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"The smallest case that comes before a lawyer is worth his entire devotion."

Lord Atkin.

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Liability for Fire.

The New Zealand Court of Appeal has laid it down in *Kelly v. Heyes*, 22 N.Z.L.R. 429, that "the law in New Zealand has ever been that if a person lights a fire on his own land he must at his peril prevent it spreading to the land of his neighbours and there is nothing in the Land Act abrogating this law." Land owners who improve their property, even when the improvement is one specified as an improvement under the Land Act, by felling bush and then burning it are always liable for damage done to neighbouring lands if the fire spreads to them, however careful they may have been, and whatever warning they may have given their neighbours.

Such an unmodified liability upon those who take up bush land does not appear to be in the best interests of settlement, and in laying down this rule the Court of Appeal did not pretend that it was founded on any such interests. The learned Judges laid down the rule upon the ground that they had in this respect to follow the principles of the Common Law. The opinion expressed by the late Sir John Salmond in his work on *Torts* does not accord with the Court of Appeal's finding as to what the rule of the Common Law is. Sir John Salmond came to the conclusion that there must be negligence before liability attaches for the result of fire spreading, and that liability for fire is not absolute and independent of negligence. It seems that the view expressed by Sir John Salmond is in agreement with decisions in Canada to the effect that if a man, in order to clear his land, burns his felled timber he is not liable if it spreads to adjoining lands and does damage provided that he has made his burn at a proper time and in a proper season, having reference to wind and weather, and after having given due warning to adjoining owners. The Canadian rule seems set out in the headnote to *Buchanan v. Young*, (1873) 23 C.P. 101, 33 E. & E. Dig. 55: "Persons have a right to set out fire on their land for the purpose of clearing it, and if the flames spread under the influence of a wind suddenly arising, and cause damage to a neighbour, no action will lie without proof of negligence." When the normal course of agricultural improvement and husbandry demands burning, as it does in New Zealand, the Canadian view seems in the general interest preferable to the rule which the Court of Appeal has declared prevails in New Zealand. In South Africa it appears that where a fire starts on a person's open veldt and spreads to his neighbour's property and does damage, direct proof of negligence is required before the neighbour can recover damages.

The Common Law of England is set out by Thirning, as follows: "Every man shall answer for his fire which by misfortune burns the goods of another," and this statement is adopted, in effect, in Rolles' Abridgement. In the Supreme Court of Victoria, Chief Justice Stawell came to the conclusion that the English Common Law on the subject of fires was local and did not apply to that Colony. Mr. Justice Richmond, however, in *Hunter v. Walker*, 6 N.Z.L.R. 690, came to the conclusion that the English Common Law on the subject of fires did apply to New Zealand and that the provisions of The Metropolitan Building Act of George the Third's reign relating to fires were applicable to bush fires in the Colony. The decision of Mr. Justice Richmond is the ground of the later decision of the Court of Appeal in *Kelly v. Heyes*. South Africa, Canada and Victoria, according to Chief Justice Stawell, seem to have escaped from the English rule on the ground that it related to local conditions and not to the conditions of those respective Colonies. The circumstances which dictated the declaration of the English Common Law by English Judges were so different from the circumstances to which it has been applied in New Zealand that one cannot help wondering whether the language in which the rule has been stated would have been so inflexible had it been conceived that it would be applied to such different circumstances of husbandry as obtain in the various Dominions. For New South Wales, as long ago as 1866, an Imperial Statute was passed dealing with bush fires. In New Zealand no effort has been made to escape the consequences of an ancient and rigid rule of Common Law so inapplicable to our circumstances that grave injustice can be done by its application. Settlers in New Zealand who fell and burn, whatever precautions they may take, are liable for damage done to adjoining owners if the fire spreads. Claims are constantly made by owners for damage resulting from a neighbour's fire to their fences and pasture, damages usually being detailed as cost of posts, wire, labour required to repair, cost of grass seed and expenses of sowing, although when all is said and done the property of the person claiming may have been cleaned up and considerably improved by the fire. Unless some farmer is prepared to contest the decision of the New Zealand Court of Appeal by taking his case to the Privy Council and there obtains a decision overruling the Court of Appeal, no precautions taken by him to prevent his fire from spreading will save him from liability for damages.

There is an enormous area of bush country in New Zealand still to be felled, cleared and burnt. If farmers wish to be relieved from liability for burning, which is essential if their lands are to be profitably occupied, they must look to the Legislature to remedy the present state of the law in New Zealand as to liability for fire. For negligence the settler should always remain liable, but it is quite feasible for the Legislature to sanction the framing of regulations under which, if complied with, a settler entitled to a burn should be liable for damage to neighbours resulting from his negligence. Such regulations would vary according to local conditions. At the present time a great number of farmers are under the impression that if they give notice to adjoining owners of an intended burn, and the burn is planned for the proper time of year, they are under no liability. Their confidence, however, in this respect is due to a misconception of the law relating to fires that prevails in New Zealand.

Supreme Court

Herdman, J. February 18, July 10, 11; August 13, 1929. Wellington.

HARRIS v. RICHARDSON.

Undue Influence—Sale by Bankrupt with Consent of Official Assignee of Life Interest in Capital Sum—Official Assignee Not Party to Assignment—Ignorance of Vendor—Pressure by Creditors—Sale at Undervalue—No Independent Advice—Act of Vendor After Knowledge That Transaction of Doubtful Validity in Effecting Insurance on Life in Name of Purchaser Held Not in Circumstances to Amount to Affirmation—No Acquiescence or Laches Owing to Ignorance of Facts Until Shortly Before Action Brought—Title of Plaintiff to Sue—Transaction Set Aside.

Action by plaintiff to set aside on the ground of undue influence an assignment to the defendant of a life interest in a capital sum of £7,250 to which the plaintiff was entitled under his father's will. The plaintiff was a farm labourer, described by His Honour as of weak character and possessing an intelligence which was not of a high order. From his father's estate he received in addition to the life interest above mentioned, the sum of £4,000 in cash, which he invested in a farming property. This venture was disastrous, and on 15th May, 1916, he became bankrupt. At the instigation of the Official Assignee the plaintiff took out a policy of insurance on his life for £1,000 in the National Mutual Life Association and assigned the policy to the Official Assignee on 10th August, 1916. Between the date of the bankruptcy and January, 1918, pressure was brought to bear upon the plaintiff to raise funds upon the security of his life interest for the purpose of satisfying the claims of his creditors. About July, 1928, further pressure was brought to bear upon him by creditors to settle up his affairs, with the result that he decided to seek the help of the defendant Richardson, a moneylender in Wellington, with whom he had had previous dealing. Harris and his wife stated that Richardson was informed by Harris that he wanted to borrow £1,000 upon the security of his life interest, but Richardson's evidence was that Harris wanted to sell it. Harris stated that Richardson, after looking at the relevant papers, said that he could not lend on the life interest but offered to purchase it for £1,500; Harris maintained that it was worth £2,000 anyhow and eventually Richardson, after making some calculations, offered £1,750, to which Harris agreed as he was afraid he might not get a better offer. Richardson made the offer on condition that Harris took out a second policy of £1,000 in the National Mutual Life Association. The insurance was effected on or about 10th July, 1916, the policy maturing on 10th July, 1930, or on the prior death of the life assured. The policy was transferred to the defendant on 10th July, 1918, and on that date plaintiff and defendant attended at the office of the defendant's solicitor, where a deed assigning his life interest in the trust fund of £1,750 which had been prepared by the solicitor under instructions from the defendant was executed by the plaintiff. The document was read over and explained to the plaintiff by the solicitor, but it was never suggested that the latter should have independent advice. Evidence was given of two transactions prior to 10th July, 1928, between the plaintiff and the defendant which resulted in profit to the latter. In 1917 he purchased a life policy for £500 from the plaintiff subsequently making a profit of £100 with interest at 10 per cent., and later in 1917 he lent £50 on the security of a motor car. On 4th August, 1928, the defendant effected further insurance on the plaintiff's life, in the Temperance and General Insurance Office; the plaintiff's conduct in relation to this further insurance was relied upon as an affirmation of the transaction, and is stated in detail in the report of the judgment.

February 2, 1929.

Macassey and Lawson for plaintiff.

Myers, K.C. and D. Perry for defendant.

July 10, 11, 1929.

Macassey and Lawson for plaintiff.

D. Perry and James for defendant.

HERDMAN, J., said that without the support of the insurance policies the plaintiff had little of value to offer the defendant. He might have died at any moment. If the defendant had purchased the bare interest of the plaintiff in the income arising from the trust fund for £1,750 alone, it was of course obvious that he ran the risk of losing perhaps the whole of his money immediately; but what was a security of little value when it stood alone was converted into a security of considerable worth when coupled with insurance policies. The element of mortality was eliminated as soon as the life policies became the property of the defendant. If plaintiff had died immediately after the execution of the assignment the defendant would have become entitled immediately to the proceeds of two policies which would have amounted to £2,000 at least, and to any interest on the £7,250 which might have become payable to the plaintiff before he died. If the plaintiff had died in July, 1918, the defendant would have become entitled to a profit of not less than £250. But the plaintiff had survived, and since 1928 about £400 per annum, some £4,000, had been received by the defendant from the trustees against a certain outlay for insurance premiums. During next year, 1930, he would be entitled to the proceeds of one policy for £1,000 plus accrued bonuses. Mr. Talbot gave evidence that by 17th August, 1930, Richardson would have received back his £1,750 with interest at 10 per cent. and in addition would have made a profit of £2,275 8s. 3d. Mr. Gostellow, the Government Actuary, gave evidence that the fair market price of the annuity which Richardson purchased was £3,992 and that to ensure the repayment of the capital invested with a reasonable rate of interest it would be necessary to take out a policy covering the life of the annuitant for £4,342. In an endeavour to ascertain with some degree of certainty whether the plaintiff's annuity was sold at an undervalue His Honour had considered **Vaughan v. Thomas,** 1 Bro. C.C. 556, where it was held that to take an annuity worth nine years purchase at five years purchase was an unconscientious bargain, and **Heathcote v. Paignon,** 2 Bro. C.C. 179, where an annuity worth £500 was sold for £200. From the evidence given at the trial His Honour stated that certain facts definitely emerged. First it had been proved with certainty that in July, 1928, when the sale of the annuity was effected, the plaintiff was in financial straits and was being pressed to raise funds upon the strength of his life interest. Secondly it had been proved that when he effected the sale he was not independently advised. Thirdly the history of the man's career showed that he was an incompetent bucolic who possessed no business ability. Fourthly from the defendant's previous experience of the plaintiff and his family he must have been well aware that the family had been struggling against adversity. Fifthly the annuity was bought at an undervalue. The defendant knew that the plaintiff was financially embarrassed and that he could make himself secure by arranging to have the life interest supported by life insurance, and on the whole His Honour thought that—to use the words of the Master of the Rolls in **Evans v. Llewellin,** 1 Cox, 340—Harris was in a situation "in which he was not a free agent and was not equal to protecting himself." His Honour could not believe that the shrewd, experienced moneylender when he agreed to purchase the plaintiff's annuity for £1,750 was not perfectly well aware that he was handling an interest in property the true value of which was much in excess of the sum that he proposed to give for it.

The plaintiff to succeed had to bring himself within the principle stated in **20 Halsbury's Laws of England, 760.** The plaintiff must show, to begin with, that the defendant stood in such a relation of superiority towards him and was in a position to exercise such domination and influence over his will and judgment that the law imposed upon the defendant an obligation to establish that he had not abused that influence or taken undue or improper advantage of the plaintiff's subjection, distress or necessities. That obligation could only be discharged by establishing not only that the defendant made full disclosure of all relevant facts and of the rights to which they gave rise, but also that the plaintiff had independent and competent advice from a person having full knowledge of those facts and rights, and, in the present case, it being a case of purchase, that he received adequate value. The conduct of the parties and the circumstances of the particular case might give rise to the relation from which arose the presumption of undue influence. His Honour referred at length to **Chesterfield v. Jannsen,** 2 Ves. Senr. 124, 155; **Evans v. Llewellin** (*cit. sup.*) **Wood v. Abrey,** 3 Madd. 417, **Baker v. Monk,** 4 De G.J. & S. 388, **Sinclair v. Elderton,** 21 N.S.W.L.R. (Eq.) 21, **Brusewitz v. Brown,** (1923) N.Z.L.R. 1106, **Aylesford v. Morris,** L.R. 8 Ch. 490, and **Harrison v. Guest,** 8 H.L.C. 482, and, after reviewing the evidence, said that it had been satisfactorily proved that a relation existed between the parties to the present action when the contract for the sale of the plaintiff's life interest was made which gave rise to a presumption of what the law called "influence." It was, therefore, for the defendant to rebut that presumption. He could do that by proving that defendant had independent

advice. In the present case he could not do that. He might be able to discharge the onus by proving that the plaintiff was a capable and experienced business man, but in the present case he was unable to do that; nor could he prove that the consideration was fair and reasonable. Indeed, neither the evidence as to value given by Mr. Gostellow nor the figures of Mr. Talbot were challenged. It was no doubt true that inadequate consideration alone was not sufficient to give rise to a presumption of influence: **Moth v. Attwood,** 5 Ves. 845; **Griffith v. Spratley,** 1 Cox 383. But considering the whole of the evidence carefully His Honour had come to the conclusion that the plaintiff was very much in the hands of the defendant. The case, in His Honour's opinion, came within the principle stated in **Fry v. Lane,** L.R. 40 Ch. D. 312, 322, that: "Where a purchase is made from a poor ignorant man at a considerable undervalue, the vendor having no independent advice, a Court of Equity will set aside the transaction."

