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"No man can be a great advocate who is no Lawyer. The thing is impossible."

—Lord Erskine.

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Articles of Association and Contracts.

The judgment of the Court of Appeal in *Eltham Co-operative Dairy Co. Ltd. v. Johnson*, delivered on 10th December, has cleared up the doubt that had for some time exercised the minds of many of the profession upon what is really a fundamental point of company law, but one which until that judgment could not be regarded as having been finally decided.

A first step on the road to its decision was the judgment of the Full Court in *Macdonald v. Normanby Co-operative Dairy Factory Co. Ltd.*, (1923) N.Z.L.R. 122, in which it was held that a company cannot by amending its articles force additional shares upon a dissenting member under the plea that the articles constitute, by virtue of the Companies Act, a contract by the member to accept those shares. The reason for the decision was thus explained by Salmond, J., at pp. 137, 138:

> "Before a regulation included in the articles can be operative as a statutory or constructive contract under Section 24 of the Act it must first of all be valid and operative as a regulation. But since the right of a company to issue and allot shares, and the obligation of shareholders to accept those shares, must be constituted by a contract between the company and the shareholders, such a right and obligation cannot be constituted by a regulation instead of a contract. . . . I do not doubt that the terms of an actual contract (to take up additional shares) may be properly and validly inserted as a clause in the company's Articles, instead of being expressed in a separate document."

In *Shalfoon v. Cheddar Valley Co-operative Dairy Co. Ltd.*, (1924) N.Z.L.R. 561, Salmond, J., in a lucid judgment thus expounded the principles that should be applied:

> "A company cannot by its articles, whether original or amended, impose upon its members any pecuniary obligation over and above their statutory obligation to pay up the amount of their shares. Any attempt by a company to attach to its shares any accessory or collateral pecuniary liability is *ultra vires* and void as being contrary to that fundamental principle of limited liability which lies at the root of company law. No distinction can be made in this respect between an obligation to provide the company with money and an obligation to provide it with money's worth. It makes no difference whether the additional and accessory obligation is to supply the company with money or to supply it with milk."

The learned Judge went on to hold that, while such a clause was *ultra vires* and inoperative as a regulation of the company, it might be operative as a binding contract if made by mutual consent between the company and the individual shareholders and that such a contract might be set out in the articles. But these statements were *obiter*, for he concurred with the rest of the Court in deciding that the clause in question was invalid as being in unreasonable restraint of trade.

Recent litigation in England, however, cast a serious doubt on the correctness of the two New Zealand decisions. *Dibble's case*, (1923) 1 Ch. 342, which was relied on in *Shalfoon's case*, and in which the principle stated by Salmond, J., was recognised and applied, was believed by some to have been over-ruled in *toto* by the House of Lords in *Biddulph's case*, (1927) A.C. 76. Although in both English cases the societies concerned were not companies but industrial societies, it was considered by some that companies were on the same footing as industrial societies. In England, meanwhile, by Section 22 of the Companies Act, 1929, it was enacted that, notwithstanding anything in the memorandum or articles of a company, no member of the company shall be bound by an alteration in the memorandum or articles after the date on which he became a member, if and so far as the alteration requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made, or in any way increases his liability as at that date to contribute to the share capital or otherwise pay money to the company. The section does not apply in any case where the member agrees in writing, either before or after the alteration is made, to be bound by it.

In *Hole v. Garnsey*, (1930) A.C. 472, the appeal in which was argued about the same time as the appeal in the *Eltham Co-operative Dairy Co. v. Johnson*, judgment in the latter being delayed until the English decision was available, it was decided: (1) that the *ratio decidendi* of the majority of the House in *Biddulph's case* was that the appellant was bound by actual assent to the proposed alteration of the rule and that the necessity for passing an opinion upon the validity of the amendment of the rules did not arise and (2) that an alteration in the rules of an industrial society requiring members to subscribe for additional shares is not binding on members who have neither voted for the alteration nor otherwise assented to it. It was pointed out that the differences between a limited company and a registered society are such that the considerations which determine the question whether a member is bound by alterations in the constitution are not identical in the two cases, and that their Lordships in *Biddulph's case* had not sufficiently adverted to the distinction between the binding force of original stipulations to which the member has assented and of purported alterations of the original stipulations to which alterations he has refused assent.

After a perusal of the decision in *Hole v. Garnsey* the Court of Appeal in the Eltham Company's case had no difficulty in coming to the unanimous conclusion that that decision did not in any way conflict with those in *Macdonald's* and *Shalfoon's cases*, and that Ostler, J.'s anticipation of the decision of *Hole v. Garnsey* in distinguishing *Biddulph's case* was correct. The Court therefore held that certain alterations in the articles made by the appellant company, while binding upon persons who voted for them and assented to them, amounted to no more than an offer in respect of the future to persons who had been supplying it upon the old terms—an offer which was never communicated to the respondent, and which, therefore, he could not be regarded as having accepted.

It was suggested in argument that the company was entitled to succeed by reason of the special provisions of the Dairy Industry Amendment Act, 1924, but there was no proof that the company was a "co-operative dairy company" to which that Act applied.

Court of Appeal.

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

March 28, 31; December 10, 1930.
Wellington.

