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"Marshall thy thoughts into a handsome method."
—Thomas Fuller.

Tuesday, March 6, 1928.

Licensing Motor Vehicles.

The effect of the decision, **Hodson's Pioneer Motor Service Limited v. Sayers** (1927) N.Z.L.R. 655, was to make motor service cars liable to pay license fees to all the local bodies along the line of route upon which they were plying for hire. This decision has now been modified by Section 9 of the Motor Vehicles Act 1927. The effect of this section is that such charges may only be made by each of the two local authorities within whose respective districts the terminal points are situate.

Counties situate along the line of route cannot now impose plying for hire license fees. This does not, however, mean that Counties have no power in this respect. All the powers enumerated in the second schedule to the Counties Act 1920 remain to the County Councils. It is to be noted that the second schedule applies solely to public vehicles, but the vehicles to which the second schedule now applies must be confined to vehicles garaged within the district. The second schedule of the Counties Act 1920 concludes with a proviso that "No such by-law shall come into force until the publication in the Gazette of a notice that it has been approved by the Governor-General."

The repeal of Section 110 of the Counties Act 1920 has raised the doubt in the minds of some local authorities as to whether the Governor-General has now power to approve of Regulations issued under the second schedule. It is to be observed, as above stated, that the second schedule applies solely to public vehicles, and the proviso above cited carries with it, of itself, the implied authorisation of the Governor to assent to such By-laws. Section 110 is not the empowering section to enable the Governor-General to approve of By-laws under the second schedule.

The purpose of Section 110 empowered the Governor-General, by Order-in-Council, to authorise any County Council to make by-laws providing for the licensing of vehicles using any road within the County prohibiting such use without such license and the payment of fees for such license. Section 109 and the second schedule deals with public vehicles plying for hire, but Section 110 deals with vehicles using country roads.

While therefore the power to license public vehicles plying for hire within the County remains, where the garage is situate within the district, Counties no longer enjoy the right to license vehicles using any road within the County, nor the right to prohibit the use of such roads without such license. It would appear therefore that the Counties concerned can no longer collect fees for the use of the county roads, although of course the provisions of Section 150 Public Works Act 1908 relative to extraordinary traffic remain.

The Monroe Doctrine.

The incompatibility of the doctrine of the equality of Nations with the application of the Monroe Doctrine has long been recognised by text-book writers on International Law. The Permanent Court of International Justice extends to the full the application of the doctrine of the equality of States. The Constitution of the League of Nations, however, acknowledges the disparity in influence between its members. Nevertheless, each member of the League has but a single vote at meetings of the Assembly. It is not surprising therefore that the Argentine delegate Senor Cantilo should remark that the Monroe Doctrine has never been explicitly approved by the South American Republics.

The Doctrine, as Senor Cantilo pointed out, owes its origin to the days when the Holy Alliance was enunciated as a means of opposing any attempts at a predatory policy in Europe. The parties constituting the Alliance alleged the existence of "a vast conspiracy" against the established order. In 1823 the Powers were considering the propriety of helping Spain to subdue her rebellious South American Colonies. Canning thereupon suggested to the American Minister in London that such European interference should be watched with jealousy. Out of this advice arose the Monroe Doctrine, with its twin principles of non-colonization and non-intervention. Great Britain, in the next year refused to concede the non-colonization principle and this phase of the Doctrine has ceased to attract attention. The non-intervention principle has however remained much in evidence. It was the principle upon which the United States intervened in the Venezuelan and British Guiana Boundary Dispute of 1895. The dispute was settled chiefly in favour of Great Britain, the right of the United States to dictate in the matter remaining unsettled. When the 1901 Venezuelan affair arose President Roosevelt pronounced "We do not guarantee any State against punishment if it misconducts itself, provided that punishment does not take the form of acquisition of territory by any non-American power." This variation left the Doctrine in an unsatisfactory position. If the United States was not prepared to undertake some responsibility in respect to the International obligations of the South American Republics, she could hardly hope that other Powers would be likely to concede any of the means open to them to enforce those obligations. That American influence was enlisted during the Great War to dissuade Equador and Columbia from disregarding their neutrality, may, be regarded more as a concession to expediency than anything else. The second principle of the Monroe Doctrine therefore has hardly received the sanction of other Nations. The nearest to sanction which the Doctrine has received is in Article 21 of the League Covenant, which provides that "nothing in the Covenant shall affect the validity of . . . . regional understandings like the Monroe Doctrine for securing the maintenance of peace." History does not attest that the Monroe Doctrine is for the maintenance of Peace, but rather for the protection of the self-interests of the United States; and now Senor Cantilo has with cogency pointed out that "it is a purely unilateral declaration of principle having no application to the regional agreements being discussed here." Had the Senor designated the Doctrine as an unilateral declaration of "policy" instead of a "principle" he would have had most International Jurists in agreement with him.

Supreme Court.

Skerrett C.J. December 16, 19, 1927.
Wellington.

IN RE MULVANEY.

Shipping and Seamen—Failure of Seaman to join Ship—Seaman Engaged in New Zealand—Plea of Guilty to Charge of Desertion—Magistrate Imposing Sentence of Imprisonment—Jurisdiction of Magistrate to Hear Charge—No Jurisdiction to Impose Imprisonment—Motion to Quash Conviction—Admissibility of Evidence of Place of Engagement—Conviction Quashed—No Ground for Quashing Conviction That Seaman Not Guilty of Offence of Desertion—Shipping and Seamen Act 1908, Section 132—Shipping and Seamen Amendment Act 1909, Section 24—Merchant Shipping Act 1894 (Imp.) Sections 221, 711.

Motion to make absolute an order nisi calling upon the Stipendiary Magistrate at Nelson to show cause why the conviction of one Mulvaney, on 25th July, 1927, of an offence that he on 13th July, 1927, at New Plymouth, in New Zealand, being a duly articled seaman on board the "S.S. Waipori" did unlawfully desert the said ship, should not be quashed without a writ of certiorari actually issuing. The motion was treated also as a motion to quash the conviction.

The facts, as appearing from the affidavits filed, were as follows: On 13th July, 1927, at New Plymouth, the applicant for the writ of certiorari signed the articles of the "S.S. Waipori" as a seaman. The steamer sailed from New Plymouth, in accordance with her schedule, on the sailing date, 13th July, 1927, but the applicant failed to join the ship before its departure—he alleged inadvertently. Later, in July, 1927, he was arrested in Nelson and charged before Mr. Maunsell, S.M., with the offence that he on 13th July, 1927, being a duly articled seaman, did unlawfully desert his ship. Mulvaney pleaded guilty. Upon his being charged the Magistrate inquired of the Sergeant of Police who conducted the prosecution where the ship was, and was informed by him that the ship had left New Zealand. He then asked the applicant whether he had anything to say, to which he replied: No—only that he was drunk at the time. The Magistrate convicted the applicant of the offence and sentenced him to be imprisoned in the Police Gaol at Nelson for the space of 14 days. The Magistrate stated that the facts that the applicant was engaged or signed on in New Zealand and did not actually join the ship were not disclosed to him either by the Sergeant of Police or the applicant; and that on the facts disclosed he inferred that the applicant had come to New Zealand in a British foreign-going ship on which he had signed on out of New Zealand, and had deserted such ship in New Zealand. The Magistrate further said that had the facts that the applicant signed on in New Zealand and did not actually join his ship been brought to his notice he should have allowed the applicant to withdraw his plea of guilty and would not have convicted him.

Hay in support of motion.
Fell to oppose.

SKERRETT C.J., read Section 132 of the Shipping and Seamen's Act 1908, under which the charge was laid and the further proviso added to paragraph (b) of that section by Section 24 of the amending Act of 1909. The offences created by that section as amended might be committed in New Zealand by a seaman or apprentice of any ship in New Zealand to which the Act applied and were punishable under its provisions. But the last proviso enacted that no seaman who had been engaged in New Zealand should be sentenced to imprisonment under the section for any of the offences created by it. If therefore the seaman or apprentice found guilty of any of those offences had been engaged in New Zealand the Court had no power to inflict imprisonment on him for such offence. That substantially accorded with Section 221 of the Merchant Shipping Act (Imperial) which took away the power to punish by imprisonment similar offences in the United Kingdom. It was clear that the Magistrate had jurisdiction to hear the charge against the applicant and to convict him of the offence so charged, but it was equally clear that he had no jurisdiction upon such conviction to impose imprisonment for the offence unless such convicted person had not been engaged in New Zealand, or at any rate unless the Magistrate had evidence before him that such person had been engaged elsewhere than in New Zealand. There was no evidence before the Magistrate as to the place where in fact Mulvaney was engaged. The applicant's plea of guilty did not admit that he was engaged elsewhere than in New Zealand. The place of his engagement was not an ingredient of the offence; but it was an ingredient for the determination of the nature and kind of punishment to be inflicted upon conviction.

The question remained whether the jurisdiction to impose the punishment of imprisonment did not depend on the fact that the convicted person was engaged elsewhere than in New Zealand.

If the place of engagement was not one of the material facts necessary to sustain the conviction but was one of the essential facts to justify the infliction of imprisonment following upon conviction, then it was clear that the place of engagement must necessarily on an application to quash be capable of being shown by evidence *dehors* the contents of the conviction. It appeared to fall within the classes of cases where jurisdiction depended upon a question of fact collateral to the merits or upon certain essential preliminaries to the inquiry, or where fraud was charged or it was suggested that members of the inferior Court were unqualified or biased, or were interested in the subject matter. Those defects of jurisdiction could only be made apparent to the revising tribunal by extrinsic testimony or affidavits. That was decided in **Colonial Bank of Australasia v. Willan** L.R. 5 P.C. 417, 442; **Reg. v. Bolton,** 1 Q.B. 66, 73; **Rex v. Nat Bell Liquors Ltd.** (1922) 2 A.C. 128, 160. In the following cases convictions were quashed for imposing imprisonment in excess of jurisdiction, although they did not touch the question whether the fact on which the quantum of punishment depended was extrinsic to the merits and ascertainable by extrinsic evidence: **Reg. v. Slade and London Justices ex parte Saunders,** 64 L.J.M.C. 273; **Reg. v. Tomlinson,** L.R. 8 Q.B. 12; **In re Clew,** 8 Q.B.D. 511; **Reg. v. Slade** (1895) 2 Q.B. 247; **Reg. v. Cridland,** 7 E. & B. 853.

His Honour did not think it could be doubted that it was the duty of the Magistrate before awarding imprisonment to have satisfied himself that the accused had not been engaged in New Zealand. There could be no hardship in casting that duty upon the Magistrate since the engagement of a seaman must be in writing, and the production of the articles or secondary proof of their contents afforded unambiguous evidence of the fact.

