New Zealand
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"When thou dost get at the heart of crime, be moved to pity, not puffed up with joy."

—*Confucius.*

Tuesday, March 20, 1928.

Purchasing Cars for Employees.

There is an increasing practice for commercial firms to finance certain of their employees in the purchase of motor cars to be used by them for the purposes of their work for their employers. These transactions are usually between firms and trustworthy employees, and so that transactions are not infrequently carried out in a somewhat loose manner from a legal viewpoint.

In a recent case in Victoria, namely: **Australian Metropolitan Life Assurance Co. Ltd. v. Lea** (1928) V.L.R. 29, one of these transactions came before the Court. The Assurance Company supplied the money for an employee to purchase a car for himself, subsequently taking a Hire-purchase Agreement on the car to secure the repayment of the advances wherein the Company purported to let the car to the employee upon the usual terms of a Hire-purchase Agreement. The agreement was not registered, and the employee subsequently sold the car to defendant. The Company demanded the car from the purchaser, who refused to deliver up. Thereupon action was taken against defendant for detention of the car. For the defence it was contended that the Hire-purchase Agreement from the Company to the employee notwithstanding, that Court should enquire into the real transaction. This was not that of hire-purchase transaction at all because the Company never at any time had title to the car; the real transaction being that of a security for a loan to the employee. The Court adopting this view, found that the non-registration of the instrument invalidated the instrument (Instruments Act 1915, Section 127) and therefore the Company had no recourse against the car.

In these transactions it is desirable that the company financing the purchase should make sure that the sale should be made not to the employee but to the company itself and the hire-purchase transaction should then proceed to the employee. In the alternative the instrument should be registered under the Chattels Transfer Act.

The Council of the Legal Education announce the results of the Bar General examination of students of the Inns of Court, held in Middle Temple Hall, on four days last December. Among those successful in Roman Law, Constitutional Law (English and Colonial), and Legal History, as well as in Criminal Law and Procedure, was Mr. Alexander Mackay Scobie Mackenzie (Gray's Inn), Mr. J. E. R. Studholme (Inner Temple) took a Second Class in Criminal Law and Procedure, and Mr. Keith K. Kirk (Gray's Inn) a Third Class in the same examination.

Rotoroa Island.

No more difficult and thankless task could be imagined than the management and control of an Inebriate Establishment to which persons are committed usually against their will. It can be quite appreciated that the position of the Superintendent of the Rotoroa Island Inebriate Establishment would be one which would not commend itself to the charitable graces of his charges. Under the circumstances therefore it is a matter upon which the Superintendent can congratulate himself that the Advisory Committee have reported to the Minister that "The big majority of the allegations against Major Home, the Superintendent, were not proved." In coming to this conclusion the Committee have indicated their ability to sift the grain from the chaff.

This however adds more weight to their condemnation of the present system which prevails at Rotoroa Island. in that its reformative work in respect to the disease of drunkenness is not much in evidence.

"It is clear," states the report, "that the present system of dealing with inebriates leaves much to be desired. The essence of the Statute under which detention at the island is legalised is reformation, but we find very little, if anything at all, is done in this direction. If it was realised that commital to the island meant the proper treatment for persons addicted to drink, rather than punitive detention, we think that many more persons would go to the island while the disease was still in its incipient stages, and with a proper chance of recovery. The present system of committing persons for not less than a certain period is wrong. It is also wrong to limit the period. If detention is for reformative treatment, then it should not extend beyond the period necessary to effect a cure. Evidence shows that inebriates should be classified into those who are curable and those who are not.

"Inebriates who have reached the chronic stage should be committed for an indefinite period. Commital should be looked upon in the same light as the commital of a mentally defective person. He should be released only by the Minister on proper recommendations.

"We are constrained to emphasise the necessity of establishing urgent reform in the present system of treatment of inebriates who have not reached the chronic stage. We consider that a qualified medical man with special training should be appointed by the Minister for Justice to take in hand curative treatment of the inmates. The Departmental instruction that applications for discharge are not to be considered until after the inmate has completed six months' detention, is, in our opinion, wrong."

The report makes clear the fact that the problem of the inebriate is not being faced at all.

Inebriacy is a disease and requires the same delicate and professional attention as any other disease.

It is to be hoped that the matter will be properly faced now and an inebriate establishment brought into being under competent medical superintendence, whose object would be to effect cures in the quickest time possible, using compulsory detention only in the cases where absolutely necessary.

Supreme Court.

Skerrett C.J. February 1, 11, 1928.
Wellington.

IN RE BUCKLEY: PUBLIC TRUSTEE v. WELLINGTON SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS (INCPTD.)

Charitable Trust—Pecuniary Legacy to "Society for Prevention of Cruelty to Animals of New Zealand"—No Such Society Ever in Existence—Legacies of Same Amount to Another Charitable Institution and for Another Charitable Purpose—Residue Subject to Life Interest to Sister of Testatrix Given to "Before Mentioned Charities Share and Share Alike"—General Charitable Intention—Jurisdiction of Court to Direct a Scheme Cy-pres—Whether Crown Entitled to Dispose of Gifts as Parens Patriae—No Express Gift of Legacy or Residue to Trustees of Will—Implication—Independent Societies for Prevention of Cruelty to Animals Established in Different Places in New Zealand—General Nature of Cy-pres Scheme Consisting in Just Division Between Such Societies.

Mary Ann Buckley, by her will, bequeathed the sum of £1,500 "to the following charitable purposes: Firstly, Five hundred "pounds (£500) to the Crippled Children in London in England; "Secondly Five hundred pounds (£500) to The Society for the "Prevention of Cruelty to Animals of New Zealand and Thirdly "Five hundred pounds (£500) to the Blind Institute of New "Zealand." After giving a further pecuniary bequest, she directed her trustee (the Public Trustee) to invest in any of the securities authorised by the law of New Zealand for the investment of trust funds all the balance of her estate and to pay the income derived from such investment to her sister Mrs. Ellenor Houston for her life, and from and after the death of such sister the following provision was made: "I give devise and bequeath the "whole of my estate to the before mentioned charities share and "share alike." At the date of the testatrix's will, or at her death there was not, and never had been previously, any society known as "The Society for the Prevention of Cruelty to Animals "in New Zealand." There were in New Zealand independent societies established at Wellington, Auckland, Napier, Gisborne, Feilding, Wanganui, Nelson, Christchurch, Timaru, Oamaru, Dunedin and Invercargill. All those Societies were local societies and were known as the Wellington, Nelson (or other locality or district) Society for the Prevention of Cruelty to Animals, with the exception of the Timaru Society which called itself the New Zealand Society for the Prevention of Cruelty to Animals (Timaru Branch). All the Societies directed to be served were represented by Counsel at the hearing of the Originating Summons, with the exception of four, namely: The Society for the Prevention of Cruelty to Animals Auckland, The Otago Society for the Prevention of Cruelty to Animals Dunedin, and the Hawke's Bay Society for the Prevention of Cruelty to Animals, Napier, who did not desire to be represented and were prepared to abide by the decision of the Court without such representation; a further Society, namely the East Coast Society for the Prevention of Cruelty to Animals of Gisborne, was described as defunct, and had not been in operation for many years.

Kelly for Public Trustee.

Hay for Wellington Society.

Samuel for Nelson, Canterbury, North Otago, Feilding, Southland and Timaru Societies.

D. S. Smith for Wanganui Society.

SKERRETT, C.J., said that the questions which must first be considered were whether the words "The Society for the Prevention of Cruelty to Animals of New Zealand" described all or any of the before-mentioned independent Societies in New Zealand; and, if not, using the language of Buckley J. in **In re Davis** (1902) 1 Ch. at p. 880, whether having regard to the whole of the will, there was a lapse, or whether there was an indication of a general charitable intention so that effect could be given to the gift, although the legatee named had been, and was, non-existent. His Honour thought that the words used in the will contemplated one Society, and one Society only, namely a New Zealand Society for the Prevention of Cruelty to Animals in that country. They were not apt to express an intention to give legacies to a number of independent Societies or institutions in different parts of New Zealand for the prevention of cruelty to animals, or to a number of societies or institutions for the same purpose even though they might describe or regard themselves as branches of a non-existent New Zealand Society. If such had been the testatrix's intention it would have occurred to her to fix the proportion in which the pecuniary legacy was to be divided among the numerous beneficiaries. The testatrix might well have thought or assumed, when she made her will that such a society did in fact exist. The gift of the pecuniary legacy was to a non-existent society, and none of the defendant Societies could take the legacy. His Honour was clearly of the opinion that the Wellington Society could not claim the legacy merely because the testatrix for a short time (it was not known how long) resided in Wellington; nor could the Timaru Society claim the legacy because it called itself the New Zealand Society for the Prevention of Cruelty to Animals (Timaru Branch). No extrinsic evidence even if admissible, which was more than doubtful, was available to interpret the language used. It might be as well to say that the reason given by Warrington J. in **In re Raven** (1915) 1 Ch. 673, 681, for the non-admissibility of extrinsic evidence appeared to be completely applicable to the present case.

