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The Lawyer is more than a mere citizen. He is a minister of justice, an officer of the Courts, his client's advocate, and a member of an ancient, honourable, and learned profession."

—Canadian Bar Association.

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Solicitors' Guarantee Fund.

The Amendment to the Law Practitioners Act, enabling the much-discussed scheme to guarantee trust moneys held by Solicitors to be established, has passed its third reading in the Upper House, and will presently be before the House of Representatives, where we trust it will receive the same ready acknowledgment as serving a worthy end it has received in the Upper House.

The Bill in effect provides that the New Zealand Law Society may establish a scheme for guaranteeing and securing the integrity of moneys received or held by Solicitors for any person, and for such purpose may collect from practising Solicitors an annual sum and such additional sums as may from time to time be required by special levy. The Bill is thus entirely an enabling Bill, and would not be necessary were it not for the fact that the New Zealand Law Society is by Statute an incorporated body and that the powers now sought by it were not, at the time it was set up, asked for or contemplated as being necessary.

No new principle, no experiment is involved in the Bill. The principle that the individuals of a corporation, organisation, or guild should guarantee its members is as old as the hills, and as sound as it is old. The only matter for astonishment is that its application to the affairs of members of the Legal Profession has been so long delayed. Once adopted, however, it will be very surprising if the example of New Zealand is not followed throughout the British Dominions, and in adopting the principle we shall be very much surprised if the method evolved after much careful consideration by the Law Societies of New Zealand is not also followed. The general reputation of all professions, businesses, societies and trades suffer through the defalcations of particular members or officials, but those that suffer most are those whose profession or business involves the care of the monies of the public. And this is so despite the fact that the institution involved has such ample reserves that the defalcation of an official cannot involve loss to a customer. Amongst the professions the Legal Profession feels a defalcation by a member of its ranks quickest and most severely. This is due first to the fact that the defalcation, when it is by a principal, generally implies, in distinction to other cases, certain loss to customers, secondly to misgiving as to funds necessarily in the hands of other Solicitors, and thirdly to knowledge that a dishonest Solicitor can more easily perhaps than those in other occupations divert his clients' money to his own ends.

These considerations have always been in the public mind and despite their due weight, the public generally has, and will continue to, put trust in the honour and integrity of Solicitors. And generally speaking this trust has not been misplaced. Those who labour under the impression that Solicitors do not enjoy the confidence of the public are gravely in error. Those in possession of money and other property are of necessity constantly entrusting their affairs and their property to Solicitors and do so with confidence, because experience has shown them that not only will their interests be well served, but that a care and zeal will be bestowed upon them far in excess of what the principal will devote to them himself. Such defalcations by Solicitors as take place are given the widest publicity. Nevertheless the public confidence in Solicitors generally remains and there are hundreds of Solicitors in New Zealand whose uprightness, honour and integrity are questioned by nobody. This attitude on the part of the public is in part inherited and for that reason partly remains unshaken, and it is because of and in return for this traditional trust on the part of the public that Solicitors consider it a duty, since defalcations are too frequent in which the innocent suffer, to guarantee trust funds, and retrieve those cases in which the mutual trust of Solicitor and client so generally enjoyed has been abused.

The estimation in which Solicitors are held by the public in New Zealand is deservedly high. It is a mistake to suppose that the number of defalcations by Solicitors in New Zealand is proportionately higher than in Great Britain or the other Dominions. It is on the contrary lower, and in the public and social life of the community, Solicitors occupy a high place.

The honour of the Profession is no mere meaningless phrase. It implies a code of ethics, and an ethical method of business arising out of the confidential relation of Solicitor and client which involves placing the client's interest first. Despite cheap and easy criticism of the scale of costs and the method of remuneration, mostly good-natured but sometimes ill-natured, no one works harder for less remuneration than a Solicitor. His contribution in money and kind to social service and charity compare well with those of any other section of the community, and the recognition of his status as that of an honourable and useful member of society is borne out by the increasing number of young men from all ranks of society desirous of entering the portals of the Profession. The burden thrown by the Bill before Parliament on members of the Profession in retrieving the losses caused by dishonest practitioners will be cheerfully borne in the belief that the dignity and honour of the Profession to which they are proud to belong will not only be maintained but amplified.

For our part we are confident that the long and careful deliberations of the Committee of the New Zealand Law Society which was set up by the Christchurch Annual Conference, and the District Law Societies, to whom the measure was referred, will bear good fruit. Such misgivings as any member of the Profession may have had as to the merit of the Bill or its reception in Parliament must have been allayed by the whole-hearted support given to it by Sir Francis Bell, both before its introduction into Parliament and on its second reading in the Legislative Council. Sir Francis spoke as a member of the Profession, not as a member of the Government, and in no uncertain terms made it plain that in his opinion the Profession to which he had been proud to belong for over fifty years was bankrupt neither in principle nor honour.

Court of Appeal.

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

July 5; 20, 1928.
Wellington.

SMITH v. BLENHEIM BOROUGH COUNCIL.

Abattoir—By-law of Controlling Authority—Authorising Butchers to Take Fixed Percentage of Oddments from Stock Slaughtered At Abattoir—Remainder of Oddments and Offal to be Property of Controlling Authority—Whether Ultra Vires—Whether a By-law "Regulating the Working and Management of the Abattoir"—Whether By-law Reasonable—Slaughtering and Inspection Act 1908, Section 18—Amendment Act, 1910, Section 3.

Appeal from the decision of Ostler, J., upholding a By-law of the Blenheim Borough Council, made under the Slaughtering and Inspection Act 1908 and Amendment Act 1910.

Myers, K.C. and Tracey for appellant.
D. M. Findlay and Nathan for respondent.

REED, J., delivering the judgment of Sim, Reed, and Blair, JJ., said that the By-law was made in 1915, in pursuance of Section 18 of the Slaughtering and Inspection Act, 1908, as amended by Section 3 of the Amendment Act, 1910, which provided that the controlling authority of an abattoir might from time to time make by-laws, not inconsistent with the Act or regulations made thereunder:—

(a) Prescribing the charges payable for the use of the abattoir, the housing and feeding of stock before slaughter, and the slaughtering and dressing of stock.

(b) Regulating the working and management of the abattoir.

The by-law prescribed a fixed fee for slaughtering each head of stock and contained the following clause:—

"That the butchers shall take all hides, skins, and gut fat, and shall have the right to take the following percentage of oddments from animals slaughtered on their behalf; provided the butcher shall have asked for such oddments at the time of giving the order for killing. All oddments so ordered must be removed on the same day as killed or first thing the next morning."

(The percentage of the various classes of oddments which might be taken then followed).

"The remainder of the oddments and offal shall be the property of the Council. As long as intestines are run at the abattoirs, runner fat and scraps of fat round paunches will be saved for the butchers, provided they have clean empty tins available for reception of same."

It was contended by the appellant that that clause was *ultra vires* as not being within the statutory powers of the respondent, and was, moreover, unreasonable. In approaching a consideration of the question the attendant circumstances were to be considered. First it was to be observed that the by-law affected only a limited number of persons, that was to say, the butchers who, under the Act, were required to slaughter at the abattoir. The important bearing of that fact was that to a considerable extent the butchers and the local authority were enabled to mutually confer as to the most convenient method of managing the abattoir. On the one hand the local authority had to make provision that the costs of administration and management should not become a charge upon the general body of ratepayers, but should be covered by the fees charged; it had the further duty cast upon it of making provision whereby the abattoir should not become a nuisance or a menace to the health of the community. The butchers on the other hand were naturally desirous that the cost to them should be kept as low as possible. The local authority had, therefore, to make provision regulating the slaughtering of stock and the removal of all refuse consequent upon and naturally produced by such slaughtering. It had to make all necessary arrangements to such end and to fix adequate fees to cover the cost. The amount to be charged must necessarily be dependent upon the circumstances, the more refuse to be removed the greater the cost. Again, before adequate arrangements could be made it was essential that the local authority should know approximately the amount of refuse that daily would have to be removed and the nature of it. As nearly as possible the amount should be equalised. In Blenheim the butchers never desired to be allowed to take the whole carcase of the animal slaughtered, and the uncontradicted evidence of the Clerk of the local authority was that the proportions prescribed by the by-law to be taken by the butchers were as near as possible the average then and previously taken by the butchers. No exception to that was taken by the butchers for many years and the local authority framed its charges and made its arrangements for disposal of the refuse upon that basis. After the by-law had been in force for more than nine years, that was to say in November, 1924, the butchers were invited to a conference with the abattoir committee of the local authority. The minutes of that meeting were produced. It appeared that it was explained by the chairman that more revenue was required if certain necessary improvements and repairs were to be made to the abattoirs. The meeting unanimously decided on an increased scale of charges. The butchers then submitted a series of suggestions for the consideration of the committee. Those suggestions were passed on to the local body and were adopted. One of these suggestions was "that the offal be offered for sale by tender." Up till that time the refuse had been disposed of by the employees of the local authority. Their Honours had used the term refuse in preference to offal, the latter suggesting non-edible parts of the carcase only, whereas the offal referred to in the recommendation of the butchers was the whole of the rejected parts of the carcase which it had been customary to leave on the abattoir premises by the individual owners of the animals killed and intended to be disposed of by the local authority. Public tenders were duly called in accordance with the recommendation and a contract was let on 26th February, 1925, for a term of five years, by which the contractor agreed to pay the sum of Thirty-five pounds (£35) per annum for the right to take all "offal and oddments" and agreed to remove everything, and completely cleanse the abattoirs every day. He was not allowed to sell anything for human consumption except the runners. He had established a pig farm. Tenders had been called upon a certified daily average of offal for 1924 and the agreement provided that should the average fall below that the contractor should have the right to determine the agreement. The local body had no power to determine the agreement except in case of failure by the contractor to carry out its terms. It was quite clear that the butchers were fully seised of the position. It would appear that "runners" had lately become of commercial value and the contractor was no doubt making a very good profit out of his contract. In those circumstances the butchers had combined to bring the present test case to attack the by-law which, if it could be done successfully, would enable them to obtain their "runners" with the resultant profits.

The respondent local body claimed as its authority for enacting the provisions which were attacked that they fell within the term "regulating the working and management of the abattoir." Management was a wide term and would appear to be sufficient to include reasonable regulations dealing with the disposal of the carcase of an animal slaughtered at the abattoirs. It was, however, contended by the appellant that the complete carcase from horns to hoof of an animal so slaughtered was the private property of the owner of the animal and that no by-law that purported to deprive the owner of any part of such carcase was *intra vires* of the local authority. The appellant must go as far as that, for if the word "management" conferred the right to regulate the disposal of any part of the carcase it must necessarily confer the right to regulate the disposal of the whole carcase, such a by-law, of course, being subject to the test of reasonableness. A consideration of the facts that had already been detailed made it abundantly clear that in the administration of the abattoir the disposal of the various parts of the carcase was an essential part of the management. No doubt the law leant against an application of authority to deprive any person of his property without compensation, and, as a rule, required clear statutory authority before such a power would be implied. But that rule could not apply in the present case; the whole object of the Act would be defeated if it were so. As pointed out by Harvey, C.J. in Equity, in **Jones v. Metropolitan Meat Industry Board,** 25 N.S.W. Reports, 553, 559, in discussing a by-law, under a statute of New South Wales in *pari materia* with our own statute, that if that rule were applicable "the board could not deprive the owner of the blood of the animals; yet it is, I think, clear that the abattoirs could not be used if the owners had that right," and what applied to blood was equally applicable in the present case to many other parts of the carcase which the butchers had hitherto voluntarily surrendered to the abattoir authorities. There were two safeguards against an abuse of the power to make by-laws having the effect of confiscating part of the property of the butchers,

First, they had to be approved by the Governor-General. Before they reached that stage they must be made in the manner provided for the making of by-laws, which ensured full publicity being given to them and enabled representations to be made against such approval. Secondly, even when the approval of the Governor-General had been obtained they were still open to the test of reasonableness by the Courts. And that, their Honours thought was the only question, whether or not, in the circumstances, the by-laws were reasonable ?

