Butterworth's Fortnightly Notes.

"I might instance in other professions the obligations men lay under of applying themselves to certain parts of history, and I can hardly forbear doing it in that of the law; in its nature the noblest and most beneficial to mankind: in its abuse and debasement the most sordid and pernicious."

—Lord Bolinbroke.

TUESDAY, NOVEMBER 22, 1927.

PARLIAMENTARY PRIVILEGE.

Mr. Atmore, in drawing the attention of the House of Representatives to an alleged breach of Parliamentary Privilege on the part of the Reverend Mr. Patchett, touched upon a subject of no little interest, chiefly perhaps because the Privilege of Parliament in the respect complained of is more frequently honoured in the breach than the observance. The statement complained of, made in respect of the Religious Exercises in the State Schools' Bill, was "those who pretended to commend the Nelson System only to kill the Bill were hypocritical and despicable."

The general attitude of Parliament to such remarks was well put by Mr. Wilford: "They say what they say. Let them say." The occasion of the remark complained of, however, being the Methodist Synod; the proceedings of that august body were deemed to merit the attention of Parliament.

During the discussion upon the motion to appoint a Committee to enquire into the matter, the Minister of Education remarked that editors had to carefully watch the statements of Parsons and Lawyers. It is doubtful whether the Devil's Own have ever done anything to deserve being bracketed with the Lord's Own—and it is hoped that the latter will feel duly flattered by the association. A perusal of "**May's Parliamentary Practice**" however does not bear out the suggestion of the Minister for Education that the brethren of the Long Robe are to be coupled with the Cloth in respect to breaches of Parliamentary Privilege at any rate. According to "**May**" the chief offenders would appear to be Editors, Printers, Parliamentarians and Parsons (the two latter can decide between themselves as to which is entitled to precedence). Severe punishments were formerly accorded by the Lords and Commons in cases of libel, as fine, imprisonment and pillory; but in modern times commitment with or without fine has been the ordinary punishment. The cases reported are too numerous to mention, but those cited in "**May**" are of a thoroughgoing nature, both as to breach and the punishment therefor. In December, 1756, George King was fined £50 and committed to Newgate for six months for publishing "a spurious and forged printed paper, dispensed and publicly sold as His Majesty's Speech to both Houses of Parliament." In 1798 Messrs. Lambert & Perry were fined £50 each and committed to Newgate for three months, for a newspaper paragraph reflecting on the Honour of the House of Lords. In 1643 the Archdeacon of Bath was committed for abusing the last Parliament. In 1623 Thomas Morley was fined £1,000, sent to the pillory, and imprisoned in the Fleet for a libel on the Lord Keeper. In 1799, one Flower, was fined and committed by the House of Lords for a libel on the Bishop of Llandaff. In 1827 H. C. Jennings was reprimanded by the Speaker for sending three letters to Mr. Secretary Peel threatening to contradict his speeches from the gallery of the House. H. S. Woodfall, a Printer, was in 1774 committed to the Sergeant-at-Arms for publishing a letter libelling the Speaker. In 1832 Messrs. Kidson and Wright, Solicitors, were admonished for having addressed to the Committee on the Sunderland Dock Bill a letter reflecting on the conduct of members of the Committee, copies of which were circulated in printed handbills. In 1880 placards signed by Plimsol, a Member, were published through the City of Westminster, reflecting upon the conduct of Sir Charles Russell. Three days afterwards Plimsol withdrew and apologised, whereupon the House of Commons having condemned his conduct as a breach of Privilege, resolved that no further action was necessary.

THE LIABILITY OF INNKEEPERS.

Is a motor car a carriage within Section 174 of the Licensing Act 1908? Swift J., in **Aria v. Bridge House Hotel (Staines) Limited,** 137 L.T. 299, evidently thought it was without argument. The decision in that case will probably alarm innkeepers though it may be doubted whether the historical part of the judgment is sound. The facts are well summarised in the headnote:—

A guest at an hotel parked his motor car in the space adjoining the hotel as directed by the hall-porter of the hotel and which space was commonly used for that purpose. While the guest was at dinner in the hotel the car was stolen.

It was held that proof of negligence was not necessary and the innkeeper was liable. "In the old days," said Swift J., "when inns were remote from the towns "and when highwaymen were rampant it was not "an uncommon thing for highwaymen and innkeepers "to be in league together, and it was realised at a very "early stage in our existence that the only safe thing "for the general public was that the innkeeper should "be responsible for the safety of his guest and his guest's "goods. That law still remains." One is tempted to observe that the league between innkeepers and highwaymen may not be so much outworn as reincarnated in other politer leagues. But the authorities scarcely support the history. Blackstone (III. 330) puts the liability of innkeepers among special liabilities of special trades and does not suggest any such reason as the above. The form of writ in Calye's case was evidently well understood at the time (1584) and probably dates back to Bracton (1250) and makes the liability arise for goods "*infra hospitium.*" The framers of the writ probably based it on the praetor's edict of the 6th century A.U.C. "*Nautae caupsues, stabularii*" (Dig. IV. 9, 1) which is said to have been founded on a customary autonomous taking over of risk on the part of sea-carriers and innkeepers whether by means of a unilateral formal declaration with the word "*recipio*" or by a "*pactum*" at first expressed but afterwards understood. It was several centuries after that edict the Ulpian suggested it was founded on the bad character of the trades concerned; but it is noteworthy that the edict imposing on the master of a house a duty of insuring safety belongs to the same period, and both edicts were obviously moved by a desire to simplify proof of damage.

FULL COURT.

Sim A.C.J.
Herdman J.
Reed J.
Adams J.
Ostler J.

October 10, 11, 21, 1927.
Wellington.

TAGOLOA v. INSPECTOR OF POLICE.

Jurisdiction—Samoa Act 1921—Whether ultra vires the Legislature of New Zealand—Constitution Act 1852—Order in Council under the Foreign Jurisdiction Act 1890 empowering Parliament of New Zealand to make Laws for Samoa—Samoan Offenders Ordinance 1922—Whether Repugnant to Samoa Act 1921.

Appeal under Section 63 of the Samoa Act 1921.

The appellant was a native of Western Samoa. On the 5th day of July, 1927, an order was made by the Acting Administrator of Western Samoa under the Samoan Offenders Ordinance 1922 directing the appellant to leave the District of Tuaranga I Matu on the island of Upolu and to remain outside that district and all other districts in the island of Upolu (except the village of Saluafata) and to reside in the said village for a period of three months from the date of the signing of the Order. The appellant did not obey the Order, and his failure to obey it was charged against him as an offence under the Samoan Offenders Ordinance 1922. He was found guilty by the High Court of Western Samoa, and sentenced to six month's imprisonment.

Findlay K.C. and Harding for appellant.
Myers K.C. and A. E. Currie for respondent.

The judgment of the majority of the Court (SIM A.C.J., HERDMAN J., REED J., and ADAMS J.) was delivered by SIM A.C.J., who said that it was clear that if the Samoan Offenders Ordinance 1922 was a valid exercise of legislative power the appellant was properly convicted. That Ordinance was made by the Administrator of Western Samoa, with the advice and consent of the Legislative Council thereof, in intended exercise of the power conferred by section 46 of the Samoa Act 1921 to make laws (to be known as Ordinances) for the peace order and good government of the Territory. It was contended by Sir John Findlay on behalf of the appellant that, for several reasons, the Ordinance was not a valid exercise of legislative power. His first main contention was that the Samoa Act 1921 itself was *ultra vires* of the Legislature of New Zealand. The Constitution Act, he argued, gave the Legislature power only to legislate for the peace order and good government of New Zealand, and the Legislature, therefore, could not legislate for territory outside the boundaries of the Dominion. That was true, no doubt, as a general rule, and the case of **Rex. v. Lander** (1919) N.Z.L.R. 305, illustrated the application of that rule. If, therefore, the power to legislate for Samoa depended on the Constitution Act, the appellant would be right in his contention. But it did not depend on that Act, and the power was derived from other sources. Before the war Western Samoa was a German Colony. By an Order in Council, made on the 11th of March, 1920, in professed exercise of the powers conferred by the Foreign Jurisdiction Act 1890, after reciting that by the Treaty of Peace Germany renounced in favour of the principal Allied and Associated Powers all her right and title over the Islands of Western Samoa, and that it had been agreed between the principal Allied and Associated Powers that the said Islands should be administered by His Majesty in His Government of His Dominion of New Zealand subject to and in accordance with the provisions of the said Treaty, His Majesty ordered, *inter alia*, as follows:

"(3) The Parliament of the Dominion of New Zealand "shall have full power to make laws for the peace order and "good government of the Territory of Western Samoa, "subject to and in accordance with the provisions of the said "Treaty of Peace."

By the Mandate for the Territory of Western Samoa, dated the 17th December, 1920, the Council of the League of Nations, acting under Article 22 of the Covenant of the League, conferred a mandate over that territory upon His Britannic Majesty for and on behalf of the Government of the Dominion of New Zealand. Article 2 of the Mandate contained the following provision:—

"The Mandatory shall have full power of administration "and legislation over the Territory, subject to the present "mandate, as an integral portion of the Dominion of New "Zealand, and may apply the laws of the Dominion of New "Zealand to the Territory, subject to such local modifications "as circumstances may require."

It was contended by Sir John Findlay that His Britannic Majesty, and not New Zealand, was the mandatory under this Mandate. But this, in their Honours' opinion, was not so. The Government of the Dominion of New Zealand was intended to be the Mandatory. That was clear, they thought, from the terms of the Mandate, and there was also the fact that New Zealand had been treated by all concerned as the mandatory, and had reported as such from year to year to the Council of the League as required by Article C of the Mandate.

