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"It would be strange if we had escaped from the frying-pan of the prerogative to fall into the fire of a Minister's regulations." *Lord Sankey.*

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"The New Despotism."

It is reported that the Lord Chancellor has appointed an All-Party Committee of Parliamentary lawyers to consider the powers exercised by Ministers and the Crown by delegated legislation and judicial and quasi-judicial decisions. It is said that the Committee will report as to what safeguards are necessary to secure Parliamentary sovereignty and the supremacy of the law. The extent to which Parliament should delegate legislative action is a practical question of expediency but, as Parliament can always revoke any powers given, its sovereignty does not seem to be attacked. Nor, again, can it be said that the supremacy of the law is in question, though there can be no doubt that the supremacy of the Law Courts is, and the point seems to be whether a change of constitutional procedure which entrusts the interpretation as well as the administration of statutory rights and liabilities to officials of a Government Department is in the public interest.

The criticism of bureaucracy by the Lord Chief Justice, particularly in his book "*The New Despotism,*" has directed public attention to the results of legislation which throws into the hands of the officials what has hitherto been regarded as work within the sphere of our judicial system. Lord Hewart's book has not yet reached New Zealand, but one of his strongest protests is said to be directed against the insertion in Acts of Parliament of a clause giving Departments power to interpret provisions. It is obvious that a Department which has to administer an Act of Parliament is not the best tribunal to interpret its provisions; but, although that criticism will be generally agreed to it does not follow that there will be the same general agreement that existing judicial machinery is able to cope with the growing bulk of work of a judicial nature created by the Legislature.

The *Daily Telegraph* is reported as saying: "It is unusual for the Lord Chief Justice to write a book which is so much more than a criticism as to be the most damning and crushing indictment of a well-defined feature of the existing system of Government. Indeed, it is so unusual that the motive must not only be strong but overpowering. His cause is nothing less than the liberty of the subject and his challenge must be answered without delay." In New Zealand, as elsewhere, there has been for some time a strong body of criticism directed against legislation by order-in-council and regulation, and in all such criticism the citadel which is said to be attacked is the liberty of the subject. The liberty of the subject is too often an excuse to avoid the real issue, which is practical. Parliament itself has never liked delegating to subordinate bodies too much legislative authority, even though such authority is subordinate, but modern conditions have forced Parliament to call upon subordinate authorities to exercise increased powers in cases which can only be conveniently formulated in regulations. That such delegation happens to be more now than in the past to Government authorities is due to Parliament's own action in enlarging the sphere of Government enterprise. The inevitable result is that, if in addition to the power to make regulations the authority concerned is given discretion in its administration of those regulations and the right to interpret them, a weapon is placed in its hands by which injustice can be inflicted; the very appearance of justice is swept aside, as the laws are not trained for the weapon. To make a subordinate administrator arbiter when a difference arises between his view of his Department's rights and the ordinary citizen's view of them, is entirely subversive of English procedure. In such circumstances the right of the citizen to invoke the decision of ordinary Courts of Justice is fundamental to English ideas, and modern legislation which expels the Court and leaves the administrator judge in his own cause is repugnant to them.

But if the real purpose of the legislation is to displace in a certain sphere the ordinary Court of Law in favour of some other impartial body the question is of an entirely different character. The elimination of the Court of Law as arbiter in these matters has taken place, to a great extent, because of a feeling that its methods of procedure were ill adapted for the ready decisions required, and a pessimistic view that the task of overhauling judicial machinery so that it may function with speed and efficiency will not be undertaken in reasonable time.

Professor de Montmorency has pointed out that the transference of judicial power to the Executive from the Judiciary marks a phase not previously unknown in history. In Rome the administrative system undermined the law; but modern legislation, according to Professor de Montmorency, sweeps it aside. It is of the utmost importance that criticism of modern legislative tendencies should recognise the difficult and complicated problems that legislation has to meet and that Parliament has found it impossible to cover in statutes the innumerable detailed circumstances which will have to be provided for by the administrators. The appalling length of many of our statutes is an example of this. Professor de Montmorency does not advocate that the review of administrative action should be withheld from the purview of the ordinary Law Courts on the ground that the administrators are the best judges of their own action and procedure, but because he has come to the conclusion that the "slow judicial method cannot be preserved in its entirety." According to him the French system of administering law, while excellent in France, is not in accordance with British lines of juridical thought—hence his recommendation of the creation of separate Courts to review administrative action.

To lawyers Lord Hewart's views, as set out in "*The New Despotism,*" will prove of absorbing interest, and the finding of the Parliamentary Committee is bound to have far-reaching results. British lines of juridical thought have, generally speaking, moulded British legislation, but at the same time those lines are distinctly conservative and in no sphere more so than in that of judicial procedure. Unless those concerned in the regulation of judicial procedure realise that the machinery of Justice must be adapted to a constantly progressive task, the sphere of the ordinary Courts of Law is more likely to be restricted than extended.

Court of Appeal.

Herdman, J.
Adams, J.
Ostler, J.

September 27; October 10, 1929.
Wellington.

C. DICKINSON & CO. LTD. v. HERDMAN.

Practice—Order—Appeal from Magistrates' Court to Supreme Court—Application for Leave to Appeal to Court of Appeal—Leave Refused in Chambers—Order Refusing Leave Not Sealed—Motion for Review—Court Order and Not a Judge's Order—Order Final Though Not Sealed—No Necessity for Formal Order or For Sealing—Judicature Act, 1908, Section 67—Code of Civil Procedure, Rules 416 and 417.

Appeal from a decision of Myers, C.J., and MacGregor, J., reported 5 N.Z.L.J. 258. The facts of the case were as follows: On 8th May, 1929, MacGregor, J., gave judgment upon an appeal from a decision of a Magistrate. The Magistrate had given judgment for the appellant on a claim for commission on the sale of land. The learned Judge reversed that decision and ordered that the case should be remitted to the Magistrates' Court so that judgment could there be entered for respondent. When the judgment was delivered counsel for appellant moved orally in open Court for leave to appeal to the Court of Appeal, The motion was adjourned, and was eventually heard on 14th May, before His Honour in Chambers, when he refused the necessary leave. On 18th May the Registrar forwarded to the Magistrates' Court a memorandum of the decision of the Supreme Court as required by Section 169 of the Magistrates' Court Act, 1928. The memorandum did not state that leave to appeal to the Court of Appeal had been refused. It was entered as a judgment of the Magistrates' Court on 20th May, and the respondent acted upon it. On 29th May the appellant filed a motion in the Supreme Court for review and rescission of the order made by MacGregor, J., and in the alternative for an order granting leave to appeal to the Court of Appeal. Two affidavits were filed in support of the motion, the only ground stated in them being that the question involved in the appeal was one of great general interest. Myers, C. J., and MacGregor, J., dismissed the motion and from that order the appellant appealed.

Cornish and James for appellant.
O'Leary for respondent.

OSTLER, J., delivering the judgment of the Court, said that on the hearing of the motion in the Supreme Court the main argument adduced was that the refusal of leave to appeal was a Judge's order, and that it could be reviewed and rescinded under the provisions of Rule 421. That argument was rejected by their Honours in the Court below, and the Court of Appeal agreed with the judgment of the Court delivered by the learned Chief Justice on that point and with the reasons given for that judgment. The Court found it unnecessary to add anything to the reasons given in the Court below, because counsel for the appellant had admitted that upon that point the judgment was right.

Counsel for the appellant, however, relied upon another point which was raised in the Court below, but which was only slightly referred to in the judgment. They contended that the decision of the Court refusing leave to appeal was an order; that being an order it was sealable; that no order was taken out by respondent; that a Court always had power until its orders were sealed to review, alter, and even to rescind them, and, therefore, that the appellant Company had the right at any reasonable time before the order was completed, to move the Court to review its own order. They contended that the second part of the motion quoted was an application to the Court to review its own order, made within a reasonable time and before the order had been completed. They claimed that the judgment of the Court below decided that the Court had no power to review and rescind its own orders before such orders were drawn up and completed, and that they had an appeal on that ground. It was admitted that the only result of such an appeal being successful would be a reference back to the Court to ascertain whether it would rescind its own decision. In a sense the refusal of leave to appeal by the Court was an order, but it was not an ordinary kind of order. It was, as was held by the House of Lords in **Lane v. Esdaile,** (1891) A.C. 210, a decision in the exercise of a discretion, which was entrusted to the Supreme Court in order to bring about a finality to litigation which was considered to be in the public interest. A perusal of the judgments of the learned Law Lords in that case would show that they found great difficulty even in deciding that such a decision was an order at all. In their Honours' opinion it was somewhat misleading to call the decision of the Supreme Court refusing leave to appeal further "an order." It was wholly unnecessary to embody such a refusal in a formal order to make it *res judicata* between the parties. The decision was final and not subject to review or appeal. There were a number of instances in which it was unnecessary to embody the decision of the Court in a formal order. In England there was a special rule dealing with the matter: see Order 52 Rule 14, the Annual Practice (1929) p. 941. There was no corresponding rule in our Code, but Rule 19 of our Court of Appeal Rules recognised that, in general, the refusal of an application need not be embodied in a formal order. If it was unnecessary to embody the decision in the present case in a formal order, then, as the decision was a final order, it followed that as soon as that final decision was pronounced the matter became *res judicata* between the parties. Having finally decided the matter between them the Court had no power to reverse its own decision. In their Honours' opinion the fallacy in the argument of counsel for the appellant was in assuming that the refusal of the Court to allow an appeal was not absolutely binding upon both parties as *res judicata* until it had been embodied in a formal order. That fallacy vitiated the argument. It was only to such a decision of the Court as required a formal order to make it *res judicata* between the parties that the principle applied (illustrated by **In re Suffield,** 24 Q.B.D. 693, and many other cases) that a Court had power to review its own order before it had been drawn up and completed. In the case of **Lazarus v. Morrison,** 8 G.L.R. 719, it was true that a second application was made to the Supreme Court for leave to appeal from its decision on an appeal from a Magistrate. The Court in that case did not decide the matter on the ground that the refusal once given the Court had no power to alter its decision. In that case the Court entertained the application a second time and again refused it. But had leave been given on the second application after it had been refused the second determination, in their Honours' opinion, would have been invalid for want of jurisdiction. That case could not be construed into an authority for the proposition that the Supreme Court, having refused leave to appeal in such a case, had power to hear a second application for leave from the disappointed party. If the Court had such power then it would necessarily have the power to hear a third and fourth application, so long as the order had not been taken out. Their Honours held that when the Court had, after hearing the parties, either given leave or refused leave under Section 67 of the Judicature Act, 1908, to appeal to the Court of Appeal, that decision was final, and could not be reviewed by the Court.

Appeal dismissed.

Solicitors for appellant: **Webb, Richmond, Cornish and Swan,** Wellington.

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

Full Court.

Myers, C.J.
Herdman, J.
Adams, J.
MacGregor, J.
Ostler, J.

October 4; 10, 1929.
Wellington.

GOVERNMENT LIFE INSURANCE COMMISSIONER
v. ATTORNEY-GENERAL.

Revenue—Income Tax—Refund—Life Insurance Company—Debenture Tax—Provision for Refund to Holder of Local or Public Authority Debentures Where Tax Payable Exceeds Tax Payable if Interest from Debentures "Had Formed Part of His Taxable Income"—"Taxable Income" Meaning Ordinary Taxable Income—Life Insurance Company Entitled to Benefits of Provision Notwithstanding Partial Exemption of Such Companies from Tax Expressly Excluding Tax Payable in Respect of Income Derived from Debentures—Land and Income Tax Act, 1923, Sections 96, 99 (2), 118, 119.

Originating summons to determine whether the Government Life Insurance Commissioner was entitled to a refund or rebate

in respect of the income tax paid by it for the years ending 31st December, 1925, 1926, and 1927. The facts upon which the Government Life Insurance Commissioner claimed to be entitled to the refund are sufficiently stated in the report of the judgment.

C. A. L. Treadwell and James for plaintiff.

Solicitor-General (Fair, K.C.) for defendant.

