halsbury**, Vol. 16, Title "Income Tax," Part VI, Sec. 2, Par. 1312.

SOLICITORS.—Costs—Money paid into Court—Set off—Charging order—Costs of appeal—Final charge by way of set off—Priority.—Knight v. Knight L.J. p. 348.

Held, that where an order has been made setting off the costs of a successful defendant against a sum paid by him into Court without a denial of liability, and plaintiff's solicitor has obtained a charging order against the balance, it is a matter for the Court's discretion whether the defendant's costs of appeal should be added to his costs of the action as a final charge by way of set-off in priority to the charging order.

As to the extent of a solicitor's lien for costs and the effect of set-off: see **Halsbury**, Vol. 26, Title "Solicitors," Part V, Sec. 9, Par. 1343.

WILLS.—Construction—Devise in trust for division amongst persons "who shall live to attain the age of twenty-one years"—Attainment of twenty-one years before date of will.—Re Rayner's Trusts; Couch v. Warner, L.J. p. 348.

Held, that where a testator devised property in trust for division amongst persons "who shall live to attain the age of twenty-one years," it would be attributing a capricious intention to the testator to exclude a person who had attained the age of twenty-one before the date of the will.

As to adoption by the Court of the testator's position in the construction of a will: see **Halsbury**, Vol. 28, Title "Wills," Part XIII, Sec. 2, Par. 1248.

PRISONS.—Convict—Removal from Northern Ireland to England.—Rex v. Governor of Maidstone Prison; ex parte Maguire L.J. p. 419.

Held, (1) that the removal of convicts from Ireland to England is authorised by Penal Servitude Act, 1853, secs. 6 and 8, the effect of which was not abrogated by Irish Convict Prisons Act, 1854; (2) that an order for removal is lawfully made by the Lords Justices of Northern Ireland as representing the Governor.

As to control and powers of the English Home Secretary in respect to prisons: see **Halsbury**, Vol. 23, Title "Prisons," Part I, Sec. 1, Par. 434.

As to Government of Ireland Act, 1920: see **Halsbury**, Vol. 7, Title "Constitutional Law," Part VI, Sec. 8, Par. 178.

(A full note of each of the cases referred to hereunder will be found in the Law Journal for April 11, 1925, and many of the cases will be reported later in the Law Reports.)

BANKRUPTCY AND INSOLVENCY.—Deed of arrangement—Secured creditor—Refusal to assent—Right to apply to Court to determine rights—In re A Deed of Arrangement No. 9 of 1924, L.J. p. 418.

Held, that a secured creditor who has not assented to a deed of arrangement executed by a debtor is not within the category of persons entitled to use the machinery provided by Deeds of Arrangement Act, 1914, sec. 23.

As to assignment to a trustee for the benefit of a debtor's creditors: see **Halsbury**, Vol. 2, Title "Bankruptcy and Insolvency," Part II, Sec. 3, Pars. 549, 550.

BASTARDY.—Evidence of spouse—Non-access—Admissibility—Still-born child.—Holland v. Holland L.J. p. 419.

Held, that evidence of non-access by a spouse is admissible in a case where the wife is delivered of a still-born child.

As to admissibility of direct evidence of access or non-access: see **Halsbury**, Vol. 2, Title "Bastardy," Part I, Sec. 3, Par. 725. See also **Halsbury**, Vol. 16, Title "Husband and Wife," Part XI, Sec. 2, Par. 983.

CORPORATIONS.—Statutory powers—Electricity—Contract limiting charges—Limitation of powers.—Southport Corporation v. Birkdale District Electric Supply Co. L.J. p. 418.

Held, on the facts, that an agreement by an electric supply company, regulating the company's charges by those of a municipal body, was not an agreement which derogated from the statutory powers of the company.

As to waiver of power conferred by statute on a corporation: see **Halsbury**, Vol. 8, Title "Corporations," Part V, Sec. 2, Par. 806.

ACTION.—Combination to induce tradesmen not to deal with plaintiff—Trade interests—Damage—Absence of intent to injure plaintiff.—Sorrell v. Smith and others, L.J. p. 487.

Held, that, although a combination of two or more persons wilfully to injure a man in his trade is unlawful, and if it results in damage to him it is actionable, yet if the real purpose of the combination is not to injure another, but to forward or defend the trade of those who entered into it, then no wrong is committed and no action will lie although damage to another ensues.

As to Damnum absque injuria generally: See **Halsbury**, Vol. 1, Title "Lecture," Part II, Sec. 3, Pars. 8-19.

INCOME TAX.—Company working mines in Bolivia—Products of mines sold in England by agents—Carrying on business in United Kingdom.—Aramayo Francke Mines v. Eccott, L.J. p. 487.

Held, that, where an English company owns and works mines outside the United Kingdom and sells the products thereof in the United Kingdom through agents, it is carrying on business in the United Kingdom and is liable to Income Tax.

As to what constitutes a carrying on of business in the United Kingdom: See **Halsbury**, Vol. 16, Title "Income Tax," Part VI, Sec. 2, Par. 1303.

LUNATICS AND PERSONS OF UNSOUND MIND.—Detention in licensed house—Reception order.—Harnett v. Adam and Bond, L.J. p. 486.

Held, that the manager of a house licensed for the reception of lunatics may compel the return of a lunatic who has left the institution on probation; and that such manager is within Lunacy Act, 1890, Sec. 330.

As to proceedings against persons acting under statutory powers: See **Halsbury**, Vo. 19, Title "Lunatics and Persons of Unsound Mind," Part XIII, Par. 1122.

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 Wick Overseers; Same v. Same and Hampton Overseers, L.J. p. 487.

