Butterworth's Fortnightly Notes.

" When you have resolved to fight a battle, collect your whole force. Dispense with nothing. A single battalion sometimes decides the day." —*Napoleon.*

TUESDAY, DECEMBER 20, 1927.

RETROSPECT.

And so the year's work closes. Ere yet another respite is taken, and the chapter of the year is sealed, it has become a custom to look back from the vantage point of the present and view the immediate past.

The closing year has been nominated the critical year by the Minister of Finance. The financial aspect has been far from bright, and this adverse factor has weighed as heavily upon the legal profession as upon any other section of the community. This is evidenced by the decrease in the quantity of Conveyancing work. The total number of properties transferred under the Land Transfer Act during the seven months, April to October, is 18,966, the consideration for which totals £18,522,984 as against 21,188 transfers, the consideration for which totals £20,774,519 for the corresponding seven months of last year. This represents a decrease of 2,222 transactions and a decline of £2,251,535 in the consideration over the period under review. The plaints in the Magistrates' Court during 1926 totalled 81,061 ; the amount claimed £1,333,941. For the six months ending 30th June, 1927 the plaints entered numbered 41,717 and the amount claimed £714,251, so it will be seen that the small debtor has had even less of an earthly paradise this year than last. The financial stringency has had its effect upon the litigation before the Supreme Court, there being a decided falling off of contested cases. Undoubtedly litigation is one of the luxuries which has been curtailed by the public. The economic outlook at the present moment is certainly more promising. The benefit of the present satisfactory price levels of our products will be felt during the coming years, but a goodly amount of hypothecation will have to be worked off before any buoyancy in commerce generally will be felt. How long this will take cannot be conjectured but until this time arrives no considerable increase in legal work can be looked for. The situation for the profession generally should, however, gradually ease from now onward.

The Legislature during the recent session promised much but achieved little, the Rural Intermediate Credit Measure being of the greatest interest. The Police Offences Acts, and the Justices of the Peace Acts were consolidated, but the Magistrate's Court Act, although amended, was not consolidated, which is to be regretted. The Stamp Act was amended but no provision was made for the part remission of duties in the case of quick successions. Why this desirable provision was not included is a little difficult to understand. The Parliamentary Debates during the session were not of an elevated quality and this state of affairs would point to the desirability from a Dominion viewpoint of members of the legal profession taking a greater interest in public life than they do at present. It is to be hoped that the forthcoming Law Conference will result in the profession taking upon itself a wider function than has hitherto obtained and exert its corporate influence in respect to legislation. Should such be achieved many members would, it is hoped, be moved to offer themselves at the Parliamentary Elections, and if successful to share the ardours of the labours of the Executive Council.

The ranks of the profession have been sorely depleted by the hand of the Reaper. Sir Bassett Edwards, ex-Judge ; Mr. Justice Alpers ; Mr. White, K.C., of Timaru ; Mr. B. J. Dolan, of Wellington ; Mr. Walter H. Armstrong, of Cambridge ; Mr. H. Clement Kirk, of Wellington ; Mr. J. W. Poynton, S.M. ; Mr. F. E. Wilson, of New Plymouth, and Mr. A. Swarbrick, of Hamilton, have gone to their last bourne, all of them well remembered for their respective contributions to the work of their age and generation.

The impending retirement of Mr. Justice Stringer will add another kindly personality to that band which, including Sir Robert Stout, Sir Frederick Chapman, Sir John Hosking, Mr. P. S. McLean and Mr. A. de B. Brandon has a hold upon the respect and affection of the men of our own time. It is the wish of all that the members of this revered band will long enjoy the tranquility of the friendship of life's decline—retirement.

With brighter hopes for the future and an immediate determination to banish care for the festive season and the vacation, this Journal takes its leave of the profession it has endeavoured to serve faithfully, having enjoyed throughout the year the reciprocity of an ever-increasing encouragement from both the members of the Bench and the Bar.

SAMOAN COMMISSION.

It was unfortunate, but, nevertheless, probably inevitable, that the Samoan affair should have become the subject of party politics. The administration of Western Samoa by New Zealand had been in the past the subject of commendation by the Mandates Commission of the League of Nations. Soundings of a subterranean disturbance reached us via Sydney that the Samoan was not as contented with his lot as we were led to believe by the official reports. But of these matters the legal profession, *qua* profession, took no concern. Interest was, however, quickened when the Government's Samoan Bill was brought down. This measure gave to the Administrator of Samoa, the power to order white persons to leave Samoa, and the power to banish Samoans without preferring a charge and without recourse to legal process. Were these measures justified ? In respect to the latter power assurance has been given in no measured terms by the Royal Commission that for the proper administration of the territory, the power given to the Administrator to banish Samoans is necessary. The finding together with the expression, " after due investigation, that the banishing " orders were made after proper enquiry and that no " objection can be taken to them," dissolves any suspicion that the Administrator is using his powers in an arbitrary or tyrannical manner. The Commission appear to have been satisfied with the Administration in its attitude towards the Native Samoan. Their discontent was manufactured for them by the Mau ; but it does not appear that the Mau has been at all successful in its efforts to make out a case against the Administration. The Commission finds that the Administration and the Mau cannot exist together. This therefore justifies the Government in its attitude of supporting the Administration. The complaint of Sir Joseph Carruthers, who is taking a great interest in this matter, that the Order of Reference was too narrow, cannot be taken seriously. Neither Sir Charles Skerrett nor Judge McCormick would have accepted the Commission with an order of reference framed to make their work of no value.

SUPREME COURT.

MacGregor J. November 23, 24, 28, 1927.
Wellington.

DE CHATEAU v. CHILD.

Land Transfer Act 1915—Alteration of Transfer after Execution in Purported Pursuance of Agreement for Sale—Materiality—Registration Void—Transfer Certified Correct before Alteration by Solicitor Employed as Clerk—Employment Terminated before Alteration and Registration of Instrument—Whether Proper Certificate—Land Transfer Act 1915, Section 175.

Action claiming (*inter alia*) declaration that a memorandum of mortgage a memorandum of transfer were wrongly registered, and that the plaintiff was entitled to have the Land Transfer Register corrected and rectified by removing the entries of such registrations. The facts appear sufficiently in the note of the judgment. The case is not reported on the other relief claimed, nor upon the counterclaim.

Wiren for plaintiff.
Sladden for defendants.

MACGREGOR J., said that for the plaintiff it had been contended that the registration of both transfer and mortgage had been "wrongfully obtained" inasmuch as the transfer itself (the governing instrument of title) (a) was void in law before registration, and (b) had not been properly certified under Section 175 of the Land Transfer Act 1915. The facts regarding the registration of the transfer and mortgage were fairly clear. The property was originally purchased by the plaintiff from the defendants under and in terms of an agreement dated 27th October, 1925. The transfer of the land, along with an adjoining right of way was executed by the vendors on 27th November, 1925, but was not registered until 8th September, 1927. The long delay was accounted for in part by the fact that the subdivisional plan was not deposited until June or July, 1926. Until that time the documents remained unregistered in the hands of the firm of solicitors who were then acting both for the vendors (who were also mortgagees) and for the purchaser. About that time the firm of solicitors apparently discovered that there had been no covenant obtained from the purchaser in furtherance of clause 6 in the agreement of sale and purchase, relating to the right of way that went along with the property. The solicitors' clerk in charge of the transaction then added to the transfer (already executed) a further clause in the shape of a covenant by the purchaser binding her to pay a share of the cost of maintaining the right of way, in apparent pursuance of the clause to that effect contained in the agreement. That new clause was added to the transfer on the express instructions of one of the defendant mortgagees, who himself was a solicitor. It was so added without any instructions or consent from the purchaser, who persistently refused thereafter to sign the transfer so altered, and consulted a fresh firm of solicitors—more especially with reference to having the right of way more clearly defined in a separate document signed by all necessary parties. Finally on 8th September, 1927, the transfer so altered was registered along with the mortgage by the original solicitors, but without any notice to the plaintiff or her solicitor. On those facts, in His Honour's opinion, the transfer had become wholly void. The rule of law on the subject in New Zealand was clearly stated in **Thornes v. Eyre,** 17 G.L.R. 499, where Cooper J. followed closely the well-known decision of the English Court of Appeal in **Suffell v. Bank of England,** 9 Q.B.D. 555. It was unnecessary to cite the earlier cases, which were fully reviewed in **Suffell's** case (*cit sup.*). As was said by Grose J., in **Master v. Miller,** 4 T.R. 320: "The "principle of those cases is that any alteration in a material "part of an instrument or agreement avoids it, because it there- "by ceases to be the same instrument."

In the present case His Honour thought that it had been established (1) that the alteration of the transfer was material; (2) that it was made with the consent of the vendors; and (3) that it was made without the consent of the purchaser. It therefore according to **Suffell's** case (*cit sup.*) avoided the whole instrument so altered. It was argued for the defendants that the alteration so made by them was not material, inasmuch as it did not bind the plaintiff, she not having signed the transfer so altered. The answer to that argument was that by the alteration itself, without any further signature, the transfer had ceased to be the same instrument as before. His Honour thought also that the registration of the transfer was "wrong- "fully obtained" on the further ground that it had not indorsed thereon a proper certificate under Section 175 of the Act. It was indorsed shortly after its execution: "Correct for the pur- "poses of the Land Transfer Act," by Mr. T., who was himself a solicitor in the employment of the firm of solicitors originally acting for both vendors and purchaser. Before registration was effected Mr. T. had left the employment of the firm. His certificate was of course signed long before the alteration was made in the transfer, so that the instrument he certified as "*correct*" was not the same instrument as that presented to the Registrar on 8th September, 1927. In those circumstances His Honour did not think there was any real compliance with the terms of Section 175. The instrument of transfer was certainly not signed nor approved of by the purchaser herself, nor did His Honour think it was (in the language of Section 175) signed by "a solicitor of the Supreme Court employed by" her. (As to that question, see **District Land Registrar v. Thompson** (1922) N.Z.L.R. at p. 631).