MYERS, C.J., delivering the judgment of the Court, referred to Sections 96, 99 (2), 118 (3), and 119 of the Land and Income Tax Assessment Act, 1923, and said that rates prescribed by the annual taxing Act (passed pursuant to Section 73 of the Act of 1923) had been (a) in respect of all income derived from debentures issued by local and public authorities before 28th August, 1923, 2/6d. for every £1; (b) in respect of income derived from debentures issued by such authorities on or after the 28th August, 1923, 4/6d. for every £1; and (c) on ordinary income a graduated rate, with a maximum of 4/6d. in the £. In each and every year the income of the Government Life Insurance Department exclusive of income from debentures had been such an amount as to bring the Department into the scale on which the maximum amount of income tax was payable, and inasmuch as the appropriate rate under the annual taxing Act would be 4/6d. in the £, the rate payable by the Department under Section 96 of the principal Act was 2/3d. in the £. So far the parties were on common ground. But the Commissioner of Taxes had required the Department to pay the full rates of 2/6d. and 4/6d. in the £ respectively upon income derived from debentures according to whether such debentures were issued before the 28th August, 1923, or on or after that date. The Department claimed that by reason of the provisions of Section 99 (2) it was entitled to a refund or rebate, in respect of the income from debentures, of the difference between 2/3d. in the £ and the rate of 2/6d. or 4/6d., as the case might be, that the Commissioner of Taxes had charged and the Department had paid. The Commissioner of Taxes had refused to make any refund or rebate. The Solicitor-General's argument seemed to be that for the purpose of construing Section 99 (2), it was necessary to look at Section 96 for the definition of the Department's "taxable income," and he contended that that Section defined the Department's "taxable income" as including income from debentures and also income from all other sources and then proceeded to prescribe the income tax payable by the Department, such income tax being: (a) in respect of income derived from debentures, such tax as was prescribed by the annual taxing Act, and (b) in respect of all other income, one-half the amount that would be payable by the Department but for the provisions of Section 96. In other words he contended that the notional payment contemplated by the second portion of Subsection (2) of Section 99 was in the circumstances of the case the same in amount as the actual payment made under Section 96, and consequently, he said there was no refund to be made under Section 99 (2). Their Honours were unable to spell out that meaning from Sections 96 and 99 (2) of the Act. So far as Section 96 was concerned, all it did in their Honours' opinion was to provide that in respect of income from sources other than debentures the Department should pay only one-half the rate of tax prescribed by the annual taxing Act, and that, so far as income from debentures was concerned, it should pay tax at the same primary rate as any other taxpayer who derived income from debentures. Such last-mentioned rate was, of course, fixed by the annual taxing Act, but that Act was subject to Section 99 (2), which applied to every holder of debentures and provided for a refund, where the taxpayer was a debenture-holder, of the difference between the amount of tax that would have been payable by him if the interest received by him on the debentures had formed part of his taxable income and the actual aggregate amount of income tax paid or payable by him including the tax paid in respect of interest on debentures. The words "taxable income" in Section 99 (2), having regard to the context and to the purpose of the subsection, must, in their Honours' opinion, mean ordinary taxable income, or taxable income other than income from debentures. That harmonised with the provisions of Sections 118 and 119, because the income derived by holders of debentures was assessible and chargeable with income tax separately from income derived by the debenture-holders from other sources. The amount actually paid by the Department was 2/6d. or 4/6d. in the £, as the case might be, on debentures according to their date of issue, and 2/3d. in the £ in respect of income from other sources. If the income derived from debentures had formed part of the ordinary taxable income of the Department that was to say income from sources other than debentures, the rate payable by the Department would have been 2/3d. on the whole of its income. It followed that the view taken by the Government Life Insurance Department was, in their Honours' opinion, right and that the Department was entitled under Section 99 (2) to a refund or rebate equal to the difference between 2/3d. in the £ and the amount actually paid.

Solicitors for plaintiff: **Treadwell and Sons,** Wellington.
Solicitor for defendant: **Crown Law Office,** Wellington.

Myers, C.J.
Herdman, J.
Adams, J.
Smith, J.

July 9; October 10, 1929.
Wellington.

PETERSEN v. PAAPE.

Licensing—Publican's License—Sales Off Premises—Order Taken by Agent of Licensee at Timaru and Forwarded to Licensee at Dunedin and Accepted There—Liquor of Description Ordered Selected Packed and Marked on Licensed Premises—Delivery by Carrier to Purchaser in Timaru—Finding of Magistrate That Order Accepted on Licensed Premises—Facts on Which Finding Based Not Before Appellate Court—Quaere Whether Contract Made on Premises if Acceptance Posted—Appeal on Point of Law Only—Appellate Court Bound by Finding of Magistrate and Complete Executory Contract Therefore Made on Licensed Premises—Sale Lawful—Licensing Act, 1908, Section 195.

Appeal in point of law from the decision of the Stipendiary Magistrate at Dunedin dismissing an information against the respondent who was the holder of a publican's license for the premises in Dunedin known as the Grand Hotel, charging him with having, on 21st December, 1928, sold liquor at a place where he was not authorised by his license to sell the same. The sale was alleged to have been made in Timaru to a person named Breen residing there. The Magistrate upon the hearing of the information found that the respondent had engaged one Smith as a commercial traveller to solicit orders for intoxicating liquor and that Smith, on 23rd October, 1928, called upon Breen, at Timaru, and obtained an order for certain liquor. Breen signed an order in a bound book of order forms belonging to the respondent and Smith forwarded or delivered the book of order forms including Breen's order, to the respondent at his licensed premises in Dunedin, where he, the respondent, accepted Breen's order. The order form was addressed to the licensee of the Grand Hotel, Dunedin, requesting him to supply to the person signing the order the goods specified at the prices mentioned. The terms were stated to be "Delivery on Receipt of Net Cash," and were to be delivered to the address of the person signing the order. Smith did not at any time accept the order on behalf of the respondent; and no executory contract was made off the respondent's licensed premises. In due course the liquor in accordance with, and answering the description in, the order was taken from the cellar at the respondent's licensed premises in Dunedin by the respondent, or one of his servants, and packed in a case which was separately marked for Breen. A list was typed on the licensed premises and forwarded to a carrier at Timaru. Such list set out the names and addresses, including Breen's, of the persons to whom the carrier had to deliver the cases, and the number of each case and the respective amounts payable by the respective purchasers. On 10th December, 1928, those cases were delivered to the New Zealand Express Company from the licensed premises at Dunedin for consignment to Clark, the carrier at Timaru, who was to transmit them to the respective purchasers. Clark, on 21st December, duly delivered to Breen the case containing the liquor ordered by him, and Breen at the same time paid the agreed price to the carrier, Clark, who sent his cheque to the respondent for Breen's and other moneys collected. The Magistrate considered that the sale had taken place on the licensed premises, and dismissed the information.

Currie for appellant.
W. Perry for respondent.

MYERS, C.J., delivering the judgment of the Court, said, the question involved was of academical rather than practical importance, because a very slight alteration of the order form adopted by the respondent would probably bring the case within the decision in **Pletts v. Beattie,** (1896) 1 Q.B. 519; and if that

were done a prosecution could not succeed. The present case was not in its circumstances similar to **Pletts v. Beattie** (*cit. sup.*) inasmuch as the order form did not contain a provision whereby the purchaser of the liquor assented to the appropriation to his order by the respondent at his licensed premises of goods of the description ordered and in a deliverable state. Quite apart, however, from any consideration of the case of **Pletts v. Beattie** there were other authorities by which in their Honour's opinion, the point raised in the present case was concluded. The position might have been different if **Titmus v. Littlewood,** (1916) 1 K.B. 732, stood as an authority in New Zealand. In that case it was held that the words "sell" and "sale" in the section of the English Act corresponding with Section 195 of the New Zealand Licensing Act, 1908, referred to a completed sale, and that a person who on licensed premises merely entered into an executory agreement for the sale of intoxicating liquor was not liable to the penalty imposed by the section. That case, however, was expressly dissented from by a Full Bench of the Supreme Court in **Bryant v. Eales,** (1916) N.Z.L.R. 1065, where it was held that a complete executory contract made off licensed premises constituted an offence under Section 195. Even if **Titmus v. Littlewood** (*cit. sup.*) stood as an authority in New Zealand there might still be a difficulty in the way of a prosecution in the present case by reason of the possibility of its still being held that the circumstances of the present case were so much like those in **Walker v. Walker,** 90 L.T. 88, as to make the decision in that case apply. *His Honour referred also to* **Strickland v. Whittaker,** 68 J.P. 235, and **Noblett v. Hopkinson,** (1905) 2 K.B. 214, at p. 220. In the present case the Magistrate found that the contract was made on the respondent's licensed premises, and counsel for the appellant admitted that there was a complete executory contract for sale made at the Grand Hotel at Dunedin. Unfortunately the precise facts upon which the Magistrate based his finding were not before the Court and it might well be that although the contract was made in Dunedin it was not made on the licensed premises. The acceptance by the respondent might have been by a letter sent by post in which case it would be at least arguable that a complete executory contract was not made on the licensed premises. That point, however, could not be considered as the facts were not before the Court. In the present case, as in **Crawford v. Nuttall,** (1918) N.Z.L.R. 385, the appeal was on point of law only; and the appellant was in the same difficulty as that in which the appellant found himself in that case. In the circumstances their Honours thought that Mr. Currie's admission was properly made and that both he and the Court were bound by the Magistrate's finding. The present case was comparable with **Guild v. Freeman,** 36 Sc. L.R. 6. In considering the English and Scottish cases their Honours had not overlooked the difference between the terms of a license under the New Zealand Act and those of a license under the English Act. In New Zealand a publican was licensed to sell and dispose of liquors in any quantity on his licensed premises. It might, therefore, have been contended that the making of an executory contract for sale on the licensed premises was not sufficient, but that there must be a complete disposal of any liquor sold at the time when it left the licensed premises; and it might have been contended that in the present case there was not such a complete disposal. Their Honours thought that there were several answers to that possible contention: Firstly, it was true that in **Bryant v. Eales** (*cit. sup.*) the Court had to consider not a publican's license but a wholesale license in which the words "and dispose of" did not appear. The judgment of the Court was, however, referable generally to Section 195 (1) of the Act under which the information was laid. In **Crawford v. Nuttall** (*cit. sup.*) however, the license that the Court had to consider was a New Zealand wine license in which the words: "sell and dispose" did appear, and there was nothing in the judgment of the majority of the Court in that case to suggest that the decision in **Bryant v. Eales** (*cit. sup.*) did not have general application under Section 195 to all licenses; the assumption indeed was the contrary. Secondly, it was to be observed that the language of Section 195 (1) was "No person shall sell," and not "No person shall sell or dispose of." Thirdly, it would seem difficult in any case, taking the subsection as it stood, to hold that it was to be differently construed in its application to different forms of license.

The conclusion at which their Honours arrived, therefore, was that in view of the Magistrate's finding that a complete executory contract of sale was made on the respondent's licensed premises at Dunedin his dismissal of the information was right and must be affirmed.

Appeal dismissed.

Solicitors for appellant: **Raymond, Raymond and Campbell,** Timaru.

Solicitors for respondent: **Lang and Paterson,** Dunedin.

Myers, C.J.
Herdman, J.
Adams, J.
MacGregor, J.
Ostler, J.

September 30; October 10, 1929.
Wellington.

IN RE PANAPA WAIHOPI.

Will—Construction—Native Land—Devise to Trustee Upon Trust for Absolute and Exclusive Enjoyment of Beneficiaries Named—Subsequent Provision That If Any Beneficiary Should Die Without Issue All His Right Title and Interest Which He Had Acquired Under the Will Should Vest in the Children of a Person Named—Beneficiaries Entitled to Fee Simple Subject to Executory Devise in Event of Death Without Issue—Trustee Not a Bare Trustee of Fee Simple for Beneficiaries Named—Succession Orders in Favour of Such Beneficiaries Improperly Made by Native Land Court—Native Land Act, 1909, S. 148—Wills Act, 1837, 1 Vict. C. 26, Section 29.

