[TUESDAY, OCTOBER 27, 1925.

Butterworth's Fortnightly Notes

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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.

The Editor will be pleased to receive manuscripts of Articles for consideration and any suggestions with regard to the development of the Paper.

Address all communications:—The Editor,
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49-51 Ballance Street, Wellington.

TUESDAY, OCTOBER 27, 1925.

Court of Appeal Practice.

NOTICE OF MOTION.

At the sittings of the Court of Appeal which has just finished SIM J. made an interesting comment anent the present practice of giving the grounds in the Notice of Motion on appeal under the Court of Appeal Rules. The practice almost universally adopted is to use the words "Upon the grounds that the judgment is erroneous in point of fact and law." His Honour said that such a statement was frequently inapplicable and in any case quite unnecessary. He added that it is quite sufficient merely to give notice of the appeal without stating any ground at all, and that the statement of the grounds of the appeal, at all events such a statement as that quoted above, should be abandoned. Similar observations have been made by the same learned Judge and by other Judges previously.

COURT OF APPEAL.

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

July 20, 21, 22, 23, 24, 25, 27, Sept. 23, 1925.

H.M. THE KING v. CROWN MILLING CO. ET AL.

Commercial Trusts Act—Whether combine contrary to public interest.

This w s an appeal from Sim J. and was allowed by a majority of the Court, Stout C.J., Reed J. and MacGregor J., while Herdman and Alpers JJ. thought that the appeal should be dismissed. The reasons of each of the learned Judges were given at great length and it is impossible here to give more than a comparatively short note. The result is unsatisfactory inasmuch as the six Judges who have sat on the case in the Supreme Court and on the Court of Appeal are evenly divided in opinion. While nothing of great interest from the point of view of pure law has resulted yet the result of the Appeal wil have an enormous effect on the manner in which the trade affected is controlled. We hear, and it eminently satisfactory to know it, that the matter is going to the Privy Council for final determination. For the purposes of this note we take the facts and the references to the relevant sections of the Commercial Trusts Act from the reasons of Stout C.J.: It defined a Commercial Trust as "any association or combination

(a) Having as its object or as one of its objects that of (I) controlling, determining, or influencing the supply or demand or price of any goods in New Zealand or any part thereof or elsewhere, or that of (II) creating or maintaining in New Zealand or any part thereof or elsewhere a monopoly, whether complete or partial, in the supply or demand of any goods; or
(b) Acting in New Zealand or elsewhere with any such object as aforesaid;

and includes any firm or incorporated company having any such object, or acting as aforesaid":

It was applicable, however, only to the goods mentioned in the schedule of the Act. The schedule was amended by a statute in 1915, and the goods now to which the Act applies are the following:

"Agricultural implements.
Coal.
Petroleum or other mineral oil (including kerosene, naphtha, and the other products or by-products of any such oil).
Tobacco (including cigars and cigarettes).
Any article of food for human consumption and ingredients used in the manufacture of any such article."

The most important section of the Act on which the main charge in this case was based was Section 5, which is as follows:—

"5. Any person who conspires with any other person to monopolise wholly or partially the demand or supply in New Zealand or any part thereof of any goods, or to control wholly or partially the demand or supply or price in New Zealand or any part thereof of any goods, is guilty of an offence if such monopoly or control is of such a nature as to be contrary to the public interest."

The facts proved show that the parties charged did conspire to monopolise the demand or supply in New Zealand of certain goods mentioned in the schedule, namely, articles of food for human consumption. The contest was whether the monopoly or control was of such a nature as to be contrary to the public interest.

What, then, did this agreement provide? First, there was a company called Distributors Limited, incorporated in October, 1922. This company made agreements with certain persons called the millowners, and the agreement recited, inter alia, as follows:—

"Whereas the company is incorporated with powers to buy, sell, deal in, and act as agent for the sale . . . of the products of milling and cereals . . . And whereas the said millowners have agreed that the company shall act as their sole agent for the sale of flour and its by-products upon the terms and subject to the provisions hereinafter contained: and whereas the company in consideration thereof has agreed to extend to the said millowners the advantages it possesses in the marketing and distribution of such flour."

Then the agreement proceeds to set out the mutual covenants. It provides that there shall be only a certain amount of wheat milled in the mills; it is to be a proportionate quantity for each mill. That is defined in paragraph 3 to mean, "for any month a quantity (5 per centum, more or less, at the sole discretion of the managing director) which bears the same proportion to the total quantity sold for delivery in New Zealand during such month by all mills under agreement as the capacity of the said mill bears to the total capacity of all mills under agreement."

Clause 3 (a) of the agreement is as follows:—"The company hereby undertakes to sell on behalf of the said millowners during each month subject to the terms of this agreement the said millowners proportionate quantity ascertained as aforesaid, but the company shall not be liable in damages in the event of its failure to sell any quantity although the output of the said millowners may exceed the said proportionate quantity."

Then paragraph 4 reads:—"Upon the terms and subject to the provisions hereinafter contained, the said millowners shall during the continuance of this agreement employ the company and no one else as the agent of the said millowners to sell and dispose of all flour which the said millowners shall during the continuance of this agreement have available for sale for delivery in New Zealand, and the company shall during the continuance of this agreement act as agent of the said millowners for that purpose. The said millowners shall not make any direct sales or sell otherwise than through the agency of the said company."

Then paragraph 5 is:—"Nothing in this agreement contained shall be construed as binding or requiring the said millowners to limit the output of flour of the said millowners; but if the output of flour of the said millowners shall at any time exceed the said proportionate quantity of flour the said millowners shall either export the excess out of New Zealand or carry the same over to be subsequently dealt with under the provisions of this agreement."

Then paragraph 6 reads:—"The said millowners shall, if so required by the company in each or any

calendar month during the continuance of this agreement, entrust to the company as agent to sell the same for delivery in New Zealand upon and subject to the terms and provisions of this agreement one twelfth part of the capacity of the said mill as fixed by clause 2 hereof."

Paragraph 7 says:—"The nature of the company's agency hereby constituted shall as regards all sales of flour for delivery in New Zealand, be a del credere agency, subject to the provisions hereinafter contained, and in respect of the services as a del credere agent it shall be entitled to a commission at the rate of £5 per centum, or such lesser rate as the managing director shall for the time being have agreed to accept upon the price of all flour so sold by the company for delivery in New Zealand."

There are other paragraphs declaring what the authority of Distributors Limited is. Then paragraph II is as follows:—"II (a) The managing director, after communication with each of the directors within New Zealand, and with the consent in writing or by telegram of a majority of such directors, shall from time to time ascertain the current price at which flour shall be sold through the agency of the Company f.o.b. at the ports of Lyttelton, Timaru, or Oamaru."

"(b) In ascertaining the current price the then cost of wheat, f.o.b., at the ports of Lyttelton, Timaru, or Oamaru, and other matters that ought reasonably to be taken into consideration, shall be considered, so that as nearly as possible the price secured by the millowner shall be on an equitable basis as between millowners."

"(c) In all cases in ascertaining the current price the price shall be calculated so as to produce if possible and practicable a fair and reasonable rate of commercial profit to the millowner."

"(d) The current price of flour in each town or district shall be a price equivalent as regards the millowner to the current price f.o.b. at the ports of Lyttelton, Timaru, or Oamaru, as above ascertained."

"(e) The ascertainment of the current price by the managing director in manner aforesaid shall be absolute and final and not subject to any arbitration."

These are some of the sections in the agreement which show that Distributors Limited fixes the amount of flour that each millowner is to produce, and also fixes the price.

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

STOUT C.J. said that "The question then is whether this is a monopoly, and whether it is a monopoly that is of such a nature as to be contrary to the public interest. Is it contrary to the public interest to limit the output of flour? Is it contrary to the public interest to declare that if the output of a mill exceeds a certain quantity that quantity must be exported and not sold in New Zealand? Is it of a nature that is contrary to the public interest to fix or control the price of this important article of food? The Courts in recent years have exhibited a growing reluctance to interfere with comprehensive arrangements entered into for the conduct of commercial enterprises. In England workers may combine and refuse to work for an employer no matter what the purpose or motive of their action is and the employer is without remedy. **(See Salmond on Torts,** 6th Ed. 575.)"

He added: It cannot therefore, in my opinion, be said that this contract was not of a nature to be contrary to the public interest. First, the Distributors Company had the power of fixing the price; second, it had the power of fixing the amount of production, and where the production was to take place at different parts of the Dominion and it had the power of declaring that flour produced in New Zealand must be exported (See paragraph 5). It was therefore a contract of such a nature as to be contrary to the public interest.

HERDMAN J. who was of opinion that the judgment of SIM J. was correct said inter alia: Then there is the **Mogul S.S. Co. Case,** 1892 A.C. 26, in which the House of Lords decided that because certain high-handed acts done by defendants were done with the lawful object of protecting and extending their trade and increasing their profits and that since they had not employed any unlawful means the plaintiffs were without redress. Again in **Ware & De Freville Lim v. Motor Trade Association,** 1921, 3 K.B. 40, it was held that:

> "The defendant association and its members, being manufacturers of motor cars, were justified in fixing the retail selling prices of cars and in enforcing observance of those prices, not merely by refusing to deal with recalcitrant traders, but by blacklisting such traders and threatening all other persons in the trade who dealt with persons on the black list that they would be put on that list themselves."

Scrutton L.J., one of the members of the Court of Appeal, in the course of his judgment said:—

> "While low prices may be good for the public for the time,, they are not a benefit if all the suppliers are thereby ruined. A steady level price may have considerable advantages over violent fluctuations from very high prices in times of scarcity, and fierce competition and unremunerative prices in times of plenty or financial pressure. This combination seems to me at least as unobjectionable as the combination in the **Mogul Case,** which was intended to drive a particular shipowner out of the trade."

