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"*The growth of constitutional liberties has largely consisted in the reduction of the discretionary power of the executive and in the extension of Parliamentary protection in favour of the subject, under a series of statutory enactments.*"

—*Lord Parmoor.*

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The Second Conference.

The second Annual Conference of Lawyers to be held at Wellington, at Easter, next year, is likely to prove as important in the history of the Profession of New Zealand as was the first. Although the first Conference was attended with all the difficulties and uncertainties of an inaugural meeting much useful work was done. At the second Conference the importance will rest, not so much as did the first on the fact of the meeting of Lawyers from all parts of the Dominion in conference, as on the subjects to be dealt with and the method to be adopted in dealing with them. Very great responsibility is thrown on the Wellington Committee in charge of the proceedings, a responsibility that may, in future, possibly be borne by District Committees more generally. This is so because the place of the Conference as a body in the professional world is not yet determined. In the last issue of this Journal an article was contributed by Mr. W. J. Hunter dealing with the place the Annual Conference should assume. The suggestions there made need careful consideration. It may be a fundamental mistake to adopt a proposal that would constitute the Annual Conference an official body that might in reality be but an enlargement of the New Zealand Law Society. If the suggestions that the Conference should consist of a meeting of delegates, and that the matters to be discussed should be limited to those submitted by the Committees of the various District Societies were adopted, the Conference might lose the character it took to itself at its first meeting which led to its description, in the extract from "The Evening Post" of the 4th of June last, quoted by Mr. Hunter, as "The Lawyers' Parliament." It appears to us that the strength of the Conference lies in the meeting of Lawyers generally, apart altogether from their official position in their respective Societies, and that any attempt at restriction of attendance to delegates would detract from its usefulness. That does not mean to say, however, that the place and functions of the Conference do not need defining and regulating.

The "Evening Post," in its comment, besides pointing out that between the sessions of the Conference it needed an executive to carry on its business and keep its views before the public, went on to say that whether that would be better done by the Council of the New Zealand Law Society or some other body with special and limited functions, was a matter beyond the province of the "Post" to discuss. The question so raised will sooner or later have to be settled, and it is probably one of the most important questions to be decided at the next Conference. The decision of this problem needs careful consideration and to that consideration the article by Mr. Hunter is an important contribution. We hope it will be followed by others and that the whole question will be the subject of a paper to be read at the Conference.

The subjects to be discussed at the Conference will, we presume, be disclosed by remits from District Societies and by papers read by invitation of the Conference Committee in Wellington. Procedure on important subjects by discussion of a remit without a paper in support of it is apt to cause lack of precision and a result that amounts to but one step on the road to decision, namely, a conclusion for further discussion. Papers on the other hand, read by members are far better records of the complete presentation of the subject, enable better discussion, and permit of much more definite action. It is suggested that if members are invited to read papers on selected subjects, those papers should be printed in advance and supplied to members of the Profession at the Conference when the paper is read. Such a course is perhaps not necessary when the subject dealt with is a question not demanding action within the Profession, but when, as is inevitable at the present stage of these Conferences, questions relating to the administration of professional affairs and procedure are vital, and discussion which leads to action is alone useful, the printed paper is essential to members. If, sufficiently in advance of the date of meeting, the papers are distributed to the Profession, the importance of the subjects dealt with, as well as the personality of the authors, are bound to determine to a great extent the attendance at the Conference. It might even be well for the Wellington Committee to tabulate those questions upon which it thinks discussion is wanted, and to determine upon the members of the Profession who should be invited to deal with them. The writings of such papers entail considerable care and thought and much valuable time. In addition to the authors of the papers those wishing to discuss the subjects in question may also wish an opportunity for time for preparation. It may be a mistake to delay these steps till the next year. The Profession does not return from vacation till well on in January, and some members not till the end of January, and the pressure of the New Year's work leaves but little time to prepare full papers. Many of those who are asked to read papers may, unless they be given ample time in which to prepare them, well be unable to undertake the tasks to which they are invited, and we suggest that it would be as well for the Committee in Wellington to prepare its programme so that those on whom they rely may have the advantage of ample time for preparation.

In addition to the position of the Annual Conference as a new constitutional body in the world of the Profession, questions in regard to the advisability of permanent Court of Appeal Judges, the institution of a Rules Committee, the proper province of the Public Trust Office, and perhaps, above all, the disciplinary powers to be given to the New Zealand Law Society, are matters of great moment at the present time to the Profession on which a presentment by those qualified, and able to devote the time, would prove both interesting and valuable.

Court of Appeal.

Reed, J.
Adams, J.
MacGregor, J.
Ostler, J.

October 5; 12, 1928.
Wellington.

UNITED INSURANCE CO., LTD., v. ARTHUR.

Insurance—Policy—Arbitration Clause—Action for Recovery of Money Under Policy—Insurance Company Requiring Reference to Arbitration—Construction of Clause—Arbitration Condition Precedent to Liability to Pay.

Motion for order restraining the defendant from proceeding with an action in the Magistrates Court on the ground that the plaintiff company was entitled to have the amount recoverable ascertained by arbitration. On 24th November, 1927, the plaintiff company issued a comprehensive policy indemnifying the defendant against claims in respect of accident and other risks in relation to a motor car. In the proposal the defendant undertook "to agree to accept and abide by conditions of the company's policy and such warranties on the back hereof as are applicable." The policy provided that the company should, subject to the terms and conditions of this policy contained therein and on the back thereof, indemnify the insured against the risks stated therein. The last clause of the policy was as follows: "Provided always that the insurance hereby made is and shall be subject to the conditions and memoranda (if any) endorsed hereon in like manner as if the same were respectively repeated and incorporated herein, and compliance with such conditions and memoranda, and each of them, shall be a condition precedent to the right of the insured to sue or recover hereunder." By condition No. 8 printed on the back of the policy it was provided that all differences arising out of the policy should, if required by the company, be referred to arbitration, and that the determination thereof in such manner (if so required by the company) should be a condition precedent to the liability of the company to pay, and to the right of the insured or his legal representatives to recover any sum under the policy, and that no action should be brought or prosecuted to enforce any claim (if arbitration was so required by the company) until the same should have been agreed and adjusted, or should have been determined and ascertained in such manner. It was expressly declared that all arbitration proceedings under the policy should be subject to the provisions of that condition, any legislation to the contrary notwithstanding. No suit or action of any kind against the company for the recovery of any claim upon or by virtue of the policy should be sustainable in any court of law or equity unless such suit or action should be commenced within six months from the time when the right of action accrued, or, if such claim is disputed by the company, within six months next after the company had notified the insured of such dispute; and in case any such action should be commenced against the company after the expiration of such period of six months, the lapse of time should be taken and deemed as conclusive evidence against the validity of the claim thereby so attempted to be enforced, and might be pleaded in bar to any such action.

A difference having arisen between the company and the defendant with reference to the amount payable by the company in respect of an accident alleged to have occurred to the motor car described in the policy, the company required that it should be referred to arbitration. The defendant refused to join in a reference and commenced proceedings in the Magistrates Court at Wellington to recover £200. The company thereupon filed in the Supreme Court and served on the defendant a notice of motion for an order restraining the defendant from proceeding with that action. The proceedings were removed into the Court of Appeal on 31st August, 1928.

C. H. Treadwell for plaintiff.
O'Leary for defendant.

ADAMS, J., delivering the judgment of the Court, said that as it appeared that there was some doubt whether the remedy by notice of motion was available in the circumstances, and both parties desired to have the real question between them determined without unnecessary delay, it was agreed that the application should be dealt with as if it were made on an originating summons under the Declaratory Judgments Act, 1908, to determine whether upon the true construction of the policy it was a condition precedent to the liability of the company to pay, and of the defendant to recover, any sum thereunder that the amount payable by the company in respect to the accident should be determined by arbitration.

In the opinion of the Court the answer to that question must be in the affirmative. A long line of authoritative decisions commencing with **Scott v. Avery,** 5 H.L.C. 811, had established the rule of law that while parties could not by contract oust the jurisdiction of the Courts, they could agree that no cause of action could accrue in respect of any differences which might arise between them until such differences had been adjudicated upon by an arbitrator, and that such an agreement was valid and enforceable, and if pleaded, was a good defence to an action in breach of its terms. Counsel for the defendant, however, relied upon the decision of Salmond, J., in **Jones v. Eagle Star and British Dominions Insurance Co., Ltd.** (1923), N.Z.L.R. 336, which was referred to by MacGregor, J., in **Hempton v. State Fire Insurance** (1925) N.Z.L.R. 510. In that case the claim arose on a policy of accident indemnity in respect of a motor car. The proposal and policy, were in all essential matters in the same terms as the proposal and policy in the present case. Salmond, J., in that case refused to make an order under Section 5 of the Arbitration Act, 1908, to stay the action commenced by the plaintiff. In that case Salmond, J., after referring to the rule of law established by **Scott v. Avery,** 5 H.L.C. 811, and to **Viney v. Bignold,** 20 Q.B.D. 172, **Caledonian Insurance Co. v. Gilmour,** (1893) A.C. 85, and **Spurrier v. La Cloche,** (1902) A.C. 446, and discussing the extent and limitations of the rule, refered to the passage in condition 8 in the policy in **Jones v. Eagle Star and British Dominions Insurance Co., Ltd.** (*cit. sup.*) commencing "and in case such differences shall arise" down to "ascertained in manner aforesaid." As to that he said (p. 343): "It is to be noticed that this provision is not absolute but merely conditional. It operates only if arbitration is required by the company. If arbitration is not required by the company the assured is at liberty to institute an action on the policy. This liberty involves the existence of a cause of action which is prior to and independent of any award. The action would be based on a cause of action fully constituted by the covenant of indemnity contained in the policy, and the occurrence of loss by fire. The question whether a cause of action has arisen by reason of the fire cannot depend on a subsequent election by the company between litigation and arbitration. It is impossible, therefore, for the company to bring the case within **Scott v. Avery** and to contend that the policy creates no cause of action until and unless the dispute has been determined by arbitration." Their Honours were unable to accept that view of the construction of the policy. On the contrary, they thought the opposite view was determined by authority. The question was one of intention in every case, to be collected from the words, and that was so even when the intention was obscurely expressed, but was found by the Court: **London Guarantee Co. v. Fearney,** 5 A.C. 911, per Lord Blackburn at p. 917. Their Honours referred at some length to that case and to the judgment of Lord Watson, and also to **Woodfall v. Pearl Assurance Co.,** (1919) 1 K.B. 594. Those cases established beyond controversy that performance of a conditional stipulation such as that in the present policy was a condition precedent to the right of action.

