Butterworth's Fortnightly Notes.

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

—Richard Hooker.

TUESDAY, MARCH 16, 1926.

EDITORIAL.

LAW EXAMINATIONS AND THE NEW REGULATIONS.

We have received further letters from law students with regard to the new regulations. One by "Law Student", which we will publish in our next issue, refers largely to the plight of those students who served at the War and who took advantage of certain concessions made to them on their return with regard to the Solicitors General Knowledge examination. Unless the regulations are amended then this Law Student, and we suppose he is but one of a good many, will suffer very great hardship. No one will cavil at the examinations being made more searching, no one should object to a certain number of years practical experience being an essential precedent to admission but all will agree that too drastic a change with indifference to the hardship worked on many students is quite uncalled for.

We feel we can confidently say that the effect of the regulations was not sufficiently realised at first and there is an unanimous desire of the Council of the New Zealand Law Society to amend the regulations so as to work as little hardship as possible. We have said before that there will be certainly some hardship but we are equally sure that a great deal of the hardship now apparent can be avoided and yet the objective of the regulations can still be reached.

There is to be a meeting of the Law Society in the course of a few days and we believe this matter is coming up for consideration. In the meantime we are confident that the Council will find equitable relief for the deserving.

SUPREME COURT.

Adams J. Nov. 12, Dec. 21, 1925.
Timaru.

PYNE GOULD GUINNESS LTD. v. G. S. MEREDITH & CO. LTD & JOHN MILL & CO. LTD.

Contract—Chattels transfer—Sec. 31 of Act of 1908—"Mentioned"—Meaning of—Contract—Time—Delivery when time silent.

The plaintiff claimed the potatoes in the first instance as grantee under an instrument by way of security under the Chattels Transfer Act 1908 dated 28th June 1924 and given to the plaintiff by Peter Swaney and registered under the Act; and alternately under a contract of sale made on or about 19th June 1923. It was admitted that the potatoes were taken by Meredith & Co. and were dealt with by John Mill & Co. Ltd. as agents with notice of the plaintiff's claim, but they deny the alleged title under the instrument, and also under the contract; and allege that Meredith & Co. bought and took delivery of the potatoes under contracts of sale made on 6th June 1923 without notice of the instrument or of any contract for sale of the potatoes to the plaintiff.

The instrument by way of security was on a printed form and purported to assign to the plaintiff all the stock chattels and crops described or referred to in the first schedule, which was as follows:—

"70 acres now growing in wheat.
"80 acres to be sown.
"75 acres to be sown in potatoes.
"90 acres of wheat ac. **are now at in and upon or about my property** being lot 1" (here follows description by section block and district) "and 75 acres of potatoes are to be sown on the land leased by me from M. Cooney Main South Road Morven or other lands which the grantor **may now or hereafter for the time being occupy.**" The words in black were printed, the remainder of the schedule being in writing.

The contract was made up by two notes as follows:—

"SALE NOTE.

"19/6/25.

"I have this day sold to Pyne Gould Guinness Ltd.

Quantity Approx.	Description	Price per ton.	On Trucks.
816	Scotia Table Potatoes	£2/5/-	Morven
1500	Dakota Table Potatoes	£4/2/6	"
375	Dakota Seed and Pig	£1/10/-	"
285	Scotia Seed and Pig		
2350	Arran Chief Seed and Pig		

as per samples. The grain to be delivered in good condition and equal to sample.

Storage or railway weights to be accepted as basis for settlement. (Price of sacks) extra.

Name—Peter Swaney,
Address—Waimate.

The seller to be charged any extra railage incurred through weight exceeding 200lbs. per sack as provided in the railway regulations."

The bought note was in the same terms, except that it had the words "we have this day purchased from P. Swaney, Waimate" instead of "I have this day sold etc." and was signed "Pyne Gould Guinness Ltd. per W. F. Morrison."

Donnelly for plaintiff.
Callan for defendant.

ADAMS J. in giving judgment for defendants said with regard to the Chattels Security that the words "or other lands which the grantor may or now or hereafter for the time being occupy" did not comply with Sec. 31 of Chattels Transfer Act 1908. He thought the words "the lands mentioned" in the Section mean lands mentioned in such a manner that persons reading the instrument at any time after its execution would be able to identify the lands referred to. He compared Secs. 25 and 26 which relate to stock and referred to **Silk v. Dalgety & Co. Ltd.** (1923 N.Z.L.R. 1065) where it was held that the word "mentioned" there meant "specified." In **Bailey v. Union Bank** (1916 G.L.R. 449) the word was held to be equivalent to "description."

With regard to the reliance placed on the contract the learned Judge held that the property never vested in the plaintiffs on the facts. He made the following observations of the law touching the matter: The sale was therefore of unascertained goods to be delivered by the seller on trucks at Morven. The price was fixed at so much per ton and the railway weights were to be accepted. The sold and bought notes state the quantities by numbers and these are stated to be approximate. There can be no doubt that the numbers refer to sacks. The stipulation as to delivery is for the benefit of both parties, and Swaney could not be required to give, nor the plaintiff to accept, delivery at any other place or in any other manner. **Maine Spinning Co. v. Sutcliffe & Co.** (1918 87 L.J. K.B. 382).

Where a contract for sale of goods is silent as to time of payment, then, unless a different intention appears, de-

livery and payment are concurrent conditions, and the price is therefore payable on delivery. Where, as in this case, the price is to be ascertained by weighing the goods it does not become payable until the goods are weighed.

The learned Judge said the case was very similar to **Logan v. Le Mesurier** (1847 6 Moo. P.C. 116). As in that case the sale was not complete until delivery.

The learned Judge referred to the following passage in the judgment delivered by the Judicial Committee of the Privy Council (page 134):

> "Taking the whole of the terms together it appears to us that the first part of the contract, selling an ascertained chattel for an ascertainable sum (and which, if it stood alone, would pass the property) actually paid upon an hypothesis or estimate, is controlled by the subsequent part of the contract providing for the possession, carriage, measurement and delivery, all by the seller, with the readjustment of the price by repayment or increase of the sum paid upon estimate in the event of the estimate proving erroneous, and that so the property did not pass before the delivery at Quebec. If, again, it is said that the measurements was not to be made by the seller, but in the manner alleged by the appellants, this can make no difference in the result, because in what way soever, and my whatsoever mode, the measurement was to be after delivery at Quebec. Instead of a sale, it was only a contract to deliver at a certain time and place, and the property did not pass before that delivery."

Skerrett C.J. Feb. 10, 16, 1926. Wellington.

ADAMS v. ADAMS & OLSEN.

Divorce—Adultery—Petitioners conduct inducing or contributing to adultery of respondent.

In a suit for dissolution of marriage on the grounds of the respondent's adultery with Olsen the respondent pleaded that while admitting the acts of adultery yet the conduct and habits of petitioner had induced or contributed to that adultery. The adultery took place 9 months after the parties had separated.

Luckie for petitioner.
C. A. L. Treadwell for respondent.
No appearance of co-respondent.

SKERRETT C.J. found for the petitioner and we publish the following remarks of the learned Chief Justice on the law touching the matter: It is not necessary in my opinion to embark on a close analysis of the section; or to distinguish between the language employed in Section 21 subsection (2) of the Divorce and Matrimonial Causes Act 1908 and that in Section 31 of the Imperial Act of 1857. In any view of the language of our section there must be a distinct causal nexus between the adultery and the habits or misconduct complained of; and that causation must have induced or had at least a sensible share in contributing to the adultery.

Solicitors for petitioner: **Field & Luckie**, Wellington.
Solicitors for respondent: **O'Dea & Bayley**, Hawera.

Reed J. Nov. 25 26, 1925; Jan. 11, 1926. Auckland.

HAYCOCK v. ST. CLAIR JOUNNEAUX.

Guarantee—Discharge from—Alteration in contract after execution of guarantee.

This was an appeal from the decision of a Magistrate who held the appellant liable under a guarantee given by him in respect of payments due by his son to the respondent.

Biss for appellant.
Richmond for respondent.