ELTHAM CO-OPERATIVE DAIRY CO. LTD. v. JOHNSON.

Company—Articles—Contract—No Power by Articles to Impose Upon Members Pecuniary Obligation Over and Above Obligation to Pay for Shares Taken—Obligation Binding Only if Contract on Basis of Article—Such Contract Variable Only By Agreement and Not By Alteration of Articles Unless Assented to By Members—"Co-operative Dairy Company"—Dairy Industry Act, 1908, S. 48—Dairy Industry Amendment Act, 1922, S. 10—Dairy Industry Amendment Act, 1924, S. 2 (3).

Appeal from a judgment of Ostler, J., reported 5 N.Z.L.J. 247, where the facts are stated.

Johnstone and **Weir** for appellant.
Chrystall and **A. J. Mazengarb** for respondent.

MYERS, C.J., delivering the judgment of Myers, C.J., Blair, J., and Kennedy, J., said that the learned Judge in the Court below had relied largely upon the Full Court decision in **Macdonald v. Normanby Co-operative Dairy Co. Ltd.**, (1923) N.Z.L.R. 122, and the judgment of Salmond, J., in **Shalfoon v. Cheddar Valley Dairy Factory Co. Ltd.**, (1924) N.Z.L.R. 561, at p. 577 *et seq.* There had been an impression in New Zealand that the authority of those decisions was impaired, if not entirely abrogated by the decision of the House of Lords in **Biddulph and District Agricultural Society Ltd. v. Agricultural and Wholesale Society Ltd.**, (1927) A.C. 76. The learned Judge in the Court below did not share that impression, and he distinguished **Biddulph's case.** Thet he was right in so doing was clearly shown by the judgment in the recent case decided by the House of Lords, **Hole v. Garnsey** (1930) A.C. 472, which clearly removed the misconception that existed as to the effect of **Biddulph's case.** It was not strange that a wrong impression should have existed in New Zealand, because there appeared to have been in England also a misconception that resulted in the passing of S. 22 of the Companies Act, 1929 (Eng.), which section was referred to in **Stiebel's Company Law,** 3rd Edn. 65, published a few months before **Hole v. Garnsey** was decided by the House of Lords, as an alteration of the law consequent upon the decision in the **Biddulph** case. Their Honours referred to that section because at the argument it was urged on behalf of the appellant that an inference was to be drawn in its favour by reason of there not being such a provision in New Zealand and of the fact that such a provision was considered necessary in England. That there was no substance in that point was shown by the history of S. 22, following as it did the **Biddulph** case, and by the explanation of that case as now given in **Hole v. Garnsey.** The effect of the decision in **Hole v. Garnsey** appeared to be correctly stated in the headnote as being that an alteration in the rules of a society registered under the Industrial and Provident Societies Act, 1893, requiring members of the Society to subscribe for additional shares was not binding on members who had neither voted for the alteration nor otherwise assented to it. It was true that Lord Tomlin in his judgment referred to the differences between a limited company and a registered society. He pointed out that a limited company was created and regulated by statute: that its capital was fixed and could not be reduced except on special grounds and with the sanction of the Court; that its powers were circumscribed by the terms of its memorandum of association; that the memorandum could not be altered except for certain purposes and then only with the sanction of the Court which was bound to consider the interests of the members, and that an alteration of the articles of association could not be made so as to enlarge the powers conferred by the memorandum. He then pointed out that in regard to a registered society the statute did not require that the constitution of the society should on registration be regulated more closely than might be done by including in the registered rules provision for certain matters specified in that behalf in the Act; and that the specified matters did not contain any reference to the amount of capital or the manner in which the rules might be altered. He then stated that it resulted from the differences between a limited company and a registered society that the consideration which determined the question whether a member was bound by alterations in the constitution were not identical in the two cases—at any rate where the matter did not depend upon the element of fraud or bad faith. In the case of a limited company Lord Tomlin said that the answer would be found when it had been ascertained whether or not the limitations and formalities imposed and required by the Acts had been adhered to and complied with. It would be observed that the learned Lord was referring only to alterations in the constitution of the company, and not to matters of contract apart from what might be regarded as the constitution of the company. Their Honours regarded it as clear, therefore, firstly that the decision in **Hole v. Garnsey** was not in any way in conflict with the decisions in **Macdonald's case** and **Shalfoon's case,** and consequently that it did not touch the real question that had to be decided in the present case. If then the judgments in the last two mentioned cases applied, the learned Judge was right in deciding as he did in favour of the respondent. True, the Court was not bound by those decisions, and Mr. Johnstone's comment might be just that the statements relevant to the present case made by Salmond, J., in **Shalfoon's case** were *obiter,* but they were nevertheless a carefully considered opinion from a very eminent source and were entitled to great respect.