It was contended also by Sir John Findlay that the Foreign Jurisdiction Act 1890 did not give His Majesty jurisdiction to make the Order in Council of the 11th March, 1920. If the view taken by the Supreme Court of South Africa (Appellate Division) in the case of **Rex. v. Christian** (1924) S.A.L.R. 101, as to the Mandate in connection with German South West Africa was right, then an Order in Council was unnecessary. There was no Order in Council in that case, and the Mandate was the same, in substance, as the Mandate in the case of Samoa. It was held that the Mandatory, the Government of the Union of South Africa, was, by virtue of the Mandate, *de facto* and *de jure* the Government of the territory of German South West Africa, and acquired *majestas* or sovereignty therein so that a charge of high treason might be maintained against an inhabitant of the mandated territory. It was unnecessary, however, to consider whether or not the Court could accept the view taken in South Africa as to the effect of such a mandate, for there was an Order in Council in the case of Samoa. According to the decision of the Privy Council in the case of **Jerusalem-Jaffa District Govenor v. Suleiman Murra** (1926) A.C. 321, such an Order in Council was authorised by the Foreign Jurisdiction Act 1890. The question there was as to the validity of an Ordinance made by the High Commissioner for Palestine. The Mandate for Palestine entrusted the administration of that territory to Great Britain. This was followed by an Order in Council providing for the administration of Palestine by a High Commissioner, and giving authority to a Legislative Council to make Ordinances for the peace order and good government of Palestine. This authority was afterwards given to the High Commissioner. It was held that the jurisdiction exercised by Great Britain under the Mandate was a jurisdiction within a foreign country within the meaning of the Foreign Jurisdiction Act 1890. It was held also that the Ordinance was a valid exercise of the legislative power given to the High Commissioner. The Palestine case was an authority, therefore, for holding that the Order in Council was authorised by the Foreign Jurisdiction Act 1890. To the same effect was the decision of the Court of Appeal in **Rex. v. Earl of Crewe** (1910) 2 K.B. 576. This decision was approved of by the Privy Council in the case of **Sobhuza II v. Miller** (1926) A.C. 518, and it was there said by Viscount Haldane, delivering the judgment of the Judicial Committee, that the Foreign Jurisdiction Act 1890 appeared to make the jurisdiction acquired by the Crown in a protected country indistinguishable in legal effect from what might be acquired by conquest, and that the Crown could not, excepting by statute, deprive itself of freedom to make Orders in Council. That applied of course, to all foreign countries within the scope of the Act. The judgment of the Privy Council in the case of the **Attorney-General for Canada v. Cain** (1906) A.C. 452 contained a clear statement as to the powers of legislation in connection with ceded territory. It was there said that when territory was ceded to Great Britain the Crown of England became possessed of all legislative and executive powers within the ceded country, and retained them until parted with by legislation, Royal Proclamation or voluntary grant. The Imperial Government might delegate those powers to the Government of the ceded territory either by Proclamation, which had the force of a statute, or by a Statute of the Imperial Parliament or by the statute of a local Parliament to which the Crown had assented. If such delegation had taken place the depository of the executive and legislative powers and authority of the Crown could exercise those powers and that authority to the extent delegated as effectively as the Crown itself could have exercised them.

The Order in Council purported to be made "by virtue of the powers by the Foreign Jurisdiction Act 1890 or otherwise in His Majesty vested." It appeared to their Honours that the Treaty of Peace Act 1919 might be invoked also as an additional statutory authority for the Order in Council. Section 1 of that Act authorised His Majesty to make such appointments establish such offices make such Orders in Council and do such things as appeared to him to be necessary for carrying out the Treaty and giving effect to any of the provisions of the Treaty.

The last point raised by Counsel for the appellant in connection with the validity of the Samoa Act 1921 was that the term "The Government of the Dominion of New Zealand," as used in the Mandate, did not mean the Parliament of New Zealand. But a reasonable interpretation must be put on the Mandate, and where legislation was necessary it must mean that the legisla-

tion was to be passed by the appropriate legislative body. That in the case of New Zealand was Parliament, and the Order in Council of the 11th of March, 1920, expressly conferred the power to make laws for Western Samoa on the Parliament of the Dominion of New Zealand. Their Honours thought, therefore, that the appellant had failed to establish that the Act of 1921 is *ultra vires*.

Their Honours proceeded to consider the questions raised by the appellant in connection with the Samoan Offenders Ordinance 1922. It was contended that the Ordinance was *ultra vires* because it did not provide for any inquiry before the order authorised by section 3 of the Ordinance could be made by the Administrator It was contended also that the Ordinance was repugnant to the provisions of the Samoa Act 1921, and on that ground was *ultra vires*. The power to make Ordinances for Western Samoa was conferred by section 48 of the Samoa Act 1921. That section provided that the Administrator, acting with the advice and consent of the Legislative Council of Western Samoa, might make laws (to be known as Ordinances) for the peace order and good government of the Territory not being repugnant to the Act or to regulations under it or to any other Act of the Parliament of New Zealand or of the United Kingdom in force in the Territory or to any regulations there in force. This power was declared by sub-section 2 to extend to the imposition of tolls rates dues fees fines taxes and other charges. Section 61 of the Act provides that it should not be lawful or competent to legislate in connection with certain specified matters. Section 57 gave the Governor-General of New Zealand power to disallow any Ordinance at any time within one year after the Administrator has assented to it. Within the limits of subjects and area prescribed by the Statute creating it, the Legislature of New Zealand possessed authority as plenary and as ample as the Imperial Parliament in the plenitude of its power possessed and could bestow: **Hodge v. The Queen,** 9 A.C. 117, 132; **Attorney-General for Canada v. Cain** (1906) A.C. 542, 547; and the Legislature possessed the utmost discretion of enactment for the attainment of the specified objects: **Riol v. The Queen,** 10 A.C. 675, 678. The Legislature of Western Samoa was, in their Honours' opinion, in the same position, and the question to be determined was whether or not, according to the rule just stated, the Samoan Offenders Ordinance 1922 can be regarded as a valid exercise of legislative power. Clause 3 of the Ordinance was as follows:—

> "3. If the Administrator is satisfied that the presence "of any Samoan in any village district or place is likely to "be a source of danger to the peace order or good govern- "ment thereof the Administrator may by order signed by "him order such Samoan to leave any village district or place "in Samoa and to remain outside such limits for such time "as the Administrator shall think fit and by the same or any "subsequent order the Administrator may order such Samoan "to reside in any place specified in such order."

Clause 4 supplemented this with a power to authorise the arrest of the Samoan against whom the order had been, or was being made. Clause 5 provided for the punishment of disobedience to the order by imprisonment for a term not exceeding one year. Now it was clear that clause 3 had been enacted, not for the purpose of punishing a crime of some kind or another, but as a political precaution, and it gave a power which was to be exercised, as Isaacs J. said in **Ex parte Walsh and Johnson,** 37 C.L.R. 36, 96, by the political department, the Executive, and possibly on considerations not susceptible of definite proof but demanding prevention. The very object of the legislation might be defeated if, before exercising the power, the Administrator was bound to give notice to the person concerned, and to hold something in the nature of a formal inquiry. Their Honours thought, therefore, that the failure to provide for any such inquiry did not make the Ordinance invalid. For this view of the question the case of **Rex. v. Lawson Street Police Station Inspector,** 89 L.J.K.B. 1200, was a direct authority. The person against whom the order was made might not have been guilty of a crime of any kind, but it might be necessary, in the interests of peace, order and good government, that he should depart from some particular place. The Administrator must be the judge as to the necessity, and, if acting *bona fide*, he was satisfied on the subject, the question whether his opinion was justified or not or whether he should have been satisfied or not on the materials before him was not examinable by the Courts: **Jones v. Robson,** 70 L.J.K.B. 419; **Ex parte Walsh and Johnson,** 37 C.L.R. 36, 67.

Their Honours then proceeded to consider the other objection taken by the Appellant. Part V of the Samoa Act 1921 provided for the punishment of a number of crimes. It was contended that the provisions of Clauses 3 and 4 of the Ordinance were repugnant to the Act as being an attempt to provide another and different punishment for some of the offences created by the Act, and in particular the offences created by section 102. But, as their Honours had already held, the provisions of Clause 3 and 4 must be regarded as merely preventive and not punitive, and it followed, therefore, that they could not be in conflict with the provisions of the Act, which were purely punitive. Clause 5 of the Ordnance provided for the punishment of disobedience to an order made under clause 3, but the maximum punishment was within the prescribed limit and the clause was not in conflict with any of the provisions of the Act.

Their Honours thought, therefore, that the Ordinance was a valid exercise of legislative power, and that the Appellant was properly convicted under it. Appeal dismissed

OSTLER J. said that he concurred in the decision of the Court on the question whether the Samoa Act 1921 was *ultra vires*, and he also agreed with the majority of the Court that the powers given to the Administrator by the Ordinance were not judicial but executive powers and were therefore not examinable by a Court. The point on which he found himself at variance with his brother Judges was as to the validity of the Samoa Offenders Ordinance Act 1922. Section 349 of the Samoa Act 1921 provided that the law of England as existing on the 14th day of January, 1840 (the year in which the Colony of New Zealand was established) shall be in force in Samoa, save so far as inconsistent with this Act or with any Ordinance or regulation, or inapplicable to the circumstances of the Territory: Provided that no Act of the Parliament of England or of Great Britain or of the United Kingdom passed before the said 14th January, 1840, shall be in force in Samoa unless and except so far as it is in force in New Zealand at the commencement of this Act. It was held by the Court of Appeal in **Cock v. Attorney-General** (28 N.Z.L.R. 405) that the Statute 10 Car. I c. 10, which abolished the Court of Star Chamber and declared all Courts but the ordinary courts of justice illegal, was in force in New Zealand, as was also the Statute 42 Edw. III c. 3, which enacted that no man should be put to answer for a crime unless in the manner prescribed by law. Therefore by virtue of section 349 those Statutes had become part of the law of Samoa. The Act had in fact been at pains to confer on all the inhabitants of Samoa, be they aboriginal natives, Chinese, or white, the constitutional rights to which every British subject was entitled in a British community.

