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" My own view is that this slavery of case law which exists to-day is doing infinite harm to English law."
—Mr. Justice McCardie.

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Professional Privilege.

The recent decision of the House of Lords in *Minter v. Priest*, 46 T.L.R. 301, is of considerable interest to lawyers, dealing as it does with the subject of the privilege attaching to communications passing between solicitor and client. Obviously this privilege, to use the language of Lord Buckmaster, is one the maintenance of which is essential in the best interests of society; the circumstances, therefore, in which it is said that a discussion between a solicitor and a person consulting him is not privileged need careful scrutiny.

The facts of the case may be shortly stated as follows: The appellant, desiring to sell certain premises, approached one, Taylor, and offered him £100 if he could find a purchaser at £9,500. Taylor in due course introduced, as a person prepared to purchase, one, Simpson; the latter placed the matter in the hands of Messrs. Parker & Thomas, as his solicitors. Simpson experienced difficulty in finding the agreed deposit, and his solicitors were unable to raise the money for him. It was suggested that Priest, the respondent, who was a solicitor, and who had previously acted for the appellant, might be able to find the money and, if he could, Messrs. Parker & Thomas were agreeable to stand down in favour of the respondent. Accordingly Taylor and Simpson went to the respondent's office. They explained the purpose of the visit. The respondent there and then refused to advance the money; he went on, however, to make a proposal whereby the three of them (Taylor, Simpson and himself) could, through the first mortgagee, acquire the property at a lower figure, and in the course of, and for the purpose of advancing, this proposal made the defamatory statements in respect of which the appellant sued. At the trial before Mr. Justice Horridge and a special jury the plaintiff called Taylor, on subpoena, to prove the alleged slander. Taylor claimed privilege. The learned Judge was not prepared to rule on the question until Taylor had stated the circumstances, and he ruled that Taylor must answer. The jury, in answer to certain questions put to them (the House of Lords held, however, that the question of privilege was for the Judge) found that at the time the words were spoken the relationship of solicitor and client did not exist between the respondent and Simpson or Taylor, found that the respondent was actuated by malice, and assessed the damages at £1,500; judgment was entered accordingly. The Court of Appeal set aside the judgment, and its decision has in turn been emphatically reversed by a strong Bench of the House of Lords—Lords Buckmaster, Dunedin, Warrington, Atkin and Thankerton.

The judgments in the House of Lords bring out several important points and it seems advisable, for the purpose of a clearer understanding of the whole subject, to notice first the matter, forcefully drawn attention to by Lords Dunedin and Atkin, of the twofold nature of the protection given to communications between solicitor and client, a matter as to which there seems to exist some little confusion. In the first place, to use the language of Lord Atkin, such communications are protected from disclosure whether by production of documents or in oral evidence. This protection is part of the law of evidence. It is personal to the client. It is the privilege of the client only and may be waived by him. The second protection arises only after the communications have been admitted in evidence, and relates to the question whether an action will lie. The communications have become evidential; are they actionable? The question of the existence of this privilege can arise only in actions of defamation, and where the solicitor is made defendant the privilege cannot be waived by the client.

Next, it is of great practical importance to notice that all their Lordships agreed that at the commencement of the interview the occasion and the communications made were privileged. In the words of Lord Dunedin, if a man goes to a solicitor as a solicitor, to consult and does consult him, though the end of the interview may lead to the conclusion that he does not engage him as his solicitor or expect that he should act as his solicitor, nevertheless the occasion is privileged. Further, while it is not part of a solicitor's business to lend money independently of any professional employment, Lords Buckmaster, Warrington and Atkin held that it is a part of a solicitor's business to carry out contracts for sale and purchase of land and incidentally thereto to advance or procure the advance of money necessary for those purposes. Communications made for this purpose are protected whether the solicitor accedes to the request to find the money or not. But, on the facts of the case under consideration, the relationship of solicitor and client came to an end when the respondent declined to advance the money. When the words complained of were spoken, they were spoken, not in the sense of giving professional advice, but for a purpose independent of professional advice—to procure the carrying out of a speculation and to enable the solicitor to secure a participation in its profits.

Another point of interest, and indeed of importance, is the very clear ruling given by their Lordships that the question of privilege was one properly for the Judge and ought not to have been left to the jury. It is difficult to see how a jury could claim to be able properly to determine where the relationship of solicitor and client begins and where it ends; and if the law were otherwise it would not be a satisfactory position either for client or for solicitor.

It was unnecessary to determine, in the view taken by the House of Lords, the question as to whether the second branch of the twofold protection given to professional communications is an absolute or merely a qualified privilege. All of their Lordships expressly refrained from deciding the point, but such expressions of opinion as were offered seem, so far as such *dicta* in such circumstances can be said to have any weight, to be in favour of the view, notwithstanding *More v. Weaver*, (1929) 1 K.B. 655, that the privilege is only qualified. Whatever may be the law, it is difficult to see that either public policy or the best interest of the profession demands that the privilege should be absolute.

Court of Appeal.

Myers, C.J.
Herdman, J.
Blair, J.
Smith, J.
Kennedy, J.

March 18, 19, 20, 21; June 24, 1930.
Wellington.

IN RE COCKBURN-HOOD-SHAPLAND DECD.

Will—Codicil—Interpretation of Revoking Codicil—Trust to Pay Income of Residue to Nephew During Life and After His Death to Hold Corpus in Trust for Such of His Children as he Should Appoint and in Default of Appointment for All the Children of Such Nephew with Usual Hotchpot Clause—In Event of Nephew Dying Without Leaving Children Attaining a Vested Interest Trust for Nieces of Testator for Life with Further Trusts as to Corpus After Their Deaths—Codicil Revoking Will "Entirely With Regard to" Nephew—Life Interest of Nephew and Special Power of Appointment Revoked—Revocation Not Extending to Gift to Nephew's Children in Default of Appointment—Observation as to Testator's Expressed Reasons for Revocation—Gift to Nephew of £100 per annum "and upon the Death of My Wife the sum of £200"—Sum of £200 not an Annuity—Property Law Act, 1908, S. 25.

Originating summons removed into Court of Appeal. The testator died in England on or about 26th April, 1926. His testamentary instruments consisted of a will made on 19th February, 1915, and five codicils thereto made at various times. The will itself and the first four codicils were all prepared by a professional man in New Zealand. The fifth codicil which created the difficulties that the Court was asked to solve was made in London, in December, 1924, and was a "home-made" document prepared either by the testator himself or by some layman on his behalf. Amongst various bequests the testator bequeathed to his nephew Benson Cockburn-Hood all his guns and also his gold watch and his ring with his coat of arms engraved thereon. By the will and the first four codicils thereto the testator bequeathed and created certain legacies annuities estates and interests as therein more particularly set forth. The portion of the will material to the questions under consideration which dealt with the position that was to obtain after the death or (as amended by the first codicil) the second marriage of the widow, who was still alive and had not re-married, was as follows: "I further declare that my trustees shall stand possessed of my trust property and the proceeds of the sale thereof (subject to all the legacies annuities and interests hereinbefore bequeathed or created) upon trust *to pay the income thereof to my nephew Benson Cockburn-Hood (only son of my late brother Alexander Cockburn-Hood) during his lifetime And after his death I declare that my trustees shal stand possessed of my trust property and the proceeds of the sale thereof upon trust for all or any to the exclusion of the others or other of the children of the said Benson Cockburn-Hood in such shares and proportions and in such manner in all respects as the said Benson Cockburn-Hood shall by deed either revocable or irrevocable or by will or codicil appoint And in default of and subject to any such appointment upon trust* for all the children of *the said* Benson Cockburn-Hood who being sons shall attain the age of twenty-one (21) years or being daughters shall attain that age or marry in equal shares and if there shall be only one child the whole to be in trust for that one child *But so that no child taking any share under any such appointment as aforesaid shall take any share in the unappointed part of any of the said trust premises without bringing his or her appointed share into hotchpot and accounting for the same accordingly.* And in case the said Benson Cockburn-Hood shall die without leaving children who shall live to attain a vested interest as aforesaid then I direct my trustees to hold my trust property and the proceeds of the sale and conversion thereof upon the trust following that is to say upon trust to pay the income thereof in equal shares to each of my said five nieces Marion Cecilia Cora Mary and Adelaide Cockburn-Hood for their respective lives." The will went on to dispose of the corpus after the death of the nieces but those further provisions are immaterial for the purposes of the present report. The fifth codicil read as follows: "This is to certify that I revoke my previous will entirely with regard to my nephew Benson Cockburn-Hood made in Masterton New Zealand and I now leave him upon my death One hundred pounds per annum and upon the death of my wife provided she outlives me the sum of Two hundred pounds (£200) my reason for making this alteration to my previous will is that I find he is unsuited for the life on a Station such as Glendonald and that upon my death he will come into possession of the Cradley Estate in England."

The two questions asked by the originating summons were: (1) Does the sum of £200 bequeathed by the fifth codicil to Benson Cockburn-Hood upon the death of the widow of the testator mean the sum of £200 per annum, or does it mean a single sum of £200? (2) What if any is the effect of the words in the fifth cocicil "I revoke my previous will entirely with regard to my nephew Benson Cockburn-Hood made in Masterton New Zealand," upon the nterest bequeathed by the said will to the children of the said Benson Cockburn-Hood.

Evans for plaintiffs, the trustees.

Levi for defendant Benson Cockburn-Hood.

Cooke and **James** for defendants other than Benson Cockburn-Hood and Joan Cara Daubeny and others.

Hadfield for defendant Joan Cara Daubeny and others.

Johnston for possible children of defendant Benson Cockburn-Hood.

MYERS, C.J., delivering the judgment of the Court of Appeal, said that it was a trite saying that the Court was not entitled to speculate as to what the testator intended. The material parts of the will and the codicil must be read together and the testator's meaning ascertained (if possible) from the language that he had himself chosen to use. The Court was not to guess at the revocation or extend it further than the clear language of the revoking instrument required: **Hearle v. Hicks,** 1 Cl. & F. 20; **In re Freme's Contract,** (1895) 2 Ch. 778, 783; **In re Whitehorne,** (1906) 2 Ch. 121, 126.

As to the first question raised by the summons, different suggested interpretations had been submitted by counsel. The document should if possible be construed according to its actual words without adding words that do not appear in the document itself. If the testator had intended that after his widow's death there was to be an annuity of £200 instead of the annuity previously given of £100 he could easily have said so plainly by repeating the words "per annum" after the figures "£200." If the testator had merely said: "I now leave him upon my death £100 per annum" it seemed plain enough that that would have meant an annuity of £100 during Benson's life: **Savery v. Dyer,** Amb. 139; **Nichols v. Hawkes,** 10 Hare 342. All that the testator proceeded then to do was to say that upon the death of his wife provided she outlived him he left Benson the sum of £200. In the opinion of their Honours that portion of the codicil must be construed as giving an annuity of £100 during Benson's life and one lump sum of £200 in addition upon the death of the widow.

On the second question raised by the summons, which was the really important question for determination, a great number of authorities were cited, all of which had been examined but to only a few of them did their Honours think it necessary to refer. In their Honours' opinion the case was governed by **Alt v. Gregory,** 8 DeG.M. & G. 221; **Green v. Tribe,** 27 W.R. 39, 42: and **In re Whitehorne,** (1906) 2 Ch. 121. Mr. Cooke sought to distinguish those cases and cited a number of authorities for that purpose, but in their Honours' opinion his attempted distinction failed. The more important of the cases cited by him were also cited in **In re Whitehorne,** (*cit. sup.*) and distinguished by Buckley, J. In their Honours' opinion the gift to Benson and the gift to the children must be regarded not as one gift but as two separate and distinct gifts. To Benson was given a life interest in the residue, while it was the corpus of the fund that was given to the children. The codicil dealt, as their Honours thought, only with the thing given to Benson. Just as in **In re Whitehorne,** so in the present case, there was not in the will an original gift to the person named in the revoking provision of the codicil, with a subsequent direction as to the enjoyment of the gift, but a gift to trustees in trust for that person for life and after his death for his children. If it could be said that only one thing was dealt with in the will the answer still was that it was not that thing, but only Benson's interest therein, that the codicil referred to and affected. The same distinction was drawn in many of the cases—e.g., **In re Freme's Contract,** (1895) 2 Ch. 778, 782, 784; **Rowe and Brown v. Public Trustee,** (1928) N.Z.L.R. 51,—though in those two particular cases it was held that what was revoked was the thing given and not merely the interest therein of the particular person named in the codicil. **Tabor v. Prentice,** 32 W.R. 872, one of the cases on which Mr. Cooke strongly relied, was decided upon the special language of the codicil which the Court there had to construe. Again **Boulcott v. Boulcott,** 2 Drew 25, as was said by Buckley, J., in **In re Whitehorne,** turned on its own particular