REED J. held that there was no alteration whatsoever in the terms of the guarantee and therefore the principle established in **Emmett v. Dewhurst** (3 Mac. & G. 587) that any alteration in the terms of a guarantee before breach is within the 4th Section of the Statute of Frauds and to be effective must be in writing, had no application.

His Honour remarked also: "Even if the terms of the rearrangement did alter the position of the appellant his concurrence precludes the operation of the principle that if a creditor so deals with his principal debtor as to alter the position of the surety he discharges the surety: **Woodcock v. Oxford and Worcester Rly. Co.** (1 Drew. 521)."

Later on the contention that in rearranging the finance the mortgage in question had been discharged the learned Judge said: The law is settled that where there is an absolute release by the creditor of the principal debtor the remedy against the surety is gone, because the debt is satisfied, and no right of recourse remains when the debt is gone. **Commercial Bank of Tasmania v. Jones** (1893 A.C. 313, 316). But that is not the case here, the mortgage was released, and a new mortgage substituted, solely for the purpose of carrying out the terms of the re-arrangement, the whole matter being with the full consent and approval of the appellant. In such circumstances, there being no actual release of the debt of the principal debtor, but merely a rearrangement of the security, it does not operate as a release of the surety. The case of **Orchison v. Schlaeffer** (1924 N.Z.L.R. 1170), to which counsel for the appellant referred, does not help him. In that case the principal debtor was absolutely released and no debt was left. It is clear from the judgment of Mr. Justice Sim that had the new mortgages provided for a continuing liability of the principal debtor, even though in the different capacity of a surety, the liability under the original guarantee would not have been discharged.

Alpers, J. Dec. 3, 4, 7, 8, 9, 10, 11, 14, 1925; Feb. 26, 1926. Wellington.

IN RE TRADEMARK "LYSOL."

Trademark—Fraud—Lack of candour in ex parte application—Property in trademark—What is—Assignment of trademark — Essential qualities—Distinctiveness—Publici juris—Assignment in terms of statute—Whether this suffi-

cient—Treaty of Versailles—Effect of on alien's business lost through war.

This was a motion to expunge from the Register the entry of trademark 6182 Class being the word "Lysol" originally registered in the name of Schulke and Mayr of Hamburg on September 15, 1906, but now registered by virtue of an assignment dated 7th September, 1920, in the name of Lysol Ltd. of London.

We have been requested on account of the importance of this application to report the case fully. This is impossible but we publish a longer note of the case than we should have done ordinarily. We take the facts from the reasons of the learned Judge.

On January 20, 1890, one Wilhelm Dammann of Halle-on-Saale, Germany, lodged in the British Patent Office a provisional specification in regard to "an improved process for rendering "tar-oils soluble in water, and the production of disinfectants and other useful products therefrom." The complete specification was left on 15th October 1890 and the application accepted on 10th January 1891. Hitherto, it is claimed, tar-oils had not been completely divisible in water: emulsions only had been produced. The inventor claims for his process that it renders tar-oils completely soluble in water and enables him to introduce into the product itself other bye-products such as atomic groups which contain halogens, sulphur, nitrogen, and phosphorus. To this new product the inventor gives the name "Lysol" or "Lysoline". ("Lysis"—loosening; "-ol"—the suffix in common use in all names of chemical substances of the cresol class.) "Lysol" is, in fact, "Liquid Cresol Soap."

In July 1890, between the dates of the two specifications, the firm of Schulke & Mayr of Hamburg, in virtue, no doubt, of a license to manufacture from the patentee Dammann, registered the word in England as their trade mark. Dammann's patent expired in 1900 and up to that date Schulke & Mayr were, as far as we know, the sole manufacturers of the new product. After that date of course any one who chose to do so was at liberty to manufacture the product; but Schulke & Mayr alone could call it "Lysol" in any country where the trade mark was registered.

In 1890 Mr. J. E. Schloss established himself in business in New Zealand as sole selling agent, inter alia, of Schulke & Mayr's disinfectant "Lysol" and until the outbreak of war in August 1914 he continued to import and sell. Up till 1900 there existed by virtue of the Dammann patent an absolute monopoly in the new product; thereafter for many years, Mr. Schloss seems to have enjoyed a de facto monopoly in spite of the occasional appearance in the market of "Liquid Cresol Soap" made by other manufacturers and sold under different names.

On September 15, 1906, the word "Lysol" was, on the application of Schulke & Mayr entered in the Register of Trade Marks in New Zealand as an "invented word" in Class 2 in respect of disinfectants. The mark had previously been registered in many other countries but in all, except South Africa, during the currency of the patent, i.e. before 1900.

On the outbreak of the war with Germany the trade mark "Lysol" was, in England and in Australia, voided; in New Zealand, suspended only; in South Africa, left alone. The suspension in New Zealand was effected by Order-in-Council dated August 23, 1915. It was "suspended so far as regards and in favour of Pearson's Anti-Septic Company Limited of London." This company was authorised to sell its "Lysol" in New Zealand under that name, provided there was used, with the word "Lysol" some other mark or means of distinguishing the goods.

Up till the outbreak of war a very large number of manufacturing chemists in England and elsewhere had been producing "Liquid Cresol Soap" and selling it under a variety of names and registered marks of which Desodol, Xysol, Pacolol, and Evansol are but a few. When the German trade mark was voided, however, most of these manufacturers evidently found it to their interest to adopt the German name for this German-invented product and to call it "Lysol", either alone or in conjunction with their own firm names or other distinguishing marks. This of course they had the right to do in England and in Australia. But they exported their preparations to New Zealand also, either in ignorance of the terms of the Order-in-Council giving Pearson's alone the right to use the word, or, what I fear is more probable, in defiance of it. At any rate, while the Order-in-Council continued in force, they were all infringers of Pearson's rights. Among these enterprising pirates—and not the least enterprising of them—one finds the respondents themselves, Lysol Limited, who now come before the Court, virtuously indignant at the attempted continuance of such conduct by their late confederates in buccaneering.

The Treaty of Versailles was signed on June 28, 1919. Thereby the High Contracting Parties agreed, among many other things, that rights of industrial property should be re-established or restored in favour of the persons entitled to the benefit of them at the moment when the state of war commenced. By order of this Court made on the 26th day of September, 1924, it was declared that the Order-in-Council of August 23, 1915, suspending the trade mark "Lysol" in favour of Pearson's, ceased to be operative on July 10, 1920—being six months after the Treaty came into force in New Zealand.

On September 7, 1920, the Schulke & Mayr Aktien Gesellschaft, successors to the former partnership firm of Schulke & Mayr, in consideration of the sum of £100 transferred to Lysol Limited all their trade marks (including the mark "Lysol") in Belgium and in any British possession "together with the goodwill of the business at any time carried on in connection therewith and together with the right of Lysol Limited to represent themselves as carrying on such business in succession to the company and to use similar packages and advertisements—and to identify the goods sold by Lysol Limited with the goods formerly sold by the company and their predecessors and together also with the right to make application for the revival or continuance of any —— rights which may have been temporarily forfeited or may have lapsed and which may be possible to revive."

The schedule of countries includes England, Australia, New Zealand, British India, Canada, the four States of the South African Union, and Belgium. This seems a lot for the money; especially when one considers that in the last-named country, particularly, the demand for disinfectants would be expected to be brisk. But in England and Australia, one remembers, the registration of the mark had been irretrievably cancelled and it may be that in some other countries in this world-compelling list it was not seriously thought "possible to revive" the moribund right.

"Lysol Limited" was formed sometime in 1915 by S. H. Marshall, formerly manager of the Lysol Department of "Zimmermann & Co. (Chemists) Limited", agents in the United Kingdom of Schulke & Mayr. Lysol Limited was manufacturing, and during the years 1917-1920, at any rate, exporting to New Zealand, "Liquid Cresol Soap" made up as "'L' Brand Lysol" or "Marshall's Lysol" and described on the bottles as "the only genuine original Lysol."