The question then was whether the Samoan Offenders Ordinance Act 1922 was repugnant to the Act conferring these rights. Happily there had been many decisions on this question as to the meaning of repugnancy, and to His Honour's mind they formed a clear guide to the right answer to the question. His Honour referred to **Robinson v. Reynolds** (Mac. 574); **R. v. Marais** (1902 A.C. 51); **Attorney-General for Queensland v. Attorney-General for Commonwealth** (20 C.L.R. 148); and **Union S.S. Co. v. Commonwealth** (36 C.L.R. 130) and said that in his opinion the word "repugnant" as used in section 46 of the Samoa Act 1921 must be construed in the same way as in the cases referred to, that is to say if the Ordinance took away rights given by the Act it was repugnant and therefore *ultra vires* as being beyond the power of the Legislative Council of Western Samoa to enact His Honour then referred to sections 3, 4, and 5 of the Samoan Offenders Ordinance Act 1922, and said that in his opinion it could not be doubted that these provisions were not only preventive but also punitive. The Administrator was given power as an executive act without any trial and without the formality of hearing the party proceeded against to order his banishment from his own village to any place in the Territory (which would include an outlying Island) for any period of time, extending even to the life of the person against whom the order was made. The Samoan in question might be a chief or person of consequence in his own village. He might be banished to a place where he was held in no esteem. His Honour found it difficult to see how it could be argued that such treatment was merely preventive and not punitive. Even in a civilised country the banishment of a subject from his home town to some remote part of the country for an indefinite term could not but be felt to be a heavy punishment..

The Parliament of New Zealand had by the Samoa Act 1921 whether wisely or unwisely, conferred on the Samoans a code of law which gave them the constitutional rights of British subjects. It had applied to them all the English Acts of Parliament in force in the Colony, including the Statute abolishing the Star Chamber. It had imposed a code of criminal law, which included the crimes of treason and sedition. It had provided a Court and a code of criminal procedure for the trial of such cases. It was true that under the Ordinance the Administrator had the power to order banishment for any reason that touched the peace order and good government of the Territory. The Ordinance was wider in its scope than the Criminal Code, but it partly covered the same ground. Under it the Administrator had power to make an order of banishment against a Samoan who had in his opinion been guilty of treason sedition or any other crime. Such an order would conflict

with that person's rights to a trial before the constituted Court in the prescribed way. Therefore in His Honour's opinion the Ordinance was repugnant to the Act within the meaning of that word as used in section 46, and being repugnant was *ultra vires* and void.

Solicitors for appellants: **Findlay, Hoggard, Cousins and Wright,** Wellington, agents for **Thomas E. Slipper,** Apia, Samoa
Solicitors for respondent: **Crown Law Office,** Wellington.

SUPREME COURT.

Sim A.C.J. September 5; October 27th, 1927. Dunedin.

STEWART v. BIGGS.

Defamation—Privilege—Statement made by Medical Superintendent in reply to Deputation—Referring to Plaintiff's Profession—Newspaper Reporters Present—Finding of Malice by Jury—No Evidence to Justify Finding—Judgment for Defendant.

Cross Motions for judgment. The plaintiff was a medical practitioner practising at Milton, and the defendant was the Medical Superintendent of the South Otago Hospital Board. The plaintiff had acted as deputy-superintendent of the Milton Hospital, but the defendant removed him from the position, and although the plaintiff remained for some time a member of the honorary hospital staff, he was removed afterwards from that position by the Board. The Friendly Societies at Milton objected to this further change and communicated with the Board, and subsequently a deputation of Milton citizens attended to discuss with the Board the question of the plaintiff's position. The meeting was at the request of the deputation held in public. After several speakers had expressed their views the defendant as medical superintendent made a statement in connection with the plaintiff at the Milton Hospital. The plaintiff alleged that a passage in this statement was defamatory of him in connection with his profession, and claimed £500 damages. The following were the issues submitted to the jury and their answers:—

1. Were the words set out in paragraph 4 of the Statement of Claim defamatory of the plaintiff in connection with his profession as a medical practitioner? Answer: Yes.
2. Were the said words true? Answer: No.
3. Did the defendant honestly believe them to be true? Answer: No.
4. Was the defendant when he spoke the said words actuated by malice against the plaintiff? Answer: Yes.
5. What damages is the plaintiff entitled to recover? Answer: £25.

The plaintiff moved for judgment, but waived his right to the damages awarded by the jury. The defendant moved for a judgment in his favour, on the ground that the occasion of the publication was privileged, and there was no evidence fit to be submitted to the jury of malice or excess of privilege. In the alternative the defendant asked for a new trial on the ground that the verdict was against the weight of evidence in connection with the answers to issues 2 and 4.

H. E. Barrowclough for plaintiff.
J. S. Sinclair and Bremner for defendant.

SIM A.C.J., said that the question whether the occasion was privileged, if the facts were not in dispute, was a question of law only for the judge and not the jury: 18 Halsbury, p. 685, par. 1261; **Adam v. Ward** (1917) A.C. 309. An occasion was privileged where the person who made a communication had an interest or a duty (legal, moral or social, of perfect or imperfect obligation) to make it to the person to whom he did make it, and the person to whom he did make it had a corresponding interest or duty to receive it: 18 Halsbury, p. 686, par. 1263. In the present case the object of the deputation was to ascertain the Board's reasons for refusing to reinstate the plaintiff as a member of the honorary hospital staff at Milton. The defendant's statement was made at the request of the Board for the purpose of making these reasons clear to the members of the deputation. It was the duty of the defendant to make the statement when requested to do so by the Board. The members of the deputation had an interest in hearing the defendant's statement of the reasons. And so also had the members of the Board. *Prima facie,* therefore, the occasion was privileged. It was contended, however, on behalf of the plaintiff that the presence of the newspaper reporters at the meeting prevented the occasion from being privileged. But the case of **Pittard v. Oliver** (1891) 1 Q.B. 474 was an authority against this view. To the same effect was the decision of Mr. Justice Williams in the case of **Hodges v. Glass,** O.B. & F. (S.C.) 66. In the present case the defendant was not responsible in any way for the presence of the reporters or for the matter being dealt with in open meeting, and the occasion, His Honour thought, was privileged.

The next question to be considered then was whether or not there was any evidence to justify the finding of malice. The law on the subject of malice was stated by Lord Esher (then Brett L.J.) in **Clark v. Molyneux,** 3 Q.B.D. 237, 246, and in **Royal Aquarium Society v. Parkinson** (1892) 1 Q.B. 431, 442. It was not sufficient that the statements made were consistent with the existence of malice; they must be inconsistent with *bona fides* and honesty of purpose: **Hart v. Gumpatch,** L.R. 4 P.C. 460; Spencer Bower on Actionable Defamation (2nd Edn.) p. 138 Note (w). Evidence of malice might be either intrinsic or extrinsic. Intrinsic evidence consisted in the contents of the statement itself. Its language, for example, might be so violent or insulting—it might go so far beyond the just requirements of the occasion—as to amount in itself to sufficient evidence of malice: Salmond on Torts (6th Edn.) p. 520; **Laughton v. Bishop of Sodor and Man,** L.R. 4 P.C., p. 505; **Spill v. Maule,** L.R. 4 Ex. 232. Extrinsic evidence consisted in the circumstances in which the statement was made—circumstances which went to show that the statement, even though moderate, and justifiable in its language, was in reality animated by some improper motive. It was not necessary to prove affirmatively what the improper motive really was; it was sufficient to disprove the existence of a proper motice: Salmond on Torts (6th Edn.) p. 521. It was not suggested that the statement complained of here contained in itself evidence of malice, and the plaintiff relied on several extrinsic circumstances as justifying a finding of malice. The first was the relations between the parties. It was clear from the evidence that there had been friction between them, and the jury were justified in thinking that the relations between the parties were strained. But that, although it bore, as Lord Denman said in **Simpson v. Robinson,** 12 Q.B. 511, 513, upon the issue of malice, was not sufficient of itself. His Honour thought to justify any reasonable man in saying that the defendant was not using the privileged occasion honestly but was abusing it. There must be evidence on which a reasonable man could find malice: **Adam v. Ward** (1917) A.C. 309, 318, and a jury was not entitled to say that a defendant must have been malicious merely because he was on bad terms with the plaintiff. The plaintiff relied also on the fact that the defendant had pleaded a plea of justification. But that was not in itself evidence of malice, even though the defendant did not attempt to establish it at the trial: Gatley, p. 638; **Wilson v. Robinson,** 7 Q.B. 68. The defendant, however, did attempt to establish his plea of justification, and proved it, His Honour thought, by the evidence adduced by the plaintiff himself. His Honour then reviewed the evidence at length, and said that in substance the statement made by the defendant was true, and the plaintiff's whole grievance was that the defendant stated the facts in such a way as to imply that the plaintiff tried to have the patient placed beside the women and babies in the maternity home. The plaintiff had not introduced this interpretation of the defendant's words by an innuendo in his Statement of Claim, and it was doubtful whether this was the meaning that would be ascribed to them by reasonable men who heard them. If this view were right, then the case seemed to come within the decisions in **Capital and Counties Bank v. Henty,** 7 App. Cas. 741, and **Nevill v. Fine Art Insurance Co.** (1897) A.C. 68, with the result that judgment ought to be given for the defendant. The defendant, however, did not ask for judgment on this ground, and His Honour proceeded to deal with the ground on which his motion was based.

