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, OCTOBER 26, 1926.

Mr. C. A. L. Treadwell, of Wellington, who has been the Editor of "Butterworth's Fortnightly Notes" from the inception of the journal, has resigned his position. Mr. Treadwell relinquishes his position at the end of the year.

WIGS.

The Anthropological Section of the British Medical Association has recently been discussing learnedly on the effect of the barrister's wig in aggravating baldness. Anent this our contemporary the Law Journal says, "Professor Fleure explained it as due to increased brain-energy on the ground that hair growth absorbs a great deal of organic power which, in the bald man, is utilised physiologically for the development of brain cells. But we find it difficult to reconcile that theory with the fact that Common Law barristers are usually balder than their Chancery brethren and that both have less luxuriant hair than conveyancers—a fact of which any observant person can easily satisfy himself. Our own view is rather the commonplace one, that the wearing of the wig by the Court practitioner is deleterious to the growth of hair."

We, for our part are rather inclined to think that the learned writer in our contemporary has a sense of humour. Adverting for the slightest moment to our memory of the growth on the heads of the members of our Bench we seem to find luxuriance not sparcity. Again we think of our leaders at the Bar again luxuriance. And then we think of our leaders outside the profession and we at once visualise much sparcity. Perhaps there is something in it after all and someone will start the No Wig campaign, but we repeat as our opinion "There's no time for a man to recover his hair that grows bald by nature."

A correspondent suggests we should encourage notes on matters of interest from readers. We inserted for a long time a memorandum inviting such contributions, and we repeat now, in full accordance with our correspondent's views, that this journal welcomes such contributions. One of the main objects of this journal is to be the means of members of the profession imparting for the benefit of the others information of use and interest.

COURT OF APPEAL.

Skerrett C.J.
Sim J.
Stringer J. October, 1926.
MacGregor J.
Alpers J.

MAYOR ET AL OF INGLEWOOD v. SCOBIE.

Negligence—Common employment—Statutory duty—Neglect of—Workers' Compensation Act 1922, Sec. 76.

This was an appeal from the decision of Reed J. and was dismissed. The facts were as follow:—

The defendant Corporation was engaged in changing an electric supply system from an old to a new source of supply. This involved the substitution of new supply poles and new wires for old.

At a certain part of the line the plaintiff, a workman of limited experience in electric supply systems, was directed to cut and remove the wires from a pole to which the old system of wiring was attached. The learned Judge has found that the plaintiff was told that the wires attached to the pole (which were bare low-tension wires) were or would be "dead."

The Engineer denies making this statement, but the learned Judge has found that the statement was in fact made, and counsel for the Corporation admits that this Court is bound by the finding of fact.

As a fact there were to the knowledge of the Engineer some three bare low-tension wires attached to the pole from which the electric current had not been disconnected. The Engineer may have thought that the workman would not come into contact with any of these live wires, or that they were not a source of danger to the workman. However this may be, the live wires were attached to the pole below the wires which the plaintiff was directed to cut and remove. For the plaintiff it is said that some of these latter wires were also "live" wires; but it is wholly unnecessary to enter into the controversy on this point. As a fact plaintiff, after severing two or three of the old wires (it is uncertain how many), sustained an electric shock, which caused him to fall from the ladder on which he was standing to the ground and to sustain very severe injuries. The most likely explanation is that he must have touched one of the three live wires and at the same time one of the dead ones which was earthed, thus creating an electric circuit which caused the shock resulting in his injury.

It is not disputed that there was negligence on the part of the defendant as between master and servant—that negligence presumably consisting of allowing or inviting an inexperienced servant to work upon or in the immediate vicinity of what was in fact a live wire; but two contentions were made. It was said (1) That if plaintiff while working had used the precaution of wearing a protective belt attachable to the pole, though he could have sustained some injury, he would not have suffered to the same serious extent as in fact he did. It was admitted that the plaintiff was entitled to some damages, but it was contended that the amount should be greatly reduced because of the neglect to wear the safety belt, which if worn would have prevented the full injury which he suffered.

(2) That the plaintiff's damages were limited under Section 76 of The Workers' Compensation Act of 1922 to £1000.

Blair for appellant.
Moss for respondent.

THE COURT dismissed the appeal. SKERRETT C.J. on the second point said:—

We deal now with the second question involved in the case—namely, whether the amount of damages which the plaintiff is entitled to recover is limited to £1000 by Sub-section (3) of Section 67 of The Workers' Compensation Act 1922.

That Sub-section reads as follows:—

"No servant shall be entitled to recover from his employer "in an action brought under this Act in respect of the "negligence of a fellow servant a larger sum by way of "damages for any one cause of action than one thousand "pounds."

There was no dispute in the argument as to the general principles on which this question ought to be determined. It appears clear that the defence of common employment cannot be raised if the cause of action established is the non-fulfilment of a statutory duty imposed on the employer or if the employer has been guilty of some personal negligence, such as the neglect to provide reasonably safe plant, or the conduct of his business according to a dangerous and negligent system. If any such cause of action is established the defence of common employment is not available and Section 67 does not apply.

We think that, in the circumstances of the present case, an absolute duty was imposed on the defendant Corporation as licensee under The Public Works Act not to engage workmen on electric lines which are not disconnected from the source of supply.

Regulation 37 (a) (Page 16 of Regulations) reads as follows:—

"(a) The electric lines upon which workmen are engaged "shall be disconnected from the source of supply, but if a "suitable raised insulated platform is used the electric lines "need not be so disconnected."

It is not disputed that the Regulation imposes an absolute duty on the defendant Corporation as the licensing authority, but it is said that the duty in fact imposed by the Regulation has no application in the present case.

Mr. Blair contends that the sole object of the Regulation was to secure that a workman engaged in work on "live wires" should be insulated; that the plaintiff standing on the ladder was in fact insulated, and that if a raised insulated platfoorm had been provided by the defendant and used by the workman he would still in the circumstances have suffered an electric shock, although the platform might have prevented his falling from the platform to the ground. We cannot accept this contention. In our opinion the regulation prohibits the employment of workmen on live electric lines unless a "suitable raised insulated platform is pro-"vided." If the platform is not provided, as is the fact in the present case, the prohibition against the employment of workmen on live wires remains; and it is a breach of a statutory duty imposed on the employer not to so employ workmen. The doctrine of common employment and the provisions of Section 67 have therefore no application to the present case.

Having arrived at this conclusion, it is unnecessary to consider whether there was evidence on which it could be held that the system of removing the wires from the old system of electric supply adopted by the defendant Corporation was a negligent system. If, as we have found, a statutory rule of conduct imposed on the defendant had been broken, and that breach has caused injury to the plaintiff, there is an end of the matter.

The result, therefore, is that in our opinion the appeal should be dismissed with costs on the highest scale as upon a case from a distance.

Solicitor for appellant: **H. J. M. Thomson**, Inglewood.
Solicitors for respondent: **Moss & Spence**, New Plymouth.

SUPREME COURT.

Herdman, J. September 28, October 6, 1926.
Auckland.

IN RE CAVENETT.

Habeas Corpus—Illegal sentence—Alteration of sentence before recording same—Whether permissible.

This was an application on behalf of a man who had been convicted in the Magistrate's Court to have the sentence quashed and him liberated. The learned Judge said as to the facts:—

On the 8th of September, 1926, William George Cavenett was charged before Mr F. W. Hunt, one of the Auckland Stipendiary Magistrates, with two offences.

First, with the theft of 12 pairs of half hose of the value of 24s., the property of the New Zealand Shipping Company.

Second, with the theft of an axe of the value of 4s. 3d., the property of the New Zealand Shipping Company.

By consent both charges were heard together. After hearing evidence the Magistrate found the offences to have been proved, and in respect of the first offence convicted Cavenett and sentenced him to two months' imprisonment. As to the second charge, he intimated that he would convict and discharge the prisoner.

At this stage Counsel for the prisoner applied to the Magistrate to fix the amount of the security to be found by the accused upon an appeal against his conviction.

The learned Judge dealt with the various affidavits filed, and added:—

The contents of all the affidavits filed in this proceeding, although the deponents may not be unanimous upon every detail, make it quite apparent that certain facts are unchallengable. It is undoubted that in the first instance the Magistrate's pronouncement upon the charge of stealing an axe was that the accused would be convicted and discharged. In respect of that charge the man was given his liberty. Next, it cannot be denied that at a later stage that decision was altered to a sentence of imprisonment for a month. And lastly, it is plain that the Magistrate altered his original decision after the matter of an appeal against the sentence of two months' imprisonment which he had imposed on the other charge had been mentioned. It is evident that the Magistrate intended to make certain that no matter what the fate of an appeal against his decision on the first charge might be Cavenett should suffer imprisonment. Accordingly he refused to increase the sentence of imprisonment for one month by a day so that appeal proceedings might be taken upon the second charge.

McVeagh & Sullivan for the motion.
Meredith contra.

HERDMAN J. made the order. In his Reasons the learned Judge said:—

It was not disputed by Counsel for the prisoner that it is competent for a Magistrate to alter his decision before it is entered up. It was conceded that for a proper reason he might increase a sentence, but it was submitted that inasmuch as the assessment of punishment in such a case as the present is the sole prerogative of the Magistrate, he has a discretion to exercise, and that discretion must be exercised, to use a phrase which appears in **Sharpe v. Wakefield, 1891, A.C.** at page 179, "according to the rules of reason "and justice, not according to private opinion. It is to be "not arbitrary, vague, and fanciful, but legal and regular." The law should be administered decently and in order, and Magistrates are bound to dispense justice in accordance with the law as it is and not in accordance with the law as they would wish it to be.