The arbitration clause was not to be construed alone but as incorporated with and an integral part of the cotnract of indemnity. In **Jones v. Eagle Star and British Dominions Insurance Co., Ltd.** (*cit. sup.*). Salmond, J., came to the conclusion that a complete right of action was constituted by the covenant of indemnity and the occurrence of loss by fire, and that such cause of action over-rode the provision for arbitration in condition 8 endorsed on the policy. In the opinion of their Honours that was not the true con-

struction of the policy. The covenant of indemnity and the arbitration clause were not separate and distinct from each other, but the arbitration clause was to be construed as incorporated with and an integral part of the covenant. The rule of construction applicable in such cases was clearly laid down in **London Guarantee Co., Ltd. v. Fearnley**, 5 A.C. 911; and **Caledonian Insurance Co. v. Gilmour**, (1893) A.C. 85. Applying the canon of construction thus established to the policy in the present case, the liability of the company under the indemnity in the body of the policy and the condition as to arbitration was "one and indivisible" and that was the meaning of Lord Herschell's statement in **Caledonian Insurance Company v. Gilmour**, (*cit. sup.*) at p. 90, that "the only contract on the part of the appellants to make any payment at all is a contract to pay the sum ascertained" by the award. The same construction must be given to the stipulations following the condition for arbitration in the 8th condition, each such stipulation being so read. Bearing in mind what their Honours had already said, the proper construction of the policy appeared to be that the conditions were precedent, not to liability, but to payment—recovery of the amount due—**Toronto Railway Co. v. National British and Irish Millers Assurance Co.**, 20 Com. Cas. 1, per Buckley, L. J., at p. 8. Subject to the conditions the company became liable on the occurrence of the loss, but an action would not lie until such of the conditions as became applicable had been performed or waived. But the right or cause of action included every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment—**Read v. Brown**, 22 Q.B.D. 128, 131. It therefore included compliance with or waiver of conditions precedent. The six months period after the right of action accrued within the final provision of condition 8 therefore meant six months after the complete cause of action came into being. Consequently the difficulty suggested by Salmond, J., in **Jones v. Eagle Star and British Dominions Insurance Co., Ltd.**, at the foot of page 343 did not arise.

It was therefore evident that there was in the present case only one cause of action or liability in respect of the loss. The company having required a reference under the condition, a cause of action could arise only on an award. The cause of action would accrue when all the facts necessary to support the action had happened. A defence arising after an action had been commenced might always be pleaded, and there appeared to be no reason why, in such cases as **Jones v. Eagle Star and British Dominions Insurance Co., Ltd.** (*cit. sup.*), the defendant insurer should not be entitled, after the issue of the writ, to require a reference under the condition of the policy, and thereupon file a defence under the rule established by **Scott v. Avery** (*cit. sup.*). The decision of that question, however, was not necessary in the present case. The company was therefore entitled to a declaration that it was a condition precedent to the liability of the company to pay, and of the defendant to recover, any sum under the policy, that the amount payable by the company in respect to the accident should be determined by arbitration in accordance with the 8th condition of the policy.

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

Solicitors for defendant: **Bell, Gully, Mackenzie and O'Leary**, Wellington.

Full Court.

Reed, J.
MacGregor, J.
Ostler, J.
Blair, J.

October 4, 5; 12, 1928.
Wellington.

YOUNG v. GOGGIN.

Gaming—Totalisator—Investments Received at Windows in Members' and Stewards' Stands on Racecourse—Stands Not Connected With Main Totalisator Building—Meaning of Term "Totalisator"—Investments at Stands Held to be Received Elsewhere than on Totalisator—Gaming Act, 1908, Sections 32, 50.

Appeal from a decision of Mr. Mosley, S.M., at Christchurch. The information alleged that the appellant being the servant of the Metropolitan Trotting Club did on 11th February, 1928, at Christchurch unlawfully permit to be received an investment on the totalisator elsewhere than at the totalisator itself. The Magistrate convicted the appellant. It was admitted that on the day in question totalisator tickets were sold at ticket boxes situated in the Members' and Stewards' stands. Those stands were not situate in the totalisator building, but in a building some distance away from the main totalisator building and not connected with such building. The window in the Members' stand closed six minutes before the main totalisator closed, and the window in the Stewards' stand closed five minutes before the closing of the main totalisator. Some official of the club then came from the main totalisator building and checked the tickets in each of these two places, and all sales were then recorded on the main totalisator. It appeared that the club had a license from the Minister of Internal Affairs to use the totalisator on its racecourse on the day in question.

Thomas for appellant.
Solicitor-General (Fair, K.C.) for respondent.

MacGREGOR, delivering the judgment of the Court, said that whether or not the Magistrate's decision was right in point of law depended largely upon the true construction and effect of the relevant sections of the Gaming Act, 1908. Section 32 (3) of the Gaming Act, 1908, provided that it should not be lawful for any member, officer, agent or servant of the racing club "to receive or permit to be received any investment on the totalisator elsewhere than at the totalisator itself." The term "totalisator" was defined in Section 50 (3) (1) as "the instrument for wagering or betting known by that name, and any other instrument or machine of a like nature and conducted upon the same principles." A similar instrument for wagering or betting was defined in 15 **Halsbury's Laws of England**, 292, as "a machine operated by persons desirous of betting, which records the amount staked on each particular horse in a race, and the total of all bets made, in order that such total, less a percentage, may be distributed amongst those who betted upon the winning horse." That definition was apparently based upon the case of **Tollett v. Thomas**, L.R. 6 Q.B. 514, where an instrument or machine of a like nature was held to be an instrument of gaming. The latest authoritative definition of a totalisator was given in the Oxford Dictionary (1926) as follows:—"A machine or apparatus for registering and showing the total of operations, measurements, etc., spec. an apparatus for registering and indicating the number of tickets sold to bettors on each horse in a race."

There was in the present case no connection, manual, mechanical, or electrical between the receiving boxes in the Members' and Stewards' stand and what had been called the main totalisator. The bets made at those places were separately retained until five or six minutes before the closing time of the main totalisator; they were then totalled and subsequently recorded on the main totalisator before it closed. Up to the moment of collection they had no connection with the main totalisator. If any accident happened between the closing of those pay offices and the closing of the main totalisator, whereby the investments made at those pay offices did not reach the main totalisator in time to be publicly recorded, the investments at those pay offices could not be part of the investments on the race. Section 32 (2) of the Act made it an offence to register any moneys on the totalisator after the starting time of any race, or to take into account in the calculation of dividend any investment which had not been publicly registered on the totalisator before the starting time of the race. That subsection contemplated the complete public registration before the starting time of the race of all investments on such race. An investment to become entitled to participate in a dividend must be so publicly notified. It would be straining the sense of a penal statute to say that the act of acceptance of an investment, and the public exhibition of the amount of such investment must be absolutely simultaneous. It was well known that until the introduction of the electric totalisator an appreciable interval necessarily occurred between the moment of payment and the appearance of the record

of such payment on the face of the totalisator. That interval was more or less prolonged depending on the facilities and conveniences at the totalisator. At many totalisators the only connection between the pay-in windows and the publicly exhibited dial was purely manual, and to some extent at least intermittent. But the history of the use of the totalisator as given in evidence did not anywhere show the existence of a practice whereby a separate and distinct office not in any respect manually, mechanically, or electrically connected with, or operating simultaneously with, the main totalisator had been treated as part of the totalisator. Especially so was that the case where, as in the present case, no attempt had been made to synchronise the payments at the separate office with the payments at the main totalisator. It might be that distance from the main totalisator did not afford the test, so long as there was sufficient connection between the separate pay-in office and the main totalisator as reasonably to enable the investments as approximately made in the separate office to be recorded on the main dial of the totalisator. That question did not arise here, because the pay-in office on the facts as proved or admitted appeared to have no connection with the main totalisator. The question in each case must necessarily depend mainly upon the facts. All the Court had to decide was whether an investment received in an entirely separate building with no connection and no attempt at synchronising with the main totalisator was a payment made elsewhere than at the "totalisator" itself. The Magistrate on the facts found that such investment was not made at the totalisator itself, and the Court thought he was right in so finding.

Appeal dismissed.

Solicitor for appellant: **C. S. Thomas**, Christchurch.
Solicitor for respondent: **Crown Law Office**, Wellington.

Supreme Court.

Reed, J. August 27, 28; September 13, 1928.
Auckland.

BEYER v. HINGLEY AND GUEST.

Mortgage—Implied Covenant of Indemnity on Transfer of Land Subject to Mortgage—Not a Mere Covenant of Indemnity but Covenant to Pay Mortgage Debt—Benefit of Covenant Assignable Before Payment of Debt or Part—Land Subject to Three Mortgages—Mortgagor Transferring Land to Purchasers Subject to Mortgages—Third Mortgagee Acquiring Second Mortgage—Death of Mortgagor Appointing Widow Sole Executrix and Beneficiary—Death of Widow Appointing Daughter Sole Executrix and Beneficiary—Assets of Mortgagor's Estate Not Able to be Identified Among Assets of Widow's Estate—Whether Executrix Entitled to Plead "*Plene Administravit*" to Action for Mortgage Debt—Provision in Third Mortgage that Principal and Interest Shall Become Payable Upon Sale of Land—Consent of Third Mortgagee to Sale by Transferees of Land Subject to Mortgages—Original Mortgagor Not Released—Notice of Assignment of Second Mortgage—Property Law Act, 1908, Section 57.

One Hawkesby had given first, second, and third mortgages over his property. The third mortgagee was one Beyer, who subsequently acquired the second mortgage. Hawkesby sold the property to the defendants subject to the three mortgages. The defendants subsequently sold the property to Keyes, the third party, still subject to the mortgages. Hawkesby died leaving his widow executrix and sole beneficiary under his will. She died on 12th July, 1926, leaving her daughter, Mrs. Belworthy, executrix and sole beneficiary under her will, her sole assets consisting of some furniture accepted by the Commissioner of Stamp Duties without valuation as worth £200. On 11th March, 1918, Beyer died leaving his widow, the plaintiff, sole executrix of his will. Interest under the various mortgages was duly paid by the third party, Keyes, until the latter end of 1927, and he then ceased to pay interest. Upon this default the plaintiff made a formal demand upon Mrs. Belworthy, as ultimate executrix in the estate of her father, for payment of the principal and interest due under the second and third mortgages. Mrs. Belworthy thereupon executed a Deed of Assignment to the plaintiff of "all that right title interest claim and demand of her the Assignor to be indemnified by the (defendants) from and against payment of all the principal and interest under the mortgages or otherwise howsoever in relation to the premises . . ." The Deed also gave an irrevocable power of attorney to sue, and there was a provision that it should not operate to release the Assignor from any liability under the mortgages. The plaintiff claimed to recover from the defendants the amount of principal and interest due in respect of the second and third mortgages.

Richmond for plaintiff.
West for defendant Hingley.
Bennett for defendant Guest.
Leonard for Keyes.

