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"The English judicial system is, to my mind, absolutely the greatest in the world."

—*Mr. Justice McCardie.*

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The Law of Husband and Wife.

Attention was called at the last Auckland Conference to one aspect of our existing law of husband and wife which, it was said, required reform—the present liability of a husband for the torts of his wife—and a remit was passed advocating an alteration of the law. We ventured at the time to express the view that perhaps insufficient attention was paid, on consideration of the remit, to the point of view of the person suffering damage as a result of the wife's tort, and that, if the husband's liability were abolished, the person injured might find it difficult in many cases to obtain satisfaction of a judgment simply against the wife. Admittedly, however, the view is authoritatively held that such an alteration in the law is desirable. In reply to a question in the House of Commons, the Attorney-General has very recently declared himself in favour of a Bill to amend the law in this respect, and he is to confer with the Lord Chancellor on the matter. A few days before the Attorney-General's statement, Mr. Justice McCardie had criticised the present law in a considered judgment in *Gottliffe v. Edelston*, 46 T.L.R. 544. He said (p. 546):

> "A husband is liable for any tort that his wife may commit, provided that it is not connected with a contract. It matters not whether the tort be negligence, slander, trespass or assault. Thus she may be driving a motor-car against his express request. She may, by her negligence, cause damage to a third person to the extent of thousands of pounds. For this damage the husband can be sued, whether the wife be joined or not as a defendant. Judgment may be given against him for the damages, and on that judgment he may be made bankrupt. He has no right whatever to claim any part of the damages from his wife even though she be possessed of a large private fortune of her own. A wife, on the contrary, is not liable for her husband's tort, unless she authorised or joined in it. Nay, more; if the wife threatens to commit a tort which may inflict a heavy burden on her husband he has no right whatever to apply to the Court to prevent her from doing the wrongful act. The husband is helpless."

While we ourselves would be inclined to attribute more weight to the learned Judge's criticism on the main point if it had contained some reference to the point of view of the person injured as a result of the wife's tort, Mr. Justice McCardie has raised two points, not stressed, we believe, at the Auckland Conference, which obviously require remedy: (1) the fact that the husband cannot recover from his wife any part of the damages recovered against him, and (2) the fact that he has no right to restrain by injunction the threatened commission of a tort by his wife. If, in these two respects, the law were altered much of the hardship of the present position *quoad* the husband would be removed.

But Mr. Justice McCardie in *Gottliffe v. Edelston* does not confine his criticisms of the law of husband and wife to the point mentioned, and he draws attention to several other anomalies in the legal results which follow from marriage at the present day. The other "curious phenomena of the law" which the learned Judge criticised are:

(1) A husband may be liable for what are called "necessaries" for his wife even though his wife's income largely exceeds his own and even though she refuses to pay a penny towards the expenses of the joint home.

(2) A wife has the widest powers of action for the protection and security of her separate property. For this purpose she may sue either in contract or in tort. She may bring every class of action against him. But a husband cannot sue his wife for a tort in any circumstances whatsoever.

(3) If a husband wrongfully converts to his own use the goods of his wife she may bring an ordinary action against him for public trial in the Courts. But if a wife wrongfully converts to her own use the goods of her husband, the only remedy of the husband, so far as he has any remedy at all, is to apply to the Court under the special provisions of S. 17 of the Married Women's Property Act, 1882 (S. 23 of our Act of 1908).

(4) Though the wife can sue the husband for antenuptial debts, yet the husband has no right whatsoever to sue the wife for debts that she owed to him before marriage. Moreover, he cannot, apparently, set-off such debts against her claims.

These matters of injustice are due, no doubt, to the fact, as the learned Judge pointed out, that the various changes made from time to time in the law in favour of married women have not been accompanied by such contemporaneous adjustments as were needed to secure a proper and adequate code for the regulation of rights between the spouses themselves. As Lord Sumner said in *Edwards v. Porter*, (1925) A.C. 1, at p. 38: "Generally speaking the Act of 1883 was a Married Women's Property Act, not a Married Man's Relief Act."

Mr. Justice McCardie thus concludes what will probably come to be regarded as a classic judgment:

> "I have referred to many decisions. I have, for the purposes of the case, read many more. I have considered with care the intricate provisions of the Married Women's Property Act, 1882. At every point of research, on every aspect of the case, I find nothing but confusion, obscurity, and inconsistency. I find privileges given to a wife which are wholly denied to a husband, and I find that on the husband there has fallen one injustice after another. I hope that the day is not far distant when the vital and far-reaching relationship of husband and wife will receive the attention of Parliament. When that day comes I trust the present features of injustice will be removed, that the existing obscurities will be made clear, and that the great institution of marriage will gain a new dignity and a new strength through a wise and beneficent amendment of the law."

It may perhaps be said that some of the injustices and inconsistencies to which Mr. Justice McCardie draws attention are unimportant in that they relate to matters of only occasional occurrence; but that is no adequate reason for postponing reform. It may, on the other hand, be said that the learned Judge has understated rather than overstated the case, for he refers only to anomalies *quoad* the husband. In some respects—take, for instance, the right to bring an action for loss of consortium—a wife's rights in law are, without reason, inferior to those of her husband. From the aspect, not of the husband alone, but of both of the spouses, the whole branch of the law certainly requires a comprehensive overhaul.

Court of Appeal.

Herdman, J.
Reed, J.
Adams, J.
Blair, J.

July 10; 23, 1930.
Wellington.

BAILEY v. VILE.

Easement—Surface Water—Land Transfer Act—Registration—Obligation of Lower Land to Receive Water Flowing Naturally From Higher Land Adjoining Even Though Such Water Confined to Drains in Course of Natural User of Higher Land—Obligation a Natural Easement Binding on Successive Owners of Lower Land—Registration of Natural Servitude Not Necessary Under Land Transfer Act.

Appeal on law and fact from a judgment of Ostler, J., in an action in which the appellant, the owner of Lot 62, Ohakea Settlement, claimed an injunction restraining the respondents A. C. Vile, owner of Lot 56, and his mother Mrs. Vile, the owner of Lot 58, from proceeding with certain drainage operations and claimed damages for the loss sustained by the appellant from such operations. The appellant alleged that in or about May, 1926, the respondents by a cut through an embankment led the water from certain ponds on Mrs. Vile's property into a ditch running along the boundary dividing the appellant's property from that of the male respondent. He further alleged that the respondents by deepening and enlarging the ditch brought such water to a point on the boundary between Sections 56 and 62 and that by cutting through the bank of the ditch at a low point in the ditch and digging a large drain surplus water was caused to flood and damage the appellant's property. The natural fall of the land was from the respondents' properties towards the south-west corner of the appellant's property. The respondents denied the allegations of the appellant and pleaded that all they had done was to clear certain old drains which had existed for some 40 years with the assent of the appellant and his predecessors in title. Section 62 (appellant's section) was brought under the Land Transfer Act in April, 1881, the title antevesting to January, 1875. The owner was then one Hirst. That land was part of a large block and the whole block was sold by Hirst to one James Bull in August, 1893. Sections 56 and 58 respectively, belonging to Mr. and Mrs. Vile, were purchased by the said James Bull prior to 1st August, 1893. The land of which those two sections formed part was brought under the Land Transfer Act in 1893, the certificate of title benig issued to James Bull. In 1900, Bull transferred all such land to the Crown, and together with other lands it was subdivided for sale, and a subdivisional plan prepared. Sections 56, 58 and 62 were leased in perpetuity to one Goodrick, one Wilks, and the appellant respectively. The respondents subsequently acquired the leases in perpetuity of Sections 56 and 58. All parties to the present proceedings subsequently acquired the freehold. When the land was disposed of by the Crown a booklet detailing the particulars and terms and conditions was published by the Lands Department, and that booklet was made an exhibit in the case. Section 56 (Vile's section) was described as partly fenced by ditch, bank, and gorse fences. Section 58 (Mrs. Vile's section) was described as fenced on three sides with ditch, bank, and gorse fences. Section 62 was described as nearly all fenced with ditch-and-bank and wire-and-gorse fences. By clause 24 of the conditions each lessee was required "at all times during the said term to keep open all creeks drains ditches and water-courses upon the land." The respondents claimed that the alleged draining of the ponds consisted of no more than cleaning the place which constituted the natural outlet of those ponds, and they denied any cutting down of the bank of the old ditch, alleging that the place where the alleged cutting down took place was and always had been the lowest place constituting a natural outlet for the water. Ostler, J., who tried the case, and moreover had the advantage of a view of the property, accepted the evidence of the respondents and their witnesses on that point. The learned trial Judge also found that the flooding of the appellant's land which took place in 1926 was due not to the operations of the respondents but to unpredecented floods which reached the appellant's property from another direction. The appeal was from that decision.

Cooper for appellant.
Gray, K.C. and **Graham** for respondents.

BLAIR, J., delivering the judgment of the Court, said that counsel for the appellant admitted that he could not succeed in any attempt to upset the trial Judge's findings of fact, and it followed that the appeal must fail on the facts. As, however, an injunction was asked for to prevent the respondents bringing water on to the appellant's property and as the point was raised and argued as to the respective rights and duties of adjoining owners of property with respect to surface waters flowing from one property to another, and their respective rights as to repair of drains dealing with such waters, it was necessary to touch upon that aspect of the case. It was not disputed by the respondents that they had ploughed and cultivated their respective properties according to the ordinary practice of farmers, nor was it disputed that they had cleaned out old drains. The judgment of Ostler, J., in addition to disposing of the case on the facts, dealt with the case from the point of view that the properties in question at the time when they were respectively acquired by the parties to the present proceedings had, as he put it, each been impressed with a system of draining which rendered the appellant's section liable to take part of the drainage from the ponds on Section 58 (Mrs. Vile's section). The Judge held that the appellant's section had become servient to Mrs. Vile's section by reason of an easement or quasi-easement appurtenant to Mrs. Vile's section, and he applied the equitable principle explained in **Allen v. Taylor,** 16 Ch. D. 355. It was not disputed that when those properties all belonged to one owner the present system of disposing of surface waters was in existence. There was between Sections 62 and 56 a boundary drain and that drain was of mutual benefit to the two owners of 62 and 56. Indeed the appellant himself did not seek to disturb the existing arrangements. His claim was that the respondents had altered the old subsisting arrangements by deepening drains and leading additional water into them. The whole of those lands while belonging to one owner, and while by him impressed with their present system of drainage were under the Land Transfer Act. Those lands were subdivided and sold and at the time of sale were described as being drained as they were at present drained. But no specific easement was at the time of the subdivisional sale recorded on the respective titles to the subdivided properties. If the question between the parties were as to the right of one owner to interfere with drains bringing on to appellant's lands other than natural waters, which drains were subsisting at the date of subdivision, the question would arise as to the effect of the Land Transfer Act owing to the absence of any mention of those drains on the titles. But as only natural waters were brought on to the appellant's property that question did not arise in the present proceedings. It was not, therefore, necessary to decide it.

The question in the present case was as to the extent of liability of the appellant's lands to take the natural water from the respondents' properties, notwithstanding that such natural waters had been more or less confined into drains and notwithstanding that no easement was registered on the title. As already pointed out the natural fall of the land was from the respondent's properties towards the appellant's. There was thus created by nature itself a servitude whereby the lower lying property was required to take the water flowing naturally from the higher to the lower land. It had never been questioned that an owner of land had to take it with all its natural burdens. That liability had to some extent been defined. The necessity for that definition arose from what was called the natural use of the land. The law on that subject had been definitely settled by the Privy Council in **Gibbons v. Lenfestey,** 84 L.J.P.C. 158. The following extract from the judgment precisely met the present case: "The law may be stated thus: when two contiguous fields, one of which stands upon higher ground than the other, belong to different proprietors, nature itself may be said to contribute a servitude on the inferior tenement, by which it is obliged to receive the water which falls from the superior. If the water which would otherwise fall from the higher ground without hurting the inferior tenement should be collected in one body by the owner of the superior in the natural use of his property for draining or otherwise improving it, the owner of the inferior is, without the positive constitution of any servitude, bound to receive that body of water on his property . . . The right however of superior proprietor is not quite absolute. The limit cannot be defined by definition, but each case must depend on its own circumstances. It would not for instance be within his right to introduce water which was foreign to the land—for example by procuring a pipe supply or draining another watershed." **Gibbons v. Lenfestey** dealt with property in the island of Guernsey, where the law did not allow the creation of a servitude or easement, except by express grant which must be registered to affect subsequent owners. In that respect the position was similar to that in New Zealand in the case of easements created since the Land Transfer Act, 1885, came into force and not registered. The facts were that the

drainage of high land had for many years been collected into a drain which discharged on to a lower property. The lower proprietor blocked the outlet alleging the want in the superior proprietor of a registered grant, and the Guernsey Courts decided that the want of registration was fatal to the claims of the superior proprietor. The Judicial Committee pointed out that although the Romans designated the right of a superior proprietor to discharge natural water on to lower land as a servitude, they explained the distinction by dividing servitude into three classes—natural, legal, and conventional—and that the right in question in the case belonged to the first class. The Privy Council decided that a natural servitude was not an ordinary servitude to which the Guernsey law requiring registration applied. Their Honours thought that equally true so far as regards the necessity for registration in the case of natural servitudes affecting land in New Zealand under the Land Transfer system.