It was, however, contended that there was authority supporting the contention that, apart from the question of reasonableness, the by-law was *ultra vires*. Reference was made to an undelivered judgment of the late Mr. Justice Salmond, together with the subsequent judgment of Stout, C.J., delivered in the case of **Thompson v. Nelsons (N.Z.) Ltd. and the Hastings Borough Council** (unreported). The observations of both those learned Judges were directed to a state of facts quite different from those existing in the present case. No question of the legal right to make a by-law dealing with the disposal of the carcase of the slaughtered animal was involved, and neither judgment helped in the present case. The case of **Jones v. Metropolitan Meat Industry Board,** on appeal to the High Court of Australia, 37 C.L.R. 252, was cited by the appellant in order to distinguish it. In that case statutory power was given to the respondent to make by-laws providing for the management and control of all public abattoirs and for regulating and controlling the use of same, and for regulating the conduct of all persons resorting thereto or slaughtering therein. It was held by Knox, C.J., Isaacs and Rich, JJ., (Higgins and Starke, JJ., dissenting) that the statute authorised a by-law which provided that portions of animals slaughtered at the abattoirs might be taken by the board, some without payment and others at a price fixed by the board. That judgment affirmed the decision of Harvey, C.J., in Equity, in the Court below. It was contended that the statutory power was wider in the New South Wales Act than in the New Zealand Act. The power to make by-laws, there conferred, was for the management and control of the abattoir and regulating and controlling the use. In New Zealand a local authority that had established an abattoir was registered as "the controlling authority thereof" : Section 12 of the Act of 1908. Section 18 required the "controlling authority" to appoint a manager, slaughterman, workmen and other persons as it deemed necessary for the purposes of the abattoir. Then, it was the "controlling authority" that was given the power to make by-laws "regulating the working and management of the abattoir." It was, their Honours thought, quite impossible to accept the contention that a "controlling authority" that was given power to make by-laws for the working and management of an abattoir could be said to have less power through the legislature failing to specify that such by-law might provide for the "control" of such abattoir. Their Honours thought, therefore, that so far as the measure of authority conferred by the respective statutes was concerned there was no difference. The case, therefore, was an authority in favour of the validity of the by-law under consideration, not of course binding on the Court of Appeal, but entitled to the greatest consideration, weakened, no doubt, by the Bench being divided in opinion. Apart, however, from that authority their Honours should have arrived at the same conclusion for the reasons already stated.

There remained then the question as to the reasonableness of the by-law. The Court agreed with Isaacs, J., where he said (p. 257) in the High Court that "reasonableness must have relation to all the attendant circumstances." In **Slattery v. Naylor,** 13 A.C. 446, at p. 452, it was put thus :—

> "In determining whether or no a by-law is reasonable, it is material to consider the relation of its framers to the locality affected by it, and the authority by which it is sanctioned."

That which might be perfectly reasonable as regards an abattoir at Blenheim might be quite unreasonable with regard to one situated in a large centre of population such as Wellington. As had been shown, various parts of the animal, both edible and non-edible, were not wanted by the butchers in Blenheim when the by-law was enacted. No doubt all such parts would be of value in Wellington. Now could it be said to be unreasonable if, in order to properly manage the abattoirs, provision was made by the by-law for the disposal of such discarded parts, even though technically it deprived the owners of their property therein ? The by-law could not be good at one time and bad at another. It was either bad or good *ab initio*. The fact that parts of the carcase which were considered refuse, and a proper subject of disposal by the controlling authority when the by-law was made, had increased in value, could not make what was formerly a good exercise of legislative power, *ultra vires*. No doubt the increased value attaching to the runners was a perfectly good ground for amending the by-law were it not that to do so, until the expiry of the existing contract, would be a breach of a contract entered into with the tacit approval and consent of the only persons affected by the by-law—the butchers. In what manner then, in those circumstances, could the by-law be said to be unreasonable ? Lord Russell, C.J., in **Kruse v. Johnson** (1892) 2 Q.B. 91, 99, enunciated a test. No doubt, as held by Williams, J., in **Grater v. Montagu,** 23 N.Z. L.R. 904, the non-existence in New Zealand of some of the checks and safeguards in force in England in the public interest against unreasonable and improper by-laws justified our Courts dealing with by-laws with a somewhat freer hand than they were dealt with in England, but that learned Judge limited too wide an interpretation being given to that statement by saying :—

> "I should be very loath to put my opinion against this or any other corporation as to the validity of a by-law unless the circumstances were such as to show quite clearly that the corporation was wrong. Naturally, under ordinary circumstances, the corporation would be the best judge of what was proper."

The circumstances in the present case, in their Honours' opinion, not only did not show that the controlling authoriry was wrong, but on the contrary showed that the by-law was reasonable and proper.

SMITH, J., delivered a separate judgment holding the by-law to be both *intra vires* and reasonable.

Solicitors for appellant : **McCallum, Mills and Co.,** Blenheim.
Solicitor for respondent : **A. C. Nathan,** Blenheim.

Sim, J.
Ostler, J.
Smith, J.

July 19; 20, 1928.
Wellington.

STEVENS v. DALRYMPLE AND OTHERS.

Will—Construction—Trustees—Commission—Will Providing that Trustees Entitled to Receive a Sum Equal to Six per cent. "Of All Moneys Received Paid Away or Expended" in Respect of Residuary Estate—Whether Trustees Entitled to Commission on Monies Received and also on Monies Paid Away or Expended—Grammatical Construction Clear—Court Not Entitled to Alter Clear Sense of Words to Give More Reasonable Effect—Whether Commission Payable on Specific Legacies.

Appeal from a decision of Reed, J., on an originating summons issued by the appellants, as trustees of the will of John Stevens, deceased, for the determination of certain questions arising under the will. The beneficiaries were joined as defendants and were the respondents in the appeal. By the will the testator first bequeathed three legacies of £1,000 each to each of his three children. He then forgave debts owed to him by two other children. He then appointed his executors and trustees, and gave to his trustees "All the rest and residue of my real and personal estate . . . . (hereinafter referred to as 'my residuary estate') upon the trusts and directions hereinafter contained." Then followed a trust for conversion and for payment of debts and funeral and testamentary expenses, and for equal division of the balance among the testator's other children. There was power given to the trustees to postpone the sale and conversion for such a time as they should think fit, and it was provided that the income of any unsold portion of the estate should be subject to the same trusts as the trusts contained in the will regarding the division of the capital. Power was given to the trustees either to lease or bail any part of the residuary estate unsold. The testator further provided :—

> "I declare that my said trustees accepting the trusteeship under this my will shall be entitled to receive out of my residuary estate as remuneration for their trouble in the administration of the trusts herein contained regarding my residuary estate a sum equal to six pounds (£6) per centum of all moneys received paid away or expended in respect of my residuary estate on the administration thereof such sum shall be equally divided between my said trustees accepting the trusteeship."

Two questions were raised in the Court below depending upon the construction of that clause. The first question was whether the trustees were entitled to the commission mentioned on all

moneys received and on all moneys paid away or expended, or whether they were entitled only to the commission on either all the moneys received, or on all moneys paid away or expended.

The second question was whether the trustees were entitled to any commission on the three legacies of £1,000 each given by the will. The learned Judge decided that upon the grammatical construction of the words of the will the trustees were given commission either on all moneys received or upon all moneys paid away or expended, but not upon both, and that commission was not payable upon the legacies. The trustees appealed from this decision.

Baldwin and H. F. Johnston for appellants.
C. H. Treadwell for respondent Dalrymple and Others.
Watson for respondent Stevens and Others.

OSTLER, J., delivering the judgment of the Court of Appeal, said that His Honour Mr. Justice Reed, in referring to the words: "All moneys received paid away or expended," said: "In construing the words literally or grammatically the word 'or' must be treated disjunctively; consequently the sentence fully set out would read: 'all moneys received or paid away or expended.'" Counsel for the appellants agreed that was how the words should be read, and their Honours also agreed that that was their plain meaning. The question then was what was the grammatical meaning of those words. The word "or" was no doubt a disjunctive word. It was also a correlative word, i.e., it was used in conjunction with the word "either" or the word "whether," which was either implied or expressed. The grammatical use of that pair of correlative particles was to disjoin two things that were comparable one with other such as similar parts of speech. The word "or" in the sentence under consideration must refer in each case to the verb following. Therefore the rules of grammar required that the correlative "either" or "whether" which was implied in the sentence should refer to a similar part of speech, i.e., a verb. If that rule was observed then the sentence must be read as "on all moneys either received or paid away or expended," or alternatively, "on all moneys whether received or paid away or 'expended.'" The grammatical meaning of those words was in the opinion of the Court beyond doubt. They meant that the commission on all moneys whether those moneys were received or whether they were paid away or whether they were expended. Their Honours found nothing in the context to justify any departure from the ordinary rule that the words must be construed in their plain grammatical sense. It was true that that construction would allow the trustees to collect what was equivalent to 12 per cent. commission on moneys belonging to the estate, i.e., 6 per cent. on every sum of money received, and a further 6 per cent. on paying out or expending each sum of money received. That certainly seemed an excessive remuneration for their services. It was considerably more than any Court had the power to allow. But if a testator in plain language provided for the remuneration of his trustees, however extravagant that provision might be, the Court had no more power to reduce it or cut it down than it had power to cut down an ordinary legacy. Of course if the language used had been ambiguous the Court would have had the power to give it the construction most consonant with reason and good sense. The rule, however, was that in construing a will the words must be given, their plain grammatical meaning, unless the context required some modification, and if the words could have only one grammatical meaning then that meaning must be given to them. The Court was not entitled to alter the meaning because it thought that the remuneration given was more than the services for which it was given were worth.

The remaining question for decision was whether the trustees were entitled to any commission on the three legacies of £1,000 each given by the will. The clause in the will quoted above provided that the commission was to be paid to the trustees for their trouble in the administration of the trusts regarding the residuary estate, and it was to be paid only on all money received paid away, or expended in respect of the residuary estate. The words were so clear that there could have been no question about the matter but for the fact that after the testator's death the beneficiaries all agreed among themselves to a variation of the terms of the will whereby they were all to share equally. It was stated at the Bar that the effect of that agreement was to give to the three specific legatees a larger sum than they would have otherwise obtained under the will. The appellants contended that that the effect of that agreement was a disclaimer of the legacies by the specific legatees. They relied on the general rule of equity that lapsed or disclaimed legacies fall into the residue. In the opinion of the Court however, there was nothing in the agreement entered into by those three legatees to show that they ever had the slightest intention of disclaiming their legacies. So far as they were concerned the effect of the agreement was that they were to get the full amount of their legacies and some part of the share of the residuary legatees as well. So far as the trustees were concerned they still had the duty cast on them by their acceptance of the trust of paying those legacies, and they had no rights of remuneration except those given by the will. Their Honours thought that that would have been so even if the specific legatees had purported in the agreement to disclaim their legacies. So far as the trustees were concerned such an agreement would have been *res inter alios acta*. In their Honours' opinion the trustees could not rely on a subsequent agreement made among the beneficiaries to enlarge their rights given them by the will. The Court was, therefore, of opinion that on that point the judgment of the learned Judge in the Court below was right.

Appeal allowed and the order of the Supreme Court varied accordingly.

Solicitor for the appellants: **P. E. Baldwin,** Palmerston North.
Solicitors for Nora Dalrymple and Others: **Treadwell and Sons,** Wellington.
Solicitors for Mary Stevens and Others: **Chapman, Tripp, Cooke and Watson,** Wellington.
Solicitors for the remaining respondents: **Innes and Oakley,** Palmerston North.

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

July 4, 1928.
Wellington.

SAMPSON v. WHITE STAR BREWERY LIMITED.

Principal and Agent—Land Agent—Commission—No Authority in Writing—Whether Principal Estopped from Setting up Absence of Written Authority—Whether Defence Fraudulent in Law—Land Agents Act 1921-22, Section 30.

Appeal from the judgment of Sim, J., reported 4 N.Z.L.J. 120, where the facts are sufficiently stated.

Donnelly for appellant.
Sargent for respondent.