REED, J., said that the defence was (1) That the assignor (Mrs. Belworthy) had no power to assign the right purported to be assigned, and further that the Deed of Assignment was ineffectual to carry out the purported assignment; (2) That if the defendants were bound to indemnify Mrs. Belworthy, then she had not been damnified or suffered any loss or become liable to suffer any loss entitling her to exercise the said right of indemnity; (3) A defence solely applicable to the third mortgage to which His Honour would refer later; (4) Laches. There being no privity of contract between the plaintiff and the defendants, in respect of the mortgages, the right to recover was dependent solely upon the rights the former had acquired under the assignment from Mrs. Belworthy. It was necessary therefore to first determine what right of action Mrs. Belworthy had against the defendants. She was the ultimate executrix of her father's estate, that was of the estate of the mortgagor, Hawkesby. Had he been alive his right, subject to certain questions to be later considered, would be to enforce against the defendants the covenant implied by Section 57 of the Property Law Act, 1908, viz., to pay the moneys secured by the incumbrance and to keep (him) harmless and indemnified in respect of such moneys. In **Official Assignee of Parsons v. Jarvis and Peach** (1923), G.L.R. 321, it was held in the words of Salmond, J., at page 324, that "the contract so entered into . . . is not merely a contract to indemnify the mortgagor in the sense of making reimbursement of all moneys which he may be thereafter required to pay, and which he does accordingly pay under the mortgage. It is a contract by the purchaser that he will himself pay the mortgage moneys to the mortgagee as and when they become due." It was clear therefore that had Hawkesby been alive he could have successfully brought an action against the defendants in damages for the full amount owing on the mortgages. And that would not be in any way dependent on his financial circumstances; even if he were bankrupt the right would enure to the Official Assignee in his estate. It was elementary law that the executor of an executor was the executor and representative of the first testator—the ultimate executor was the representative of every preceding testator. The chain in the present case was complete, there had been no intervening intestacy, and there had been in each case a single executrix. Mrs. Belworthy was therefore to all intents and purposes the executrix and representative of her deceased father, Hawkesby, and had vested in her all rights of action that would have been possessed by him contract of indemnity, there was vested in her a right of action against the present defendants for a breach of the implied covenant to pay the principal and interest moneys due under the mortgages; alternatively, under the implied contract of indemnity, there was vested in her a right of action for damages—the measure of which was the full amount owing in respect of such principal and interest—for failure by the defendants to relieve the estate from the liability under the mortgages. His Honour referred to the dicta of Salmond, J., in **Parsons v. Jarvis and Peach** (*cit. sup.*) at page 324. That part of the judgment was important in view of the point raised that the Deed of Assignment only purported to assign the right to be indemnified and not

the right to require payment of the principal and interest moneys due under the mortgages. It was contended that although Mrs. Belworthy might have had a right of action in respect of the latter covenant, she had no right of action in respect of the indemnity inasmuch as she would not be liable were an action brought against her by the mortgagees. To such an action it was said she would have a complete defence of *plene administravit* inasmuch as there were no ear-marked assets of her father's estate that came into her possession. It was contended that in those circumstances there was no estate to indemnify, and consequently the covenant to do so was not enforceable. His Honour thought that the answer to that contention was that the right to indemnify was in itself an asset in the estate inasmuch as its successful enforcement would produce assets divisible amongst creditors in the estate: **In re Perkins** (1892), 2 Ch. 182, 187, 189. In administering the estate it was the duty of the executrix in the interest of those creditors to realise all assets. The claim by Hawkesby's executrix against the defendants was a chose in action, and as such was an asset in the estate, although not chargeable against the executrix until she had received the money: **Williams on Executors** (11th Ed.) 1283. Neglect to get a debt in constitutes a devastavit, Ibid. 1424. His Honour referred also to **Lowson v. Copeland,** 2 Bro. C.C. 156; **Clack v. Holland** 19 Beav. 271, 272. It followed, therefore, that the executrix in the present case would be liable for devastavit if she neglected to take steps to collect the money due under the covenant. Under the covenant she had a right of action against the defendants *inter alia* to compel payment of the money secured by the mortgages. That money, if collected, enured for the benefit of certain creditors in the estate—the plaintiffs: **Parsons v. Jarvis** (*cit. sup.*). If she did not take all necessary steps to collect the money she was guilty of devastavit and was personally liable for her default. Although the estate might be otherwise insolvent or without any other assets, nevertheless as said by Pickford, L.J., in **British Union and National Insurance Company v. Rawson,** (1916) 2 Ch. 476, 484, in the case of an insolvent debtor a contract to indemnify him had the same result as a guarantee to the principal creditor of payment of the debt. See also **Parsons v. Jarvis** (*cit. sup.*) The position therefore was that a defence of *plene administravit* by Mrs. Belworthy would be no answer, and a judgment would go against her as executrix of the estate. It would not be enforceable against her personally unless she committed devastavit by not taking all necessary proceedings to collect the money due under the covenant, but the judgment would be against the estate, and she had the right to call upon the defendants to indemnify the estate, whether or not there were any other assets in the estate. That being His Honour's view on the matter it was unnecessary to consider whether the Deed of Assignment from Mrs. Belworthy to the plaintiff assigned not only a right of action for damages for breach of the covenant to indemnify, but a right of action for the money secured by the mortgages under the first part of the implied covenant, that was to say, "to pay the moneys secured by the incumbrance." It also became unnecessary to consider whether or not, in the circumstances, and to cure any technical defects, leave should be given to join Mrs. Belworthy as a plaintiff. The Deed of Assignment gave a full power of attorney to sue in her name, and that was pleaded in the Statement of Claim, so that joining her as a plaintiff would be purely a formal matter.

It was further contended that the contract of indemnity was not assignable. The defendants placed great reliance on **Rendall v. Morphew** (1915), L.J. Ch. 517. In that case Eve, J., arrived at the conclusion that a certain covenant of indemnity was not capable of being assigned. His Honour stated that in the only case to which his attention had been drawn in which that judgment was considered, namely the **British Union and National Insurance Company v. Rawson** (*cit. sup.*), Pickford, L.J., treated it as a decision that the executors of the indemnified, who had fully administered the estate, had a defence to any claim by the principal creditor and were under no liability. The learned Judge only indirectly referred to what would appear to be the real decision, that the right of indemnity was not capable of being assigned, and in that indirect reference he, His Honour thought, disagreed with Eve J. In the last case the ground upon which it was contended that the contract of indemnity was not assignable was that it was a personal contract which could not be assigned or enforced by anyone but the indemnified. That contention was held to be untenable. Upon the same ground the same contention was advanced in **Rendall v. Morphew** (*cit. sup.*) but Eve, J., did not deal with that contention but based his opinion of the non-assignability of the contract upon the ground of the negative results that, under the circumstances there detailed, would, as he found, follow from an assignment to an outsider. The learned Judge did not hold that the executors could not succeed in an action, but (in effect) that even if they could the right of action was not assignable. That view was in conflict with the decision in **British Union and National Insurance Company v. Rawson,** and, with great respect, was not, His Honour thought, the law. The right to assign a contract of indemnity was definitely held by our Court of Appeal in **Parsons v. Jarvis** (*cit. sup.*). It was of interest to note that in Canada the equitable right of a vendor of mortgaged lands to an indemnity from the purchaser had been held to be assignable: **Maloney v. Campbell,** 28 Canadian Supreme Court Reports, 228. The contract of indemnity, then, having been assignable by the original mortgagor during his lifetime, there was no principle in either law or equity to prevent it being assigned after his death by his executrix whatever the financial position of the estate might be.

His Honour then proceeded to consider whether, during the lifetime of Hawkesby, Beyer by his acts released him from liability under the mortgages. The first point made was in respect of the third mortgage. It contained the following covenant:—"In case the mortgagor shall sell the land or any part thereof . . . the principal and interest moneys hereby secured shall forthwith become due and payable by the mortgagor . . ." That mortgage was dated 6th October, 1915, and on 1st May, 1916, Hawkesby himself conveyed the property, subject to the mortgages, to the defendants. On 14th July 1916, the defendants having agreed to sell to the third party, Keys, wrote to Beyer's solicitors for his consent to the sale, and on 15th July conveyed to Keyes. Beyer consented, such consent being signified in a letter from his attorney dated 15th July, 1916. It was contended for the defendants that in so consenting Beyer varied the terms of the third mortgage and thereby released Hawkesby from his liability to pay such third mortgage, and that consequently the defendants were not liable in a suit for indemnity of Hawkesby's estate. If Hawkesby was a consenting party to the sale to Keyes that question could not arise. So far as the covenant was concerned it had already operated on 1st May, 1914, by Hawkesby selling the property. There was no saving clause in the mortgage suspending the operation of the covenant if the property was sold by consent of the mortgagee; consequently, even if that sale were by consent, as to which there was no information, the principal had automatically become due and payable. His Honour was unable to see that the consent to the subsequent sale to Keyes had any effect whatsoever. In terms it did not waive the breach of covenant by Hawkesby, and it was very doubtful if in effect it did so. In His Honour's opinion the correspondence could have no greater effect than if it explicitly stated that the mortgagee waived the effect of the breach by Hawkesby. It would be a curious result if that constituted such a variation of the contract as to release Hawkesby from his liability under the mortgage. His Honour did not think it did. Hawkesby's contract was to pay the principal money upon the due date prescribed in the mortgage. There was no arrangement made which had the effect of altering that date, and Hawkesby's liability was in no way affected. Moreover, Hawkesby by his conveyance of the property to the defendants and their assigns, impliedly authorised a sale of it and, if he considered the covenant still operative, impliedly gave authority to obtain the necessary sanction of the mortgagee to such sale. In such circumstances it would be unnecessary to obtain Hawkesby's definite consent to the sale, but if it were, His Honour thought, the natural and reasonable inference from the evidence of Mr. Holloway was that Hawkesby was fully conversant with the transaction and signified his aproval of it. Assuming therefore that it would have been any defence by the defendants to a suit by Hawkesby, brought in his lifetime, under the contract of indemnity, that his liability had been discharged by operation of law, there was not, in His Honour's opinion, any evidence to support such a defence. So far as the defendants themselves were concerned they were stopped from setting up that, in their capacity as guarantors of

Hawkesby's indebtness, they were released from liability through an alteration in the terms of the mortgage by the fact that they themselves were parties to the alleged alteration: **Barns v. Jacobson,** (1924) N.Z.L.R. 653, 658.

The next point taken by the defendants was that there was no evidence that any notice under Section 46 of the Property Law Act, 1908, was given to Hawkesby of the assignment to Beyer of the second mortgage. The submission, on the assumption that that was so, was that no action would lie, at the suit of Beyer against Hawkesby, until notice of the assignment had been given, and consequently that Hawkesby's estate was not liable to the plaintiff at the date of the assignment by Hawkesby's ultimate executrix to her, and therefore that no right of action existed at the present time against the defendants. The assignment of mortgage, which was in the form No. 5 of the Fifth Schedule to the Property Law Act, 1908, was dated 18th April, 1917, and was registered in the Deeds Registration Office on 1st May. Hawkesby was not joined as a party. Hawkesby died on 2nd April, 1920, some two years after Beyer's death. The answer to that submission was that the plaintiff was suing upon an assignment made by the legal representative of Hawkesby of his rights against the defendants, and that in the Deed of Assignment such representative specifically admitted the assignment to Beyer on 18th April, 1917, of the mortgage in question. No doubt there was no specific admission of a notice in writing having been given of that assignment, but a notice in writing could have been waived by Hawkesby—13 **Halsbury,** 165—for the statutory provision was for the protection of a debtor as was a similar rule at common law: **Stocks v. Dobson,** 4 De G., M. & G., 11. No particular form of written notice was necessary under the statute provided that it indicated with sufficient certainty to the mortgagor that the debt owing by him had been assigned to a named assignee: **Denney, Gasquet and Metcalfe v. Conklin,** (1913) 3 K.B. 177. Moreover, there was no limit of time within which notice must be given nor did the statute lay down that it must be given by any particular person. Notice by the personal representative of the plaintiff to the personal representative of Hawkesby was effectual to give a legal title to sue: **Bateman v. Hunt,** (1904) 2 K.B. 530, 538. When therefore in the present transaction between the same parties there was a distinct admission of the assignment of the mortgage, the onus was not upon the plaintiff to prove in this action against the defendants that she had a legal title to sue Hawkesby's representatives. It became unnecessary, therefore, to consider the contention by Mr. Richmond on behalf of the plaintiff that Section 67 of the Property Law Act, 1908, abrogated the necessity of notice under Section 46 of the same Act. That left a subsidiary question to be dealt with. It appeared that on failure of the third party, Keyes, to pay the interest on the mortgages, the plaintiff sued him in the Magistrate's Court and recovered judgment for the sum of £76 15s. for interest due. That judgment was unsatisfied. That did not work by way of estoppel of the present action, nor in any other respect was it a bar: **Chant v. Rhodes,** (1917) N.Z.L.R. 184, 187. It was, however, contended by the defendants that, having a right of recourse against Keyes, they might be met, as to the amount of that judgment, by a claim that he was liable in respect of it to the plaintiff and could not also be liable to the defendants. That was not disputed and therefore credit must be given for that amount against the present claim.