Appeal dismissed.

Solicitors for appellant: **Cooper, Rapley and Rutherfurd,** Palmerston North.

Solicitors for respondent: **Graham and Reed,** Feilding.

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

July 15, 1930.
Wellington.

ATTORNEY-GENERAL (EX RELATIONE GOULD) v. CHRISTCHURCH CITY CORPORATION.

Practice—Appeal to Court of Appeal—Special Leave to Appeal—Judgment of Supreme Court Restraining Erection by Corporation of Buildings on Public Reserve and Compelling Removal of Existing Buildings—Matter One of Public Right *Affecting All Citizens of Large City*—No Private Rights Involved—Relator Not Personally Interested Except as to Costs—Delay Explained and Not Prejudicial—Exceptional Case—Special Leave Granted on Terms as to Costs and as to Prompt Prosecution of Appeal.

Application for special leave to appeal to the Court of Appeal from the decision of Herdman, J., reported 5 N.Z.L.J. 162, where the facts are stated.

O'Shea in support of motion.
Gresson and **Wanklyn** to oppose.

MYERS, C.J., delivering the judgment of the Court, said that the Court had power to give special leave and in exercising its judicial discretion was bound to give the special leave if justice required that that leave should be given: **In re Manchester Economic Building Society,** 24 Ch. D. 488, 497; **In re J. Wigfull and Sons Ltd. Trade-Marks,** (1919) 1 Ch. 52; **West v. Dillicar,** (1921) N.Z.L.R. 617. If in the present case the plaintiff had been a private individual and the subject matter of the action had been private property or private rights, it was quite plain that an application for special leave to appeal after so great a lapse of time could not have been listened to. In the special circumstances of the case, however, His Honour had come to the conclusion, though not without a good deal of hesitation, that leave ought to be granted, but only upon special terms. The grounds upon which that conclusion was based were: (1) The matter involved in the litigation was one of public rights affecting every citizen of Christchurch. In **Waimate County Council v. McLean,** 6 G.L.R. 35, it was held that where the matter for determination was one of public importance and there were merits in the reasons for not commencing the appeal within time the Court of Appeal would grant special leave to appeal. The present case involved something more than a matter of public importance such as was in question in that case because as His Honour had said it affected every citizen in Christchurch. Very much the same principle applied in the present case as was stated by Williams, J., in **Solicitor-General v. Bishop of Wellington,** 19 N.Z.L.R. 665, at p. 669. (2) The sole personal interest of the relator in the present case was one of costs, and he could not very well complain if the indulgence asked for was granted to the defendant, provided that the grant of the indulgence was accompanied by a condition which would fully protect him so far as his personal interest was concerned. (3) If the injunction and mandatory order granted by the Supreme Court were carried into effect a very great deal of expense would have to be incurred in demolishing the existing structures and in the purchase or acquisition of land and the erection of a new corresponding structure thereon. That expense would have to be borne by the public, and seeing that no private rights were involved His Honour thought that the case might be treated as an exceptional one. (4) A great deal of the time that had elapsed since judgment was entered had been spent in conferences held by the defendant, not, it was true, with the relator and his committee, but with other public bodies, in a genuine endeavour to make arrangements which, while the judgment would have been complied with, would have been reasonably satisfactory to the citizens of Christchurch. Those conferences unfortunately had failed. It was true that the relator and his committee had nothing to do with those conferences, but that was for the very reason that they had no personal interest in the subject-matter of the litigation and it was therefore not a question of making arrangements with them but with other public bodies. (5) The state of things which had been ordered by the judgment to be altered had existed for some three or four decades, and nobody would be prejudiced in consequence of the granting of special leave to appeal. As His Honour had already said the case would have been a very different one if any private rights or interests were involved in the litigation.

Leave to appeal would be granted, subject to the following conditions: (1) The defendant corporation must, whatever might be the result of the appeal, pay the full costs of the plaintiff as between solicitor and client in both the Supreme Court and the Court of Appeal; (2) An undertaking by the defendant in that behalf must be embodied in the order; (3) The order must be sealed and taken out within fourteen days from the date of the present judgment; (4) The appeal must be proceeded with and brought to argument at the next sittings of the Court of Appeal. In saying that an order should be made in the present case His Honour felt that he was not departing from the principles that had been laid down in the cases cited. His Honour regarded the case as an extreme one and its circumstances as most unusual and peculiar.

Special leave to appeal granted.

Solicitors for corporation: **Izard and Loughnan,** Christchurch.
Solicitors for relator: **Lane, Neave and Wanklyn,** Christchurch.

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

June 25; July 18, 1930.
Wellington.

McLAUGHLAN v. MARLBOROUGH COUNTY.

Rating—Valuation of Land—Adoption of Rating on Unimproved Value in Lieu of Rating on Annual Value—Preparation of New Valuation Roll Unnecessary—Rates Properly Levied on Existing Roll—Injunction Claimed Restraining Demand and Collection of Rate—Notice of Action Unnecessary—Rating Act, 1925, Ss. 6, 7, 47—Valuation of Land Act, 1925, Ss. 2, 38.

Action under Rule 466, commenced without a writ, for an injunction to restrain the defendant County from demanding, suing for, or collecting, a rate struck in August, 1929. An order was made by Reed, J., removing the action into the Court of Appeal.

Prior to 1925 the system of rating in operation in the County was on the annual value. On 28th February, 1925, there was carried in the manner prescribed by statute a proposal that the system of rating on the unimproved value be adopted in the County. Such proposal was declared to be carried in the notices required by the statute and, by S. 43 of the Rating Act, 1925, all rates made or levied by the Council from and after 31st March, 1925, were required to be made and levied on the unimproved value. The valuation roll used by the defendant since the proposal was carried was the roll supplied by the Valuer-General some years prior to the carrying of the proposal, corrected each year in accordance with S. 39 (c) of the Valuation of Land Act, 1925. Such roll was made by the Valuer-General and supplied to the County pursuant to the provisions of the Valuation of Land Act, 1908, then in force. No "revision" of the valuation roll had since been made. No valuation roll had been supplied by the Valuer-General since the carrying of the proposal. In each year since the proposal was carried rates had been struck by the County Council on the unimproved value of the lands in the County in accordance

with the valuation roll supplied by the Valuer-General prior to 1925. In each year up to 1929 the defendant had paid the amount levied upon him. On 9th August, 1929, rates were again struck in the same manner on the unimproved value of the lands as shown on the roll referred to. It was those rates that the defendant had refused to pay, and the validity of which he challenged.

The plaintiff had not given one month's notice in writing of his intention to commence an action.

McNab for plaintiff.

McCallum and **McCormick** for defendant.

MYERS, C.J., said that as a preliminary point the defendant relied upon S. 14 (1) of the Counties Amendment Act, 1927. It was admitted that no notice as mentioned in that subsection was given by the plaintiff; and it was therefore urged on behalf of the defendant that the action could not be allowed to proceed. With that contention His Honour was entirely unable to agree. The authorities on the point were collected and carefully considered by Reed, J., in **Broad v. County of Tauranga,** (1928) N.Z.L.R. 702, and His Honour was in complete agreement with that learned Judge in the view that the section had no application to an action or proceeding of the present kind. Mr. McCallum also relied upon S. 66 of the Rating Act, 1908; but the answer to his contention was that the present case was not one of an action by the County to recover a rate and that the section did not apply: **Hendrey v. Hutt County Council,** 3 N.Z.L.R. (C.A.) 254, 260; **Broad v. County of Tauranga** (*cit. sup.*).

As to the principal question arising, namely the validity of the rates levied, His Honour said that in a somewhat similar case quite recently decided—**Taylor v. Mt. Albert Borough Council,** (1930) N.Z.L.R. 30—Blair, J., had to consider the same point as arose in the present case. In that case the learned Judge held that by reason of S. 47 (1) of the Rating Act, 1925, it became obligatory upon the local authority to obtain a new valuation roll from the Valuer-General after the determination of the ratepayers to adopt rating on the unimproved value, and that until such roll had been received the local authority could not proceed to levy rates under the new system. His Honour, therefore, held that the local authority, which had levied the rate under the new system before it had obtained the new roll, must be restrained by injunction from demanding and collecting the rate. In order that the defendant might succeed in the present action it must be shown that **Taylor's case** was wrongly decided.

His Honour read S. 47 of the Rating Act, 1925, and said that the prototype of that enactment was first found in S. 12 of the Rating on Unimproved Value Act, 1896. There were, however, certain features which His Honour thought either escaped notice or were insufficiently considered in **Taylor's case** and which indeed were either barely or not at all referred to by counsel in argument in that case. One of those features was that prior to the Act of 1896 the system of rating on the unimproved value did not exist in New Zealand. It was first introduced by that Act. Previously the only system in vogue were those of rating either on the capital value or on the annual value. By S. 12 of the Act of 1896 it was required that as soon as conveniently might be after the adopting proposal had been carried in any district, i.e., the proposal to substitute rating on the unimproved value in lieu of rating on the annual value or the capital value as the case might be—a valuation roll of the rateable property in the district should for the purposes of rating on the unimproved value be prepared by the local authority, and that the roll and all notices of assessment, instead of setting forth the capital value, should set forth the gross value, the value of improvements, and the unimproved value, of all rateable property in the district. It was to be noted that under S. 12 the duty of the preparation of the roll was upon the local authority and not, as at present, upon the Valuer-General. It was plain that under the Rating on Unimproved Value Act, 1896, it would have been impossible for the local authority to strike a rate under the new system of routine on unimproved value unless and until S. 12 had been complied with, and what was in effect a new roll prepared containing the new and necessary particulars of the amount of the unimproved value. It was also necessary to give the ratepayer the right to object to the valuation of his improvements or to the unimproved value of his land as assessed on the valuation roll because those particulars were new, and consequently he had never had the right to object to them before. By the Government Valuation of Land Act, 1896, passed two months after the Rating on Unimproved Value Act, the duty of the preparation of the valuation rolls was cast upon the Valuer-General and the District Valuers, but a consideration of that Act was not necessary for the purposes of the present case, though in all probability, had the adopting proposal been carried at any time after the passing of the Government Valuation of Land Act, 1896, the position would have been precisely the same as it was under the present legislation.

By reason of the combined effect of the Rating Act, 1925, and the Valuation of Land Act, 1925, and of the Acts which those two Acts repealed and reproduced, the position was entirely different from what it was immediately after the passing of the Rating on Unimproved Value Act, 1896. True, where a local authority under the Rating Act, 1925, rated on the annual value system, although a valuation roll had been supplied by the Valuer-General, such valuation roll was not used for the purposes of rating. There was used instead the valuation list prepared under the special part of the Rating Act commencing with S. 7. Turning to the Valuation of Land Act, 1925, S. 7 provided that a separate valuation roll should be prepared for each district. Such roll was required to set forth in respect of each separate property certain particulars, including the name of the owner of the land, the value of improvements, the unimproved value of the land, and its capital value. "District" was defined in S. 2 as meaning the district over which the jurisdiction of a local authority to levy rates extended. So that a district valuation roll must be prepared under S. 7 for a district even though there was in force in that district the system of rating on the annual value. S. 38 (1) provided that in the case of each district the district valuation roll, so long as it continued in force, should be the roll from which the valuation roll of every local authority rating on the capital or unimproved value should be framed. It was true that until 1925 the defendant County did not rate on the capital or the unimproved value but nevertheless the provisions of the Valuation of Land Act applied to all districts, and in fact the district valuation roll was prepared for the Marlborough County as required by the Act and was supplied to the County Council.