The argument in the present case is that there was an illegal exercise of discretion by the Magistrate.

On this subject a statement made by Lord Esher in **The Queen v. Vestry of St. Pancras, 24 Q.B.D. at page 375** was cited. Speaking of the discretion to be exercised by a metropolitan vestry, he said: "If people who have to exer-"cise a public duty by exercising their discretion take into "account matters which the Courts consider not to be proper "for the guidance of their discretion, then in the eye of "the law they have not exercised their discretion." In that case a metropolitan vestry had a discretion under a statute as to the granting and fixing the amount of a superannuation allowance. The facts proved that the members had not properly exercised their discretion and a mandamus was issued.

Upon the same subject I refer to the New Zealand case of **Isitt v. Quill, reported in 11 N.Z. Law Reports at page 255.** In this case the Court quashed a certificate which refused a publican a license because the majority of the licensing committee had not really exercised a judicial discretion and had shown that they were incapable through bias of exercising such a discretion.

I have already stated that it is obvious from the facts deposed to in the affidavits filed that the sentence of imprisonment upon the second charge pronounced by the Magistrate was passed because prisoner's counsel announced that he intended to appeal against the sentence on the first charge. Other motives may have played a part in determin-

ing his conduct. He may have had it in his mind to stop appeals in the future or to make certain that in any event the prisoner would suffer imprisonment. If all or any one of these motives influenced his judgment, then it seems to me that a discretion was improperly exercised.

It cannot be said in this case that there was a slip of the tongue. It is not an instance of using words in error. If the man stole the axe, the limit of the Magistrate's discretion was to punish him for stealing the axe. But that he did not do. The facts, in my opinion, prove that punishment was with deliberation meted out to a man who on one charge had in effect been given his liberty, not for the offence of which he was found guilty, but for a reason that was irrelevant and illegal. Had the Magistrate dismissed the charge it would seem that he could not have altered his judgment, for in **Halsbury, Vol. 19 at page 601**, this note appears:—"It is presumed, however, that if the Justices an-"nounce that they have dismissed a case they cannot re-"verse their decision." However, in this instance the Magistrate did not dismiss the charge. All that can be said is that he decided at first to let the man go unpunished.

I emphasise the point that the action of the Magistrate was in my judgment irregular not because he altered a sentence but because he acted illegally, in that his decision was influenced by matters that should not have weighed with him.

It might be argued in such a case as this that, inasmuch as no excess of jurisdiction appears upon the face of the document filed with the return of the rule granted, the conviction cannot in proceedings for a writ of Habeas Corpus be set aside. But it appears that affidavits are admissible to show a want or excess of jurisdiction, although they may directly contradict facts stated in the return which, if true, would show jurisdiction and no excess of it. **See Paley on Summary Convictions, 5th Edition at page 441.**

In **Bailey v. Collier, 3 E. & B. 607**, it was held that it was open to the prisoner to show by affidavit that there was no evidence from which the Justices might reasonably draw an inference that the relations of master and servant existed between prisoner and his employer, as that would show that the Justice had no jurisdiction.

Again in **In Re Authers, 22 Q.B.D. at page 350**, a case in which a motion to discharge a prisoner who had been brought up on a writ of Habeas Corpus was under consideration. Hawkins J. said:—"I have had many doubts "whether it was competent for us to go behind a convic-"tion which had not been quashed upon certiorari or by "any other process of law; but I have satisfied myself that "we can go behind this conviction upon affidavits. There "are two authorities, in the Queen's Bench and Exchequer "respectively, which seem to be conclusive. They were two "cases of prosecutions of workmen for neglecting their duty "to their employers, and in each of them there was a sum-"mary conviction; upon the argument of a rule for a writ "of habeas corpus it was allowed to be proved by affidavits "that the men were, as a fact, not in that particular em-"ployment, and, therefore, not subject to the jurisdiction "of the justices, the ground of admission of the affidavits "being that there was no evidence before the justices to "justify a conviction. So, in the present case, the Court "is at liberty to go behind the conviction and to receive "affidavits, it not being a case of conflicting testimony, but "one in which the magistrate has found a previous convic-"tion when, in point of fact, there was none."

As then it is competent at this stage in the proceedings to go behind the conviction, the next matter to consider is whether there is proof that the record of the conviction accurately states the facts, for the rule is that no Judge by misstating a fact shall give himself jurisdiction.

The record of the conviction in this case shows that the accused was sentenced to imprisonment for one month for stealing an axe. But this is not a correct statement of what happened, for if I am to accept the facts deposed to by the persons who have sworn affidavits, the punishment was awarded not for that reason, which, of course, would be a perfectly legitimate one, but for another reason which the law does not authorise the Magistrate to take into account.

The conviction will be set aside.

Solicitor for accused: **J. J. Sullivan.**
Solicitor for Crown: **V. R. S. Meredith.**

Ostler J. August 28, 1926.

ELLIOT v. KIRKPATRICK.

Practice—Trial—Application for trial by jury.

Action to revoke Probate on the grounds that (a) the will was not duly executed, (b) lack of testamentary capacity, (c) that testator did not approve or know of contents of will, and (d) undue influence. On an application for trial by jury.

Burnard in support.
Wauchop contra.

OSTLER J. refused the application. He said:—
It was stated at the bar that a further ground would be raised in amended pleadings, viz., that the testator was subject to undue influence when he made the will.

That being the case, it is clear that the case cannot be decided on several simple issues of fact. Some of the questions raised may involve questions of law, and in so far as they are questions of fact, those questions cannot be decided properly by a jury without a very careful and elaborate direction by the Judge as to the law applicable to the facts, and it is by no means certain whether the jury will apply the law correctly. Therefore in this case, which in my opinion is indistinguishable from The Public Trustee v. Evans (3 G.L.R. 331) and Bell v. Bell (8 G.L.R. 423), plaintiff has not discharged the onus resting on him of shewing that this case can be more conveniently tried by a Judge and jury. The summons is accordingly dismissed with £4 4s. costs and disbursements.

Solicitors for motion: **Burnard & Bull**, Gisborne.
Solicitors to oppose: **Beaufroy & Wauchop**, Gisborne.

Skerrett, C.J. September 10, 30, 1926.
Auckland.

SCHISCEKA v. PEDDLE.

Sale of land—Different contracts same parties—Right of purchaser to sepearate transfers—L.T. Act, Sec. 178—Obligations of vendor of land generally.

This was an originating summons to have determined certain difficulties arising out of two contracts for the sale and purchase of land. We do not publish the facts, but merely certain statements of the law affected of particular interest to conveyancers.

Webster for plaintiff.
Cocker for defendant.

SKERRETT, C.J., said, inter alia:—
I shall assume that the law is as stated in **Earl of Egmont v. Smith** (6 Ch. 469), viz., that a vendor cannot object to convey to a purchaser in parcels by separate conveyances at one and the same time, if the purchaser requires him to do so and pays him the additional expense thereby incurred. In that case it was doubted whether in the absence of express stipulation the vendor could not object to so convey if the purchaser requires the conveyances to be made at different times. **Prima facie** one would have thought that the rule was that the obligation of a vendor is to convey to the purchaser the land which he has contracted to sell in the parcels described in the contract. This appears to be the opinion of the learned editor of **Williams on Vendors & Purchasers, 3rd edn.** See his comment on **Earl of Egmont v. Smith** at p. 582 (Note). It may, however, well be that conveyancing practice has caused a modification of the **prima facie** construction of the obligation on the part of a vendor to convey. It is, however, the rule in **Egmont v. Smith**, which the purchaser in the present case must invoke, for as will presently be seen he has taken transfers in separate parcels. He has gone even further than the rule laid down in the case under discussion.

Later in the course of the judgment, after relating some additional facts, the learned Chief Justice said:—
It was admitted before me that the District Land Registrar was entitled, pursuant to Section 178 of The Land

Transfer Act, to refuse to register the before-mentioned transfer, because such registration would necessarily have involved the isue of a new certificate of title in respect of the land comprised in the transfer. See **Williams v. District Land Registrar of Gisborne** (26 N.Z.L.R. 1081).

The first question is thus stated:—"In the event of the "District Land Registrar continuing to require a new sur- "vey in pursuance of Section 178 of The Land Transfer "Act, 1915, by whom should the costs of such survey be "paid?"

It is as well that I should state what the obligations of a vendor of land under the provisions of The Land Transfer Act are in the matter of transfer under an open contract of sale. Apart from his obligation to shew title, the vendor must execute a proper memorandum of transfer of the property contracted to be sold—i.e., he must furnish an instrument capable of registration under the Act, without which title could not be transferred to the purchaser at all. I agree with the statement of law to that effect by Sir William Cullen, C.J., in **West v. Reed and Anr.** (13 N.S.W.St.R. at p. 578). If the contract relates to the sale of the whole of the land comprised in a certificate of title, the registrar has no power to require the deposit of a new plan, as no question can in that case arise as to the obligation of the vendor to provide at his own cost a new survey. If, however, the contract relates to part of the land comprised in an existing certificate of title, then the registration of the transfer involves the issue by the District Land Registrar of a new certificate of title for the portion included in the transfer. The District Land Registrar may in that case require to be deposited in the Land Registry Office a plan of the land comprised in the transfer. As it is the contractual duty of the vendor to give to the purchaser an instrument capable of registration under the Act, I think that, as between himself and his purchaser, he is under an obligation to provide and pay for the new survey.

Solicitor for plaintiff: **T. C. Webster**, Auckland.
Solicitors for defendant: **Stanton, Johnstone & Spence**, Auckland.