circumstances and laid down no general principle. Moreover a consideration of the will and codicil in that case and of the Vice-Chancellor's judgment at pp. 34 and 35 showed a marked distinction from a case like the one at present before the Court. The same observations applied to such cases as **In re Jermingham's Trusts,** (1922) 1 Ir. 115, which was cited by Mr. Cooke. In the present case all that the testator said in the codicil was first of all that he revoked his previous will entirely with regard to his nephew Benson. He then proceeded to give Benson a small annuity, and, if their Honours were right in their view, a further small lump sum of £200 upon the widow's death. Up to that point the testator had used words which in terms referred to Benson personally and Benson only. In particular no reference was made to his possible children. The testator then proceeded to state the reason for making the alteration to his will, and in that respect the case bore some similarity to **In re Whitehorne** (*cit. sup.*). The first reason that he gave was that Benson was unsuited for the life on a station such as Glendonald. That was the name of the sheep-station which the testator owned. No rights were given to Benson under the will in regard to that station, but the testator might not unnaturally have thought that possibly, after the widow died, seeing that Benson was entitled to a life interest in the residue, which included the station property, he might desire to occupy and work the station. At all events that reason seemed to their Honours to be a reason personal to Benson and in no way to affect his children. The second reason stated was that upon the testator's death Benson would come into possession of the Cradley Estate. The Cradley Estate was an entailed estate to which, on the death of the testator, Benson Cockburn-Hood became entitled as tenant in tail. He also became entitled to certain trust funds in connection with the Cradley Estate. He had according to an affidavit filed by him, barred the entail and become absolutely entitled to the estate, and he was also absolutely entitled to the trust funds. The net annual value of the Cradley Estate appeared to be about £325, while the trust fund was said to comprise investments of the value of a little over £7,500, and the annual income therefrom (before deduction of tax) was said to be about £309. The value of the residue of the testator's estate of which Benson would under the will have had the income after the widow's death was stated at the Bar to be about £60,000. Mr. Cooke suggested that the second reason given by the testator was not personal to Benson but also involved his possible children because the testator must be assumed to have known that the entail could be barred and that the Cradley Estate could then be disposed of by Benson by his will amongst his children if any at the date of the fifth codicil, and indeed at the testator's death Benson was unmarried. He had married since the testator's death but so far had no children. But Mr. Cooke's suggestion was, their Honours thought, a mere matter of speculation. The matter should be determined upon the principles already referred to, and, applying those principles and bearing in mind that the codicil made no reference to the children and gave no indication that the testator was dealing with the gift to them, it could not be said in their Honour's opinion that there was in the codicil a reasonably clear revocation of that gift, or that the retention of the gift to the children was in any way inconsistent with the codicil. The only thing certain, or reasonably clear, was that the testator revoked, and intended to revoke, the gift of the life interest to Benson.

It was suggested by Mr. Cooke that the gift which was revoked by the codicil was, as he termed it, one conglomerate gift to Benson and his children. Their Honours had already expressed their view on that aspect of the case. As to Mr. Cooke's contention, in support of that suggestion, that the power of appointment linked the two gifts together, and so made only one gift, in their Honours' opinion the power of appointment had no such effect. But their Honours did think that the entire revocation of the previous will with regard to Benson took away the special power of appointment conferred upon him by the will. A power might be released by deed or the person to whom it was given might contract not to exercise it—**Property Law Act, 1908,** S. 25; **N.Z. Insurance Co. Ltd. v. Wigley,** (1927) G.L.R. 117; **In re Somes,** (1896) 1 Ch. 250—and it well might be that in the present case, even though the life interest was revoked, the power of appointment, if it survived, might in certain circumstances or events at least become or be used as a benefit to Benson himself. On that point the case was similar to **In re Brough,** 38 Ch.D. 456. There a testator by his will gave to his sister H. a life interest in a share of his residuary estate and a special power of appointment by will over the capital of the share. By a codicil he revoked all devises and bequests whatsoever "in favour of" H. It was held by Kay, J., that the power of appointment was revoked as well as the life interest; but, said the learned Judge, "Accordingly as to this share the gift in default of appointment must take effect." Similarly, their Honours thought, in the present case. If then the words in italics in the extract from the will set out above referable to the life interest to Benson and the special power of appointment conferred upon him were eliminated, the testator's declaration was that his trustees should stand possessed of his trust property and the proceeds of the sale thereof (subject to the legacies, annuities, estates and interests bequeathed or created by the will and codicils) upon trust for all the children of Benson in accordance with the terms of the will, and if there were no such children who lived to attain a vested interest then upon the trusts of the will in favour of the nieces.

Questions answered accordingly.

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

Solicitors for Benson Cockburn-Hood: **Levi and Jackson,** Wellington.

Solicitors for defendants other than Benson Cockburn-Hood and Joan Cara Daubeny: **Chapman, Tripp, Cooke and Watson,** Wellington.

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

June 24; July 1, 1930.
Wellington.

R. v. MUNN.

Criminal Law—Evidence—Admissibility—Accused Indicted for Murder of Wife by Poisoning—Evidence Admitted of Accused's Persistent Cruelty and Ill-will Towards Wife Over Periods of Years Ending Three Years and One Year Respectively Before Murder—Evidence Admissible to Prove Murder and also to Rebut Defence That Poison Taken by Wife Either Suicidally or Accidentally.

Case stated for the opinion of the Court of Appeal as to whether certain evidence admitted at the trial of the appellant on a charge of murder was properly admitted. The prisoner had been convicted of the murder of his wife on 11th February, 1930, the case for the Crown being that he poisoned her by the administration of strychnine. The evidence, the admissibility of which was questioned by counsel for the prisoner, was that of three witnesses, a son and two daughters of the prisoner by a former wife whom he had divorced. The son was in February, 1930, nearly 22 years of age, and the daughters were at that time 19 and 17 years of age respectively. Those three witnesses had for a period of several years lived in the house of the father and stepmother up to a point of time, in the case of the daughters, three years before the stepmother's death, and, in the case of the son, 12 months before that event. Their evidence was tendered with the object of showing a persistent course over a continuous period of several years of unkindness, cruelty, and ill-will on the part of the prisoner towards the deceased.

Northcroft for accused.
Solicitor-General (Fair, K.C.) for Crown.

MYERS, C.J., said that Mr. Northcroft had attacked the admissibility of the evidence on the ground that there was no logical association between the facts sought to be proved and the type of crime charged, or, to adopt the language of Kennedy, J., in **Rex v. Bond,** (1906) 2 K.B. 389, 400, that the prior acts did not, in point of historical and circumstantial connection, form inseparable parts of the transaction which the jury had to investigate. He also contended that the conduct spoken of by the witnesses was so remote in point of time as to make the evidence inadmissible. His Honour took the true principle applicable in a case of the present kind to be that stated by Kennedy, J., in **Rex v. Bond** (*cit. sup.*) at p. 401, and by Lord Atkinson in **Rex v. Ball,** (1911) A.C. 47, 68.

There was certain evidence adduced, to which no objection was, or could have been, taken, and which tended to show that at a later period then that spoken of by the son and daughters, the prisoner was tired of his wife. For example, when the prisoner was informed by the police that he was under arrest he said: "I told you I bought the poison, I called the doctor,

and I did everything for the damned woman." Much more important than that, however, was the fact that about the beginning of October, 1929, four months before the date of his wife's death, he inserted the following advertisement in the Auckland Star: "Gent, 40, lonely, wishes to meet companionable woman, without means preferable, view matrimony. Write R. 6218, Star." It was further proved that as a result of that advertisement the prisoner became involved in an intrigue with a woman named Stuck, and that one of his excuses for that conduct was that his wife had lost interest in him. In those circumstances it seemed to His Honour, applying the language of Kennedy, J., in **Rex v. Bond** (*cit. sup.*), that the previous relations of the prisoner and his wife could reasonably be treated as explanatory of the conduct of the accused as charged in the indictment and were properly admitted in proof as integral parts of the history of the alleged crime for which the prisoner was on his trial. And, to apply the language of Lord Atkinson, the evidence sought to be given was evidence of previous acts of the prisoner to show that he entertained feelings of enmity towards the deceased, and was evidence not merely of the malicious mind with which he killed the deceased but of the fact that he killed her. If a prisoner was charged with the murder of his wife, whether the means alleged to have been adopted was poisoning or an act of violence, the mere fact that on a previous isolated occasion he had shown violence towards her in a fit of anger might not be admissible. But a persistent course of unkindness, cruelty, and ill-will was quite another and different thing. Mr. Northcroft in answer to questions from the Bench admitted, very properly, His Honour thought, that if the conduct given in evidence by the daughters and the son had continued up to the date of the death of the deceased, or up to a date shortly before her death, the evidence would have been admissible. If that was so, then it went a long way to dispose of the suggestion that there was no logical connection between the prior conduct sought to be proved and the crime (or type of crime) charged. But Mr. Northcroft contended that, inasmuch as the evidence referred to a period as far back as, in the case of the daughters, three years before the death, and, in the case of the son, one year, the conduct sought to be given in evidence was, as it were, too stale, and had, therefore, no logical connection with the alleged method of the commission of the crime, i.e., by poisoning. In His Honour's opinion that contention was not well founded. His Honour could not see that the method of the alleged crime in a case of that kind was material. If the fact was that a person charged with the crime of murdering his wife had become tired of her, such fact was relevant at least as showing motive, quite irrespective of the means or method alleged to have been used in the commission of the crime. Indeed it might be thought that it would be much more likely for a man who had become tired of his wife to endeavour to get rid of her by some subtle means than by an act of violence. From the time when the son left the prisoner's house the only persons living in the house with the prisoner and his wife were two quite young children of the second marriage. If, as was admitted, the evidence challenged would have been relevant had the course of conduct extended to a date shortly before the death of the deceased, His Honour could see no reason why the evidence should not be admissible because the persons giving the evidence were unable in the nature of the circumstances to speak of more recent conduct. If the acts sought to be given in evidence were isolated acts there would be a great deal of force in Mr. Northcroft's contention (see **Rex v. Mobbs,** 6 Cox C.C. 223, which was discussed and explained in **Rex v. Chomatsu Yabu,** 5 W.A.L. R. 35; and **Russell on Crimes,** 8th Edn., 1946) but it was different, His Honour thought where the evidence tendered was evidence of a persistent course of conduct over a period of several years. Moreover the publication of the advertisement already referred to, and the prisoner's subsequent conduct with Mrs. Stuck, helped to bridge the hiatus between the time when the son left the house and the date of the death of the deceased, and, His Honour thought, to make relevant the previous relations between the prisoner and his wife. It might be observed that in **Rex v. Ball** (*cit. sup.*) the evidence under consideration which was held to be admissible was evidence of acts done by the accused two years prior to the date of the offence charged against them in the indictment. See also **Rex v. Carrick,** (1918) G.L.R. 132. His Honour thought also that in all the circumstances of the case the evidence was admissible for the purpose of rebutting the possible (and His Honour understood suggested) defence by the prisoner that his wife had taken the poison herself either suicidally or accidentally. For those reasons the evidence was, in His Honour's opinion, relevant and was properly admitted. The question of its weight or value was a matter for the jury, and on that question the jury seemed to have been carefully and properly directed by the learned trial Judge.

HERDMAN, REED, ADAMS and OSTLER, JJ. concurred.

Supreme Court

Reed, J. June 9; 16, 1930.
Wellington.

PUBLIC TRUSTEE v. COMMISSIONER OF STAMP DUTIES

Revenue—Death Duties—Estate Duty—Succession Duty—Policies of Life Insurance Mortgaged to Insurance Company—Deduction from Final Balance of Estate Only of Nett Amount Payable Under Policies—Legacy of "Proceeds of All Policies of Insurance on My Life"—Direction for Payment of Debts—Legatee Entitled to Receive Gross Amount Payable Under Policies Without Deduction of Mortgage Debt—Value of Succession Calculated Accordingly—Death Duties Act, 1921, Ss. 13, 70, 71 and Death Duties Amendment Act, 1925, S. 2.

Case stated by Commissioner of Stamp Duties. By his will B. C. Lawrence, deceased, gave to his wife free of estate and succession duty "the proceeds of all policies of assurance on my life." His estate, not specifically disposed of, was devised and bequeathed to his trustees "upon trust to pay my debts, personal and testamentary expenses," and then followed a residuary clause. The testator's policies of insurance were for £400 and at the date of his death there were accrued bonuses of £118 6s. 0d., making a total of £518 6s. 0d. The testator had borrowed from the insurance company on these policies and there was owing by him to the company at his death the sum of £186 6s. 9d. The nett amount payable by the company was thus £331 19s. 3d. Under S. 2 (1) of the Death Duties Amendment Act, 1925, the value of any policy or policies of life insurance (not exceeding £1,000) is to be deducted from the final balance of the estate for the purpose of computing estate duty. Two questions arose in these proceedings: (1) whether under S. 2 (1) of the Death Duties Amendment Act, 1925, a deduction should be made of £518 6s. 0d., or of £331 19s. 3d. (2) whether for the purposes of computing the value of the widow's succession under S. 13 of the Act of 1921 the sum of £518 6s. 0d. or of £331 19s. 3d. should be taken.