Last of all there are such cases as **The Adelaide Steamship Co. Case,** and the **Salt Case.** I don't think that any good purpose would be served by me were I to discuss minutely the large body of evidence tendered at the trial. I have been unable to disentangle from the statements of witnesses any satisfying proof that the flour milling business under the combination shows any falling off of efficiency or that economy in production is not being observed or that the cost of marketing flour or its by-products has increased, or that any unreasonable toll in the shape of interest on the capital of the combined millowners is levied from the public when it purchases bread.

REED J. in the course of his reasons said: Turning now to the case law which has been brought to our notice, and, which it is claimed, helps in the interpretation of Section 5. The case upon which the greatest reliance is placed by the appellants is that usually referred to as the **Vend Case** reported sub nom. **The King v. Associated Northern Collieries** 14 C.L.R. 387 and, on appeal to the High Court, **The Adelaide Steamship Company Limited v. The King** 15 C.L.R. 65 and in the Privy Council as **Attorney-General of the Commonwealth of Australia v. The Adelaide Steamship Company Limited** 1913 A.C. 781. I do not think any assistance can be derived from this case. The provisions of the Australian Statute and our own are entirely unlike. Whereas, in the New Zealand Statute the sole question is as to whe-

ther the monopoly or control is of such a nature as to be contrary to the public interest, under the Australian Statute the Court has to decide, the charge is under Sections 4 or 7, whether it was entered into "with intent to restrain trade or commerce to the detriment of the public," and, if under Section 10, whether, however innocently made, it has in fact turned out to be detrimental to the public. "Section 10 authorises the Court to grant an injunction against carrying out a contract, which however innocently made turns out to be detrimental," per Griffiths CJ. 15 C.L.R. at 79. To these two points, therefore, the members of the various Courts, which dealt with the **Vend Case**, devoted their attention, first as to whether there was any sufficient evidence that the combine was formed with intent to restrain trade to the detriment of the public, and secondly as to whether there was sufficient evidence of actual injury to the public by its operations. As pointed out by Lord Dunedin in the recent case in the House of Lords of **Sorrell v. Smith** 41 T.L.R. 329, 335 "the case (i.e. the **Vend Case**) really depended on a question of statutory legislation." The actual finding of their Lordships of the Privy Council is in these words: (1913 A.C. at 819)

> "In their Lordships' opinion the decision appealed against was right, first, because so far as the Crown relied upon S. 4 (1) (a) and S. 7 of the Act there was no evidence (at any rate no satisfactory evidence) of any sinister intention on the part of the colliery proprietors or shipping companies; and secondly, because so far as the Crown relied on S. 10 there was no evidence (at any rate no sufficient evidence) of injury to the public."

There was no issue before those Courts, such as arises in the present case, as to whether the combine could be used in a manner to be injurious to the public interest. That case, therefore, does not assist in the interpretation of the words used in our Statute. There is then the **Salt Case, North Western Salt Coy v. Electrolytic Alkali Coy.** 107 T.L.R. 439 and in the House of Lords 1914 A.C. 461. This was an action upon a contract in which, with out having pleaded it, the defendant submitted that the contract was unenforceable and void as being in restraint of trade. The headnote to the report in the House of Lords correctly states the effect of the decision of the House as follows:—

> "Where an action is brought on a contract which is ex facie illegal as being in unreasonable restraint of trade, the Court will decline to enforce the contract, irrespective of whether illegality is pleaded or not; but, where the question of illegality depends upon the surrounding circumstances, as a general rule, the Court will not entertain the question unless it is raised by the pleadings." And, it was "held that, having regard to the form of the pleadings, the surrounding circumstances could not be looked at for the purpose of determining the illegality of the agreement, and that the agreement was not ex facie illegal."

This was all that the House decided. Some general observations were made by the Lord Chancellor—Viscount Haldane—to which I shall refer later when dealing with the question of the necessity from the point of view of protecting the industry, of creating the combine, but otherwise no assistance is to be derived from this case. These two cases, and more particularly the **Vend Case**, are chiefly relied upon by the respondents. Neither case really assists in the interpretation of our Statute. In both cases there are general statements with regard to the law relating to contracts in restraint of trade but those statements must be taken as being referrable to the particular facts before the respective judicial bodies. As Lord Halsbury L.C. said in **Quinn v. Leathem** 1901 A.C. at 506:

> "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."

Thus in the **Vend Case** Lord Parker, whose dicta were constantly referred to in the present case, was dealing with a case in which, as I have already pointed out, the main question was as to whether the documents, evidencing the alleged monopoly, disclosed an intent to injure the public, not as to whether they disclosed a monopoly of such a nature as to be contrary to the public interest, and the subsidiary question was as to whether the operations of the monopoly had in fact been detrimental to the public. So in the **Salt Case** the question was as to whether the documents, apart from all surrounding circumstances, disclosed ex facie, an illegal agreement. Law is not a logical science, and observations which are highly valuable in cases involving the same questions have no application where the points in issue are as in the present case. In the **Sugar case—Merchants Association of New Zealand v. The King** 32 N.Z.L.R. 1233—it was pointed out by the Chief Justice (1253) that the **Vend** Case was of no value in interpreting the New Zealand Statute, and, by the Court of Appeal per Williams J. (1259):

> "The provisions of our Act appear to be more stringent in several respects than those of the Australian Act."

In these circumstances this Court is not hampered, in the construction of this purely New Zealand Statute, by either the decisions or dicta in the **Vend** or the **Salt Case** and, as held by the Court of Appeal in the **Sugar Case** (p. 1267):

> "All that the Court has to consider is the nature of the monopoly or control, and whether such nature is contrary to the public interest."

I have already pointed out the potentialities for evil to the public in this combine. Are they of such a nature as to bring the combine within the Section? Now this is not a case where there has been the sale of a business giving to one party a right to be protected against competition from the other. All the members of the Association are engaged in the same business within the same territory, and the object of the Association is purely and simply to silence and stifle all competition as between its members. It is urged that this is necessary to the life of the milling trade, that unrestricted competition in the past resulted in fluctuating prices of flour, and, in some cases, in sales below a remunerative price. No doubt the law will uphold, in exceptional cases, an anti-competitive contract if it be clearly shown that unrestricted competition will result in ruin to private interests, and an ill-regulated supply, for such cannot be of advantage to the public. In the **Salt Case** Viscount Haldane L.C. said as follows (1940 A.C. 469):

> "An ill-regulated supply and unremunerative prices may, in point of fact, be disadvantageous to the public. Such a state of things may, if it is not controlled, drive manufacturers out of business, or lower wages, and so cause unemployment and labour disturbance. It must always be a question of circumstances whether a combination of manufacturers in a particular trade is an evil from a public point of view."

The test to be applied was suggested by Tindal C.J. in delivering the judgment of the Court in **Horner v. Graves** 7 Bing. 743 as follows:

> "We do not see how a better test can be applied whether reasonable or not than by considering whether the restraint is such only as to afford a fair protection to the interests of the party in favour of whom it is given and not so large as to interfere with the interests of the public."

This dictum was cited with approval in the Privy Council in **Collins v. Locke** 4 A.C. 686. Let that test be applied to the present case, and we find, first, that the combine affects a commodity, flour, of which the public must have a constant supply, a commodity which the poorest member of the community must buy, a commodity which is essential, in the interests of the whole of the public, should be kept at as cheap a price and be of as good a quality as is possible. We find that the price of flour in New Zealand is above the parity of other wheat producing countries, that the formation of the combine largely removes the incentive to improve either the methods of manufacture or the quality of the flour, or to reduce prices. The interests of the general public are thus seriously affected by the combine, does it afford only a fair protection to its members?

MACGREGOR J. in dealing with the references made by counsel to foreign cases as an aid to interpret the New Zealand Statute said: At the learned and lengthy argument in this Court we were invited by counsel to be guided by several decisions in the Courts of other countries relating to alleged monopolies—in Australia, America and England respectively. Personally I must protest against thus being contsrained to adopt this comparative method of arriving at the meaning and effect of plain words used in a New Zealand statute, which method appears to me designed rather to darken counsel than to elucidate. I have examined all the foreign cases referred to, and in the result I do not think that the various decisions therein are of any real assistance in the present case. Some of these judgments undoubtedly are valuable for the light they throw upon the development of the common law touching monopolies and contracts in restraint of trade, but no one of them appears to me to give the solution of the precise problem now before us, which must in the end in my opinion be solved by reference to the actual words of Section 5 itself. The Australian case relates to a monopoly of coal alleged to have been intended to be "to the detriment of the public," and against the provisions of "The Australian Industries Preservation Act." (**Attorney-General of Australia v. The Adelaide**

Steamship Company and Others 1913 A.C. 781.) The American case involved the construction of the Sherman Anti-Trusts Act 1890, which was directed against contracts in restraint of trade between or among the several States of the U.S.A. (**Standard Oil Company v. The United States.** U.S. Reports Vol. 221 pp. 1 etc.) The English case referred to (**North Western Salt Company Ltd. v. Electrolytic Alkali Company Ltd.** 1914 A.C. 461) related to a monopoly in salt, alleged to have been created in the North West of England by an agreement between salt manufacturers, which it was suggested was illegal at common law as being in unreasonable restraint of trade. From this short statement it must I think at once be evident that the actual decisions in these cases do not touch the precise question in issue here.