Herdman, J. August 26; September 10, 1926. Auckland.

KEY SECURITY CO., LTD., v. AUCKLAND LOST PROPERTY ASSOCIATION & MASON.

Trade-mark—Design—Infringement of design—Whether ex parte order should be rescinded.

This was an application by defendant to have an ex parte order preventing it from continuing to infringe the plaintiff's design until the hearing of an action. The facts as stated by the trial Judge were as follows:—

Hampson for plaintiff .
Inder for defendant.

HERDMAN, J., discharged the ex parte order. He said: The Statement of Claim filed in the action alleges that the Plaintiff Company carries on business at Auckland as a protector of keys. It hires out to clients a metal tab which is attached to the hirer's keys. Each tab has a number for identification purposes recorded thereon, and there is an intimation that the finder of the keys should they be lost will be rewarded on returning the keys to the Plaintiff Company.

The design which is imprinted on the metal tab is registered as a design under "The Patents, Designs and Trademarks Act 1921-1922," and the certificate of registration issued on the 20th of September, 1922, contains the following statement:—

"The design is to be applied to a key tag for use in connection with a system for securing the return of lost keys."

The complaint of Plaintiff Company is that Defendants are hiring out an article identical with the article which it is producing and that it is an obvious imitation thereof.

Beyond the fact that the parties have each used tabs of brass of the same shape with something imprinted thereon there is no resemblance between the two articles. In the case of the Plaintiff there is imprinted on their brass tab the design of a key superimposed on the word "reward." Certain other words also appear on the tab.

In the case of the Defendants their tab on one side has imprinted thereon:

"The Auckland Lost Property Association.
No. 554.
25 City Chambers,
Queen street, Auckland,"

and on the other side appear the words:

"Return Attached Immediately to
25 City Chambers,
Auckland.
5/- reward will be paid to finder."

No design of any kind is imprinted on the Defendants' brass tab. Mr. Hampson admits that if Defendants produced a tab of a different shape bearing on it the words which appear on the tab which at present they manufacture he would have no case. He therefore complains not of any design on Defendants' tab and not of the words which appear thereon, but of the shape of the tab.

I am not at present deciding the real contest between the parties. My business at this stage is to do no more than determine whether Defendants should be prohibited by the Court's order from manufacturing their tabs until this action is heard.

The statement of defence is not, I think, a complete one, but when the time arrives for the hearing of the action it may be said of the Plaintiff's design that it is not new or original. It may also be said that Defendants' design looked at as a whole is not an exact reproduction of the article produced by the Plaintiff Company.

If the Plaintiff claims that the shape of his product is new or original I would have difficulty in believing that that is so, and certainly Defendants have not reproduced the exact thing that is manufactured by the Plaintiff Company. The inscriptions on the brass tabs are altogether dissimilar.

In **The Gramophone Case, 28 R.P.C., page 226,** an action brought for the infringement of a design which had been registered, Lord Loreburn, L.C., alluding to the box or cabinet in respect of which registration had been got, asked the question: "How can it be said that the shape or con- "figuration of this cabinet is new and original so as to "come within the Act?"

In like manner one may ask the same question about the shape of the metal tab manufactured by the Plaintiff. Again in the Gramaphone Case Lord Halsbury stated that the Plaintiffs in order to succeed in infringement must show that the article complained of is an exact reproduction of the Plaintiff's design and that any difference, however trifling or unsubstantial, will or may protect it from infringement. (See also Negrotti and Zambra v. Stanley & Coy., 42 R.P.C. 365.)

Another case which illustrates the principle upon which such a case as the present should be decided is **Hutchinson Main & Coy., Ltd., v. St. Mungo Manufacturing Coy., 24 R.P.C. 265,** the Golf Ball Case.

Section 52 of "The Patents Designs and Trade-marks Act 1921" states that an applicant may obtain registration for a design which is new or original.

What is original or what is new about the Plaintiff's design? Is it the shape? I should hardly think so. Is it the inscription on the metal tab? If that be so, then, as I have pointed out, there is no resemblance between Plaintiff's inscription and the inscription on Defendants' tab. The essential feature of Plaintiff's design is not the shape of the metal tab but what is inscribed thereon, namely, the key, the word "reward" and the other lettering, and as persons will have to examine the tab to see what it is all about there will be no possibility of confusing it with that made by Defendants.

One of the questions that will have to be determined in this action when it comes to trial is whether the article produced by Defendants is a fraudulent or obvious imitation of Plaintiff Company's design. This is a question of fact. It is also open to Defendants to attack the validity of the registration of the design. At this stage I express no final opinion on these questions. I am, however, satisfied that at this stage there is not sufficient material before me to justify a finding that a **prima facie** case of infringement has been made out and that interference by the Court's order is justifiable.

The interlocutory order made **ex parte** on the Plaintiff's application will therefore be rescinded with costs £3 3s. and disbursements.

Solicitor for plaintiff: **W. L. Wiseman.**
Solicitors for defendants: **Inder & Metcalfe.**

MacGregor, J. August 20; September, 1926. New Plymouth.

HARDWOODS, LTD., v. GARDINER.

Wages Protection and Contractor's Lien—Sec. 5 of Act—Meaning of.

We take the facts of this appeal from a Magistrate's decision from the reasons of the learned Judge.

In the present case the respondent Gardiner let a contract to a contractor Large to paint and paper his hotel for **£165.** The contractor was then indebted to the appellant Company, which refused to supply the contractor with certain materials required for this contract, unless and until the contractor gave an order on the appellant for **£50** out of the contract moneys. This order was duly given, and it is admitted that it constitutes an "assignment" within the meaning of section 5. Express notice of the assignment was given by the appellant Company to the respondent. At the time that notice was given the respondent had already paid out certain sums for the wages due to the contractor's workmen, but there was then remaining unpaid more than enough of the contract price to pay the sum of £50 assigned to the appellant Company. The respondent, however, did not pay the appellant Company their £50, but continued to pay to the contractor's workmen their wages as they from time to time accrued due. When the contract was completed, all the wages due to the workmen had been paid, but there was none of the contract money left available to satisfy the appellant's claim for £50, for which sum it accordingly sued the respondent.

Quilliam for appellant.
Croker for respondent.

MACGREGOR, J., said:—

The question I have now to determine is whether the Magistrate has in the result taken the right view of the precise meaning and effect of the operative words in section 5, "**every assignment..... shall have no force or effect "at law or in equity as against all wages due or to accrue due to the workers.**"

In my opinion the Magistrate has rightly interpreted the section in question here, by holding that the words I have underlined are in effect absolute (as indeed their terms would **prima facie** import). The golden rule for the construction of an Act of Parliament has thus been laid down by **Lord Wensleydale** in "**Grey v. Pearson**" (6 H.L. 106):—"The grammatical and ordinary sense of the words is to "be adhered to, unless that would lead to absurdity, or some "repugnancy or inconsistency with the rest of the instru-"ment."

After consideration I can see no reason why that rule should not be adhered to and followed in the present case. Section 5 forms a portion of Part I of "The Wages Pro-"tection and Contractors' Lien Act 1908." Part I itself is headed "Protection of Wages." The earlier portion of Part I contains various broad provisions for the protection of workers' wages, while the latter portion thereof makes specific provision for the attachment and payment of wages in arrear. Sections 4, 5, and 6 are quite general in their terms. Section 4 makes wages due to workmen a first and paramount charge upon the moneys due to the contractor under the contract. Section 5 provides (as we have seen) that an assignment of the contract money is to have no force or effect as against all wages "due or to accrue due" to the workers; while section 6 states that moneys received by the contractor from the employer shall not be liable to be attached or charged, until all wages "due or to accrue due" to the workers have been fully paid or satisfied.

At the argument before me it was admitted that there was no decision precisely in point, but a number of cases were cited on both sides as tending to elucidate the question now to be decided("**in re Barbier,**" 3 N.Z.L.R. 370, S.C.; "**White v. Ensor,**" 11 N.Z.L.R. 586, C.A.; "**Fitzher-"bert Road Board v. Roberts,**" 17 N.Z.L.R. 538; "**Dallas "v. Smart,**" 18 N.Z.L.R. 479, and "**Collins v. Cooper,**" 31 N.Z.L.R. 277).

I have examined all these cases with care, but in the end have found it necessary to refer only to the first and last of them. The head-note in "**in re Barbier**" (supra) is as follows:—"By section 14 of 'The Workmen's Wages Act, "1884,' the claims of unpaid workmen to be paid out of "money in the hands of the contractee have a priority over "the claims of an assignee of the contractor, even though "notice of the assignment may have been previously given "to the contractee."

It is obvious that that case is almost identical in its main features with the present one. It is to be observed also that section 14 of the then "Workmen's Wages Act, 1884," is not nearly so clear and specific in its provision for the protection of workmen's wages as the present Consolidation Act of 1908. All that section 14 enacted in 1884 was that "the wages that may be outstanding on any contract "or undertaking shall be a first charge upon any money in "the hands of the contractee which has accrued or may ac-"crue and become due to the contractor on account of "such contract or undertaking."

In the Act of 1884 there was no provision corresponding in section 5 of the present Act. And yet **Johnston J.** in Barbier's case was quite clear that the claims for wages took priority over the assignee's claim. In his judgment the learned Judge thus summarily disposes of the whole matter:—"I am of opinion that there was a good assignment, "and one of which the Mother Superior was bound to take "notice, but for section 14. I am perfectly clear that the "Legislature intended to give workmen priority of claim "over moneys remaining in the hands of the contractee. "Otherwise the section would be nugatory, as a contractor "would only have to execute an assignment to get rid of "the wages claim."