Von Haast for appellant.

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

REED, J., said that the answer to the first question depended on the meaning to be attached to the word "value" in S. 2 (1) of the Act of 1925. The section made provision for a monetary deduction from the final balance of an estate. The keynote was that the value must be a monetary one, it was not the deduction of some abstract conception but that of a concrete sum of money. To the extent that an estate had benefitted by a policy of life insurance a deduction was made from the amount liable to duty. Any other construction would lead to an absurdity. It was submitted that the statute had in effect made its own dictionary by the meaning attached to the word "value" in Ss. 70 and 71 of the Act of 1921; but from neither of those sections could any inference be drawn as to the meaning intended to be attached to "value" in the section in question. His Honour thought that the question was concluded by the following consideration. Under S. 5 (f) of the principal Act "money payable under a policy of insurance" was part of a testator's estate and liable to duty. The "money payable under a policy" was the total amount insured less incumbrances. If the contention of the appellant were correct, and £518 6s. 0d. should be deducted from the final balance, then it was obvious that credit would be given twice for the same amount. On the other hand if the contention of the respondent were correct the allowance under S. 2 simply cancelled the entry of the net value in Statement "A." That, of course, was the most reasonable construction and His Honour adopted it. The answer to the first question was, therefore, that the respondent was correct in deducting from the final balance of the estate of the deceased the sum of £331 19s. 3d.

The second question depended on whether the testator's widow was entitled to receive, under the bequest, the gross sum of £518 6s. 0d., or the net sum of £331 19s. 3d. The amount she was entitled to receive answered the question as to the value of the succession acquired by her. It was well established law that in the case of a specific legacy the legatee was entitled to receive the same, freed and discharged from any incumbrances to which the testator, either before or after the making of his will, had subjected it. He was entitled to be exonerated by the general personal estate from such encumbrances: **Jar-**

man on Wills, 6th Edn., 2035. The respondent had felt it incumbent upon him to accept the judgment of Stout, C.J., in **Crewe v. Crewe,** (1920) G.L.R. 452, as determining the question. But Stout, C.J., did not consider the effect of the provision that "*all my just debts*" were to be paid out of the residuary estate, and his attention had apparently not been drawn to three very similar Australian cases: **In re Somerville,** 5 N.S.W. S.R. 390; **In re Lister,** 7 N.S.W. S.R. 58; **Ramsay v. Lowther,** 16 C.L.R. 1. The question really was: Did the words used take the case out of the general rule? In the present case there was the general rule and coupled with it the direction to pay the testator's "just debts." Against that was the ambiguous phrase "the proceeds of all policies." In His Honour's opinion that meant the total sum (including bonuses) assured by such policies irrespective of any charges thereon. The answer to the second question was that for the purposes of S. 13 of the Death Duties Act, 1921, the respondent should have included the sum of £518 6s. 0d. in the value of the succession acquired by the wife of the deceased.

Solicitor for appellant: **Public Trust Office Solicitor,** Wellington.

Solicitor for respondent: **Crown Law Office,** Wellington.

Ostler, J. June 10, 1930.
Auckland.

WHANGAREI HARBOUR BOARD v. NELSON.

Lease—Public Bodies Leases Act—Leasing Authority—Exercise of Statutory Powers—Whether Document Lease or License—Rack Rent—Document Granting Possession of Land to Lessee and Containing Covenant by Lessee to Allow Picnic and Excursion Parties to Use Part of Land—Document a Lease and Not Mere License—Public Bodies Leases Act, 1908, Ss. 10, 12.

Special case for the determination of certain questions involving the construction of a lease. The plaintiff was a leasing authority under the terms of the Public Bodies Leases Act, 1908, and had granted to several persons a lease over lands within its jurisdiction. The lease followed the form set forth in the Second Schedule to the Land Transfer Act, 1915. The rental reserved was £5 1s. 0d. per annum payable half-yearly in advance. Clause 6 of the document provided as follows: "6. The Lessees will also at all reasonable times allow picnic parties and excursionists to land upon the beach of the said land and to remain upon the portion of said land not occupied by buildings or machinery for the purposes of such picnic or excursion parties provided however that the lessees or their representatives shall be at liberty at any time or times to remove such picnic or excursion parties or any member or members thereof who in the opinion of the Lessees or their representatives shall not be exercising all reasonable care in preventing damage or spoliation to the said beach the trees growing or being upon the said land or any building plant machinery wharf or premises erected thereon." After the execution thereof the lessees transferred to the defendant all their estate and interest therein. Certain questions, in particular as to the defendant's right to a renewal, subsequently arose between the plaintiff and the defendant and in the course of the proceedings it became necessary to determine whether or not the so-called lease was in reality a lease or only a license. The necessity for a decision upon this point arose from the fact that the plaintiff had contended that the document in question was a mere license and was therefore revocable.

Goulding for plaintiff.
Johnstone for defendant.

OSTLER, J. (orally) said that the questions raised in the case were as follows: "(a) Is the said alleged lease lawful and valid? (b) Is the defendant Lawrence William Nelson entitled to specific performance of the provisions contained in Clause 11 of the said alleged Memorandum of Lease it being admitted for the purpose of the determination of this question that he has complied with all conditions entitling him to a grant of a new lease if the original lease is lawful and valid?" The question which His Honour had to determine was whether the document before him was or was not a lease. In arriving at a conclusion upon that question His Honour had to determine primarily what were the intentions of the parties as evidenced by the document which they had executed. On the face of the document itself, which was in form a Land Transfer lease, it seemed clear that a lease was intended. The lessee was certainly given possession of the property dealt with by the document and Clause 6 hereof did not, in His Honour's opinion, materially detract from the right of possession conferred upon the lessee. It is true that under Clause 6 the lessee agreed with the lessor to allow to the public a limited right to enter upon a specific part of the land for a defined purpose. It conferred no right to enter on the whole of the land for general purposes. The cases that had been cited showed clearly that such a limited right could be reserved either to the lessor himself or to persons other than the lessor. In point of fact the present case was even stronger than that of **Glenwood Lumber Company v. Phillips,** (1904) A.C. 405. In the document before His Honour the reservation was in favour of third persons and the reservation was expressly assented to by the lessee. That showed that the lessee was intended to have exclusive possession. If that were not so, what reason would there be for the insertion of a covenant by which he, the lessee, agreed specifically to confer limited rights upon third persons? The rights conferred on members of the public by Clause 6 were not inconsistent with the enjoyment of exclusive possession on the part of the lessee. The possession of the lessee was paramount. The Harbour Board had, in point of fact, no authority to grant licenses, but only to grant leases, and the presumption was that it acted correctly and did not exceed its powers. The form of the instrument and the language used therein were entirely consistent with the view that a lease was intended. It began with a recital of the leasing powers enjoyed by the Board under the Statute in pursuance of which it purported to act. There was a clear distinction between the present case and such cases as **Mayor of Christchurch v. Pyne, Gould, Guinness Ltd.** (1928) N.Z.L.R. 318; **Tonks v. Mayor of Wellington,** 27 N.Z.L.R. 617; **Solicitor-General v. Mayor of Wellington,** 21 N.Z.L.R. 1. In those cases the grant was made subject to a superior and pre-existing statutory or other right in the public. That was not the case here. In the present case the public had no specific rights over the property apart from the document itself. The document itself conferred upon the public no rights which any member thereof could enforce. Even assuming that the public had rights, they were not anterior to the document, nor were they superior to those enjoyed by the lessee. Indeed the reverse was the case. The rights of the lessee were paramount and the rights, if any, of the public were subordinate and owed their existence to no other source than the document itself.

It might be argued that the rent reserved in this document was not a rack rent. Even assuming that that was true, the lease was nevertheless valid. S. 10 of the Public Bodies Leases Act, 1908, referred to the rent that was fixed at the commencement of the tenancy. S. 12 gave power to accept a surrender of a lease and to grant a removal for the whole or any part of the remainder of the term. In the new lease so granted, the rent need not be a rack rent, but might be such rent as should be determined by the leasing authority.

Taking all these matters into consideration, His Honour had arrived at the conclusion that the lease was perfectly valid and that the lessee was entitled to specific performance thereof. Both questions answered therefore, in the affirmative.

Solicitors for plaintiff: **Russell, McVeagh, Bagnall and Macky,** Auckland.

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

Ostler, J. May 9; July 5, 1930.
Napier.

ROBSON v. NEW ZEALAND INSURANCE CO. LTD.

Insurance—Motor Car Policy—Accidental Damage to Car—Insurers Electing Themselves to Effect Repairs—Car When Returned to Insured Not in Same State of Repair as Before Accident—Insured Remedying Defects Without Consent of Insurers and Suing Insurers for Cost—Insured Entitled to Recover Damages for Breach of Contract to Reinstate—Condition of Policy That Insured Not to Repair Damaged Car Without Written Consent of Insurers Not Affecting Such a Claim.

Appeal on point of law from the decision of the Stipendiary Magistrate at Napier nonsuiting the appellant who had brought an action claiming from the defendant the sum of £32 19s. 8d.

The appellant was the owner of a motor car which had been purchased by him new in September, 1928, for approximately £900, and which he had insured with the respondent under a policy whereby the respondent agreed to indemnify him in respect of loss or damage to the car while in use within New Zealand on the terms and conditions set out in the policy. Clause 3 of the conditions of the policy provided: "The insured shall not without the written consent of the company repair or alter the damaged motor car." Clause 11 of the conditions provided: "The due fulfilment and performance of the terms provisions conditions and endorsements of this policy by the insured in so far as they relate to anything to be done or complied with by him . . . . shall be conditions precedent to any obligation of the company to make any payment under this policy." The motor car was damaged by an accident on 27th January, 1929. The respondent was advised of the accident and it elected to repair the car itself. Under the policy it had reserved the option of doing so. The car was accordingly taken to a garage designated by the respondent and repaired in that garage. The cost of the repairs was £185. The car was, when repaired, delivered to the appellant, but he found that the repairs effected were unsatisfactory and that the car had not been put in the same state of repair as it was in at the time of the accident. He complained to the proprietors of the garage and they remedied certain of the defects complained of. He took the car back after that, but it would not run satisfactorily. Finding that the car did not improve, he took it to his own motor engineers and upon their taking down the engine they found certain defects which were due to faulty workmanship in the garage chosen by the respondent. This was reported to the respondent, but without waiting for the consent of the respondent to those defects being remedied the appellant gave instructions to his engineers to remedy the defects which they did at a cost of £32 19s. 8d. After those repairs had been done the car was restored to practically the same condition as it was in prior to the accident. The appellant applied to the respondent to pay for the repairs, but the company declined to do so upon the ground that the appellant had committed a breach of clause 3 of the conditions of the policy. The learned Magistrate held that that was a good answer on the part of the company and non-suited the appellant.

Hallett for appellant.

Willis for respondent.

OSTLER, J., said that in his opinion the judgment of the learned Magistrate was erroneous. Under the contract contained in the policy the insurance company had two alternative modes of performance of its obligations if and when they arose. It could either allow the insured to have his car repaired himself, and pay him the cost, or it could itself effect the repairs and hand the car back to him duly repaired. The effect of the exercise of that option on the part of an insurance company had been stated in **Bank of New South Wales v. Royal Insurance Co. Ltd.**, N.Z.L.R., 2 S.C., 337. It was there held, following **Brown v. Royal Insurance Co. Ltd.**, 28 L.J. Q.B., 275, that where a policy of fire insurance gave the insurer the option of electing either to pay the amount of the policy or to reinstate, and after the loss the insurer elected to reinstate, that did not constitute a fresh contract between the insured and the insurer, but the policy related back, and would be read as if it had originally been one simply for reinstatement. Following that principle the contract between the parties in the present appeal must be read as though *ab initio* it was a contract to reinstate. But clause 3 of the conditions did not apply to such a contract at all. Clause 3 was intended to refer and to be applicable to the other option possessed by the insurance company, viz.: the option of allowing the insured to do his own repairs and paying him for them. In that case clause 3 applied and the insured should not without the written consent of the company repair or alter the damaged car. The condition had no application whatever to the alternative mode of performance which the company had chosen. The contract must be looked at as simply a contract by the company, if the appellant's car was damaged, to reinstate. If it made a breach of that contract by failing to repair the car properly then it was liable for an action for damages for breach of its contract. See the cases cited in **Porter on Insurance**, 6th Edition, 215, and **Welford and Otter-Barry's Fire Insurance**, 2nd Edn., 334. For those reasons the learned Magistrate's judgment was, in His Honour's opinion, erroneous in nonsuiting the appellant; the appeal must be allowed, and the case remitted to the learned Magistrate to assess the damages and to give judgment for the appellant against respondent for such damages as he found had been proved. With regard to damages, the measure would be the cost of repairing the car so as to put right the defective work done by the respondent company's engineers. On the facts found in the present case it seemed clear that that must be the sum of £32 19s. 8d.

Appeal allowed.