Where an occasion was privileged it was not for the defendant, as a condition of immunity, to prove affirmatively that he honestly believed the statement to be true: **Jenoure v. Delmege,** (1891) A.C. 73, 79. The jury had found in the present case that the defendant did not honestly believe hte statement he made to be true, but, in His Honour's opinion, there was nothing in the evidence to justify such a finding, and the finding of the jury on the subject was really perverse. As to whether there was any evidence to justify the finding of malice, His Honour said that the whole statement made by the defendant to the deputation was for the purpose of justifying the action of the Board in connection with the plaintiff, and anything which would discredit the plaintiff professionally was relevant to the discussion. The defendant was justified, therefore, in bringing up Mrs. P.'s case, and there was nothing, His Honour thought in the evidence to justify the jury in saying that the defendant did not use the privileged occasion for its proper

purpose, namely that of vindicating the action of the Board, but abused it by making an unnecessary attack on the plaintiff's professional character. If the Court came to the conclusion that the occasion was privileged, and that there was no evidence, or not more than a *scintilla* of evidence as to malice, the proper course was to enter judgment for the defendant: **Clark v. Molyneux,** 3 Q.B.D., p. 245; **Stuart v. Bell** (1891) 2 Q.B. 341, 345, 352. The result was that judgment would be entered for the defendant.

Solicitors for plaintiff: **Ramsay, Barrowclough and Haggitt,** Dunedin.
Solicitor for defendant: **R. R. Grigor,** Balclutha.

Sim A.C.J. October 31, 1927.
In Banco. Dunedin.

O'CONNELL v. ANDERSON AND THOMSON.

Practice—Motion for Jury—Action Against Doctor and Nurse for Negligence—Breach of Contract or Tort.

Motion for an order directing a trial before a Judge and a Jury of 12. The action was brought by the plaintiff against a doctor and a registered nurse, who attended the plaintiff in her confinement, for £750 damages on the grounds of alleged negligence. The plaintiff alleged that, owing to a complication shortly after the birth of the child, the defendant Anderson administered an anaesthetic to her for the purpose of performing a slight operation on her, and that, while she was under the anaesthetic, through the negligence of one or both of the defendants, a hot-water bag was allowed to rest against her leg, inflicting severe injuries on it.

C. J. L. White in support of Motion:
I submit that this is a case which can be more conveniently tried before a Judge and a Jury of 12. This is a personal action and, though based on the hypothesis of a breach of contract, is more in the nature of a tort. I accordingly rely on the cases of **Bond v. Gear** (1926) G.L.R. 333, and **Ford v. Blurton,** 38 T.L.R. 801.

Hay for defendant Anderson to oppose:

I submit that this case is covered by the decision in **Harle v. Bennie** (1926) N.Z.L.R. 113. Moreover the question as to whether there was the relationship of master and servant between the doctor and the nurse will arise and this is a question for a Judge alone: **Gibson v. The King** (1927) N.Z.L.R. 669. The onus of showing that the case can more conveniently be tried before a Judge and a Jury than before a Judge alone is on the person applying for the jury: **Clare and Another v. Canton Insurance Office Ltd.** (1925) G.L.R. 268.

Hanlon for defendant Thomson.

SIM A.C.J. (orally): I think that this case is covered by the decision in **Hearle v. Bennie** (*supra*) of which the majority of the Judges have approved. The Motion is accordingly dismissed, with costs £3 3s. 0d. to each defendant, and the case ordered to be tried before a Judge alone.

Solicitor for plaintiff: C. J. L. White, Dunedin
Solicitors for defendant Anderson: **Treadwell and Sons,** Wellington.
Solicitor for defendant Thomson: **Gilkison (Jnr.),** Queenstown.

Ostler J. October 21, 22, 1927.
Wellington.

WILSON v. COMMISSIONER OF STAMP DUTIES.

Revenue—Succession Duty—Child Adopted by Husband of Deceased Before Marriage—Whether Duty Payable as on Gift to Child or Stranger—Death Duties Act 1921, Section 17 (4) (b).

Case stated under Section 63 of the Death Duties Act 1921. Appellant was the executor under the Will of the late Jessie McLaren, widow, who died on the 27th August, 1926, leaving an estate, the final balance of which had been certified at £1,433 8s. 8d. By her Will she bequeathed her whole estate to Mrs. Helen Sothby Wilson. Mrs. Wilson, when a child, was adopted by one Robert McLaren, by an order made on the 17th May, 1900, under the Adoption of Children Act 1895. The testatrix married Robert McLaren on the 26th March, 1902, nearly two years later than his adoption of the child who became Mrs. Wilson. Succession duty was assessed on the value of Mrs. Wilson's succession at the rate of £10 per centum, under the provisions of Section 17 (7) (b) of the Death Duties Act 1921, as though she were a remote relative or a stranger in blood to the testatrix.

Rothenberg for appellant.
Taylor for respondent.

OSTLER J. said that the appellant contended that succession duty should have been assessed under Section 17 (4) (b) of the Act, as though Mrs. Wilson were a child of the testatrix, in which case the duty would be at the rate of only £1 per centum. "Child" was defined in Section 2 of the Act as including a "step-child." The provisions of Section 17 (4) (b) therefore applied in the case of a step-child, and there could be no doubt that Mrs. Wilson on the marriage of the testatrix with Robert McLaren became the step-child of the testatrix. Counsel for respondent did not dispute that this would be so, but for the provisions of Section 20 of the Death Duties Act 1921, which he contended had the effect of destroying Mrs. Wilson's status as a step-child of the testatrix for the purpose of the assessment of succession duty. In His Honour's opinion the section had not the legal effect contended for. It provided that the **adoption** should not be deemed to create any other relationship between any persons. In this case it was not the adoption but the marriage which created the relationship of step-mother and step-child between the testatrix and Mrs. Wilson. When that marriage took place Mrs. Wilson was in law in the same position as a child born in lawful wedlock to her adopted father. Had she been such in fact it could not be doubted that the marriage of her father to the testatrix would have created the relationship of step-mother and step-child between the testatrix and Mrs. Wilson. Therefore the marriage created the same relationship between the two as though Mrs. Wilson had been a natural daughter of the father, born in wedlock. There were no words in Section 20 apt to destroy the relationship created by the marriage. In His Honour's opinion the assessment of succession duty was incorrect, and the duty ought to have been assessed under Section 17 (4) (b) of the Act.

Solicitor for appellant: **W. L. Rothenberg,** Wellington.
Solicitor for respondent: **Crown Law Office,** Wellington.

Ostler J. September 23; October 5, 1927.
Wellington.

SMITH v. MAYOR &c. OF BLENHEIM.

By-law—Validity—By-law Regulating Working and Management of Abattoir—Provision that parts of Animals Slaughtered to be Property of Controlling Authority—Whether ultra vires—Slaughtering and Inspection Act 1908, Section 18; Amendment Act 1910, Section 3.

Motion under Section 12 of the By-laws Act 1910 to quash a by-law made by the Blenheim Borough Council, as controlling authority of an abattoir established under the Slaughtering and Inspection Act 1908. The By-law purported to be made under the authority of Section 18 of the latter Act as amended by Section 3 of the Amendment Act 1910. The By-law, after prescribing a fixed fee for the slaughtering of each head of stock, contained a clause that the butchers should have the right to take certain fixed percentages of oddments (the heads, feet, and runners) of animals slaughtered on their behalf, and that the remainder of such oddments and offal should be the property of the defendant Council.

Mills for plaintiff.
D. M. Findlay and Nathan for defendants.

OSTLER J., in giving judgment, said that it was contended on behalf of the plaintiff that the power given by the Act to make charges was a power to make money charges only; that there was no power to make charges in kind; that the property in all parts of the beast slaughtered was in the butcher who owned the beast; and that the By-law in addition to making a charge for its slaughter purported to confiscate part of the owner's property. The case of **Young v. Christchurch City Council** (10 G.L.R. 28) was relied on. It was held by Chapman J. in that case that regulations made by the defendant Council under Section 18 of the Slaughtering and Inspection Act 1900 purporting to authorise defendant Council to retain part of the offal of all beasts slaughtered in its abattoirs, were *ultra vires*, there being no power given by the Act to make other than money

charges. Had the Act remained in the same words as the Act in force when that case was decided, His Honour would have been content to follow the authority of that case. Section 18 of the Slaughtering and Inspection Act 1908 was in practically the same words as section 18 of the Act of 1908, under which **Young v. Christchurch City Council** was decided. But Section 3 of the Amendment Act 1910 materially altered the provisions of section 18. It was contended on behalf of the defendant that the By-law in question was made in pursuance of this new power, and that it was *ultra vires* of this power. The defendant relied on the case of **Jones v. Metropolitan Meat Industry Board,** 37 G.L.R. 252; 25 N.S.W.L.R. 553). In that case power was given to the defendant Board, a statutory body constituted under the Meat Industry Act 1915 (N.S.W.) to make By-laws providing for the management and control of all public abattoirs and for regulating and controlling the use of same, etc. The defendant Board made a By-law which provided that portions of animals slaughtered at the abattoirs might be taken by the Board, some without penalty, and others at a price fixed by the Board. It was held by the High Court of Australia that this By-law was within the statutory power to make By-laws for the management and control of abattoirs. His Honour could see no distinction between that case and this. In this case also defendant had power to make By-laws regulating the working and management of its abattoirs. If that case was rightly decided the By-law complained of in this case was within the powers given by the Act. His Honour was not prepared to differ from the high authority of that case, and he therefore held that the By-law complained of was not *ultra vires*.