It had, however, been argued on the defendant's behalf that the plaintiff confirmed the transaction by agreeing in August, 1928, to effect a further insurance upon his life. Under the direction of the defendant, Mr. Marquis, manager of the T. & G. Insurance Co., saw the plaintiff and got him to sign the necessary proposal and submit to the customary medical examination. Mr. Marquis said that the plaintiff remarked to him speaking about the proposed insurance: "I suppose it is all right. Richardson has been very decent to me." Mr. Marquis gave the date of the interview as 4th August, 1928. On the 28th August, 1928, the solicitors of Harris, Messrs. Card and Lawson, wrote to Richardson threatening to issue a writ in an action to have the deed of assignment set aside. In **Welles v. Middleton,** 1 Cox 112, Lord Thurlow said that mere general expressions of satisfaction were no proof of an intention to confirm, and in **Murray v. Palmer,** 2 Sch. & Le Fr. 474, Lord Redesdale, L.C., (at pp 485 & 486) said that to establish an intention to confirm, it must be shown that the servient party was aware that the act he was doing was to have the effect of confirming an impeachable transaction. Assuming that the plaintiff made the statements to which Mr. Marquis testified, could that be said in the present case? No doubt the lapse of a long period of time during which the servient party remained inactive was an element of importance in such a case as the present one. In May, 1928, the plaintiff might have suspected that he had been wronged. When he saw Mr. Marquis he might have had doubts about the validity of the assignment. But there was nothing to show that he did any act knowing that it was to have the effect of confirming the assignment. There was nothing to show that he acted with his eyes open. His Honour doubted very much whether he had any sound ground for believing that the transaction was assailable until just before 28th August when his solicitors wrote their letter. His Honour distinguished **Allcard v. Skinner,** 36 Ch.D. 145. It was not necessary for the defendant to prove a positive act of confirmation. Acquiescence might be proved by acts which established it or by proof of a long period of time during which a transaction had survived impeachment, but, as was pointed out in **La Banque Jacques-Cartier v. La Banque D'Epargne de la Cite et du District de Montreal,** 13 App. Cas. 118: "Acquiescence and ratification must be founded on a full knowledge of the facts." In the present case the ignorance of the plaintiff prevailed until he went to his solicitors. His Honour distinguished **Wright v. Vanderplank,** 8 De G. M. & G. 147, and **Knight v. Marjoribanks,** 11 Beav. 349.

Complaint had been made about laches and delay and the defendant had relied upon the Statute of Limitations. The evidence was, however, that the plaintiff did not know that he had been wronged until 1928 and as he was seeking equitable relief His Honour did not think that in the circumstances his suit was barred. His Honour referred to **Maloney v. Trustees Coy.,** 24 V.L.R. 297, **Beynon v. Cook,** L.R. 10 Ch. 389, and **Fry v. Lane,** 40 Ch. D. 312.

It was contended that as the plaintiff was an undischarged bankrupt he was not entitled to assign his life interest to the defendant. It was plain that when a person was adjudicated a bankrupt the Official Assignee acquired the bankrupt's property absolutely but, subject to Section 120 of the Bankruptcy Act, 1908, paragraph (f) of which provided that the surplus moneys remaining in the hands of the Assignee after making all the payments prescribed in paragraphs (a) to (e) should be paid to the bankrupt. In the present case the Assignee although not a party to the deed of assignment was cognisant of the transaction and acquiesced in it. He, with Harris, executed the transfer of the life insurance policy on 11th July, 1918. He no doubt handed over the policy in exchange for the moneys which satisfied the claims of all the creditors but he took no part in the negotiations leading up to the sale of the annuity and he was not a party to the deed of assignment. The Assignee had been released from the administration of the estate. He was *functus officio* and all creditors had been paid in full. It seemed to His Honour that what in effect Harris did when he signed away his annuity was to dispose of his right to what he believed to be the surplus coming to him, a disposition which, according to **Bird v. Philpott,** (1900) 1 Ch. 822, he had a right to make notwithstanding that it was made during the pendency of the bankruptcy. But whether the disposition of property which the plaintiff made was or was not in effect a disposition of the surplus of his estate the defendant could hardly be allowed to say that the assignment under which he had enjoyed such handsome benefits for eleven years was invalid. His Honour understood the argument to be that the plaintiff could not give title and therefore could not now sue. The defendant was well content with the title which he had been given, so apparently was his solicitor. But now when the transaction was attacked because the part he played in it was said to be unconscientious he submitted in defence the invalidity of the assignment. His Honour accordingly declared that the transaction which was the subjectmatter of the present suit and the assignments effecting the same were void as they had been obtained by undue influence and ordered the assignment to be cancelled and the policies to be delivered to the plaintiff, an account to be taken by the Registrar of all moneys received and paid by the defendant in connection with the transaction, the action to stand adjourned until the account be taken.

Solicitors for plaintiff: **Card and Lawson,** Featherston.
Solicitors for defendant: **Perry and Perry,** Wellington.

Adams, J. June 4, 5; August 19, 1929. Christchurch.

MERCANTILE FINANCE CORPORATION LTD. v. FRANCIS & TAYLOR LTD.

Company—Agency—Borrowing Powers—Authority of Director—Company Composed of Two Members Acquiring Business of Motor Agent—Both Members Directors—Conduct of Business Left to One Director—Agreement of Directors *inter se* to borrow from Named Company Only—Managing Director Forging Documents and Obtaining Without Authority Advances From Company Other Than That Authorised—Directors Empowered Under Articles to Delegate Borrowing Powers to One Director—No Such Delegation in Fact—Lender Advancing Money Without Knowledge of Contents of Memorandum or Articles or Making Enquiries as to Authority of Director—Lender Not Entitled to Assume That Transaction Within Director's Authority—Company Not Liable to Repay Moneys Lent.

Action to recover £1,996 17s. 6d. alleged to be owing in respect of two transactions made between the plaintiff company and one Francis purporting to act on behalf of the defendant company. The defendant company was a private company consisting of two members, Francis and Taylor; it was formed in August, 1926, to take over the business of Francis, a motor agent, part of whose business was to dispose of motor vehicles on hire-purchase terms. Francis and Taylor each signed the memorandum of association for 5,000 £1 shares. Francis and Taylor were the directors of the company. Francis was the manager of the business and Taylor, who resided in Invercargill, paid monthly visits to Dunedin to supervise the books and accounts. On the registration of the company it was agreed between the directors that all the financing business of the defendant company should be transacted through the Southland Guarantee Co. at Invercargill, Taylor being a director of that company. On 11th June, 1926, Francis had disposed of two motor-omnibuses to one Emms under hire-purchase agreements. On the security of these documents and certain collateral promissory notes Francis obtained an advance from the Otago and Southland Finance Co. On 10th July, 1926, Francis disposed of a motor-car to Emms, on hire-purchase terms, taking a motor-car in satisfaction of the deposit and inducing Emms to sign a printed form of hire-purchase agreement and a number of promissory notes in blank, which Francis was to complete by filling in the correct particulars and amounts. The price payable under the hire-purchase agreement was to be £365, but Francis fraudulently inscribed as the total liability the sum of £1,914 0s. 6d., and altered the promissory notes accordingly. He obtained an advance on the instrument and promissory notes from the Otago and Southland Finance Co. When the fraud was dis-

covered Emms refused to meet the promissory notes, but Francis ultimately induced Emms, on 6th June, 1927, to assist him by signing a new hire-purchase agreement and new promissory notes for the two omnibuses and the car. Francis promised to "square off" the fraudulent transaction with the Otago and Southland Finance Co. and to replace the fraudulent documents with the new agreement and promissory notes. The new hire-purchase agreement purported to be made between Francis and Taylor Ltd., and was signed "Francis & Taylor Ltd., F. B. Francis, Director." Francis & Taylor Ltd. had, however, no interest in either the vehicles affected or the hire-purchase agreement, for Francis & Taylor Ltd. had not agreed to take over from Francis his interest in motor-vehicles disposed of by him under hire-purchase agreements or his liabilities in respect of moneys borrowed thereon. The vehicles belonged to Francis subject to the rights of Emms under the hire-purchase contract and of the Otago and Southland Finance Co. in respect of its advances.

In April, 1927, Francis agreed to buy Taylor's shares in Francis & Taylor Ltd., and Taylor thought that thereafter he had no connection with the company and left matters entirely to Francis. There was no meeting of directors from April, 1927, until October, 1928, and there was no evidence of any informal meeting or arrangement between the directors during that period as to any matter relating to the company's business. On 25th May, 1927, Francis, on behalf of the defendant company, and within his authority, disposed of an omnibus to the Inter City Omnibus Co., in Christchurch, on terms of hire-purchase. He was introduced to Mr. Stewart, the secretary of the plaintiff company in Christchurch, on 30th May, 1927, and obtained an advance of £2,000 from that company on pledge of the hire-purchase contract and indorsement of the relative promissory notes. It appeared from the evidence of Stewart that on this occasion Francis was introduced to him by a person whose name he did not know, but said to be a salesman in the employ of Maclaren & Co., a responsible firm in Christchurch. Mr. Stewart knew nothing about the defendant company; he had no knowledge of its memorandum or articles of association, and made no enquiries of any kind as to the position of the defendant company, financial or otherwise, or as to the authority of Francis to borrow money and pledge its securities. On 6th June, 1927, Francis applied to the plaintiff company for an advance upon the documents in the transaction between Emms and the defendant company of that date, and two days afterwards obtained an advance of £2,018 15s. 8d. thereon. In each case an instrument in the plaintiff company's usual form of security signed "Francis & Taylor Ltd. F. B. Francis, Director," was executed. At the request of Francis the first of those advances by the plaintiff was paid by cheque payable to the order of McLaren & Co. Ltd. The second was paid by cheque payable to the order of the defendant company. The cheques were not crossed and Francis obtained cash for the second cheque, in Christchurch. No record whatever of the transaction with Emms was made in any of the defendant company's books, and Taylor had no knowledge of it or of either of the two transactions with the plaintiff until after the defendant company went into liquidation. The transaction with the plaintiff company, relating to the business between the Inter-City Bus Co. and the defendant company, was genuine but unauthorised.

Donnelly and **Thomas** for plaintiff.
F. B. Adams for defendant.
Mills for defendant Emms.

ADAMS, J., said that it was hopeless to contend that Francis had any real authority to use the name of the defendant in the contract of hire-purchase of 6th June, 1927, between the defendant and Emms, or in the agreement of the same date purporting to be made between the defendant company and the plaintiff company. The defendant company never had any property or interest in the chattels described in and dealt with by the documents. Those documents were, therefore, false documents within the meaning of Section 288 (a) of the Crimes Act, 1908, being documents the whole of which purported to be made by or on behalf of the defendant who did not make or authorise the making thereof. They were made by Francis, with knowledge of their falsity, and with the intention that they should be acted upon as genuine by the plaintiff company, and that the plaintiff company should be induced by the belief that they were genuine to advance money upon them. Both documents were, therefore, forgeries.—S. 290, Crimes Act—and were simply null and void: **Ruben v. Great Fingall Consolidate,** (1906) A.C. 439; **Kreditbank Cassell G.M.B.H. v. Schenkers,** (1927) 1 K.B. 826. The indorsement of the promissory notes was infected with the same vice: S. 24, Bills of Exchange Act, 1908; **Kreditbank Case** (*cit. sup.*). In the circumstances counsel for the plaintiff very properly intimated that he did not rely upon either the agreement or the indorsement of the promissory notes. He urged, however, that those instruments were ancillary to the borrowing of the money which was the real transaction, and which, in the circumstances, apart from the documents, was within the real or ostensible authority of Francis. The only real authority shown, however, was limited to borrowing on such securities from the Southland Guarantee Co. The reason of that restriction was plain. Taylor was a director of that company and was, therefore, in a position to approve or disapprove of any application which might come before the directors of that company. The ostensible authority set up was based upon the facts that Francis was left in full control of the company's business; that under Article 95 of Table "A" the defendant's directors could delegate their borrowing powers to him; that the plaintiff company was entitled to assume that those powers had been delegated to Francis, and, therefore, was not bound to inquire as to whether he had in fact power to borrow on the defendant's behalf. The ostensible authority of an agent was based upon the doctrine of estoppel. The classic exposition of the application of the principle of estoppel to such cases as the present was found in the judgment of Parke, B., in **Freeman v. Cooke,** 2 Exch. 654, 663, which was adopted by the Judicial Committee in **Miles v. McIlwraith,** 8 App. Cas. 120. After quoting a passage from the judgment delivered by Lord Blackburn in the latter case (at p. 133), His Honour said that it was sufficient to say that, in order that a person or company might be bound by an unratified contract of an agent without real authority, it must appear that his supposed authority was ostensible to the other contracting party and relied on by him when he made his contract: **13 Halsbury's Laws of England,** 390.