Solicitors for appellant: **Hallett and O'Dowd**, Hastings.
Solicitors for respondent company: **L. W. Willis**, Hastings.

Smith, J. February 20, 21; June 18, 1930. Auckland.

AUCKLAND CITY CORPORATION v. MERCANTILE AND GENERAL INSURANCE CO. LTD.

Insurance—Fire—Untrue Answer to Question in Proposal—Proposal Basis of Contract—Proponent Signing Proposal in Blank—Agent of Insurers Promising to Complete Proposal and Stating that Nothing Further Required—Agent Not Authorised by Insurers to Answer Questions Independently of Proponent or to Dispense with Answers—Answers Filled in by Agent Partly from Statement by Proponent and Partly from Own Knowledge—Proposal Providing that all Statements Must be Under Hand of Assured or His Specially Authorised Agent—Agent when Filling in Answers Acting as Agent of Proponent and Not of Insurers—Agent Ignorant of True Facts and Knowledge Not Therefore Imputable to Insurers—No Estoppel Created Against Insurers—Insurers Not Liable on Policy—Reinstatement—Insurers Not Liable to Reinstate Unless Liable Under Policy—Fires Prevention (Metropolis) Act, 1744, S. 83.

Motion for writ of mandamus commanding the defendant to lay out and expend certain insurance moneys alleged to be payable by it under a policy of insurance in rebuilding and reinstating the premises insured, which premises had been destroyed by fire. By deed of lease dated 16th September, 1925, the plaintiff as owner of the land described in the lease leased the said land to two lessees. By divers assignments, the interest of the lessees in the lease became vested on 4th June, 1926, in Mary Brown, the wife of Alexander Brown. On 31st January, 1927, Mary Brown effected a policy of insurance with the defendant, whereby the defendant insured her in the sum of £500 against loss or damage by fire upon the premises situated on the land. The policy was renewed for the year 1928–1929, and again for the year 1929–1930, and in July, 1929, the premises were totally destroyed by fire. The plaintiff as lessor notified the defendant that it required the defendant to lay out and expend the insurance moneys payable in respect of the premises in rebuilding and reinstating the same; but the defendant refused to do so because of certain incorrect answers in the proposal and the concealment of material facts. The questions of the proposal which were in issue were as follows: (1) "Is the property freehold or leasehold and if the latter when does the lease expire?" Answer: "F" (meaning freehold). (2) "If held under lease, does it contain a stipulation as to the disposal of insurance money, and in what way?" Answer: . . . . No answer was made to the second question. The proposal stated that the policy was to be in the name of Mrs. M. Brown, and that it was to cover her interest as owner. It was signed by Mrs. Brown by her husband as her agent. There was a printed statement that the proposal was made subject to the conditions of the company's policy, which were agreed to. The policy expressly made the proposal the basis of the insurance. The defendant contended that Mary Brown had falsely stated the property to be her freehold property as owner, whereas she was only the lessee; and that by reason of such untrue statement, the policy was rendered null and void. The defendant also contended that it was induced to issue the policy by reason of the said Mary Brown concealing from the defendant the material fact that the land upon which the dwelling-house was erected was held by her under lease from the plaintiff and was not her freehold property. The plaintiff contended that the defendant was precluded from relying on any breach of warranty due to any inaccuracy in the answers to the questions in the proposal upon the ground that the company's inspector filled in such answers as agent for the company and the company was therefore responsible for the same or alternatively upon the ground that the company was estopped from setting

up the inaccuracy of such answers. The facts relevant to these allegations are set out in the report of the judgment.

Stanton and H. J. Butler for plaintiff.

Professor Cornish and **Glaister** for defendant.

SMITH, J., said that the plaintiff contended that its claim for reinstatement was not dependent upon the rights subsisting between Mrs. Brown and the company. Mr. Stanton submitted that the plaintiff was entitled by virtue of S. 83 of The Fires Prevention (Metropolis) Act 1744 (14 Geo. III c. 78) to insist that the insurance company must lay out the insurance moneys in rebuilding, regardless of whether those moneys were payable as between the insurer and the insured. If that argument had not been submitted, His Honour should have thought it unarguable. The submission did not appear to have been made in any reported case. In **Searle v. South British Insurance Co.,** (1916) G.L.R. 153, 155, Sim, J., said: "The Statute in question was not passed for the purpose of altering the contractual rights and obligations of the parties. Its declared object was the discouragement of arson and fraud, and the Statute ought not to be construed as altering contractual rights and obligations further than is caused necessarily by the operation of its express provisions." His Honour respectfully agreed with that view. It was clear, His Honour thought, that the insurance moneys referred to in S. 83 could be only those moneys which were payable by the insurers upon adjustment pursuant to the policy. The Statute itself referred to the adjustment of the claim. If no moneys were payable by reason of the avoidance of the policy, then there were no moneys upon which the claim of a lessor or mortgagee for the reinstatement of the burned premises could operate. The claim of the plaintiff must depend, then, upon the defendant's liability to pay under its policy with Mrs. Brown.

Mr. Cornish had moved for a non-suit, upon the ground that the evidence showed that Mrs. Brown had sold the property before the fire, and that she could not, therefore, have suffered any loss. It was not shown, however, whether the sale was a completed transaction, or remained an executory contract. It was not shown that Mrs. Brown had received payment pursuant to the contract, and that she had lost her insurable interest in the property. If she retained her legal though not her beneficial interest, she still had a sufficient insurable interest: **Rayner v. Preston,** 18 Ch.D. 1. An insurance company must pay the insurer while he retained his insurable interest in the property. After payment, the insurer was entitled, on the ground that a contract of fire insurance was a contract of indemnity, to the benefit of the vendor's contract to the extent of the insurance moneys paid: **Castellain v. Preston,** 11 Q.B.D. 380, 396, and 404. His Honour's conclusion was that the defendant had not shown that it was entitled to a non-suit.

The next question was whether the policy had been avoided. It was necessary to deal only with the defence that the statement that the property was the insurer's freehold property was part of the basis of the contract, and untrue. The recital in the policy that the proposal was the basis of the contract made the truth of the statements contained in the proposal, apart from the question of their materiality, a condition of the liability of the insurer: **Dawsons Limited v. Bonnin,** (1922) 2 A.C. 413.

The next question was as to the true construction of the subject-matter of the answer in dispute. Mr. Stanton contended that the property was both freehold and leasehold—the City Council's freehold, Mrs. Brown's leasehold—and that the answer "freehold" was sufficiently true. That argument rested on the ground that the company framed the question, and that the principle of the maxim *verba chartarum fortius accipiuntur contra proferentem* ought to be applied. His Honour was unabl to accept that contention. The maxim would apply if the question were ambiguous. His Honour did not think it was ambiguous. Fairly construed, the inquiry whether the property was freehold or leasehold referred to the property to be insured, and the inquiry was made in respect of the interest which was to be covered by the insurance. The proponent stated in her proposal that the policy was to cover her interest as owner. What she owned was a leasehold. When, then, she was asked whether the property was freehold or leasehold, the obvious answer was "leasehold." There was no evidence to show whether Mrs. Brown intended to insure the interest of both lessor and lessee in the property, as she might have done—**Castellain v. Preston,** 11 Q.B.D. 380, 400,—but it was implied in the plaintiff's claim for reinstatement that the whole interest in the property was insured. However that might be, the insurance for which Mrs. Brown applied was an insurance to cover her interest as owner. That was a leasehold interest, and upon the fair and reasonable construction of the proposal form, she described it as a freehold interest. That answer was not true. Its untruth was demonstrated by the failure to answer the associated question:—"If held under lease, does it contain a stipulation as to the disposal of insurance money, and in what way?" The result was that there has been a breach of warranty, whether or not the misstatement was material. *Prima facie,* Mrs. Brown could not recover upon the policy: **Condogianis v. Guardian Assurance Company Ltd.,** (1921) 2 A.C. 125.

The plaintiff submitted, however, that the defendant company was bound by the contract in the particular circumstances of the case. It was contended, in effect, (1) that the present case was within the **Bawden** line of cases—**Bawden's Case,** (1892) 2 Q.B. 534—and was not within the **Biggar** line of cases—**Biggar's Case,** (1902) 1 K.B. 516; and (2) that the company was barred by estoppel—in so far as estoppel was wider than the ground of decision in **Bawden's Case**—from setting up the defence of breach of warranty. The difficulty in point of legal principle of permitting an assured to enforce a written contract, notwithstanding a breach of warranty on his part, in lieu of rescinding the contract where there had been misrepresentation on the part of the company or its agent, or of declaring "no contract" where the parties had not been *ad idem,* was apparent. See **Newsholme Brothers v. Road Transport and General Insurance Co.,** (1929) 2 K.B. 356. But where a case came within the principle of **Bawden's Case,** or where the doctrine of estoppel could be applied against the company, that might be done. It was necessary to examine the facts of each case. In the present case, the leasehold property was purchased on 4th June, 1926. At some time prior to 31st January, 1927, Mrs. Brown, by her agent (her husband, or her daughter) advised McCullough, an inspector of the defendant, that Mrs. Brown had purchased a house property in Totara Street, Ponsonby, and wished to insure it with the defendant. McCullough suggested that Mr. Brown (who was acting as Mrs. Brown's agent) should call at the office of the defendant, which Brown did on or about 31st January, 1927. Either at that interview, or previously, McCullough and Brown had some conversation about the subject-matter of the proposed insurance, and Brown, so His Honour held, told McCullough that the property was his wife's own and that it was "free." Apart from that conversation, McCullough had a certain knowledge of Brown's affairs. He had handled other insurance for Brown somewhere about the previous October or November. Those insurances were upon freehold properties, and again helped McCullough to think that Mrs. Brown owned the freehold interest in the property. McCullough thought that all the properties in Totara Street were freehold. McCullough knew that insurance risks had not been declined for Brown, because of his (McCullough's) knowledge of Brown's affairs. In these circumstances, Brown asked for an insurance of £500. He asked McCullough, however, to go out and see the house "and see what the insurance could give on it." McCullough, with such knowledge and assumption of knowledge of the circumstances as he had, suggested that Brown should sign a blank proposal form as his wife's agent, and said that nothing further would be required from Brown. McCullough said he would inspect the property, obtain the necessary particulars, and information, and fill in the details thereof on the proposal form himself. Brown, as agent for his wife, then signed the proposal form in blank, in the name of Mrs. Brown as applicant. Immediately above the applicant's signature a note was printed lengthways on the form: "Note.—All statements made and corrections thereof in the proposal must be under the hand of the assured or his specially authorised agent." McCullough inspected the property. He ascertained the answers to certain questions concerning the condition of the premises, comprising questions as to hazardous goods, lighting, wireless installation, heating, process of manufacture, power, and any lift or well-hole. The remaining questions were questions as to whether the property was freehold or leasehold; as to whether the proponent either individually or in partnership or the wife, husband or partner of proponent had ever had any risk declined or renewal refused or any policy cancelled by an insurance office; or had ever been a claimant on a fire insurance office, and as to whether the property was subject to mortgage or chattels lien. The answers to those questions could not be obtained by mere visual inspection of the property. McCullough relied on his general knowledge of the Brown's insurances for his answer in the negative to the questions concerning other risks and claims; and upon Brown's statement that the property was free, for his answer in the negative to the mortgage question. As the result of Brown's statement that the property was "the wife's own" and that it was free, and because he thought there was no leasehold property in Totara Street, McCullough had, by a general association of ideas, no hesita-

tion in assuming that the property was a freehold property, and in good faith, but mistakenly, he answered that question accordingly. As the result of what Brown had told him, he inserted the words "(Mrs.) M. Brown" following the printed words "Policy to be in the name of," and the word "Owner" following the printed words "To cover interest as." All of those answers and statements were inserted above the signature of the applicant "Mrs. M. Brown per A. Brown." McCullough then made his confidential report on the back of the proposal form, valuing the property at £625. The policy was duly issued pursuant to the proposal form so completed. His Honour reviewed the evidence at length and said that his conclusion on the evidence was that the defendant did permit its agent to assist the proponent to complete the proposal form, either by writing down the proponent's answers in proper form or by helping the proponent to put his answers in proper form. The defendant also did permit its agents to issue a cover note pending the acceptance or rejection of the risk by the company. But the defendant did not permit its agent in any case (a) to take upon himself to supply independently of the proponent the answers to the questions put to the proponent by the company through the medium of its proposal form; or (b) to dispense with the answers to any of those questions. It was agreed by both Brown and McCullough that no question was asked by McCullough and no statement was made by Brown as to whether the property was freehold or leasehold. McCullough assumed that he could supply the answer from such knowledge as he had, largely induced by Brown's statement that the property was the wife's own and that it was free. In dispensing with information from Brown on the subject of tenure, and in supplying his own answer, McCullough acted outside the scope of his actual authority as the company's agent, even though he believed in good faith, as he did, that the answer which he gave was true.