The assignment by the Hamburg company to this company of "the goodwill of its business" in New Zealand, precedes by three years the date on which in fact German nationals were permitted to re-commence business relations with the Dominion.

In May 1922 the two parties to this agreement applied in New Zealand for the registration of the transferee Lysol Limited as proprietor of the trade mark and registration was finally effected on October 22, 1924.

In the meantime British and Australian firms—some twenty-five or more in all—continued to export to and sell in New Zealand "Liquid Cresol Soap", under the name "Lysol", made up in bottles that so closely resembled in shape, colour, and glass-markings the well-known Schulke & Mayr bottles, and wrapped in wrappers which in many cases were so like the Schulke & Mayr wrappers, as to put the explanation of coincidence quite out of the question. Respondents' Lysol continued to be imported as "true British Lysol" and this after they had acquired the goodwill of the German business. But the most bizarre episode in this Gilbertian medley Mr. Schloss is himself responsible for. He had been the selling agent in New Zealand since 1921, and the duly authorised attorney since 1922, of the respondent Lysol Limited. In the year 1923—three years after the assignment of the goodwill—he bought from the German firm and imported into New Zealand 225 cases of Schulke & Mayr's Hamburg-made "Lysol" to compete on this market with the "only genuine and original Lysol" of his new principals.

The grounds set out in support of the motion fall under three main heads, though there are many sub-heads, and even sub-sub-heads under each, viz:—

1. That the original registration of the word in 1906 was made without sufficient cause in that it was not "distinctive" and not an "invented word"; that it was a word "publici juris"; that the registration thereof was obtained by fraud or by the suppression of material facts and without any bona fide intention of using it as a trade mark.

2. That if the original registration in 1906 be deemed valid then the registration on October 22, 1924, of Lysol Limited as assignees of the mark is an entry wrongly made,

because the purported assignment from Schulke & Mayr is an assignment in gross and therefore invalid; and because at the date of the assignment the use of the word "Lysol" as a trade mark was calculated to deceive.

3. That even if both the original and the subsequent registrations be deemed valid, then the existing entry on the Register of Trade Marks of the word "Lysol" is an entry wrongly remaining on the Register in that the word has ceased to be, if it ever were, a "distinctive" word and in that its use as a trade mark is calculated to deceive both traders and the public by misleading them into believing that Lysol Limited has the exclusive right to manufacture and sell in New Zealand the industrial product universally known as "Lysol", whereas it is lawful for anyone to manufacture and sell it.

It is not suggested by the applicant that the word "Lysol" is scandalous, irreverent, or even "improper".

Cornish and **C. A. L. Treadwell** in support of Motion.
Myers K.C. and **Evans** contra.
Prendeville for Register of Patents etc.

ALPERS J. in making an order in terms of the Motion after setting out the facts at length said: The argument of counsel occupied eight days and between 70 and 80 authorities—text writers and decided cases—were cited to the Court. It may be assumed, therefore, that little has been left undone and less has been left unsaid. But though the argument was long it was never allowed to become other than interesting, and I am indebted to the learned research and lucid exposition of the counsel engaged in the case, for indispensable assistance in what has proved, I must admit, a fomidable task.

His Honour held that the charge of fraud which was largely based on the wording of a letter from the Patent Agents to the Registrar of Trademarks was not established. The learned Judge said: "The correspondence perhaps falls short of that utmost candour which ought to characterise an ex parte application, but that is the most that can be said about it." The application was the application in 1906 for registration.

His Honour in referring to the decision of the Supreme Court of South Africa on an identical application in respect of the trademark "Lysol" and which decision was to the contrary effect from His Honours judgment remarked that in the application to the South African Court the validity of the assignment and the effect of Part X of the Treaty of Versailles were not dealt with by the learned Judges who formed the Court.

His Honour commented that the procedure on application of this sort which provided for evidence on affidavit was unsatisfactory as giving no opportunity of judging if credibility was important.

Dealing then with the property in a trade mark the learned Judge quoted the words of Lord Cranworth in **The Leather Cloth Co. Ltd. v. American Leather Cloth Co. Ltd.** (35 L.J. Ch. 53 at 61), which quotation included these words: "But I further think that the right to a trademark may in general, treating it as property, or as an accessory of property, be sold and transferred upon a sale and transfer of the manufactury of the goods on which the mark has been used to be affixed, and may be lawfully used by the purchaser."

The learned Judge thereupon added: In the exigencies of commerce and industry the doctrine so evolved has been broadened and extended. But a mark is still not assignable, as it is said, "in gross"; it can still only be transmitted "in connection with the goodwill of the business concerned in the goods for which it has been registered." The "concern" with the goods need not be that of manufacturer: it is enough that the goods are the goods of the proprietor of the mark "by virtue of manufacture, selection, certification, dealing with or offering for sale." The mark and the goodwill with it, may be "split": the proprietor of a registered trademark may assign the right to use the same in any British possession or protectorate or foreign country in connection with any goods for which it is registered together with the goodwill of the business therein of any such goods. (**Patents, Designs, and Trademarks Act 1921-22, Sec. 2 and Sec. 87.**)

In spite of the extension of the doctrine in a number of decisions and in a series of statutory enactments, it still bears the indicia of its origin in the Chancery: the rules of law which now recognise property in a mark and at the same time set limits to its assignability, are founded upon the same principle: the protection, in the one case of the owner of the mark, in the other case of the general public, from injury by deception. The law governing assignment as stated by Fry L.J. in 1891 in **Pinto v. Badman** (8 R.P.C. 181) is still the law in spite of amendments in statutes of later date: "It may be assigned, if it is indicative of origin, when the origin is assigned with it. It cannot be assigned when it is divorced from its place of origin or when, in the hands of the transferee, it would indicate something different from what it indicated in the hands of the transferor."

To the contention of counsel for Lysol Ltd. that **Pinto v. Badman** was different from this case in that the assignment from Schulke & Mayr did in set terms purport to transfer with the mark the goodwill of the business at any time carried on in connection therewith and together with the right of Lysol Ltd. to represent themselves as carrying on such business . . . and to identify the goods sold by Lysol Ltd. with the goods formerly sold by the company, His Honour said: But what did this word "Lysol" indicate as to origin of the product in the minds of druggists who dealt in it, of doctors who prescribed it, or of the public who used it? Witness after witness called by respondents themselves, speaking of the period before the war, depose that the word to them connoted "Schulke & Mayr's Lysol", "German Lysol", "a Lysol made in Hamburg." Schloss himself is emphatic upon the point—and he ought to know. "For 24 years before the war," he says, in course of his cross-examination, "I had sole control of importation of article called Lysol. I suppose I am in pretty regular touch with my clients throughout the country: I only deal with wholesale people. They know that it came from Schulke & Mayr. They certainly knew it was a Hamburg firm."

Now if it had ceased to be distinctive by 1920 and had become "publici juris" it was not assignable; you cannot sell a name. If it had remained in fact distinctive or if it was rendered notionally distinctive by force of the Treaty, it was still distinctive of German origin.

The respondent's blazon "genuine original Lysol" on their labels could only mean "the old German Lysol". But there is no pretence that the Lysol they sell and to which they claim the exclusive right to affix the trade mark "Lysol", is made elsewhere than in London. They say they purchased the right to use the mark on goods by them exported to and sold in New Zealand; and that right is exclusive, for the assignment by Schulke & Mayr of their goodwill in New Zealand implies a covenant not to export and sell their own manufacture there. But the right so purchased can only be the right to export and sell Schulke & Mayr's Lysol. The law allows them only to purchase the trade mark when they also purchase "the goodwill of the business concerned in the goods"—Schulke & Mayr's "goods"—"for which it has been registered." The right purported to be assigned "to identify the goods sold by Lysol Limited with the goods formerly sold" by Schulke & Mayr is a right to deceive the public, and the law of England knows no such right.

It is not enough that an assignment in terms conforms to the very language of the statute; this Court will go behind the formal words of the document and see what it really effected. "Lysol" is a manufacturer's mark, not a selector's or merchant's mark any more than was the mark on the champagne in **Mumm's Case** (39 R.P.C. 379).