For the foregoing reasons the plaintiff was entitled His Honour thought, to a declaration that the memorandum of transfer and the memorandum of mortgage were wrongfully registered, and the plaintiff was entitled to have the Land Transfer Register corrected and recitified by removing the entry of such registrations accordingly.

Solicitors for plaintiff: **Tripe and Herd,** Wellington.
Solicitors for defendants: **Gray and Sladden,** Wellington.

Skerrett C.J. December 2, 8, 1927.
Blenheim.

IN RE NICOLL.

Infant—Guardianship of Infants Act 1926—Welfare of Infant Paramount Consideration—Matters to be Considered.

Application by the father of the above-named female infant for a writ of Habeas Corpus to be issued directed to Emma Murray, the maternal aunt of the above-named infant, for the purpose of restoring the infant to the custody of her father. The child was born on the 18th July, 1924, and the mother died within a week after the birth of the child. At the time of her death the father had another child, then about fifteen months old. The father was then wholly unable adequately to provide for the bringing up of his two children, the younger of whom necessarily required great attention. Mr. Nicoll accordingly arranged with a Mrs. Ham, the mother of his late wife, to take charge of his elder child, and also arranged with Mrs. Murray, the sister of his late wife, to take charge of the child just born. On the 1st February, 1926, the father remarried. He married a widow who had no children of her own, but who had adopted a daughter when two years of age. That daughter was at the date of the application 16 years of age, and was in excellent health. The applicant's second wife was 37 years of age, and was said to be very capable with children. After his remarriage, the applicant became desirous of again having the custody and care of his children. In March, 1926, he obtained the custody of his child Joan, who had in the interim after his wife's death been in charge of her maternal grandmother. He was also desirous of obtaining the custody of his younger child, and applied in July, 1927 to Mrs. Murray to yield up the custody of the child to him. Mrs. Murray, who was a widow, had apparently become greatly attached to the child and refused to part with her, and also refused to accept payment for the keep of the child since she had been with her. The child was apparently not constitutionally unsound but of a nervous temperament. According to Dr. Boag, who saw the child during the first twelve months of her life, the child had improved in strength and general health and was at the date of the application a moderately healthy child not requiring any special medical attention.

P. B. Cooke for appellant.
Kennedy and Nathan for Mrs. Murray.

SKERRETT C.J., said that the question was whether under the circumstances the father was entitled to the custody of his child. It was clear that under the Guardianship of Infants Act 1926 the Court in determining that question must have regard as a first and paramount consideration to the welfare of the infant. His Honour referred to **In re Thain,** (1926) 1 Ch. 676, per Warrington L.J., and to **The Queen v. Hyngal** (1893) 2 Q.B. 232, 243, per Esher M.R., and said that it was clear that under our statute and also under the rules of equity the greatest regard was had to the benefit a child must acquire from being in the custody of its parents and from obtaining the love and affection which that relation inspired. The father's life was blameless and the wife he had recently married was a

lady of good character and quite competent to assist in the bringing up of the child. In parting with the child to Mrs. Murray the father must be held to have acted under the pressure of circumstances existing at the time and to have done what was then the best thing for his child and himself. Both in parting with his child and in seeking to take her back he had been actuated by motives of affection. The father had not been guilty of any misconduct and had not been unmindful of the welfare of his child, and of his parental duties.

It was true that Mrs. Murray had been most attentive, affectionate and skilful in her treatment of the child ; and it was to her kindness and attention that the present healthy condition of the child was due. Those circumstances however were not sufficient to override parental rights or to justify the Court in depriving the child of the opportunity of winning the affection of its parent and of standing in the intimate relation of child and parent. Unless Mrs. Murray was to have the permanent custody of the child it was clear that the sooner the parting came the better it would be in the interests of the child. His Honour adopted the words of Eve J., quoted by Warrington L.J., in **In re Thain** (cit. sup.) at p. 691 :

> " It was said that the little girl would be greatly distressed " at parting from Mr. and Mrs. Jones. I can quite under- " stand it may be so. But at her age one knows how merci- " fully transient are the effects of parting and other sorrows, " and how soon the novelty of fresh surroundings and new " associations efface the recollection of former days and kind " friends ; and I cannot attach much weight to this aspect " of the case."

In the case dealt with by Eve J., the child was about seven years of age. In the present case the child was only a little over three years. His Honour did not think that that suggestion afforded sufficient ground for declining to give the father the custody of the child.

His Honour was satisfied that the father was of sufficient financial ability and had a home and other conditions which would enable him to bring up the child comfortably and to render its future as far as possible happy.

His Honour thought therefore that the applicant was entitled to the writ for which he applied ; but the writ would not issue from the office at Blenheim for seven days in order that in the meantime through the Solicitors or otherwise some convenient arrangement might be made for restoring the child to the applicant. If such an arrangement could not be made then the writ would issue to bring the child up on an early date to be handed over. That could take place at the ensuing sittings of the Court about to be held at Blenheim. There would be no order as to costs.

Solicitors for applicant: **Burden, Churchward and Reid,** Blenheim.
Solicitor for Mrs. Murray: **A. C. Nathan,** Blenheim.

Skerrett C.J. (In Chambers). November 12, 1927. Wellington.

IN RE NEALE, EX PARTE BLACK AND WHITE CABS, LTD.

Bankruptcy—Practice—Creditor's Petition—Service of Summons Without Copy of Petition—Whether Petition should be Dismissed—Bankruptcy Act 1908, Section 37 (2)—Rule 103 of Bankruptcy Rules.

In this case the petition for adjudication had been duly filed and a summons under Section 37 of the Bankruptcy Act 1908 had been taken out of the Court calling upon the debtor to appear and shew cause why he should not be adjudged bankrupt. A copy of the petition had also been taken out of Court with the intention of serving the same together with a copy of the summons on the debtor as required by sub-section (2) of section 37. The summons had been duly served upon the debtor but no copy of the petition had been served.

Shorland for petitioning creditor.
Fitzherbert for debtor.

SKERRETT C.J., said that counsel for the debtor asked that the petition should be dismissed and counsel for the petitioner asked that the summons should stand over in order to enable the summons and petition to be duly served. His Honour was unable to accede to the contention of counsel for the debtor that the whole proceeding was a nullity. It was clear that the decision **In re McGregor,** 33 N.Z.L.R. 801, to the effect that the filing of the petition and the issue of the summons were contemplated by the Act to be contemporaneous acts must be treated as overruled : see **In re Olsen** (1919) N.Z.L.R. 73. In the present case the petition had been duly filed and a summons duly issued and all that had happened was that the summons calling upon the debtor to show cause why he should not be adjudged bankrupt had not been validly served. It appeared that the petitioner was entitled under Rule 103 to ask the Registrar to alter the first day appointed for the hearing of the petition and to appoint another day and hour. The summons could then be served together with a copy of the petition as required by Section 37. His Honour would therefore adjourn the summons for a week but upon the condition that the petitioning creditor paid to the debtor the sum of £2 2s. 0d. costs. That indulgence would permit the petitioning creditor to serve the summons and petition in due form.

Solicitors for petitioning creditor: **Chapman, Tripp, Blair' Cooke and Watson,** Wellington.
Solicitors for debtor: **Johnston, Beere & Co.,** Wellington.

Sim J. November 16, 23, 1927. Invercargill.

SOUTHLAND DAIRY COMPANY LTD. v. WARD.

Landlord and Tenant—Sub-Lease—Renewal—Construction—"Increased Rental" of Head Lease—Literal Construction Leading to Absurdity.

Action for the specific performance of a contract to grant a sub-lease. In 1914 the defendant, the Right Honourable Sir Joseph Ward, was the lessee of a parcel of land in Invercargill containing 29.3 poles, under a lease for 14 years from 1st April, 1913, at the yearly rental of £35. On 6th June, 1914, the defendant subleased to the Southland Farmers' Co-operative Association Limited a part, containing 27.1 poles, of the parcel of land included in his lease. The sub-lease was for the term of 14 years from 1st April, 1913, less the last day of the said term at the yearly rental of £78. The sub-lease was in 1921 transferred with the consent of the Defendant to the Plaintiff. Clause 5 of the sub-lease provided :—

> " At the expiration of the said term hereby created if the " Lessor shall obtain a renewal of his said lease the Lessor " shall give and the Lessee shall take a renewal of this sub- " lease for the whole of the term of such renewal excepting " the last day thereof upon the same terms and conditions " as are herein expressed (including this present covenant " for renewal) and at the same rental but with this variation " that if the rental to be paid by the Lessor under such new " Superior Lease of the said lands shall have been increased " then the rental under such new sub-lease shall be raised " to the extent of that part of the increased rental (as afore- " said) which bears the same proportion to the total increased " rental as the area of the land included in this sub-lease " bears to the area of the land included in the Superior " lease . . . ."