The next question was whether the legacy lapsed, or whether looking at the whole of the will, there was evidence of a general charitable intention which would enable effect to be given to the will. His Honour thought it clear that the testatrix had indicated a general charitable intention. The present was not the case of a gift to a charitable institution which had existed but had ceased to exist—see **Clark v. Taylor,** 1 Drew 642; and **In re Rymer** (1895) 1 Ch. 19—but it was the case of a gift to an institution which had never existed at all in which case, as stated by Buckley J. in **In re Davis** (*cit. sup.*) at p. 884, the Court would lean in favour of a general charitable purpose and would accept even a small indication of the testator's intention as sufficient to show that a purpose, and not a person, was intended. The testatrix bequeathed "the sum of £1,500 to (meaning "for") "the following charitable purposes," and then followed amongst others the legacy under consideration. The legacy was sandwiched in between a gift for a clear charitable purpose namely to the "Crippled children in London in England," and a gift to what was admitted to be an existing charitable institution in New Zealand, namely "The Blind Institute of New Zealand." Furthermore there was the residuary devise and bequest which upon the death of the testatrix's sister gave the whole of her estate to the before-mentioned charities share and share alike. Those circumstances clearly indicated that the character of the pecuniary bequests was for a general purpose of charity and that the testatrix merely pointed out the mode of giving effect to them. There was ample authority for that view—see **In re Clergy Society,** 2 K. & J. 615; **In re Maguire,** L.R. 9 Eq. 632, and **In re Davis** (*cit.sup.*) at pp. 883-5, where the authorities were discussed. It appeared therefore that the principle of *cy-pres* must be applied to the pecuniary legacy of £500 under consideration, notwithstanding that the residue of the estate was given to charity—see **Mayor of Lyons v. Advocate-General of Bengal,** 1 App. Cas. at p. 115. The difficulty which arose in **In re Davis,** and was dealt with at page 888, did not arise as the language of the residuary clause in the present case was a gift to charities *and not, as in that case, to institutions.* It was of course clear that the share in the residuary estate destined for the New Zealand Society for the Prevention of Cruelty to Animals must also be given effect to *cy-pres.*

The further question then arose whether the Court had jurisdiction to direct a scheme *cy-pres.* The will contained no express bequest or gift of the legacy, or of the residuary estate, to the trustees of the will; but His Honour thought that such a bequest and gift must be implied, for that was essential to enable the trustees to give effect to the provisions of the will. That would give power to the Court to direct a scheme *cy-pres,* and exclude the right of the Crown as parens patriae to dispose of the gifts. The question however was of no real importance and was not referred to in the argument and need hardly be further discussed. It was extremely unlikely that the Attorney-General would desire to intervene for the purpose of the Crown itself directing the execution of the trusts *cy-pres.* His Honour would therefore direct a scheme subject to the Attorney-General intimating within a limited time whether he disputed the power of the Court so to do. The drawing up of the order would be postponed for a month to enable the papers to be brought before the Attorney-General to ascertain whether he was desirous to intervene in the suit and insist upon a claim of right to dispose of the charitable bequest. If he did the question must be argued. If he did not then the order for the inquiry must go on the lines which His Honour was about to indicate. It was clear that if the Societies interested in the execution of the charitable

bequest *cy-pres* could not agree there must be a formal inquiry. His Honour had insufficient information to order and define a scheme *cy-pres*. It was of course clear than any scheme must direct the division both of the legacy of £500 and the share of the residue which was intended for a New Zealand Society amongst the Societies for the Prevention of Cruelty to Animals in New Zealand in such portions as might be just. That arose from the primary rule to be observed in the application of the *cy-pres* doctrine that the intention of the donor must be observed as far as possible. His Honour could see no difficulty in the Societies concerned arriving by agreement at the proportion of the bequests which each was to receive. If the parties concerned could agree, then, upon obtaining the consent of the Attorney-General to the scheme, an order could be made, without inquiry, for the division of the fund according to the agreement. If no agreement could be arrived at then an order must be given for an inquiry to settle a scheme. Notice of the inquiry must be given to the Attorney-General who must have liberty to attend.

Solicitor for plaintiff: **Solicitor, Public Trust Office,** Wellington.

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

Solicitors for Nelson and other Societies: **Maginnity, Son and Samuel,** Nelson.

Solicitor for Wanganui Society: **A. D. Brodie,** Wanganui.

Sim, J. February 16, 1928.
Dunedin.

ELLIS AND BURNS v. HUTCHEON.

Landlord and Tenant—Forfeiture—Lease of Licensed Premises—Proviso for Re-entry on Indorsement of License on Record of Conviction for Offence under Licensing Act—Three Day's Notice of Intention to Enforce Right of Re-entry Insufficient—Property Law Act 1908, Section 94.

Action by plaintiffs, as lessors of a property known as the Victoria Hotel, Dunedin, to recover possession of the demised premises on the ground of the lessee's breach of covenant. On 19th January, 1928, the plaintiffs' solicitors served on the defendant a notice under Section 94 of the Property Law Act 1908, of the lessors' intention to re-enter and determine the lease at the expiration of three days from the date of service of the notice. The notice alleged breach of a covenant in the lease to carry on the business of a publican in an orderly manner, and default under a provision in the lease providing in effect that if and whenever the license held in respect of the demised premises should be endorsed with a record of conviction for any offence committed by the licensee against the Licensing Act the lessors might re-enter and determine the lease, in that the lessee was convicted on 5th December, 1927, of keeping open the premises on 12th November, 1927, for the sale of liquor, when such premises were required to be closed, and of selling liquor on the same date when the premises were required to be closed, and that a record of such conviction was ordered to be endorsed on the license held in respect of the premises.

J. S. Sinclair for plaintiffs.

Hay and J. M. Paterson for defendant.

SIM J. (orally) said that the plaintiffs must fail in their action because they had not given the notice required by Section 94 of the Property Law Act 1908. His Honour thought that the time allowed by the notice—three days—was not sufficient. The purposes of such a notice were stated by Lord Russell C.J., in **Horsey Estate Ltd. v. Steiger** (1899), 2 Q.B. 79 at p. 91. It seemed to His Honour that the notice in the present case did not give the defendant the opportunity he ought to have had to consider his position. He had been allowed practically only two days, because the notice was served on the Thursday, that giving him only Friday and a half-day on Saturday. The time given by the notice was quite inadequate.

Plaintiffs non-suited.

Solicitors for plaintiffs: **Irwin and Irwin,** Dunedin.

Solicitor for defendant: **W. G. Hay,** Dunedin.

Adams, J. December 7, 19, 1927; February 1, 1928.
Christchurch.

WILSON v. ZEALANDIA SOAP AND CANDLE TRADING CO., LTD.

Company—Article Conferring Lien on Shares of Each Shareholder "for his Debts, Liabilities and Engagements"—Shareholder Indemnifying Company Against Loss in Respect of Third Person's Debt to Company—Action by Shareholder for Dividends—No Loss Sustained at Date of Action—Whether Company Entitled to Lien on Shares in Respect of Indemnity—Whether Lien Extends to Dividends—Nature of Contract of Indemnity Against Loss—Effect of Giving of Time by Company to Debtor.

Action claiming *inter alia* £194 5s. 0d. and interest in respect of dividends declared by the defendant company on shares held by the plaintiff. The defendant company admitted that the dividends had been duly declared, but claimed a lien under its Articles of Association (the relevant portions of which are referred to in the judgment) in respect of a sum of £621 12s. 1d., being the unpaid balance of a debt of £2,732 0s. 3d. owing to the company by one Oldman, in July, 1922, which balance was alleged to be presently recoverable from the plaintiff under a letter of indemnity dated 20th July, 1922, signed by the plaintiff and addressed to the defendant company, which read: "In consideration of your company not taking any steps to make Mr. E. W. Oldman, Auckland, a bankrupt I hereby undertake to indemnify the company against any loss with respect to the debts incurred in his Agency." The defendant company also counterclaimed for this balance. By deed of assignment, dated 27th July, 1922, Oldman assigned the greater portion of his real and personal property to the company, and covenanted to pay any balance of the debt of £2,732 0s. 3d. and interest over and above the net proceeds of the realization of the property. By the same deed Oldman's wife assigned her reversionary interest in a sum of £600 to the company and guaranteed the performance of all covenants on Oldman's part contained in the deed.

Wilding for plaintiff.

Hunter and Gee for defendant.

ADAMS, J., held on the facts that the arrangements made between the defendant company and Oldman, subsequent to the giving of the plaintiff's indemnity, were authorised by the plaintiff and that the latter could not therefore rely upon those arrangements as releasing him from liability under his indemnity. Had His Honour found otherwise, however, the plaintiff's defence must have failed because the plaintiff was not a surety in the full sense, but was in the position of a *quasi*-surety, and the giving of time without his consent would not discharge him from his indemnity—**Way v. Hearn,** 11 C.B.N.S. 774; **Rowlatt on Principal and Surety,** 2nd Edn., 250; **15 Halsbury** 552. His Honour held further, considering the surrounding circumstances, that the true construction of the indemnity was that it related not to certain debts due to Oldman shown on Oldman's balance sheet as forming part of his assets (a construction contended for by the plaintiff on account of the use of the word "debts" in the indemnity) but to Oldman's debt of £2,732 0s. 3d. due to the company.

The plaintiff could not, however, be called upon to pay anything under the indemnity unless and until a loss had been actually sustained. In effect he was in the position of an insurer against loss. The rule of law in such cases was stated by Lord Blackburn in **Burnand v. Rodocanachi,** 7 App. Cas. 333, 339, and see also **Castellain v. Preston,** 11 Q.B.D. 380, 394 *et seq.* The defendant therefore had no cause of action against the plaintiff in respect of the sum of £621 12s. 1d. until an actual loss was ascertained by exhaustion of its remedies under the deed, and the counterclaim was premature.

