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"It is better that some slight degree of injustice should be done in an individual case than that the Courts should abandon the sure anchorage of a dependable rule.
—Viscount Birkenhead."

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Law Practitioners Amendment Bill.

That the amendment to the Law Practitioners Act, enabling the Council of the New Zealand Law Society to establish a scheme guaranteeing and securing moneys held by Solicitors, was not passed into law in the Session just closed will cause great disappointment to the great majority of the Profession. The Bill passed the Legislative Council where it was introduced, and, after its second reading in the Lower House, was referred to the Statutes Revision Committee. That Committee apparently considered that further time than was available during last Session should be given to the provisions of the Bill. The result was that the Bill did not come up for its third reading and must await its chance next Session. The Bill, in fact, suffered the fate of the great majority of private members' Bills whose passage through the House, unless skilfully engineered, is entirely dependent on the time demanded by the Government for public measures. As far as can be ascertained members of all parties in the House were prepared to accept the principle of the Bill as thoroughly in accordance with the public welfare. Generally speaking, it can be said they approved of the proposals contained in the Bill as a praiseworthy effort on the part of the Profession to protect the public. Had the Statutes Revision Committee sent the Bill, referred to it, back to the House without amendment, there is no reason to doubt but that the Bill would have passed its third reading without opposition. One can only suppose that the hesitation of the Statutes Revision Committee was due to a desire to examine the extent of the powers entrusted to the Council of the New Zealand Law Society, and a desire to see that the moneys it was empowered to collect from the Profession, were properly safeguarded.

Perhaps the Statutes Revision Committee was entitled, in view of the criticism that has been directed against Government by Regulation, to time for consideration of the ground which the regulations were intended to cover. But what better safeguard could there be than the provision that all rules in connection with the scheme had first to meet with the approval of at least three Judges of the Supreme Court? The same answer could, with propriety, be made to criticism directed against the control of the Fund by the Society itself.

If the alternative to a voluntary scheme by the Profession is compulsory legislation, provision for fidelity bonds or contribution to a Government scheme, the voluntary scheme, to succeed, must cover claims of as wide a character as will satisfy the public. A modified liability is not sufficient; on the other hand unlimited liability is not intended. Hurried consideration would not have enabled the Statutes Revision Committee to appreciate the wide liabilities to which Solicitors were willing to submit themselves. The scope of liability, however, was a question to which, of necessity, the Committee had to apply itself. The Bill as originally drafted by the Council of the Law Society, after much consideration, had defined this liability, and there is no doubt that the extent to which liability was being assumed by the Profession in that Bill would have satisfied the Committee. There is no doubt that the liability there defined would have been imported into the regulations to be made under the new Bill.

Although it is likely that the Committee would have been satisfied that the Council and the Judges could have been safely left to define that liability, the extent of the liability, however, does, in fact, at the same time, prescribe the public right, and that such a right should be defined by regulation, and not by Statute, seems opposed to the principles recently advocated by Mr. A. F. Wright and Mr. Alfred Coleman, which, generally speaking, meet with the approval of the Profession. There is no reason to believe that in a Bill which the Profession itself promotes there is any desire to depart from those principles. The real criticism of lawyers on the subject of Legislation Regulation is, perhaps, not the same as that of the business community which appears to be founded on a general objection to legislation by Order-in-Council or Regulation. There are many matters, in fact an infinite number of matters, which can only be dealt with by Order-in-Council and Regulation, and the multiplicity of Regulations is occasioned, not by any wilful departure from traditional method, but by the necessity of the times. The objection of lawyers is to the creation of a "*droit administratif*" above, and apart from, the Common Law. To assume that Regulations and Orders-in-Council are a body of administrative law implies an ignorance of the true meaning of "*droit administratif*," and to think that the mere number of Regulations and Orders-in-Council creates administrative law is a fundamental misconception.

The powers given to the Law Society, insofar as they relate to matters *inter se*, are properly the subject of Regulation; the domestic relations of the Profession are properly controlled by the governing bodies of the Profession. Where a right of the public is invaded, or where it is necessary that the public should be given a right, or where it is necessary to define the liability of a class to the public, the matter would seem to be, strictly speaking, one for legislative enactment.

When the Law Conference meets next year, further consideration will, no doubt, be given to the Bill. The Incorporated Law Society of Great Britain has much wider powers than the Council of the New Zealand Law Society would, under its Bill, have acquired. The friendly atmosphere of Parliament towards the Bill may induce the Profession to adopt a bolder course, and lead to Parliament being asked to place the New Zealand Law Society in the same position, in regard to control of its members, as the Incorporated Law Society is in at Home. There is every reason why such powers should be conferred.

Supreme Court

Sim, J. August 21; 29, 1928.
Wellington.

MATEHUIRUA HOROMONA v. IKAROA DISTRICT MAORI LAND BOARD.

Native Land—Native Land Court—Succession Order Made in Favour of Native—Subsequent Sale of Land to Crown—Part of Purchase Money Paid to Native—Order of Native Land Court Cancelling Succession Order Before Balance of Purchase Money Paid to Native—Whether Native's Right to Receive Balance of Purchase Money Taken Away—Native Land Act, 1909, Sections 368 (4), 376—Native Land Amendment and Native Claims Adjustment Act, 1922, Section 7.

On 21st June, 1912, the Native Land Court made an order determining that the plaintiff was entitled to succeed to the interest of one Hohaia Pokitara in a certain block of land situated at Plimmerton. The land was, in 1926, purchased by the Crown under Part IX of the Native Land Act, 1909, and a proclamation was made under Section 368 (4) declaring the land to be vested in His Majesty the King. In exercise of the power conferred by Section 376 of the Act the Native Land Purchase Board decided that the purchase money of £4,940 should be paid to the defendant for distribution to the Native owners, and the money was paid to the defendant on 28th June, 1926. The plaintiff's share of the purchase money was £412 14s. 8d. A payment thereout of £98 6s. 11d. was made to the Native Trustee on account of the plaintiff and the sum of £20 was paid to the plaintiff herself. Before, however, the balance was paid to the plaintiff the Chief Judge of the Native Land Court, in professed exercise of the power conferred by Section 7 of the Native Land Amendment and Native Land Claims Adjustment Act, 1922, made an order dated 19th July, 1927, cancelling the succession order of 21st June, 1912. The plaintiff contended that that order did not affect her right to receive the balance of her share of the purchase money, and she claimed accordingly to recover such balance from the defendant.

Spratt and Stead for plaintiff.
O'Leary for defendant.

SIM, J., said that the first question to be considered was the effect of the order made by the Chief Judge on the rights of the parties. It was clear that it did not affect the title of the Crown to the land, for that was Crown land by virtue of the Proclamation. The plaintiff relied on the judgment of the Full Court in **In re Harawira Pikirangi,** 34 N.Z.L.R. 338, as an authority for holding that her rights in connection with the purchase money were not affected by the order. The question there under consideration was the effect of an order made under Section 226 of the Native Land Act, 1909, which had since been replaced by Section 92 of the Amendment Act of 1913. It was said in the judgment (p. 345) that when Native land was sold and "the purchase moneys have been paid by the purchasers, either to the Native vendor or his agent, they lose their character as purchase moneys and become simply sums of money in gross unaffected by the source from which they have been derived." The decision in that case was approved and applied by the Court of Appeal in the case **In re Hunia te Hana** (1922) N.Z.L.R. 149. In applying in the present case what was said by the Court in **In re Harawira Pikirangi** it was necessary to have due regard to the express provisions of the Act of 1922 as to the effect of the Chief Judge's order. Section 7 (5) provided that the order of cancellation was to take effect from the making thereof, and continued as follows: "but no such . . . cancellation of any order made by the Chief Judge hereunder shall take away or affect any right or interest acquired for value and in good faith under any instrument of alienation before the making of such order of . . . cancellation. . . . Any such alienation shall thereafter enure for the benefit of the persons eventually found by the Chief Judge's order to be entitled to the share or interests affected and all unpaid or accruing purchase money rent royalties or other proceeds of such alienation as well as any compensation payable under the Public Works Act 1908, shall be recoverable accordingly. All *bona fide* payments made in faith of the order . . . cancelled shall not be deemed to be invalid because the order was so . . . cancelled." The concluding words of the subsection appeared to have the effect of saving from invalidity any payments already made to the plaintiff or on her account. The question was as to the balance of the purchase money still held by the defendant. The sale to the Crown was an alienation as defined by Section 2 of the Native Land Act, 1909, and the defendant, as provided by Section 376 of the Act of 1909, held the balance of the purchase money on behalf of the Native owners "to be paid to them in accordance with the orders of the Native Land Court." That did not mean that an order had to be obtained from the Native Land Court authorising the payments to the Natives or on their account. It meant, His Honour thought, that the payments were to be made to the Natives according to their rights and interests as defined by the orders of the Native Land Court. The order of the Native Land Court was the authority, therefore, for the payment made by the Maori Land Board in each case, and if while the Board had any money in hand belonging to any particular Native the Order of the Native Land Court defining the share and interest of that Native were cancelled, the Board would not be entitled to make any further payment to that Native. That that was the intention of the Legislature seemed reasonably clear from the provisions of Section 7 (5) of the Act of 1922, dealing with unpaid purchase money rent royalties or other proceeds. It was true that the present case did not come within the terms of those provisions, for the Chief Judge when cancelling the plaintiff's Succession Order did not decide who was entitled to the share and interest in question, and an order would have to be made by the Native Land Court on the subject. There were, therefore, no persons who could claim the benefit of the alienation by virtue of the Chief Judge's order. His Honour thought, therefore, that when the order of cancellation was made by the Chief Judge the interest of the plaintiff in the balance of purchase money in the hands of the defendant came to an end, and she was not entitled to recover any part of such balance. Her claim on that ground failed, and it was unnecessary to consider the validity of the order that the Native Land Court purported to make under the authority of Section 92 of the Amendment Act of 1913.

Solicitors for plaintiff: **Stead and Prichard,** Waitara.
Solicitors for defendant: **Bell, Gully, Mackenzie and O'Leary,** Wellington.

Adams, J. June 29; August 24, 1928.
Greymouth.

JAMES v. MABIN.

Misrepresentation — Banker — Branch Manager—Alleged Oral Misrepresentations and Advice by Manager of Bank as to Financial Position of Company Inducing Plaintiff to Sign Guarantees — Payment by Plaintiff with Knowledge of Misrepresentations to Bank to Obtain Release from Liability under Guarantee—Quaere Whether Manager and Bank Joint Tort-Feasors and Whether Manager Released by Such Payment—Statement of Claim Alleging Alternatively Fraud or Negligent Advice—No Distinction Shown in Pleadings Between Alleged Fraud and Alleged Advice—No Special Duty to Take Care—Action Within Lord Tenterden's Act (9 Geo. IV., c. 14, sec. 6.).

Question of law argued before trial as to whether the Statement of Claim disclosed any legal cause of action. The action was against one Mabin, manager of a branch of the Bank of New South Wales, at Greymouth, claiming damages on the ground that (a) by reason of fraudulent and false representations, or (b) by reason of advice negligently carelessly and recklessly given, the plaintiff had signed several guarantees and continued the same and in consequence lost £2,500. The Statement of Claim alleged that the plaintiff and another, at the request and on the advice of the defendant, guaranteed the account of one, Rundle, a timber merchant; that Rundle's business was converted into a limited company and that the plaintiff, with two others, acting upon the representations that the company was financially sound and doing a lucrative business, and upon other representations, and at the request and upon the advice of the defendant, agreed to guarantee the company's account at the Bank for £7,000, and subsequently to extend the guarantee to £10,000 and to sign a further guarantee in respect of bills under discount up to a limit of £27,000. Eventually the Bank demanded from the guarantors payment of £32,000, and the Statement of Claim alleged that the plaintiff for the purpose of obtaining a release from his liability under the guarantee paid £2,500 to the Bank. The Bank had taken possession of all the company's assets and it appeared that the company was insolvent.

Murdoch and Hannan for plaintiff.
Myers, K.C., and W. F. Ward for defendant.