Those observations brought their Honours to the consideration of the articles of association of the appellant company prior to 1917. Article 8A was as follows: "Subject to such dividends as may be from time to time declared (as remuneration to the shareholders for the capital paid by them to the Company), the whole of the net profits of the Company shall be paid to suppliers provided that each supplier holds one share for every 300 gallons of milk or 108 lbs. of butter fat supplied by him during the year; otherwise any milk or butter fat supplied and not supported by one share shall not be counted or taken into account in calculating the proportion of profits to which each shareholder shall be entitled." Article 8B provided that in declaring any dividends as a remuneration to shareholders for the capital paid by them to the company the directors should limit the amount to be paid so that the shareholders should not receive a greater return upon their shares from the date of the payment of the same, or from the date of the last dividend declared, as the case might be, than would be equalled by interest upon such money at the rates paid by the company's bankers on fixed deposit during the same interval of time. Article 10 provided (*inter alia*) that the directors might purchase milk and materials from all or any of the shareholders as they might think fit, and might refuse to purchase or receive milk or materials from any particular shareholder or shareholders. Article 8A was altered in 1910 and again in 1912 in respect of the shareholding which a supplier was to undertake in proportion to the quantity of milk or butter fat supplied. Nothing turned on those alterations as it was common ground that the respondent was aware of them and did in fact take up his requisite number of shares in accordance with the articles as altered. It would be seen from Article 8A and Article 8B that the company recognised and dealt with a member of the company in two capacities, firstly *qua* shareholder and secondly *qua* supplier. As a shareholder, the dividend payable to him was limited by Article 8A. Articles 8A and 10 showed clearly, firstly, that a shareholder who produced milk or butter fat was in no way bound to supply his produce to the company, and, secondly, that the company was in no way bound to purchase or receive his produce. If, however, the shareholder did supply his produce to the company then he was dealt with under Article 8A not *qua* shareholder but *qua* supplier who had complied with the requirement of taking up a number of shares in respect of which shares he would receive his dividend as a shareholder.

In **Palmer's Company Law,** 13th Edn. 36, after referring to various authorities including **Hickman v. Kent and Romney Marsh Sheep Breeders Assn.,** (1915) 1 Ch. at p. 897, the learned editor said: "These decisions however all deal with cases in which members claimed and sought to enforce or protect rights given to them as members of the company. Where rights are by the articles given to members not as such but in some other capacity (e.g. as directors, policyholders or otherwise) a member claiming to enforce the same cannot, it seems, sue on the articles—treating them as a contract by the company with him—but must take out a contract outside the articles." And at p. 37: "The Courts have in some cases acted on the footing that a clause in the articles, not dealing with the rights of a member as such, but apparently intended to operate as a contract with him, is to be regarded as the basis of a contract, i.e., as indicating the terms on which the company proposes to contract with him, and that if the parties enter into the relations contemplated by the clause, they are to be treated as having made

a contract in the terms of the clause and are bound accordingly." The learned editor then gave as an illustration **Swabey v. Port Darwin Gold Mining Co.,** (1889) 1 Meg. 385, and referred at p. 38 to the following statement by Lord Esher: "The articles do not themselves form a contract, but from them you get the terms upon which the director is serving." He then proceeded: "The question whether an implied contract so entered into is capable of being varied by the company against the will of the other party has not been finally decided." **Macdonald v. Normanby Co-operative Dairy Factory Co. Ltd.** went a very long way in the direction of deciding the point which was said in **Palmer's Company Law,** 13th Edn., at p. 38, not to have been finally decided in England. Subject to the observation that his dictum might be *obiter*, Salmond, J., in **Shalfoon's case,** at pp. 579 and 580, dealt expressly with the very point. his view being that such a contract although contained in the articles of association could not be altered except by mutual consent of the parties. In the present case the contract between the respondent as a supplier and the company was constituted by the delivery and acceptance of the produce. The terms upon which the produce was delivered by the supplier and accepted by the company as at the date when such supply and acceptance commenced were to be found in the articles of 1910 to which reference had already been made. The parties must be assumed to have agreed that those were the terms of the contract. In effect the company said to the respondent: "You are not bound to supply, but, if you do, these will be the terms on which we accept your produce"; and the respondent in effect replied, "Very well, I will supply on those terms." That being so, their Honours respectfully agreed with Salmond, J.'s statement in **Shalfoon's** case that the contract was like any other contract, and that its terms could be varied only by agreement between the parties.

In 1917 the company altered its articles by special resolution and radically altered the terms dealing with the supply of milk and butter fat. The alterations did not affect the respondent so long as he supplied all his milk and butter fat, which he did until 1924. Consequently he received payment in the same way and on the same basis as under the articles that existed prior to 1917. He would, therefore, have no knowledge or notice merely from the course of business between the parties that any alteration had been made in regard to the payment for milk and butter fat supplied by him to the company. If he had had notice or knowledge of the alteration and had continued to supply he/would have been bound by the alteration in the articles. The learned Judge in the Court below had found as a fact that the respondent had no such notice or knowledge, and the company, therefore, sought to rely upon the doctrine of constructive notice. In their Honours' opinion that doctrine had no application to a case like the present one. It was not until the 1924-1925 season when for a period of some months the respondent had supplied only portion of his milk and butter fat to the company that the company sought to pay him on a basis different from that which had previously been acted upon, and until then, as the learned Judge in the Court below had found, the respondent had no notice of the alterations made in 1917. The company had only itself to blame for the position in which it found itself in its relations with the respondent. Its proper course when the articles were altered in 1917 was to give every supplier express notice of the alteration having been made. The respondent, had he received such notice, would then have had the option either of discontinuing his supply to the company and making arrangements elsewhere or of continuing his supplies to the company on the altered terms. That opportunity was not given him.