As to the claim of lien set up by the defendant company, Article 18 of the company's Articles of Association was as follows: "The Company shall have a first and paramount "lien upon all the registered shares and registered stock of "each shareholder for his debts, liabilities, and engagements "solely or jointly with any other person to or with the Com-"pany, whether the period for the payment, fulfilment, or "discharge thereof shall have actually arrived or not." Article 19 provided that the lien might be enforced by sale of the shares or stock but that no sale should be made unless and until default was made in the payment, fulfilment, or discharge of such debts, liabilities, or engagements. There could, His Honour thought, be no doubt that the plaintiff's undertaking to indemnify was a contingent liability and also an "engage-

ment." The period for its fulfilment had not yet arrived, but in the meantime the liability or engagement remained effective and unfulfilled. The defendant therefore had a lien upon the plaintiff's shares as security for the payment of any loss which might be sustained in terms of the undertaking. The lien extended to any dividends declared on the shares. That was decided in **Hague v. Dandeson,** 2 Exch. 741. That case, it was true, was the case of a bank under a deed of settlement, but it had always been cited in the leading text-books on company law as authority for the proposition as stated in **Lindley on Companies,** 6th Edn., 638, "*Prima facie* a clause conferring "a lien on shares will extend not only to the shares but also to "dividends and other moneys payable in respect of them."—See also **Palmer's Company Law,** 12th Edn., 166; **Buckley on Company Law,** 10th Edn., 576. The net result of the litigation was that the claim of each party failed.

Plaintiff non-suited on claim; defendant non-suited on counterclaim.

Solicitors for plaintiff: **Wilding and Acland,** Christchurch.

Solicitors for defendant: **Hunter and Ronaldson,** Christchurch.

Reed, J. December 12, 1927; January 19, 1928. Auckland.

IN RE LOZA: FERNANDEZ v. DICKINSON.

Trustee—Accountant Trustee—Will Authorizing any Trustee Engaged in Profession or Business to Charge and be Paid for Services "in like Manner as if not being such Trustee he had been Employed by the Trustees"—Extent to which Accountant Trustee Entitled to Remuneration.

Originating summons for interpretation of the will of Joaquin Fernandez Loza, deceased. The proceedings are reported only upon one question asked in the summons, viz.: Whether, there being a vacancy in the number of trustees under the will, and it being desired to appoint Mr. Warnoch, an accountant, to that position, Mr. Warnoch, if appointed, would be entitled to be remunerated out of the estate for the performance of his duties as trustee. Mr. Warnoch had been acting as accountant for the trustees in the administration of the estate and had been paid for his services the usual fees payable to Public Accountants. The will provided:—

"Any trustee . . . . who may be a solicitor or engaged in "any other profession or business shall be entitled to charge "and be paid for all services rendered by him or his firm "in connection with my estate in like manner as if not being "such trustee . . . . he had been employed by the trustees."

Meredith for plaintiff Hesketh.
Leary for plaintiff Fernandez.
McVeagh for defendants and Mrs. Vaughan.
Hogben for Mrs. Edwards.
Hore for John Alphonso Fernandez.

REED, J., read the provision in the will above quoted and said that accountancy was a "profession or business" and therefore if the present was a case in which a prudent man acting for himself would employ the services of an accountant the trustees were entitled to pay him whether he were a trustee or not. His Honour did not think that trustees were entitled to employ an accountant solely because books and accounts were required to be kept in an estate. In **Godefroi on Trusts,** 5th Edn. 207, it was said:

"Trustees are justified, in cases where their accounts are "of a complicated nature, in employing an accountant, but, "of course, subject to the limitation affecting the employment "of all other agents, that the occasion is one in which, ac-"cording to the usage of business, an accountant would be "called in by a prudent man acting for himself."

His Honour had no information as to the extent the accountant's services had been called upon in the estate, and no argument had been addressed to him upon the necessity or otherwise of his employment. His Honour's answer must be, therefore, perfectly general: if the trustees were justified in employing an accountant then so far as that employment, and the extent of it, could be justified by the trustees, the accountant—even though he became a trustee—was entitled to be paid for his services.

Solicitors for plaintiffs: **Hesketh and Richmond,** Auckland.

Solicitors for defendants: **Russell, Campbell and McVeagh,** Auckland.

Blair, J. February 2, 24, 1928. Auckland.

WHEELER v. SMITH.

Wages Protection and Contractors' Liens Act 1908—Practice—Order for Lien Obtained in Supreme Court—Lien Unsatisfied—Order by Supreme Court for Sale—Whether Supreme Court's Order Directing Sale Sufficient Authority to Sheriff to Sell and Execute Documents—Proper Form of Order—Wages Protection and Contractors' Liens Act 1908, Sections 83, 87.

On 22nd August, 1927 the plaintiff, a builder, obtained in the Supreme Court, an order under the Wages Protection and Contractors' Liens Act 1908 for lien against land owned by the female defendant, Mrs. Smith. The amount of this lien was £198 5s. 5d., and, it being unsatisfied, a motion was filed for an order (a) that the plaintiff "be entitled to sell" the land; (b) specifying the notice of such intended sale; (c) that the Registrar of the Supreme Court at Auckland execute all transfers, etc., necessary to complete title to any purchaser; (d) that the moneys arising from the sale be applied first in payment of costs of sale, secondly in payment of costs of and incidental to the action, thirdly in payment of plaintiff's lien, and fourthly the surplus if any to the female defendant.

Leahy in support of motion.

BLAIR J. said that the motion was made under Section 83 of the Wages Protection and Contractors' Liens Act 1908. It was clear that the Court could make an order directing a sale of the land to take place and specifying the public notice that must be given. Section 87 provided the machinery for selling land when the lien had been established in the Magistrates Court. But in the present motion the lien was established in the Supreme Court and no specific procedure was laid down as to the course to be followed after the Court had "directed a sale" under Section 83. If the Magistrates Court directed a sale nothing further was required than a certified copy of the decision. The Magistrates Court had precisely the same powers as the Supreme Court under Section 83. Each was "a Court" under Section 48. If therefore the Magistrates Court made an order under Section 83 and that order reached the Sheriff he proceeded upon it in all respects as if a writ of sale had been issued, and express authority was conferred by Section 87 on the Sheriff to convey or transfer the land to a purchaser.

The order which His Honour was asked to make was that "the Registrar" execute all necessary transfers, and His Honour was also asked to make an order as to the destination of the proceeds of the sale. It might happen that the Sheriff was not the same person as the Registrar. But even if he were the same person, as commonly was the case, the two offices were distinct, and an authority to the Registrar was different from an authority to the Sheriff. The Judicature Act 1908, Sections 27-29, showed that there was a marked distinction between the two offices. The latter was the King's bailiff and he had the same powers privileges and responsibilities as a ministerial officer of one of His Majesty's Courts at Westminster (Section 32). There was importance therefore in seeing that, when interference with private rights took place, such interference was done by the proper officer.

The question then arose whether after the Supreme Court had made an order under Section 83, that order could be delivered to the Sheriff and become operative under Section 87 in the same way as a Magistrate's order made under Section 83. It was not expressly stated in the Act that an order of the Supreme Court directing a sale, when handed to the Sheriff, was sufficient authority for him to sell, but the Legislature having expressly made a like order under the same Section, when made by an inferior Court, operative as sufficient authority to the Sheriff, it seemed to His Honour that it was a necessary inference that a like order by the Supreme Court was a like authority to that Court's own officer. The previous practice had not been uniform, but Adams J., in 1921, made an order directing a sale followed by a subsequent order in terms of Section 87. Owing to the doubt as to the applicability of Section 87 to Supreme Court orders made under Section 83 the Sheriff possibly asked that he be fortified by an order in express terms.

Even if an order made under Section 83 was not of itself sufficient authority for the Sheriff to exercise all the powers given him by Section 87 it seemed that the Legislature, having given the Court power to direct a sale, must have intended such power to be effective and the Court could, as Adams J. had already done, amplify an order in terms of Section 87. That could be embodied in one order.

(*Continued at foot of next column*)

Law Conference, Christchurch.

Easter, 1928.

The Conference Committee for the Law Conference to be held at Christchurch, on Wednesday, Thursday and Friday, 11th, 12th, and 13th April, have now finalised the arrangements.

The proceedings will open at the Provincial Council Chamber, on Wednesday, at 10 a.m., when Mr. Alex. Gray, K.C., President of the New Zealand Law Society, will deliver his inaugural address.

From 10.30 to 11.30 there will be a discussion of remits received, and at 12 o'clock noon, His Worship the Mayor of Christchurch (the Rev. J. K. Archer) will extend a Civil Reception to the Conference. From 2 to 3 p.m. Mr. A. F. Wright (Christchurch) will deliver an address on "Government by Regulation," to be followed by discussion. From 3 to 4.30 p.m. there will be discussion on the remits and at 8 p.m. the Conference Committee will hold a Reception and Dance in honour of the visitors, at the Winter Garden.

At 10 a.m. on the second day, a paper will be read by Mr. Harold Johnston (President of the Wellington District Law Society) on "The Present Rules Dealing with Juries in Civil Cases,"—followed by discussion.

An important remit from the Taranaki Law Society of great interest to the whole profession will be discussed immediately following Mr. Johnston's paper, and it is expected that the discussion will occupy the remainder of the morning.

In the afternoon it is hoped that a paper will be read by Mr. M. Myers, K.C., upon a subject bearing upon the present outlook in the profession. The remainder of the afternoon will be devoted to the discussion of remits. At 7 p.m. the visiting practitioners will be entertained at dinner at the Winter Garden, and on the same evening the ladies accompanying visitors will be entertained at a Bridge Party at the Jellicoe Hall.