Solicitors for plaintiff: **McCallum, Mills and Co.,** Blenheim.
Solicitor for defendants: **A. C. Nathan,** Blenheim.

JUDICIAL QUERIES.

Shearman J. once asked: What is a **nap**?

Sir Travers Humphries could not answer. The Lord Chief Justice explained:

"A tip" is a tip that a horse may win; a "nap" about a horse is that he is certain to win; while a "special nap" goes even to greater lengths.

Lord Mansfield once asked a slightly inebriated sailor witness:

"What does 'abaft the binnacle' mean?"

"Damn my eyes," exclaimed the sailor, "Here's a landlubber of a judge wants me to tell him what 'abaft the binnacle' is."

"You've now shown me," said Lord Mansfield, "what 'half-seas over' means; please now oblige me by explaining 'abaft the binnacle.'"

Lord Darling once enquired: "What is Mr. George Robey?"

"The Darling of the Music Halls, your Honour," was the immediate reply of counsel.

Sir Frank Lockwood was once congratulated by Judge Cave on his successful defence of a prisoner, who had set up an *alibi*. Lockwood explained that there had been some difficulty, as he had to select the best *alibi* of three. Witnesses were available to prove that at the time of the offence the prisoner was:—

ONE: In church.
TWO: At a race meeting.
THREE: Ordering, at an undertakers a coffin for his mother-in-law.

Lockwood chose the third defence—AND WON.

Mr. Oswald, the author of "Contempt of Court," once had a tussle with an underbred and unlearned judge. The judge came off second-best and remarked that he could teach Oswald neither manners nor law.

"I respectfully agree, my Lord," answered Oswald, blandly: "You could teach nobody either."

THE N.Z. CONVEYANCER.

Conducted by C. PALMER BROWN.

AGREEMENT BETWEEN SUPPLIER AND FACTORY OWNER.

AN AGREEMENT made this day of between A.B. (hereinafter referred to as "the supplier") of the one part and C.D. (hereinafter referred to as "the firm") of the other part WHEREAS the supplier is a dairy farmer carrying on business upon (1) lands situate in the(2) district and more particularly described in the Schedule hereto WHEREAS the firm has entered into and may hereafter enter into agreements with various other persons for the supply of milk to the firm either upon terms identical with those set forth herein or upon such other terms as the firm may from time to time deem expedient AND WHEREAS the supplier is desirous of having the milk obtained from his cows milked on or from the said lands manufactured into butter which the firm has agreed to do in consideration of the supplier entering into these presents NOW THIS AGREEMENT WITNESSETH as follows, namely:

1. The supplier shall during each milking season as hereinafter defined supply and deliver to the firm for and during the period of (3) years from and inclusive of (4) 19 (4) all the milk from all the cows which the supplier shall milk upon or from the said lands except such quantity of milk not exceeding (5) gallons per diem as the supplier shall retain for his own household use and except such milk as is mentioned in paragraph 4 hereof.

2. The supplier agrees that the number of cows to be milked by him daily on the said land during each milking season shall be not less than .

3. The supplier shall deliver the said milk daily at the dairy factory of the firm at aforesaid not later than o'clock in the forenoon or at such later time as the firm shall from time to time direct. The said milk shall be delivered in its pure and natural state not adulterated with any material whatsoever. The supplier shall not send or deliver to the firm any milk from sick cows or from cows within ten days of their having calved. He shall immediately after milking cause the said milk to be properly strained to remove impurities and cooled and set where the atmosphere is free from foul and injurious smells. He shall keep night's milk separate from morning's milk until delivery at the said factory. He shall keep all milk cans thoroughly clean. He shall not remove or suffer to be removed from the said milk any cream and all milk retained by him for household use shall be the average quality yielded by the said cows.

4. The firm shall at all times have the right to reject any milk which in the opinion of the firm or the manager or person in charge for the time of the said dairy factory shall not be good and fresh or in first-class order and condition or in properly cleansed and scoured utensils or in respect of which any of the foregoing conditions have not been complied with without being liable in any way to the supplier in respect of such rejection.

5. The firm shall keep at the said dairy factory a Tester and shall use the same for the testing of the milk supplied and delivered by the supplier in pursuance of this agreement and shall also keep at the said dairy factory an automatic skim-milk weighing machine.

6. The firm shall manufacture the said milk into butter for and on behalf of the supplier and the firm shall be the sole agent of the supplier to dispose of such butter for and on behalf of the supplier in such manner as the firm shall deem expedient and as shall in the opinion of the firm be to the best advantage of the supplier. Nothing herein contained shall be construed as giving the supplier any right to have any milk supplied by him hereunder or the butter-fat or butter obtained therefrom treated or manufactured separately from that of any other person or persons or to have separate accounts thereof but for the purpose of selling pledging and disposing of the goods the firm shall have all the powers of a mercantile agent under the Mercantile Law Act 1908.

7. In consideration of the manufacture by the firm of the said butter and of the premises the supplier shall pay to the firm the sum of for each pound weight of butter-fat obtained from the milk supplied by the supplier and the firm shall account to the supplier for the same number of pounds weight of butter as there shall be pounds weight of butter-fat obtained from the said milk from time to time and any surplus or "over-run" of butter in excess of such weight of butter-fat shall belong to the firm absolutely.

8. The firm will each day after the butter-fat has been obtained from the said milk return to the supplier a quantity of skim milk in the proportion which the quantity of milk delivered by the supplier at the said dairy factory bears to the total quantity delivered by all other persons to the said factory on that day. Provided that the firm shall not be bound to return any such skim milk later than noon in the day on which the milk from which the skim milk shall result shall have been delivered to the firm PROVIDED ALSO that if the supplier shall fail to apply for and take away on any day any skim-milk which he may be entitled by the time herein mentioned he shall have no claim whatever against the firm either for such skim-milk or for the value thereof or for damages for the loss of such skim-milk or otherwise howsoever.

9. The firm shall on the day of in each year and upon the day of each month thereafter up to and inclusive of the day of during the currency of this agreement advance and pay to the supplier a sum calculated at such rate per pound of the butter-fat obtained from the milk supplied by the supplier during the previous month as the firm shall from time to time determine.

10. Within two calendar months after the close of each milking season the firm shall account for and pay to the supplier any surplus payable to the supplier under this agreement after first deducting therefrom: (a) the manufacturing charge mentioned in Clause 7 hereof; (b) any railage freight or other charges incurred or paid by the firm on behalf of the supplier in connection with the subject matter of this agreement or (in case the same shall be incurred or paid on behalf of any other person or persons conjointly with the supplier) a proportionate part thereof; (c) any sum or sums of money whatever now or hereafter from time to time to become payable by the supplier to the firm and in case of there being a deficiency the same shall be refunded by the supplier to the firm and the provisions of this Clause shall not be deemed to affect the right of the firm to deduct at any time or times any moneys payable by the firm to the supplier or the whole or any part or parts of any sum or sums of money due by the supplier to the firm. The firm shall retain for the sole use and benefit of the firm such proportion of the amounts received by the firm as aforesaid as the weight of the "over-run" shall bear to the total weight of butter so advanced against consigned or sold as aforesaid.

10. Whenever and as soon as any butter manufactured by the firm under this agreement shall have been delivered by the firm on railway trucks at the Railway Station for carriage elsewhere such butter (except the said "over-run") shall thenceforth be and remain at the sole risk of the supplier.

11. The firm shall keep the said dairy factory open (weather and state of the roads and other circumstances permitting) during the whole of each milking season unless prevented by fire or other accident but the firm shall not be bound to keep the said factory open if and so long as the available supply of milk from all persons supplying milk to the said factory shall at any time or times fall below gallons per diem or fail to produce pounds of butter-fat per diem AND while the said dairy factory shall remain closed the provisions hereof as to delivery shall be suspended until the available supply shall exceed the limit aforesaid.

AS WITNESS, etc.

NOTE:—In view of the difficulties dealt with in Bruce v. Good (1917) N.Z.L.R. 514, it is advisable to provide expressly that the manufacturer has the powers of a mercantile agent in disposing of the product, but that the property remain in the suppliers.

(1) State whether freehold or leasehold. (2) Fill in district where land situated. (3) Insert number of years. (4) Fill in date of commencement of agreement. (5) Fill in quantity which supplier may retain for household use.

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ODE TO THE COMMON LAW CLERK.

Mr. Smartboy is a Law Clerk,
"Common" by some people called,
But for wit and pointed humour
Nowhere is this man equalled.

Tho' sarcastic his remarks are
Pride will make the victim laugh;
Turn away his verbal arrow
To avoid his further chaff.

But another side his nature
Shows to those who see him much
For he's patient with his clients
When they're talking Dutch.

Slowly he undoes the tangle
Of their trials and their pain,
Dots the costs down in a diary,
Sweetly warbles, "Come again."

Sisters, Uncles, Fathers, Mothers,
Bring their troubles to his shrine,
So he sues their aunts and brothers,
Blithley charging one pound nine.

He finds out from youthful culprits
Why they chopped up Smithsons' fence,
And gets lucid explanations
From the ones who seem most dense.

But when office hours are over,
And he's finished for the day,
Goodbye other people's worries:
Hurrah for the Cabaret.

—H. A. A.

Wellington.

ARE THE ARTICLES OF A COMPANY A CONTRACT?

(By C. Palmer Brown).