The defendant obtained a renewal of his lease but not for the whole of the land included in the original lease. The new lease included only the 27.1 poles included in the sub-lease. The rental for the new term was £42 per annum being an increase of £7 per annum on the rent payable under the original lease. The defendant was willing to grant a new sub-lease to the plaintiff and the plaintiff was willing to accept such new sub-lease, but they were not agreed as to the amount of the new rent. The plaintiff claimed that it should be £85, i.e., the rent payable under the first sub-clause plus the additional rent of £7 which the defendant had now to pay. The defendant claimed that the rent should be £120, i.e., the original rent of £78 plus the whole rent of £42 payable by the defendant under his new lease.

H. J. Macalister for plaintiff.
P. B. Cooke for defendant.

SIM J., said that in order to give effect to the plaintiff's contention it was necessary to read the words " increased rental " in Clause 5 of the sub-lease as referring not to the whole rental, but to the amount by which the original rental had been increased. The defendant contended that the Court was not justified in departing from the literal meaning of the words used. If the defendant's construction were adopted some curious results would follow. If the defendant had obtained a renewal of his lease without any increase of rent, then the rent to be paid under the new sub-lease would have been only £78. The position, therefore, was that an increase of £7 in the defendant's rent caused an increase of £42 in the plaintiff's rent. If the defendant at the end of the next 14 years secured a renewal of his lease, the plaintiff would be bound to take a renewal

of the sub-lease. If the defendant's rent was increased by, say, £1 per annum then the plaintiff's rent had to be increased by £43, making a total rent of £163. And so, term after term, if the defendant secured a renewal of his lease with an increase, however small, of his rent, the rent under the sub-lease would go on piling up indefinitely at the rate of something over £43 each term. That result was so fantastic that it was impossible to believe that the words in question correctly expressed the intention of the parties. Where the literal construction would lead to an absurd result, and the words used were capable of being interpreted so as to avoid that result the literal construction would be abandoned: **10 Halsbury's Laws of England,** 435; **Wallis v. Smith,** 21 Ch.D. 243, 257. In the present case to read the words literally would lead to an absurdity. That absurdity might be avoided by giving to the words "the increased rental" an interpretation of which they were capable, namely by treating them as meaning the amount of the increase in the new rental to be paid by the defendant. That, His Honour thought, was how they ought to be construed, with the result that the plaintiff's contention as to the rent was upheld.

Solicitors for plaintiff: **Macalister Bros.,** Invercargill.
Solicitors for defendant: **Watson and Haggitt,** Invercargill.

Reed J. November 28; December 6, 1927.
Auckland.

IN RE O'NEILL, DECEASED: O'NEILL v. McDONALD.

Will—Construction—Absolute Gift or Life Estate—If Absolute Interest Conferred Provisions for Substantial Specific Legacies of No Effect.

Originating summons for interpretation of will of James O'Neill, deceased, which provided: ..

"I give and bequeath to my wife .... all my interest in land "and stock furniture and effects on property at Omahu After "death of my wife .... I bequeath the following amounts "...." (then followed a number of specific pecuniary legacies, after which the will proceeded) "The balance of money from "the estate to be divided as follows to be in equal parts to "educating Catholic children Thames and to finish the building "of the Catholic Church Thames."

McLiver for plaintiff.
Dickson for Lonergan.
Richmond for Salvation Army.
Conlan for Sister Hill.
Finlay for Margaret Cronin.
McVeagh for defendant and Bishop Cleary and Bishop Lister.

REED J. said that it had been contended for the widow that there was an absolute bequest to the widow of the land and chattels mentioned. It was admitted that if that were so it was a bequest of practically the whole estate and that there was no money or property to meet the specific legacies of over £3,000 0s. 0d. which were to take effect on the death of the widow. That condition existed both at the time of making the will and at the date of the death of the testator. The will was a home-drawn holograph will. It undoubtedly represented the attempt of the testator, unskilled in legal matters, to dispose of the whole of his property. It must be presumed that he knew his financial position and therefore knew that he had no money to meet the pecuniary legacies of £3,000 0s. 0d. Knowing this, he provided that they were payable at his wife's death. He knew that there was no source from which they could be provided but by the sale of the property bequeathed to his wife, and he closed the will with a bequest of the residuary estate in the words "the balance of money from the estate to be "divided etc." The intention appeared to be that, as submitted by Mr. McVeagh, he had a succession of interests in view, first the life estate of his wife, secondly on her death and on realisation of the estate the pecuniary legacies, and lastly any money received from the sale of the estate after satisfying the legacies to be distributed as provided in the disposition of his residuary estate. Any other construction would have the effect, if there were any money in the estate, of an intestacy as regards that money during the lifetime of the widow. His Honour thought, therefore, that the intention of the testator sufficiently appeared from the will that a life estate only in the wife was intended.

Solicitor for plaintiff: **F. D. McLiver,** Auckland.
Solicitor for Lonergan: **J. F. W. Dickson,** Auckland.
Solicitors for Salvation Army: **Buddle, Richmond and Buddle,** Auckland.
Solicitors for Sister Hill: **Conlan and Wright,** Auckland.
Solicitor for Margaret Cronin: **G. P. Finlay,** Auckland.
Solicitors for defendant and Bishops Cleary and Lister: **Russell Campbell and McVeagh,** Auckland.

THE N.Z. CONVEYANCER.

Conducted by C. PALMER BROWN.

MEMORANDUM OF LEASE OF FARM WITH DETAILED CROPPING COVENANTS.

I,
(hereinafter called "the Lessor" which expression unless repugnant to the context shall include my executors administrators and assigns) being registered as the proprietor of an estate in fee simple subject, however, to such encumbrances, liens, and interests as are notified by memorandum underwritten or endorsed hereon, in the piece of land situated in the
of containing by admeasurement
be the same a little more or less

DO HEREBY LEASE to
(hereinafter called "the Lessee" which expression unless repugnant to the context shall include his executors administrators and assigns) all the said land to be held by him the Lessee as tenant for the space of
years from the day of
One thousand at the yearly rental of payable by equal half-yearly payments of on the days of and in every year, the first of such half-yearly payments to be made on the day of next subject to the following covenants conditions and restrictions:—

1. The Lessor excepts and reserves from this demise all mines metals minerals coal lignite and gravel in under or upon the said land together with full powers for himself his agents servants and workmen to enter upon the said land and dig search for get dress make merchantable and carry away sell and dispose of the said mines metals minerals (including gold) coal lignite and gravel hereby excepted and reserved or any part thereof respectively by such means and in such manner as the Lessor shall think necessary and for these purposes or any of them to erect buildings and machinery on and to enter on the said land or any part thereof and occupy such part thereof as shall be necessary.

2. The Lessee will during the said term pay the rent hereby reserved on the days and in manner aforesaid.

3. The Lessee shall and will pay all rates taxes assessments and outgoings whatsoever now or hereafter during the continuance of this Lease to be or become due or payable in respect of the said land except land tax.

4. The Lessee will not assign transfer sublet or part with the possession of the said land or any part thereof without the previous consent in writing of the Lessor. Provided that such covenant shall not be arbitrarily or unreasonably withheld.

5. The Lessee will not without the consent in writing of the Lessor sow or plant any live fences upon the said land.

6. The Lessee shall and will throughout the said term at his own expense well and sufficiently repair maintain and keep in good and tenantable repair and condition all the buildings erections boundary and dividing and party fences gates ditches watercourses drains and other works including the water supply system to the said demised premises belonging and will renew all such parts thereof as shall become decayed or unserviceable and will at the end or sooner determination of the said term deliver up all such buildings erections fences and ditches in such a like state of good and tenantable repair and condition.

7. The Lessee will permit the Lessor or his Agent either alone or with workmen at reasonable hours in the daytime once at least in every month during the said term to enter upon the said land and view the state and condition thereof and to give leave or send a notice in writing to the Lessee to repair and make good the same within one calendar month next after such notice within which time the Lessee shall repair and make good any want of repairs mentioned in such notice and in default of his so doing the Lessor shall be entitled but not obliged to effect such repairs and to recover the cost thereof by distress or otherwise as rent in arrear.

8. The Lessee will during the said term at his own expense keep insured against loss or damage by fire in the name of the Lessor in some Office to be approved of by him all buildings tenements or premises erected on the said land and will without any demand whatsoever deliver to the Lessor the policy or policies of every such insurance and from time to time the receipts for the premiums thereon and all moneys which shall be received under or by virtue of any such insurance shall in the event of loss or damage by fire be laid out and expended in making good such loss or damage.

9. The Lessee will cultivate and manage the said hereby demised premises in accordance with the best and most approved system of husbandry employed in the District of and will not without the written consent of the Lessor vary the following seven years' rotation of crops throughout the term of this Lease namely :—

Year of Rotation	Crop
In first year	A green crop to be fed off by stock
In second year	A crop of grain
In third year	A green crop to be fed off by stock
In fourth year	A crop of grain which may be sown down with English grasses.

Or at the Option of the Lessee

In first year	A crop of grain
In second year	A green crop to be fed off by stock
In third year	A crop of grain which may be sown down with English grasses and if so sown down then to be manured as in case of green crop.
In fourth year	If not sown down with English grasses in the preceding year then to be sown down with English grasses with a green crop to be fed off by stock.

In fifth, sixth, and seventh years in pasture.

