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"The old Common Law is good enough for all except bureaucrats."

—*Mr. Justice Eve.*

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Ask a Policeman.

In the "Illustrated London News," of July 7th, appears a photograph that may well be framed and placed alongside Punch's famous cartoon of the policeman holding up the traffic of a London street while the nursemaid in charge perambulates "His Majesty Baby" across. The photograph in question shows the familiar "bobby" of the London streets, assisted by a be-medalled inspector of police, holding up traffic and shepherding across the road, during an investiture at Buckingham Palace, a duck and her seven ducklings who chose that time to waddle from the Palace to the lake in St. James's Park. The incident depicted in this photograph, coming as it does when so much attention is being paid to police administration and police methods, serves as a timely reminder of the place which our police, and we mean by that, the police throughout the British Empire, have gained in the estimation of the public. It is to the interest of the community that not only the respect and confidence which they have gained in the past should be upheld, but that the affectionate regard in which they have been held by the public in the past should continue.

It is a very remarkable tribute to the police of London, and a striking example of British mentality that while a suspicion that police methods threaten the, according to the authority of the author of "Misleading Cases" purely chimerical, liberty of the subject, arouses public disquiet, equal disquiet is aroused when a soldier is appointed to the head of the police, lest militarization should result in the elimination of the constable, who, although his lot be unhappy, is the friend of babies, cooks and ducklings, and the substitution for him of a person too disciplined to be mother, father, brother and long-lost friend, as occasion requires.

The outbursts in London have had their echoes here. It has not been uncommon lately to read reports of cases in the Magistrate's Court and the Supreme Court where Counsel have suggested that statements from an accused have been obtained by threat or exhaustion. Unless there is real ground for such suggestions we do not believe they do the accused any good and we are satisfied it is not in the interest of the community to suggest to the ill-informed that they cannot entrust either their confidence or their troubles to the police. The liberty of the subject is dear to the average Englishman, and but little reflection will convince him he would enjoy but little of it and enjoy but little of his property were it not for his friend the policeman. The longer the policeman is a friend of the man in the street and can, while performing his duty, maintain a friendly attitude to man, woman and child, the better it will be for all concerned. Dignity, seclusion, reserve and ceremony, all play their appropriate parts in the administration of British justice. To abandon, abolish or remove such accompaniments from the persons, places and occasions to which they have for many long years been attached would be as unwise as to attempt to introduce them into those occasions where their presence would prevent the very confidence their absence assists in promoting. We prefer and believe it better in every way that a trial should be conducted with the ceremony, traditions and manners of Bench and Bar in the Supreme Court of New Zealand, than, say, in the manner of the "Trial of Mary Duggan," but that does not mean that Judicial robes, wig and gown, should be imported into the Magistrate's Court. In England the question of Judicial robes for Magistrates is receiving attention. It is said that the office of a Stipendiary Magistrate is one no whit less deserving of a distinctive judicial robe than that of a County Court Judge. The important duties undertaken by Magistrates in the administration of the Criminal Law can hardly be overestimated and the dignity of their position ought to be made plain to every one in their Courts. On the Civil side, however, they primarily exist as what is called the People's Court, and although the extension of their jurisdiction to claims of £300 and the abolition of District Courts, renders them now-a-days less the Court of the litigant in person and more the Court of the advocate, it may perhaps be inadvisable to further embarrass the shy litigant in person with the formality attendant on Judicial robes. As clothes make the man so robes and uniform may connote an attitude to the business in hand. The towns in which the Democratic and Republican conventions were held in the United States, we are told, bid highly for that honour and their citizens to prove their readiness to make pleasant the stay of visitors wore badges on which was printed: "Ask me, I live here." We have always "Asked a Policeman!" Put him into khaki and a baton in his hand and we may have to pass him by and ask a gentleman with a badge. The wiser course is to keep him, and for him to remain, as he has been, as a friend in need, and not to pretend either to him or to ourselves that he has developed into an enemy or instrument of torture, nor should the authorities allow him to imagine that that is what he is expected to become.

No one should know better the difficulties a policeman has to face and the great restraint he must place upon himself than those engaged in the profession of the law, and it ill befits them, unless they have real evidence upon which to proceed, to suggest that these humble guardians of the law are instead of kindly, well-intentioned men, inquisitors bent upon obtaining unfair admissions from those unfortunate citizens who are brought into the hands of the police in the performance of their manifold duties. The American policeman has not, in our eyes, the same attributes of geniality and kindness which we have always attributed to our own police, and we serve no good purpose by giving to our police the names given by the American public to their own police or attributing to them the same attributes.

Court of Appeal.

Reed, J.
Ostler, J.
Blair, J.
Smith, J.

July 5; 20, 1928.
Wellington.

COMMISSIONER OF STAMP DUTIES v. PRATT AND ANOTHER.

Revenue—Estate Duty—Will Conferring Share on Son with Power to Appoint Among Children and Other Issue—Provision that the Trustees, if so Requested by Any Son or Married Daughter for the Benefit of Whom and Whose Issue Any Interest in the Estate was Held, May from Time to Time Raise any Part or Parts Not Exceeding One Half of Such Share Upon Trust for Such Son or Married Daughter and His or Her Issue and Pay the Same for Such Son or Daughter's Own Use and Benefit—Object Stated to be to Enable Son or Married Daughter to Obtain Payment for His or Her Own Benefit Out of Capital—Death of Son Without Exercising Power of Appointment and Without Making Any Request for Payment—Whether "May" in Above Provision Conferred a Discretion on Trustees as to Payment—Whether Such Provision, Even if Trustees Had no Discretion upon Request Being Made, Conferred on Son or Married Daughter a General Power of Appointment—Whether any "Power or Authority which Enables the Donee To Appoint"—Death Duties Act 1921, Sections 2 and 5.

This was an appeal from the judgment of Sim, J., reported in 4 N.Z.L.J.. 120. The question raised by the appeal was whether or not the Commissioner of Stamp Duties was legally entitled to assess, as part of the dutiable estate of Frederick Pratt, deceased, a sum of £5,330 12s. 6d., being the value of one-half of the share in which he was interested under the will of his father, William Pratt. The case turned upon the proper construction to be placed upon the third codicil to the will of William Pratt, and Section 5 of the Death Duties Act 1921. The facts appear sufficiently from the report of the judgment.

Solicitor-General (Fair, K.C.) for appellant.
Wilding, K.C., and Harman for respondents.

REED, J., said that the first and principal question to be determined was as to the proper construction of the codicil. It had to be read with the will and previous codicils, but it was to be noted that it was made subject to the specific declaration that the provisions were to apply "notwithstanding anything contained in my said will or in the first and second codicils." That was a fitting introduction to a clause which enabled the property previously made subject to trusts to be disposed of. Eliminating references to shares in the company, which had not been formed at the date of Frederick Pratt's death, the codicil provided that the trustees "if they shall be requested so to do by any son or married daughter of mine for the benefit of whom or whose issue my trustees may then hold . . . . any interest in my estate . . . . *may* from time to time raise any part or parts not exceeding in the aggregate one-half of the share in my estate . . . . then vested in my trustees upon trust for such son or married daughter and his or her issue and pay the same for such son or married daughter's own use and benefit." Whether the word "may" was to be interpreted as giving a discretion to the trustees depended, His Honour said, upon the object with which it was used. If the object was to enable the trustees to effectuate a right then it was the duty of the trustees to exercise the power when those who had the right called upon them to do so. That rule applied even if the power was given by the word "may" if the object was clear. See Lord Blackburn in **Julius v. Lord Bishop of Oxford,** 5 A.C. 214, 243. The testator had not left the object in doubt for he definitely stated what was his intention. He said: "My intention being by this declaration *to enable* any son or married daughter to *obtain payment* to him or her *for his or her own benefit* of any sum or sums not exceeding in the aggregate one-half of the capital value of the share in my estate directed to be held by my trustees for the benefit of him or her and his or her issue." The learned Judge in the Court below did not consider that such expression of intention was sufficiently clear to override the use of the word "may" in the earlier part of the clause, and that, therefore, the exercise of the power by the trustees was discretionary. With the greatest respect His Honour was unable to agree with him. It appeared to His Honour that to do so would be to treat the explanatory clause as surplusage, which was opposed to the well known rule of construction of, if possible, giving effect to every word used, unless, indeed, the words used were consistent with a discretionary power being vested in the trustees. It was permissible in the case of even ordinary words to consult a dictionary to ascertain their meaning—**Mathew v. Purchings,** Cro. Jac. 203. There were two important words in the statement by the testator as to his intention, namely, "enable" and "obtain." The Oxford Dictionary defined the former as being: "To empower —to supply with the requisite means or opportunities to an end or for an object—to give power to (a person); to strengthen, make adequate or proficient; to make possible or easy, also to give effectiveness to (an action)." It defined "obtain" as: "To come into possession or enjoyment of (something) by one's own effort, or by request, to procure or gain, as the result of purpose and effort; hence generally to acquire, get." The use of those words, in His Honour's opinion, made the sentence capable of only one construction, that was to say, the testator explained that his intention was to put it in the power of the donees to get payment of the money specified, for their own personal benefit. In His Honour's opinion it was entirely inconsistent with any discretionary power in the trustees to refuse. His Honour was fortified in that opinion by the words of the immediately succeeding clause. The testator said: "I declare that my trustees may *if they shall think fit* receive from my son etc." Here the testator used words definitely conferring a discretionary power in a paragraph immediately following that in which the word "may" was used without such additional words. Had the testator intended in the preceding clause to give the trustees a like discretion it was inconceivable that it should not have been made equally clear.

That did not conclude the matter, however. The question still remained whether assuming that there was no discretionary power in the trustees, the right possessed by Frederick Pratt of converting one-half of the capital value of his share into money constituted a general power of appointment within the definition in the Death Duties Act 1921. That question was apparently not raised in the Supreme Court and was barely touched on before the Judges of the Court of Appeal. Nevertheless it had to be considered. His Honour had had the opportunity of reading the judgment about to be delivered by Mr. Justice Ostler on that point and, for the reasons stated by him, His Honour agreed that the right possessed by Frederick Pratt was not within the definition. For those reasons His Honour thought that the appeal should be dismissed.

OSTLER, J., delivering the judgments of himself and BLAIR, J., stated that their Honours regretted that they were unable to agree with the conclusion reached by Mr. Justice Reed and Mr. Justice Smith on the point on which the case was decided in the Court below. Although impressed with the arguments with which those learned Judges supported their conclusion, their Honours could not help thinking that the use of the word "may" in the clause negatived any intention on the part of the testator to cast a mandatory duty on the trustees. Had he so intended it would have been so easy and so obvious to use the word "shall." Their Honours thought that the subsequent words which were relied on to prove that the testator intended the trustees to have no discretion in the matter were given full effect in being treated as words of explanation and not as operative words. They could be given their full effect without any alteration of the *prima facie* and more natural meaning of the word "may." Their Honours read the will as giving the trustees a discretion to raise the one-half share of any son or married daughter, the testator's intention being that the persons designated might obtain payment for their benefit of the half share if the trustees in their discretion were prepared to raise the money. Their Honours thought that the words "for his or her own benefit" were not given effect to upon the construction contended for by the Crown. Upon that construction a son or married daughter had the power merely upon request to obtain half of his or her share without disclosing the purpose for which the money was required, and could use it for any purpose beneficial or otherwise. Upon their construction the person desiring to raise the half share would have to satisfy the trustees that it was required for his or her benefit, and the trustees were given a discretion in the matter. For those reasons their Honours agreed with the judgment in the Court below.