To the contention of counsel in support of Motion that Schulke & Mayr could not assign a business as they had none to assign and relying on the principle enunciated in **Fink v. J. A. Sharwood & Co. Ltd.** (30 R.P.C. 725) His Honour held that Schulke & Mayr were protected from the consequences of that case by the Treaty of Versailles.

Later referring to the principle enunciated in the case of **Bowden Wire Ltd. v. Bowden Brake Co. Ltd.** (31 R.P.C. 385) the learned Judge concluded his reasons as follows:

If, then, the Lysol to which the respondents claim the exclusive right to apply that name, is a Lysol made by them in London, but the trade mark is a word connoting manufacture in Germany; if it has nothing in common with the German Lysol except that both are compounded from Dammann's specification and not from any secret formula assigned with the mark; and if the persistent use of the words "genuine original Lysol" on this British product indicates—and it can only indicate—that it is a German product, then the continued use of the mark in that way by the respondents is and cannot otherwise than be, calculated to deceive the public. "The main objects of the restrictions upon assignments," says Lord Justice Rigby in **The "Magnolia" Case** (14 R.P.C. 620 at p. 630), was to prevent confusion or deception by suggesting that the articles to which the mark is applied continue to have some connection or other with the original registered owner." A thing so confusing, so productive of deception, and so inconsistent with the very first principles of trade mark law,

ought not to be allowed to remain upon the Register and I accordingly order it to be expunged.

Costs are allowed to the applicant as follows: On the Motion £12 12s.; for each of seven extra days £12 12s.; second counsel £10 10s. per day on each of the days on which he actually attended. The Registrar of Trade Marks was represented by counsel, who, however, did not take part in the argument. I allow him £21. Witnesses' expenses and disbursements to be fixed by the Registrar of the Court.

Solicitors for the applicant: **Webb, Richmond & Cornish.**
Solicitors for respondent: **Bell, Gully, MacKenzie & O'Leary.**
Solicitor for Registrar of Trade Marks: **Crown Solicitor.**

Alpers J. Dec. 16, 1925; Feb. 11, 1926.
Wellington.

IN RE ROBERT MILSON DECEASED.

Will—Gift to daughter with reservations if she marry—Whether gift be absolute or less.

We take the facts from the reasons of Alpers J. The will was made in 1888, and the testator died in 1909. He had only one child, a daughter the defendant Annie Linklater. She was born before the date of the will and married Joseph Linklater in 1903 six years before the death of her father. She has nine children all of them under age, the eldest, the defendant Robert George Linklater having been born in 1905. The landed property bequeathed by the will is now of the nett value of approximately £34,000. After providing for the appointment of executors and payment of debts the will proceeds as follows:

> "I give devise and bequeath subject to such reservations as are herein contained to my daughter "Annie Milson all my landed property of whatever "I may die possessed of including sections 533, 534, "540 and 541 upon the Bunnythorpe road Palmerston "North for her sole use and benefit and I direct that "in case she shall marry that my executors shall so "order that her husband or husbands she may inter-"marry with shall have no power or right to sell, "dispose of or mortgage the property but that it "shall be for my daughter Annie's use and for her "children's but should my daughter die without issue "I will that Thomas Milson of Asterby, Lincolnshire, "England, shall inherit the property or his heirs. I "further direct my executors to realise so soon after "my death as they may think fit upon all the live "stock I may have at the time of my decease and "that the proceeds be used and invested for my "daughter's sole use. I also direct my executors to "pay to my wife Annie Milson out of the estate "above mentioned the sum of one hundred pounds "sterling per year to be paid every six months so "long as she shall live. This amount to be a first "charge out of monies derivable from all or any "of my estate. I also leave to my wife Annie Mil-"son for her natural life the house and all the fur-"niture now upon section 534 and at her death the "same to become the property of my daughter Annie. "To my mother if she survives me I direct that a "home be provided for her by my wife and daughter. "In general I wish my executors to act according to "the best of their judgment in carrying out these "my wishes contained in my will."

Rose for Public Trustee.
Gray K.C. and **H. F. Johnston** for defendant Annie Linklater.
Hoggard for defendant Robert George Linklater.
Myers K.C. and **Evans** for other defendants.

ALPERS J. in deciding that the gift to the daughter Annie Linklater was an absolute gift made the following observations of interest with regard to the interpretation of wills. My first impression, formed when I had read the will, but before I had heard the arguments of counsel or consulted the many authorities cited by them, was that the daughter was intended by the testator to take an absolute interest. In most cases impressions formed in this way are embarrassing, and a Judge naturally does his best to avoid such "snap-shot" opinions, till he has heard both sides. But in a case where the question to be decided is the construction of a will a first impression may be useful; for that is a view of the testator's intention, particularly where, as here, the will is home-made, which is arrived at merely as a question of plain grammar and composition, without regard to technical meanings which the law may have affixed to some of the terms employed or to rules of construction of which the layman who wrote the document probably knew nothing.

To the contention of counsel for the defendants other than the defendant Annie Linklater that similar words in other wills had been interpreted differently the learned Judge observed: It may well be that words similar, though not the same, have been construed differently in other cases; but authorities on construction are really of little avail. In the case of **In re Palmer** (1893 3 Ch. 369 at 373) Lindley L.J. speaks of

> "the mischief done by construing one will by paying "too much attention to decisions on other wills. Rules "of Law must be attended to; but if in any case "the intention of a testator is expressed with suffi-"cient clearness to enable the Court to ascertain it, "the Court ought to give effect to it in that case, "unless there is some law which compels the Court "to ignore it."

No principle of construction is more clearly established than this: that where there is a clear gift in express terms in one part of a will, it cannot afterwards be cut down except by words which indicate with reasonable certainty the intention of the testator to take back or reduce that which he has already given. I do not think the words following "and I direct" do clearly indicate an intention to cut down the prior gift of "all my landed property—for her sole use and benefit." I agree with counsel for the defendant Annie Linklater who contended for the construction I have accepted, that the direction to "my executors" shows that it was only on a marriage after the testator's death, that he desired to limit the estate already given without limitation. Prima facie words of futurity in a will point to events happening after the execution of the will and not merely to events happening after the testator's death; but this prima facie meaning may be controlled by the context (**In re Chapman** 1903 1 Ch. 431). Here anything directed to be done by "executors" can clearly only be done after the death of the testator. The added words therefore amount to an attempt by the testator to divest the estate of his daughter upon the happening of a condition subsequent—her marriage after his death. But she had been married six years before his death presumably to a husband of whom the testator approved. He had therefore six whole years in which he might himself have done that which he directs his executors to do, either by making a new will or a codicil to the present will. He dispensed therefore in his lifetime with performance of the condition. (**In re Parke** 1910 2 Ch. 322; **In re Grove** 1919 1 Ch. 249.)

Solicitors for Public Trustee: **G. G. Rose**, Wellington.
Solicitor for Annie Linklater: **Gray & Jackson**, Wellington.
Solicitors for R. G. Linklater: **Findlay, Hoggard & Morrison**, Wellington.
Solicitors for other defendants: **Bell, Gully, Mackenzie & O'Leary**, Wellington.

Herdman J. October 5, 1925.
Auckland.

HOWIE v. CHATTERTON.

Will—Testamentary capacity—Principle applicable in determining capacity.

This was a writ to set aside a will made by one Mary Buckler in favour of one daughter, the defendant, and to the exclusion of deceased's husband and other children.

Northcroft for plaintiff.
Finlay for defendant.

HERDMAN J. found on the facts that the deceased had signed the will in question when she was not in a condition to appreciate fully what in effect she was doing. He made the following citations relevant to the matter:

In such circumstances what principle of law is applicable? It seems to me that as Lord Lindley said in **Tyrell v. Painton** (1894 P. at p. 156) I should ask myself the question:—

> "Has the defendant affirmatively established to my "satisfaction that the testatrix knew what she was "doing when she executed this will?"

Looking at all the evidence and considering all the cir-

cumstances my answer to the question must be in the negative.