Inasmuch as the appellant company chose in the first instance to include in its articles a statement of the terms upon which it was prepared to accept produce from suppliers, their Honours did not doubt that it could by special resolution alter those terms by an appropriate amendment of such articles, and that such alteration would be binding upon all persons who voted for it or otherwise assented to it. Their Honours said that subject to the doctrine laid down in such cases as **Allen v. Gold Reefs of South Africa,** (1900) 1 Ch. 656, and **British Nurse Syndicate v. Alperton Rubber Co. Ltd.,** (1915) 2 Ch. 186, that a company could not alter its articles for the purpose of committing a breach of contract. An alteration of the articles could not, therefore, affect a contract for the supply of produce on agreed terms for a period that was still running. In the present case the Articles of 1917, while binding upon persons who voted for them or assented to them, amounted to no more than an offer in respect of the future to persons who had been supplying them upon the old terms—an offer which was never communicated to the respondent and which, therefore, he could not be regarded as having accepted.

It was suggested in the argument in the Court of Appeal—it was not raised in the Court below—that the company was entitled to succeed by reason of the provisions of the Dairy Industry Amendment Act, 1924. That Act, however, could apply only to "co-operative dairy companies" within the meaning of S. 48 of the Dairy Industry Act, 1908, as amended by S. 10 of the Dairy Industry Amendment Act, 1922. It was sufficient to say that there was no proof disclosed in the case that the appellant company was a "co-operative dairy company" within the meaning of those sections, even if it were assumed that subsection (3) of S. 2 of the Amendment Act, 1924, applied to a case like the present where the company by an alteration of its articles sought to vary a contract without notice to the other party to the contract.

In the view that their Honours took of the case, it was unnecessary to consider the question as to whether the new Articles 52, 53, 55 and 63 made in 1917 were invalid on the ground that all or any of them amounted to an unlawful restraint of trade. As they stood, even if valid, and the Court had to construe them, they might probably be held to mean something quite different from what the company intended. Other difficulties of construction apart, the operation of the articles as they stood might result, in a particular month or months, in the absolute confiscation of the produce of non-members and non *bona fide* members for the benefit of the so-called "*bona fide* members." The company would be wise to have its articles carefully revised.

HERDMAN and SMITH, JJ., concurred.

Appeal dismissed.

Solicitors for appellant: **Syme and Weir,** Eltham.
Solicitor for respondent: **A. Chrystall,** Eltham.

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

October 9; 24, 1930.
Wellington.

JORGENSEN v. MINISTER OF CUSTOMS.

Licensing—Brewer's License—New License—No Absolute Discretion in Minister to Refuse Grant of License—No Power to Refuse License Where Brewery and Plant in Conformity with Requirements of Existing Regulations and Not Situate in or within Five Miles of No-License District Unless Applicant a Person Unfitted to Hold License—Finance Act, 1915, S. 38—Finance Act, 1917, S. 48.

Originating Summons under the Declaratory Judgments Act, 1908, raising the question as to the nature and extent of the discretion conferred on the Minister of Customs by S. 38 of the Finance Act, 1915, and S. 48 of the Finance Act, 1917, in considering applications for a new license in respect of a proposed brewery.

D. M. Findlay and **W. Perry** for plaintiff.
Solicitor-General (Fair, K.C.) for defendant.

MYERS, C.J., delivering the judgment of the Court said that where a statute enacted that a permit or license should not be granted except with the consent or approval of a Minister or other authority, it was clear that an absolute and unfettered discretion was conferred upon such Minister or other authority to refuse the permit or license, and to do so for any reason whatever or for no reason at all, and without assigning any reason: **Rex v. Lord Bishop of Gloucester,** 2 B. & Ad. 158; **Re Lane,** 13 G.L.R. 510; **Paeroa Brewery Co. Ltd. v. Ridings,** (1924) G.L.R. 207; **Metropolitan Meat Industry Board v. Finlayson,** 22 C.L.R. 340. See also **Tredegar v. Harwood,** (1929) A.C. 72. The real question in the present case was whether or not S. 38 of the Finance Act, 1915, conferred upon the Minister of Customs a similar absolute and unfettered discretion. That question was purely one of interpretation.

Subsection (1) of S. 38 required that any person who desired to obtain a brewer's license should apply in writing in the prescribed form to the Collector. A form was prescribed and appeared in the N.Z. Gazette, 1915, p. 3954. Subsections (2), (3) and (4) of S. 38 were as follows: "(2) The application shall contain a particular description of the premises on which the

