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, NOVEMBER 9, 1926.

THE CULPRIT CABLE.

Accuracy is an especial feature of the Press Association telegrams of Appeal Court proceedings and in consequence general reliance is placed on them by both practitioners and public. This confidence in the P.A. caused a little furious thinking recently when the Appeal Court Decision delivered by Skerrett C.J. in the **Public Trustee v. Bank of New Zealand** was reported. "A mortgagor is not personally liable under a mortgage." The report was of course intended to read "The mortgagor is not personally liable under **the** mortgage and such liability would be inconsistent with the whole scheme of **the** mortgage."

The facts in this case are that the Public Trustee as administrator of the estate of Eliza Jane Gamlin of New Plymouth desired directions from the Appeal Court as to how the Estate was to be distributed. The estate comprised with other things a farm property of some 120 acres in the Koupokonui District. In 1909, the deceased mortgaged the farm to the Bank of New Zealand to secure repayment to the Bank or demand any monies that might be owing to the Bank by John Nicholas Gamlin. The land so mortgaged was valued at £2,300 while at the death of the deceased the liabilities of John Nicholas Gamlin amounted to some £36,800. The property obviously was insufficient to satisfy the debt to the Bank. The Bank claimed satisfaction of the whole amount owed to it out of that part of deceased's estate not mortgaged to the Bank.

The Court was therefore called upon to interpret the particular mortgage which did not provide expressly for the personal liability of the mortgagor but which personal liability it was contended, must be implied. The Appeal Court however decided that the mortgagor was not personally liable "and such liability would be inconsistent with the whole scheme of the mortgage."

The Draftsman of a mortgage under such circumstances should therefore be quite certain whether the personal liability of the mortgagee for the debt is intended and if so this should be clearly stated. It cannot be implied. (H.J.).

A SOLICITOR'S DUTY TO HIS CLIENT.

In delivering an oral judgment of the Court of Appeal in respect to a Legal Practitioner who was suspended from practicing for a period of years Skerrett C.J. observed that it was the duty of a solicitor who was acting for both parties to a sale to carefully explain to the party whose interests are adversely affected the nature and effect of the transaction and if it appeared to be a swindle to advise him not to go on with the matter. Should the party refuse to take his advice the solicitor's plain duty was to withdraw from the matter and positively refuse to have anything whatever to do with it. The facts in the case in question were that a vendor sold his property for which the purchaser paid £400 in cash, which the purchaser had obtained by raising a first mortgage of £800, upon the security of the property purchased the remainder of the purchase consideration was a second mortgage of the property. The duty of a solicitor to his client was the subject of remark by Farwell J. in **Powell v. Powell** and Stirling L.J. in **Wright v. Carter** (on appeal) approved and adopted the language of Farwell J.

In **Powell v. Powell,** 1900 1 Ch. 243 a question arose as to the validity of a voluntary settlement made by a young person in favour of a parent. There are certain observations in the course of the judgment of Farwell J. in that case which have an important bearing upon the duty of a solicitor in such a case.

At p. 247 the learned Judge said :—

"He (i.e. the solicitor) must also satisfy himself that the gift is one that it is right and proper for the donor to make under all the circumstances, and if he is not so satisfied, his duty is to advise his client not to go on with the transaction and to refuse to act further for him if he persists. He certainly ought not to go on if he disapproves, simply because, as was suggested in this case, he thinks that someone else would do the work if he does not. The plea that offences must needs come does not exonerate the man by whom the offence cometh."

In **Wright v. Carter,** 1903 1 Ch. 27 the same question came up for consideration by the Court of Appeal.

The case was one in which the validity of a gift by a client to his solicitor was challenged. In this connection Stirling L.J. said :—

"Now it has been laid down in recent cases, and particularly in two cases in this Court—**Mitchell v. Homfray,** 8 Q.B.D. 587 and **Liles v. Terry,** 1895 2 Q.B. 679 that in order to uphold a gift of this kind, the donor must have obtained independent advice in conferring the gift; that is to say the transaction cannot be upheld unless that condition is satisfied; but if the old rule still remains—that the Court must look to all the circumstances of the case—the introduction of a new solicitor, although a highly important element, does not conclude the matter, and the Court has still to be satisfied that the the influence arising from the relationship can no longer be supposed to exist. I think also, that the new solicitor called in to advise in such a case takes upon himself no light nor easy task. The duties of the adviser have been considered by Farwell J. in the recent case of **Powell v. Powell,** 1900 1 Ch. 243, in the course of his judgment, he says this :—

> 'The solicitor does not discharge his duty by satisfying himself simply that the donor understands and wishes to carry out the particular transaction. He must also satisfy himself that the gift is one that it is right and proper for the donor to make under all the circumstances and if he is not so satisfied, his duty is to advise his client not to go on with the transaction and to refuse to act further for him if he persists.'

With that view of a solicitor's duty I agree. I think a solicitor would fail in his duty if he neglected to inform of the circumstances in which the transaction was taking place. It might turn out, for example, to be one in which a poor man was divesting himself of all his property in favour of the solicitor. In such a case it would be impossible, it seems to me, whatever the advice may have been, to uphold the transaction." (H.J.).

COURT OF APPEAL.

Sim J.
Reed J.
MacGregor J.
Ostler J.

October 19, 20, 28, 1926.
Wellington.

WAITAKI DAIRY COMPANY v. N.Z. DAIRY CONTROL BOARD.

Dairy Control—Dairy Produce Export Control Act 1923—Powers of Board constituted under Act.

We take the facts from the reasons of MacGregor J., who delivered the judgment of the Court.

The plaintiff in this action is a company carrying on business in Dunedin and elsewhere in New Zealand as manufacturers and exporters of butter. It claims to be a proprietary dairy company, as distinguished from a co-operative dairy company, and we assume for the purposes of our judgment that it has made good this claim. The defendant is the New Zealand Dairy Produce Control Board incorporated by the "Dairy Produce Export Control Act 1923." The long title of that Act describes it as "An Act "to make provision for the control of the export of dairy produce." Section 13 (1) of the Act reads as follows:—

"The Board is hereby empowered to determine from time "to time the extent to which it is necessary for the effective "operation of this Act and the fulfilment of its purposes, "that the Board should exercise control over the export of "dairy produce from New Zealand and may assume control "of any such dairy produce accordingly."

On 26th May, 1926, the defendant Board, in pursuance of Section 13 (1) of the Act, passed the following resolutions:

"Pursuant to the power conferred on the New Zealand "Dairy Produce Control Board by Section 13 (1) of the "Dairy Produce Export Control Act 1923, and to all other "powers it thereunto enabling, the New Zealand Dairy Pro-"duce Control Board doth hereby resolve and determine "that it is necessary for the effective operation of the "Dairy Produce Export Control Act 1923 and the fulfil-"ment of its purposes that the Board should exercise abso-"lute control over the export of dairy produce (that is, "butter and cheese) from New eZaland, AND THE BOARD "doth further resolve and determine that the Board do "assume control of such dairy produce accordingly; AND "THE BOARD doth further resolve and determine that "such control shall operate from midnight on the 31st day "of August, 1926; AND THE BOARD doth further resolve "and determine that such control shall operate until fur-"ther determination by the Board."

Sir John Findlay, K.C., and **Hanna** for plaintiff.
Blair, McVeagh & Cook for defendant.

THE COURT said (MacGregor J. delivered the judgment):—

The substantive ground on which the plaintiff Company bases its present claim to relief is that the power of export control given by the Act to the Board does not apply at all to the dairy produce of the Company, inasmuch as it purchases outright from dairy farmers milk and cream for manufacture and sale on its own account and not on behalf of the farmers or "producers." This main contention was subdivided by Sir John Findlay at the hearing into the following propositions whieth he put forward as the basis of the plaintiff's case for an injunction:—

1. That the classes intended to be directly benefitted by the Act are the "producers"—as defined by the Act (section 3).

2. That the Board is in fact milk and cream "suppliers'" Board.

3. That the "dairy produce" referred to throughout the Act is dairy produce belonging to these milk and cream "producers."

4. That the Act contemplates the milk and cream "producers" supplying their milk and cream to a factory, which as agents of the "producers" converts it into dairy produce.

5. That these "producers" are the "owners" of that dairy produce, and are so referred to throughout the Act.

6. That it is only the dairy produce of such "producers" that the Board can assume control of, and

7. That if the "producers" prefer to sell their milk and cream outright to a proprietary dairy factory the Board has no control over the "dairy produce" so manufactured.

An additional but subsidiary contention, based on Section 13 (3) was also urged by plaintiff's Counsel at a later stage of his argument, which we shall deal with separately after disposing of his main grounds of action as above detailed.

On consideration we are quite unable to see that the extensive power of export control conferred by the Act on the Board can be limited in the way suggested on behalf of the plaintiff here. In other words, we are satisfied that the Board's power of control does extend to the export of the "dairy produce" of this particular Company, whether or not it buys outright its milk and cream from the dairy farmers for manufacture into "dairy produce" for sale on its own behalf. The words of the Act, and particularly of Section 13 (1), are in our opinion altogether too wide and clear to be cut down in the manner suggested by Counsel for the plaintiff Company. The principles which should guide us in interpreting the provisions of this Act are, we think accurately stated in **Halsbury** (vol. xxvii, pp. 150/1), as follows:—

"Statutes which limit or extend Common Law rights "must be expressed in clear, unambiguous language..... "The fact that a Statute may restrict Common Law rights "is, however, no reason why, when the language is clear, "it should be construed differently from other Statutes."