ADAMS, J., stated that Mr. Myers contended that the whole action was based on fraud only and could not be put on any other ground; that whatever the defendant said or did in the matter was said and done as the agent of the Bank, and therefore if any fraudulent misrepresentations were made, the Bank and the defendant were joint tort-feasors; that by agreeing to a compromise with the Bank, the plaintiff had released the Bank, the transaction being an accord and satisfaction, and that the sole cause of action was thereby extinguished. It might be conceded that in cases of joint tort, which included cases of principal and agent, there was only one cause of action, and that in such cases a release of one by accord and satisfaction or by other means operated as a release of all: **Duck v. Mayeu** (1892) 2 Q.B. 511; **Beadon v. Capital Syndicate,** 28 T.L.R. 427. But there were two difficulties in the way of applying those propositions in the case at the present stage. In the first place, for all that appeared, the settlement with the Bank might have been agreed upon for any one of several reasons—e.g., that the plaintiff was unable to pay more; or that the other guarantors paid or arranged for the balance; or that the Bank held securities estimated to cover the balance; or on an allowance *ex gratia* Moreover there was no specific allegation of any such agency in the Statement of Cliam, and His Honour did not think it could be regarded as established by necessary implication. The defendant was not the manager of the Bank, but a branch manager only. *Prima facie* the defendant would have authority to transact all the Bank's business in connection with his branch, and no limitation of that authority would affect persons dealing with him as such manager without notice of the limitation—**Banbury v. Bank of Montreal** (1918) A.C. 626, 702. But His Honour was in some doubt as to whether that implied authority extended to the business of inducing a third party to guarantee the account of a customer. There were also references in the Statement of Claim to the defendant as agent for the company which might possibly lead to an inference that the defendant was in fact acting as agent for that company. To enable the defendant to take advantage of that defence the alleged release and the fact of agency, must, His Honour thought, be established. It was strenuously denied by the plaintiff.

His Honour was of opinion, however, that the alleged representations fell within the express terms of 9 Geo. 4, c. 14, Sec. 6—(Lord Tenterden's Act). That section read as follows: "No action shall be brought whereby to charge any person upon or by reason of any representation or assurance made or given concerning or relating to the character, credit, ability, trade or dealings of any other person, to the intent or purpose that such other person may obtain credit, money or goods upon (*sic*) unless such representation or assurance be made in writing signed by the party to be charged therewith." His Honour entertained no doubt that all the representations alleged concerned and related to the credit, ability, trade and dealings of the company, and, if in fact made, were so made to the intent that the company might obtain credit with or money from the Bank. The representations relied upon and alleged to have been fraudulent were made orally, and therefore by force of the statute no action could be brought whereby to charge the defendant thereon. In passing, His Honour observed that, although the words of Section 6 of Lord Tenterden's Act were general, "any representation or assurance made, etc." the section was restricted to fraudulent misrepresentations or assurances—**Swift v. Jewsbury,** L.R. 9 Q.B. 301, 311, 316; **Banbury v. Bank of Montreal** (1918) A.C. 626, 692, 694, 706, 708, 713.

The alternative claim was for the same sum, on the ground that the defendant "negligently, carelessly and recklessly" advised the plaintiff to sign the two guarantees in respect of which demand was made by the Bank and upon which the £2,500 was paid. From a consideration of the terms of the Statement of Claim His Honour concluded that there was nowhere in the Statement of Claim any discrimination between the alleged frauds and the alleged advice. Indeed in summing up in his Statement of Claim the allegations of fraud the plaintiff said that the "advice" given to him by the defendant was "negligently, carelessly and recklessly" given, and then proceeded to set out the grounds, every one of which alleged fraud *simpliciter*. He thus supplied his own definition of the phrase "negligently, carelessly and recklessly," which was a proper definition of fraud and of nothing less than fraud—**Derry v. Peek** (1887) 14 A.C. 337, 350. In cases where an action would lie on the ground of negligent advice there was no need to prove fraud, which was immaterial. Nor was it in every case of negligent advice causing loss that such action would lie. If it were so, it would be exceedingly dangerous to give friendly advice at all. Where there was no special duty to take care, fraud must be alleged and proved. It would be sufficient on that point to refer to **Robinson v. National Bank of Scotland Ltd. and Anor,** (1916) S.C. 154. The plaintiff did not allege any circumstances which could give rise to any special relationship between himself and the defendant. It did not appear that he was a customer of the Bank, or that the advice was given in answer to any inquiry. On the contrary, he said and his counsel insisted, that the defendant came to him and advised him in the course of persuading him to sign the guarantees, the advice apparently being contained in the alleged misrepresentations and some statements that the plaintiff was not incurring any financial risk in signing the guarantee for £7,000, and that in signing the guarantee for £27,000 he did not incur any risk. Those at the most were variants of the other alleged representations as to the company's financial ability. His Honour accordingly held that the Statement of Claim did not disclose any cause of action.

Solicitors for plaintiff: **Hannan and Seddon,** Greymouth.
Solicitors for defendant: **Brandon, Ward and Hislop,** Wellington.

Reed, J. August 7; 14, 1928.
Auckland.

BROAD v. TAURANGA COUNTY COUNCIL.

County Council—Rates—Injunction—Irregularities in Resolution Striking Rates—Public Notice of Intention to Make Rates Not Given—Rescission at Special Meeting of Resolution Striking Rates—Minutes of Such Meeting Confirmed "with Exception of Clause re Rescinding Rate Notices"—Whether Rescinding Resolution Thereby Revoked—Validity of Rates—Whether Statement of Claim Could be Amended to add Further Grounds of Invalidity of Rate—Whether Injunction to Restrain Levying of Rates Could be Granted—Delay—Whether Statutory Provisions as to Notice and Time for Commencing Action Applicable—Whether Rate Book Signed by Members of Council Conclusive—Counties Amendment Act 1927, Section 14—Rating Act, 1925, Sections 51, 54, 58, 66.

Claim under Rule 466 for an injunction restraining the defendant Council from collecting certain rates alleged to be illegal by reason that in making and levying the same the Council did not comply with the formalities prescribed by the Rating Act 1925. The facts sufficiently appear from the report of the judgment.

Johnstone for plaintiff.
Gould for defendants.

REED, J., said that the first question to be determined was whether and to what extent the Council failed to comply with the Act. It appeared at a meeting of the Council on 10th June, 1927, a resolution was passed that notice be given of the *intention* of the Council at a subsequent meeting to be held on the 8th day of July, to make and levy rates for the year 1927-28. There followed a schedule of the rates to be levied in each Riding. The resolution provided that the rates were to be payable in one sum on 14th September, 1927, at the County Office, Spring Street, Tauranga. The resolution of the intention to make the rate was quite in order. It then became the duty of the Council, under Section 54 of the Rating Act, to give public notice of such intention, not later than fourteen days before the date upon which it was proposed to make the rate, together with certain particulars. That section was entirely disregarded and no notice was given. However the Council met on the day appointed, 8th July, 1927, and it was recorded in the minutes that the resolution striking the rates was confirmed. That resolution did not purport to strike a rate but His Honour thought a wide construction might be given to it and the resolution held to sufficiently express the intention of the Council to there and then strike the rate in terms of the resolution of 10th June. That, of course, did not get over the difficulty of the want of the notice required under Section 54.

The irregularities, however, did not stop there. In the minutes of a special meeting held on 27th September, appeared the following:—"In accordance with notice of motion the chairman moved that the resolution striking the rates for 1927-28 .... be rescinded, Councillor Bailey seconded. Carried." The resolution referred to was that of 10th June. The rate was not struck on that date, but, as already shown, was struck on 8th July, but a rescission of that resolution had the effect of expunging it from the Minute Book so far as it might be claimed to be an operative act by the Council. The result was that the resolution of 8th July was rendered entirely incompetent as a resolution striking a rate inasmuch as, whatever construction might be placed upon it,

there was a complete lack of the conditions prescribed by Section 51 of the Act. Following upon the resolution of rescission the Minute Book recorded that it was moved, seconded, and carried :

"That in respect to Maketu Riding only a general rate of 2d. in the pound on unimproved value of new roll and Hospital rate of one farthing on the capital value, be struck and that the other Ridings remain as in original resolution."

Giving to that resolution the widest possible interpretation, it purported to strike a rate on that date, 29th September, according to the schedule set out in the resolution of 10th June, with the alteration as specified as regards the Maketu Riding. On 14th October it was recorded in the Minutes :—

"Minutes of previous ordinary meeting were confirmed, also the minutes of special meeting *with exception of Clause re rescinding rate notices.*"

It was difficult to understand what was actually meant by that resolution. His Honour came to the conclusion that what was intended was to revoke the resolution of rescission of the resolution of 15th June. The intended resolution of revocation, however, had not that effect for the formality of notice required by Section 51 was not complied with. In that state of muddle only one thing was clear and that was that no matter what date was selected, no rate was on that date made with the formalities required by the Statute. And it was not a mere matter of form, it was a matter of substance. The formalities prescribed were for the protection of rate-payers and were conditions precedent to the imposition of rates. "It is a legal axiom," said Baron Martin in **Gosling v. Veley,** 4 H.L.C. 678, 727, that (adopting the language of Lord Denman, C. J., in **Veley v. Burder,** 12 Ad. & E. 247) "the law requires clear demonstration that a tax is lawfully imposed." The statute authorised the imposition of a tax but only if the Council complied with the conditions precedent imposed by the statute. Non-compliance with such conditions rendered the tax or rate invalid. *Prima facie,* therefore, the rates purported to be imposed were invalid and their collection could be restrained.

In the Statement of Claim the making and levying was alleged to be illegal, but the only ground assigned was failure to give the notice prescribed in Section 54. Mr. Gould, on behalf of the defendant Council, submitted that in consequence the other irregularities could not be relied on without an amendment and that the plaintiffs could not amend, and he cited **Colegrove v. Young,** 22 N.Z.L.R. 491. His Honour could, however, see no reason why the facts upon which relief was sought could not be amended, full opportunity, of course, being given to a defendant, if taken by surprise, to meet and answer any new facts alleged. It could not, of course, be claimed in the present case, nor indeed was it, that facts appearing in the affidavit of the defendant's own principal witness, took counsel by surprise. His Honour thought an amendment was unnecessary, but if required would be granted.

It was, however, contended by Mr. Gould that, notwithstanding such invalidity, the plaintiffs on various grounds were not entitled to an injunction. It was first contended that delay was a bar. That was dealt with from two aspects (1) the lapse of time between the issue of demand for payment of the rate and commencement of the proceedings, and (2) the statutory limitation upon actions provided by Section 14 of the Counties Amendment Act, 1927. The demand for the rates was made on the 17th of October, 1927, and the present proceedings were commenced by the plaintiffs on the 19th June, 1928, without any previous notice to the defendant Council. The delay was not strongly pressed it being obvious that it was largely due to the fact that the County Clerk had misled the Solicitors for the plaintiffs by incorrectly stating in an official letter to them dated the 18th November, that the public notice required by Section 54 of the Rating Act, 1925, had been duly given. In any case mere delay did not disentitle a plaintiff to an injunction in aid of a legal right, there must be something more. The equities as between the parties must be strongly against the applicant ; such delay as took place in this case was in the circumstances, no bar to the proceedings. It was also claimed that Section 14 applied to such a proceeding as the present and that the plaintiffs, having failed (a) to give a month's notice before commencement of the proceedings, (b) to commence the proceedings within six months after the thing complained of, were statute barred. The difficulty in deciding whether the section applied was due to the fact that obviously it was intended, primarily, to refer to common law actions. Stout, C.J., in **Mason v. Mayor of Pukekohe** (1923) G.L.R. 41, held, indeed, that it had no application to equity suits, but with this view Stringer, J. disagreed in **Grigg v. Auckland Electric Power Board** (1925) N.Z.L.R. 184. Mr. Justice Stringer treated the question of notice, and time for commencing an action, as being governed by the same considerations ; if the action or proceeding was such that the notice was not required then the statutory limitation upon the commencement of such action had no application. That, His Honour thought, must be so. Subsection (1) provided for the notice being given and subsection (2) enacted that "every *such* action or proceeding shall be commenced within six months." If the action did not come within subsection (1) as requiring notice it was not within subsection (2) as being *such* action. Now the class of actions that His Honour considered was not within subsection (1) was that in which where by requiring notice to be given "individual rights or statutory provisions might be defeated." Such was the present case where if notice were required the local authority "might in the meantime have enforced payment of rates illegally made, and might have inflicted irreparable injury to some of the rate-payers," for rates so paid under an illegal levy could not be recovered from the local body—**Julian v. Mayor of Auckland,** (1927) N.Z.L.R. 453. Admittedly the distinction was narrow and unsatisfactory. It would, His Honour, thought, be in accordance with the intention of the legislature if the view expressed by Stout, C.J. was by legislation adopted as the law, that was, that the section should not apply to suits in Equity. That Section 14 should apply to all proceedings of every kind or nature against any person "acting under the authority of the Council or in the execution or intended execution or in pursuance of the Act," clearly could not have been intended. The difficulty of interpreting the section as including every form of action or proceeding was evidently felt by Williams, J., in **Fleming v. Walker,** 29 N.Z.L.R. 989, 992, for he expressed a doubt whether the corresponding section in the Municipal Corporations Act applied to an application for mandamus, although he was a member of the Court of Appeal that in **Barker v. Marks,** 6 N.Z.L.R. 529, decided that proceedings for prohibition were an action. His Honour referred at length also to **Roberts v. Metropolitan Borough of Battersea,** 110 L.T. 566, 568 ; **R. v. Hertford Union,** 111 L.T. 716, 718 ; **Flower v. Local Board of Low Leyton,** 5 Ch. D. 347, 349, 352 ; **Bateman v. Poplar District Board of Works,** 33 Ch. D. 360, 368, 387 ; **Harrop v. Ossett Corporation** (1898) 1 Ch. 525, 527 ; **Fielding v. Morley Corporation** (1899) 1 Ch. 1. The two cases last cited decided that the words "action, prosecution, or other proceeding" the words in Section 14 of the New Zealand Act being "action or proceeding"—included injunction when it was a question of protecting the funds of a local body who successfully contested an action. The judgment of the Master of the Rolls in the last case showed clearly that he limited his judgment to the particular case before him and that he did not intend his interpretation to be of general application. His Honour then referred to **Rex v. Port of London Authority ex parte Kynock Ltd.** (1919) 1 K.B. 176., which was not cited, but which appeared to be of considerable importance. It was a question of mandamus and the point was raised that the proceeding had not been commenced within the six months provided by the Public Authorities Protection Act. His Honour quoted from the judgments of Scrutton, L.J., at p. 188, and Bankes, L.J., at p. 186, and said that in his opinion the same considerations applied to an injunction when it was sought to prevent a local body from enforcing the payment of an illegal rate, or of doing something which was *ultra vires* of the Council, particularly when there was the same safeguard, as pointed out by Scrutton, L.J., as existed in the case of a mandamus, of the discretionary power to refuse when there had been an undue lapse of time. His Honour was of opinion, therefore, that the section did not apply and that the proceedings were in time.