A further ground on which it was claimed that the conviction should be quashed was that the affidavits showed that the applicant had never joined the ship and therefore could not be guilty of desertion. Whatever might be the intrinsic merit of the contention it was not a ground for quashing the sentence in the present case. The accused upon being charged pleaded guilty and thus admitted that he had been guilty of desertion; and while the plea stood there was no reason why the Magistrate should inquire further. Moreover in **Rex v. Nat Bell Liquors Ltd.** (*cit sup.*) the Privy Council held that a conviction before a Magistrate upon a charge properly before him would not be quashed on the ground that the depositions showed that there was no evidence to support the conviction, or that the Magistrate misdirected himself in considering the evidence, or that there was no evidence to support the charge.

It had been contended that the Court ought in the exercise of its discretion to refuse to grant the writ. Even when the writ was discretionary it was the practice to grant it *ex debito justitiae,* where it was shown that the Court below had acted in excess of its jurisdiction, if the application was made by an aggrieved party unless the conduct of the applicant had been such as to disentitle him to relief. It had been said that had the applicant not pleaded guilty the whole facts would have been inquired into and it would have been ascertained that the accused had been engaged as a seaman in New Zealand and was therefore not punishable by imprisonment. The plea of guilty had no relation to the fact whether the accused had or had not been engaged in New Zealand. The accused was almost certainly ignorant of the legal effect of his having been engaged in New Zealand and could not be said to have misled the Magistrate. The question was never raised or considered.

It had been contended that the Magistrate had jurisdiction by virtue of Section 771 and Section 221 of the Imperial Act to punish the offence to which the applicant pleaded guilty by imprisonment. Section 221 authorised the imposition of imprisonment for similar offences to those mentioned in Section 132 of the Dominion Act, except in the United Kingdom. The New Zealand legislature had power to create its own tribunal

and to prescribe and regulate their jurisdiction. Section 132 (N.Z.) was applicable to desertion in New Zealand from British ships whether they were or were not engaged in the New Zealand coasting trade and to desertion from ships on the New Zealand register or engaged in the New Zealand coasting trade. It was the machinery provided by the Dominion Legislature under which *inter alia* desertion in New Zealand from British ships might be punished; but New Zealand Courts of summary jurisdiction were prohibited from imposing imprisonment as a punishment in cases where the engagement was made in New Zealand. That prohibition was not repugnant to any provision of the Imperial Act and was clearly within the power of the New Zealand Legislature. Section 711 was not intended to authorise the imposition by New Zealand Courts of punishments contrary to an express prohibition of the New Zealand legislature for offences under the Imperial Act committed in New Zealand.

Conviction quashed.

Solicitors for applicant: **Mazengarb, Hay and Macalister,** Wellington.

Solicitors for Mr. Maunsell: **Fell and Harley,** Nelson.

Reed J. December 12, 23, 1927. Auckland.

MACKLOW v. HESKETH AND OTHERS.

Will—Death Duties—Direction to Trustees to Dispose of Sufficient Property to Pay Death Duties—Whether Direction to Pay Estate and Succession Duty Out of Residuary Estate Alone—Testator's Daughters Benefitting Equally by such a Direction—"Death Duties"—Death Duties Act 1921, Sections 2, 31—Satisfaction of Legacies by Transfer of Assets in Specie—Date at which Value of such Assets to be Ascertained—General Legacies Payable on Determination of Life Estate—Death of Life Tenant Within Executors' Year—Legacies to Infant Grandchildren to Whom Testator Not in Loco Parentis—Date from which Legacies Carry Interest.

Originating summons for the interpretation of the will of William Charles Macklow deceased. The questions asked in the summons and the relevant portions of the will appear in the report of the judgment.

J. H. Rose for plaintiff.
McVeagh for all defendants except Mrs. Trousdale.
Fleming for defendant Mrs. Trousdale.

REED J. said that the first questions asked arose in respect of the following provision:—

"I . . . . give devise and bequeath to my dear wife Mary Jane "Macklow and to my only living son John Walter Teed Macklow "both of whom I appoint as Trustees during the life of my "wife, who both shall have to dispose of properties, or shares, "or mortgages, or other means, to realise sufficient moneys "to pay for death duties. During the life of my dear wife "she shall receive the whole of the nett income of all my pro- "perties, mortgages, interests, share dividends, and all other "income and shall reside in my living residence during her life, "and on her decease, my son as Trustee shall have entire con- "trol of all my real and residuary personal estate, and shall "dispose, or transfer, or realise, the values of all my estates "that may be necessary to provide sufficient moneys which "I bequeath to my three daughters who are married and who "are at present named as follows . . . . To each of my said daugh- "ters I give and bequeath a value of Five thousand pounds "(£5,000)."

The first questions were: (1) Whether any of such legacies were liable to bear a proportion of the estate duty payable in respect of the estate and if so what proportion should each legacy bear, and (2) Whether any of such legacies were payable free of succession duty? Estate and succession duty were payable in accordance with the directions contained in the will: Death Duties Act 1921, Section 31 (2). In default of any directions they were payable in manner provided by Subsections 3 and 4. The intention of the testator, to be gathered from the words used by him in his will, governed the question. The first duty cast upon the Trustees by the will was "to dis- "pose of properties, etc., to realise sufficient moneys to pay "for death duties." It was contended that that was not a direction to the trustees to pay the death duties. His Honour could not doubt what the intention of the testator was. He specifically instructed the trustees to sell part of his estate for the purpose of raising money to pay the duties. It would be unreasonable to hold that he did not intend that the trustees should devote the moneys so raised to the purpose for which they were raised. His Honour thought, therefore, that it constituted a direction to pay the death duties. That being so it was a direction to pay the duties out of the testator's residuary estate to the exoneration of specific legacies—**Caldwell v. Fleming,** (1927) N.Z.L.R. 145, 154. Then what did the testator mean by "death duties?" If he had used the words "testamentary expenses" that would have included estate duty but not succession duty—**In re Holmes,** 32 N.Z.L.R. 577. The reason that succession duty was not included in the term "testamentary expenses" was that it was imposed not on the general estate but on specific portions of it and the fact that the executors had to pay it was merely machinery to facilitate collection. That was the reasoning of the Court of Appeal in **In re Holmes** (*cit. sup.*) adopting the views of Lindley L.J. in **In re Maryon Wilson** (1900) 1 Ch. 565. But the testator had not, in the will under consideration, limited the payment to testamentary expenses; he used the wider term "death duties." That clearly included estate duty and His Honour could see no reason why it should not also include succession duty. Colloquially it was included in the expression "death duties," and by the Death Duties Act 1921, "death duty" was defined as meaning "estate duty or succession duty as imposed by this Act." (Section 2). His Honour was fortified in arriving at that view of the intention of the testator by the fact that the only persons benefitted by that construction, and that equally, were his three daughters. Had strangers, and more especially if unequally, been included in the benefits of that construction, to the detriment of the residuary estate, some doubt might have been occasioned as to whether the language used by the testator did really represent his intentions.

The will provided that the legacies might be satisfied by the transfer of assets in specie, or partly in specie and partly in cash, and the question arose as to the date at which the value of such assets should be taken? There could be no doubt that it must be at the date of transfer.

The next question was from what dates did the legacies carry interest and at what rates (a) on such portion as might be satisfied by money; (b) on such portions as might be satisfied by the transfer of assets in specie? Of the named beneficiaries one died during the lifetime of the testator leaving children. By the terms of the will "the legacy of the parent shall be divided equally amongst them." Considering first the case of the living named beneficiaries, unless by the terms of the will it could be ascertained that the testator intended that a legacy should be payable immediately upon his death or at some time earlier than twelve months after his death, the general rule applied that it was not payable until the expiration of the twelve months, and interest did not begin to run until that time had expired. It was contended that the testator had in fact indicated an earlier date for payment inasmuch as it was made dependent on the death of the widow, which had happened within the twelve months. In **In re White, White v. Shenton,** 101 L.T. 780, Joyce J. held (distinguishing **Laundy v. Williams,** 2 P. Wms. 478, as a case of general legacies) that where the death of the life tenant happened within a month of the death of the testator interest ran from the death of the life tenant. The effect of the decision in **Laundy v. Williams** (*cit. sup.*) was that where the legacy was payable upon a future contingency and that contingency happened more than a year after the death of the testator the legacy was payable instanter, and interest ran from the happening of the contingency; if, on the other hand, the contingency happened within the executor's year, the legacy was not payable, nor did interest run, until the expiration of that year. His Honour quoted the criticism of **In re White** (*cit. sup.*) in **Jarman on Wills** (6th Edn.) Addenda CCCVII, note to 1110, and said that in his opinion those comments were justified, But it was unnecessary to differ from the decision in **In re White** (*cit. sup.*), as that case was distinguishable, the present case being one of a general legacy. His Honour thought, therefore, that, as regards the surviving daughters, interest ran from one year after the testator's death. As regards the children of the deceased daughter the position was the same. In the case of a legacy left to an infant by its father, the Court allowed interest by way of maintenance, from the date of the death of the testator—**Hearle v. Greenbank,** 3 Atk. 695, 716. The same rule applied where the testator had placed himself *in loco parentis* to the infant legatee—**Wilson v. Maddison,** 2 Y. & C. C.C. 372. No authority had been cited making the same rule applicable to grandchildren and there was nothing in the will indicating any intention to provide for their maintenance. His Honour thought, therefore, that interest, in the case of the grandchildren, ran from twelve

months after the death of the testator. As regards the rate of interest, His Honour would follow his own decision in **Morpeth v. Wilson** (1926) N.Z.L.R. 39, 47, and fix it at 6 per cent., the rate to be the same in either of the alternative methods suggested of satisfying the legacies.

The last question was as to whether succession duty was chargeable against the widow's estate in respect of the interest she derived under the will of the testator. For the reasons already stated in reference to the legacies of the daughters His Honour thought her estate was exonerated.

Solicitors for plaintiff: **Jackson, Russell, Tunks and West,** Auckland.

Solicitor for defendants: (except Mrs. Trousdale): G. A. **White,** Auckland.

Solicitors for Mrs. Trousdale: **McVeagh and Fleming,** Auckland

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Sim J. December 13, 14, 1928. Blenheim.

W. E. CLOUSTON & CO. LTD. v. WADDY.

Mortgage—Default in Payment of Principal—Power of Sale—Sale by Registrar—Mortgagee Purchasing at Auction—Action by Mortgagee for Possession and Mesne Profits—Suffiency of Demand for Payment—Further Advances for Protection of Security Made by Mortgagee Subsequent to Demand—Whether Demand Waived—Mortgagee in Possession of Stock and Chattels on Mortgaged Premises under Chattels Security—Whether Entitled to Mesne Profits—Action to Recover Possession of Certain Land.