Lord Halsbury is said to have remarked during an argument: "When I hear counsel say that one thing is practically another, I know it is not that other." If his Lordship had brought this attitude of mind to bear on Section 24 of the Companies Act 1908, or its equivalent in Section 16 of the English Companies Act 1862, he might have said: "When the statute declares that the articles bind the company and the members as though they were a covenant by each member to conform to all the regulations in the articles, I know there is no covenant." Yet the decisions have taken quite a different course. There are numerous dicta distinctly setting out that the articles themselves are a contract, not merely that they are enforceable in an action of contract. In **Imperial Hydropathic Co. v. Hampson,** 23 Ch. D. 1, Cotton L.J. guardedly says that the articles are a contract between the shareholders to comply with the regulations in them; that is to say they are primarily regulations but are enforceable by virtue of a contract to abide by them. Later on this distinction is not apparent. In **Wood v. Odessa Waterworks Co.,** 42 Ch. D. 636, Stirling J. said: "The articles of association constitute a contract not merely between the shareholders and the company but between each individual shareholder and every other," and in **Welton v. Saffery** (1897) A.C. 315, Lord Herschel said: "It is quite true that the articles constitute a contract between each member and the company." In **Hickman v. Kent or Romney Marsh Sheepbreeders' Association,** (1915) 1 Ch. 881, Astbury J. reviewed the decisions and held the articles to be a written agreement for submission to arbitration under the Arbitration Act.

The first difficulty to arise from the treatment of the articles as a contract in themselves arose from an attempt to secure for one of the shareholders a special benefit by the provisions of the articles. Thus in **Elery v. Positive Insurance Company** (1876) 1 Ex. D. (C.A.) 88, the articles provided that the plaintiff should be employed as the permanent solicitor of the company. This was disposed of by laying it down that the shareholder could not *qua* contractor take advantage of a contract entered into *qua* shareholder—a highly artificial distinction. If however the fact had been insisted upon in the decisions that the articles are rules for the government of the affairs of the company and not contracts to be observed by any one it would scarcely have been suggested that it might be a rule of the company that X should be its solicitor any more than that the Rules of the Supreme Court should nominate the officials of that Court. But the principal difficulty has arisen in the consideration of the limits of the right to alter. A contract that may be altered by one party (though it has not always been clear that the company is a party to the supposed contract until the enactment of the present Companies Act) is an anomaly; consequently in the cases on the extent of the right to alter there are numerous expressions that show an uneasiness about the root idea of contract; for instance in **Allen v. Gold Reefs of West Africa** (1900) 1 Ch. 656, Lindley J. said: "They (the articles) have the effect of a contract but the exact nature of that contract is even now very difficult to define. Be its nature what it may . . . ."

And so in that case the right to alter was held to be restricted so that it should only be used *bona fide* in the interests of the company; or as Lord Wrenbury (Buckley L.J.) puts it: "Possibly the limitation on the power of alteration may turn out to be that the alteration must not be such as to sacrifice the interests of the minority to those of the majority without any reasonable prospect of advantage to the company as a whole."

There is no statutory definition of the articles; but there is a description that suggests another line of thought. The articles (Section 22) are to contain such regulations for the company as the subscribers to the memorandum of association deem expedient; and succeeding sections refer not to "the articles" but to "the regulations," e.g., the power to increase capital is to be taken by regulation and the power of alteration is a power to alter the regulations. The statutory contract is that the members will abide by the regulations; a contract ancillary to the main purpose of the articles and not affecting their nature as regulations.

Applying this conception to the question of power to make alterations it would seem that an alteration can produce no more than a regulation—a general rule for the conduct of the members of the company in its affairs—enforceable by the same statutory contract. Such a regulation must conform to the general rules laid down for what Dicey calls subordinate law-making authorities in the exercise of their powers and so the restrictions on the right to alter instead of being special rules set up in cases like **Allen v. Gold Reefs of West Africa** *supra* fit in with the theory of *ultra vires*.

This subject came under discussion in the Court of Appeal in **Macdonald v. Normanby Co-operative Dairy Factory Co. Ltd.** (1923) N.Z.L.R. 122, and a comparison of the judgment of Salmond J. with the weighty dissenting judgment of Reed J., is interesting. The former insists that the articles are regulations but treats them nevertheless as a contract, without taking the distinction between the regulations themselves and the contract to abide by them suggested above.

Before a regulation included in the articles can be operative as a statutory or constructive contract under Section 24 of the Act it must first of all be valid and operative as a regulation. But since the right of the company to issue and allot shares and the obligation of the shareholders to accept those shares must be constituted by a contract between the company and the shareholders such a right and obligation cannot be constituted by a regulation instead of a contract. A regulation which purports to create such a right and to impose such an obligation is *ultra vires* and inoperative as a regulation. Therefore it cannot possess the statutory effect attributed to the regulations by Section 24 and cannot amount to a constructive contract between the company and the shareholders. . . . A company can amend its regulations but not its contracts.

The point of departure between this judgment and that of Reed J. is that the latter treats the articles as a contract; that the shareholder knew of the power to alter when he took up his shares and an alteration to provide fresh capital must have been in the reasonable contemplation of the shareholder, and that there was nothing of an oppressive or fraudulent nature in the proposed amendments. All this is unanswerable if the premises be conceded that the question is one of contract simply; and it is in accordance with the authorities. But it is submitted that the true view is as suggested above.

Salmond J. returned to the subject in **Shalfoon v. Cheddar Valley Co-operative Dairy Company Limited**

(1924) N.Z.L.R. 561. The question raised and discussed in that case was whether an article compelling a shareholder to supply milk anywhere in New Zealand was invalid as being in restraint of trade. It was held to be invalid. But Salmond J. first cleared the ground by discussing the nature of the articles as regulations :—

This distinction (between regulation and contract) is of practical importance for several reasons. In the first place an obligation imposed by a regulation is not merely personal but is appurtenant to the shares of the company so as to run with those shares in the hands of successive owners and to bind all shareholders for the time being ; but a contractural obligation is purely personal and binds only the individual shareholder who has become a party to the contract and cannot be made to run with the shares as appurtenant thereto in the hands of the successive owners. In the second place a regulation can always be altered or repealed by the company and the rights and obligations created thereby may be thus modified or destroyed ; whereas a contract between the company and a shareholder can only be altered or cancelled by the mutual consent of both parties. In the third place a regulation to be valid must be within the scope of the legislative authority given by the Companies Act to a company over its shareholders ; whereas a contract made between a company and a shareholder is subject merely to the general provisions of the law of contract. . . . An article which is in its own nature *ultra vires* cannot derive authority and validity from Section 24 of the Act as being constructively a contract between the company and its members.

In connection with these two cases the curious may see an illustration of *ex post facto* legislation and the concern of Parliament for the dairy industry in the Dairy Industry Amendment Act 1924 validating allotments made and articles registered contrary to the provisions of the decisions. But the emphasis laid on the nature of articles as regulations remains sound and it is submitted that the statutory provision for their enforcement by action of contract does not alter their nature.

CORRESPONDENCE.

To the Editor.

Sir,

Yea, verily, law has its humour, albeit it is sometimes unappreciated by the laity.

In a certain North Island Court a young man of sober and industrious repute was charged with riding a motor bike negligently. Learned counsel entered a plea of guilty. The Police made a statement : The boy was proceeding along a road ; the pace was reasonable ; but he had collided with a motor lorry that had been travelling towards him and had cut across the boy's track into a street on boy's left. Boy's bike damaged to extent of £12 10s. 0d. Magistrate looks grave : "Where is the negligence ?" Police say in effect "*res ipsa loquitur.*" Counsel for boy says : "Pure misadventure, Sir." Magistrate again looks troubled—that plea of "guilty" worries him—finally convicts and orders boy to pay costs. Cream of the joke. Another solicitor confides to another of same ilk : "The motor-lorry driver consulted me, and we had decided to plead guilty, but he has never been charged and the other man has been convicted."

See **Warren v. Heinze** (1923) S.A.S.R. 429.

Yours, etc.,

28th October, 1927. HANNIBAL.

JURY SYSTEM.

Lord Hewart's Experiences.

The Lord Chief Justice, interviewed by the "Manchester Evening News," expressed his belief in the great value of our jury system. The system has been much discussed during the last few days since a speaker at the provincial annual meeting of the Law Society suggested that jury service should be done by a panel of retired business men who would received salaries and travel to places where their services were required. The speaker attacked the jury-woman.

Lord Hewart said he could not help thinking that the proposal in the form in which it was reported to substitute professional juries for our present system exhibited too little appreciation of the real meaning and value of our system of trial by jury.

"The function of the jury," he added, "whether in civil or criminal cases, is to arrive at a true conclusion of the facts upon the evidence which has been presented. This function our juries discharge with most remarkable capacity and judgment. I will say nothing from my own experience, which at the Bar and on the Bench extends now over more than twenty-five years. I would rather quote the opinion of a very distinguished judge, who was also a very distinguished member of the Bar, Lord Justice Pickford, afterwards Lord Sterndale, Master of the Rolls. I have heard him, speaking not casually but at the close of an earnest conversation, say that in his opinion jurors and juries were never wrong, and I respectfully agree with that opinion.

"That is by no means to say that if you were to cross-examine each individual member of the jury upon the particular reason which has impelled him to arrive at a verdict you would always get a useful or convincing answer. The point is that twelve persons, indifferently chosen, chosen in fact by chance from the whole body of the public, have arrived somehow at a unanimous conclusion on the facts. The magic of it is its unanimity, not the reasons which may have weighed most with this or that individual member.

"I cannot understand how the process of individual selection, conducted in some unexplained fashion, would be likely to improve on the existing system. It might, on the other hand, easily give rise, if not to partisanship, at any rate to an appearance or suspicion of partisanship. Of course, as things are, there are provisions which are from time to time made use of for the purpose of challenging individual jurors, but as at present advised I am satisfied that what may be called the haphazard or chance selection is the best. We certainly do not want professional jurors in another sense—in the sense which every schoolboy recollects from the comedy of Aristophanes.