ALPERS J.: We take the following extracts from this learned Judge's reasons: It is admitted that the combination has been established to fix prices and to limit and control the output; that it may even have a tendency to raise prices, provided that they do not thereby become "unreasonably high." On the other hand, it has to be remembered that the Government has complete facilities for controlling the combination and checking possible abuses both under the provisions of "The Commercial Trusts Act" and "The Board of Trade Act 1919." By removing the embargo and lowering the duty the Government can at any time give full play to foreign competition; nor is domestic competition excluded—because the Northern Mills are responsible for approximately one fourth of the output of flour in New Zealand. I agree with the contention of the Attorney-General that the conduct of the combination, if otherwise illegal, cannot be defended merely because it was consequent upon, or consonant with certain actions of the Government of the day; for no constitutional government has power to dispense with obedience to law. But the policy of the Government as exemplified in the wheat control scheme and the actions and pronouncements of its responsible officers over a number of years, is surely not irrelevant when we come to consider whether or not the public interest has suffered. A Court will be chary of convicting a body of men of an offence, not upon evidence of their actual misconduct, but upon the legal construction of the effect of a document, when the charge against them amounts to this: that they have acted upon a view of the meaning of "public interest" which has found support for a number of years in legislative enactments imposing tariffs, in Orders-in-Council regulating prices, and in official utterances of Cabinet Ministers responsible to Parliament in which the same view of the meaning of "public interest" is expressed in unambiguous terms. It is quite possible that the Distributors agreement, so far from constituting a "pernicious monopoly" has in reality been a "beneficient conspiracy." If the consequences alleged by counsel to flow from its operations have in fact followed upon its inauguration, then it has certainly not proved detrimental to the public welfare. They contend that as a result of the combination the supply and the price of flour has been "stabilised"—a highly distasteful but very convenient word. Three important industries, wheat growing, flour milling, and baking, it is claimed, have been saved from disorganisation; but for Distributors Limited, it is said, these industries would have been crippled by the price-cutting that was threatened when State Control was withdrawn. There is at least some evidence from which conclusions may be drawn, and have by the learned judge in the Court below been drawn, that support these contentions of counsel. And these opulent Corporations, like humbler persons accused of offences against the law, are entitled to "the benefit of the doubt."

That there may be combinations which monopolise the demand and supply of goods, or control price and limit output and which are yet within the law, is of course clear from the Statute itself. This was fully recognised by this Court in **The Merchants Association of New Zealand v. The King**, 32 N.Z.L.R. 1233:

> "There may, however, be other considerations which negative this conclusion (that a monopoly is contrary to public interest). Thus if a monopoly is reasonably necessary in order to prevent the destruction or crippling of an important local industry, or if it is reasonably necessary in order to secure efficient and economical distribution of the product of that industry, the monopoly might not be contrary to the public interest although it tended to keep up prices. Williams J. at p. 1268.

I express no opinion upon the questions, so much debated at the bar, whether cases decided under the American "Sherman Act" or the Australian "Industries Preservation Act" or at Common Law are or are not in point. But there are to be found in the reports observations of great pith and moment by distinguished judges which are germane to the matter here considered and which, by analogy at least, appear to me to confirm the conclusion at which I have arrived.

As to the meaning to be attached to "public policy" I quote from the dissenting judgment of **Kennedy L.J.** in **"The North Western Salt Co. v. Electrolytic Alkali Co. (107 L.T. at p. 447)**—the judgment that was upheld in the House of Lords (1914 A.C. 461):

> "The doctrine of the invalidity of a covenant or contract on the ground of its being in restraint of trade rests upon what is called public policy. How is one to ascertain and judge of the interests of the public? Do they consist solely in the cheapness of a manufactured article? or may the judge consider the possibility or even, in some circumstances, probability that unregulated competition may result either in destroying the production or the manufacture by making the trade unprofitable, or ultimately in raising the price of the commodity to the loss of the buyers by leaving a practical monopoly in the hands of the most wealthy or most powerful of the competitors? By what test is a judge to decide in the case of a bargain made freely and independently between two powerful trading bodies, such as the present plaintiffs and the present defendants, whether the bargain, which each thought, no doubt, pecuniarily advantageous to itself, is invalid as being against public policy." So in the same case on appeal to the House of Lords **the Lord Chancellor, Viscount Haldane** says "Unquestionably the combination in question was one the purpose of which was to regulate supply and keep up prices. But an ill-regulated supply and unremunerative price may, in point of fact, be disadvantageous to the public. Such a state of things may, if it is not controlled, drive manufacturers out of business, or lower wages, and so cause unemployment and labour disturbance. It must always be a question of circumstances whether a combination of manufacturers in a particular trade is an evil from a public point of view."

The agreement which was the matter in controversy in the Australian "**Coal Vend Case**" **(Attorney-General of the Commonwealth of Australia v. Adelaide Steamship Company Limited 1913 A.C. 771)** was, as well as its general scope as in its particular clauses, very like the Distributors agreement under consideration here. The judgment of the Privy Council was delivered by **Lord Parker** and in the course of his discussion of the effects of that agreement occur many observations which throw light upon the present case. "It can never be in the interests of the consumers that any article of consumption should cease to be produced and distributed, as it certainly would be unless those engaged in its production or distribution obtained a fair remuneration for the capital employed and the labour expended." **(page 801.)** "Not only can no trace be found in the vend agreement of an intention to raise the price of coal to an unreasonable extent, but such an intention is highly improbable, for it was not in the interest of the vend to charge unreasonable prices. The vend did not comprise all the collieries in the Newcastle and Maitland fields, nor any of the Southern or Western collieries. It did not, therefore, eliminate competition either in home trade, the inter-State trade, or the foreign trade. It is to be observed that the selling price to be fixed under the vend agreement applies to all these trades. If the vend fixed the prices too high, it would inevitably lead to the trade of its members being lost to competitors outside the vend. It might also lead to the development of further pits or shafts, and the consequent creation of new competitors. It would certainly check the demand for the coal of its members." **(page 810).** "The community if interested to maintain freedom of trade is equally interested in maintaining freedom of contract within reasonable limits **(page 795.)**

ROYAL FORCES.—Allowance by employers to employees joining—Civil pay—Inclusion of War bonus.—Deuce and another v. Railway Clearing House, L.J. p. 465.

Held, that in a contract between employer and employee for the payment of a proportion of the employee's salary or standard rate of pay during the period of the employee's service in H.M. Forces, the word "salary" includes the grant of a war bonus.

As to civil pay in addition to military pay: See Halsbury, Vol. 25, Title "Royal Forces," Part V, Sec. 3, Par. 89.

SUPREME COURT.

Stout, C.J.
Sim, J.
Reed, J.
Adams, J.
Ostler, J.

Oct. 1, 6, 1925.
Wellington.

PUBLIC TRUSTEE v. McCHESNEY ET AL.

Administration—Illegitimate—Legitimated by Section 3 of Act—"Dying" whether meaning "has died"—Whether child legitimated after death of father entitled to share equally with legitimate child of same parents.

This was a case referred to the Full Court and after hearing counsel the judgment of the Court was subsequently delivered by Sim J. The facts were as follows: The plaintiff is the administrator of the estate of Thomas Elliot McChesney, who died intestate on or about the 11th day of January, 1920. On the 27th of May, 1915, McChesney was married to one Sarah Jane Stevenson, a spinster, and of this marriage one child, the defendant Thomas McChesney, was born on the 31st of August, 1915. Prior to the said marriage, namely on the 7th of January, 1913, the said Sarah Jane Stevenson gave birth to a female child of which McChesney was the father, namely the defendant Eliza Euphemia McChesney. The said child was not legitimated during the lifetime of her father, but after his death the mother of the child made application for her legitimation under the provisions of the Legitimation Amendment Act 1921-22, and such legitimation was registered on the 27th of July, 1923. The question submitted for determination by the originating summons is whether or not the defendant Eliza Euphemia McChesney is entitled to participate in the distribution of the estate of the deceased equally with the other defendant.

Kelly for Public Trustee.
D. S. Smith as guardian ad litem of infant defendant Eliza Euphemia McChesney.
Hoggard as guardian ad litem of infant defendant Thomas McChesney.

SIM J. said: Mr. Hoggard, who was appointed guardian ad litem of the defendant Thomas McChesney, contended, in the first place, that Section 3 of the Legitimation Amendment Act 1921-22 did not apply to a case such as the present where the father had died before the Act came into force. Sub-section 1 of Section 3 is as follows:—

> "In the case of a man who has married the mother of a child born before their marriage dying without availing himself of the provisions of the principal Act to secure the legitimation of such child the mother may make application for the legitimation thereof."