S. 6 (1) of the Rating Act, 1925, read as follows: "Where the system of rating on the capital value or on the unimproved value is in force, the valuation roll from time to time supplied by the Valuer-General under the Valuation of Land Act, 1925, shall be the valuation roll for the district. Provided that nothing in this Act shall be held to be binding on the Valuer-General in so far as it limits the date for transmitting the roll to the local authority." The position, therefore, was that in 1925, when it was decided in the Marlborough County to adopt the system of rating on the unimproved value, there was a district valuation roll in existence which had been supplied by the Valuer-General under the Valuation of Land Act. In His Honour's opinion, therefore, S. 6 became at once applicable. That section was in His Honour's view a general enactment which applied to all districts where the system of rating on the capital value or the unimproved value was for the time being or from time to time in force. S. 47 (1) did not say that a *new* valuation roll was to be made after the proposal was carried. It simply said that a valuation roll should be prepared and supplied as provided by S. 6. The Valuer-General therefore, in effect, said to the County Council: "I have already performed in advance my duty under S. 47 by preparing, and supplying you with, a valuation roll. If you wish me strictly to comply with S. 47 I will do so by giving you a copy of that which I have already supplied to you, but that is all that I can do." In truth, though the prototype of S. 47 (1) was essential in 1896 when the system of rating on unimproved value was first introduced, it was quite superfluous under present day conditions and legislation. It was difficult to understand how it had been allowed to remain except through mere oversight on the part of the draftsman. Nevertheless the section was there, and its effect had to be considered—not, however, alone as would have been the case in 1896—but in conjunction with the provisions of S. 6 and generally with the provisions of the Rating Act, 1925, and the Valuation of Land Act, 1925. Any duty that S. 47 imposed was upon the Valuer-General, not upon the local authority. That duty was to prepare and supply a valuation roll as provided by S. 6 and to do that as soon as conveniently might be. But in His Honour's opinion, as the Valuer-General had already supplied a proper valuation roll his duty must be regarded as having been performed in advance, and S. 47 had been substantially complied with. Even if that were not so, His Honour thought that the County Council would under S. 6 be entitled to act upon the roll previously supplied pending the performance of the Valuer-General's duty under S. 47.

Subsection (2) of S. 47, like subsection (1), though it was necessary in 1896, had become superfluous. It might be said that it would still operate if a valuation roll were revised, but it was unnecessary even then because the rights of ratepayers were fully safeguarded under the Valuation of Land Act. For the reasons stated His Honour was unable to agree with the

decision in **Taylor v. Mt. Albert Borough Council** (*cit. sup.*). In His Honour's view the present claim failed, and the County Council was entitled to judgment.

HERDMAN and REED, JJ., delivered separate judgments concurring.

ADAMS, J., concurred in the judgments of Myers, C.J., and Reed, J.

OSTLER, J., dissented.

Solicitor for Plaintiffs: **A. A. McNab,** *Blenheim.*
Solicitors for defendant: **McCallum and Coy.,** Blenheim.

Supreme Court.

Myers, C.J.
Reed, J.
Blair, J.

July 18; August 6, 1930.
Wellington.

CLARKE v. ELLERMAN, BUCKNALL & CO. LTD. AND OTHERS.

Practice—Discovery—Right to as Between Co-Defendants—Action Against Shipowners and Stevedores Claiming Damages for Injuries Received During Unloading of Cargo—Question Arising Whether Shipowners or Stevedores Responsible for Use of Unsuitable Gear—Question In Issue Between Co-defendants Whether Gear Supplied by Shipowner for Purpose for which Used by Stevedores—Stevedores Entitled to Discovery Against Shipowners—"Opposite Party"—No General Rule That Discovery will be Ordered as Between Co-defendants—Code of Civil Procedure, Rule 161.

Motion to review and rescind an order made in Chambers by Reed, J., (reported *ante* p. 181) that the defendants Ellerman Bucknall & Co. Ltd. and the Federal Steam Navigation Co. Ltd. make discovery to the N.Z. Shipping Co. Ltd., a co-defendant in the action.

Watson and **Shorland** in support.
C. A. L. Treadwell and **James** to oppose.

MYERS, C.J., said that he had had the opportunity of reading the judgment about to be delivered by Reed, J. His Honour entirely agreed with it and had nothing to add.

REED, J., said that it was not disputed that the decision in **Shaw v. Smith,** 18 Q.B.D. 193, was applicable to the interpretation of R. 161 of the Code, but it was contended that the facts in the present case did not bring it within that decision. **Shaw v. Smith** was generally cited as establishing the principle that discovery would not be ordered as between two parties who were not adverse parties on the record unless, to use the phrase of Lord Esher, M.R., in that case, there was some "right to be adjusted in the action as between them." Lindley, L.J. put it thus: "there being rights to be adjusted between them to which such discovery . . . is material," and added "It cannot exist, I think, apart from any community of interest or any question of rights to be adjusted between the parties"; and Lopes, L.J.: "Parties between whom some question was in conflict in the action." In **Birchall v. Birch, Crisp and Co.,** (1913) 2 Ch. 375, Cozens-Hardy, M.R., expressed a preference for the phrase used by Lord Esher, and, in the case before him, applied the test of whether a decision in the case would render *res judicata* any rights one defendant might have against the other. His Honour thought the inference from what he was reported to have said was that, if such were the case, an order for discovery would be made. Kennedy, L.J., said: "I read the words 'to adjust the rights in the action' to mean rights as to which when the case is tried there will be a judicial decision between these parties." Swinfen Eady, L.J., specifically accepted the test applied by Lord Esher but, in a dissenting judgment, disagreed with the results of its application to the circumstances of the case, holding that if the plaintiff succeeded there would be a final adjudication and final adjustment of the rights between the parties, and he thought discovery should be ordered. His Honour thought that the following remarks of that learned Judge were pertinent to a consideration of the question: "Now it does not depend upon whether every question raised by the pleadings can be finally determined in the action, but whether there are rights to be adjusted between the parties; and if there are rights to be adjusted between co-defendants, then, in my opinion, the right to discovery is afforded, because it would be unfair to give relief or finally to determine the position of one defendant as against another without affording him the benefit of discovery."

In the present case the action was by an injured workman against three defendants claiming damages for injuries suffered through the breaking of the gear used in lifting a heavy weight—an "International Harvester," weighing 2 tons 2 cwt.—from the hold of a ship. The statement of claim alleged: "8. That it was the duty of the said defendants to provide plant and appliances reasonably fit for the purpose of the work of discharging cargo, and the plaintiff assumed, and was entitled to assume, that the plant and appliances were in good order, but the said defendants failed to discharge their said duty in that the said hook was unfit for the purpose for which it was used, and in consequence of such negligence the plaintiff was injured as aforesaid and accordingly he claims the damages hereinafter mentioned. 10. That if it should be shown that the said defendants, Ellerman, Bucknall and Company, Limited, and the Federal Steam Navigation Company Limited were not negligent, then the said accident was due to negligence on the part of the said defendant, the New Zealand Shipping Company Limited, in that the said hook was attached to an eye-bolt at the top of the samson post as aforesaid for the purpose of raising boxes of tobacco only, and it was neither agreed nor intended that the said International Harvester should be raised save by the ordinary gear with which the said steamboat was provided." The first-named defendants pleaded that the ship was being discharged by the defendant the New Zealand Shipping Co. as independent contractors having full and exclusive control of the work of unloading the said ship, and, "5. That in discharging the said International Harvester weighing 2 tons 2 cwt. . . . the New Zealand Shipping Company Limited by its agents and workmen failed to use the gear provided for lifting cargo of such weight and negligently used discharging gear that the said New Zealand Shipping Company Limited caused to be rigged for the purpose of discharging light cargo. 6. That the defendants provided plant and appliances reasonably fit for the purpose of discharging cargo from the said No. 3 hatch and, if the plaintiff was injured as alleged, the plaintiff was injured in consequence of the negligence of the employees of the New Zealand Shipping Company Limited and not in consequence of any negligence of the defendants." The defendant, the New Zealand Shipping Company Limited pleaded in effect: (1) that it used the gear as supplied by the ship; (2) that it had no knowledge that the gear which broke was intended only for the purpose of raising light cargo; (3) that it had no knowledge that there was other gear available for the lifting of heavy cargo. If the Court should hold that the accident was due to the gear being defective by reason of the hook being too light a second issue fell to be decided on the pleadings, that was to say: which defendant was responsible for the use of the defective gear? The fact that the New Zealand Shipping Co. was the actual user would not determine the rights as between that company and the other defendants for there was an implied warranty by the shipowner that the gear supplied to the stevedore was effective for the purpose for which it was required: **Mowbray v. Merryweather,** (1895) 2 Q.B. 640.

The pleadings in the present case specifically raised the question whether or not the gear that broke was supplied by the shipowner for the purpose of raising the exceptionally heavy harvester machine. That issue would be required to be decided by the Court, and would be a final decision, determining relative rights of the New Zealand Shipping Co. and the other defendants. It was to that issue that the discovery was directed. His Honour thought that it came within the principles of the cases cited as being a right to be adjusted in the action between them. Certainly, in the words of Lopes, L.J., the defendants were "parties between whom some question is in conflict in the action." Again, the decision would render the question, in dispute between the defendants, *res judicata,* or to use the words of Kennedy, L.J., "there will be a judicial decision between these parties." Finally, as said by Swinfen Eady, L.J., "it would be unfair to give relief or finally determine the position of one defendant as against (the others) without affording him the benefit of discovery." His Honour thought the motion should be dismissed and the order should stand.

It by no means followed from the present decision that discovery might be ordered as a general rule as between two defendants. All that the judgment did was to apply well-estab-

lished principles to the circumstances of the present case and to hold that, in those circumstances, discovery might be ordered.

BLAIR, J., concurred.

Motion dismissed.

Solicitors for N.Z. Shipping Co. Ltd.: **Treadwell and Sons,** Wellington.

Solicitors for other defendants: **Chapman, Tripp, Cooke and Watson,** Wellington.

Myers, C.J. July 21; 25, 1930. Auckland.

LAING v. KERR.

Sale of Goods—Sale by Description—"Springing Heifers"—Cattle Sold on Behalf of Dairy Farmer at Auction as "Springing Heifers"—Cattle Dying on Day After Sale of Arsenic Poisoning Through Compulsory Dipping—Parties Aware of Dipping But Not of Condition of Cattle—Cattle Satisfying Description at Time of Sale—No Implied Warranty of Fitness—Buyer Not Relying on Seller's Judgment—Supply of "Springing Heifers" Not in Course of Seller's Business—No Implied Warranty of Merchantable Quality—Seller Not in Circumstances a Dealer in "Springing Heifers"—Statement at Time of Sale That Cattle Came from Good Stock and that Same Class of Cattle Being Milked and Doing Well Not Amounting to Express Warranty of Fitness.

Appeal on point of law only from the decision of the Magistrate's Court at Dargaville. The appellant was a dairy farmer, as were also the respondents. The respondents did not breed dairy cattle for sale as part of their ordinary business, though occasionally they had surplus cattle which they disposed of. It was unusual, however, for a dairy farmer to sell springing heifers. On 19th September, 1928, the respondents took a number of springing heifers to Arapohue and instructed the N.Z. Loan and Mercantile Agency Co. Ltd. to offer them for sale by public auction at its monthly stock sale to be held on that date. Before the respondents placed the heifers in the saleyards they took them over to the Association's dip at Arapohue for the purpose of dipping them. That was done because the heifers came from a tick-infested area, and the regulations made under the Stock Act required them to be dipped. The person in charge of the dip sprayed the heifers with cattle dip instead of running them through the concrete bath filled with dip: that was necessary because the heifers were near to calving. Arsenic was a usual and essential ingredient of a cattle dip. The appellant who was desirous of procuring a few heifers near to calving, for the purpose of increasing his dairy herd, indicated his requirements to a representative of the N.Z. Loan and Mercantile Agency Co. Ltd. and the purpose of his requirements. Having ascertained that a number of springing heifers were to be offered for sale he personally attended the sale. When the auctioneer reached the respondent's heifers he addressed one of the respondents thus: "What have you to say about these cattle?" And one of the respondents replied: "They come from good stock. I am milking the same class of cattle and they are doing well." The auctioneer then proceeded to sell the heifers which he described as "springing heifers," and three of them were bought by the appellant. Before the heifers were put up for sale the appellant examined them and used his own judgment to determine the likely dates on which they would calve. The appellant took delivery of the heifers; while being driven they showed signs of sickness, and on the next morning they all died. The cause of death was arsenic poisoning, the arsenic in the cattle-dip which was sprayed on the heifers having penetrated the skin and become absorbed in the blood stream. No fraud was suggested on the part of the respondents, nor was it suggested that they had any reason to believe that the heifers were affected by arsenic poisoning. The appellant knew that all the cattle were dipped before they were offered for sale in the district, and the Magistrate found that the appellant knew or ought to have known that arsenic poisoning was a possible result from dipping in the ordinarily used dip. The appellant sued the respondents in the Magistrate's Court for the amount that he had paid for the heifers, but the Magistrate decided in favour of the respondents. It was from that decision that the appeal was made.