Assuming, however, that the construction contended for by the Crown was the correct one, then in their Honours' opinion there was a fatal objection to the Crown's case based upon the construction of the Statute. It was claimed that £5,330 12s. 6d., the amount of the half share the deceased Frederick Pratt could have obtained had he requested the trustees to raise it during his lifetime, was a part of the estate of the deceased, and as such liable to death duties. It was claimed to be such under

Section 5, Subsection 1 (h) of the Death Duties Act 1921, which provided that in computing for the purposes of the Act the final balance of the estate of a deceased person, his estate should be deemed to include and consist of, *inter alia*: "Any property situated in New Zealand at the death of the deceased over or in respect of which the deceased had at the time of his death a general power of appointment." What was aimed at by that clause was not the property of the deceased person, but property belonging to some other person, over which he had at his death a general power of appointment. The deceased's own property was caught in the mesh of earlier clauses. The deceased was merely a life tenant under the will, his interest under it dying with him. No power of appointment general or special over any part of the property comprised in his father's will was given to the deceased by the will. He was merely given the right upon request, which might be either a written or verbal request, to obtain payment in his lifetime of one half of the share of which he was life tenant. If therefore there was no definition of "general power of appointment" in the Act it was clear that at the time of his death he had no power of appointment. But it was said that he had a general power of appointment within the definition of that term contained in Section 2 of the Statute. The term was defined to include "any power or authority which enables the donee . . . . to appoint or dispose of any property . . . . as he thinks fit for his own benefit, whether exercisable by instrument *inter vivos* or by will." The words "power or authority" meant power or authority granted by the owner of the property. It was a power or authority granted to a *donee*. Therefore a power or authority granted by a donor was postulated. The Court must look at the will of the owner of the property to find the power or authority. Before that power or authority could be a general power of appointment within the words of the statutory definition it must be a power vested in the donee to appoint either for his own benefit or to dispose of the property either by an instrument *inter vivos* or by will. The will gave the deceased no power to dispose of any property. It gave him power to *obtain* property. As soon as he obtained it he could at once dispose of it, not because of any power given to him by the will, but because it was his own. It moreover gave the deceased no power to appoint any property for his own benefit either by instrument *inter vivos* or by will. If without making any request for the money he endeavoured to leave it by will, surely his bequest would be invalid. The unanswerable objection to its validity would be that he was only a life tenant, and his interest in the property bequeathed died with him. If it was suggested that he could embody the request in his will, and then validly dispose of the property by will, the answer would be that if the request was valid the power to dispose was derived, not from the will but from the fact that the property had become his own. If on the other hand the request was invalid, because never communicated to the trustees in his lifetime, then the disposition would be invalid, because no power to dispose had been given by the will of the donor of the power. The same argument would apply with equal force to an attempt to dispose of the property during the lifetime, or an attempted appointment to himself in writing. If the writing operated as a request, then the power of disposing or appointing was derived not from the will, but from the fact that the property had become his. Once it were conceded that he had the right given him by the will to obtain the property upon his request, then the moment he made the request the property would become his in law and in equity. It would become a debt due to him, and as such, part of his estate. If he never made the request, then the property never became his, and no power to dispose of it or to appoint it for his own benefit was given by the will. It might conceivably be contended that the power to obtain given by the will, although not a power to dispose, is a power to the deceased to appoint for his own benefit. In their Honours' opinion such a construction would be straining the meaning of the words used in the Statute. What the Statute contemplated was a power given to the donee to appoint property either by will or by instrument during his lifetime. No such power was given to the deceased by the will. He could obtain this property without any writing at all. By merely making an oral request it became his, whereas no power was given to him either to dispose of it by will or to appoint by any instrument either to himself or to anyone else. For those reasons their Honours were of the opinion that at the time of his death the deceased had no general power of appointment over the half-share within the meaning of that term as defined in the Act.

SMITH, J., stated that with the greatest respect, he was unable to agree with the view of the codicil expressed by His Honour Mr. Justice Sim. His Honour agreed with the view taken by His Honour Mr. Justice Reed. The authority contained in the third codicil was, however, in His Honour's opinion a paramount authority conferred upon the sons and married daughters. The unmarried daughters were excluded from the power. The effect of the introductory words "notwithstanding anything contained in my said will or in the first and second codicils thereto or hereinbefore contained," taken in conjunction with the expression of intention, was to make it clear that the testator authorised the sons or married daughters to obtain an absolute interest to the extent of one-half of the share in his estate in respect of which such son or married daughter had otherwise a life-interest only.

The words "for his or her own benefit" occurring in that part of the third codicil in which the testator explained his intention were not, in His Honour's opinion, words conferring upon the trustees any power of determining the object to which the money so raised should be applied. In the first place, His Honour thought that they only explained the testator's intention that the life-interest was ended in respect of the sums of money obtained under the authority. In the second place, those words followed the words "payment *to* him or her." In His Honour's opinion it was unreasonable to suppose that the trustees were to exercise any supervisory power over any son or married daughter in respect of the application of any such moneys after payment thereof to any such son or married daughter. His Honour concluded, therefore, that upon receipt of a request from a son or married daughter pursuant to the authority contained in the third codicil, the trustees were bound to act upon it in the manner directed by the codicil. Furthermore, the person making the request would, in His Honour's opinion, acquire a vested interest to the extent of the amount thereby required to be raised. Equity regarded that as done which ought to be done, and His Honour saw no reason why that principle should not apply in that case. It followed, therefore, that the death of a beneficiary after making a request and before payment to him or her would not affect the vesting of the property. It was said by counsel for the respondent that the construction which His Honour had given to the authority contained in the third codicil would involve an imprudent and improvident result. It was nevertheless in His Honour's opinion the intention of the testator as gathered from the words used by him.

The Commissioner claimed to tax the authority conferred by the third codicil upon the ground that it was property within the meaning of Section 5 of the Death Duties Act 1921. That section provided that the estate of a deceased person should be deemed to include (*inter alia*) "any property situate in New Zealand at the death of the deceased over or in respect of which the deceased had at the time of his death a general power of appointment." The authority conferred by the third codicil was clearly not a general power of appointment in the sense in which that term was used in law. The appellant accordingly resorted to the special definition of "general power of appointment" contained in Section 2. The relevant words were as follows: "'General power of appointment' includes any power or authority which enables the donee or other holder thereof . . . . to appoint or dispose of any property . . . . as he thinks fit for his own benefit whether exercisable by instrument *inter vivos* or by will . . . ." In His Honour's opinion, the authority given by the third codicil was an authority enabling the holder thereof to dispose of property for his own benefit. By means of a request, Frederick Pratt might, in His Honour's opinion, have disposed of one-half of the share in which he had a life-interest only, in that by the making of the request he would have cancelled the right of the remaindermen in that share to the extent of one-half thereof and would have vested the same in himself as absolute owner. In His Honour's opinion such a divesting and vesting amounted to the disposal of property. The special definition of "general power of appointment" in the Statute, was however, qualified by the words "whether exercisable by instrument *inter vivos* or by will." In His Honour's opinion, those words meant that a power or authority within the special definition must be exercisable either by instrument *inter vivos* or by will. the words "whether" and "or" stated two alternatives. His Honour did not think that it was permissible to read a third case into that definition in a taxing statute. If, therefore, the power granted to Frederick Pratt was exercisable orally, His Honour thought it was not caught by the words of the definition. In the present case, the testator had given his property to his trustees upon trust for conversion. It was therefore in Equity deemed to be converted into personalty. The share in respect of which Frederick Pratt had a right to exercise authority was a share in personalty. Although in practice powers of appointment were almost invariably required to be exercised by some deed or will, it was clear that a power of appointment in respect of personalty might be exercised by word of mouth. **Bailey v. Hughes,** 19 Beaven 169; **Farwell on Powers** (3rd Edition) p. 200. The third codicil did not require the exercise of the authority by any instrument *inter vivos* or by will. The authority might,

therefore, have been exercised by word of mouth. It was not an authority which was caught by the special definition of a "general power of appointment."

Appeal dismissed.

Solicitors for the appellant: **Crown Law Office,** Wellington.
Solicitors for the respondents: **T. D. Harman and Son,** Christchurch.

Sim, J.
Reed, J.
Blair, J.

June 29; July 19, 1928.
Wellington.

NATTRASS v. RAIL TRACTORS LTD. AND OTHERS.

Practice—Claim—Order Giving Leave to File Defence after Judgment by Default—Order Made on Condition that Appellant Should Give Security for Costs Within a Certain Time—Whether Order Irregularly Obtained—Agreement by Appellant to Assign to Respondents His Interest in Any Past Present and Future Inventions Relating to Certain Letters Patent in Consideration of Their "Employing" Him for a Term—Pleading by Respondents in Statement of Claim that Assignment was in Consideration of Their "Agreeing to Employ" Appellant—Whether Contract Properly Pleaded—Whether Agreement as Pleaded Limited Respondent's Rights to Patents Actually Granted or Applied for—Discretion of Court as to Setting Aside Judgment.

Appeal from portion of an order made by Mr. Justice MacGregor giving leave to appellant to file a defence in an action in which judgment was given against appellant in default of appearance. His Honour made it a condition of leave that appellant within 21 days of the making of the order should give security for £100 for the costs of the action to the satisfaction of the Registrar. Appellant was not able to find the security within the time, and he appealed from that portion of the order imposing the condition as to finding the security. The action was in respect of obligations arising under an agreement made between the appellant and the respondents on the 14th September, 1925, the material words of which were:—

"In consideration of the said C. D. Wilson and H. Martindale employing H. Nattrass for two years from date at a salary of £5 weekly the said H. Nattrass agrees to transfer and assign all his interest and estate in any past present and future inventions appertaining to improving on or arising from his invention for which Letters Patent were granted to him No. 51145 dated 29th October, 1923 and also all his estate and interest in the said invention for which application for Letters Patent have been applied for out of New Zealand." The Statement of Claim alleged (paragraph 4) that on the 16th May, 1925, defendant executed an absolute assignment of the said Letters Patent to the said C. D. Wilson. Paragraph 5 alleged that on the 14th September, 1925, an agreement was made between the parties "whereby in consideration of the said plaintiffs agreeing to employ the defendant for 2 years from the said 14th September, 1925, at a weekly salary of £5 the defendant agreed to transfer and assign all his interest and estate in any past present and future inventions appertaining to an improvement on or arising from the invention in respect of which the said Letters Patent No. 51145 were issued and also all his estate and interest in the said invention to which application for Letters Patent had been applied for outside of New Zealand."

The respondents as plaintiffs had endeavoured to serve the defendant personally, but being unable to do so had eventually obtained the leave of the Court to proceed without service. The matter came before Mr. Justice MacGregor by way of motion to set aside the judgment, the grounds being that judgment was irregularly obtained, that the order dispensing with service of the writ was irregularly obtained, that the name and address of the defendant's solicitor in Sydney were known to the plaintiff's solicitors and not communicated to the Court, nor was service through such solicitor sought, that the existence of the Writ was not brought before the defendant's notice till after judgment was obtained, that the written agreement on which plaintiff's claim was founded was wrongly stated in the Statement of Claim in matter essential to the plaintiff's claim, and that defendant had a good defence to the action.

Spratt for appellant.
Treadwell for respondents.

BLAIR, J., delivering the judgment of the Court of Appeal, stated that the order giving leave to file a defence did not purport to set aside the judgment, or even conditionally set aside the judgment, but no point turned upon that fact as the parties were agreed that if defendant had complied with the condition the judgment was to be treated as set aside. As a matter of practice, however, the order was irregular because it purported to give leave to file a defence to an action the judgment in which was not set aside. The Court also pointed out that in the motion itself and in the argument before the Court the order dispensing with service of the writ was attacked but that no motion had been filed by the defendant asking that such order be set aside. A number of affidavits dealing with the validity of that order were filed, and used in the motion to set aside judgment. That also was irregular because while there was a Court order dispensing with service or ordering substituted service, such order must be taken as valid, and service in accordance with such order constituted proper service. Not having moved to set aside the orders as to service, it was not open to the defendant in the proceedings to attack those orders. His Honour further stated that it had been submitted that the proper rule under which the plaintiff should have proceeded was Rule 53, and not having given the bond required by that rule the order was on its face bad. Rule 53 had no application to the case, but applied to those cases where a plaintiff desired to proceed without service upon an absent defendant. Here personal service out of New Zealand was desired, and a genuine attempt was made to effect personal service and an order was subsequently made giving leave to proceed as if personal service had been effected.

The main contention on behalf of the appellant was that the judgment entered on the 3rd November, 1928, should have been set aside unconditionally on the ground that it was irregularly obtained. It was admitted that unless irregularity could be established the condition imposed could not be complained of. The appellant relied on **Analby v. Pretorius,** 20 Q.B. 1, 764, where it was laid down that where a plaintiff had obtained a judgment irregularly, the defendant was entitled *ex debito justitiae* to have such judgment set aside and the Court had power to impose terms upon him only as a condition of giving him costs. The appellant if he could show irregularity in the obtaining of the judgment was entitled to have it set aside. The first objection to the regularity of the judgment was that the written contract sued upon was not properly pleaded in that an executed contract was alleged whereas the contract was in fact executory. The whole point made was that the Statement of Claim said: "In consideration of the said plaintiffs' agreeing to employ the defendant" and the contract said: "In consideration of employing the defendant." The contract, it was suggested, was so worded that the plaintiffs would have no right to call for an assignment until the plaintiffs had actually kept the defendant in their employment for two years, and as two years from the 14th September, 1925, would not expire till the 14th September, 1927, the writ which was issued on the 16th August, 1927 was issued before any right to call for an assignment had arisen. Any judgment by default must strictly follow the pleadings (**Smith v. Buchan,** 58 L.T.N.S. 710) and where as in the present case, the defendant claimed to be entitled to have the judgment set aside *ex debito justitiae*, the allegations in the Statement of Claim could not be contradicted. It would be otherwise, of course, where the defendant alleged some merit on his part, and asked the Court in the exercise of its discretion to set aside the judgment. The agreement in this case instead of being set out in its very words was set out in *oratio obliqua* and it was very questionable indeed whether there was any substance in the point raised as to the difference between "employing" and "agreeing to employ." The word "employing" might well mean in its context that the consideration was the taking into employment on a two-year contract.