The word "dying" is used here as equivalent to "has died", and does not necessarily import futurity. The words "the case of a man . . . dying" may be treated, therefore, as wide enough to cover the case of a man who has died before the Act came into force as well as the case of one who dies after it has come into force. There does not appear to be any valid reason for supposing that the Legislature intended to provide only for cases where the father died after the Act came into force. On the contrary it is reasonable to conclude that the Legislature intended to provide for all cases where the father had died without availing himself of the provisions of the principal Act, and that it did not matter whether he died before or after the passing of the Amendment Act. A case such as the present certainly seems to come within the mischief intended to be remedied by the Act, and there is nothing in the language used which compels the Court to say that it cannot be applied to such a case. We think, therefore, that the mother was entitled to secure the legitimation of her daughter. Mr. Hoggard's next contention was that, as two third shares of the deceased's estate vested in the defendant Thomas McChesney on his father's death, Section 2 of the Legitimation Act, 1908, could not be construed so as to divest one of these shares and vest it in the other defendant. But that seems to be the necessary effect of Section 2. When a child is legitimated it is deemed to have been legitimated from birth, and is "entitled to all the rights of a child born in wedlock including the right to such real and personal property as might have been claimed by such child if born in wedlock, and also to any real and personal property on the succession of any other person which might have been claimed through the parent by a child born in wedlock." The only way in which effect can be given to the plain language of the statute in the present case is by holding that it operates to divest one of the shares vested in the defendant Thomas McChesney and to vest it in his sister. The general rule is clear that a retrospective effect should not be given to an Act unless the intention of the Legislature that it should be so construed is expressed in clear plain and unambiguous language: **Young v. Adam** (1898) A.C. 469, 476. Such an intention has been manifested here, for the Legitimation Act is obviously retrospective in its whole purpose, and the Legislature, when enacting the last part of Section 2, must have contemplated that the necessary effect thereof would be to disturb in some cases a distribution already made. Such an intention was clearly manifested also by the Legislature when it enacted the Amending Act of 1921-22, for the necessary effect in every case under that Act, where the father died intestate, would be to divest shares in the estate which had already vested. In cases where the father left a will under which the legitimated child could not claim any benefit, such child would be entitled to make a claim under the Family Protection Act. Such a claim, if granted, would have the effect of disturbing existing rights and interests. Mr. Hoggard relied on the Queensland case of **In re Jost** (1924) St. R. Qd. 249 as an authority in his favour. The Queensland Legitimation Act of 1899 contains in Section 3 language which, so far as it goes, is identical with that contained in Section 2 of the New Zealand Act. It concludes with the words "and shall be entitled to all the rights of a child born in wedlock," and does not contain the words of the New Zealand Act "including the right to such real and personal property as might have been claimed by such child if born in wedlock." It was held by the Supreme Court that the effect of legitimation was not to reopen a class which had been closed under a will. It was contended that the words of the statute were so emphatic that even after the class was closed it would reopen to receive a child so registered after such close. The Court rejected this contention, and the Chief Justice said that "such an interpretation would interfere with vested rights, and pushed to its legal consequences would produce great inconvenience." But the necessary effect of retrospective legislation is to interfere in many cases with vested rights. Notwithstanding this, effect has to be given to the legislation where it is clearly intended to be retrospective. The legislation in question here was clearly intended to be retrospective, and effect ought to be given to that intention by holding that the defendant Eliza Euphemia McChesney by reason of her legitimation, is now entitled to one third share of her father's estate. The costs of all parties ought to be fixed by the Registrar as between Solicitor and client and paid out of the estate.

Solicitor for the plaintiff: **Solicitor Public Trust Office**, Wellington.
Solicitors for the defendant Eliza Euphemia McChesney: **Morison, Smith and Morison**, Wellington.
Solicitors for the defendant Thomas McChesney: **Findlay, Hoggard and Morrison**, Wellington.

Ostler, J.

Sept. 17, 30, 1925.
Wellington.

CHAIRMAN ET AL OF WAIRARAPA SOUTH v. HERMAN NITZ ET AL.

Local Body—Request to acquire land for road formation—Whether form of request compliance with Act—Whether creates binding contract—Steps necessary to make binding contract—Practice—Amendment of pleadings—Adding new cause of action—Whether permissible—Declaration of right—Hypothetical state of facts.

In 1917 the eight defendants requested the plaintiffs to acquire a road in the district leading through certain land of one Cameron. The defendants agreed that a special rate should be levied on their land to pay principal interest and other charges of a loan to carry out their request. The remainder of the facts are not important for the purpose of this note other than the facts that are referred to in those portions of the reasons of Ostler J. we note.

Myers K.C. and **Hart** for plaintiffs.
Skerrett K.C. and **Jordan** for defendants.

OSTLER J. after discussing the facts at considerable length said: The defences relied on were the second and third, which are purely technical defences without any merit. The defendants by signing a request agreeing to charge their lands with the cost, induced the Council to incur an expenditure in taking this land, and now, because

they no longer require the road, they say that no contract was made by reason of the Council acting on their request, because a County Council has no power to make such a contract. I confess I have striven hard to find some good legal ground upon which I could hold that defendants bound themselves by an enforceable contract, but I have been unable to find any such grounds. A County Council is a statutory body, and has no powers but those given to it by Statute. If they desired to give effect to the request of the defendants and at the same time legally to bind the defendants' lands by virtue of a special rate to pay the cost, they could have done so, but only by strictly following the procedure laid down by the Local Bodies Loans Act 1913. They could have raised a special loan by special order under Section 16 of the Act without taking any of the steps described in Sections 8 to 12 (that is steps in the taking of a poll). They could have proceeded under Section 16 (e), as the ratepayers in the part of the district did not exceed one hundred in number. But in order to bind the defendants, they would have to take the following steps:—

1. Obtain a consent from the defendants in the form prescribed by the regulations made under the Act. The form is prescribed in Clause 9 of the Regulations which are contained in N.Z. Gazette 1914, p. 1574.

2. Having obtained the consent in proper form they should have ascertained what part of the district would be affected, that is benefited by the proposed work.

3. They should then have ascertained whether the persons signing the consent amounted to three-fourths of the ratepayers in the district affected, and whether the capital value of their lands exceeded the capital value of the lands of those ratepayers in the district affected who had not signed the consent.

4. Then, under Section 17, which incorporates Section 3 they should have prepared a special roll comprising all the names of ratepayers in the district affected, such roll to be prepared and completed in the manner prescribed by the Regulations referred to.

5. The special roll having been completed they should have deposited it for public inspection at their office, and published a notice that it was there for inspection in some newspaper circulating in the district.

6. After allowing seven days to elapse for the lodging of objections, if no such objections were made, they could then by special order give themselves power to raise a special loan and to pledge as security for the loan a special rate on the lands of the ratepayers whose names were included in the roll.

The taking of all these steps was in my opinion a condition precedent to the power of the Council to charge the lands of the defendants with any special rate. . . . . In my opinion the fact that the Council acted on the request of defendants and incurred liability before taking the proper steps to bind the defendants, does not create a contract between the Council and the defendants. A County Council has only the powers of contracting which are given to it by Statute. The powers of contracting given by Section 145 to 148 of the Counties Act 1920 are not, in my opinion, wide enough to enable a County Council to create a binding contract merely by incurring expenditure at the request of ratepayers, when there was no duty to do so, and there it has failed to take the statutory steps to render their lands liable. There would be great practical difficulties if it were held that a County Council could ignore the statutory discretions and powers vested in it, and by merely executing a consideration upon request, render the ratepayer liable on the contract so made. If that were so a County Council could contract itself out of the discretions and powers given to it for the public benefit, and it has been well settled that a local authority cannot do that: **Ayr Harbour Trustees v. Oswald** (8 App. Cas. 623). Dealing with the prayers in the statement of claim, the request is in my opinion not a consent in compliance with the regulations. It is not in the form prescribed, and the variations are very material. It does not state the amount in the pound of the special rate proposed, or the amount of the loan and there are other considerable variations. In my opinion it is impossible to hold that the request is a consent within the meaning of the Regulations. The second (alternative) prayer is for a decree ordering the defendants to execute a proper form of consent. But this would be to treat the request as an enforceable contract, and for the reasons given in my opinion it is not a contract at all, and, not being a contract it could not in any case be enforceable. The third (alternative) prayer is for an enquiry as to damages for breach of contract. As I have held there is no contract there can have been no breach of contract, and therefore this claim fails. Counsel for plaintiffs before the conclusion of plaintiff's case, asked for an amendment to add the following alternative prayer:—

> A declaration that plaintiffs are entitled, by virtue of Section 39 of the Finance Act 1921-1922, upon obtaining the consent of the Governor-General-in-Council to raise a loan secured on the lands of the defendants specified in their request, and treating those lands as a special district, under Section 16 (d) of the Local Bodies Loans Act 1913.

Section 39 of the Finance Act 1921-1922 is as follows:—

> "Where a local authority, as defined by the Local Bodies Finance Act 1921-1922 is at the commencement of this Act liable to pay . . . purchase money or compensation for any lands acquired . . . whether such liability exists under contracts now binding upon such local authority or by reason of the compulsory taking of such lands, and whether . . . the amount of purchase money or compensation payable in respect thereof has or has not been heretofore ascertained, such local authority may from time to time, with the consent of the Governor-General-in-Council for the purpose of paying such purchase money or compensation, borrow moneys in the manner provided by the Local Bodies Loans Act 1913, without taking any steps defined in Sections 8 to 12 of that Act."

Counsel for defendants object to this amendment, upon the ground that it introduces a new cause of action, and further that it asks the Court to make a binding declaration of right upon a hypothetical state of facts. In my opinion these objections are both fatal. The plaintiffs were apparently aware of the provisions of Section 39, yet they have not taken any steps under it to obtain the consent of the Governor-General-in-Council. Their action is for a declaration that the request signed by the defendants is a consent within the Regulations, or in the alternative that the request and the acts of the Council based on it taken together make a contract which they can either specifically enforce, or for the breach of which they can obtain damages. They now ask the Court to declare that notwithstanding they have not a valid consent of the defendants, and that the defendants are not bound by any contract, they can if they take certain steps which they have not taken, and may not get the necessary consent to take, raise a special loan secured on the lands of the defendants. In my opinion this is a new and different cause of action, which plaintiffs could not have added by amendment before the trial under Rule 144. Moreover it has been held that in the exercise of its discretion to make declarations of right under the Declaratory Judgments Act 1908 the Court ought not to declare the law on a hypothetical state of facts: see **Wellington Harbour Ferries Ltd. v. Wellington Harbour Board** (29 N.Z.L.R. 729).