The facts appear sufficiently in the note of the judgment.

Kennedy and McNab for plaintiff.
Mills for defendant.

SIM J. said that the defendant until shortly before the action was the owner of certain freehold and leasehold land of which the plaintiff was the third mortgagee. On 9th September, 1927, the plaintiff caused the property to be put up for sale by auction through the Registrar of the Supreme Court at Blenheim, in intended exercise of the power of sale contained in the mortgage; at the sale the plaintiff became the purchaser of the property. The Registrar executed a transfer to the plaintiff, but such transfer had not been registered.

In order to entitle the plaintiff to maintain the present action it was necessary to bring the case within Section 105 of the Land Transfer Act 1915, by proving default in payment of the principal or interest secured by the mortgage. The amount secured by the mortgage was £4,000 and further advances, and the defendant covenanted to pay upon demand the said principal money and further advances and all other moneys which might be owing by the defendant to the plaintiff and also to pay upon demand the balance due upon the account current between the plaintiff and defendant. There was also a covenant for payment of interest with half-yearly rests on 31st March and 30th September, in each year. The plaintiff relied on a letter of 20th January, 1927, as a demand for payment for the purposes of the mortgage. That letter was from the plaintiff's manager, Mr. Priddle, to the defendant, and was as follows: "re Account. "I am instructed to write and inform you that we are not pre- "pared to make further advances and that you had better "arrange your finance elsewhere as our Directors require the whole amount repaid." The cases of **Deverges v. Sandeman, Clark and Co.** (1902), 1 Ch. 579, 597, and **Stubbs v. Slater** (1910), 1 Ch. 632, appeared to be authority for saying that the demand under such a mortgage need not specify the amount due to the mortgagee. The defendant had treated that letter as a demand for payment, for he interviewed Mr. Priddle on 27th January, and told him that he was making arrangements with the Bank of New Zealand, and that Mr. Riddiford was to guarantee his account. On 7th April, 1927, the defendant wrote to the plaintiff stating that the Bank of New Zealand had agreed to find the money to repay the plaintiff's debt, and requesting the plaintiff to have the securities released so as to hold them in readiness to settle. In the end the defendant was not able to arrange with the Bank of New Zealand to pay off the plaintiff's debt, and the plaintiff, having a mortgage over the stock and chattels on the Station, took possession of such stock on 25th of June, 1927, and was still in possession thereof.

His Honour thought that the letter of 20th of January, 1927, ought to be treated as a demand for payment for the purposes of the mortgage, and thought also that the demand had not been waived by the fact that further advances had been made since by the plaintiff. Those further advances were all payments made for the protection of the plaintiff's security, and the plaintiff had no alternative but to make them or lose the benefit of its security. The defendant had not paid any part of the balance owing to the plaintiff on the account current between the parties, and there had been a default, therefore, in payment of the principal sum secured by the mortgage, with the result that the plaintiff was entitled to judgment for possession of the land included in the mortgage. Judgment accordingly for possession with costs according to scale as on a claim for £1,000 with disbursements and witnesses' expenses to be fixed by the Registrar. The plaintiff claimed mesne profits from 9th of September, 1927, down to date of judgment. But the plaintiff had been in possession of practically the whole Station, except the dwellinghouse, since 25th June, 1927, when possession was taken of the stock, and nothing ought to be allowed for mesne profits. On the facts as proved the only relief the defendant was entitled to on his counter-claim was a judgment for accounts.

Solicitors for plaintiff: **Johnston, Beere and Co.,** Wellington.
Solicitors for defendant: **McCallum, Hills and Co.,** Blenheim.

Reed J. November 28, 1927; January 19, 1928.

WILLIAMS v. KENDALL.

Land Transfer Act—Mortgage—Transfer by Mortgagor of Equity of Redemption under First Mortgage—Transferor Taking Second Mortgage for Balance Purchase Money—Second Mortgage containing Express Covenant to Indemnify Second Mortgagee in Respect of Principal and Interest Due Under First Mortgage—Further Transfer of Ultimate Equity of Redemption Subsequent Extension of First Mortgage—Memorandum of Extension Signed by First Mortgagee, Original Mortgagor, and Registered Proprietor and Consented to by Original Mortgagor as Second Mortgagee—Default Made under both Mortgages by Registered Proprietor—Action by Second Mortgagee Against Mortgagor under Second Mortgage to Recover Principal and Interest Due Under Second Mortgage and Interest Paid to First Mortgagee—Effect of Extension to Discharge Mortgagor under Second Mortgage from Liability in Respect of First Mortgage and to Render Second Mortgagee Unable to Return Identical Security Given—Inflexibility of Rule that Mortgagee Unable to Recovery Security is Prevented from Suing Mortgagor—Injunction Granted to Restrain Second Mortgagee's Action.

Injunction to restrain defendant from taking certain threatened proceedings against plaintiff in respect of two mortgages under the Land Transfer Act. The defendant having mortgaged certain property to Butler Brothers, transferred the property, subject to the mortgage, to the plaintiff, at the same time taking from her a second mortgage for balance of purchase money. The second mortgage contained a covenant by the plaintiff in the following terms:—

"That the mortgagor will duly and punctually pay the "principal interest and other moneys payable under the "mortgage mentioned in the Memorandum of Encumbrance "hereto at the times and in manner therein provided and will "well and faithfully observe and perform the covenants "conditions and agreements therein contained or implied "and on the part of the mortgagor thereunder to be observed "and performed and in default thereof the mortgagee may "(but without prejudice to his other rights and remedies) "pay all or any moneys and do all or any matters acts or things "which may be necessary to comply with the provisions of "such mortgage and any moneys so paid and expenses so "incurred shall be a debt due by the mortgagor to the mort- "gagee and shall be recoverable on demand together with "interest at the rate of Eight pounds per centum per annum "and until paid the same shall be a charge on the said land "and shall be added to the moneys hereby secured."

The plaintiff subsequently sold and transferred the property to a Mrs. Broadbent, subject to the two mortgages, both being current. The first mortgage became due on the 19th of July

1926 but in the preceding month of June an extension for three years was executed and registered. The document was signed by Mrs. Broadbent "as present mortgagor," by the attorney of the defendant "as original mortgagor," and by the Butlers "as mortgagees"; and contained a consent signed on behalf of the defendant as second mortgagee. The plaintiff had no knowledge of, and was not a party to, this extension. Subsequently Mrs. Broadbent abandoned the property. The defendant demanded from the plaintiff the principal and interest on the second mortgage, and interest paid by him in respect of the first mortgage; hence the claim for an injunction.

Quartley for plaintiff.
Harman for defendant.

REED J. said that there were two main questions: (1) as to the liability in respect of the first mortgage; (2) as to liability under the second mortgage. It had been contended that the liability of the plaintiff to pay the interest and principal moneys under the first mortgage was imposed (a) by Section 88 of the Land Transfer Act 1915; (b) by the express covenant in the second mortgage and (c) if the defendant were not entitled to recover from the plaintiff under (a) or (b), he was entitled by the implied covenant set out in the Fourth Schedule, Clause 6, of the Land Transfer Act 1915. It had been contended that the payment of the interest on the first mortage by the defendant, being for the purpose of protecting his security under the second mortgage, was money "expended in lawfully exercising or enforcing "any power right or remedy in the mortgage contained or implied in favour of the mortgagee." Reference was made to **Fisher on Mortgages,** 6th Edn., 948, and to **Cootes on Mortgages,** 9th Edn., 1219. His Honour thought that the clause referred to just such matters as were dealt with in those text books and did not include matters falling within the specific covenant implied by Section 88 of the Land Transfer Act 1915. The defendant, therefore, must stand or fall accordingly as he could or could not successfully claim to be entitled to recover under (a) or (b).

The plaintiff claimed that the document of the 14th of June 1926 made "a new contract compounded of the terms of the old and the new instrument" within the decision in **In re Goldstone's Mortgage: Registrar-General of Land v. Dixon Investment Coy.** (1916) N.Z.L.R. 489, 502, and that she was accordingly no longer bound under either the express or the implied covenant, which were solely referable to a contract which no longer existed. Upon the authority of the decision in that case the Memorandum of Mortgage and the Memorandum of Extension in the present case constituted a new contract. The terms of the latter document created a novation—**Nelson Diocesan Trust Board v. Hamilton** (1926) N.Z.L.R. 342, and therefore, effected accord and satisfaction in respect of the first mortgage, releasing from liability any person bound by such first mortgage—**Robertson v. White** (1923) N.Z.L.R. 1275; **Paterson v. Irvine** (1926) N.Z.L.R. 352. It had been contended for the defendant that the present case was distinguishable from those two cases and from **Nelson Diocesan Trust Board v. Hamilton** (*cit. sup.*) in the following respects: (1) the plaintiff was not the original mortgagor; (2) the original mortgagor was a party to the substituted contract; (3) there was no alteration in the rate of interest. The case of **Knuckey v. Baddeley,** 29 N.Z.L.R. 710 was referred to, which was a decision of Chapman J.; the distinction between that case and **Robertson v. White** (*cit. sup.*) which was decided by the same learned Judge, was clearly pointed out in the latter case. There was no substitutionary enforceable contract in the former case. In **Robertson v. White** where there was a written contract, *inter alia,* extending the period for payment. **Knuckey v. Baddeley,** therefore, did not help the defendant. The principle to be gathered from the cases was not affected by the fact that the plaintiff was not the original mortgagor. The position before the substitutionary contract was entered into was: (1) the defendant alone was personally liable on the mortgage to Butler Brothers; (2) Mrs. Broadbent was not personally liable to either Butler Brothers or the defendant: (3) the plaintiff was liable to the defendant to indemnify him against any liability under the mortgage, and (4) Mrs. Broadbent was liable to indemnify the plaintiff against any liability under the mortgage—Section 88 of the Land Transfer Act 1915. In those circumstances the substitutionary contract was made whereby Mrs. Broadbent became personally liable to Butler Brothers. The defendant in writing consented. The mere consent of the defendant to the substitutionary contract did not *ipso facto* conserve Butler Brothers' recourse against him; indeed it would appear from the judgment in **Nelson Diocesan Trust Board v. Hamilton** (*cit. sup.*) at p. 350, that the consent of the mortgagor, in order to constitute a novation, if not actually given, must be necessarily inferred. His Honour was not, however, required to decide whether the defendant was or was not still personally liable to Butler Brothers. He was clearly not liable on the original mortgage, that having been abrogated, and, if any liability still existed, it was under the substitutionary contract. That view appeared to be in accordance with the principles of the cases cited and appeared to answer the first two objections. The third objection that there was no alteration in the rate of interest, made no difference to the principle. It was quite immaterial what the terms of the substitutionary contract were. It was not even necessary that there should be any alteration in the terms of the original contract, provided of course, that it should clearly appear that there had been accord and satisfaction of the original contract by the substitution of the liability of another person upon another contract in lieu of the original contract. And that was the position in the present case. As to the express covenant in the second mortgage, it referred explicitly to the original first mortgage; upon the extinction of the first mortgage there was nothing upon which the covenant could operate, and it was therefore abrogated. The result was that as regards the interest paid to the first mortgagees, the plaintiff was not liable to the defendant in respect of either the implied or the express covenant.