Held, that in calculating the rateable value of hereditaments occupied by a public body subject to statutory restrictions, assessment on the profits basis is the only way of arriving at the fund which has to be apportioned and of ascertaining the rent of the property which a reasonable hypothetical tenant might be expected to pay.

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

REVENUE.—British company carrying on trade or business—Profits earned wholly outside United Kingdom—Corporation Profits Tax.—Alianza Co. v. Inland Revenue Commissioners, L.J. p. 486.

Held, that, where a company incorporated in England carries on its trade or business exclusively outside the United Kingdom and only keeps an office in England for the registration of and payment of dividends to shareholders resident in the United Kingdom, it is liable to Corporation Profits Tax under Finance Act, 1920 (c. 18), Sec. 52.

As to Corporation Profits Tax generally: See **Halsbury**, Vol. 24, Title "Revenue," Part III, Sec. 1, Par. 1066.

SHIPPING AND NAVIGATION.—Charterparty—Construction—Readiness to load—Notice—Cancellation clause.—Aktiebolaget Nordiska Lloyd v. C. Brownlie & Co. (Hull), Ltd., L.J. p. 488.

Held, that where by the terms of a charterparty a ship is to be treated as ready for loading from first high water after arrival and notice of readiness to load is to be handed in within specified hours, and is a condition precedent to the obligation of the charterer to load, a ship is ready to load which arrives at the port of loading but is prevented from giving notice only by reason of arrival at a time when it was too late to give such notice.

As to cancellation clause in a charterparty: See **Halsbury**, Vol. 26, Title "Shipping and Navigation," Part VII, Sec. 1, Par. 174.

(A full note of each of the cases referred to hereunder will be found in the Law Journal for May 9, 1925, and many of the cases will be reported later in the Law Reports.)

PUBLIC HEALTH AND LOCAL ADMINISTRATION.—Private street works—Apportionment of expenses—Objections—Appeal to Minister of Health.—Rex v. Minister of Health, ex parte Aldridge, L.J., p. 439.

Held, that Public Health Act, 1875, Sec. 268, has not been rendered nugatory by the provisions as to objections in Private Street Works Act, 1892, and that an appeal lies to the Minister of Health upon the apportionment, by the Local Authority, of expenses of private street works.

As to appeal against expenses charged by Local Authority: See **Halsbury**, Vol. 23, Title "Public Health and Local Administration," Part II, Sec. 5, Pars. 757, 758.

INDUSTRIAL PROVIDENT AND SIMILAR SOCIETIES.—Share qualification—Rule requiring members to take up and pay for shares—Validity—Nature of limited liability.—Agricultural Wholesale Society, Ltd. v. Biddulph and District Agricultural Society L.J. p. 438.

Held, that the limitation, under Industrial and Provident Societies Act, 1893, sec. 60 (d.), of the liability of members to contribute in a winding-up to the amount unpaid on their shares, does not involve any prohibition against a member undertaking a further or extrinsic liability under the articles of association or the rules, to take up and pay for further shares.

As to rights and liabilities of members: see **Halsbury**, Vol. 17, Title, "Industrial, Provident and Similar Societies," PartIV, Sec. 6, Par. 35.

INSURANCE.—Fire—Foreign company—Re-insurance—Deposit with Paymaster General.—Forsikringsaktieselskabet v. Attorney-General L.J. p. 438.

Held, that a foreign company carrying on a re-insurance business in fire risks in the United Kingdom is carrying on "fire insurance business" within Assurance Companies Act, 1909, sec. 1, and must pay the deposit required by sec. 2 (1) of the Act, and even if the contract of re-insurance is not strictly a "policy," the company undertakes liability within the Act.

As to deposit to be made by assurance companies: see **Halsbury**, Vol. 5, Title "Companies," Part VI, Sec. 5, Par. 1085.

As to application of requirements to foreign assurance companies: see Vol. 5, Title "Companies," Part XIII, Sec. 3, Par. 1380.

As to re-insurance generally: see **Halsbury**, Vol. 17, Title "Insurance," Part I, Sec. 7, Pars. 742-745.

LANDLORD AND TENANT.—Lease—Covenant against assign assignment—Consent of lessor "not to be unreasonably withheld"—Lessor's purpose in refusing consent.—Gibbs and Houlder Bros. and Co.'s Lease, In re; Houlder Bros. & Co. v. Gibbs L.J. p. 439.

Held, that, where a lease contains a provision under which the consent of the lessor to an assignment of the lease by the lessee is not to be withheld unreasonably, refusal to consent is unreasonable if the sole ground is something extrinsic from the assignees or their treatment of the premises and wholly personal to the lessor.

As to covenants against assignment: see **Halsbury**, Vol. 18, Title "Landlord and Tenant," Part XV, Sec. 1, Pars. 1105-1116.

POOR LAW.—Superannuation allowance to servant—Statutory pensions scheme—Compulsory contributions—War bonuses paid without statutory deductions—Power of servant to contract out.—Dewhurst v. Guardians of Salford Union L.J. p. 439.

Held, (1), that the statutory contributions by poor law officers and servants made under Poor Law Officers' Superannuation Act, 1896, should be deducted from war bonuses; (2) that the Act does not confer upon poor law officers the right of contracting out of the pension benefit as regards the war bonus.

As to superannuation of poor law officers and servants: see Halsbury, Vol. 22, Title "Poor Law," Part II, Sec. 5, Par. 1142.

Printed by Warnes & Stephenson, Ltd., 127 Tory St., Wellington, for the Proprietors of "Butterworth's Fortnightly Notes."