"It may be said that under the existing system the burden sometimes falls unduly upon particular individuals who are summoned at very short intervals. That, I think, is a reflection, not upon the jury system, but upon the mode in which, through indolence or otherwise, the summoning of persons is in particular cases carried out. The number of persons eligible or liable is so enormous in comparison with the number of jurors actually required, that there is, in the nature of things, no reason why, under proper administration, hardship should be imposed upon anyone.

"With regard to the service of women on juries, they seem to me to be most admirable. Fortunately, the opportunities for public service for women have been within recent years very largely increased in this country.

Just as to-day women are solicitors, barristers, and magistrates, so also are they members of juries. I have a strong suspicion that if a woman witness is giving false evidence she is much more likely to impose upon men than upon women, and this proposition is not the less true if the perjured witness happens to be extremely good-looking."

THE EXERCISE OF STATUTORY DISCRETION.

The occasions on which local authorities are called upon to exercise a statutory discretion grow more and more numerous from year to year. The words conveying the power are usually such that, to the lay mind at least, they appear to convey an absolute power which can be exercised without limitation or external control. It should be noted, however, that " a person in whom is vested a discretion must exercise his discretion upon reasonable grounds. A discretion does not empower a man to do what he likes merely because he is minded to do so—he must, in the exercise of his discretion, do not what he likes, but what he ought. . . . He must act reasonably ; " per Lord Wrenbury, in **Roberts v. Hopwood** (1925) A.C. 613 ; 89 J.P. 105. " Discretion " means when it is said that something is to be done within the discretion of the authorities, that something is to be done within the rules of reason and justice and not according to private opinion ; according to law and not to humour. It is not to be arbitrary, vague and fanciful, but legal and regular : per Lord Halsbury, L.C., in **Sharp v. Wakefield** (1891) A.C. 173 ; 55 J.P. 197. Lord Esher, M.R., in giving judgment in the well-known case of **R. v. St. Pancras Vestry** (1890), 24 Q.B.D. 371, said : " If people who have to exercise a public duty by exercising their discretion take into account matters which the courts consider not to be proper for the guidance of their discretion, then in the eye of the law they have not exercised their discretion." In **R. v. Board of Education** (1910) 2 K.B. 165, Farwell, L.J., at page 179 ; 74 J.P. 259, dealt with the exercise of discretion by Government departments in the following terms : " If the tribunal has exercised the discretion entrusted to it *bona fide*, not influenced by extraneous or irrelevant considerations, and not arbitrarily or illegally, the courts cannot interfere ; they are not a court of appeal from the tribunal, but they have a power to prevent the intentional usurpation or mistaken assumption of a jurisdiction beyond that given to the tribunal by law, and also a refusal of their true jurisdiction by the adoption of extraneous considerations in arriving at their conclusions or deciding a point other than that brought before them, in which cases the courts have regarded them as declining jurisdiction. Such a tribunal is not an autocrat free to act as it pleases, but is an inferior tribunal subject to the jurisdiction which the Court of King's Bench for centuries and the High Court since the Judicature Acts, has exercised over such tribunals." It has also been laid down that a body having a duty to exercise a discretion upon an application being made to them, must consider every such application upon its merits. Thus a licensing body cannot come to a general resolution to refuse a licence to everybody who does not conform to some particular requirement. See **R. v. Sylvester** (1862), 31 L.J.M.C. 93 ; **R. v. Walsall Justices** (1854), 18 J.P. 757 ; **R. v. London County Council** ; **Ex parte Corrie** (1918) 1 K.B. 68 ; 82 J.P.20 ; **cf. R. v. Port of London Authority** ; **Ex parte Kynoch, Ltd.** (1919) 1 K.B. 176 ; 83 J.P. 41.

Similar language to that of Farwell J., in **R. v. Board of Education** (*supra*), was used by Lord Sumner in **Roberts v. Hopwood** (*supra*), in respect to borough councils. " Much was said at the bar about the wide discretion conferred by the Local Government Acts on local authorities. In a sense this is true, but the meaning of the term needs careful examination. . . . There are many matters which the courts are indisposed to question. Though they are the ultimate judges of what is lawful and unlawful to borough councils, they often accept the decisions of the local authority, simply because they are themselves ill-equipped to weigh the merits of one solution of a practical question as against another. This, however, is not a recognition of the absolute character of the local authority's discretion, but of the limits within which it is practicable to question it. There is nothing about a borough council that corresponds to automony."

The principle enunciated by Lord Russell in the case of **Kruse v. Johnson** (1898) 2 Q.B. 91 ; 62 J.P. 469, that when a discretion is conferred upon a local authority, the court ought to show great reluctance before they attempt to determine how, in their opinion, the discretion ought to be exercised, may be taken to represent the attitude usually adopted by the court whenever the exercise of a statutory discretion by a government department or local authority is in question. Thus in **R. v. Brighton Corporation** ; **Ex parte Thomas Tilling, Ltd.** (1916), 80 J.P. 219, Lord Reading said at page 221 : " It is the policy of Parliament to leave the decision of these matters to the local authority, and the court has always taken the view that assuming that the local authority has come to a decision upon the merits of the case without taking into account, or being influenced by, matters which were outside the proper sphere of their consideration, the court would not interfere, notwithstanding that it might have arrived at a totally different conclusion." (See also the judgment of Lord Buckmaster in **Roberts v. Hopwood** (*supra*). The Divisional Court frequently refuses applications for rules *nisi* for writs of *certiorari*, and discharges such rules in the absence of evidence showing that there has not been a proper exercise of discretion by the department or local authority concerned. To succeed, it must at least be clear that there has been a failure to take into consideration matters which ought to have been considered, or that matters have been considered which ought not to have been considered, or that the discretion has been exercised for ulterior or improper motives.

In conclusion, the phrase, " shall think fit," which occurs frequently in local government legislation must be considered. In **Carr v. Anderson** (1903) 1 Ch. 90, Cozens Hardy, L.J., stated that the words " shall seem fit " import the exercise of some discretion and that some care must be taken in the matter. The same may equally be said of the phrase " shall think fit."

In **Roberts v. Hopwood** (*supra*), Lord Wrenbury, in the course of his judgment remarked as follows : " Thirdly and lastly, I point to the word fit. That word means, I think, ' fitting ' or ' suitable.' The words ' as they think fit ' do not mean ' as they chose.' "

Lord Sumner, in the same case, said such words are subject to an implied qualification of good faith, as the authority exercising the power " may *bona fide* thing fit," while Lord Atkinson, thought the words should be construed as meaning, " shall think fitting and proper."—" Justice of the Peace," 27/8/27.

BILLS BEFORE PARLIAMENT.

Public Service Superannuation Consolidation.

Guardian of Infants Amendment. To confer on Magistrates Courts jurisdiction to give consent, in certain cases, to marriage of infants. Section 7 of Guardian of Infants Act 1926 limits jurisdiction of Court to infants over sixteen years of age. Bill extends jurisdiction to children under that age.

Petroleum. Warrants to prospect for petroleum to be issued by Minister. Holders of prospecting warrants obliged to carry on prospecting operations. Existing rights may be surrendered and rights under the Act may be taken in lieu thereof. Notice to be given in writing to the Minister of existing rights in respect of petroleum created otherwise than by grant of warrant or license. Persons injuriously affected by the operations of Act entitled to compensation. Royalties 10 per centum of value of crude petroleum won under license; Crown right to priority in purchase of output. Governor-General on behalf of licensee may take land under P.W. Act. Wages of workmen constitute an equitable charge on plant. Penalty for breach of provisions of Act, £50.

Police Offences. Consolidation.

Hutt Valley Lands Settlement Amendment. Empowering sale by private contract of Workers' Dwellings erected on land subject to principal Act imposition of restrictions on powers of alienation. Mortgagor to continue to reside on mortgaged premises.

Industrial Conciliation and Arbitration Amendment. Permanent assessors dispensed with. Judge alone to exercise certain jurisdiction of Court. Arbitrators appointed for each particular dispute. Principal Act not to apply to Farming industry and industries associated therewith. Courts may provide in awards for payment by results. Individual employers may agree with workers for payment by results. Dismissal of worker within six months after acting as assessor or as arbitrator to be *prima facie* evidence of his having been dismissed because of his so acting. Compulsory Conference to avoid strikes or lock-out in any industry.

Post and Telegraph Amendment.

Motor Vehicles Amendment. Provision for registration of motor vehicle in any district. Issue of registration plate may take the place of the issue of annual license. Limiting provisions of Section 12 (4) of principal Act made by local authorities in respect of motor vehicles plying for hire. Local authority where motor vehicle is garaged may charge licensing fee.

Slaughtering and Inspection Amendment. Local authority may raise special loan for extending its abattoir.

Coal Mines Amendment. Wages of workmen to constitute an equitable charge upon plant, and other minor amendments.

Seeds Importation. Seed to be treated before importation so as to distinguish it. Offence to sell or possess imported seed not treated.

Electoral Consolidation.

Reserves and Other Lands Disposal.

Mortgagees Indemnity (Workers' Charges). Mortgage Indemnity Fee of One Shilling to be charged on each mortgage and release of mortgage. Mortgagee to have claim against Assurance Fund in respect of loss resulting from enforcement of workers' charge. Mortgagor not obliged to keep mortgagee insured against loss resulting from workers' charge.

Main Highways Amendment. Cost of experimental work may be paid out of Revenue Fund. Local Authorities may, without taking a poll, borrow money to reconstruct bridge forming part of main highway.

Licensing Amendment.

Motor Spirit Taxation.

Valuation of Land Amendment. Where system of rating on unimproved values is in force in any Borough, the Governor-General may direct the re-valuation of unimproved values to the exclusion of other values; appointment by local authorities of Members of Assessment Court. If no two Members of Assessment Court can agree, President's decision to be the decision of the Court.