Judgment for plaintiff for principal and interest due under the mortgages, less the sum of £76 15s.

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

Ostler, J. August 28; October 8, 1928.
Invercargill.

OTAUTAU TOWN BOARD v. WALLACE COUNTY COUNCIL.

Contract—Discharge—Impossibility of Performance—Roads —Apportionment of Costs of Maintenance—Agreement by County Council to Contribute Towards Cost of Maintenance of Road in Control of Town Board—Road Declared Main Highway Under Control of Main Highways Board—Control Delegated by Main Highways Board to Town Board—Main Highways Board Contributing to Cost of Maintenance—Town Board Unable to Perform Consideration for Promise of Council—Loss of Control of Road as Principal—Contract Discharged—Implied Condition that State of Things Existing When Contract Made Should Continue—Contract Superseded by Statute—Main Highways Act, 1922, Ss. 3, 9, 18—Main Highways Amendment Act, 1925, Ss. 6, 7.

Claim by plaintiff Board against defendant Council for £89 11s. 6d. alleged to be due under a contract by the defendant Council to pay a proportion of the cost of maintenance of the main road in the town of Otautau. By written agreement dated 15th October, 1909, the parties agreed that, as the main road through the township of Otautau was largely used for traffic to and from different parts of the Wallace County, the cost of grading, gravelling, and of the upkeep of that road should be borne by the parties in certain proportions. The control of that road was, at the date of the agreement and until the 9th June, 1924, vested in the plaintiff Board, but by Order-in-Council made on that date under Section 3 of the Main Highways Act, 1922, the Riverton-Otautau Road, including such main road, was declared to be a main highway under the Act, and the control of the main road was delegated by the Main Highways Board to the plaintiff Board. Since that date the plaintiff Board had expended moneys on maintaining and repairing the main road, and had as from 12th June, 1924, received a proportion of the cost from the Main Highways Board. The defendant Council paid its proportion of the cost of maintenance under the agreement down to 12th June, 1924, but refused to pay any further contributions, contending that the agreement had become void.

Hogg for plaintiff.
Macalister for defendant.

OSTLER, J., said that in his opinion the contention of the defendant Council that the agreement had become void was well founded. By the Order-in-Council of 9th June, 1924, a new status was given to the Riverton-Otautau Road, which included in its length the main road through Otautau. The whole road was declared to be a main highway within the meaning and for the purposes of the Main Highways Act. The effect of the Order-in-Council was, by Section 9 of the Act, to take the control of the road from the plaintiff Board and to vest it in the Main Highways Board. By the first proviso to Section 9, as amended by Section 6 of the Amendment Act, 1925, the Main Highways Board had the power to delegate all or any of its powers in respect of the road to the plaintiff Board, and it had done so. But the plaintiff Board had no power of control over the main road except such as it exercised as agent for the Main Highways Board, and that Board had the power to revoke or vary the powers it had delegated to the plaintiff Board. His Honour said that Section 18 of the Act showed that the intention of the Legislature was to vest the power of apportioning the cost of maintenance and repair of all main highways in the Main Highways Board. Therefore the position was that the control of the main road had been taken from the plaintiff Board and vested in the Main Highways Board; and that Parliament had vested in the Main Highways Board the power of apportioning the cost of maintenance among the various local authorities served by the Riverton-Otautau Main Highway.

So far as the promise of the defendant Council was concerned, that had not been rendered impossible of performance by the Act of the Legislature. But the consideration given by the plaintiff Board for the defendant Council's promise had been rendered impossible of performance by the act of the Legislature. It had no powers except as the agent of the Main Highways Board, and that Board alone had the power of apportioning the cost of maintenance. The contract in the present case was of the class where the

performance of the consideration on the part of the plaintiff Board was a condition precedent to the performance of the promise on the part of the defendant Council. If the plaintiff Board could not perform the consideration it could not demand performance of the defendant Council's promise. One of the terms of the contract was that all works in connection with the main road should be under the control and supervision of the Wallace County Engineer. The plaintiff Board had no power to agree to any such stipulation. It was merely the agent of the Main Highways Board, and it could not delegate the control it had thus acquired to the servant of an outside local authority. There were other stipulations it had agreed to which it had no power to perform, and therefore it had no power to demand the fulfilment of the defendant Council's promise. His Honour thought moreover that the contract must be considered as one entered into upon an implied condition that the state of things existing when it was entered into would continue. The general principle upon which such a condition is imported by law into a contract was stated in **Tamplin Steamship Co. v. Anglo-American Products Co.**, (1916) 2 A.C. by Lord Loreburn at p. 403. It seemed clear that the contract was made on the assumption that the plaintiff Board would continue to have full control of the main road through their town, and that as sensible men the defendant Council, had they known that the control would be taken by a new statutory body which would defray a proportion of the cost of maintenance, would have at once stipulated that the agreement should cease to operate as soon as the new arrangement came into force. That being so the law would import into the contract an implied condition of *rebus sic stantibus*: see **Scottish Navigation Company's Case**, (1917) 1 K.B. 222, 249; **Bank Line, Ltd. v. Capel & Co.**, (1919) A.C. 435, 460. His Honour thought, moreover, that it could be gathered from the Main Highways Act and its Amendments that it was the intention of the Legislature to supersede all agreements of the present nature by the new scheme formulated in the Act. His Honour thought that was made clear by the provisions of Section 7 of the Main Highways Amendment Act, 1925. Under Section 109 of the Public Works Act, 1908, the Governor-General had power to apportion the cost of maintenance of a road in a district which was largely used for traffic to and from another district. Parliament evidently meant to abrogate all those apportionments because by Section 7 (3) of the Amendment Act of 1925 it expressly revived all such apportionments. The fact that it had revived apportionments by the Governor-General but had said nothing about apportionments by agreement between local authorities was strong evidence that it intended such agreements to be superseded by the new scheme of road control provided by the Main Highways Act. For the above reasons His Honour thought it clear that the contract, even if valid when made, had been rendered void, and the plaintiff Board's claim therefore failed.

Judgment for defendant.

Solicitors for plaintiff Board: **Hogg, Raines & Hodges**, Invercargill.

Solicitors for defendant Council: **Macalister Bros.** Invercargill.

Adams, J. September 13, 14, 1928. Greymouth.

SMITH v. CARLYLE.

Motor Vehicles—Regulations—Motor Lorry Not Equipped With Efficient Handbrake Used On Road—Exemption of "Machines Used Solely in Farm or Roading Operations and Not for the Carriage of Goods or Passengers"—Lorry Used for Purposes Connected With Roadmaking—Carrying Two Employees of Local Authority Engaged in Work Incidental to Roadmaking—Such Employees "Passengers" and Exemption Not Applicable—Motor Vehicle Regulations 1 (3) (d); 4 (4).

Appeal in law from a decision of Mr. W. Meldrum, S.M., at Greymouth holding that a certain lorry had been used solely in roading operations and therefore came within the exemption in regulation (1) subsection 3 (d) of the Motor Vehicle Regulations, 1928. An information had been laid against the respondent for operating on the Paroa Road a motor lorry which was not equipped with an efficient hand brake complying with clause 4 of regulation 4 of the regulations under the Motor Vehicles Act, 1924. The case showed that on 2nd April, 1928, the respondent, who was a motor driver employed by the Grey County Council, was driving a motor lorry belonging to the Council along Paroa Road. The lorry was equipped with two brakes, one of which, the hand brake, was out of action and useless. Two other employees were riding in the lorry with the respondent. The purpose of the journey was to pick up a pair of truck wheels and take them to a garage to be affixed to a truck which was to be used at the Council's stone quarry for conveying metal for spreading on the County roads. The respondent was forbidden to carry passengers other than the Council's roadmen on the lorry, which was generally employed in roading operations and not for any other purpose. The Magistrate accepted the contention of respondent's counsel that the lorry was a machine used solely in roadmaking operations and not for the carriage of goods or passengers, and that the two men riding on it were not passengers in that they were not carried for hire, but were engaged by the Council in work incidental to roadmaking, and held that the lorry came within the exemption above referred to.

Kitchingham for appellant.
Joyce for respondent.

ADAMS, J., said that he thought that the determination of the Magistrate was erroneous in law. Regulation 1 (3) provided that regulations 4 to 6 should not apply to, *inter alia*, (d) "Machines used solely in farm or roading operations, whether for traction or otherwise, and not for the carriage of goods or passengers." In His Honour's opinion the two men being carried on the lorry were passengers within the meaning of the regulation. It was true that in accordance with the well known rule of construction the meaning of the word "passenger" had in some cases been limited by its context to persons being carried for hire—see **The Lion**, L.R. 2 P.C. 525—but there was no context in the present case to require or justify a departure from its ordinary meaning, "one who travels or is carried in some vessel or vehicle,"—Oxford Dictionary.

His Honour agreed with counsel for the appellant that the object of regulation 1 sub-clause (3) (d) was to exempt only machines used in actual farming and roading operations, and to emphasise that by making the exemption inapplicable to any such machine if it was being used for the carriage of goods or of persons other than the person or persons employed in working it.

Appeal allowed.

Solicitors for appellant: **Guinness and Kitchingham**, Greymouth.

Solicitor for respondent: **W. J. Joyce**, Greymouth.

Women and the French Bar.

A Suffragette who had passed all her legal examinations recently applied to the French Court of Appeal for a permit to practise there. She did not expect to succeed, but thought this might prove useful for her beginning of a campaign. At any rate, a case would be stated affording opportunities for argument. To her surprise and disgust she received a courteous reply admitting her claim and promising to give effect to it as soon as she had produced the usual papers, which, as pointed out, included an attestation that she had duly performed her military service.

Supreme Court Bench.

The Temporary Appointment.

Last week saw the publication in the daily press of the views of the New Zealand Law Society with regard to appointments to the Bench generally and, in particular, with regard to the appointment temporarily of Mr. Justice Frazer of the Court of Arbitration. The first pronouncement followed a report in the "Evening Post" of some remarks of Mr. P. J. O'Regan, protesting against the postponement until after the New Year of the sittings of the Court of Arbitration at Wellington, previously fixed for 19th November. Mr. O'Regan was reported as saying that, however gratifying the promotion of His Honour Mr. Justice Frazer was to the legal profession and to the public, he felt bound to protest against the postponement. Mr. A. Gray, K.C., President of the New Zealand Law Society, in a statement to the press said that Mr. O'Regan's remarks conveyed an implication that the legal profession approved of the appointment; in point of fact, however, no society or body authorised to express the views of the legal profession—either the New Zealand Law Society or any district Law Society—had expressed approval of the appointment, temporary though it might be. As a matter of fact, the Council of the Wellington District Law Society had addressed a letter of protest to the Attorney-General on the subject.