In applying these principles to the present case, we find at the outset that Section 3 of the Act is quite explicit in its terms of interpretation:—

"In this Act, unless the context otherwise requires, "'Dairy-produce' means butter and cheese: 'Producers' "means persons carrying on business as suppliers of milk or "cream to factories manufacturing dairy produce for ex-"port."

Then under Section 13 (1) the Board has power to determine from time to time the extent to which it is necessary that the Board should exercise control over the export of "dairy produce" from New Zealand. This power of determination is apparently unqualified and unlimited in its operation, subject to the exceptions provided by Section 13 (7) and 13 (8), which obviously do not apply to the present case. By its resolutions of 26th May, 1926, the Board has duly determined to exercise absolute control as from 1st September, 1926, over the "export of dairy produce (that "is, butter and cheese) from New Zealand."

That absolute control in our judgment clearly and broadly applies to the export of all dairy produce from New Zealand on and after the specified date. In these proceedings the plaintiff Company suggests that its particular dairy produce should be exempted from the general body of "dairy "produce from New Zealand" on the specific grounds already set out herein.

In our opinion this suggestion is plainly untenable. The plaintiff Company admits that it manufactures "dairy produce" for export from New Zealand. The dairy produce so manufactured by the plaintiff Company **prima facie** at all events forms part of the "dairy produce from New Zea-"land" spoken of in the earlier part of Section 13 (1) of the Act. It is clearly impossible for the Court to remove it from that category without adding to the definition of "producers" in Section 3 some such words as "for and on "behalf of the producers," or "as agents for the pro-"ducers." We can see no valid reason for thus adding to or qualifying the express words of the Statute, which appear to us in this respect quite free from doubt in their meaning and operation.

Solicitors for plaintiff: **Messrs. Findlay & Hoggard**, Solicitors, Wellington.

Solicitors for defendant: **Messrs. Chapman, Tripp, Blair, Cooke & Watson**, Solicitors, Wellington.

Skerrett C.J.
Sim J.
Stringer J.

October 11, 19, 1926.
Wellington.

UNION STEAM SHIP CO., LTD., v. COMMISSIONER OF TAXES.

Income-tax—Companies—Jointly interested—Joint Assessment—Finance Act 1917, Sec. 13.

The following are the facts relevant to this appeal from the Commissioner:—

The Union Steam Ship Company, Limited, The United Repairing Company, Limited, and The Wellington Patent Slip Company, Limited, are the respective owners of unimproved lands of the values set out in the case.

The whole of the paid-up capital of the Wellington Patent Slip Company is held by or on behalf of the Union Steam Ship Company, and one-half of the capital of the United Repairing Company is also held by the Union Company, the other half being held by the Northern Steamship Company, Limited. Upon these facts the Commissioner of Taxes made a joint assessment of the three Companies for the purposes of Land Tax in respect of the land owned by them respectively for the years 1921, 1922, 1923, 1924, and 1925.

C. G. White for appellant.
Fair, K.C. (Solicitor-General), for respondent.

STRINGER J. delivered the judgment of the Court in favour of the respondent. He said: "The question submitted to the Court is whether this assessment is correct, or, if not, upon which method the assessment should be made. The answer to the question depends upon the true construction of Section 13 of The Finance Act, 1917, which, as amended by section 7 of the Land and Income Tax Amendment Act 1920, is in the following terms:—

"13 (1). If two or more Companies consist substantially "of the same shareholders those Companies shall be deemed "for the purposes of land tax to be a single Company, and "shall be jointly assessed and jointly and severally liable "accordingly, with such right of contribution or indemnity "between themselves as is just.

"(2). For the purposes of this section two Companies "shall be deemed to consist substantially of the same share-"holders if not less than one-half of the paid-up capital of "each of them is held by or on behalf of shareholders in "the other. Shares in one Company held by or on behalf "of another Company shall for this purpose be deemed to "be held by the shareholders in the last-mentioned Com-"pany."

It is convenient, in the first place, to deal with the interpretation of the section as applicable to the usual case where the shares in each of two Companies are held by individual shares in each of two Companies are held by individual shareholders. In such case the two Companies may be assessed jointly if half the paid-up capital of one Company (say the A Company) is held by or on behalf of the other Company (say the B Company). Thus, to simplify matters, if the individuals holding one-half of the paid-up capital in Company A hold also one-half the paid-up capital in Company B, the section is satisfied and the two Companies can be assessed jointly. The words "by or on behalf of "shareholders in the other" do not mean that half the paid-up capital in A Company must be held by, or on behalf of, all the shareholders in B Company. Such a construction would render the section practically nugatory. The words are not "by, or on behalf of, the shareholders in the "other," but by, or on behalf of, "shareholders" in the other, meaning any one or more of the shareholders in such other Company. The test prescribed by the section may be stated thus: Is half the paid-up capital in each Company held by the same individuals?

The last sentence of sub-section 2 of the section deals with the case of a Company, in its corporate capacity, holding shares in another Company. Some provision to meet this case was necessary because the main provision deals only with half the paid-up capital in two companies being held by individual sharesholders who were common shareholders in both. Accordingly it is provided that if a Company holds shares in another Company the shares shall be deemed to be held by the shareholders in the last-mentioned Company. This gives effect to what appears to be the main purpose of the section. Thus, if the Union Company consists of sharesholders, A, B, C, etc., then, as that Company owned all the shares in the Wellington Slip Company, A, B, C, etc., are deemed to be the shareholders in the latter Company. The result is that while the whole of the paid-up capital of the Union Company is, in fact, held by A, B, C, etc., the paid-up capital of the Patent Slip Company is deemed, by force of the section, to be constructively held by the same A, B, C, etc. It follows, therefore, that the paid-up capital of the Union Company being in fact held by its shareholders, and the same persons being, by force of the section, constructively deemed to hold the whole of the paid-up capital in the Patent Slip Company, the two Companies can be jointly assessed.

In the case of the Repairing Company, the Union Company holds half the paid-up capital of the former, but the other half is held by the Northern Steamship Company. Here again the shareholders of the Union Company, A, B, C, etc., are constructively deemed to hold half the paid-up capital of the Repairing Company, and, as they are the actual shareholders in the Union Company, one-half of the paid-up capital in both Companies is held by the same persons. The two Companies are, therefore, liable to be jointly assessed.

It now remains to determine the question whether the three Companies, the Union Company, the Patent Slip Company, and the Repairing Company, can be assessed jointly. The fact that the Union Company and the Patent Slip Company may be assessed jointly, and the fact that the Union Company and the Repairing Company may be assessed jointly, do not necessarily justify the assessment of the three Companies jointly. What is required is that the same individuals should in fact own at least half of the paid-up capital of the Union Company, and constructively own at least half the paid-up capital of each of the other two Companies. If this position is attained the three Companies may be assessed jointly. The shareholders in the Union Company, A, B, C, etc., actually hold all the paid-up capital in the Union Company. They also hold, constructively, all the paid-up capital of the Patent Slip Company, and half the paid-up capital of the Repairing Company. The same individuals hold either actually or, what is the same thing, constructively, at least half of the paid-up capital in each of the three Companies, and, in our opinion, all three may be assessed jointly.

For these reasons the answer to the question submitted to us is that the assessment of the Commissioner was right, and the appeal is, therefore, dismissed with £15 15s. costs.

Skerrett, C.J.
Sim, J.
Stringer, J.
Alpers, J.

October 1, 18, 1926.

WILLCOCKS v. N.Z. INSURANCE CO., LTD.

Insurance—Motor-car—Ambiguous question in proposal form Rule of construction—Materiality of undisclosed fact—Onus probabandi.

We do not publish the facts of this appeal from Ostler J. The only reference of interest was on a general question of law not affected by the particular facts.

Spratt for appellant.
Weston for respondent.

THE COURT (STRINGER J. delivering the judgment) reversed the decision of the trial judge in non-suiting the plaintiff.

It has been settled by this Court that if there is any ambiguity in the questions put to a proponent for insurance it must be construed most favourably to the proponent, and that it is sufficient if the questions are answered in any sense which they will reasonably bear: **Royal Exchange v. Coleman**, 26 N.Z.L.R. 526. We think that principle is applicable to the present case. The heading under which the proponent is asked for information, having regard to their collocation, might reasonably be understood as requiring particulars to be given as to the price paid for the car when originally purchased, and, so understood, the statement made was quite true. The fact is that the various particulars asked for are not framed to meet the probably somewhat unusual case of a person buying a new car, then selling it, and again later on repurchasing it.

It was further contended that it was a material fact that the car had been purchased by the Appellant for £850, and that her failure to disclose this fact was a violation of that good faith which is the basis of all forms of insurance. "It "is a question of fact in each case whether if the matters "concealed or misrepresented had been truly disclosed they "would on a fair consideration of the evidence have in-

"fluenced a reasonable insurer to have declined the risk or "to have stipulated for a higher premium." **Mutual Life v. Ontario,** (1925) A.C. 344. The onus of proving materiality of the undisclosed fact was upon the Respondent, and no evidence upon the point was submitted, for the reason that the non-suit made it unnecessary to enter upon the defence. It appears also to be incumbent upon the Company setting up such a defence to satisfy the Court that it was not aware of the fact of the non-disclosure of which it complains. So far as the evidence for the plaintiff is concerned it appears that both the Manager and the Respondent Company, and its agent who affected the insurance, saw the car at the time the risk was accepted, and were apparently satisfied as to its being a good insurable risk for £600. In these circumstances it might be difficult to establish the materiality to the Respondent of the fact that the price paid for the car was £850. However this may be, the materiality of the non-disclosed fact was not proved, and cannot be determined on this appeal.