It was further contended that the plaintiffs were debarred from obtaining the relief claimed by reason of the provisions of Section 58 of the Rating Act, 1925. That section provided that the rate book having been signed by two members of the Council (which had been done) "shall be conclusive evidence in all Courts of the correctness of the contents thereof . . . and that the same had been duly made." That point was concluded by authority. It had been shown that the conditions precedent to the signing of the rate book had not been performed and that the rate itself was invalid. In such circumstances the rate book was made and signed without jurisdiction and Section 58 did not apply : see **Chairman, etc. County of Matamata v. Maraetai Farms Ltd.** (1916) G.L.R. 176, which followed **Williams v. Swansea Canal Navigating Co.,** L.R. 3 Ex. 158 ; and **Mayor of Auckland v. Speight,** 16 N.Z. L.R. 651.

Another contention was that Section 66 of the Rating Act' 1925, precluded the plaintiffs from obtaining the relief prayed for. That section provided that "the invalidity of any rate as a whole shall not avail to prevent the recovery of the rate appearing in the rate book to be payable by any person." Referring to a similar section in the Rating Act, 1876, Gillies, J., in delivering the judgment of the Court of Appeal in **Hendry v. Hutt County Council,** 3 N.Z.L.R. C.A. 254, 260, held that the provisions of the section did not prevent proceedings such as

the present being taken by any ratepayer to test the validity of the rate.

Finally it was contended (a) that the Court had a discretion with regard to the issue of an injunction; (b) that in the circumstances of the present case it should, in the exercise of such discretion, refuse the injunction sought. The Court had a discretion, but that discretion must be exercised judicially. The question, therefore, was whether any good grounds had been shown why the Court should withhold the only remedy the plaintiff had in support of his rights. The relevant facts were: (1) the total rates levied amount to £11,028 16s. 4d., and there had been paid by ratepayers in respect thereof the sum of £8,649, 14s. 11d. The total rates levied upon the plaintiffs amounted to £109 19s. 7d. (2) The defendant Council had publicly notified and had taken all preliminary steps to have the striking of the rate validated by Parliament. It was claimed that the plaintiffs were not really prejudiced by the irregularities attending the abortive making of the rate and, on the other hand, that the Council would be seriously hampered in its administration if an injunction were granted. More especially, it was urged, that the grant of an injunction would prejudice the Council in its attempt to have validating legislation passed by Parliament. On the other hand it was shown that the action of the plaintiffs was not simply obstructive but was prompted by a substantial grievance which might or might not be rectified in the course of any validating measures that were taken. It appeared that in no previous year were the plaintiffs ever rated at more than £30, but that for the year in question the rates were increased to £109 19s. 7d. That was due to an increased valuation of the land owing to the value of standing flax being included in the valuation of the unimproved value of the land. His Honour understood from statements at the Bar that such valuation was only applicable to the year then in question and that certain legislation, under which the right to take into consideration the value of standing flax in assessing the unimproved value of the land was claimed, had been repealed and would not be operative in the future. Whether or not the failure by the defendant Council to publicly notify the making of a rate had prejudiced the plaintiffs in obtaining any reduction of the rate was not discussed nor did His Honour think it was material. It might be added that instructions to take the present proceedings were given by the plaintiffs before there was any notification by the Council of the proposed introduction of validating legislation. As the plaintiffs were at least entitled to a declaration that the rates purported to be made were invalid and unenforceable, was there any good reason why an injunction should not be granted? The claim that the administration of the County affairs would be thereby hampered had no weight. The Council could not well endeavour to force the payment of outstanding rates after the Court had declared them invalid, and the grant of an injunction would not prevent voluntary payments by rate-payers. It was not such a case as **Attorney-General v. South Staffordshire Waterworks Coy.,** 25 T.L.R. 408, cited by the defendant, where although the injunction was suspended owing to the defendants being actively engaged in promoting a Bill in Parliament to secure the powers which were in question, serious results would have followed if the injunction were to be made immediately operative, namely the stoppage of a pumping station. The present case was more like **Attorney-General v. Westminster City Council** (1924) 1 Ch. 437, and on appeal (1924) 2 Ch. 416, where the Court refused to suspend the operation of an injunction although efforts were being made to secure Parliamentary authority to do the act complained of, but in that case no serious results would follow an immediate order. That the grant of an injunction might prevent or detrimentally affect validating legislation His Honour could not believe. An injunction would only determine the rights of the plaintiffs in respect of the existing invalid rate. There was nothing to prevent Parliament validating the rates and making their collection legal subject to such conditions as it was thought fit to impose. The grant of an injunction determined the litigation so far as the Court was concerned and the matter would remain in no sense *sub judice*. The defendant Council had demanded from the plaintiffs the payment of an invalid rate; if sued they could not set up the defence that it was invalid and they would require to submit to judgment. Their only remedy was in the form of the present proceedings. No adequate relief other than an injunction could be given, and His Honour was unable to see any reason why it should not be ordered.

Injunction granted.

Solicitors for plaintiffs: **Hodge, Keys and Hookey,** Te Puke.

Solicitors for defendant Council: **Sharp, Tudhope and Wilson,** Tauranga.

MacGregor, J. September 3; 10, 1928. Wellington.

PUBLIC TRUSTEE v. HORTON.

Will—Construction—"Money"—Bequest to Husband of Interest of "All My Money" Until Only Child Became Twenty-One—Gift of "the Whole of the Money" to Such Child When He Reached Twenty-one—"Money" Held to Comprise All Real and Personal Estate of Testatrix.

Originating summons for the interpretation of the will of Beatrice Catherine Morton, deceased. The will provided (*inter alia*) as follows: "I bequeath the interest of all my money, on trust, to my second husband George Harry Horton until my child becomes twenty-one years of age. When the child reaches the age of twenty-one the whole of the money is to be his." The will also provided that if George Harry Horton died before the child was twenty-one years old his children were to have ten pounds each out of the estate and that all his funeral expenses were to be paid out of the estate. The testatrix died on 8th June, 1910. Her only son, the defendant, O. G. Horton, was born a few days before her death. The next of kin of the testatrix were the two defendants, her husband and the said child. At the date of the death of the testatrix her estate amounted in all to the sum of £1,462, made up as follows:

	£	s.	d.
Cash in possession of the said deceased	10	0	0
Debt due by one Burridge	28	0	0
Accrued rentals	2	6	4
Interest in an English estate which at the date of the death of the said deceased was the subject of contested litigation—in stamp accounts estimated at	291	15	5
Realty being part Section 4, Block IX Wakapuaka, having thereon erected three cottages— £1,780			
Less mortgage 650	1,130	0	0
Total	£1,462	1	9

The Court was asked to determine (*inter alia*) whether the term "money" comprised (a) the whole of the assets of the estate or (b) the whole of the general personal estate. In the event of both those questions being answered in the negative then the Court was asked to determine what assets were comprised in the term.

Kelly for Public Trustee.
Kennedy for G. H. Horton.
W. Perry for O. G. Horton.

MACGREGOR, J., said had he been free to determine the first and main question apart from authority, His Honour should probably have answered it forthwith by deciding that the term "money" as used in the will was wide enough to comprise the whole real and personal estate of the testatrix. That such a result might follow in New Zealand where there was a sufficient context appeared clearly enough from the language used by the Judges of the Court of Appeal in **Public Trustee v. Sheath** (1918) N.Z.L.R. 129. In the present case, however, it was contended for the defendant G. H. Horton that the word "money" must be held to be used in its narrowest sense as equivalent to "cash" in view of the English decisions, and especially in view of **Lowe v. Thomas,** 23 L.J. Ch. 616, as followed by Younger, J., in **In re Gliddon,** (1917), 86 L.J. Ch. 253. On the other hand, Counsel for the infant defendant O. G. Horton, contended that the word "money" must be construed in its widest sense as including everything the testatrix possessed, and referred to **Re Cadogan,** 25 Ch. D. 154, and other cases in support of that view. If His Honour adopted the first line of argument it was clear that the testatrix must, notwithstanding the terms of her will, be held to have died intestate, except as to the trifling sum of £10 being the only cash in her possession. If His Honour adopted the second, the will itself would operate on the whole estate left by the testatrix, thus carrying out her natural and indeed obvious intention that her only child should have all her property on attaining the age of twenty-one, and that her husband should meantime enjoy all the income arising therefrom. The decisive question was whether there was sufficient indication in the context of the will that the term "money" was used in the wider sense already referred to. On the whole His Honour came with some difficulty to the conclusion that there was such a context. The word "money" as used in a will was always a flexible term. It might mean only actual "cash," or it might have a much wider signification. His Honour referred to the dicta of Stirling, J., in **In re Buller,** 74 L.T., 407, 409, to the effect that the term "money" in a will

had no absolute technical meaning but that its meaning in every case must depend upon the context and upon the surrounding circumstances which the Court was bound to take into consideration in determining its construction. His Honour referred also to **Seale-Hayne v. Jodrell** (1891) A.C. 304, per Lord Herschell, at p. 306.

On applying that rule of interpretation what was the result? There was a strong leaning or presumption against intestacy. The will not only by itself confirmed that presumption, but *prima facie* must be taken to be intended to dispose of the whole estate of the testatrix. In the body of the will there was in effect a settlement of "all my money on trust" for the only child of the marriage of the testatrix, with a direction to pay the income to his father during his minority. The general gift of "the whole of the money" was not followed, as in **Lowe v. Thomas** (*cit. sup.*) by a specific gift of personal property, which His Honour thought sufficiently distinguished that case from the present one. On the other hand, the gift of "all my money" was succeeded by an alternative provision that if G. H. Horton died before the child was twenty-one years old, his first family were each to have £10 "out of the estate" and all his funeral expenses were to be paid likewise "out of the estate." In His Honour's judgment the context, and indeed the whole of the provisions of the will, went to show that the testatrix in speaking of "all my money" used those words in the same sense in which she afterwards spoke of her "estate" in the same document. In other words, His Honour thought that in the will the words "all my money" were equivalent in meaning to "all my estate" both real and personal. In the unique circumstances of the present case, indeed, one might almost say in the language of Lord Macnaghten in **Seale-Hayne v. Jodrell** (*cit. sup.*) that "to hold otherwise would, I think, be to defeat the obvious intention of the testator by over-refinement and straining after precision more apparent, perhaps, than real." His Honour accordingly held that the term "money" comprised all the real and personal estate and that the interest from the whole of the assets in the estate should be paid to the husband of the testatrix until the son O. G. Horton, became twenty-one.

Solicitors for Public Trustee: **Solicitor, Public Trust Office,** Wellington.

Solicitors for defendant G. H. Morton: **Luke and Kennedy,** Wellington.

Solicitors for defendant O. G. Morton: **Perry and Perry,** Wellington.

Ostler, J. August 13; 18, 1928. Dunedin.

IN RE DENNISTON; MEEK v. MEEK AND OTHERS.