Another defect said to be apparent on the proceedings related to the countries as to which patent rights had been granted. The appellant alleged that the agreement as pleaded limited the plaintiff's right to a transfer only of patent rights in respect of patents actually granted or applied for. The facts proved by affidavit showed that at the date of the signing of the agreement there were some patents in the process of being applied for and other applications were made subsequent to the date of the agreement. The pleadings referred to them without giving dates, and in paragraph 13 of the Statement of Claim it was alleged that all such applications though in defendant's name were made by the Patent Agents as agents of the plaintiffs and on their accounts. The fact that such alleged irregularity existed could only be established by going outside the pleadings and the answer already made on the other point applied. But the whole of that point depended on construing the allegations in paragraph 5 of the Statement of Claim as limiting the plain-

tiff's right to Letters Patent *in esse* or actually the subject matter of pending applications. Looking at the Statement of Claim it was clear that the allegation was that the plaintiff agreed to transfer "all his estate and interest in any past present and future inventions . . . . in respect of which Letters Patent No. 51145 were issued." In other words it was alleged that he agreed to transfer the whole of his rights as patentee of the invention as described in New Zealand. The Statement of Claim also alleged that he agreed to transfer certain pending rights but that was complementary only to the agreement to transfer the whole of his rights in the patent. In that respect it followed the language of the agreement. The defendant suggested that a default judgment would deprive him of valuable rights which he never agreed to transfer, but if the construction of the agreement was as the Court suggested, then the only damage he suffered was the loss of the balance of the period for which he claimed he was entitled to be employed. The appellant had not established that he was entitled *ex debito justitiae* to set aside the judgment and that being so it was admitted that the question of setting aside was one of discretion and no objection could be raised to the condition imposed by Mr. Justice MacGregor.

Appeal dismissed.

Solicitors for appellant: **Morison, Spratt and Morison,** Wellington.

Solicitors for respondents: **Treadwell and Sons,** Wellington.

Sim, J.
Reed, J.
Ostler, J.
Blair, J.
Smith, J.

July 6; 9, 1928.
Wellington.

THOMPSON v. LEATHART.

Practice—New Trial—Collision Between Two Cars—Finding of Jury That No Negligence on Part of Either Driver and That Accident Unavoidable—Whether Verdict Against Weight of Evidence—Whether any Presumption of Negligence Arises From Collision on Highway.

Appeal against an order of Mr. Justice Stringer granting a new trial. The respondents (plaintiffs in the Court below) sued the appellant and one Lees for £1,000 damages for the death of their son who was killed in a collision between two motor cars, one of which was driven by Thompson and the other by Lees. The action was heard before His Honour Mr. Justice Stringer and a Common Jury of 12 and the Jury found that there was no negligence on the part of either of the defendants and that the accident was unavoidable. The plaintiffs moved for a new trial on the ground that the verdict was against the weight of evidence. Mr. Justice Stringer held that the verdict exonerating Lees was not unreasonable but granted a new trial as against Thompson. His Honour held that as the accident happened in broad daylight in a public street, and as there was no other traffic in the vicinity at the time there was a presumption of negligence and that negligence was on the part of Thompson. Thompson brought the present appeal against that order.

P. B. Cooke for appellant.
O'Leary for respondents.

SIM, J., delivering an oral judgment, stated that in his opinion the appeal should be allowed. Mr. Justice Stringer had said that there was a presumption of negligence on the part of one or both of the defendants. But it was clear that the maxim *res ipsa loquitur* did not apply to an accident on a highway and there was nothing in the circumstances of the collision to justify the learned Judge in holding that it necessarily involved negligence on the part of one or both of the drivers. His Honour stated that upon considering the evidence His Honour would have been inclined to take the same view as the Jury apparently took of the question. His Honour thought that the Jury were justified in regarding the collision as having been caused by a misunderstanding between the two drivers, without any negligence on the part of either of them.

REED, OSTLER, BLAIR and SMITH, JJ., concurred.

Solicitors for appellant: **G. P. Finlay,** Auckland.
Solicitor for respondents: **A. J. Moody,** Auckland.

Sim, J.
Reed, J.
Smith, J.

July 9, 10; 19, 1928.
Wellington.

KNAPP v. THE FARMERS MILKING MACHINE CO. LTD.

Patent—Infringement—Findings of Arbitrator—Whether Arbitrator Misdirected Himself in Law—Whether Patent Anticipated—Scope of Patent—Whether a Patent for Precise Mechanism Described or for Attainment of Result by Any Means Substantially Equivalent to Mechanism Described—Construction of Specification and Claims—New Result Obtained—Whether Machine Embodied Pith and Marrow of Patent—Whether Improvements Prevented Machine From Being an Infringement of Patent.

Appeal against the judgment of His Honour Mr. Justice Ostler (reported 1927, B.F.N. 138, granting an injunction against the appellant restraining him from infringing a certain patent belonging to the respondent. This injunction was granted notwithstanding the findings of the Arbitrator which His Honour treated as being against the respondent, and which His Honour held could not be set aside as being against the weight of evidence. His Honour held, however, that the Arbitrator had misdirected himself on point of law, and, as in his opinion Warren's patent was a good patent and had been infringed by the appellant. His Honour accordingly granted an injunction against the appellant. The appellant contended that the Court was not entitled to deal with the case in that way, and that judgment should have been entered for the appellant on the findings of the Arbitrator.

P. B. Cooke for appellant.
Sir John Findlay K.C. and Park for respondent.

SIM, J., delivering the judgment of the Court, stated that in dealing with the case it was not necessary, their Honours thought to go over all the ground covered by Mr. Cooke in his able and elaborate argument. One topic to which he devoted considerable argument was the alleged anticipation of Warren's invention by Blackham's patent. The Arbitrator found that Blackham's patent was not in any respect an anticipation of Warren's patent. The appellant was bound, their Honours thought, by that finding, and that was the answer to Mr. Cooke's argument. It was convenient to consider next the question of the scope of Warren's patent. It was not disputed that Warren obtained a new result by his machine. The earlier milking machines were not designed, as Warren's was, so that the operation of one pump extracted the milk and released it by the alternate pressure and vacuum created on each side of the piston on its stroke and return stroke in the cylinder. All the earlier milking machines had to be fitted with separate vacuum tanks and releasers. That the result obtained by Warren was a novelty was established by the evidence, and was admitted by the appellant in the passage from his evidence quoted by Mr. Justice Ostler in his judgment of the 23rd of July, 1927. It was true that that result was obtained by means of known mechanical processes, but the new result was sufficient their Honours thought, to bring the case within the class in which **Proctor v. Bennis,** 36 Ch. D. 740, was the leading authority. That was disputed by Mr. Cooke, who contended that the invention belonged to the class in which **Curtis v. Platt,** 3 Ch.D. 135n., L.R. 1 H.L. 337, was the leading authority. What **Curtis v. Platt** laid down was, as stated by Cotton, L.J., in **Proctor v. Bennis,** "that where there is no novelty in the result, and where the machine is not a new one, but the claim is only for improvements in a known machine for producing a known result, the patentee must be tied down strictly to the invention which he claims and the mode which he points out of effecting the improvement." On the other hand the rule established by **Proctor v. Bennis** was that when the invention consisted in the production of a new result, the patentee was not tied down strictly to the particular means or the identical parts set forth in the specification, and it was an infringement to substitute obvious equivalents for the parts specified, and at the same time to make use of the novel principle the carrying of which into effect was the real substance of the patentee's invention.

It was contended by Mr. Cooke that the case could not be brought within the rule laid down in **Proctor v. Bennis,** because the new result was not claimed in the specification of Warren's patent. The subject of claims was considered by the Privy Council in the case of **Ridd Milking Machine Company Limited v. Simplex Milking Machine Company Limited** (1916) 2 A.C. 550, and it was there laid down that if a patentee desired

to claim a general principle as part of his patent he must make that claim reasonably clear in the claim as stated in the specification, and must not leave it to be inferred from a general review of the specification or to be spelt out from ambiguous language used therein. The result of the cases on the subject of claims was summarised thus in **Terrell on Patents** (7th Edn.) p. 149: "The specification and claims must be construed in the light of the common knowledge in the art at the date of the letters patent. It must be determined by the Court whether the monopoly claimed is for the precise mechanism described or for the attainment of a result by any means substantially equivalent to the precise mechanism described. If the claim be construed to bear the latter meaning, and if in fact the attainment of the result be a novel achievement the claim will then cover mechanical equivalents for the mechanism described. But whether the attainment of the result be novel or old in fact, if the claim be construed as limited to the precise mechanism shown, the patentee must abide by the result of his limitation." The claim on that subject in Warren's specification was not so clear as it might have been, but the Court was justified, their Honours thought, in treating it as not being limited to the precise mechanism described, but as extending to the attainment of the specified result by any means substantially equivalent to the mechanism described. The question of the construction of the claim was discussed by Mr. Justice Ostler in his judgment of the 23rd of July, 1927, and their Honours agreed with what he had said on the subject. The claim was more general in its terms than was the claim in **Proctor v. Bennis,** 36 Ch. D. 740, and that case was an authority, therefore, for holding that the specification did include a claim for the result obtained by the invention. That was sufficient to bring the case within the rule established by **Proctor v. Bennis,** and the appellant must be held to have infringed the respondent's patent if he had arrived at the same result by means of a process substantially the same as that disclosed in Warren's specification. In their Honours' opinion the answers given by the Arbitrator to the four questions submitted to him by the order of the 23rd July, 1927, amounted to a finding of infringement, and justified the conclusion arrived at by Mr. Justice Ostler, that the appellant had taken the pith and marrow of Warren's patent. He had added to it a double ball-valve arrangement whereby the vacuum was made constant instead of pulsating, and whereby both sides of the pump could deal with both the inflation and deflation of the teat cups, and the collection and expulsion of the milk. He had also varied the method of collecting and expelling the milk. Those, as the appellant claimed, might be improvements on Warren's machine, but they did not prevent the appellant's machine from being an infringement of Warren's patent. In the first answers given by the Arbitrator he said that Knapp's machine did not appropriate any of the novel mechanical features of Warren's patent either separately or in combination, and the appellant relied on that as a finding in his favour on the issue of infringement. But before the question of infringement could be determined the proper construction of the language of the specification must be settled. That was a question of law, and was in all cases for the Court alone. Until the scope of Warren's specification had been ascertained by the Court the question of infringement could not be determined, and the answer of the Arbitrator could not be treated as a finding that there had not been in law any infringement. The further answers given by the Arbitrator, when the subject was referred back to him by the order of the 23rd July, 1927, made the matter clear, and amounted as their Honours had said, to a finding of what in law was an infringement.

Appeal dismissed.

Solicitors for appellant: **Chapman, Tripp, Cooke and Watson,** Wellington.

Solicitors for respondents: **Findlay, Hoggard, Cousins and Wright,** Wellington.

Supreme Court

MacGregor, J. June 25; July 9, 1928. Auckland.

WOODLEY v. WOODLEY AND MELDRUM.

Destitute Persons Act 1910—Certiorari—Prohibition—Order for Separation, Maintenance and Guardianship Made in Absence of Defendant and Without Defendant Being Represented—Refusal of Adjournment—Refusal of Rehearing—Whether Defendant Had a Fair Opportunity of Answering Charges—Whether Magistrate "Satisfied of the Truth" of the Complaint "Having Regard to All the Circumstances of the Case"—Order Made Ex Parte—Whether Prohibition Lies for Contravention of Principles of Common Law—Whether Remedy of Appeal an Answer to a Writ of Prohibition—Destitute Persons Act 1910, Sections 17 (3), 73.

Motion by way of *certiorari* to remove into Supreme Court and to quash an order for separation, maintenance and guardianship under the Destitute Persons Act 1910, made against the plaintiff in favour of plaintiff's wife, by Mr. Meldrum, S.M., at Hokitika, on 15th September, 1927. At the time the order was made the plaintiff was a prisoner detained in prison at Auckland, and his wife was residing with her mother at Hokitika. The ground of the application for *certiorari* was broadly stated as being that the order was made by the Magistrate without jurisdiction, in that by the conduct of the Magistrate the plaintiff was precluded from placing any evidence before the Court upon the hearing of the complaint on which the order was founded. It appeared from the Statement of Claim and from the affidavits filed by the parties that the complaint against the plaintiff was served upon him on the 30th August, 1927. He at once asked to be sent to Hokitika, in order that he might be present at the hearing. This was found by the Prisons Department to be impracticable. Woodley then applied to the visiting Magistrate at the gaol who advised him to instruct a solicitor to make the necessary application to have evidence taken in Auckland on his behalf. The visiting Magistrate assured him there was no need to instruct a solicitor to appear personally for him at Hokitika, as no Magistrate would, in the circumstances, hear the proceedings without giving him an opportunity of being heard. On the 2nd September, 1927, the plaintiff made written application for an adjournment of the hearing of the complaint to permit of the taking of evidence of himself and four other witnesses in Auckland. Woodley also instructed a solicitor, who wrote to the Clerk of the Court at Hokitika, requesting an adjournment *sine die*, but in case that should not be granted, enclosing an application to have the evidence of witnesses taken in Auckland. The Clerk of the Court was requested to inform Mrs. Woodley's solicitor of the application made in the letter and of the application for leave to take evidence in Auckland. On the 15th August the Magistrate refused to grant an adjournment and dismissed the application to take evidence and made an order against the plaintiff. The plaintiff did not appear, nor was he represented at the hearing. The Magistrate, in an affidavit, stated that he duly considered the plaintiff's application for an adjournment, and examined Mrs. Woodley and her witnesses before arriving at his decision. He then refused to grant any adjournment for taking evidence at Auckland or otherwise, and proceeded to make the order against Woodley now complained of. When Woodley was informed that this order had been made against him in his absence, he applied through his solicitor for a re-hearing of the case. This came on before Mr. Meldrum, S.M., and was summarily refused. The application by way of *certiorari* to quash the order of the Magistrate was then made.

Northcroft in support.