Sim J.
Stringer J. October 11, 18, 1926.
MacGregor J.

COMMISSIONER OF STAMP DUTIES v. THOMPSON.

Stamp Duties—Sec. 88 of Act—Agreement to purchase half share in residuary estate—Sec. 70.

This was an appeal from Skerrett C.J., and was dismissed.

Fair, K.C. (Solicitor-General), for appellant.
White for respondent.

THE COURT (SIM J. delivering the judgment) said:—In dealing with the question of stamp duty it is necessary, we think, to consider the two documents separately. The agreement made by the Respondent for the purchase of his brothers' half-share in the residue of the testator's estate was liable, under Section 88 of the Act, to be charged with the same conveyance duty as if it had been an instrument of actual conveyance. The question then is: What, for the purposes of Section 79 of the Act, is the value of the consideration expressed in that agreement? It is clear, of course, that the £1250 agreed to be paid by the Respondent to his brother is to be included in the calculation. The Respondent agred also to discharge all the testator's debts (except a certain mortgage) and to pay the legacies as specified in the agreement. But, as between the Respondent and his brother, the Respondent's half-share of the residue was charged already with the payment of one-half of these debts and legacies. In substance, therefore, the obligation undertaken by the Respondent was to pay one-half only of the debts and legacies; that is to say, the half for which, as between the two sons, the brother's share was liable to pay. On this view of the agreement, the value of this part of the consideration must be treated as being one-half of the amount of the debts and legacies, and duty should be assessed on this basis. The total amount on which duty is to be assessed, therefore, is £5137, as set forth in the judgment of the Chief Justice.

We proceed now to consider the question of the duty on the conveyance from the trustees of the will to the Respondent. The conveyance cannot be treated, we think, as coming within the provisions of Sections 91 and 92 of the Act, and it is not exempt from conveyance duty unless it can be brought within the terms of clause (d) of Section 81 of the Act. It was contended by the Solicitor-General that it did not come within the terms of that clause. More property, it was argued, was conveyed to the Respondent than he was entitled to under the will, and it was, therefore, not a conveyance to him "to the extent to which he was "so entitled." This argument raises the question whether or not the exemption extends to a conveyance to the assignee of a devisee. If it does not extend to such a case, then a conveyance to the trustees of the will of a devisee, who had died before he could obtain a conveyance, would be liable to conveyance duty. It is difficult to believe that the Legislature could have intended to exclude such a case from the benefit of the exemption. If the exemption extends to such a case, then the Court is justified, we think, in treating the exemption as extending to every case where the conveyance is to an assignee of the devisee. The assignee acquires by his assignment all the rights of the devisee, and ought to be treated as standing in his shoes for all purposes, including that of exemption from stamp duty. We think, therefore, that the Respondent is entitled to claim the benefit of the exemption, although the conveyance included his brother's half-share of the land as well as his own share. Before the conveyance was executed the Respondent had provided funds for the payment of the testator's debts, and had secured the payment of the legacies to the satisfaction of the several legatees. He was entitled, therefore, to obtain a conveyance of the real estate from the trustees. This conveyance did not contain any covenant by the Respondent to make any payment to the trustees or to any other person. It was simply a conveyance to the Respondent, made with the consent of Walter Thompson, the Respondent's brother, and of the legatees, to give effect to the trusts of the will and the agreement for the sale and purchase of Walter Thompson's interest. The fact that it was this and nothing more is sufficient to distinguish the present case from the cases of **Morrison v. Commissioner of Stamps,** 26 N.Z.L.R. 1009, and **Sutherland v. Minister of Stamp Duties,** (1921) N.Z.L.R. 154, on which the Solicitor-general relied in support of his argument. In **Morrison's case** the testator's land was conveyed to two sons, and they gave a mortgage over it to the trustees to secure the payment of the legacies and annuities bequeathed by the will. These amounted to about £50,000. It was held by the Court of Appeal that the conveyance was the outcome of a bargain by the sons with the trustees, whereby the sons undertook, in consideration of the trustees conveying the land to them, to pay certain sums of money which otherwise the trustees would have had to pay. It followed from this that the conveyance was a conveyance on sale for valuable consideration, and liable to duty accordingly. In the present case there was no bargain of any kind between the Respondent and the trustees, and there was no consideration of any kind moving from him to the trustees. They conveyed the land to the Respondent because he had become entitled to have a conveyance of it. In **Sutherland's case** the two sons of the testator were entitled each to a share of the residue of the estate. They were entitled also to Craigielea farm subject to a condition. To give effect to this condition each of them gave a mortgage to the trustees over his share of the farm to secure £16,149. 14s. 2d. This sum was the difference between the value of the son's share in the residuary estate and the value of his share in the farm. This sum was made up of £13,250 14s. 2d. in respect of land, and £2899 in respect of stock. It was held by the Full Court that each of them was a purchaser to the extent, at least, of £13,250 14s. 2d., and Edwards J. expressed the opinion that they were really purchasers to the extent of £16,149 14s. 2d. In the present case there is nothing in the nature of a purchase by the Respondent from the trustees. The only purchase he made was of his brother's interest in the residuary estate.

The result is that the amount of stamp duty payable on the agreement for sale is 10s. for every £50 or part of £50 of the sum of £5137, and the conveyance is exempt from duty under clause (d) of Section 81 of the Act. The appeal, therefore, is dismissed with costs on the lowest scale as on a case from a distance.

Skerrett, C.J.
Sim, J.
Stringer, J. October 8, 22, 1926.
MacGregor, J.

MILLIKEN v. PUBLIC TRUSTEE.

Will—Limitation—Cross—Whether to be implied.

We take the facts from the reasons of the learned Chief Justice, who delivered the judgment of the Court. The appeal was from Ostler J. and was allowed. We have deleted a large portion of the reasons touching the law affected, on account of the fact that will cases are not often of great value in construing otter wills so much depending on particular words and phrases.

The question in this case arises under the Will of the above-named testator, dated 25th May, 1895. He died on

the 7th September, 1897, and probate of his will was granted to the executor therein named, the Public Trustee.

Testator first married in 1853. Shortly after the marriage the parties thereto separated. There was no issue of the marriage. In 1861 the testator, in the beief that his first wife was dead, married Eliza Joyce, nee Eliza May. At the time of his death, the testator had the following family: He had two daughters then living—one, Ann, who married a Mr. Hoglund, and at the date of the testator's death had eight children, of whom six survived the testator. After his death five other children were born to Ann, and all eleven children attained the age of 21 years, and are still living.

The other daughter, Mary, never married.

The married daughter died in the year 1921, leaving a will; and the unmarried daughter died in the year 1925, also leaving a will.

The following are the main provisions of the testator's Will:—

(1) He bequeathed a legacy of £100 and the whole of his household goods and effects to Eliza Joyce, his wife, or reputed wife.

(2) He directed his executor to convert into money the rest of his estate and invest the sale proceeds.

(3) He further directed his executor to pay out of the income arising from his estate an annuity of £100 to his wife and after her death to divide the whole of such income equally between his two daughters during their lives. On the death of either of his two daughters, the testator gave the following direction, which it is advisable to set out in full:—

"AND after the death of either of them should they leave "any children I DIRECT that my trustee may apply the "share of such income theretofore coming to such deceased "parent for the benefit and maintenance of such one or "more of the children who in the discretion of my trustee "shall require the same, and I DECLARE that such income "shall not be apportioned but may be applied for the bene-"fit of any one or more of the children of such deceased to "the exclusion of the others or other of them and that all "accumulations thereof shall be added to the capital with "power to resort thereto if required AND on the youngest "child of either stock attaining the age of twenty-one years "I DIRECT that the share of the money in the hands of "my trustee appropriated to such stock both the capital "sum and the accumulated income if any shall be divided "among such children in equal shares and I empower my "trustee to apply any portion of the share to which any "child shall be presumptively entitled should it be found "necessary for the purpose of maintenance and education "or advancement in life of any such children."

(4) The following provision is the clause on which the present controversy arises; and it is therefore advisable to set it out in full:—

"Should one daughter predecease the other leaving no "children or leaving children should they all die before at-"taining the age of twenty-one years I DIRECT that the "share in the income of such deceased daughter or her is-"sue shall be paid to the surviving daughter for her life "and after death or if she be dead I DIRECT that the "whole of the capital and accumulated income shall be "divided equally among the children of such survivor on "their attaining the age of twenty-one years as hereinbefore "recited."

(5) The final provision in the will is thus expressed:—

"In the event of there being no children living to become "entitled to payment the residue of my estate shall be dis-"tributed as if I had died intestate in respect thereof."

The married daughter of the testator, who left children surviving her who attained the age of 21 years, having died before her unmarried sister, the question is asked in the Originating Summons as to the persons entitled to succeed in the moiety of the residuary estate of the testator the income of which was under the will payable to the unmarried daughter during her life.

von Haast for appellants.
Archer & Hutchison for respondent Smith.
Kelly for Public Trustee.

THE COURT allowed the appeal. Skerrett C.J. for the Court said, *inter alia*:—

We think we are justified in reading the words in the present will "predecease the other" as "die," and we thus summarise the main reasons for this conclusion:—

(1) The object of the testator was manifestly to provide for the two daughters and their descendants, and the Court leans to that construction, which makes a complete provision for all those children and their descendants who were manifestly the objects of the testator's bounty.
(2) If the words be not read in the sense we have given them an intestacy must necessarily arise in the event of a daughter dying before her unmarried sister though she leaves children who attain the age of 21 years.
(3) The testator could have had no reason to make the gift over in favour of the children of a daughter dependent on their parent surviving her sister.
(4) The testator's intention as shewn by the final gift over was to make a complete disposition of his property in favour of his daughters and their descendants, except in one event and one event only, viz., the event of there being no children of either daughter acquiring a vested interest in the testator's residuary estate.