Will—Capital and Income—Apportionment—Direction to Trustees to Convert Real and Personal Estate and Invest Proceeds in Certain Authorised Investments Upon Trust to Pay Income to Widow During Widowhood—Direction That Until Collection and Conversion Income to be Treated as Income from Authorised Investments—Authorised Investments Such That Income Apportionable—Trustees Carrying on Business—Death of Widow During Business Year—Whether Profits During Portion of Year Preceding Death of Widow Capital or Income—Profits Prima Facie Not Apportionable—Contrary Intention Expressed in Will—Apportionment Act, 1886, Section 2—Property Law Act, 1908, Section 108.

Originating summons to determine the question whether the profits of a business earned during the portion of the business year immediately preceding the death of the widow of the testator were income and therefore part of the estate of the widow or capital and therefore part of the testator's estate. The testator died on 9th May, 1904, leaving a widow and four children. By his will he directed the trustees to sell and convert his real and personal estate into money and, after payment of his debts funeral and testamentary expenses, to invest the residue in certain investments specified in the will upon trust to pay the income of those investments to his wife during her life if she should so long remain his widow, and after her death or second marriage upon trust for his children who being sons attained 21 years of age, or being daughters attained that age or married under that age. The trustees were empowered to postpone the sale or conversion of the whole or any part of the estate for so long as they should think fit and in the meantime to carry on his business. The will contained these words: "I declare that the income from every part of my real and personal estate previously to the collection and conversion thereof into money shall be treated in the same manner as if it were income proceeding from the investments authorised hereby." The authorised investments were any of the public stocks or funds or Government securities of the United Kingdom or of the Colony of New Zealand or of any of the Australian Colonies, or on first mortgage of lands in fee simple tenure in the United Kingdom, New Zealand, or any of the Australian Colonies.

The greater part of the testator's estate consisted of a business which the trustees carried on under the power given to them by the will. They caused a balance-sheet to be prepared showing the profits made by the business from the last annual statement down to the death of the testator. The object of striking a balance as at the date of the testator's death was no doubt to fix the commencing date of the period during which the widow was to receive the income. The next balance sheet was prepared as on 28th February next, which presumably was the date on which the annual balance had been struck in the lifetime of the testator. Thereafter during the widow's lifetime an annual balance sheet was prepared as on 28th February in each year. The business was a profitable one, and the trustees paid to the widow monthly throughout her life moneys for and on account of profits earned by the business. After each annual balance sheet had been prepared the balance of the profits earned during the year was paid to the widow. The widow died on 14th January, 1928. The trustees promptly caused a balance sheet to be prepared showing the profits earned by the business since the 28th February preceding. That was done, as the trustees said, in the belief that it was their duty to ascertain what profits had been earned by the business down to the date of the widow's death. The account showed that for the period from 28th February, 1927 to 13th January, 1928, the profits amounted to £2,054 10s. 6d. That sum, less the amount already paid to the widow during her life was claimed by the executor of the widow's will, who happened to be one of the trustees under the testator's will. It was also claimed by the surviving children of the testator and the representative of one deceased child as part of the capital of the estate.

Barrowclough for plaintiffs.

Callan for defendants, the children of testator.

N. G. Hay for defendants the executors of testator's widow.

OSTLER, J., said that Mr. Callan, who represented the children of the testator, had relied first on that line of cases which decided that the profits of a business were not apportionable under the Apportionment Act. Those cases were **Jones v. Ogle,** L.R. 8 Ch. 192, and **In re Cox's Trusts,** 9 Ch. D. 159, followed in New Zealand by Salmond, J., in **Riddell v. Speedy** (1925) N.Z.L.R. 354. It was too late, His Honour stated, for a Court of first instance to question the authority of those cases, and they must be treated in such Courts as settled law, though if they should ever come up for review in a Court of higher authority much might be argued in favour of the view that those decisions were intended to refer only to the class of business there dealt with. It was clear moreover that those cases were intended to lay down the rule of law, viz., that the Apportionment Act did not apply to the profits of a business, only so far as no contrary intention was expressed in the will. **In re Cox's Trusts** (*cit. sup.*) per Hall, V.C., at p. 162; **Jones v. Ogle** (*cit. sup.*) per Lord Selborne, at p. 195. In the present case the testator's will was made in 1901, at a time when the Apportionment Act, 1886 (which was now enacted as Section 108 of the Property Law Act, 1908) was in force. When he declared that the income from every part of his estate previously to the conversion should be treated as though it were income from the investments he had authorised, it seemed that he must be taken to have had the provisions of the Apportionment Act in mind, and to have used those words in reference to the existing law. His intention was to provide an income for his widow payable at convenient periods, and therefore he gave a mandatory direction to his trustees to treat (*inter alia*) all the profits of his business as though they were income derived from the investments he authorised. All the classes of investments which he authorised were investments in which the income was apportionable by law, and therefore His Honour thought that the testator must have made that provision with that law in view. It was true that according to the cases cited, the profits of the business were not periodical payments in the nature of income within the meaning of those words as used in Section 2 of the Apportionment Act, 1886, but the testator had clearly directed his trustees to treat them as though they were, and therefore, in His Honour's

opinion, they were bound to do so, and the Court was equally bound to treat those profits as income apportionable at law. In view of that clear direction in the will His Honour thought the trustees were right in ascertaining the profits of the broken period down to the death of the testator. Had they not done so then they would have had to pay the whole of the profits for the year ending on the 28th February, 1905, to the widow. That would have been contrary to the clear intention of the will, and would have been to discriminate unfairly against the remaindermen. His Honour also thought that the payment to the widow monthly of a sum on account of profits earned was in accordance with the intention of the will. No doubt the trustees had a discretion, had they thought fit, to make those payments every three months, or even half-yearly, but they exercised their discretion honestly and fairly, and in so doing they carried out the obvious intention of the testator. When the widow died, His Honour thought that it was their duty, in order to carry out the intention of the testator, to ascertain the profits down to her death. The direction was that those profits should be treated as apportionable income from investments, and they so treated them. Had they endeavoured to treat those profits as capital they would have been doing an injustice to the widow and would have been flouting the clear intention expressed in the will.

It might be suggested that the only reason for the declaration in the will that the profits of the business were to be treated as apportionable income from investments was to obviate the rule in **Howe v. Earl of Dartmouth,** 7 Ves. 137, as the Court held had been done in **In re Chancellor,** 26 Ch. D. 42. No doubt the testator or the draftsman of his will must be assumed to have had that object in view. But in the present case the testator had gone further than the testator did in **In re Chancellor** (*cit. sup.*). He had not only directed that until conversion the profits of the business were to be treated as income, but he had specifically directed that they were to be treated as income from specified investments the income from which was apportionable. Therefore His Honour thought that the declaration in the will was a clear direction to the trustees to do what they had done.

Assuming, however, that His Honour was wrong in holding that there was a clear direction in the will binding the trustees to do what they had done, then once having exercised their discretion, no doubt *bona fide*, at the commencement of their trust in such a way as to deprive the widow of all the profits of the business for the broken period, from the date of the last balance sheet down to the date of the testator's death, it seemed to His Honour that they were bound to exercise their discretion in the same way by ascertaining the profits for the broken period down to the widow's death. To act otherwise would have been to lay themselves open to a charge that they had not acted impartially. His Honour was of opinion, however, that the trustees were bound by the terms of the will to act as they had done. His Honour accordingly held that the £2,054 10s. 6d. (less the amount already received by the widow) was income and belonged to the widow's estate.

Solicitors for the plaintiffs: **Ramsay, Barrowclough and Haggitt,** Dunedin.

Solicitors for the defendants the children of the testator: **Callan and Gallaway,** Dunedin.

Solicitor for the executors of the will of the testator's widow: **W. G. Hay,** Dunedin.

Ostler, J. August 20; 28, 1928.
Invercargill.

MATHIESON v. HALL.

Mortgage—Mortgages Extension Acts—Exercise of Power of Sale by Mortgagee—Notice Required—Default under Mortgage to which the Mortgages Final Extension Act, 1924, Applied—Act Repealed Before Exercise of Power of Sale by Mortgagee—Mortgagee Not Required to Give Three Months' Notice Before Exercising Power of Sale as Required by Section 10 (6) of Repealed Act.

Originating summons for the determination of the question of law whether the defendant mortgagee could exercise his power of sale without first giving three months' notice as required by Section 10 of the Mortgages Final Extension Act, 1924. The mortgage was executed on 8th August, 1919, and thus came under the provisions of that Act. The Act was, however, repealed by Section 7 of the Property Law Amendment Act, 1927. The mortgage contained a clause giving the mortgagee a power of sale upon default being made by the mortgagor in payment of interest for fourteen days after the due date. The plaintiff had made default for more than that space of time, and the defendant threatened to exercise his power of sale forthwith.

Stout for plaintiff.

Hogg for defendant.

OSTLER, J., said that the plaintiff claimed that, notwithstanding the repeal of the Mortgages Final Extension Act, 1924, the defendant could not exercise his power of sale until he had given the three months' notice provided for in Section 10 (6) of that Act. He claimed that he had acquired a right under that provision, and that he still retained that right notwithstanding the repeal of the Act. He relied firstly on the provisions of Section 20, Clause (e) (iii) of the Acts Interpretation Act, 1924, which provided that the repeal of an Act should not affect any right already acquired, accrued, or established. He also relied on the form of Section 7 of the Property Law Act, 1927, as showing the intention of the Legislature to leave the so-called right untouched. The intention of the Mortgages Extension Act, 1925, and its various amendments was to impose restrictions upon the contractual rights of mortgagees for the protection of mortgagors during a financial crisis caused by the Great War. The Act was intended from the commencement to be merely a temporary measure as shown by the limited duration provided for. It was subsequently extended year after year, until the Act of 1924 was passed as a final extension. The very title of the Act of 1924 showed that it was intended to be the final interference with the rights of the mortgagee, and therefore when that Act was finally repealed, His Honour had no doubt that it was the intention of the Legislature that all restrictions that had been imposed on the rights of the mortgagees by that series of enactments should be repealed. It was no doubt considered that the necessity for such restrictions had passed. It was true that in the repealing clause, Section 7 of the Property Law Amendment Act, 1927, there was an incomplete recital. The recital referred only to extension orders, and stated that all extension orders had expired and it was, therefore, desirable that the Act should be repealed. But the Legislature must be presumed to have known and remembered the provisions of Section 10, imposing the liability on mortgagees after a default of giving three months' notice before exercising their powers of sale. Yet the whole Act was repealed and it must be presumed, therefore, that the Legislature intended to repeal that provision also. If so the restriction placed by that section on the powers of mortgagees had been abolished.

The plaintiff contended that before its abolition a right had accrued to him to receive three months' notice after default on his part, before the exercise by the mortgagee of his power of sale. The purpose of Section 10 was to impose a restriction on a mortgagee's rights. It was true that that liability could not be imposed on a mortgagee without conferring a corresponding right or privilege on his mortgagor. But as soon as that restriction was removed, the corresponding right automatically ceased. The privilege given to a mortgagor was not an acquired or accrued right within the meaning of Section 20 (e) (iii) of the Acts Interpretation Act. It was a mere right or privilege to take advantage of an enactment if his mortgagee while that enactment was in force should attempt to exercise his power of sale: see **Abbott v. Minister for Lands** (1895) A.C. 425, 431; **Reynolds v. Attorney-General of Nova Scotia,** (1896), A.C. 240. The privilege possessed by the plaintiff while the Act was in force could have been turned into a right accrued had he commenced proceedings while the Act was in force, which proceedings could not have been heard until the Act was repealed. Until the mortgagor took some active step towards availing himself of the protection granted him he acquired no right which survived the repeal of the protecting Act. **Ex parte Raisen,** 60 L.J.Q.B. 206, which was relied on by counsel for the plaintiff was distinguishable on that ground. His Honour held, therefore, that the defendant was entitled to exercise the power of sale in his mortgage without giving three months' notice of his intention so to do.

Solicitors for the plaintiff: **Stout and Lillicrap,** Invercargill.

Solicitors for the defendant: **Hogg, Raines and Hodges,** Invercargill.

Recent Cases on Banking and Negotiable Instruments.

By Professor A. L. Goodhart, M.A., LL.M.

During the past year an unusual number of important cases dealing with negotiable instruments have appeared in the English law reports. They are of interest not only from the standpoint of legal theory, but also because most of them concern matters of considerable practical importance to the commercial world, a conjunction which is not always true of those cases which particularly appeal to the lawyer. Although these cases have no relation to each other except that they are all comprehended within the same division of the law, it is thought that this gives them sufficient unity to justify dealing with them in one article.

GARNISHEE ORDERS AND BRANCH BANKS.