Holmden to oppose.

McGREGOR, J., said that it was quite clear from the affidavits that when the Magistrate made the order he knew that the plaintiff was neither present nor represented at the hearing. He knew further the cause of his unavoidable absence, and also that he was anxious to place the evidence of himself and other witnesses before the Court. Instead of giving the plaintiff an opportunity of thus being heard, however, he chose to act on the *ex parte* evidence of Mrs. Woodley and her witnesses alone, and effectually prevented the plaintiff from being heard on a matter which vitally affected not only his pocket, but the future life of himself and his family. The question was whether such an order so made should be allowed to stand, or whether it could be quashed or set aside by the Supreme Court as having been made without jurisdiction. It was clear that "a man cannot incur the loss of liberty or property for an offence by a judicial proceeding until he has had a fair opportunity of answering the charge against him, unless, indeed, the legislature has expressly or impliedly given an authority to act without that necessary preliminary,"—per Baron Parke in the Exchequer Chamber in **Bonaker v. Evans,** 16 Q.B. 162, 171. In the more recent case of **Rex v. Sussex Justices** (1924) 1 K.B. 256, it was further laid down by Lord Hewart, C.J. (at p. 259) that a "long line of cases shows that it is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done." That case was an application for *certiorari,* in which a

conviction of Justices was in the result brought up and quashed. In the present proceeding the broad question to be determined was whether Woodley had a fair opportunity of answering the charges against him, or (in other words) did Woodley have justice done to him when this order was made against him? In His Honour's judgment both of those questions must be answered in the negative. From the affidavits filed it appeared that Woodley was unjustly treated, in that he did not have a fair opportunity of answering the charges against him. By Section 17 (3) of the *Destitute Persons Act 1910* it is provided that: "a Magistrate hearing the complaint, on being satisfied of the truth thereof, may if he thinks fit, having regard to all the circumstances of the case" make an order against the husband in terms of the Statute. It was difficult, His Honour stated, to see how a Magistrate could be satisfied of the "truth" of such a complaint, until he had heard the evidence of the husband and his witnesses (if any). It was equally difficult to imagine how any Magistrate could have regard to "all the circumstances of the case" unless and until he had before him the version of those circumstances according to the husband as well as that given by the wife. Those appeared to be the statutory conditions of his jurisdiction to make an order under that part of the Act, and if he neglected to observe those conditions, as in the present case, and notwithstanding proceeded to make an order for maintenance, etc., it appeared to His Honour that any order so made was made in effect without jurisdiction and therefore liable to be quashed by the Supreme Court. Such an order indeed was really an order made *ex parte*, without hearing the person against whom it was made. The only provision in the Act for making an order *ex parte* was to be found in Section 73, but even under that section such an order could be made only where it was proved to the satisfaction of the Magistrate that the defendant was absent from New Zealand, or that his residence was unknown, or that he kept himself concealed or away from his usual place of residence so that he could not be found. It was needless to say that none of those circumstances existed in the case under review.

By his Statement of Claim and Notice of Motion the plaintiff claimed (in addition to a writ of *certiorari*) an order of the Court prohibiting the defendants from acting or taking any further steps upon the order made against him. On the affidavits before the Court His Honour thought that the plaintiff had made good his claim to such an order also. Prohibition would lie not only for excess of or absence of jurisdiction, but also for the contravention of some statute or the principles of the Common Law: **Halsbury,** Vol. X, p. 142. That doctrine was well illustrated by the recent case of **Rex v. North—ex parte Oakey** (1926) 43 T.L.R. 60. In that case the Court of Appeal in England issued a writ of prohibition to restrain an Ecclesiastical Court from proceeding on an order made by it for payment of certain expenses and costs against a clergyman who had never had an opportunity of being heard before the order was made against him. On giving judgment in that case Bankes, L.J., referred with approval (at p. 61) to the "invariable maxim of law that *you cannot proceed against a party* without his having the opportunity of being heard, and without his appearing in Court, before a judgment shall be pronounced against him," and Atkin, L.J. (as he then was) said (at p. 66): "It appears to me quite plain that the fact that there is a remedy of appeal is no answer to a writ of prohibition, where the want of jurisdiction is a want of jurisdiction based upon the breach of a fundamental principle of justice, as I deem this to be." In that case as in the present one, it was argued for the defence that the remedy (if any) was by way of appeal and not *certiorari* or prohibition. The appropriate answer to that argument was given by Scrutton, L.J. (at p. 64): "Lord Justice Thesiger, in the case to which we have been referred of **Martin v. Mackonachie,** (4 Q.B.D. 697, 732), says: 'The mode in which that suit is to be conducted, the sentence which it is open to the Judge to pronounce, and the means by which that sentence is to be enforced, are all, in the absence of statutory provision relating to these matters, to be regulated by the practice of the Court itself, and in respect of which if the Judge errs, appeal and not prohibition would be the proper remedy, unless his error involves the doing of something which, in the words of Mr. Justice Littledale in **Ex parte Smyth** (3 Ad. & E. 719 at p. 724), is contrary to the general laws of the land, or, to use the language of Mr. Justice Lush in the Court below, is 'so vicious as to violate some fundamental principle of justice.'"

In His Honour's judgment the order made against the plaintiff by the defendant Magistrate in the present case was, in the language of Thesiger, L.J., contrary to the general law of the land and also so vicious as to violate the fundamental principles of justice. It seemed to His Honour, accordingly, that the defendants must be prohibited from acting or taking any further steps upon the order in question.

Order for *certiorari* and prohibition made.

Solicitors for plaintiff: **Earl, Kent, Massey and Northcroft,** Auckland.

Solicitors for defendants: **Wynyard, Wilson, Vallance and Holmden,** Auckland, *as agents for* **Park and Murdoch,** Hokitika.

MacGregor, J. June 26; July 3, 1928. Auckland.

GOLDSBERRY v. GOLDSBERRY.

Gift—Husband and Wife—Property Purchased in Name of Wife Partly with Husband's Earnings as Saved by Wife and Partly with Wife's Personal Earnings—Presumption of Gift by Husband to Wife—Whether Rebutted by Evidence.

Summons under Section 23 of the Married Women's Property Act, 1908, for an order defining the estate or interest of the plaintiff in two properties the titles to which were registered in the name of his wife. Both properties were subject to mortgages under which the wife alone was liable. The Court was satisfied that a large proportion of the moneys paid in respect of both properties came out of the husband's earnings as saved by his wife. The Court was also satisfied that a considerable proportion of the moneys were saved by the wife herself out of her own personal earnings. In both cases, however, the transfer was taken in the name of the wife alone, with the consent or concurrence of the husband. Differences arose between the husband and the wife early in 1928, after the properties were purchased as above, and they were at the date of action living separate and apart. Proceedings by the wife against the husband for a maintenance order were pending in the Magistrate's Court at Auckland. The husband claimed by the summons a joint interest in the properties so purchased, and the wife refused to recognise his claim.

Quartley in support.
Jordan to oppose.

MACGREGOR, J., stated that the general rule of law was that where a person bought a property and paid the purchase money or part of it, but took the transfer in the name of another, there was *prima facie* no gift, but a resulting trust for the person paying such money or part; but where the person in whose name the transfer was taken was the wife or child of the man paying the purchase money there was a presumption that a gift was intended—**15 Halsbury's Laws of England,** 414, 415. That presumption might of course be rebutted by evidence, or indeed by the whole circumstances of the case. But the burden of rebutting that presumption, rested on the person who asserted his title to the property. In the present case His Honour did not think the husband had discharged the burden of proof. The affidavits filed were numerous and conflicting, but fell far short of convincing the Court that the various sums of money paid by the husband to the wife from time to time were not intended as gifts to her. In its main features the matter much resembled the case of **Raymond v. Raymond,** 14 G.L.R. 422. In that case it was held by Williams, J., that where a husband paid over his earnings to his wife so that the household expenses might be defrayed thereout, and she invested the surplus moneys in her own name and with her husband's knowledge and consent, the law would presume that an advancement or provision for the wife was the object of the husband, unless there was evidence to rebut that presumptipn. It was true that in **Raymond v. Raymond** (*cit. sup.*) the surplus moneys so paid over to the wife were invested on mortgages, while in the present case they were invested in house properties, which were used successively as the family home. But His Honour did not think that that difference in the circumstances of the case could really affect the legal effect of the transactions in question. In the opinion of the Court there was no evidence in the present case that the moneys given by the husband to the wife, and invested by her in the purchase of the two properties in question, were at any time held by her in trust for her husband.

Summons dismissed.

Solicitor for plaintiff: **A. G. Quartley,** Auckland.
Solicitors for defendant: **Dignan, Armstrong, Jordan and Jordan,** Auckland.

Reed, J. June 27; July 2, 1928.
Wellington.

HARRISON v. HARRISON.

Divorce—Jurisdiction—Domicile—Whether Parties Domiciled in New Zealand—Onus of Proof of Change of Domicile of Origin—Whether Onus Discharged.

Petition for dissolution of marriage on the ground of desertion. The petitioner resided in England, and by order of the Court all the evidence had been taken on affidavit. She married in London, on 8th October, 1920. England was the domicile of origin of the husband. In February, 1921, the parties went to South Africa, the husband being appointed to a position there. In September, 1921, his engagement having expired, the parties sailed via India and Australia for New Zealand, where the husband expected to obtain work of a permanent character with a view to settling down. In India the parties had a serious disagreement and it was arranged that the wife should return to England, whilst the husband went on to New Zealand, and when he had made good he would send for his wife. They parted at Colombo, in April, 1922. The wife said she had letters from him from Melbourne and New Zealand, but did not keep them. He ceased to write in August, 1923. In November, 1923, information was obtained from a firm of solicitors that the husband was at the time of writing in Wellington, but did not permanently reside there and was connected in some way with the "picture business." Enquiries in 1924 resulted in information that he was in Wanganui. The petitioner wrote to the address given, but received no reply. In 1927 enquiries were made in Wanganui and it was reported that the respondent, under an assumed name, had at one time conducted a cabaret in Wanganui, but had left there and was believed to have joined a touring theatrical company and had left New Zealand and gone to Australia. On enquiry from John Fuller and Sons it was reported that it was some time since they had heard of the respondent and that they believed he went to Australia and advised addressing a letter to him under his assumed name, care of Fullers, Sydney. That was done but no reply was received. The Court dispensed with personal service and the citation was advertised in the Sydney "Bulletin" and "Auckland Weekly News," without result.

D. M. Findlay for petitioner.

REED, J., said that the predominant question was whether or not the Court had any jurisdiction to grant a decree. Unless the married pair were domiciled in New Zealand it had not—**Le Mesurier v. Le Mesurier** (1895) A.C. 517. The domicile of the wife followed that of her husband and it was therefore necessary for the petitioner to prove that the domicile of the husband was New Zealand. The burden of proof was upon the petitioner of showing an abandonment by the respondent of his domicile of origin, for the presumption of law was against such an intention—**Attorney-General v. Rowe,** 1 H. & C. 31. Residence in a country was *prima facie* evidence of the intention to reside there permanently, and, in so far, evidence of domicile—**Brown and Watts on Divorce** (10th Edn.) 10. There was no evidence that the respondent was at the present time resident in New Zealand, in fact the evidence so far as it went was to the contrary. What then was the evidence of his intention to abandon his domicile of origin and acquire a domicile in New Zealand? The only evidence was that he left for New Zealand and agreed to send for his wife when he had made good in the new country, that he arrived in New Zealand and wrote to his wife from there for about sixteen months, and there was some slight evidence that in 1924 he was carrying on a cabaret business in Wanganui, and later was attached to a theatrical touring company, and went to Australia. That was all the evidence, and His Honour stated it fell far short of what was required to prove an abandonment of his domicile of origin in England and the acquisition of a New Zealand domicile. Were the Court to assume jurisdiction in this matter and grant a decree and should the petitioner marry again, His Honour had not the slightest doubt that if such marriage were attacked in the English Courts it would be held to be invalid. As it was possible that further evidence might be obtained the petition would not be dismissed but adjourned *sine die.*

Solicitors for the petitioner: **D. M. Findlay and Moir,** Wellington.

The Honourable Mr. Justice MacGregor.