The next question was as to whether, on account of those transactions with the first mortgage, the plaintiff was relieved from liability to the defendant under the second mortgage. The argument for the plaintiff might be shortly stated as follows: By the defendant taking proceedings on the personal covenant the right to redeem arose enforceable on payment. As the defendant had been party to an alteration in the first mortgage by the substitutionary mortgage he had placed it out of his power to give back the second mortgage having an estate the same as when given. The rule in equity was well established and was stated by Viscount Cave, L.C., in **Ellis and Co.'s Trustees v. Dixon-Johnson** (925) A.C. 489, 491. The various cases which establish the rule were viewed in **Mortleman v. Public Trustee** (1927) N.Z.L.R. 642, 649, where a Full Court by the Chief Justice put the rule as follows:—

> "A mortgagee will not be permitted to put in force his "legal right under a covenant for payment unless he is in "a position and is prepared to reconvey the mortgaged "property upon payment of the money due on the mortgage. "The mortgagee has his election, and until he has made "his election no right to redeem arises in favour of a mortgagor "who has parted with his equity of redemption; but if he "elects to sue the original mortgagor he must be in a position "on payment of the mortgage moneys to restore the mortgaged "property to the mortgagor."

If then, in the present case, the defendant sued the plaintiff, he must be in a position to hand over to the plaintiff the security he held. That security was a second mortgage on certain property. The value of a second mortgage largely if not entirely depended on the conditions existing with regard to the first mortgage; any alteration for the worse in those conditions would affect the value of the second mortgage. If by an act of the mortgagee the value of the property over which he held security was reduced in value, he could not compel the mortgagor to accept such depreciated property, and he therefore could not have judgment for his debt. His Honour thought that was in accordance with principle, and referred to **Ellis and Co.'s Trustees v. Dixon-Johnson** (*cit. sup.*) and the difficulty lay in applying the principle to the present case. Unquestionably the estate which the mortgagee could restore was not identically the same. The mortgage given was over a property subject to a first mortgage maturing on 19th July, 1926, and the mortgage that would be released would be on a property on which the first mortgage did not mature until 1929. Whether on the bare fact that, by the action of the mortgagee, the property he was able to restore was not the same as that over which the security was given, justified an order for an injunction restraining an action on the covenant, or whether the Court should refuse an order, leaving it to the Court trying the action to value the depreciation, if any, and make an allowance therefor in reduction of the claim under the covenant, was the difficulty. The only case, so far as His Honour had been informed, in which the rule had not been enforced inflexibly was that of **Ellis and Co.'s Trustees v. Dixon-Johnson** (1924) 1 Ch. 342, in the Court of Appeal (1924) 2 Ch. 451, and in the House of Lords (1925) A.C. 489. His Honour reviewed at length the judgments in the several Courts, and said that the opinions of Lawrence J., the Judge of first instance, and Warrington and Sargent LJJ., in the Court of Appeal to the effect that the rule was not inflexible and would bend to special circumstances, were not adopted in the House of Lords. The judgments of Viscount Cave and Lords Sumner and Buckmaster in the House of Lords showed

(*Continued on page 7.*)

Sir Charles Skerrett, K.C.M.G.,

Chief Justice of New Zealand.

About 50 years ago one of the brightest and politest of boys was attracting the favourable notice of the profession behind the counter of Magistrate's Court Office in Wellington. On Mr. Hugh Gully the impression made was so favourable that he was glad to secure the boy's services, and after serving his articles with the firm of Buller, Lewis and Gully, this promising youngster was admitted as a barrister and solicitor of the Supreme Court in 1885. Five years later he was already making his mark at the Bar. Referring to his argument in Mahoney v. The Queen, one of the greatest of our Judges remarked: "What a lot of law will be in that little head before it is done!" Had Mr. Justice Richmond been alive to-day nobody would have been more pleased than he to know that that little head is now to be found on the Bench under the Chief Justice's wig, and by the universal consent of the Judges and the profession that is its proper place.

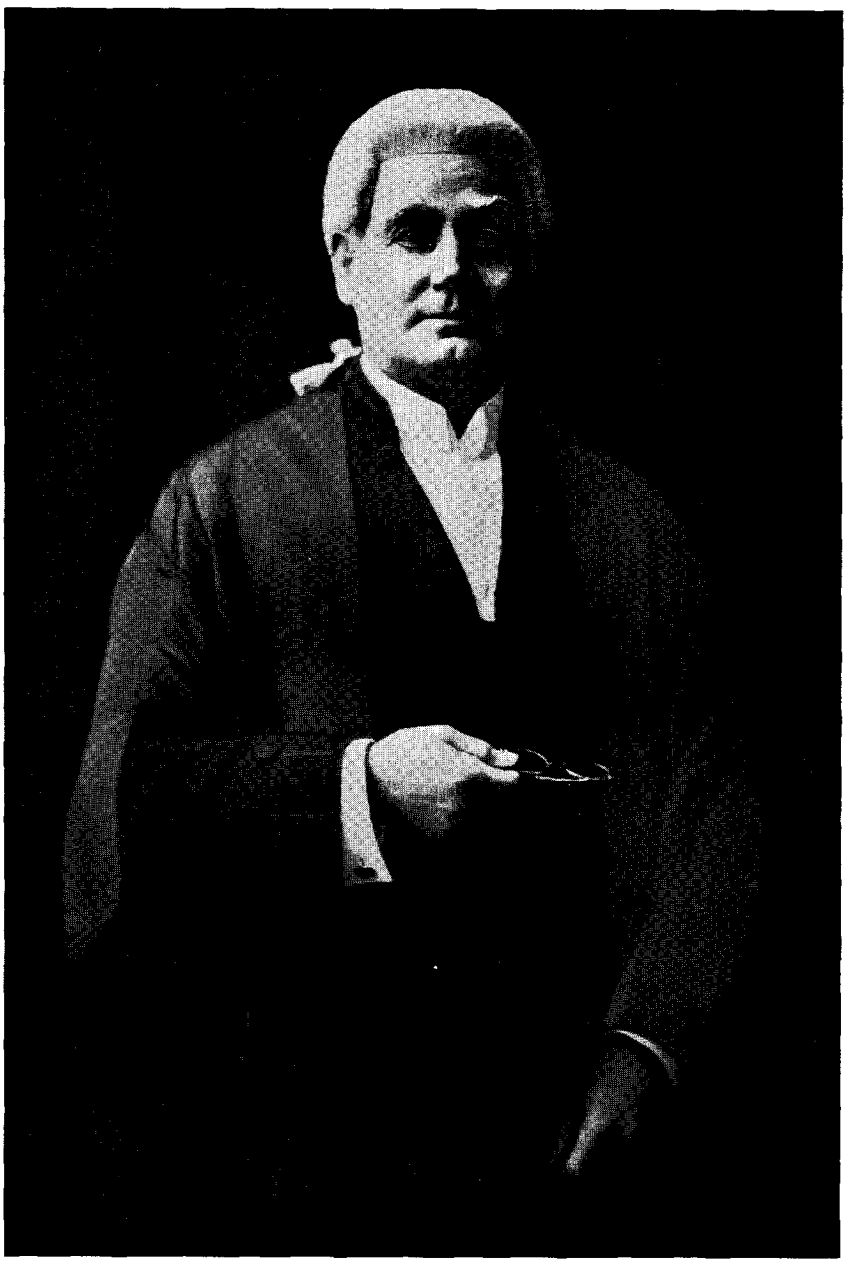
The progress of Sir Charles Skerrett from Junior Clerk in the Magistrate's Court to Chief Justice has been a uniform, persistent, and ungrudged, because entirely merited and unostentatious, success. He has owed nothing to fortune. He had to start from scratch, from the very foot of the ladder, and for every step towards the top he has had to rely upon his own exertions. Yet in the stress of competition he has never stooped to anything mean or shabby,; on the contrary, his generosity, his sportsmanship, and his natural courtesy have always been patent to everybody and have usually disarmed the jealousy of those whom he has passed in the race. Under the less strenuous conditions of the Bench there is still a place for these virtues, and the same politeness with which the boy in the Magistrate's Court Office used to please his seniors is extended by the Chief Justice to the youngest members of the profession. There are Judges who forget that they were ever young or ever made mistakes, but he is not among the number.

In variety of excellence Sir Charles Skerrett can have had few superiors anywhere. In England the immense mass of business enables and even compels a barrister to specialise; in New Zealand he has to take everything that comes—equity and common law, *nisi prius* and *banco*, and until he is far advanced he cannot ignore the fact that he is a solicitor as well. These different branches or phases of the law not merely represent different kinds of learning, but demand different aptitudes on the part of the practitioner. The result is that a versatility and an all-roundness are demanded of our front-rank men for which there is no call at the English Bar; and among the very best of our best has been Sir Charles Skerrett. He has combined to an astonishing degree the quickness and the thoroughness, the brillance and the industry, which are rarely found together. The humblest and most conscientious plodder laboriously securing his first steps in the profession has not brought to his task a greater industry than was maintained by Sir Charles to the very end of his career at the Bar. To this untiring industry were added a grasp of facts, an alertness unembarrassed by surprises and disappointments, a knowledge of human nature, a sense of humour, and a natural eloquence entirely devoid of flowers and frill which made him one of the ablest advocates that ever addressed a jury.

It is, however, the work in Banco and in the Court of Appeal that supplies the severest intellectual test, and here also Sir Charles Skerrett's supremacy had been for some years unchallenged. In addition to some of the qualities already mentioned a firm grip of legal principles, the power to discern their application to a complicated mass of facts, minute accuracy in analysis and distinction, and the capacity to appreciate the demands of principle where precedents are wanting or inconsistent, were needed for such an achievement as that. On the last and perhaps most difficult point an excellent example is supplied by Sir Charles's argument of the fundamental point of constitutional law which he raised successfully in **Cock v. Attorney-General** (28 N.Z.L.R. 408). The same report also illustrates the lucidity with which his arguments were both expressed and arranged. That despite the wide field which a New Zealand barrister has to cover, Sir Charles Skerrett could hold his own with the specialists of the English bar was proved by the compliment paid him by the Privy Council on his argument in **Smith v. McArthur** (1904, A.C. 389), and by the success of the appeal on the very point on which he had most strongly advised it and which had been entrusted to him.