The evidence of Mr. Stewart, the plaintiff company's secretary, showed that he knew nothing about the defendant company, had no knowledge of the provisions of its memorandum or articles of association, made no enquiries of any description as to the position of the defendant, financial or otherwise, or as to the authority of Francis to borrow money and pledge its securities on its behalf. He did not know who were the defendant's directors, and it was a fair inference from his evidence that he was not aware of the fact that it was registered as a private company. He was, however, sufficiently acquainted with company law and practice to know that companies generally had more directors than one, and also a secretary, and that generally it was the practice of private companies to require that one director and the secretary should sign contracts. The absence of the secretary's signature should have put him on immediate inquiry in the course of which he would have discovered that under Article 100 (p) Table "A" the signature by the secretary was essential. Nevertheless he accepted the signature of Francis alone to the documents in both transactions. There was no evidence of any representation or conduct upon which estoppel could be supported.

The question raised as to delegation by the directors of their power to borrow money was covered by recent authorities. His Honour referred to a passage from the judgment of Sargant, L.J., in **Houghton and Co. v. Nothard, Lowe and Wills Ltd.,** (1927) 1 K.B. 246, 266, a judgment in which Atkin, L.J., concurred, in which this question was discussed. Referring to the opinion of Wright, J., in the Court below, that the plaintiffs were entitled to assume that anything necessary to delegate any of the functions of the board to one director or two directors had been done as a matter of internal management, the learned Lord Justice in that case said that, in his opinion, that was to carry the doctrine of presumed power far beyond anything that had been decided, and placed limited companies, without any sufficient reason for so doing, at the mercy of a servant or agent who should purport to contract on their behalf, and that on that view not only a director of a limited company with articles founded on Table "A," but a secretary or any subordinate officer, might be treated by a third party acting in good faith as capable of binding the company by any sort of contract, however exceptional, on the ground that a power of making such contracts might conceivably have been entrusted to him. **Houghton and Co. v. Nothard, Lowe and Wills Ltd.** (*cit. sup.*) was discussed and followed in **Kreditbank Cassell G.M.B.H. v. Schenkers,** (1927) 1 K.B. 826. With great respect to the observations of Scrutton, L.J., in the latter case, His Honour ventured the comment that it would be difficult to satisfy the Court that a person had acted in reliance on a power of which he had no knowledge. **Houghton and Co. v. Nothard, Lowe and Wills Ltd.** (*cit. sup.*) was affirmed on appeal in the House of Lords, (1928) A.C. 1. There was nothing in the judgments indicating dissent from the observations of Sargant, LJ., to which His Honour had referred. The rule of law laid down

in **Mahoney v. East Holyford Mining Co.**, L.R. 7 H.L. 869, and similar cases, did not apply. As His Honour had already shewn, there never was in fact a valid delegation by the directors of their powers to borrow generally, and the plaintiff's case could not be supported by reference to the particular delegation. There was the further point, also taken by counsel for the defendant, that Article 100 (p) Table "A," which authorised the directors to "make and execute all such assurances and instruments as might be necessary, provided that they were signed by the directors, or by one director and the secretary" was not complied with.

Judgment for defendant.

Solicitor for plaintiff: **C. S. Thomas**, Christchurch.

Solicitors for defendant: **Meredith, Hubble and Ward**, Auckland.

Solicitors for defendant Emms: **McCallum, Mills and Co.**, Blenheim.

Ostler, J. August 14; 15, 1929. Auckland.

WHITE v. SAMSON.

Mortgage—Novation—Transfer of Land Subject to Mortgage—Purchaser Executing Memorandum of Extension of Mortgage—Original Mortgagor Not Party to Extension—Purchaser Personally Liable Under Covenants of Mortgage—Land Transfer Act, 1915, S. 104.

Action for principal sum and interest due under a mortgage. On 19th May, 1917, one Sheen executed a mortgage to the plaintiff to secure the repayment to her on 11th May, 1921, of the principal sum of £3,500 with interest at 6½ per cent. per annum. The mortgage, which was secured on certain land under the Land Transfer Act, was duly registered. On 11th May, 1921, Sheen transferred the land to the defendant, subject to the mortgage. On 3rd September, 1925, the plaintiff and the defendant executed a memorandum of extension of the term or currency of the mortgage in the form provided by Section 104 of the Land Transfer Act 1915. The memorandum of extension was in the following words: "The term or currency of the annexed mortgage is hereby extended to the 31st day of March, 1927." It was signed by the defendant as "mortgagor," and was duly registered. The defendant made default in payment of the principal upon the extended date and also in payment of interest. The plaintiff commenced the present action on 15th March, 1929, claiming the principal and interest due upon the mortgage from defendant. The defendant filed a statement of defence in which the above facts were admitted, but he claimed that he had entered into no covenant either express or implied to pay the money and, therefore, he could not be sued personally for it. By consent a question of law was ordered to be argued as to whether the statement of claim disclosed any cause of action. Defendant's counsel admitted that if he could not succeed on the point of law he had no other defence, therefore Ostler, J., intimated that he would hear argument on the point of law and also hear and determine the action.

Johnstone for plaintiff.

Sullivan for defendant.

OSTLER, J., said that the point was well settled by authority that where the transferee of land subject to a mortgage entered into a memorandum of agreement with the mortgagee for the increase of the rate of interest, or for the extension of the term of the mortgage and for an increase in the rate of interest, the agreement amounted to a novation, and a new contract was thus formed compounded of the terms of the original mortgage and the new memorandum, under which the transferee of the land became primarily liable to the mortgagee for payment of both principal and interest: see **Re Goldstone's Mortgage**, (1916) N.Z.L.R. 489; **Robertson v. White**, (1923) N.Z.L.R. 1275; **Perpetual Trustees v. Elworthy**, (1926) N.Z.L.R. 621; **Nelson Diocesan Trust Board v. Hamilton**, (1926) N.Z.L.R. 342; **Paterson v. Irvine**, (1926) N.Z.L.R. 352; **Williams v. Kendall**, (1928) G.L.R. 114. It was argued that because all that the defendant agreed to was an extension of the term, the case could be distinguished from the line of cases cited. But the principle upon which those cases were decided was that the new composite contract was a novation, under which the original mortgagor was let out and a new mortgagor substituted. That principle applied whatever variation was made in the original contract, whether it was an increase in the rate of interest, or an extension of the term, or both. In any of such cases it was equally a novation, the mortgagee being able to look only to the new party with whom he had made the new agreement to perform all the terms of the original mortgage as so varied. It was argued that in the present case there could not be a novation because Sheen was not a party to the new agreement. The answer to that contention was to be found in the judgment of the Court of Appeal in **Nelson Diocesan Trust Board v. Hamilton** (*cit. sup.*) at p. 350. The consent of Sheen must be presumed unless the contrary was proved. His Honour was unable to distinguish the present case in principle from the cases cited, and, therefore, held that the defendant by signing the memorandum of extension of term of the mortgage made himself personally liable for the payment of principal and interest.

Judgment for plaintiff.

Solicitors for plaintiff: **Stanton, Johnstone and Spence**, Auckland.

Solicitor for defendant: **J. J. Sullivan**, Auckland.

Ostler, J. August 13; 15, 1929. Auckland.

BASTER v. COMMERCIAL UNION ASSURANCE CO. LTD.

Insurance—Life and Accident Policy—Policy Not Covering Death or Disablement to Insured "While Engaged in Motor-cycling"—Insured Killed While Riding in a Side-car Attached to Motor-cycle—Insurer Not Liable under Policy—No Ambiguity in Terms of Policy.—Court Not Entitled to Create Ambiguity by Departing from Ordinary Meaning of Words—Rule of Construction *contra proferentem* Not Applicable.

Action by administratrix of the estate of one Baster, deceased, to recover from the defendant the sum of £500 alleged to be due upon a policy of life and accident insurance taken by the deceased with the defendant. The policy provided that if the assured should sustain any bodily injury by violent, accidental, external and visible means, and such injury should within 90 days cause the death of the insured, the defendant would pay the sum of £500 to his executor or administrators. The policy contained the usual provisions that the insurance should be subject to the conditions and memoranda endorsed on it in like manner as if the same were respectively repeated and incorporated in it, and provided that "compliance with such conditions and memoranda, and each of them, should be a condition precedent to the right of the insured to sue and recover hereunder." One of the conditions endorsed on the policy was in the following terms: "This policy does not cover death or disablement resulting from accidental injuries sustained by the insured while engaged in steeplechasing, racing including reliability trials (whether on horseback or wheels), boxing or wrestling in public exhibitions, hunting, motor-cycling, mountaineering, playing polo or football, or whilst in or through falling from any form of aerial conveyance." On 9th January, 1927, the insured was anxious to go from his home to Avondale on a matter of business. One Allen who owned a motor-cycle and side-car offered to take him there in the side-car. He accepted the offer, and on the way a collision occurred with another vehicle which injured the insured, and he died from his injuries the same day.

G. P. Finlay for plaintiff.

A. H. Johnstone for defendant.

OSTLER, J., said that the defence raised was that the insured was engaged in motor-cycling at the time he met with the accident. In order to construe the words of a document the cardinal rule was to read the whole document in order to discover by its terms the object of the parties. In so reading it the ordinary popular meaning of the words used must be adopted. The object of the condition quoted above was quite clear. It was to except from the policy certain named occupations, some of which were indulged in only as pastimes, which were considered to be extra hazardous and peculiarly liable to produce accidents. The words were not "engaged in riding a motor-cycle," but "engaged in motor-cycling." Could it be doubted, if a man took his wife for an outing in a motor-cycle and side-car, that in ordinary and popular language they would be correctly described as both engaged in motor-cycling, just as a person who sat in the back seat of a motor-car during a drive was correctly stated in popular language to be engaged in motoring. Counsel for the plaintiff admitted that a girl who rode pillion-wise behind the rider of a motor-cycle was "en-

gaged in motor-cycling." The reason given for that admission was that the pillion rider had to help in the balancing of the machine by swaying her body at the curves. It was true that the attachment of a side-car made a motor-cycle more stable inasmuch as it then had three wheels instead of two, but its stability was still far from ideal, and the passenger in a side-car when taking curves at speed had also to assist by swaying his body in order to prevent a capsize. If, therefore, a motor-cycle when it had a side-car attached still remained a motor-cycle, His Honour thought there could be no doubt that in ordinary and popular language the passenger in the side-car was engaged in motor-cycling equally with the rider of the cycle.

Counsel for plaintiff however contended that when a motor-cycle had a side-car attached it ceased to be a motor-cycle. He based that contention upon some remarks of Chapman, J., in **Perrin v. Gardiner,** 29 N.Z.L.R. 448. But there was nowhere in that decision any suggestion that "motor-cycle" was confined to a machine having two wheels only. If a motor-cycle ceased to be a motor-cycle as soon as a side-car was attached, what did it then become? It could not be described accurately as a motor-car. That term was confined to motor-vehicles with four wheels. His Honour knew of no other term which had been popularly adopted to describe such a three-wheeled vehicle, except that of a "motor-cycle." There was nothing in the word itself which limited "motor-cycle" to a vehicle with two wheels. His Honour referred to **Mehaffy and Dodson on Motor Cars,** 2nd Edn., 17, and said that in his opinion a motor-bicycle remained a motor-cycle notwithstanding that a side-car was attached to it.

Something was said during the argument about the rule of construction of an insurance policy. His Honour agreed that where there was an ambiguity in the words used in the policy they must be construed *contra proferentem,* but in the present case His Honour could find no ambiguity. The Court had no right to create an ambiguity by giving a meaning to the words used which was different from their ordinary meaning, in order to apply the rule: see **Coles v. The Accident Assurance Co.,** 5 T.L.R. 736; **In re United London and Scottish Insurance Co.,** (1915) 2 Ch. 167.

It was somewhat remarkable that the point in the present case did not seem to have come up for decision either in New Zealand, or in England, or in Australia. Certain American decisions were referred to, but those were in conflict with each other and, therefore, were of little assistance. But even there it seemed that what might be called the better opinion was in accord with the view His Honour had taken. **Bew v. Travellers' Insurance Co.,** 14 Amer. L.R. 983, decided that a passenger in an aeroplane was within the exception of an accident insurance policy which provided that it should not cover injuries sustained while "participating in aeronautics." The reasoning used in that case seemed to His Honour unanswerable. In ***Benefit Association v. Hayden,*** 37 Amer. L.R. 622, the Supreme Court of Arkansas took the contrary view although one of the Judges dissented from the judgment. But the learned editor of the reports added a note to the judgment to the effect that it was contrary to the rule adopted in a number of other jurisdictions.