The Council of the New Zealand Law Society, at its meeting held on the 20th November, passed two resolutions in the following terms—and these were also communicated to the press :—

(1.) "That this Council strongly approves and endorses the resolution passed by the Council of the Wellington District Law Society on the 2nd November, 1923, as follows: 'That in the emphatic opinion of the Council all appointments to the Supreme Court Bench should, in the public interest, be filled from the actively practising Bar.'"

(2.) "That this Council also endorses the letter of the President of the Wellington District Law Society addressed to the Attorney-General on 2nd November, 1928, on the same subject and protesting against the recent temporary appointment."

Court of Appeal.

Sittings for 1929.

The following dates have been fixed for the sittings of the Court of Appeal at Wellington for 1929 :—

Monday, 11th March ..	.. Second Division.
Tuesday, 25th June ..	.. First Division.
Tuesday, 24th September	.. Second Division.

Compulsory Registration of Titles.

Limited Certificates of Title and the Registrar's Minutes.

By C. Stanley Brown, LL.B.

The Land Transfer (Compulsory Registration of Titles) Act of 1924 was undoubtedly an excellent piece of legislation. Its purpose—namely, to bring all land titles in the Dominion under the Torrens System—was admirable, and the method adopted appears so far to be working smoothly and efficiently. It would, therefore, be all the greater pity to allow any remediable flaw or fault to impair the usefulness of the statute. Such a fault, it is submitted, does exist in Section 12 of the Act, which reads as follows :—

"The Registrar's minutes shall not form part of the Register for the purposes of Section 42 of the principal Act, nor shall any person other than the registered proprietor, or a person authorised in writing in that behalf by the registered proprietor, be entitled to be informed of the contents or of the nature of such minutes except pursuant to an order of the Supreme Court or of a Judge thereof."

To appreciate the actual operation of this Section it is necessary to bear in mind certain considerations which may not be apparent at first reading. By far the greater number of titles issued and to be issued under the Act are, and will be, "limited as to title," and there is no compulsion on anyone to remove the limitations. No doubt there will be a continual process of converting limited into ordinary certificates of title, either on the initiative of present owners or to meet the requirements of transferees or mortgagees; but this will be a slow and prolonged process and one may safely say that for many years at least the limited title will be continually with us. For conveyancing purposes it is useless to know that a man holds a certificate of title subject to limitations unless we also know what those limitations are.

Every title investigated by the Examiner of Titles for the purposes of the Act must fall into one or other of three classes, namely: (1) Perfect; (2) Good in substance, but subject to some defect of form; (3) Defective in substance, i.e., incurably bad. In each case indifferently he records the title as "limited," though Class 2 is the only one to which the word is really applicable. Many perfect titles must, no doubt, be described as "limited" because of failure to satisfy what may be called the "stock" requisitions for surrender of title deeds and evidence negativing unregistered leases. Owing to the manner in which Section 8 (2) is expressed, it is quite probable that this fact was not realised by the Legislature in passing the Act in its present form, but that it was anticipated that every perfect Deeds title would simply be converted into a perfect Land Transfer title. This point is important in connection with the argument which follows. The position in regard to the third class, titles defective in substance, is also different from what one might anticipate. At first sight it would appear that no certificate of title should be issued at all to a person whose claim is of this description. But the fact of the matter is that where a defect appears in the Deeds Register it is impossible to say from that Register alone whether it is curable or incurable. Suppose, for example, that a conveyance

to John Doe is followed by a conveyance from James Doe to the present holder, Richard Roe. Roe's title may in fact be faultless, as there may be an unregistered conveyance from John Doe to James Doe, or perhaps John and James may have been the same person. On the other hand, the sale to Roe may have been a fraud by James Doe, which Roe's conveyancer carelessly failed to detect. It is impossible to say from the Deeds Register what the true position is ; the Registrar must issue a title to someone, and therefore all he can do is to issue a " limited " title to one or other, and embody a note of the defect in his minutes. To say, therefore, that Richard Roe is now registered proprietor of the land, subject to a limitation of title, is to say nothing. Roe's claim to the land may be perfectly good ; but it may also be perfectly bad.

The endorsement " Limited as to title " is in fact a smoke-screen, which may or may not conceal a deadly enemy, and which, therefore, serves no purpose to the conveyancer except to put him on his guard and warn him that he must investigate further. His duty to do so is not lessened by the undoubted fact that on penetrating the screen he will, in probably ninety-nine cases out of a hundred, find no real enemy at all—that (to drop metaphor) the only fault of the title is some formal matter that can be quite readily disposed of. The Registrar's minutes, therefore, form as essential a part of the information necessary to anyone dealing with land subject to limitation of title as does the certificate of title itself. Why then should the one be open to search without restriction, while permission must be obtained to search the other ? As Dr. Kerr states in his work on the Australian Land Titles System, at p. 498 : " A principle of great importance in the working of the Torrens Statutes in Australia is the public right of search." Surely any invasion of this principle is contrary to the whole scheme and spirit of our Land Transfer System.

It must, of course, be conceded that in most cases where a search is required to carry out a bargain *inter praesentes* it is not likely that a registered proprietor will refuse to give the necessary authority ; but even in these cases the requirement of applying for, and obtaining such authority may well occasion troublesome and unnecessary delay to the conveyancer. But what will be the position when the title stands in the name of a person who has left New Zealand without leaving an attorney, or when the registered proprietor has died, and transmission has not yet been registered ? Presumably the provision for application to the Court is intended to cover such cases. If so, as there is no express provision for the order being made ex parte; some one should be brought before the Court to represent the registered proprietor, and this would necessitate a preliminary application to the Court for directions as to service of the notice of motion. It is unnecessary to point out the inconvenience and delay, not to mention the expense, that would be incurred in such twofold application. Moreover, searches are often required not for the benefit, but for the detriment, of the registered proprietor. A judgment creditor, for example, has obtained a charging order on the judgment debtor's land, and is proceeding to sell it ; he requires to know what title he can offer to a buyer. The same position may arise with a municipal corporation endeavouring to realise on a property for arrears of rates, or a workman enforcing his lien under the Wages Protection and Contractors' Liens Act. It may even arise where a mortgagee desires to exercise his power of sale, and has lost his Notice of the Registrar's Minutes (as mortgagees frequently do) ; for the Act imposes no duty on the Registrar to supply a copy in such a case. In many cases of this type, where the parties are hostile, it would be vain to ask the registered proprietor for permission to inspect the Minutes ; yet without such inspection nothing can be done. In these cases also, it is to be presumed, application could be made to the Court for an order—the Section itself gives no guidance on the point ; but here again one is confronted with this dilemma : If the Court in such a case must make an order, on proof of nothing further than that the applicant is genuine in his desire to search, what is the use of the Section ? Surely the fact that he is willing to pay the search fee should be sufficient evidence of the genuineness of his desire to search, without the ponderous formality of Supreme Court proceedings. If on the other hand, the Court must make the interest of the registered proprietor paramount, and refuse an order because the search is required for purposes hostile to him, the effect would be to nullify legitimate statutory charges.

It appears from the speech of Sir Francis Bell, in moving the third reading of the Bill in the Upper House, that this section was inserted by the Statutes Revision Committee in consequence of fears being expressed that the " open " system might lead to blackmailing by unscrupulous persons, who presumably would peruse the files of Minutes in order to find what titles appeared to be defective, and would then threaten to provoke hostile claims, and allow themselves to be bought off. This, however, seems a very slight and fanciful danger to set-off against the real inconvenience and wrong involved in the remedy applied. In the first place, the Statutes of Limitations (the phrase is convenient though not accurate) would go far towards minimising the possibility of these imaginary enterprising gentlemen making a lucrative " find." In the second place, for reasons mentioned above, it is impossible to tell from the Registrar's minutes alone whether a defect there suggested is one of form only or of substance. If, therefore, in a given case a landowner were threatened with disclosure of a alleged defect in his title, if such defect should be in fact a mere remediable technicality he could snap his fingers at the would-be blackmailer. If on the other hand there is a real gap in the title, as by a past fraud or wrongful dispossession, why should anyone be given statutory assistance to quiet him in possession of the fruits of fraud and wrong, merely because the instrument of disclosure may be disreputable ? If the blackmailing bogey is to be taken seriously, surely it would be a sufficient check to impose a separate search fee for inspection of the Minutes. As an alternative suggestion, it should be possible to have a means of distinguishing those cases where the limitation of title is due only to one or other of the " stock " requisitions from those where some further requisition of a conveyancing nature is made ; to make the first class open to search, and to screen off only the second.

But the true remedy for the present situation, it is submitted, is to make all the Registrar's Minutes fully open to inspection. Publicity of record must always carry with it the possibility of abuse in some degree ; but publicity of record is a vital part of the Torrens System, and if that system is to be applied to our former Deeds System lands it should be applied completely, and all land titles be made clear to the light of day.

New Zealand Law Society.

Proceedings of the Council.

A Meeting of the Council of the New Zealand Law Society was held in Wellington, on Tuesday, 20th November, 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) and Mr. R. Kennedy (Proxy)
Canterbury	,,	Mr. K. Neave and Mr. H. H. Cornish (Proxy)
Gisborne	,,	Mr. M. Myers, K.C.
Hamilton	,,	Mr. W. Tudhope
Hawke's Bay	,,	Mr. E. F. Hadfield (Proxy)
Marlborough	,,	Mr. R. Kennedy (Proxy)
Nelson	,,	Mr. W. Perry (Proxy)
Otago	,,	Mr. R. H. Webb
Southland	,,	Mr. P. Levi
Taranaki	,,	Mr. G. M. Spence
Wanganui	,,	Mr. W. A. Izard
Wellington	,,	Mr. A. Gray, K.C., Mr. C. H. Treadwell, and Mr. H. F. Johnston

A number of matters of interest to the Profession were considered, some being of a more or less confidential nature.

Custody of Wills of Mental Patients.

The Council considered the following Report of a committee which had been set up at a previous meeting to consider the requisitions which had been made by District Public Trustees upon Solicitors of clients who have become mental defectives, for delivery to the Public Trust Office of the wills of those clients:—

" The Council has been asked by a District Law Society for a ruling as to the practice to be adopted by Solicitors holding wills of clients who have become mental patients and whose estates are being administered by the Public Trustee as Committee. The Public Trustee apparently claims to be entitled to such wills under Section 100 of the Mental Defectives Act 1911. From the fact that on occasions, as we understand, he merely asks for (or is satisfied with) a certified copy of the will, it would appear that he claims the right not only to obtain the will from the solicitor by whom it is held but also to open and read it.