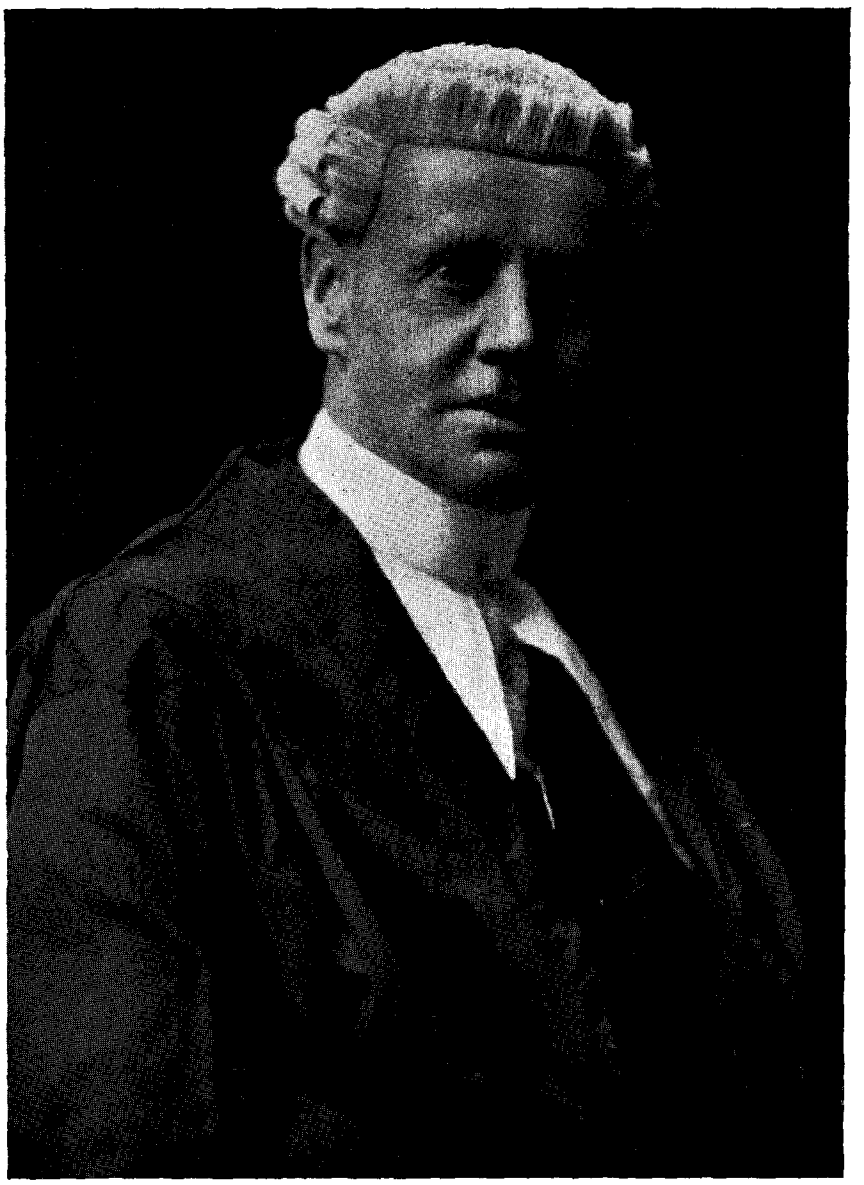
His Honour Mr. Justice MacGregor is a son of the late Rev. Professor James MacGregor, D.D., and was born at Paisley, Scotland, in 1862. He was educated at George Watson's College, Edinburgh, and at Edinburgh University. In 1881 he came to New Zealand joining the office of Messrs. Stewart and Denniston, at Dunedin. He continued his studies at the University of Otago and passed his final law examinations in July, 1883, gaining first place for the whole of the Colony and winning, in consequence, the Canterbury Law Society's Gold Medal. Mr. MacGregor practised at Dunedin on his own account until 1903 when, on the appointment of Sir Frederick Chapman to the Supreme Court Bench, he became a member of the firm of Smith, MacGregor and Sinclair. In 1898 he was President of the Otago District Law Society. In 1914 he was appointed a King's Counsel; he was Crown Solicitor at Dunedin from 1914 until 1920. In the latter year he became Solicitor-General, and held this office until his elevation to the Bench, on the 15th September, 1923.

Outside the sphere of law, Mr. Justice MacGregor takes a keen interest in Imperialism; amongst his writings on this subject is "Ideals of Empire," published in 1908. In his youth he has been a keen sportsman, and in addition to successes at cricket and football was champion of the Otago Golf Club in 1898-9.

Queer Measures of Damages.

Concerning the oft-mentioned prevalence of personal injury cases and love and matrimony cases heard in the High Court of Justice, there is of late a notable contrast in the amount of damages awarded in the two classes; the person who suffers physical injury or loss of limb can go to the Court with a feeling of confidence that Judge and Jury will not take a light financial view of his injuries and wrongs. Not so, by any means, the spouse who has been deprived of a partner or the lover whose chances in the matrimonial market have been seriously impaired by a broken promise of marriage.

In breach of promise actions, to put it bluntly, the amount of damages range from £5 to £50, and occasionally higher; in divorce cases, the question being "What is the guilty spouse worth?" it is rarely that the woman, at any rate, is valued by judge or jury at more than fifty pounds—very often much less. On the other hand, in three personal injury cases recently reported in "The Times," and in which the plaintiffs were successful, the following damages were awarded: To a window-cleaner, for injuries caused by the negligent driving of a tramcar, £750; to a lad of sixteen employed by a coal merchant, for an injury which led to the amputation of a leg, £1,616; and to a police detective-inspector, for injuries which led to his premature retirement on pension, £3,400 was awarded.—"Law Journal."



The Honourable William Cunningham MacGregor,
Judge of the Supreme Court of New Zealand

Vendor's Failure to Make Title.

The Rule in Flureau v. Thornhill and its Application to New Zealand.

Part III.

By J. GLASGOW, LL.B.

It is fairly clear that the Judges of our Court of Appeal in *Slack v. Lockhart*, 1 N.Z. Jur., App. 1, in the mood they were then in, had they been unable to distinguish the cases, would have held that *Flureau v. Thornhill* had no application in New Zealand. The distinction they made was that in *Flureau v. Thornhill* the contract failed for defect of title before completion, whereas in the case before them the contract was complete and had been executed and the plaintiff evicted (the contract, it should be explained, was a "long term" agreement for sale and purchase, with payment by instalments) and consequently his damage was not a profit missed but a disastrous loss actually made. The Court did not consider the question whether a buyer under such a contract is not entitled to insist on the vendor showing a good title at the date possession is to be given and if so that loss through omission to do this can hardly be called any more the vendor's fault than the purchaser's. The Court found that the vendor had warranted his title and stated that where upon the sale or conveyance of either land or chattels the vendor plainly held himself out as owner that was equivalen to a warranty. No authority is given for this statement. The judgment went on to say that the reasons for the rule in England being the length and complexity of titles, it could not apply to the title to a sheep-run in New Zealand which was originally derived from the Crown and the devolution of which afterwards was recorded in a public office, and further that the reasonableness of the implied exception in agreements for sale of realty in England appeared when it was considered that the danger to an English vendor lay in the possibility of defect in some higher link in the chain of title, and that the ordinary covenants for title in England did not warrant against such defects, being limited to the acts and defaults of the vendor; and it would, therefore, in such cases as *Flureau v. Thornhill* be harsh to make a vendor liable *on his contract* for defects which *upon his conveyance* he would not be answerable for.

The question whether titles in New Zealand are as simple as the Court seemed to think in 1863 will be considered later, but two points may be noted in passing: firstly, it was not necessarily the "length and complexity" of English titles that led to the rule, but the *uncertainty* from whatever causes arising, and, secondly, it has comparatively recently been found expedient in New Zealand to limit the vendor's implied covenants for title, and the Property Law Act, 1905, brought the covenants into line with the English practice; this latter fact has a significant bearing on the supposed simplicity of New Zealand titles.

The rule does not appear to have been cited in any reported case again until *Hall v. Pharazyn*, 7 N.Z.L.R. 283, decided in 1886, by Prendergast, C.J. and Richmond, J. This case carries the matter no further because although *Flureau v. Thornhill* and *Bain v. Fothergill* were cited in argument they are not mentioned in the judgment of either Judge and the decision was clearly based on the application of a rule applying to the special circumstances of the case, namely, that a person who makes a wrong statement as to a fact which was once actually within his own knowledge, and which it is his business to remember, cannot excuse himself by alleging that he had forgotten it at the time of making the statement.

The question next came up in 1893 in *Gormley v. McIntyre*, 12 N.Z.L.R. 36. Denniston, J., decided that this case came within *Engell v. Fitch* and he pointed out that there was no conflict between that case and *Flureau v. Thornhill*. The learned Judge did not suggest that the rule in the latter case was not in force in New Zealand and indeed it seems plain that he did not doubt that it was.

Stewart v. Taylor, 24 N.Z.L.R. 785, decided in 1905 by Stout, C.J., is, after *Slack v. Lockhart*, the strongest attack that has been made on the rule; but on examining the case two facts emerge—firstly, the learned Chief Justice's remarks on the rule and its application are obiter because the action was in fact an action in deceit and was decided as such (see p. 790) and, secondly, the decision in *Slack v. Lockhart* was not so strong against the rule as a casual reading of the judgment in *Stewart v. Taylor* would lead one to think. After pointing out that when *Slack v. Lockhart* was decided *Hopkins v. Grazebrook* was supposed to be still good law in England, *Bain v. Fothergill* not then having been decided, and that he was bound by the decision of the New Zealand Court of Appeal and not the House of Lords, Stout, C.J., went on to say: "The Court (of Appeal) did not purport to over-rule *Flureau v. Thornhill*," although later he said: "The Court seems to have assumed that the rule was not applicable in New Zealand." It was also stated that the Court had decided that the rule did not apply "to the sale of a Government Leasehold—a run." Now what the Court of Appeal did decide was that the rule did not apply to the sale of a license from the Crown to depasture stock, sold together with the stock, where the vendor had put the purchaser in possession of the wrong land of which he (the purchaser) was subsequently dispossessed. Moreover, it seems hardly correct to say: "The Court seems to have assumed that the rule was not applicable," for it clearly left the matter open, and stated that *Slack v. Lockhart* was distinguishable in its essential features from *Flureau v. Thornhill*. The arguments are not reported, but it does not appear that *Gormley v. McIntyre* was brought to the notice of the learned Chief Justice.

In 1907 *Lovelock v. Jefferies*, 26 N.Z.L.R. 1333, was decided by Cooper, J., but, beyond mentioning that the circumstances were such as to exclude the rule in *Flureau v. Thornhill*, the matter is not discussed; but in the following year the same Judge decided *Fleming v. Munro*, 27 N.Z.L.R. 796. This was an exchange, and on the facts as found it was submitted that the rule applied and that the damages were limited accordingly. The learned Judge considered at some length the question whether the rule applied in New Zealand. He pointed out that the reasons given by the Judges in *Flureau v. Thornhill* (which reasons caused the Court of Appeal's doubts in *Slack v. Lockhart*) were not approved in *Bain v. Fothergill*, and as the expressions in *Slack v. Lockhart* were merely expressions of doubt and the question was expressly left open, and as the Chief Justice in *Stewart v. Taylor* had not resolved the

doubt, he declined to accede to the argument that *Slack v. Lockhart* was a decision of the Court of Appeal that settled the matter. He referred to Lord Chelmsford's much broader reason for the rule and quoted his remarks on the speculative nature of the damages; and finally decided that the reasons given by Lord Chelmsford showed that the rule was applicable in New Zealand. He then proceeded to show why the case before him was not within the rule and gave full damages to the plaintiff, not as *purchaser* of the defendant's property, but as *vendor* to the defendant of his own property. Cooper, J., expressly stated that the plaintiff did not claim any damages for loss of bargain as purchaser, but only as vendor for the breach by the defendant of the defendant's obligation to purchase the plaintiff's property. This aspect of the matter really made unnecessary his finding that the rule applies in New Zealand and to that extent robs the judgment of some of its importance.

In 1915, Edwards, J. decided *Milliken v. Riordan*, (1916) G.L.R. 65. This was a case in which the defendant either could not or would not pay off a mortgage on the property sold. The judgment states that the fact that the vendor has not the money to remove an encumbrance which he has the legal power to remove cannot bring him within the rule. No doubts were expressed as to the application of the rule to New Zealand.

In *McKay v. Maclean*, (1917) G.L.R. 291, Cooper, J. held that the inability of the vendor to discharge a mortgage was not a question of title; had it been such he would have limited the damages to the cost of investigating the title.

Munro v. Pederson, (1921) N.Z.L.R. 115, decided by Salmond, J., was an action by the purchaser of a Crown leasehold to recover a deposit, the Land Board's consent not having been obtained. It was held that on an open contract for sale of a lease the vendor was under an absolute obligation to get the lessor's consent and, that being so, the plaintiff was entitled to recover his deposit. The question of how much damages the plaintiff might have obtained had he claimed them was not argued, but the learned Judge said that, the obligation to obtain consent being absolute, the question whether the vendor had done his best to get the consent was only relevant as to the amount of damages, and he then mentioned that the Court of Appeal had doubted if the rule was in force in New Zealand and referred also to *Stewart v. Taylor*, finally stating that it was not necessary in the case before him to attempt a solution of the question. No mention is made of any of the other New Zealand cases in which the matter had been discussed.

In *Moss v. Perpetual Trustees* (1923) N.Z.L.R. 264, Hosking, J., refers to *Flureau v. Thornhill* as the classical authority for the rule that on a sale going off for want of title the purchaser cannot recover for loss of bargain; but inasmuch as only return of deposit, interest and costs, was claimed the question of its applicability did not arise and *Flureau v. Thornhill* is only mentioned in connection with the question whether interest on the deposit could be claimed.