The next question was whether McCullough acted within an ostensible authority which the company permitted him to assume. His Honour did not think that he did. Brown was not illiterate or subject to any disability. When he signed the proposal form, he must be taken to have had notice of the note printed on the policy that all statements in the proposal must be under the hand of the assured. Reasonably interpreted, that meant that the statements made or to be made must be statements of the assured. His Honour respectfully agreed also with the view expressed by Palles, C.B., in **Taylor v. Yorkshire Insurance Company,** (1913) 2 I.R. 1, where, after referring to **Levy v. Scottish Employers Insurance Company,** 17 T.L.R. 229, and to **Biggar's Case** (*cit. sup.*), he said (p. 17): "On the contrary, I hold with Mr. Justice Wright that, although 'he may have been an agent to put the answers in form,'" (which was the extent of the agency in the present case) "the agent of an insurance company cannot be treated as their agent to invent the answers to the questions in the proposal form; and that, if he is allowed by the proposer to invent the answers, and to send them as the answers of the proposer, the agent is, to that extent, the agent, not of the insurance company, but of the proposer." When, therefore, Brown at McCullough's suggestion signed the blank proposal form, Brown authorised McCullough to fill up the form as Mrs. Brown's agent, not merely in respect of the matters discussed between Brown and McCullough, but in respect of the answers to all the questions required by the proposal form. Upon those findings, Mrs. Brown and not the company was clearly responsible for the untrue statement.

The company did not indeed need to rely upon the principle of **Biggar's Case,** (1902) 1 K.B. 516, followed recently by the Court of Appeal in **Newsholme Brothers v. Road Transport and General Insurance Company Ltd.,** (1929) 2 K.B. 356. In each of those cases, although the company's agent knew the true facts, he wrote untrue answers in the proposal form. In **Biggar's Case,** the agent acted with gross negligence or fraud. In **Newsholme's Case,** he exceeded his authority as the company's agent, by filling in the proposal form. In each case, the company did not know of the agent's breach of duty. In each case, the agent was held to be the agent of the assured in filling up the proposal form, and the company was held not liable. In the present case, if it were assumed that the agent did not exceed his authority, he yet had no knowledge of the true facts, and therefore no knowledge which could be imputed to the company. It was, therefore, not necessary for the company to invoke the doctrine that breach of duty coupled with the conduct of an assured, not illiterate, in signing a proposal form, deprived the agent of his status as agent of the company. That lack of knowledge of the true facts also made it unnecessary to consider whether knowledge thereof by the agent, assuming him to be the company's agent, could or could not be imputed to that artificial person, the company, by virtue of his position with the company: see the judgments of Lord Dunedin and Lord Sumner in **J. C. Houghton v. Nothard Lowe and Wills Ltd.,** (1928) A.C. 1. Again, the facts of the present case made the **Bawden** line of cases inapplicable (**Bawden's Case,** (1892) 2 Q.B. 534), for, as was said by Williams, J., in **In re Samson and the Atlas Insurance Company,** 28 N.Z.L.R. 1035, 1040, it was at least certain that "they are cases in which it was proved that the person who filled up the proposal was the agent of the company to fill it up, and that he was fully aware of the actual facts, though he stated them incorrectly in the proposal." The present case was nearer **Paxman's Case,** 39 T.L.R. 424, where the agent had filled in the proposal from information supplied by the assured. McCardie, J., held that the arbitrator, whose opinion was under review, had been justified in applying the principle of law contained in **Biggar's Case** (*cit. sup.*) as there was no suggestion that the agent had any knowledge of the untruth of the statements.

The only question left was whether the agent's statement to Brown that "nothing further would be required" was sufficient to create an estoppel against the company. In His Honour's opinion, it was not. No estoppel could arise from the representation of an agent unless it was made within the agent's actual or ostensible authority. His Honour had already dealt with the extent of McCullough's authority. He had no authority actual or ostensible to make such a representation, involving, as it did, the dispensing with an inquiry from the proponent required by the company's proposal form, and the supplying by the agent of his own answer. McCullough's duty was to see that he had the proponent's answers to all the questions, and the proponent's duty *uberrimae fidei* was to see, on his own account, that the questions were correctly answered. Mr. Stanton contended, however, that the present case was close to **Western Australian Insurance Co. v. Dayton,** 35 C.L.R. 355, (1925) V.L.R. 533, and that the reasoning of Mann, J., and of Isaacs, A.C.J., in that case should be followed here. His Honour after considering that case at length, said that in his opinion, it was distinguishable from the present case. In the present case the manager did not give his special authorisation to the transaction. McCullough did not have the extent of authority attributed to the agent in that case by Isaacs, A.C.J., and Mann, J. McCullough did not bustle Brown: he discussed some of the matters with Brown in the office. He did not make Brown think that answers to the form were unnecessary. There appeared to have been no statement on the proposal form in **Dayton's case** that the statements in the proposal must be under the hand of the assured, or his specially authorised agent. It was true that in **Dayton's case** the policy stated that the particulars in the proposal should be deemed to be furnished by or on behalf of the insured. But with respect to the inference which was to be drawn from the conduct of the parties at the time the proposal form was signed, such a recital had not the same effect, His Honour thought, as a note upon the proposal form that all statements must be under the hand of the assured or his specially authorised agent. McCullough had no actual authority to represent that Brown's signature to the blank proposal form would be sufficient for the purposes of the company; and the true inference from the facts was not that the company must be bound by an ostensible authority to make such a representation, but that Brown authorised McCullough to complete the form on Mrs. Brown's behalf.

In His Honour's opinion, no sufficient ground had been established to prevent the defendant company from relying upon the breach of warranty.

Motion dismissed.

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

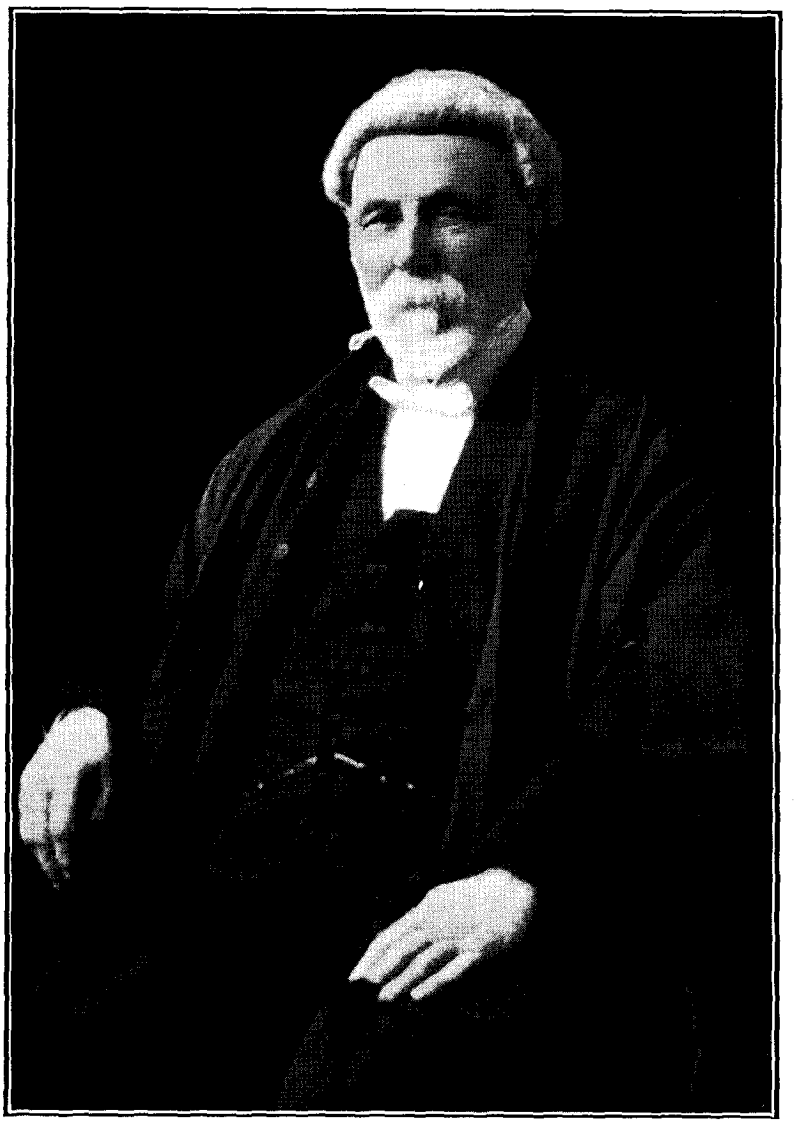
Solicitors for defendant: **Glaister and Ennor,** Auckland.

Rules and Regulations.

Dangerous Drugs Act, 1927. Additional drugs declared to be dangerous.—Gazette No. 53, 24th July, 1930.

Post and Telegraph Act, 1908. Amended regulations relating to transmission of bullion and jewellery by post.—Gazette No. 53, 24th July, 1930.

Foreign Orders and Medals.—Regulations as to Foreign Orders and Medals applicable (a) to persons in the service of the Crown; (b) to persons not in the service of the crown.—Gazette No. 53, 24th July, 1930.



The Late Right Honourable Sir Robert Stout, P.C., K.C.M.G.

The Late Right Honourable Sir Robert Stout, P.C., K.C.M.G.

Tributes of Bench and Bar.

Tributes on behalf of the Supreme Court Bench, the Magistracy, and the profession to the memory of the late Rt. Hon. Sir Robert Stout have been publicly expressed throughout the Dominion at gatherings of the profession for that purpose. We are unable to print them all in full, but we record below, as representative of them all, those expressed in the Court of Appeal at Wellington, and the Supreme Court at Auckland.

WELLINGTON.

Tributes by Bench and Bar at Wellington to the memory of the late Sir Robert Stout were paid in the Court of Appeal at Wellington, on Monday, July 21st, 1930. Upon the Bench were their Honours Mr. Justice Reed, Mr. Justice Adams, Mr. Justice Blair, Mr. Justice Kennedy, and Sir Frederick Chapman.

His Honour Mr. JUSTICE REED said:

"We are assembled here this morning to pay a tribute of respect to the memory of one who has for many years been a prominent figure in our public life. Sir Robert Stout in his time held the two highest offices open to a citizen of this Dominion, those of Prime Minister and Chief Justice. To his many activities in the social and public life of New Zealand the public Press has borne ample testimony, but this large and representative gathering is to-day assembled more particularly to mark its respect for Sir Robert in his capacity as a lawyer and as Chief Justice of New Zealand. I well remember, as a boy in Dunedin, his prominence at the Bar and the vigorous contests between him and the late Sir John Denniston in the local Courts.

"But, it is of his connection with the Bench as Chief Justice that my seven years' experience of him, as one of his puisnes, best qualifies me to speak. The close association that such a position entails enables one to form an accurate estimate of character, and I desire to pay a personal tribute to his kindliness of heart and honesty of purpose in all he did. Sir Robert's outstanding characteristic was his sense of duty. Nothing would turn him from what he conceived to be that duty, and he would do it regardless of consequences or adverse criticism. He was mentally, in every sense, a strong man. He was without a particle of side or pretentiousness; display was abhorrent to him.

"Kindliness of heart and sympathy with the poor and distressed were the predominant moving forces in his administration of justice; sound commonsense characterised his judgments.

"To us who were his close associates on the Bench his kindliness and consideration made him a well-loved friend, and when he retired we long missed his cheery and ever-friendly presence. We mourn his loss.

"To the gentle lady who for more than half a century has been his helpful companion, and who now lies upon a sick bed, we extend our heartfelt sympathy. May the many proofs she will receive of the universal respect in which her lamented husband was held, and the Dominion-wide sympathy that will be extended to her and her children in their bereavement, afford some solace to her and to them in their great sorrow."

The Right Hon. SIR FRANCIS BELL, K.C., on behalf of the Bar, said:

"May it please Your Honours,—We who are assembled on a very mournful occasion are grateful to Your Honours for affording us the opportunity of union with the Bench in endeavouring to express our sense of loss, which we feel most sincerely, of one who was pre-eminent in our ranks. There are few of us, Your Honours, whose memories are preserved of the early days of Sir Robert's practice amongst us; but those who have those memories remember how instant was his advancement to the first rank of advocates amongst the distinguished advocates who at that time were gathered in the city where he began his professional life. We are able to recall not only that immediate advancement, but association with a man who was throughout his life absolutely free from assumption or arrogance—carrying on his life's work without offence, but even obstinately determined in his opinions.

"In the three avenues that he followed—politics, study and the law—he attained eminence. To the powerful intellect he had inherited from the sturdy ancestors in the Islands of his birth was added phenomenal industry which is an example to us and we hope will be an example to those who follow us in the profession of law.

"It is well to recall that in the first year after his entry into the profession and his call to the Bar he was elected by his fellow citizens to membership of the Provincial Council, which some of us remember as a real Parliament, and immediately afterwards he became Provincial Solicitor with the status of Attorney-General of the Province. Then five or six years after his entry into the Parliament of New Zealand, and after the abolition of the Provinces he became Attorney-General of the Colony, an early advancement, I believe, without precedent, that it should have been by common consent due to the position he had already attained.