" This wide claim is apparently made upon the ground that the will is part of the ' property ' of the mental defective, and that the Public Trustee may under Section 100 of the Mental Defectives Act 1911 take possession of all that person's ' property.' Sections 99 and 100 of the Act have to be read together, and in our opinion the Public Trustee's claim is not well-founded. A careful perusal of these provisions satisfies us that a will was never intended, and cannot be deemed, to be included in the term ' property ' within the meaning of Section 100. It seems to us that the Official Assignee in Bankruptcy might just as well attempt to claim from the Solicitor of the bankrupt possession of a will made by the bankrupt.

" In any event we are clearly of opinion that even if the will were handed to the Public Trustee he has no right to open and read it. In England any person who has the custody and control of the will of a lunatic may upon oath deposit the same in the Office of the Master of Lunacy **for safe custody.** But when this course is adopted the will must be enclosed **in a sealed cover,** and it is not opened until the lunatic's death. Even so, the rule in regard to the deposit of the will in the Lunacy Office is merely permissive—not compulsory : see **19 Halsbury 434,** and the Rules in Lunacy 1892 in **Archibold's Lunacy, 5th Ed. 644.**

" It must be remembered that a will is a highly confidential document which, in our opinion, neither the solicitor holding it nor the Public Trustee nor anyone else has any right to open and read (or divulge its contents in any way whatsoever) during the life of the person who has made it, except with his consent. In our opinion it is the duty of a solicitor to refuse absolutely to deliver out of his custody, whether to the Public Trustee or to any other person, the will of a mental defective or any copy of such will, or in any way to divulge the contents of the will during the life of the mental defective, except of course on the instructions of the mental defective himself in the event of his recovery. If the Public Trustee disputes the correctness of this position, it should be left to him to take appropriate proceedings in the Supreme Court, which proceedings, if taken, we consider it the duty of the N.Z. Law Society, in the public interest, to oppose."

The Council adopted the Report and authorised the President of the Society, in the public interest, to retain counsel to oppose any proceedings which might be taken by the Public Trustee in the event of his disputing the correctness of the position.

" New Zealand Law Journal."

A letter was received from Messrs. Butterworth & Co. (Australia) Ltd., Wellington, offering to reserve up to four pages in each issue of the " New Zealand Law Journal " for publication of information to be supplied by the Law Societies, which would enable the various Societies to disseminate information of matters affecting their own districts to practitioners throughout the Dominion.

It was resolved to accept the offer, and to inform the District Law Societies accordingly, and invite them to supply the Journal whenever possible, with information considered to be of general interest to the Profession.

Service of Magistrate's Court Summonses by Post.

A protest was received from a District Law Society in connection with the delay and inconvenience frequently incurred in the matter of service of a summons or other process by registered letter, as provided by the Magistrates' Courts Act 1928, particularly when strict compliance with the instructions on the subject contained in a circular issued by the Department of Justice was insisted upon by Clerks of Court. The Council was urged to make a further effort to have the mandatory instructions to Clerks of Court withdrawn, so as to enable service to be effected either personally or by post at the option of the plaintiff.

The Council resolved to communicate again with the Attorney-General and forward to him a copy of the correspondence with a request that the complaint might be remedied.

Appointments to the Supreme Court Bench.

The matter of Judicial appointments was also considered, and the following resolutions were passed :—

" That this Council strongly approves and endorses the resolution passed by the Council of the Wellington District Law Society, on the 2nd November, 1923, as follows :—

' That in the emphatic opinion of the Council all appointments to the Supreme Court Bench should in the public interest be filled from the actively practising Bar.' "

" That this Council also endorses the letter of the President of the Wellington District Law Society addressed to the Attorney-General, on 2nd November, 1928, on the same subject, and protesting against the recent temporary appointment."

Nelson District Law Society.

Annual Meeting.

The Annual Meeting of the Nelson District Law Society was held on the 9th instant. The following officers were elected :—

President—Mr. E. B. Moore ; Vice-President—Mr. W. S. Milner ; Council—Messrs. J. Glasgow, C. R. Fell, W. C. Harley, G. Samuel, W. V. Rout, and W. Nicholson. Library Committee—Messrs. J. Glasgow, W. V. Rout, and G. Samuel. Secretary—Mr. E. J. Kemnitz. Auditor—Mr. C. M. Rout.

The question of legal holidays was considered, and it was unanimously resolved to adopt whatever holidays were fixed by the Wellington District Law Society.

Legal Advice in Newspapers.

English Bar Council's Warning.

A long-standing resolution of the General Council of the English Bar reads : " It is contrary to professional etiquette for a Barrister to answer legal questions in newspapers, or periodicals, whether for a salary or at an ordinary literary remuneration : (1) where his name is directly or indirectly disclosed, or (2) where the questions answered have reference to concrete cases which have actually arisen or are likely to arise for practical decision." Apparently this resolution has not, in practice, been strictly observed, for a warning has recently been issued to members of all Inns, the notice stating :—

" The attention of the General Council of the Bar has been called to the increasing practice of Legal Journals advising, or professing to advise, their subscribers on points of law arising in actual practice. Recently a firm of publishers offered gratuitous advice on conveyancing questions to all subscribers to one of its publications. It is believed that in some cases the advice is represented as being ' counsel's opinion.' "

London Letter.

England,
Wednesday, 26th September, 1928.

My dear N.Z.,

This, you will be glad to hear, is my last Vacation letter. My next letter, which when you read it you will be contemplating a vacation, if a short one, yourself, will be written under all the stress of accumulated arrears of work before me, and the bitterness of a spent quantity of holiday behind me ; although, to be exact, the term will still be two days off the starting at the date of writing. The fact is, however, that the last two weeks of the vacation are only holiday so far as court work is concerned.

I was up in London, making my second attempt at work yesterday. The hours were short and the attire jaunty ; I dare say that none-the-less I got on with my Opinion as well as ever, merely by reason of freshness. There is much to be said for the Long Vacation, really ; and of the earnest persons whom I saw in the Inner Temple Library, working away and denying themselves our leisure, I was impressed by none. There were outside some small signs of activity ; an occasional solicitor with urgent vacation papers, easily recognisable because they are, for some unknown reason, always untidy, the papers, or the solicitor, or both ; a yawning barrister's clerk, or two, standing idle at the chambers' door, sunning themselves and waiting for that (indecently early) hour at which, in vacations, chambers close down for the day ; a still more occasional barrister. I got an impression of little or nothing doing . . . . which only goes to show how misleading impressions can be, since, in the Temple Church itself and less than a hundred yards from my chambers and little more than that from the Inner Temple Library, a Judge of the High Court was being married !

It has never been my good fortune to come into contact with Wright, J., once a giant at the commercial Bar, and now a splendid specimen of the " puisne " on the Bench. The pictures you will find of him, in our papers of to-day's date (26th September), may be taken as perfectly accurate portraits, in detail as in the *ensemble* : a combination of strength with tolerance, character with humour, and some fairly high degree of legal acumen with some appreciable personality. That is the man ; slow to come by his fame, by his fortune, and by his promotions, but, when he did come by these things, coming (so to speak) with no mean bump. I have, I feel sure, told you of him before ; he was the first pupil of my master, Rowlatt, J., and the latter is never tired of quoting him as an example of the unexpectedness and unaccountability of career at the Bar, as the instance ever to be noted when young men discuss being called, or older men discuss giving in and getting out. He should (said Rowlatt) have been picked out at once by solicitor-clients with any discrimination ; but there was the fear (thought Rowlatt) that he was so long being postponed to lesser men as inevitably to be passed over for ever. Wright, J., was called to the Bar in 1900, I believe ; Rowlatt, J., was Rowlatt, J., when Wright received his first brief, for Rowlatt will tell you himself his melancholy pleasure, on seeing him come into his court, that at any rate one client had recognised the merit of him before he left the Bar ; and Rowlatt, J., was not on the Bench till 1912. With

Wright, then, there was thus a period of twelve barren and hopeless years ; yet at the end of the eighteenth year, at any rate, he was admitted to be at the top of his particular mountain.

In the photograph in the "Morning Post" you will also see a very useful, if faint, picture of the face of Finlay, J., who acted as best man. I tell you this, because it has always seemed to me that a photograph (and especially a press photograph) is just as likely utterly to mislead as correctly to inform.

This is all the news. My work involved a re-perusal of that sterling case of the end of the War (in which, had I only been in England, I should have had a brief and a good brief too !) **Wilson v. United Counties Bank Ltd.** (1920) A.C. 102. You may just possibly recall it : the suit in which one Major Wilson recovered no less damages than, in all, £52,682 5s. 8d., from the Bank, by reason of the carelessness of a branch manager in the management of the Major's affairs during his absence in France ! In the very lengthy judgments of Lords Finlay and Atkinson, in the House of Lords, the full story and discussion appear ; I do not know that there is a great deal of very effective law in the case, though I have more than once found it useful, as a guide in the matter of measuring damages (less guide, perhaps, than supplier of arguments for forlorn hopers) and as an encouragement for sporting litigants who are out for a gamble but are loth to embark on a necessarily expensive and inevitable loss. Such is my present case ; my client, whose interest in litigation is more than passing and whose fortune enables him to satisfy his interest to the full, spoils for a fight with a bank, whose official has (there are no two ways about it) shockingly treated him, or attempted shockingly to treat him. I have warned my client that his cause of action may be as good as his common sense and conscience inform him, but that his action is, and can only be, instituted at a risk ; he has taken another opinion, and the other opinion has told him the same ; he now comes back to me for my formal opinion, intimating his determination to proceed unless I positively inform him he must, and can only, lose. I rather think that the plaintiff's legal advisers, in the case of **Wilson v. The United Counties Bank** must, before the event, have informed him of doubts and of the existence of risks at the outset ; and their advice, if so given, seems to me none the less well given though the plaintiff's success was so prodigious. He was lucky with his jury ; he was still more lucky with the mismanagement of his opponents' case ; and so I have informed my lay client, who is interested enough to consult authorities for his own edification, pointing out to him that the task he is attempting is much on a par with that attempted by Major Wilson, that in some ways his case is stronger, but that he must not count upon what (with a narrow majority, if all the judgments be taken into account) a favourable trade wind and a singularly helpful defence brought about. You will see, from the observations of their Lordships (particularly of Lord Birkenhead who is notably and, it may be said, unnecessarily trenchant as usual) where, largely the defendant's weakness lay ; the advocate so criticised, was, I believe, seriously ill at the time, and, in any case it does not matter now since he is beyond the reach of effective criticism. Dead ? Dear me, no : a man is less safe, in the matter of criticism, in the grave than he is upon the Bench—especially the appellate Bench.

Yours ever,
INNER TEMPLAR.

Correspondence.

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

Sir,

Drainage of Surface Water.

"Baron's" contribution in your issue of 16th October, on the question of drainage of surface water is welcome.

The disposal of water in city areas occasions particular difficulty. Not only are legal pronouncements at variance but the law in regard to surface water has been developed almost entirely with reference to agricultural land.

Whatever the nature of the land it does not appear to me that either reasonable user or natural user affords a satisfactory basis for determining drainage rights. The former has not that element of certainty which is so desirable in a rule of law, nor does it seem consonant with the general principles of English law relating to interference with the soil of one property to the detriment of the soil of another property.

As to natural user, what constitutes this might have been expected to vary with developments in the use of land throughout the ages ; but one gains the impression that the definition was practically fixed by the state of affairs obtaining when Roman law was being evolved, or at any rate at so early a stage as to make it difficult of development in regard to non-agricultural land.