In my opinion the same result must follow under the 1908 Act, which is in its terms even more pronounced and specific in protecting the workmen's wages than the prior statute of 1884. It is true that in "**Collins v. Cooper**" (supra) **Denniston J.** made use of some remarks that Mr. Quilliam asked me to apply in the present case in support of his argument that the workmen were entitled to the protection given to their wages by section 5 only after taking some specific step under the stattue to recover their wages. These remarks are to be found at page 261, and are as follows:—

"But the extent and limits of the protection must be "governed by the language of the Statute. Wages are pro-"tected by being given, on taking the prescribed steps, in "the widest and most absolute terms, a first and paramount "claim on the contract moneys."

It must be remembered, however, that these words were used by the learned Judge merely as illustrating the case then before him, which related solely to the claims of sub-contractors under the Act of 1908. He points out immediately after the passage I have quoted from his judgment, that the provisions in favour of sub-contractors are much more limited than those relating to workmen's wages. As he himself says:—"There is no such provision in their favour "as those given by section 5 to workers"! In other words, the decision in "**Collins v. Cooper**" does not deal with the statutory provision given to workmen's wages by section 5 at all. I am satisfied that that section as **Johnston J.** said of section 14 of the 1884 Act, "gives rights to workmen "which an assignment such as this cannot take away." The particular right given to the workmen by section 5 arises out of the language of the section itself, and does not depend for its origin or existence upon any step taken by the workmen in question. In my judgment it is a statutory right created by the section in favour of the workmen's wages which cannot legally be cut down or affected by any assignment of the contract moneys by the contractor. The result, of course, is effectively to make the wages due to workers on a contract "a first and paramount charge" upon the contract moneys in terms of section 4 of "The "Wages Protection and Contractors' Lien Act 1908."

In view of the opinion I have formed and expressed as to the correct interpretation of section 5 of the 1908 Act, it is not necessary for me to deal with the further question raised as to the effect of section 3 of the amending Act of 1914. On the whole I am satisfied that the Magistrate rightly came to the conclusion that the appellant Company could not in the face of section 5 succeed in its action to recover the £50 in question from the respondent.

The appeal will accordingly be dismissed with costs (£9 9s. and disbursements, if any) to be paid by the appellant to the respondent.

Solicitors for appellant Company: **Govett, Quilliam & Hutchen,** Solicitors, New Plymouth.

Solicitor for respondent: **C. H. Croker,** Solicitor, New Plymouth.

COURT OF ARBITRATION

Frazer J. September 29; October 6, 1926. New Plymouth.

CARLSON v. THE KING.

Workers' Compensation—Loss of eye—Injury September, 1925—No loss of work—Eyesight lost May, 1926—Method of computing sum.

We take the facts from the reasons of the Court.

1. That the suppliant met with an accident to his eye whilst working in the employment of the Crown on the 4th September, 1925.

2. That as the injury appeared to be only a slight one the suppliant continued at work, though he consulted a doctor from time to time.

3. That except for odd days lost in visiting a doctor, he has not lost any time from work owing to the accident, and consequently no claim has been made or is made for any period of total incapacity.

4. That his eyesight gradually failed, and on the 25th May, 1926, he was examined by Dr. Fookes on behalf of the Crown, who certified that there was then a total loss of the eyesight.

5. That all questions of notice or time are waived.

6. That the average weekly earnings of the suppliant at the date of the accident were £4 14s.

7. That for the purpose of computing the present worth of a lump sum settlement of future payments, it is agreed that the time shall run from the 30th June, 1926, being the date upon which the Crown completed its enquiries and admitted liability.

The question submitted to the Court is what method of computing the amount due to the suppliant is correct:—

(a) Whether the amount is 50 per cent. of the maximum for total incapacity, i.e., £375 0 0

or

(b) the present value as at 30/6/1926 of 275 weeks at £1 7s. 3d. per week £329 2 1

Note: 58 per cent. of average earnings £2 14 6

£2 14s. 6d. per week for 275 weeks £750 0 0

or

(c) 43 weeks from 4/9/1925 to 30/6/1926 at £1 7s. 3d. £58 11 9
and present value as at 30/6/1926 of 232 weeks at £1 7s. 3d. £283 4 0

Total £341 15 9

or

(d) Present value as at 30/6/1926 of 232 weeks at £1 7s. 3d. £283 4 0

At the hearing counsel agreed to admit a medical certificate signed by Dr. W. S. Baird, which stated that the sight of the eye had, for all industrial purposes, been lost on 7th October, 1925. Paragraph 4 of the Statement of facts was accordingly amended, and the question of law was altered to read as follows:—

"The question submitted to the Court is what method of computing the amount due to the suppliant is correct:—

(a) Whether the amount is 50 per cent. of the maximum for total incapacity, i.e., £375 0 0

or

(b) 38 weeks from 7/10/1925 to 30/6/1926 at £1 7s. 3d. £51 15 6
and present value as at 30/6/1926 of 237 weeks at £1 7s. 3d. £228 10 4 £340 5 10

Note: 58 per cent. of average earnings £2 14 6

£2 14s. 6d. per week for 275 weeks £750 0 0

or

(c) 43 weeks from 4/9/1925 to 30/6/1926 at £1 7s. 3d. £58 11 9
and present value as at 30/6/1926 of 232 weeks at £1 7s. 3d. £283 4 0 £341 15 9

or

(d) 38 weeks from 7/10/1925 to 30/6/1926 at £1 7s. 3d. £51 15 9
and present value as at 30/6/1926 of 232 weeks at £1 7s. 3d. .. .. £283 4 0 £334 19 9"

O'Dea for suppliant.
Weston for defendant.

FRAZER, J. said:—

The underlying question is: "If the commencement of incapacity is not contemporaneous with the accident, (1) does compensation commence to be payable from the date of the accident or the date of the commencement of the incapacity, and (2) from which of those dates does the period of liability commence to run?" Sub-sections (5) and (6) of section 5 of The Workers Compensation Act, 1922, provide that compensation is to be payable "during any period of (total or partial) incapacity," and sub-section (7) provides that weekly payments shall not extend over a longer aggregate period than six years. Where an accidental injury does not at once cause incapacity, actual or constructive, there can be no compensation until incapacity occurs, for compensation is payable only during the period of incapacity; and as it is provided that the weekly payments must not extend over a longer aggregate period than six years, it must be assumed, in the absence of any words indicating a contrary intention, that the period of liability commences to run from the date on which compensation becomes payable. Apparently some doubt has arisen as to the effect of the judgments in Rough v. Prouse Lumber Coy. (12 G.L.R., 151) and Tompkins v. Northern Steamship Coy., Ltd. (1925), G.L.R. 121). Certain passages in these judgments have been taken as meaning that the period of liability runs from the time at which the injury was received, but it is obvious, from a consideration of the facts of the two cases, that the commencement of incapacity was there coincident with the accident, and that the Court had not before its mind such a case as the present, where an appreciable interval of time separated the accident and the consequent incapacity.

Further, section 28 provides for the Court making a declaration of liability in a case where no present incapacity exists, but makes no special provision for limiting the term during which the compensation that may be subsequently assessed is to be payable. Sub-section 7 of section 5 applies, as in cases where the accidental injury and the commencement of incapacity are coincident in point of time. Section 28 clearly shows that compensation is not payable from the date on which the accidental injury was received, when incapacity follows after an interval; and it is reasonable to assume that if the period of liability were to run from any date other than that on which compensation first became payable, section 28 would certainly have made suitable provision in that behalf.

We are of opinion, therefore, that compensation is payable in accordance with the method of computation set out in basis (b): that is, the weekly payments and the period of liability alike commence from the date on which the incapacity commenced. Judgment accordingly, with costs £7 7s.

Solicitors for suppliant: **O'Dea & Bayley**, New Plymouth.
Solicitors for Crown: **Weston & Billing**, New Plymouth.

A DAY AT THE PRIVY COUNCIL.

(By M. F. Gresson, Esq.).

"Counsel!"

It is thus that waiting Counsel are summoned into the presence of the Privy Council by a Court usher clothed in evening dress. As 10.30 a.m. approaches Counsel get ready in the robing room, gather up their papers, have an eleventh hour conference with their juniors, and await the summons into the Council Chamber. Following upon the usher's summons Counsel troop into Court to find their Lordships already seated. Rigid etiquette prevails concerning Counsel's position. The Appellant and his Junior always take up their seats on the left facing their Lordships whilst opposite to them are Respondent's Counsel. The Registrar calls the name of the case and instead of Counsel for each party getting up and stating for whom they appear a different procedure is followed. Appellant's Counsel advances to a little rostrum in the centre of the Court and enumerates the various Counsel who appear for each party.