Judgment for defendant.

Solicitor for plaintiff: **G. P. Finlay,** Auckland.

Solicitors for defendant: **Stanton, Johnstone and Spence,** Auckland.

Kennedy, J. August 27; 31, 1929. Invercargill.

IN RE SOUTHLAND WOOLLEN MILLS LTD. (IN LIQUIDATION).

Company—Winding-up—Application for Removal of Names from List of Contributories on Ground of Misrepresentation—No Prompt Repudiation of Shares or Prompt Application for Removal of Name from Share Register After Discovery of Misrepresentation—Notice of Intention to Defend Action for Calls in Magistrates' Court Not Amounting to a Repudiation—No Proceedings for Rescission Instituted Before Winding-up—Notice of Intention to Defend Action for Calls in Magistrates' Court Not Amounting to Proceeding for Rescission—Removal of Names from List Refused.

Application by certain shareholders that their names be removed from the list of contributories. Each of the shareholders applied for and was allotted shares in the above-named company in 1924, and each alleged that he was induced to take shares in reliance upon untrue representations, made by brokers soliciting subscriptions, to the effect that some one or other named persons of substance in his district had already taken a large number of shares. His Honour found (if it were necessary to decide the point) that there had been misrepresentation such as each plaintiff alleged. It was not until July, 1928, that the plaintiffs first became aware that the representations made were untrue. Each was in that month sued in the Magistrates' Court for calls on shares standing in his name in the register of members. A notice of intention to defend was in each case filed and evidence was taken on commission at Naseby in September, 1928, when the defence was indicated by the evidence taken. The actions were called on for hearing in December, 1928, after the company had been ordered to be wound up by the Court on a petition presented on 16th October, 1928. In August, 1929, the Official Liquidator made out and left at the Supreme Court Office a list of the contributories of the company, and in that month, on receiving notice of the appointment to settle the list, the plaintiffs applied to have their names removed.

Lloyd for plaintiffs.

Barrowclough for Official Liquidator.

KENNEDY, J., said that in his opinion the applications must be refused. A contract to take shares, even though it had been induced by misrepresentation, was voidable and not void. A shareholder might affirm or avoid a voidable contract but, until he elected to avoid it, it remained good. **Oakes v. Turquand,** L.R. 2 H.L. 325. That right, however, to avoid the contract must be exercised, if at all, promptly after the discovery of the misrepresentation, and would be lost if a winding-up commenced before the contract was effectually avoided. The question to be determined was whether the plaintiffs, after discovering the misrepresentations, promptly took the proper steps to avoid their contracts. Not only did they not apply for rectification of the register or take any proceedings for rescission, but they did not, so far as the affidavits showed, even promptly formally repudiate. The reason for the requirement of prompt action was that shareholders' names were on the register and they were accordingly held out to the public as members and persons might be induced to act on the faith of that membership. The books contained many cases in which the necessity for prompt action was discussed. His Honour referred to **Scholey v. Central Railway Co. of Venezuela,** L.R. 9 Eq. 266n., and **Sharpley v. Louth and East Coast Rail,** 2 Ch.D. 663. When the summonses were first received, the various applicants knew there was a proposal by some to petition for the winding-up of the company. The fact that they were sued was a further circumstance that must be taken into account in considering whether they promptly avoided their contracts. In His Honour's opinion they did not. Merely filing notice of intention to defend an action for calls in the Magistrates' Court was no sufficient avoidance. The defence might well be on grounds other than on grounds involving repudiation of the shares. It was not, so far as the affidavits filed showed, till about two months after the plaintiffs had knowledge of the misrepresentation that their attitude was in some manner disclosed by the evidence taken at Naseby. Such a delay was, under the circumstances, unreasonable, and consequently the plaintiffs, having failed promptly to avoid their avoidable contracts, had by that delay lost their right to rescission. It might further be observed that the plaintiffs could not in any event, while they still permitted their names to remain on the register of members, successfully defend actions in the Magistrates' Court for calls on the ground that they had been induced to take shares by misrepresentation. It was not a sufficient defence to an action for calls that a shareholder had repudiated because of misrepresentation. In order to succeed he must show not only that he had repudiated the contract, but also that he had, after discovering the misrepresentation complained of, taken prompt steps to have his name removed from the register of members: **First National Reinsurance Company Limited v. Greenfield,** (1921) 2 K.B. 260; **Components Tube Company v. Naylor,** (1900) 2 Ir. R. 1. The rule illustrated by the two decisions cited was correctly stated in **Buckley's Companies Acts,** 10th Edn., 580.

There was, however, a further reason (and it applied even though the plaintiffs promptly formally repudiated their shares) why the share register might not be rectified and why the names of the shareholders could not be removed from the list of contributories, and that was that, before any proceedings were taken by the shareholders for rescission or for rectification of the register, a winding-up supervened. Once a winding-up supervened, avoidance was not possible unless either proceedings

were instituted before the commencement of the winding-up or an agreement had been made that the shareholders should be bound by the result of other proceedings which were being taken for the avoidance of the contract to take shares. There was no agreement between the company and the shareholders that the shareholders should not take action but should wait the result of a test action, nor did the company assent to the repudiation, so that there was no reason for the shareholders to refrain from taking proceedings to have their names removed from the register. His Honour referred to **Whiteley's Case,** (1900) 1 Ch. 365, and **First National Reinsurance Co. v. Greenfield** (*cit. sup.*) at p. 277, and said that it could not be properly contended that the defence to each action for calls in the Magistrates' Court amounted to the taking of proceedings for the rescission of the contract, for the Magistrates' Court had no jurisdiction to rescind the contract or to rectify the register. The shareholders applying did not, prior to the commencement of the winding-up, take proceedings to rectify the register and it was too late at that stage for them successfully to apply: **Fleming v. Eclipse Laundry Company,** (1928) N.Z.L.R. 598. The plaintiffs' names would accordingly remain in the list of contributories.

Summons dismissed.

Solicitors for plaintiffs: **Callan and Galloway,** Dunedin.
Solicitors for Official Liquidator: **Ramsay, Barrowclough and Haggitt,** Dunedin.

Kennedy, J. August 7, 8, 14, 1929. Dunedin.

HEFFERMAN v. O'NEILL AND SMITH.

Landlord and Tenant—Partnership—Practice—Claim for Rent for Premises Demised to One of Two Partners Personally Before Commencement of Partnership—Premises Subsequently Used For Business of Firm—No Evidence That Person to Whom Premises Let Acted as Agent for Firm—Acts of Other Partner Recognising Landlord Not Sufficient to Substitute Partners as Tenants—Other Partner Not Liable for Rent—Defendants Having Common Solicitor and Common Counsel—Plaintiff Ordered to Pay Half Costs of Defendants.

Action claiming from the defendant the sum of £50 2s. 9d. alleged to be rent due from 18th February, 1928, to 10th October, 1928, in respect of certain premises let by the plaintiff to the defendants on 1st March, 1927. The defendants denied that any rent was due inasmuch as they were never tenants of the plaintiff and they alleged that the tenant of the premises was one Graham Fox O'Neill and his father Graham Fox O'Neill. The Court upon consideration of the evidence found that the premises were let to the defendant W. E. O'Neill and rejected the defendant's contention that they were let to Graham Fox O'Neill for himself alone. The question remaining for consideration was whether the defendant A. H. Smith was jointly liable with the defendant W. H. O'Neill. The case is reported on this question only. The facts relative thereto are sufficiently set out in the judgment.

Neill for plaintiff.
Sinclair for defendant.

KENNEDY, J., said that the plaintiff alleged at the trial that the defendant A. H. Smith was, at all material times, a partner with the defendant W. H. O'Neill and his counsel submitted that if he could show that, at any time prior to 18th February, 1928, and continuing thereafter during the period of occupation of the garage premises, a partnership subsisted between the defendants, then the defendant A. H. Smith would be equally liable with the defendant W. E. O'Neill and **Pocock v. Carter,** (1912) 1 Ch. 663, was relied on as supporting that proposition. That case was not, however, an authority for the proposition for which it was cited. If in fact the defendant W. E. O'Neill was, when the premises were taken, a partner with the defendant A. H. Smith, and acted accordingly for himself and as agent for A. H. Smith in taking the premises from the plaintiff, then the defendant A. H. Smith would be equally liable with the defendant W. E. O'Neill to the plaintiff. But if in fact the defendant W. E. O'Neill was not a partner with the defendant A. H. Smith at the time when the premises were taken by the defendant W. E. O'Neill, and if W. E. O'Neill did not take and did not purport to take the garage premises for himself and the defendant A. H. Smith, then the defendant A. H. Smith would not become liable to the plaintiff merely by his subsequent occupation of the premises with the defendant W. E. O'Neill even though the defendants might then be partners. The contract of tenancy would in that event have been made with W. E. O'Neill alone. It would be a tenancy at will and would continue until terminated by one month's notice in writing by either side. A subsequent partnership between W. E. O'Neill and A. H. Smith, although it might affect the rights *inter se* of W. E. O'Neill and A. H. Smith, would not, without more, result in the substitution for the tenancy theretofore subsisting between the plaintiff and the defendant W. E. O'Neill, of a tenancy between the plaintiff and both defendants. The plaintiff did not frame his action as one for use and occupation but, even if he had, the plaintiff would have had to show, before the defendant A. H. Smith could be held liable, an acceptance of the two defendants as tenants in place of the defendant W. E. O'Neill. The substitution for the original tenant must be express and was not to be implied from mere acts of recognition on his part of the landlord such as promising to pay rent and so on: **Hyde v. Moakes,** 5 C. & P. 42. Had it then been proved that, when the tenancy arrangements were made, the defendant A. H. Smith was a partner with the defendant W. E. O'Neill? The plaintiff was unaware that the defendant A. H. Smith was even said to be associated with the business until after the premises were let. The evidence of Graham Fox O'Neill was that the defendant A. H. Smith did not become a partner at all events until after the tenancy arrangements had been made with the plaintiff. The evidence of the defendant A. H. Smith was not very clear but on the whole His Honour thought it followed from his evidence that, whatever arrangements were made with the defendant W. E. O'Neill and Graham Fox O'Neill, they were not concluded until after the premises had been let to the defendant W. E. O'Neill. The first receipt for moneys paid by the defendant A. H. Smith was dated 3rd March, 1927, while rent was charged for and paid from 1st March, 1927. It was improbable that rent commenced to run until a date subsequent to the agreement to take the premises and it was highly improbable that the rent commenced to run from a date prior to the actual agreement to take the premises. Whatever then might subsequently have been arranged between the defendants, the plaintiff had failed to prove that, when the premises were taken by the defendant W. E. O'Neill, the defendant A. H. Smith was then, in fact, his partner. There was no evidence that the defendant W. E. O'Neill was authorised by the defendant A. H. Smith to conclude the tenancy arrangements nor did the defendant W. E. O'Neill, if unauthorised, purport to act as agent so that his acts might subsequently be ratified. Nor, finally, had the plaintiff shown, in addition to the consent of W. E. O'Neill and A. H. Smith to be tenants, that the plaintiff had put himself in such a position that he could no longer sue W. E. O'Neill alone, but must sue them jointly.

In the result the plaintiff's claim succeeded against the defendant W. E. O'Neill but it failed against the defendant A. H. Smith.

The defendant A. H. Smith had a common solicitor and common counsel with the defendant W. E. O'Neill and following the rule illustrated in the cases of **Isbister v. Mackinnon and Others,** 5 N.Z.L.R.S.C. 489, and **Stevens v. Florence and Harry Parkin,** (1924) N.Z.L.R. 619, the plaintiff would be ordered to pay the defendant A. H. Smith for costs one half the total costs of the action as on the Magistrates' Court scale with one half the witness allowances for the attendance of the defendants' witnesses.

Solicitors for plaintiff: **A. G. Neill,** Dunedin.
Solicitor for defendants: **Leslie G. Cameron,** Dunedin.

The highest income earned by the most fashionable silk during the past year did not greatly exceed £20,000; and the statement that £40,000 was earned has no foundation in fact. Apart from the income tax officials, who disclose no secrets, the clerks are the best informed people on the subject of a barrister's income; and when a thousand guinea brief is delivered in the Temple or in Lincoln's Inn everybody knows about it next day. Four of such briefs per term in the whole Temple is a high average for the past four years; and briefs of higher denomination are still more rare.—"Outlaw" in the "Law Journal."

Tampering with Witnesses.

By W. E. Leicester, LL.B.