Originating summons for the interpretation of the will of a Native, Panapa Waihopi. By his will the testator appointed Mahaka Paraone his executor and trustee, and devised all his real estate to his trustee in fee simple. The testator then directed that his trustee should stand possessed of the real estate upon trust, as to the Te Karaka 3 Block, for the absolute and exclusive use enjoyment benefit and advancement of his grandson Rongo Kaimoni; as to the Tapuihikitia Block upon similar trusts for Wiremu Karena; as to Mangatu 3 Block upon similar trusts for Rongo Kaimoni and Wiremu Karena as tenants in common; as to Rangatira and Mangatu Blocks upon similar trusts for Rongo Kaimoni, Wiremu Karena, and Wiremu Mokaraka as tenants in common; and as to all his other lands upon similar trusts for Rongo Kaimoni and Wiremu Mokaraka as tenants in common. The testator then declared that his trustee should have power to sell the whole or any part of his real estate, and to mortgage the real estate or any part thereof for payment of debts, etc. The will then provided as follows: "In the meantime to lease my residuary estate and to accept surrender of leases thereof and generally to manage my residuary estate and I declare that if any one of the beneficiaries under this my will shall die without issue then all his rights titles and interests which he has acquired by virtue of this my last will shall vest in the children of Mahaka Paraone as tenants in common in equal shares." Panapa Waihopi died in November, 1916, and letters of administration with the will annexed of the estate of Panapa Waihopi were granted by the Native Land Court to the Public Trustee on 17th April, 1917, under the power in that behalf given by Section 146 of the Native Land Act, 1909. The estate of the testator thereupon vested in the Public Trustee under Section 146 (2). On the same day the Native Land Court appointed the Public Trustee as trustee for Rongo Kaimoni under Section 172 of the Act, and made succession orders vesting estates in fee simple in the beneficiaries under the will including Rongo Kaimoni, and without reference to the gift over in the event of the death of any beneficiary without issue. Rongo Kaimoni died unmarried and without issue in July, 1927, leaving a will under which his mother, Agnes Horsfall, was the sole beneficiary. Twelve children of Mahaka Paraone survived Rongo. The following questions were submitted by the Native Land Court for determination: (1) Did the Native Land Court make an error or mistake or decide a point of law erroneously in deciding that the interests in Native Land devised by the will of Panapa Waihopi deceased to his executor and trustee in trust for certain persons vested directly in the beneficiaries under the trust by virtue of subsection (3) of Section 148 of the Native Land Act, 1909, and by making succession orders accordingly? (2) What was the nature and extent of the estate devised by the said testator under his will to Rongo Kaimoni, Wiremu Karena and Wiremu Mokaraka therein mentioned respectively? (3) Rongo Kaimoni one of the beneficiaries under the said will having died without issue what (if any) estate did the children of Mahaka Paraone take in the Native Land devised under the will of Panapa Waihopi deceased upon trust for the use and enjoyment of the said Rongo Kaimoni?

Nolan for children of Mahaka Paraone.

Gilfedder for executrix of will of Rongo Kaimoni.

ADAMS, J., said that reading the will without reference to any rules of construction it was not difficult to ascertain the real

intention of the testator. He desired in the first instance to give all his personal estate to his grandson Rongo Kaimoni. As to his real property, he selected three objects of his bounty—Rongo Kaimoni, Wiremu Karena, and Wiremu Mokaraka. Having provided for those three, it then occurred to him that one or more of them might die without issue and he declared that in such case all the rights, titles and interests which the person dying without issue had acquired under his will should vest in the children of Mahaka Paraone as tenants in common. In their Honours' opinion those dispositions created estates in fee simple in the first takers subject to an executory devise to the children of Mahaka Paraone. In support of that proposition their Honours referred to **Edwards v. Edwards,** 15 Beav. 357; **O'Mahoney v. Burdett,** L.R. 7 H.L. 388; **In re Schnadhorst,** (1902) 2 Ch. 234; and **Comiskey v. Bowring-Hanbury,** (1905) A.C. 84. Their Honours did not think the circumstance that the disposition by way of executory devise followed at the end of the powers of management and control vested in the trustees affected the construction. The language of the executory devise was clear and unambiguous and must be construed as an effective gift over in the event of the first takers dying without issue. It appeared from paragraph 10 of the case that, in the application to the Chief Judge of the Native Land Court, the case for the claimant was put on the ground that the succession orders should have been made for life estates only, but that was negatived by the express language of the contingent devise. The interest which was to pass to the children of Mahaka Paraone on the death of the beneficiaries was "all the rights titles and interests which he"—the person dying without issue—"has acquired by virtue of this my will." If the first devisees took life estates only those words would be deprived of all meaning; there would be nothing left upon which the contingent executory gift could operate. The submission of counsel that on the construction their Honours had adopted the executory devise would be void under the rule as to perpetuities, assumed that the words "without issue" imported an indefinite failure of issue, but in a will those words were to be construed to mean a want or failure of issue in the lifetime or at the time of the death of the person dying "without issue" and not an indefinite failure of issue.—*Wills Act*, 1837, 1 Vict. c. 26 s. 29.

It was, however, submitted by counsel for Agnes Horsfall as executrix of the will of Rongo Kaimoni, that the trustee appointed was a bare trustee within Section 148 (2) of the Native Land Act, 1909, and that the interest devised, therefore, vested directly in the beneficiary under that trust. It appeared from the note of the learned editor of **Lewin on Trusts,** 13th Edn., 1028, that there was some difficulty in arriving at a comprehensive definition of the term "bare trustee," but in their Honours' opinion the trustee of the present will was not a bare trustee. The lands were vested in him upon trust, *inter alia*, to protect the executory devises and that was sufficient to remove him from the category of bare trustees. The testator intended his trustee to retain the title to the land and to be a party to any leases. In that connection their Honours thought that the paragraph of the will quoted above was significant. Their Honours added that the decision was on the special circumstances of the particular case. If their Honours had been obliged to determine that the trustee was a bare trustee the interests of the persons entitled under the executory devises would nevertheless have remained unaffected but would in that case be without adequate protection. The children of Paraone would have had the right to lodge caveats against the titles under the Land Transfer Act or that might have been done by the District Land Registrar.

The answers to the questions submitted were: (1) The decision of the Native Land Court was erroneous in law—(a) in deciding that the interests in Native land devised by the will vested directly in the beneficiaries by virtue of subsection (3) of Section 148 of the Native Land Act, 1909, and (b) by making succession orders accordingly; (2) Rongo Kaimoni, Wiremu Karena, and Wiremu Mokaraka took estates in fee simple defeasible in each case by the death without issue of the beneficiary; (3) Rongo Kaimoni having died without issue the children of Mahaki Paraone took an estate in fee simple as tenants in common in equal shares in all the native land devised by the will of Panapa Waihopi upon trust for his use and enjoyment.

Solicitors for the children of Mahaka Paraone: **Nolan and Skeet,** Gisborne.

Solicitors for Agnes Horsfall: **P. Gilfedder,** Invercargill.

Supreme Court

Blair, J. October 9; 11, 1929.
Wellington.

NIXON v. MILLAR AND IRVINE.

Wages Protection and Contractors' Liens Act—Practice—Costs—Claim for Lien Brought in Supreme Court—Claim Within Jurisdiction of Magistrates' Court—Neither Debt Nor Right to Lien Disputed—Costs Allowed Only on Magistrates' Court Scale.

The plaintiff had taken proceedings in the Supreme Court under the Wages Protection and Contractors' Liens Act, 1908, to establish a lien for £268 10s. 7d. Neither the debt nor the plaintiff's right to a lien was disputed. The plaintiff claimed costs on the basis of an action in the Supreme Court.

R. R. Scott for plaintiff.
Parry for defendant Millar.
Putnam for defendant Irvine.

BLAIR, J., said that although the amount was within the jurisdiction of the Magistrates' Court, the plaintiff elected to proceed in the Supreme Court, and asked for costs on the basis of an action in that Court. The reason advanced for proceeding in the Supreme Court was that that Court had rules whereas there were none in the Magistrates' Court, and it was suggested that there was doubt as to the correct procedure in the Magistrates' Court. The practice in the Magistrates' Court in lien proceedings was well settled and His Honour could not accept the contention that a person claiming a lien within the amount of the Magistrates' Court's jurisdiction should select the Supreme Court and then ask the defendant to pay costs on the scale fixed in that Court instead of the more moderate scale fixed in the Magistrates' Court. Stout, C.J., in **Gillanders Bros. v. Reeves,** 23 N.Z.L.R. 417, treated defended lien cases as analagous to a Supreme Court action, but fixed a lump sum for costs. His Honour thought that the costs in the present case should be upon the Magistrates' Court basis. The matter was not defended. His Honour allowed the plaintiff as against the defendant Irvine (the builder) the sum of £7 7s. 0d. and disbursements, including disbursements for registering lien.

Solicitor for plaintiff: **R. R. Scott,** Wellington.
Solicitors for defendant Millar: **Buddle, Anderson, Kirkcaldie and Parry,** Wellington.
Solicitors for defendant Irvine: **Fell and Putnam,** Wellington.

Myers, C.J. August 17; September 26, 1929.
Wanganui.

COOPER v. SYMES.

Negligence—Collision—Pedestrian Walking Along Left Side of Road Twenty Feet Wide Run Down by Motor-vehicle Proceeding in Same Direction—Pedestrian Aware of Approach of Overtaking Vehicle—Pedestrian Entitled to Walk Along Carriage-way of Road by Day or Night and Entitled to Exercise of Reasonable Care on Part of Drivers of Vehicles—Accident Due to Failure of Driver of Vehicle to Keep Proper Look-out—Pedestrian Entitled to Assume Proper Look-out Being Kept—No Contributory Negligence on Part of Pedestrian—Quaere Whether Any Rule that Pedestrians Should Keep to Right of Road Exists in New Zealand.

Appeal on fact and law from a judgment of the Magistrates' Court at Wanganui, in an action in which the appellant claimed damages for personal injuries caused by the respondent's negligent driving of a motor car. The accident occurred on 27th April, 1928, between 6 and 7 p.m. on a road called Springvale Road, leading into Wanganui. The road in question was sixty-six feet wide, with a substantial strip of grass at each side. On the right side of the road looking towards Wanganui there was first the wide strip of grass at the side of the road, then a footpath, and then a narrower strip of grass—between which last-mentioned strip and the wide strip of grass on the left side of the road there was a metalled roadway 20 feet wide. The

learned Magistrate found the following material facts: (1) At the time of the accident the plaintiff and her husband were walking towards Wanganui on the left side of the metalled portion of the road, the plaintiff being at least a foot or two from the edge of the grass, and her husband walking on her right. (2) The respondent, who was overtaking the appellant and her husband, was driving on his proper side of the road at the time of the accident at a reasonable speed of about 15 miles per hour. (3) The appellant and her husband were overtaken and knocked down by the motor car, and both sustained serious injuries. (4) The respondent had sufficient lights on his car to enable him to see the appellant and her husband. (5) The respondent was negligent in not keeping a sufficient lookout. (6) The footpath was unmetalled and, on the night in question, muddy, with occasional pools of water, and not fit to walk upon. It was admitted by the appellant and her husband that prior to the accident they had seen a car (which it was subsequently ascertained was being driven by one Glenn) with bright headlights approaching them from the direction of Wanganui; this car, the Magistrate found, was at the time of the accident still some distance (possibly 300 yards) away, and it did not appear to have been suggested by the respondent that he was in any way affected by the lights of that car. It was also admitted by the appellant and her husband that they were aware of the car, which turned out to be the respondent's car, coming behind them. The appellant's husband said that he had looked round two or three times while the plaintiff herself said that she had looked round once. The Magistrate found that the respondent was negligent in not keeping a sufficient lookout, and added that he inferred from the circumstances that he had been driving about the centre of the road and, being faced by the bright lights of an approaching car, had swung over to his left-hand side and so collided with the plaintiff and her husband. The Magistrate took the view that the appellant and her husband, who were on a metalled road only twenty feet in width, with a car with bright headlights approaching them and another car overtaking them in the rear, and who must have known that they occupied a position of some danger, and who appeared to have taken no steps to change that position, were in those circumstances undoubtedly negligent and that their negligence contributed to a great extent to the accident.

Brodie for appellant.