Unless the Conference decides to sit on the Friday morning for any special business, this morning will be free. The afternoon will be devoted to golf and tennis matches. It is hoped that it will be possible to arrange contests between practitioners of the North Island and South Island in teams.

Those practitioners who have not already registered as attending will be able to do so by telegraphing the Conference Secretary, Mr. W. J. Hunter, P.O. Box 181, Christchurch, on or before Saturday the 24th March.

Supplementing the activities of the Conference Committee, the wives of members of the Committee are arranging entertainment for the visiting ladies. This will include a morning tea, motor picnic, and a dinner for ladies.

(Continued from page 16)

The order His Honour should make was to direct that there be a sale of the land, that 21 days' notice of such intended sale be given by advertisement once in the "Auckland Star" newspaper and once in the "New Zealand Herald" newspaper, and that notice of such intended sale be served upon the female defendant, the form of such notice to be settled by the Registrar, that the sale be made by the Sheriff who should effect and complete the sale in the same manner and with the same powers and authorities as he was required or authorised to effect a sale of land under a writ of sale pursuant to a judgment of the Supreme Court including the execution of any instruments necessary to convey to a purchaser the estate or interest sold.

Solicitor for plaintiff: **C. S. Leahy,** Auckland.

The N.Z. Conveyancer.

Conducted by C. Palmer Brown.

DEED TO GIVE EFFECT TO INFORMAL WILL.

THIS DEED made the day of BETWEEN of the one part AND of the other part WHEREAS by her last Will and Testament bearing date the of gave devised and bequeathed to the parties hereto certain legacies and bequests and gave the residue of her estate to the said and by a codicil to the said Will dated the day of the said confirmed the said Will AND WHEREAS by a holograph writing dated the day of a copy of which is set out in the Schedule hereto the said purported to revoke paragraphs of her said Will and to direct that all her goods and effects and her property at should be divided equally between the parties hereto but did not revoke certain legacies bequeathed by the said Will AND WHEREAS the parties hereto are desirous that the dispositions in the said writing of the day of shall be given effect to in the same manner as if the same were the last Will and Testament of the said deceased NOW THIS DEED WITNESSETH as follows:

1. or other the person to whom probate or letters of administration with the Will annexed may be granted shall administer and deal with that part of the estate and effects of the said deceased devised and bequeathed to the parties hereto as if she had duly executed the said writing of the day of as her last Will and Testament And each of the parties hereto agrees to the estate and effects of the said deceased being divided and administered in accordance with the said writing but subject to the legacies to other persons aforesaid.

2. Each of the parties hereto shall execute and do all such deeds documents and things as may be necessary or convenient for carrying out the provisions hereof and of giving effect hereto.

3. No party hereto shall commence or prosecute any action or proceeding against any other party or parties in reference to any part of the real or personal estate of the said deceased except for the purpose of enforcing these presents.

4. The parties hereto hereby undertake to indemnify the said or other the executor or administrator of the said estate against all actions proceedings damages and costs that may be brought sustained or incurred by reason of the administration of the said estate in accordance herewith.

5. The costs of and incidental to the preparation and stamping of these presents shall be payable out of the residue of the said estate.

IN WITNESS whereof this deed hath been executed the day and the year first above written.

SCHEDULE.

Insurance Law.

An Explanation of Some of the Main Principles

(By H. F. Von Haast,)

The purpose of these articles is not to cover in an elementary fashion the whole ground relating to insurance law, but to elucidate some of the main principles relating to contracts of insurance, that it is often difficult to extract from treatises on the subject, where with the abundance of details and references to cases, it is hard to see the wood for the trees.

Insurance is an agreement between two parties the insurer and the assured, that in consideration of a payment by the assured called the "premium," the insurer will on a certain event happening during a given time pay to the assured the amount of loss caused to the assured by the event, as in fire and marine insurances, which are contracts of indemnity only, or an agreed sum, as in the case of contracts of life insurance and accident insurance. Under a contract of indemnity the sole liability of the insurer is to compensate the assured only for the damage suffered owing to the occurrence of the event insured against up to the amount insured. If the assured has suffered no damage he has no claim against the insurer.

The Completion of the Contract.

The first principle to which is directed attention is that an agreement for insurance is a contract governed by the ordinary rules relating to contracts. To constitute a contract there must be an offer by one party and an unconditional, unqualified, identical acceptance of that offer by the other party. Both parties must agree upon all the material terms of the contract. If there is any agreement upon nine terms and a disagreement upon the tenth, there is no contract. If there is bargaining and variation of the terms in the cause of the negotiations, then there is no contract until the last offer by whichever party made has been accepted by the other party. Every time one party varies the terms of the offer of the other, he makes a counter-proposal or what is a new offer. To illustrate by a simple case: A offers to sell B a farm for £1,000. B says he will give £950. That is a refusal followed by a new offer. If A declines £950, B cannot then turn round and say that he will give A £1,000 and enforce a contract to sell to him for £1,000. A's offer is dead. B's offer has been refused. The negotiations must begin again. Or take a simple case in insurance. The assured makes a proposal to insure his life at the ordinary rate. In consequence of information given by him, the company is willing to insure him, but only on condition that his life is loaded, and that he pays a higher premium. The company writes him to that effect, for to make a contract the acceptance must be communicated to the person who makes the offer. The company has refused his proposal and made him a counter offer. If he refuses, there is an end of the matter. If on the other hand, he accepts it by letter, or by paying the premium demanded, then a contract has been made that can be enforced by either party. Take another case. A proponent made a proposal for insurance. The company rejected it, because the amount called for exceeded the amount that the company would write on any one life. The company sent a policy for the maximum amount that it would write to its agent with instructions not to deliver it to the proponent until he had signed a new application for a reduced amount. The agent delivered the policy to the proponent, but the latter died before he had signed a new application. It was held that there was no meeting of the minds of the parties essential to establish the contract. The legal position was that the proponent made a proposal. That was rejected by the company. Then the company made a new proposal for an insurance of a smaller amount, but that was never accepted by the proponent. (**Mackelvie v. Mutual Benefit Life Insurance Co. of Newark,** 287, F. 660).

So where the proposer makes a proposal for life insurance, pays his first premium and receives an interim receipt, providing that the insurance shall be binding from the date of the approval of the medical officer, the proposer can withdraw his proposal and recover his premium at any time before the medical officer signifies his approval.

In the absence of statutory requirements or special conditions in the contract, a contract of insurance need not be made by a formal policy or by any form of writing. A contract of fire insurance for instance, can be made verbally, although, if one is wise, one will never risk such a contract, but see that all the essential terms agreed upon by both parties are reduced to writing; such as the nature and duration of the risk, the premium, the amount of insurance, and the person or persons whose interest is insured. But once you have a proposal and acceptance, even without the payment of a premium, in the absence of any condition to the contrary, you have a binding contract of insurance, and the proposer is bound to pay the premium and the company to issue the policy in accordance with the terms of the agreement. For instance, in **Adie and Sons v. The Insurance Corporation Ltd.** (14 T.L.R. 544) Adie and Sons wrote to the company asking if they would take up the insurance. The company replied on the 18th February that they were prepared to accept the proposal and had sent the papers to the Glasgow branch to be dealt with there. On 19th, the Glasgow branch wrote: "The head office have forwarded to us your favour and intimate their acceptance of the proposal. We will let you have our policy as early as possible." On 20th the premises were burnt down. Adie and Sons had not paid the premium and the company had not issued a policy. It was held that the letter of the 18th was an acceptance of the offer and hence Adie and Sons were bound to pay the premium and the company to issue a policy in the ordinary form employed in their office, and it was immaterial that the parties had not discussed and expressly agreed to every item of the policy. If nothing is said about the policy it will be taken that the parties have agreed that the policy is to be in the company's usual form and containing the terms usual in that class of insurance.

But if the company tenders a policy in a different form or containing different terms from those agreed on, the proposer is not bound to accept it. So in **Braund v. Mutual Life and Citizens Assurance Co. Ltd.** (1925) N.Z.L.R. 529, Braund made a proposal for a combined life and accident insurance in which "accident" was defined in a general way and was not limited by specific exceptions. The company some time after the contract had been completed by its notification to Braund of the acceptance of the risk, issued a policy

in which a condition, in small print and difficult to read, enumerated accidents, including hernia, in respect of which the company exempted itself from liability. Braund had an accident which caused hernia, but the company declined to pay his claim. It was held that Braund had a right to assume that the policy conformed substantially to his proposal, that he did not accept the new terms embodied in the policy and that he was therefore entitled to have the policy rectified so as to conform to the proposal and to recover under the policy so rectified.

It may be noted that in that case the company could probably have succeeded, if it had relied on the technical defence that notice of the accident had not been given forthwith, but the claim being a genuine one, that defence was waived in order that the case might be decided on its merits. That is undoubtedly the proper attitude for an insurance company to take up, if only on the narrow ground of self-interest.

The following is an example of a verbal insurance that was held good and at the same time illustrates the necessity of the parties agreeing upon all the material terms of the contract, viz.: **Murfitt v. Royal Insurance Co. Ltd.** (38 T.L.R. 335).

Mr. Murfitt owned an orchard and nursery garden alongside a railway. He went to Allwood, the Royal's agent, and submitted a proposal for insurance for £3,000 of his trees and plants. Allwood said that, if Murfitt did not effect any other insurance meantime, he would send a proposal to the Royal and hold Murfitt covered pending a decision by the company whether it would accept the proposal or not. Before the company had come to a decision a fire occurred which did considerable damage. Subsequently the Royal refused to accept the proposal and repudiated liability. "Oh, but" says Murfitt, "your agent kept me covered and you're bound by his action," and he sued the company and succeeded.