The Committee on the day when I was present consisted of Lord Dunedin (presiding), Lords Atkinson, Phillimore, Carson, and Merrivale. The united ages of four of them I was informed amounted to 316 years, whilst the other was a mere boy of some 68 years. Lord Dunedin is an amazingly impressive Judge. An ideal President—for he reinforces his perfect courtesy and kindness with the deepest legal knowledge and experience. Should Counsel flounder or appear to be in difficulty it is always Lord Dunedin's kindly hand which assists to extricate him, and should any of his Lordship's colleagues appear to be unduly insistent in heckling Counsel Lord Dunedin may always be depended upon for friendly intervention. The real characteristic of the Tribunal (apart from its legal attainments) is its essential kindliness. Should they disagree with the views which Counsel advance they express that disagreement in no uncertain terms. What one of the solicitor's clerks called "Hedging" by Counsel is anathema to them. A straight answer to a straight question is all they ask. But give them that straight answer even if it be against your case, and they are kindness itself. Lord Phillimore is a purist in English. On one occasion Counsel in a case referred to something being done by his client "at the point of the pistol" (misled no doubt by the attractive alliteration). Lord Phillimore delicately took up his pen and looked at the ceiling musingly. "No," he said, "at the point of the bayonet perhaps or possibly at the muzzle or barrel of the pistol but not I think at the point of the pistol." Naturally of the most kindly disposition only one thing rouses him to fury. Woebetide the Counsel who uses a split infinitive. Lord Carson if he does not agree with Counsel is an implacable immovable adversary. Once he is satisfied a point is sound it is waste of time to attempt to move him. Relentlessly he always confronts Counsel with the point which appears to him conclusive, but it is always done with a kindly smile which seems to say: "After all when I was at the Bar I always used to try the same tactics." Lord Merrivale is a very good friend to Counsel in difficulty. Tenacious of opinion he always unbends in the kindest manner to Counsel who admit that the exigencies of their brief force them to put forward a view in opposition to that held by his Lordship. Needless to say their Lordships in common with all Englishmen are extraordinary kind to New Zealanders.

So soon as the argument is completed the President calls out to the usher: "Clear the Bar"—a phrase which to Colonials has a somewhat ambiguous meaning. Counsel and parties then retire to an ante-room and their Lordships deliberate. At the conclusion of this deliberation a bell rings and Counsel are again summoned. The President then either informs them of the result or tells them that their Lordships will consider what advice they will tender to His Majesty.

LONDON LETTER.

Temple, London,
1st September, 1926.

My Dear N.Z.,—

The above address is not the truth, nor a part of the truth; it is anything but the truth. Having retired into the depths of the country, upon the assurance that your Editor had so much of my observations in hand as to relieve me of any need to supply more, I have been caught napping. I am in trouble with the Fourth Dimension which, as every pressman knows, is Space; be your copy of whatever length, breadth or depth, there yet remains the paramount consideration of the printer's idea of space. We have misjudged it; and here am I, remote from all knowledge and news of the Law and yet called upon to address you upon the subject. The Long Vacation has been *in esse* this last four weeks, and I confess to but the vaguest recollection of what took place during the last three weeks of last term and so comes within the period intervening since my last letter to you. Shall be let byegones be byegones, upon my undertaking that, so soon as ever the Law Courts re-open and the Temple re-awakens, I select and inform you of any last term decisions of such essential importance that you ought to be reminded of them?

I was before Fraser J., sitting as Vacation Judge, a week or two ago, and I noted that there was then plenty of business going forward in Chambers. This no doubt was largely the winding-up of the term's unfinished work, and I understand that a rigid exclusion from the Vacation Court of non-vacation business has since reduced pressure to the low normality of this period. The materialisation of the Electricity Bill is the principal incident in the sphere of legislation; but as yet its interest is more commercial than legal, though it has for us the personal interest that it was piloted through its complicated stages by the Attorney-General. Business people and statesmen may, apparently, laugh at lawyers, but yet they must turn to them to deal with the more difficult even of their non-legal affairs! The less prominent but, to lawyers, the more important developments are, perhaps, the Report of the Royal Commission on Lunacy and Mental Disorder and the new Milk Regulations. As to the former, it is to be presumed that you will have some time ago studied the Report especially in its legal aspect (a critical one); and as to the latter, I dealt, some months ago I believe, with characteristics of the farmers' situation as to the sale of milk and as to the guarantee which he must afford that it is not tampered with after leaving his control. The subject is a difficult one, from the legislators' point of view; but too much of that difficulty is, as many lawyers think, left reposing upon the first, as distinct from the middle man. The discussion is reiterated in a full article of the "Justice of the Peace," August 14, at page 463.

There are further, and still more regrettable, results of my being caught napping in this correspondence; I am not able, before sending off this letter, to resume contact with your Myers or your Gresson, both of whom are on tour. I cannot deal faithfully, therefore, in this letter with the judgments either in **Morgan v. Wright** or **Wilkinson v. Bisset,** the first two of your current appeals to be dealt with by the Privy Council. I understand, but not officially, that both judgments have gone forward to you within a short time of their pronouncement some six weeks ago. Moreover, it may well be that you have been informed in detail by another pen; I will ascertain if this is so, and if it is not so I will fill in any blank. As to the future, the important matter is of course **The King v. Crown Milling Co. Ltd. and Others,** the printed record in which seems likely to be of some length but the final hearing of which Myers estimates as likely to occupy not more than four days, a considerably shorter period than it occupied before Sim J. or before the Court of Appeal. Sir Francis Bell has recently gone to Geneva, no doubt upon the business of the League of Nations; he will return to this country before the Respondent's Case is finally settled, but will be gone, in all probability, before the hearing. Even to those not directly concerned, I cannot help feeling that the battle over the relevance or irrelevance of the Privy Council judgment in the Vend Case (**Attorney-General of the Commonwealth of Australia v. Adelaide Steamship Co. Ltd.,** 1913, A.C. 781) must be of considerable interest; and I sincerely trust we may be able to persuade their Lordships that the matter is one to be decided without praying in aid principles emanating from Australian soil.

Of further pending appeals, I am only aware at the moment of the details of **Doughty v. Commissioner of Taxes,** the revenue point arising upon your Land and Income Tax Act, 1916, as amended by the 1923 Act. You will doubtless recollect, or you shall at any rate in the fulness of time be fully reminded of, the association between this case and **Anson v. The Commissioner of Taxes** (1922) N.Z. L.R. 330; and you realise that this latter decision is likely to be reviewed in this appeal. The point is one which might have arisen under the revenue legislation of any British country; and I have no doubt that the Privy Council judgment upon it will be fully reported in our recognised reports. A matter of an interest more peculiar to yourselves is the subject of the appeal in **Gardner v. Te Poru Hirawanu and Others**; the adjudging of the question involved in it is sure to be of a very wide application. Is a leasee of native freehold land warranted in felling timber trees growing thereon and entitled to sell the timber felled and retain the proceeds, when the lease itself makes no reference, one way or the other, to the felling of such timber? The Native Land Act, 1909 is, it may be assumed, a statute as well known to you as it was, before the beginning of this week, unknown to me. Equally familiar to you, but likely to be of a more direct concern to their Lordships, is your existing authority upon this question: **In re Rotoiti Block** (1923) G.L.R. 418. As far as I am at present aware, and I probably speak to those who know better than myself, that decision need not be reviewed in this appeal, but the point of the discussion in the Privy Council will be, is **Gardner v. Te Poru Hirawanu and Others** distinguishable from **In re Rotoiti Block**?

I have nothing to add, but, before I close, I may properly make reference to the general interest which must centre in the discussion of the last-mentioned point. To me it seems to involve a juxtaposition of mature principles of the law of the mother country with the exigencies and the new developments of your Dominion. While you will be vitally concerned with the latter, and we are more academically interested in the former, the juxtaposition itself is of an equal interest to both of us; and neither of us should finish with the case without learning more of the law, and the fundamentals of the law, than we knew before. The **Crown Milling Co. Ltd.** case, which is likely to be known in the future as "Distributors," seems to me likely to end in a heated political argument among whatever lawyers (however academic) it is discussed hereafter!

Yours ever,

INNER TEMPLAR.

SUMMARY OF LEGISLATION, SESSION 1926

(Sessional numbers, prices, and dates of coming into force are inserted, where available, following the titles of Acts, for the convenience of practitioners desiring to purchase advance copies from the Government Printer. The arrangement below is for practical convenience and general indication of subject-matter, but many Acts might with propriety be classed under more than one heading.)

1. **CONSOLIDATION. (a). Enactments prepared under section 5 of the Statutes Drafting and Compilation Act 1920.** Though introduced as strictly consolidating measures, most of these (as the Full Titles indicate) received in Parliament alterations which effect deliberate, though slight, amendments of existing law.

Hospital and Charitable Institutions. New matter:—Sec. 64 (authorising Boards to keep imprest accounts).

Pensions (No. 56; 1s.; 1st January, 1927).

Mining (No. 15; 1st April, 1927).

Public Revenues (No. 13; 1s. 9d.; 1s October, 1926). New matter:—Sec. 40 (transfers of balances of accounts within the Public Account).

National Provident Fund (No. 16; 1s. 3d.; 1st January, 1927). New matter:—Sec. 62 (6) (devolution of rights on death of a person who is a contributor on behalf of another person).

Government Railways (No. 17; 1s. 9d.; 9th September, 1926). New matter:—Sec. 90 (persons who resigned to stand for Parliament in 1925 may be permanently reappointed, and preserve their superannuation rights as if their employment had been continuous).

Local Bodies' Loans (No. 14; 1s. 6d.; 1st October, 1926). New matter:—Secs. 31 (power in certain cases to cancel debentures and issue new debentures), 116 (debentures and coupons may be made payable free of exchange), 117 (interest in arrears bears compound interest at 5 per cent.), and 118 (unexercised balance of loan authority may be cancelled by the Minister of Finance).

(b). Enactments not submitted as compilations, and substantially recasting the previous law.

Hauraki Plains (No. 39; 9d.; 1st April, 1927). The original special loan of £80,000 authorised by the Hauraki Plains Act 1908 now reaches the respectable sum of £900,000.

Census and Statistics (No. 3; 6d.; 1st January, 1927).