And the Lessee will drill in not less than two hundredweight of approved manure per acre with each green crop and will feed off all such green crops with stock which shall be continuously herded and camped on the said demised land. And it is hereby declared that the words "green crop" wherever the same occur in this Lease shall mean and include Turnips, Rape, Cabbage, or any other crop generally used for feeding stock and that the words "crop of grain" wherever the same occur in this Lease shall mean and include Oats, Wheat, Barley, Rye, Lint, Beans, and Peas.

10. The Lessee will pay to the Lessor on demand the sum of for every acre of the said land on which any crop of Turnips, Rape, Ryegrass, or plants of a like nature have been left for seed in any year and in event of default in the payment thereof the Lessor may enter upon the said demised land or any part thereof and distrain for the amount so unpaid as if the same were rent in arrear under this Lease. Provided that on proof to the satisfaction of the Lessor that any of such grass seed from any such grass seed crop has been sown on any of the demised lands then the Lessee shall be entitled to a refund of two shillings and sixpence for every forty (40) bushels of such grass seed so sown. Provided always and the Lessee hereby covenants with the Lessor that the Lessee shall not nor will take more than two seed crops of turnips, rape, ryegrass or plants of a like nature off the same piece of the said demised land during the said term.

11. The Lessee will furnish to the Lessor at least once in every year a statement in the form to be submitted to the Lessee by the Lessor showing the nature of the crop which the Lessee is growing in each subdivision of the said land during the current year and also the nature of the crop proposed to be grown in the next succeeding year in each subdivision of the said land and the Lessee shall state in such return the amount and kind of manure used on the said land and the name and address of the merchant from whom such manure has been purchased by the Lessee.

And it is hereby agreed and declared by and between the Lessor and the Lessee as follows :—

(a) That notwithstanding anything to the contrary herein contained the Lessee may at any time take out of the said land such coal lignite gravel and building material as the Lessee may require for his own use upon the said land.

(b) And also that three calendar months previous to the expiration by effluxion of time of the term hereby granted the value of all buildings and fencing erected by the Lessee with the previous consent and approval in writing of the Lessor shall be ascertained and determined in case of dispute by arbitration in manner hereinafter provided and if and provided the said buildings and fences respectively shall be standing on the said lands at the expiration of the said term hereby granted the Lessee shall be entitled to receive the amount of the value of such buildings and fencing from the Lessor but the Lessee shall not be entitled to have compensation for any buildings or fences for which such previous consent and approval has not been obtained. And it is hereby agreed and declared between the Lessor and the Lessee that every dispute which shall arise between the Lessor and the Lessee as to the value of any buildings and fencing as aforesaid shall be referred to the arbitration and determination of two indifferent persons one to be appointed by the Lessor and the other by the Lessee and the provisions of the Arbitration Act 1908 shall apply to such arbitration.

PROVIDED ALWAYS and it is hereby expressly agreed and declared that if the rent hereby reserved or any part thereof shall be in arrear and unpaid for the space of three calendar months next after any of the days hereinbefore appointed for payment thereof although no formal or legal demand shall have been made therefor or if the Lessee shall fail to perform or observe any of the covenants conditions or agreements herein contained or implied or by the Lessee to be performed or observed then and in any such case it shall be lawful for the Lessor to re-enter upon the land hereby demised or any part thereof in the name of the whole and the same to have again repossess and enjoy as if these presents had not been made and in case of any such re-entry the Lessee shall not be entitled to receive any valuation or sum whatever for or in respect of any buildings or fencing on the said land or any part thereof.

THE LAW OF BANKRUPTCY.

Part IV.—New Zealand Legislation.

(*Continued from page 250*)

(W. A. Beattie).

In 1861 the ordinance was amended by providing that it was not necessary for the two months' imprisonment to intervene before the debtors' petition could be presented. In 1862 the "Debtors and Creditors Act" repealed the above ordinances, and enacted new provisions. It represented a slight advance. A debtor not in custody might, with the concurrence of one or more creditors to whom he owed not less than £50, petition for the sequestration of his estate for the benefit of creditors, and for relief from imprisonment. The right was given to a creditor to whom the amount owed was not less than £50 to petition for sequestration and cession of property if the debtor remained three days in custody without paying or giving security, or if, not being in custody, he failed to pay or give security after 14 days from the date of judgment, or if he absented himself from his place of business or abode so as reasonably to imply an intent to defeat or delay, or even to avoid service of a summons, or if he suffered execution to defeat or defraud creditors, or if, knowing that he could not meet his engagements he made away with, mortgaged or encumbered property fraudulently and with intent to prevent division amongst the general body of creditors, or, if a trader, pawned, pledged or otherwise disposed of except by *bona fide* transactions goods and chattels which had been obtained on credit and were unpaid for. Here are the beginnings in a way, of Acts of bankruptcy. The Court, on the hearing of the petition, might discharge the debtor and his estate from debts, and order a cession of the property on trusts, the trustee being recommended as a rule by creditors. Provision was made for interim sequestration, and interim protection to the debtor, with certain safeguards. The Court might order the business of the debtor to be wound-up under inspection if the creditors resolved that that should be done. Power was given to the Court to approve compositions in certain circumstances. Prison maintenance was increased to 5/- and a charge of 5% was made on all estates which came under the provisions of this Act, to form "The Insolvent Estates Fund." The offences by a debtor were defined and were added to as follows: Falsifying books; if a trader, conducting business or keeping books with gross negligence; disobeying order calling to appear before Court; not fully discovering affairs within two months before service of any rule, concelaing or embezzling property with intent to defraud; failure to disclose within one month that a debt has been falsely proved; wilfully omitting property from petition or schedule; withholding production of books with intent to conceal state of affairs or to defeat the object of the law; parting with, mutilating concealing or falsifying books after or within three months before petition with intent to conceal true state of affairs; disposing of or concealing from the Court or trustee any property with intent, knowing that unable to meet engagements, to diminish the sum due to the general body of creditors; attempting to account to the Court or meeting of creditors held within three months next before the presentation of the petition, by setting up fictitious losses or expenses; obtaining credit by fraud within three months next before presentation of the petition; disposing of goods unpaid for and obtained on credit, with intent to defraud. A saving clause was inserted with regard to Crown debts, and there were procedural sections.

An office of "Mercantile Assessor" was created, the assessor's duty being to advise the Judge on mercantile and accountancy matters. The assessor could be challenged for cause, and two peremptory challenges were also allowed. This office was abolished in 1866. By an amendment Act of 1865, it was a provided that "All proceedings under the said Act shall be deemed to be proceedings in bankruptcy." The main effect of this Act was to create the office of "Inspector in Bankruptcy," an officer who was to have access to all estate accounts and had general powers of inspection; and also to make provision for priority of debts in certain cases. These priorities so fixed by the Act were landlord's rent, not exceeding twelve months, and the wages of domestic servants, agricultural and other labourers, and salaries of clerks who did not receive more than £150 per annum, not exceeding six months. These all ranked equally, and took priority to all other claims. The Court might make an allowance to the debtor for maintenance up to the time of the first meeting of creditors, of a sum not exceeding £3 3s., not a very large sum indeed. A sequestrator or trustee who held more than £25 for ten days or over, could be penalised in interest at 20%, and if he failed to account to the Inspector within a week after requisition in writing, he was deemed to have appropriated the fund and was guilty of a misdemeanour.

By further amendment of 1866, the debtor was not to get relief, unless the consent of the creditors was obtained, in less than six months, but was to be given relief in any case within three years, if the estate paid less than 6/8 in the £. The thin end of the wedge was inserted as regards the Inspector, and the office of Official Assignee may trace its origin here. He was to be sequestrator in all estates of a value less than £500, and might be appointed a joint sequestrator in other estates, with the consent of the creditors. If a creditor failed to pay maintenance of a prisoner in custody for two weeks, the prisoner had a right to his release, and could not be re-imprisoned for that debt, though the debt was not released.

It is only natural that the arbitrary provisions of such Acts as have been referred to in the above articles, their everlasting basis of imprisonment for this person and for that person, their fixed times and periods and payments, their long enumeration of offences and penalities, their clinging to the historical results of the action of debt, should cease to find favour. A select committee was appointed to go into the whole question of Bankruptcy Law, and in the result a report was made and read. The chairman of the committee, Mr. Reeves, reported to the House, on Friday, the 16th of August, 1867, that the committee had "arrived at the unanimous conclusion that the best course to be taken is to repeal the existing law and to abolish the present system of administration with a view to the adoption of the Scotch system, as embodied with the modification necessary to adapt it to English jurisprudence in the bill recently introduced into the English Parliament by the Law Officers of the Crown.

"Your commissioners accordingly drafted a Bank-
"ruptcy Bill based on the English Bill with alterations
"necessary to suit the circumstances of the Colony
"which they recommend should at once pass through
"the House."

"Your commissioners further recommend immediate
"abolition of Imprisonment for Debt and have prepared
"a Bill to carry out that object taking as their guide

" the measure recently introduced by the same authori-
" ties into the English Parliament."

From the recommendations of the commissioners ultimately came the " Bankruptcy Act 1867." The 19th century was a noble one in law making. The Georges, humorously referred to in Scottish Poem as the " wee German lairdies " had passed. A great Queen held sway over the hearts of a loyal and adoring people, and the atmosphere and conditions for the development of ideals was created. The works of such jurists as Bentham had laden the branches of the trees with bud, and now, in the springtime of her reign the buds burst into glorious bloom. Criminal Law, Procedural Law, almost every branch of law was affected, and not least, the branch which is being dealt with in these articles. Of no time could it be more truly said in the realms of jurisprudence that :

" The old order changeth, yielding place to new,
And God fulfils Himself in many ways."