"Much truth is spoken," says Mr. Justice Darling, in one of his lighter moments, "that more may be concealed." And true it is that most witnesses, consciously or unconsciously, eliminate from their testimony those elements which support the opposing contentions or which do not lend weight to their own. To what extent, then, is counsel entitled, apart from cross-examination, to probe into the mental recesses of the stolid witness and to endeavour to show the partisan one that his damaging conclusions are based upon insufficient premises?

Text-books throw very little light on this subject and prosecutions, against either lawyers or laymen, have been rare. From the reported cases, however, certain broad principles can be deduced. It is a misdemeanour at common law to threaten, persuade, or induce a witness not to appear, even if the threat, persuasion, or inducement fails. An attorney commits an offence if he advises the friends of the prisoner to write to the witnesses not to appear, and they write accordingly—1 *Hale* 820; nor was it doubted by the Court of King's Bench that an attorney who was concerned with the "spiriting" away of a witness (summoned even by the Commissioners of Excise) could be convicted—*Steventon and Ors.*, (1802) 2 East. 362. Where the prisoner's brother, apparently a man of morbid outlook, said to a Crown witness: "It would be better for you to bring your sheet and coffin than to prosecute my brother," it was held that he was guilty of a misdemeanour—*Loughran*, (1839) 1 Craw. & Dix 79 (Ir.). At the Swansea Summer Assizes (4th August, 1906) Jelf, J., sentenced prisoners upon a conviction obtained on an indictment for conspiracy to defeat the ends of justice by preventing a girl under sixteen years from attending to give evidence against a man charged with a criminal offence against her. She had been induced to go to the United States.

The witness approached need not have been bound to give evidence. In *Carroll*, (1913) V.L.R. 380, Cussen, J. adopts the statement made by Lord Cottenham in *Lechmere Charlton's Case*, (1837) 2 My. & Cr. 316: "All these authorities tend to the same point; they show it is immaterial what measures are adopted, if the object is to taint the source of justice, and to obtain a result of legal proceedings different from that which would follow in the ordinary course." A distinction has been made in our Courts between the act of persuading or attempting to persuade a person not to appear and give evidence at all and the act of attempting to persuade a person to give such evidence in a criminal proceeding that the accused would be acquitted: *Gray*, 23 N.Z.L.R. 52. Evidence of the latter type would support a charge under Section 138 (d) of the Crimes Act, 1908, of wilfully attempting to defeat the course of justice and it seems that the same principle applies to every attempt to influence a witness in whatever stage of the case it may be: *Webster*, (1880) 1 N.S.W. L.R. 327.

It is surprising, nevertheless, that until 1919 there appears to be no reported case of a charge of inducing a witness to alter his evidence. In that year, the Court of Criminal Appeal heard an appeal against the judgment of Horridge, J., on this point. A witness had given certain evidence against a person charged with attempting to procure her miscarriage. The indictment charged the appellant with endeavouring to persuade the witness at the trial to alter the evidence she had previously given by falsely stating that the accused was not the man in question or that she was doubtful whether he was the man. Darling, J., delivering the judgment of the Court said: "No distinction can be made between the offence of endeavouring to persuade a witness to alter evidence already given, and the offence of attempting to dissuade a witness from giving evidence of a certain character." The conviction was held good: *Greenberg*, 121 L.T. 288. Here, the persuasion really amounts to subornation of perjury, but the judgment seems to cover a case where a witness as the result of persuasion or influence modified or elaborates the evidence which he has already given or intends to give.

Anthony Trollope in his "*Phineas Redux*" pictures a scene for us:—

> "The witnesses were not called at once. Sir Gregory Grogram began the work of the day by saying that he had heard that morning for the first time that one of his witnesses had been,—'tampered with' was the word that he unfortunately used,—by his learned friend on the other side. . . . . Then there arose a vehement dispute between Sir Gregory, assisted by Sir Simon, and old Mr. Chaffanbrass, who rejected with disdain any assistance from the gentler men who were with him. 'Tampered with!' That word should be recalled by the honourable gentleman who was at the head of the bar, or—or—' Had Mr. Chaffanbrass declared that as an alternative he would pull the Court about their ears, it would have been no more than he meant. . . . . There was a great deal said on both sides, and something said also by the judge. At last Sir Gregory withdrew the objectionable word, and substituted in lieu of it an assertion that his witness had been 'indiscreetly questioned.' Mr. Chaffanbrass would not for a moment admit the indiscretion, but bounced about in his place, tearing his wig almost off his head, and defying everyone in Court. The judge submitted to Mr. Chaffanbrass that he had been indiscreet. 'I never contradicted the Bench yet, my lord,' said Mr. Chaffanbrass,—at which there was a general titter throughout the bar,—'but I must claim the privilege of conducting my own practice according to my own views. In this Court I am subject to the Bench. In my own chamber I am subject only to the law of the land.'"

But is there any real reason why counsel should approach a witness only at such peril? In civil cases, different considerations apply; but to adopt a contrary view-point in criminal cases is to lose sight of the function of the Crown, which is not to play a series of trump-cards but to present impartially such evidence as it considers relevant. Where the issue between the King and the subject is whether the latter did or did not do some particular act, it is comparatively simple. On the other hand, where the issue is as to whether in the opinion or judgment of the witness the acts or omissions of the accused amounted in the surrounding circumstances to some criminal offence, and the Crown at the initial stages of the enquiry has assisted in the formulation of that opinion or judgment, then it does not seem unreasonable that the accused or his counsel should have the right of bringing to the attention of

the witness facts or conditions that may demonstrate the falsity of his original beliefs or soften their rigour. The evidence given by an emotional man at a coroner's inquest held immediately after an accident, although coloured understandably enough by a hostility towards the man who caused death, may be very wide of the mark. Once committed to a definite statement on oath, the witness is unlikely, after a period of months, to yield in cross-examination what he would during the course of a conversation held shortly after the event. In the box his tendency, due to temperament or a desire to avoid being trapped, is inevitably to ignore or reject any possibilities appearing to reflect upon the version he has already given. By the time he reaches the Supreme Court, he frequently regards himself not as an individual unit but as a powerful member of the Crown team. He is, in fact, ready for all comers; and, if the case is one that has excited much public comment, he wants to be on the winning side.

I am far from suggesting that counsel should themselves make, or encourage in others, a practice of seeking directly or indirectly, to affect, by means external of the Court, testimony given or to be given; but it is conceivable that cases may arise where it is unjust to deprive them of that right. There is no occasion to assume that reputable practitioners will abuse such a right or that, by its assertion, witnesses will be cajolled into perjury. The mere accident that permits the police, with the elaborate machinery at their disposal, to obtain the first statements should not, in justice to the accused, render the giver of the statement as sacred to the Crown as were those high officials in ancient Greece who had to do with the performance of the Eleusinian mysteries and whose very names could not even be mentioned without the commission of a legal offence.

Commercial Documents.

More Dicta by Lord Atkin.

We published recently, ante p. 219, some forceful comments by Lord Atkin, delivering judgment in a recent case in the House of Lords, on the careless drafting of commercial documents. The same learned Judge expressed much the same views in an address at the last annual reception of the teaching staff of the Law Society's School of Law. "My experience," he said, "of the business world is that business documents are about the most carelessly drafted documents—outside an Act of Parliament—that can be conceived. You are constantly credited, as lawyers, with using an unintelligible jargon. But I should imagine that fifty per cent. of the cases that come into Court are due to the careless and unintelligent drafting of documents by laymen. The lawyer cannot do anything better for his client, and ultimately for himself, than by inducing business men to allow their documents to be drafted by a competent lawyer."

"Those who make no mistakes, it has been said, will never make anything; and the judge who is afraid of committing himself may be called sound and safe in his own generation, but will leave no mark on the law."

—Sir Frederick Pollock.

London Letter.

Temple, London,
17th July, 1929.

My dear N.Z.,

We have a heat wave upon us, and the Bar is severely put to it to survive the last, intensified weeks of the legal year in the climatic conditions which prevail. To-day is so sultry and moist as even to remind me of old times in Singapore, where at least we worked with little but silk upon us and a hard-working fan above our heads! I could wish for these amenities now, notwithstanding the ruthless devastation the wind of the electric fan made amongst the "documents accompanying brief," if one loosed them for an instant from their container. Still, I suppose our lot is no worse than any others' lots in sweating London to-day, unless we may claim that head-work requiring concentration for long stretches is the most oppressive of all functions to discharge in the extreme heat. I shall not live, but I suppose my sons will, to see our professional dress rationalised at least to the extent of dealing with such weather as this in some appropriate material.

The appointment of Holman Gregory, K.C., to succeed the late Judge Atherley Jones in the City Court is the item of social interest of our period. Judge Atherley Jones was what is known, and is best described, as a "character," typical of which was the heavy ribbon of black silk which supported his eye-glass when not in use. He might have been, to all appearance, one of Charles Dickens' figures of fun: if he had been, and had been suitably illustrated as such, he must have become as immortal as Mr. Pickwick or Micawber. I had no experience of him as a Judge, and only recall his peers' appreciation of him in his days at the Bar; this was kindly and amused. Holman Gregory is of quite another stamp; as a junior and as a leader, distinction was always promised by him but never, somehow, materialised; at every vacancy on the Bench, his name has always been canvassed as a possible filler of it, but the suggestion arises less from his immediate claims by reason of wide practice or notable successes in the Courts than from the fact that he has so long been marked down for promotion that this time, it has been felt on each occasion, he may very likely be promoted. The City Judgeship, part of that special jurisdiction peculiar to its own locale, just about appreciates the man and his career at its due value; he is eminently fitted to the by no means little distinction of that Court and that promotion, by no means a starry one, is admirably suitable in his case. He will carry all the necessary judicial dignity, both by reason of his handsome appearance and carriage and by reason of his sonorous voice; and he will probably fill the part with complete satisfaction to all, if his temper mellows and standardises at the dominating and not at the domineering.

In the Courts, perhaps rather in prospect than in present, and behind the scenes, in interlocutory preliminaries rather than in open battle in the forum, there is much to-do over cinematograph business which now occupies its own, adequate place in the business world. There is much speculation going forward, both in the financial and the commercial side of the industry, both (that is) as to the shares and as to the undertakings of the film-producing companies. There is

much middleman work going on, much buying and selling of possible house-fillers; so that one way and another there is much going forward of the sort of contract and transaction from which litigation arises and among the class of merchant who has the means wherewith to litigate. I do not know how far the industry, and its illegitimate offspring—the "talkie"—has you, in New Zealand, by your artistic throat; but here you will already be aware of the degree of its hold upon the public and you will realise what importance there may well be in the development to which I have just referred. Mr. Justice Mackinnon, recently assuming to speak as a Judge of artistic matters as no doubt he well may, pronounced the severest and least mitigated sentence possible on all to do with the "films,' *alias* "movies," *alias* "flickers"; we have yet to hear him upon the worse and second offence of the "all-talking"; but, however true this pronouncement may be from the aspect of art, from the professional point of view we regard matters cinematographic as a very welcome subject of litigious or non-litigious business; the inherent nature of the thing leads to the most intriguing problems, especially as to the identity of the positive prints and the original negatives involved in the various contracts and as to the points which arise upon those identities; and the inherent nature of the people who have to do with the thing, which is described as universally and without exception unscrupulous, causes these and all other cinematographic problems to be presented to us in their most interesting and effective light. I do not know of any particularly enlivening actions which have as yet been tried out; I speak, rather from knowledge of the future obtained from present goings-on in what we call the "Bear Garden" and in what is, to inform the uninformed, the central hall from which open out the various Practice Masters' rooms in the High Courts in London. It is where we counsel of the junior species assemble at 1.30 p.m., if we are going before a Master, or at an earlier hour, if we are going, on appeal from a Master, to a Judge in Chambers; and the disorderly attribute suggested by the title is brought about by the daily struggles, now somewhat less ferocious than they used to be in the good old days of infinite business, which takes place in the effort to get before the Master slightly quicker than should be. It is in the "Bear Garden" I have got my impression that a subject of much litigation, pending, will be seen to be, unless the spirit of compromise spreads abroad, that of the Film World; and a very welcome relief too, say we from this incessantly overwhelming topic, "Personal Injuries," which always involves an impossible motor car, proceeding at something less than fifteen miles an hour, with all its breaks on and its hooter uninterruptedly sounding the alarm.