OSTLER, J., delivering the judgment of the Court, said that on the view that their Honours took of the facts there was nothing from which the Court could infer any representation of existing fact on Lambert's part on which an estoppel could be founded against the respondent company. It was a common case, such as had arisen before in the Courts both under Section 30 of the existing Act, and also under Section 13 of the Act 1912, where the agent desired to have his commission secured by writing, but was content to rely on the word of his principal. No doubt circumstances might arise which would create an estoppel against a principal, so that he would be estopped from setting up the defence provided by Section 30, but in order that such estoppel should operate there must be a clear representation of some existing fact which had induced the agent to bring about the contract of sale without first taking the precaution of getting his appointment in writing. As was well said in **Spencer Bower's Estoppel by Representation**, 41, there were very few promises from which a representation of existing capacity or intention could not plausibly be inferred. Their Honours adopted the following passage from that work as being applicable to the facts of the case: "If the language used and the circumstances of the case clearly indicate a promise and not a statement of present intention (except in the general ethical sense in which every promise involves such a statement), the Courts have not shrunk from their duty to regard the matter in this light only, though the result has been in many cases to leave just expectations unrealised, and to absolve from all consequences conduct that was at least morally censurable. In all cases, accordingly, where it is admitted or established that the party claiming cannot succeed against his opponent on the basis of contract (either because there is no contract in fact or because the contract is by statute, or at common law unenforceable), and it is therefore only possible for him to succeed if he can establish a representation which the other party will be estopped from contradicting, and the statement

on which he relies cannot be interpreted otherwise than as a promise he has always been left without a remedy at all." In the opinion of the Court that passage was peculiarly applicable to the facts of the present case. Their Honours agreed that the case of **Hooper v. Anderson and Co.** (No. 2) 1919, N.Z.L.R. 65, was rightly decided and governed the present case. Although it might be mean and shabby to rely on that statutory defence it was certainly not fraudulent to do so, in the sense in which that term was used and understood in a Court of Law.

Appeal dismissed.

Solicitors for appellant: **Raymond, Stringer, Hamilton and Donnelly.**

Solicitors for respondent: **Slater, Sargent, Dale and Connall.**

Full Court.

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

July 24; 30, 1928.
Wellington.

WILLIAM CABLE & CO. LTD. v. TEAGLE SMITH & SONS, LTD.

Practice—Third Party Notice—Leave to Serve Same Out of New Zealand—Contract by Defendant for Purchase of Machinery from Third Party—Contract Made in England and to be Performed in England—Machinery Forwarded to New Zealand and Sold by Defendant to Plaintiff—Alleged Defects in Quality of Machinery—Common Question Between Plaintiff and Defendant and Defendant and Third Party—Whether Court had Jurisdiction to Grant Leave to Serve Notice out of New Zealand—Whether Subjectmatter of Action "Property Situated in New Zealand"—Whether Contract an "Instrument" Affecting Such Property—Rules 48 (e) and 95 of Code.

Motion to rescind an order made by Mr. Justice Smith (reported 4 N.Z.L.J. 156) dismissing an application made by the defendant for leave to issue a third party notice to one Frederick John Allen, who resided and carried on business in England, and for leave to serve such notice out of the jurisdiction.

Stevenson for plaintiff.
Cooke for defendant.

SIM, J., delivering the judgment of the Court, said that for the purposes of the present motion Mr. Justice Smith's view as to the position of the parties was accepted as correct, namely, that the contract between the defendant and the third party was a contract made in England and to be completely performed in England, and was separate and distinct from the contract entered into between the plaintiff and the defendant. "In those circumstances," said Mr. Justice Smith, "the defendant may have a right of contribution or indemnity or other remedy or relief against the third party in respect of defects in the quality or performance of machinery supplied to it, and in respect of which it may be liable either to repay to the plaintiff the purchase price paid by the plaintiff or to be mulcted in damages at the suit of the plaintiff. The common question to be determined would be the quality and performance of the machinery supplied by the third party." That was sufficient to bring the case within Rule 95 of the Code of Civil Procedure, and the question to be determined was whether or not the Court had jurisdiction to grant leave to serve the third party notice out of New Zealand under Rule 48 of the Code. On the argument before the Court Mr. Cooke abandoned the claim made before Mr. Justice Smith that the case came within Clause (c) of Rule 48, and rested his case on the claim that it came within Clause (e) of that rule. The subjectmatter of the action, he argued, was the machinery which was now in New Zealand, and that brought the case within the first part of Clause (e). In the alternative the case, he argued, came within the last part of the clause. But the case of **Jones v. Flower,** 24 N.Z.L.R. 447, decided by the Full Court, was an authority for holding that a case such as the present did not come within Clause (e) of Rule 48, and that where a plaintiff was claiming in respect of a breach of contract, the fact that the contract on which he relied related to property in New Zealand did not bring the case under Rule 48 unless the contract came within the terms of Clause (b) or (c) of Rule 48. The cause of action under consideration in **Jones v. Flower** was a claim for damages for breach of a contract made in London, respecting land in New Zealand. It was held that the case did not come within Subsection 5 of the then Rule 48. That subsection was the same as Clause (e) of the present Rule 48, except that Clause (e) contained the word "instrument," which was introduced apparently when the Statutes were consolidated in 1908. In the present case the claim that the defendant would have against the third party would be for damages for breach of contract, and the case was governed, therefore, by the decision in **Jones v. Flower,** with the result that there was not jurisdiction to give leave to serve the third party notice out of New Zealand. But even if there had been jurisdiction, the case, their Honours thought was one in which the Court, in the exercise of its discretion, should refuse the defendant's application.

Motion dismissed.

Solicitors for plaintiff: **Izard, Weston, Stevenson and Castle,** Wellington.

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

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

July 26; July 18, 1928.
Wellington.

GODKIN v. NEWMAN.

Public Works Acts—Roads—Statutory Power to Make Regulations as to Classification of Roads and Streets with Reference to Their Suitability for Use by Different Classes of Motor Lorries—Regulations Giving Power to Classify Roads—Validity—Whether Necessary That Regulations Should Fix Basis of Classification—Public Works Amendment Act 1924, Section 19 (2)—Motor Lorry Regulations 1925 and 1927.

Appeal from the decision of Mr. E. Page, S.M., dismissing an information against the respondent who was charged that on 4th October, 1927, he did on a classified road, namely, the road between Horokiwi Gorge and Paekakariki, operate a motor-lorry which with its load exceeded the weight for which the road was by the Motor Lorry Regulations, 1927, declared to be available. The Magistrate held that there had not been any valid classification of the road in question. The question to be determined on the appeal was whether or not that decision was right in point of law. The facts appear sufficiently in the report of the judgment.

Currie for appellant.
D. Perry for respondent.

SIM, J., delivering the judgment of the Court, said that Section 19 (2) of the Public Works Amendment Act 1924, authorised the Governor-General from time to time by Order-in-Council to make regulations in relation to the use of motor-lorries as follows:—

> "(a) For the classification of motor-lorries according to their weight and carrying-capacity;
>
> "(b) For the classification of all roads and streets in New Zealand with reference to their suitability for use by different classes of motor-lorries."

On 24th March, 1925, Regulations were made by which motor-lorries were divided into sixteen classes indicated respectively by the letters of the alphabet from A to P. The classification was determined by the weight of the motor-lorry with the maximum load it was licensed to carry. Clause 7 of the Regulations made provision for the classification of roads by authorising the Minister of Public Works in respect of any Government Road and the Main Highways Board in respect of any main highway and the local authority having control of that road or street in respect of any other road or street to declare that such road or street belonged to some one of the four following classes:—

> "First class: Available for the use thereon of any motor-lorry.
>
> "Second class: Available for the use thereon of any motor-lorry which with the maximum load it is licensed to carry weighs not more than 8 tons.
>
> "Third class: Available for the use thereon of any motor-lorry which with the maximum load it is licensed to carry weighs not more than 4 tons.
>
> "Fourth class: Available for the use thereon of any motor-lorry which with the maximum load it is licensed to carry weighs not more than 2½ tons."

That clause was amended by the Regulations of 21st September, 1925, by substituting five classes for the four classes already set forth. The first two classes were the same as before. The third class was new and was defined as follows :—

> "Third class : Available for the use thereon of any motor-lorry which with the maximum load it is licensed to carry weighs not more than 6 tons."

The fourth and fifth classes were the same respectively as the third and fourth classes of the previous classification. The Main Highways Board submitted a proposed classification of the road in question to the Minister of Public Works, who by Notice published in the Gazette (1926, p. 2542) altered such proposed classification and declared the road to be in the second class. The regulations of 1925 were repealed by the Motor Lorry Regulations 1927, which came into force on 1st April, 1927. Sub-clauses 1 and 2 of clause 7 of those new regulations read :—

> "(1) The Minister in respect of any Government Road and the Main Highways Board in respect of any main highway and the local authority having control of any other road in respect of that road may declare that such road belongs to some one of the following classes, namely : First Class, Second Class, Third Class, Fourth Class, and Fifth Class.
>
> "(2) Any road classified under the Motor Lorry Regulations 1925 and the amendments thereof shall be deemed to have been classified as belonging to the class of the same name constituted under the last-preceding clause hereof."

The first question to be considered was whether or not the provisions contained in the Motor Lorries Regulations 1925 as to the classification of roads were valid. The power given by Section 19 of the Act of 1924 was to make regulations for the classification of all roads and streets in New Zealand with reference to their suitability for use by different classes of motor-lorries. It was not necessary, their Honours thought, for the Governor-General himself to make the actual classification. He might entrust the duty to others, but if he did that he must first determine the basis on which the classification was to be made. Now Clause 7 of the Motor Lorry Regulations 1925 appeared to supply such a basis, namely availability for use thereon of different classes of motor-lorries. "Available" was the word used in the regulation, but that the Court took to mean the same thing as "suitable." The regulation, therefore, fixed a standard by which the roads were to be classified according to their suitability for use by different classes of motor-lorries, and was, their Honours thought, a valid exercise of the power conferred by Section 19.

The next question to be considered was the validity of the provisions contained in Clause 7 of the Motor Lorry Regulations 1927. That clause did not specify any basis for the classification of roads. It merely gave power to declare that a particular road belonged to one of five classes, without any guide as to how those five classes were to be determined. In effect it deputed to the controlling authority the power, which the Governor-General alone could exercise, of fixing the basis on which the classification was to be made. It was said, however, that Clause 8 of the Regulations could be invoked for the purpose of supplying that omission in Clause 7. But that dealt with the use of classified roads, and until roads had been classified under a valid regulation it could not have any effect. It might be surmised from the provisions of Clause 8 that the draftsman responsible for the regulations intended that the basis of classification should be the same as before, but he had omitted to say so, and the Court was not justified in supplying the omission by surmise. Their Honours thought, therefore, that Clause 7 was not a valid exercise of the power conferred by Section 19.

The position then was that the road in question was duly classified under the Motor Lorry Regulations 1925. Those regulations had been repealed, and the classifications made under them were not any longer in force. An attempt was made in Subclause (2) of Clause 7 of the Motor Lorry Regulations 1927 to keep them in by force by declaring that they should be deemed to have been classified as belonging to the class of the same name constituted under the preceding subclause. That would have been effective if such subclause had been valid. But it was not valid, and the road in question had lost the classification it acquired under the Regulations of 1925, and it had not acquired any classification under the Regulations of 1927 for the reason that they did not contain any valid provisions for the classification of roads.

Solicitors for appellant : **Crown Law Office**, Wellington .
Solicitors for respondent : **Perry and Perry**, Wellington.

Supreme Court

Smith, J. May 23 ; July 3, 1928.
Wellington.

ANSON v. PARKER.

Destitute Persons—Affiliation—Corroboration—Whether Evidence Corroborated in a Material Particular—Whether Failure to Call Evidence to Contradict Evidence Given on Behalf of Complainant Amounts to Corroboration—Whether Supreme Court on Appeal on Point of Law Can Consider Corroborative Value of Evidence not Specified by Magistrate as Corroborative—Admissibility of Hearsay Evidence—Destitute Persons Act, 1910, Sections 10, 68.

Appeal from an order made by Mr. J. H. Salmon, S.M., in the Magistrate's Court at Wellington adjudging the appellant to be the father of the respondent's illegitimate child. The ground of the appeal was that the decision of the Magistrate was erroneous in point of law. The facts appear sufficiently in the report of the judgment.

O'Leary and Leicester for appellant.
Dunn for respondent.