The word "survivor" where used in the gift over we are considering creates no difficulty. The gift is not a gift to a class. There were only two daughters; and the word "survivor" must mean the "other" daughter; and the words "children of such survivor" must mean "the child-"ren of such other daughter."

The rule of construction we have applied is cognate with the method which implies a cross-limitation, but it is unnecessary in the present case to consider or apply the latter method of interpretation.

The appeal must therefore be allowed, and the answer to the question submitted to us is that all the children of Ann Hoglund, the deceased daughter of the testator, are entitled to succeed in equal shares to the moiety of the residuary estate of the testator, the income from which was payable to the daughter Mary Joyce during her lifetime.

The appellants are given the costs of the appeal upon the middle scale, and the respondent Smith upon the same scale. The Public Trustee, as executor under the Will, will be entitled to his costs. All such costs shall be in addition to the costs allowed in the Court below, and will be paid out of the estate.

Skerrett C.J.
Reed J. September 22; October 8, 1926.
Ostler J. Wellington.

CALDWELL v. FLEMING.

Will—Direction to pay testamentary expenses—Whether direction to pay duty out of residue—Apportionment of parts of estate liable for duty and interest—Whether conditions imposed by will must be observed.

The Court was asked to answer the following questions which we take from the reasons of Reed J., who delivered the judgment of the Court:—

This is an Originating Summons for the interpretation of the will and codicil of David Fleming, deceased. The will is home-drawn, but the codicil was prepared by a solicitor.

The testator directs that his debts, funeral and testamentary expenses be paid, and he then gives his wife a life annuity of £200, increased by the codicil to £250, and a life estate in the dwelling-house and lands attached. Upon her death part of this land is to go to St. Andrew's Presbyterian Church, Waverley, upon certain terms and conditions, in default of compliance with which there is a gift over to two of his nephews; the balance of this land is left, on his wife's death, to the Free Church of Glenisla, Forfarshire. By the combined effect of the will and codicil his farm at Moumahaki, consisting of 433 acres, is left to the Wellington Society for the Prevention of Cruelty to Animals, subject to certain terms and conditions, non-compliance with which entails the reversion of the farm to his nephews. His farm, known as Isla Park, of 560 acres, he charges with the payment of his wife's and another small annuity; the balance of the income he gives to his nephews, together with the reversion of the property on his wife's death. He makes provision for remuneration to his trustees for their services, and there is a residuary devise.

The Court is asked to answer the following questions:—

1. Is the direction in the will to pay testamentary expenses tantamount to a direction that all estate duty shall be paid out of the residuary estate?

2. If so, and the residuary funds are insufficient for such purpose, from what part or parts of the estate should the balance of estate duty be paid?

3. If the residuary funds are not primarily liable for estate duty, what parts of the estate are liable therefor?

4. If the future interests of the defendant churches are liable for portions of estate duty, what parts of the estate are liable for payment of interest on such portions of the estate duty until such future interests become interests in possession?

5. Is the defendant the Wellington branch of the Society for the Prevention of Cruelty to Animals entitled to a transfer of the freehold property devised to such defendant branch freed and discharged from the conditions annexed by the will to such devise?

5a. Are the defendants, the Trustees of St. Andrew's Presbyterian Church, Waverley, entitled to a transfer of the freehold property devised to such defendants upon the termination of the life interest of Florence Evelyn Fleming freed and discharged from the conditions annexed by the will of the testator to such devise?

5b. Are the defendants, the Trustees of the Free Church of Glenisla, Forfarshire, Scotland, entitled to a transfer of the freehold property devised to such defendants upon the termination of the life interest of Florence Evelyn Fleming freed and discharged from the conditions annexed by the will of the testator to such devise?

6. Does the will direct a payment of commission to the Trustees of five per cent. on the income and on capital?

Currie for trustees and widow.
Kelly for Public Trustee.
Moss for Fleming.
Kennedy for Wellington Branch S.P.C.A.
W. J. Treadwell for Presbyterian Churches.

REED J., in delivering the judgment of the Court, said:

Question 1.—The direction is in the following words:—"I direct that all my debts funeral and testamentary ex-"penses shall be paid as soon as conveniently may be after "my decease."

In default of a direction by the testator to the contrary estate duty is payable out of the property comprised in each succession in the same proportion that the value of that succession bears to the aggregate value of all the successions. Sec. 31 (4) Death Duties Act 1909. Does the will, therefore, contain a direction to the contrary? We think it does.

By his will the testator directed that all his debts, funeral and testamentary expenses should be paid as soon as conveniently may be after decease. He then, by his will and the codicil thereto, after making certain specific dispositions, devises and bequeaths all his real and personal property not specifically disposed of. This residuary estate is what remains after satisfying the previous dispositions made by the will, one of them being the direction to pay the testamentary expenses. Estate duty is a testamentary expense. **Beetham v. Holmes**, 32 N.Z.L.R. '77. Estate duty is payable, therefore out of the general estate and in reduction of the amount of the residuary estate, and therefore actually out of the residuary estate. **In re Fernsides** (1905) 1 Ch. 250. **In re Cawthron**, 1916 G.L.R. 605.

The contrary intention by the testator is therefore sufficiently expressed and the estate duty must be paid out of the residuary estate; succession duty must, of course, be paid by the beneficiaries in accordance with the provisions of Section 31 (3) of the Act.

Question 2.—The residuary estate being primarily liable, therefore, for the payment of the estate duty, and it appearing, that such residuary estate may be insufficient for that purpose, the next question is from what part or parts of the estate should the balance of the estate duty be paid?

It is contended that annuities should be regarded in the same light as life interests. We cannot accede to this contention. We think it is clear that the annuities valued as a succession are liable to pay their proportion of the estate duty under sub-section (4) of Section 31 of the Death Duties Act 1909.

Question 4.—There being a deficiency in the residuary estate, and each of the churches having been held liable to contribute to such deficiency, in the same proportion that the value of its succession bears to the aggregate value of all the successions, we think that sub-section 6 of Section 31 of the Act applies, and that each church upon its interest becoming an interest in possession will be liable for interest, upon its proportion of the amount of the deficiency, from the date of payment until paid, at such reasonable rate as may be then fixed by a Court of competent jurisdiction.

Questions 5, 5a, 5b.—Each devisee desires to know whether it can take its devise without carrying out the conditions imposed by the testator. Following the order in which they come in the will, the first to be considered is a devise made subject to the widow's life interest, and is in the following terms:—

"After her death the house and some 9 acres of land at-"tached being part of Section 327 **I bequeath** to St. An-"drew's Presbeterian Church Waverly on the following "conditions only, that is that it be invested in the name "of the Ministers and Elders for the time being and that "they neither sell or mortgage the property and that they "build a Church in a most suitable site if properly laid "within twenty-five 25 years from the time that they get "possession and that there be no military parades or shows "held in the Church and that at least there be two or part "of two of the Psalms of David sung to sacred tunes dur-"ing each service. If those conditions does not suit the "Church or its Prybestry or if they dont carry out those "terms then it goes to my nearest relatives vis my nephews "Alexander James and Howard Fleming sons of my bro-"ther James."

The intentions of the testator are here clearly defined. The authorities of St. Andrew's Presbyterian Church, Waverley, are given the option of accepting the nine acres of land in trust in perpetuity if they are agreeable to accept it upon the terms and conditions stipulated. Then, on the assumption that the gift is accepted, the testator endeavours to provide for the conditions being carried out by a gift over in default.

The condition against selling or mortgaging the land, if the Mortmain Acts were in force in New Zealand, would be bad, but the Act, with its various amendments, is not in force. The rule against perpetuities is, however, in force as well as the exception to the rule in favour of charities.

It is clear that the Church or its Presbytery must within a reasonable time determine whether it will accept the gift or not. That determination must therefore be made within a time which cannot offend the Rule against Perpetuities. If they disclaim the gift, then the gift over takes effect and the property goes to the nephews. On the other hand, the gift over, if the Church or its Presbytery do not carry out the conditions imposed by the testator, is void as offending against the rule against Perpetuities. It is clear that the Church is required to build a Church only if a suitable site is properly laid out within twenty-five years from the time of its getting possession; and the further condition that there should be no military parades or shows held in the Church, and that at least there be two or part of two Psalms of David sung to sacred tunes during each service, cannot be broken until after the Church is erected. The result, therefore, is that the breach of the condition to build a church may not happen before the expiry of 25 years, and the breach of the other conditions may also not happen until after that period. The following cases appear to us to establish this proposition: **In re Davis, Lloyd v. Cardigan County Council**, 1915 1 Ch. 543. **In re Bowen, Lloyd Phillips v. Davis**, 1893 2 Ch. 491. **In re Blunt's Trust**, 1904, 2 Ch. 767. **In re De Costa**, 1912 1 Ch. 337.

The result so far arrived at is that there is a good charitable gift to St. Andrew's Presbyterian Church on the trusts specified in the Will, and that the gift over to the nephews in the event of the Church failing to carry out the conditions of the will is void as transgressing the Rule again Perpetuities.