And then, have you women barristers at your side of the world? If so, and indeed even if not, you will be amused to hear that the difficulty long forseen has now become actual: the modest, unassuming virgin defending that particular class of criminal case which, at Assizes, is always given (if possible) a day to itself and a day when no one need be present, unless his or her "curiosity" impels. On the Western Circuit this time, there has been witnessed the (to me, thoroughly unpleasant, utterly unnecessary and absolutely damning of the wonders of our so-called modern civilisation) spectacle of such a feminine advocate going into inconceivably intimate, physical details of an alleged rape, and doing it with so unblushing a thoroughness, and, I am informed, technical ineptitude, as to alarm even the hardened Judge himself! If there are, amongst those who read, brother-lawyers who regard the coming of women into our profession (1) seriously, and (2) with approval, then I reluctantly but firmly join issue with them from A—Z of the whole claim and all the arguments with which it is supported, the truth being that only those women come to our masculine profession for whom there is no demand in their own: and man's services in this world being so much inferior to woman's, as no husband or son among us will probably deny, we have, in the Lady Barrister, the inferior type of her own species engaged in the inferior occupation and displaying, it may safely be added, invariably inferior qualifications even at this low ebb! I may be pardoned this outburst, for the reason that not a single one of our feminine recruits has gained as yet the least distinction and the whole of them have had but one achievement, organised advertisement in the press. If any one young man on a Circuit, whether by his own fault or not, had been illustrated and chatted about in the daily papers, as each of these young persons have been upon her least appearance, his guilty responsibility would have been presumed and himself damned. I do not blame the women for disregarding our unwritten laws of professional etiquette, for we all know that law instinctively means nothing to women and never will and never, in the exigencies of their existence, can. I only object to those practising law who, instinctively, care nothing for it. And if the answer be made, that these are women who have not women's instincts, I agree that the answer may be true in fact, but I reply it has no effective point, since they certainly have not man's logic.

Any news to be extracted from current proceedings in the Courts I will collect and reproduce for you in my next letter, to be written, if I calculate aright, upon the first day of the blessed Long Vacation. A new argument in favour of that institution which I have never heard put by the public (whose argument it is) is this: the suspending, for all practical purposes, of the High Court jurisdiction for two and a half months is an agreeable boon for hard-pressed financiers who just require that much moratorium, as at the end of their financial year, to meet their debts! There are now commencing before the Masters those battles peculiar to this period, the battle for time! In such battles any argument may be used, or any technicality relied upon, or anything said to the Master, except the truth: "Master, I want TIME . . . and if only I can get to the Long Vacation, I shall get it!"

Yours ever,
INNER TEMPLAR.

Guilty without Indictment.

A curious chapter of errors was revealed in the recent case of *Rex v. Yitching* before the Court of Criminal Appeal in England.

The indictment and the result of the proceedings indicated that the prisoner had been tried before Charles, J. and convicted for rape. But according to the endorsement on the back of the indictment the Grand Jury had found: "No true bill for rape. A true bill for indecent assault (aggravated)." The accused, therefore, had apparently never been indicted for rape, and he had not properly been tried for indecent assault. The conviction was accordingly quashed.

Australian Notes.

(By Wilfred Blacket, K.C.)

Law Reform is in the air, and is likely to stay there because it can never become a thing of thrilling interest to politicians. Mr. Justice Harvey, Chief Judge in Equity, put his views on this subject on the air on Sunday last by broadcasting a very interesting address. His Honour seemingly deplored the enormous increase in litigation in recent years and stated that the business of the Courts in 1926 was three times as great as in 1908. To barristers and solicitors this might seem to be a gladsome thing, and to me it seems to indicate the fact that litigants have no fault to find with the legal procedure of New South Wales, but of this more anon. In order to reduce this great bulk of litigation His Honour thinks that the system which has prevailed in Norway since 1796 might be worthy of adoption. The essential part of that system is that a case may not be litigated in the Courts of Law until it has been dealt with by a Court of Conciliation. The latter is quite an informal tribunal. The parties appear before it in person, and the conciliators endeavour to find a means of avoiding resort to law. They are able to effect an adjustment of the matter in dispute in from fifty-five to sixty-five per cent. of the cases, and the remainder then are brought before the Courts for trial; but even in these cases the hearing is frequently shortened by admissions made before the conciliators. His Honour suggests that such a form of preliminary procedure here would be equally efficacious in reducing the mass of litigation, and that it would tend to foster a conciliatory spirit in the nation.

The Victorian Supreme Court had before it recently an interesting and important point in connection with default in payment of maintenance. Carl H. Franke had been ordered by a Melbourne Court to pay weekly sums for his wife's maintenance. Some time after the order was made he went to New Zealand and lived there for some time paying nothing for his wife's maintenance. She issued a warrant against him but it was not served until he returned on a visit to Victoria. The Court held that the section of the Deserted Wives and Children's Act as to default in payments ordered could not be construed to include default by a person being then beyond the limits of the State.

At Darlinghurst (Sydney) Sessions this week a strange old legal antiquity was dug up when a Crown Prosecutor, finding that there were not enough jurors available for the last case in the day's list, "prayed a *tales*"; but his request was refused by Judge Cohen. I can remember only two precedents for this application; it was made and granted once at Dubbs Assizes, and was granted on my application in 1889 at Cobar. The Court was sitting late. There was some reason for this, not, I think, unconnected with duck shooting, and so it was that when the last case was called on all the jurors except two were out considering verdicts. His Honour having granted the *tales* the police started out at 11.15 p.m. to catch jurors. They brought them along as they got them, and the prisoner, who took a vivid interest in the game, challenged them as fast as they came. When he had exhausted his challenges and jurors were still coming along, he smilingly said that he wanted to plead guilty. Never shall I forget the appearance of the Court. Never before, nor since, have I seen pyjamas and nightgowns under ulsters in the jury box. If the prisoner had made his challenge "to the array" it might possibly have succeeded.

At Glen Innes Quarter Sessions Court, it is telegraphed, a prisoner made an attack upon the presiding Judge asserting in effect that the latter and the Crown Prosecutor had fixed up his case between them in the hotel. Judges have to be always ready for such attacks. I have several times heard them made. It is related of Judge Docker that a prisoner who had been sentenced to eighteen months imprisonment with hard labour became profanely abusive and forecasted a dreadful fate for His Honour. The Judge waited patiently until the prisoner had concluded and then said that he had reconsidered the matter and thought that a more just and proper sentence would be two years imprisonment with hard labour, and finally asked whether the prisoner wished "to say anything more." Whereupon the prisoner replied, "Oh no, I don't want to say anything more—your Honour's too good at repartee." I may mention that during my short periods of presiding at Quarter Sessions I made it a rule to state the sentence at the outset and then follow on with a few well-chosen remarks appropriate to the occasion, but I do admit that there was always a moment of intense anxiety lest the prisoner might want to say something upon hearing what he had been awarded.

In a recent suit for restitution, Mr. Acting-Justice Maxwell felt compelled to refuse relief because he did not think the petitioner was sincere in his expressed desire that his wife should return to him. He had sworn that she on one occasion had chased him round and through the house with an axe and that when he got away to cover in the bathroom she had thrown the axe through the fanlight, wounding him severely. His Honour seemed to think that there could be no happiness in their continued association—but is this really so? May it not be that in the lives of some persons incidents of this kind are pleasing diversions softening the ordinary asperities and enlivening the colourless monotony of matrimonial union? The incident was a substitute for a visit to the pictures. After starring in such a thrilling drama of modern life and adventure the husband would not want to go to the pictures for a month. Quite probably he would not be able to.

Rules and Regulations.

Animals Protection and Game Act, 1921-22.—White-backed magpie absolutely protected.—Gazette No. 62, 12th September, 1929.

British Nationality and Status of Aliens (in New Zealand) Act, 1928.—Naturalization Regulations, 1929.—Gazette No. 61, 5th September, 1929.

Defence Act, 1909—Financial Instructions and Allowance Regulations for N.Z. Military Forces amended.—Gazette No. 62, 12th September, 1929.

Fisheries Act, 1908.—Regulations for trout fishing in Feilding and District and Auckland Acclimatisation Districts.—Gazette No. 62, 12th September, 1929.

Government Railways Act, 1926; Master and Apprentice Act, 1908.—Amendments to the Regulations under the Government Railways Act, 1908, re employment of apprentices.—Gazette No. 62, 12th September, 1929.

Law Practitioners Amendment Bill.

DEBATE IN LEGISLATIVE COUNCIL.

We publish below the Hansard report of the debate in the Legislative Council on the second reading of the Law Practitioners Amendment Bill.

On the question, *That this Bill be now read the second time,*

The Hon. Mr. SIDEY (Leader of the Council) said,—Sir, this Bill is promoted by the legal profession of New Zealand, and it is as head of the profession that I have the honour to introduce it into the Council. The object of the Bill is to provide a fund for the purpose of reimbursing persons who may suffer pecuniary loss by reason of the misappropriation of moneys by a solicitor. At the outset I want, on behalf of the legal profession, to emphasize the point that this Bill is not a measure of compulsion promoted by the Government as having been rendered necessary for the purpose of protecting those who might suffer through the defalcations of a few dishonest lawyers. It is a purely voluntary effort on the part of the profession itself. The members of the profession have felt for some time that the defalcation of one member of the profession does reflect on the whole profession, and they are prepared to tax themselves for the purpose of protecting the public against any loss by reason of such defalcation. Another thing I ought to say is this, that I believe the public have got a wrong impression of the extent to which defalcations have taken place, simply because of one or two illustrations which occur now and then. When one considers the large number of solicitors who have been engaged in practice in this country since its foundation as a colony, and the enormous amount of trust funds that have been committed to their care, the proportion of those who have succumbed to temptation and proved themselves unworthy of their trust is exceedingly small. There are black sheep in every fold, and dishonest people are sometimes found in every walk of life. This, however, is a voluntary effort to protect the public in the way I suggest, and the Government is providing the machinery for the purpose. A great deal of consideration has been given for some time to this question by members of the profession. The various district societies throughout New Zealand have considered it, as well as the Council of the New Zealand Law Society, and at two conferences of lawyers from all over New Zealand resolutions in favour of legislation of this kind were passed. Last year a Bill was proposed which had for its object an exactly similar purpose as this one. It came before this Council and was passed. It went to another place, where, owing to the lateness of the session, it was held up, but this Council adopted it, and I want to say that the Bill which I now submit to the Council is, in some respects at any rate, not open to the same objection that was raised to the Bill of last year. As honourable members may recollect, an objection raised to that Bill was that it gave what was described as practically a blank cheque to the Council of the New Zealand Law Society to do what it liked to achieve its object. It was empowered to do everything by Order in Council. The Bill which I now submit is not open to that objection. There are certain limitations which I will briefly mention. One is that it does not refer to any solicitor who is simply in employment either with a private practitioner or in a public office. It only applies to those solicitors who are practising either on their own account or in partnership with other solicitors. Another limitation is that some restriction is imposed upon the extent to which fees or levies can be obtained from members of the profession. It was felt, however, that it was necessary to make these fees or levies such as to be reasonably sure that they would be adequate for the purpose. It was felt that Parliament was entitled to know that the proposals to be made were likely to be sufficient for their purpose within the restrictions which have been imposed. The limitations proposed are that in any year the fee shall be not more than £10 and not less than £5, with the additional right for the society to make a levy not exceeding £10, but not to exceed £50 during the whole period the solicitor is in practice. In order that this Council may see that these proposals are likely to be entirely adequate for the purpose for which they are provided, I shall show honourable members what has taken place in the past, and the amount of money that may be expected from these contributions. I have a list of the defalcations that have taken place in the last ten years. I have reason to believe that these are greater than those of the preceding ten years, and that over a twenty-year period the average per year is smaller than my calculation shows. Taking the last ten years, the defalcations amounted to £37,482, an average of £3,748 per annum. What sum may be expected from the contributions under this measure? There are in New Zealand 1,740 solicitors who obtain certificates. That number includes qualified clerks and persons in the Public Service, such as the Public Trust Office, who are not practising on their own account. After making what is regarded as a liberal allowance for those who would not come in under this Bill, as they are not practising on their own account, it is considered safe to say there are about one thousand five hundred solicitors who would be affected. On the basis of a fee of £5, the amount of the contributions would be £7,500 per annum, which figure is about double the average amount which has been lost by way of defalcations during the last ten years. Honourable members will see, therefore, that in all probability a very liberal allowance is being made in the Bill for any possible contingency that may arise. The proposal that the fee shall be not less than £5—that is to say that there shall be a minimum as well as a maximum—is not unreasonable. In the Bill there is a provision under which the Council of the Law Society can when a solicitor goes out of practice refund to him the contributions he has made while in business. It will enable the Council to deal more fairly with those who have contributed at the beginning of the scheme if those who come in afterwards are obliged to contribute the same amount, even although there may not be the same occasion for it. If no minimum were provided and the fund increased, as I believe it will, the Council might consider that it did not require so large a contribution, and it might decide that £2 2s. was a sufficient fee. The provision of a minimum levy is therefore fairer to those who have already contributed. An objection is sometimes raised that the present lawyers are paying for those who will come after them. This proposal will minimize although it may not remove that objection. If there are other points upon which explanation is sought I shall be pleased to give any explanation desired when I reply or when the Bill is in Committee. While there may have been differences of opinion amongst the members of the various law societies in regard to the Bill, I can assure the Council that the proposals have received a great deal of consideration from all the district law societies, and to-day there is absolute unanimity on the part of them all. I trust, therefore, that the Council will follow the course it adopted last session and pass this Bill. I move the second reading.