In his judgment Lord Lindley, referring to the opinion of the Judicial Committee in **Barry v. Butlin** (2 Moo. P.C. 480), and to other cases, proceeds to say:—

> "The rule in **Barry v. Butlin, Fulton v. Andrew** and "**Brown v. Fisher** is not, in my opinion, confined to "the single case in which a will is prepared by or "on the instructions of the person taking large bene- "fits under it, but extends to all cases in which cir- "cumstances exist which excite the suspicion of the "Court; and wherever such circumstances exist, and "whatever their nature may be, it is for those who "propound the will to remove such suspicion, and "to prove affirmatively that the testator knew and "approved of the contents of the document, and it "is only where this is done that the onus is thrown "on those who oppose the will to prove fraud or un- "due influence, or whatever else they rely on to dis- "place the case made for proving the will. Here "the circumstances under which the will of the 9th "was prepared and signed are such as to cause the "gravest suspicions. The doubt which they raise "is not, to my mind, removed by the evidence on "behalf of the defendants, and I should go further "if it were necessary."

I conclude by saying that this, in my opinion, is a will prepared "in circumstances which raise a well-grounded suspicion that it does not express the mind of the testator" (see Davey L.J. in **Tyrell's Case**) and that I ought not to pronounce in its favour because that suspicion has not been removed.

An order will therefore be made recalling the grant of Probate in common form of the will executed by Mrs. Buckler on the 21st of June 1924.

Solicitors for plaintiffs: **Earl, Kent, Massey & Northcroft**, Auckland.

Solicitors for defendant: **Fitzherbert & Fitzherbert**, Auckland.

MISTAKEN IDENTITY.

—by—

J. F. B. STEVENSON, Esq.

It is better that there should be dozens of acquittals in doubtful cases, than one wrong conviction. The mesh of the net of justice should not be so fine that it will not assure the innocent escaping, when wrongly accused. This is essential to retain unshaken the confidence of the public in the administration of justice, and in the methods of the police. A study of the history of crime reveals that no source has such a black record for miscarriages of justice through wrongful convictions as cases of mistaken identity. The terrible misfortune, and the awful mental sufferings, which innocent men have endured within the walls of prisons, whilst serving sentences for crimes they never committed, should be a powerful and sorrowful warning to all Courts and Juries. With prospects ruined, character lost, and family rendered destitute by a wrong verdict, the iron has seared the soul of many a man. Every case which depends on evidence of witnesses as to identity is fraught with the danger of a possible miscarriage of justice. A Magistrate of long and wide experience informed me that he never felt at ease on his seat of justice when he was called upon to decide a man's guilt or innocence on evidence of disputed identity. Well may all have such uneasiness to place them on their guard, and make keen their perception, so that a possible grevious wrong may not be done to the innocent, as it takes no diligent search to find ample authenticated cases of mistaken identity to illustrate the snares and pitfalls that await the feet of justice.

The most recent case which aroused popular interest and public indignation was that of Major Sheppard, D.S.O., and it occurred last year. It resulted in a commission of inquiry, which severely criticised the methods of a certain section of the London Police, and recommended the alteration of Police Regulations and an amendment of The Criminal Justice Act.

The facts were as follows:—A woman of a certain character, named Miss Dennistoun, met a man on the 18th of June last in the West End of London, and he accompanied her home to her flat. Next morning he left the flat, and the lady's attache case, £18/10/0 in cash, and other articles of value also disappeared. About 10 p.m. on the 27th of June, Major Sheppard, an Officer on the Staff of the Officer commanding the London District, was proceeding home through the West End when Miss Dennistoun stopped him. He thought she was accosting him, and he threatened to send for the Police. She accused him of theft, and said she would call the Police, and he then suggested that they should go in a taxicab to Vine Street Police Station. There she made a charge against him of theft from her room. The subsequent proceedings showed that the Major was "presumed guilty from the start", "treated like a dog", "kept for four hours before being allowed to communicate with his solicitor or friends", "and compelled to have his finger prints taken". He was ordered about and told to "Stand up, Sheppard", "Sit down, Sheppard". The Police also put him through a cross-examination. Confidental official papers the Major produced to prove his identity were suggested by the Police to be stolen property. They refused to communicate with the Major's Commanding Officer, or the Provost Marshal. Bail was refused him until after four hours, when he at last induced the Police to send for his solicitor, who then bailed him out. On arrival at Vine Street Station, Miss Dennistoun said the Page Boy at her flat would be able to identify Major Sheppard, and the Major was placed in an identification parade. He was an army man of smart appearance, and the other men in the parade were, he said, poorly dressed, some wearing "chokers", and some without collars. The Page Boy was brought in, and the Inspector said to him, "You have been brought here to identify the man. Can you do so". The boy seemed to hesitate, and said something about the Porter. The Inspector then said, in what was described as a peremptory voice, "If you can identify the man, you must touch him", whereupon the boy touched the Major. It was alleged some in the rank at the time were craning their necks at him. The Hall Porter was brought in and picked out the Major as the man, but the Major described the methods employed at the parade as "a farce". He was sent before a Magistrate, and duly committed for trial. Miss Dennistoun was positive that he was the man, and the Page and Hall Porter were now also firm.

Whilst the Major was awaiting trial a man named H. D. Trevor was arrested on other charges. Trevor had a long criminal record, but was a smartly dressed scoundrel, and was known to the Underworld as "the monocled man". Detective Sergeant Woods happened to see Trevor in the cells, and happily noticed the very striking resemblance that the criminal bore to Major Sheppard. The Detective commenced investigations on his own initiative, as he

was not satisfied in his mind, unlike apparently the rest of the Police, of Major Sheppard's guilt. Trevor turned out to be the culprit, Miss Dennistoun was able immediately to pick him out at a parade, and she admitted her mistake with reference to the Major. Up to this time she had positively and honestly been firm in her accusation of Major Sheppard, and could not be shaken. This is the more remarkable as the man who was in her flat was there for a considerable time, and had removed his clothing. The positive way women will swear to a man, and become more cock-sure under cross-examination, will be seen later when Adolf Beck's amazing case is dealt with. Upwards of 25 women in one case and 11 in another wrongly identified Beck as the man who had been on friendly visits to their houses and defrauded them.

The dramatic sequel occurred at the Old Bailey of Major Sheppard being shown to be a victim of mistaken identity, and he was released from the Grand Jury. Counsel for the Director of Public Prosecutions stated that it was only by chance that a grave miscarriage of justice had not occurred. He described the Police methods at Vine Street as "outrageous", and "as savouring of American methods". The Recorder, Sir Ernest Wild, said he thought it right to allow these statements to be made by Counsel acting for the Director of Public Prosecutions, and added, "This has obviously been one of those lamentable cases, not unknown to Criminal Law, of mistaken identity. It proves, if proof were needed, the very great care that should be taken before any person is even put upon his trial upon evidence of identity". The Recorder recalled that it was owing to a bad mistake of witnesses as to identity that the Court of Criminal Appeal was established. (This refers to the Adolf Beck case).

The Home Secretary set up an immediate commission of inquiry with Mr. Rawlinson, K.C., MP., as Chairman. The Chief Police witness, Inspector Pelling, admitted to the Inquiry that "It was only by the merest chance that Major Sheppard was not sent to prison on the charge of theft the woman brought against him". In the early stages of the Inquiry it also transpired that the Vine Street Police would not let a man held on suspicion see any friends until they had made their preliminary investigations, and charged him, nor would they allow him bail. Mr. Rawlinson's report found, inter alia:—

(a) The serious aspect of the Inquiry is not the fact that Major Sheppard was improperly treated—as he undoubtedly was at Vine Street—but that other prisoners had been treated similarly in the past at Vine Street, and that, unless steps are taken to prevent it, possibly other prisoners may be so treated in the future.

(b) Vine Street's methods of detention were absolutely wrong.

(c) **The identification parade was little less than a farce.**

(d) Every person who can be bailed, and who is not likely to abscond, is entitled to it at the earliest possible moment.