SMITH, J., said that in every such case the Magistrate's notes of evidence ought to form part of the case—**Coulston v. Taylor,** 28 N.Z.L.R. 807. They were not incorporated in the present case and His Honour therefore directed that they should be supplied to the Court and should form part of the case. This was done. The evidence given by the respondent, aged 19, related to acts of familiarity with the appellant, and also to various acts of sexual intercourse, one of which was directly relevant to the birth of the complainant's illegitimate child. Evidence corroborative of that portion of the respondent's evidence was given by her brother-in-law, but the Magistrate had apparently not relied upon it as corroborative. After referring to certain payments of money as corroborative the Magistrate said that the evidence of the complainant and her witness being uncontradicted he adjudged the defendant to be the father of complainant's child. The mere failure of the defendant to give or call evidence could not be treated as a relevant consideration so as to relieve the complainant of her obligation to make out, independently of the defendant, a *prima facie* case corroborated in a material particular. The true question was whether, at the close of the complainant's case, there was evidence adduced by or on behalf of the complainant upon which an affiliation order ought to be made. Cf. **Dolling v. Bird** (1924) N.Z.L.R. 545. As the Magistrate had specified certain evidence as corroborative, viz., that relating to the payments of money, and had not specified as corroborative the evidence relating to familiarity and opportunity, His Honour doubted whether it was open to the Court, on an appeal on a point of law, to consider the corroborative value of the evidence not specified as corroborative. That evidence of familiarity and opportunity might be corroborative was clear—**Dalton v. Rigney** (1916) N.Z.L.R. 1183, but the Magistrate might have regarded it as so unsatisfactory that he could not rely upon it. On an appeal on a point of law, the Court could not check such evidence. In the view which His Honour had formed as to the corroboration of the respondent's evidence relating to the payment of money, it was, however, unnecessary to decide the question.

His Honour reviewed the respondent's evidence which was to the effect that after finding herself pregnant she approached the appellant, who first promised to marry her, but subsequently urged her to go away so that nobody would know anything about it, promising at the same time that he would send her £40. It was arranged that she should receive the money through a certain solicitor. On the faith of these promises the respondent went away. On her approaching the solicitor for the money he informed her that no monies had been received but that if the appellant sent him any money he would forward it on. The respondent then wrote a letter to the solicitor giving him her correct address. Subsequently she received a letter enclosing a cheque for £10 from the solicitor who promised to make further arrangements for her. She was later informed by him that he had made arrangements for her "through another source." A further sum of £15 (less exchange) was received by her through the solicitor. On 14th July, 1927, the respondent wrote to the solicitor's firm alleging that the appellant was the father of her

illegitimate child, that it was understood that the appellant had left £40 with such solicitor for the support of the child, and requiring a consent order for confinement expenses and maintenance. The firm of solicitors replied on 19th of September, 1927, that they were endeavouring to get into communication with the appellant about the matter and that it was incorrect that the appellant left £40 with them, although it was true that they received certain money to assist Miss Parker; that such money was not received from the appellant, but from a person who gave them explicit instructions that no names were to be mentioned in connection with the matter. They further stated that as soon as they had been able to see the appellant they would advise the respondent whether he would recognise the claim or not. On 22nd September, 1927, the firm wrote advising that the respondent repudiated liability. On 24th September, 1927, the firm, apparently in response to the letter from the respondent of 21st of September, requiring money, wrote forwarding "£3 less exchange, being balance of moneys we hold on your behalf." It was submitted by counsel for the appellant that there was no corroborative evidence to connect the appellant with the payments of the money by the solicitor or his firm. It was further submitted that the respondent's conversations with the solicitor were hearsay evidence and that they should not have been admitted by the Magistrate, notwithstanding the fact that the Magistrate had a discretion under Section 68 of the Destitute Persons Act 1910, as to the admission of evidence whether otherwise legally admissible or not. In support of that contention, **Seed v. Sommerville,** 7 G.L.R. 199, was cited. That was, however, a case in which the Arbitration Court itself indicated that it would exercise caution in the admission of evidence under the wide powers conferred upon it. In His Honour's opinion the discretion as to the admission of evidence under Section 68 belonged solely to the Magistrate. He might limit it, as he thought fit, and his discretion was not controllable by this Court. The Court, however, was entitled to have regard to the nature of the evidence admitted when considering whether the evidence submitted as corroborative might be regarded as such. The function of the Court on an appeal on a point of law was to determine whether there was evidence which was corroborative. If there was such evidence it was not for the Supreme Court but for the Magistrate to determine whether or not that evidence satisfied him: **Mash v. Darley** (1914) 3 K.B. 1226, 1231. The corroboration required must be corroboration in a material particular. In the words of Atkin, L.J., in **Thomas v. Jones** (1921) 1 K.B. 22, 45, approving **Rex v. Baskerville** (1916) 2 K.B. 658: "It must be evidence which tends to prove that the man is the father of the complainant's child; in other words, it must be evidence implicating the man, evidence which make it more probable than not that the respondent to the summons is the father of the child." That dictum was referred to by Hosking, J., in **Watson v. Laidlaw** (1922) N.Z.L.R. 1172. In His Honour's opinion, the correspondence was sufficient to corroborate the complainant's story in a material particular. The correspondence showed that the respondent left her father's house in Raniwahia and stayed away from home during a great part of her pregnancy. She stated that it was a condition of payment by the appellant that she should leave home. The correspondence further showed that the solicitor who made the payment was not the respondent's solicitor; and that after receiving the respondent's letter in which she made it plain to him that she regarded the appellant as the father of her child, the solicitor sent her £10. The later letter in which he stated that he had been able to make arrangements for the respondent through "another source" plainly indicated that there was some previously existing source known to both parties. The only reasonable inference was that that source was the appellant, and the payment of the £10 must be attributed to him. If so, it was plain that it was contributed in response to her appeals for help while she was away from her own home during the period of pregnancy. In His Honour's opinion, that evidence from the correspondence written by the solicitor in question clearly amounted to corroboration of the respondent's story in a material particular. It was, therefore, open to the Magistrate to attribute the payment of the £10 referred to in the letter of 14th April to the appellant. The Magistrate had specifically referred to that sum as having been paid before any other source had been referred to. Having found that as a fact, it was also open to the Magistrate to find that whatever might have been the immediate source of the money, the original source was the appellant, and that was apparently what the Magistrate meant when he said: "There was only one possible source from which the money could have come and that was from defendant." In His Honour's opinion, therefore, the evidence of the letters corroborated the departure of the respondent from her own home and showed the payment of money by or on behalf of the appellant for the support of the respondent during the period of her pregnancy, and constituted evidence corroborative of the evidence of the complainant in a material particular. The weight of that evidence was for the Magistrate, and he had been satisfied with it.

Appeal dismissed.

Solicitors for appellant: **Cooper, Rapley and Rutherfurd,** Palmerston North.

Solicitor for respondent: **Alexander Dunn,** Wellington.

Smith, J. July 27; 30, 1928.
Wellington.

SPARKES v. SPARKES.

Practice—Divorce—Petition for Divorce on Ground of Adultery—Application for Leave to Dispense with Co-respondent—Matters to be Taken Into Consideration by Court—Leave Not Granted on Affidavit of Petitioner Only.

Motion for an order granting leave to dispense with the co-respondent. The special ground stated in the petition to excuse the petitioner from making the alleged adulterer a co-respondent (as required by Section 24 of the Divorce and Matrimonial Causes Act 1908) was that the petitioner's wife committed adultery with some male person whose name was unknown to the petitioner. The affidavit of the petitioner only was filed in support of the motion. It set out that the petitioner discovered his wife's adultery when he found that he had contracted a venereal disease from his wife. He stated that he spoke to the respondent about it, and that the respondent "admitted that she had been intimate with some one in Central Park." He also said that he demanded the name of the person but his wife at first "refused to divulge his name, but subsequently said she only knew him by the name of 'Jack.'" The petitioner also set out in his affidavit an undated letter from the respondent admitting misconduct but declining to give the name of the person with whom she had misconducted herself. The petitioner said that he had endeavoured to ascertain the name of the co-respondent, but without success, and that he did not know anyone of the name of "Jack" with whom the respondent had been intimate.

P. W. Jackson for petitioner.

SMITH, J., said that the Rule was that the Court would not dispense with the co-respondent on the affidavit of the petitioner only. **Leader v. Leader,** 32 L. J. (P.) 136; **Barber v. Barber** (1896) P. 73; **Sim's Divorce Act** (3rd Edn.) 65. Mr. Jackson urged on the authority of **Gill v. Gill,** 60 L.T. 712; **Jones v. Jones** (1896) P. 165; and **Saunders v. Saunders** (1897) P. 89, that the order should be made. The last mentioned case which was a decision of the Court of Appeal, laid it down that the question of dispensing with the co-respondent must be decided in each case on its own circumstances unfettered by any general rule of practice. Although that was so, the facts must first be established. In Divorce, the Court was not concerned solely with the interests of the petitioner and the respondent.—See per Gorell Barnes, J., in **Jones v. Jones** (1896) P. 165, 169. It was, therefore, a sound rule of practice which required that before the Court exercised its discretion as to dispensing with the co-respondent, the petitioner's affidavit should be corroborated by some person who had assisted in endeavouring to trace the co-respondent or who could corroborate the statements of the petitioner. In the present case, the petitioner stated that he had endeavoured to ascertain the name of the person with whom the respondent admitted misconduct. No details were given, save the application to the respondent herself. His Honour thought there could be no difficulty in giving further particulars of any genuine efforts made to ascertain the identity of the co-respondent, and of filing a corroborative affidavit. The motion would be adjourned *sine die* to enable the petitioner to file (1) an affidavit showing what inquiries (if any) he had made apart from his application to the respondent, and (2) an affidavit corroborative of the facts stated in his affidavit in support of the present motion and of the facts to be stated in the further affidavit to be filed.

Solicitors for the petitioner: **Wilford, Levi and Jackson,** Wellington.

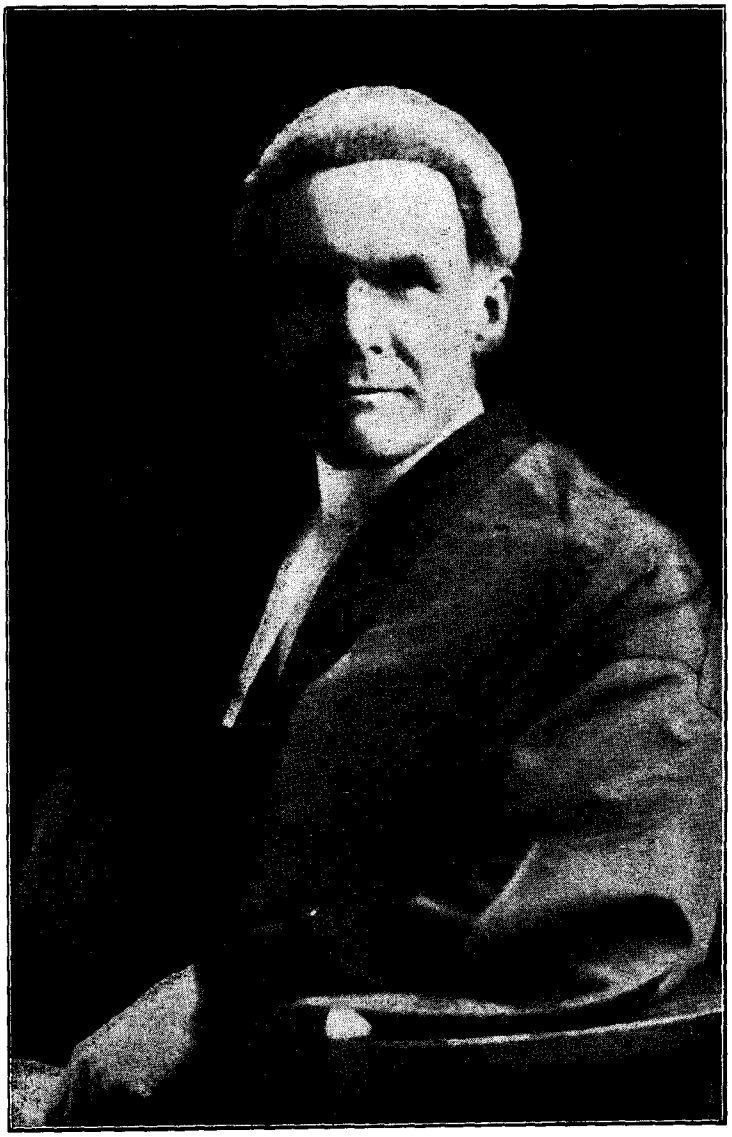
Obituary

The Honourable Sir William Sim

Judge of the Supreme Court of New Zealand.