The reputation which Sir Charles Skerrett had established at the Bar is being fully confirmed on the Bench. His only complaint about the work is understood to have been that there was not enough of it, but he appears to have sought partial compensation in annexing more than his fair share of it. If there is not enough work to go round, the reason is certainly not that it is being shirked and postponed. Under the present C.J., New Zealand justice is proving as prompt, as calm, and as efficient as it ever was. We might add that it is also proving as patient and as courteous. What a marvel of both these qualities was the Chief Justice's conduct of the Samoan Commission—sitting from 8.15 to 12 and from 2 to 5 for 27 days in a tropical climate, with occasional sittings in Chambers added, and listening to 155 witnesses, regarding a large number of whom the counsel who called them had to argue that the importance of their evidence consisted in its triviality!

Though an intense power of concentration has been one of the secrets of Sir Charles Skerrett's success, he has not made the mistake of concentrating on work alone. Intense concentration on play at the proper time is indeed one of the things that keep him fit for work. He is essentially an open-air man. First football and then polo claimed his enthusiastic attention. He is still a keen fisherman and deer-stalker. It was said of an English K.C. that he annotated "Lindley on Partnership" with one hand and milked a cow with the other. There is an unpleasant suggestion of straddling about this learned gentleman's ambidexterous activity, but no suspicion of the kind attaches to Sir Charles Skerrett. Nobody knows better than he that there is a time to work and a time to play; that "to everything there is," as the wise man says, "a season," and not least to the kinds of sport that he loves. The candidate who was horrified to find that he was expected to sit for examination on Derby Day and begged to be excused on the ground of "an important engagement in the country" would have had our Chief Justice's sympathy, but he has ordered his own life on a different principle. The maintenance of the out-door activities which enabled him to stand the strain of an exceptionally arduous professional career is now a matter of public concern as a condition of his fulfilment of all that is expected of him on the Bench.



The Hon. Sir Charles Perrin Skerrett, K.C.M.G.,
Chief Justice of New Zealand

(*Continued from page 5*)

that, had the mortgagor insisted upon his equitable right, the Court would not have been entitled to modify the rule to suit the peculiar circumstances of the case. As the law stood, therefore, His Honour thought that a mortgagee must fail in an action on the personal covenant against the mortgagor if, by his own acts, he had put himself in the position of being unable to return the identical security over which the mortgage was given. It was clear, also, that in those circumstances, a mortgagee might be restrained from bringing an action on the covenant.

An injunction in respect of both mortgages would be granted, but it must be worded in such a way as to apply only to the conditions then existing. It might be that the mortgagee would be able to put the security in order and so be in a position to comply with the rule. As to the legal effect of his being able to do so His Honour would express no opinion.

Solicitor for plaintiff: **A. G. Quartley,** Auckland.
Solicitors for defendant: **Napier, Herman and Smith,** Auckland.

The Rural Intermediate Credit Act 1927.

During last session a great deal of interest attached to the measure which has now become the Rural Intermediate Credit Act of 1927, taking effect from the 1st January last. The personnel of the Board which is to control and administer the scheme was recently announced and it may therefore be taken that the scheme will come into active operation at an early date. Country practitioners particularly will be brought into close touch with the scheme as the object of the legislation is the securing of a flow of funds for lending to the farming community upon, mainly, chattel securities.

The scheme, as already stated, is under the control of a special board, comprising Colonel J. J. Esson, C.M.G., Financial Adviser of the Government, who is appointed Chairman of the Board, Mr. J. W. Macdonald, the Public Trustee, who acts ex officio as principal executive member of the Board under the title of Commissioner of Rural Intermediate Credit, Mr. W. Waddel, Superintendent of the State Advances Office, Messrs. J. N. Massey, Puni, Auckland, and J. Brown, of Lowcliffe, Canterbury, representing the farming community, Major Norton Francis, C.M.G., of Christchurch, a director of Messrs. Pyne, Gould, Guinness Ltd., Stock and Station Agents, and Mr. T. E. Corkill, formerly Assistant General Manager of the Bank of New Zealand.

The local administration of the scheme will, in certain respects, be under the control of district boards to be set up by the central Board and local officers designated District Intermediate Credit Supervisors. The organisation of the Public Trust Office will evidently be utilised for the administration of the scheme.

The funds for employment by the Board in its lending business will be obtained in two ways: firstly, by advances from the Government by way of loan, and secondly, by the issue to the public of debentures secured, generally, upon the assets of the Board.

Dealing with Government advances first, the Act authorises the advance to the Board from the Consolidated Fund of sums up to £400,000 in total, such advances to be for a term of not less than twenty years as arranged between the Minister of Finance and the Board, to be free of interest for the first ten years and to carry interest after that period at a rate prescribed by the Minister of Finance. Of such advances two-thirds is to be employed in the Board's business, while the remaining one-third is to be credited to a redemption fund which, with the resulting income, is not to be employed for any purposes other than the redemption of debentures issued by the Board except that when interest on the advances requires to be paid to the Consolidated Fund an amount equal to the interest for any year on the proportion of the advance credited to the redemption fund may be transferred out of the income of the fund for that year to the general business account of the Board. Moneys in the redemption fund are to be invested in Government securities only. The nett profits of the Board from time to time are to be credited equally to the redemption fund and to a reserve fund, which latter may be invested at the discretion of the Board either in Government securities or in its business.

It is laid down in the Act that repayments to the Consolidated Fund from time to time are not to exceed the total of the amount of accretions to the redemption fund including the profits transferred to that fund and the amount standing to the credit of the reserve fund. This provision operates to preserve the margin, referred to later, provided for the security of debenture-holders. The debentures issued by the Board are given priority for purposes of repayment over the right of the Consolidated Fund to receive repayment of the advances previously referred to. The consent of the Minister of Finance is required to the issuing by the Board of debentures and the total of the debentures outstanding at any time is not to exceed the aggregate of the advances received from the Consolidated Fund and the amount secured by the mortgages, bills of sale and other securities belonging to the Board. A further provision in the Act limits the amount of the Board's debentures outstanding for the time being to the sum of £5,000,000.

The debentures will be for terms from 6 months to 5 years and will carry interest at rates not exceeding 6 per cent. per annum. They are constituted authorised investments for trust funds, public moneys, the funds of certain lending Government departments and for certain classes of Savings Bank moneys.

Debenture-holders are given the right to petition a Judge of the Supreme Court for the appointment of a receiver either upon default by the Board in payment of interest and principal or if the audited accounts of the Board for any year disclose a loss exceeding 25 per cent. of the total amount raised by the Board by debenture issues.

The funds at the disposal of the Board for lending purposes, i.e., two-thirds of the advances from the Consolidated Fund, and all moneys raised by debenture issues, are to be made available for the benefit of the farming community in four ways.

The Act firstly provides for the establishment of limited liability companies of a special description called "co-operative rural intermediate credit associations" with the special function of borrowing moneys, mainly from the Board, and re-lending such funds to its shareholders upon securities approved by the Board. To form such an association there must be at least twenty persons engaged in farming operations and the consent of the Board is required to the registration of any association. The Act prescribes a standard form of memorandum of association applicable to these associations and the regulations issued under the Act on the 22nd December last lay down model articles of association from which no departure is permitted without the consent of the Board. Certain provisions of the Companies Act are also by the regulations excluded from application to these associations.

The minimum share contribution of each member of an association is fixed at 25 £1 shares and a shareholder who obtains a loan exceeding £250 is required to increase his holding of shares up to the nominal value of one-tenth of the amount of his loan. It is unnecessary to state the amount of share capital with which an association proposes to be registered.

Provision is contained in the Act for a shareholder who has repaid his loan retiring from the association, provided that the number of shareholders is not reduced below twenty, and receiving out of its assets the amount agreed upon with the association and approved by the Board as the value of his shares.

The associations are subject to a number of restrictions and the Board is also given some measure of control over the activities of the associations ; for example, the local representative of the Board the District Intermediate Credit Supervisor, is automatically a director of each association formed in the district in which he acts and the Board has also the right to appoint any one member of an association to act as a director representing the Board. The investment of an association's paid-up capital and the application of its profits are subject to the direct control of the Board. An association has no power to borrow money or create any charge or encumbrance on its assets except as provided in the Act, a provision which makes it impossible for the association to mortgage its assets in any way except with the precedent approval of the Board.

The purposes for which loans may be obtained by members of associations are limited by the Act ; also the security for any loan obtained must be a mortgage of land, a bill of sale over chattels, or approved personal security. A shareholder cannot obtain a loan beyond £1,000 or ten times the nominal value of his shares, whichever is the less. The maximum rate of interest permitted to be charged to borrowers is seven per cent. and loans cannot be granted for a period exceeding five years.

It is not, however, necessary for a farmer desirous of obtaining an advance from the Board to become a member of an association of this description. Provision is contained in the Act for an individual farmer applying direct to the Board for an advance provided he is able to produce a satisfactory guarantee for the repayment of such proportion of the loan as the Board requires, being not less in any case than twenty per cent. of the amount granted. For advances of this description there must be a security over chattels, as contrasted with the case of all loans through associations where the security may, if acceptable to the Board, be either a mortgage of land, a bill of sale over chattels or approved personal security.

The maximum loan which may be granted to an individual borrower, (£1,000) and the maximum rate of interest chargeable (seven per cent.) are the same as in the case of loans through associations but there is a difference in regard to the term of the loan, in that loans through associations may be for terms up to five years whereas loans direct to individuals are to be repayable on demand, and to be repaid within five years of the date of granting.

The administration of loans of this latter description is to be largely in the hands of district boards to be set up by the central Board, which will control the general lending policy of the district boards.

There is a provision which prohibits a farmer from obtaining an advance of more than £1,000 in total by making separate applications through an association and direct to the Board.

These are the two methods by which farmers are to come more or less directly in touch with the Board in relation to their personal financial requirements. Further provision is contained in the legislation to enable the Board to grant advances to farmers' co-operative organisations and also to discount farmers' notes and bills for banks and financial institutions.

The Act authorises the Board to grant loans to " co-operative societies " meaning by that bona-fide co-operative companies (not being co-operative rural intermediate credit associations) incorporated under the Companies Act and having for their principal object the production or sale of staple agricultural or pastoral products, including live stock, and including also goods manufactured from any such products. To be qualified to receive an advance from the Board an association must have a subscribed capital of not less than £2,500 and have not less than thirty members. To a society having these requirements the Board is authorised to grant loans up to eighty per cent. of the fair market value of live stock or produce belonging to the society. The term of such loans is to be not less than six months and not more than three years and the rate of interest is not to exceed seven per cent. per annum.