brewery is situated and of the plant for manufacturing beer, and shall contain particulars of such other matters as may be required by regulations. (3) Except in the case of an application for (a) The renewal of a license previously granted; or (b) A new license to the successor in business of a person hold ing a license; or (c) A new license in lieu of a license formerly held by the applicant, but which had within six months before the application for the new license lapsed or otherwise determined —every application for a brewer's license shall be submitted to the Minister for approval. (4) The Minister shall not approve of an application for a license in respect of a brewery situated within a no-license district within the meaning of the Licensing Act, 1908, or within five miles of the boundary of any such district." Subsection (6) said that on payment to the Collector of the supervision fees provided for by subsection (5), and with the approval in writing of the Minister in those cases in which such approval was required, the Collector should issue to the applicant a license in the prescribed form. By subsection (7) it was provided that every license should be in force until the thirty-first day of December next after the date thereof and, by subsection (8), that on payment of the supervision fees, such license was renewable not later than the fifth day of January in each year, and if so renewed should continue in force until the thirty-first day of December thereafter. Subsection (10) provided (*inter alia*) that no structural alteration of or structural addition to any brewery or to any plant mentioned in the application for the license should be made without the permission in writing of the Collector. The Solicitor-General contended that the section conferred upon the Minister an absolute and unfettered discretion to grant or refuse an application for a completely new license subject only to the provisions of subsection (4). With that contention their Honours were unable to agree. If subsection (3) stood alone and there were no such provisions as were contained in subsections (2) and (4) there might be a great deal in the Solicitor-General's contention; but, in their Honour's opinion, subsections (2) and (4) made all the difference. It was necessary in the case of an application for a completely new license that some authority should see that the proposed brewery conformed to the particulars and requirements lawfully prescribed by the regulations; and it seemed to their Honours that the effect of subsections (2) and (3) was to throw that responsibility upon the Minister, instead of merely upon the Collector. That view was certainly consistent with the fact that in the case of the renewal of a license previously granted, or a new license to the successor in business of a person holding a license, or a new license in lieu of a license formerly held by the applicant but which had within six months before the application for the new license lapsed or otherwise determined, the license might be issued by the Collector without the Minister's approval. The reason for that was no doubt that in those cases the Legislature presupposed an existing brewery which had already been licensed and which had, therefore, satisfied all statutory and prescribed requirements. It was, therefore, only an application for a license in respect of a new brewery that it was necessary to submit to the Minister for approval. Subsection (4) of S. 38 was in effect a proviso to subsection (3), its operation, however, being limited to applications that were required to be submitted to the Minister for approval and the effect of the three subsections (2), (3) and (4) taken together was that the Minister had not an absolute and unfettered discretion, but could only refuse his approval of a new application if the proposed brewery, (a) did not comply with lawfully prescribed regulations or with some express statutory provision, or (b) was situated within a no-license district within the meaning of the Licensing Act, 1908, or within five miles of the boundary of any such district.

Even if the construction could be regarded as doubtful, which their Honours did not think was the case, the most that could be said for the defendant was that the subsections were capable of two interpretations, each of them reasonable,—one of which would or might involve an injustice, while the other would not. If that were the case, the latter construction should be adopted. Indeed it was plain enough, reading subsection (1), (2) and (3) together, that an application could only be made and dealt with in respect of an existing building and an existing plant. That was emphasised by the regulations which clearly contemplated that both the building and the plant were actually in existence when the application was made. It was also manifest on reference to subsection (4) because, although "brewery" was defined by S. 33 as a place where beer was made, subsection (4) of S. 38, which dealt with the case where the application had to be approved by the Minister,— and such case was restricted to that of an entirely new application—used the same term "brewery." It was said that to erect and instal the proposed buildings and plant might, in the present case, cost £100,000. The construction of the section contended for by the Solicitor-General would mean that the whole of that expenditure might be incurred and then rendered useless by the action of the Minister in arbitrarily refusing his consent, such refusal being final, the applicant having no right of appeal or any other remedy. In their Honours' opinion such an intention could not be imputed to the Legislature on the true construction of S. 38, and the defendant's contention was erroneous.

Their Honours next referred to S. 48 of the Finance Act, 1917. The Solicitor-General argued that that section had no reference to the case of an application that had to be referred to the Minister for approval under S. 38 of the Act of 1915. In the view that their Honours took of the true construction of the last-mentioned section, it was immaterial whether the Solicitor-General's contention was correct or not. But in their Honour's opinion it was wrong. Their Honours could see no reason whatever for so restricting the meaning of subsection (2) of S. 48. The words "applicant for a brewer's license" in their natural meaning certainly included the case of an application for an entirely new license: and of course there was every reason why a new license should not be granted to a person who was not of good character and reputation. Indeed it might be doubted whether subsection (2) applied to any other case than that of an application for an entirely new license. What the subsection said was that the Minister might, in the circumstances therein referred to, "refuse his approval" of the issue of a license to the applicant; and the only case where his approval was necessary under S. 38 of the Act of 1915 was that of an application for an entirely new license. In order to give the subsection the construction contended for on behalf of the defendant, the Solicitor General frankly admitted that it must be read as if the words were "direct the refusal" in the place of "refuse his approval." There was no justification for thus construing a subsection where the words of the enactment had, as they stood, a plain, sensible, and reasonable meaning. Moreover, subsection (3) also referred firstly to the case where the Collector acting by direction of the Minister (that was to say under subsection (1)) refused to "renew any license," and secondly to the case where the Collector acting by direction (that was under subsection (2)) refused "to grant a new license." Again, subsection (7) said that the powers conferred by S. 48 (*inter alia*) "to refuse to approve any application for a new license" should be in addition to, and not in substitution of, the powers in that behalf conferred on the Minister by the Act of 1915; and the only powers in that behalf conferred by that Act had reference to the approval of an application for an entirely new license. If the Act of 1915 gave the Minister the absolute and unfettered power contended for by the Solicitor-General, S. 48 of the Act of 1917 would have been quite unnecessary—so far as applications for entirely new licenses were concerned. The truth was that the relevant provisions of S. 38 of the Act of 1915 dealt only with matters affecting the character of the application in respect of compliance of the brewery and plant with the regulations, and, to the limited extent mentioned in subsection (4), the locality of the brewery; while S. 48 of the Act of 1917 dealt with the question of the character of the applicant.