Lastly there is the devise to the Wellington S.P.C.A. in the following terms:—

"My farm at Moumahaki known as Waiteranui contain-"ing 433 acres more or less—this I leave and bequeath to "the Wanganui Society for the Prevention of Cruelty to

"Animals at my death providing the Society is in existence "and a Registered Society if not it will go to the Welling- "ton Society for the same purpose—but either of them only "under the following conditions vis that they neither sell "or mortgage the property and that it be let to a practical "farmer at a fair rent bound to keep the place in good "order and the leasee a member of or adherent of the Prey- "besterian Church —the funds accruing from same to be "used for paying a live inspector or inspectors in different "localities to prosecute those brutally abusing animals "starving or in any other way—if these terms does not suit "or the Societies does not approve of them then it goes as "before to my three nephews—all leases not to be transfer- "able—and no neighbour farmer be a lessee."

By a codicil it was provided:—

"Whereas by my said will I have bequeathed my farm "at Moumahaki known as Waitaranui to the Wanganui So- "ciety for the Prevention of Cruelty to Animals providing "such Society is in existence at the time of my death and "a registered Society and if not such farm to go to the "Wellington Society for the same purpose **NOW THERE- "FORE I HEREBY REVOKE** such bequest so far as it re- "lates to the said Wanganui Society and **DEVISE AND "BEQUEATH** my said farm at Moumahaki to the Welling- "ton Society for the Prevention of Cruelty to Animals to "be held by such Society upon the terms and subject to "the conditions and restrictions contained in my said will."

It is clear that this also is a charitable gift, coming within the words used by Lord Macnaghten in the case of **Commissioners for Special Purposes of Income Tax v. Pensel,** 1891 A.C. 583, as being a purpose "beneficial to the community."

Much that we have said with reference to the devise to St. Andrew's Presbyterian Church applies to this gift, and need not be repeated here. In this case the gift over to the three nephews takes effect only in the event of the gift not being approved of or accepted by the Wellington Society. The gift over, therefore, does not transgress the rule against Perpetuities, and is therefore valid. The gift over cannot now take effect, since the Wellington Society has approved of and accepted the gift. We are of opinion that this property is devised to the Wellington Society on the trusts stated in the will, and that the main purpose of the trust is to use the income arising from the property for the purpose of paying "a live inspector or inspectors in dif- "ferent localities to prosecute those brutally abusing ani- "mals starving or in any other way." It follows that the conditions imposed by the testator as to selling or mortgaging and prescribing the conditions under which the property is to be let are valid and enforceable. These conditions are neither impossible, unlawful, nor contrary to public policy.

The Society is entitled, therefore, to a transfer of the property devised, but upon the trusts expressed in the conditions and terms contained in the will. The property is charged with an increase on the widow's annuity made under the Family Protection Act 1908, and this must be adequately protected.

Question 6.—As to this question, the will provides: "also "the usual five per cent. to my trustees for their services "on or as compensation for their trouble as managers."

The will, as has been said, is a home-made will, and it must be our endeavour to ascertain what the testator meant by the language employed by him. Two things are to be observed. The first is that whatever is to be given to the trustees is given as compensation for their services and troubles; and that compensation may properly be inferred to be the "usual" remuneration allowed to trustees. The reference to the five per cent. must have been intended to refer to the authority given to the Court by Section 20 of the Administration Act 1908, to allow on the passing of accounts, to an administrator or trustee, such commission or percentage, **not exceeding** 5 per cent., for his pains and trouble as is just and reasonable. The testator, therefore, in our view had in mind this statutory provision and intended that his trustees should be allowed such usual remuneration for their services as the Court usually allows under the statutory provision fixing the maximum percentage of 5 per cent. The question will be answered accordingly. As to costs: we allow to each section of the parties represented, excepting the trustees, the sum of fifty guineas and disbursements; the trustees will have their costs as between solicitor and client, to be taxed by the Registrar. The whole to be paid out of the residuary estate.

SUPREME COURT.

Skerrett, C.J. September 1, 7, 1926.
Auckland.

RE HERBERTSON DECEASED: McNAIR v. McKENZIE.

Will—Precatory clauses—When creating trust—Power of trustee to have other trustee removed.

We do not publish the facts of this case, which was for the interpretation of a will. We, however, note the references of the learned Chief Justice to the law affecting the matter.

Endean for plaintiffs.
McLiver for defendant.
Northcroft for another defendant.

SKERRETT, C.J., said:—

The principle which must be applied in the determination of the question whether words of confidence, hope or appeal in connection with a devise, or bequest, constitute a trust, is well settled; but its application in many cases is difficult. I think the rule is well stated in Sir Arthur Underhill's work on Trusts and Trustees, 8th ed., at p. 18, founded on the judgment of **Mussoorie Bank v. Rayner (1882), 7 A.C.** 321. That learned writer says:—"A gift by will to a per- "son followed by precatory words expressive of the donor's "request, recommendation, desire, hope or confidence, that "the property will be applied in favour of others, may "create a trust, if, on the whole will, it appears that the "testator intended the words to be imperative."

This rule is consistent with the action and definition of a trust. In order to constitute a trust it is clear that the words must create an equitable obligation binding the person (who is called a trustee) to deal with property over which he has control (which is called the trust property) for the benefit of other persons. The characteristic of a trust then is that it must be imperative. So when we are dealing with expressions which are usually referred to as precatory words, it is clear that in order to regard them as a trust it must be plain that they are used imperatively and for the purpose of imposing an obligation upon the taker of the property. It must therefore rest on those who assert that precatory words create a trust to satisfy the Court that the testator by his language, having regard to the will as a whole, intended to impose an obligation on the person to whom property is given. It is to be noted that the doctrine of precatory trusts adopted in early times by the Court of Chancery has lately been modified. Lord Justice Lindley observed in **In re Hamilton, Trench v. Hamilton, 1895 2 Ch. 370, at p. 373:**—"We are bound to see that "beneficiaries are not made trustees unless intended to be "made so by their testator. You must take the will which "you have to construe, and see what it means; and if you "come to the conclusion that no trust was intended, you "say so, although previous judges have said the contrary "on some wills more or less similar to the one which you "have to construe." The Judicial Committee of the Privy Council in **Mussoorie Bank v. Rayner** (before cited) said:— "Their Lordships are of opinion that the current of de- "cisions now prevalent for many years in the Court of "Chancery shows that the doctrine of precatory trusts is "not to be extended and it is sufficient for that purpose to "refer to the judgment given by Lord Justice James in the "case of **Lambe v. Eames (1871) (L.R. 6 Ch. 597),** and "Sir George Jessel in the case of **re Hutchison & Tenant (1878) (8 C.D. 540).**"

The learned Chief Justice on the question of removing trustees said:—

Apparently a power may be given to a person or persons to remove a trustee from the trusteeship and to appoint another person in his place. See **London and County Bank v. Goddard, 1897 1 Ch. 642.** In the absence of such power it would appear to be necessary in the event before referred to to apply to the Court under Section 41 of The Trustee Act 1908 to remove the trustee in default from his trusteeship, and perhaps to appoint a trustee in his room and stead. It is clear that the Court has power to remove a trustee or trustees from their trusteeship wherever any good

reasons exist for so doing. See **Letterstedt v. Broers**, 9 A.C. at p. 371; **Assets Realisation Co. v. The Trustees, etc., Insurance Corporation**, 65 L.J.Ch. 74. It would appear necessary in some way by obtaining a vesting order under Section 43 of The Trustee Act 1908, or under the provisions of Section 80 of that Act or by conveyance or transfer to have the assets of the testator vested in the new and continuing trustees. It will be necessary of course to satisfy the Court that the trustee whom it is sought to remove has in point of fact refused to abide by the wish of the testator; and that therefore according to his will the testator did not desire that he should continue in the execution of the trusts of the will.

Solicitors for plaintiffs: **Endean & Holloway**, Auckland.
Solicitor for defendant: **F. D. McLiver**, Auckland.

Skerrett, C.J. September 3, 9, 1926. Auckland.

RE HUTCHINSON DECEASED: CRAWFORD v. HUTCHINSON.

Will—Power to carry on business—Whether absolutely discretionary as to time—Income from business—Interest of life tenant and remaindermen—Accumulation—"Settled estate"—Hypothetical question—Vesting of estate in remainder.

This was an originating summons to determine certain questions arising out of the will of the deceased. The facts are as follows:—

The testator at the time of his death carried on the business of a Cycle Importer in the Karangahape Road, Auckland. At the time of the testator's death it was not a profitable business, but since the testator's death the executor, Mr. Crawford, has carried on the business and transformed it into a very profitable business. Mrs. Emma Jane Hutchinson, the widow of the testator, who is also a trustee, works in and assists in the conduct of the business. The business is carried on upon a leasehold property.

By his will the testator devised and bequeathed his property, both real and personal, unto his trustees before mentioned upon certain trusts. So far as the business of the testator was concerned these trusts may be very shortly stated. The rent, residue, and remainder of the testator's estate (which included the business assets) were to be held by the trustees upon trust as and when they should think fit to sell and convert into money. And the trustees were to stand possessed of the proceeds of conversion, after payment thereout of just debts and funeral and testamentary expenses, upon trust, to invest such proceeds and to pay the net income arising from the investments to the testator's widow during her widowhood, and upon and after her death or re-marriage the testator directed that his trustees should hold the corpus of his residuary estate upon trust to divide the same into so many equal shares as should provide one share for each of his children then living, and should hold and stand possessed of the said shares comprising his said residuary estate upon trust to pay the same to his children upon the youngest of them attaining the age of twenty-one years. The will then contains the following provision:—

"I empower my trustees to carry on and manage my busi-"ness of Cycle Importer for so long as they shall in their "absolute discretion think necessary employing in the con-"duct of such business such managers, employees and per-"sons as they shall deem fit and without being answerable "to any person for any losses or damages suffered in the "carrying on of such business and with power to make and "enter into all commitments and engagements in connec-"tion therewith which they shall in their absolute discretion "think fit and with power to sell the said business on such "terms as they shall think fit and (if they shall think fit) "without taking any security for any balance of purchase "money that may from time to time be owing in respect "thereof."