Solicitors for plaintiffs: **Hart, Tucker & Daniell,** Masterton.
Solicitor for defendants: **T. Jordan,** Masterton.

Stout, C.J. August 24, 29, 1925.
Wanganui.

IN RE SETTLED LAND ACT AND IN RE PIECE OF LAND IN WANGANUI.

Settled Land Act—Application for leave to sell—Used only to produce income towards orphanage.

We take the facts from the reasons of Stout C.J. The Settlement deals with other lands and the other lands are set apart for the site of the orphanage. The parcel asked to be sold is held not for the site of buildings for the orphanage but only for the purpose of letting the land so that the rents or income may be used as an endowment for the orphanage. The Deed of Settlement declares that the Trustees have power to lease for any number of years not exceeding 42 years and for building or other purposes and at such rents or such terms and under and subject to such covenants and conditions as to them may appear reasonable and fit but without taking any premium or profit for granting any lease and without power to sell mortgage or otherwise than as aforesaid to dispose of or part with the same Trust Estate or any part of it, etc.

Watt in support of application.
Izard for Attorney-General.

STOUT C.J.: There are many cases under the Settled Land Act and before that Act was passed in which the trustees had no power to sell yet the Court has granted leave to sell a trust estate. There are two cases in New Zealand of the sale of what may be termed charity lands, viz., **In re Mornington Baptist Church** (1908) 10 G.L.R. 520 and **In re Wellington Diocesan School for Girls (Nga Tawa, Marton) Trust Board.** It was held that this Court has a general jurisdic-

tion not derived from the Settled Land Act to grant leave to sell or mortgage Charitable Trust property though the trust deed gave no such power. The powers given in this settlement are limited to leasing powers. In the description and enumeration of the powers it is said that only those powers given can be exercised. That would have been the case if the express powers given had only included leasing and it seems to me not to matter that powers given have added to them what the powers not given are. That really is the effect of adding the words "without power to sell mortgage or otherwise than aforesaid to dispose of or part with the same trust estate or any part of it." The following English authorities may be referred to: **In re The Overseas of Ecclesall**, 16 Bev. 297 the sale of charity lands was ordered though opposed by the Attorney-General. **In In re Parkes Charity**, 12 Sim. 329, the land was devised to the use of the poor of the Parish of Wisbech and it was held that the Court could order a sale. **Re Ashton Charity**, 22 Bev. 288, is to the same effect and some cases were cited to the Master of the Rolls in which it was doubted if such order should be made. I am of opinion that as this land is only to be used for income purposes—for letting—that there is no reason why it should not be sold if by a sale a greater fund will be acquired for the purposes of the charity and in my opinion the affidavits filed show that that is likely to follow. The trustees are a large number of able and trustworthy men and anxious to see the charity benefit. Order made. The Trustees must, however, put a proper upset price so that due care is exercised in the sale. The costs of this application can come out of the income.

PROFESSIONAL ETHICS.

At the recent annual dinner of the Wellington District Law Society attention was called by one of the speakers to the absence of any formulation of the principles embodying the ideals which the members of the profession should endeavour to maintain in practice. These principles are not, so far as we are aware, made the subject of any detailed teaching at our University Colleges nor are they, we believe, to be found collected in an ordered fashion in any work published by British authors. But much thought has been given to the subject in the United States. In some of the States an oath embodying a brief general statement of the conduct to be pursued by practitioners in their professional capacity is embodied in the oath to be taken on admission to practice. Codes of ethics were adopted by many of the individual States and the American Bar Association representing the whole of the States collated these Codes and formulated for acceptance one general code in seventy clauses. As we believe it will be to the advantage of the profession in New Zealand if we make this code generally known we give one instalment of it in the present issue and shall publish the rest of it in our next number. We suggest that when the attention of practitioners has been thus drawn to the subject steps should be taken by the New Zealand Law Society to obtain the opinion of its members with the view of formulating a code for their instruction and guidance. It may be that all the rules put forward by the American Bar Association might not commend themselves to the general body of the profession in New Zealand but they would, we think, form an unchallengeable basis for rules of our own and it may be we should deem ourselves capable of improving upon them. We now set out the first instalment of the Code referred to.

CANONS OF ETHICS.

DUTIES OF ATTORNEYS TO COURTS AND JUDICIAL OFFICERS.

1. **Respect for Judicial Officers.**—The respect enjoined by law for Courts and judicial officers is exacted for the sake of the office, and not for the individual who administers it. Bad opinion of the incumbent, however well founded, cannot excuse the withholding of the respect due the office, while administering its functions.
2. **Criticisms of Judicial Conduct.**—The proprieties of the judicial station in a great measure disable the judge from defending himself against strictures upon his official conduct. For this reason, and because such criticisms tend to impair public confidence in the administration of justice, attorneys should, as a rule, refrain from published criticism of judicial conduct, especially in reference to causes in which they have been of counsel, otherwise than in Courts of review, or when the conduct of a judge is necessarily involved in determining his removal from or continuance in office.
3. **Using Personal Influence on the Court.**—Marked attention and unusual hospitality to a judge, when the relations of the parties are such that they would not otherwise be extended, subject both judge and attorneys to misconstructions and should be sedulously avoided. A self-respecting independence in the discharge of the attorney's duties, which at the same time does not withhold the courtesy and respect due the judge's station, is the only just foundation for cordial personal and official relations between Bench and Bar. All attempts by means beyond these to gain special personal consideration and favour of a judge are disreputable.
4. **Defending the Courts against Popular Clamour.**—Courts and judicial officers, in the rightful exercise of their functions, should always receive the support and countenance of attorneys against unjust criticism and popular clamour; and it is an attorney's duty to give them his moral support in all proper ways, and particularly by setting a good example in his own person of obedience to law.
5. **Candour and Fairness.**—The utmost candour and fairness should characterise the dealings of attorneys with the Courts and with each other. Knowingly citing as authority an over-ruled case, or treating a repealed statute as in existence; knowingly misquoting the language of a decision or text-book; knowingly misquoting the contents of a paper, the testimony of a witness, or the language or argument of opposite counsel; offering evidence which it is known the Court must reject as illegal, to get it before the jury, under the guise of arguing its admissibility; and all kindred practices are deceits and evasions unworthy of attorneys.
   Purposely concealing or withholding in the opening argument, positions intended finally to be relied on, in order that opposite counsel may not discuss them, is unprofessional. Courts and juries look with disfavour on such practices, and are quick to suspect the weakness of the cause which has need to resort to them.
   In the argument of demurrers, admission of evidence, and other questions of law, counsel should carefully refrain from "side-bar" remarks and sparring discourse, to influence the jury or bystanders. Personal colloquies between counsel tend to delay and promote unseemly wrangling, and ought to be discouraged.
6. Attorneys owe to the Courts and the public whose business the Courts transact, as well as to their own clients, to be punctual in attendance on their causes; and whenever an attorney is late he should apologise or explain his absence.
7. **Display of Temper.**—One side must always lose the cause; and it is not wise or respectful to the Court, for attorneys to display temper because of an adverse ruling.

DUTIES OF ATTORNEYS TO EACH OTHER, TO CLIENTS AND THE PUBLIC.

8. It is a mark of proper respect, and a practice worthy of adoption in all Courts of record, for attorneys to rise and remain standing, while the judges enter and take their seats upon the Bench.
9. **Upholding the Dignity of the Profession.**—An attorney should strive at all times, to uphold the honour, maintain the dignity, and promote the usefulness of the profession; for it is so interwoven with the administration of justice that whatever redounds to the good of one advances the other; and the attorney thus discharges, not merely an obligation to his brothers, but a high duty to the State and his fellow-man.
10. **Disparaging Members of the Profession.**—An attorney should not speak slightingly or disparagingly of his profession, or pander in any way to unjust prejudices against it; and he should scrupulously refrain at all times, and in all relations of life, from availing himself of any prejudice or popular misconception against lawyers, in order to carry a point against a brother attorney.