The provisions relating to the discounting activities of the Board are contained in the Regulations issued under the provisions of the Act on the 22nd December last. Paragraph 46 of the Regulations provides that in order to enable banks and approved financial institutions to afford financial assistance to farmers the Board may discount promissory notes and bills of exchange provided that the maker of the promissory note or acceptor of the bill of exchange, as the case may be, is a farmer and that the promissory note or bill of exchange is endorsed to the satisfaction of the Board. It is also provided that no person is to obtain accommodation by means of discounted promissory notes or bills of exchange and advances directly or indirectly from the Board beyond a total amount of £1,000. The Board is given power to fix its discount rate.

The Regulations mentioned previously prescribe a scale of maximum legal charges in respect of the formation of associations and the preparation and discharge of securities for loans made by the Board or by associations ; also standard forms of chattel securities and a form of guarantee.

The "Bulletin's" Blunder.

There is a temptation to enquire how far away New Zealand is from Australia when the Sydney " Bulletin " publishes a very good cartoon of Mr. Justice Adams and then proceeds in its happy, snappy way to advise its readers that the cartoon represents Justice Salmond. Sir John's career is outlined, together with the information that " His manner on the Bench is particularly suave, and counsel like him, though they daren't try to pull his leg." The said counsel are of course trying to visualise how they could pull the leg of a Judge who, since the 19th September, 1924, has been a revered memory.

The Law of Bankruptcy in New Zealand

Part V.

(Continued from Vol. III, page 263.)

(W. A. BEATTIE).

It is necessary, before going further, to state briefly what Mr. Reeves meant in his report to the House when he made reference to the Law of Scotland, in Bankruptcy jurisdiction. A few references will be given in order that those sufficiently interested may go into this matter more deeply, but otherwise this article will deal only with general principles.

One is quite safe in saying that the whole conception of the law of bankruptcy in Scotland was simplified and rendered more workable by reason of the fact that the conceptions were based on the Roman Law of debt. One cannot help feeling that the conception was more logical and that compared with it, the English statutes were somewhat cumbersome and makeshift. The English statutes did not lend themselves to that easy analysis which characterised the Scottish legislation, and consequently had to be constantly amended and repealed as experience demanded. A Scottish enactment of 1696 on the other hand, survived for over a century and a half, and its successor inherited its fundamental characteristics. The confusion that surrounded the term "bankruptcy" was surmounted largely by the term "Notour bankruptcy," introduced in the Scottish enactment of 1696, c. 5. First, a person becomes insolvent, then notoriously insolvent or publicly insolvent. By certain acts, which we would now call acts of bankruptcy, he publicly shows that he is insolvent. These acts were strictly defined and were "sentence" of insolvency, execution of diligence (writ of execution) against a debtor by horning (a certain type of warrant) and caption, retiral to the Abbey (Holyrood, which was a place of sanctuary), or other privileged place, flight or absconding, or defence of the person by force (presumably when he was being seized for debt). These overt acts would be, in those days, such as would most clearly show the state of the debtor's finances. This status of "Notour (notorious) bankruptcy" was followed later by sequestration (commencing with an Act of 1772) or cessio bonorum. Sequestration and cessio bonorum were the modes of bringing about distribution of the estate. Cessio bonorum, taken from the Roman Law, is most interesting. It was "an equitable relief from the severity of the law of imprisonment for debt." A process was sued out of the Court of Session by the debtor in the form of a summons wherein the debtor was pursuer (Plaintiff) and all the creditors were defenders (Defendants). The pursuer was bound to exhibit to the Court a complete statement of his affairs (a "condescendence") and to show that his insolvency was due to innocent misfortune. The cessio bonorum, or delivery of all property to a trustee then followed and distribution was made amongst the creditors. It did not operate as a discharge from debts. Later a petition could be presented by the creditors to bring about a cessio bonorum. This applies as a convenient method in small bankruptcies, but could be altered into a sequestration later, when the amount involved exceeded £200. Sequestration on the other hand did not develop through the common law; but was statutory (commencing in 1772). It was a process of taking and distributing the property of the debtor under supervision of the Court. The status of Notour Bankruptcy was followed by liability to sequestration, but a petition for sequestration was competent only within four months after constitution of Notour Bankruptcy. The sequestration statutes were based on the principles of equity which underlay the Scotch Law of Bankruptcy. These principles were in the main as follows: The first was that the insufficient property of the debtor at once became the property of the creditors. The second was that no creditor should have an advantage, and thus preference was stopped. By the Act of 1696, to which we have made reference, preferences were invalidated, and the doctrine of relation-back was formulated. The principle of relation-back was that if a debtor made payments to creditors within a short period of his Notour bankruptcy, he must have made them with a view to preference, and they were thus invalidated. This principle is one of the most important of our present day bankruptcy principles, and we can quite easily see its origin here.

Placing these facts in logical order we see that bankruptcy law in Scotland could be analysed into definite stages, the first being insolvency, the second notorious or public acts which constituted Notour bankruptcy, and which we could now call acts of bankruptcy, and the third the sequestration or cessio bonorum which followed. An insolvent could be forced into Notour bankruptcy by a diligence or a "sentence," or by a seizure perhaps, of his person, which would be followed by resistance if he thought fit to commit this "notorious act." The petition would then follow for sequestration. What could be more logical. At the present time we have insolvency, then the Act of Bankruptcy, then the adjudication which is in effect sequestration, giving as it does automatically the property to the assignee. There is thus very little difference in principle between what was done in Scotland over two centuries ago, and what is done here to-day. If, also, we were to delve into the details of sequestration and cessio bonorum, and if we were to consider the clause in the act to which we have referred as regards preferences, and the clause regarding ranking of creditors, we should inevitably be brought to the conclusion that we were rather like the rustic who expended most of his energy in running down a moving staircase which was going upwards, whereas had he looked over the balustrade he would have found a staircase that would have taken him to his destination without any energy at all. Where the balustrade is the border of Scotland, one often fears that through sheer obstinacy and racial rivalry energy is thus expended unnecessarily on both sides, although decreasingly so. It is remarkable how the two systems of jurisprudence exist in so small an island, but they seem to exist happily enough. Whether or not the penchant for finance of the Scot had anything to do with the admirable way in which he worked out this branch of the law it was certainly an occasion for the piping in of the haggis when the Law Officers of the Crown recommended that the Scottish system of bankruptcy administration should hold sway in England, and when the New Zealand Parliament followed suit.

He who desires further detail should refer to the subject in Bell's Commentaries, Vol. II, or to Erskine II, tit. 12, and Murdoch's Law of Bankruptcy in Scotland.

London Letter.

Temple, London,
7th December, 1927.

My dear N.Z.,—

The event of the period, so far as I am concerned and, indeed, so far as the Constitution is concerned, is the fight in the House of Lords over the body of the "Tribunal" in the new Landlord and Tenant Bill. I don't know whether you recall the provisions of that enactment, or about-to-be enactment, and how, as well as altering the general law of landlord and tenant in one or two particulars, it creates the entirely new position between them as a result of which a tenant of business premises, on quitting his holding at the termination of his tenancy, may either obtain compensation in respect of the improvements he has added, or the goodwill he has caused to be attached, to the premises, or may obtain a new lease willy-nilly his landlord. If you have not studied the matter carefully, you will require to be told that, as the Bill was first drafted and indeed as it passed through the House of Commons, all questions as to this new right of the tenant were referred to a "Tribunal" of an entirely new creation, of essentially lay character and of almost unlimited irresponsibility. Not only were questions of the right to, and amount of, the compensation so referred; but it was also put within the scope of the gentlemen who compose these tribunals, to dictate the terms of the new lease if such was ordered to be granted.

Far be it from me to claim to be the man who won this, or any other, war; but I may fairly say that I took the brunt of the first offensive against the designers of the Bill, on behalf of those crusaders whose desire it is to maintain the jurisdiction of the Courts and to exclude such new jurisdictions, whether of surveyors or of any other so-called "Experts." I really think I had made some impression when we all marched off to the House of Lords together, to hear what their Lordships had to say about the Bill, upon the whole. They had much to say, especially the Lawyers among them. Buckmaster, as ever, was passionately mistaken in all his observations, and none of us paid much attention to his admirably delivered sentimentalities. Parmoor, whom we all so cordially dislike, was ineffective, in an effort to bless the Bill, as the sort of thing his Socialists approve of, but to curse the Tory Government that promoted it. The fun began with the cold-blooded criticisms of Lord Sumner, that man of cutting intelligence and scathing phrase. Whatever else he had to say, he had nothing but ill to say of this new Tribunal: and the observations of those who followed him (including our trusty and well-beloved Lord Phillimore, who was able to inform his Peers that he had been practising some six years at the Bar when the Judicature Act came into operation in 1875) made it plain to the lowest intelligence that the Tribunal must go or the Bill could hardly stay. The debate was adjourned: conferences took place among the designers and producers: and to-morrow there goes before their Lordships an amendment, which I venture to describe as contrite, by which these "Experts" are put back in their proper place; the place of referees, that is, to whom the Courts, having jurisdiction in the matter, refer the questions for inquiry and report.

I think it will universally be admitted that this is a very healthy expedient, and, though the amendment is so contrived that the Court will not have to enforce its control of the matters unless and until it wants to do so or is wanted by one of the parties to do so, it is a very much better thing that the Courts' jurisdiction should remain unaffected. Lord Birkenhead's speech, defending the Bill, was one of the finest pieces of advocacy I have ever heard. In the matter of words, he is undoubtedly the marvel of the age.

In the House of Lords, the decision of the Court of Appeal (reversing Wright J.) has been upheld in the case of **Haughton and Co. v. Northand Lowe and Co. Ltd.,** to the effect that where a director proposes to contract on behalf of a company and does so without the company's authority, the company is not estopped from disputing the agreement by reason of its directors' knowledge. In the Court of Appeal (M.R., Sargant and Lawrence L.JJ) there has been a very interesting decision on a point as to price maintenance agreements, from the point of view of restraint of trade of course: a subject very dear to the hearts of some of you out there, but, to me, a sore subject between us I suppose! (However, I bear no malice: I confine myself to angry expressions of pity for you as, daily, I eat my bread at home, made, as it is, of the flour which I have selected for myself and no Distributor has selected for me.) The agreement was considered from the point of view, as well of width as of public policy, by a judgment of Sargant L.J. which is worth reading: **Palmolive Company of England v. Freedman.** In the same Court was heard the Revenue Appeal———

And there the typewriting ribbon of the strange typewriting machine at which I compose this letter at midnight, suddenly gives out and disappears into the bowels of the mechanism. As I am informed by my proprietors that no one can read my handwriting and as it is dangerous to be illegible when stating refinements of the law, I break off here (to resume as soon as may be) to go to bed, or first I may say to Birmingham for Assizes tomorrow. What a life!