Gould for plaintiff Crawford.
Sellars for plaintiff Hutchinson.
Northcroft for remaindermen.

SKERRETT, C.J., to the following questions put the following answers:—

The first question is as follow:—

"(1) Whether under the provisions of the said will the "executors are empowered to continue the business of the "testator refered to in the will indefinitely at their dis-"cretion, or only so long as may be necessary for the ad-"vantageous disposal of the said business, or for what "term?"

The answer was in the affirmative. In re Crowther, Midgley v. Crowther, 1895 2 Ch. 56.

The second question is thus stated:—

"(2) What are the rights in the income from the testa-"tor's business as between the tenant for life and the re-"maindermen respectively? Is the defendant Emma Jane "Hutchinson entitled to receive the entire nett profits real-"ised and to be realised in the carrying on of the said busi-"ness, or only to receive such interest as would have re-"sulted if the business had been sold one year after death "of the testator and proceeds invested in an authorised in-"vestment (and in that latter event what rate of interest "should be allowed), together with the annual income re-"sulting from investment of the surplus income from the "business?"

The answer to the second question will be that the widow is not entitled to receive the entire net profits for the time being accruing from the carrying on of the testator's business, but is entitled to interest on the value of the unconverted property as determined in the case of In re Hartigan, 17 Gaz. L.R. 703.

The third question reads as follows:—

"(3) Is the defendant Reginald Wordsworth Hutchinson "entitled to have accumulated for his benefit or paid for "his maintenance and education the annual income on the "sum of £1000 referred to in paragraph (2) of the said "will, and if not, who is entitled to the income thereof "pending the attainment by the defendant Reginald Words-"worth Hutchinson of such age as entitles him to demand "payment of the corpus?"

The answer to this question is that the gift of £1000 mentioned in paragraph (2) of the will vested in the son Reginald Wordsworth Hutchinson on the death of the testator and that he is entitled to the income of such sum until he attains the age of 21 years. When he attains that age he is entitled to call upon the trustees to pay the said sum to him.

The fifth question reads as follows:—

"(5) Who is entitled, pending the said Reginald Words-"worth Hutchinson attaining the age of 21 years, to the "income arising from the property in Birkenhead referred "to in paragraph 4 of the said will; and is the said parcel "of land 'settled estate' or 'settled land' within the mean-"ing of Part I or Part II of 'The Settled Land Act 1908,' "and ought the executors of the said will to apply to this "Honourable Court for leave to sell or lease the said land "under the provisions of the said Act?"

I answer this question as follows: The income of the property during the minority of the son Reginald Wordsworth Hutchinson, except the rates and other outgoings payable in respect thereof, belongs to the persons entitled for the time being to the residuary estate. The income will thus be received as part of the capital of the residuary estate and will be held upon the trusts affecting such residuary estate.

With regard to the second part of the question as to whether the parcel of land is "settled estate" or "settled land" within the meaning of Part I or Part II of The Settled Land Act 1908, I decline to answer this question. It is a purely hypothetical question, and it is not the practice of the Court to answer that kind of question. **Non constat** that an application will be made under that Act, and if made it must then be determined for the purposes of the application. The Court cannot advise the executors as to the expediency of any step in the administration of the estate.

The sixth question reads as follows:—

"(6) Are the rates and outgoings on the Birkenhead pro-"perty, referred to in paragraph 4 of the said will, payable "out of the corpus of the residuary estate generally, or "out of Reginald Wordsworth Hutchinson's share thereof, "or out of the income of the residuary estate, or the said "Reginald Wordsworth Hutchinson's share of such in-"come?"

I answer this question thus: The rates are payable out of the corpus of the residuary estate and not out of Reginald Wordsworth Hutchinson's share thereof, or out of the income of the residuary estate, or the said Reginald Wordsworth Hutchinson's share of such income.

The seventh question reads as follows:—

"(7) Construe clause 5 of the said will and declare when "the shares of the remaindermen vest absolutely and whe- "ther (subject to prior termination of the life estate and "prior vesting) the share of each remaindermen becomes "due and payable upon his or her attaining the age of 21 "years or when the youngest child attains that age."

I answer the question as follows: The shares of the children entitled in remainder expectant on the death of the testator's widow vest absolutely in the children who shall be living at the time of the death or re-marriage of the widow; but, so far as the provisions of the will are concerned, such share is not payable to such children until the youngest of them shall attain the age of 21 years.

"THE TEMPLE."

The pen-name of the London Correspondent of "Butterworth's Fortnightly Notes" raises interest as to the origin and history of the "Inner Temple" of which he, apparently, is a member. There is a "Middle Temple" also. A week or two ago in a Forensic Fable reference was made to the "Outer Temple" but that was just a part of the joke. Such a Temple has no existence, and so far as I can ascertain, the date of its destruction—if it ever existed—is not known.

Outside the Temple is Fleet Street, seething with the traffic of the twentieth century. Motor cars, buses, lorries, newspaper vendors, pedestrians, tokens of wealth and poverty are cheek-by-jowl on every hand in a mad medley. Pass beneath an old archway and the centuries roll back. Within the Temple, as in a shallow inlet from the sea, comparative silence prevails.

It is not hard to conjure up visions of some of the old denizens. One can nearly see Dr. Johnson with "Bozzy" hard by, on his way to Wine Court, Fleet Street, to take his favourite seat at the "Cheshire Cheese" fireside. Close to the Temple Church may be seen a tombstone which marks the final resting-place of the dust of Oliver Goldsmith. Charles Lamb, as indicated in the delightful essay to the "Old Benchers of the Inner Temple" spent his first seven years in the Temple and was well acquainted with some of its worthies. Spencer, Chaucer, and Thackeray all refer to the ancient pile. The 45th chapter of Martin Chuzzlewit is laid in Fountain Court. Old Samuel Pepys noted in his diary on April 13th, 1661: "That a boy fell asleep in Church"—(an old-fashioned habit seemingly)—"but happily sustained no hurt."

The Temple owes its origin apparently to the ancient Knights Templars of Jerusalem, who, after the Crusaders, spread over Europe. The end of the 12th century saw them settled in London. They grew great and wealthy, but later the Order was abolished. It was, however, followed by the Order of Knights Hospittalers.

In the reigns of the early Edwards, the lawyers came and took up their abode in the Temple and multiplied. When the old orders were, by royal prerogative, abolished, the lawyers became Crown tenants at a small annual rental.

Spenser records this history in these words:—

"There when they came, whereas those bricky towers,
The which on Themmes brode aged back doth ride,
Where now the studious lawyers have their bowers,
There whylome wont the Templer Knights to bide,
Till they decayed through pride."

Later, James I, a canny Scot, with an eye to a higher rental, gave the lawyers notice to quit. They in their dismay made a levy on their members, and knowing James' susceptibility to show and flattery, presented him with a goblet of golden pieces and prevailed upon him to make their tenure perpetual. Later again they bought up the reversion, and there they have remained to this day.

In early times, the occupants were all lawyers, now its denizens are varied in their vocations. Then, the lawyers lived in their chambers—now few do so. The controlling body was and still is the "Benchers," and the president of this body is the Master who is also the preacher in the "Round Church," a relic of ancient days.

The arms of the Inner Temple is a figure of Pegasus (alluded to by Elia), that of the Middle Temple "Agnus Dei." A wag has put it in this way:—

"The clients may infer from these
How just is their profession,
The lamb sets forth their innocence
The horse their expedition."

L. A. T.

LONDON LETTER.

Temple, London,
15th September, 1926.

My Dear N.Z.,—

In legal matters nothing has happened since I last wrote and nothing is likely to happen before I write again. The Temple is funereal and deadly silent; clerks come late to Chambers and leave early; if solicitors want work from us, they have to pursue us to the country and extract it from us there; and if ever there is peace and quiet in this troubled world, the Long Vacation of the Courts is providing it now. For my part, I rush occasionally about the country and hold enquiries for the Minister of Transport. Last week I had the leaders of the parliamentary bar before me in a hard-fought fight between a wealthy Corporation and a Motor Omnibus Company almost as wealthy. Here, as you know, we specialize such matters; you, no doubt, take in your stride such affairs as Water, Gas and Electricity, Railways, Trams and other transport undertakings, regarded, so to speak, from the municipal point of view. For me it is something of a novelty to observe how these litigations are handled by the old hands. Sir Lynden Macassey K.C., the appointed Leader of that lucky bar, showed the facility of a long experience and F. J. Wrottesley K.C., showed the dash and distinction of a promising recruit to the ranks of parliamentary "silks"; and I was left with the impression that, complex though the figures may be and unusual the issue which these practitioners contest before Committees of the Lords and Commons, down at Westminster, their proceedings must be very suave and their methods easy-going compared to the tussles and the rigid conventions of our Courts. Our particular dispute concerned the discrimination between a penny and a twopenny fare; and I suppose some thousands of pounds will depend upon which impressed me most. Experience or Dash. Notwithstanding the amenities

of the discussion, considerable heat was in reality developed; and yet I do not suppose that anyone in that Town Council Chamber was likely to be affected, as to his private pocket, by the loss or gain of the pounds and not one of them will ever himself pay the fare in question, whether I make it a penny or twopence. But humanity, I have long ago come to the conclusion, is naturally litigous and loves a contest for contention's sake.