D. L. Ross for appellant.

A. M. Goulding for respondent.

MYERS, C.J., said that it was first of all contended that the words spoken at the sale by one of the respondents amounted to an express warranty of the fitness of the cattle. That contention the Magistrate rejected, and His Honour agreed with him. All that was said by the respondent who was questioned by the auctioneer was that the cattle came from good stock; that he was milking the same class of cattle; and that they were doing very well. His Honour certainly could not spell out of those statements such a warranty as would be necessary in order to enable the appellant to succeed on that ground.

The next point arose under S. 15 of the Sale of Goods Act, 1908. It was contended on behalf of the respondents that the sale was not a sale of goods by description within S. 15, but that it was merely a sale of specific chattels. It was contended on the other hand on behalf of the appellant that the sale was a sale of goods by description and that therefore S. 15 applied. Each counsel endeavoured to apply in his own favour various passages from the classic judgment of Salmond, J., in **Taylor v. Combined Buyers,** (1924) N.Z.L.R. 627. The question as argued really was whether the word "springing" was an expression of representation or of description. In His Honour's view, for the reason that would presently appear, it was immaterial which was the true position in the present case, although His Honour was disposed to think that the case was one of the sale not merely of specific goods but of specific goods by description: **Boys v. Rice,** 27 N.Z.L.R. 1038, 1048: **Taylor v. Combined Buyers Ltd.** (*cit. sup.*). The Magistrate had held that a springing heifer was a heifer which was within six weeks of calving. His Honour interpreted the term "springing" therefore as indicating no more than the stage of gestation that the heifers had reached. As already stated, the appellant examined the heifers before they were put up for sale and used his own judgment to determine the likely dates on which they would calve. It seemed to His Honour that the heifers were "springing" heifers within the definition stated by the Magistrate as His Honour understood it. If that were so, then, whether the expression "springing" was one of representation or of description, the result was the same. If representation, the representation was true. If description, then the heifers corresponded with the description and satisfied the requirements of S. 15 of the Act. The short answer to the appellant's contention was, His Honour thought, that the heifers were at the time of the sale "springing" heifers. The fact that they were, unknown to either party, suffering from a complaint or condition that might cause their death either next day or a month afterwards did not seem to His Honour to affect the correctness of the description.

The case, however, did not end there because the appellant sought to invoke the provisions of paragraphs (a) and (b) of S. 16 of the Sale of Goods Act. As to paragraph (a) he could only succeed if it appeared (1) that expressly or by implication he made known to the respondents the particular purpose for which the heifers were required so as to show that he relied on their skill or judgment; and (2), that the heifers were goods of a description which it was in the course of the business of the respondents to supply. If those requirements were satisfied then there would be an implied condition that the heifers were reasonably fit for the purpose. So far as paragraph (b) was concerned it would require to be shown that the respondents dealt in goods of the description purchased by the appellant in which case there would be an implied condition that the goods were of merchantable quality. In His Honour's opinion the appellant could not successfully invoke either paragraph of the section. In the first place, even though he told the representative of the N.Z. Loan and Mercantile Agency Co. Ltd. the particular purpose for which he required the heifers, it was plain, in His Honour's opinion, that he did not in any way rely on the skill or judgment of the respondents or of the auctioneer. In the second place the supply of springing heifers was not in the course of the respondents' business, nor had it been shown that they dealt in goods of that description, within the meaning of the section. **Knight v. Mason,** 15 G.L.R. 300, 303, and **Dell v. Quilty,** (1924) N.Z.L.R. 1270, 1277, were authorities for that view. His Honour could not think that an isolated sale of a few springing heifers by a dairy farmer constituted him a "dealer," or involved the conclusion that the springing heifers were "goods of a description which it was in the course of his business to supply." The case of **Jackson v. Townsend,** 33 N.Z.L.R. 242, cited on behalf of the appellant was not an authority to the contrary. The Magistrate, it was true, decided there that the principle of S. 16 (a) of the Sale of Goods Act applied, but that was not the ground upon which the case was decided in the Supreme Court.

Appeal dismissed.

Solicitors for appellant: **Webb, Ross and Astley,** Dargaville.

Solicitors for respondents: **Hayes, Mitchell and Goulding,** Dargaville.

Myers, C.J. June 16; August 18, 1930.
Wellington.

BRANDON v. PHELPS AND HILL & JACKSON LTD.

Wages Protection and Contractors' Liens—Claim of Lien by Subcontractor Against Owner—Date of Completion of Work—Contract Found on Facts to have been Completed Before Subcontract—Requirement of Contract as to Certificate of Completion Waived by Parties—Notice of Claim Given Within Thirty Days of Completion of Subcontract but not within Thirty-one Days of Completion of Contract—Subcontractor Entitled to Charge Only in Respect of Moneys Actually in Hands of Owner—Wages Protection and Contractors' Liens Act, 1908, Ss. 55, 56, 59—Wages Protection and Contractors Liens Amendment Act, 1914, S. 4.

Appeal from the judgment of the Magistrate's Court at Wellington holding that certain work done by both respondents in November and December, 1929, respectively was "work" within the meaning of Ss. 55 and 56 of the Wages Protection and Contractors' Liens Act, 1908, and, in effect, that the work to be done by the subcontractors under their respective sub-contracts with the contractor Robinson was not completed until in the one case 18th November, 1929, and in the other 6th December, 1929. The Magistrate also found that the work which the contractor had contracted with the employer to perform had not been completed even on 27th February, 1930, when the present actions were commenced. The Magistrate held that the respondents were entitled to recover from the owner the amounts due to them by the contractor for the work done.

Hislop and **Brandon** for appellant.
Boys for respondent, Phelps.
Cunningham for respondent, Hill & Jackson Ltd.

MYERS, C.J., said that it did not follow from the facts as found by the learned Magistrate that the respondents were entitled as against the appellant to the relief that the Magistrate had given. That question depended not upon Ss. 55 and 56 of the Wages Protection and Contractors Liens Act, 1908, but upon subsection (2) of S. 59 and the further subsection (3) which was added by the Amendment Act of 1914. After quoting those provisions, His Honour said that he thought it was plain that subsection (3) which was passed subsequently to, and probably consequent upon, the decision in **Walker v. Roberts,** 10 G.L.R. 629, was enacted for the protection of the employer or contractor, as the case might be, the object being to enable the date to be definitely fixed from which the period of thirty-one days mentioned in subsection (2) was to run. It was to be noted that subsection (3) defined the work "for the purposes of this section." So far as the employer was concerned subsections (2) and (3) of S. 59 referred, His Honour thought, to the whole work that the contractor contracted with the employer to perform. It might well be, therefore, that a subcontractor might be entitled to claim under Ss. 55 and 56 which dealt with "the completion of the work" that the sub-contractor contracted with the contractor to perform, though by reason of subsections (2) and (3) of S. 59 which dealt with a different state of things the position might be that the employer had not still in hand one-fourth part of the money payable under the contract to the contractor. But in such case the claim would not be enforceable as against the employer to a greater extent than the amount still held by him, assuming, of course, that the payments made by him in excess of three-fourths were justifiable under the section. The question arose as to when, as between the employer and the contractor, the work under the contract was completed for the purposes of subsection (2) of S. 59. That question had to be determined in the light of subsection (3).

The appellant claimed that the work was completed on 15th August, 1929, on which date he took possession of the house; and he claimed that the maintenance period commenced to run as from that date. The learned Magistrate decided against him on that point and came to the conclusion that the maintenance period had not commenced to run even on the 27th February, 1930, the date on which he gave his judgment. The reason upon which he based that conclusion was that it was a condition precedent to the maintenance period commencing to run that the appellant should in accordance with the specifications have certified under his hand that the work had been finally and satisfactorily completed. It is quite true that the specifications contemplated such a certificate, but His Honour could see no reason why that certificate should not have been waived by both parties, in which case the date of completion would be a question of fact to be decided, like any other fact, on the evidence. The fact that possession of the house was given and taken on the 15th August was certainly not conclusive on that point, but it was a fact that had to be taken into consideration. The specifications provided that the contractor should maintain the works for a period of three calendar months from and after the date when the proprietor or his appointee should have certified under his hand that the works had been finally and satisfactorily completed. The contractor had received up to (and including) 15th August progress payments amounting to 70 per cent. of the total contract price—that the contractor was, under the contract, entitled to only on the view that the work was completed, subject only to maintenance. After that he received on 19th August an "extraordinary payment" of £200, and on 4th September the sum of £150, "being part payment of contract." On 20th September, 1929 (just over 31 days from 15th August), the contractor received from the appellant the sum of £45 which was acknowledged as "being final payment with the exception of maintenance payment." On 2nd October he received a further payment of £20 which he acknowledged as being part of maintenance money on contract for house." On 31st October the contractor wrote to the appellant: "As the final payment of maintenance money on your house Tinakori Road will shortly be due I should be pleased if you will write me fully of what will require to be done for you to give me a final clearance." All those facts were consistent, and it seemed to His Honour consistent only, with the view that the maintenance period was running and was indeed drawing to a close. If it commenced, as the appellant said it did, on 15th August, then it would expire on 15th November. It was clear, His Honour thought, that the parties were agreed that the maintenance period commenced nearly three months prior to the date of the letter of 31st October, and, in those circumstances, His Honour thought that the date given by the appellant namely 15th August must be taken as the commencement of the period. That connoted that as between the employer and the contractor the work contracted for was completed, subject only to maintenance and the remedying of defects. The facts showed, His Honour thought, that the requirement in the specifications as to the certificate was waived.

The appellant still had a sum of about £40 in hand and as the Magistrate had found on the facts that the respondents were entitled to claim under Ss. 55 and 56, they were entitled to a charge upon that money, and they were entitled to have it divided between them proportionately to the respective amounts of their claims. As against the contractor personally they were of course entitled to judgment for the full amount.

Appeal allowed.

Solicitors for appellant: **Brandon, Ward and Hislop,** Wellington.
Solicitor for respondent, Phelps: **R. H. Boys,** Wellington.
Solicitors for respondent, Hill & Jackson Ltd.: **Luke, Cunningham and Clere,** Wellington.

Reed, J. July 28, 1930.
Wellington.

RE UEROA NGAREWA.

Bankruptcy—Creditors—Rights of Minority—Application by Minority for Leave to Use Name of Official Assignee in Action to Determine Ownership of Property—Offer of Compromise by Bankrupt Rejected by Minority and Withdrawn by Bankrupt—Minority Entitled to Use of Name of Official Assignee in Giving Indemnity as to Costs and Entitled to Full Conduct of Proceedings—Official Assignee Not Entitled to Nominate Solicitor to Have Conduct of Proceedings—Liberty Reserved to Official Assignee to Apply to Court to Authorise Acceptance of Offer of Compromise if Renewed—Form of Order—Bankruptcy Act, 1908, Ss. 9, 66.

Motion for an order that, upon receiving a sufficient indemnity against costs, the Deputy Official Assignee at Hawera do permit his official name to be used by Mr. L. A. Taylor, solicitor, in litigation to be brought to determine whether a sum of £300,

represented by a cheque for that amount, held by Mr. T. E. Roberts, of Patea, solicitor for the bankrupt, was or was not an asset in the said estate. It appeared that lands the property of the bankrupt had been recently sold, and the sum of £300, the consideration money, was in the hands of a Maori Land Board who had given a cheque for the same to Mr. Roberts as solicitor for the bankrupt but which cheque was being held unpresented. It was a question of law whether that sum, being the proceeds of either West Coast Settlement Lands or Native Land, was property of the bankrupt passing to the official assignee under S. 61 of the Bankruptcy Act, 1908. The bankrupt offered a compromise of £100 upon condition that his discharge would not be opposed, and the Deputy Official Assignee was disposed to accept that. Mr. Taylor, who was a creditor in the estate, refused to be a party to the compromise and opposed the discharge. Counsel for the bankrupt then withdrew his offer of £100, and the application for discharge was adjourned. Mr. Taylor was prepared to find the necessary indemnity.

Spratt in support of motion.

Matthews to oppose.