"It is almost forgotten that he was the most prominent member of the Commission of Judges and lawyers who framed the Act and Rules of Procedure of 1882—a revolutionary change opposed by many. I believe there are few survivors, if any, of the membership of that Commission; but curiously enough our procedure still bears the mark of his influence in the exuberance of his youth, in the strength of his convictions, modified afterwards, when he insisted against the views of the majority of the Commission that there should be omitted from the writ of summons the proverbial association of the Sovereign. I am only offering an example of the influence he then held with the Bench and with the Bar. In this country alone the writ of summons still runs not in the Sovereign's name. There are so few who remember those days, but there are many more who have vivid memories of battles against him in the Court in later years before he accepted the great office which he held for more than a quarter of a century. Those memories are of a strong and powerful advocate, fair and successful, and success followed him unsought throughout his life. More of us have memories, because there are more still surviving, of the years of his tenure of that great office, and bear witness to the impartiality, patience and courtesy of that great Judge. And many have mem-

ories still of kindly encouragement aiding them in the early days of their career. The records of his judgments demonstrate the industry of research for authority. There are in those judgments more authorities generally cited than are to be found in the judgments of his fellows on the Bench, and that is more worthy of record for the reason that he had been so long a student of legal principle and with an inclination rather to follow principle than precedent where precedent seemed to conflict. No Judge who has served so long and retired has carried with him a greater sense of those who were privileged to practise before him of his unvarying justice and honour.

" May I give one example of the attachment which he gained from those who practised before him. The existence of Courts of Appeal demonstrates that it is part not only of our right but of our duty to criticise judgments fearlessly—even to challenge the exercise of judicial discretion and even to consider the personal experience in the particular branch of law of the Judge who delivered the judgment. In conference with clients and in consultation amongst ourselves it gradually became the universal practice to omit the title when the Chief Justice was referred to, and to use rather some epithet or expression without failure of respect expressing the affection which the profession had for him. And after his retirement from the Bench that practice continued amongst us, and it was still to the day of his death the habit of us all to refer to Sir Robert Stout in those terms of affectionate regard. I believe that he himself would have desired no more emphatic tribute to his character or more sincere recognition of the character and quality of the man.

" We wish to endeavour, as Your Honour has given us the precedent, to avoid as far as possible reference to that part of his life which was spent apart from the Courts and in the service of the public ; but I do desire to recall to the memory of the Bench and the Bar that we lawyers owe to him and his industry an indebtedness of various kinds. The first example is the monumental work of the Consolidation of the Statutes in 1908 of the Commission of which he was not merely the Chairman but the most industrious and active member ; and, next the establishment in this city of the University College, due almost entirely to his energy and persistence. Is it remembered that while he was Prime Minister in 1887 he passed through the House of Representatives, but failed to pass through another branch of the Legislature, the Middle District University Bill ? His absence from Parliament for some time made a relaxation of that effort necessary, but on his return to Parliament in 1894 he managed to pass through Parliament a skeleton Act, for the Government would not assist him by allowing finance to be included in the Act. But by his effort as a private member he passed a skeleton Act through both branches of Parliament entitled the Middle District University Act. That Act, though never of effect because of the absence of finance, became the model of the Victoria College Act which was passed in 1897. Many for whom I speak have reason to be grateful to the memory of Sir Robert Stout for the foundation of that school of learning where their own education has been completed. And as a third and last example, it was by his influence, and his influence alone, that Sir John Salmond was induced to resign his professorship at Adelaide and to give New Zealand the advantage of counting amongst its public servants, lawyers, and Judges the great world-recognised jurist.

" All of us are familiar with those last days when, after retirement from the Bench, he endeavoured to enter with pristine vigour into political life, and that advocacy of certain social reforms which he regarded almost as the work of his life apart from his legal and judicial career. But before I speak my last sentence of these last days it would not be fitting that no reference should be made to the last and greatest of his honours—the appointment to the Judicial Committee of the Privy Council. It is a matter of pride to us all that he should have received so emphatic a recognition of his quality both as a lawyer and a student from the greatest lawyers of the Empire ; emphasised perhaps more than in any other instance by the choice of him to write and deliver the judgment on a subject so foreign to all his experience as the rites of an Indian temple and the personal attributes of a pagan god.

" Turning again to these last days, I can speak of being associated with him in Parliament, in business and in social life. We at the Bar know perhaps better than Your Honours of the Bench with what glee he returned to the old familiar relation hampered so long by the respect tradition requires to the judicial office, and how greatly he enjoyed renewal of the incidents stored in that receptive memory, and how cheerfully he accepted the old relation of equality in badinage and raillery. But he was mistaken indeed in his belief that age had not had its effect, and though as enthusiastic and as vigorous in intention as ever, there was necessarily latterly the obvious failure in aptness of expression ; but he lived then as he had lived always, free from assumption of superiority, a simple life, almost ignoring his great position, and so he has left memories of a life honoured by every section of the community, and by none more than by those who claim him as one of themselves in this Court.

" It seems fitting, Sir, that in this Court, which was the arena of his first and long successes, in this Court over which for so many years he presided with dignity and with honour to himself and advantage to the country, that in this Court the first public tribute should be paid to his memory.

" May we be allowed to join with Your Honour in some expression of the true sympathy for those who have the more intimate and personal sorrow. His private life, as his public life, was free from blame, and their sorrow is great. Still, they have, with us, the memories of an honoured life spent in the service of the State."

Mr. Justice Reed : The Attorney-General is unfortunately ill in bed, and he writes to me and asks that this letter should be read :—

" I much regret that I shall be unable to be present in the Supreme Court this morning to personally join in the tribute to be paid to the memory of the late Right Honourable Sir Robert Stout, the news of whose death has been received with universal sentiments of regret. In my unavoidable absence I trust Your Honour will accept these few lines from me.

" For very many years Sir Robert Stout occupied a foremost place in the ranks of the legal profession, and for over a quarter of a century adorned the high office of Chief Justice. He was, I believe, with one exception, at the time of his death the oldest member of the legal profession in New Zealand. He was called to the Bar in 1871. As was the case with so many of our Supreme Court Judges, his training ground was

in Dunedin. The Bar in Dunedin was a strong one, but Sir Robert in a comparatively short time forged his way to a leading position. It was not many years before his great ability and persuasive eloquence won for him recognition as a brilliant advocate. One of the first cases by which he attained distinction was a trial for arson which took place some five or six years after his admission. Sir Robert was acting as junior, but was permitted to take a prominent part. He was an indefatigable worker, to which the law reports alone bear ample testimony.

"But Sir Robert was far more than an able lawyer; he was a great national figure. It has been said of England that the history of her great lawyers is in no small degree the history of the nation. The same might be said with some truth as regards New Zealand, and to write fully the record of Sir Robert Stout's activities would be to recount the political, educational, and social life of this country extending over many years.

"It was only four years after he had been called to the Bar that he entered Parliament, and may I be pardoned for mentioning that among the bonds of sympathy between us there was this, that not only was he a predecessor of mine in the office of Attorney-General, but the constituency that first sent him to Parliament was the same that sent me, and which I represented for 27 years. This constituency was known as Caversham. In later years its name was altered to that of Dunedin South. In politics Sir Robert rose to the highest position in the State.

"His interest in primary, secondary and university education was well known. He started life as a school-teacher and retained to the end a passionate enthusiasm for education in every form. He was a great student of social and economic questions, and was at one time a frequent contributor and lecturer on such subjects.

"He was a great man intellectually and physically, but although he attained to such eminence in the State, he retained the charm of simplicity in all his private relations. There was no pride in his composition, and his great goodness of heart endeared him to all who knew him well.

"The life of Sir Robert Stout, with his lofty aims, his diversified interests, his temperate habits, his broad human sympathies, his tireless industry, his devotion to work and duty, and other qualities by which he raised himself from humble circumstances to the highest office in the State, constitutes not only a call to members of the legal profession to take a broader view of citizenship than that which is circumscribed within the compass of their professional interests, but constitutes also an inspiring example, especially to our young people.

"I thank Your Honour in anticipation for according to me the privilege of paying this brief and wholly inadequate tribute to the memory of Sir Robert Stout, and of joining in the expressions of sympathy which will this morning be tendered to his widow and family."

Auckland.

The tributes of Bench and Bar at Auckland were paid in the Supreme Court on Monday, 21st July. His Honour the Chief Justice presided, and associated with him on the Bench were Mr. Justice Ostler and Mr. Justice Smith, Mr. Justice Frazer of the Court of Arbitration, and the Honourable Sir Walter Stringer.

His Honour the Chief Justice said:

"Mr. Towle and Gentlemen of the Bar: The death of a great man is not as a general rule permitted to be the subject of reference in this Court. That is, speaking generally, permissible only where the greatness of him who has passed away has been achieved by high judicial office or by eminence otherwise in the practice or profession of one branch or another of the Law. It is, therefore, because of his great service to his country as a Judge and as a lawyer that we pay our tribute to the memory of the man whose loss we mourn to-day. But, apart from his distinguished service as a Judge and as a lawyer, Sir Robert Stout was a truly great man, whose career should serve as an inspiration and a guiding-star to every young man in the community.

"Arriving in New Zealand from his Shetland birthplace thousands of miles across the sea, an unknown youth of nineteen years of age, without money, without influence, he gradually, by dint of his own great qualities of mind and character, his innate ability, and his indomitable application and perseverance, so gained the respect and confidence of the people of his adopted country as to win the highest positions in their gift in every branch of the body politic.

"Admitted as a barrister and solicitor in 1871, within the short period of seven years, at the age of only thirty-four, he became Attorney-General. Six years afterwards he was Premier and foremost citizen of the Colony as New Zealand then was. In 1899, upon the resignation of Sir James Prendergast, he was appointed to the position of Chief Justice, a position which he occupied and adorned until his resignation at the end of 1925 when he was eighty-one years old. So far as I know, it is the only instance in the British Empire of the one man having held the highest offices in both the Executive and Judicial branches of the State. For a parallel case we have to look to the United States, where the late Mr. Taft had a similar record.

"But, as if this were not sufficient, Sir Robert for a period of over twenty years held also the highest office in the educational life of the community, that of Chancellor of the New Zealand University. And in 1921 he was appointed a member of the Judicial Committee of the Privy Council, the ultimate Appellate Tribunal of the Oversea Dominions of the Empire.

"In every one of the great positions that he held he displayed the same characteristic qualities—the same ability, integrity, high-mindedness, courtesy, kindness, and untiring industry. Few of you will remember him as a practising barrister. Indeed as a barrister he seems to have belonged to a past generation, as will be apparent when I tell you that I believe myself to be the youngest man living who appeared against him at the Bar, and I can remember only two such appearances. He was a great advocate and enjoyed a very successful career at the Bar. One of the principal secrets of his success was that he had a fine sense of what the really important issues were in a case and concentrated his attention upon them, and them alone. But it is as a Judge that we all knew him best, and it is as a Judge that he inspired in every one of us a sincere and lasting affection. A kindlier man never lived—nor a man with a greater passion for justice. Many a young man now at the Bar remembers the encouraging and kindly word from the "Old Chief," as we used to call him, which means so much at the commencement of one's career.

"And now a great man has gone to his eternal rest: in his own consciousness and in ours of having lived a long, honourable, and intensely useful life. We can but mourn him—and remember his life as a guiding light. Just that,—and add our expression of sincere and respectful sympathy to Lady Stout and the members of the family, and our hope that they will derive some consolation in their grief from to-day's tributes in the Courts over which the departed one presided for so many years from the men who knew him best and who held him in deep and reverent affection."

On behalf of the Bar, MR. R. P. TOWLE (President of the Auckland District Law Society) said that they had gathered to pay their last tribute of respect to a late Chief Justice. They were taking farewell of one who had been the outstanding personality of the Dominion for a period of sixty years and upwards.

It was thirty-nine years since Sir Robert Stout was admitted to the Bar. He had quickly made his mark as an advocate. Just as from the earliest times Englishmen had always recognised that advocacy was necessary to the administration of justice, so they had recognised that honesty, industry and fearlessness were true adjuncts of advocacy, without which the world would learn little of the message of truth. The late Chief Justice possessed all those adjuncts in a marked degree. He was above all things a seeker after truth. When he became elevated to the position of Chief Justice that attribute, coupled with his great industry and great wisdom, enabled him to carry the duties and responsibilities of his great office with impartiality and with dignity, and in a manner which compelled not only the respect, but the confidence of lawyer and litigant alike.

Mr. Towle recalled Sir Robert Stout's services to the legal profession and the cause of justice in connection with the code of civil procedure, in the coding of the criminal law in 1893 and in the consolidation of statutes in 1908. While they respected him as a Judge, it was Sir Robert Stout, the man, whom they came to regard with feelings of affection. While he administered the law with impartiality and with fairness, he at all times showed the utmost kindness, consideration and courtesy to all who came in contact with him, and particularly to the younger members of the profession. To Lady Stout and to the members of the family they tendered their earnest and respectful sympathy.