Perhaps from the Dominion standpoint the most important case is *Richardson v. Richardon and the National Bank of India, Ltd.* (1927) 43 T.L.R. 631. In this case the question was whether money held by a foreign branch of an English bank to the credit of a judgment debtor could be made the subject of a garnishee order by an English Court. Order XLV, Rule 1 of the Rules for the Supreme Court deals with the case where "any other person is indebted to such debtor and is within the jurisdiction." That has been interpreted to mean "is indebted within the jurisdiction, and is within the jurisdiction, for a debt is not property within the jurisdiction if it cannot be recovered here." (See the Yearly Practice of the Supreme Court for 1927, note p. 783). Mr. Justice Hill held that the debt in the present case was not subject to a garnishee order as it was not a debt recoverable within the jurisdiction.

There seems to be plenty of authority that in the case of money deposited at the branch of a Bank, the locality of the debt is at that branch. As Lord Robson said in *Rex v. Lovitt* (1912) A.C. 212, 219, "Although branch banks are agencies of one principal firm, it is well settled that for certain specific purposes of banking business they may be regarded as distinct trading bodies." Thus it was held in *Woodland v. Fear* (1857) 7 E. & B. 519, that the obligation of a bank to pay the cheques of a customer rested primarily on the branch at which he kept his account, and that the bank in that case had rightly refused to cash the cheque at another branch. As Atkin, L.J., said, in *Joachimson v. Swiss Bank Corporation* (1921) 3 K.B. 110, 129: "Moreover payment can only be due, as it appears to me, at the branch where the account is kept and where the precise liabilities are known, and if this is so, I apprehend that demand at the place where alone the money is payable must be necessary. A decision to the contrary would subvert banking business." In *Clare and Co. v. Dresdner Bank* (1915) 2 K.B. 576, Mr. Justice Rowlatt held that the plaintiffs who had an account at the Berlin branch of the defendant bank were not entitled to demand payment from the London branch without having made any request to the bank in Berlin to pay or to remit the balance to London. In the course of his judgment the learned Judge said: "Money has a different value in different parts of the world even although it may be expressed in the same currency, and I cannot conceive it possible that a man who has, we will say, £1,000 sterling to his credit at a bank in New Zealand, on coming to London would have the legal right to demand payment of £1,000 at an office of the same bank in London without being liable to pay anything in consideration of that convenience, or even to give time for the bank in London to ascertain whether he was in fact a customer of and had a credit balance at the branch in New Zealand." *Leader and Company v. Direction Der Disconto Gesellschaft* 31 T.L.R. 83, can be distinguished on the ground that in that case there had been a demand for payment at the Berlin branch which had been refused.

Willis v. Bank of England (1836) 5 L.J.N.S.K.B. 73, can no longer be considered good law. In that case the plaintiffs, as assignees of N., a bankrupt, brought an action of trover to recover the amount of three bank post bills payable to N., which were paid by the Bank of England branch at Gloucester. Some time before payment was made notice of bankruptcy was given to the Bank in London. Lord Denman, C.J., said:—

> "The general rule of law is, that notice to a principal is notice to all his agents—*Mayhew v. Eames*; at any rate, if there be a reasonable time (as there was here) for the principal to communicate that notice to his agents before the event which raises that question happens. We have been pressed with the inconvenience of requiring every trading company to communicate to their agents everywhere whatever notices they may receive. The argument *ab inconvenienti* is seldom entitled to much weight in deciding legal questions; and if it were, other inconveniences of a more serious nature would obviously grow out of a different decision."

Although from the customer's standpoint each branch bank at which he may have a credit has its own identity, this rule does not apply to the bank when it deals with the accounts of its customers. The bank is entitled at any time to combine the accounts. In *Garnett v. M'Kewan* (1872) L.R. 8 Ex. 10, the plaintiff, having an account at the L. branch of the defendant's bank, which showed a balance to his credit, drew cheques to that amount on that branch. At the same time he was indebted to the bank at their B. branch in an amount which, having regard to his whole account, reduced his assets in the bank's hands to a few shillings only. The bank, without any notice to him, transferred the B. debt to the L. branch, and refused to pay the cheques on presentment. *Held*, that the bank was entitled at any time to combine the accounts, and to charge the L. account with the B. debt. Bramwell, B., said:—

> "With regard to the correlative rights of the parties, it must be remembered that if a customer might draw anywhere where he had a balance, no matter what the real debit against him might be, there would be a real hardship on bankers and a difficulty in their conducting business. But to limit his drawing to the amount of his total actual balance is no hardship on him, for he always knows, or can know if he likes, the state of his account as a whole."

Of course, if there is a special contract that each account shall be kept separate then the bank cannot combine them. *Cumming v. Shand*, 5 H. & N. 95.

It is also important to note that there is identity between the various branches of a bank for the service of process other than garnishee orders. In *Logan v. Bank of Scotland* (1904) 2 K.B. 495, the service of a writ of summons on a branch bank was held valid.

In the present case Hill, J., raised an interesting moot question when he considered what would be the result if the foreign branch of a bank refused to pay after a demand had been made. It is clear that the bank in England could be sued, but would the cause of action be for damages or for money lent? He came to the conclusion that the cause of action would be for damages, and therefore the claim could not be made the subject of a garnishee order.

ALTERATIONS IN A BANK NOTE.

The next case to be considered is *Hong Kong and Shanghai Bank v. Lo Lee Shi* (1928) A.C. 181. The respondent placed two bank notes issued by the appellant bank in the pocket of a garment, and, having forgotten that she had done so, she proceeded to wash the garment so that the bank notes were mutilated. With the assistance of the bank she succeeded in piecing together the fragments of one of the notes to the satisfaction of all parties, but in the case of the other note the number was missing. It was on this ground that the appellant bank refused payment.

The case raised two questions of importance:—

(1) Whether the destruction of the number was a material alteration of the note, and:

(2) If it was a material alteration did the purely accidental destruction of the number avoid the liability of the bank?

Unfortunately it is difficult to tell from the judgment of the Judicial Committee of the Privy Council on which of two possible grounds they affirmed the judgment of the Court below.

Was the number a material part of the note? In *Suffell v. Bank of England*, 9 Q.B.D. 555, it was held that the number of a Bank of England note was a material part of the instrument. The Court, however, in that case emphasised the distinction between a Bank of England note and an ordinary promissory note. It is part of the currency of the country and must be issued to anyone who brings a certain quantity of bullion to the bank. In the present case the notes of the appellant bank were not part of the currency, although in practice they were treated as if they were. Lord Buckmaster, by whom the opinion of the Court was delivered, held that these notes were in the ordinary form of a promissory note and that the number "is no part of the operative portion of a bill of exchange or promissory note." Therefore it would seem to follow in the present case that the destruction of the number of the note was not a material alteration, and therefore the note was not avoided.

The Judicial Committee, however, did not base its judgment on this ground alone. It also considered at some length the interpretation of Section 64 of the Bills of Exchange Act, 1882, reproduced for Hong Kong in the Bills of Exchange Ordinance, 1885, Section 64. It is arguable that what is said in the judgment on this subject is only a dictum. It may be convenient to give here the relevant words of the section: "Where a bill or acceptance is materially altered without the assent of all parties liable on the bill, the bill is avoided except as against a party who has himself made, authorised, or assented to the alteration, and subsequent indorsers." From the grammatical standpoint this section seems to say that all material alterations however made avoid the bill unless they are alterations to which assent has been given. The Judicial Committee, however, adopted a more liberal construction when they held that the "alteration contemplated is one to which all parties might assent. It is not reasonable to assume parties assenting to a part of the document being effaced by the operations of a mouse, by the hot end of a cigarette, or by any other means by which accidental disfigurement can be effected. . . . The fact that the change is accidental in itself negatives the possibility of assent."

This construction of the section may give rise to difficulty in the future, based as it is on "a possibility of assent." It is doubtful whether it would cover an intentional but unauthorised alteration made by a third party. There would obviously be a possibility of assent to such an alteration. Does it, therefore, avoid the bill? The emphasis placed in the judgment on mice and cigarettes would seem to imply that alterations are to be divided into three classes: (1) alterations which have been assented to; (2) alterations by pure accident; and (3) unauthorised alterations by third parties. With all respect there does not seem to be any reason for drawing a line between (2) and (3); but the *ratio decidendi* of the case seems to make such a distinction. It will be interesting to see what the Courts will make of this judgment when a similar point arises in a future case.

PASS BOOKS.

In his well-known work, "The Law of Banking," Sir John Paget said, at p. 344: "The present position of the pass book is most unsatisfactory. Its proper function is to constitute a conclusive, unquestionable, record of the transactions between banker and customer, and it should be recognised as such. After full opportunity of examination on the part of the customer, all entries, at least to his debit, ought to be final and not liable to be subsequently re-opened, at any rate to the detriment of the banker." Attempts have been made in the past both by the banks and by their customers to make pass books conclusive evidence as to entries contained in them, but these have always been rejected by the Courts. The most remarkable, and probably the least meritorious, attempt on record was made by the customer in the recent case of *British and North European Bank v. Zalzstein* (1927) 2 K.B. 92. In this case the bank manager had negligently allowed Zalzstein, a customer, to carry too large an overdraft. In order to conceal this fact from the auditors, the manager transferred £2,000 from the account of another customer, from whom he held a power of attorney, to the account of Zalzstein. The audit passed off without any discovery of this manipulation, and the manager retransferred the £2,000. The account of Zalzstein, therefore, showed the original debit, the manager had escaped the reprimand he feared, and no one had suffered loss. Nothing of this was known to Zalzstein until he received his account some weeks later. He made no comments, but eventually when he was sued for £2,392, the amount of his overdraft, he claimed: (1) the £2,000 placed to his credit was a payment to him, and therefore became his money, so that his overdraft was liquidated to that extent; (2) the bank had no authority to make the subsequent debit and therefore it was void.

Mr. Justice Sankey found for the plaintiff bank. He held that in every case, where it is sought to treat a mere book entry as a payment, it must be shown: (a) that some other circumstance was present, such as express previous authority to pay or communication of the fact of the entry to the customer; (b) that such circum-

stance was relied upon by the customer, and that in consequence he altered his position. In the present case the manager never meant the entry to be a payment, and the defendant on discovering it never regarded it as such.

The plaintiff's argument was based in large part on *Eyles v. Ellis*, 12 Moore 306. In that case the plaintiff and the defendant both banked with the same bankers. The defendant wrote to the plaintiff that in payment of his rent he had directed the bank to transfer the necessary sum from his account to that of the plaintiff. The plaintiff thereupon sent a receipt. Thereafter the bankers made the necessary transfer, and advised the plaintiff of the fact. However, before the letter reached him the bankers stopped payment, and the plaintiff thereupon sued the defendant for the rent. The Court held that when the bankers credited the plaintiff on the instruction of the defendant this constituted payment. In the present case the plaintiff argued that, as the bank manager had a power of attorney from the other customer to deal with his account, the entry in the pass book constituted a payment from the other customer and the bank could not dispute it of its own motion. The answer to this ingenious argument is that the entry in the pass book was never meant to be a payment by the manager. If the plaintiff in reliance on the entry had altered his position the bank would, of course, have been liable. A pass book is dealt with on the same principle which applies to money paid under a mistake of fact.

(To be continued)

Bishops in Privy Council Appeals.

Although the recent Privy Council appeal of the *Rector and Churchwardens of the Parish of St. Nicholas Acons v. The L.C.C.* has been generally hailed as the first occasion on which there was a full muster of ecclesiastical assessors since the Order in Council of 1865, the number, in fact, while one more than the necessary quorum of three, was one less than the full muster of five authorised by the rules made under Section 14 of the Appellate Jurisdiction Act of 1876. Of the Archbishops of Canterbury and York and the Bishop of London, one is to be summoned ; and of other prelates, four. In the numerous ecclesiastical appeals to the Privy Council, since that body took over the duties of the High Court of Delegates in 1833, one sometimes finds a bishop amongst the Privy Councillors ; but not invariably. In *Jones v. Gough*, (1865) 3 Moo, P.C.C. (N.S.) 1, there is no bishop ; in *Williams v. The Bishop of Salisbury*, two years earlier, the two Archbishops and the Bishop of London appeared ; one bishop is reported among those present in the case of *Herbert v. Rev. T. Purchas*, (1871), 7 Moo P.C.C. (N.S.) 551 ; in *Wakeford v. Bishop of Lincoln*, (1921) A.C. 813, there were four—London, Ely, Gloucester and Rochester ; while in the eight appeals, reported and unreported, therein referred to as having taken place since the Clergy Discipline Act of 1892, there were, as a rule, the irreducible minimum of three prelates.

New Zealand Law Society.

Proceedings of the Council.

The third meeting of the year of the Council of the New Zealand Law Society was held in Wellington on Friday, 5th October, 1928.