Fire Brigades (No. 11; 1s. 3d.; 1st January, 1927). Considerable verbal alteration, and special provisions about new Fire Boards. Elections are to be held in February instead of May. Financial year runs from 1st April instead of 1st July. Financial provisions largely recast.

2. **CONVEYANCING.**

Conveyancers should note the apportionment between landlord and tenant of the cost of complying with an inspector's requisitions under the **Dairy Industry Amendment Act,** borrowed from Victoria and noted below, which will require consideration in framing leases of dairy-farms. The apportionment applies in the absence of express agreement to the contrary.

Instruments varying a mortgage of land (heretofore frequently assessed as an agreement at 1s. 3d.) now attract a duty of 2s. 6d. See **Stamp Duties Amendment Act.**

Attention should also be given to secs. 32 and 33 of the **Town-planning Act** (noted under "General Administration").

3. COMMERCIAL AND INDUSTRIAL LAW.

Dairy Produce Export Control Amendment (No. 19; 6d.; 23rd August, 1926). The election of producers' representatives on the Dairy-export Control Board is now (a) a ward system, instead of a North and South Island system, (b) an *electoral-college system, the votes of all factory-suppliers of* each company going to the candidate polling most votes from that company's suppliers, and (c) a tonnage-vote system, the voting power of the preference ascertained under (b) depending on the company's weight of dairy-produce exported during the preceding year. No doubt the dairy-farmers understand it.

Dairy Industry Amendment (No. 35; 6d.; 31st August, 1926). Apportionment between landlord and tenant of cost of complying with Inspector's requisitions. Cream-grading may be introduced by regulation. Dairy companies registered under the Companies Act may not use the word "co-operative" in their name unless entitled to be registered as co-operative dairy companies under the Dairy Industry Act 1908; the section is retrospective, and existing offending companies must change their names. (The Act does not catch concerns that may prefer to incorporate under the Industrial and Provident Societies Act). Miscellaneous amendments, directed to improved sanitation and hygiene.

Industrial Societies Amendment (No. 26; 6d.; 23rd August, 1926). Provisions for change of name and dissolution of societies. Annual returns to be sent to Minister of Industries and Commerce instead of Minister of Internal Affairs.

Workers' Compensation Amendment (No. 51; 6d.; 1st January, 1927). Increases compensation. On fatal accidents, with total dependants, the compensation will be 2 years' wages (instead of 1½) or £300 (instead of £200), whichever is larger, up to £1000 (instead of £750). Weekly payments during total incapacity will be 62⅔ per cent. of average weekly earning (instead of 58 per cent.) up to £4 (instead of £3 15s.). The same increase is made for partial incapacity. The aggregate limit of such payments is raised from £750 to £1000.

4. CRIMINAL LAW.

Destitute Persons Amendment (No. 10; 6d.; 23rd August, 1926). The high cost of living is exemplified by the doubling of the permitted maximum on maintenance orders, and the removal of the maximum as between husband and wife. Supreme Court orders for alimony and maintenance may be enforced in the Magistrate's Court. Courts may be cleared of the public, and reports forbidden. Maintenance Officers as officers of the Magistrate Court, may be appointed to recover maintenance arrears—unless the complainant asks them not to.

Evidence Amendment (No. 5; 6d.; 28th July, 1926). A *short but important procedural Act. Accused, and his or* her wife or husband, may give evidence before Justices as well as on trial. The wife or husband of a person charged with bigamy is a competent witness, without accused's consent.

Justices of the Peace Amendment (No. 7; 6d.; 23rd August, 1926). Women may be made Justices. The Criminal Record Book of the lower courts receives statutory recognition, and is apparently required wherever and whenever a Justice convicts on an information. A summons "upon an information for a matter determinable summarily" may be served by registered post. By consent, remands may be for more than eight days. The power of the Supreme Court to modify penalties on appeal is enlarged. The **form of** caution to accused is altered. A fine may replace imprisonment in all cases triable by Justices. Other detail amendments.

Magistrates' Courts Amendment (No. 40; 6d.; 1st January, 1927). "Principal" magistrates to get £1000 a year, others £900. Two Justices may make an attachment order. Appeal procedure is modified, but nothing done to meet the practical difficulty of having no formal address for service in the lower court, felt particularly where a party has no solicitor, or no solicitor with a local office.

Oil in Territorial Waters (No. 27; 6d.; 1st April, 1927). A fine of £500 for letting oil get into territorial waters, salt or fresh, from any ship, place on land, or apparatus from one to the other. Follows in great measure the Imperial Act, the Oil in Navigable Waters Act, 1922, 12 & 13 Geo. V, c. 39.

Police Offences Amendment (No. 12; 6d.; 23rd August, 1926). Contains the much-debated clause creating the offence of obtaining admission to a place of entertainment without right and without paying the admission fee, and ancillary offences. A person is liable as an idle and disorderly person if he cannot discharge the onus of proving he has lawful means of support. Other minor amendments.

5. PROFESSIONAL and EDUCATIONAL.

Dentists Amendment (No. 44; 6d.; 9th September, 1926). 55 gentlemen and 2 ladies entitled to qualify for registration on passing a special examination less onerous than those required from the ordinary dental student, and to practise dentistry meanwhile, under supervision. One gentleman entitled to be registered without any examination.

Education Amendment (No. 53; 6d.; 1st January, 1927). Miscellaneous administrative amendments. Schoolmasters may suspend a child from attendance, but the Education Board alone may expel. Scholarship age limits reduced from 16 and 14 to 15 and 13 years, with a saving clause for 1927 for those otherwise over age.

Electrical Wiremen's Registration Amendment (No. 38; 6d.; 9th September, 1926). Temporary permits may be granted to applicants for registration. Wiring Inspectors to be certificated, as wiremen are under the principal Act; hitherto they were only registered.

Maori Arts and Crafts (No. 48; 6d.; 9th September, 1926). Another board established, the Board of Maori Arts, "to foster and encourage the study and practice of Maori arts *and crafts," with power to establish and control schools of* art, deal in goods, print books, and undertake custody of Maori antiquities.

New Zealand Agricultural College (No. 68; 6d.; 11th September, 1926). The College is established as a corporate body, the corporators including everyone down to the undergraduates. There is a College Council and a Professorial Board, and the Council may appoint a Principal, not necessarily a member of the Professorial Board, to which professors belong only if the Council of the University has approved their appointment. Auckland University College may endow the Logan Campbell Chair, and Victoria College the Buchanan Chair. The Consolidated Fund furnishes £15,000 a year.

New Zealand University Amendment (No. 70; 9d.; 1st January, 1927). The university is reconstituted as a corporation consisting of the four university colleges. A "Council of the University of New Zealand" is created, of 17 or 18 persons variously appointed and elected, which replaces the existing Senate, which passes (subject to the Governor-General in Council's approval) university "statutes," and which confers the degrees set out in the Act and the diplomas set out in the Act or invented by a "statute." There is also to be an Academic Board and an University Entrance Board, the latter to "consider the curricula and courses of study (what is the distinction?) at secondary schools and technical high schools...." Courses and examinations for the same degree may differ at different colleges. Degrees no longer conferrable are—Bachelor, Master, and Doctor of Agriculture (see now Agricultural Science), Bachelor, Master, and Doctor of Public Health (the diploma of Public Health remains), Doctor of Veterinary Science, Master of Dental Surgery, Doctor of Engineering, and Doctor of Commerce. New degrees are Bachelor and Master of Agricultural Science, of Architectural Science, of Forestry Science, of Home Science, of Medical Science (presumably something neither Medicine nor Science, as both these fields of learning are otherwise provided for), and Bachelor of Surgery (which has in fact been conferred for many years, without examination, and on payment of fees only, upon Bachelors of Medicine; but apparently without legislative sanction, which is now given, but not with any validating or retrospective force). From the number of cases in which there is no intermediate step between Baccalaureate and Doctorate, it would appear that the partial co-ordination of the three standards of Bachelor, Master, and Doctor in various branches of learning which was introduced in 1904 is now completely abandoned, and that the Master's degree in, say, Arts, Science, or Law may represent just as high an attainment as the Doctorate of Medicine or Dental Surgery.

Nurses and Midwives Registration Amendment (No. 8; 6d.; 23rd August, 1926). Minimum age for registration reduced from 23 to 22 years.

Scientific and Industrial Research (No. 28; 6d.; 31st August, 1926). A new Department of State is set up, in charge of a "Permanent Secretary" under a Minister, to maintain such scientific services and laboratories as may be transferred to it or created. A Council of Scientific and Industrial Research is set up as an advisory council, comprising not more than 7 members, all Crown nominees, but not in the Government service. Discoveries and inventions are to belong to the Crown. National Research Scholarships may be established by the Governor-General, on the advice of the Council.

Veterinary Surgeons (No. 50; 6d.; 1st January, 1927). Veterinary surgeons join the ranks of the closed professions, with a registering Board, a Registrar (from the Department of Agriculture), and an annual list in the Gazette of such registered persons as elect to pay for the privilege of publication. Unregistered veterinary surgeons of ten years' standing may continue to practise, but may only use the name "veterinary practitioner." Other unregistered persons are not forbidden to practise, but apparently must only avoid using the descriptions of "veterinary surgeon," "veterinarian," and "veterinary practitioner," and titles suggesting registration.

6. LAND.

Cemeteries Amendment (No. 23; 6d.; 23rd August, 1926). The duty of administering the principal Act is transferred from the Minister of Internal Affairs to the Minister of Health. The financial year of cemetery trustees is changed from January-December to April-March. Cremation requirements may be modified to permit religious rites (probably those of the Hindu community) to be observed away from the established crematoria.