In *Conn v. Bartlett*, (1923) G.L.R. 729, Salmond, J., held that the case was governed by *Bain v. Fothergill*, and mentioned that in *Fleming v. Munro* Cooper, J., had held that the law in this respect was the same in New Zealand as in England. No mention whatever is made of *Slack v. Lockhart* or *Stewart v. Taylor*. *Day v. Singleton* is quoted as an authority for the proposition that a vendor is bound, notwithstanding *Bain v. Fothergill*, to do his best to perform the contract by perfecting his title, and if he fails to do so he is liable for full damages. It is submitted that these words, literally construed, are too wide and that while he is bound to do his best to get a lessor's consent, and probably to do certain other things which may be necessary to be done between the contract and completion, he is not bound to make any attempt to remove defects in his title existing prior to the contract. There seems to be no authority for saying that a vendor must bargain with the holders of outstanding interests or of the legal estate. It is otherwise of course where he has a legal power to compel such person to sign.

In *Pfhalert v. Sweeny*, (1926) G.L.R. 109, Reed, J., again mentions that doubts exist whether the rule is applicable in New Zealand and cites *Munro v. Pederson* but not *Conn v. Bartlett*. He said, however, that it was not necessary for him to decide the question as, even if the rule applied, *Day v. Singleton* governed the case before him. The defect in this case was lack of a mortgagee's consent to the lease the defendant had contracted to grant, and it was held, firstly, that he had made no honest attempt to obtain the consent, and, secondly, that as it was legally possible to compel the mortgagee to take repayment, he could have done that and thus dispensed with the consent, and that pecuniary inability to do this, even if proved, would be no defence.

Finally, in *Craythorne v. Jenkins*, (1927) G.L.R. 279, Adams, J., applied the rule, mentioning in particular Lord Chelmsford's words in *Bain v. Fothergill*, and also referring to the over-ruling of *Hopkins v. Grazebrook*. No mention is made of any prior New Zealand decisions nor of any doubts as to the rule applying here.

It will be seen from the above cases that the weight of authority in New Zealand is in favour of applying the rule, and it is certain that, except in a case coming exactly within *Slack v. Lockhart*, any Judge of first instance is at liberty, if not bound, to apply it. The question is still open as to what view the Court of Appeal might take. Even admitting that the rule did arise owing to the uncertainty and complexity of titles in England it is submitted that there are in many cases uncertainties in New Zealand titles although there may not be any real complexity, and that the difference between conditions in this country and in England is one of degree and not of kind. The learned author of *Shepphard's Touchstone* says that he never looked into a title of weight wherein he could not make and move more doubts than he could satisfy. The New Zealand conveyancer may perhaps take up a position somewhere between that of Shepphard and of Sir George Jessel, who is reported to have said that though he was probably often wrong he never had any doubts. At the time *Slack v. Lockhart* was decided there was no Land Transfer Act here and the Judges of the Court of Appeal seem to have been unduly optimistic as to the effect of the Deeds Registration Act—if so, they erred in good company for Lord Westbury was confident that registration of documents of title would make title to land as simple as that to chattels. But the fact is that many uncertainties in title may still exist. For instance it is not uncommon for a beneficiary under a will to think he has a vested interest when it is really only contingent; a reference to the Law Reports will show how often the Court has had to decide this question in New Zealand. Again,

suppose the property sold is a lease made by a widow with a life interest determinable on remarriage and purporting to have been made under Section 34 of the Settled Land Act—in such a case real doubts might well arise. It would be easy to multiply such instances. Even under the Land Transfer Act difficulties may and do often arise. For one thing the lessor's consent to an assignment of lease is just as necessary under that Act as under the old system; again, the vendor may be holding under an agreement for sale and purchase and be unable to get a registrable title from his vendor. Other real defects may exist in spite of an apparently clear title on the register: for instance, a purchaser of a city building site may find a right-of-way existing prior to the land being brought under the Act (see *Carpet Import Co. v. Beath*, (1927) N.Z.L.R. 37) or a mining privilege, not capable of registration, but still valid against the registered owner (see *Gray v. Urqhuart*, 30 N.Z.L.R. 303) or again the vendor may be unable to make title owing to Section 117 of the Public Works Act as occurred in *Moss v. Perpetual Trustees* (*cit. sup.*). There may also be conditions attached to a title where a road has been exempted from the operation of Section 117, such as a setting back of a building line, which the vendor has either never heard of or has forgotten.

From these, and other examples that will occur to every reader, it would seem that there is no reason why we should not follow here a rule which (although admittedly not based on any apparently sound principle) has been followed in England for 150 years simply because, whatever it may lack in theory, it has been found to work equitably in practice.

Bills Before Parliament.

British Nationality and Status of Aliens (in New Zealand). (Right Hon. Sir Francis Bell). Part II of British Nationality and Status of Aliens Act 1914 (Imperial) adopted—Clause 3. Regulations may be made by Governor-General in Council; all other powers conferred by Part II of Imperial Act on Government of New Zealand to be exercisable by Minister of Internal Affairs; cases which by Sections 7 and 8 of Imperial Act may be referred to a "Superior Court" in New Zealand, may be so referred to Supreme Court—Clause 4. Persons previously naturalized may receive certificate of naturalization under this Act—Clause 5. Provisions of Imperial Acts set out in Second Schedule to Act declared part of law of New Zealand—Clause 6. Naturalization of aliens in Cook Islands and Western Samoa—Clause 7. Restricted operation of certificates of naturalization granted to residents of Western Samoa—Clause 8. Oath of Allegiance to be taken before Magistrate or Justice of Peace—Clause 9. Nothing in Imperial Acts or this Act to limit (a) provisions of Immigration Restriction Act 1908 (b) any Act relating to electoral rights and distinguishing between classes of British subjects in relation to such rights—Clause 10. Keeping of records of naturalization by Minister of Internal Affairs; searches; copies, etc.—Clause 11. Penalty on summary conviction for false representation or statement, imprisonment with or without hard labour for any term not exceeding three months—Clause 12. Real property in New Zealand may be taken acquired held and disposed of by an alien in same manner as by a natural-born British subject and a title thereto may be derived through, from, or in succession to an alien in same manner as though a natural-born British subject—Clause 13. Power of Governor-General to make regulations—Clause 14. British Nationality and Status of Aliens (in New Zealand) Act 1923, and Amendment Act 1924, repealed; saving of existing certificates—Clause 15.

Building Trades Employees' Tools of Trade Insurance. (Mr. Fraser). Employers to insure against loss by fire of tools of trade of workers employed in connection with building trade in full insurable value—Clauses 3, 4. Employer to pay insurance moneys to worker—Clause 5. Employer failing to insure liable to pay employee amount of loss—Clause 6. Employer to produce on demand of officer of Labour Department policies and last receipts for premiums—Clause 7.

Captive Birds Shooting Prohibition. (Hon. Mr. Thompson). Offence to take part in, arrange, assist in, or take money from or allow premises to be used for any meeting, competition, etc., at or in course of which captive birds are liberated for the purpose of being shot at time of liberation. Penalty, fine not exceeding £25/-/-.

Divorce and Matrimonial Causes. The first Divorce Act was passed in England in 1857, and, with amendments from time to time, remained in force until 1925, when a Consolidation Act was passed. The first Divorce Act in New Zealand was passed in 1867; it was copied for the greater part from the English Act of 1857. The present Bill is a consolidation, but an explanatory memorandum annexed thereto states that it has seemed advisable to take advantage of the improvements made by the English Act. It is intersting to note that the word "divorce" has been substituted for the phrase "dissolution of marriage." The more important changes made by the Bill are: (a) Failure to comply with a decree for restitution of conjugal rights is made a ground for judicial separation; it remains a ground for divorce, as at present; (b) The distinction between cases of adultery happening before and after 1st June, 1899 is abolished; Sections 22 and 23 of Act of 1908 dropped accordingly; (c) Rule as to the retention of her domicil by a deserted wife, notwithstanding husband's change of domicil, extended by Clause 12 so as to apply to the case of a wife who has been separated from her husband by agreement or otherwise; (d) Except in case of adultery, collusion declared to be only a discretionary bar to relief; (e) Connivance declared a bar in case of adultery only; (f) Clause 33, dealing with alimony and maintenance, is taken from Section 190 of the English Act of 1925. It gets rid of confusion created by conflicting provisions of Sections 41 and 42 of Act of 1908, and gives the Supreme Court the additional powers possessed by the High Court in England; (g) Section 29 of Act of 1908 dropped; (h) Sections 68, 69, 70 and 71 of Act of 1908 dropped as unnecessary; the English Act of 1925 contains no such provisions; (i) Section 74 dropped as unnecessary; (j) Section 5 of the Amending Act of 1912 omitted as spent.

Education Amendment. (Mr. H. E. Holland). Repealing Subsection (2) of Section 15 of Education Amendment Act 1919.

Engineers Registration Amendment. (Mr. Field). Amending Section 6 of Engineers Registration Act 1924 as to qualification for registration.

Inspection of Machinery. (Hon. Sir Maui Pomare). Consolidating Inspection of Machinery Act 1908, and its amending Acts. In Clause 53 (Section 45 of Act of 1908) the words "The Board" have been altered to "The Secretary on the recommendation of the Board." Otherwise no material alterations.

Judicial Proceedings (Regulation of Reports). (Mr. Fraser). Prohibiting publication in relation to judicial proceedings of any indecent matter or indecent medical, surgical or physiological details, the publication of which is calculated to injure public morals—Clause 2. Prohibiting publication in relation to proceedings for divorce, nullity, judicial separation or restitution of conjugal rights of any particulars except (a) names, addresses and occupations of parties and witnesses; (b) concise statement of charges, defences and countercharges in support of which evidence given; (c) submissions on points of law and decisions thereon; (d) Judge's summing-up, jury's finding, judgment, and observations of Judge in giving judgment—Clause 3. Penalty for each offence on summary conviction imprisonment not exceeding four months or fine not exceeding £500—Clause 4. Publication in documents for use in judicial proceedings or communication to persons concerned in proceedings, publication pursuant to directions of Court, publication in *bona fide* law reports or in publications of technical character *bona fide* intended for circulation among members of legal or medical professions excepted—Clause 5.

Licensing Amendment. (Mr. H. G. R. Mason). Enabling holders wine-makers' licenses to sell wine of their own manufacture or of the manufacture of another holder of a wine-maker's license in quantities of not less than one reputed quart from such place or places as Magistrate upon granting of license may determine.

Noxious Weeds. (Hon. Mr. Hawken). Consolidating Noxious Weeds Act 1908, and its amending Acts. Names of some of the noxious weeds and seeds in Schedules have been brought up to date. Otherwise no material alterations.

Post and Telegraph. (HON. MR. NOSWORTHY). Consolidating Post and Telegraph Act 1908, and its amending Acts. No material alterations.

State Fire Insurance Amendment (No. 2). (HON. MR. ROLLESTON). Empowering State Fire Insurance Office to undertake earthquake insurance and any other class of insurance business which is commonly undertaken in New Zealand or elsewhere, by fire-insurance companies; General Manager to have same powers of reinsurance as he has in respect of fire insurance.

Surveyors Registration. (HON. MR. MCLEOD). Constitution and procedure of Survey Board—Clause 3. Officers of Board—Clause 4. Register of Surveyors to be kept—Clause 5. Qualification of applicants for registration as Surveyors—Clause 6. Saving of existing rights—Clause 7. Applications for registration to be verified by statutory declaration—Clause 8. Limitations as to age and character—Clause 9. Certificates of registration—Clause 10. Penalty for wrongfully procuring or attempting to procure registration, fine not exceeding £50.—Clause 11. Board may remove from register name of any person "convicted of any offence punishable by imprisonment or dishonouring him in the public estimation, or who has been guilty of such improper conduct as renders him, in the opinion of the Board, unfit to be registered under this Act," Clause 12. Further powers as to cancellation or suspension of registration after inquiry by the Board—Clause 13. Board may hold inquiry into charges relating to defective surveys; person concerned "may, if he thinks fit, be represented by counsel or otherwise"—Clause 14. Right of appeal to Board of Appeal consisting of Magistrate and two assessors; such assessors to be appointed in accordance with regulations under this Act to represent Board and appellant respectively—Clause 15. Upon cancellation or suspension of the registration of any Surveyor under this Act, the Surveyor-General shall cancel, or shall suspend for a like period, any license issued by him to such Surveyor for the purposes of the Land Transfer Act 1915. Offences by unregistered persons—Clause 17. Copy of register to be gazetted; certificate under hand of Registrar to effect that any person is or is not registered as a Surveyor, etc., shall be conclusive evidence of the matters therein certified to—Clause 18. Application of fees received by the Board—Clause 19. Subject matter in respect of which Board may make rules—Clause 20. Governor-General may by Order-in-Council make regulations with respect to appointment of assessors and the conduct of appeals and generally for such other matters as may in his opinion be necessary for the purpose of giving full effect to provisions of Act—Clause 21.

Local Bills.

Christchurch District Drainage Amendment.

Tumu-Kaituna Drainage Board Empowering.

Ashburton Water Supply (Langmoor Creek).

Wellington City Empowering.

Buller County Leasing Empowering.

Invercargill Borough Council Special Rate Empowering.

Motueka Borough Council Library.

Auckland City Empowering.

Auckland Water Supply.

Johnsonville and Makara Gas Supply.

Whangarei Harbour Board Vesting.

New Plymouth Borough Council Empowering.

Timaru Borough Empowering.

Court of Arbitration Sittings.

The following Sittings have been arranged by the Court of Arbitration:—

Christchurch—Tuesday, 28th August, at 10 a.m.
Wellington—Tuesday, 11th September, at 10 a.m.

London Letter.