Mr. A. Gray, K.C., President of the Society, was in the chair.

The following gentlemen were in attendance as the representatives for the following District Law Societies, namely :

Auckland (represented by		Mr. C. H. Treadwell (Proxy)
Canterbury	,,	Mr. K. Neave, Mr. H. F. O'Leary (Proxy), Mr. H. H. Cornish (Proxy)
Gisborne	,,	Mr. M. Myers, K.C.
Hamilton	,,	Mr. N. S. Johnson (Proxy)
Hawke's Bay	,,	Mr. H. B. Lusk
Nelson	,,	Mr. Wm. Perry (Proxy)
Otago	,,	Mr. H. H. Cornish (Proxy)
Southland	,,	Mr. P. Levi
Taranaki	,,	Mr. G. M. Spence
Wanganui	,,	Mr. N. R. Bain
Wellington	,,	Mr. A. Gray, K.C., Mr. C. H. Treadwell and Mr. H. F. Johnston.

Before proceeding with the business before the meeting, the President asked the Council to record its deep sense of the loss sustained by the Bench, the public, and the profession of the law by the death of Sir William Sim. A resolution was passed accordingly, members of the Council standing. The President thereupon informed the Council that its expression of sympathy would be forthwith conveyed to Lady Sim.

The Council considered a number of matters of interest to the profession, more or less of a confidential nature. The Council set up several committees for the purpose of obtaining a report before reaching a final decision in connection with the matters under consideration.

Legal Conference.

The Council, in accordance with a suggestion contained in the minutes of proceedings of the first New Zealand conference, held at Christchurch this year, considered the question of deciding where the next conference should be held.

It was unanimously resolved that the next conference should be held in Wellington, the date of which is to be arranged by a committee to be set up later by the Council of the Wellington District Law Society.

Court of Arbitration Sittings.

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

Timaru : Friday, 19th October, at 10 a.m.
Westport : Tuesday, 23rd October, at 10 a.m.
Greymouth : Thursday, 25th October, at 10 a.m.
Christchurch : Friday, 2nd November, at 10 a.m.
Wellington : Monday, 19th November, at 10 a.m.

Drainage of Surface Water.

NATURAL OR REASONABLE USER THE TEST ?

The question as to the liability of a lower proprietor of land to receive rain water coming on to his land from the upper proprietor is often coming up for consideration before our Courts. It is clear that the lower proprietor must accept the natural flow of surface water, in a diffused state, from his higher neighbour's land and cannot complain of any damage thereby caused. The difficulty arises where the neighbour chooses, for the purposes of improving or draining his land, to concentrate the natural flow of surface water in an artificial channel by means of a pipe or otherwise from his land at a point so as to discharge it on his lower neighbour's land and thus, it may be, to injure the latter's property.

The late Mr. Justice Hosking, in *Crisp v. Snowsill*, (1917) N.Z.L.R. 252, laid it down that if the acts you do on your own land injure that of another, liability follows unless it is in the natural user of your own land that those acts are done, and that cutting a drain for collecting the water was not a natural user. Natural user not reasonable user, is, he says, the test. Mr. Justice MacGregor in an oral judgment in *Spear v. Newham* (1926) N.Z.L.R. 897, followed and applied this principle in the case of a landowner at Oriental Bay, Wellington. In the most recent case of *Black and White Cabs Ltd. v. Tonks*, (1928) G.L.R. 311, Mr. Justice Sim laid it down that while surface water remains in a diffused state without being gathered into any channel a landowner may make such improvements upon his property as he chooses. He cannot, however, by artificial means gather the water upon his property together and throw it upon the property of his neighbour, whether the grade of the latter's land is higher or lower than his. This adopts the view of the well-known American text writer on the subject—*Farnham on Waters* (at p. 2619). The views expressed in the cases noted have been generally accepted in the Dominion as the result of the authorities on the subject both here and in England, but it appears to be open to question whether, as Mr. Justice Hosking laid it down, natural user as distinguished from reasonable user is in fact the true test.

In the recent case in the Privy Council of *Gibbons v. Lenfestey*, (1915), 84 L.J.P.C. 160, Lord Dunedin lays the law down as of general application as follows: "Where two contiguous fields, one of which stands upon higher ground than the other belong to different proprietors, nature itself may be said to constitute a servitude on the inferior tenement, by which it is obliged to receive the water which falls from the superior. If the water which would otherwise fall from the higher ground insensibly, without hurting the inferior tenement, should be collected into one body by the owner of the superior in the natural use of his property for draining or otherwise improving it the owner of the inferior is, without the positive constitution of a servitude, bound to receive that body of water on his property." This was an appeal from the Royal Court of Guernsey; the appellant had built a greenhouse on his land close to a tunnel or culvert from which water on his premises was discharged upon the respondent's adjoining land situate on a lower level and made a hole in the greenhouse wall opposite the pipes on the respondent's land into which the water in the past had been accustomed to discharge. The respondent blocked up this hole thereby causing a severe flood on the appellant's land. All the Courts below had held that the respondent's action was justified, but the Privy Council reversed the judgments and held that the respondent, the lower proprietor, had no right to block up the hole.

Gibbons v. Lenfestey was cited in the recent case before Mr. Justice MacGregor, but His Honour came to the conclusion that in using the word "fields" Lord Dunedin referred to agricultural land only and not to city properties. The decision of the Privy Council was not alluded to in the recent case before the late Mr. Justice Sim. It is submitted, however, with great respect, that when *Gibbons v. Lenfestey* is closely examined the properties affected were in fact residential lands in an urban or a suburban district and that the word "fields" is used synonymously with "lands" and that the principle is applicable to all properties whether urban, suburban, agricultural or pastoral, particularly as Lord Dunedin especially refers to the English law of "eavesdrop" whereby a proprietor may not build on the extreme verge of his property and then throw water off his roof on to the neighbour's land. This reference would surely be unnecessary were the principle only referable to agricultural land. Lord Dunedin states that a natural servitude such as the right in question is derived from the Roman law. Such servitudes were of two kinds—rural and urban. Rural servitudes affected chiefly or only the soil, and could exist if no houses were built; urban servitudes affected chiefly or only houses, and could not exist without houses, but it is pointed out by a distinguished writer on Roman Law (Dr. Hunter) that rural servitudes may exist in a town, and urban servitudes may exist in the country, and that an urban servitude included the right to refuse, or the obligation to receive, the rain water from a gutter. Servitudes were for the land in this sense, that the necessities of the dominant land constituted the measure of the enjoyment allowed. From this it may be gathered that there is no sound reason in law for any distinction between servitudes affecting agricultural land or urban land. *Gibbons v. Lenfestey*, it may be noticed, seems to have escaped the notice of the editors of the last editions of both Gale on Easements, and Goddard on Easements. It is surprising that there is so little authority emanating from the highest courts in England on the subject, but in *Young and Co. v. Bankier Distilling Co.* (1894) 69 L.T. 838, Lord Watson, in the House of Lords, approved of a statement of the law by Lord Gifford in these terms: "Although there is a natural servitude on lower heritors to receive the natural or surface water from higher grounds, the flow must not be increased by artificial means, although reasonable drainage operations are permissible." Drainage operations are usually carried out by means of pipes or conduits for the purpose of concentrating water.

The test, therefore, to be gathered from the judgment of the Privy Council, and inferentially from the case in the House of Lords, seems to be that if the operations of the upper proprietor in improving his property and its drainage system are reasonable or necessary then the lower proprietor is bound to receive the natural water coming from the upper proprietor's land, whether concentrated in a pipe or drain, or not. The upper proprietor cannot however, bring foreign water on to his land and compel the lower proprietor to receive it. The proposition laid down in *Gibbons v. Lenfestey,*

seems preferable to the rigid rule hitherto laid down in this Dominion, which may, in many cases where there is no other reasonable means of drainage, prevent the upper proprietor from making use of his land for building or occupational purposes. *Farnham* states that some of the Courts in the United States have adopted the rule that the liability of a landlord for diverting surface water proper to the injury of another depends upon the necessity and reasonableness of his act, and if necessary and reasonable, he is not liable for resulting damages. The rule thus stated illustrates the elasticity of the English common law.

It should be added that the principle alluded to has no application to what is called flood waters. It seems clear that an owner may, by embankment or otherwise, protect his own property from injuries by flood water, whether this results in damage to his neighbours or not, provided he takes reasonable and usual means for the purpose, a flood being treated as a common enemy.

—BARON.

London Letter.

Scotland,
22nd August, 1928.

My dear N.Z.,

In the midst of the Highlands (at the summit of the Pass of Drumochter, to be exact) away from civilisation, away from traffic, smoke and dirt, and, best of all, away from work and worry—"Good Heavens," said I, "I have forgotten all about New Zealand." Well, the Proprietors and the Editor must be as angry as they will with me, for thus for the first time forgetting my "London Letter" to you, due to be delivered every other Thursday morning. But upon this we must all agree: It was a good and proper spot (upon a beautiful summer morning) at least to remember New Zealand. And here, in the very North of Scotland, far past Inverness and within hail of John O'Groats, I find it impossible to believe that time can matter much to any man and am convinced that a week's lateness must be too small a matter for any man to take account of it. Thus, we find the "London Letter" of this date being written a week behind its due time, six hundred and more miles away from its proper address, and with nothing on earth about which to write it.

I wonder if you recall a letter I wrote you of a few weeks back all about a case of my own, in which the plaintiff asserted the gift to him by the defendant of stock on a farm of one sort and another amounting to a value of some thirty to forty thousand pounds? It is at the scene of action, in that affair, that I have arrived and am staying, my friend, the defendant, and his family having arrived at it some six hundred years or so before me. Fortunately for this letter, there has been here over the week-end my friend's Scottish Law Agent, too; and if I have nothing to tell you of the English Law and Lawyers at the moment, I can at least tell you something of the Scottish. It seems that North of the Tweed, as well as South, they suffer a lack of litigation, their thirteen Judges of Session having difficulty at times to be, or even appear, respectably busy. "Lords of Session" is, as you know, the courtesy title they enjoy; but it was not until my Lord Kyllichy turned up at a country hotel to spend the night with a Mrs. Macintosh that it was deemed desirable, lest there be misunderstandings, to permit the Judge's wife also to bear his title.

The last-mentioned incident, about which there was some amusement at the time, carries us back about a quarter of a century, I believe, to what were the golden days of the Scottish bench; Lord Stormont-Darling, Lord Low, Lord Kyllichy, Lord Kinnear, and Lord Maclaren are names known even to an ignorant and disrespectful Southerner like myself. The name which abides most revered in my informant's memory, apparently, is that of Lord Robertson, young Lord President, indeed, and brilliant, until his weakness (of the form not uncommon, up North) got the better of him. I gather that, in Scotland of to-day, as in England, there is a notable tendency to a more abstemious character, at Bench and Bar; that the tendency is perhaps not so marked up here, as it is down with us, whether it be that our virtue is the greater or that we are the less men; but that with the reduction of drinking habits the legal calibre, in aggregate, does not improve and that if it is a sober age, to-day, it is also an age of mediocrities. The Oscar Slater case is a matter you will have studied in the newspapers; if the summing-up, there under consideration, is to be taken as any fair example of the contemporary judicial ability, or if Lord Guthrie is to be regarded as typical of his brethren, that case seems to justify my informant's comments. It must astound our youngest pupil that a Judge, in anyway entitled to be called learned, should inform a jury that the presumption of innocence of a particular offence does not avail a man who is of a general bad character! What we at Home find more difficult to absorb, however, is the more correct but the less intelligible fact of a majority verdict in any criminal case, let alone a murder charge!

It is not for me, however, to criticise the legal world of Scotland; for however I may think it may be improved, and especially as to a more efficient and less precarious administration on its criminal side, I, as a Southerner, must, if I open my mouth, lay myself open to the effective reply that, after all, the greatest Judge upon our highest bench, and perhaps the most successful advocate in London, to-day, are both Scots. I refer in the first place to Lord Dunedin, that once remarkable advocate, Murray, and that ever human man, as full as the rest of us of human weaknesses as a man, but almost flawless as a Judge; and I refer, in the second place, to H. P. Macmillan. It is said of the latter that he covets the place, as representative of Scotland, on Supreme Courts of Appeal, either of my Lord Dunedin or my Lord Shaw; that, meeting Lord Dunedin one morning, he cried out genially, "How are you?"; and that my Lord Dunedin's cruel answer was, "Very well thank you; and so is my Lord Shaw." The story may be true for all I know; no one can help liking the rugged, but (as I say) ever human Dunedin, and not many people can contrive to like as a man, however ardently they admire as an advocate, my Lord's alleged victim, to whom the Scots for the most part refer as being "narrow begot." I dare say that his only fault is the obvious one, that he has no humour about him; and it is a certain, if an unjustifiable, fact that in our profession we tend not only not to love, but even not very carefully to consider (as companions) those of our Brothers in Law who are stodgy, while we will forgive another any number of faults, vices or even offences if there is human merriment in him.