The questions raised by the originating summons could not very well be answered categorically in the precise form in which they were raised. The position might be summed up by the following answers: (1) The Minister had not under the provisions of S. 38 of the Finance Act, 1915, the absolute right to refuse the grant of a brewer's license on an application which under that section was required to be submitted to him for approval. (2) If such an application were made in accordance with subsection (2) of S. 38 of the Finance Act, 1915, and the brewery and plant were in conformity with the requirements of any existing valid regulations in that behalf, and the premises were not situate within a no license district within the meaning of the Licensing Act, 1908, or within five miles of the boundary of any such district, the Minister must grant his approval, unless he found himself justified in refusing under subsection (2) of S. 48 of the Finance Act, 1917, upon the ground that the applicant was unfitted to be the holder of a license by reason of the fact that he was not a person of good character and reputation. (3) The Minister did not possess an unfettered discretion to refuse an application for a brewer's license. His powers were limited in the manner and to the extent set out in the preceding paragraphs (1) and (2). (4) Where the Minister under S. 48 (2) of the Finance Act, 1917, refused his approval to the issue of a completely new license on the ground that the applicant was, by reason of the fact that he was not a person of good character and reputation, unfitted to be the holder of such license, the applicant had the right of appeal provided for by subsection (3) of the same section. The applicant had not a right of appeal under S. 38 of the Act of 1915, nor indeed

was a right of appeal necessary in that case, because it could not be assumed that the Minister would act otherwise than in good faith, and if it appeared that the premises and plant mentioned in the application were not in conformity with the requirements of any existing valid regulations in that behalf, the applicant could amend his specifications and his application to make them conform with the regulations.

Solicitors for plaintiff: **D. M. Findlay and Moir**, Wellington.
Solicitors for defendant: **Crown Law Office**, Wellington.

Supreme Court

Reed, J. December 5; 6, 1930.
Nelson.

LAWSON v. MINISTER OF CUSTOMS.

Licensing—Brewer's License—Cancellation or Suspension—Power of Minister to Cancel and Suspend License Where Brewer Convicted of Offence "Against This Part of This Act"—Conviction Under Subsequent Amending Act—Minister Entitled to Exercise Powers—Acts Interpretation Act, 1924, S. 5 (c)—Finance Act, 1915, S. 68—Finance Act, 1917, S. 46 (2).

Originating summons to determine the question whether the Minister of Customs was entitled under S. 68 of the Finance Act, 1915, to cancel or suspend the brewer's license of the plaintiff, in consequence of a conviction entered against him under the provisions of S. 46 (2) of the Finance Act, 1917. The conviction was for selling from a cart a number of 2 gallon demi-johns of beer to labourers employed in a Public Works camp, this being a direct breach of the section which prohibits beer, sold under the authority of a brewer's license, being delivered otherwise than from a brewery, depot, or bottling store. The Minister did not raise any question as to the jurisdiction of the Court to determine the matter.

Kerr for plaintiff.
Fell for defendant.

REED, J., said that S. 68 was one of a number under Part III of the Act, and was headed "Beer Duty." In addition to dealing with the excise duty on beer, Part III regulated the duties of brewers, provided for the issue of licenses, enumerated offences with the penalties attached, and, generally, prescribed a code for brewers and breweries, and repealed the Beer Duty Act, 1908, and amendments, and certain sections of the Licensing Amendment Act, 1910. Part III was a statute in itself and was "deemed to be one of the Customs Acts within the meaning and for the purposes of the Customs Act, 1913": S. 75. That was important and it was further important to note that the various parts of both the Finance Acts under consideration were really a number of independent statutes, only related in their containing certain financial provisions. As His Honour had already stated, Part III enumerated a number of offences and, in most cases, prescribed the penalty, and, as regards the others "for which no specific penalty is provided" there was a liability to a penalty of twenty pounds. His Honour cited the provisions of S. 68 adding that the argument for the plaintiff revolved largely around the meaning to be attached to the words "this Part of this Act" appearing in that section. In a statute such as the present one composed, as His Honour had shown, of what were in reality a number of independent enactments, those words did not raise any implication of a possible limitation that they might be said to have in an ordinary statute. The words "this Part of this Act" were purely words of identification and the equivalent words in a homogeneous statute would be "this Act"; and that was the meaning that His Honour thought should be attached to them, "this Act" meaning the Act which, for identification purposes, it was necessary to term "this part of this Act."