It was held that:—

(1) There was nothing in England to prevent the formation of an oral contract as to fire or burglary, although the position as to marine insurance was different owing to statutory requirements.

(2) Allwood, although he had no express authority, had an implied authority to insure.

(3) The company would, if it had raised the point, have been entitled to judgment on the ground that no completed bargain had been proved, for such a bargain would require to specify the nature and duration of the risk, the premium, and the conditions of the contract. But the company had expressly refrained from raising it. If they had done so, "they would," so said the Judge, "have shattered the whole basis of their business operations."

To sum up: There must be an offer by one party and an acceptance of it by the other party communicated to the person making the offer, which acceptance must be absolute and identical with the terms of the offer, and the minds of both parties must be in agreement in all the material terms of the bargain

The question whether there has been a completed contract, and if so, the date of its completion is of vital importance when some event occurs that alters the risk between the date of the proposal and the date of the completion of the contract. In **Canning v. Farquhar** (160 B.D. 727) Canning on 8th December sent through Walters to the Sun Life Assurance Society, a proposal to insure his life for one year for £2,000. On 14th the Society's Actuary replied that the proposal had been accepted at the annual premium of £47 18s. 4d., and added, "No assurance can take place until the premium is paid." On 5th January Canning fell over a cliff. On 9th Walters tendered the premium at the Society's office and informed them of Canning's accident. The premium was refused, Canning died and his administrator sued for the policy money. The question was whether or not there was a binding agreement to insure. The Judges of the Court of Appeal held that there was not. Lord Justice finally considered the company's acceptance of Canning's offer, not a contract, but a continuing counter offer which, had there been no change in the risk, would have been accepted by the tender of the premium, making a definite contract under which the company would have been bound to issue a policy. But there was no contract before the tender and, the risk being changed, the company's offer could not be fairly regarded as a continuing offer which Canning was entitled to accept. His tender of the premium was a new offer for a new risk which the company were at liberty to decline. Canning's original proposal was for the insurance of a man who was sound in mind and limb; when his tender of the premium was made, it was for the insurance of a man who had fallen over a cliff, and, as "Monty" says of the Greeks who were shot at dawn on an empty stomach, "after that, a man is never quite the same again."

In **Dalgety and Co. Ltd. v. The A.M.P. Society** (1908) V.L.R. 481, Mr. Howe, the proponent, in his proposal to the Society stated that he had never suffered from cancer or tumour, but in reply to the question: "Have you undergone any surgical operation?" answerd: "Had smokers' lip operation 12 months ago." In consequence the society wrote Howe accepting his proposal, but loading his life with a higher premium than was set out in the proposal form. At that stage therefore no contract had been made. Howe had made a proposal which the company had not accepted, because it did not agree to the premium. The society made a counter-proposal which Howe could either have accepted or declined or which the Society could have withdrawn before Howe's acceptance. Howe, on receipt of this letter went to Dr. Bird primarily about the loading, and after an examination remembered a small lump under his jaw. Dr. Bird said it would have to be cut out. The doctor suspected that it was cancerous but he did not tell Howe so. It was arranged that Howe should go to the doctor's private hospital and have the operation performed. Howe paid his premium after this on 24th September, thereby completing the contract. On 26th he was operated upon. The growth proved to be cancerous and of such a character as ordinarily follows epithetioma of the lip, which was that Howe actually had had, although as the result of the microscopical examination of the specimen removed after the smoker's lip operation his trouble was pronounced not to be epithetioma. Howe eventually died of cancer. It was held by Cassen J. that there was no contract prior to the payment of the premium on 24th September. Howe had made a proposal which was not accepted, but a counter-proposal at an increased premium was made and was accepted by the act of paying the premium. Unfortunately Howe, after his interview with Dr. Bird, believed that the lump was malignant and knew that the doctors thought it sufficiently serious to necessitate

an operation. These facts should have been disclosed to the society as they certainly would have affected its mind. There is a general rule that a representation, once made in the course of a negotiation for a contract, *prima facie* continues in force until it is withdrawn or altered, and such a representation, unless withdrawn or altered, is construed to mean that the facts represented are at the time of making the contract true, and when made by a proponent for insurance, that no other material facts are then known to him. So that the moment for deciding whether the proponent has fulfilled his duty of disclosing all material facts to the insurance company is the moment of the completion of the contract hence the society was justified in declinging to pay the policy moneys. This illustrates significance of the date on which the contract was made. Had Howe, in respect of the society's letter, accepted its terms and paid the premium asked, the contract would have been completed, and what happened after the contract was once made, would be quite immaterial. A case on similar lines in New Zealand, decided in 1926, was **Watt v. Southern Cross Assurance Co. Ltd.** (1926) G.L.R. 152.

(To be continued.)

Statistical Requirements.

Regarding Land Dealings.

The following statement has been supplied to the Press by Mr. W. M. Hamilton, president of the Canterbury Law Society :—

Probably few people realise the inquisitorial powers which Statute has conferred on the Government. We are all familiar with the elaborate list of particulars which have to be supplied to the Census Enumerator, but these are insignificant in comparison with those which the Government may require if it wishes.

For instance, by Section 9 of the Census and Statistics Act 1926, a list is given in headings from (a) to (s), 19 in all, which cover pretty well everything that affects the private concerns of the individual. In short, he can be compelled to disclose all that can be told about himself, his business, and his affairs in general. What a weapon this might be in the hands of some Governments may be imagined. Apart from that it can be made an irksome and oppressive burden.

An instance of this is the recent regulations in respect of transfers and mortgages. Under these regulations, when any transfer, mortgage, or other dealing in land is presented for registration, particulars must be supplied under four headings—of these No. 3 has five sub-headings and No. 4 has twelve. Under No. 3 the sub-headings relate to transfers, etc., and require full particulars of the purpose for which the land is used, whether :—

(1) Farming purposes (inclusive of sheep farms, dairy farms, agricultural farms, fruit farms, bee farms, and every other kind of farm).

(2) Mainly or solely residential purposes.

(3) Business purposes, including retail and wholesale businesses, manufacturing establishments, and offices.

(4) Combined residential and business purposes.

(5) Miscellaneous purposes—that is to say, any purpose not set out above.

No. 4 relates to mortgages, and requires information in detail as to what purpose the money is required for, whether—

(1) To secure to vendor unpaid purchase money of property mortgaged.

(2) To secure loan (to lender other than vendor) to enable mortgagor to purchase property mortgaged.

(3) To secure loan to enable mortgagor to build on property mortgaged.

(4) To secure loan to enable mortgagor to improve or develop property mortgaged otherwise than by building.

(5) To secure current account of mortgagor.

(6) To secure loan for purposes not connected with property mortgaged.

(7) To repay existing mortgage.

(8) To secure liabilities of mortgagor other than loans.

(9) To secure liabilities of persons other than mortgagor.

(10) To secure payment of debentures.

(11) For other purposes.

(12) For two or more classes of purpose in conjunction.

These particulars may be of some use, though what it is not easy to see, but if required why should they be supplied at the cost of persons dealing in land ? The cost of supplying the particulars will have to be added to the legal expenses involved. A legal practitioner who registeres a document for a client cannot be expected to obtain and supply the answers to the elaborate questions involved without adequate remuneration, and his client has to find this. It is troublesome enough as it is to comply with the numerous requirements in connexion with completion and registration of documents. To add to this trouble without very cogent reason is unreasonable and oppressive, and adding expense to all dealings with land, and altogether improper.

Moreover, it is an added burden to the general cost of living. The staff in the Lands Registry Office will have to be increased, and additional staff will have to be found to compile and complete the statistics. It is to be hoped that the Government on reflection will realise that their introduction was inadvisable and will have them revoked at the earliest opportunity. Otherwise very serious exception is bound to be taken to them by a large section of the community already suffering irritation and annoyance in other ways from enthusiasts in various activities not concerned with production or material benefits to the community.

It is contended that the particulars demanded by these regulations are of no practical use, but only serve to employ a staff of Government officials in work which produces highly controversial results and lead to nothing of consequence in the end, and that even if the Government think they are worth paying for, the expense should not fall on persons dealing in land. It is simply adding auother cost to the already oppressive charges which producers have to bear.

London Letter.

Temple, London,
22nd December, 1927.

My dear N.Z.,—

I am surprised and delighted to have the opportunity of writing you again. I thought that, after the regrettable incident of my last letter, I should be asked to resign. Believe me, it was through no fault of my own that I had to break off suddenly, for I had hours in front of me to get my letter to you duly written, when, at five-thirty, the clear horizon was interrupted by a cloud no bigger than a man's hand, a call to a "short" conference. The conference lasted an hour-and-a-half, and in the middle of it I received news that a special jury case at Birmingham Assizes, known not to be reachable for a week, was to be reached in a day, so I had to catch the parcel post train thither and do what I could about my food and my letters .... And when I had got through these somehow or other, and was arrived at Birmingham half-an-hour after midnight, believe me there was not a bed to be had at or within fifteen miles of the place, so much importance do we attach nowadays to our local Dog Shows. (I speak literally, and do not here refer to Assizes). However, the less said about it all the better, and these be the cases which I was just about to tell you of, when, in the midst of all my troubles that evening my typewriter ribbon gave out:—

In **Konskien v. B. Goodman Ltd.** the Court of Appeal (Scrutton, Sargant and Greer LL.J.) upheld Salter J., on a pretty point of negligence, but gave different reasons for their view. In fact, the matter turns upon the allowing of debris to fall and remain upon another's roof; in law, it turns upon a continuing or non-continuing negligence. Meanwhile, the other Court of Appeal dealt, in the matter of stamp duty, with a decision of Rowlatt J. upon a matter in which there was a re-settlement following a disentailing assurance. Rowlatt J. was upheld (**Earl of Westmoreland v. Commissioners of Inland Revenue**).