11. **How far an Attorney may go in supporting a Client's Cause.**—Nothing has been more potential in creating and pandering to popular prejudice against lawyers as a class, and in withholding from the profession the full measure of public esteem and confidence which belong to the proper discharge of its duties, than the false claim, often set up by the unscrupulous in defense of questionable transactions, that it is an attorney's duty to do everything to succeed in his client's cause. An attorney "owes entire devotion to the interest of his client, warm zeal in the maintenance and defense of his cause, and the exertion of the utmost skill and ability," to the end that nothing may be taken or withheld from him, save by the rules of law, legally applied. No sacrifice or peril, even to loss of life itself, can absolve from the fearless discharge of this duty. Nevertheless, it is steadfastly to be borne in mind that the great trust is to be performed within and not without the bounds of the law which creates it. The attorney's office does not destroy man's accountability to his Creator, or loosen the duty of obedience to law, and the obligation to his neighbour; and it does not permit, much less demand, violation of law, or any manner of fraud or chicanery, for the client's sake.
12. **Exposing Corrupt Attorneys.**—Attorneys should fearlessly expose before the proper tribunals corrupt or dishonest conduct in the profession; and there should never be any hesitancy in accepting employment against an attorney who has wronged his client.
13. **Attitude of State's Attorney towards Innocent Prisoner.**—An attorney appearing or continuing as private counsel in the prosecution for a crime of which he believes the accused innocent, forswears himself. The State's attorney is criminal, if he presses for a conviction, when upon the evidence he believes the prisoner innocent. If the evidence is not plain enough to justify a nolle prosequi, a public prosecutor should submit the case, with such comments as are pertinent, accompanied by a candid statement of his own doubts.
14. **Defending One whom Advocate believes to be Guilty.**—An attorney cannot reject the defense of a person accused of a criminal offense, because he knows or believes him guilty. It is his duty by all fair and honourable means to present such defenses as the law of the land permits, to the end that no one may be deprived of life or liberty, but by the due process of law.
15. **Maintaining Harassing Litigation.**—An attorney must decline in a civil cause to conduct a prosecution, when satisfied that the purpose is merely to harass or injure the opposite party, or to work oppression and wrong.
16. It is bad practice for an attorney to communicate or argue privately with the judge as to the merits of his cause.
17. He should avoid all unnecessary communication with jurors, even as to matters foreign to the cause, both before and during the trial.
18. **General Rules as to Professional and Unprofessional Advertising.**—Newspaper advertisements, circulars, and business cards, tendering professional services to the general public are proper but special solicitation of particular individuals to become clients ought to be avoided. Indirect advertisement for business, by furnishing or inspiring editorials or press notices, regarding causes in which the attorney takes part, the manner in which they are conducted, the importance of his positions, the magnitude of the interests involved, and all other like self-laudation, is of evil tendency, and wholly unprofessional.
19. **Newspaper Discussion of Pending Litigation.**—Newspaper publications by an attorney as to the merits of pending or anticipated litigation, call forth discussion and reply from the opposite party, tend to prevent a fair trial in the Courts, and otherwise prejudice the due administration of justice. It requires a strong case to justify such publications; and when proper, it is unprofessional to make them anonymously.
20. It is better that all newspaper reports be taken from the records and papers on file in the Court.
21. **Where Attorney becomes Witness for his Client.**—When an attorney is a witness for his client except as to formal matters, such as the attestation or custody of an instrument and the like, he should leave the trial of the cause to other counsel. Except when essential to the ends of justice, an attorney should scrupulously avoid testifying in Court in behalf of his client, as to any matter.
22. **Impersonality of the Advocate.**—The same reasons which make it improper in general for an attorney to testify for his client, apply with greater force to assertions, sometimes made by counsel in argument, of personal belief in the client's innocence or the justice of his cause. If such assertions are habitually made they lose all force and subject the attorney to falsehoods; while the failure to make them in particular cases will often be esteemed a tacit admission of belief of the client's guilt, or the weakness of his cause.
23. **Stirring up Litigation.**—It is indecent to hunt up defects in titles and the like and inform thereof, in order to be employed to bring suit; or to seek out a person supposed to have a cause of action and endeavour to get a fee to litigate about it. Except where ties of blood, relationship or trust, make it an attorney's duty, it is unprofessional to volunteer advice to bring a lawsuit. Stirring up strife and litigation is forbidden by law, and disreputable in morals.
24. **Confidential Communications.**—Communications and confidences between client and attorney are the property and secrets of the client, and can not be divulged except at his instance; even the death of the client does not absolve the attorney from his obligation of secrecy.
25. **Accepting Adverse Retainers.**—The duty not to divulge the secrets of clients extends further than mere silence by the attorney, and forbids accepting retainers or employment afterwards from others involving the client's interests, in the matters about which the confidence was reposed. When the secrets or confidence of a former client may be availed of or be material, in a subsequent suit, as the basis of any judgment which may injuriously affect his rights, the attorney cannot appear in such cause, without the consent of his former client.
26. **Attacking his own instruments or Conveyances.**—An attorney can never attack an instrument or paper drawn by him for any infirmity apparent on its face; nor for any other cause where confidence has been reposed as to the facts concerning it. Where the attorney acted as a mere conveyancer, and was not consulted as to the facts, and unknown to him, the transaction amounted to a violation of the criminal laws, he may assail it on that ground, in suits between third persons, or between parties to the instrument and strangers.
27. **What influences an Attorney May Use.**—An attorney openly, and in his true character, may render purely professional service before committees, regarding proposed legislation, and in advocacy of claims before departments of the government, upon the same principles of ethics which justify his appearance before the Courts; but it is immoral and illegal for an attorney so engaged to conceal his attorneyship, or to employ secret personal solicitations, or to use means other than those addressed to the reason and understanding to influence action.
28. **Representing Conflicting Interests.**—An attorney can never represent conflicting interests in the same suit or transaction, except by express consent of all so concerned, with full knowledge of the facts. Even then such a position is embarrassing, and ought to be avoided. An attorney represents conflicting interests within the meaning of this rule, when it is his duty, in behalf of one of his clients, to contend for that which duty to other clients in the transaction requires him to oppose.
29. "It is not a desirable professional reputation to live and die with—that of a rough tongue, which makes a man to be sought out and retained to gratify the malevolent feeling of a suitor, in hearing the other side well lashed and vilified."
30. **Ministering to Prejudices of his Client.**—An attorney is under no obligation to minister to the malevolence or prejudices of a client in the trial or conduct of a couse. The client can not be made the keeper of the attorney's conscience in professional matters. He cannot demand as of right that his attorney shall abuse the opposite party or indulge in offensive personalities. The attorney under the solemnity of his oath, must determine for himself whether such a course is essential to the ends of justice and therefore justifiable.
31. **Ill-feeling and Personalities between Advocates.**—Clients and not their attorneys are the litigants; and whatever may be the ill-feeling existing between clients, it is unprofessional for attorneys to partake of it in their conduct and demeanor to each other, or to suitors in the case.
32. In the conduct of litigation and the trial of causes, the attorneys should try the merits of the cause, and not try each other. It is not proper to allude to, or comment upon, the personal history, or mental or physical peculiarities or idiosyncracies of opposite counsel. Personalities should always be avoided, and the utmost courtesy always extended to an honourable opponent.

(To be concluded.)

LONDON LETTER.

The Temple, London,
5th August, 1925.

My Dear N.Z.,

I can sum up the conclusion of our recent labour crisis in one quotation. To meet the threat of a universal stoppage there was only available the grant of a subsidy to the Coal Trade; as to which, the Prime Minister, it may be observed,

"And saying he would ne'er consent, consented."

I leave it to you, and the future, to decide the correct application of the metaphor, preferring myself to remain in the position of the Delphic Oracle. The quotation may be intended to refer to the analogy of a beautiful woman stooping to folly, with the usual, dismal consequences in the long run; or it may refer to the surrender of a coy maiden to the re-iterated proposals of a strong-minded suitor, with the result familiar at any rate in fiction that "they all lived happily ever after." Enough for our present purposes that the immediate calamity was averted, and that we all got away for our holidays where we now are. I take the holiday mood as an excuse for the breaking of a number of promises which I have made in this correspondence. As to the Tasmanian apple case, **Bradley & Sons Ltd. v. The Federal Steam Navigation Co. Ltd.** I will candidly admit that, away from Chambers notwithstanding the above illusory address, I have nothing to add to my brief announcement that, after hearing a vast number of expert and other witnesses, Branson J. decided that the epidemic of "brown heart" in the imported apples was attributable to innate disease and not to any faulty ventilation of the ship's holds. As to my promise of a selection of cases from last term's Revenue Paper, I resort to the low expedient of setting out the headnotes of the lot, as reported:

Barson v. Airey (41 T.L.R. 560; 159 Law Times 534; 69 Solicitor's Journal and Weekly Reporter 679) Income Tax—Director—Services as director outside United Kingdom—Liability as to remuneration received.

Martin v. Lowry (41 T.L.R. 574; 159 L.T. 511; 69 S.J. & W.R. 724) Income Tax—Single transaction—Activities amounting to trade—Schedule D. Cases I and IV.

Betts v. Clare & Co. Ltd. (1925 Weekly Notes 194; 60 Law Journal 619; 41 T.L.R. 561; 159 L.T. 533; 69 S.J. & W.R. 708) Average Basis—Trade set up within the three years—Period over which accounts to be brought into calculation.

Granger v. Executors of Maxwell, deceased (1925 W.N. 195; 41 T.L.R. 570; 159 L.T. 533; 69 S.J. & W.R. 679) Exchequer Bonds—No interest in year of assessment—Liability—Schedule D. Case III, Rule I (f).

Scales v. Atalanta S.S. Co. (41 T.L.R. 591; 159 L.T. 534) Finance Act (No. 2) 1915, sec. 31 (6) "Agent"—Income Tax Act, 1842.

Collins v. Firth Brearley Stainless Steel Syndicate Ltd. (160 L.T. 6; 69 S.J & W.R. 695) Income Tax—Company—Profit on buying and selling patents—Finding of fact by General Commissioners.

Cooper v. Stubbs (60 L.J. 657; 41 T.L.R. 614; 160 L.T. 27; 69 S.J. & W.R. 743) Income Tax—Speculating in "futures" over long period—Found by Commissioners not to be "carrying on a trade"—Finding reversed by Judge on Case Stated—Questions of fact and questions of law.

Commissioners of Inland Revenue v. Roberts (41 T.L.R. 623; 69 S.J. & W.R. 727) Super tax—Sale of firm's undertaking to Company—Accrued profits included in sale—Dividend—Assessment of shareholder formerly partner in firm.

Lethern v. Muller & Co. (London) Ltd. (not yet reported in current legal journals) Income Tax—Foreign shipping company—London agents—Goods carried f.o.b.—Finance Act (No. 2) 1915, sec. 31 (7).

The King v. Special Commissioners of Income Tax, ex parte The Headmasters' Conference (not yet reported in current legal journals) Income Tax—Exemption—Income Tax Act, 1918, sec. 37 (1) (b)—"Established for charitable purposes only."