Temple, London,
20th June, 1928.

My dear N.Z.,

The legal excitements of the period have been, of course, the Savidge Enquiry and the preparations for the Pace murder trial. As to the latter, perhaps the excitement is more local (so far as relates to the period itself) than I admit: it is a matter, as you no doubt know, of my circuit, the Oxford Circuit which covers Berkshire, Oxfordshire, Worcestershire, Gloucestershire (the venue, in this case), Monmouthshire, Herefordshire, Shropshire, Staffordshire and has a foothold in Birmingham; and naturally there was some particular excitement amongst us, as to where the trial was to be and who, of junior counsel, was likely to be invited to assist the Crown in the matter? Earingay is already in the case for the defence: a man of some years and learning, he was formerly a solicitor and is a fairly recent recruit to the Circuit: his abilities have got him no inconsiderable practice, and a man has always an advantage in this country, who first is a solicitor and then becomes counsel and so avoids the obstacle of having to form an acquaintance among solicitors, our only clients: in any case, he and Clements (who was also once a solicitor) split between them the best of the Gloucestershire work, as you guessed who read the recent ecclesiastical enquiry in that neighbourhood. Earlier in the period it was announced that the trial was not to take place actually at Gloucester but, by removal, at Shrewsbury: and there, thought I, I may come in. However, it has now gone back to Gloucester, whither Horridge, J., will return after Shrewsbury Assizes: and in any case, reliable rumour announces that the Junior to the Treasury (Common Law side), who, as for the moment we regret, is a member of the Oxford Circuit, will himself go down as junior to the Solicitor-General. So that is that!

It occurs to me, as I had nearly forgot, that the fact of the trial taking place about, but not before, 28th June, need make no difference in this correspondence, since it must be long after that date you get this letter. I may comment at least upon the personnel of the Bar involved. The Solicitor-General you must know all about, if you have ever bothered to read what I write: and he is not yet so fully developed in his stride as a law officer as to be a proper subject for immediate examination. As to him, later on in his career, say I. Giveen, the Treasury Junior in question, is an unusual fellow: rumour has it that he has, suddenly and with increasing years, come by a strong distaste for getting on his legs in Court, vastly preferring that Chambers work than which many a leading junior's practice consists of little else. Rowlatt, J., when he was Treasury Junior, never much shone as an advocate, nor, I believe, much cared for advocacy. But I have told you all about Giveen, also, on an earlier occasion. Between the S.-G. and Giveen is to be a Circuit Leader, my friend Micklethwaite, K.C., with whom I first began my career (he was Rowlatt's devil, when I was Rowlatt's pupil) and with whom I had a contest at Monmouth Assizes, last week. We thought I had him under, at lunch, and that Horridge, J., was going to tell him that his defence was wasted and had best be cut short and converted into a plea of mitigation. It was nominally a Murder case: but manslaughter only was ever

feasible or seriously suggested. We all thought Horridge, J., was about to say that, if murder was impossible, manslaughter was inevitable: but he later surprised us all by taking away from the Jury even the question of manslaughter, wrongly as I thought at the first blush of surprise but rightly as I came to feel when he reasoned with me. Micklethwaite did the defence as cunningly as easily: he is a thoroughly nice, a thoroughly able, a thoroughly unstartling but a thoroughly reliable circuit leader. He was in the Armstrong case, in 1919, which you no doubt recall and which also took place on the Oxford Circuit. Ought I to harp upon our distinction in the matter of murders, or ought I to hush it up?

Norman Birkett, K.C., is the "Star" who is to defend Mrs. Pace, and a star of a first magnitude he is, too. He forms the link between the two subjects of the period: the Savidge Enquiry, in which he represented the police, and our murder case. Wild red hair, a sharp nose, a penetrating eye and an utter dissimilarity from his published photographs, which may have all his features but which miss the expression and entirely miss the man in so doing: those be his physical characteristics. His professional qualities are a very persuasive eloquence, just ordinary enough to be deadly with a jury, but otherwise quite sound enough (with an occasional lapse) for a Judge sitting without a jury; and the most careful, the most critical, not far short of the most clever and usually, for the witness, the most catastrophic cross-examination. He is the coming man; indeed, he has arrived; and no home, where a crime has been committed or a *cause celebre* is afoot, is now complete without him. In my recent ten-day case I sat behind him, for the most part, and never do I want to prompt a leader more ready to understand, and more efficient to bring out, the points one has to pass to him from behind and quicker to assimilate minute and longer knowledge of a heavy case necessarily in his junior's possession. From this point of view, there is no other word for him than "perfect": I think I have at one time or another prompted most of the known Common Law leaders of the day, and it may be that experience has taught me with what material, on what occasions and how they should be prompted. Never have I partaken in such a prompting as the prompting of Birkett: no need ever to waste a word and never a word missed; no need ever (if you know your job) to "interrupt" him, tug at his gown or otherwise embarrass him or diminish his effect; you follow his mind as easily as he accepts yours, and though you may, at times, have quite a conversation with him, while he is speaking or cross-examining, yet so little has to be said between him and you, and upon what has to be said you and he are so much at one, that his speech does not break off nor his cross-examination pause and the Court has no reason to be aware that Birkett has, or cares if he has, a junior behind him at all. I have a collector's passion for King's Counsel, such as other men have for race horses: I even fancy I have such a taste in leaders, as other men have for valuable china. At least let me say this: to be led by Birkett is like driving a Rolls Royce. . . . .

I am left with little space for the Savidge Enquiry: but, the matter still being *sub judice* as I write and the sole interest of it lying in the judgment, this is perhaps as well. Exactly what change Pat Hastings got out of our weighty, but far from immobile, Sir Archibald Bodkin, Director of Public Prosecutions, I have been unable to learn. If you miss him at the moment, it is very hard later to come across the gossip who was near enough at hand to judge of the contest and to give you the facts over lunch: and I was, as I say, away at Monmouth Assizes at the time. (The question is: should one ever go away? The answer is: dare one ever say "No" to the Treasury?) I fancy that Bodkin got the best of the interchange: but then, the material for his cross-examination consumed its own steam, so to speak, and the letter he had to face up to was so effective in itself that there was not much left for Hastings to do about it. If the verdict, or whatever we may call it, is pronounced soon after the despatch of this letter, I rather fancy I shall be glad to have the opportunity to forget the affair before I write to you again. It is an unworthy subject, and is only capable of a dismal conclusion, I think, whatever the actual judgment may be. I hope you agree with me; or, better still, I hope you have not studied the matter and know nothing of it. If so, I shall not blame myself for having omitted to tell you the details of this incident in police procedure.

We have had words already, I think, with regard to the appeals in **Hyman v. Hyman, Hughes v. Hughes**: appeals heard together and, a thing almost unique in my twenty odd years' experience, by a full Court of Appeal. (Can it be that, unbeknownst to me, such a full Court of Appeal sat many a time to hear appeals, in the days of my youth; and that I, being not yet a hardened, old man or a hardening, oldish man, let them rip and had my attention on more lively matters outside the dusty purlieus of the law?) Six Lords Justices of Appeal did, as I informed you, sit: the Master of the Rolls and Lords Justices Scrutton, Lawrence, Greer, Sankey and Russell: and, with the exception of Lawrence, L.J., who could not resist the temptation of dissenting from no less than five brethren, they sat to uphold the proposition of Hill, J., that a wife, having covenanted in a Deed of Separation not to claim maintenance other than that provided in the Deed but having later sued for and obtained a decree absolute of dissolution of marriage, might defy her covenant and sue for maintenance; for that "the jurisdiction in matters of divorce is not affected by consent . . . . and, by a parity of reasoning, a stipulation, attempting to shorten the arm of the Court when a marriage is subsequently dissolved by its decree, cannot succeed." What stuck in the gills of Lawrence, L.J., was that a woman should go thus approbating and reprobating her deed, first, profiting by its benefits and then evading its obligations. "This," said His Lordship, "is a thing against which Courts of Equity have always set their face." "And thus," I add, from the Common Law side, "have come very much nearer an accurate representation of the national conscience, than they do in many of their so-called 'equitable doctrines.'" However that may all be, I mention the subject in this letter, because the Lords Justices (six of one, and half-a-dozen of the other) have this day pronounced their judgment in the matter.

And at this I must break off, for a very pleasant reason. One of your learned Judges has done me the honour to look in upon me, at my Chambers and in my absence, as I learn on returning here from a visit to the Treasury. I must hurry after him, for I would not for the world miss the privilege of catching him; and a dozen, a baker's dozen, of our own Lords Justices may sit together and decide what they please, yet I shall not stay to listen to them.

Yours ever,

INNER TEMPLAR.

The N.Z. Conveyancer.

Conducted by C. Palmer Brown.

Agreement for Loan to Father on Security of Life Insurance Policy on Life of His Son.

To.....
I.....
IN CONSIDERATION of the sum of
lent by you to me (the receipt whereof is hereby acknowledged) DO HEREBY AGREE that I will repay to you the said sum of and interest thereon in manner following that is to say by twenty-four monthly instalments of each payable on the last day of each successive calendar month the first of such payments to be due on the day of PROVIDED that each aforesaid sum of shall be reduced to on payment of such latter sum on or before due date.

AND IT IS HEREBY DECLARED that as collateral security for the said loan I have delivered to you a policy of insurance on the life of my son being Number in in the sum of together with a transfer thereof to myself duly signed by the said such transfer being approved by the Public Trustee in terms of Section 75 of the Life Insurance Act 1908, together with a further transfer by myself in blank. In case default shall be made by me for 14 days in any payment you are authorised to sell the said policy and to complete the blank transfer in terms of the sale or at your discretion to surrender the said policy to the said Society, the proceeds after deducting expenses to be applied in extinction or reduction as the case may be of the balance of the moneys owing hereunder notwithstanding that the due date of payment of part of such moneys may not have arrived. Should there be a surplus on such sale such surplus shall be paid to me. Any deficiency shall remain a debt due by me to you and shall be recoverable forthwith together with interest at ten per centum per annum from the date of ascertainment of the amount. The computation of the balance due shall be in accordance with the tables of repayments held by you.

I further agree that I will duly and punctually pay each yearly premium on the said policy and in case of my failing to do so in any instance you will be at liberty but not under obligation to pay the same on my behalf, adding the amount to the moneys hereby secured and charging interest at ten per centum per annum thereon.

On completion of my repayments the policy is to be transferred back to me.

Dated this day of .

The wording of the explanatory memorandum annexed to the Divorce and Matrimonial Causes Bill at present before Parliament is inclined to convey the impression that refusal to comply with a decree for restitution of conjugal rights is by the Bill made a ground for judicial separation only and not a ground for divorce. This is however not the case ; the Bill makes refusal to comply with such a decree a ground for judicial separation, but such refusal also remains, as under the present law, a ground for divorce.

Correspondence.

The Editor,
"N.Z. Law Journal."
Sir,

Service by Post.

I have read with interest recent letters by Messrs. Taylor and McCown, in the Law Journal, on this subject.

My experience, however,does not coincide with theirs. The new system appeals to me as a much-needed reform, and a distinct step forward, and in this district, it is working smoothly and satisfactorily. Service by post might, I think, with advantage, be extended to processes in "judgment summons" proceedings, and thus lessen the burden to both parties.

Prior to the change, my firm's annual mileage bill ran well into three figures, and it has now shrunk to much more modest proportions. The old system lent itself to much abuse, for although Natives and other debtors would be living in town, they were invariably served at a distance—on some road contract, for example, many miles out. In practice debtors had no redress.

Mr. McCown seems to suggest that the Bailiff had, or will have, a very hard lot. Here again, I differ. The Bailiff never loses. In the normal way, the Bailiff would put in his pocket say half-a-dozen summonses for a township ten miles out. This would involve an hour's run in his car there and back, with an extra hour or so serving the summonses, making enquiries, or otherwise—result £3 for an easy morning's work.

"Fruitless" mileages, i.e., fruitless except to the Bailiff, were a continual source of annoyance. In this district, the unfortunate debtor was frequently compelled to pay in costs far more than the original debt. Distances, as computed by Bailiffs, were apt to exceed those computed in any other way. The Magistrate's Court Officials at Auckland apparently found it necessary to stamp on their summonses a notice that mileage in the particular case, was not to exceed such and such an amount. I think there is little in the point about payment of claims formerly made to the Bailiffs having now ceased. Road and other communications have greatly improved of recent years.

The effect of the regulations has been to lessen the cost of Magistrate's Court proceedings, and therefore must tend to increase, not diminish, business. Under the previous system, mileages had become an open scandal. They are an anachronism, apparently instituted under very different conditions, and have no claim to survival except under the special conditions contemplated by the regulations.

Norman Potts.

Opotiki.

Sir,

Statutory Land Charges Registration Bill.

There can be little or no doubt that there is a feeling growing among members of the profession that there is need for a closer scrutiny of the measures brought before Parliament and it would seem that, while there is yet time, something might well be done in this direction as regards the Statutory Land Charges Registration Bill.