The Right Hon. Sir FRANCIS BELL.—On behalf of the profession, for which I have a certain right to speak, I desire to thank the Government and my honourable friend the Attorney-General for having helped to carry into effect this great reform by which the profession—an honourable profession—binds itself to insure the public against those members of the profession who may unfortunately disgrace its name. My honourable friend has been more enterprising than I, for although I supported the Bill last year I did not, I think, undertake it for the Government, a fact which, no doubt, made its passage in another place a very precarious matter. Members of the profession have long desired to have the power to do what is proposed in this Bill—namely, tax themselves to protect the honour and name of the profession. There has been a difference of opinion amongst the various district law societies not in regard to principle, but as to matter of detail, and I am delighted to hear from the Attorney-General that unanimity has been reached, and that this Bill represents the considered request to Parliament of the profession to which my honourable friend and I both belong. There is one minor point I would like to ask him to consider in Committee. It relates to clause 20, which I regard as one of the important clauses of the Bill, giving power to the Council to insure. Insurance is possible, but, probably, it would be a limited sum in the case of each individual. However, it is another safeguard to the sufficiency of the fund. Having regard to the other class limiting the purposes to which the fund may be applied, I think it would be advisable to have in clause 20 the additional

words "The Council may pay the premiums of such insurance out of the fund." No doubt that is what is contemplated; but the Council of the New Zealand Law Society has considerable funds at its disposal apart from this fund, and it might be possible to contend that the power here given to the Council is to enter into contracts of insurance, but, if it does so, to indemnify the fund and pay the premiums out of other funds. It is a mere detail, and if my honourable friend will consider it I shall be quite satisfied with the conclusion he reaches.

The Hon. Mr. McINTYRE.—I was hoping that the leader of the Council mgiht have intimated that he intended to refer this Bill to the Statutes Revision Committee to take evidence. The Bill contains some twenty-four clauses; and, while it directly affects only about fifteen hundred members of the legal profession, it indirectly affects a large number of the general public.

The Hon. Mr. HANAN.—It is for their protection.

The Hon. Mr. McINTYRE.—I admit that the intention of the Bill is to protect the public; and, although we have the assurance of the leader of the Council that the law societies are unanimously in favour of this Bill, I know that there are differences of opinion even among members of the legal profession as to the justification of this Bill—in fact, I have reason to believe that some members of the legal profession in this Council are opposed to it.

An Hon. Member.—More foolish they.

The Hon. Mr. McINTYRE.—That is merely a matter of opinion. Honest members of the legal profession regard their honesty as one of their greatest assets, for when a firm of solicitors has a long and honourable reputation for straight dealings there is no doubt that sensible people will place their trust funds and take their business to that firm instead of to an unknown firm; and it does not seem fair in principle that the honest lawyer should have to pay for the dishonest lawyer. I do not consider it to be one of my functions to stand up here and protect members of the legal profession, which is well represented in this Council; but I do think they should be given an opportunity of being heard in objection to the Bill if they wish. I myself had evidence last year that there were many objectors to a similar measure. That was shown by the very large number of congratulatory letters I received from members of the legal profession on the stand I had taken then. I think I was the only member of this Council who criticized last year's Bill, and I know my attitude met with the approval of many men in the legal profession. I admit that the present measure is in many ways an improvement over that of last year. My main purpose on that occasion was to point out the inconsistency of the Law Society in passing a resolution in conference strongly condemning the Government for legislating by Order in Council, and at the same conference drawing up a three-clause Bill which was nothing but legislation by Order in Council — in fact, was worse, because it was not even to be submitted to the Government, as the proposal was that the Law Society Council be given a blank cheque and the regulations had to be approved merely by three Judges of the Supreme Court. I strongly objected to the Judges of the Supreme Court being the lawmakers as well as administrators of the law. The present Bill has, as I say, eliminated that objection; and it also has met my objection in regard to the making of rules and regulations, in so far as any rules made by the Council of the Law Society must have the approval of the Governor-General, which means that they are simply Orders in Council, because they will then, I have no doubt, be submitted to the Attorney-General. The present is a Government measure, which places it on a very different footing to last year's Bill. I admit that in this Bill the legal profession is voluntarily endeavouring to protect the public; but, in claiming credit for it, it was making a virtue of a necessity, because the members of the profession are well aware that owing to the many defalcations of trust funds by dishonest lawyers a large amount of business is going to the Public Trust Office, and something had to be done to stop it. It is being borne home to the public week after week that at present the safest thing to do is to place trust moneys in the hands of the Public Trustee; and this is an attempt to regain the public confidence, and was a reform long overdue. I agree that under this Bill the public will have some protection, and because of that I cannot object to it; but it is not perfect by a long way, and I think that those members of the legal profession who object to it should be given an opportunity of tendering evidence before the Statutes Revision Committee. Personally, the Bill does not affect me, and it is a great improvement on the Bill of last year; but I would like the leader of the Council to carry out my suggestions to send it to a Committee. The measure is a very important one, and I think it was hardly fair to introduce it yesterday and then take the second reading to-day.

The Hon. Mr. WESTON.—Under clause 19 of this Bill there is provision whereby in the event of the fund not having sufficient funds at the time to satisfy the claims made against it such claims are to be paid subsequently out of future accumulations. I can conceive it possible that if there were a very bad defalcation in the earlier years of the fund it might be very awkward for the fund to have to satisfy those claims, plus interest, during the period they might remain unpaid.

The Right Hon. Sir FRANCIS BELL.—The insurance will help a great deal in that case.

The Hon. Mr. WESTON. — It might, but it should be remembered that the premiums are always heavy.

The Right Hon. Sir FRANCIS BELL. — There will be ample provision, with the insurance.

The Hon. Mr. WESTON.—I should like to have the assurance of the leader of the Council that that matter has been considered. There is also the question of the priority in which claims held over should be paid.

The Hon. Mr. SIDEY.—I will attend to that.

The Hon. Mr. WESTON.—I am inclined to think that the suggestion of the Hon. Mr. McIntyre that the Bill should be referred to the Statutes Revision Committee is a reasonable one, because it would give an opportunity for honourable members to satisfy themselves that minor points had not been overlooked, and it would give the framers of the measure an opportunity of showing how they were prepared to meet any questions which might arise.

The Hon. Mr. MALCOLM.—The registered accountants of New Zealand are at present holding a conference in Dunedin; and I notice, according to a newspaper report, that they propose to make suggestions in regard to this matter to the Government. Will the leader of the Council undertake that they will be given an opportunity to make these suggestions before this Bill becomes law?

The Hon. Mr. HANAN.—From some of the remarks that have fallen from the Hon. Mr. McIntyre, the inference might be drawn that the members of the legal profession have exhibited a low standard of conduct in the practice of their profession.

The Hon. Mr. McINTYRE.—Oh, no.

The Hon. Mr. HANAN.—He knows, or should know, as any other man with worldly knowledge knows, that there are "black sheep" in every class, no matter what calling or vocation in life that might be mentioned. There are men who at times will be guilty of dereliction of duty and violate principles of honour. When a clergyman does something morally wrong widespread publicity is given to the case. When a lawyer misappropriates a client's money his offence is made known throughout the length and breadth of the country. If you take a period of years and the offences of the character which this Bill deals with you will find that it is a very small percentage of the members of the legal profession who have been guilty of misappropriating funds. Now, this measure is for the benefit of the profession as a whole. It is also for the protection of the public. It does not matter what progressive measure might be formulated or projected, it will be found that there are some people who will object to it. But the question we have to consider is this: Is this a measure that is approved of by the great majority of the members of the profession in this country, and is it for the benefit of the public? The answer is Yes. Furthermore, there is the fact that men who are in practice and whose standing in the country is high are prepared to put their hands in their pockets and help to establish an assurance fund in order to protect the public against financial loss due to the action of some member or members of

the profession appropriating moneys belonging to clients. The majority of members of the profession have high standards of duty, and there is no danger of these reputable practitioners misappropriating money; but in order to maintain that high standard of professional honour and duty they are willing to subscribe towards the establishing of this fund that will protect the public against those members of the profession who might be guilty of the offence of misappropriating their clients' funds. I say that the members of the profession in this country are to be commended for formulating and supporting a measure of this character. It shows a public spirit and an earnest desire to do that which is in the public interest—in a word, it makes manifest the very fine spirit that animates lawyers to uphold the high traditions that have been and are associated, generally speaking, with the practice of the legal profession in this and other progressive countries.

The Hon. Mr. SIDEY (Leader of the Council).—I want to thank my right honourable friend Sir Francis Bell for his generous remarks in regard to myself, and honourable members for the reception given to the Bill. In reference to clause 20, which has been alluded to by my right honourable friend, I shall have that looked into to make quite sure that the insurance premiums are not to be a charge upon the ordinary funds of the society, but may be paid out of the guarantee fund. Of course, that is intended. The guarantee fund will stand by itself in every respect, and the ordinary funds of the Council of the Law Society will be entirely separate and distinct from that fund. Referring to what was said by the Hon. Mr. Weston, he will have noticed that under clause 13 of the Bill, if the fees are not sufficient—if there should be a deficiency in the fund——

The Hon. Mr. WESTON.—I do not think there would be. Supposing there was a really bad case at the start, it would be found that the fund was very much hampered, even with the levy. It is a question of figures, that is all.

The Hon. Mr. SIDEY.—Yes, it is a question of figures. I am quite sure that the honourable gentleman will see that in all probability, as far as one can humanly judge from the experience of the past, there is ample provision here to meet the possibilities of the future. There are, as I have pointed out, fifteen hundred solicitors, and £10 in fees from each of these will amount to £15,000. If a further £10 is levied, as will be possible, there will be a total of £30,000 for the fund in one year. No previous circumstance has shown it necessary to provide so much as that. But if it did so happen that there should be a large claim upon the fund in the first year, this would be covered by clause 19, to which reference was made by my honourable friend. This clause provides that—

"No moneys or other property belonging to the New Zealand Law Society other than the fund shall be available for the satisfaction of any judgment obtained against the society in relation to the fund, or for the payment of any claim allowed by the Council; but if at any time the fund is not sufficient to provide for the satisfaction of all such judgments and claims they shall, to the extent to which they are not so satisfied, be charged against future accumulations of the fund."

The Hon. Mr. WESTON.—Yes; but are they to carry interest in the meantime?

The Hon. the SPEAKER.—I think the honourable gentleman had better reserve his remarks until the Committee stage.

The Hon. Mr. SIDEY.—That is another matter, and one that might be dealt with in Committee. Now, in regard to the suggestion to send the Bill to a Committee, under ordinary circumstances that is not an unreasonable thing to ask. But I would request the Council to remember that the Bill has been introduced in this Council instead of in another place; and it is the second year that the Bill, or a Bill on these lines, has been before the Council. It must be some time yet before the Bill is finally dealt with by the Legislature, and the position is therefore not the same as if this were the only opportunity there would be to raise objections. I may say that I consulted with the Chairman of the Statutes Revision Committee with a view to seeing whether he thought the Bill ought to be referred to a Committee of the Council, and he said that he did not think that it would be necessary to do so. It was only after consulting with that honourable gentleman that I thought I would ask the Council to deal with this Bill as with last year's Bill, without its going to a Committee. There will be an opportunity of referring it to a Committee in another place. If any honourable member would prefer that the Committee stage be not taken on Tuesday I shall arrange for it to be taken at a later day. There was a question put to me by the Hon. Mr. Malcolm as to whether the society of accountants might have an opportunity of making certain representations. I shall be very pleased to see that any representations that they may make are given consideration.

Bill read the second time.

Drafting of Legislation.

Resolution of English Law Society.

The latest annual report of the English Law Society contains the following paragraph on the subject of the Council's views on the careless drafting of legislation:

"Representations were made to the Council regarding recent cases in which comment had been made by His Majesty's judges upon the difficulty of arriving at the true meaning of certain recently passed Acts of Parliament.

"The Council are persuaded that the difficulties referred to are caused by the hasty manner in which legislation is dealt with and particularly by reason of the fact that Bills are sent up from the House of Commons to the House of Lords of an exceedingly complicated nature at the end of the session when no adequate time for their consideration is available.

"It was in these circumstances that the Council passed and circulated the following resolution:—

"'The Council of the Law Society regard it as seriously to the public disadvantage that frequently insufficient time is allowed to the House of Lords properly to consider Bills sent to them from the House of Commons at the conclusion of Sessions of Parliament, and that consequently even less time is allowed to the House of Commons for consideration of amendments made in the House of Lords.

"'The Council are of opinion that not only is it essential that those who are made responsible under the Constitution for the substance of legislation should have more, rather than less, than sufficient time properly to examine and appreciate it but that with regard also to its form it is necessary that ambiguities should be avoided and meanings made clear. They venture to express the hope that some means may be found for securing careful scrutiny of all legislation, so that the Courts of Justice may be relieved as far as possible from the present burden of elucidating statutes of which varying meanings are possible and unwilling litigants spared the anxiety and expense to which too often they are subjected.'"

Court of Arbitration.