REED, J., said that the principal contention of the Deputy Official Assignee was that he should have the right to nominate a solicitor to have the conduct of the proceedings. That, of course, was quite an untenable position. An Official Assignee had a right to appoint his own solicitor to act in any bankrupt estate which came into his hands, but in the present case, as the other creditors in the estate were not prepared to give an indemnity, the minority creditors, who were prepared to do so, had the full conduct of the proceedings including the appointment of their own solicitor: **Ex parte Pooley, re Meiklam,** 10 L.T.N.S. 102. That the Court had jurisdiction to make the order asked for His Honour did not doubt. Ss. 9 and 66 of the Bankruptcy Act, 1908, were very wide. In England, for more than a hundred years, the jurisdiction to make such an order had been exercised without any specific statutory authority. Even in the case of the bankrupt himself "where he has a clear interest, and the assignees refuse, the Lord Chancellor upon petition would compel them upon an offer of indemnity to let him use their names: **Spragg v. Binkes,** 5 Ves. 583, 587; **Benfield v. Solomon,** 9 Ves. 77, 84. Creditors had been permitted to do so on the same terms: **Ex parte Ryland,** 2 D. & C. 392; **Ex parte Pooley, re Meiklam** (*cit. sup.*). In **Ex parte Kearsley, in re Genese,** 18 Q.B.D. 1, it was held that when a minority of the creditors of a bankrupt were dissatisfied with the refusal of the trustee to take proceedings to recover property alleged to be part of the bankrupt's estate, and desired to institute such proceedings themselves, they must, in the first instance, apply to the trustee for leave to use his name, and offer him a proper indemnity. If he refused, they were entitled to apply to the Court for leave to use the name of the trustee on giving him an indemnity against costs. The only question that troubled His Honour was as to whether or not it would be better in the interests of the estate to accept the compromise offered, if a renewal of such offer could be obtained, than to embark on possibly unsuccessful litigation. The acceptance of the compromise would give the creditors between six and seven shillings in the pound whilst the proceeds of a successful action would pay the debts in full. His Honour had not considered the probabilities of success, and His Honour thought, therefore, that the order should be made subject to the right of the Deputy Official Assignee to come to the Court in such form of proceedings as he might be advised, to obtain an order declaring whether or not, assuming it to be still open, the compromise should be accepted. If the Court should decide that, in the interests of the estate, the compromise should be accepted, the present order permitting the proceedings would, of course, be vacated. The order would, therefore, be in the following terms: "It is ordered that the said L. A. Taylor be at liberty to use the official name of the Deputy Official Assignee in Bankruptcy in an action or application to the Court to be brought or made to determine whether a sum of £300 represented by a cheque for that amount held by Mr. T. E. Roberts, of Patea, as Solicitor for the bankrupt is or is not an asset in the said estate and that the said Deputy Official Assignee of the said estate be and he is hereby directed to permit his official name to be so used subject to and upon the following conditions, that is to say, that the said L. A. Taylor shall before commencing any action or making any application as aforesaid give to the said Deputy Official Assignee a proper indemnity to the satisfaction of the Registrar against costs of the said action or application and shall also deposit with the said Deputy Official Assignee the sum of £50 as security for the payment of the said costs and further that the said Deputy Official Assignee shall be at liberty notwithstanding the commencement or making of any such action or application to enter into any compromise arrangement or settlement of or in connection with the said claim subject to such consent of the creditors as may be requisite under the provisions of the Bankruptcy Act, 1908 and to the consent of the Honourable Court upon due notice to the said L. A. Taylor, with full power and authority to the said Court if approving of the said compromise to make such order in the premises as to the said Court may seem meet. Liberty is reserved to either party to apply."

Order accordingly.

Solicitors for Official Assignee: **O'Dea and Bayley,** Hawera. **L. A. Taylor** in person.

Reed, J. August 4; 5, 1930. Wellington.

PAGE v. BATTEN.

Partnership—Practice—Arbitration—Action Claiming Dissolution of Partnership Stayed on Ground That Partnership Articles Contained Arbitration Clause Covering Claim—Discretion of Court as to Stay—Matter Not Withdrawn from Arbitrator Solely on Ground that Business Would Suffer Loss from Delay Involved in Arbitration Proceedings.

Motion by defendant to stay an action by the plaintiffs against the defendant claiming a dissolution of partnership upon the ground that the articles of partnership contained an arbitration clause covering the subjectmatter of such claim. It was admitted that a decree of dissolution of partnership was within the power of the arbitrator under those articles, but it was claimed that as the business was being carried on at a loss, and the delay entailed by arbitration proceedings would increase that loss, the Court's discretion should be exercised by refusing a stay and allowing the case to go to trial.

Buxton for plaintiffs.

Johnston, K.C., and **Fitzherbert** for defendant.

REED, J., said that it was denied by the plaintiffs that the business was being carried on at a loss, but His Honour did not think that it was necessary to decide that question, for, if it were so, it was not sufficient to justify the withdrawal of a case from the tribunal selected by the parties. The only authority to which His Honour had been referred which indicated that the Court's discretion might be exercised on those grounds was the case of **Joplin v. Postlethwaite,** 61 L.T. 629. The circumstances there were very special: not only was the capital apparently all lost but there was no money to go on paying wages and the factory was closed down and the business at a standstill. The Court refused to stay the proceedings but adjourned the action until the trial of the action. In **Russell on Arbitration,** 11th Edn. 105, it was said that that case could not be regarded as any general authority for the proposition that questions affecting the dissolution of a partnership should not be left to the tribunal selected by the parties." Although the Court had complete discretion in the matter it was a judicial discretion and must be exercised judicially. In actions for dissolution of partnership where the articles contained a general arbitration clause the cases in which the Court had refused to allow the arbitration to proceed would appear to be confined to cases where charges of fraud, or dishonesty, or want of good faith, were made, *bona fide*, by one partner against the other, or where questions of law were likely to arise which were more fit for the Court than a lay tribunal, or where the attempted reference was made vexatiously: 22 **Halsbury** 90. There was nothing of that in the present case and there would, therefore, be an order for stay of proceedings.

Proceedings stayed.

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

Solicitors for defendant: **O. and R. Beere and Co.,** Wellington.

"It is a sort of superstition that counsel sometimes are overpaid. The real cause of the vast expense of some trials is that the inordinate length to which they are spun out."

—Mr. R. S. Deans, LL.B., M.P.

Audience in the Supreme Court.

The Right of Audience on Behalf of Bodies Corporate.

(CONTRIBUTED)

A side-issue arising on the hearing of *Wanganui Harbour Board v. Attorney-General*, 6 N.Z.L.J. 182, (1930) G.L.R. 282, is likely to be of more immediate concern to the profession than the main question decided. The proceeding was an originating summons, presumably under the Declaratory Judgments Act, 1908, for interpretation of the Harbours Act, 1923. According to the words of the judgment: "The Attorney-General leaves the case for argument to the interested parties. The various local bodies concerned are represented with the exception of the Waimarino County Council, which, however, has been duly served and has written stating that they do not propose to be represented." From both reports it seems that counsel appeared for the plaintiff Board, other Counsel for the Wanganui City Council and the Waitotara County Council, and a further statement in each report reads: "The County Clerk of the Wanganui County Council in person." Apart from the small point that the "parties" could not in strictness have been the respective councils, but must have been the corporations which acted through them, it is remarkable to find a local authority permitted to appear in the Supreme Court by one of its employees, and a considered judgment expressly to recognise such representation.

Hitherto it has always been understood that while a litigant could enjoy right of audience in the superior Court in person, if he did not choose to exercise that right, or if, for lack of individuality, a litigant being a corporation could not exercise it, the only kind of agent through whom the right of audience could be exercised was a barrister of the Court. There seems to be no New Zealand authority on the point, but in England, in *Re London County Council and London Tramways Co.*, (1897) 13 Times L.R. 254, an officer of a company (its chairman of directors) was expressly refused audience on a notice of motion in the Queen's Bench Division, the Court itself taking the objection, and Mr. Justice Cave saying in reply to the statement that the company was willing that he should appear, and that he was a servant of the company, that if that were sufficient a doorkeeper might be authorised to appear; a litigant was allowed to appear in person, but a company must appear by attorney who could instruct counsel on their (sc. its) behalf. And so with a managing director in *Scriven v. Jescott (Leeds) Limited*, (1908) 126 L.T. Jo. 100, "it being one of the infirmities of a company that it could only appear by attorney." The ambiguous use in the cases of the term "appearance," which sometimes refers to entering an appearance, or pleading (in the sense of lodging pleadings), and sometimes refers to appearing *coram judice* in enjoyment of the right of audience does not, it is thought, obscure the principle laid down.

The rule was enunciated by Lord Tenterden as far back as 1831, in *Collier v. Hicks*, 2 B. & Ad. 663: "The superior Courts do not allow every person to interfere in their proceedings as an advocate, but confine that privilege to gentlemen admitted to the Bar." In another old case, *Cobbett v. Hudson*, (1850) 15 Q.B. 988, Lord Campbell said: "The first day I sat here, Mrs. Cobbett desired to make a motion on behalf of her husband for a *habeas corpus*; and I heard her without the slightest scruple, as my illustrious predecessor Hale heard the wife of John Bunyan. On each of those occasions the liberty of the subject was in question . . . But a proceeding at *nisi prius* is very different . . . . There would at least be opportunity of applying to a gentleman of the Bar, and this would be much better than that the wife of a party should come into Court to wrangle at *nisi prius*, and engage in scenes inconsistent with the character of her sex." (The last phrase, indeed, must nowadays be taken for obiter of merely antiquarian interest).

Solicitors in England are by statute given right of audience in the High Court in its bankruptcy jurisdiction—as in the Supreme Court with us—but a solicitor attempting to address the Court of Appeal there on an appeal in bankruptcy was forbidden to do so: *Re Ellerton*, (1887) 3 T.L.R. 324. The statute was allowed to have no force beyond its express provision. Again, where a statute expressly authorised an assessment committee to "appear" by their clerk on an appeal to Quarter Sessions against a valuation list, nevertheless he could not personally be heard at such Quarter Sessions so much as to consent to an alteration in the list: *R. v. London JJ.*, (1896) 1 Q.B. 659. And the point was stressed that "it was for the benefit of all parties that consents should not be given by persons who merely come to represent parties, but should be given formally in Court by counsel who are responsible to the Court for the consents they give."

Somewhat parallel is the position as regards "appearance" in the sense of attending to lodge pleadings, which can be done only by a litigant in person or by his solicitor. And in England it has been ruled that even a person so closely identified with the nominal party as a liquidator with his company is not allowed to enter an appearance in the name of the company: Ann. Pr. (1930) p. 122; Yrly. Pr. (1930) p. 113.

As far back as Coke, (Co. Litt., 66 b), we read: "A corporation aggregate of many cannot appeare in person; for albeit the bodies naturall, whereupon the bodie politique consists, may be seene, yet the bodie politique or corporate cannot be seene, nor doe any act but by atturney." The twofold justification for restricting rights of audience can be gathered from the judgment of Lord Justice Cairns in *In re Broadhouse*, 36 L.J. Bkcy. 29, to be "that the Court should have before it one of its own officers, who, on the one hand, is under an obligation to the Court, because he is the officer of the Court, and, on the other hand, is under an obligation, because he is in privity with the suitor, and is the actual person who represents the suitor."

Perhaps the wisest view to take of the *Wanganui case* is to add it to the list of things that have happened *per incuriam*.

"I am sorry to say that witnesses do lie, no matter how eminent they are or how respectable they are. They come into the witness-box and tell shocking lies. Don't be frightened if you are driven to the conclusion that witnesses are lying."

—MR. JUSTICE HORRIDGE (summing up to a jury).

The Money-Lenders Act.

An Anomalous Position.

By T. J. FLEMING.

The Money-lenders Act, 1908, like the English Act on which it is modelled, was no doubt intended to protect the public from unscrupulous usurers. The result, in the writer's opinion, has been an entire failure to prevent usury; on the other hand the Act, like a sword of Damocles, is suspended over the heads of thousands of innocent persons, who never dream that they are money-lenders within the meaning of the Statute.

The *New Zealand Law Journal* has already exerted a beneficent influence on the legislation of the country, and it is in the hope that this obsolete and dangerous Act may be immediately amended, that the writer is bringing the matter before the readers of this Journal.

The newspapers of the Dominion daily contain bold and lengthy advertisements by money-lenders inviting the public to "have done with their financial worries," to "laugh at their financial worries," and to call on the advertisers and obtain loans at moderate rates of interest. These "moderate rates" are seldom less than 40 per cent. and often a great deal more. If the poor victims fail to keep up the extortionate payments, bailiffs are introduced (some of them of a most objectionable type) and further heavy charges imposed. The worst that can happen to the money-lender is that his transactions are liable to be re-opened by the Court, and a fair rate of interest fixed. In practice this is practically never done, as no one wishes the world to know not only that he is short of cash, but short of brains. Besides, the disclosure would in many cases lead to the victim losing his situation or credit.