CORRESPONDENCE.

To the Editor.

Sir,

There passed away at New Plymouth, on Monday, the 14th instant, at the age of 59 years, Mr. Frank Wilson. The event spread a wave of depression among the members of the profession throughout Taranaki. The genial Frank was no more. Not again would his never-failing and cheerful greeting " Well, old man," be heard. Never again would we feel the hearty pressure of his right hand given in no perfunctory manner but with a true friendliness behind it.

Mr. Wilson was no great fighter : he was too humane ;. but as an arbitrator and adviser among his professional brethren, it is safe to say that he had no equal in New Plymouth. The writer has good cause to remember him in this connection. But though not pugnacious, it was generally conceded that our departed friend was well read and thoroughly seasoned in the law. His quiet patient demeanour enabled him to see much that his more volatile brethren might perchance overlook.

It was apparent that his professional brethren were glad at his funeral to have the opportunity of paying their last respects to his remains. Solicitors and clerks—for whom Mr. Wilson always had a pleasant and courteous word—attended in large numbers.

Hath he not always treasures, always friends,
the good great man ?

If ability to hold friends be a mark of greatness, then our late lamented friend was a great man.

" SUUS AMICUS."

To the Editor.

Sir,

There is undeniably a growing desire among a large proportion of the profession in favour of an annual conference. The feeling is that the barrister side overpowers the solicitor element in the constitution of the N.Z. Law Society. To give members generally an idea of how the Law Society (Solicitors only) in England functions as compared with the barrister body will you kindly publish the following note which is taken from the " Law Times " of the 8th ult ?

Yours, etc.,
" SOLICITOR."

" Last week's meetings of the Law Society at Sheffield were marked by that activity which is characteristic of each annual gathering of the solicitor branch of the Profession. Papers were read on several important questions and the discussion which followed in each instance showed the lively interest taken by the members in the subjects brought before them. All this is in painful contrast to the annual meeting of the Bar, which is the most perfunctory and useless performance imaginable, and certainly not in keeping with the place which the Bar holds in the public estimation. From members of the Profession—the Bar and solicitors alike—guidance is expected in the solution of the difficulties that confront the citizen in new legislation, and in suggesting improvements in the sphere of public life. The Law Society certainly does its part in carrying out this duty ; and it would be well if the Bar, too long apathetic would follow the good example so set."

JUDICIAL APPOINTMENTS.

To the Editor.

Sir,

It seems to be the consensus of opinion that the days have passed when judgeships were a close preserve for the benefit of practitioners in the four principal centres. As the work of the judiciary is arranged in New Zealand, specialization of the exclusive kind is impossible for a judge. While pre-eminence in one or more branches of the law is welcomed, there must be no branch with which he is not tolerably familiar. Criminal and commercial work, equity and patent law, divorce and admiralty cases, may all come his way. It has come to be recognised that a lawyer adequately gifted in other respects may equip himself with this necessary range of experience as well in the course of a busy provincial practice as in one of the cities, where the work, especially among leaders, tends more and more to specialization ; and in some cases probably better.

When appointments to the bench are discussed, it is impossible therefore to overlook the claims of Mr. H. B. Lusk, whose name has been more than once mentioned in connection with possible vacancies. Trained originally in Auckland, he has been for many years the leading advocate of Hawke's Bay, if not of the whole East Coast. Until receiving the appointment of Crown Prosecutor at Napier a few years ago, he was retained for the defence in the majority of criminal cases. On the civil side he has been engaged for many years in most of the important litigation of Northern Hawke's Bay, and even farther afield, and is a familiar figure in the Court of Appeal at Wellington. As a man of law, a man of affairs, and a man of the world, he would bring to the bench a ripe experience that would carry the confidence not only of the Bar, but also of the public. His essential fairness has been particularly noticeable in the course of his work as Crown Prosecutor. One can imagine, assuming him to be willing to accept appointment, that his court would be conducted with a simple dignity where courtesy would take the place of pomposity, and firmness would be evident without harshness. The possibility that he may be available for office lends an additional interest to the discussion of the one or more vacancies that are at the present time due to be filled.

Yours, etc.,
" OLD SERGEANT'S INN."

RULES AND REGULATIONS.

Regulations as hereinafter mentioned appeared in Gazette No. 78, issued on 10th November, 1927 :—

General Regulations under Sale of Food and Drugs Act 1908, published in Gazette of 26th June, 1924, amended as follows :—

Regulation 41 amended by—

(a) Deleting from paragraph (d) of clause (2) thereof, the words " and preservative," and :

(b) By revoking clause (3) thereof.

Regulation 46 amended by—

(a) Deleting from clause (1) thereof the words " and preservative," and :

(b) By revoking clause (3) thereof.

Regulations governing the importation of swine from Canada, providing *inter alia* :—

(a) Permit required from Minister of Agriculture.

(b) Every shipment of such swine to be accompanied by a statutory declaration made by the shipper as to breed, sex, etc., and freedom from infectious and contagious disease.

(c) Period of quarantine on arrival in New Zealand—Stock Act 1908.

Regulations as hereinafter mentioned appeared in Gazette No. 82, issued on 1st December, 1927 :—

Amended regulations as to annual returns furnished to Government Statistician by Accident Insurance Companies carrying on business in New Zealand.—Census and Statistics Act 1926.

Maori Jury Regulations.—Juries Act 1908.

Owners of motor vehicles, plying for hire, or carrying passengers, mails, or merchandise over defined routes, to furnish monthly returns to Government Statistician showing particulars of vehicles, quantity and class of goods carried, number of passengers carried, distance run, etc. —Census and Statistics Act 1926.

THE LAND AGENTS ACT 1921-22.

(By C. C. CHALMERS).

(*Continued from page 254*)

3. (1.) No person shall carry on business as a land agent unless he is the holder of a license under this Act.

(2) Where two or more persons carry on business in partnership as land agents it shall be sufficient compliance with this section if one of those persons is the holder of a license under this Act.

(3) Where a company carries on business as a land agent it shall be sufficient compliance with this section if some person appointed in writing by the general manager or pursuant to a resolution of the directors is the holder of a license under this Act.

(4) A barrister or solicitor while in practice as a barrister or solicitor shall not after the thirty-first day of March, nineteen hundred and twenty-three, be the holder of a license under this Act.

NOTES TO SECTION 3 :—

SUB-SECTION (1): As to what is "carrying on "business" as a land agent see Notes to section 2. For definition of "land agent" see section 2. For consequences of carrying on business as a land agent without a license see section 31.

SUB-SECTION (2): Under the corresponding provision, section 3 (2) of the 1912 Act, it was held that, where a licensed land agent under that Act entered into partnership with a person not holding a license, the legal effect was that the former held his license on behalf of the firm, and that section 13 of that Act (see now section 30) did not in such a case debar the firm from maintaining a claim for commission: Smith v. Johnson (1914) 33 N.Z.L.R. 1412; 17 G.L.R. 150.

SUB-SECTION (3).—To enable a company to carry on the business of a land agent there must be power to do so in the memorandum of association. See, for a power that was held sufficient, Wairarapa Farmers' Co-op. Association Ltd. v. Hull (1914) N.Z.L.R. 492. Where there is no such power, it may be possible to secure an alteration to the memorandum of association: See the Companies Act 1908, section 162, and In re Insurance Co., Ltd. (1911) 30 N.Z.L.R. 825; 14 G.L.R. 9, C.A.; also the English cases under section 9 of the Companies (Consolidation) Act 1908 (Eng.), especially Patent Tyre Co. In re (1923) 2 Ch. 222; 92 L.J. Ch. 358.

Where a company acquires the business carried on by a land agent, the arrangement being that the agent is to continue to carry on the business in his name but for the benefit of the company at a fixed salary, the effect is not that the license can be treated as held by the agent on behalf of the company for the purposes of the Act (*vide* sub-section 3); South Taranaki, &c. v. Fama (1920) N.Z.L.R. 219, 222; G.L.R. 156, 157, per Sim J. There is nothing fraudulent or improper in such an arrangement, nor would a principal dealing with the agent be prejudiced by reason of the fact that the agent was carrying on the land agency business for the company and not for himself, *ibid.* But it may be the case that the company, not having obtained a license, commits an offence under section 31, by being interested in the land agency business carried on in the name of the agent, *ibid.*

23. (1.) All moneys received by a land agent in respect of the sale, lease, or other disposal of land or of any interest in land, or in respect of any other transaction in his capacity as a land agent, shall be applied as follows :—

(a) In payment of the expenses, commission, and other charges of or incidental to such sale, lease or other disposal or transaction as aforesaid:

(b) In payment of the balance (if any) to the person or persons lawfully entitled thereto.

(2) Pending the payment of any balance aforesaid it shall be paid by the land agent into a general or separate trust account, and shall not be withdrawn therefrom save for the purpose of paying the same to the person or persons entitled thereto, as hereinbefore provided.

(3) Every person who commits a breach of this section shall be liable on summary conviction to a fine of fifty pounds.

(4) Save as herein provided, moneys paid into a trust account pursuant to this section shall not be available for payment of the debts of the land agent, or be liable to be attached or taken in execution under the order or process of any Court.