At first sight that Bill is harmless enough, its object being to protect purchasers of land against charges thereon (as defined in the Bill) unless those charges are

registered before completion of the purchase. But in at least two respects the Bill would seem to alter what have hitherto been fundamental principles of our Land Transfer System. In the first place, curiously enough, an unregistered charge would appear to be made void even against a purchaser of the land *with* notice of the existence of the charge—on what principle of common sense or expediency, it is difficult to surmise. And yet this would not appear to be the object of those instigating the measure for the Hon. the Attorney-General is reported in "Hansard" as saying, on the second reading of the Bill:—

> "The object of the Bill is to protect purchasers of land against undisclosed charges which may exist *and of which they may have no knowledge*."

But where does the Hon. the Attorney-General find the limitation of the term "purchaser" to *bona fide* purchasers without notice?

In the second place what effectual remedy has a person against whose land a charge is without fraud either improperly registered or registered in the wrong amount? Paragraph (2) of Clause 12 of the Bill reads:—

> "No person shall have any claim against the Land Assurance Fund by reason of any omission, mistake, or misfeasance of any person other than the Registrar, his officers or clerks, in relation to the registration or release of a charge under this Act."

It is, no doubt, impossible to be dogmatic about the true interpretation of a statutory provision, but *prima facie*, at all events, the clause quoted would seem to deprive the registered proprietor (except in the case of mistake by the Registrar) of what would otherwise have been his chief safeguard—a claim on the Assurance Fund. This view obtains some support from the Attorney-General's statement:—

> "Clause 12 protects . . . . the Land Assurance Fund in regard to the registration of the Charges."

Yours, etc.,

"CONVEYANCER."

13th August, 1928.

Fixture Lists.

Below are the fixture lists for the August sittings of the Supreme Court at Auckland, Wellington, Christchurch, and Dunedin, as settled before the commencement of the respective sittings. Fixtures made for dates before the publication of this issue of the Journal have been omitted.

Auckland Fixture List.

August—

21st.—Auckland Football Association (Uren) v. Blamford Park Stadium (Terry)
Maxwell (Leary) v. Sparks
Devonport Borough Council Compensation Cases Continue
22nd.—Hogg (Newberry) v. Hogg
Russell (Endean) v. Minister of Railways (Meredith)
Endean (Endean) v. Minister of Railways (Meredith)
Devonport Borough Council Compensation Cases Continue
23rd.—Fraser (Hogben) v. Horton (Arrowsmith)
24th.—Harrison (Johnstone) v. Wilson and Another (Johnston)
Pegler (Browne) v. Manurewa Town Board
27th.—Beyer (Endean) v. Hingley (West)
Hanssen (Sullivan) v. Hanssen (Dickson)
28th.—Bagnall (Endean) v. Clements (Wood)
Proctor (Dickson) v. Martin and Another (Fraer)
29th.—Brodie (Endean) v. Finn
Shepherd (Hanna) v. Sunderland and Another (Addison)
30th.—J. Burns & Co. (McVeagh) v. Darby and Another (McLiver)
31st.—Bankruptcy.

September—

3rd.—Prisoners for Sentence. Banco.
4th.—Adams (Moody) v. Whitehead (Hogben)
5th.—Fleming (McMillan) v. Eclipse Laundry
6th.—Hamilton (Cocker) v. Finlay (Armstead)
7th.—Spencer (Northeroft) v. Jaffe
10th.—Sutcliffe (Hall-Skelton) v. Winstone (Finlay)
11th.—Smith (Steadman) v. Thompson
12th.—Smith (Steadman) v. Thompson (continues)
13th.—Finlayson (Blomfield) v. Connell (Boyes)
14th.—Hauraki Flax Growers Ltd. (Holmden) v. Thorp (Wood)
Bayer (Mowbray) v. The King (Meredith)
17th.—Prisoners for Sentence. Banco.
Hope v. Hope
18th.—Hull (Mason) v. Otaua Drainage Board (McVeagh)
19th.—Williams (Hanna) v. Darnell (Gould)
20th.—Blair (Seller) v. Martin (Johnstone)
21st.—Hanna (Hanna) v. Fisher (Meredith) and Morris (Rennie)
25th.—Kirkness (Hogben) v. Sheldon (Milne & Meek)
26th.—Cartier (McMillan) v. Tucker (McVeagh)
27th.—Gustafson (Thomson) v. Martin
28th.—Bankruptcy.

October—

1st.—Prisoners for Sentence. Banco.
2nd.—Collins (Taylor) v. Walker (McVeagh)
3rd.—Kawene (Holmden) v. Buckland & Sons
4th.—Dominion Motors Ltd. (Meredith) v. Dignan
5th.—James (Leary) v. Standard Insurance (McVeagh) and Others (Uren)
8th.—Subritzky (Hall-Skelton) v. Lane & Sons Ltd. (Johnston)
9th.—Paykel Bldgs. (Hayes Ziman) v. Patterson (Johnstone)
10th.—Paykel Bldgs. (Hayes Ziman) v. Patterson (Johnstone) continues
11th.—McLeod (Johnston) v. Takapuna Borough Council
12th.—Gosse (McVeagh) v. Kibblewhite
15th.—Prisoners for Sentence. Banco.
16th.—Munro Bros. (Terry) v. Woodhouse & Co. (Finlay)
17th.—Cruickshank (Hall-Skelton) v. Dickson (Dickson)
18th.—Mullenger (Robinson) v. New Lynn Town Board
19th.—Mullenger v. New Lynn Town Board continues
23rd.—Taupo Totara Timber Co. (Reed) v. Tollemache
24th.—Public Trustee (Johnstone) v. Royal Insurance Co. (McVeagh)
25th.—Mowbray v. Takapuna Borough Council

Wellington Fixture List.

August—

20th.—Brindle (Kennedy) v. Brindle (Sievwright)
21st.—Horomona (Prichard) v. The Ikarca District Maori Land Board (Mackenzie)
22nd.—Tasker (Wiren) v. Algar & Algar (Cornish)
23rd.—Jude (O'Leary) v. Benjamin (Jackson)
24th.—Humphreys (Hain) v. The Public Trustee (as Executor of Estate of Edward Herbert Fisher, deceased) (Rose)
27th.—Tonks (Croker) v. Tonks, Tonks and Tonks (as the Executors and Trustees of the Estate of Enoch Tonks, deceased) (Beere)
28th.—Continues
29th.—Nicholls (Beere) v. Quinn (Herd)
30th.—Baron (Tripp) v. J. C. Hutton (N.Z.) Ltd. (Morison)
31st.—Atkin (Tripp) v. J. C. Hutton (N.Z.) Ltd. (Morison)

September—

3rd.—John Brodie & Co. (Dunn) v. E. W. Mills & Company Limited (Tripp)

Christchurch Fixture List.

August—

24th.—N.Z. Farmers Co-op. Association of Canterbury Ltd. (Van Asch) v. Forsyth (Cuthbert)
27th.—Martin and Another (Twyneham) v. Whale (K. M. Gressen)
Tinker (Batchelor) v. Tinker (Hunter) and Bates (Twyneham)
28th.—French (Hunter) v. McBratney (Thomas)
29th.—Cambridge (Brown) v. Cambridge and Carmichael Martin (Burns) v. Lill
30th.—Official Assignee (Donnelly) v. Bowes (Hutchison)
31st.—Hicks and Another (Sargent) v. Patterson (Lascelles)

September—

3rd.—Hillgrove (Thomas) v. South Island Motors Ltd. (Cuthbert)
4th.—Nicholls and Another (Burns) v. Caygill
5th.—Undefended Divorce. Empson (Lascelles) v. Empson (Thomas)
6th.—MacDonald Lumber Co. Ltd. (Brown) v. Dale and Another
7th.—MacDonald Lumber Co. Ltd. v. Dale and Another (continues)

Dunedin Fixture List.

August—

27th.—Switalla (Neill) v. H.M. The King (Adams)
28th.—Dunedin Wool & Skin Co. Ltd. (Neill) v. Williams (Anderson)
29th.—Lamb (Grater) v. H.M. The King (Adams)

Bench and Bar.

The following have been appointed Chairmen of the Licensing Committees in the districts named: Mr. J. Miller, S.M. (Pahiatua and Wairarapa); Mr. W. G. Riddell, S.M. (Wellington and Hutt); Mr. R. M. Watson, S.M. (Rangitikei and Oroua).

Mr. C. E. Scott, LL.M., Wellington, has been admitted as a Barrister.

Mr. Claude Lightoller, Solicitor, Sydney, N.S.W., and Mr. J. E. Nicholson, Solicitor, Perth, Western Australia, have been appointed Commissioners of the Supreme Court of New Zealand in New South Wales and Western Australia respectively.

Mr. W. G. Fletcher, former Commissioner of Stamp Duties at Auckland, has been appointed Secretary to the Auckland District Law Society.

Rules and Regulations.

Child Welfare Act 1925: Child Welfare (Forms and Procedure) Supplementary Regulations.—Gazette No. 58, 26th July, 1928.

Cook Islands Act 1915: Amendment to Clause 28 of Cook Islands Treasury Regulations.—Gazette No. 62, 9th August, 1928.

Copyright Act 1913: Extension to Roumania.—Gazette No. 62, 9th August, 1928.

Customs Act 1913: List of articles approved for manufacture with methylated spirits without pyridine.—Gazette No. 62, 9th August, 1928.

Fisheries Act 1908: Amended regulations as to trout-fishing in Waimarino Acclimatization District.—Gazette No. 59, 2nd August, 1928.

Harbours Act 1923: Addition to general Harbour Regulations as to lights.—Gazette No. 59, 2nd August, 1928.

Judicature Act 1908: Rule 531 BB of Supreme Court Rules revoked as from 1st August, 1928.—Gazette No. 58, 26th July, 1928.

Mining Act 1925: Certain provisions of Act to apply to prospecting and mining for, and storage of, petroleum, other mineral oils and natural gas within Mawheranui Survey District.—Gazette No. 62, 9th August, 1928.

Naval Defence Act 1913: Constitution of Naval Board.—Regulations for government and payment of New Zealand Division of Royal Navy.—Gazette No. 59, 2nd August, 1928. Amendment of regulations for Royal Naval Reserve and Royal Naval Volunteer Reserve N.Z. Divisions).—Gazette No. 54, 5th July, 1928.

Patents, Designs and Trade-marks Act 1921-22: Section 144 of Act to apply to Irish Free State as from 6th August 1928.—Gazette No. 62, 9th August, 1928.

Plumbers Registration Act 1912: County of Waitemata declared a district within which after six months from 1st September, 1928, all sanitary plumbing to be done by persons registered under Act.—Gazette No. 62, 9th August, 1928.

Post and Telegraph Act 1908: Amended regulation prescribing treatment of irregularly posted printed papers and commercial papers. Regulations prohibiting publication of lists of telephone subscribers without authority of Minister.—Gazette No. 62, 9th August, 1928.

Samoa Act 1921: Amendment to Rules of High Court of Western Samoa.—Gazette No. 58, 26th July, 1928.

Weights and Measures Act 1925: Amendment to Weights and Measures Regulations 1926.—Gazette No. 58, 26th July, 1928.

Legal Literature

Digest of the Land Laws of New Zealand.
Second Edition: By W. R. JOURDAIN.
(pp. 343: Department of Lands and Survey: Butterworth & Co. (Aus.) Ltd., Distributors).

One is probably correct in saying that the Land Laws of New Zealand rival in complexity and obscurity those of any other English-speaking country in the world. Mr. Jourdain's work does not attempt to deal with all of these Laws—for the scope of this volume is confined to the legislation relating to lands under the administration of Lands Boards and to lands in which the Crown is interested—but nevertheless he finds it necessary to refer to the relevant provisions of some seventy-five statutes and their respective amendments. Mr. Jourdain's book is in the form not of a text-book, but of a digest; the provisions of this maze of legislation are arranged and annotated in the alphabetical order of their subject matter and the work forms a comprehensive index—with full and detailed cross-references—to this branch of our law. For example, under the title "Lease in Perpetuity" we find six sub-headings: "Conditions of Lease," "Exchange for Renewable Lease," "Acquisition of Freehold," "Reduction of Capital Value," "Surrender of Lease," "Transfer of Occupation License," with the relevant statutory provisions under each, and, in addition, numerous references to other portions of the work. The work includes also, in so far as they are relevant to the subject matter, the regulations made under the various Acts, and also references to cases—but of the latter, and this is the only criticism a perusal of the pages prompts one to offer, one would have liked to have found more and to have found them more fully treated. This is, however, in comparison with the volume's merits, but a slight defect.

The whole of the Land Act is digested, and even if the work had stopped there there would have been no doubt as to its utility, for who can be sure, without the most exhaustive research, a task made all the more exacting by the inadequate nature of the marginal notes in the Statute itself, of not having overlooked one of its multitudinous sections? The scope of the work is, as pointed out above, much more extensive than that, and one has not the slightest hesitation in saying that it should prove invaluable, if not indispensable, to all conveyancers.

New Books and Publications.

Roman Law for Students. By Octavious Hall. Price 9/-. (Stevens & Sons).

Celebrated Trials. By George Borrow, first compiled and edited by George Borrow, and now newly revised and edited by Edward Hale Bierstadt. Two Volumes. Price 55/-. (Jonathan Cape).

Contracts of Sale C.I.F. 2nd Edition. By A. R. Kennedy. Price 12/-. (Sweet & Maxwell).

The Unemployment Insurance Acts, 1920-1927. By Albert Crew, assisted by R. J. Blackham. Price 11/6. (Jordan).