But what of the retired farmer or business-man, whose only remaining business in life is to invest the capital, small or large, which he has acquired by a lifetime of toil? In the course of a year or two, he may have made sufficient loans to establish a "system," or "course of business," of money-lending. He holds himself out to solicitors and financial agents as a person having money to lend. He may occasionally insert a small advertisement in a newspaper, inquiring for securities. Good easy man, he plays bowls, and perhaps attends the races, in the comfortable assurance that his money is well invested in sound securities, and his income assured. He would be offended if anyone should advise him to register as a money-lender. But if he should come within the dangerously wide sweep of Section 2 of the Act, then all his treasured securities would not be worth a penny stamp. In law he would be a pauper. He would be utterly dependent upon the honesty of his mortgagors.

This statement may appear to some to be ill-founded. It certainly could never have been the intention of the Legislature to bring about so palpable an injustice. But can the Courts disregard the clear wording of the Act? Section 2 of the Act is as follows: "In this Act, if not inconsistent with the context, "money-lender" includes every person, whether an individual, a firm, a society or a corporate body, whose business is that of money-lending, *or who advertises or announces himself or holds himself out in any way as carrying on that business.*" The exceptions include: "(d) Any person *bona fide* carrying on the business of banking or insurance, or any business in the course of which, and for the purposes whereof, he lends money at a rate of interest (including any payment or deduction by way of premium, fine or foregift) not exceeding 10 per cent. per annum."

Reading the Act, and such cases as are reported, at their face value, it is hard to resist the conclusion that any person who systematically lends money is a money-lender, and should register; otherwise all his transactions are illegal and void; unless he can show that the loans were made (1) in the course of some other business which he is *bona fide* carrying on; (2) for the purpose of that business, and (3) at not exceeding 10 per cent. interest.

A solicitor, for example, it is submitted, might safely make loans for the purpose of bringing conveyancing work to his office, but if he should in any one case charge more than 10 per cent. interest, say on a short dated loan on personal security, he would run the risk or rendering all his loan transactions invalid.

Certainly the Courts have done some clever side-stepping lately, both in New Zealand and Australia. *Abigail's case* in Australia for instance, will be fresh in the memories of the profession. But there was no side-stepping on the part of the late Sir William Sim in the case of *Kerr v. Louisson*, (1928) N.Z.L.R. 154, nor in the English cases therein cited.

The English Money-lenders Act was amended in 1927 to prevent registered money-lenders from soliciting prospective borrowers either by letter or advertisement. But in New Zealand the money-lender's license enables him to entice the unwary of both sexes, with false and unscrupulous advertisements, without detriment to himself, whilst the ordinary investor of his own capital at reasonable rates of interest is placed in jeopardy.

Judges and Politics.

In the course of some congratulatory remarks upon the recent appointment of Lord Macmillan as a Lord of Appeal in Ordinary to fill the vacancy caused by the retirement of Lord Sumner, the Lord Chancellor, at the Lord Mayor's Banquet held in July last, made some timely comments about Judges being appointed by the Government to preside over Committees set up to enquire into and report upon this and that:

> "It is matter for congratulation that His Majesty has appointed Lord Macmillan to Lord Sumner's place. His presence will prove a great accession of strength to the judicial side of the House of Lords and Privy Council. It will necessitate, I am afraid, Lord Macmillan not accepting in the future chairmanships of Committees, over so many of which he has presided with such very general public satisfaction. It is to be hoped that the practice of appointing Judges to preside over Committees, and so to take them from the judicial work which the State looks to them to discharge, will not be resorted to except on very rare occasions. Although His Majesty's Judges never refuse to give their valuable help, such tasks place them in a difficult position and do not, in my view, contribute to a better discharge of their judicial duties."

New Mexican Penal Code.

Abolition of Trial by Jury.

The June number of *Pacific Affairs* contains an interesting article on "New Mexican Penal Principles," by Lic. Don Jose Almaraz, a specialist in penal law and author of the project of the New Mexican Penal Code. That Code takes into consideration in reference to mental disorders, toxicomania, intoxication, vagrancy, mendicancy, etc., the principle that prevention is more important than punishment and that it would be senseless to wait until a person who is a menace to society has committed a crime to apply the remedy. Under the present Code any individual found in a condition dangerous to society must be submitted to a treatment which will fit him to re-enter the group in which he lives. A body of specialists (Supreme Council of Social Protection and Prevention), of which Don Jose Almaraz is president, has been appointed to deal with everything related to the prevention of crime in general.

The new penal law might be designated as a law of social protection and prevention and aims at re-utilisation, if possible, of the criminal or socially dangerous person, otherwise at segregation. Fines are expressed not in currency but in terms of so many days' salary. The death penalty has been abolished as an experiment. By means of studies of penitentiary anthropology there will be a division of the penal establishments and the delinquents will be classified into five principal categories. For the so-called born criminal there will be imprisonment or relegation to isolated places; alcoholics and drug addicts, the insane and the abnormal, will be treated in an asylum for the criminally insane; those subject to violent passions will be confined in a prison cell; the habitual criminal will be given correctional education in a reform school, and the occasional offender will be treated by a procedure of correctional instruction in a workhouse. In all prisons and places designed for delinquents, there will be a laboratory of penitentiary anthropology where the prisoner will be studied under the following aspects: (a) Morphological (constitution or type); (b) Physiological (temperament and prison diseases); (c) Psychological (character, with its sensory, affective, intellectual and volitional variants). These data will be used as the basis of a *moral diagnosis* of the prisoner, supplemented by a *correctional prognosis*. The object of all treatments will be to effect the adaptation of the prisoner to his own individual life and his re-adjustment to the life of the group.

Trial by jury was eliminated by the Commission which drew up the Code after taking into consideration, Don Jose Almaraz says, the following arguments:

"(1) Because it is not competent; the trial develops before it in a manner so deficient that the jurors never thoroughly absorb the facts necessary to pronounce a true verdict.

"(2) Because, in contrast to the judges, who are professional, the jurors have no reputation to preserve, no permanent functions, no specific capacity, no responsibility or fear of losing their positions; because their numbers are appointed at random, are generally of a low intellectual level, and because they operate outside of the law.

"(3) Because the most conclusive charges, the certified statements of the authorities, the most authentic testimony, the most undeniable facts, and everything representing conscientious instruction or investigation disappear in a second before a sudden impression, a feeling provoked in the consciousness of the jurors by a few rhetorical images and a few declamatory gestures; the trial is converted into a game of chance, into a judicial duel, into a spectacle in which the principal roles are played by the prosecution and the defence.

"(4) Because, with all the defects previously noted, the institution of the popular jury nullifies the benefits which are to be expected from the individual application of the penalties, and the latter system becomes impracticable.

"(5) Because the number of injustices committed by juries through their ignorance, their incapacity, their corruption, their bad faith and their impunity is notorious.

"In Mexico experience had demonstrated with a great accumulation of statistical data that the existence of the jury was incompatible with any legislation which tended to diminish crime; many confessed and convicted criminals, especially if they were young women, were absolved by the juries and re-entered the ranks of society. A short time after their release they were again apprehended by the police in open mi conduct. Public opinion has always condemned the existence of the popular jury as a penal institution deploring the unjust acquittals which are daily published in the press."

The Possibilities.

Lord Birkenhead's Repartee.

Sir John Simon, addressing the Hardwicke Society recently, tells a new one about Lord Birkenhead.

When at Wadham College, F. E. Smith appeared in the Police Court on the morning after a rag, charged with assaulting a policeman in the execution of that policeman's duty. F. E. denied the charge. The prosecuting solicitor led him to the point where he asked him in sonorous voice whether he suggested that the constable was guilty of wilful and corrupt perjury.

F. E.: No.

Solicitor: You have heard the constable swear, on oath, that you assaulted him.

F. E.: I heard him.

Solicitor: Then if he is not committing perjury, what other explanation is possible?

F. E.: There are at least five.

Solicitor: Would you mind telling the Court what they are?

F. E. (enumerating rapidly on his fingers): (1) He may commit perjury. (2) I may commit perjury. (3) He may be honestly mistaken. (4) I may be honestly mistaken. (5) The two statements, though apparently contradictory, may be capable of being reconciled.

Australian Notes.

WILFRED BLACKET, K.C.

R. v. Lynch, a case before the Court of Criminal Appeal at Sydney, was one in which the prisoner had been convicted of an offence against a girl of eleven years of age. According to the medical evidence she was mentally defective and the Chief Justice, presiding, found upon questioning her that she did not understand the nature of an oath and therefore did not allow her to be sworn, but admitted in evidence some statements made by her shortly after the occurrence. This ruling was supported by the Court of Appeal.

Burns v. McDonough was an application for removal of a license, and the question was whether an order in favour of the applicant could lawfully be made. The Liquor Act prohibits the grant of an order for removal "unless the premises to which it is desired to remove the license is situated within a radius of one mile from the licensed premises." In this instance the premises proposed to be erected were wholly within a mile radius if measured from the nearest point of the licensed premises, but were outside that radius if measured from the furthest point of those premises. The Licensing Court had allowed the removal, and its decision was appealed from to Judge Edwards at Quarter Sessions. He stated a case for the opinion of the Supreme Court, and it was held that the order was within the section. The grammar of the words cited did not assist the Court in construing the section.

Mr. Justice McArthur sitting in Probate at Melbourne granted leave to presume the death of Mrs. A.B. Ten years ago, she, a lady of sixty years of age, had suddenly disappeared. Exhaustive search had been made for her, but she had never been discovered, or seen by any of her friends. The rents of cottage property owned by her had not been collected for any part of that period. The day following the making of the order Mrs. A.B. came along to the Court to mention that her death was only a rumour. She said that when she disappeared she had merely gone to a convent where she had remained ever since. A nun who accompanied her to the Court was able to verify this statement, so the order will have to be revoked and her tenants will probably have to pay up some rent.

Lindfield v. Railway Commissioners, at Sydney Supreme Court, raised an interesting point under the Government Railways Acts. The plaintiff was graded as a temporary cleaner in the service, but he had qualified for the next grade, that of fireman, and was acting as fireman on a day when he received an injury which incapacitated him for some weeks. He claimed payment for this period as a fireman: the Department contended that he was only entitled to receive the pay of a temporary cleaner. The relevant words of the Act provide that when an officer is incapacitated for a time by injury sustained in the performance of his duty he shall during such time be paid at "the rate of salary that he was receiving at the date of the injury." The trial judge ruled that Lindfield could only claim payment during incapacity at the rate payable to him as a temporary cleaner, and this view was affirmed by the Full Court.

In *McCay v. McCay*, Divorce, N.S.W., the wife had obtained a divorce, with custody of the only child. Permanent alimony at the rate of £6 a week was allowed to her together with £1 a week for the maintenance of the child until he should attain the age of 16. The husband's income was then and now is about £35 per week, for he is very brilliant journalist. Recently the wife married again, her husband, who is engaged upon engineering work in Egypt, having a permanent position with an income of £600. Adam McCay thereupon applied to the Court for relief from, or variation of, the order. His Honour Mr. Justice Owen, after mentioning the large powers and discretion vested in the Court, said in effect that the mere fact that the wife had married again and was now in a good position was not the only matter to be considered. The exact point had not been raised in England upon any application to discharge or vary an order for alimony. His Honour ordered that there should be a suspension of the order for alimony of £6 a week to the wife so long as her husband occupied the same position and had the same income as at present, but he increased the sum allowed for the child's maintenance from £1 to £3 until the child attained the age of 18 or until further order.

In the five breadcarters' case, referred to *ante* p. 156, where it was contended on behalf of a union that the jurisdiction given to the Industrial Arbitration Court excluded jurisdiction of the Equity Court to restrain or deal with any wrongful proceedings by the officers of a Union. Long Innes, J., ruled that the jurisdiction of the Equity Court still continued. The decision will not be the subject of any appeal.

Section 14 of the South Australian Gaming and Lottery Amendment Act introduces what appears to me to be a novelty in criminal procedure. It provides: "If, after the hearing of any information for unlawful gaming, the evidence is such as raises in the mind of the magistrate a reasonable suspicion that such person (*sic*) is guilty, such evidence shall be deemed to be *prima facie* evidence that such person is guilty of such offence." One, W. J. Powell, was charged with an offence under the Act and upon the hearing the magistrate dismissed the information and stated that there was no reasonable suspicion of the guilt of the defendant. The police appealed to a Judge in Chambers, and as he upheld the magistrate, appealed from his decision to the Full Court, and an order was then made referring the case back to the magistrate. Now Powell has obtained special leave to appeal to the High Court. The pendency of proceedings prevents comment on these somewhat remarkable facts.