Forests Amendment (No. 69; 6d.; 11th September, 1926). The Forestry Department may sell timber as agent. Forests may be excluded from national endowment lands. Irregular timber leases in Westland and Karamea under the Mining Act validated, overruling **R. v. Lawry** (1926), 2 B.F.N. 390, Gaz. L.R. 206. Mining Wardens' grants of timber-tramway licenses also validated. Administrative amendments.

Hutt Valley Lands Settlement Amendment (No. 45; 6d.; 9th September, 1926). Commercial and industrial sites may be 'sold in fee simple' privately. Upset price on sales by auction need not be announced. Machinery amendments.

Land Laws Amendment (No. 49; 9d; 9th September, 1926). The O.R.P. tenure is for the future abolished, and a Deferred Payment system substituted, with residence requirements for ten years, which may be dispensed with, and power by Order-in-Council to impose restrictions on transfer. The price is spread over 34½ years. Provisions on purchasing freehold of L.I.P. holdings are revised. Holders under various existing tenures may exchange their titles for the new D.P. tenure. Various provisions are made for the sale of national-endowment lands. Many detail amendments, most of which, as between the Crown and its tenants, appear to be to the latters' advantage. The new D.P. tenure appears not to affect the Renewable-Lease tenure, still maintained.

Rent Restriction (No. 36; 6d.; 31st August, 1926). Part I of the War Legislation Amendment Act 1916 and its amendments are further continued in force till January 1st, 1928. Various amendments are, however, made. The "standard rent," based on pre-war values, is replaced by one of 7 per cent. of the capital value, together with average outgoings and estimated prospective depreciation, the capital value to be determined, if necessary, by a Magistrate. The new standard rent operates from not earlier than 1st August, 1927. Unless a Magistrate so orders, on the tenant's application before or after that date, the 1916 Act ceases to apply to any dwelling-house after that date. Other verbal amendments.

Reserves and Other Lands Disposal (No. 62; 1s.; 11th September, 1926). The mass of private and local enactments for many years inserted in this annual Act has this year been dealt with elsewhere (see **Local Legislation Act**), and although many of the sections, involving transactions between the Crown and local bodies, or affecting lands vestel in local bodies, partake of local bill legislation, in the main the Act is no more than a legitimate corollary to those provisions of the Land Act which require express legislation to divest of its character land once proclaimed a reserve. The sections purport to be grouped according to Land Districts, which makes it quaint to read, under the heading "Wellington Land District," a validation of the trust for the Crown of the new London Offices of the High Commissioner vested in the Public Trustee.

Scenery Preservation Amendment (No. 20; 6d.; 23rd August, 1926). The Minister may authorise the killing in scenic reserves of specified birds and animals, but not "imported game," "native game," or opossums. Clearings may be leased for ten years or less, and tramway licenses granted. Reserves under other Acts may be placed under the Scenery Preservation Act, and local bodies may contribute to the acquisition and upkeep of scenic reserves.

Swamp Drainage Amendment (No. 58; 6d.; 9th September, 1926). Confers on the Crown additional powers over districts affected, as to rates for loans and sinking funds, rates for administrative expenses and maintenance of works entry on private land (with right to compensation), and fixes the capital expenditure, for rate-computation purposes, deemed to have been incurred in the Waihi Drainage Area, at £75,000, and in the Kaitaia Drainage Area at £125,000.

Valuation of Land Amendment (No. 71; 6d.; 11th September, 1926). Planted trees (except fruit-trees and hedges) and bush left for shelter or ornament are excluded from valuations supplied for local rating purposes. Valuations made during a financial year may have retrospective effect to the previous 31st March.

7. LOCAL GOVERNMENT.

Local Authorities Empowering (Relief of Unemployment) (No. 2; 6d.; 23rd June, 1926). Local authorities authorised to borrow under the Local Bodies' Loans Act may without limit, and without a ratepayers' poll, borrow for relief works up to the 30th June, 1927.

Local Elections and Polls Amendment (No. 42; 6d.; 9th September, 1926). The X of approval is replaced by the scoring out of disfavour, and in various respects voting-procedure is assimilated to that at Parliamentary elections. Corporations, unincorporated bodies, firms, and the like, may vote by a representative, who, with executors, trustees, etc., retains also his personal vote. The war legislation as to aliens voting is repealed, alien enemies for the time being may neither vote nor hold elected office, and other aliens may vote but not hold office.

Local Government Loans Board (No. 60; 6d.; 1st April, 1927). Sets up a board of the Secretary to the Treasury, the Engineer-in-Chief of the Public Works Department, and five Crown nominees, without whose sanction no ratepayers' poll may be taken, and by which every loan is to be sanctioned. Thereafter the consent of the Governor-General in Council is required (sec. 20 of the Finance Act 1919 being repealed).

Local Railways Amendment (No. 34; 6d.; 31st August, 1926). Districts may be divided into electoral wards, elections are to be triennial instead of biennial, vacancies are to be filled by the Board by co-option. Locomotives are subjected to the same inspection as Government railway locomotives.

Motor-omnibus Traffic (No. 67; 9d.; 11th September, 1926). Applies in 13 districts (of which the cities and larger boroughs are the nuclei), and others that an Order-in-Council may create, and in those districts to mechanical vehicles carrying 6 passengers or over, for a single fare of 2s. or less. Buses and drivers must be licensed by a local authority selected as licensing authority, with appeal to an Appeal Board. Third-party insurance must be effected, to an amount to be fixed by regulation. Existing private concerns may surrender their plant to competing local bodies, who must pay compensation. Residents in a tramway district may by petition obtain a motor-bus service, if the tramway undertaker assents, or the Appeal Board so orders.

8. REVENUE AND FINANCE.

Appropriation (No. 72; 1s. 3d.; 11th September, 1926). Usual appropriations in terms of budget. Various special payments authorised. Special provisions about income-tax for Long-term Mortgage Department of Bank of New Zealand and any other bank establishing a similar department.

Customs Amendment (No. 47; 6d.; New Zealand proper, 9th September, 1926; Cook Islands, date to be fixed by Order-in-Council). Amendment of tariff, dealing with motor-vehicles and their parts and accessories, and rough-sawn timber.

Death Duties Amendment (No. 4; 6d.; 28th July, 1926). Penalty for late payment of death duties reduced from 10 to 5 per cent. Refunds of overpaid duty may be made at any time.

Finance (No. 46; 9d.; 9th September, 1926). Loans of nearly eight million pounds authorised. Various special payments authorised. Registrar's fees on mortgagees' sales altered. Jury fees increased. Superannuation fund rights extended. Subsidies to united counties payable as to the previous separate counties. Harbour Board deposits with building societies permitted till 12th January, 1929. Rabbit Boards added to the list of local bodies that may run an "unauthorised expenditure" account.

Imprest Supply (No. 1; 6d.; 23rd June, 1926).

Imprest Supply (No. 2) (No. 6; 6d.; 28th July, 1926).

Imprest Supply (No. 3) (No. 59; 6d.; 9th September, 1926).

Land and Income Tax Amendment (No. 24; 6d.; 23rd August, 1926). The amendments affect tax on Native lands, absentees on Crown service, computation of trading stock sold with other assets, relation back of re-valuations of land, persons charged with deducting income-tax from remittances to non-residents.

Land and Income Tax (Annual) (No. 9; 6d.; 23rd August, 1926). No change from last year.

Rural Finances (No. 54; 6d.; 1st April, 1927). In effect an amendment of the State Advances Act 1913, establishing the Rural Advances Branch of the State Advances Office, to make advances on rural lands of various tenures up to £5500, providing for the raising of funds for the purpose, which are to be deemed trust investments (the **Trustee Act 1908**, sec. 95, being in effect amended), but which are not charged on the public revenues, and will (nominally) therefore not be included in the National Debt. The amount thus to be borrowed is limited to the amount of Rural Advances Branch advances outstanding, but other State Advances Office funds may be used for the purposes of the branch.

Stamp Duties Amendment (No. 63; 6d.; 11th September, 1926). Adhesive stamps are available for postage and revenue, impressed stamps for revenue only, and apportionment between the Stamp Duties Office and the Post Office is provided for. It is sometimes hard to say when an order for payment of moneys should be stamped as an assignment; in future, an order on the butter-fat moneys (this is what it amounts to) up to £20 is chargeable with 2d. On a sale of property where the consideration is deemed unascertainable the duty may be fixed at £5. Instruments varying a mortgage attract 2s. 6d. The cheques of the trustees of a War Fund are made free of duty.

9. GENERAL ADMINISTRATION.

Cinematograph-film Censorship Amendment (No. 22; 6d.; 23rd August, 1926). Censorship may by regulation be extended to posters.

Cook Islands Amendment (No. 12; 6d; 23rd August, 1926). Additional superannuation benefits for New Zealand Public servants in Cook Islands service.

Family Allowances (No. 30; 6d.; 1st April, 1927). Every father of three or more children may collect two shillings a week from the Commissioner of Pensions, unless the "average" (elaborately defined) income of the family exceeds £4 a week plus the two shillings. Stepchildren and adopted children are included, but illegitimate children are not. Aliens, Asiatics, and recent immigrants do not participate. Every inhabitant of New Zealand must answer official inquiries.