The plaintiff did not commit any of the offences specified in the 1915 Act. He was prosecuted for a new offence created by the Act of 1917. Part II of that Act was, as in the case of Part III of the Act of 1915, declared to "be deemed part of the Customs Acts within the meaning of the Customs Act, 1913": S. 56. It amended Part III of the Act of 1915 in several important particulars. Particularly—S. 46—it attached restrictions as to the sale of beer by brewers licensed under the Act of 1915; it amended S. 68 of that Act by inserting after the words "this Part of this Act" the words "or against the Licensing Act, 1908." It added an offence by S. 46 (4) and that was the offence in respect of which the plaintiff was convicted. The next question was whether the Minister was legally entitled on that conviction to act under the powers conferred by S. 68 of the 1915 Act and cancel the brewer's license held by the plaintiff. Counsel for the plaintiff had quoted extensively from **Craies on Statute Law** and cited a number of English cases on the interpretation of statutes, but His Honour thought the whole question was covered by S. 5 (c) of the Acts Interpretation Act, 1924, which His Honour respectfully agreed with Williams, J., in **McKenzie v. Penman**, 21 N.Z.L.R. 210, meant that the original Act and all the amending Acts are to be read as if the amending Acts had been incorporated in the original Act. The Court, therefore, had to read all the Acts as one Act. Applying that interpretation, the Act of 1915 (Part III) must be read as if it were combined with the Act (Part III) must be read as if it were combined with the Act of 1917 (Part II) in one Act. That being so the offence of which the plaintiff was convicted was an offence to which S. 68 of the Act of 1915 applied and the Minister was legally entitled to cancel or suspend the plaintiff's license.

Question answered accordingly.

Solicitor for plaintiff: **J. R. Kerr**, Nelson.
Solicitor for defendant: **Crown Solicitor**, Nelson.

Reed, J. November 17; 24, 1930.
Wellington.

SOCONY PROPRIETARY LTD. v. BEGG.

Sale of Goods—Passing of Property—C.I.F.E. Contract—"Shipment to Constitute Delivery"—"Net Cash by Demand Draft on Arrival of Vessel"—Bill of Lading Taken to Order of Seller's Agent—Reservation of Right of Disposal—Property Not Passing on Shipment—Sale of Goods Act, 1908, Ss. 6, 20, 21, 22.

Originating summons to determine in whom was the property of a quantity of oil, which was the subject of a written contract of sale and purchase between the plaintiff and one Pimentel trading as the Mecca Oil Company. Pimentel was insolvent, and in gaol for fraud, and the oil, having recently arrived in New Zealand, had been seized by the defendants under several distress warrants on unsatisfied judgments obtained against Pimentel. The plaintiff company was a Melbourne firm and its agents in Wellington, Philips and Pike, made the contract. The oils to be supplied were various grades of the manufacture of the Standard Oil Company of New Zealand. The drums or containers were to be branded Mecca Motor Oil with the strength specified: light, medium, heavy, extra heavy, separator. The letter of confirmation of the sale set out the details of the order including the condition about the brands and proceeded as follows:

"SHIPMENT: The above order has been cabled for prompt shipment and we have requested our Principals to reply stating date upon which they expect to make shipment.

"PRICES named are cost insurance (free of particular average) freight and exchange Main New Zealand Ports, viz., ports to which the carrying vessel (or vessels) accept cargo at main port rates of freight. Excess freight above main port rate and bank exchange thereon to be a charge against the buyer. If the published bank selling rate for telegraphic transfers of funds to London exceeds £5 per cent. premium on the day of arrival at Wellington of the vessel or vessels carrying these goods or any portion of the same the buyer will be charged with such additional exchange.

"Sellers will not be required to tender Insurance Policy covering the goods, but undertake that the goods will be held insured under F.P.A. condition for invoice value plus 10% and in event of loss buyer will be credited the 10%.

"TERMS: Net cash by demand draft on arrival of vessel or vessels carrying the goods, or as nearly as possible after arrival of vessels or vessels carrying the goods.

"Seller's liability shall cease upon presentation of Bill of Lading or at their option by presentation of an order for delivery alone on the vessel or the Agents thereof instead of the aforementioned document.

"Shipment of the goods to constitute delivery and each shipment is to be deemed as a separate contract."

The oil was shipped at San Francisco by the Standard Oil Co. of New York which took the bill of lading to " order," indorsed it in blank, and posted it to Phillips and Pike. On arrival of the oil in Wellington a draft drawn on the Mecca Oil Co. by the plaintiff was presented along with the bill of lading to Pimentel; the draft was not taken up. The oil was then stored by Phillips and Pike in a warehouse of Adams & Blyth, who were storage agents of Phillips and Pike and of the Mecca Oil Co. While the oil was so stored the defendants, claiming that it was the property of the Mecca Oil Co. seized it under warrants of distress on unsatisfied judgments obtained against Pimentel. The Mecca Oil Co. had paid to the plaintiff a deposit on the oil.

Hadfield for plaintiff.
Treadwell and **James** for Begg and another.
Parry for Coulls, Somerville, Wilkie Ltd.