(e) The questions put to Major Sheppard by the Police were in direct defiance of the rules approved by His Majesty's Judges of the King's Bench, and circulated to the Police. (These rules may be found in Archbold 26th Edition, Pages 390-391. The most important refer to cautions, and the non-cross-examination of prisoners making statements. They also forbid the Police reading to one accused the statement of another accused charged with the same offence so as to invite a reply, and lay down the proper procedure to be adopted in such cases)

Public indignation was strong, and the Home Secretary handed to the papers a communication he sent to Mr. Rawlinson on receipt of the latter's report, and inter alia wrote:—

(a) "I do not think the Police should enter a charge and admit an accused person to bail to answer a charge at a Court without a careful preliminary investigation".

(b) "I have come to the conclusion that when the Police are satisfied with the identity of the accused person, and there is not reasonable fear of his absconding, it would be well if, before any charge is entered, they had power to admit him to bail to appear on a later day at a Police Station, if so required, instead of keeping him in custody till their investigation is completed. Such a power would allow of the accused person being released—instead of being detained as at present—pending the result of the preliminary investigation. I therefore propose following your suggestion, to ask Parliament to insert a clause for this purpose in the Criminal Justice Bill".

(c) "I gather from your report that you approve the rules governing the questioning of prisoners, but are of opinion that they were not properly carried out, and suggest that I should call the attention of the Police to the need for carrying them out to the full. This I have done".

(d) "I accept your strictures re the identification parade, and instructions are being issued to the Police that any person who is to be put up for identification is to be verbally informed that he is entitled to have a solicitor or friend present at the identification parade. Notices will also be displayed in convenient places at Police Stations. The present general orders upon the subject shall be amplified with a view to ensuring that every precaution will be taken in the interest of the accused person to make the conduct of the parade as satisfactory as possible".

(e) "Every person arrested by Police on suspicion, and remaining for a longer or shorter time in Police custody, should be allowed immediate and ample facilities for communication with friends or legal advisers. Such persons should be supplied, on his request, with writing materials, and his letters should be sent by Police by post or otherwise with the least possible delay; telegrams should also be sent at once at the expense of the prisoner, if he so desires".

"The attention of the Police, continues the Home Secretary, will be drawn to these orders and further instructions given regarding their interpretation in the sense most favourable to the person detained. Clear notices will in future be exhibited at Police Stations informing such persons of the facilities provided for their communicating with their friends and legal advisers, and also of the provisions with regard to bail. The above is the action I propose to take in the general interest with a view to giving effect to the recommendations in your report".

By a "mere chance" Major Sheppard escaped a ruined career, the acquisition of a convict's number, and the embitterment of his whole life by a term of imprisonment.

In the next issue examples of wrongful convic-

tions and sentences, including that of Adolf Beck, will be discussed. If ever there was a genuine miscarriage of justice, it occurred in the classic example of the trials of Beck. He was twice wrongly convicted, and served sentences totalling over five years. In 1904 whilst serving his second sentence, he was proved to have been the victim of mistaken identity, and received Her Majesty's gracious pardon for crimes he never committed.

I will endeavour later to draw attention to the lessons to be learnt from these cases, but at this juncture will conclude by adopting the following words from the report of the Committee of Inquiry in Beck's case:—

"Evidence as to identity based on personal impressions, however bona fide, is perhaps of all classes of evidence the least to be relied upon, and therefore unless supported by other facts, an unsafe basis for the verdict of a Jury."

(To be continued.)

LONDON LETTER.

The Temple, London, E.C.,
10th December, 1925.

My Dear N.Z.,

From every point of view but one, and that one was the Communists', the fortnight has been a singularly uninteresting one, and the Courts, except for the immediate litigant and his counsel and advisers have been to all intents and purposes stagnant. Swift J. has undoubtedly earned and deserved loud praise for his conduct of the Communist trial, having put upon it just that atmosphere of solemnity without excessive seriousness, of concern without panic, which the exigencies required. You probably know that misgivings were felt at the outset as to the wisdom of the prosecution, and competent critics urged, in advance, that it might do the trouble-makers more good than harm to be brought into the dock, more good, that is, from their own point of view. What gave rise to greater anxiety was that the prosecution might, when subjected to the acid test of legal proceedings, crumble and be shown to be without substance, of which casastrophe the result would necessarily be to reveal a terrified government (of a presumably terrified people) ludicrously confronted by their doom; if anybody or anything was to be pour rire in the matter, urgently it was required that this should be the Communists or Communism. As it turned out there was nothing to laugh about, just as there was nothing to pull a very long face about. It all amounted to a criminal offence or two, requiring at the most a short term of reflection in the Second Division, if, indeed, binding-over-to-be-of-good-behaviour would not have been enough. The offer of this was refused, so the normal short sentences were passed and are now being served. The Attorney General is warmly to be congratulated on the handling of a enterprise from which no martyrs nor any other dangerous elements are likely to result.

In the matter of prosecutions, I should also mention that the Boulton case goes ahead, as I write, and it is suspected that the whole lot of the accused may be discharged. These financial matters are very difficult to follow, superficially, and I for my part, and I dare say you for your part, do not incline to follow them profoundly except when paid to do so! It may be that the anticipation of acquittal, for Boulton, is optimistic, and that the Judge's intimation to the Jury was not intended to foreshadow any such result but was designed to obtain lucidity and precision, as to the field of the enquiry, a thing which is not always the greatest boom to the defence in a criminal case! By the time this letter reaches you, you will no doubt have read the result and possibly have forgotten it. It shows that there is little ado in the legal world, if I can find matters no more thrilling to inform you of, than these prosecutions.

Some importance attaches to the allowing of an appeal from the decision of Lawrence J. in re Lister (see Law Journal "Notes of Cases," Vol. LX, at page 682). Clauson contended, you will remember, that disclaimer by a trustee only relieved him of liabilities attributable to the vesting of the property of the bankrupt in him, and that the words "from all personal liability in respect of the property" did not serve to excuse the trustee for rates, the liability for which arose only from occupation. One would have thought that this was a fairly obvious proposition, but E. W. Hansell is a potent controversialist in these matters, and the note of the case shews the authorities which he used to confound Clauson and the counter-proposition which he prevailed upon Lawrence J. to accept: "The primary object of sub-section 2 of section 54" (the disclaimer provision of the Bankruptcy Act 1914) "is to relieve the bankrupt and his estate and to relieve the trustee in bankruptcy from all liability, as though the property had never vested in him at all. The Master of the Rolls, Atkin and SargentL.JJ., have found themselves unable to agree with Lawrence J., in his decision that "the rates were a liability in respect of the property as the property occupied became the rateable hereditament; it was in respect of the occupation of that rateable hereditament that the personal liability of the trustee attached; therefore the rates were a liability upon the trustee in respect of the property disclaimed," and therefore the disclaimer eliminated the liability for the rates. The Master of the Rolls says, simply, that the disclaimer does not eliminate liabilities which result from the trustees own act of occupation.

I think that the "E. & O. E." case is worth your passing attention. For years, I remember, those letters were sheer Greek to me, and since I came to know that they stood for "Errors and Omissions Excepted" I have always wondered what the exact effect of them might be in law. Berg & Sons v. Landauer resolved my doubts, to some extent. A bill of lading referred to a provisional invoice in such manner and to such purpose that the contract, according to Rowlatt J., was affected in its substance by the insertion of the date of the provisional invoice in the bill of lading. The insertion of that date was a condition of the contract. This being so, the Court was faced with the fact that the date inserted had been, by reason of a clerical error "February 1st" instead of "February 2nd", and amongst other matters which fell to be discussed was the effect, upon this clerical error, of the letters "E. & O.E." appearing in the margin. To the decision of Rowlatt J. the foregoing premises are essential, that the insertion of the date was a

material condition, affecting the substance of the contract; and the decision was that "E. & O.E." serving as that inscription does to save the maker of the document from an admission, could not render an incorrect date such as to answer the description of a correct date; or, in other words, the letters did not serve to cancel the error so that the incorrect date complied with the condition.