W. J. Treadwell for respondent.

MYERS, C.J., said that in his opinion the Magistrate misdirected himself on the law and on the proper inference to be drawn from the facts as found. He had referred to a rule of the road stated in **Beven on Negligence,** 4th Edn., 684, as follows: "The custom or law of the road is that horses and carriages should respectively keep on the near or left side, and foot passengers take the right-hand, and this is judicially recognised without proof." The Magistrate said that that point was not taken by the defence at the hearing before him—nor indeed was it very much pressed on the argument of the appeal—and that, though he referred to it in his judgment, he did not base his opinion upon it. His Honour did not find it necessary to attempt to determine the question as to whether the rule referred to operated in New Zealand. His Honour was satisfied that it was a rule very little known in this country, and it was desirable in the circumstances to leave the question of its existence open until it expressly arose. In the present case, even if the rule existed in New Zealand, His Honour should still be of opinion that the Magistrate was wrong in his essential conclusions on the question of negligence. Apart from the fact that in the present case there was an express finding that the footpath was not fit for use, it would appear plain that a pedestrian had a right whether by day or night to walk along the carriageway of a road, and was entitled to the exercise of reasonable care on the part of persons driving vehicles along it: **Boss v. Litton,** 5 C. & P. 407; **Anderson v. Blackwood,** 13 R. 443; **McKechnie v. Couper,** 14 R. 345. His Honour referred also to **Graham v. Edinburgh and District Tramways Co.,** (1917) S.C. 7, and **Craig v. Glasgow Corporation,** (1919) S.C. (H.L.) 1; 35 T.L.R. 214. Of course there was a duty on the part of the pedestrian to exercise care; and if he failed to exercise due care and by reason of his own negligence a collision took place between himself and a vehicle whereby he sustained injury, he could not recover against the owner of the vehicle. But His Honour entirely failed to see in the present case any ground for saying that the appellant's injury was due to any negligence on her part. She was not crossing, but walking along, the long straight road. She must be assumed to have known that the metalled portion of the roadway was twenty feet wide and, as she was walking very close to the edge, that there was ample room for the respondent's car to pass without any danger to herself, if it were properly handled. She knew that the respondent's car was lighted and she was entitled to assume that he was keeping a proper lookout and that he must have seen her. Moreover it would appear that when she looked round and saw the car approaching, it was in the centre of the road. If the respondent had kept a proper lookout the accident would not have happened. Even if, which did not clearly appear to be the case, he found it necessary to swerve slightly to the left in order to pass Glenn's car which was approaching him from the direction of Wanganui, but was then apparently about 300 yards off, there was still ample room for him to do so without his running into the plaintiff and her husband. Even if there had been insufficient room the fault would still have been his, because, if he had been keeping a proper lookout, he must have seen the plaintiff and her husband, and it would then have been his duty, if he thought that there was any danger, either to stop or to slow down, or at least to sound his horn in order to warn the appellant and her husband. None of those things did he do; and his reason for not doing any of them was that he had not seen the appellant and her husband; and that failure was due entirely to the fact that he had been negligent in not keeping a proper lookout. In those circumstances it appeared to His Honour to be plain that the respondent's negligence was the cause of the injury, and that he was accordingly liable in damages: **British Columbia Electric Railway Co. v. Loach,** (1916) 1 A.C. 719 at pp. 727, 728; **Colmore-Williams v. Weir,** (1918) N.Z.L.R. 1003. The essential circumstances of the case seemed to His Honour to bear some similarity to those in **Tucker v. Lloyd,** (1916) G.L.R. 660, and were clearly distinguishable from those in **Shearer v. Dunedin Corporation,** 24 N.Z.L.R. 192, which was relied upon on behalf of the respondent.

Appeal allowed.

Solicitors for appellant: **P. L. Dickson,** Wanganui.

Solicitors for respondent: **Treadwell, Gordon and Treadwell,** Wanganui.

Smith, J. September 20; 24, 1929.
Auckland.

THOMAS v. THOMAS.

Divorce—Custody of Children—*Decree Nisi* **Granted on Ground of Husband's Adultery—Welfare of Children Paramount Consideration—Innocent Party Entitled to Custody Except Under Exceptional Circumstances—Rule that Husband Should in Ordinary Circumstances Have Custody of Male Child Not Applicable Where Husband Guilty of Adultery—Exceptional Circumstances Justifying Younger Child Being Left with Husband—Custody of Elder Child Given to Wife.**

Motion by petitioner (the wife) to make absolute a *decree nisi* pronounced on 29th May, 1929, and for the custody of the two children of the marriage. The wife had the custody of the elder child, who was born on 24th July, 1921, and the husband the custody of the younger child who was born on 7th October, 1923. The parties were married on 5th January, 1921, the elder child of the marriage being born some six and a-half months thereafter. The wife had had an illegitimate son before marriage, which was (apparently) not the son of the respondent. The husband served with the Australian military forces during the war. He received for war disability, an Australian Soldiers' Pension of between £16 and £17 per month. Since the war, he had suffered from nervous troubles, but he appeared to have improved progressively. Most of the allegations against him in respect of drunkenness related to the years 1923 and 1924. Though still a nervous man he had since pulled himself together. The wife left her husband in October, 1924, and April, 1925, but returned to her husband after each departure. She left her husband finally in October, 1925. His Honour found that owing to her husband's treatment of her at that time she was justified in leaving the house. The circumstances of her departure were, however, complicated by a letter written to her by one, Macdonald, on 8th October, 1925, in which he asked her not to visit him at the Hospital where he then was, as visitors were coming to see him and might talk. He subscribed himself: "your loving sweetheart, Dave." Infidelity on the part of the wife was not, however, established. The wife made Macdonald's acquaintance while her husband was away receiving treatment at Hanmer, and was evidently on very friendly terms with him. Prior to that occurrence,

viz., shortly before 4th October, 1925, the petitioner had written to the respondent complaining that she was being starved, and resenting his complaints about her, and stating that if she didn't suit, it was "goodbye for ever." She added: "You can have the children if you like." When she left, she took her illegitimate son with her, and left behind the two children of the marriage. She resided with her father and mother, and had, since leaving her husband, supported herself. On 13th November, 1925, and again on 25th November, 1927, she endeavoured to obtain *inter alia* the guardianship of the children in the Magistrates' Court; the first application was not proceeded with, and the second was dismissed. After the wife's departure, the husband engaged various housekeepers for his house at No. 22 Keppell Street. The petition for divorce was founded on proof of adultery with one of them. There was also evidence to show adultery with another woman in his own house. On 21st December, 1928, the elder child left home and went to his mother. The father applied for a writ of *habeas corpus* in respect of that child, and obtained a rule *nisi*. His Honour heard the motion to make the rule absolute, but dismissed the application and discharged the rule. It was agreed between counsel that the evidence on that application should be available on the present application for custody.

Hubble for petitioner.
Mahony for respondent.

SMITH, J., said that after considering the circumstances of the elder boy's departure, which was purely voluntary, and after seeing the boy and considering the whole of the evidence, for the reasons which he had given on the *habeas corpus* application, he came to the conclusion that, in the interests of that child, the custody of the mother should not be disturbed.

The problem really before the Court was the custody of the younger child, almost six years of age. The general rule was that stated by Adams, J., in **Vander Veen v. Vander Veen,** (1923) G.L.R. 244, at p. 244: "The Court considers first the welfare of the children, and secondly the interests of the innocent party." In **Brown and Watts on Divorce,** 10th Edn., 137, it was said that the innocent party was entitled to the custody of the children except under very exceptional circumstances. Where one party had been guilty of the matrimonial offence of adultery, and the other had not, it might be said, as a general rule, that the Court considered that the interests of the children were best served by placing them in the custody of the innocent party. Mr. Mahony had relied upon His Honour's expression of opinion in **Parsons v. Parsons,** (1928) N.Z.L.R. 477, that in all ordinary circumstances it was very desirable that a male child should have the care and guidance of its father. A view to much the same effect was expressed by Williams, J., in **Morton v. Morton,** 14 G.L.R. 271, and by MacGregor, J., in **Re Hylton,** (1928) N.Z.L.R. 145. Where, however, the father was the guilty party to a divorce suit founded on adultery, the circumstances could not be regarded as "ordinary" for the purpose of His Honour's expression of opinion. The rule to be applied was the rule which His Honour had stated. The question in the present case was whether there were very exceptional circumstances sufficient to justify the younger child being left in the custody of the respondent? His Honour thought there were for the following reasons: (1) It was clear that chastity had not been regarded by either party to the suit as a virtue of much consequence in the conduct of life. Nothing was proved against the wife after marriage, and in that respect she was better than her husband. She was not, however, chaste before marriage, and she was at least "philandering" with another man while her husband was receiving attention for his war disabilities at Hanmer. The Court had no very decisive choice between the parents on the ground of sexual morality. (2) When the wife left the husband about the time Macdonald's letter was written to her, she took only her illegitimate son with her, and she told her husband that he could have the children of the marriage. (3) The wife's application for custody of the children was dismissed by the Magistrate in November, 1927, although it was true that, at that time, the adultery of the husband had not been proved. (4) The husband maintained both children from October, 1925, to December, 1928, when the elder boy transferred himself to his mother. Since December, 1928, the husband had maintained and cared for the younger boy. His Honour had seen the boy, not for the purpose of ascertaining his wishes, but for the purpose of seeing how he was cared for; and the result must be regarded as satisfactory. (5) The wife would probably be fully taxed to care for the elder boy in the home of her parents. Those parents were both elderly and the wife's mother was blind. The wife at present attended to her mother and would no doubt have the care of both parents upon her hands.

It would, His Honour thought, be disastrous if the respondent continued to bring his younger son up in a house of illicit intercourse. The boy was entitled to a better example from his father. On the other hand, it would also be disastrous if the petitioner gave the elder boy any similar example. In His Honour's judgment, the best course to take, having regard first to the interests of the children and next to the claims of the petitioner, was to order (a) that the petitioner (the wife) do have the custody of the elder boy until the further order of the Court, and (b) that the respondent (the husband) do have the custody of the younger child, until the further order of the Court. Neither child was to be removed out of the jurisdiction of the Court without the further order of the Court. The petitioner was to have reasonable means of access to the younger child, and the respondent to have reasonable means of access to the elder child. Probably the parties would be able to arrange terms of access, but, if not, His Honour would give directions as to the times and modes of access. Liberty to apply was reserved to each party. The nature of the order would make it incumbent upon each parent to take care of his or her own conduct, and to take proper care of the child committed for the present to his or her custody. Decree *nisi* for dissolution of marriage made absolute.

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

Solicitors for respondent: **Mahony, Dignan and Foster,** Auckland.

Kennedy, J. August 5, 9; October 7, 1929. Dunedin.

KEKLER v. MAGAN.

Contract—Statute of Frauds—Sufficiency of Memorandum—Offer to Purchase Signed by Defendant and Accepted by Vendor—Prior Promise by Vendor to Instal Gas Cooker and Paint House in Event of Defendant Buying House—No Reference to Such Promise in Written Offer—Promise Merely Collateral Undertaking and Not Term of Contract of Sale—Not Condition Precedent—Memorandum of Contract Sufficient.

Action by plaintiff against defendant to recover £230 as damages for breach of a contract to purchase the plaintiff's property for £1,650, which contract was alleged to have been made on 23rd March, 1929. Four days later the defendant repudiated it and in June, 1929, the plaintiff resold the property for £1,450. It appeared that the defendant who himself had a small house property, was taken by the agent for the plaintiff to see the plaintiff's property, and after inspection the defendant signed an offer, which the plaintiff accepted. The writing produced was in the form of a complete contract. The defendant suggested that he desired the words "subject to disposing of my property" to be inserted in the offer but he was informed by the plaintiff's agent that an offer in those terms would not be considered, and he signed the offer without those words. Prior, however, to the contract being signed mention was made of a gas cooker and the plaintiff said: "If you buy this house, you can select a range of your own choosing," or used words substantially to that effect, intimating that he would at his expense instal a gas cooker if the plaintiff purchased the house. The evidence also established that the question of painting was discussed prior to the contract being signed and that the plaintiff promised to paint the house if the defendant bought. No mention was made in the offer to purchase either of the gas cooker or of the painting. The principal question arising was whether there was a sufficient memorandum in writing of the contract to satisfy the Statute of Frauds.

Sinclair for plaintiff.
Hay for defendant.

KENNEDY, J., said that if a promise to supply a gas cooker and to paint had been part of the terms of the offer and not merely a collateral agreement, then there would not exist any memorandum or note in writing of all the terms of the contract and the contract would be unenforceable. If, however, the terms as to the gas cooker and as to painting were not terms of the agreement for sale of the land but terms of collateral agreements, which operated by way of inducement to the defendant to sign the contract of sale, then the contract for sale might be enforced if it were in writing although there

was no note or memorandum in writing of the collateral agreements. His Honour was of opinion that the undertaking as to painting, if it rose above the level of a mere intimation of intention, was a collateral undertaking and that if it were formally embodied in words, it would, having regard to the circumstances under which it was uttered, have amounted substantially to the following: "If you become a buyer, I will paint the house." The undertaking as to the gas cooker was in substantially identical terms. Even if the undertaking as to the gas cooker were not sufficiently definite to permit of its enforcement by the defendant, if he had completed the agreement for the sale of the land, that would be no answer to the plaintiff's claim to enforce the contract for the sale of the land, all the terms of which had been agreed on. The distinction between an undertaking which amounted to a collateral agreement and an undertaking which was one of the terms of a contract for the sale of land was pointed out in **Angell v. Duke,** L.R. 10 Q.B. 174. His Honour did not think, although the contract sought to be enforced was a contract for the sale of land, that there was any essential difference between the present case and the cases of **Angell v. Duke,** L.R. 10 Q.B. 174, **Mann v. Nunn,** 43 L.J.C.P.N.S. 241, and **Wallace v. Stevenson,** 16 N.Z. L.R. 166, for the words of the Statute had reference to "contract for sale of land or any interest in or concerning land," and those words applied as well to a sale as to a lessee of land. The promises, if such they were, were not, as in **Watson v. Raymond,** 9 N.Z.L.R. 216, conditions precedent. They might be fulfilled subsequent to the agreement for sale and subsequent even to the completion of the contract of sale by transfer of the land. They were anterior to the contract for the sale of the land and, if there had been no contract of sale, neither party would have any cause of action against the other on the promises. After the undertakings had been given, it was still open to the defendant to purchase or not as he might please. At most the undertakings were collateral agreements inducing the contract of sale. It followed then that all the terms of the contract of sale of the land were in writing, that the contract was enforceable and that the defence failed.