We regret to record the death of Sir William Sim, senior puisne Judge of the Supreme Court, who up to the day before his death had been performing his judicial duties.

Sir William Sim was born at Wanganui in 1858, and, having served his apprenticeship in the office of Mr. Borlase in that town, qualified at the age of 19. Mr. Sim went to Dunedin and entered the office of Messrs. Sievwright, Stout & Co., as chief common law clerk to Mr. (now the Right Honourable Sir Robert) Stout. On the dissolution of that firm he followed Mr. Stout and became a member of the firm of Stout, Mondy and Sim, which soon became one of the leading legal firms in Dunedin. Dr. (now Sir John) Findlay joined the firm when it opened an office in Wellington, and "Stout, Mondy, Sim and Findlay" became one of the best known firms in New Zealand. In 1907 Mr. Sim was appointed Judge of the Court of Arbitration, and from this office was, on 16th January, 1911, appointed to the Supreme Court Bench. In 1924 he received the honour of a knighthood.



Sir William Sim has written several valuable legal text-books. In 1892, with Sir Robert Stout he wrote "Practice and Procedure of the Supreme Court of New Zealand," the first New Zealand legal publication to run into more than one edition. This work is now in its sixth edition and for all of the editions except the first Sir William Sim was solely responsible. He has also written a valuable work on the law of Divorce, now in its third edition, and, at the time of his death, had almost finished compiling, in conjunction with Mr. J. C. Stevens, of Dunedin, a volume of Supreme Court Forms.

At a most inopportune time New Zealand has lost in the sad death of Sir William Sim, a Judge worthy of a place in any Court in the British Empire.

Tributes of Bench and Bar at Wellington.

Reference was made to the late Sir William Sim in the Supreme Court at Wellington, on Thursday, 30th August. On the Bench were their Honours Mr. Justice MacGregor and Mr. Justice Smith, and also Sir Walter Stringer; there was a large and representative gathering of the Bar.

The Attorney-General (Hon. F. J. Rolleston) on behalf of the Bar, said:—

"The occasions are fortunately rare when members of the Bar are called upon to meet under circumstances as sad and as tragic as those under which we meet this morning. The removal by death of one who, no less than two days ago, was occupying a seat on the Bench of this Court is, I think, a tragedy which will deeply move the members of the Bar throughout the Dominion, and also the members of the public. At such short notice, and under the shadow of this great loss, I feel myself unable to pay an adequate tribute to one who for over twenty years occupied a seat on the Bench, one who adorned the bench of justice, and who earned the fullest confidence and respect of all who were privileged to practice before him. Your Honours, I could wish that the task of paying a tribute to the memory of Sir William Sim were in abler hands than mine. The life and work of the late Judge, his industry, his high sense of duty, and, above all, his passion for justice, will be an abiding memory to members of the Bench and the Bar, and to the people of this Dominion. In the full possession of his faculties, with his vigour unabated and his powers undimmed, he has been called to his long rest. To-day, we who have practised before him for so many years, and who have learned to know and to admire him, are met together to tender, through your Honours and your colleagues, our sincerest sym-

pathy in the great loss which we know you and we have sustained. At this stage I would like to mention to your Honours that I have received a letter from Sir Robert Stout, the late Chief Justice of New Zealand, in which he states that he regrets exceedingly that, through illness, he is unable to be present to-day to join in the tribute which is being paid to his old partner and friend. I hope that the presence of this gathering of members of the Bar, and the united sympathy which it indicates, will be some small consolation to the sorrowing widow and family."

His Honour Mr. Justice MacGregor, said: "Mr. Attorney and Gentlemen of the Bar, we are gathered here this morning in sadness of heart to do honour to the memory of one to whom all honour is due at our hands. The learned Judge who has just passed away from among us had long been a tower of strength on this judicial Bench. His place there will be hard to fill. His clear intellect, his wide knowledge of law, and his terse and lucid diction, were combined with unflagging industry and absorption in his work. Almost literally, he died in harness. It is to be feared, indeed, that his devotion to duty cut short a valuable life. For many weeks past it was obvious to those around him that his health was failing, but he strove to the end to do his appointed task, until exhausted nature failed. It is altogether right and fitting, accordingly, that we should do prompt honour to his memory. I desire, therefore, in all sincerity to associate my colleagues and myself with the eloquent and kindly words that have fallen from Mr. Rolleston. For my own part, I was closely associated with Sir William Sim for more than forty years, both in Dunedin and in Wellington—at the Bar and on the Bench. I had long since learned to appreciate and admire his judicial mind, his scholarly attainments and his untiring industry. Of late, indeed, I knew that he was looking forward to his early retirement, to a period of rest after labour. But it was not to be. He has been taken away from us in the full ripeness of his powers, and we shall one and all deeply feel his loss. What that loss must be to his bereaved widow and family one can only faintly conjecture. All that we can do now is to extend to them our sincere and heartfelt sympathy in their great affliction."

Public Clamour in Murder Cases.

There will be complete agreement in the profession with the protest made recently by the Home Secretary against the habit, which has of recent years become very common, of endeavouring to influence the decision of the Home Secretary with regard to the exercise of the prerogative of mercy, by newspaper agitation and by petitions for the reprieve of convicted murderers. The matter has nothing to do, of course, with the question of whether or not capital punishment is a good or a bad thing, and we have no intention of entering upon that topic; but, so long as capital punishment is the law of the land, it is of the greatest public importance that the administration of justice in this regard should not be influenced by uninstructed agitation. The duty of deciding whether or not a reprieve ought to be granted in any particular case is one of the most anxious which can fall to the lot of any individual, and his decision should be, and in fact is, only reached after careful consideration of the evidence given in the case, and of all relevant and proper circumstances. The opinion of journalists, and the views of those who have read newspaper reports, can be of absolutely no assistance.—"Law Journal."

Law Practitioners Amendment Bill.

The Law Practitioners Amendment Bill has been introduced in the Legislative Council by the Hon. Mr. McGregor. Below are the provisions of the Bill as it read in the first reading:—

A BILL INTITULED.

AN ACT to amend the Law Practitioners Act, 1908.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Law Practitioners Amendment Act, 1928, and shall be read together with and deemed part of the Law Practitioners Act, 1908 (hereinafter referred to as the principal Act), and shall come into operation on the *first* day of *January*, nineteen hundred and twenty-*nine*.

2. (1) The Council of the New Zealand Law Society (hereinafter referred to as the Society) may establish a scheme for guaranteeing and securing the integrity of moneys received or held by solicitors for any person.

(2) In connection with the said scheme the Council of the Society may, with the approval of at least three Judges of the Court, of whom the Chief Justice shall be one, make rules for all or any of the following purposes:—

(*a*) Providing for the payment of an annual sum to the the Society by solicitors practising their profession, with power to exclude or differentiate as regards any class.

(*b*) Providing for the payment to the Society by such solicitors of such special levies in lieu of or in any addition to any annual sum as aforesaid as may from time to time be resolved upon by the Council of the Society.

(*c*) Providing for the management, control, use, investment, and disposal of any moneys which may be so paid to the Society.

(*d*) Prescribing what claims may be made upon and paid by the Society out of the moneys so paid to it, and providing for inquiry into investigation of and adjudication upon any such claims.

(*e*) Providing for the investigation of the affairs and accounts of any practising solicitor which the Council of the Society may consider proper in view of the existence of any such scheme so established.

(*f*) Prescribing such practice and methods to be observed by solicitors in the keeping of their trust accounts as in the opinion of the said Council will assist and make more effective the audit thereof.

(*g*) Imposing fines and penalties for the breach of any such rules.

(*h*) Providing for the publication or notification of all or any of such rules.

3. All payments and pecuniary fines and penalties prescribed or authorised by or under any such rules may be recovered by the Society in any Court of competent jurisdiction from any person failing to pay the same and appropriated to the above purposes; and if any such rules shall so provide, any Registrar having notice of such default by any solicitor shall not issue to such solicitor a certificate under section forty-five

of the principal Act until he is satisfied that the default no longer continues.

4. Wilful failure by a solicitor to comply with any provision of such rules shall, if the Court thinks fit, be ground for the exercise of the summary jurisdiction of the Court under the provisions of the principal Act.

Damages for Dishonour of Cheques.

In *Kinlan v. Ulster Bank, Ltd.*, (1928) Ir. R. 181, which recently came before the Court of Appeal in Southern Ireland, Kennedy, C.J., pointed out that "it had long been settled law that if a banker wrongfully dishonour the cheque of a customer who is a trader, the customer is entitled to substantial, and not merely nominal damages, without proof of special damage." The leading case on the subject is *Rolin v. Steward*, 23 L.J.C.P. 148, where the Court of Common Pleas refused to disturb a verdict for 500*l.* damages, although no evidence whatever was given to prove the special damage alleged. The jury, said Williams, J., are not confined, in estimating damages, to the actual damage proved, but may take into their consideration the fact that "the dishonouring cheque is particularly calculated to be injurious to a person in trade." Substantial damages may be recovered by a trader whose cheque has been dishonoured, even though the cheque was in fact paid the day after the original dishonour—*Fleming v. Bank of New Zealand* (1900) A.C. 577; *Bailey v. Bank of Australasia* (1906) 6 N.S.W. S.R. 686.

In the Irish case, Kennedy, C.J., also observed that there does not appear to be any positive decision negativing the right of a non-trader to recover, without proof of special damage, substantial damages for the dishonour of his cheque. This is so. There is no reported English or Irish case definitely negativing such right. In *Smith v. Cox and Co.* (*Times*, March 9, 1923), where no special damage was alleged, counsel for the bank contended that the plaintiff, a non-trader, could only recover nominal damages of 1*s.* It was, however, unnecessary to decide the point, for on the case as framed, and the evidence given, the plaintiff was held to fail. But although there is no reported English or Irish decision as to the measure of damages where a non-trader's cheque is dishonoured, Williams, J., in *Rolin v. Steward* (*supra*) seems to have been of opinion that, in order to recover substantial damages, a non-trader must both allege and prove special damage. And there are express decisions in Australia and America to this effect: *Bank of New South Wales v. Milvain* (1884) 10 V.L.R. 3; *Third National Bank of St. Louis* (1910) 178 Fed. Rep. 678. In the former case a farmer whose cheque was dishonoured was awarded 50*l.* damages. No special damage was proved. On appeal it was held by the Supreme Court of Victoria that as a farmer was not a trader, the judge was in error in giving the plaintiff substantial damages, and that the damages must be reduced to one shilling. It is clear from the decision of the Privy Council in *Fleming v. Bank of New Zealand* (*supra*) that if the plaintiff had been not merely a farmer, but also a dealer in farm stock, there would have been no ground for reducing the damages.

—Clement Gatley, in the "Law Journal."

Scrutinising Impending Legislation.

The Profession's Duty to the Public.

A Paper read at the Taranaki Law Society's Conference,
By Alfred Coleman.

It is evident that of late years there has been a growing tendency on the part of the State, which means on the part of the political party in power, to encroach more and more by legislation upon the old common law rights and liberties of the people. Sometimes the encroachment arises through direct legislation, but more often through the operation of Orders-in-Council, Proclamations and Regulations under Acts. The tendency is, in fact, no longer a mere tendency but is, at the least, a well-defined movement which threatens to become firmly established unless vigorously combated on every possible occasion. Otherwise the old English political and legal ideals of the liberty of the subject can no longer be maintained. The causes giving rise to the tendency referred to are apparent. In the first place modern socialistic and communistic principles have gained ground to a much greater extent than is commonly supposed, with the result that legislation giving effect, in a modified form only as yet, to these principles has brought about corresponding interferences with the common law rights of the individual and the serious aspect is that these common law rights were invariably based on principles of justice, equity, and fairness, which is certainly more than can be claimed for the socialistic legislation which is supplanting them. Our ideas of abstract right and wrong are thus being weakened and this is bound to have a far-reaching and disastrous effect on the morality, using that word in its wider and proper sense, of the people. The socialistic and communistic tendency referred to also gained impetus through the abnormal conditions prevailing during and after the Great War, when things were done and powers exercised by the State by Order-in-Council and direct legislation, which, under normal circumstances, would not have been done or even seriously considered. Bad habits, however, are not easily cured, and we cannot look to politicians and to high officials in the Civil Service, which latter are the greatest offenders, and in most cases the instigators of this class of legislation, to put the moral and legal rights of the subject before considerations of party politics or Departmental convenience and aggrandisement. The "Order-in-Council menace" was most ably dealt with in a recent paper read at the Christchurch Conference, and I cannot profitably enlarge on that aspect of the matter. So far as it is concerned, though we have not yet arrived at a stage comparable with the Continental bureaucratic tyranny, still, as Lord Chief Justice Hewart recently said *apropos* the same matter, "eternal vigilance is the price of liberty."