A novelty in prosecutions of a kind comparable with *Packham v. Court*, *ante* p. 223, is a case now pending in the Police Court, Sydney, against five defendants who are charged for that they on a certain date "at Wall-street, St. Peters, did wrongfully and without legal authority, watch a place where a number of persons were working, with a view to compelling such persons to abstain from doing certain acts which such persons had a legal right to do." Complaint is frequently made that criminal charges are expressed in absurdly technical phraseology, but this charge completely disarms any such criticism. One is tempted to wonder whether private detectives who in accordance with their advertised offer—"persons watched from 5/-"—follow one of the said persons "with a view to compelling him to abstain from living in peace and comfort," could not

also be prosecuted. Many years ago I advised an action against a private detective for acts done in the course of his employment, but as there had been a trespass there was a safe ground to go upon. The action was never tried, and this resulted from the fact that the defendant was—with exceedingly unpleasant and lengthy consequences to himself. I make a point of mentioning this matter for I think there is usually some public rejoicing when a private detective has to cease watching others because warders are watching him.

The Australian Glass Manufacturers Company has issued a writ for £100,000 damages for libel against "Smith's Weekly." The amount of the claim seems to furnish a precedent for I cannot remember anything beyond £10,000 for libel in earlier cases. In Brisbane recently, a plaintiff claimed £7,000. The jury found every question submitted to them in his favour, and awarded him £7,000.

A sorrowful interest is attached to the case of K. M. White, barrister, of New South Wales. When at Lismore Sessions in November last he gave a cheque to a local hotelkeeper and this was returned dishonoured. The matter was brought before the Supreme Court at Sydney and the barrister was censured for his default in the transaction and informed that "for a member of the Bar to be censured in open Court for conduct which amounted to inadequate standards of honour and propriety was a very serious thing." He was also severely censured for having accepted from a client money for the costs of an appeal, and for having failed to account for this money until pressed to do so. The Court censured him not only for his delay in accounting but also for having acted as a solicitor in the matter of the appeal, and ordered him to pay the costs of the Bar Council and the Law Society.

In *Land Development Co. v. Proven*, already noticed *ante* p. 155, the company appealed to the High Court against the decision of the Supreme Court that a contract for the sale of land made on a Sunday was illegal under 29 Car. II, ch. 7. The High Court in a unanimous judgment held that the exercise of the business of land-jobbing has no close resemblance to, or connection with, trading in goods. To come within the statute, the land agent's avocation must be *ejusdem generis* with one of the four specified callings (tradesman, artificer, workman, or labourer, or other person). The broker is not one of the four *genera* mentioned in the statute, and cannot be brought within its provisions unless under the words "other person." The appeal was therefore allowed. The promotion of the appeal seems not to be devoid of a pleasant flavour of philanthropy towards members of our profession for the company gave an undertaking that it would not enforce the contract, and also as a condition of the leave to appeal agreed to pay the defendant's costs in any event, and were accordingly ordered to do so, and restrained from setting off against these their costs of earlier proceedings.

The State of New South Wales some months ago leased the Rothbury mine in the Maitland District and worked it with free labour whereupon 5,000 or more unionists went to Rothbury "to get the scabs out of the mine." A force of eighty police prevented them from carrying out their intention, but certain of their number did acts of violence, and charges against eighteen of such persons were prosecuted in the local Police Court. There were separate charges against various of the defendants in respect of their own illegal acts, but the averment that they were present at "an unlawful assembly" was an ingredient of each charge. The Magistrate took the evidence to prove an unlawful assembly as against all the defendants, and then heard the evidence against each defendant. He then considered the cases separately, and adjudged the penalties against those whom he convicted. The Supreme Court granted a prohibition on the ground that the Magistrate erred in hearing all the cases together, but the High Court on appeal has reversed this decision and ordered that the convictions are to stand. Sir I. A. Isaacs, C.J., dissenting from his four colleagues, thought, however, that there was "no room for hesitation in holding" that the decision appealed from was correct.

Elected Judges.

"I wonder whether our Judges, wonderful as they indubitably are, would be any better if they were appointed in accordance with one or more of the eight principles recommended by Aristotle. His elective citizens, of course, had all, on his hypothesis, a sound legal education; and his four modes of electing judges from the whole people is not, therefore, feasible in our land at present. There remain, however, the modes of election from some by vote or from some by lot, and the mixture of the two. The "some" in our own case from whom election might be made by dice-throwing or lot is not feasible unless we assume that practising members of the Bar of x years standing and/or £y annual income in fees are a sufficient "some." But there remains the election by vote. The practising members of the annual Council of the Bar might vote for the man they considered best; the voting body might consist of elected representatives of barristers and solicitors. The result might be an even better judge than he who is chosen by the unaided election of the Lord Chancellor. On the other hand it might not."

—"Outlaw" in the "Law Journal."

Crown Procedure.

Yet another protest as to the existing Crown procedure appears in the latest annual report of the English Law Society: "The Council deem it unfortunate that once again they are compelled to record that their long-continued representations on this subject have not been regarded. In November last the Council were encouraged to hope that something was about to be done. The Solicitor-General stated in the House of Commons that a draft Bill was in an advanced state of preparation, and that the Lord Chancellor proposed to introduce it at a very early date. Time passed, however, and in March last in reply to a question on the same subject the Lord Chancellor stated that the time at the disposal of the House did not permit of the matter being dealt with."

Court of Arbitration.

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

Dunedin: 10th September, at 10 a.m.

Invercargill: 16th September, at 10 a.m.

Bench and Bar.

We regret to have to record the death of Mr. J. A. Flesher, O.B.E., of Christchurch.

Mr. Flesher was born at Christchurch in 1865, and was educated at Christ's College, where he held the Gould Scholarship. His legal training was received in the office of Messrs. Wilding and Lewis, and later on the staff of Messrs. Joynt and Acton-Adams. He was admitted as a solicitor in 1898, and as a barrister in the following year, and he then commenced practice in Christchurch on his own account. For twelve years Mr. Flesher was Secretary to the Canterbury District Law Society. From 1918 until his death he was solicitor to the Borough of New Brighton.

The late Mr. Flesher's record in municipal affairs in Christchurch has probably not been equalled in recent years. From 1893 till 1895 he held a seat on the Christchurch City Council as representing the Richmond Ward, and he was again elected to the Council in 1901, remaining a member until 1903. From 1906 till 1918, and again from 1921 until his death, he was a member of the Christchurch Tramway Board, being its Chairman from 1913 to 1916, and again in 1928-29. From 1911 to 1913 he was a member of the New Brighton Borough Council; he was Mayor of the Borough from 1915 to 1917. From 1917 to 1922 he was again a member of the Christchurch City Council, and he was elected Mayor of Christchurch in 1923, an office which he held until defeated by the Rev. J. K. Archer at the following election in 1925. He was elected again to the Council in 1928, being a member until his death. Mr. Flesher was a member also, at the time of his death, of the Waimakariri River Trust, and the Avon Licensing Committee, and he was also President of the Canterbury Progress League. He had been a member also of the Christchurch Domains Board, the Richmond Domain Board, and the Richmond School Committee. He was prominent also in Red Cross and St. John's Ambulance Association affairs; it was for his services in Red Cross matters that Mr. Flesher was invested with the Order of the British Empire. Mr. Flesher was prominently connected with the Methodist Church; he was three times a member of the General Conference and for over thirty years attended the New Zealand Conference. He was honorary legal adviser to the Church from 1912 until his death.

Mr. A. A. Finch, one of the oldest members of the profession at Dunedin, died on the 20th inst. Mr. Finch was born in Brixton, Surrey, in 1856, and came out to New Zealand with his parents on the ship "Mariner," in 1859. He was educated at the Otago Boys' High School and the Otago University, and subsequently served his articles under the late Mr. B. C. Haggitt, who was then Crown Solicitor. In 1883 he was admitted as a barrister and solicitor, and in the following year he joined the late Mr. Donald Reid, Junr., who was then practising under the name of Reid Bros., the name of the new firm being Messrs. Reid Bros and Finch. This partnership was dissolved in 1887 and for the rest of his life Mr. Finch practised on his own account.

Mr. Finch was keenly interested in athletic and musical matters. He was for some years president of the Otago Lawn Tennis Club, the Dunedin Cycling Club, and the Dunedin Sports Club; he was secretary of the Carisbrook Cricket Club for a lengthy period, and was for more than ten years treasurer of the Dunedin Orchestral Society. He took a prominent part in Anglican Church affairs: at the time of his death he was chancellor of the diocese, a member of the Diocesan Trust Board, and a member of the Standing Committee.

Mr. P. Levi, M.A., of the firm of Messrs. Levi, Jackson and Yaldwyn, Wellington, has been re-elected chairman of the Victoria University College Council. Mr. Levi was also elected to represent the Council on the Senate of the New Zealand University.

Mr. V. F. Coningham has commenced practice on his own account as a solicitor at Wellington.

Law Practitioners Amendment Bill.

Amendments in Committee.

We have already printed in this Journal (*ante* p. 189) the provisions of the Law Practitioners Amendment Bill recently introduced in the Legislative Council by the Attorney-General. Several amendments of importance appear in the Bill as reported from the Statutes Revision Committee of the Council.

In the first place, not perhaps unexpectedly, the Committee has struck out the whole of clause 5 which, it will be remembered, imposed restrictions on the rights of solicitors under twenty-five years of age as to engaging in private practice. Further, clause 6, authorising the Court to remove the name of a barrister or a solicitor from the rolls on his voluntary application, has also been struck out. This clause was, it seemed to us, a most desirable one from every point of view, and it is difficult to imagine why it has now disappeared.

One or two minor additions to the Bill have been made. A clause is added providing for the continuance in force of all practising certificates until January 31st, instead of January 10th as at present. S. 72 of the Act of 1908 is amended by omitting from paragraph (a) the words "and Southland."

Mr. Justice Kekewich.

Kekewich, J., knew much law, but his applications of it did not always commend themselves to all, and many of his judgments were reversed on appeal. "This, my lords," said counsel once, opening his case in the Court of Appeal, "is an appeal from a judgment of Mr. Justice Kekewich. But there are other reasons for saying that the judgment is wrong." On one occasion Kekewich, J., observed to counsel that if he (the Judge) were to do so-and-so as a trustee, he would be compelled to give judgment against himself. "But, of course, your Lordship would appeal," was the helpful reply of counsel. A brother Judge once described him as "quick, courteous, and wrong." Lord Justice Bower's reputed remark on another occasion was: "To have a judgment by my brother Kekewich in your favour is like putting to sea on a Friday—unfortunate, but not necessarily fatal."

Bills Before Parliament.

Coal Mines Amendment. (MR. H. E. HOLLAND). Wages owing to persons employed in or about any mine to be payable weekly, and, if majority so desire and request, payment to be made either at mine or at place not more than two miles distant therefrom: S. 74 of principal Act repealed.—Cl. 2. Every working-place where rock-drills used shall, if inspector directs, be furnished with adequate water-blast or other appliance for laying dust, smoke, or gases, and no person employed underground to be permitted to return to any end, rise, or other close place unless air reasonably free from dust, smoke, or noxious fumes.—Cl. 3. Compulsory fortnightly inspections by two representatives appointed by the miners employed in any mine, and such miners' inspectors to be paid by Mines Department: all other inspections pursuant to S. 130 of principal Act to be paid by miners as heretofore.—Cl. 4.

Crimes Amendment. (HON. SIR THOMAS SIDEY). If with respect to any person who after passing of Act is sentenced to imprisonment or reformative detention for any term not less than twelve months or to imprisonment and reformative detention for a total term of not less than twelve months, and who is not discharged before the expiration of his sentence or is not on probation at the date of such expiration, the Prison Board recommends to the Governor-General that he should, in his own interests, be placed under supervision in accordance with this section, Governor-General may direct that on the expiration of his sentence such person shall for a period of twelve months be under the supervision of a Probation Officer, or of a society or committee or person to be nominated in that behalf by Chief Probation Officer, subject to such conditions as Governor-General thinks fit to impose as to his subsequent good conduct or as to any other matters: person committing breach or non-observance of conditions so imposed guilty of offence punishable on summary conviction by fine of £20 or imprisonment for three months, and may be arrested without warrant by any constable: Governor-General may at any time order that person under supervision under this section shall cease to be under supervision.—Cl. 2. Probationary license issued under Act of 1910 to any person under sentence of imprisonment or reformative detention (not being habitual criminal or offender) may be for such term as Governor-General thinks fit, not exceeding a term due to expire within twelve months after expiration of sentence: S. 7 of Act of 1920 repealed.—Cl. 3. Person on probation or under supervision after expiration of sentence may apply to Prisons Board for discharge.—Cl. 4. Power to make regulations conferred on Governor-General in Council by S. 29 of Crimes Amendment Act, 1910, to include power to make all such regulations as are deemed necessary for effective administration of this Act.—Cl. 5.