The two last-named cases may be found, epitomised, in the "Morning Post" legal digest of July 20 and 27 respectively, and the above notes are taken from an advance proof of the term's index of that digest. The interesting ones, all decided in favour of the tax payer, are Betts v. Clare & Co. Ltd., Granger v. Executors of Maxwell decd., Cooper v. Stubbs in the Court of Appeal; the thrilling one is Martin v. Lowry, retailing the facts of that astoundingly big deal in Government Surplus Stores; and the one of widest application, to matters other than tax, is the last, the Headmasters' Conference case, with its decision that an institution connected with educational purposes but calculated to promote the interests of individual headmasters also is not within even the wide, technical definition of "charity."

My remaining promise, to go through the interesting personalities of Bench and Bar of the day, I intend to keep both in the letter and the spirit, starting with Lord Cave and ending with myself. All the "Studies," except the last, will be serious attempts to put you in momentary contact with the living men, giving you neither facts nor figures of their past, since history is not in my line. Such of their past as my victims carry about with them I will not omit; it would, for example, be misleading and inept to omit, in dealing with the Lord Chancellor, any reference to his championing in the remote past of the Cause of the Licensed Trade. Better men than I must write these great men's biographies; if I can bring you into their presence from overseas, for a moment, I shall have served my purpose and executed your Editor's instructions. What is threatened by this impudent suggestion that I shall, at the last, suddenly descend from the heights into the very depths and inflict myself upon you, he who lives shall see. Meanwhile, there is some more technical matter to survive, before we can let ourselves loose on the personal equation.

We were very busy settling outstanding affairs, before we dispersed for the Long Vacation. The Report of Mr. Justice Lawrence's Committee was published on the subject of Poor Persons in Litigation. I have frequently adverted to that topic in these letters; the report need now only be mentioned and need not be analysed, having regard to the purely domestic nature of its statistics and recommendations. The Law Journal of August 1 not irrelevantly raises the question: is a solicitor who undertakes, gratis, the conduct of a poor per-

son's suit to stand thereafter to be shot at by the poor person, in an action for negligence? You may or may not agree with the solution of this dilemma which is propounded; it makes no reference to the possibility of another solicitor welcoming the task, even gratis, of attacking a confrere of whom he entertains a poor opinion! Further we are presented with some important alterations in, and additions to, our Rules of Procedure, but these I suspect need not worry you. A more important topic, from an imperial point of view, is the agitation as to the York—Antwerp Rules, the American opposition to the universal adoption of which has somewhat hardened. I hope I am to be pardoned the observation that the much vaunted Idealism of the New World does not compare favourably, when the acid test is applied, with the self-depreciating practices of the Old World. The Empire has led, and the Mother Country has followed, in an enterprise to bring the whole commercial community together in the handling of its sea-born traffic. It is only necessary to compare the prefaces of the last and the last-but-one editions of Scrutton to discover how little self-interest has been allowed to prevail with us. Upon this subject, as upon so many others, we are advised to make no comment which may dislocate delicate negotiations; enough then to express the hope that the informal discussions and movements, said to be current, may induce the outstanding Nations to come into the international scheme. Turning to a less essential development, there may be mentioned the now definite arrangments of our solicitors' Incorporated Law Society to celebrate its centenary, with all due pomp and circumstance, at the beginning of the next legal year, in October. From the other branch of the profession, I may express profound admiration of, and sincere congratulation on the achievement of a hundred years of team work.

A number of cases need to be reviewed, before we can close our discussions of the term's progress. So regular is the practice with the English legal periodicals to summarise the effect of the period's legislation and litigation, that I need essay no such treatise. To be perfectly clear on the subject, I may remind you that the Trinity Term ended on July 31 last, and therewith a legal year. The new legal year does not begin till the second week in October, and during the intervening period only matters of pressing necessity are susceptible to treatment by the High Court and its Vacation Judges. Doubtless you will for yourselves recall the familiar stories of learned Judges being pursued in their sports and pastimes of the season by bearers of applications to serve notices of motion with writ. The cases, to which I refer above, are those which were decided in the latter days of the term. Wing v. Pickering was a striking instance of the importance which the Courts attach to every word and letter of the Miners' Charter, the Coal Mines Act, 1911. Section 67 of that Act imposes very strict provisions in the emergency of a mine becoming dangerous by reason of the prevalence of noxious or inflammatory gasses. In Maltby coal mines the emergency came into existence and, as to the men working on the face of the coal, the provisions of the section were properly complied with. The section permits of a re-admission of men, after withdrawal of workers, for the purpose of dealing with the danger in question. In this instance a number of volunteers were admitted, after the withdrawal, to deal with the danger, then pressing, from fire. A disaster followed, and a charge was preferred against the authority admitting the volunteers in disregard of the provisions of the section. The latter contended, and Justices held, that the danger of gas and the danger of fire were indistinguishable and inseparable, for the purposes of the section and that the provisions applied only to the safety of coal workers and not to the risk of danger to voluntary danger-fighters. On both points the Divisional Court disagreed and, emphasising the sacred nature of the Charter, ruled that re-admission, as permitted, must only be for the purpose of eliminating the gas and that any other admission of men, in whatever emergency, must be subject to the restrictions of the section. In Barnett v. Sanker, a claim by an intermediary for balance due on account in dealings in metals in a recognised Metal Market, McCardie J. assisted us all a little further upon the obscure point of the extent of the application of the Gaming Act, 1845, to hazards in money or produce markets as distinguished from hazards on the race course or the card table; he cited **Universal Stock Exchange Ltd. v. Strachan** (1896) A.C. 166 and specified a test for discovering whether the speculative element must be regarded as paramount or as merely incidental, when the defence of the Gaming Act is set up. An interesting point was raised in a Country Court case as to a husband's liability to pay for the funeral expenses of a child over sixteen, the circumstances being that upon divorcing his wife he had obtained an order for the custody of the child but had in fact left the child with the mother, who buried it, at its death, and now claimed to be repaid. The case went to show how very limited are a father's liabilities towards his children, after the age of 16, it being held in this case that there could be no liability upon him at all. The name of the case was Bamsey v. Bamsey, and, should any reader of Fortnightly Notes require it, a report from a local paper can be obtained for him. The County Court was, I think, that of Greenwich. In a similar context a Divisional Court consisting of the Lord Chief Justice, Avory and Shearman JJ. last week decided that a father could not obtain, by writ of habeas corpus, the custody of a child which, for some six years of its life and after the death of its mother, he had left to be cared for and brought up by an aunt. Good faith being conceded on both sides of the dispute as to the child's proper destination, the Court insisted upon the paramount maxim of the law that in such matters consideration of the welfare of the child itself must decide: In re Margaret Thain, an Infant, noticed in the London newspapers of July 30 last. At an earlier date Tomlin J. decided, in Thorn v. Madden, that the habitual taking in of paying guests was breach of a covenant not to use premises for trade, business or any purposes other than that of private dwelling-house and professional residence; and in Isaacs & Sons v. Cook, a case possibly of the greatest importance to your Exporters, it was held that a report of the High Commissioner of Australia, in London, to the Prime Minister, in Australia, was absolutely privileged, though it dealt not with matters of State but with the undesirability of exported fruit being put on the London market through the intermediary of the plaintiffs and others

constituting a particular middleman. I incline to note, in this letter, the point of law only, as to privileged occasion in libel and slander; in its wider bearing it is safe to assume that the case has been widely reported in New Zealand.

In these more remote issues, from the lawyers' point of view, the Court of Appeal has authorised the President's decision upon the measure of damages in collision, in the case of The "Susquehanna" and, more importantly, the House of Lords has affirmed the Court of Appeal's decision in Brightman & Co. v. Bunge Y Born, upon a matter of demurrage and the construction of a particular class of charter-party. The case is very fully noted and reported in the Law Reports (1924) K.B. 619, to which I may refer you. And, one Peter Wright having labelled the late Mr. Gladstone a blackguard and the Grand Old Man's sons having labelled Peter Wright liar, fool and coward and one Peter Wright apparently being content to leave it at that and there arising accordingly no prospect of a litigation on the point of defamation of the dead to be tried by an action in defamation on the living, this concludes our business for the term.—Yours ever,

INNER TEMPLAR.

FUSION ?

Wangaratta, Victoria.
12th August, 1925.

The Editor,
Butterworth's Fortnightly Notes,

Dear Sir,

My old friend H. F. von Haast has sent me a copy of your issue of 21st July, in which reference is made in an article by him to the position of the legal profession in Victoria as amalgamated.

Substantially his statement is correct so far as Melbourne is concerned, though a few amalgams still survive, more particularly at criminal work but those of us who practise in the country, though our work is mainly that of solicitors, do frequently and regularly appear in the County and Supreme Courts at local Sessions, especially in cases which do not justify, or in which clients cannot afford, the expense of bringing Counsel from Melbourne. The system of Barristers going on circuit does not obtain here. All who practise solely as Barristers have their Chambers in Melbourne and do not attend Country Courts unless specially briefed. So far as Country districts are concerned the amalgamation is therefore a distinct advantage to litigants and prisoners.

May I add that far from being frowned upon I have always met with the kindliest courtesy from the Bench, and my relations both professional and personal with those who practise solely as Barristers have always been perfectly cordial. I have never felt myself a pariah.

Yours faithfully,
F. C. PURBRICH.

Mr. H. B. Gibson, Solicitor, Hawera, has been admitted as a Barrister of the Supreme Court by His Honour Mr. Justice Alpers on the motion of Mr. H. R. Billing.

Mr. A. M. Mowlem, S.M., New Plymouth, who has been indisposed for some weeks, has left for a health recuperating trip to the Blue Mountains, New South Wales.

BENCH AND BAR.

MR. JUSTICE ALPERS.