Solicitors' Guarantee Fund.

A New South Wales Bill.

A Bill is at present before the Parliament of New South Wales making provision *inter alia* for a solicitors' guarantee fund. Its provisions are reviewed at length in the latest number of our contemporary the *Australian Law Journal* and the Bill, so far as it relates to the fund, would seem to be an entire adoption, almost *ipsissimis verbis*, of our own Act of last year. This is indeed a compliment to those responsible for the form of our measure. It is most interesting to notice that the same figures are proposed to be adopted in N.S.W. as we have adopted here—annual contributions not exceeding £10; levies up to £10 per annum if the fund is insufficient, with the same limit of £50 in levies for any one solicitor during the whole period of his practice; contributions to cease while the nett amount of the fund is not less than £100,000.

Gaming and Wagering.

Some Differences Between the English and New Zealand Statutes.

By H. F. VON HAAST.

(*Concluded from page 187*)

As the totalisator was not legalised in England until 1928, let us first examine the legal position of the totalisator and of those who bet by means of it. What is the gamble? This, says Richmond, in *Dark v. Island Bay Park Racing Club*, (1886) 4 N.Z.L.R. S.C. 301, at p. 302, is the position: "The depositor in the totalisator backs the horse he selects against the field. That is the wager, and it is laid with the backers of the other horses—whether the layers of the wager are known to one another or not signifies nothing—and those who are working the machine are the stakeholders. The same result was arrived at in *Attorney-General v. Luncheon and Sports Club Ltd.*, (1929) 45 T.L.R. 294, in which it was held that the company, which in its club ran a totalisator, paying out all moneys staked by backers of losers to the backers of winners, after deducting 10 per cent. for expenses, were not liable to pay betting duty, as no bets were made with them and they merely received the money for the purpose of distributing it..

There have been two decisions upon the Gaming and Lotteries Act, 1881, so far as it relates to the totalisator, but in considering them we must bear in mind the fact that the sections in that Act referring to it were two only, section 46, which enables the Colonial Secretary to grant licences for its use, and Section 47, which was as follows: "If the conditions above mentioned are duly complied with, no person shall be liable to any penalty or forfeiture under this Act, or any other law for the time being in force relating to gaming and lotteries for the use of the totalisator in manner hereinafter provided," which was repeated in section 50 of the Act of 1908. It was upon the Act of 1881 that *Dark v. Island Bay Park Racing Club* (*cit. sup.*) and *Pollock v. Saunders*, 15 N.Z.L.R. 581, were decided. In the latter case Denniston, J., delivering the judgment of the Court of Appeal said epigrammatically: "The totalisator, though not actually banned, is certainly not blessed. It remains what it was before the Act—an instrument for betting and gambling—practices tolerated by the law but not recognised by its Courts. It seems extravagant to invoke in favour of this half-contemptuous concession a restriction on private rights established for the protection of the laudable and necessary pursuits of trade and commerce." In *Dark's case*, the plaintiff had two tickets on the totalisator on "Tale-bearer," which ran a dead heat with "Little Scrub." The Racing Club refused to pay a dividend and ordered the race to be run again when "Little Scrub" won, and his supporters received the dividend. The plaintiff claimed £2 2s. 0d. as the dividend on "Tale-bearer." Richmond, J., held that the action was "to enforce an agreement made between the depositors—it is to carry the agreement into effect by an action against the stake-holder," and said that with regard to this particular instrument, the totalisator, section 46 of the Act (section 50 of the Act of 1908) "really authorises the use of the instrument in this sense

that it is not to expose the parties using it to penalty or forfeiture. But there is nothing more, in my opinion, which gives the right of action upon a wagering contract effected by the totalisator, any more than any other wagering contract. Hence bets on the totalisator are null and void, which means not that they are not legal, but that they cannot be enforced in a Court of Justice." He therefore dismissed the action.

But since the date of that decision there has been "*something more*" in the Gaming Act than a mere protection of "tote" gamblers from penalty or forfeiture. Section 35 of the Act of 1908, which first appeared as Section 36 of the Gaming and Lotteries Amendment Act, 1907, provides that: "*It shall be the duty* of all racing clubs using the totalisator to pay out (after deducting the usual ten per cent. commission) by way of dividend all moneys received from investments on the totalisator." But it is not necessary to pay out fractions unless they exceed 6d. Section 4 of the Gaming Amendment Act, 1924, enacts that: "It shall be lawful for any club licensed to use the totalisator to refund any moneys invested on the totalisator in respect of any horse which is for any reason withdrawn from any race before the totalisator closed for that race." Sections 192 and 193 of the Stamp Duties Act, 1923, levy totalisator duty and dividend duty respectively on the gross takings of the totalisator, and the latter section authorises racing clubs to deduct dividend duty payable in respect of each race pro rata from the several amounts payable by the club to the investors on the totalisator in respect of that race.

If Richmond, J.'s decision were carried to its logical conclusion and the depositor has no remedy against the racing club operating the totalisator which refuses to pay out a dividend, then the law as laid down by Edwards, J., in *Sharp v. Morrison* should apply, and the investor, who before the dividend was paid out, went and directed the officials not to pay over the proceeds which they were holding for him as agent, but to return it to him, would be entitled to recover it from the racing club not as stakes but as his own money in the hands of his agent, for as Richmond, J., says: "It signifies nothing whether the layers of the wager are known to one another or not." But if the Legislature imposes a duty on the racing club to pay out after the authorised deductions by way of dividend *all* moneys received from investments, and if it authorises the deduction of dividend duty pro rata from the several amounts payable by the club to the investors in respect of each race, has it not gone a good deal further than the Act of 1881 upon which the decision of Richmond, J. was based? If it has conferred a legal duty on the racing club to pay, has it not impliedly conferred a legal right on the investor to recover the dividend "payable by the club to him?" Has it not by the sections referred to legalised the totalisator so as to alter the law as to gaming and wagering, so far as the totalisator is concerned in the following respects at least: (1) To enable the winner of a wager to obtain the money won (less authorised deductions) from the stakeholder. (2) To prevent the loser of a wager or anyone else who has invested his money on the totalisator from demanding his money back from the stakeholder before it is paid over except in the event of the horse he has backed being withdrawn from a race before the totalisator closes for that race, seeing that there is a duty on the club to pay out all moneys received for investment by way of dividend and that it is authorised to deduct the dividend calculated on the gross amount paid into the totalisator on each race from the amounts payable to the investors. While Courts of Justice are naturally averse to adjudicating on gaming and wagering claims, still if some disappointed and litigious person should ever be tempted to invoke the aid of the Court against a racing club, these matters will require serious consideration.

Now let us compare the English legislation. The Racecourse Betting Act, 1928, *legalised the use of totalisators on certain racecourses.* It began by providing that nothing contained in the Betting Act, 1853, should apply to any approved racecourse or to any act done thereon on the days on which horse races take place, thereby sweeping away all the hair-splitting as to the interpretation of "other place" that led up through a series of decisions to the *Kempton Park case*, (1899) A.C. 143, and making the law as to betting houses, offices, rooms, or other places inapplicable to approved racecourses. But it went further and it made it a condition of the approval of a racecourse by the Racecourse Betting Control Board, that the persons having the management of such racecourse should provide a place where bookmakers might carry on their business and to which the public might resort for the purpose of betting. What a contrast to our Gaming Amendment Act, 1920, which declares the business or occupation of a bookmaker illegal and makes it an offence punishable on summary conviction by fine or imprisonment to carry on such business or occupation or to make a bet with a bookmaker, but does not "render unlawful investments of money on the totalisator."

By the English Act a Racecourse Betting Control Board is established to issue certificates of approval in respect of racecourses, and it is made "lawful for any approved racecourse for the Board and any person authorised by them to set up and operate a totalisator for the purpose of effecting betting transactions on horse races only—and also "for any person to effect betting transactions by means of a totalisator lawfully operated." It is provided that the Board shall distribute or cause to be distributed the whole of the money staked by means of a totalisator on any race among the persons winning bets made by means of the totalisator on that race, after the deduction of such percentage of those moneys as the Board may from time to time determine, either generally or with respect to any particular racecourse. The deductions go into a totalisator fund which (subject to the payment of expenses, contingencies and gifts for charitable purposes) the Board is to apply in accordance with a scheme prepared by it and approved by the Secretary of State for purposes conducive to the improvement of breeds of horses or the sport of horseracing. Such are the English provisions with regard to betting on the tote on "the sport of kings." How far they have altered the previous provisions with regard to gaming and wagering by a concession that certainly cannot be described as "half-contemptuous," only time and the sagacity of English Judges can determine.

The English Law Society receives annually from the Treasury the sum of £1,700. The grant is made in pursuance of a resolution of the House of Commons of May 11th, 1897, and is a contribution towards the expenses of the Law Society in carrying out the disciplinary duties laid upon it by the Solicitors Acts.

New Zealand Law Society.

Proceedings of the Council.

A meeting of the Council of the New Zealand Law Society was held at Wellington, on Friday, July 4th, 1930, at 10.30 a.m. The Vice-President (Mr. C. H. Treadwell) occupied the chair during the forenoon.

The District Law Societies were represented as follows:

Auckland	represented by	Messrs. A. H. Johnstone and R. P. Towle
Canterbury	,,	Messrs. G. T. Weston and H. F. O'Leary (proxy)
Gisborne	,,	Mr. C. A. L. Treadwell
Hamilton	,,	Mr. F. A. Swarbrick
Hawke's Bay	,,	Mr. H. B. Lusk
Marlborough	,,	Mr. H. F. Johnston, K.C.
Nelson	,,	Mr. C. R. Fell
Otago	,,	Mr. R. H. Webb
Southland	,,	Mr. P. Levi (proxy)
Taranaki	,,	Mr. G. M. Spence
Wanganui	,,	Mr. W. A. Izard
Westland	,,	Mr. A. M. Cousins
Wellington	,,	Messrs. A. Gray, K.C., C. H. Treadwell and Albert A. Wylie.

Many matters of interest to the profession were considered, some being of a more or less confidential nature. Amongst other subjects the following were dealt with:

Scale of Conveyancing Charges—Deed of Covenant.

A suggestion which had been received through a District Law Society at a previous meeting that in place of the scale allowance of a fixed sum of £2 2s. 0d. there should be a sliding scale as follows, viz.: in cases of mortgages not exceeding £500 (or even £1,000), £1 1s. 0d.; not exceeding £2,000, £2 2s. 0d.; exceeding £2,000, £2 12s. 6d.—was reported upon by the Committee which had drafted the new scale. The Committee was unable to recommend any alteration of the scale charges. The report was adopted.

New Legislation.

The following Bills, which had been circulated to District Law Societies, viz.: (a) the Law Practitioners Amendment Bill; (b) the New Zealand University Amendment Bill, and (c) the Judicature Amendment Bill, were discussed with the Honourable the Attorney-General (Sir Thomas Sidey), who attended the meeting of the Council for that purpose. The Bills were separately considered by the Council and were approved with certain additions.

Audit of Solicitors' Trust Accounts.

A discussion took place relating to the regulations for the audit of Solicitors' Trust Accounts, and it was resolved that the Standing Committee of the Council confer with the New Zealand Society of Accountants with a view to regulations being prepared for bringing about improvements in the methods of audit, and for the appointment of approved auditors.

Solicitors' Fidelity Guarantee Fund.

It was resolved to adopt a form of advertisement for publication by District Law Societies, drawing attention to the purposes of the Solicitors' Fidelity Guarantee Fund established by the New Zealand Law Society under the Law Practitioners Amendment (Solicitors' Fidelity Guarantee Fund) Act, 1929.

Partners Appearing as Counsel on Originating Summons.

A question was submitted to the Council for its ruling whether it was proper in any circumstances that two counsel who practise in partnership as barristers and solicitors should appear and act on an originating summons for plaintiff and defendant respectively, or for any parties having different interests. The Council expressed its emphatic disapproval of such a practice.

Investment of Trust Funds upon Contributory Mortgage.

A proposal was submitted that it should be made lawful to invest trust funds upon contributory mortgage, unless the instrument creating the trust expressly forbids such investment; and, further, that investments heretofore made by trustees on contributory mortgage be validated unless prohibited as aforesaid, and that steps be taken to introduce legislation to give effect to the proposal. The Council rejected the proposal.

Executors' Commission.

Attention was was drawn to the provisions of Section 20 of the Administration Act, 1908, and to a recent decision of Mr. Justice Ostler (In re Cavanagh, (1930) G.L.R. 184) to the effect that if one of two or more executors dies, and the surviving executor or executors apply for commission, the Court has no power to allow a portion of the commission to the representatives of the deceased executor. It was resolved to request the Attorney-General to consider the advisableness of having the section amended so as to enable the representatives of a deceased executor to make application in a proper case for remuneration. A further question of empowering the Court to apportion commission among executors was deferred, pending the consideration of the point by the Councils of the various District Law Societies.

The Judge as Navigator.