I suggest that a basis that would be logical, certain, and not unfair would be to cast upon the occupier who interferes with the natural conditions of land the onus of ensuring that he does not injure his neighbour's land in so doing. Nature's disposition of the earth's surface admittedly fixes the rights and obligations of higher and lower occupiers as to discharge and receipt of surface water before that surface is disturbed. He who disturbs it might fairly be made responsible for the consequences. This basis would not interfere with the decision in *Crisp v. Snowsill* (which seems to be supported by the greater volume of authority).

If Part IV of the Land Drainage Act, 1908, does not already give sufficient power to an occupier to dispose of any concentration of surface water resulting by reason of building or other operations on his land it could be extended.

Yours, etc.,

Auckland. N. A. CAMPBELL.

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

Dear Sir,

Service By Post.

I have noted with interest the various letters written against this method of service, and lastly a remark by Mr. A. W. Mowlem, S.M., that it "is seldom successful." In view of these protests I feel compelled to place the experience of my firm before your readers.

Prior to the advent of service by post, we paid to the local Constable £50 to £100 a year in mileages. In a large number of cases little or no mileage was actually incurred by him, service being effected at a

football match or stock sale, but mileage was charged to the place of residence. If there were several summonses against one defendant full mileage was charged on each. This practice though grossly unfair is—as other practitioners have doubtless found to their cost—most difficult to combat.

Since the amendment we have found that a large proportion of summonses have been served by post successfully and in a reasonable time. In some cases service has been more prompt than in the past when the Constable held the summonses until a number for the one locality had collected. Our mileage account has been reduced considerably, and tradesmen are now able to sue where previously they would not on account of the prohibitive cost of same. I certainly think that those in the country to whom the new method affords a considerable saving should take any necessary steps to prevent its repeal.

Yours etc.,
Country Practitioner.

The General Election.

Legal Candidates.

Members of the Profession formed no small percentage of the number of candidates at the recent General Election, and it is not without interest to notice their respective fates at the hands of the electors, or to be more precise, their fates as known at the time of writing.

To review first those sitting members who were defeated at the polls, the name of the Attorney-General the Hon. F. J. Rolleston, of the firm of Tripp & Rolleston, Timaru, perhaps first catches the eye. Also unsuccessful in retaining their seats were Mr. E. P. Lee (Lee, Grave & Grave, Oamaru) ; Mr. J. Mason (Mason, Dunn & Tattersall, Napier) ; and Mr. T. E. Y. Seddon (Hannan & Seddon, Greymouth). Of the non-sitting members who were also unsuccessful were Mr. J. A. Flesher (Christchurch) ; Mr. R. H. Greville (Greville & Bramwell, Auckland) ; Mr. W. C. Hewitt (Auckland) ; Mr. D. B. Kent (Waipukurau) ; Mr. N. J. Lewis (Wanganui) ; Mr. M. F. Luckie (Field & Luckie, Wellington) ; Mr. A. A. McLachlan (McLachlan, Atack & Hill, Christchurch) ; Mr. S. M. Macalister (Macalister Bros., Invercargill) ; Miss E. Melville (Auckland) ; Mr. A. B. Sievwright (Wellington) ; Mr. G. H. Smith (Smith & McSherry, Pahiatua) ; Mr. J. W. Yarnall (Auckland).

Among the successful candidates are : Mr. W. E. Barnard (Helensville) ; Mr. W. A. Bodkin (Alexandra) : Mr. W. J. Broadfoot (Broadfoot & Mackersey, Te Kuiti) ; Mr. W. H. Field (Field & Luckie, Wellington) ; Mr. W. D. Lysnar (Gisborne) ; Mr. H. G. R. Mason (Mason & Mason, Auckland) ; Sir Charles Statham (Statham, Brent & Anderson, Dunedin) ; Hon. W. D. Stewart (Downie Stewart & Payne, Dunedin) ; Mr. T. M. Wilford (Wilford, Levi & Jackson, Wellington).

The Profession loses four of its sitting members and gains three new members.

Forensic Fables.

MR. TITMOUSE, MRS. TITMOUSE AND THE CLAIM FOR GOODS SOLD AND DELIVERED.

Mr. Titmouse, of Pump-Handle Court, was a Barrister and a Happily Married Man. There was but One Fly in the Ointment. Mrs. Titmouse, Though Amiable and of Pleasing Appearance, was not a Capable Manager, and Mr. Titmouse Often had Occasion to Complain of her Reckless Expenditure. At last, Mr. Titmouse was Driven to Take the Extreme Course of Putting his Foot Down. Mrs. Titmouse Gathered that if she were County-Courted, she would Jolly Well have to Get the Money out of her Own People. Nor did the Tears of Mrs. Titmouse Cause him to Recede from this Position. A Few Days Later Mr. Titmouse, Armed with a Three and One, was in the Robing-Room of the County-Court which Enjoys Jurisdiction over

West Kensington and the Parts Adjacent Thereto. To his Delight a Solicitor's Clerk Pressed another Brief into his Hand, saying that the Case had been Called On and that his Counsel had been Held Up Elsewhere. The Claim, he Explained, was by Messrs. Lingerie, Ltd., for the Price of Goods Sold and Delivered and there was No Defence. Mr. Titmouse Rushed into Court to Find that the Defendant was Already in the Witness-Box. She was Conversing Very Sweetly with the Judge. It was Mrs. Titmouse. Before Mr. Titmouse could Open his Mouth the Judge said he had Ascertained from the Defendant that the Goods in question had been Ordered on behalf of her Husband, and he Supposed there was no Objection to Substituting him as the Defendant. Mr. Titmouse was so Taken Aback that he Feebly Assented to this Proposal. Judgment was Accordingly Signed against Mr. Titmouse (whose Christian Names Mrs. Titmouse Obligingly Supplied) with Costs. When he Got Home that Evening Mr. Titmouse Took the Line that he had been Moved to this Act of Self-Sacrifice by Pity for Mrs. Titmouse, and Mrs. Titmouse was So Tactful that she Pretended to Believe him.

Moral: Be Firm.

Summary of Legislation.

Continued from p. 293.

4. LAND LAWS AND CONVEYANCING.

Hanmer Crown Leases. (1st January, 1929). Crown tenants within Hanmer Town area may surrender old leases for fresh ones, operating under the Public Bodies' Leases Act, 1908; apparently rent and terms may be varied. Mortgagees must consent, and the security re-attaches to the new lease on its registration. The Commissioner of Crown Lands for Canterbury, a Government valuer, and a lessee's representative, are to be a committee to advise the Minister of Lands, who nevertheless has a final discretion as to whether applications shall be granted. The Crown may resume land within the area whether held by old or new lease, on which is, or hereafter appears, a mineral spring, geyser, or natural gas, compensation being payable.

Land Laws Amendment. (9th October, 1928). Cheviot Estate tenants may acquire the freehold. Two or more persons (qualified to hold land-for-settlement lands) may apply to the Land Purchase Board to acquire any rural land. If the application and the applicants are approved, each applicant pays five per cent. of the estimated price of his section, and the land is acquired and sold to the applicants without competition for cash or as a deferred payment freehold. The interest of an occupier of Crown land may be sold under the Rating Act for non-payment of rates levied after 31st March, 1929; the purchaser must be qualified to acquire the holding and be approved by the Land Board.

Native Land Amendment and Native Land Claims Adjustment. (9th October, 1928). Nineteen sections dealing with general matters, followed by twenty-nine in the nature of private legislation. S. 3 contains full powers for a Maori Land Board to carry on farming business on any land (not, it seems, despite the marginal-note, necessarily Native land) owned by Natives, with the consent of a majority of the owners or the Committee of Management (if the owners are incorporated). There is power to borrow, and mortgage stock, crops, and the land itself. A Maori europeanised under the 1912 Act may by Order-in-Council be again de-europeanised. The Native Land Court is given power to declare land to be a public road, and impose compensation on a local body; also to close roads "over" Native land. Extended power to compromise Native rates (not only rates on Native land) is given. Boards of Management may be set up to administer moneys to be paid in satisfaction of grievances for confiscations during the wars. The Comittee of Management of the incorporated owners of a block may lease it to one of their members, directly reversing **Tataurangi Tairuakina v. Mua Carr**, (1927) N.Z.L.R. 240, 688.

Property Law Amendment. (19th September, 1928, with retrospective application to existing and expired leases). If a lessor is under covenant to grant a renewal, and refuses on the ground of breach by the lessee of conditions precedent to the right of renewal, the Court may grant relief, and direct renewal. **Parker v. Greville** (1910), A.C. 335, **Chrystall v. Ehrhorn** (1917), N.Z.L.R. 773, and **Birch v. Prouse** (1922), N.Z.L.R. 913, are, on this point, no longer law. Relief may be given so as to defeat a grant by the lessor to a third party, who may however be entitled to damages or compensation. It is not expressly stated whether a grant to a third party registered under the Land Transfer Act will be so defeated.

Religious, Charitable, and Educational Trusts Amendment. (9th October, 1928). Widens the powers of trust bodies. "Charitable purpose" now includes all charities within the meaning of the preamble to the Statute of Elizabeth. Schemes approved by a Judge or the Attorney-General may be further amended, and original purposes restored.

Statutory Land Charges Registration. (2nd October, 1928, but does not invalidate pre-existing charges if registered by 1st January, 1930, or charges arising between passing of Act and 1st January, 1929, if registered by latter date). Does not apply to workers' charges, charges under S. 228 of the Mining Act, or S. 2 of the Coal Mines Amendment Act, 1927, or charges on Native land for which no Land Transfer title or provisional register has been issued; or to rates. Those charges which it does affect are void against purchasers under instruments registered before the charge is registered. Lodging a caveat is equivalent to registration of an instrument. Machinery is provided for registration and discharge. Crown is bound by the Act.

5. LOCAL GOVERNMENT.

Electric-power Boards Amendment. (9th October, 1928). A Chairman's honorarium is limited to £300. The right of reduction of general rates where electricity is not available is restricted to prompt claimants. On the other hand, Boards may waive the "availability rate" where they think the supply, if taken, would not have been of reasonable benefit to the occupier or the property. The right to borrow without ratepayers' consent is extended by allowing a Board that acquires a local body's electrical undertaking to assume (with the Local Government Loans Board's approval) that local body's loan-indebtedness in relation to such undertaking. If the cost of installation or fittings done by a Board for the occupier of land does not exceed £30, such cost, or the rent of fittings, may be charged on the land without consent of owner or mortgagee. Over £30, such consent is required.

Hospital and Charitable Institutions Amendment. (9th October, 1928). Chairmen of Hospital Boards are to be elected biennially in June (instead of May, as at present), commencing with June, 1930. Borrowing powers of Boards are extended, and basis of subsidy is altered. A patient's unclaimed personal property may be sold after two years, and the proceeds form part of the funds of the Board until claimed by a person entitled.

Local Authorities Empowering (Relief of Unemployment) Amendment. (30th June, 1928). Extends for another year, i.e., to 30th June, 1929, the time during which moneys may be borrowed under the Act of 1926. Repeals the 1927 Amendment. Repeats from the Imprest Supply Act, 1927, (now spent), a power for the Government to subsidise expenditure of local bodies.