I said a little while back that the gravity of the tendency of the times lay in the fact that the common law rights now so often infringed upon were based on justice, equity, and fairness, whilst the interfering legislation supplanting them was very frequently un-

just, inequitable and unfair. And that is the plain truth of the matter. Instances of this are innumerable and it is an amazing thing that Parliament should, in the first place, pass such Acts and that, in the second place, the public should remain silent under injustice and unfairness. The truth is, of course, that Parliament, as a whole, does not properly understand what it is doing and what results will ensue, and the public understands less, if possible, than Parliament about the matter. The question I wish members of the Society to consider is: Has the legal profession any especial duty to do what it can towards, in the first place, preventing any legislation of the nature referred to, and in the second place, bringing about its repeal as soon as it possibly can? It may be objected that the legal profession cannot properly concern itself in these matters and that its members must regard themselves merely as laymen and seek to obtain the repeal of any faulty legislation purely in their capacity as electors, and in the ordinary ways common to political methods. I do not think that this is the right view to take. Lawyers are experts in law, and they alone can properly appreciate how legislation will, or may, affect the rights of the individual, or operate prejudicially to our ancient conceptions of justice and equity. They can no more, in my opinion, stand by, mute and passive in the face of unjust and oppressive legislation, than could the medical profession remain silent and inactive should the State propose to put into operation some scheme which would operate adversely to the health or physical or mental well-being of any section of the community. Surely the preservation of principles of justice and equity is of more moment than considerations of public health or the advancement of medical science. It may be true that the public does not at present consider, or look to, the profession to conserve and preserve its ancient rights. If that is so, it is largely the fault of the profession, and, in any case, the matter is not beyond remedy and the public viewpoint can in time be directed more favourably towards us in the not too remote future. I wish to reiterate that the gravity of the matter is the breaking down of old common law principles, invariably right and fair, and the substitution by statute and regulation of methods both unfair and fundamentally unjust. This process is going on all the time and points to a serious weakness of national character. Unless relentlessly fought the outcome will be most serious on national morality and public and private conceptions of right and wrong. As previously said it often emanates from well-meaning, but ill-informed and narrow-minded, politicians and public servants. To them a political system or departmental convenience means more than individual rights or national well-being. All of you are familiar with the type of legislation referred to and all are aware of the great difficulty in having it repealed. If time permitted, a fairly short research would bring to light innumerable instances of what I mean, and a very short consideration of each of them would convince, one would think, any ordinary fair-minded man of the absolute injustice that Acts of this type perpetrate. Of many examples which have come under my own notice I will mention the statutory provisions dealing with the abatement of, or compensation for, nuisances created by public authorities. It is well-known, of course, that ample relief and compensation can be obtained by those suffering from private nuisances at any time. Even under the Prescription Act action can be taken up to twenty years from the commencement of the nuisance, and, as most of the land in New Zealand is now held under the Land Transfer system, to which the Prescription Act does not apply, the position is that there is practically no limitation of time as against any person suffering under a nuisance created by another private party. So far as nuisances created by a public body or the Government are concerned, however, action must be taken within twelve months of the completion of the works which give rise to the nuisance (Section 37 of the Public Works Act 1908) even if no nuisance actually arises within the twelve months. This limitation of time renders the provisions of Section 167 of the Municipal Corporations Act 1920 largely illusory. Section 167 reads as follows:—

> "Every person having any estate or interest in any lands taken under the authority of this Act for any public works, or injuriously affected thereby, or suffering any damage from the exercise of any of the powers hereby given, shall be entitled to full compensation for the same from the Corporation. Such compensation may be claimed and shall be determined in the manner provided by the Public Works Act 1908."

Section 37 of the Public Works Act, 1908, reads as follows:—

> "No claim for compensation under this Act or any former Act relating to public works shall be made (in respect of any lands taken) after a period of five years after the date of the Proclamation taking the said lands, or (in respect of any damage done) after a period of twelve months after the execution of the works out of which such claim has arisen or may hereafter arise; and all right and title to any compensation in respect of such lands or for damage arising out of the execution of such works, as the case may be, shall after such respective periods absolutely cease."

The time limitation imposed by the Public Works Act has frequently been most adversely commented upon by the Judges. In *Palmerston North Borough v. Fitt*, 20 N.Z.L.R. 396, Mr. Justice Edwards said (at pp. 405, 406):—

> "In many cases, especially in drainage cases, such as the present, it may well be that the period of limitation upon the preferring of a claim has actually expired before it has been discovered that the public work has done damage. The law appears to require amendment, whether by materially extending the period within which a claim may be preferred, or by making the period of limitation run from the first serious actual damage, and not from the completion of the public work. With the hardship of the case I am not, however, concerned."

In *Farrelly v. Pahiatua County Council*, 22 N.Z.L.R. 683, Stout, C.J., said (at p. 684):—

> "The County Council rely upon Section 246 of the Public Works Act, 1894, as giving power to do what was done. I do not see my way to distinguish this case from the *Mayor, etc., of Palmerston North v. Fitt*, 20 N.Z.L.R. 396, which is binding upon me. There is, however, a hardship on plaintiff under the circumstances, and I think that the Legislature might well consider whether it should not remedy the limit of twelve months within which a claim for compensation could be made. If a compensation claim is not brought within that time, as in this case, there is no remedy. The defendants are therefore entitled to nonsuit."

Again, in *Lyttle v. Hastings Borough* (1917) N.Z.L.R. 910, Edwards, J., again said (at p. 918):—

> "In my opinion therefore it is plain that the plaintiffs cannot rely upon Section 150 in support of their claim.
>
> "It is no doubt a hardship to the plaintiffs, that they have not and have never had an opportunity of having their claim for compensation disposed of upon its merits. The work in respect of which their claim is made was completed in May, 1914. Their right to claim compensation was extinguished by Section 37 of the Public Works Act, 1908, at the expiration of twelve months from that date—namely, in May, 1915. The alleged injuries of which they complain did not occur until May, 1916, and until then there was nothing to show that such injuries were likely to result from the construction of the pumping station.

"In *Palmerston North Borough v. Fitt*, 20 N.Z.L.R. 396, decided in 1901, I called attention to the result of the drastic limitation of claims in such cases, in the following words: 'In many cases, especially in drainage cases, such as the present, it may well be that the period of limitation upon the preferring of a claim has actually expired before it has been discovered that the public work has done damage. The law appears to require amendment, whether by materially extending the period within which a claim may be preferred, or by making the period of limitation run from the first serious actual damage, and not from the completion of the public work.' In *Farrelly v. Pahiatua County Council*, 22 N.Z.L.R. 683, in which also the period of limitation had expired, Sir Robert Stout, C.J., said: 'There is, however, a hardship, on plaintiff under the circumstances, and I think the Legislature might well consider whether it should not remedy the limit of twelve months within which a claim for compensation could be made. If a compensation claim is not brought within that time, as in this case, there is no remedy.' The law, however, remains unaltered although the Public Works Act has been twice consolidated and many times amended since these observations were made. The Court is not, however, concerned with the hardships to which I have referred. The plaintiffs have failed in their action, and the usual results must follow."

The injustice complained of does not lie in the creation of the nuisance to a private person by the Government or by a public body. The greater interests of the majority must be conceded. It lies in the provision denying just compensation, for, under the circumstances of the case, an action could not be brought until the nuisance arose, and the nuisance might not (and in the above cases did not) arise until after the expiration of the time limit. These cases are classical examples of departmental legislation. The flagrant injustice of that legislation is obvious.

(To be continued.)

London Letter.

Temple, London,
4th July, 1928.

My dear N.Z.,

The chief interest centres, in matters of law, in the radical changes in our system of local government which are now being contemplated by our legislature. You may or may not have attempted to follow the indication of the new policy, recently announced by the Treasury, as to rating and as to the measures of centralisation and averaging, which are proposed in order to implement the relief from the burden of rates of industry, urban and rural. To the man in the street the policy appears to be at least a measure of statesmanlike prevision, though there must necessarily be many items of controversy in so large a scheme: to the politician it is likely to provide a somewhat dangerous platform: and to the lawyer it means some of the most drastic law-changing which has taken place in our time. I regret that, as I am in some way retained to assist the draftsmen of the necessary and voluminous Bills now in hand, that I am in the position of not being able to see the wood for the trees! I am so obsessed with the matters of detail, with which I am presently concerned, that I despair of being able to afford you any useful synopsis of the broader generalities. Indeed, I doubt if even the most perspicacious and detached person could, in the compass of such a letter as this, present a summary, in any way reliable, of so complex a matter which (it is, I think, on all hands admitted) the current reforms, though they should achieve practical improvement, will further complicate from the technical point of view. This observation applies, perhaps, more to the transient provisions than to what will be the ultimate substance of the new machinery and position. My advice to you, therefore, is to let the matter be, for the present, or at least to attempt now no more than an intelligent curiosity as to what is afoot: reserve your more profound consideration till a later stage when, the legislation having been completed and the transient provisions being severable from the permanent, you may study something that is not for the most part *flux*!

The gist of one part of the matter, to which I must perhaps call your attention, is the proposed abolition of the Boards of Guardians (and, with them, the Boards of Management of the Poor Law Act 1927), an expedient which will vastly increase the calibre of the County Council units and which gives rise, already, to some keen controversy. How much of this controversy is to be discounted, as being merely the outcry of the Vested Interest, has yet to appear.

Just as I completed my last letter to you, the *Habeas Corpus* appeal to the Judicial Committee of the Privy Council (**Eshug-Bayi Fleko v. The Officer Administering the Government of Nigeria and Another**) was subject of publications of a judgment which was cut out and forwarded, by unnumerable *amici curiae*, to those concerned for your Government in the matter of West Samoan Petition for Special Leave for Appeal (Mr. Nelson). The latter is due to be heard on Monday next, and I must not comment upon it as yet, however overflowing I may be with the facts and the law of it. As to the Nigerian appeal, above-mentioned, you will have observed that the Petitioner got the better of the situation and that His Majesty was, humbly and one may suppose a little reluctantly, advised that the learned Judge in the Court below was wrong in refusing to rehear a matter, however often heard already in another form; and that, the Petitioner having the costs of that appeal, the incessant and apparently unending litigation of the deported Native Chief must be resumed. The short point of the case was that it may well be available to a suitor, in appropriate circumstances, to make the same application to successive Judges in a matter of *habeas corpus* (the writ in which was described in the judgment as a "high prerogative writ") for the reason that he was, in old times, entitled to apply successively to the Court of Chancery and to each of the three Common Law Courts, and that the Judicature Act of 1873 must not be construed as having taken away, by mere implication, this right.

At Gloucester, the trial of Mrs. Pace proceeds in an atmosphere of great emotion, innumerable women and some men having devoted their whole time, for the period of what is to be a lengthy trial, to the experience of being made to sob and cheer at intervals. As reasonable people you must feel not a little perplexed at the affair, and at a difficulty to understand why crowds should throng a street to give recurrent ovations to an accused person, however innocent she may be or they may think her? The truth is that Gloucestershire is a queer county, as much in the matter of murder charges as in the matter of vaccination. You may recall a former trial, not so long back, when a vast crowd (probably composed of much the same individuals) assembled to hoot, boo and threaten a woman against whom the objection was that she dared charge a doctor for that, by reason of his anti-vaccination views and practices, her child had died. For my part, and having had some

experience of them on juries in cases of equivalent gravity but of less public interest, I have no use for them and their extremist folly; whatever the truth of Mrs. Pace, and I readily assume the best, there is neither occasion nor warrant for the hysterical attitude of the masses. I must add that I was less at a loss to understand the mentality of the Gloucestershire man, who can thus deport himself, when I observed the length of his hair!