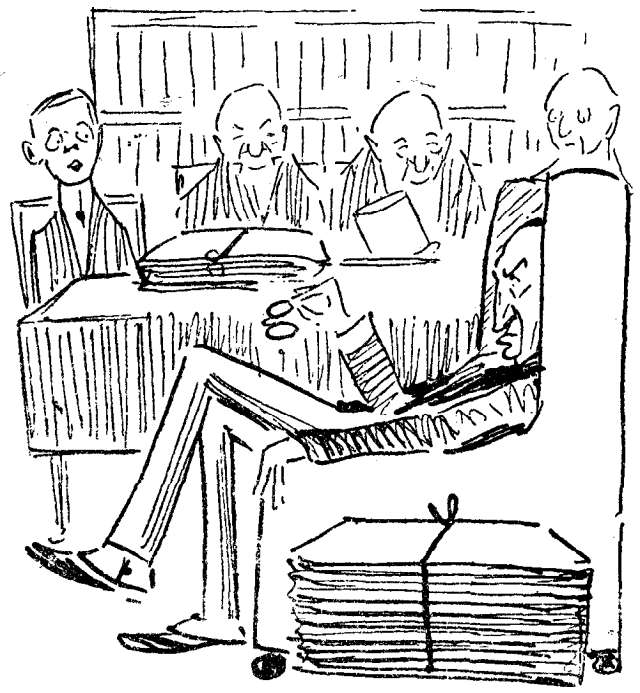
The following fixtures have been arranged by the Court of Arbitration:—

Dunedin: 4th October, 1929, at 10 a.m.
Invercargill: 7th October, 1929, at 2.30 p.m.

Forensic Fables.

THE SILK WHO KNEW HOW TO MAKE A GOOD SHOW.

There was Once a Plaintiff who Brought an Action in the Hope that the Defendant would Prefer not to Fight. But the Defendant Plucked Up Courage and Briefed a Silk whose Fame as a Cross-Examiner was World-Wide. As the Plaintiff, apart from being a Bad Egg in a General Way, had Spent Several Years in Penal Servitude, it was Clear that the Silk would have Some Material to Work Upon. A Week before the Case Came On the Silk Presided over a Consultation at which the Question of Evidence was Discussed. How was the Black Record of the Plaintiff to be Established? The Junior Suggested that the Certificate of his Conviction Duly Produced in Court would Suffice. The Silk Curtly Rejected this Proposal, and gave Other



Directions. When the Time Came for the Silk to Cross-Examine the Plaintiff the Court was Crowded with Expectant Members of the Public and Representatives of the Press. The Silk First Asked the Plaintiff whether he was in Good Health. Having Learned that the Plaintiff's Physical Condition was All that Could be Desired, the Silk Enquired where the Plaintiff Lived. After Ascertaining that he Resided in Tooting, the Silk Begged to be Informed Whether he Ever Went to the Country or the Sea-Side. If so, Which Place did he Like Best? The Silk then Took the Plaintiff Through a Long List of Inland and Marine Health-Resorts and Gathered that he Usually Spent his Holidays at Margate. Did the Plaintiff Care, by any Chance, for Devonshire? What did he Think of the Moors of Devonshire? Did he Know them Well? Had he Found them Salubrious? Had he Found them So Salubrious that he had Lived on them for Seven Years? Did he Know the Stout Gentleman Standing Up at the Back of the Court? Was the Stout Gentleman a Warder at the Dartmoor Convict Establishment? Did he Know the Gentleman with a Broken Nose Standing Up in the Gallery? Was he a Fellow-Convict with the Plaintiff at the said Convict Establishment. Were the Plaintiff and the Gentleman with the Broken Nose Employed in the Quarries at the Same Time? When the Plaintiff had Given Satisfactory Answers to these Various Queries, the Silk Resumed his Seat. Was his Reputation as a Cross-Examiner Enhanced? It was. The Daily Journals Reported his Masterly Performance Word for Word, and the Public Wondered Once More at the Amazing Skill with which the Silk Managed to Worm the Truth out of a Cunning Scoundrel.

MORAL: *Do it in style*

Success at the Bar.

Some Maxims.

Lord Alness, the Lord Justice-Clerk, addressing the Glasgow Judicial Society recently, set down three conditions as desirable for those who aspired to membership of the Bar: first, a spirit of adventure; second, financial resources to tide over the inevitable years of waiting; third, reasonable ability.

Lord Alness then read a letter from Lord Shaw of Dunfermline in response to a request for his views regarding the qualities that make for success at the Bar. Lord Shaw wrote:—

"I was once at the Bar myself but this is all I can remember about its qualities:

"(1) Go straight; rather ruin than a deviation from that.

"(2) Learn law as other people have set it down in text books. Get your terminology all right; and, as for the rest, if the law agrees with what you feel to be a straight deal, then you are getting to the hidden treasure called 'principle.' If it does not, keep a look-out for a chance to knock it on the head.

"(3) Work in the same way with what we call 'the authorities.' Let them guide your judgment, not drown it. Do not forget that truth and sense are occasionally found in decided cases.

"(4) Be a cultured man as well as a lawyer; therefore let your love for letters always grow. So you will be a man with a vision and a penetration which will guide you in labyrinths and stony places, and bring illumination and effectiveness into the daily task.

"(5) Be brave amid disappointments, and let these inspire you to greater knowledge and greater accuracy.

"(6) Have command of yourself, knowing that there are stages of law which bring no comfort with them. A practising lawyer, forgetful of self-command, loses his temper, then loses his head, and then loses his case.

"(7) Finally, while relevance and effectiveness are your aims, have a wide charity towards those whom you address, and be patient with the Judges."

Bills Before Parliament.

Land and Income Tax Amendment. (Rt. Hon. Sir Joseph Ward). "Farm Lands" defined as including all lands used or capable of being used for agricultural or pastoral purposes but not lands regularly used for any purpose that renders impracticable their use for agricultural or pastoral purposes. Special land tax payable by all persons who on 31st March preceding year for which tax payable were owners of farm lands of a total unimproved value of more than £14,000: provided that not to apply to lands owned by or in trust for any society or institution established exclusively for charitable, educational, religious, or scientific purposes of a public nature and not carried on for private pecuniary profit.—Cl. 2. Provision in relief of hardship arising from imposition of special land tax: S. 169 of principal Act to have no application to special land tax.—Cl. 3. S. 42 of principal Act amended by omitting from subsections (1) and (2) words "timber or flax (other than the roots of flax-plants)" and substituting words "or trees."—Cl. 4. As from 1st April, 1930, Ss. 43 and 46 of principal Act repealed; S. 44 amended by omitting from subsection (1) words "or the subsidiary roll"; S. 45 amended by omitting from subsection (1) words "either on the district valuation roll or on the subsidiary roll" and substituting words "on the district valuation roll."—Cl. 5. S. 49 of principal Act amended by repealing paragraphs (a) and (b) and substituting paragraphs providing for special exemption up to £7,500 where total unimproved value does not exceed that sum and, where it does exceed that sum, of £7,500 diminished by £1 for every £1 of that excess. S. 65 of principal Act amended by adding proviso to effect that in each of five years of assessment immediately following year in which mortgagee entered into possession Commissioner shall, if satisfied that mortgagee in possession solely for purpose of furthering realization of his security, assess him separately in respect of estate or interest of which he is deemed to be beneficial owner. S. 25 of Finance Act, 1924, repealed.—S. 7. Public Trustee and General Manager of State Fire Insurance Office liable for land tax: exemption from land tax of land used to provide access to railways, etc., specified in paragraph (f) of S. 69 (1), and of certain Crown Lands and endowment lands occupied for pastoral purposes: S. 69 amended accordingly and S. 9 (3) of Amendment Act of 1924, repealed.—Cl. 8. Where Public Trustee as mortgagee of lands in respect of which mortgagor has made default has before passing of Act become purchaser of such lands, he is to be assessed for land tax as if he were mortgagee in possession thereof.—Cl. 9. Time within which charges in respect of land tax may be registered extended in certain exceptional cases: S. 11 of Amendment Act of 1924 amended.—Cl. 10. By clause 11 the assessable income of any person is deemed to include: "(a) All profits or gains derived by any taxpayer from the use or occupation of lands used for agricultural or pastoral purposes if the unimproved value of all such lands owned by the taxpayer at any one time during the income-year was not less than fourteen thousand pounds: Provided that the income-tax payable in any year in respect of the income to which this paragraph relates shall not exceed the difference between the sum of fourteen thousand pounds and the total unimproved value of the lands from which such income was derived: (b) All profits or gains derived from the extraction, removal, or sale of minerals, timber, or flax, whether by the owner of the land or by any other person, reduced by an amount equal to the cost of the minerals, timber, or flax so extracted, removed, or sold by the taxpayer during the income year: (c) All profits or gains derived from the use or occupation of any Crown land or other land administered by a Land Board and held as a small grazing-run or for pastoral purposes, or derived from the use or occupation of any other lands reserved, set apart, or granted by the Crown as endowments and occupied for pastoral purposes: (d) All profits or gains derived from the business of dealing in live-stock, meat, butter, cheese, or wool, or in grain, fruit, or other crops, being the natural products of land carried on by any person other than the owner of that land: Provided that when the taxpayer is the owner of other land, which, being used for the purposes of the said business, is not in itself sufficient for the full sustenance of such live-stock or production of such other products the Commissioner shall (except in cases to which paragraph (a) of this subsection is applicable) assess for income-tax only the profits derived from dealing in so much of such live-stock or products as is in excess of the capacity of the said land fully to sustain or produce. Consequential repeal of paragraph (l) of S. 78, paragraphs (d) (dd) and (e) of S. 79 of principal Act, and subsections (1) and (2) of S. 9 of Amendment Act of 1924. Income tax payable in respect of income derived from use of land to be reduced by amount of land tax payable in respect of same land: S. 83 of principal Act modified.—Cl. 12. Special provisions as to computation of assessable income derived from business of dealing in live-stock.—Cl. 13. Provisions of principal Act relating to special exemptions in respect of children amended.—Cl. 14. Special exemption in respect of dependent children or grandchildren incapacitated by permanent mental or physical infirmity.—Cl. 15. S. 99 of principal Act amended.—Cl. 16.

Land and Income Tax (Annual). (Rt. Hon. Sir Joseph Ward). Specifying rates of ordinary land tax, special land tax, and income tax, for year commencing April 1st, 1929.

Unemployed Workers. (Mr. Fraser). Sundry definitions including "district" as meaning any one of the industrial districts constituted by Industrial Conciliation and Arbitration Act 1925; "employer" as meaning any person, firm, company or local authority employing labour of any kind for hire or reward and including any agent, representative or attorney of them respectively: "ruling rate of wages" as meaning wage fixed by an industrial agreement or by award of Court of Arbitration or, if no such agreement or award exists, ruling wages for similar work in district.—Cl. 2. Unemployment Board established.—Clauses 3-7. Unemployment Insurance Fund created partly from contributions from workers and employers at prescribed rates and partly from monies provided by Parliament.—Cl. 8. Enforcement of contributions.—Cl. 9. Special works to reduce unemployment.—Cl. 10 and 11. Railway passes to unemployed workers.—Cl. 12. Power to regulate methods and conditions by and under which employers may advertise for labour.—Cl. 13. Right to work.—Cl. 14. Technical training of unemployed workers.—Cl. 14. By clause 16 the Governor-General in Council is hereby empowered from time to time by Order-in-Council *to issue such orders and give such directions and prescribe such rules as will in his judgment be calculated to safeguard the requirements and well-being of the people or to give full effect to the provisions of this Act.*" Clauses 17 to 20 contain general provisions and further powers of regulation making.

Unemployed Workers (No. 2). (Mr. Fraser). Governor-General in Council to make such regulations as may be necessary for purpose of carrying out provisions of Act.—Cl. 3. Every unemployed worker entitled to be registered for employment at any Government Labour Bureau—Cl. 5—and to have right to work and receive minimum living wage for services.—Cl. 6. Immigrants induced or assisted by New Zealand Government to come to New Zealand to have similar rights.—Cl. 6.

Legislative Interference.

Proposing the toast of "The Company," at a recent dinner of the London Carpenters' Company, Mr. Justice Eve made some trenchant observations on the steadily growing evil of legislative interference with the private individual. One of the main objects, he said, which lead to the formation of that and similar institutions was the desire to secure the right to maintain and manage their own affairs without statutory restrictions. To those who were convinced that the best Government was that which governed least, it was alarming to contemplate the increasing scope of legislative interference in those matters which in the past had been considered the private affairs of the citizen. Legislative interference was sometimes supported by attractive pretexts preceded by certain harmless intrusions, and if they were tolerated and ignored the attack would become more aggressive, the advance more permanent and more rapid, and individual liberty and corporate activities would find themselves hampered by unnecessary restraint. The insatiable appetite to control other men's affairs was often evinced by those whose capacity to manage their own affairs was in inverse proportion to their desires.