Yours ever,
INNER TEMPLAR.

Children's Courts.

Rev. George Birmingham, in his latest published volume of essays "Ships and Sealing Wax," rather deftly touches off His Majesty's Courts and the children. He says, in the course of a discussion on fashionable words: "'Sex conscious' has a still longer list of evil "things to answer for. There always were boys who "delighted in obscenity; but so long as we called them "nasty-minded little beasts, which is what they are, "they were more or less ashamed of themselves and other "boys did not want to imitate them. Since we have "taken to speaking of them and writing about them as "examples of the dawn of 'sex-consciousness in adol-"escence' they are beginning to think themselves nice, "and the rest of us find ourselves regarding them as "*interesting.*"

The writer's judgment is that if we hope to prevent the increase of crime among our youths, the law will need to call smut by that name whether it be in a boy or man.

"OEDIPUS."

Standing Mute.

It is seldom nowadays that a sane prisoner refuses to plead to an indictment, but an instance with rather unusual features has recently occurred in the Dublin Criminal Court. Two youths charged with membership of an illegal military force refused to plead, and the Judge thereupon directed the jury to decide whether the prisoners were mute of malice or by the visitation of God. The cable report indicates that, notwithstanding uncontradicted evidence that the prisoners could speak, the jury were unable to agree, the foreman refusing to answer the Judge's question as to the reason for the disagreement. The jury were ordered to reconsider their verdict but, not only a second but a third time, reported a disagreement, with the result that they were discharged, the Judge saying that their verdict was perverse.

In the comparatively early stages of English law an accused, if found to stand mute by visitation of God, was tried as if he had pleaded not guilty. If, however, he was found to be obstinately mute then, in treason, in all misdemeanours, and in petty larceny, the standing mute was considered to be equivalent to conviction. On an indictment for any other felony the position was different. In such a case if the prisoner after *trina admonitis* and a respite of a few hours still persisted in refusing to plead he was subject (whether by the common law or by 3 Edw. 1 c. 12, seems not to be clear) to the punishment of *peine forte et dure*. The order of the Court was that he be removed to prison and there stretched on his back on the bare floor of a low dark chamber, naked, and as great a weight of iron as he could bear, and more, placed upon his body. He would be fed one day on three morsels of the worst bread and on the next on three draughts of stagnant water, and so on alternately, and was kept in this situation until he died or until he answered. Instances are on record of prisoners choosing to die rather than to answer, their object being to avoid the attainder of their property which in those times resulted from a conviction of felony. The barbarous punishment of *peine forte et dure* existed until 1772, in which year it was abolished by 12 Geo. 3, c. 20, which made refusal to plead to an indictment for felony equivalent to a plea of guilty.

The present law on the point in England is contained in the Criminal Law Amendment Act 1827, Section 2, which provides: "If any person, being arraigned upon "or charged with any indictment or information for "treason, felony, piracy or misdemeanour, shall stand "mute of malice, or will not answer directly to the "indictment or information, in every such case, the "Court if it shall so think fit, shall order the proper "officer to enter a plea of 'Not guilty' on behalf of "such person."

It has been held that under this Statute the Court cannot itself determine whether in fact the accused is mute of malice or by visitation of God, but must direct a jury to be forthwith empanelled and sworn to try the question—**Reg. v. Israel,** 2 Cox 263; **Reg. v. Schleter,** 10 Cox 409. And therein apparently lies the reason for the extraordinary situation in the Dublin Criminal Court; and it would seem that a similar situation is quite capable of arising in our own Courts. Section 419 (2) of our Crimes Act 1908 enacts: "If the accused "wilfully refuses to plead, or will not answer directly, "the Court may, if it thinks fit, order the proper officer "to enter a plea of not guilty."

The difference in phraseology between the two corresponding statutory provisions is slight and apparently unimportant; if it is a question for the jury and not for the Court whether the accused is in fact mute "of "malice" it would seem to be equally a question for the jury alone to determine whether he is "wilfully" mute. In the New Zealand case of **R. v. Nye,** 12 G.L.R. 174, the English practice was (though not expressly) followed by Cooper J. The accused, a deaf mute, was indicted for murder. After his counsel had stated that the accused could not read or write (although he had formerly been able to do so) the learned Judge directed a jury to be empanelled to try whether he stood mute of malice or by visitation of God. The jury found that the prisoner stood mute by visitation of God. A jury was then empanelled and sworn to try under Section 437 of the Crimes Act 1908 (see now Mental Defectives Act 1911, Section 32) whether the prisoner was lunatic so that he could not plead to the indictment. The inability of an accused through lunacy to plead to an indictment leads however into a different although cognate branch of the law outside the scope of the present notice. The law as to standing mute would be perhaps of greater practical importance if a finding that the prisoner is mute by the visitation of God were an absolute bar to trial on the indictment. But such is not the case—**R. v. Steele,** 1 Leach 451; **R. v. Governor of Stafford Prison, ex parte Emery** (1909) 2 K.B. 81: the mute may nevertheless be tried if he is sane, and can read or write, or intelligence can be conveyed to him by signs or symbols. Before proceeding to the trial it is however necessary to ascertain whether he can plead to the indictment or understand the proceedings—**R. v. Jones,** 1 Leach 102; **R. v. Governor of Stafford Prison** *cit. sup.*

The matter cannot however, it seems, be regarded as one of academic interest only. The jury empanelled to try the reason of the accused's standing mute may consist of any twelve bystanders, and should an accused charged with a political offence (when the bystanders would be mainly partisans) adopt the course of standing mute, it is by no means inconceivable that the Dublin scene would be re-enacted in our own Court.

"SERGEANT-AT-LAW."

Broadcasting and Copyright.

Following the decisions of the Courts of Australia and the United States under substantially similar Statutes, McCardie J. decided that the broadcasting of an opera by wireless constituted a performance "in public" within the meaning of Section 1, Subsection 2, of the Copyright Act 1911. The defendants in the case (**Messager v. British Broadcasting Co.** (1927) 2 K.B. 543) unsuccessfully claimed that the performance was given in their private studio, to which the public was not admitted. To this McCardie J. replied: "If I did not hold this to be a public performance by the defendants I should fail to recognise the substance and reality of the matter and also the object and intent of the Copyright Act."

Reports.

Wellington District Law Society.
Annual Meeting.

The Annual General Meeting of the Wellington District Law Society was held at Supreme Court Buildings, on the 27th February, 1928.

There was a large attendance of members, Mr. H. H. Cornish, the retiring president, took the chair.

The following officers of the Society were elected :— President, Mr. H. F. Johnston ; Vice-President, Mr. C. G. White ; Treasurer, Mr. A. A. Wylie ; Auditor, Mr. J. S. Hanna (re-elected) ; Ordinary Members : Messrs. H. H. Cornish, R. Kennedy, P. Levi, W. Perry, D. S. Smith, and G. G. G. Watson.

The Annual Report and Balance Sheet for the year ended 31st December, 1927, were adopted.

The report indicated that in the district there are 347 practitioners, of this number 258 practice in the city and suburbs, and 89 in the country towns. The increase for the year (25) mainly concerns the city.

There were 27 practitioners elected to membership of the Law Society during the year.

Reference was made to the loss sustained by the deaths of Messrs. Justice Alpers, R. Clement Kirk, and B. J. Dolan, a tribute of respect being conveyed in each instance to the relatives.

Members of the Society were gratified to learn of the appointment of Mr. A. W. Blair, a well known practitioner in the city, as a Judge of the Supreme Court. Mr. Blair had formerly been an active member of the Council for many years and was twice President.

The Council acknowledged with thanks from the Government of Fiji complimentary copies of Ordinances with Chronological Table and Index 1875 to 1924.

Many other matters of interest to the profession were discussed.

The question of the Easter Holidays to be observed was considered, when it was decided that the Law Offices in the City should be closed at Easter and should extend from 5 p.m. on Thursday the 6th April until Saturday the 14th April, both inclusive.

The proceedings terminated with a vote of thanks to the staff.

The Success of Appeals.

The number of successful appeals from the Lower Courts to the Court of Appeal is about 33 per cent. of the whole number, and the number of successful appeals from the Court of Appeal to the House of Lords is about 33 per cent. There is no reason for believing that if there was a higher tribunal still the proportion of successful appeals would not reach at least that figure."

—Lord Justice Atkin.

Bench and Bar.

Mr. J. H. Luxford, a well-known member of the Auckland legal profession, has been appointed a stipendiary magistrate. The appointment is to take effect from April 1, but it is not known in which district Mr. Luxford will be stationed.

Not only has Mr. Luxford experienced a brilliant career at the Bar, but he has also a fine war service record to his credit, and was in his younger days a prominent athlete. Born in Palmerston North in 1890, Mr. Luxford is the youngest son of Mr. W. L. Luxford, now of Mount Albert. He was educated in Palmerston, Dannevirke and at Wanganui Collegiate School. In 1908 Mr. Luxford joined the staff of Mr. C. L. MacDiarmid, solicitor, of Hamilton, and in 1913 was admitted to the Bar by Mr. Justice Cooper. While in Hamilton Mr. Luxford played in the representative Rugby fifteen, and was a member of the Hamilton Rowing Club's senior four. In the 16th Waikato Regiment he held a commission.

Following his admission to the Bar, Mr. Luxford practiced at Te Awamutu with Mr. A. E. Cox. On the outbreak of the European War, he enlisted in the New Zealand Main Body, but owing to an injury he was posted to the machine gun instruction school at Trentham. Fit for active service at the end of 1915, Mr. Luxford joined the New Zealand Division in Egypt, and in April of the next year he went to France. Fighting in every engagement, he was mentioned in despatches from France by the late Earl Haig for gallantry at the first battle of the Somme. At Gravenstafel, in October, 1917, he was seriously wounded, and subsequently invalided out of the army. Mr. Luxford rose from the rank of lieutenant to captain in April, 1916, and in December of the same year he was promoted to the rank of major.

Returning from the war, Mr. Luxford resumed practice in Hamilton in 1919, but eventually moved to Auckland, where he followed his profession with the late Mr. W. J. Napier. Later he joined the firm of Fitchett and Rees, with which he is still associated. Mr. Luxford is a member of the General Trust Board of the Auckland Diocese, a member of the visiting committee of Roto Roa Island, and a member of the executive of the Victoria League. He compiled the official history of the New Zealand Machine Gun Corps, which was published under the title, " With Machine Gunners in France and Palestine."