In the Chancery Division an entertainment of a much less questionable kind is proceeding with great liveliness, as I write, before Eve, J. It is a question as to the rights of a Club to alter the rules of its constitution so as to admit a class of member different from that originally contemplated. The Club in question is the City Carlton Club, one of those institutions in the City mainly founded to provide a quiet and undisturbed lunch in a part of the world where this amenity is notoriously deficient. "Carlton" indicates a characteristic, in the membership, of conservative Politics: as the Reform Club is the great Liberal club, so the Carlton Club (in the West End) is, as you know, the great Conservative club. But in the City it is not so easy to fill, as one pleases, the necessary ranks of members, for the amenities of the club are necessarily limited and they do not appeal to a want in every man. Moreover, floor space is of such immense value in this centre of civilisation, that a full list is necessary. In their difficulties, the management of the Club took steps to extend its membership to others than those professing Tory views, indeed to those professing the political opposite. Eve, J., tries the cause of those who object to the extension and he is letting himself go upon the many occasions for witty reference and legitimate mirth upon what may be a Tory, what (if anything any longer in this country) a Liberal and what, if it did not necessarily cease to exist on the coming into actual existence of the Union, a Unionist?

I do not think I have anything else of note to comment upon. The Lord Chancellor spoke with vehemence upon the tiresome attitude of certain illogical obstructionists in Parliament, which prevents the carrying out of the improvements of the Judicial Committee, already in draft and ready to be legislated; this at a dinner at which the Lord Chief Justice spoke, with great humour but much less justification, upon the wickedness of the Bureaucracy in propounding laws meant not to be understood of the people and surreptitiously ordained to be adjudicated upon by the Bureaucrats themselves, to the exclusion of the Courts. This would be all very well said and valuable, if there was real ground for complaint or cause for alarm; but there is not. In which context it is to be noted that that great parliamentary draftsman, Sir Frederick Liddell, comes in the autumn to the end of his time at the Office of the Parliamentary Counsel; but his services are not to be lost to the State, since he is to take over, at about that time, the very much less onerous but equally responsible functions of Counsel to the Speaker. As I ventured to tell him, when I read of the Speaker's selection, the Speaker has been well advised and will be well advised. Upon the problems of Parliamentary matters and procedure, which arise for the Speaker to be advised upon, there is not a man in the country who knows a tithe of what Liddell knows.

Yours ever,

INNER TEMPLAR.

The Late Viscount Haldane.

The late Viscount Haldane was born in 1856, and was educated at Edinburgh Academy and the Universities o Edinburgh and Lottingen, where he studied philosophy under Lotze. He took first-class honours in philosophy at Edinburgh, and was Gray scholar and Ferguson scholar in philosophy of the four Scottish Universities. In 1879 he was called to the Bar at Lincoln's Inn and practising on the Chancery side became a Queen's Counsel so early as 1890. In 1885 he entered Parliament as Member for Haddingtonshire, for which constituency he was re-elected without break up to and including 1910. He was in 1905 included in Sir H. Campbell-Bannerman's Cabinet as Secretary for War, and was the author of the important scheme for the reorganisation of the British army, by which the militia and volunteer forces were replaced by a single territorial force; the wisdom of this course was amply demonstrated in 1914, although public opinion was never quite reconciled to the surprise of receiving the gift of a new army at the hands of a Chancery leader. In 1910 he was appointed Chairman of the Royal Commission on University Education in London, and while effect has not yet been given to the recommendations made in the report, there can be no doubt that when reform comes at length to be made these recommendations will form the basis of the University's new activities. In March, 1911, he was elevated to the peerage and was appointed a member of the Judicial Committee of the Privy Council. Of all the cases dealt with by that tribunal he is said to have found his most absorbing interest in the Indian appeals, for the fundamental principles of Hindu law are based upon religious duty and philosophic concepts unfamiliar to England. In 1912 at the request of the Cabinet he visited Berlin to discuss disarmament proposals. In the same year, in succession to Lord Loreburn, he became Lord Chancellor, and with dignity and brilliance presided over the House of Lords. Omitted through popular prejudice from the first Coalition Ministry, he turned more and more to the realms of philosophy and to the cause of national education, gravitating at the same time somewhat uncertainly in the direction of the Labour Party. In the Labour Ministry of Mr. Ramsay MacDonald, in 1924, he became again Lord Chancellor, He was the first Chancellor of Bristol University, has been Lord Rector of Edinburgh, and has received many honorary degrees. Lord Haldane's was without doubt a master mind, the effects of which are to be found through nearly every department of State, in education, in the army and no less in the law, and withal it was all the time not quite clear—as Mr. Philip Guedalla has happily put it—whether his philosophy was the pastime of a lawyer, or his law the agreeable recreation of a philosopher.

Among the New Zealand appeals in which Lord Haldane presided in the Privy Council are: Kauri Timber Co. v. Commissioner of Taxes, (1913) A.C. 771; Rutherford v. Acton Adams, (1915) A.C. 867; The King v. Broad, (1915) A.C. 1110; Union Steamship Co. v. Robin, (1920) A.C. 654; Soushall v. Kaikoura County Council, (1923) A.C. 459; Auckland Harbour Board v. The King, (1924) A.C. 318; Crown Milling Co. v. The King, (1927) A.C. 394; it is an interesting fact that all these appeals, with the exception of the last, were dismissed by the Judicial Committee.

Bills Before Parliament.

Education Amendment. (Hon. Mr. Thompson). Section 56 of Education Act, 1914, amended by inserting after word "secular" in Subsection (4) the words: "in the sense of non-sectarian," and by inserting certain subsections providing for setting apart of half-an-hour on one or two school days in each week for giving of religious instruction.

Magistrates' Courts (see supra. p. 177). The Bill as reported from the Statutes Revision Committee reconciles the conflicting provisions of paragraphs (a) and (b) of sub-clause (5) of clause 82 of the Bill (being paragraphs (a) and (b) of Subsection (5) of Section 75 of the Act of 1908) by striking out paragraph (b) and amending paragraph (a) to read: "May be effected by the Bailiff or by any person whom the Bailiff appoints to act for him, or by any constable, or, with leave of the Magistrate or of the Clerk, by the party at whose instance the same was issued or by his solicitor, or by any one appointed by such party or his solicitor."

Maintenance Orders (Facilities for Enforcement) Amendment. (Hon. Mr. Rolleston). By the Maintenance Orders (Facilities for Enforcement) Act, 1921, provision is made for the enforcement in New Zealand of maintenance orders made in the United Kingdom or elsewhere in His Majesty's dominions. The purpose of the present Bill is to extend the authority given by the principal Act, in order to permit of the enforcement in New Zealand of maintenance orders made in any British protectorate or mandated territory.

Music-teachers Registration. (Sir John Luke). Music-teachers Registration Board established; contracts, meetings and functions of Board.—Clauses 3 to 9. Board to appoint Registrar of Music-teachers.—Clause 10. Register of Music-teachers to be kept.—Clause 11. Qualifications of applicants for registration.—Clause 12. Manner of making application for registration.—Clause 13. Penalty for false or fraudulent representation for purpose of securing registration, fine £50.—Clause 14. No person under 18 to be registered, nor any person "who is not in the opinion of the Board" of good character and reputation.—Clause 15. Certificates of registration to be issued; every such certificate to remain property of Board and to be surrendered on demand.—Clause 16. Annual fee 10s. 6d.—Clause 17. Board may cause to be removed from register name of any person dead or registered in error or punished by imprisonment for any offence "which in the opinion of the Board renders him unfit to be registered under this Act," or guilty of such improper conduct as renders him in the opinion of the Board unfit to be registered under this Act, or in arrear for more than three months in respect of annual fee.—Clause 18. Appeals in prescribed manner from decision of Board to Board of Appeal consisting of Magistrate and two assessors, one appointed by Board and one by appellant; determination of Board of Appeal to be final and conclusive.—Clause 19. Offences.—Clause 20. Application of moneys received by Board.—Clause 21. Governor-General empowered to make regulations by Order in Council prescribing (*inter alia*) forms, examinations, subjects in respect of which registration granted, conduct of appeals and generally for purposes of Act.—Clause 22.

Opticians. (Hon. Mr. Young). Providing for registration and regulation of Opticians. To come into force 1st January, 1929.—Clause 1. "To practise as an Optician" means "to employ any methods for estimation of errors of refraction of human eye and to prescribe or adapt lenses to correct such errors."—Clause 2. Opticians Board established.—Clause 3. Meetings of Board.—Clause 4. Register of Opticians to be kept.—Clause 5. Qualifications of applicants for registration.—Clause 6. Applications for registration to be verified by statutory declaration.—Clause 7. No person under 21 to be registered, nor any person "who is not, in the opinion of the Board, of good character and reputation"; any appeal against refusal to register on latter ground to be determined according to the opinion formed by Board of Appeal of character and reputation of applicant.—Clause 8. Certificates of registration to be issued to registered Opticians.—Clause 9. Penalty for false or fraudulent representation for purpose of securing registration, fine £50.—Clause 10. Board shall cause to be removed from the register name of Optician registered in error, "or who is convicted of any offence punishable by imprisonment and 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 11. Appeals in prescribed manner from decisions of Board within three months to Board of Appeal consisting of Magistrate and two assessors appointed in accordance with regulations under Act; decision of Board of Appeal to be final and conclusive.—Clause 12. Gazetting of names.—Clauses 11, 12. Board to conduct examinations.—Clause 15. Offence for unqualified person to describe himself as registered Optician, etc., or to practise as Optician, fine £20.—Clauses 16, 17. Offence for person other than registered medical practitioner to describe himself as oculist or eyesight specialist, fine £20.—Clause 18. Offence for person other than medical practitioner or acting under instructions of medical practitioner to apply any drug to the eye.—Clause 19. Fees to be paid into public account.—Clause 20. Governor-General empowered to make regulations by Order in Council prescribing (*inter alia*) forms, subjects for examination, course of instruction, fees, conduct of appeals and "generally providing for such other matters as in the opinion of the Governor-General in Council are necessary or expedient for the effective administration of this Act.—Section 21. Nothing in Act to prohibit certain acts.—Section 22.

Preferential Voting. (Mr. McCombs). Provisions of Act to apply to all national polls provided that proposals submitted exceed two in number on any one voting paper.—Clause 2. Mode of marking voting paper.—Schedule, paragraph 1. Form of voting paper.—Paragraph 2. Preliminary count of votes.—Paragraphs 3–6. Electoral District count.—Paragraphs 7 to 10. Official count of votes and declaration of poll.—Paragraphs 11 to 19. Definitions.—Paragraph 20.

Summer Time (Local Empowering). (Mr. Sidey). Any local authority (as defined) may by special order adopt for its district time not more than one hour in advance of New Zealand standard time; references to time in any enactment Proclamation, Order in Council, order, regulation, rule, by-law, deed, notice, award or industrial agreement to refer in such district to time as fixed by special order; references to time in any award or industrial agreement relating to workers employed in threshing grain or shearing sheep to refer to standard time, except by mutual agreement between employer and workers employed by him.—Clauses 1–3. Duration of Summer time, period fixed by local authority in special order, but no period to be fixed to begin earlier in any year than 2 a.m. on first Sunday in October or to end later than 2 a.m. on third Sunday in March.

Surveyors' Institute Amendment. (Hon. Mr. McLeod). This Bill is the complement of the Surveyors Registration Bill. Except for certain amendments of minor importance in relation to the Council of Surveyors' Institute, its sole purpose is to separate the law relating specially to the Surveyors' Institute from the general law relating to the registration of surveyors and the conduct of the profession of surveying. The Bill effects this by repealing all the provisions of the Surveyors' Institute and Board of Examiners Act, 1908, except those relating to the Surveyors' Institute; the repealed provisions so far as necessary will be re-enacted in the Surveyors Registration Bill (see *supra*, p. 194).

Workers' Compensation Amendment. (Mr. Howard). Workers' Compensation Act, 1922, amended (a) by omitting from Section 4 all words after word "be" in second line, and substituting the words "one thousand pounds"; (b) by omitting from Section 5 (5) the words "sixty-six and two-thirds per centum of" in the second line, and all the words after "accident" in the third line; (c) by omitting from Section 5 (6) the words "sixty-six and two-thirds per centum of the difference between"; (d) by omitting Section 5 (7); (e) by omitting from Section 5 (10) all words after "injury" in fourth line; (f) by inserting at end of Section 13 (1) the words "It shall be compulsory on such employers to insure all such workers against accident" (g) by omitting Section 67 (3); (h) by omitting "100 per cent." in second column of Second Schedule and inserting "£1,000" in lieu thereof and to insert the words "per cent." after figures "80" in second line of same column.—Clause 2. Act not to bind Crown.—Clause 3.