Education Amendment.

Howard Estate Amendment.

Introduction of Plants. Conditions governing the introduction of Noxious Weeds and Prohibited Plants.

Mining Amendment. Business and Residence Sites. Licenses not to be "surrendered with a view to acquisition of mining privilege by other person." Prospector to report discovery of minerals to Inspector. Sections 77, 109, 144, 217 and 226 amended. Dredge-master to hold certificate. General rules amended. Mine to have two outlets. Sections 282, 296, 419 amended. Provisions as to directions, etc., given by Inspector.

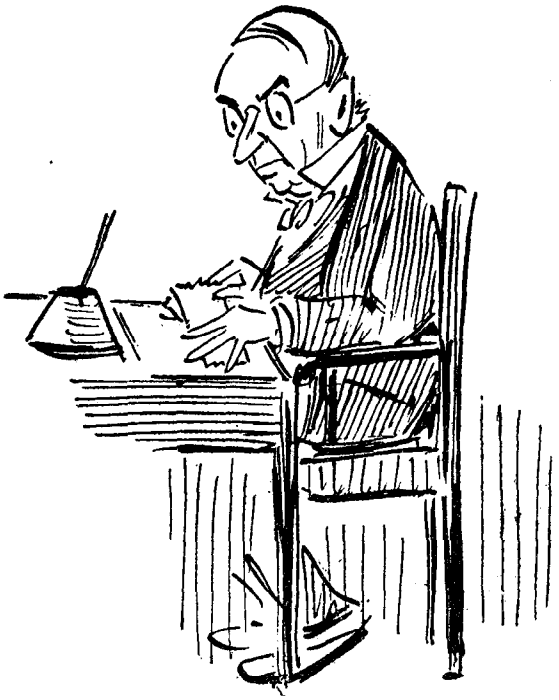
Stock Amendment. Section 47 principal Act amended. Recovery of Stray Stock; Registration of Standard Marks by Societies established to promote improvement of stock. Disturbance of stock by trespassers with dog or gun.

FORENSIC FABLES.

No. 35.

THE EXPERIENCED ADVOCATE AND THE HALF-YEAR'S RENT.

An Experienced Advocate Crossed the Strand in a Happy Frame of Mind after a Full and Satisfactory Day in the Royal Courts of Justice. He had Won the First Case by Pointing Out to the Jury that the Principal Witness for the Enemy had Professed to Remember Details which must (had his Story been True) have Passed from his Mind. His Second Victory was Due to his Reminder of the Jury that the Plaintiff had failed to Recall Incidents which must (had his Account of the Matter in Question been an Honest one) have Dwelt in his Memory. His Third Triumph was the



Result of a Successful Invitation to the Jury to Say that a City Merchant who Pretended that he had Forgotten to Fill Up the Counterfoil of an Important Cheque Ought not to be—Nay, Could not be—Believed upon his Oath. He was Pleased with himself. On Returning to Chambers the Experienced Advocate Found on his Desk a Peremptory Reminder that his Half Year's Rent was Due and Owing. The Experienced Advocate was Indignant because he Felt Sure he had Already Sent a Cheque for the Amount .He Distinctly Remembered Blotting the Date of the Cheque and Filling up the Counterfoil. The Experienced Advocate, having Examined his Pass-Book and Cheque-Book, Ascertained that during the Past Twelve Months he had not Filled up any Counterfoils at all, and, furthermore, that he had not Sent a Cheque, whether Blotted or Otherwise, for the Half-Year's Rent. The Experienced Advocate Rejoiced More than Ever Over his Good Day's Work.

Moral: Circumstances Alter Cases. O.

LEGAL LITERATURE.

THE NEW COOTE AND TRISTRAM.

COOTE'S COMMON FORM PRACTICE AND TRISTRAM'S CONTENTIOUS PRACTICE in the High Court of Justice in Granting Probates and Administrations. Sixteenth Edition, by A. F. Hart and C. T. A. Wilkinson and W. E. Willan. London: Butterworth & Co. pp. lxxxvi, 1074, 70 (Index). Price 55/- in New Zealand.

It is one of the quaint commonplaces of book-buying that a standard English book of forms published just after the Conveyancing Act 1881 (Imperial) can be picked up for as many shillings as an edition of the same work prior to that Act costs in pounds. The domestic reforms in the law involved the loss of its world-wide application. Possibly something similar may happen as a result of the "new conveyancing" introduced by the various Imperial statutes of 1925, which revolutionised the law of property. One may assume—it hardly concerns us—that the new Edition of Coote and Tristram has been carefully brought up-to-date. What does concern us is that the pre-1925 law is still fully treated. The editors recognise that testators who died in 1925 and earlier have left wills that are still unpropounded; in fact, the admissibility of wills made before the Wills Act 1837, came into force is still explained, though shortly (p. 45). So long as the buying public in the Dominion is too small to warrant the issue of a local text-book on probate practice, no practitioner acting upon a will or application for letters of administration which is even slightly out of the ordinary can afford not to supplement with one of the standard English text-books the passages which deal with the topic in the general Supreme Court Practice of Stout and Sim. If he relies on the latest edition of Coote and Tristram he will be in safe hands.

Instances of the value of the book in New Zealand are the passages dealing with Alterations in Wills (pp. 36 *et seq.*), noting, by the way, the difference between an alteration intended to be final and one in pencil and merely deliberative; Incorporation of Papers by Reference (pp. 40 *et seq.*, 486 *et seq.*); Soldiers' and Sailors' Wills (pp. 46 *et seq.*); Wills under the Act which is represent by Sections 31 and 32 of the Administration Act 1908 (pp. 54 *et seq.*); and Due Execution (pp. 496 *et seq.*)

The whole chapter (No. IX), on Limited Grants is of Dominion application. So is the list of the order (where death occurred before 1926) in which next of kin are entitled to administration (pp. 112 *et seq.*) Careful people will appreciate the instructions about the proper way to describe a testator (p. 77) or executor (p. 74), where these do not agree with what is stated in the will, and the way in which administrators of varying degrees of kinship should be described in the administrator's affidavit and the letters of administration (p. 147).

The collection of forms is a large one, and includes many which are handy on occasion in New Zealand, such as those relating to irregular execution (pp. 878 *et seq.*), administration bonds in particular cases (pp. 909 *et seq.*), affidavits (they call them "oaths") leading to various special grants, both of probate (pp. 942 *et seq.*) and of letters of administration (pp. 952 *et seq.*), and some specimen bills of costs (pp. 863 *et seq.*)

Of some interest are the Statutory Will Forms (p. 1041), prescribed by the Lord Chancellor under the Law of Property Act 1925, and apparently another attempt to popularise that "shorthand conveyancing" of which the Leases Act 1845 (Imperial) was an example, (generally understood to have been little adopted), and of which the Sixth Schedule to the Land Transfer Act 1915 and the Fifth Schedule to the Chattels Transfer Act 1924 furnish other, and slightly more popular, examples. One would think that a testator with property of importance to justify the elaborate provisions which are available would prefer his will to be a self-contained document. Their completeness, however, should make some of them, such as the directions respecting annuities, and legacies to charities, and the administration trusts, valuable as precedents in drawing wills.

The perversity of the public is the profit of the profession—as may here be clearly seen from the "summaries of reported cases," introduced at convenient places. It is impossible to say what the worthy testator will do next; but it is some help to know what he has done in the past—to wit, signed in the testimonium or attestation clause (so frequently that a regular form of affidavit is provided for his case), signed his will with a rubber stamp, filled in a blank in different ink, referred to other documents, made obliterations which require a microscope to decipher the will, or made a series of testamentary documents leaving their revocative effect on each other uncertain.

Finally, one may commend to practitioners in the Native Land Court Chapter XI, with its eleven grounds on which the validity of a will may be hopefully attacked.

A. WATT.

BENCH AND BAR.

Mr. J. W. Poynton, Stipendiary Magistrate at Auckland, since 1918, died suddenly on Sunday evening, November 13th. The late Mr. Poynton was for ten years a gold miner on the West Coast, but on the advice of Sir Robert Stout took up the study of the Law, qualifying and being admitted in 1891. He practiced in Wellington until 1895, when he was appointed Magistrate at Invercargill. In 1900 he was appointed Public Trustee, and in 1910 Secretary to the Treasury and Superintendent of Advances to Settlers. He was well liked as a Magistrate, acting always with impartiality and to the best of his judgment.

It is understood that the leading practitioner in Auckland, who previously intimated his inability to accept elevation to the Supreme Court Bench, has again found it impossible for him to accept the proffered honour.

Mr. C. T. Keegan, for past three-and-a-half years Managing Clerk Messrs. Alison and Alderton, has commenced practice at Dilworth Buildings, Auckland.

Mr. C. H. M. Wills, formerly of Mr. J. F. W. Dickson and Mr. H. L. M. Buisson, formerly on staff of Mr. R. N. Moody, have entered into partnership and commenced practice at Winstone's Buildings, Queen Street, Auckland.

During his recent visit to the Argentine with the British Rugby Team, Mr. J. O. J. Malfroy took the opportunity of enquiring into the legal system there. He found the Argentinians very keen upon following the experiments of the Legislatures of New Zealand and Australia, particularly in regard to the Labour Laws. Mr. Malfroy was also interested in the mortgage system of the country he visited. The mortgages are gilt-edged security, state guaranteed, and negotiable on the Stock Market. Efforts to introduce the Torrens System of registration of land titles have failed.

RULES AND REGULATIONS.

Regulations as hereinafter mentioned appeared in Gazette issued on 3rd November, 1927:—

Additional Rules for Examination of Masters and Mates—Shipping and Seamen Act 1908.