A helpful practice rule was used by Mr. Barton S.M., a few days ago in a case when dealing with a motor case. He said that in these days of touring motorists, it was sometimes difficult to make findings relating to motor accidents where the parties lived at widely distant points and were compelled to take their evidence on commission. In the case dealt with, as the defendant and a witness had travelled a long distance in order to tender their evidence, and as the evidence has been very helpful, he would allow defendant some amount in addition to those expenses prescribed by the scale.

Deceased Persons' Estates.

The following Estates of Deceased Persons were placed under the Charge of the Public Trustee during the Month of January, 1928. Date given denotes date of death.

ADAMS, Leonard, Auckland, Retired Hotelkeeper, 14/11/27, Intestate.
ADDICOAT, Thomas, Thames, Miner, 23/9/27, Testate.
AICKIN, Margaret, Auckland, Widow, 3/1/28, Testate.
AMBLER, Richard, Masterton, Slaughterman, 17/1/28, Intestate.
ANDERSON, Mary Ann, Auckland, Widow, 9/12/27, Testate.
ATKINSON, Agnes Speirs, Waikari, Married Woman, 10/12/27, Testate.
BAKER, William, Awakeri, Farmer, 11/12/27, Testate.
BALLINTYNE, Janet, Miller's Flat, Married Woman, 20/12/27, Intestate.
BARLASS, Ann, Christchurch, Widow, 15/12/27, Intestate.
BARTA, Wenz, Wanganui, Labourer, 18/1/26, Intestate.
Beaufort, Thomas Ralph Caseley, Roxburgh, Retired coach-driver, 23/12/27, Testate.
BEDWELL, Ernest, Christchurch, Ship's steward, 13/12/27, Intestate.
BELL, David Alfred Angelus Moore, Wellington, Labourer, 23/12/27, Testate.
BENNETT, John, Lowcliffe, Farmer, 29/12/27, Testate.
BEST, Frederick, Christchurch, Retired, 22/12/27, Testate.
BIGGS, Clara, Wellington, Widow, 29/12/27, Testate.
BILLENS, Emma, Christchurch, Widow, 24/12/27, Testate.
BLASKETT, William, Ashhurst, Settler, 16/1/28, Testate.
BOORMAN (or HINKLEY), Samuel, Dunedin, Retired Farmer, 4/1/28, Testate.
BOOTHMAN, Eliza Jane, Auckland, Widow, 23/12/27, Testate.
BRERETON, Jean Dodds Thomson, Cambridge, Jeweller, 26/12/27, Testate.
BRODIE, Elizabeth, Auckland, Widow, 3/1/28, Testate.
BROMLEY, James, Christchurch, Accountant, 11/1/28, Testate.
BROWN, Ethel Maud, Wellington, Widow, 26/12/27, Testate.
BRUNEL, Ludveina Anastasia Grace, Kaikoura, Spinster, 29/1/26, Intestate.
BULL, Walter, Dunedin, Retired seed-merchant, 13/1/28, Testate.
BUNZ, Leonard Merton, Christchurch, Masseur, 23/12/27, Intestate.
BURNARD, Samuel, Christchurch, Retired, 22/12/27, Intestate.
BUXTON, Henry, Ryal Bush, Farmer, 11/1/28, Testate.
CAMERON, Daniel, Balcultha, Old-age pensioner, 24/12/27, Intestate.
CARSTON, Mary, Dannevirke, Married woman, 20/12/27, Testate.
CARTER, Job, Auckland, Retired, 25/12/27, Testate.
CHAPLIN, Harry, Christchurch, Retired railway employee, 22/1/28 Testate.
CHARLES, Michael, Ashburton, Retired farmer, 9/1/28, Testate.
CHESNEY, Andrew, Dunedin, Retired school-teacher, 3/1/28, Testate.
CLARK, George William, Christchurch, Carpenter, 13/1/28, Intestate.
COLE, William Henry, Masterton, Retired painter, 29/12/27, Testate.
COLEBROOK, Florence Elizabeth, Henderson, Married woman, 14/12/27, Testate.
COOMBES, Joseph, Paroa, Farmer, 6/1/28, Intestate.
CORKIN, Francis, Tihaka, Farmer, 6/1/28, Intestate.
CRAIG, John, Rangitumau, Labourer, 21/12/27, Intestate.
CRONE, Catherine, Napier, Spinster, 22/1/28, Testate.
CRUMPTON, Thomas, Auckland, Retired farmer, 9/1/28, Testate.
DE MOLEYNS, John Gilbert, Napier, Labourer, 4/1/28, Intestate.
DOIG, Mary, Dunedin, Married woman, 9/12/27, Intestate.
DRAKE, Jane Murray, Sussex, England, Widow, 22/2/26, Testate.
DUNCAN, John, Bortons, Retired farmer, 22/1/28, Testate.
EALHAM, Margaret Thompson, Christchurch, Widow, 20/1/28, Testate.
EVANS, Alfred, Auckland, Waterside Worker, 22/1/28, Testate.
FOOTE, James Gordon, Fencourt, Farmer, 22/12/27, Testate.
GALPIN, Catherine, Whangarei, Married woman, 16/11/27, Testate
GILL, Mary Agnes, Gisborne, Maternity Nurse, 21/12/27, Testate.
GODKIN, James, Auckland, Retired farmer, 15/1/28, Testate.
GUNDERSEN, Sydney Ernest, Norsewood, Labourer, 5/12/27, Intestate.
GUTHRIE, Andrew Percival, Longburn, Butcher, 3/1/28, Intestate
HALL, Elizabeth, Christchurch, Widow, 25/12/27, Intestate.
HAMILTON, Joseph Given, Christchurch, Cycle Dealer's assistant, 26/12/27, Intestate.
HANSEN, Susan, Palmerston North, Widow, 21/1/28, Testate.
HAWKE, William Henry, Pukekohe, Estate Agent, 11/12/27, Testate.
HIND, William Henry, Wellington, Cabinetmaker, 1/1/28, Intestate.
HOLLOWAY, Edwin George, Wellington, Retired Butcher, 31/12/27, Testate.
HORNEMAN, Henry Sweedland, Christchurch, Retired, 11/1/28, Testate.
HOSKINE, or HOSKING, Alfred, Waihi, Miner, 1/1/28, Intestate.
HOWE, Arthur George, Napier, Bookseller, 12/12/27, Testate.
HOWICK, William, Palmerston North, Baker, 26/11/27, Testate.
INGLIS, Maria, Pahiatua, Widow, 24/11/27, Testate.
ISBISTER, William, Auckland, Retired Civil Servant, 3/1/28, Testate.
JACKSON, Robert Walter, Westport, Fisherman, 31/12/27, Testate
JOHNSTON, James Martin, Auckland, Saw-doctor, 21/12/27, Testate.
KEANE, John James, Gisborne, Civil Engineer, 21/12/27, Intestate
KELLY, Sarah, Auckland, Widow, 13/12/27, Testate.
KELBURN, Eliza, Christchurch, Widow, 20/1/28, Testate.
KIRKWOOD, Annie Mary, Stratford, lately of Ryde, Sydney, N.S.W., Spinster, 2/12/27, Testate.
LANT, Lily Cecila, Wellington, Tailoress, 9/1/28, Testate.
LAUDER, David, Wellington, Labourer, 26/12/27, Intestate.
LAWRENCE, Agnes Elizabeth, Waitara, Spinster, 2/12/27, Intestate.
LAYMAN, Henry, New Plymouth, Retired farmer, 28/12/27, Testate.
MACKIE, Annie Elizabeth, Dunedin, Widow, 4/1/28, Intestate.
MAHONEY, Denis, Wellington, Council employee, 24/12/27, Intestate.
MANSON, James, Motupipi, Farmer, 2/1/28, Testate.
MAYNE, James Boxer, Christchurch, Retired, 24/12/27, Testate.
MILLER, John, Oamaru, Farmer, 14/1/28, Intestate.
MONAGHAN, John, Carterton, Retired farmer, 11/1/28, Testate.
MURPHY, Charles Denis, Norsewood, Farmer, 25/12/27, Intestate.
MCINNES, Christina, Wellington, Widow, 10/1/28, Testate.
MCKINLAY, Archibald, Maungakaramea, Farm labourer, 14/12/27 Intestate.
MCLEOD, Annie, Lumsden, Widow, 23/12/27, Testate.
NEWBY, Emily, Christchurch, Married woman, 24/12/27, Testate.
ORSBORN, William, Lower Hutt, Retired draper, 18/1/28, Testate.
O'SHEA, Catherine, Karoro, Spinster, 27/12/27, Testate.
OSWIN, Alexander Augustus Henry, Christchurch, Warehouseman, 3/1/28, Testate.
PAUL, Robert Ferguson, Wellington, Foundry Manager, 17/12/27, Intestate.
PAYTON, Mary Ann, Wellington, Married woman, 30/12/27, Testate.
PEEK, Eleanor May, Hamner Springs, Married woman, 4/1/28, Intestate.
PERKIS, William, Port Ahuriri, Sailor, 29/11/27, Intestate.
POLLARD, William, Hamilton, Farmer, 13/9/27, Intestate.
POWER, James Graham, Kurow, Harness-maker, 17/12/27, Intestate.
REYNARD, Alfred, Wellington, Cabinetmaker, 9/1/28, Testate.
RICHARDS, Bertram Edwin, Woodville, Stationmaster, 19/12/27, Testate.
RICHARDSON, Edward Malcott, Stirling, Farm labourer, 6/1/28, Intestate.
RITCHIE, Andrew, Christchurch, Retired, 10/12/27, Testate.
Roddis, Eliza, Petone, Widow, 9/1/28, Testate.
ROOKS, Annie, Masterton, Widow, 23/1/28, Testate.
ROSS, Esther, Whakaronga, Widow, 28/12/27, Testate.
ROWLEY, Mary Rose, Invercargill, Widow, 12/12/27, Testate.
RUTLEDGE, William Charles, Dunedin, Commission Agent, 4/1/28, Testate.
SANDERS, Hilda Florence Adelaide, Auckland, Married woman, 22/1/23, Intestate.
SHAW, James Francis William, Runciman, Farmer, 25/12/27, Testate.
SHIELDS, Frederick Louis, Timaru, Plasterer, 26/12/27, Intestate.
SINCLAIR, John, Christchurch, Brass Finisher, 20/1/28, Testate.
SLOAN, Gertrude Emily, Christchurch, Widow, 25/4/27, Testate.
SMYTH, Margaret, Ashburton, Widow, 29/12/27, Testate.
SPITTAL, Alexander, Karamea, Bridge-builder, 15/1/28, Intestate.
SNELL, James Walter, Ponatahi, Retired farmer, 5/1/28, Intestate.
SOMERVELL, Andrew, Otawhao, Retired carpenter, 18/12/27, Testate.
STEVENS, Katherine Louisa, Dunedin, Widow, 21/12/27, Testate.