Customs Acts Amendment. (HON. MR. FORBES). Part I: Divers amendments to existing customs duties. Part II: Duty on beer brewed in New Zealand. Part III: Duty on tobacco manufactured in New Zealand.

Finance. (HON. MR. FORBES). Part I: Stamp Duties. Increased rates of duty on conveyances.—Cl. 4. Conveyance duty payable on transfers of property by incorporated Departments of State.—Cl. 5. Imposing conveyance duty on transfers of certain classes of shares.—Cl. 6. Increased conveyance duty when instrument also liable to gift duty.—Cl. 7. Increased duty on conveyance where conveyance duty has been paid on agreement of sale.—Cl. 8. Increased duty on declarations of trust that are contemporaneous with conveyances.—Cl. 9. Increased duty on partitions of land.—Cl. 10. Increased duty on instruments executed under power of appointment.—Cl. 11. Increased duty on instruments of partnership.—Cl. 12. Increased duty on mortgages, and on discharges and variations of mortgages. Repeals.—Cl. 13. Mortgage duty payable on certain mortgages to Crown.—Cl. 14. Increased duty on leases and licenses.—Cl. 15. Increased rate of bank-note duty.—Cl. 16. Increased duty on certificates of incorporation of companies in certain cases. Repeal.—Cl. 17. Increased duty on deeds of assignment.—Cl. 18. Increased duty on deeds not otherwise charged.—Cl. 19. Receipts given by insurance companies to be dutiable.—Cl. 20. Increased annual license duties payable by companies.—Cl. 21. Annual license duty under Part X of principal Act to be payable by Government Life Insurance and State Fire Insurance Departments.—Cl. 22. Bills of exchange, promissory notes, and receipts by Government Life Insurance Commissioner or State Fire Insurance General Manager made dutiable under principal Act.—Cl. 23. Increased duty on guarantees.—Cl. 24. Increased rate of totalizator duty.—Cl. 25. Racing clubs entitled to deduct commission of 12½ per cent. of investments on totalizator. Consequential amendments of Gaming Act.—Cl. 26. Part II. Death Duties: Prescribing rates of estate duty where final balance exceeds £100,000.—Cl. 29. Reduction of exemption in respect of gift duty.—Cl. 30. Part III. Amusements Tax: Payment for reservation of place at entertainment to be included in price charged for admission for purposes of computing amusement-tax.—Cl. 32. Rates of amusements-tax. Repeals.—Cl. 33. Part IV. Main Highways: Repeals.—Cl. 35. Interest to be paid out of Main Highways Revenue Fund on capital moneys heretofore transferred from Public Works Fund.—Cl. 36. Subsidies to local authorities in respect of their general rates to be hereafter paid out of Main Highways Revenue Fund instead of Consolidated Fund.—Cl. 37. Apportionment of net revenues derived from Customs duty on motor-spirits.—Cl. 38. Provision for payment out of Main Highways Revenue Fund of moneys to be applied for construction or maintenance of roads that are not main highways.—Cl. 39. Part V. Cinematograph Films: Interpretation.—Cl. 41. Imposition of film-hire tax in respect of proceeds derived from renting sound-picture films.—Cl. 42. Persons liable to film-hire tax.—Cl. 43. Assessment of film-hire tax.—Cl. 44. Computation of net receipts for purposes of assessment of film-hire tax.—Cl. 45. Monthly returns of receipts to be made by licensed renters for purposes of this Part of Act.—Cl. 46. Dates of payment of film-hire tax.—Cl. 47. Powers of Commissioner of Taxes in respect of film-hire tax.—Cl. 48. Section 39 of principal Act (as to relief of exhibitors from contracts that do not make provision for quota requirements) amended.—Cl. 49. Regulations.—Cl. 50. Part VI. Miscellaneous: Prescribing amount of license fees payable under Share-brokers Act.—Cl. 51. Abolition of Land Assurance Fund Account and transfer of liabilities to the Consolidated Fund. Repeal and saving.—Cl. 52. Transfer to Consolidated Fund of interest earned by the investment of moneys received by Public Trustee as Custodian of Enemy Property.—Cl. 53.

Gaming Amendment. (MR. WILLIAMS). S. 28 of principal Act repealed: S. 29 of principal Act amended by adding thereto the words "unless such telegram is addressed to the secretary of the racing club under the control of which any race meeting is being held.—Cl. 2. S. 30 of principal Act amended by repealing subsections (1), (4) and (6).—Cl. 3.

Industrial Conciliation and Arbitration Amendment. (HON. MR. SMITH). Cl. 2 provides "(1) For the purposes of any award that may hereafter be made under the principal Act, the term 'industrial matters' shall include any matter that is not within the meaning of that term as defined in section two of the said Act, if the following conditions are complied with, but not otherwise: (a) If the parties to the dispute in relation to which the award is made expressly agree to regard such matters as an industrial matter; and (b) If the award recites that the parties have so agreed and that in the opinion of the Court the matter is relevant to the dispute in relation to which the award is made. (2) If the validity of any provisions contained in any award made before the passing of this Act is hereafter questioned on the ground that such provisions relate to matters that are not industrial matters within the meaning of the principal Act, the Court may then consider whether or not such matters are relevant to the dispute in relation to which the award was made, and the decision of the Court in such case shall have the same effect in relation to the validity of the award or of any of its provisions as if such decision had been given before the making of the award. In any such case all the parties to the award shall be deemed to have agreed to regard such matters as industrial matters, unless the disagreement of any party or parties has been recorded in the records of the Court."

Land and Income Tax Amendment. (HON. MR. FORBES). Ss. 2 and 3 of Act of 1930 (relating to imposition of special land-tax) repealed: repeal not to affect liability to pay such tax, or any penalty incurred, for year commencing on 1st April, 1929: any cases of hardship that may arise in respect of an assessment of special land-tax for year commencing on 1st April, 1929, made after 31st March, 1930, may be dealt with by Commissioner acting under authority of S. 169 of principal Act, but otherwise that section not to apply to special land-tax.—Cl. 2. S. 49 (4) of principal Act, as contained in S. 6 of Act of 1929, amended as from passing of latter Act by repealing paragraph (b): in case of a mortgage existing at commencement of year preceding year of assessment, if principal sum secured at noon on 31st March preceding year of assessment is greater than the principal sum secured at any other time during the year, the capital value of the mortgage to be average of principal sums secured at noon

on last day of each month of year preceding year of assessment: in any other case capital value to be principal sum secured at noon on 31st March preceding year of assessment.—Cl. 4 (1) and (2) provides: "(1) The assessable income of any person shall, for the purposes of the principal Act, be deemed to include: (a) All profits or gains derived by any taxpayer from the use or occupation of lands used for agricultural or pastoral purposes if the total unimproved value of all estates or interests in such lands used or occupied by the taxpayer at any one time during the income-year was not less than seven thousand five hundred pounds: (b) All profits or gains derived from the extraction, removal, or sale of minerals, timber, or flax, whether by the owner of the land or by any other person, reduced by an amount equal to the cost of the minerals, timber, or flax so extracted, removed, or sold by the taxpayer during the income year: (c) All profits or gains derived from the use or occupation of any Crown land or other land administered by a Land Board and held as a small grazing-run or for pastoral purposes, or derived from the use or occupation of any other lands reserved, set apart, or granted by the Crown as endowments and occupied for pastoral purposes: (d) All profits or gains derived from the business of dealing in live-stock, meat, butter, cheese, or wool, or in grain, fruit, or other crops, being the natural products of land, carried on by any person other than the owner of that land: Provided that when the taxpayer is the owner of other land, which, being used for the purposes of the said business, is not in itself sufficient for the full sustenance of such live-stock or production of such other products, the Commissioner shall (except in cases to which paragraph (a) of this subsection is applicable) assess for income-tax only the profits derived from dealing in so much of such live-stock or products as is in excess of the capacity of the said land fully to sustain or produce. (2) Except as is hereinbefore provided in this section, income derived by any person from his direct use or occupation of any land shall be exempt from taxation under the principal Act." By clause 4 (3) losses made before 31st March, 1928, by taxpayer to whom S. 11 (1) (a) of Act of 1929 applied in connection with use or occupation of land are not to be deducted from assessable income for year of assessment commencing on 1st April, 1929, or any subsequent year, nor are similar losses made before 31st March, 1929, by taxpayer to whom clause 4 (1) (a) of this Bill applies to be deducted from assessable income for year of assessment commencing on 1st April, 1930, or any subsequent year: by clause 4 (4), Ss. 11 and 12 of Act of 1929 are repealed. Pensions granted in respect of South African War exempt from taxation: S. 78 of principal Act amended.—Cl. 5. S. 80 of principal Act amended by inserting word "premises" before word "implements" wherever occurring in provisoes to par. (a) of subsection (1).—Cl. 6. S. 81 (3) of principal Act amended by adding proviso that no relief to be given in respect of a loss incurred in any business if, had any profits been derived therefrom in year in which loss incurred, such profits would not have been assessable income.—Cl. 7. Special exemption allowed in respect of income derived from use of land to be based on unimproved value: S. 83 of principal Act amended: S. 10 of Act of 1924 repealed.—Cl. 8. Special provision with respect to assessment of income tax of insurance companies: S. 95 of principal Act repealed.—Cl. 9.

Land and Income Tax Annual. (HON. MR. FORBES). Fixing rates of land-tax and income-tax for year commencing on 1st April, 1930.

Local and Private Bills.

Bay of Islands Harbour Amendment.

McLean Institute.

Napier Harbour Board Loans Enabling.

Otago Presbyterian Church Board of Property.

Wellington City and Suburban Water-Supply Amendment.

Rules and Regulations.

Board of Trade Act, 1919. Revocation of Board of Trade (Sugar) Regulations, 1921.—Gazette No. 58, 14th August, 1930.

Pharmacy Act, 1908. Regulations made by Pharmacy Board of New Zealand.—Gazette No. 58, 14th August, 1930.

Treaties of Peace Act, 1919. New Zealand Reparation Estates Amendment Order, 1930.—Gazette No. 58, 14th August, 1930.

Probation.

Nature of Cases in Which Granted During Year.

While it may well be that the mere name of an offence, e.g., theft, false pretences, forgery—is no guide at all, except perhaps where there is an epidemic of a particular offence, as to whether the case is one for probation, the following list, taken from the report recently submitted to Parliament by the Chief Probation Officer, of offences for which probation was granted during the year ended 31st December last is of interest.

Offence	Admitted to Probation	Deferred Sentence	Total
Theft	319	60	379
False pretences	61	26	87
Breaking, entering, and theft	22	4	26
Attempted suicide	3	18	21
Breach of probation	13	4	17
Obscene language	10	7	17
Unlawful conversion of vehicles	13	3	16
Vagrancy	11	5	16
Mischief and wilful damage	10	5	15
Receiving stolen property	12	2	14
Common assault	11	3	14
Drunk in charge of a vehicle	12	1	13
Forgery	11	..	11
Disorderly behaviour and resisting	9	..	9
Breach of Bankruptcy Act	6	3	9
Carnal knowledge	5	1	6
Offences under the Post and Telegraph Act	5	1	6
Unlawfully on premises	5	1	6
Indecent assault	4	2	6
Obscene exposure	2	..	2
Indecent acts	2	..	2
Aggravated assault	2	..	2
Concealment of birth	2	..	2
Keeping a brothel	2	..	2
Bigamy	1	1	2
Breach of prohibition order	..	2	2
Disobedience of maintenance order	..	2	2
Failing to render personal service (Defence Act)	1	..	1
Stowing away	1	..	1
False declaration under Marriage Act	1	..	1
Released under section 15 (in lieu of bail)	1	..	1
Totals	557	151	708

New Books and Publications.

Conveyancers Costs. A Handbook with Precedents. By F. W. Broadgate. (Effingham Wilson). Price 12/6.

The Law Relating to Local Government Audit. By William A. Robson. (Sweet & Maxwell Ltd.). Price 20s.