Fisheries Amendment (No. 33; 6d.; 31st August, 1926). Special regulations, fees, and licenses may be enacted for trout and perch fishing in the Rotorua Acclimatization District, exclusive of Taupo, as to which see sec. 14 of **The Native Land Amendment and Native Land Claims Adjustment Act.**

Guardianship of Infants (No. 32; 6d.; 1st January, 1927). A substantial amendent of Part I of the Infants Act 1908, giving the mother and the guardians appointed by her equal rights with the father and his guardians. The Court (including, with limitations, the Magistrate's Court) may appoint and direct guardians. Fresh requirements as to the consents necessary for a minor's marriage replace Secs. 19 and 20 of the Marriage Act 1908. Generally both parents and/or all guardians must consent. The Act is largely in the words of the recent Imperial statute, the Guardianship of Infants Act 1925, 15 & 16 Geo. V, c. 45, decisions on which should therefore be noted.

Lights on Vehicles Amendment (No. 37; 6d.; 9th September, 1926). Motors exempt from principal Act while subject to lighting regulations under the Motor-vehicles Act 1924. Pedal-bicycles must carry red rear-reflectors (penalty, £1).

Main Highways Amendment (No. 43; 6d.; 9th September, 1926). Chiefly financial modifications.

Marriage Amendment (No. 41; 6d.; 9th September, 1926). Charges the Minister of Internal Affairs with the responsibility of a discretion in accepting an officiating minister nominated by persons claiming to be a religious body, apart from the churches recognised expressly by the principal Act.

Native Land Amendment and Native Land Claims Adjustment. Rent under leases of native land may be released or reduced, or the time for payment extended, by a resolution of assembled owners not requiring the Maori Land Board's confirmation. Maori Land Boards may make advances for various purposes, and to that end pool moneys held by them in a common fund. Elaborate provisions appear about fishing rights at Taupo, involving special licenses and fees for fishing, camping, and plying with launches. There are various other amendments, and the usual enactments implementing, negativing, or overruling as regards particular blocks the work of the Native Land Courts.

Native Trustee Amendment (No. 65; 6d; 11th September, 1926). Powers of the Native Trustee extended, and administrative amendment.

Samoa Amendment (No. 25; 6d.; 23rd August, 1926). The comprehensive civil, criminal, and administrative code enacted for the Territory by the Samoa Act 1921 receives detail amendment as regards European status of half-castes, number of official members of Legislative Council, High Court jurisdiction to entertain suits for restitution of conjugal rights, power of Legislative Council to pass divorce legislation (for non-European Samoans only), public service superannuation, status of employees of the "Reparation Estates" (the German plantations confiscated in the War), and application of the proceeds of realising and working these properties.

(To be concluded.)

OTAGO LAW SOCIETY.

The difficult problem confronting District Law Societies of arranging occasions for social gatherings of the profession has been overcome by The Otago District Law Society by the inauguration of a Sports Day, which it is hoped to make an annual event. This year it took the form of a Golf Tournament and was held by kind permission of the Balmacewan Golf Club, on the Club's Links at Maori Hill, on Monday the 27th September (Dominion Day). The weather was all that could be desired, and thirty-six members of the profession both town and country, drove off in a bogey handicap. Members in possession of the dignity of a club handicap were reduced two strokes, while other players were allowed the limit of eighteen strokes. This handicapping resulted in a very good game and the winning card proved to be Mr. A. N. Haggitt, with a score of two down with Mr. R. S. Brown (four down) second.

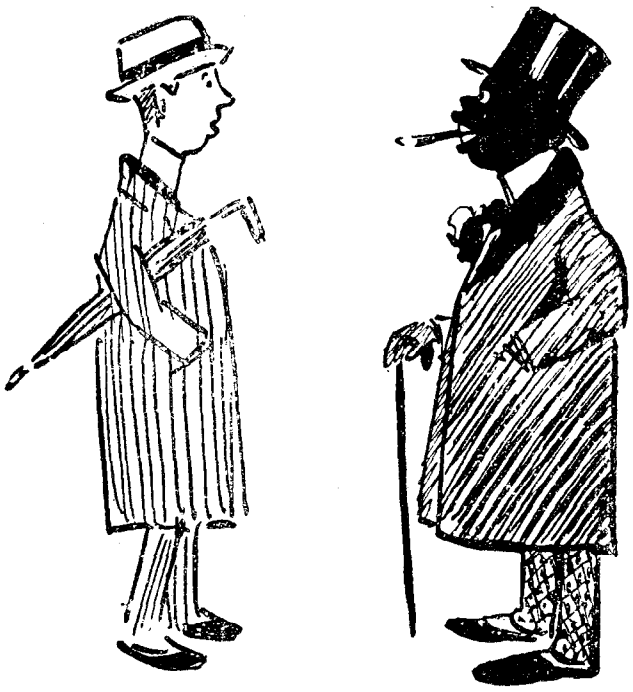
The committee in charge of the tournament showed great discernment in the organisation thereof. Realising that (especially in the case of persons who have not had as much practice of late as they might have had) golf is essentially a game requiring masculine detachment and a freedom from the hampering conventions of language to which we are, as a profession, irrevocably bound on normal occasions, the presence of the ladies was in terms not requested until 3.30. By that time the air was expected to have cleared (and had so done) and everybody was ready to do justice to the very excellent afternoon tea provided. The President of the Society, Mr. W. L. Moore, was unable to be present by reason of illness, but Mr. F. S. Brent (Vice-President) presented the prizes in a happy speech, in which he voiced the regret of the profession, that our Judge, Mr. Justice Sim, was unavoidably absent at the Court of Appeal. Many of the non-playing members and their wives had arrived for this less strenuous portion of the ceremonies, and the day was voted by all to have been an unqualified success, and one which we all hope will be repeated.

FORENSIC FABLES

No. 24.

THE AMBITIOUS YOUTH
WHO WANTED ELIGIBLE CHAMBERS.

An Ambitious Youth was Advised that if he Wished to Succeed at the Bar it was All-Important that he should Secure Eligible Chambers. He Accordingly Embarked upon this Quest Directly After his Call. The Ambitious Youth was Quite Clear as to his requirements. He did not Wish to Confine himself to Government Work, or to Tie himself Up in the Commercial Court, the Admiralty Court or the Old Bailey. What the Ambitious Youth Desired was a Comfortable Room in a Set of Chambers on the Ground or First Floor where there were (1) a Busy Leader (of Conservative Politics) who would Shortly become a Judge; (2) a



Junior with a Heavy Mixed Practice who was in need of a "Devil" and would Soon take Silk, and (3) an Experienced and Active Clerk. After Six Months had Elapsed he Felt that he need not Insist on the Busy Leader. When Nine Months had Gone By he Thought that the Second Floor might Do. A Year after his Call the Ambitious Youth Closed with an Offer of Half a Room, the Other Moiety of Which was Occupied by a Coloured Gentleman. The Chambers were at the Top of Sealing-Wax Buildings. The Other Tenants were a Female Journalist and an Elderly Person who was not a Teetotaller. The Clerk was an Oaf with a Squint who Smoked Cigarettes.

Moral: Aim High.

O.

CORRESPONDENCE.

Nelson,
8th October, 1926.

To the Editor,
"Butterworth's Fortnightly Notes."

Sir,—

Among the excellent Conveyancing precedents which you have been publishing I notice one which is, I think, from a practical point of view, capable of improvement. I refer to the proviso allowing a Mortgagor to repay part of the principal sum on three month's notice. I suggest that it should be made clear that the giving of any such notice should be deemed a covenant by the Mortgagor to repay the amount stated in the notice on the date therein named and that failure to do so should entail the same consequences as the breach of a covenant in the Mortgage. Where such a clause is not inserted there seems nothing to stop the Mortgagor changing his mind at the last minute and calmly declining to pay the amount named. Several experiences of this sort have befallen me in actual practise.

May I suggest that you should encourage correspondence from practitioners on points of every-day importance—it seems to me that this would add enormously to the interest and utility of your already very interesting Journal.—Yours, etc.,

"COUNTRY PRACTITIONER."

The Editor,
"Butterworth's Fortnightly Notes,"
Wellington.

Sir,—I dissent from the sentiments expressed by Mr. Dickson in his letter to you anent our Judicial system. "Change the system" is a shibboleth used by many who do not mean what they say, and though Mr. Dickson assails the existing system, his suggestions contain no inroads on it.

In regard to our Judges, it has been and is the pride of the country that they have always consisted and do consist of the best intellects of the profession. To their credit, be it said, the honour of serving their country on the bench outweighs the emoluments of private practice. The barrister who "really cannot afford to accept office as a judge" has, I submit, been living above himself.

In the nature of things, the Magistrates must be drawn from—well—not the front-rankers. The remuneration will not draw the busy common law practitioners, who make the best judges; but on a whole the Magistrates do very well. Speaking from my own experience, when I encounter a poor Magistrate I wish that his jurisdiction were narrower than it is. When I plead before a sound Magistrate I wish that he had more power than he has. We must take the good with the bad and strike an average, and so far as I can ascertain from my reading, conditions are much the same in England, in regard to the County Court Judges.

In such a small country as this, it will not be practicable to divide the Magistracy into three divisions, as suggested by Mr. Dickson. Jealousy would, if no other cause were available, disrupt such a system.

I make the suggestion, however, that the Law Society might try to get its views consulted when appointments to the Magistracy are being made.

In regard to the jury system, I feel that insufficient time has passed to enable anyone to say what the precise effect of withdrawing causes from the Jury has been. Everyone knew how, under the old jury system, a verdict depended on one's ability to strike the sympathy string, and there are few with courage enough to say that the old system ought not to be changed. Perhaps there will ultimately be evolved some compromise between the old and new.

For fear that I should be held to be flattering our judges, I subscribe myself

"HAILES."

September 14th, 1926.