I had, further, a case in the Chancery Division and a case in the King's Bench Division. The case in the Chancery Division, **In re Bridgett and Hayes' Contract,** was decided by Romer J., and it defines and delimits the period during which a settlement, or the dealing with settled estate by the personal representatives of the tenant for life, survives. Perhaps the King's Bench Division case is of greater point, dealing as it does with the effect of an assignment of all rights, under a written agreement, upon the arbitration clause contained in the agreement: see the decision of Wright J. in **Cottage Club Estates v. Woodside Estate,** if the matter presents itself to you as one worth pursuing.

So much for the cases which I had for you. To-morrow (for on this occasion, I am taking no risks and am writing to-night . . . if that intimation conveys anything to you!) to-morrow we will deal with the cases which I have: two in the Court of Appeal, two in the Chancery Division, three in the King's Bench Division, and one in the Judicial Committee of the Privy Council. No doubt you would put the last first: I put it last by long habit, for the reason that, technically, judgments in the Privy Council are not of binding authority in this country. Before closing down, I may perhaps tell you the tittle-tattle, such as it is. Scrutton L.J. presided, last Thursday night, at the dinner given to Bankes L.J. upon his retirement from the Bench. We all thought he was the wrong man to do it, and he did it extremely well. But the dinner was a foolish affair in this respect, that, given free use of the Temple Hall, the promoters elected to charge two pounds for each ticket, whereat the Junior Bar, or a very large section of it, said that expense should not be so blowed as that, but be blowed rather to the promoters . . . and the Junior Bar or a very large section of it, accordingly stayed away. Next, the Lord Chief Justice has been indiscreet again: he appears to be one of those people who opens his mouth and lets his tongue run as it likes. He has accused our universally respected Civil Service of being overpaid and underworked. Say what else you will about our Upper Civil Service, three things are certain: it takes meagre pay compared to its values, it works unsparingly and, in the matter of honour, it is beyond reproach. Now, in this matter of taking good pay, the Lord Chief Justice is known to have taken a total sum for fees, as Law Officer, so ample (and surpassing by tens of thousands the biggest of the salaries he complained of at Manchester) that a limit had thereafter to be imposed to secure anything like reasonableness; and the Lord Chief Justice did this during the War! How indiscreet of the little man therefore to embark upon a subject, as to which the Civil Service has no need whatever to fear the most minute investigation, but as to which the public would be as thrilled, as shocked, to hear the full details with regard to the Lord Chief Justice. And that, I think, is all of my gossip for this letter, and is it not enough?

In the Court of Appeal, **Smith and Others v. Schilling** decides the position arising where several defendants have joined separate causes of action and a general payment into Court is made and some of the plaintiffs recover less than the sum paid in. You may recollect the authority, in the matter of **Bunning v. Ilford Gas Co.** (1907) 2 K.B. 290, which this case overrules? Of equal interest, possibly, is the Court's decision, reversing Rowlatt J. in the Revenue Paper Case, **Inland Revenue Commissioners v. Lancashire Agricultural Society,** and upon the demand for exemption, as a charity of an association whose objects involved but were not limited to matters for the benefit of the world at large as distinguished from their own members; see Lord Machagnten's classification in **Commissioners of Income Tax v. Pensel** (1891) A.S. 583.

In **Dashwood v. Dashwood** Tomlin J. decided that where an action is stayed by consent on terms schedules, the terms cannot be enforced by an application to commit or attach but an injunction or an order for specific performance must first be obtained; and in **Manchester Corporation v. Oldenshaw Urban District Council** Eve J. held that an obligation to maintain a highway does not involve the liability to reconstruct it and make it a materially different thing from that which it originally was, notwithstanding that to repair the highway according to its original character would be to leave a thoroughfare totally unfit for modern traffic demands.

In the King's Bench Division we have the decision of Wright J. that a pleading in a cause may constitute the memorandum in writing which is required by our Sale of Goods Act 1893, and is no doubt required by corresponding statutes of yours. This upholds and follows **Lucas v. Dixon,** 22 Q.B.D. 357. In the Divisional Court of the same division we have the two decisions

to note, **Humber Conservancy Board v. Federated Coal and Shipping Company** (defining the meaning of " place " in the expression " Port includes place " in our Merchant Shipping Act 1894) and **Glanville v. Sutton and Co. Ltd.** (as to the bearing of a knowledge of a horse's danger to other horses upon the question of *scienter* when the horse did injury to a human being).

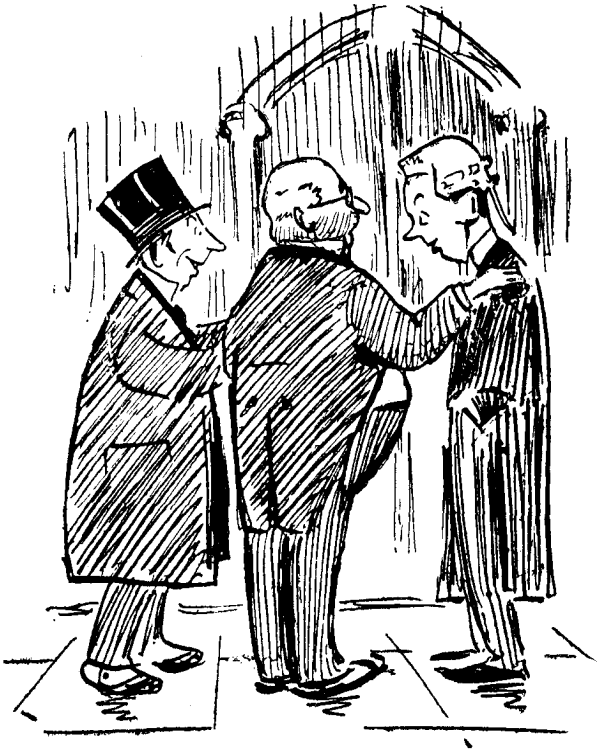
The case in the Privy Council of that of **City of Halifax v. Estate of James Fairbanks and Another,** and it turns upon what is called a " business tax," and its description as direct taxation within the meaning of the British North America Act 1867. I am aware, Gentlemen, that you may feel no more burning interest than do I in what is the meaning of the British North America Act and what may be within it, but I need hardly remind you that, as in **Montreal v. A. G. for Canada, etc.** (1923) A.C. 136, other and more engaging aspects of the matter fell to be discussed and fall to be studied in their Lordships' judgment. Their Lordships were the Lord Chancellor, Viscount Haldane, Lord Wrenbury, Lord Darling and Lord Warrington, all happily still with us. (I dare hardly mention to you the current rumour that Lord Atkinson really is going this time !).

I see that I have omitted far the two most interesting decisions of the period, that of the Divisional Court in **Roe v. Russell** in which leave to appeal has been obtained and an early hearing is to take place next term. It turns upon what are the rights of the so-called " statutory tenant," that is to say the person who retains possession of premises contrary to the wish of his landlord and only by virtue of the Rent and Mortgage (Restrictions) Acts. Can he sublet ? Up to date, no. We shall see what the Court of Appeal says : the point was deliberately left at large in **Keeves v. Dean** (1925) 1 K.B. The other case turns upon our recent Workmen's Compensation Act 1923. You may remember, and you may have experienced the difficulty that in the case of weekly payments, the employer would under the 1906 Act often make up his mind that the incapacity had ceased, stop the payment and leave the workman to start an arbitration and starve, if necessary, meanwhile. Section 12 of the Consolidation Act, was intended to stop this, and provided that the master might only cease or diminish payments " *in pursuance of* " an agreement or award. Given an award, does the payment stop at the date of the award or at the date, found in the award, to be that at which the incapacity ceased ? Let me recommend you to the report of the recent case (**Ocean Coal Co. v. Davies** (1927) A.C. 271) for the incidental entertainment of reading Lord Dunedin's dissenting judgment. Clauson J. in **Clatton v. Ashwell and Nesbitt Ltd.** approached the same point from another aspect, and what with one case and another, you will not be surprised to learn that legislation is likely to take place to make the matter clear. It will, no doubt, be to the effect that the workman's right to receive runs only to the date found to be the date of cessation of incapacity, that the master's duty to pay continues till the date of the award with right to recover payments in respect of the period subsequent to the found date, and that to give substance to the master's rights in the matter, payments pending award and after reference (whatever the form of reference) may be made into Court.

Yours ever,

INNER TEMPLAR.

Forensic Fables.



YOUNG MR. TITTLEBAT, THE LEADING SOLICITOR AND THE UNEXPECTED VICTORY.