Yours ever,

INNER TEMPLAR.

Bills Before Parliament.

Many Bills were introduced in the dying stages of the Session which was brought to a close last week ; it has been thought advisable, as it may be some time before copies of all the Acts are available, to summarise as in previous numbers, all the Bills that have not already been dealt with in this column.

Auckland Grammar School Amendment. (Hon. Mr. Wright). Special application only.

Auckland Transport Board. (Right Hon. Mr. Coates). This Bill is of purely local application and its provisions are not here summarised.

Auckland University College Reserves Amendment. (Hon. Mr. Wright). Special application only.

Canterbury College and Canterbury Agricultural College Amendment. (Hon. Mr. Wright). Power to grant renewals of leases in certain cases.—Section 12 of principal Act amended.

Companies Amendment. (Hon. Mr. Rolleston). Compromises between company and its members or any class of them and between company and its creditors or any class of them.—Section 260 of principal Act and Section 3 of Amendment Act of 1920, repealed.—Clause 2. Alteration of provisions as to preferential claims in respect of salaries or wages in event of liquidation, to conform with provisions of Bankruptcy Act.—Clause 3. Requiring payment of certain debts out of assets subject to floating charge in priority to claims under charge.—Clause 4.

Copyright (Temporary) Amendment. (Hon. Mr. Rolleston). Performance of musical work in broadcasting service not an infringement of copyright.—Clause 3. Establishment of fund to provide for payment of compensation to owners of copyright in musical works for performance of such works in broadcasting service.—Clauses 4—8.

Education Reserves. (Hon. Mr. McLeod). Consolidating Education Reserves Act, 1908, and its amendments. No material alterations.

Electric Power Boards Amendment. (Hon. Mr. Williams). Limitation of amount of Chairman's annual allowance.—Clause 2. Modifying conditions on which ratepayers may obtain partial exemption from general rates on ground that supply of electricity not available to them. Section 56 of principal Act, as amended by Section 8 of Amendment Act of 1927, further amended.—Clause 3. Section 64 of principal Act as to supply of electricity to value of separate rate amended.—Clause 4. Amended provisions as to accounts and financial statements. Section 75 of principal Act amended.—Clause 5. Where Board acquires electric works from a local authority it may undertake the loan or other liabilities of that local authority in respect of such works.—Clause 6. Application of Section 119 of principal Act as to charges on land in respect of installation, etc. restricted. Section 17 of Amendment Act of 1927 repealed.—Clause 7.

Government Railways Amendment. (Right Hon. Mr. Coates). Provision for appointment of General Manager of Railways.—Clause 2. Further provisions as to appeals relating to appointments.—Clause 4. Provision for subsidy of Sick Benefit Fund.—Clause 5. Additional leasing powers in respect of lands not required for railway purposes.—Clause 7. Powers of Minister as to provision of dwellinghouses for members of Department extended.—Clause 8. Restrictions as to motor traffic at railway crossings as from 1st June, 1929.—Clause 9. Superannuation.—Clauses 10, 11.

Hospital and Charitable Aid Institutions Amendment. (Hon. Mr. Young). Alteration of date of election of Chairman of Hospital Board.—Clause 2. Section 60 of principal Act (as to borrowing powers) amended.—Clause 3. Section 92 of principal Act (as to relief of non-residents) amended.—Clause 4. Sale of unclaimed personal property in possession of Board.—Clause 5. Modification of rules for computation of subsidies.—Clause 6.

Industrial Conciliation and Arbitration Amendment, No. 2. (Hon. Mr. Wright). Industrial Agreements under principal Act may be made for term not exceeding five years.—Clause 2. Awards under principal Act may with consent of parties be made for term not exceeding five years.—Clause 3. Power of Court to extend term of award for any period not exceeding five years from date when award came into force.—Clause 4. Industrial Agreements or awards may, in lieu of fixing minimum rate of wages, prescribe a basis for calculation of wages.—Clause 5.

Land Laws Amendment. (Hon. Mr. McLeod). Authorising leases of lands in Cheviot Estate to acquire fee-simple. Section 322 of Land Act, 1924, repealed. Special provisions as to acquisition by Crown of any private rural land on behalf of any two or more persons qualified to acquire land that is subject to principal Act.—Clauses 3 and 4. Occupier's interest in Crown lands may be sold for non-payment of rates.—Clause 5.

Local Legislation. (Hon. Sir Maui Pomare). Seventy-nine clauses of special application.

Main Highways Amendment. (Hon. Mr. Williams). Machinery provisions only.

Motor-Spirits Taxation Amendment. (Hon. Mr. Williams). Providing for refund of duty paid on motor-spirits used for agricultural tractors.

Native Land Amendment and Native Land Claims Adjustment (Right Hon. Mr. Coates). Enabling Maori Land Board to encourage Maori industry and development of Native land.—Clause 3. Restoring status of Europeanized natives.—Clause 4. Certain provisions as to limitation of area not to apply to Maori Land Board.—Clause 5. Enabling assignment to Board of moneys due to Natives.—Clause 6. Enabling Board to appropriate moneys of Native debtors.—Clause 7. Enabling orders of exchange to include European land.—Clause 8. Permitting Crown to acquire interests by order of Court.—Clause 9. Permitting readjustment of relative interests on consolidation.—Clause 10. Section 5 (9) of N.L.A. and N.L.C.A. Act, 1924, amended.—Clause 11. Permitting rights-of-way to be laid out by Court.—Clause 12. Permitting roads in use to be declared public roads.—Clause 13. Permitting unused public roads over Native land to be closed.—Clause 14. Provision for case of lost title deeds.—Clause 15. Enabling settlement of claims for rates on Native lands.—Clause 16. Enabling goldfields revenues to be paid to Board for distribution.—Clause 17. Authorising settlement of Native grievances regarding confiscated land.—Clause 18. Setting up Board in connection with Ngaitahu claims.—Clause 19. Miscellaneous provisions not of general application.—Clauses 20—41.

New Zealand University Amendment. (Hon. Mr. Wright). Maximum subsidy payable on any voluntary contribution to University or constituent colleges, £25,000. Consent of Council of the University and of the Minister required to establishment of any new Chair.—Clause 3. Increase in value of University National Scholarships.—Clause 5. Resident requirement for bursars.—Clause 6. Definition of "Professor of the University" extended to apply to Canterbury Agricultural College.—Clause 7. Section 4 of Amendment Act of 1926 (as to constitution of Council) amended.—Clause 8. Provision for appointment of Pro-Chancellor of the University; consequential amendments.—Schedule.—Clause 9. Power to confer honorary doctorates in Laws, Science, Literature and Music, on recommendation of Academic Board.—Clause 11. Chairman of Academic Board.—Clause 12. Member of Academic Board to be elected by professorial staff of Massey and Canterbury Agricultural Colleges.—Clause 13. Provisions of Amendment Act of 1926 (as to University Entrance Board) amended.—Clause 14. Sections 21 of Amendment Act of 1926 as to subsidies amended.—Clauses 15, 16A. Constituent Colleges to send annual reports to University Council.—Clause 16. Section 14 of Amendment Act of 1926 amended.—Clause 16B.

Public Works. (Hon. Mr. Williams). Consolidating Public Works Act, 1908, and all its amendments. In Clause 118 (Section 5 of Amendment Act of 1927) a definition of "road" has been inserted so as to make the clause correspond with Clause 119. Otherwise no material alterations.

Religious, Charitable and Educational Trusts Amendment. (Hon. Mr. Rolleston). Section 13 of principal Act amended.—Clause 2. Extension of definition of expression "charitable purpose."—Clause 3. Section 15 of principal Act amended.—Clause 4. Schemes under Part III or IV of principal Act may be altered and original purpose may be restored.—Clause 5.

Reserves and Other Lands Disposal. (Hon. Mr. McLeod). Special application only.

Summer Time. (Right Hon. Mr. Coates). Providing for time during period of Summer Time being thirty minutes in advance of New Zealand standard time. Period of Summer Time from 2 a.m. on second Sunday in October, till 2 a.m. on third Sunday in March. Act to continue in force until 30th September, 1929.

(Continued on page 262)

The Truck Act.

ORDERS ON WORKMEN'S WAGES.

The wording of statutes is often enough criticised as loose, inaccurate, or ambiguous and as failing to express clearly and unequivocally the apparent intention of the Legislature, the unfortunate draftsman almost invariably suffering "the slings and arrows" of Bench and Bar. Those who feel sympathy for the "patient merit" of the draftsman will, therefore, welcome an opportunity of placing the blame for a wicked failure to express the august intention of the Legislature upon some other shoulders. This opportunity is found upon reading Subsection (2) of Section 6 of "The Truck Act 1891" (N.Z.), the word "plaintiff" (the last time it appears therein) having been held by Richmond, J., in *Kellick v. Adams*, 12 N.Z.L.R. 715, at p. 720, to be a misprint for "defendant" or "employer." The subsection reads as follows:—

> "(2) Nor shall the defendant be entitled to any set-off or counterclaim in respect of any goods supplied to the plaintiff by any person under any order or direction of the *plaintiff* or his agent."

So none other than the printer, our white-headed boy in the family of statute-producers, has been held the culprit.

But when one refers to the re-enactment of the subsection in Subsection (b) of Section 32 of the Wages Protection and Contractors' Liens Act, 1908, now in force, one finds—in spite of the fact that the learned Judge had stated: "This discovery [of the existence of the misprint] . . . . relieves me from the duty of attempting to make the subclause say something which I now feel assured the Legislature never intended,"—that notwithstanding this, the draftsman has serenely repeated the "misprint," but has added at the end of the subsection the words "or the defendant or his agent."

So now we have not only what the Legislature intended but also what it has been held the Legislature did not intend. It is to be noted that Subsection (2) of the 1891 Act was copied from the English Act, "The Truck Amendment Act 1887," with the exception of the "misprint." It is respectfully submitted that Richmond, J., was justified in experiencing difficulty in interpreting the altered provision within the spirit of "Truck" legislation, but the Legislature in New Zealand seems now, in the 1908 Act, definitely to have disregarded the original limited intention of "Truck" legislation (i.e., to prevent the "truck" system of payment of wages) and to have extended it in a manner already pronounced by our Court to be contrary to that intention.

Stated shortly, the "truck" system of payment of wages is the payment of wages with goods, or otherwise than with coin of the realm. The above-mentioned subsection of the English Act was apparently designed to prevent an employer from side-stepping the prohibitive legislation by the simple expedient of giving to the workman, not goods, but an order on a third person to supply goods to the workman. That appears to be quite logical; but Richmond, J., could not see why *the workman* should not give to a third person an order on his wages, and why the employer should not be at liberty to honour such an order. He said: "The employer would be precluded from honouring orders by the workman in favour of his wife or his son, or a fellow-workman. He could not send anyone to receive his wages for him. . . . . I cannot adopt such a construction."

It is submitted that the subsection as it now stands in the New Zealand Act of 1908 is open to no other construction than that it deprives the employer of the right of set-off in respect (*inter alia*) of just such orders as Richmond, J., so clearly stated the employer ought to have the right to honour. If this construction be correct, then in New Zealand no employer may safely honour an order given by a workman upon his wages, whether it be given in favour of a tradesman, or to secure a loan, or merely to enable his wife or friend to receive his wages for him.

—P. KEESING.

Supreme Court Sittings.

It has been found necessary to postpone the dates for the commencement of the next sittings of the Supreme Court in certain of the centres. The centres affected, and the dates to which the sittings have been postponed are given below:—

Blenheim	29th November.
Gisborne	20th November.
Invercargill	20th November
Nelson	4th December
New Plymouth ..	4th December
Palmerston North ..	20th November.
Wanganui	27th November.

Counsel in County Courts.

Twice, within a week, hard things have been said to and concerning counsel learned in the law by County Court Judges; and the unfortunate truth is that there was some ground for criticism. Take, for example, the observation of His Honour Judge Turner on counsel's love of cross-examination and the "waste" of precious County Court time therefrom resulting.

It cannot be denied that sometimes in the heat of contest, a barrister seems to lose all sense of time and direction—and sympathy will not be withheld from the judge in such a case, when he is groaning beneath the weight of a long and ungovernable list of impending causes. But it would be very unfair to blame counsel with unqualified condemnation. Nowadays it is in the County Court that he must find his feet and acquire experience in his craft; he must reasonably satisfy his client; and it is obvious that many a client would much prefer to see his opponent well "shaken up" in cross-examination than win his case. Again, the County Court brief is often so ill-prepared that counsel must pick up his cause as he proceeds. In the High Court there is generally peace and plenty of time; in the County Court there is rush, noise, over-crowding, and confusion. County Court Judges usually remember these things and make allowances, not unmindful of the time when they, too, were barristers in the same plight.—"Outlaw," in "The Law Journal."