NOTES TO SECTION 23 :—

This section, with alterations and additions, replaces section 8 of the 1912 Act. As to the agent's duty to render an account, see section 24.

1. SECTION 23, 1 (a): Before the land agent is entitled to deduct his commission under sub-section 1 (a), the following points must be complied with :—

(i) The moneys must be received by the land agent for a principal (vendor, lessor, &c.). This is usually the case, the most familiar example being the receipt by a land agent of a deposit on behalf of his vendor principal. In such a case the payment is deemed to be a payment to the principal direct, so that, if the purchaser becomes by law entitled to a refund of his deposit, he must sue the principal and not the land agent: Ellis v. Goulton (1893) 1 Q.B. 350. Hence, commission, &c., deducted from moneys so received by a land agent on behalf of his principal is a deduction from moneys which are legally vested in the principal. But, if there is no concluded contract between, say, a vendor and a purchaser, any money such as a deposit, which has been paid to the land agent on behalf of his principal, cannot be treated as having been paid to the principal direct, and the person paying it has to recover it from the land agent, who cannot, therefore, under the circumstances deduct from it any commission which he claims: Pringle v. McKay, 1922, N.Z.L.R. 818, 824. Although in such cases there is no concluded contract, the land agent may nevertheless be entitled to claim commission from his principal; but that depends upon the terms of his contract of agency and why there was no concluded contract.

In some cases a land agent expressly or impliedly receives money, such as a deposit, as a stakeholder, in which case he has to pay it to the vendor, if the contract is completed, as well as if its incompletion is due to the purchaser committing a breach of the contract (and, consequently, only at that point of time and under those circumstances can he deduct his commission); but he must re-pay it to the purchaser should the contract be broken by the vendor. It is on those terms that an auctioneer receives a deposit: See Harington v. Hoggart (1830) 9 L.J.K.B. 14 and Munro v. Pedersen (1921) N.Z.L.R. 115, 121; G.L.R.

76, 79. Morton v. Blennerhasset (1911) 14 G.L.R. 282, was a case where a deposit was paid to agents to hold as agents for the vendor and the purchaser, and it was held that they were in law stakeholders. The vendor failed to complete and, accordingly, the purchaser was held entitled to sue the agent for a refund of the whole of the deposit, although he had accounted for it to his principals, because in law he should have held it. And see Douglas v. Matson, 2 J.R. N.S. S.C. 158; Brodie v. Connell (1914) 17 G.L.R. 301; and, generally, cases collected 1 Eng. and Emp. Dig. p. 667. From the point of view of a purchaser it is desirable that a deposit should be paid to a land agent as stakeholder and not as agent for a vendor, because in the latter case, if the vendor cannot show a good title and is insolvent, the purchaser loses his deposit altogether: See Williams Vendor and Purchaser, 3rd Edn., Vol. I, pp. 27-8; Vol. II, pp. 1015-6.

(ii) The land agent must have legally earned his commission by fulfilling the terms of his contract of agency, which is usually to be found in the agent's written "appointment" or "engagement" required under section 30. This is a matter of common law outside these notes: See amongst other New Zealand cases Latter v. Parsons, N.Z.L.R. 645, 8 G.L.R. 596 C.A. as explained in McGrail v. Lewis (1922) N.Z.L.R. 1460; G.L.R. 347; and see the unreported English C.A. decision of James v. Smith, set out in Knight Frank and Rutley v. Gordon (1923) 39 T.L.R. 399. See also Bowstead's Agency, 7th Edn., p. 191 *et seq*; and Lloyd and Joske's Remuneration of Commission Agents.

(iii) The land agent must not have been guilty of misconduct, deception, &c.: See Bowstead's Agency, 7th Edn., p. 212; and Lloyd and Joske's Remuneration of Commission Agents, p. 135.

(iv) The land agent must show compliance with section 30 as to a written appointment. Where he has not obtained such appointment he cannot deduct his commission under sub-section 1 (a) of this section (23) out of a deposit received by him as agent for his principal: Glasgow v. Hood (1920) N.Z.L.R. 586; G.L.R 372; Smith v. Bason (1921) N.Z.L.R. 467; G.L.R. 327; Buchanan v. Samson (1922) N.Z.L.R. 558; G.L.R. 169; unless by reason of an express agreement to that effect between the land agent and his principal: Smith v. Bason *supra* (p. 469 of N.Z.L.R.); Buchanan v. Samson, *supra* (p. 562 N.Z.L.R.); or unless the principal has consented to the land agent treating the deposit as a sum paid to the land agent by the principal: Buchanan v. Samson, *supra* (p. 562 N.Z.L.R.). Mere knowledge by the principal that the agent has received from a purchaser a deposit on the principal's behalf, or even if such deposit is received by the agent with the principal's consent, is insufficient: Smith v. Bason, *supra* (p. 469 N.Z.L.R.).

Where, however, the agent receives money from his principal, and not from a third person and the principal, when making the payment, does not make any appropriation concerning it, then the agent, although holding no written appointment in terms of section 30, is entitled to deduct commission owing to him from the money so paid to him by his principal, in accordance with the ordinary law of appropriation of payments: Glasgow v. Hood, *supra*; Smith v. Bason, *supra*. The foregoing decisions were under the corresponding provisions of the 1912 Act (sections 8 and 13), but their authority in respect of the foregoing matters appears to remain unimpaired: See also notes (par. 5) to section 30.

(v) The land agent must show that he holds a license (see Notes, par. 3 (d), to section 30).

2. SECTION 23 (1) (b)—23 (2):—The distinction between this provision and section 8 (1) (b) of the 1912 Act, should be noted. According to the latter the balance had to be paid "to the person or persons on "whose behalf the sale was made or as he shall direct." That portion of the judgment of Sim J. in Buchanan v. Neale, (1920) N.Z.L.R. 889 at p. 892; G.L.R. 524 at p. 525; and the concluding portion of the judgment of Salmond J. in Smith v. Bason, *supra*, should now be read in the light of this distinction. Ordinarily the person to whom the balance is payable will still be the agent's principal, the vendor, &c.; but in certain circumstances it may not be.

For instance, before the agent has paid over such balance to his principal the latter may have gone bankrupt, in which case the Official Assignee would be the "person lawfully entitled thereto." Or the principal may have validly assigned or charged such balance in favour of someone, who would then be the person referred to.

Where the agent has received money, say a deposit, on behalf of his principal, the vendor, it is his duty, after deducting any commission or remuneration earned by him, to pay the balance to his principal on the request of, or demand by, the latter: Buchanan v. Neale, *supra*, p. 892 N.Z.L.R., referring to Edgell v. Day (1865) L.R. C.P. 80; and if he fails to do so, he will be liable to pay interest thereon from the date of such demand: Edgell v. Day, *supra*, Harsant v. Blaine (1887) 56 L.J. Q.B. 511, C.A. Where the agent has been guilty of a breach of duty of some kind and so has disentitled himself to commission (see *supra*, par. 1 (iii)), he would be liable to pay interest on the whole of the deposit from the time of the demand: Atkins v. Kennedy (1921), G.L.R. 424; N.Z.L.R. 977, Salmond J. And it is to be noted, also, that by sub-section 3 the agent renders himself liable to a fine up to £50.

(To be continued)

YOUNG—FOR A LORD CHANCELLOR

Lord Cave, who recently denied in vigorous and unequivocal terms an unfounded rumour of his alleged intention to retire from the office of Lord Chancellor, is seventy-one, very young for an office which has at all times proved one of the healthiest occupations in the realm. Indeed, the exceptions are so few that it may be said with truth that Lord Chancellors never die, and never voluntarily retire from their great responsibilities. Lord Cave says that he can do his twelve hours a day without fatigue or any indication that the years have impaired the quality of his work; and this is manifestly so. Ignoring for the moment—and only for the moment—such youthful prodigies as Lord Birkenhead, the present Keeper of the King's Conscience is, for a Lord High Chancellor, a mere stripling. The late Earl of Halsbury occupied the Woolsack, and delivered good, confident and impressive judgments until the year 1905, when he was eighty-two years old. The "Lives of the Chancellors" include many who were, if anything, not quite old enough at seventy years.

LONDON LETTER.

Temple, London,
26th October, 1927.

My Dear N.Z.,—

I regret that I am not up to date, or at least up to the minute, in the matter of professional gossip, owing to the fact that I have been away from London this week in connection with a manslaughter case. As my friends put it, I have been down in the country, at Bury St. Edmunds Assizes that is, "testifying." A young man who killed a child while riding a motor bicycle upon the sea-shore got two months in the second division: Rowlatt J. was always of the opinion, apparently, that he who motors on the sea-shore, "the children's playground," has a very special duty of diligence upon him, so that a very little negligence in him will be "gross" within the meaning of the recent decision as to what is necessary to constitute the essential element of manslaughter. I have learnt much from this experience, my last lesson being the extreme discomfort to which the officials of Courts, "vested with a little brief authority," put the unhappy witnesses. The better to learn this lesson, I was careful not to disclose my profession and to take such treatment as is normally meted out to the layman. It is difficult to believe what could happen till it happened; for instance, I was not allowed to sit down anywhere and when I did sit down I was fetched off my seat! When the case was called on, I, with the other witnesses in the case was collected by a red-nosed and singularly nasty minion of the Court and sent below-stairs nearly into the cells. By what right I was forbidden to hear the opening speech or the evidence of other witnesses, I had not discovered when in the midst of my address to my janitors at large, I was suddenly bundled out of the jail and pushed upstairs into the Court and into the witness-box.