For the rest, I have in my holiday-time been digging deeper and deeper into the reasons for judgment, in various matters, of your robust Chief Justice that was; your highly refined Mr. Justice Sim; your Mr. Justice Herdman, Reed and Ostler in whom I note, only as yet, a deliberate common sense; your Mr. Justice MacGregor, who seems to have a certain bite; and your Mr. Justice Alpers, of whom I rejoice to learn (and, I profoundly hope, correctly) that the menace to his physical health is passed. Your new Chief Justice must be, if his argument at the bar is any indication, a man of the most engaging force and the most alluring vitality; and your former Attorney General, who must often have been his formidable opponent, could, I suppose, be described by no man and in no sense as lacking in stamina? It is good, at this distance and even in this superficial manner, to make each other's acquaintance; and this leads me to another subject, in personalities, upon which I feel a little bitterly.

I had been promising myself a quiet chuckle in due course at your expense, my learned brethren, and a modest but unmistakeable boast about the irresistible attractions and the superior charms of this Mother Country, when you get to know it. An insidious campaign was being conducted to undermine the morale and divert the allegiance of your Maurice Gresson; we thought we would let him talk himself out and then, by artful but continual suggestion, have him converted and conquered in the end. We watched him closely, nursed him carefully and waited our opportunity, somewhere in our golden autumn, to administer the *coup de grace*. To you, of course, he is one among many; to us, in this generation at least, he was the first to arrive from the New Zealand bar. He came as a wolf into our fold; he came, he saw, and just as he was about to be conquered he has suddenly cut short his visit and left for home. Where is my quiet chuckle? Where my boast? I ask you not to believe a word he says, and I have every reason to suspect that, in Christchurch at least, he will say many. We have let him tell us all about you; we have waited till it was too late to tell you, through him, all about ourselves. In case he should look like getting the better both of us and of you, let me divulge a fact which you may use against him. Of all the counsel who took part in the causes in which he was engaged, Maurice Gresson was the only one to arrive in Downing Street in a tall hat.

When there is nothing to add, why add it? Our honourable and learned Judges are playing golf in plus fours or, as I know to be the fact of one of them, trudging on foot over mountains in flannel rags not worthy of the name of trouser. Our leaders are sailing in coastal waters or sitting on coastal beaches, flatly refusing to think of cases until the summer is finally gone and out. Even County Courts are semi-somnolent, and their presiding genii are circuiting more to deal with partridges than with parties. There may be one law for the rich and one law for the poor, but for the barrister, be he poor or rich, there is this month no law at all. This fact I find more distressing than depressing; and if you find it improper and impertinent to have this sort of loose talk addressed to you, in the midst of your work and legal labours, I excuse myself by reminding you that not many weeks after you read this letter you will be living the sort of life I live now as I write it. The Law is a delightful study, to get away from for a while.

Yours ever,
INNER TEMPLAR.

CANTERBURY LAW SOCIETY.

The Annual Competition for the W. J. Hunter Cup was played on the Shirley Golf Links on the 16th October. Mr. A. T. Donnelly won the cup with a net score of 77.

LEGAL LITERATURE.

"THE LAW OF MARRIAGE AND DIVORCE," by PERCY ERNEST JOSKE, M.A., LL.M., Barrister-at-Law, Melbourne. (Butterworth, 50/-, pp. lv & 479).

The title of this excellent book gives an accurate indication of its contents. It contains within its 500 pages a statement of the law of marriage and divorce, which for succinct, accurate and comprehensive statement, is unequalled, the writer believes, in any other work written on the subjects upon which it touches. It is a book which, written for the Australian lawyer, is not to be despised by the English lawyer, for within its pages are to be found a record of decisions which deal with points which have never been before the English Courts, and which have therefor remained amongst the group of hypothetical instances which give rise to debate and controversy, ever interesting yet ever worrying to the busy practitioner. The book is, first and foremost, for the practitioner. It does not debate points. Its sentences are like a series of head-notes to cases, placed in a logical order, one statement being followed by such another as in the natural order of things follows on. The effect of this is that reference is facilitated, and the law easily found. When a client calls on a busy practitioner, and asks his opinion on a certain point, the practitioner wants to be able to tell the client in the shortest time and in the clearest way what the law is, not what it was or what it is likely to be in the future. This book enables him to do so in the vast majority of cases. The statements of the law have been culled in many instances from the actual words used in the judgments referred to. This is not a failing, for where can one find greater lucidity in expression or more distinguished literary excellence than in the judgments of those gentlemen who, for their forensic eloquence, their practical achievements in the Law Courts, and their giant intellectual capacity, have been chosen to dignify the Bench?

The author has followed a very workable plan in dividing his book into a number of chapters rather than into a lesser number of chapters each divided into a number of sections. The effect of this is twofold. It makes reference the more easy, and it encourages the reader to read the whole chapter instead of merely a short section thereof. One of the greatest dangers with which a lawyer has to contend is the danger of starting with a case and making his facts fit it, rather than searching the case for one which fits or is analogous to the facts which he has. The reading of a chapter instead of a section places before the mind of the reader a greater variety or selection of cases to work from, and further, impresses the mind with the general principle as applied to different sets of facts, while it also assists the mind to select the most similar case to that with which it is engaged. The reading of a section is very narrowing, or at least is apt to be so, and the inductive process is rendered faulty by the paucity of instances to work from. The author has, in having a rather unusual number of chapters, divided the different topics with singular skill, guarded against the faults mentioned, preserved the benefits set out, and has avoided at the same time the error into which so many authors of practitioners' books have fallen, the effective concealment of sound principles by over-abundance of badly arranged examples. At the same time, in doing this, he has avoided those interminable chapters which make the most diligent and painstaking reader thoroughly weary, however good a mental exercise it may be to scan the pages with a grim determination to wrestle and strive, till at last, the much-sought end, rather than the knowledge

within them, is attained and the book consigned to the most "out-of-reach" part of the bookcase, to give way to a better classified, less ramified, and more intelligible book.

The book is not, however, without its faults. It is suggested that there might be an alteration in the order of certain chapters. After the subject of marriage has been dealt with (chap. 1–4) jactitation of marriage might be placed next, then jurisdiction in suits for nullity and jactitation. The chapter might then be added on jurisdiction in suits for judicial separation, to be placed either before or after the chapter on judicial separation. The effect of this would be to have dealt with nullity, jactitation and judicial separation in the first few chapters, leaving the way clear to deal with the question of dissolution. As the chapters stand at present, the grounds for dissolution of marriage are placed after the discussion of void and voidable marriages, and before judicial separation and jactitation of marriage. The question of domicil is dealt with in a chapter between jactitation of marriage and jurisdiction in suits for nullity and jactitation of marriage, surely a rather illogical position. So also, the question of jurisdiction in suits for judicial separation is placed six chapters after the discussion of judicial separation, and between a chapter on prohibition of re-marriage in cases of dissolution and Adultery, Rape, and Unnatural Offences. Bad arrangement such as this does not affect the practitioner who is about to look up one point, but it spoils the continuity of the book for one who is going to read it right through, and may render reference in any case more difficult. The index to the book, also the table of cases, appears to be excellent. It may however be suggested that the words "procedure," "proceedings," and "rules" should be in the index with their sub-titles. There is, unfortunately no reference to New Zealand Statutes, though it is a comparatively simple matter to compare the sections of the Australian Acts with those corresponding to them in the New Zealand Acts. To suit the New Zealand practitioner, it would have been necessary, for example, to amplify the chapter on grounds for dissolution, and to add a chapter on separation by mutual consent. This might have been confusing to the Australian practitioner, however, for whom the book is really intended. For the same reason, that is, to avoid confusion, no reference is made to the excellent amendment of the English rules of practice, abolishing the act on petition and the citation, and substituting therefor procedure by way of summons and notice indorsed on the petition respectively. (See "Red Book" vol. II, p. 1981). This leads one on to another point.

There is a most conspicuous lack of discussion or criticism or debate in the pages of this book. This may not be a fault in a book which is meant for easy reference to the law as it stands, and it does not mar the excellence of the book for practical purposes, but it does prevent the book from being termed a great book, in the sense for example that Salmond's Torts, Dicey's Conflict of Laws, and Snell's Equity are great books. The book can never influence the development of the law nor furnish a guide into the realm of hypothetical instances which sooner or later will become realities and will cause strenuous argument in the Courts. As an instance of this one might mention the case of Russell v. Russell (1924) A.C. 687. This case would have lent itself to great discussion, and the predictions of the author might have been justified by the subsequent cases of Holland v. Holland (1925) P. 101; Fosdike v. Fosdike, and Hillier, 132 L.T. 672; Warren v. Warren (1925) P. 107; Andrews v. Andrews and Chalmers (1924) P. 255, and Farman v. Farman, 40 T.L.R. 823. The case of Hetherington v. Hetherington (1887) 12 P.D. 112, could well have been discussed with Russell v. Russell (sup.). The case of Barker v. Barker (1924) N.Z.L.R. 1078, with the cases therein cited also offers a most tempting and fruitful field for discussion. Too little discussion has this fault—it is rather apt to lead the reader into a false sense of security, to make him dogmatic, and to obscure the difference between decisions of minor importance and those of far-reaching effect. There is another defect which is very apparent in the work. The learned author does not quote the exact words of the judges and state the name of the judge using such words. He rather summarises the effect of the dictum or decision, though in many cases the effect of this is to use practically the words used in the dictum or decision, and thus preserve the literary and legal excellence that is exhibited by the judges. One longs for the exact words of the judgment in some cases, and, although it is a question merely of style, one is constrained to think that the work could have been improved by free quotation. The barrister knows the advantage of this.