Foreign Insurance Companies.

Verification of Balance Sheets Deposited in Supreme Court.

Section 335 of the Companies Act, 1908, provides in effect, that at least once in every year every foreign insurance company carrying-on business in New Zealand shall cause a *true and duly verified* copy of its last balance-sheet to be deposited in the Supreme Court. It appears that different views as to the meaning of the words in italics have been taken in different offices of the Court, some offices requiring the verification by statutory declaration of the copy of the balance-sheet deposited. On the matter being submitted to the Judges the following ruling upon the point has been given by Blair, J., and concurred in by the other members of the Second Division of the Court of Appeal (Reed, Adams, MacGregor, and Ostler, JJ.) :—

> " As no special form of verification is prescribed my view is that ' true and duly verified ' means true copy and verified as balance-sheets of companies *ordinarily are verified*. It is not usual to have balance-sheets verified other than by the auditors of the company who append to the balanee-sheet a stock form of verification. This is the verification which I think is called for by Section 335 of the Companies Act."

Correspondence.

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

I read with interest Mr. Alfred Coleman's articles appearing in recent issues of your Journal in regard to " Scrutinising Impending Legislation." To the list of strictures mentioned in Mr. Coleman's articles, I would like to add Section 127 of the Electric-power Boards Act, 1925, and it is to be hoped that the profession will take this matter up, and use its endeavours to alter the present law embodied in the above section, and the various matters mentioned in Mr. Coleman's articles—and there are, no doubt, many others.

Yours, etc.,
D. K. Logan.

Masterton.

[Section 127 of the Electric-power Boards Act, 1925, reads as follows :—

" (1) No action shall be commenced against the Board or any member thereof, or other person acting under the authority, or in the execution or intended execution, or in pursuance of this Act, for any alleged irregularity or trespass, or nuisance, or negligence, or for any act or omission whatever, until the expiry of one month after notice in writing specifying the cause of action, the Court in which the action is intended to be commenced, and the name and residence of the plaintiff and of his solicitor or agent in the matter has been given by the plaintiff to his defendant. (2) Every such action shall be commenced within six months next after the cause of action first arose, whether the cause of action is continuing or not."—Ed. " N.Z.L.J."]

Rules and Regulations.

Administration of Justice Act, 1922. Reciprocal application to Queensland.—Gazette No. 70, 20th September, 1928.

Dangerous Drugs Act, 1927. Dangerous Drugs Regulations, 1928.—Gazette No. 71, 27th September, 1928.

Destitute Persons Amendment Act, 1926. Regulations as to registration in Magistrate's Court of copy of an Order made by the Supreme Court in the exercise of its jurisdiction in divorce or other causes for the payment of any weekly or monthly amount to or for the benefit of any wife, or husband, or any child, or children.—Gazette, No. 71, 27th September, 1928.

Fisheries Act, 1908. Regulations for trout-fishing, Taupo District and for Rotorua Acclimatization District (excluding Taupo).—Gazette No. 69, 18th September, 1928. Amending regulations for trout and perch fishing in Otago Acclimatization District. Close season for seals, prescribed by Order in Council of 15th October, 1925, extended for a period of three years from 27th November. Regulations for trout-fishing in Auckland Acclimatization District.—Gazette No. 70, 20th September, 1928.

Maintenance Orders (Facilities for Enforcement) Act, 1921. Amended regulations re registration of Orders in Magistrate's Court.—Gazette No. 71, 27th September, 1928.

Motor-vehicles Act, 1924. Supplementary regulations as to equipment and use of motor-vehicles, and as to notices and signs and generally as to motor-traffic.—Gazette No. 70, 20th September, 1928.

National Provident Fund Act, 1926. National Provident Fund Regulations 1927, Amendment No. 1, providing additional modes of investment of money belonging to fund.—Gazette No. 70, 20th September, 1928.

Rural Intermediate Credit Act, 1927. Additional regulations.—Gazette No. 70, 20th September, 1928.

Samoa Act, 1921. Samoa Native Titles Protection Order 1928. Samoa Immigration Amendment Order, 1928.—Gazette No. 70, 20th September, 1928.

Stock Act, 1908. Amending regulations for prevention of spread of ticks (ixodidae) among stock.—Gazette No. 70, 20th September, 1928.

War Regulations Continuance Act, 1920. Revocation of certain War Regulations.—Gazette No. 71, 27th September, 1928.

The "Bloody Assizes."

There have been attempts of recent years to rehabilitate Judge Jeffreys. It has been said that, as regards the exercise of his civil jurisdiction ,he was quite up to the average judicial level—perhaps above it. But whatever may be said about this, and about the biased views of Lord Macaulay as to his character, the record of the Bloody Assizes cannot be blotted out. That the number of executions was 250 or thereabouts does not seem to be doubted, though there appears to be uncertainity as to the measure of brutality with which the executions were carried out. But, as regards apportioning the blame, the exact number does not matter. It falls chiefly on Jeffreys and James II, and also on the other Judges who went the circuit. There was then no Home Secretary to interpose with a shadow of a doubt between the sentence pronounced by an infuriated Judge and its prompt execution, with the approval, it seems, of an obstinate and wrong-headed King. Lord Birkenhead, in his sketch of Jeffreys quotes his explosion to a witness : " It cannot but make all mankind tremble and be filled with horror that such a wretched creature should live upon the earth." This sentence, he adds, embodies the verdict of his fellow countrymen upon Jeffreys himself. No laboured resuscitation will get behind that.—" The Law Journal."

Legal Literature.

Norton on Deeds.

Second Edition: By the late R. J. A. MORRISON, LL.D. and H. J. GOOLDEN, M.A.
(pp. 701: Sweet & Maxwell Ltd.)

It has been said that in England, where the Profession is divided into two great branches, it is the part of a solicitor to know, not law, but practice, and it is as regards the preparation of deeds that this is peculiarly true. But a solicitor where "fusion" prevails cannot confine the extent of his knowledge to such a narrow sphere. This new edition of *Norton on Deeds* deals with every conceivable aspect of that class of legal instrument, although its prime object is to furnish a collection of canons of construction. The opening chapters are devoted to the nature and essentials of a deed, and the effect of alterations and cancellation. Then the main rules of interpretation are taken—the rules for the construction of words according to, or contrary to, their literal meaning; the rules for the reconciliation of repugnant clauses; and the rules for the rejection, transposition and insertion of words, and for the resolving of ambiguities and equivocations, and the correction of inaccuracies. Then comes a very lucid treatment of the admissibility of extrinsic evidence. Chapters are devoted to each of the various portions of a deed—date and parties, recital, consideration, parcels, habendum. Of course portions of the work—such, for instance, as Chapter XVI dealing with limitations to "heirs" and "heirs of the body"—have but little application to New Zealand. A large number of specific questions which commonly give rise to difficulty are treated in turn, e.g.: limitations over upon death "without issue," etc., estates for life, restraints on anticipation and marriage, estates by implication, remoteness and perpetuity, joint tenancy and tenancy in common, vesting of gifts to classes, and portions. Some 140 pages are devoted solely to covenants in all their ramifications. The changes introduced by the English Property Legislation of 1925 have not been allowed to obscure the old law; a black marginal line distinguishes the new (of which there is comparatively very little) from the old. A useful feature of the index is a long list of words and phrases judicially considered. While the publishers' claim that "there are few legal questions upon which some useful guidance could not be obtained from its pages" is probably not intended to be taken too literally, the scope of the work is certainly remarkable.

Wellington Law Students' Society.

The following case was argued before Sir John Findlay, K.C.: "A. and B. are rival grocers, whose shops are in the same street. A. is convicted of selling margarine as butter. B. obtains, and sets in his window, in large print, the day after the conviction, a full report of the Police Court proceedings, showing the conviction of A. A. sues B. for £250 damages for resulting loss of trade."

Wood for plaintiff: An action will lie even if the act done is lawful if it was done by a combination and maliciously—*Sorrell v. Smith* (1925) A.C. 737. Combination is not essential—dicta of Bowen, L.J., in *Mogul S.S. Co. v. McGregor Gow and Co.*, 23 Q.B.D. 612. Conspiracy is not essential—dictum of Edwards, J., in *Miller v. Cox*, 32 N.Z.L.R. 1013. Submitted that malice creates liability no less when act done by a single person than when done by a combination.

(Sir John Findlay: The old distinction is based on the greater power of a number of persons. Once establish the unlawfulness of the act and malice does not matter.)

All wilful damage is actionable unless it can be excused—*Pollock on Torts*, 12th Edn., 328.

(Sir John Findlay: It seems to me that the true domain of law applicable in this case is the law of libel.)

We are faced with the difficulty of meeting a plea of truth.

(Sir John Findlay referred to *McDougall v. Knight*, 58 L.J.Q.B. 537, showing that defendant to a libel action must prove that the conviction was right).

In *Salmon v. Maling*, 20 L.T. 885, where defendant had circulated reports of a case heard in the County Court, defendant was held to have been actuated by malice.

Goodwin in support: Damages can be obtained even though it may be difficult to assess them. If we can show there was a general falling-off of business attributable to defendant's act, damages are obtainable.

Rogers for defendant: The facts as stated do not raise the question argued in *McDougall v. Knight* (*cit. sup.*) nor have they been raised by the other side. Defendant has published "a full report of the Police Court proceedings." These words avoid the issues of libel: they do not suggest that what defendant published was unfair or inaccurate, or was not a report of the whole proceedings. Defendant is liable: (1) if he has induced a third party to commit a tort against plaintiff; (2) if the act induced is within the right of the immediate actor, but has been induced by defendant by illegal means—*Allen v. Flood* (1898) A.C. 1; *Ware and de Freville v. Motor Trade Assn.* (1921) 3 K.B. 40, 89. Neither condition of liability exists here. Malice makes no difference—*Pratt v. B.M.A.* (1919) 1 K.B. 244, 276; *Allen v. Flood* (*cit. sup.*); *Bradford v. Pickles* (1895) A.C. 587; *Sorrell v. Smith* (*cit. sup.*) was a case of conspiracy and is distinguishable. Defendant has the onus of showing justification or excuse if damage wilful—*Mogul S.S. Co. v. McGregor Gow and Co.* (*cit. sup.*) per Bowen, L.J., at p. 613. He was acting in defence of trade interest in exposing a dishonest trader. Matters of justification or excuse cannot be formulated on any general principle; they are a *simplex enumeratio*, and each case depends on its particular circumstances—*Conway v. Wade* (1909) A.C. 506, 511. On the view of the general liability for tort adopted in *Salmond on Torts*, 6th Edn. 9, the defendant has not this onus.

He also referred to Law Quarterly Review, Vol. 39, p. 202, and to *Rice v. Albee* (1895) 164 Mass. 88, referred to in *Pollock on Torts*, 12th Edn., 325. The facts were similar. Held no action lay unless statement amounted to slander.

Scott in support: The claim is for loss of trade, not loss of character. Damage must be proved. Damages not obtainable for loss of anticipated profits.

Wood in reply: I rely on *McDougall Knight* (*cit. sup.*). Also suggest there has been excess of privilege.

Sir John Findlay: There are three limitations to the defence of qualified privilege: (1) Excess of privilege. (2) Malice. (3) Inadequate representation of reports which contain defamatory matter. The conduct of B. can be construed only as attempt to injure rival. There was excess of privilege. Privilege arose from B.'s right to protect public interests or his own. It cannot be suggested he was protecting public interests, and if he was protecting his own interests, he acted in excess of privilege. I refer to the case of *McDougall v. Knight*, 58 L.J. Q.B. 537, where the defendants published a report of the judgment in a County Court case, but did not publish the evidence. Bramwell, L.J., held that there was not sufficient publication to allow persons to form their own opinions as to the correctness of the judgment or not, and that defendants must prove the judgment was correct.

Mr. Rollings proposed a hearty vote of thanks to Sir John, and expressed the Society's appreciation of the fact that Lady Findlay had also attended. The vote was carried by acclamation.

(*Continued from page 259*)

Swamp Drainage Amendment. (HON. MR. MCLEOD). Power of Minister to levy rates.—Clause 2. Classification of lands in drainage areas and appeals therefrom.—Clause 3. Application of Rating Act, 1925, to rates under this Act.—Clause 4. Section 5 of principal Act as amended by Sections 2 and 3 of Amendment Act 1926, repealed.—Clause 5. Temporary suspension of rates within Waihi and Kaitaia Drainage areas.—Clause 6.