Local and Private Bills.

Auckland War Memorial Museum Maintenance.
Church of England Empowering.
Hutt River Board Empowering.
Napier Borough Empowering.
Thames Borough Loans Rate Adjustment.
Wairarapa Electric-Power Board Empowering.

Legal Literature.

Legislative and Other Forms.

Second Edition. By Sir Alison Russell, K.C., Chief Justice Tanganyika Territory.
(pp. 287 : Butterworth & Co. (Publishers) Ltd.).

So much has been written and said of late concerning the need for a closer scrutiny of proposed legislation that this second edition of Sir Alison Russell's work makes its appearance at a particularly favourable moment. Stephen, J., once had occasion to remark that an Act of Parliament is one of those things which people continually try to misunderstand ; therefore, he said, in drafting an Act of Parliament it is not enough to attain a degree of precision which a person reading in good faith can understand, but it is necessary to attain such a degree of precision which a person reading in bad faith cannot misunderstand. This latter standard would appear to be, practically speaking, a Eutopian one, for, remembering how frequently Judges are heard to remark that such and such a section in such and such a piece of legislation is meaningless and unintelligible, and remembering also that such cases reveal probably less than a tithe of our statutory obscurities, one may well doubt whether in practice even the former and lesser standard is really attained. From this volume, which contains more than three times the number of forms in the earlier edition, practitioners and officials concerned in the initiation and preparation of legislation can hardly fail to derive valuable assistance. The work contains some preliminary notes on the drafting of legislation, many of the observations in which apply, of course, to the drafting of all legal documents. It has been suggested that legislation by reference, keeping Parliament in truth in ignorance of what it is about, is the only way in which at the present day, legislation is possible, but the author joins unhesitatingly the ranks of the critics of this method : it is almost impossible, he points out, to apply the provisions of a statute dealing with one matter to the provisions of another enactment dealing with another matter without doubts arising in the application. Marginal notes, Sir Alison Russell says, should be framed with great care—they should enable a reader to glance quickly through them relying upon their accuracy ; if the marginal note cannot be made short and clear it may be taken as a sign that the section requires amendment or division. How many of the marginal notes to our legislation would satisfy this test ? Is it only seldom that one finds a marginal note to a section composed of several subsections, with their respective paragraphs and provisoes, affording an indication of the contents of only the first subsection and completely ignoring the later provisions ? It is interesting further to notice that among the forms of clauses giving power to make regulations the objectionable type of clause empowering the Governor-in-Council to make " such regulations as may *in his opinion* be necessary for the purpose of giving full effect to this Act " finds no place. The *minutiae* of some of our enactments have apparently escaped the observation of Sir Alison !

Altogether the work is a most readable one and cannot fail to be of service to those whose practice includes matters within its scope ; and this reviewer would venture to add that Members of the Legislature would profit no little by a perusal of its pages. Primarily intended for use in Crown Colonies and Protectorates—in some thirty-eight of which the work had been officially adopted—slight changes must be made in many cases in the wording of the forms to adapt them to local conditions—the word " ordinance," for instance, appears throughout the book.

White and Tudor's Leading Cases in Equity.

Ninth Edition. By E. P. Hewitt, K.C., LL.D., and J. B. Richardson, M.A., LL.B.
(Two Vols., pp. 740 & 966 : Sweet & Maxwell Ltd.).

White and Tudor is a text-book of just on eighty years' standing and has long been regarded as one of the leading works dealing with the principles of Equity. Eighteen years have elapsed since the publication of the last edition and the decisions pronounced, and the legislation passed, have rendered necessary very considerable alterations in the text. Fortunately—so far as concerns the New Zealand practitioner—the editors have not allowed the extensive changes introduced by the Administration of Estates Act, 1925, and the Law of Property Acts to prevent them from stating the law as it existed before 1926, though in some instances the notes as to the old law have been considerably abbreviated. One only of the " leading cases " has been omitted in the present edition—*Agar v. Fairfax*, 17 Ves. 533, dealing with the subject of partition. Curiously enough on the vexed question as to the effect of an assignment of part of a debt—a point as to which there is no little conflict of authority—*Bank of Liverpool and Martins Ltd. v. Holland*, 32 Com. Cas. 56, is not cited. Leading text-books seem prone to increase in size as they go from edition to edition, but a welcome exception is found here, the text as a whole being in this edition materially shortened and without apparently departing from the high standard of its predecessors.

New Books and Publications.

Lotteries and the Law. By C. F. Schoolbred, B.A., LL.B. (Solicitors Law Stationery Society). Price 9/–.

Norton on Deeds. Second Edition. (Sweet & Maxwell). Price £2/7/–.

Landlord and Tenant. By R. Bowegaard, M.A. (Oxon.). (Effingham Wilson). Price 9/–.

A Handbook to the League of Nations. By Sir Geoffrey Butler, K.B.E. Introduction by Viscount Chelwood. (Longmans Green). Price 12/6.

The Development of International Law. By Sir Geoffrey Butler, K.B.E., M.A., and S. Maccoby, M.A. (Longmans Green). Price £1/9/–.

Roscoe's Criminal Evidence and the Practice of Criminal Cases. Fifteenth Edition. By Anthony Hawke. (Stevens & Sons and Sweet & Maxwell). Price £2/18/–.

Salmond on Torts. A Treatise of the English Law of Liability for Civil Injuries, by Sir John Salmond. Seventh Edition. By W. T. Stallybrass. (Sweet & Maxwell). Price £1/15/–.

Administrative History of Mediaeval England. By T. F. Tout, D. Litt., Vol. 3. Longman's. Price £1/15/– each.

League of Nations. By J. Spencer Bassett. Longman's. Price 15/–.

Bench and Bar.

Mr. E. C. Cutten, S.M., has been appointed Chairman of the Licensing Committees for Auckland, Waitemata, and Parnell, and Mr. F. H. Levien, S.M., Chairman of the Licensing Committee for Waikato.

Mr. C. R. Chapman died recently at Auckland. He was born in Edinburgh, in 1847, and came to New Zealand in early infancy. He was educated at the Otago Boys' High School, being one of the first scholars of that institution. In 1866 he was articled to the late Mr. J. Macassey and later to Mr. E. P. Kenyon. In 1873 he commenced practice on his own account at Dunedin. The late Mr. Chapman took a keen interest in civic affairs, and although unsuccessful in his first candidature for the Mayoralty of Dunedin in 1888, he was three years later elected to that office.

Messrs. R. A. Burns and C. W. Nash have been admitted as Solicitors at Wellington.

Mr. W. Selwyn Averill, of the firm of Duff & Averill, Hastings, has been admitted as a Barrister on the motion of Mr. H. B. Lusk.

Mr. K. R. Buchanan, of Auckland, has been admitted as a Barrister and Solicitor on the motion of Mr. R. McVeagh.

Consequent upon the appointment of Mr. J. Miller, late Registrar of the Supreme Court at Christchurch, to the Magisterial Bench, there have been some changes of interest in the Justice Department. Mr. W. D. Wallace, Registrar of the Supreme Court at Dunedin, becomes Registrar at Christchurch; Mr. J. M. Adams, Registrar at Invercargill, becomes Registrar at Dunedin; Mr. H. Morgan, Registrar at Hamilton, becomes Registrar at Invercargill; Mr. G. S. Clark, Deputy Registrar at Wellington, becomes Registrar at Hamilton, Mr. E. G. Rhodes being promoted to Senior Deputy-Registrar at Wellington, and Mr. C. Mason to Deputy-Registrar.

Wellington Law Students' Society.

The following case was argued recently, before Mr. M. Myers, K.C.: "The T.S.S. Company advertises in the daily newspapers that its ship "Pawa" will call at Wairoa on the 16th July, 1927, and leave for Auckland on the same day, taking cargo and passengers. Cargo required to be carried to be on the wharf not later than 12 o'clock on the day of sailing. Freight at usual rates. A sends 200 baskets of strawberries from an outlying town to Wairoa, consigned to a firm at Auckland, and has them on the wharf by 10 a.m. on the 16th. Before the strawberries actually arrive at the wharf, but while they are in transit, the T.S.S. Company advertises on the same morning that on account of insufficient cargo at Wairoa, the ship will not be calling. A has to sell the strawberries at Wairoa at a loss on market prices at Auckland. He sues the T.S.S. Coy. for £75 damages and consequences."

A. W. Free and W. C. Wylie for plaintiff.
C. H. Arndt and M. Hollings for defendant company.

Free for plaintiff: The act of the defendant in advertising that its ship would call at Wairoa on the date named was an offer capable of acceptance—*Denton v. Great N.W. Railway Co.*, 5 E. & B. 860; *Warlow v. Harrison*, 1 E. & E. 295; *Carlill v. Carbolic Smoke Ball Co.* (1893) 1 B.Q. 256; *Williams v. Carwardine*, 4 B. & Ad. 621. The action of plaintiff in consigning the goods and depositing them on the wharf in compliance with the terms of the advertisement was a valid acceptance—*Boydell v. Drummond*, 11 East 142. Having taken all the steps required of him and there being an unequivocal act of acceptance, a valid and effectual contract had been entered into by the parties. The subsequent advertisement was ineffectual as a revocation of the offer unless it had been communicated to the plaintiff before the goods had been put in transit.

Wylie in support: Apart from its liability *ex contractu* the defendant company was liable as a common carrier for the loss suffered by the plaintiff. The subsequent advertisement was insufficient notice to relieve the defendant company from its common law liability, and the mere fact that the cargo available did not warrant the ship calling at the port, was no ground of excuse from the liability of a common carrier. Tender having been made by the plaintiff the defendant's steamer was bound to take the goods.

Arndt for defendant: The act of the plaintiff in sending the goods was not an acceptance, as in the nature of the alleged offer it was necessary for it to be accepted by an ascertained person. The offer of the defendant company must be accepted as prescribed by the advertisement. *In Re London and Northern Bank* (1900) 1 Ch. 220; *Eliason v. Henshaw*, 4 Wheat 225. Accordingly, the condition requiring the goods to be on the wharf by 12 o'clock left it open to the defendant to revoke its advertised offer before the time. Delivery to an agent or carrier is the usual way of completing the contract. The goods were required to be on the wharf before there was an acceptance.

Hollings in support: There was a general offer calling for the delivery of goods on the wharf by a certain time. There was no consideration and therefore it could be revoked prior to acceptance.

Free in reply: It is admitted that there was an offer and that the offer was revoked only if the revocation was communicated. As the revocation was not communicated, the plaintiff is entitled to succeed.

Mr. M. Myers, K.C., delivering "judgment," said that the company could, without doubt, by an appropriate advertisement as to conditions or weather relieve itself from such a liability as was involved in the action. It could have stipulated that intending consignors must notify some agent and, further, that it was not obliged to call unless there was sufficient cargo. It did not choose to do so, but adopted an unbusinesslike method and advertisement. He was not at all sure that the admission by counsel for the plaintiff that there was no acceptance until the goods were on the wharf was properly made, for the advertisement must have contemplated that consignments would come from outside districts. It seemed that all that the condition meant was that cargo not on the wharf by a certain time would not be carried. That being so, it seemed difficult for the company to avoid its liability by an advertisement published on 16th July, the date of sailing, when the cargo was in transit. There was not a sufficient revocation to the plaintiff before delivery of the goods at the wharf. Therefore, there was a contract, and the principles of *Denton v. G.N.R. Co.* (*cit. sup.*) were not applicable. There was no dispute as to the amount of damages. Judgment for plaintiff accordingly. Mr. Myers then gave some helpful criticism of the addresses and bearing of the participants in the trial.

A hearty vote of thanks to Mr. Myers for his kindness in presiding was moved by Mr. Bannister and carried by acclamation.

Lord Hailsham seriously under-estimated his powers when he declared, recently, the impossibility of a combination of Lord Chancellor, black cap and death sentence. By section 4 of the Supreme Court of Judicature (Consolidation) Act, 1925, he is the presiding judge of the Chancery Division; and under section 70 His Majesty may include in the Commissions of Assize any judge of that Division. Moreover, apart from the transferability of High Court Judges from one division to another, the Lord Chancellor is, under and by virtue of section 2 of the same Act, President of the High Court; and it is difficult to imagine any judicial seat which he might not lawfully occupy.