One supposes that Judges of Appellate Courts must have constantly to rack their brains for kind phrases to use when about to administer some criticism of the way in which the case was conducted in the Court below Lord Atkin in the recent case of *Minter v. Priest* found a happy way out by likening the trial Judge to a navigator on a difficult course. These are his words:

> "My Lords, this slander action was tried before Mr. Justice Horridge and a special Middlesex jury. It raised important questions arising out of confidential relations between solicitor and client. That very experienced Judge found the case difficult, as it indubitably was. It is not surprising that even with such competent hands at the wheel in the shallows of a tortuous passage the ship once or twice grounded."

Australian Notes.

WILFRED BLACKET, K.C.

In *In the Will of Peter Fry*, an application made in the Equity Court, Sydney, under the Testator's Family Maintenance Act, the facts were unusual. The applicant, a daughter of the testator, had married twenty years before in opposition to the wishes of her parents. They never became reconciled to her, and did not assist her in any way, but under the will she was entitled to a legacy of £100. At the death of the testator she was in very poor circumstances. Mr. Justice Long Innes held that her marriage in defiance of her parents' wishes, and the facts that there had never been any reconciliation, and that she had received no assistance from the testator, did not disentitle her to relief and he therefore directed that £300 in lieu of £100 should be paid to her. *In the Will of Thomas Saywell* was another matter under the same Act. The applicant was the widow, who had been the testator's second wife. There had been ten codicils, and the applicant was entitled to £1,200 a year under one of these, but by a later codicil the amount had been reduced to £1,000. The estate was worth about £1,250,000 and the applicant stated that during the last year of his life the testator had allowed her £2,500. The order of the Court was that the widow should receive £1,000 a year only but that she should have a life-interest in the house in which she had lived, and its furniture.

The Federal Prime Minister, Mr. Scullin, has ordered that the Amending Conciliation and Arbitration Bill shall "stand over generally." The reason of this decision was stated to be the desirability of giving ample time to all parties for full consideration of the measure, but the more probable cause is the Prime Minister's inability to satisfy the demands of his Communistic supporters who are doubtless responsible for the most tyrannical provisions of the Bill. The Bill gives the monopoly of employment under awards to unionists, and thus excludes preference to returned soldiers. Some of these latter in Brisbane, wishing to secure their positions, applied for admission to one of the largest of the Brisbane unions for tickets of membership, but were informed that the books had been closed, and that no new members would be admitted. Upon being informed of these facts Mr. Moore, Premier of Queensland, promised to take action in the matter. He is Australia's most courageous and forceful political administrator and his method of dealing with the problem, if necessity demands action, will probably be forceful.

I wrote recently of the poor recompense that Judges in New South Wales receive, so it is appropriate to mention that Sydney's Courts, with but few exceptions, very urgently require demolition. The Criminal Courts at Darlinghurst are contained in imposing buildings, and the High Court there is in all respects about the best in the State, but the Supreme Courts are contained in ancient buildings of disreputable appearance, and are very poorly ventilated. The Districts Courts are held in a building a hundred years old, and its incurably dirty condition, and insufficient accommodation for its use as a Court, have during the past century proclaimed the original sin of its design. This is all the more remarkable because every country town that has ever been represented by an adequate member of Parliament has a £30,000 Court-house of modern construction and imposing appearance. Yet even in these Courts the window-lighting is wholly insufficient. When Tennyson wrote of men "with blinded eyesight poring over miserable books" he was evidently thinking of the Court-rooms of New South Wales. Why should not Courts be as well-lighted as factories and offices? I cannot tell. Melbourne, Brisbane, Adelaide, and Perth all have imposing buildings for the homes of Justice, but the lighting leaves much to be desired. Probably the idea is that as Justice is blind it does not matter whether there is any light in her Courts or not. Still it ought to be remembered that it is Law that the Judges have to administer.

"Rationing" work in New South Wales is a popular though feeble, method of meeting the difficulties resulting from diminishing employment. In the Railway Service one week's idleness in ten has been arranged with the sanction of the Court in the case of men whose earnings depend upon the time worked, but the Chief Industrial Magistrate has decided that rationing is illegal in the case of salaried employees. There is to be an appeal against the decision. Whether the appeal succeeds or not will not affect agreements which many thousands of salaried men have made with their employers to take a week's holiday without pay at short intervals. This widely prevailing practice is further evidence of the fact that industrial arbitration in this State at least has outlived whatever usefulness it ever possessed. It was an effective means of increasing wages and decreasing production; but now that wages must be decreased and production increased the change will have to be made without the assistance of the Industrial Arbitration Courts, and even in defiance of their authority. These may seem to be strong words, but 14,000 coal miners in the Maitland District are now, after a lockout prolonged for fifteen months, working for a wage that it is a crime for the employers to pay or the men to receive under the Award governing their industry. Wages of coal miners in the Southern and Western Districts are now being reduced by means of a lock-out but no one troubles about a prosecution.

Norman Lindsay, an artist who has done some clever work in Sydney, and who is hailed by his admirers as the seer of a new, and even neurotic, era, wrote a book called "Red Heap," which was published in London. When it reached Australia the Commonwealth Censors, being apparently of opinion that it should have been called "Red Garbage Heap," prohibited its importation. A Sydney paper announced that it would publish the book as a serial, and thereupon an official of the Commonwealth said that if it did there would be a prosecution. The serial did not appear, but there was much newspaper controversy about censorship, the majority of writers claiming that censorship should be abolished, and contending that nothing could be too bad to be read by Australians. A number of somewhat timid editors and journalists also waited upon the Federal Minister and suggested in a vague sort of way that censoring books was "rather a delicate sort of a business, don't you know, eh what!" Details of the interview are not available because the journalists paid high testimony to the power of the Press, by agreeing that the conference should be held *in camera*, as it were, and therefore reporters were rigidly excluded. Nothing resulted from the conference but its subject-matter again came into notice when the police seized 300 copies of a monthly publication and

prosecuted its owners under the local Indecent Publications Act. In the opinion of the Magistrate the article complained of was "indecent without the excuse of being smart." The paper was Sydney's Opinion, but as usual the Magistrate's opinion prevailed.

The Courts generally are now closed for the Short Vacation, and in Sydney the only pending matter of interest is a suit instituted in the High Court to restrain the local Labour Daily from continuing to publish articles inciting Australia's 60,000 shearers to go out on strike. A temporary injunction has been granted and the hearing is to be expedited.

Bills Before Parliament.

Bank of New Zealand Amendment. (MR. LANGSTONE). Directors of Bank appointed by Governor-General in Council under S. 2 of Act of 1898 not to be, while holding such appointment, "directors or shareholders in any other bank, insurance company, or any other public or private commercial company."—Cl. 2. Government to have in respect of its Preference A and B Shares right to vote at, convene, and take part in any meeting of proprietors of the Bank.—Cls. 3, 4. Whole residue of annual profits after providing for preferential dividends on the Preference A, C, and D Shares) to be paid one-third to the Government or other holders of the Preference Shares, and two-thirds to the holders of the ordinary shares.

Family Allowances Amendment. (MR. BARNARD). S. 3 of principal Act amended by omitting word "father" and substituting word "mother."

Industrial and Provident Societies Amendment. (MR. MASON). Every industrial and provident society shall have and be deemed to have always had the same power to borrow and to mortgage to secure money borrowed as if a company having same objects as society irrespective of whether expressed power or sufficient express power is given in the society's rules.—Cl. 2. Nothing in Act to prevent society regulating or limiting such power but no lender acting in good faith concerned to inquire as to power.—Cl. 3. In the winding-up of any society where any person in good faith claims any debt or security for money borrowed by society, such debt or security deemed valid notwithstanding that *ultra vires* of society or contrary to its rules.—Cl. 4.

Magistrates' Courts Amendment. (MR. MASON). Particulars of special damages claimed to be stated: S. 68 (6) of principal Act amended and substitution therefor.—Cl. 2. If under agreement landlord entitled in circumstances to re-enter for non-payment of rent, or if no provision for re-entry and rent in arrear for 10 days in case of weekly tenancy, 21 days in case of monthly tenancy, 30 days in case of quarterly tenancy, or 42 days in case of yearly tenancy, landlord may without formal demand or re-entry enter plaint for recovery of possession: S. 181 (1) of principal Act repealed and substitution therefor.—Cl. 3.

Rent Restriction. (HON. MR. SMITH). Duration of existing law as to restriction of rent extended until 1st August, 1931. The existing rights of landlords as to the recovery of possession of dwellinghouses subject to Part I of the War Legislation Amendment Act, 1916, extended by allowing recovery of possession where the premises are reasonably required by the landlord for any purpose not being the letting to another tenant.

Scaffolding and Excavation Amendment. (HON. MR. SMITH). Definition of "excavation" extended: S. 2 of principal Act amended.—Cl. 2. Inspector to have as to excavations powers conferred by S. 4 of principal Act as to scaffolding.—Cl. 3. No person to demolish any building exceeding 8 feet in height consisting wholly or partly of brick, stone or concrete without notifying Inspector: S. 5 (1) of principal Act amended.—Cl. 4. Exemption from Act of excavations made by local or public authorities removed.—Cl. 5. Amended provision as to time for giving notice of accidents: S. 9 (2) of principal Act repealed and substitution therefor.—Cl. 6.

Unemployment. (HON. MR. SMITH). Unemployment Fund established.—Cls. 3, 4. Imposition of annual levy of 30 shillings on males aged 20 years or over, payable by quarterly instalments on 1st March, June, September, and December: default in payment an offence punishable on summary conviction by fine of £5.—Cl. 5. Persons wholly exempt: persons in receipt of pension under War Pensions Act, 1915, in respect of total disablement, or in receipt of old-age pension under Pensions Act, 1926; Natives unless living as Europeans. Persons partially exempt: inmates of public hospital, mental hospital, charitable institution for aged, needy or infirm persons or for persons requiring medical or surgical treatment, prison, reformatory institution; students of university or school not in receipt of salary or wages. Governor-General may by Order in Council, on grounds of public policy, exempt wholly or partially any persons or classes of persons.—Cl. 6. Burden of proving exemption on defendant.—Cl. 7. Method of payment of levy—cash or revenue stamps.—Cl. 8. All male persons over 20 required to register and furnish particulars as to (1) his name in full, (2) residential and business address, (3) occupation or calling, (4) "such other particulars as may be required."—Cl. 9. Failure to register or furnishing false particulars an offence punishable on summary conviction by fine of £100.—Cl. 10. Constitution of Unemployment Board.—Cl. 11. Chairman of Board.—Cl. 12. Meetings of Board.—Cl. 13. Provision for appointment of associate members of Board.—Cl. 14. Payment of allowances and travelling-expenses to members of Board.—Cl. 15. Main functions of Board: (a) to make arrangements with employers for employment of unemployed persons, (b) to promote growth of primary and secondary industries, so that increasing number of workers will be required, (c) to make recommendations as to payment of sustenance allowances.—Cl. 16. Subsidiary functions of Board: (a) to establish labour-exchanges or co-operate in management of labour-exchanges established by Labour Department, (b) to ensure co-operation between Government Departments, local authorities, public bodies, and others carrying out public works so that employment distributed as evenly as possible throughout year, (c) to assist workers by grants or loans to pursue courses of vocational training or study, and to provide instructors and establish classes or training camps, (d) to make grants or loans to persons or authorities to enable undertaking of developmental works calculated to relieve unemployment, (e) to make inquiries as to any industries, (f) to appoint and, subject to regulations, to define powers of local committees.—Cl. 17. Commissions of inquiry may be appointed in assistance of Board.—Cl. 18. Detailed provision as to sustenance allowances to unemployed.—Cl. 19. Offence knowingly to employ unregistered person, or person whose payment of unemployment levy is in arrears.—Cl. 20. Wide powers of regulation making by Order in Council conferred on Governor-General.—Cl. 21.

Workers' Annual Leave. (MR. SULLIVAN). Every worker (defined as meaning any person of any age or sex employed by any employer to do any work for hire or reward) to be given fourteen days' leave on pay after each period of twelve months' continuous service.—Cl. 3. Continuity of employment is not deemed interrupted by certain breaks.—Cl. 4. Calculation of remuneration for period of leave.—Cl. 5. Offences by employers.—Cl. 6. Act read subject to awards in certain cases.—Cl. 7. Payment in lieu of leave in certain cases of less than twelve months' employment.—Cl. 8.

Local and Private Bills.

Dunedin District Drainage and Sewerage Amendment.

Dunedin City Corporation Empowering Amendment.

Kirkpatrick Masonic Institute Empowering.

Managers of St. Paul's Presbyterian Congregation (Oamaru).

Presbyterian Church Property Amendment.

Dunedin Waterworks Extension.

Rotorua Borough Empowering.

Invercargill City Fire and Accident Insurance Fund Empowering.

"*Outlaw*," writing in the *Law Journal*, says that he is fairly well informed that Sir John Simon's fees in 1924 did not fall far short of the comforting total of £104,000, and that his average for other years since the War and until he withdrew from practice was approximating £60,000 a year.