We regret to announce that His Honour Mr. Justice Alpers is indisposed and that acting under medical advice he is unable to attend to his duties for a few weeks. We trust that he will be completely restored to health ere long.

As a means towards the promotion of good fellowship between the Law and Insurance Professions the principals and staffs of these offices in Auckland hold an annual Reunion on Dominion Day with Senior and Junior Football Matches in the afternoon, followed by a Smoke Concert in the evening.

This year the football matches were held at Eden Park when there was a good attendance, the junior game ending in a draw, six points all. In the senior game Law had the better of the opening, scoring twice in the first half. In the second half Insurance played better, but were not able to pull up, and the game ended in a win for Law by 8 to 6.

The evening function was not held until Monday the 5th inst., when, instead of the usual Smoke Concert, a Ladies' Night was held in Scots' Hall and proved a great success.

Mr. W. G. Bell, the chairman of the Auckland Underwriters' Association, presided, and opened the entertainment with a few well chosen words. A musical programme led on to the supper adjournment after which Mr. J. B. Johnston, the vice-president of the Auckland District Law Society, made a happy little speech in the course of which he mentioned that on looking round on such a happy gathering he wondered how it was that, with the combined wisdom of Law and Insurance, they had not thought of a Ladies' Night before and after the success of that evening he foresaw its becoming an annual event. In concluding, he expressed Law's hope that Insurance would have a happy and prosperous year with many disputed claims but undiminished dividends.

Further musical items carried through a very jolly evening to a close with the singing of "Auld Lang Syne."

CORRESPONDENCE.

THE MOUAT CASE.

(To the Editor)

Dear Sir,—

I have read with interest the Article on this case in your issue of 29th September. The writer criticises the learned Judge's direction to the jury, and concludes that the particular verdict of manslaughter was not justified by the evidence.

As the matter is one of general importance and presents itself to my mind in a very different light, I think it worth while to state briefly a line of argument that seems to justify the verdict. I have not examined the authorities, and my views are based solely on the provisions of "The Crimes Act, 1908." An examination of the Statute seems to give a clear and satisfactory result, and I quote only so much of each section as is necessary for my purpose.

In the first place Section 173 defines "homicide" as the killing of a human being by another. The jury have, of course, decided that Mouat killed his wife. Then "culpable homicide" is defined in Section 175, under which there must have been an unlawful act, omission, etc. Mouat's conduct after the killing, his varying statements, the disposal of the body, etc., justified the jury in treating the "homicide" as culpable.

Section 175 proceeds to state that "culpable homicide is either murder or manslaughter." Once the jury were satisfied that there was "culpable homicide," they were therefore faced with the alternative of murder or manslaughter.

Now "murder" is defined in Section 182; and, in addition to the finding of "culpable homicide," it requires a further finding of some particular intent or state of mind on the part of the murderer. The onus here lies on the Crown to establish intent, and, if the jury are not convinced, they must not convict of murder. This is, I think, the crucial point. But what is the result if the jury are uncertain whether the necessary intent was present or not? Surely they cannot be bound to acquit. I think the answer is supplied by Section 186, which states that "culpable homicide not amounting to murder is manslaughter." Hav-

ing found "culpable homicide," and not being satisfied with the evidence (or lack of evidence) on the question of intent, it seems that the jury were not merely entitled, but were in duty bound, to bring in a verdict of manslaughter. The suggestion of a domestic quarrel was of a shadowy nature, but, such as it was, it told slightly in favour of the accused on the question of intent.

The matter of provocation, which is stressed in the Article, is a separate and different question arising under Section 184. Admittedly the onus under that Section rests on the accused, and he must prove the provocation by sufficient evidence. But the section shows that the question of provocation does not arise until the jury are satisfied that there was "culpable homicide which would otherwise be murder." In other words, the evidence being such as to establish the necessary intent to constitute murder under Section 182, it is open to the accused, if he can, to reduce the crime to manslaughter by satisfactory proof of "provocation." For this purpose the flimsy evidence of a domestic quarrel would no doubt be insufficient; but the error lies in assuming that it was used for this purpose.

The cases cited in the Article do not seem inconsistent with this view. I have not seen a report of His Honour's summing-up, and it is possible that expressions may have been used inadvertently that would lend colour to your contributor's criticism. But, looking at the matter with a broad view and apart from any accidental error, I think your readers will find no technical ground to cavil at the verdict of manslaughter as distinguished from murder. At any rate I invite them to examine the Statute with these remarks in mind.—I am, etc.,

"ADVOCATUS DIABOLI."

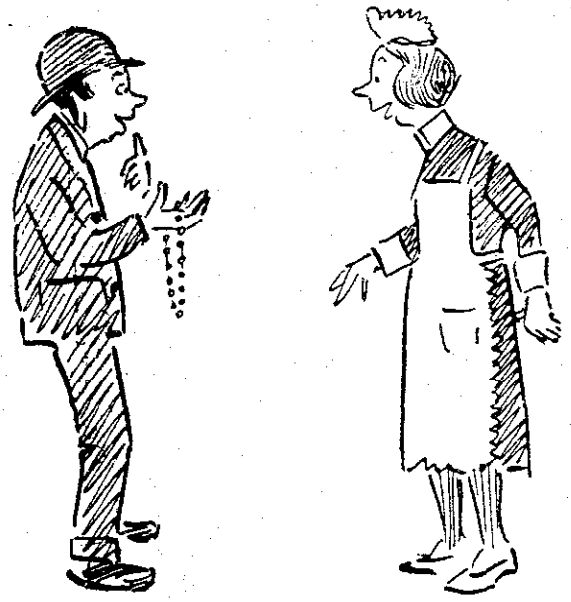
Dunedin, 8th October, 1925.

FORENSIC FABLES.

No. 10.

IRENE, HER YOUNG MAN, AND THE NECKLACE.

Irene Mugg was a Young Woman of Grit and Determination who did her Bit during the War. The Bit was in a Munitions Factory at £7 10s. a week. When Peace was Declared she Reluctantly Took to Domestic Service. Her Employers were



Mr. and Mrs. Tompkyns, of Earl's Court. Finding her Emoluments as House-Parlourmaid Quite Inadequate, Irene Determined to Supplement them. One Evening when Mr. and Mrs. Tompkyns were Dining with Friends, Irene and her Young Man (who had Come to Supper) made a Voyage of Discovery in the Best Bedroom. Their Diligence was Rewarded. As they had Taken the Precaution of Breaking the Window, Irene's Story that Burglars had Carried off Mrs. Tompkyn's Necklace was for the Moment Accepted. But a Few Days later the Nasty and Suspicious Demeanour of Mrs. Tompkyns Induced Irene to Send in her Portfolio and Seek Employment Elsewhere. When Mrs. Jenkinson of Putney applied for Irene's Character, Mrs. Tompkyns Curtly Replied that She was Unable to Recommend Irene Mugg as a Domestic Servant. Did Irene Take this Lying Down? By no Means. She Properly Sought the Assistance of the Amalgamated Union of Friendless Female Workers and Launched an Action for Defamation against Mrs. Tompkyns, and, having been Assured that Husbands are Liable for the Torts of their Wives, She Took the Precaution of Adding Mr. Tompkyns as a Defendant. The Defendants Pleaded that the Occasion was Privileged. At the Hearing of the Action, Mrs. Tompkyns was Subjected to a Severe Cross-Examination. Did she Believe that Irene had Stolen the Necklace? She did. Why, then, had She not Dared to Make a Definite Charge Against Irene? Because she had no Evidence Against her. Why had she not Searched Irene's Boxes? Because she Thought Irene would Object. Had She given Irene a Chance of Proving her Innocence? She had not. The Judge ruled (after carefully Considering the Authorities) that the Conduct of Mrs. Tompkyns throughout the affair, Taken in Conjunction with her Admissions in the Witness-Box, Afforded some Evidence of Malice. Filled with Righteous Indignation the Jury gave Irene £250, adding a Rider to their Verdict to the Effect that Mrs. Tompkyns had Behaved in an Unwomanly Manner. When the Damages and Costs had been Paid, Irene and her Young Man Disposed of the Necklace in the East End. With the proceeds they Set up in a Licensed House in the Suburbs and are now Doing Very Nicely.

Moral: Have a Jury. O.

MARRIED WOMEN'S TORTS.

When the Common Law is too rigid to adapt itself to modern circumstances by the natural method of judicial decision, there is no resource but to call in the help of the Legislature, and so we have Lord Cave's Bill to redress the anomaly that a husband is liable for his wife's torts notwithstanding that she has become a separate person as regards property. So long as the marriage gave him her property, the corresponding liability was the natural sequel. When, first in equity, by means of the separate use, and then by statute, under the Married Women's Property Act, 1882, the husband and wife became separate individuals as regards property, the husband's liability for his wife's torts became an anachronism. Yet the Courts in **Seroka v. Kattenberg** (17 Q.B.D. 177) and **Earle v.** Kingscote (1900, 2 Ch. 585)—in the latter case against the strong dissenting judgment of Moulton, L.J.—refused to recognise this, and the House of Lords in **Edwards v. Porter** (1925, A.C. 1) took the same course by a majority consisting of Lords Finlay, Atkinson and Sumner, Lords Birkenhead and Cave dissenting. That was last October, and it has now fallen to Lord Cave to take the first step to give legislative effect to his view by introducing the Married Women (Torts) Bill. This consists of a short provision that—

> The husband of a married woman shall not as such be liable to be sued or made a party to any action or legal proceeding brought against her in respect of a tort committed by her whether before or after the marriage.

This is not to apply to proceedings commenced before May 25 last. (13/6/25.)

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