Judgment for plaintiff.

Solicitors for plaintiff: **Aspinall and Sim,** Dunedin.
Solicitors for defendant: **Smith and Lousley,** Dunedin.

Kennedy, J. July 17; October 9, 1929. Auckland.

BLACKBURN v. LEDGER.

Conversion—Partnership—Bill of Sale—Launch Owned by Three Partners—Mortgage by Two Partners of Their Shares to Third Partner—Launch Seized by Grantee for Alleged Default in Payment of Interest and Sold by Auction to Grantee's Agent—No Default at Time of Sale—Possession of Grantee Before Sale Lawful—Sale to Grantee's Agent Invalid—Sale Changing Neither Possession Nor Ownership of Launch—No Conversion—Assignment of Share in "Vessel" Not an Instrument for Purposes of Chattels Transfer Act—Launch a "Vessel"—Chattels Transfer Act, 1924, Sections 2, 50.

Appeal on fact and law from the decision of a Stipendiary Magistrate giving judgment for the respondent for damages for the wrongful seizure and conversion of a launch. The appellant and the respondent and one other were in partnership as fishermen and each partner owned a one-third share in the launch. The appellant advanced a sum to his partners to enable each partner to purchase his one-third share in the launch and the partners to whom such advances were made assigned by way of mortgage their shares in the launch to secure the sum so advanced. The appellant claimed that default had been made in payment of interest and in observance of the covenants of the instrument, and took possession of the launch and sold it on 16th April, 1928. The sale was made by auction to a person who was the agent of the appellant.

The main contest before the Magistrate was whether default had been made in the fulfilment of the covenant for payment of interest and in the observance of certain other covenants which were said to be implied. The learned Magistrate found that interest was not in arrear, the interest having been paid to the solicitor for the defendant and that the defendant was so informed and approved.

Quartley for appellant.
Trimmer for respondent.

KENNEDY, J., said that it had not been shown that the Magistrate was wrong in his findings of fact. Counsel for the appellant and the respondent at first made their submissions upon the assumption that the covenants implied in instruments by way of security and set out in the Fourth Schedule to the Chattels Transfer Act, 1924, were implied in the security held by the defendant. The document followed very closely the form of an instrument by way of security set out in the First Schedule to the Chattels Transfer Act, 1924. The two partners, the grantors, were expressed to be the owners of one-third share each in the launch and in consideration of £138 13s. 4d. advanced to them they purported to assign and transfer their shares in the launch to secure repayment of the sum so advanced on 20th December, 1928, with interest in the meantime payable quarterly. No covenants were expressed to be implied. The document was filed for registration in the Supreme Court Office as an instrument by way of security, registrable under the Chattels Transfer Act, 1924. Section 2 of the Act defined an instrument and provided that an instrument did not include the following: "(d) Transfers or assignments of any ship or vessel or any share thereof." The launch in question was of sufficient size for several persons to proceed to the deep sea and it was propelled by its own engines. In His Honour's opinion it was a "vessel" within the meaning of that word where used in Section 2 of the Act. The same word was used in the English Bills of Sale Acts and had been held to apply to anything ordinarily called a vessel but not to a mere boat: see **Gapp v. Bond,** 19 Q.B.D. 200. It followed that the assignment was not an instrument by way of security within the meaning of the Chattels Transfer Act, 1924, and that the covenants, provisoes, agreements or powers to be implied by Section 50 of that Act in instruments by way of security were not implied in the document given to the defendant. A mortgagee of a chattel was of course entitled to sell the subject of the security upon non-payment of the debt, when a day had been fixed for payment, but, on the Magistrate's findings of fact as to the payment of interest, such an implied power was not exercisable. No facts, then, appeared which authorised the defendant to realise his security.

That, however, did not conclude the case as against the appellant. He was the owner of a one-third share in the launch and he was equally entitled, with his co-owners and partners, to possession of the vessel. Although the appellant did send a notice, received by the respondent after the purported sale on 16th April, 1928, he did not exclude the respondent, in fact, from possession and the appellant's possession was lawful and not unlawful. The plaintiff suffered no injury prior to the purported sale from the so-called seizure. That seizure, in fact, was a mere matter of words rather than of substance and nothing was done by the appellant up to the date of the sale for which an action for conversion at the suit of the respondent might lie. The sale on 16th April, 1928, was alleged to have been a conversion, but it appeared at the trial that the sale was merely a paper sale because one Dawson, who bought at the auction, was the agent buying for the appellant who in fact could neither legally sell nor could he legally buy in. The appellant after the sale remained as he was before, the owner of a one-third share and a mortgagee of the two one-third shares of his partners, and the respondent still retained his interest as mortgagor in the one-third share in the launch. Neither the possession nor the ownership of the launch was changed. The defendant subsequently disposed of the launch to a stranger but that was not a matter of complaint in the present action and it was not necessary in this judgment to make any observations thereupon.

Appeal allowed.

Solicitor for appellant: **A. G. Quartley,** Auckland.
Solicitors for respondent: **Connell and Trimmer,** Whangarei.

"There is a tendency to mar, and occasionally to obliterate, the strict and clear line of demarcation between the executive and the magistracy and to substitute tribunals uncontrolled by any salutary rules of evidence obtaining in the Courts."—Mr. Justice Eve.

"One must be as careful in small things as in a million pounds' worth. Time is not wasted in doing justice."

—JUDGE TOBIN.

Professional Discipline.

The Disciplinary Jurisdiction of the Supreme Court of New Zealand over the Legal Profession.

By H.F. von Haast, M.A., LL.B.

(*Concluded from p. 313*)

Neglect and delay in the transaction of a client's business may be so gross, even in the absence of any evidence of fraudulent misappropriation, as to amount to professional misconduct, calling for the exercise of the Court's disciplinary jurisdiction. In *In re W. C. Moseley*, (1925) 25 N.S.W.S.R. 174, the solicitor, who had received £25 from a client to cover the whole costs of divorce proceedings up to decree *nisi*, neglected and delayed proceedings and improperly exacted from the client a fee for counsel, and in another case received £20 from another client on account of costs of divorce proceedings, and did nothing for two years except ask the advice of a private enquiry agent and retained the money during that time. In these circumstances the Supreme Court of New South Wales considered that the professional misconduct of the solicitor called for the exercise of its disciplinary jurisdiction but contented itself with a severe censure, ordering him to repay moneys to his clients, and to pay the cost of the proceedings.

Disreputable behaviour and sexual immorality are charges that very seldom appear in the record in the law reports of disciplinary proceedings against practitioners. In *In re Weare*, (1893) 2 Q.B. 439, a solicitor had been convicted of allowing houses, of which he was the landlord, to be used by the tenants as brothels. The Court held that conviction for a criminal offence *prima facie* makes a solicitor unfit to continue on the rolls, but the Court has a discretion, and will inquire into the nature of the crime, and will not, as a matter of cause, strike him off because he has been convicted. Lopes, L.J., at p. 448, supplied this test: "Is the Court, having regard to the circumstances brought before it, any longer justified in holding out the solicitor in question as a fit and proper person to be entrusted with the important duties and grave responsibilities that belong to a solicitor?" The solicitor was struck off. *In re Baillie*, (1915) 34 N.Z.L.R. 705, is interesting for the dictum of Denniston, J. In that case there were two grounds for the motion to strike off: (a) what Denniston, J., described as a clear case of embezzlement of a client's money, (b) disreputable conduct, failure to maintain wife and children, resulting in sentences of imprisonment with hard labour, living in adultery with a woman of whose illegitimate child he was adjudged the father and towards the maintenance of which child he was ordered to pay a weekly sum followed by sentences of imprisonment for failure to keep up his payments, and drunken and disreputable habits of life. In regard to charge (b) Stout, C.J., said (p. 710): "Misconduct need not be confined to professional misconduct; it is sufficient if the conduct is disreputable and the record of the conduct of this solicitor regarding his wife and his mistress can bear no other name." Denniston, J., said (p. 712): "The second ground—that he had been for a lengthy period guilty of conduct showing that he is unfit to remain on the roll—is also, in my opinion, established." The learned Judge added: "The fact that a man is living an adulterous life, even if it is accompanied by neglect of his wife and family, is not, in my opinion, a matter of which the Court can be called on to take notice; but if such conduct is obtruded upon public notice, associated with Police Court proceedings resulting in sentences of imprisonment with hard labour, even if the latter is not actually undergone, then the matter becomes different."

In applications for readmission, the practitioner must show affirmatively that the Court, on solid and substantial grounds, can regard him as a fit and proper person to be trusted. He must show affirmatively not only that since his striking off his conduct for a considerable period has been honourable and irreproachable but that his intrinsic character has undergone a complete change—that, to use the words of Isaacs, J., in *Incorporated Law Institute of New South Wales v. Meagher*, 9 C.L.R. 655, at p. 681: "His purgation is complete, his repentance real, his determination to act uprightly and honourably so secure that he may fairly be re-entrusted with the high duties and grave responsibilities of a minister of justice. He must show, to use the words of Cockburn, C.J., in *In re Pyke*, 34 L.J. (Q.B.) 121, at p. 123, that, "having suffered the humiliation, and all the serious consequences as affecting his interests in life, which such a sentence must necessarily carry with it, he has been awakened to a higher sense of honour and principle." "It is necessary for the Court," said Ferguson, J., in *Ex parte Meagher*, (1919) N.S.W.S.R. 433, at pp. 452, 453, "to look not only to his conduct, but also to his state of mind in regard to his past errors." There must be a complete repentance and a determination to persevere in honourable conduct. If since the striking off the practitioner's conduct has been such as to give rise to suspicion of dishonourable dealing, such conduct "is to be regarded not as a first offence, if offence it be, committed by a person of previously blameless character, but as one committed by a person whose reputation is already grievously tainted, and who has been already convicted of an offence for which nothing short of removal from the rolls would have been an appropriate punishment." *Incorporated Law Institute of New South Wales v. Meagher* (*cit. sup.*) at pp. 665, 666, per Griffiths, C.J. But if in spite of an honourable and upright life in the strong light of public observation, of no suggestion of any lapse from strict integrity, of tenure of the highest public positions and of esteem both by well known citizens and members of the legal profession, the practitioner "remains so deficient in his perception of the difference between what is right and what is wrong, between what is honourable and what is dishonourable, that he fails to see that he has been guilty of any wrongful or dishonourable conduct in the past," the Court cannot "say that the applicant can be trusted to have any keener perception of that difference in determining his conduct in the future" and must refuse him re-admission: *Ex parte Meagher*, (1919) 19 N.S.W.S.R. 433, at p. 450, per Gordon, J.

The leading case on the subject is *Re Meagher*, which ran through several phases and is an interesting study of psychology. The case is reported in, (1909) 9 C.L.R. 655, and in (1919) 19 N.S.W.S.R. 433. In 1896 Meagher was struck off the roll of solicitors for being a party to a conspiracy to pervert the course of justice in connection with the Dean case. He made applications for re-instatement in 1900, 1902, 1904, 1906 and 1909. In the last year the Supreme Court by a majority granted his application, but its decision was reversed

on appeal by the High Court of Australia and his re-admission refused on the ground that his association with one Willis in land transactions was such that he was not a person who could be safely trusted by the public to discharge with honour and fidelity the high and important functions of a solicitor of the Supreme Court. The true question was held by Higgins, J., at p. 692, to be "not whether the respondent has been proved almost conclusively guilty of misfeasances since 1896, but whether he has proved that notwithstanding his misconduct before 1896 he is now a 'fit and proper' person. The presumption in favour of innocence is not applicable. The respondent has been found guilty in 1896 of misconduct such as showed him to be unfit for the office of a solicitor. As he has shown himself to be capable of such misconduct, has he shown that he is now incapable of it, or, at the least, that he is no longer likely to err in the direction of deception? It is not his reputation that is in question, but his intrinsic character." In 1896 Meagher admitted his guilt and in his earlier applications for re-admission there were professions of contrition. But when he applied to the Supreme Court of New South Wales in 1919, appealing in person, fortified by an affidavit setting out the positions he had held as Speaker of the Legislative Assembly, as Lord Mayor of Sydney (*inter alia*) and of his public service, and by a memorial from solicitors who were prepared to engage in professional relations with the applicant, should he be re-admitted, and a list of prominent citizens who had every confidence in his integrity and would be willing to entrust him with their business, there was, to quote Cullen, C.J., a complete retrogression from those professions. The learned Chief Justice said: "The fact that the applicant has seen fit on this occasion to attempt to excuse, or even to palliate the conduct which was so strongly condemned by the Courts on those occasions, and even to charge the Courts with harshness and injustice in their dealings with it, shows that the previous exercises of the disciplinary powers of the Court leave him unchanged in his conceptions of that standard of conduct which the Courts are bound to exact from those practitioners whom it takes the responsibility of accrediting to the public." In every other respect the applicant had proved himself entitled to readmission for, as Gordon, J., said at p. 450, "For the past ten years he has lived, not in the seclusion of private life, but in the full glare of public life, and during that time no act in the slightest degree dishonourable or discreditable is proved or suggested against him, but on the contrary he is shown to have received honours and distinctions, to have been elected to and held high offices, and to have earned the esteem of well-known and highly esteemed citizens of this city and of many members of the legal profession." But the same learned Judge said: "I am unable to say that I am satisfied that the applicant, who is so deficient in his perception of the difference between what is right and what is wrong, between what is honourable and what is dishonourable, that he fails to see that he has been guilty of any wrongful or dishonourable conduct in the past, can be trusted to have any keener perception of that difference in determining his conduct in the future." The Court, therefore, refused to re-admit him. The last act of the drama was the enactment of a statute by the Parliament of New South Wales admitting Meagher to practise as an attorney, solicitor and proctor of the Supreme Court, as if he had been admitted on the passing of the Act, giving him all the rights, privileges and obligations of such practitioners, including the right of audience, and making him subject to the discipline of the Supreme Court in respect of any act omission or conduct subsequent to the passing of the Act. *In re Meagher* was followed in New Zealand in *In re Lundon*, (1923) N.Z. L.R. 236, and (1926) N.Z.L.R. 656.