The sequel was happy enough. It appeared that Rowlatt J. had surprised the minions by insisting upon my being called out of my turn, so that I might get away. I was therefore called prematurely, but called in vain. The Judge became insistent to know my whereabouts and had to be informed that I had been spirited below! Thus, when I emerged (blinking) into the light of day, the Judge apologised for the highly improper officialism of the minions, said that when he had once been a witness and they had tried their tricks upon him he had refused to go where they wished, and publicly advised every witness or potential witness within hearing that he had no liability to be so used and would be upheld by his Lordship in any opposition or protest he cared to make. Believe me, O my professional brethren, if ever you question the expediency of our apparently unmoral profession, you need only take one look beneath the immediate surface of life, and you will discover such an abuse of authority, in every direction, and such an interference with the liberties of those subjects who have no voice to raise in their own behalf, or who, having a voice, are too poor or too little instructed to dare raise it, that you will be thankful for the existence of our hardfaced, disrespectful selves who take nothing from any man (whatever his pretensions) unless he show and make good his lawful warrant; who, by our mere existence and availability, keep the little bullies in some sort of restraint and hold them to some sort of moderation.

But I doubt if I have missed any gossip. It is being too readily assumed that the two new Judges who may now be appointed, given an address to Parliament, will be sacrificed to the cause of economy and there is little speculation as to whom they might be. Few people know that the authorities have yet to make up their minds and that the assumption of a decision is premature.

The strength of the K.B.D. is already depleted by the demands of circuit, and decisions of importance in any division are slow to emerge. I confess that I cannot speak as to events beyond the end of last week, after, that is, the first ten days of the new term. There has been a decision of the Divisional Court (L.C.J. Avory and Salter JJ.) as to the duty of coroners not to interpose in the deliberations of their juries and as to the urgency of a due observance of that duty as illustrated by the two Irish cases: **Rex v. Bourchier** (1882) and **In re the Mitchelstown Inquisition** (1888). The decision in point is that in **Rex v. Wood**: Ex parte **Anderson:** Guy Lailey, who attempted to show cause why the rule should not be made absolute (the proceedings being by way of *certiorari* and who never had a dog's chance, told me about it.

There was also an ineffectual appeal from the order of Clauson J., granting relief from forfeiture under our new landlord-and-tenant provisions contained in section 46 of the Supreme Court of Judicature (Consolidation) Act 1925. I only mention the case (**Nance v. Taylor**) because I am told by my brothers of the Oxford Circuit, that it is to be reported upon the point of a bargaining away by the tenant of his right to relief and of the consequent exclusion of any Judge's power to grant the relief. It leads me, moreover, to the subject of statutes, a matter upon which it is possible to be more informative, than upon the subject of case-law, at this very early stage of the term when the cream of judicial pronouncements has hardly formed upon the milk.

Of the Bills which, it is intended, should become statutes and for which the autumn session of Parliament provides but a limited time for the necessity of becoming law forthwith or of starting all over again, "from the egg" so to speak, in the next session the new Landlord and Tenant Bill is of the greatest moment. It makes some important alterations in the general law, and not the least upon this aspect of forfeiture and of the relief therefrom available to the breacher of covenants; but of paramount interest is the innovation by which is protected the tenant who, in urban leaseholds, has added to the value of premises by improvements or by goodwill. I commend to your special consideration this new line of legislation: that is, if you are not more enlightened than we are and have not such provisions in your stature book already. The Companies Bill will not achieve life this session, and will go back to the starting post, probably to begin its next struggle for existence in the Commons. If you are interested in the subject, I recommend to you a perusal of the Bill and the amusing pastime of counting up the number of occasions upon which directors are threatened with personal consequences if their company disregards its obligations. That these occasions are far too many, you must surely agree? For the rest, the legislation which will be dealt with is of a purely local interest, I think: the Films Bill and the Ouse Drainage Bill, which most intrigue our statesmen great and small, will least concern you. The real and short truth about Bills is that in these days there are too many of them, as witness this same Companies Bill. Wilfred Greene's Committee reported that, on the whole, our Companies Law, as at present existing, works admirably well and the abuses of it are perpetrated by an unrepresentative and almost insignificant minority on, pro-

portionately, few occasions. As to a detail or two only was the reform they recommended necessary. There follows a Bill, the draft of which is as thick as your fist!

Just before going to press, or rather to post, I note an interesting decision of yesterday's date and of the above-mentioned Divisional Court, in **Rex v. Sheffiel Justices.** It turns upon the recurrent incident of an extraneous matter influencing the decision of a licensing authority, acting honestly and according to its conception of the best public interest. I shall no doubt have occasion to mention this later. I should perhaps, have mentioned earlier the official announcement that, as a matter of practice, special cases stated under section 7 of our Arbitration Act 1889 will, if they are of a "commercial" nature hereafter be transferred, on application, to the "commercial" list. Perhaps this is of little interest to you and you do not suffer from the anomaly that the points of "commercial" law, which arise in an arbitration, may go to adjudication in a Divisional Court regardless of the existence of a special tribunal to deal with such matters. The pronouncement, even for us, is of less permanent interest than it might have been, having regard to the impending consolidation and reform of our law respecting arbitration.

Yours ever,

INNER TEMPLAR.

THE HUSBAND'S LOST DOMINION.

Once again a misguided husband has unconsciously and unsuccessfully relied on the law as stated in Bacon's Abridgment that he "hath by law power and dominion over his wife, and may keep her by force within the bounds of duty and may beat her, but not in a violent and cruel manner." It was left to Mr. Rooth to put this husband right in his law and to fine him for the assault upon his wife, and further to warn him of the possibility of "durance vile" if he persisted in giving a demonstration of power and dominion no longer recognised by the law.

Herein may be observed the distinction between an old Common Law rule and a provision in an antique, but unrepealed statute. If that passage from Bacon had appeared in such a statute, it could not be rejected as a defence, although means would, no doubt, be found, by misinterpretation, of getting round it. The obsolete statute is of little use in modern times as a sword, although it may on occasion be a satisfactory shield. This law of husband and wife certainly needs an up-to-date remedy. Alas (say some reformers), the masterful powers of the husband to kick and even to kiss his wife have gone; but in many serious matters he is liable for her deeds and misdeeds as if these mediaeval powers and privileges were still in full legal force and operation.

For one reason, if for no other, many married and legal men are glad that McCardie, J., continues to be free from matrimonial embarrassment. Who but a bachelor could say what he did in fact say last week about women in a breach of promise action in which, moreover, the only counsel appearing was a woman? Some folk are apt to regard his observations as the immature speculations of an unmarried youth who knows nothing about women. I do not share those views. He can see facts as clearly as any married judge. One does not say he is more courageous than they; but he is more free.

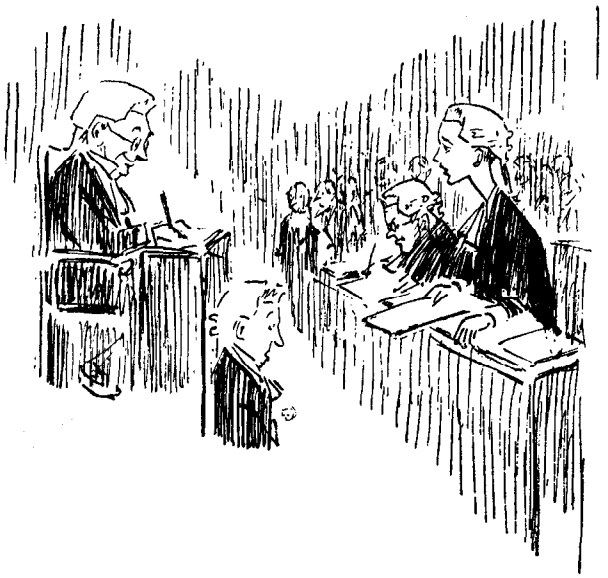
The Lord Chief Justice, Eve, J., and others have espoused the cause of Law in general in its opposition to the encroachments of the bureaucracy. It is for McCardie, J., to use every legitimate opportunity in pointing out and denouncing the legal hardships which a modern husband so patiently endures. In the law of torts the injustices to man are manifest; the waters of Equity are greatly troubled by them; they appear in almost every branch of law, and it is high time they were removed.

FORENSIC FABLES

THE KINDLY JUDGE AND THE LADY BARRISTER.

A Learned Judge, on Arriving at the Royal Courts of Justice to Deal with the Non-Jury List, was Told by his Clerk that one of the Counsel in the First Case was Miss Mary Poppleton, the Newly-Called Lady Barrister. The Judge, who was Kindly, Large-Minded, and an Upholder of the Woman's Cause, Determined that he would Give Miss Mary Poppleton a Good Run. When the Judge took his Seat he Felt that the Fragile Creature with a Squeaky Voice and a Mild Blue Eye who Appeared for the Plaintiff would Need all his Help. For a Robust and Fierce-Looking Individual was Representing the Defendant.

The Case Began. Whenever he had a Chance the Judge gave the Mild Blue Eye a Leg-Up. And he Made a Point of Treating the Fierce-Looking Advocate



with Some Severity. Ultimately (though not without Misgiving) the Judge Gave Judgment for the Mild Blue Eye with Costs. The Fierce-Looking Opponent (who, after Cross-Examining with Effect, had Delivered a Pointed Legal Argument) Promptly Asked for a Stay of Execution.