YOUNG Mr. Tittlebat was Visited One Evening in his Chambers by a Leading Solicitor. He Wanted Mr. Tittlebat to Take a Brief in a Case which was to be Heard the Next Day. But as the Defendant (for whom Mr. Tittlebat was to Appear) had no Defence, would Mr. Tittlebat Accept a Fee of One Guinea ? Mr. Tittlebat, who had Hitherto been Unemployed, Gladly Assented to this Proposal. On Perusing the Papers Mr. Tittlebat (who was not without Intelligence) Detected a Flaw in the Plaintiff's Armour. And, Sure Enough, on the Morrow Mr. Tittlebat Obtained Judgment with Costs, for the Astonished Defendant. When the Case was Over there was a Scene of Great Enthusiasm in the Corridor and both the Defendant and the Leading Solicitor Insisted upon Entertaining Mr. Tittlebat at Luncheon. At a Late Hour he Returned to Chambers, Flushed with Victory and Refreshments, Satisfied that his Career was Made. Twenty Years Elapsed and Mr. Tittlebat, now a Bald, Prosperous Person, Received a Visit from the Leading Solicitor. He did not Bring a Brief with him this Time, but Said he had Just Looked In to Ask Mr. Tittlebat Whether he Remembered that Glorious Victory of Twenty Years Ago. The Leading Solicitor Added that he had Often Wondered how Mr. Tittlebat was Getting On.

Moral : Gratitude takes Many Forms.

Legal Literature.

The English and Empire Digest, with Complete and Exhaustive Annotations. Vol. 36. Negligence: Notaries: Nuisance: Open Spaces and Recreation Grounds: Parliament: Partition: Partnership: Patents and Inventions. BUTTERWORTH & Co. (PUBLISHERS), LTD.

THIS is the fifth volume of the Digest which was produced in 1927, and the rate of progress indicates that the great work will be complete at no very distant date. The present volume contains an unusual number of Titles—eight in all; but three of them—Notaries, Open Spaces, and Partition—are slight, and Parliament is quite short. The substantial Titles are Negligence, Nuisance, Partnership, and Patents. Negligence has been contributed by Mr. Alex. Cairns and Mr. V. R. Price; Nuisance by the Hon. D. Meston; Partnership by Mr. Alex. Cairns and Mr. C. A. Collingwood; and Patents by Mr. Alex. Cairns and the Hon. D. Meston. This last is the largest Title, occupying 335 out of a total of 858 pages.

The Title Negligence is the subject of one of the greatest legal treatises in English Law, the late Mr. Thomas Beven's masterly and exhaustive work. A considerable part of it—Negligence arising out of Special Relations—Innkeepers, Medical Practitioners, Solicitors, etc.—is dealt with under other Titles; references to them are given at pp. 66 to 68; otherwise the main Title would have been much longer. As it is, the 142 pages devoted to it are full of cases to which the practitioner, in the varied circumstances on which he has to advise, should have ready access. At the outset there is the suggested distinction between negligence and gross negligence. The latter, it has been said, is simply negligence with the addition of a vituperative epithet: per Rolfe, B., in **Wilson v. Brett** (11 M. & W. 113). For all that the term has stuck and has been said to be useful as expressing the practical difference between the degrees of negligence for which different classes of bailees are responsible: **Giblin v. McMullen** (L.R. 2 P.C. 317). In another connection, "gross negligence" has been used to denote the negligence in inquiring for title deeds which has been held to be so akin to fraud as to postpone a legal mortgagee to the equitable mortgagee who holds the deeds: **Colyer v. Finch** (5 H.L.C. 905).

But negligence does not exist merely in the abstract. To found liability, there must be such a relation between the negligent and the injured person as raises a duty to exercise care (**Le Lievre v. Gould,** 1893, 1 Q.B. 491), though **Heaven v. Pender** (11 Q.B.D. 503) shows that the relation by no means requires a contractual basis. A well-known example, too, of this extension is the duty which the owner of premises owes to invitees. **Indermaur v. Dames** (L.R. 1 C.P. 274), the leading case on the subject, is very fully stated, and is followed by a long list of annotations, giving cases in which it has been either followed, or distinguished, or considered, or referred to. The duty to take care rests on special grounds where children are concerned, and the cases defining this duty fill several columns. A recent case in which the subject was carefully considered is **Cooke v. Midland Great Western Railway of Ireland** (1909, A.C. 229), which also is fully stated: "Every person must be taken to know that young children and boys are of a very inquisitive and mischievous disposition." That is so, and grown-ups must regulate their actions accordingly. The Title includes the cases on the Fatal Accidents Acts—Lord Campbell's Act of 1846, and the subsequent Acts.

The Title Nuisance opens with the definition of nuisance given by Knight Bruce, V.C., in **Walter v. Selfe** (4 DeG. & Sm. 315); it must be an inconvenience not merely to the fastidious, but an inconvenience naturally interfering with the ordinary physical comfort of persons living according to plain and sober and simple notions among English peoples. But if this is so, why did Romer J., hold a boys' school to be a nuisance in **Wauton v. Coppard** (1899, 1 Ch. 92). Clearly there are degrees in these matters, but it is both interesting and practically useful to be able to look through the Digest of the cases and see what are the circumstances which have led to Courts to interfere for the protection of neighbours. "Watching and besetting" was held in **Lyons and Sons v. Wilkins** (1899, 1 Ch. 255, digested at p. 177) to be a nuisance at Common Law, but that would lead us to a different line of cases. Here we can only indicate the nature of the matter which makes up the Title. The concluding Part—Part IV—deals with Remedies, and presents very fully the decisions which should guide the practitioner in the proceedings he may have to take.

The Title Parliament includes the cases relating to House of Lords Appeals, and also those on the Privileges of Parliament. To the Commons, it was said in **Ashby v. White** (2 Ld. Raym. 938), it belongs to determine the fundamental rights of their House, and of the constituent parts of it, the members; and this case, as the annotations show, has been the subject of frequent judicial reference. Partnership and Patents, though between them they form nearly two-thirds of the volume, we can only glance at. **Cox v. Hickman** (8 H.L.C. 268) is still important, notwithstanding that profit-sharing as a test of partnership has been put on a statutory basis by the Partnership Act 1890; and the same may be said of **Badeley v. Consolidated Bank** (38 Ch. D. 238) and other cases digested here. Attention may be called to the collection at pp. 384 *et seq* of cases on the liability of the estate of a deceased partner. The Title Patents and Inventions is an excellent speciment of the completeness with which the work is prepared. In addition to the ordinary reports the Reports of Patent Cases have been, we should imagine, completely digested, and there are probably no cases on such matters as the subject-matter of patents, specifications and infringement which have been missed; while the collection of cases on applications for extension of the term of patents will be found very useful. It is evident that no pains are spared on the part of the contributors and the Editorial staff and the Publishers to maintain the standard of the work.

Dr. J. Hight, the newly-appointed director of Canterbury College, took his place on the Canterbury College Board of Governors for the first time at the last meeting in February. He was welcomed by the chairman (Mr. H. D. Acland), who said he was sure Dr. Hight, in his new position, would bring honour to himself and distinction to his College. Dr. Hight and Dr. Bamford are the joint authors of Constitutional History and Law of New Zealand.

Reports.

Auckland District Law Society.

The Annual General Meeting of the members of the Auckland District Law Society was held at the Magistrates Court at Auckland, on Friday the 9th inst., when the retiring President Mr. J. B. Johnston, was in the chair, and there was a very large attendance of members.

In his address Mr. Johnston paid a tribute to the high standard of conduct observed in the profession throughout the Dominion. Such a standard could not be set too high, as any meanness or unprofessional conduct on the part of a few would inevitably bring discredit on the whole. No member should ever forget that he belonged to an ancient and honourable profession.

He expressed pleasure at the interest that was being evinced by the younger members in the affairs of the Society.

The annual report showed that during the year 7 applicants were admitted as barristers and solicitors, 15 as solicitors, and 12 solicitors were admitted as barristers. At the close of the year the membership of the Society was 512.

For the benefit of those members who were not familiar with the practice, Mr. R. McVeagh explained the method adopted by the Council of the Society in investigating and dealing with any complaints which came before the Society.

The meeting recorded its regret at the deaths of Mr. Justice Alpers and Mr. J. W. Pynton, S.M., and at the loss during the year of Messrs. W. H. Armstrong, C. Z. Clayton, G. M. Johnston, P. Oliphant and A. G. M. Leather. Congratulations were conveyed to Sir Walter Stringer on his knighthood, to Mr. Justice Blair on his elevation to the Supreme Court Bench, and to Messrs. S. L. Paterson and J. H. Luxford on their appointment to the Bench of the Magistrates Court.

On the motion of Mr. R. McVeagh, the following resolution was carried :—

> "That the Society desires to direct the attention of the Minister of Justice to the grievously insufficient accommodation at the Supreme Court Library at Auckland and to the urgent necessity for providing increased accommodation."

The following officers were elected for the ensuing year : —President, Mr. F. L. G. West ; Vice-President, Mr. R. P. Towle ; Treasurer, Mr. J. H. Reyburn ; Council, Messrs. R. R. Bell, G. P. Finlay, A. M. Goulding, J. B. Johnston, F. G. Massey, and R. McVeagh.

Members of Council of Law Reporting : Messrs. R. McVeagh and H. P. Richmond.

Members of Council of N.Z. Law Society : Messrs. A. H. Johnston, R. McVeagh, and H. P. Richmond.

The collection of particulars relative to irrigated land was introduced by the Statistics Office during the past year. The total area irrigated during the year was 57,033 acres, as compared with 48,082 acres in the previous year. The nature of the principal areas irrigated was :—Pasture, 49,942 acres ; green fodder and root crops, 2,273 acres ; lucerne, 2,165 acres ; orchards, 2,027 acres.

Bench and Bar.

By Gazette notice it is intimated that the title "Honourable" shall be continued to be used by Sir Walter Stringer.