In the former case it was held that although the Law Practitioners Act, 1908, contains no express provision as to the re-admission of practitioners who have been struck off the rolls, a jurisdiction to re-admit is vested in the Supreme Court, to which the practitioner must apply in the first instance, applying for a new status, based on his existing qualifications, just as if he had not been previously admitted at all. The Supreme Court in such case would exercise a wise discretion by ordering the motion for re-admission to be removed into the Court of Appeal. The Court of Appeal held that proof that Lundon had led an honest life as a farmer for six years was not sufficient proof that he had become fitted to withstand those temptations to dishonesty and abuse of power which would assail him if he were reinstated in the legal profession. He applied again in 1926. The affidavit he had filed showed that, though his farming venture resulted in insolvency and loss to his creditors, he had been industrious and gained the respect of his neighbours, and that subsequently for three years he had acted as confidential clerk and secretary to the owner of a milking machine business, but though it was sworn that the scope of his duties provided a very definite and sufficient test of his fidelity, honesty and honourable dealings with his employer and with customers and the general public, the affidavits gave no information as to his duties and responsibilities with respect to the receipt and disbursement of moneys. Then there were testimonials from gentlemen holding respectable positions and a "round robin," signed by many Auckland solicitors, representing that he was then a fit and proper person to be admitted. On this material the Court was not prepared to say that the evidence satisfied them that, upon solid and substantial grounds, they were justified in holding out to the public that the applicant was a fit and proper person to be readmitted as a solicitor.

The foregoing cases illustrate the serious responsibility that rests not only upon the Supreme Court but also upon the Law Societies of the Dominion, not only to themselves but also to the general public, to see that there stand in the ranks of an honourable profession only those members worthy of public confidence.

Consolidation of Statutes.

In Victoria the Statutes in force have been consolidated and the statute law of that State will now be obtainable in seven volumes. With the new Acts an explanatory paper of over a hundred pages will be issued directing attention to the changes in law and procedure, the removal of anomalies and the general re-arrangement of titles and subject-matter. When it is remembered that the last general consolidation of Statutes in Victoria was completed as recently as 1915, it is apparent that New Zealand can learn much from that State in such matters. Our present practice of the consolidation each year of one or two of the more important Acts, while no doubt commendable on the principle of half a loaf being better than no bread, must certainly tend to postpone, and not to hasten, a very much needed general consolidation.

London Letter.

Temple, London,
28th August, 1929.

My dear N.Z.,

It is no use my pretending that anything has occurred or that, if anything has occurred in the legal world, I am aware of it, in this period in the dead centre of our Long Vacation. The re-dispositions of Yorkshire County Court circuits are a matter of little moment to me, and of still less moment to yourselves. As they do not even include the appointment, as yet, of a new County Court Judge to take the place of the retiring Judge, there is even no scope for personal allusions. Whether or not you have the counter-part in New Zealand of our County Court system I do not even know. It is, to the layman, most familiar as a debt-collecting machinery, and a slow-moving and merciful machine at that; but it is, in actual fact and to those concerned, something very much more. It is the Court of the small, the less well-to-do litigant; in conception it is the model of progressive civilisation, in that it assures justice even in what the wealthier world may regard as trifles; and in development it achieves much good in the administration of justice and is unencumbered with most of the detrimental diseases which affect litigation these days, the mischiefs of delay and expense.

Traditionally at our Bar, acceptance of a County Court Judgeship is a confession of failure, possibly, and the abandonment of ambition always. The salary is small, and is open to the criticism appropriately directed at your Judicature but not to be applied to ours of the High Court: that the reward is unnecessarily meagre and unnecessarily calculated to make unavailable the right men. It is said that this is a state of affairs which was due to be improved upon, even if the Conservative Party was returned again to power at the last election; and that it is a state of affairs bound to be remedied, now that we have in fact a Labour Government. But beyond an *obiter dictum* of the new Lord Chancellor, at a City function towards the end of last term, there has as yet been no indication of any sweeping reform in this direction. The interest, therefore, in the forthcoming appointment of a new County Court Judge is but vague and fleeting; little more curiosity animates us, in the context, than that of seeing, if we are to see, the state of affairs of another Leader's practice, and we shall realise and shall know, if a King's Counsel is appointed and he is a known man, that his practice was smaller or more precarious than we had supposed.

It is only in the Police Courts that any legal matters take shape, this month. These have not been wholly routine or devoid of interest to such lawyers as are so devoted to law that, even on holiday, they must be watching it. The theft of motor-cars, for the temporary purpose known as "joy-riding" is, thus, a current subject which has given rise to most wonder and comment. The Larceny Act prevents the theft being a theft at all; and there is no substantial offence with which the thief, as undoubtedly the offender is according to all ethical considerations, can safely and effectively be charged. Magistrates in or about London are so plagued with the thing, that they intend, it is reported, an official application to the powers that be to alter the law so that the enterprise may be a crime. I do not know that lawyers, at large, are likely to sympathise readily with the project. It savours too much of legislating arbitrarily for a particular class, and a moneyed class at that. Motorists, moreover, do not, as an entity, recommend themselves very warmly to lawyers inasmuch as they are themselves so disposed to lawlessness. If every man in a motor car, or driving it, made it his business to learn the law regulating his driving, the world would, in England at any rate, be a vastly more safe place to live in. Though we may be motorists ourselves, on occasion, we are human beings all the time; and we must, if we are lawabiding, resent the mischievous disregard of rules by the nasty minority of motor-drivers, the tolerance of that minority, and the reluctance or omission of the majority to deal with it or have it dealt with. The usual toll of life, exacted upon the roads this holiday month, brings into prominence this subject at the moment.

The visit of American lawyers to London, upon which I believe I remarked in my last, is still a matter discussed, with appreciation of their appreciation of our systems. The conviction of a young American citizen and his sentence to five months imprisonment, for manslaughter by his motor-driving, came as a curiously apt incident about the time of this visit; and you will have seen that the proceedings, before Travers Humphreys, J., excited the admiration of the United States press, for its impersonality, its impartiality, its expedition, and its inevitability. As the *Law Journal* most wisely remarks, we, here, should do well to turn our eyes to the system and administrations of law in other countries, for our information and (if we can ever bring ourselves to contemplate such a thought) for our possible improvement. And this seems to me to warrant the principal impression I brought away with me from the United States in the early part of this year: the formidable degree of the intelligent American's modesty at heart which argues a dangerous tendency to learn, and learning, to get ahead of us even in those matters wherein we feel most superior and are most ready to teach.

It is announced that a new Borough Quarter Sessions is to be created at Southend, and you are probably completely mystified (if you have ever had to study the matter) to know what principle, if any, governed the selection in the past of the hundred odd boroughs which have their separate Quarter Sessions jurisdictions. There is not, and never has been, any principle that I know of; the selection has just happened, from time to time, and there the result is. There is further announced for the second week in next October, a meeting of the Committee, representing Great Britain and the Dominions, to enquire into the wider legislation, especially in shipping matters; and the period which this letter covers has seen the appointment and the operation and the decision of the Board of Arbitration in the cotton wages dispute, presided over by that very remarkable man, Mr. Justice Rigby Swift, a man as much detested by those who do not like him as he is admired and liked by those who do. The reason for this is simple, and has already occurred to you, as you read: he is a man of marked character, great ability, sharp humour and utter inability to suffer fools, even fools who are not fools really given time to get over their timidity, gladly. I have a great admiration for his speed of thought and his admirable gift of language, displayed to perfection in his summings-up. So much as it is given to the humble to get to know the great,

I have got to know him, and say in the hope that he may never know I have dared to say it, I like him immensely. I have the feeling that if a Judge ever is given reason to suppose that you profess a personal liking for him, he will never (just to be on the safe side) give you a fair, or at least a pleasant, run in his Court again. I do not suppose you will be interested in our new Rules of the Supreme Court relating to company matters, and I do not propose to tell you about them.

I have only to add that there is another High Court Judge of the King's Bench Division at present in these parts, with his family. His offspring and mine happen to be great friends, and his wife and mine are the same. The association of these unreasonable and ungovernable people resolved, the other night and at my house, to embark upon a series of what are known as "dumb charades." You may conceive my anxiety, with regard to the conduct of any serious case I may hereafter have in that Judge's Court, while I watched him compelled to illustrate possible rhymes to "Hug," first by creeping about on the floor and pretending to be a "slug," and then by dressing as a desperado and acting the "thug." As you very rightly say, this is a matter which ought not then to have been, and in any case shall not now be, carried further.

Yours ever,

INNER TEMPLAR.

Silence in Court.

Swearing in a new metropolitan magistrate recently, a learned Judge is said to have advised him not to talk much on the bench. That wise judges and magistrates say very little is an old story; so is the advice "Never give reasons; your decisions will probably be right, but your reasons are sure to be wrong." While it is perfectly true that a too fluent tongue is dangerous in the occupant of the bench, likely to betray him into error or indiscretion, it is easy to over-estimate the wisdom of sphinx-like silence and inscrutability. Certainly, the magistrate who constantly interrupts witnesses is sure to confuse them. If he keeps interposing and taking the case out of counsel's hands, he embarrasses him and spoils the conduct of his case. Moreover, if he talks too much, he is probably not listening and watching the demeanour of the witnesses as closely as he might. Nevertheless, the magistrate who hardly ever breaks silence is not necessarily profoundly wise. Those who have the handling of a case are often helped a very great deal by a timely intervention, explaining a tentative opinion so as to encourage argument or to direct it to the essential points of the case. To have no sign at all from the bench from start to finish means that no risk can be taken by shortening the proceedings or restricting the arguments; whereas an intimation that the magistrate regards certain matters as irrelevant or unimportant and desires the issues to be confined within certain limits, defines and lightens the task of the advocate or the litigant. Without it, he has not the faintest notion of what, if any, impression he is making. Indeed, he may almost be pardoned if he sometimes wonders whether he has the undivided attention of the bench. Occasional interruptions help far more then they hinder, provided they are (as they would be, one may assume) both timely and courteous.—"*Law Journal*."

Bench and Bar.

The Hon. T. M. Wilford, Minister of Justice, has been granted the Letters Patent of King's Counsel. While politics have of late years claimed so much of Mr. Wilford's attention that he has recently been seen but little in Court there is not the slightest doubt that Mr. Wilford's notable preeminence in the past as a jury advocate is ample justification for the appointment. As no King's Counsel appointed since the passing of the Law Practitioners Amendment Act, 1915, can practise as a solicitor, or in partnership with a solicitor, Mr. Wilford has retired from the firm of Wilford, Levi and Jackson, the practice being continued by Mr. P. Levi and Mr. P. W. Jackson under the style of Levi and Jackson.

The name of the firm of Tripe, Herd and Herd, Wellington, has been changed to Herd and Herd.

Vexatious Delay for Witnesses.