Municipal Corporations Amendment. (9th October, 1928). A fresh attempt is made at a clause disqualifying persons interested in contracts from membership of borough councils, replacing the 1921-22 provision. Biennial borough elections will in future be on the first Wednesday in May instead of the last Wednesday in April. A person can stand both as Mayor and Councillor, and if elected in both places the next candidate gets the councillorship. Council employees can be given tenure of office for three years certain (reversing **Mansfield v. Blenheim Borough Council** (1923) N.Z.L.R. 842). The valuation of farming land in boroughs may be reduced for rating purposes; this applies to town districts not forming part of a county. Sick-benefit societies of council employees may be subsidised. A fresh basis for water-rates is introduced. Petitions must be presented to the Government within twelve months of first signature; and no signature may be withdrawn (reversing, as to boroughs, **Ex parte Wright**, 7 G.L.R. 383). The power of commissions of inquiry under Ss. 131 and 132 of the principal Act (as to alteration of boundaries, etc.) to award costs is widened and made uniform. A Council's powers of selling land are enlarged. The procedure for closing streets is simplified, no public meeting being required unless objections are received. Streets may be required up to 100 feet in width. Councils may (*inter alia*) allow petroleum conduit-pipes to be laid under streets; may drain areas outside the borough; make loans for drainage fittings on private property; may (if the owner is liable) charge the cost on a property of drainage work done; may pay for musical entertainments on ferry steamers municipally-owned, and their terminal wharves; make grants to dental clinics, the Workers' Educational Association (up to £100 a year), and cemeteries not vested in the Council; erect shops and offices on borough land (reversing **Tauranga Borough v. Attorney-**

General, (1927) N.Z.L.R. 875); create dangerous-goods storage areas. Fresh provision, with right of appeal to a Magistrate, is made for licensing persons to conduct places of entertainment. Elaborate provision is made about accounts for trading undertakings; fire-insurance reserve funds and accident reserve funds are optional, and remain vested in the Council. Depreciation funds are compulsory, and are vested in Commissioners with powers and duties similar to Sinking Fund Commissioners. They take over the renewal funds under the principal Act, and the Council draws on them to replace worn-out or obsolete plant; if they decline to pay (they are not, however, bound to inquire into the propriety of the demand, though they may, if they like, get an independent report) the Supreme Court decides the matter. Trading accounts must be charged with their share of overhead expenditure, to the approval of the Audit Office.

6. REVENUE AND FINANCE.

Appropriation. (9th October, 1928). General appropriations, validation of payment to members of Parliament over the National Industrial Conference of last winter, and the Empire Parliamentary Association's recent Canadian meeting. Employees of the National Provident Fund Office may be paid by commission.

Finance. (9th October, 1928). New public loans are authorised, three millions for various public works, two millions for the Railways Improvement Authorisation Act, 1914. Samoan finances are assisted by a payment from the Reparation Estates Account, by charging the Consolidated Fund with the cost of the military police, and by extending the purposes of loans heretofore authorised. Detail provisions affect, besides the public accounts, the assessment for land tax of a mortgagee in possession; the travelling of members of Parliament; the payment of subsidies on local unemployment-relief works; and the purposes for which racing clubs may obtain a refund of totalisator duty. Temporary Civil Servants may join the superannuation fund, now or as from their first employment. Parts III. and IV. contain validating and enabling provisions for the benefit of local and public bodies and individuals.

Imprest Supply. (30th June, 1928).

Imprest Supply, No. 2. (1st August, 1928).

Imprest Supply, No. 3. (1st September, 1928).

Land and Income Tax (Annual). (2nd October, 1928). No change from last year.

Motor-spirits Taxation Amendment. (6th October, 1928, but retrospective in part). Refund of duty extended to spirits used as fuel for "agricultural tractors" (defined). This provision extends to spirits already consumed, but application must be made within 90 days of use, or by 31st October, 1928, whichever date is the later. Applications for refunds in general are in future to be made within one month of quarterly period in which the spirit was consumed; this section retrospective to 1st October, 1928.

To be concluded.

Rules and Regulations.

Judicature Act, 1908.—Dates fixed for sittings of the Supreme Court for 1929.—Gazette No. 85, 15th November, 1928.

Judicature Amendment Act, 1913.—Dates fixed for sittings of the Court of Appeal for 1929.—Gazette No. 85, 15th November, 1928.

Mining Act, 1926.—Certain provisions of the Mining Act, 1926, to apply to prospecting and mining for, and the storage of, petroleum and other mineral oils and of natural gas within the Survey District of Ohura, Taranaki Land District.—Gazette No. 85, 15th November, 1928.

Shipping and Seamen Act, 1908.—Rules for life-saving appliances.—Gazette No. 85, 15th November, 1928.

Bench and Bar.

Mr. Justice Frazer, of the Court of Arbitration, was sworn in as a Judge of the Supreme Court on the 16th instant, by His Honour Mr. Justice Reed.

Professor J. M. E. Garrow, B.A., LL.B., who has held the Chair of English and New Zealand Law at Victoria University College since 1911, has resigned. Professor Garrow has written works on the Law of Property and Trusts, and is also the author of an annotation of the Crimes Act. He was a member of the Victoria College Council 1916–1918, and Chairman of the Professorial Board 1917–1918.

Mr. E. T. E. Hogg, LL.B., of the firm of Hogg & Stewart, Wellington, has been admitted as a barrister.

Mr. H. J. Wily, of the firm of Fotheringham & Wily, Auckland, has been admitted to the Bar.

Mr. Glynne M. Lloyd, LL.B., of the staff of Messrs. Callan & Gallaway, Dunedin, has been admitted as a Barrister.

Mr. A. R. Hartley, Solicitor, MacKay, Queensland, has been appointed a Commissioner of Oaths for New Zealand.

The practice of Messrs. Fullerton-Smith & Co., at Taumarunui has been acquired by Mr. J. A. Gordon, and will be carried on under the style of Fullerton-Smith, Gordon & Co., by Messrs. J. A. Gordon and D. H. Nicholson.

Reports of Court Proceedings.

A Victorian Bill.

A private member's Bill has been introduced into the Victorian Parliament proposing to restrict the printing or publication of reports of judicial proceedings wherein any indecent matter or indecent medical or physiological details arise which are "calculated to injure public morals." In particular the Bill proposes to limit the publication of details of matrimonial causes to the names of the parties, a concise statement of the charges and defences, points of law, and the judgment and judicial comments. It will be remembered that at the recent Conference at Christchurch, a remit advocating the amendment of the law to restrict the publication of evidence in divorce cases to the names of the parties, the grounds of the petition and the result, was, on a show of hands, negatived. It is interesting to notice that the Council of the Law Institute of Victoria approves of the Victorian measure; it has, however, suggested an amendment so as to allow of the publication of the names of counsel and of the solicitors for the respective parties, and of the arguments of counsel. Such arguments, it is pointed out, might include important questions of law.

Legal Literature.

Roscoe's Criminal Evidence.

Fifteenth Edition. By Anthony Hawke.
(pp. 1159 : Stevens & Sons Ltd. & Sweet & Maxwell Ltd.)

It is a great tribute to the late Mr. Henry Roscoe who was responsible for only the first edition of this work, that in its fifteenth edition it should still, without any qualification, bear his name, especially when the first edition appeared as long ago as 1835. Since the publication of the last edition seven years ago, some important changes have been made by Statute in the Criminal Law of England. Amongst them might be mentioned the removal by the Criminal Law Amendment Act of 1922 of the defence of consent in cases connected with offences against girls under sixteen years of age, and the Infanticide Act, 1922, which, to use the editor's words, "has relieved juries from the intolerable burden of finding a verdict of murder in those cases in which a mother, with a mind still unhinged by the labours of childbirth, causes the death of her child." The Criminal Justice Act of 1925 effected many changes the most interesting being, perhaps, the abolition by Section 47 of the presumption of coercion of a married woman by her husband. While there have been many decisions since the publication of the last edition of this treatise, this reviewer is not aware of any that have fundamentally altered the previous law. The air has, however, been cleared somewhat as regards corroboration and the lack of it, and the proper direction to the jury as to acting on the uncorroborated evidence of a prosecutrix or of an accomplice. The work includes all the cases decided up to Whitsun, 1928.

In the sphere of criminal law, practice and evidence our law bears a very close resemblance to that of England, and for this reason English text-books on those subjects are of considerable assistance to the Dominion practitioner. Roscoe is more than a mere work on evidence, it embraces the whole of criminal practice and this edition, which is thoroughly up-to-date and, despite its eleven hundred or so pages, commendably concise, should prove of no little service to those whose practices take them into the Criminal Courts. Any criticism which this reviewer would venture to offer concerns not the matter but the format of the volume. Throughout the work text-matter, statutes, rules and orders are printed without any distinction of type ; some degree of difference would without doubt have facilitated reference as would the substitution of heavy type for the italics used in the catchwords at the beginning of the paragraphs. The index is copious, extending as it does over a hundred pages, but in one respect at least—as to statements of accused persons—is hardly adequate.

In Victoria, where the last consolidation of the Statutes was effected as recently as 1915, a fresh consolidation is now nearly completed. It is proposed that all legislation passed up to the end of 1928 should be included, and it is probable that the consolidated enactments will come into force in June of next year. There is to be only one Property Act embodying the present Real Property, Conveyancing, Administration and Probate, and Trustee Acts.

Supreme Court.

Sittings for 1929.

The dates for the commencement of the sittings of the Supreme Court in the various centres have now been fixed and are as follows :—

NORTHERN JUDICIAL DISTRICT.

Auckland : 5th February ; 7th May ; 30th July ; 29th October.

Hamilton : 26th February ; 11th June ; 27th August ; 19th November.

TARANAKI JUDICIAL DISTRICT.

New Plymouth : 26th February ; 28th May ; 20th August ; 19th November.

GISBORNE JUDICIAL DISTRICT.

Gisborne : 5th March ; 18th June ; 27th August ; 19th November.

WANGANUI JUDICIAL DISTRICT.

Wanganui : 19th February ; 21st May : 13th August ; 12th November.

WELLINGTON JUDICIAL DISTRICT.

Wellington : 5th February ; 7th May ; 30th July ; 29th October.

Palmerston North : 5th February ; 7th May ; 30th July ; 29th October.

Napier : 19th February ; 4th June ; 13th August ; 5th November.

Masterton : 5th March ; 3rd September.

NELSON JUDICIAL DISTRICT.

Nelson : 19th March ; 16th July ; 10th December.

Blenheim : 12th March ; 9th July ; 3rd December.

CANTERBURY JUDICIAL DISTRICT.

Christchurch : 12th February ; 7th May ; 20th August ; 12th November.

Timaru : 5th February ; 30th April ; 30th July ; 22nd October.

WESTLAND JUDICIAL DISTRICT.

Hokitika : 27th February ; 12th June ; 11th September.

Greymouth : 27th February ; 12th June ; 11th September

Westport : 27th February ; 12th June ; 11th September

OTAGO AND SOUTHLAND JUDICIAL DISTRICT.

Dunedin : 5th February ; 30th April ; 30th July ; 29th October.

Invercargill : 19th February ; 14th May ; 20th August ; 12th November.

Oamaru : 6th March ; 4th September.

Corrigendum.

P. 268 : For "Stout and Lillicrap, Invercargill," read "M. O. Barnett, Wellington."