Mr. W. A. Beattie and Mr. A. R. Short, Barristers and Solicitors of Auckland, have dissolved partnership as from 29th February. Each will continue to practice their profession in Auckland, at Argus House, High Street, and Mr. Short at Yorkshire House, Shortland Street.

Mr. A. G. Todd has commenced the practice of his profession as a Solicitor in Wellington. Mr. Todd served his articles with Messrs. Duncan & Hanna. He joined this firm in the year 1924, and for a while was with Nicholson, Gribben, Webb & Ross, Dargaville

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Mr. A. S. Taylor has been appointed Director of Studies in law at Canterbury College in place of the late Mr. T. W. Rowe.

Mr. H. Kennard was admitted as a solicitor of the Supreme Court on 2nd March, at Wellington, by Mr. Justice MacGregor on the motion of Mr. E. C. Wiren.

Mr. Richard A. Davies, of the firm of Meldrum, McLean & Davies, of Taihape, Maungaweka, and Hunterville, died on February th, as a result of pneumonia, supervening upon influenza. The late Mr. Davies, who was 41 years of age at the time of his death, was born at Inglewood, Taranaki, in 1887, and was the son of the late General R. H. Davies, who gained a fine record for distinguished service in the South African War, and subsequently died during the Great War. The late Mr. Davies was educated at the Wanganui Collegiate School, and subsequently adopted law as a profession and entered the legal firm of Messrs. Hesketh and Richmond, Auckland. Later on, he was associated for some years with the late Mr. C. B. Morison, K.C., of Wellington. Mr. Davies went to Taihape in 1911 to open a branch for the firm which, on his becoming a partner, became known as Messrs. Meldrum, Maclean and Davies. He entered into the public life of the town, and for some time was a member of the Borough Council. He was also associated for many years with the Chamber of Commerce, and it was whilst he was president, that that body attained its greatest influence for usefulness in the service of town and district. At the time of his death he was president of the Taihape Club, and was also a member of the Wanganui Hospital Board on which body he was rendering excellent service to the Taihape district. He was secretary of the Taihape Golf Club. He was strongly imbued with a deep reverence for the best traditions of his profession, and for the manliness and honour of his race. He leaves a widow and five children.

Claims in Estates of Deceased Persons.

All creditors and others *having claims against the estates of the under-mentioned* persons, which are under administration by the Public Trust Office, should send in their claims as directed on or before the date mentioned in each notice.

ANDERSON, Harry, late Helenville, farm labourer. Claims to P.T.O., Auckland, April 10.

AUSTIN, Henry C., late Hamilton, motor driver. Claims to P.T.O., Hamilton, March 25.

BEALE, Thomas Cooke, late Auckland, book-keeper. Claims to P.T.O., Auckland, April 10.

BIRRELL, Robert McDuff, late Auckland, gentleman. Claims to P.T.O., Auckland, April 10.

BRADY, Thomas, late Ngatea, pensioner. Claims to P.T.O. Auckland, March 27.

BRAGG, Letitia, late Picton, widow. Claims to P.T.O., Greymouth, April 14.

BRANDON, Mary E., late Deborah Bay, Port Chalmers, widow. Claims to P.T.O. Dunedin, March 25.

BROUGH, John, late Dunedin, labourer. Claims to P.T.O. Dunedin, March 25.

BUTLER, John, late Deep Stream, farmer. Claims to P.T.O. Dunedin, March 25.

CORRICK, Henry, late Wellington, engineer. Claims to P.T.O., Wellington, April 12.

CURRIE, William, late Wellington, waterside worker. Claims to P.T.O. Wellington, March 27.

DENNIS, Samuel, late Glenroy, farmer. Claims to P.T.O. Christchurch, March 26.

DOWLE, Margaret S., late Dunedin, married woman. Claims to P.T.O. Dunedin, March 25.

DUNLOP, John, late Tahakopa, farmer. Claims to P.T.O., Balclutha, March 25.

EARP-THOMAS, Victoria Madeline Louise, late Wellington, spinster. Claims to P.T.O., Wellington, April 12.

EASTON, Augustus S., late Foxton, farmer. Claims to P.T.O., Palmerston North, April 3.

FITTALL, Samuel, late Taumarunui, civil servant. Claims to P.T.O., Hamilton, March 21.

GEORGE, Alfred, late New Plymouth, retired farmer. Claims to P.T.O., New Plymouth, March 24.

GRAY, Robert, late Bayswater, retired draper. Claims to P.T.O., Auckland, March 27.

GREIG, Charles, late Wellington, seaman. Claims to P.T.O., Wellington, April 12.

HILL, Minnie Elizabeth, late Wellington, spinster. Claims to P.T.O., Wellington, April 12.

HUNTER, Euphemia, late Invercargill, married woman. Claims to P.T.O., Invercargill, March 21.

JOHNSEN, Jane McDowel, late Kumara, married woman. Claims to P.T.O., Greymouth, April 12.

KEAN, Robert, late Nelson, retired accountant. Claims to P.T.O., Nelson, April 10.

KERR, Althea Beatrice Dorothy, late Christchurch, widow. Claims to P.T.O., Christchurch, April 10.

LAWRENCE, Burton C., late Waitara, retired storekeeper. Claims to P.T.O., New Plymouth, March 24.

LINDBOM, Frederick Ludwig, late Cobden, miner. Claims to P.T.O., Greymouth, April 12.

MARSH, Dorothy May, late Christchurch, formerly Wellington, spinster. Claims to P.T.O., Wellington, April 12.

MATTHEWS. Robert, late Gore, retired farmer. Claims to P.T.O., Gore, April 14.

MEWHINNEY, Oliver, late Wellington, civil servant. Claims to P.T.O., Wellington, April 12.

MORGAN, William S., late Upper Hutt, roadman. Claims to P.T.O., Wellington.

MORSE, Charlotte, late Claudelands, widow. Claims to P.T.O., Hamilton, March 27.

MOSS, Thomas Ernest, late Christchurch, plasterer. Claims to P.T.O., Christchurch, April 10.

NEILSON, Margaret Ellen, late Blackball, married woman. Claims to P.T.O., Greymouth, April 12.

NELSON, Helen, late Wellington, widow. Claims to P.T.O., Wellington, March 27.

O'LEARY, Catherine, late Wellington, widow. Claims to P.T.O., Wellington, April 12.

PARKE, Amy, late Wellington, married woman. Claims to P.T.O., Wellington, March 27.

PARKER, Frank W., late Whitford, farmer. Claims to P.T.O., Auckland, March 27.

PASCOE, Joseph, late Auckland, slaughterman. Claims to P.T.O., Auckland, March 27.

PATTERSON, Charlotte, late Pigeon Valley, Wakefield, widow. Claims to P.T.O., Nelson, April 10.

POPE, Henry, late Christchurch, retired. Claims to P.T.O., Christchurch, April 10.

RITCHIE, Katherine A., late Carew, spinster. Claims to P.T.O., Timaru, March 26.

ROBINSON, Hellen M., late Christchurch, widow. Claims to P.T.O., Christchurch, March 26.

ROCHE, Kate, late Timaru, married woman. Claims to P.T.O., Gore, April 14.

RUTLEDGE, John, late Westport, labourer. Claims to P.T.O., Greymouth, March 27.

SEGRIEF, Catherine J. (also known as Sister Mary Barbara). late Wellington. Claims to P.T.O., Wellington, March 27.

SHEDDON, David, late Toiro, farmer. Claims to P.T.O., Balclutha, March 25.

SIM SIM KEE (also known as Sam Shing), late Cambridge, market gardener. Claims to P.T.O., Hamilton, April 9.

SMITH, John, late Wellington, carpenter. Claims to P.T.O., Wellington, March 27.

SMOOTHY, Alfred, late Waihi, miner. Claims to P.T.O., Hamilton, April 2.

TATTON, Claude Egerton, late Nelson, dentist. Claims to P.T.O., Nelson, April 10.

TIBBLE, Elizabeth Sarah, late Nelson, widow. Claims to P.T.O., Nelson, April 10.

TOYE, David A. W., late Tuai, Wairoa, storeman. Claims to P.T.O., Wairoa, April 5.

WALKER, William, late Clevedon, farmer, Claims to P.T.O., Auckland, April 10.

WASHBOURNE, Florence A., late Selwyn, married woman. Claims to P.T.O., Christchurch, April 3.

WASHBOURNE. William H., late Selwyn, twine maker. Claims to P.T.O., Christchurch, April 3.

WILSON, John, late Sefton, retired. Claims to P.T.O., Rangiora, April 9.

WOOLFORD, Joseph F. H., late Palmerston South, labourer Claims to P.T.O., Dunedin, March 25.

WYLEY, Alice C., late Riverley, Fordell, married woman. Claims to P.T.O., Wanganui, March 21.

The partnership hitherto carried on between Mr. W. A. Beattie and Mr. A. R. Short as Barristers and Solicitors at Royal Exchange Buildings, 10 O'Connell Street, Auckland, has been dissolved as from 29th February, 1928.

Mr. W. A. BEATTIE will hereafter practice on his own account at Argus House (ground floor) next Safe Deposit Buildings, High Street, Auckland. Phone 41-224, and MR. A. R. SHORT will practice at Yorkshire House, Shortland Street, Auckland.

Mr. R. W. Bothamley, Solicitor, desires to intimate that he has opened Chambers at **Union Bank Buildings, Featherston Street, Wellington,** and that he intends to practice his profession at Wellington as well as at Porirua.

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