Under the conditions existing in this country it is generally found practicable to give a witness some idea, at all events, of the time when he is likely to be required to give evidence; but even with us witnesses are frequently subjected to vexatious delay. Mention has lately been called to the matter in England by the observations of Judge Gwynne-James at Bath County Court, when fining a medical practitioner two guineas for failing to obey a subpoena. "The Judge," says the *Law Journal*, "mentioned two recent cases which had occurred on his Circuit where medical men refused to give evidence in Court on behalf of their patients unless they were paid special fees; in one the doctor demanded a fee of twenty guineas. The fact is that a medical witness is bound to attend on being served with a subpoena, and to be given his conduct money, with a fee of one guinea, which in special circumstances may be increased to a fee not exceeding five guineas. For failure to obey, the doctor is liable to fine and imprisonment for contempt of Court. There can be no doubt that this legal *obligatur* operates with great hardship on members of the medical profession; especially since the increase in the number of running-down cases, where medical evidence is almost invariably required. It is equally certain that their attendance must be enforced, and that there is an appreciable difference in value between a willing and an unwilling witness. An increase in the fee allowable would not meet the difficulty. Far more important, in our view, is the frequency with which doctors are summoned to attend Court at a time when the case cannot possibly be heard. A medical man is, in consequence, often kept waiting for a day or for days while his practice and his patients are suffering. The approximate timing of cases would effect a marked improvement, and this reform cannot be regarded as impracticable. Meanwhile, the doctors must remember that fine and imprisonment are greater evils than the vexatious delay which so often follows the act of obedience to a subpoena."

Some Queer Laws.

The above title is perhaps not, strictly speaking, quite correct. Any action or institution which may be described as "queer" is, in that case, meant as unsound, possessing no discoverable motive or purpose. But "queer" laws are only mysterious, erratic or eccentric when regarded objectively. To the sympathetic student of English laws and legal customs, every statute, however grotesque it may appear to the twentieth century, had its definite basis of utility, which was sometimes, too, a basis for the preservation of society.

Very recently, a "queer" bylaw was introduced in Biarritz, by which the *gens d'armes* were empowered to arrest any fat man or woman who might be dressed in such inartistic garments as to offend, not the public sense of decency, but the public sense of aestheticism. Such a law might seem amusing to us, but it certainly has its basis of utility, inasmuch as aesthetic conduct and moral conduct intertwine very closely. It is sometimes extremely difficult to differentiate, in a court of law, between the moral aspect of an action and its aesthetic aspect. What may have been assumed to have shocked a witness's sense of decency, may really, have offended merely his eyesight.

In the same way the curious statute enforced during the reigns of both Richard II and Henry IV, making it compulsory for men to practise the game of archery on Sundays, had its basis of utility in preparing the people for a state of war. Blackstone quotes another remarkable statute which was still unrepealed in his own day and endured until the reign of Queen Victoria. This was an Act (10 Edw. I) which ordained that no man should be served at dinner or supper with more than two courses, except upon any great national holiday, when he could be served with three courses. A concomitant law made the wearing of expensive garments (according to contemporary fashion—piked shoes, short doublets, and long coats) a criminal matter. The motive of such laws was possibly to keep the money concentrated in a few hands and available to the King's tax-gatherers.

It was a queer law, introduced by James I, which prevented England from probably being, in our day, a great tobacco-producing country. Before 1624, when the Abolition Order was carried out only too effectually, a good deal of tobacco-cultivation was in progress in England, especially in Gloucestershire. The law of James I empowered every sheriff to uproot all tobacco plants, and so this part of English agriculture speedily perished. The reason for such an odious proclamation seems almost to arise from some erratic spitefulness of the monarch responsible for it. Its real reason, of course, was to facilitate the collection of revenue upon tobacco, it being so much easier to levy a duty at the Customs House upon importation from Virginia or Bermuda (where it was then extensively grown) than to collect a tax from every individual tobacco planter in England.

It is strange to find that domestic fires were once taxed in England. "Smoke-farthings" and "hearth-money" were levied for the benefit of the King and of the clergy in the latter half of the seventeenth century, and there was even, at that time, a window-tax, so that the people had even to pay for their sunlight.

Daines Barrington, the celebrated archaeologist, mentions an extraordinary legal ritual (a "queer law") designed to prove the innocence or guilt of a prisoner upon trial. This was the bread-and-cheese ordeal. The food was blessed by a priest and the prisoner made to eat it. If he were able to swallow it, then he was adjudged innocent and acquitted, but if he choked in the ordeal, then he was adjudged guilty and received the consequences. "Hence, perhaps," remarks Barrington, "the expression, 'I wish it may choke me.'" Fortunately, though it may be still true that a prisoner's demeanour plays a large part in a magistrate's verdict, our rules of psychology are rather less rough-and-ready than the bread-and-cheese judgment.

One wonders whether the sensational cases, such as the recent Croydon inquest, which are so prominently featured in the newspapers, would still attract large queues of court spectators if an admission fee were charged. Such a suggestion, we know, could be promptly pooh-poohed on the ground of public interest, but it is interesting to find, in the "queer" statutes 13 Edw. I, c. 42-44, that admittance to the law courts by outsiders was charged one penny: equivalent to about one-and-threepence nowadays. The statute, it should be noted, directed that the defendant and plaintiff should not be charged admission.

Some time ago interest was aroused in a judgment upon a girl indicted for whistling in an English churchyard. Upon appeal the judgment was reversed, so that one may fairly conclude that offences committed in a churchyard are now no more culpable, in the eyes of English law, than those committed elsewhere. This was not the case in former years, when, according to the Statute 6 Edward VI, the offence of striking in a churchyard was punished by cutting off the delinquent's ears. The basis of utility, in this instance, however, was more than one of veneration, for it was instituted to prevent dangerous riots between the Papists and the Protestants upon the final establishment of the Reformation. Nevertheless, Barrington, writing in 1775, notes that not many years previously there was an indictment under the same Act at the quarter sessions in Somersetshire. Striking in the King's Palace was once regarded as perhaps the highest outrage of all, and was, until the repealing act of George IV, punishable by perpetual imprisonment and fine at the King's pleasure, and also with the loss of the offender's right hand. Baker's "Chronicle" describes the arraignment of one such delinquent:—

"On the 10th of June, 1541, Sir Edmund Knevet of Norfolk, was arraigned before the officers of the Green Cloth for striking one Master Cleer within the tennis court of the King's House. Being found guilty, he had judgment to lose his right hand, and to forfeit all his lands and goods . . . the said Knevet confessed and humbly submitted himself to the King's mercy; only he desired that the King would spare his right hand and take his left: 'Because,' said he, 'if my right hand be spared, I may live to do the King good service,' of whose submission and reason of his suit, when the King was informed, he granted him to lose neither of his hands, and pardoned him also of his lands and goods."

Then there is the curious list of exceptions made from time to time to the original Sabbath Observance Act of 1677. The statute itself contains an exemption in favour of cook's chops, and was later extended to the baking of meat, puddings and pies on a Sunday; this being regarded as "a work of piety and necessity."

One justice is said to have observed at the time that "it was as reasonable that the baker should bake for the poor, as that the cook should roast or boil for the magistrates." In the same reign, too, exception was made "for the crying or selling of milk before nine o'clock in the morning or after four of the clock in the afternoon." By a law of 10 Will. III, mackerel were permitted to be sold on Sundays before or after divine service; though why such a special mark of favour should be shown to mackerel is still obscure. At any rate it proved to be the thin edge of the wedge, for a provision was afterwards recognised by the 2nd of Geo. III, also in favour of fish carts travelling on Sundays.

A discussion on the theme of the Queer Laws of other days must inevitably lead to the question of those quaint and effete laws which still encumber the statute book, and which still survive both in England and in this Dominion under frequent protest from judges and magistrates. In England hardly a day passes when some one in legal authority does not call for the complete overhauling or revision of some law which has long outgrown its original purpose of utility. All laws, however freakish they may appear on the face of things, were designed for a specific and reasonable purpose (whether that purpose was equitable or not). The only laws which are really queer and which may really be called freakish or eccentric, are those which, suited to meet the manners and philosophy of another age, still linger in their fusty obsolescence, to harass modern judges and modern seekers of justice.

Official Memoranda.

The protest recently made in the correspondence columns of the *Times* against the tendency of Government Departments, when issuing explanatory memoranda relating to new statutes, to endeavour to interpret such statutes instead of merely to explain the machinery necessary for their working, serves to bring into prominence another aspect of "departmental aggression" upon which the Lord Chief Justice and other eminent legal authorities have been moved to make comments. The particular complaint referred to was a "Memorandum as to Compilation of Special Lists" issued shortly after the Rating and Valuation (Apportionment) Act became law. *The Justice of the Peace* commented as follows on the matter: "There is no doubt that the extent to which this memorandum purports to give the legal construction to be placed on various sections of the Act, goes far beyond what might be expected in an 'explanatory' memorandum. That an official publication of this character should be quoted before an assessment committee, as alleged, is certainly most improper. If that sort of thing were permitted, we should soon do away with the necessity for law reports, and the dicta of anonymous officials in Whitehall would have the force of judgments of the courts—an intolerable state of affairs." So far we, in New Zealand, seem to have been spared this latest type of departmental interference.

"If the scales of justice hang anything like even, throw into them some grains of mercy."

—Lord Kenyon.

Forensic Fables.

THE CAREFUL LAWYER WHO COULD NOT MAKE UP HIS MIND.

There was Once a Careful Lawyer who, as the Result of a Varicty of Unexpected Circumstances, Found Him self Elevated to the Bench. The Careful Lawyer was not Entirely Satisfied that he had the Necessary Qualifications for Judicial Office, and his Misgivings were Shared by those who Knew him Best. For Most Unfortunately, he could not Make Up his Mind. In Chambers the Careful Lawyer Got on Well Enough by Affirming the Order of the Master and Directing that the Costs should be Costs in the Cause. And in Jury Cases the Careful Lawyer Discovered that it was not a Bad Plan to Read over the Evidence to the Jury and Ask them Such Questions as Counsel Suggested. But as a Rule the Careful Lawyer Found himself Sadly

Puzzled. On Circuit he Spent Sleepless Nights Wondering whether the Prisoner ought to Have Two Months with Hard Labour or Three Months in the Second Division; and when he Tried a Non-Jury Case it was his Custom to Reserve his Judgment for so Long a Period of Time that he Often Forgot what the Case had been About. One Day, for a Change, they Put the Careful Lawyer in a Divisional Court. It was Hoped that he would Find the Job an Easy One. But the Careful Lawyer was so Bothered by Trying to Decide, whilst the Other Judgments were being delivered, whether he should Say that he Agreed with them or that he Concurred with them, that he had a Nervous Breakdown from which he Never Recovered.

Moral: *Toss Up.*

Magistrates and the Press.

The magistrates of the Gore Division of Middlesex have intimated to the local Press that facilities for obtaining the addresses of prisoners and defendants appearing at the Wealdstone and Hendon Petty Sessions will no longer be afforded. It has been explained that their view is that the Press should not have any more information concerning the cases than the public attending the Courts. On the official list of cases to be heard no addresses are given and only a bare description of the charge. Previously full details of charges and summonses have been available. Representations have (says *The Times*) been made to the magistrates urging them to reconsider their decision.

Bills Before Parliament.

The following completes our summary of the provisions of the Bills introduced into Parliament during the Session just ended. It is probably unnecessary to remind readers that many of these Bills, including some of those summarised below, have failed to become law; others, again, have reached the Statute-book in a very much modified form.

Customs Amendment. (HON. MR. TAVERNER). Increasing rate of primage duty by 1 per cent; S. 15 of Customs Amendment Act, 1921, amended.—Cl. 2. Increased rate of primage duty not to apply with regard to goods enumerated in Schedule after 31st March, 1930.—Cl. 3. Nothing to conflict with Schedule of customs duties and exemptions relating to goods from South Africa contained in Order-in-Council of 7th September, 1925.—Cl. 4. Increased primage duty to come into force in Cook Islands on day determined by Governor-General by Order-in-Council.—Cl. 5. Ratification of resolution by House of Representatives of 1st August, 1929, increasing rate of primage duty.—Cl. 6. Governor-General may by Order-in-Council prescribe with respect to goods imported into New Zealand after date specified (not earlier than 31st March, 1930) that primage duty shall be payable as if this Act had not been passed.—Cl. 7.