I have, or should have, already called your attention to the case decided under the Public Authorities Protection Act, 1893, Freeborn v. Leeming, a case in which a patient of a public authority's Medical Officer contended, but contended in vain, that the period of six months within which action must be brought ran from the time when a cure would have been complete had the treatment not been negligent. No doubt you have your similar Act, and it may be that you have the words also "six months after the ceasing of the continuance of the injury or damage" or words of a like effect. As well, therefore, as the case of Freeborn v. Leeming it will be useful to call your attention to Huyton & Roby Gas Co. v. Liverpool Corporation, which was decided at the same time and on the same point by the Court of Appeal (Bankes, Scrutton and Atkin L.JJ.) but which had, I confess, entirely escaped me until Singleton, who was in it, told me of it. Damage was done to plaintiff's mains by subsidence, and the subsidence was attributable to the omission of defendants to reinstate their road properly after breaking it up for repair purposes. The subsidence caused fractures in the mains in June and December, 1923, and in June, 1924. The action was begun in December, 1924, and the defendants relied upon the Public Authorities Protection Act and the expiry of six months. Finlay J. had decided, and the above mentioned Court of Appeal agreed with him, that the failure to re-instate was a continuing injury or damage and the period of six months could only begin to run from the time when that injury or damage was discontinued. The plaintiffs were therefore entitled to sue in respect of all the fractures.

We may conclude our review of contemporary cases with a brief notice of the effect, in law, of the fact of the cat getting active among the pigeons: Buckle v. Holmes, a case involving a claim for £8, which it is proposed to take to the Court of Appeal, and, as Sherman J. wondered in the Divisional Court, why not to the House of Lords? I assume you know the law about dogs; I do and always have done, though it may well be that I know no other! They are not ferae naturae; and it thus becomes necessary to prove scienter in the dog's master if you wish to sue in respect of the attack of the master's dog. It was argued to the Divisional Court, that, whatever the position as between dogs and human beings or as between cats and human beings for the matter of that, the position as between cats and birds is that the cats are ferae naturae, and if my cat gets among your valuable pigeons and does the inevitable damage then you have no need to prove scienter in me when you come to sue me. It is an intriguing suggestion, is it not? The Divisional Court would, however, have none of it. Cats are tame; and if you want to saddle their owners with the burden of their misdoings, you must prove the knowledge of the acquired vice.

So much for the cases. I might, however, digress for an instant to call your attention to the fact that in the current number of the Law Reports, the Metropolitan Water Board v. Kingston Union Assessment Committee occupies no less than eighty-four pages.

I am reminded that last Friday, 4th December, was the 43rd birthday of the present Law Courts in the Strand, but I find it almost impossible to believe that the beginning of business in those austere buildings was of so recent date. I suppose there are plenty of old people at the Bar who recall Westminster; and I suppose there are also plenty of young people at the Bar who regard the new Courts, where the Probate, Divorce and Admiralty Division does its business, as being of all time! We cover a long span of years between us at the Bar, and there is that spirit of perpetual youth so sedulously preserved that we never realise the differences of age between us. I find the utmost difficulty in realising that Avory J. and Horridge J. have arrived at the age at which they mignt retire. It seems only yesterday that they were appointed. Men come and men go, and only one thing stays on for ever: the Grand Jury. It really is rather amusing that after all this fuss and flurry, the Grand Jury is to remain exactly as and where it was! Long may it live and much good may it do!

Lord Buckmaster is, according to report, about to join a Board of Directors in the City, which is all very excusable, no doubt, but I do not know that I quite like it, do you? There is a tendency, nowadays, among Judges to complain that they do not earn as much as they might, or, be it whispered, as much as they deserve, and so we have a Lord-Chancellor-that-was going into the City just as another makes incursions every now and then into Fleet Street. There seems to be a lack of noblesse oblige among them, and, speaking plainly, there are those who consider that they have nothing to complain of and no right to complain and it is only another instance of the modern grasping after money. However that may be, I may more relevantly note that many Judges are expected to return from Circuit in the course of the next few days, and that the result may be that they produce between them rather more of interesting subject matter for me to communicate to you than I have had available for this letter.—Yours ever,

"INNER TEMPLAR."

BENCH AND BAR.

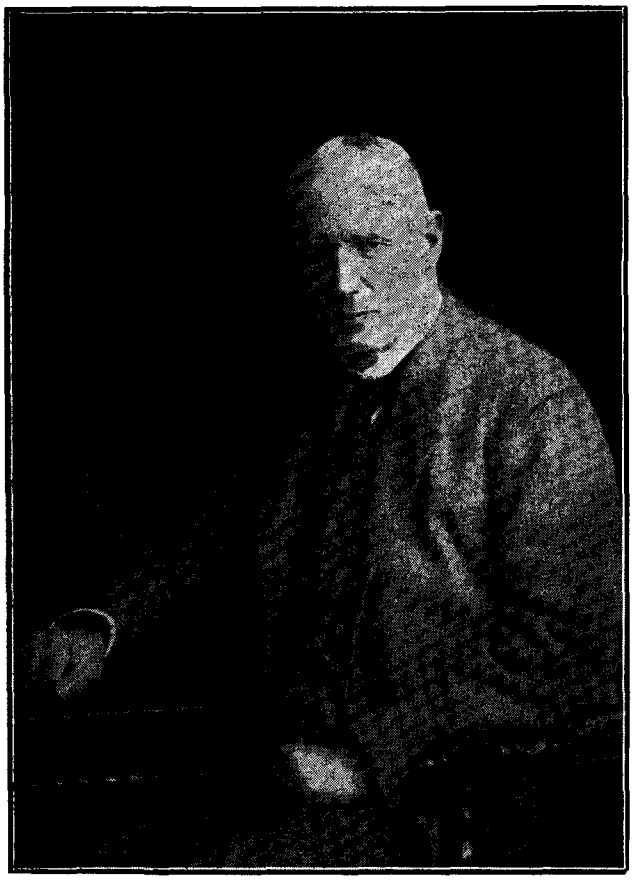
Mr. W. R. Fee of the firm of Johnston, Coates & Fee recently returned to Auckland after a nine months' tour of England and the Continent.

Mr. Tom Alexander of the firm of Parr, Blomfield & Alexander has returned to Auckland after a trip to Australia.

Statistics usually make dry reading but the following figures of the increase in the number of practitioners in the Auckland District may be of interest: During the past year certificates were issued in this District to 199 Barristers and 491 Solicitors, as against 183 Barristers and 285 Solicitors in the previous year, while 23 persons were admitted as Solicitors and 18 Solicitors were admitted as Barristers.

OBITUARY.

We record with regret the death of Mr. Rupert Reed of the firm of Graham & Reed solicitors of Feilding. Mr. Reed had suffered ill health since his return from long service at the war. He leaves a widow and child. The profession has its ranks depleted by Mr. Reed's death of a popular and able practitioner. We express our deep sympathy to Mrs. Reed.



SIR FRANCIS BELL,

P.C., G.C.M.G., K.C.

It was recently announced that Sir Francis Bell would leave New Zealand shortly to represent the Dominion at Geneva at the next Conference of the League of Nations. He has now brought to an end his connexion in partnership with the well-known firm of Barristers and Solicitors, Messrs. Bell, Gully, Mackenzie & O'Leary, of Wellington, and in general he has come to the end of his active interest in the profession of which he has for so long been a leader.

We take then this opportunity of wishing Sir Francis Bell bon voyage and many years of health and happiness in the latter days of his life.

His career since boyhood has been a series of successes due to his exceptional ability and his forceful and determined character.

Sir Francis Bell is the eldest son of the late Sir Francis Dillon Bell who in his time was a member of the Government, Speaker of the House of Representatives, and for ten years Agent General. Sir Francis was born in Nelson and spent his schooldays first at Auckland Grammar School and then at Otago High School. At the latter he was dux of the school for six consecutive years. Sir Francis Bell's interest in military training began at Otago High School. There, as Lieutenant, he commanded the Otago High School Cadets which was, we believe, the first Corps of Volunteers in New Zealand.