When the Court Adjourned the Judge's Clerk Expressed the View that he had been Rather Hard on Miss Mary Poppleton. The Judge Enquired what the Dickens the Clerk Meant, and Learned, Too Late, that he had been Misled by Appearances. It seemed that the Mild Blue Eye was a Young Man who had Steered the University Eight to Victory Three Years Ago, and that the Fierce-Looking Counsel for the Defendant was Miss Mary Poppleton. But Happily no Harm was done. For Miss Mary Poppleton Duly went to the Court of Appeal and had an Easy Win.

Moral: Spot the Lady.

O.

BENCH AND BAR.

Mr. and Mrs. H. F. von Haast have completed a tour of Scotland and have returned to London. They are proceeding to the Channel Islands for the winter, preparatory to proceeding to the Continent in the spring.

LEGAL LITERATURE.

THE ENGLISH AND EMPIRE DIGEST.

THE ENGLISH AND EMPIRE DIGEST, with Complete and Exhaustive Annotations. Vols. 34 and 35. (Butterworth & Co. (Publishers), Ltd.).

These two volumes make the third and fourth of the Digest which have been issued in the present year, and show that this great undertaking is now well on the way to completion. As the publishers announced on the issue of the 32nd volume, it is to be finished in 44 volumes, and perhaps this limitation in number accounts for the somewhat increased size of the volumes before us. It may be hoped that it will not be found necessary to maintain this increase, as it tends to make the volumes somewhat heavy to use. There are important titles still to come, and we suggest that in some of these, e.g., in "Wills," there is no real benefit in digesting the cases with the completeness which has hitherto characterised the work. It is a judicial commonplace that a decision on the wording of one will is no authority as to the wording of another. This, of course, must not be taken too literally. Many decisions on wills have established rules of everyday use, such, for instance, as that in **Sibley v. Perry** (7 Ves. 512), which settled that the collocation of "parent" and "issue" confines the meaning of the latter word to "children." But doubtless that matter has already been considered and settled.

The first of the two volumes now issued contains the titles "Master and Servant," "Mayor's and City of London Court" —a clumsy name which was unfortunately introduced when the two Courts were amalgamated in 1920—"Medicine and Pharmacy," "Metropolis," and "Mines, Minerals, and Quarries." We notice under "Mayor's Court," etc., that the case of **London Corporation v. London Joint Stock Bank** (1881, 6 App. Cas. 393), has a note that the effect of the decision is to render the process of foreign attachment practically obsolete, and cases on foreign attachment prior to 1881 have, therefore, been omitted. Perhaps this shows a tendency to adopt the plan we have just suggested, and limit the size of the Digest on practical grounds even at the sacrifice of theoretical completeness. The title "Master and Servant" is the heaviest in the volume, and runs to over 500 pages. It has many branches, and each of these is very fully dealt with. The fifteen parts into which it is divided, finishing with "Apprenticeship," with their divisions into numerous sections and subsections, present a wonderful analysis of the subject. The cases include matters of common life, such as the definitions of a "domestic servant"; the rule, apparently still good, that a general hiring, subject to a month's notice, is a yearly hiring (**Rex v. Inhabitants of Lew,** 8 B. & C. 655), though the Courts have recognised that a month's notice or a months' wages is a settled custom (**Moult v. Halliday,** 1898, 1 Q.B. 125), and also the right to give notice before the end of the first fortnight (**George v. Davies,** 1911, 2 K.B. 445), matters which —law apart—every housewife knows; but that is only a way of stating the custom.

Then the law implies an obligation on the master to provide for the servant during illness. This, said Lord Mansfield, is a condition incident to humanity, and is implied in all contracts (**Rex v. Inhabitants of Christchurch,** Burr. S.C. 494). But he is not liable to pay a doctor, not being the family doctor, whom the servant calls in (**Cooper v. Phillips,** 4 C. & P., 58). As to providing medical attendance and medicine generally, the cases do not seem to be quite clear, but the question has, in practice, been solved by the "panel." These are instances of how a consultation of the Digest is likely to bring the practitioner very rapidly into touch with a decision on the particular point he wants. Of course, the Workmen's Compensation Acts form a large and important part of the Title —about half of it—and the cases on the nature of accidents, and of accidents arising "out of and in the course of the employment," and on the amount and payment of compensation, are presented with great fullness and clearness. One of the most important of recent decisions as to payment is **Russell v. Rudd** (1923, A.C. 309) on lump sum agreements. The Title has been compiled by Mr. C. A. Collingwood, M.A., LL.B., and Mr. H. Alleyn Palmer, Barristers-at-Law.

The Titles "Medicine and Pharmacy," compiled by Mr. R. T. Sharpe, and "Mines, Minerals and Quarries," by Mr. J. R. O. Jones, Barrister-at-Law, assisted by Mr. E. Stopford Holland, contain much interesting matter. The former includes the decisions on the jurisdiction of the General Medical Council, such as **Dr. Allinson's Case** (1894, 1 Q.B. 750), and on the liability of the doctor to the patient. It is curious that the first use of a new instrument has been held to be a rash and ignorant action, and the doctor, however skilful he may be, is liable if the experiment goes wrong (**Slater v. Baker,** 1767, 2 Wils. 359). At that rate, little progress would be made; but the doctor, can it seems, protect himself by obtaining the patient's consent. "Mines," etc., includes the cases—of which **Hext v. Gill** (7 Ch. App. 699), which has a long list of annotations, is one of the best known—on the meaning of "minerals," and the collection of decisions on the construction of clauses in mining leases will be found very useful.

Vol. 35 has the Titles "Misrepresentation and Fraud," "Mistake," "Money and Money-Lending," and "Name and Arms," but by far the greater part of it is devoted to "Mortgages." This Title must have received an enormous amount of labour, and it has required sound knowledge of the law and great skill in arrangement. It is the work of Mr. E. C. P. Lascelles, Mr. J. T. Miles, M.A., Mr. H. W. Clements, and Mr. G. W. Curtis, B.A., B.C.L., Barristers-at-Law. "Misrepresentation and Fraud" (Messrs. Alex. Cairns, E. C. P. Lascelles, and J. T. Miles), and "Mistake" (the Hon. H. L. Parker), too, are titles which have called for great care, but they have not required the same extensive treatment. Both of them are concerned with points which have caused great difficulty, as is shown in the former by **Jorden v. Money** (5 H.L.C. 185), on when a representation is one of fact or only of intention, and **Derry v. Peek** (14 App. Cas. 337), which requires actual fraud as the basis of an action of deceit; and in the latter, such cases as **Kelly v. Solari** (9 M. & W. 54), which have established that money paid by mistake can be recovered if the mistake is one of fact, though not save under exceptional circumstances, if it is one of law: **Brisbane v. Dacres** (5 Taunt. 143); but the case digested just before this (p. 158) ignores the distinction: **Farmer v. Arundel** (1772, 2 W. Bl. 824). It is the plan of the Digest to give all the cases, and, in general, leave the practitioner to discover, by the help of the annotations, which are still good law. "Money and Money-Lending," contributed by Mr. A. S. Diamond, M.A., LL.M., Barrister-at-Law, is an interesting Title, but we must pass it over.

And it would be quite impossible for us to describe adequately the Title "Mortgage." In form mortgages have been altered by the Law of Property Act 1925. In substance they remain the same. The same questions will arise on "the clog on the equity," and they will be solved by the cases such as **Salt v. Marquis of Northampton** (1892, A.C.1)—numerous in recent years—which are to be found here. And the right of the legal mortgagee to possession and his other rights still depend on cases like **Birch v. Wright** (1 Term Rep., 278) of respectable antiquity. "Tacking" is included, though this is an example of a doctrine which has been almost abolished, and we have the cases on the effect of the legal estate in giving priority, a doctrine which is still important, though of more restricted scope than formerly. And the Title has an invaluable collection of cases on proceedings between mortgagee and mortgagor. The two volumes well maintain the high standard which the compilers and publishers have established.

STUDENTS' PROPERTY STATUTES.

Edited by G. R. Y. RADCLIFFE, M.A., of Lincoln's Inn, Barrister-at-Law, Fellow of New College, Oxford University Press. 1927. 8vo.; pp. 216; Index 28. (Price in N.Z. 15/-.)

The collection of the Statutes which have recently effected a revolution in English Real Property Law, into one convenient volume has been carried out by Mr. Radcliffe. Primarily the compilation has been undertaken for the convenience of Students, the author stating in the preface that the book is intended to provide a text of those portions of the Statutes in question which will be most often cited by the text-books and commented on by the lecturer. The following Acts are included: The Law of Property Act, 1925; The Settled Land Act, 1925; The Land Charges Act, 1925; The Administration of Estates Act, 1925; and The Law of Property (Amendment) Act, 1926. The minor amendments effected by the Schedule to the Law of Property (Amendment) Act, 1926, have been actually inserted in the Statutes so amended, where they are distinguished by italics.

The student in New Zealand will, of course, not find any help in this volume for the purposes of preparing himself for examinations; but the practitioner who desires to possess in a handy form the Statutes the book contains, will find it useful. Those who follow the English Reports with care, will find it of increasing utility to facilitate the references to the Statutes. The index is a full one and should be of great assistance to those who desire to study the new Property Law.

H. J.