Rural Intermediate Credit Amendment. (RT. HON. SIR JOSEPH WARD). Power of Commissioner to authorise officers of Board to sign on his behalf documents or instruments shall include power to authorise execution under seal: not necessary to validity of any transfer, assurance, consent, document, or instrument executed as provided in S. 6 of principal Act that seal of Board be affixed thereto.—Cl. 2. S. 7 of principal Act as to method of execution of documents under seal of Board amended.—Cl. 3. Increase to £2,000 of amount that may be lent by association to any one shareholder: S. 50 of principal Act amended accordingly.—Cl. 4. Increase to £2,000 of amount that may be lent to any one person without intervention of association: S. 63 of principal Act amended accordingly.—Cl. 5. Further provision for surrender of shares by shareholders in associations: S. 56 of principal Act amended.—Cl. 6. Associations to be exempt from annual license fees under Part X of Stamp Duties Act, 1923.—Cl. 7. All declarations of trust, conveyances, transfers, assignments, assurances, bonds, securities, guarantees, mortgages, assignments or transfers of mortgages, or other like instruments executed for purpose of complying with any requirements of the Board or of an association in relation to any advance made by the Board or by any such association to be exempt from stamp duty: S. 72 (1) of principal Act repealed and substitution therefor.—Cl. 8. Minister of Stamp Duties may from time to time agree with Board to exempt from stamp duty all cheques and receipts issued or given by the Board in consideration of the payment by the Board of such sums as may be agreed upon by way of composition for such stamp duty.—Cl. 9. Provision as to contents of annual report of Board.—Cl. 10.

Native Land Amendment and Native Land Claims Adjustment. (HON. SIR APIRANA NGATA). The usual annual budget of amendments of general and special application to Native Land Laws. Some 65 clauses.

Products Export Amendment. (HON. MR. FORBES). S. 2 of *Products Export Act*, 1908, amended by adding word: "tobacco" after word "hops" in definition of term "Products."—Cl. 2.

Nurses and Midwives Registration Amendment. (HON. MR. STALLWORTHY). For purposes of principal Act term "hospital" means either a public hospital under the control of a Hospital Board constituted under Hospital and Charitable Institutions Act, 1926, or a private hospital for time being licensed under Part III of that Act.—Cl. 2.

Slaughtering and Inspection. (HON. MR. FORBES). Consolidating and amending law relating to slaughtering and inspection of stock and inspection of meat for consumption in New Zealand and for export. Inspectors and other officers may be appointed.—Cl. 3. Powers of entry of inspectors.—Cl. 4. Stock for human consumption or export to be slaughtered in licensed premises.—Cl. 5. Exemptions from requirements as to slaughter of stock and sale of meat.—Cl. 6. Licensing of ordinary slaughterhouses.—Clauses 7 to 9. Establishment of abattoirs.—Clauses 10 to 14. Licensing of abattoirs.—Clauses 15 and 16. Notice that abattoir available for slaughtering.—Cl. 17. Slaughtering in ordinary slaughterhouses in abattoir district to cease when abattoir established.—Cl. 18. Sale of meat in abattoir district.—Cl. 19. Fees and charges.—Cl. 20. Revision of fees and charges.—Cl. 21. Minister may draw up scale of charges and fees if controlling authority fails to do so.—Cl. 22. Delegation of power to establish abattoir.—Cl. 23. Abattoir may be established in common.—Cl. 24. Abattoir district may be extended to include contiguous district.—Cl. 25. Licensing of meat-export slaughterhouses—Clauses 26 to 30. Slaughtering inspection and branding of stock.—Clauses 31 to 35. Diseased meat and stock—Clauses 36 and 37. Compensation for stock found diseased on slaughter.—Cl. 38. Insurance fund in respect of condemned stock.—Cl. 39. Identification of stock slaughtered.—Clauses 40 to 42. Stolen stock.—Clauses 43, 44. Export of meat: meat exporters' licenses.—Clauses 45 to 48. General provisions as to cleanliness; prevention of undue suffering to stock; allowing drainage to flow into stream; shooting at stock; blowing and spouting of meat; feeding and keeping of swine; obstruction of inspectors; punishment of offences, etc.—Clauses 49 to 60. Governor-General may by Order-in-Council declare any animal to be stock for purposes of Act.—Cl. 61. Power to make regulations.—Clauses 62 and 63. Repeals and savings.—Cl. 64.

Local Legislation. (HON. MR. DE LA PERRELLE). Some 60 clauses of local application.

Reserves and Other Lands Disposal. (HON. MR. FORBES). Providing for the sale, reservation and other disposition of certain reserves, Crown lands, endowments, and other lands, and validating certain transactions.

Railways Authorisation. (HON. MR. RANSOM). Governor-General authorised to undertake or enter into contracts for construction of certain railways in Schedule.—Cl. 2. Cost to be paid out of moneys appropriated for that purpose by Parliament.—Cl. 3. Act deemed to be a special Act for purposes of Public Works Act, 1928, "which Act is so far as applicable hereby incorporated with this Act."—Cl. 4.

Shipping and Seamen Amendment. (HON. MR. COBBE). Act to come into operation on day on which His Majesty's assent thereto is notified by the Governor-General by proclamation or on such later date (not later than three months after such publication) as is specified in the proclamation.—Cl. 1. Following provisions relative to conditions to be complied with by applicants for third-class engineers' certificates repealed:—S. 22(5) of Act of 1908; so much of 2nd Schedule to Act of 1909 as relates thereto; S. 2 of Act of 1911; S. 3 (2) of Act of 1913.

Town Planning Amendment. (HON. MR. DE LA PERRELLE). Part I: Miscellaneous amendments to principal Act. Distinction between term "regional planning scheme" as used in principal Act and that term in its true technical sense: expression "extra-urban planning scheme" substituted accordingly in principal Act for expression "regional planning scheme"—Cl. 2. Removing statutory obligation as to time within which preparation of town-planning schemes must be completed.—Cl. 3. Amending provisions of principal Act defining and restricting the rights of compensation in respect of operation of town-planning schemes.—Cl. 4. Pending completion and approval of scheme under principal Act, local authority may prohibit the erection of any building or carrying-out of any work that would contravene scheme.—Cl. 5. Part II: Regional Planning Schemes. Authority for preparation of regional planning schemes.—Cl. 6. Regional planning scheme to serve as model and adherence to its provisions to be optional and not compulsory.—Cl. 7. Local authorities may unite in preparation of regional planning scheme.—Cl. 8. Regional planning committee.—Cl. 9. Associate members of regional planning committee.—Cl. 10. Functions of regional planning committee.—Cl. 11. Regional planning committee may appoint a sub-committee.—Cl. 12. Regional planning committee to continue in existence until dissolved.—Cl.13. Committee to prepare estimate of cost of preparation of regional planning scheme.—Cl. 14. Town-planning Board to appoint a local authority which shall be responsible for expenditure incurred by regional planning committee.—Cl. 15. Members of regional planning committee to be entitled to refund of expenses.—Cl. 16. Governor-General empowered to make "all such regulations as may be deemed necessary in relation to preparation of regional planning schemes.—Cl. 17.

Divorce and Matrimonial Causes Amendment. (MR. BARNARD). S. 10 of principal Act amended by adding following additional ground for divorce: "(l) That the petitioner and respondent

are parties to a decree of judicial separation or a separation order made by a Court in any part of the British Dominions having jurisdiction to grant decrees of judicial separation or separation orders and that such decree or order is in full force and has been in full force for not less than three years. Cl. 2.

Cinematograph Films Amendment. (HON. MR. DE LA PERRELLE). Provisions of Ss. 16 and 17 of principal Act, so far as they require the incorporation in films of photographic reproductions of certificates of Censor and Registrar not to apply to sound-picture films: in case of such films the contents of such certificates shall be exhibited as prescribed by regulations under principal Act: duty of renters to supply prescribed reproduction of such certificates to exhibitors: S. 43 (d) of principal Act amended.—Cl. 2. Modification of restrictions with respect to contracts for advanced bookings: S. 37 (1) of principal Act amended by omitting word "six" and substituting word "nine": S. 87 not to apply, as regards limitation of time within which agreements for the supply of films may be entered into, to agreements under which supply is to be completed within 18 months from date of agreement.—Cl. 3.

Meat Export Control Amendment. (MR. LYSNAR). S. 2 (3) of principal Act repealed.—Cl. 2. S. 2 of principal Act amended —Cl. 3. S. 2 (2) (b) of principal Act amended and substitution therefor.—Cl. 4. Date of election of producers' representatives.—C. 5. S. 2 (4) of principal Act repealed and substitution therefor.—Cl. 6. Oversea companies not to acquire further interests in freezing works.—Cl. 7. Oversea companies to sell existing works to local companies.—Cl. 8. Pending or failing sale works to be carried on on a joint basis.—Cl. 9. Work to be carried on on owner's account if oversea companies disregard law.—Cl. 10.

Taupiri Drainage and River District. (HON. MR. DE LA PERRELLE). A public bill making provision with respect to the drainage of certain lands in the watershed of the Mangawhara River and the protection of such lands from damaged by floods.

New Zealand University Amendment. (HON. MR. ATMORE). Council of University hereafter to be known as Senate.—Cl. 2. Person employed by University or constituent colleges, if amount paid to him in any financial year does not exceed £50, not to be ineligible for membership of Senate.—Cl. 3. S. 20 of Act of 1926, as to constitution of Entrance Board, amended.—Cl. 3. Provisions as to subsidies on voluntary contributions amended.—Cl. 5. Financial year of University to end on 31st March, 1926.—Cl. 6. Statutory grant of £3,845 per annum to University restored.—Cl. 7.

Local Elections and Polls Amendment. (MR. MCCOMBS). Empowering local authorities to adopt system of preferential voting.

Finance. (RT. HON. SIR JOSEPH WARD). The usual annual miscellany. Some 65 clauses.

Transport Department. (HON. MR. VEITCH). Providing for Minister of Transport.—Cl. 2. Establishment of Transport Department: Acts in Schedule to bind the Crown.—Cl. 3. Appointment of Commissioner of Transport and other officers of Department.—Cl. 4. Wide powers of regulation-making.—Cl. 5.

Appropriation. (RT. HON. SIR JOSEPH WARD).

Land Drainage and River Protection. (HON. MR. DE LA PERRELLE) This Bill of 190 clauses reached us too late for summary in this issue.

Private Bill.

Roman Catholic Bishop of Auckland Empowering.

Rules and Regulations.

Samoa Act, 1921.—Revocation of Clause 4 of Samoa Immigration Amendment Order and amendment of sub-clause 1 (paragraph b) of Clause 6.—Gazette No. 67, 10th October, 1929.

Post and Telegraph Act, 1928. Postage rates on parcels for United States of America.—Gazette No. 72, 24th October, 1929.

Harbours Act, 1923. Amended regulations as to qualifications of harbourmasters and pilots.—Gazette No. 72, 24th October, 1929.

Cinematograph Films Act, 1928. Cinematograph Films (Storage, Exhibition, and Renting) Regulations, 1929.—Gazette No. 64, 23rd September, 1929.

Legal Literature.

Questioned Documents.

Second Edition: By ALBERT S. OSBORN. (pp. xxiv: 1004: xxv: Boyd Printing Co.; Carswell Co. Ltd.; Sweet & Maxwell Ltd.).

Favourable reviews from all quarters greeted the first edition of Osborn's *Questioned Documents* when it appeared just on twenty years ago, and this new edition, brought up-to-date with modern scientific knowledge, is welcome indeed. Intended to assist in the discovery and proof of the facts in any investigation or legal inquiry involving the genuineness of a document, the work, so far as this reviewer is aware, deals with a subject not adequately treated in any other legal text-book. Every kind of forgery is discussed with the greatest detail and thoroughness. The author deals first with such matters as the preliminary examination and care of questioned documents and explains the use of photography and the microscope and other special instruments for assisting in the detection of forgeries. Handwriting is discussed from every viewpoint—movements, alignment, pen-position, pen-pressure, shading, arrangement, size, proportions, spacing, and slant are a few of the topics dealt with—and the author explains the methods adopted by the experts in determining questions of disputed handwriting. Simulated forgeries, guided-hand signatures, traced forgeries, and anonymous letters form the subjects of separate chapters. The importance of such matters as ink and paper in considering allegations of forgery is ably treated. Questions frequently arise as to the order of writing on a document and here separate chapters are found dealing with crossed strokes and the writing in the document. There are most interesting chapters on erasures, additions, and substitutions in documents and a full treatment of a matter of great importance nowadays, questioned typewriting. The book is illustrated throughout with representations of writings of various sorts, and of instruments devised to test their genuineness—these illustrations are excellent and a most valuable feature of the work. A reviewer cannot do better, on the whole work, than adopt the words of Professor Wigmore, in his introduction: "The book abounds in the fascination of solved mysteries and celebrated cases, and it introduces us to the world-wide abundance of learning in this field."

Osborn is absolutely indispensable to any lawyer who has to consider any question of the genuineness of a document.

New Books and Publications.

The Law of Husband and Wife. By G. F. Emery, LL.M. (Effingham Wilson). Price 5s. 6d.

Shipping Documents. Second Edition. By A. J. Hodgson. (Effingham Wilson). Price 6s.

Smith's Leading Cases. (2 Volumes). Thirteenth Edition. By Sir T. Willes Chitty, A.F. Denning and C. P. Harvey. (Sweet & Maxwell Ltd.). Price £5.