Having finished his schooling he was fortunate in his father sending him to complete his scholastic training at Cambridge. There he was of St. John's College.

Having selected law as his career he returned to New Zealand after his University education and joined in partnership Mr. C. B. Izard at Wellington. The firm was known as Izard & Bell. He later took over the offices of Crown Solicitor and Crown Prosecutor from Mr. Izard. Even in the early years of his career he shewed clearly he was assured of a distinguished career both as a profound lawyer and a brilliant advocate.

In 1885 Mr. Izard retired from the firm and Mr. Hugh Gully, probably the most eloquent and brilliant Barrister who has ever pleaded at the New Zealand Bar, joined the firm.

As a member of the profession Sir Francis has always been indefatigable in its interests and many of the reforms that have come to affect the profession have been conceived and brought into effect by him. For very many years he has been recognised as a most eminent Barrister and while not possessing the transcendent eloquence of an Erskine he was an astute cross-examiner, a powerful speaker and a logical and accurate thinker. It was of course inevitable that he was a hard worker.

When the Patent of King's Counsel was first made available to the Barrister in this Dominion Sir Francis Bell was one of the first to take Silk. When he was practising actively at the Bar he was always to be found well Briefed at the Court of Appeal Sittings and he was sure to be on one side or the other of any Commercial case of much importance. At the Privy Council he succeeded in the famous case of Mere Roihi v. Assets Company Ltd. which established the true value of the Land Transfer Certificate of Title and in the case of East and West Coast Midland Railway which established no liability on the part of the Colony at the suit of the Debenture Holders of the Railway Company.

For many years Sir Francis Bell has been Attorney General. He was President of the New Zealand Law Society for many years succeeding the late Mr. W. S. Reid, who was the first President. On his retirement he was succeeded by the present Chief Justice, the Honble. Mr. C. P. Skerrett. In the Wellington District Law Society he has always been intensely interested and was its President for many years. While President realising the advisableness of that office being held for one year only he effected that change, a change which has been approved as being in the interest of the Society as against one man holding the position for an indefinite number of years.

Sir Francis Bell with Messrs. F. M. Ollivier and W. Fitzgerald compiled a series of Law Reports known as O.B. & F. Reports.

Apart from his interest in his profession Sir Francis during his career has found much time for work of public usefulness. As Mayor of the City of Wellington he carried into effect the drainage system originated by the late Mr. H. P. Higginson, M.I.C.E. which has proved so effective and has made Wellington one of the healthiest cities of the world. Unluckily his scheme of the city's acquiring Miramar Peninsula for Sports Grounds and Workmen's Homes did not meet with the favour of the citizens when the matter was decided on a poll. Had that scheme been carried into effect the land could have been purchased at a very low figure and Wellington could have provided for its citizens an incomparable Sports grounds, sufficient to meet the demands of Wellington at all times.

Parliament attracted him and in 1893 he was one

of the three members for Wellington. Latterly he was given a place in the Legislative Council and for many years has led that body and led it effectively. Through the evil days of the War Sir Francis was of enormous assistance to the Government and since those days he has been behind the Government in all matters of great moment. How great an influence he exercised in the last ten years in the Parliament of New Zealand can only be guessed; perhaps some day a biographer will reveal to us the power he wielded in the Massey Government. He has held the following offices in Parliament: Attorney General, Minister of Health, Minister of Education, Minister of State Forests, Minister of External Affairs, Minister of Immigration and Leader of the Upper House.

Readers will remember when in 1922 he went to England as our representative on the League of Nations that the Prince of Wales graciously presented him on his arrival with certain gifts from his fellow Members of the Legislative Council in New Zealand; gifts which were presented to mark the friendship which they bore him and as an appreciation of his high qualities as their Leader. His Majesty the King recognised Sir Francis Bell's public service by Knighting him in 1915 and eight years later he received from His Majesty the distinction of G.C.M.G. In January of this year he was appointed to His Majesty's Privy Council.

As a Member of Parliament while it is impossible in this Note of his career more than to touch on his main achievements we cannot overlook the fact that the original policy and the subsequent adaptations of it in respect of the administration of Samoa by New Zealand was in a great measure the work of Sir Francis. Recently he was responsible for that further step in the ideal form of land registration namely, the Land Transfer Compulsory Registration Act. In the pious hope of bringing Local Bodies to live within their income Sir Francis brought down and guided on to the Statute book the recent Local Bodies Finance Act. It took seven years of strenuous advocacy before Sir Francis was able to have this Act placed among the statutes of New Zealand.

Outside his profession, Parliament and local politics he found time, mirabile dictu, for other interests of a semi public character. For many years he was Danish Vice-Consul. When the New Zealand Constitution of Freemasons was founded one of its early years found Sir Francis Bell as Grand Master. For years he has been President of the Star Boating Club, and President of the New Zealand Rowing Association. He has been President of the following bodies as well: New Zealand Amateur Athletic Association, New Zealand Rugby Union, Wellington Racing Club, Wellington Cricket Association, Wellington and Wellesley Clubs, and the New Zealand Astronomical Society. After the war when the English Speaking Union came into existence in New Zealand Sir Francis was elected President. It required a man with the true Imperial spirit and a broad knowledge of the need of cementing the Friendship of the two great nations concerned successfully to launch on its journey this important Society. Naturally he was elected the New Zealand President of the League of Nations Union.

Thus it can be seen that Industry and Ability have made Sir Francis the great man he has proved himself to be. While perhaps he has been intolerant in disposition, brooking no opposition to his schemes yet he, of necessity, could not afford to waste time while the less instructed sought to understand the way of his going.

Yet on the other hand he was always the genial companion of the young man, ready to assist and advise.

While the profession loses him as an active member of its ranks there are, we hope, many years yet for Sir Francis Bell to continue his life of usefulness for the public weal, a life which if in New Zealand has any equal has no superior. Finally we venture to say that men who have lived through the early years of this great Colony ought as a matter of interest and record to leave behind them a record of their career prepared by themselves and not leave to posterity the more difficult task of recording it in biographical form.

—C.A.L.T.

CORRESPONDENCE.

(To the Editor.)

Dear Sir,—

I heartily agree with the sentiments expressed by your correspondent, "Barrister", in regard to the regulations governing the admission of candidates to the profession.

It cannot be disputed that the new regulations present an almost insurmountable obstacle to the student who, having secured his preliminary qualification at a secondary school a number of years previously, has partially qualified for admission as a solicitor.

Personally, I consider that more restrictions should be placed on the candidate who has been fortunate enough to secure a University career and thus gain his theoretical knowledge of law without the aid of even an elementary knowledge of the rudiments of legal practice. The student with years of practical experience to his credit might then have an opportunity of entering the profession which perhaps he is more qualified to enter than his more fortunate and younger brother with the University qualifications only.

I can with confidence assume that the general consensus of opinion of students-at-law who are placed in the same circumstances as myself, is entirely in accord with my own views.—Thanking you, I am, etc.,

"STUDENT."

Taihape, 3rd March, 1926.

REVIEWS.

THE LAND TRANSFER ACT by David Hutchen 2nd Edn. (Whitcombe & Tombs Ltd.).

This is one of the text books that a practitioner in New Zealand cannot afford to be without. The need for another edition has been felt for some time. Practitioners must have inked in a great many new references to their first edition before the second appeared. The passing of the Land Transfer (Compulsory Registration of Titles) Act 1924 made the second edition essential. We think that Mr. Hutchen has succeeded in making this edition an improvement on the first edition though that edition was an excellent work. The introduction to the Act is excellent. The author's views of the effect of the various sections are invariably correct and the addition of all the relevant cases against each section makes the work of the utmost value to the busy practitioner. The order of the matter in the Introduction is almost identical with the order of the matters dealt with in the Statute, an arrangement that assists the reader to learn the Act the more easily. As time goes on and the land of New Zealand gradually comes under the Land Transfer Act this book will continue to be an essential unit in the library of the New Zealand practitioner. We have no hesitation in recommending our readers, if they have not already a copy, to acquire one forthwith.