It would be an ommission not to indicate that the New Zealand practitioner should test the law in the pages of any book which is not expressly written for New Zealand requirements, by reference to the case and statute of law of the Dominion. For example, the devotee of the idea of night weddings would be rendered ill at ease if he were to read in this book that all marriages must be celebrated between the hours of 8 a.m. and 4 p.m.; but his mind would be calmed were he to read the corresponding provision of the New Zealand Act. Again, the chapter on discretionary bars to relief must be reconsidered in the light of the New Zealand Statute and Hall v. Hall, 21 N.Z. L.R. 251, and the chapter on grounds for dissolution of marriage would have to be considerably amplified. The New Zealand decisions which are referred to are decisions on points in which the law in the two countries is similar, and are therefor not exhaustive. The principle of testing the statements in a book is one, which, in the case of any text-book whatever, however excellent, should be applied when there is an important opinion to be given, or a case to be fought, but the text-book very often gives a most valuable guide to the decisions on the point in question, besides preparing the mind to receive the results of its research into the case law. As a guide to the case law, this book is invaluable.

Were one to go through this book in detail and criticise everything that could possibly be criticised, the conclusion could not but be that this book fills a want not only as regards the Australian practitioner but every comparative jurist, and also is a very useful addition to the library of the English practitioner. There are points, for example the effect of insanity on adultery (Crispin v. Crispin, 1 S.C.R.N.S. 13 N.S.W.) which will occur in England, and for that matter in New Zealand, and upon which the Courts will desire to be addressed, and the sole guide to the matter, beyond general principles, will be the Australian decision. It is to be hoped that the learned author will bring out succeeding editions, editions which, while preserving all the excellent points of this first one, will remedy any defects which are unavoidably present in any first edition. An appendix of forms would be a useful addition to a new edition.

W. A. BEATTIE.

SUMMARY OF LEGISLATION, SESSION 1926

Town-planning (No. 52; 9d.; secs. 32 and 33, noted below, 9th September, 1926; rest of Act, 1st January, 1927). Another corporate Board is set up, the Town-planning Board, consisting of the Minister of Internal Affairs, nominees of the engineers, architects, surveyors, the Municipal Association, and the Counties Association, several public officers, and others—up to 13 in all. A Director of Town-planning is to be appointed, with a special tenure of office and not subject to the Public Service Act. Boroughs of 1000 population and over must, and others may, or may by Order-in-Council be compelled to, submit to the Board, by 1st January, 1930, a town-planning scheme for the borough, prepared in accordance with regulations. The Board may give provisional approval and final approval, and consider objections. Local bodies or joint committees "responsible" for "rural areas" may be required to prepare and submit "regional town-planning schemes." Schemes may deal with roads, ways and building-lines, density, height, and character of buildings (and even "harmony in design of facades"); reserves, areas to be used for special purposes, lighting, drainage and water supply, and ancillary matters. Schemes once approved must be enforced by local bodies, but land-owners injuriously affected may obtain compensation (apparently from the local body), and land-owners held to be benefited must pay betterment (to the local body's "Betterment Fund"). If the requirements of the scheme could have been enforced independently of the Act (perhaps a nice question for the lawyers), no compensation is payable. Under section 32 (now in force), private owners subdividing land to which Secs. 16 and 17 of the Land Act 1924 apply must submit plans to the Director, whose certificate will enable the Land Act's requirements as to roads, rights-of-way, and building-lines to be dispensed with. And under sec. 33 (now in force), if a Borough Council submits plans of a subdivision, the Director's certificate will similarly exempt from the requirements of the Municipal Corporations Act as to streets, private streets, and building-lines. For the purposes of the last provision, and also of sec. 335 of the Municipal Corporations Act 1920, any division of land, even if only one allotment is to be disposed of, is now a "subdivision." Apparently, however, sec. 117 of the Public Works Act 1908 is still law, and what constitutes a subdivision under that Act is not altered. The Act forebodes much amendment and some litigation.

10. LOCAL and PRIVATE.

Bank of New Zealand (No. 55; 9d.; 9th September, 1926). Makes special provisions for the Long-term Mortgage Department, and various inside alterations that other banks achieve by private act or alteration of articles. The half-yearly general meeting is abolished.

Howard Estate Amendment (No. 29; 6d.; 31st August, 1926). Land added to the estate; further land may be acquired; Josiah Howard's grave to be cared for.

Local Legislation (No. 61; 1s. 6d.; 11th September, 1926). 66 sections, of which Nos. 2 to 66 validate or empower various transactions on the part of local and kindred bodies of sundry classes—acquisition and disposal of land, unauthorised expenditure and borrowing, and other matters.

Peel Forest (No. 31; 6d.; 1st January, 1927). Sets apart nearly 1300 acres in Canterbury as a reserve under the Peel Forest Board, which replaces the Peel Forest Scenic Board and the Scotsburn Domain Board, and to which certain South Canterbury local bodies, and any incorporated society, may nominate a member on making an annual subscription of £10. The Board has the powers of a local body to borrow, of a Domain Board to control, and express powers, such as providing tourist accommodation, and letting it. The Park is, however, vested in the Crown.

Westland and Nelson Coalfields Administration Amendment (No. 66; 6d.; 11th September, 1926). Amends the Westland and Nelson Coalfields Administration Act 1877. New leases may be granted on surrender of existing leases, all future leases being in part assimilated to Crown leases under the Land Act, as to registration under the Land Transfer Act, Land Board's consent to assignment, issue of leases and obligations of lessees.

Westport Harbour Amendment (No. 57; 6d.; 9th September, 1926). Financial provisions affecting Consolidated Fund and Westport Harbour Account. Special shipping-rate on coal raised from 9d. to 1s. a ton.

Altogether, in the 1926 session 72 public Acts were passed. The ten consolidating Acts noted above will occupy 450 pages of the new statute book. They repeal substantially the whole of 66 Acts, besides a large number of isolated sections in various Finance and Appropriation Acts. A new Department of State has been created, the Department of Scientific and Industrial Research. (Two other new departments, the Prime Minister's Department and Actuaries' Department, have also been created, but without the aid of legislation). Five new corporate bodies have been created—the New Zealand Agricultural College, the Board of Maori Arts, the Town-planning Board, the Peel Forest Board, and the Tuwharetoa Trust Board. Non-corporate bodies instituted include the Agricultural College Council, three university bodies (the Council, the Academic Board, and the Entrance Board), the Veterinary Surgeons' Board, the Council of Scientific and Industrial Research, the Local Government Loans Board, the Transport Appeal Boards (thirteen of them to begin with), and the committees of local bodies to be responsible for rural areas under the Town-planning Act. The non-official members of many, if not most of them, may receive allowances and travelling-expenses from the public funds of either the General Government or some public body. In nearly 20 Acts (not counting consolidating measures), new power is given to make regulations by Order-in-Council.

ADDENDA.

(1) The Hospitals and Charitable Institutions Act, 1926, is number 18, costs 2s., and comes into force on 1st January, 1927.

(2) The Native Land Amendment and Native Land Claims Adjustment Act, 1926, is number 64, costs 1s., and came into force on 11th September, 1926.

(3) In case our summary of the Workers' Compensation Amendment Act, 1926, lacked emphasis, we quote the following alternative summary from our contemporary, "The Workers' Vanguard":—"The value of a wage-slave mangled beyond repair has increased from £750 to £1,000."

FORENSIC FABLES

No. 25.

THE ELDERLY TRUSTEE AND THE HIGHLY-PLACED OFFICIAL.

There was Once an Elderly Trustee. He had White Hair and Gold Spectacles. His Reputation for Stability and Integrity Equalled that of the Bank of England. For Many Years he had Enjoyed the Confidence and Esteem of the Various Widows and Orphans whose Affairs and Securities were in his Capable Hands. But the Elderly Trustee, having Rashly Availed of Certain Inside Information in regard to Rubber, got into a Nasty Financial Mess and Came to the Conclusion that he had better Do a Bolt. He Felt, at the Same Time, (1) that it would be a Pity to Leave Behind Anything Belonging to his *Cestuis Que Trustent* which could be Turned into Ready Money, and (2) that Penal

Servitude Should, If Possible, be Avoided. The Elderly Trustee Accordingly Placed a Nice Little Lot of Bearer Bonds and Coupons in his Bag, Procured a Ticket for the Continent, and Repaired to Scotland Yard. Here his Admirable Appearance Secured for him an Interview with a Highly-Placed Official. Stating that he had been Robbed, the Elderly Trustee Handed to the Highly-Placed Official a List of the Choses in Action which his Bag Contained, and Begged to be Told where the Thieves were Likely to Endeavour to Encash them. The Highly-Placed Official Expressed his Keen Sympathy and Courteously Supplied the Desired Information. The Elderly Trustee Thanked him Warmly, and Disposed of the Nice Little Lot in the Cities Named by the Highly-Placed Official at Very Satisfactory Prices. The Elderly Trustee has not been Heard of Since. The Highly-Placed Official has Retired on a Pension.

Moral: Melius Est Petere Fontes. O.