REED, J., said that the Sale of Goods Act, 1908, codified, *inter alia*, the rules to determine the question as to when the property in goods passed from the seller to the buyer. " It embodies the principal," said Lord Parker, " that the question whether a contract for the sale of goods does or does not pass the property in the goods contracted to be sold must in all cases be determined by the intention of the parties to the contract. The Act codifies the rules by which that intention is to be ascertained, but the inference based on the rules may always be displaced by the terms of the contract itself, or the surrounding circumstances, including the conduct of the parties: " **The Parchim,** (1918) A.C. 157, 160. The difficulty in the interpretation of the contract was claimed to be caused by the last paragraph. It was unusual, but His Honour did not think it created any difficulty. The whole contract must be read together. The Standard Oil Company in shipping the goods did so as agent for the plaintiff. The goods were unascertained goods until appropriated to the contract and delivered to the common carrier—the ship. That was a delivery of the goods and would be sufficient to pass the property to the purchaser unless the terms of the contract showed that there was a reservation of the right of disposal until certain conditions were fulfilled. The last paragraph of the contract was pure surplusage and, for whatever reason it was embodied in the contract was simply a statement of the law. An unconditional appropriation of the goods to the contract by the seller, with the assent of the buyer, passed the property in the goods, and, where, in pursuance of the contract, the seller delivered the goods to a carrier for the purpose of transmission to the buyer, and did not reserve the right of disposal, he was deemed to have unconditionally appropriated the goods to the contract: **Sale of Goods Act, 1908,** S. 20, Rule 5. The shipment of the goods, therefore, constituted delivery in law whether or not the clause was present in the contract, but the question was whether or not, by the terms of the contract or appropriation, the plaintiff company had reserved the right of disposal of the goods until certain conditions were fulfilled: S. 21 of the Sale of Goods Act, 1908. His Honour stated that Rule 5 of S. 20 and Subsections (1), (2) and (4) of S. 21 were founded on the judgment of Cotton, L.J. in **Mirabita v. Imperial Ottoman Bank,** L.R. 3 Ex. 164, as was pointed out by Sir Samuel Evans, P., in **The Annie Johnson,** (1918) P. 154, 155. Applying the principles stated by Cotton, L.J., it was to be observed that the terms were stated as " net cash by demand draft on arrival of vessel or vessels carrying the goods, or as nearly as possible after arrival of vessel or vessels carrying the goods." That was a clear reservation of the right of disposal of the goods until payment was made. Further, an indication of the intention of the parties could be gathered from the penultimate clause of the agreement. S. 22 (1) of the Sale of Goods Act, 1908, provided that unless otherwise agreed, the goods remained at the seller's risk until the property therein was transferred to the buyer; but when the property therein was transferred to the buyer the goods were at the buyer's risk, whether delivery had been made or not. If the property in the goods in question in the present case had been intended to pass on shipment they would have been at the buyer's risk; the clause of the agreement assumed the liability of the seller and limited its duration to presentation of the bill of lading or order for delivery. Further, the bill of lading was to " order " and not to the Mecca Oil Company, and was sent to the plaintiff company with the invoice. S. 21 (3) of the Sale of Goods Act provided that where goods were shipped, and by the bill of lading the goods were deliverable to the order of the seller or his agent, the seller was *prima facie* deemed to reserve the right of disposal. If it had been intended to pass the property in the goods on shipment, the invoice and the bill of lading would have gone to the Mecca Oil Company. Finally, the bill of lading with a demand draft attached was tendered to the Mecca Oil Company and refused.

Certain surrounding circumstances had been referred to by counsel for the defendants as indicating the intention to pass the property in the goods to the Mecca Oil Company on shipment. First it was said that the fact that the Mecca Oil Company gave the plaintiff company a cheque for £50, on giving the order, passed the property in the goods. The facts were: (a) the value of the goods as shown by the demand draft was £562 12s. 8d.; (b) the receipt for the cheque was in the following terms: " On behalf of our principals Messrs. Socony Pty. Ltd., Melbourne, we beg to thank you for your cheque value £50 0s. 0d., which we acknowledge herewith, same being a deposit in part payment of your valued indent of the 12th June, and to be deducted from purchase price when draft is presented for payment." The payment of the money did not in His Honour's opinion amount to anything more than an earnest to bind the bargain: S. 6, Sale of Goods Act, 1908. That was necessary as no document evidencing the contract had been signed by the Mecca Oil Coy. Further the money paid was described as received as a deposit, which was a well known mercantile term. As a rule such a deposit was forfeited if the sale went off through the buyer's default: **Howe v. Smith,** 27 Ch. D. 89; **Soper v. Arnold,** 14 App. Cas. 429, 435. Finally the receipt provided that it was to be " deducted from the purchase price when draft is presented for payment," inferentially negativing any passing of the property in the goods until such draft was met. Secondly, as regards the clause which stated " sellers will not be required to tender Insurance Policy covering the goods, but undertake that the goods will be held insured under F.P.A. condition or invoice value plus 10 per cent. and in event of loss buyer will be credited the 10 per cent." it was contended that that implied an intention to pass the property on shipment, as the insurance was to cover 10 per cent. profits over the invoice price. His Honour did not think it had any such effect. In the first instance, the clause implied the necessity for presentation of documents, as in a C.I.F. contract, by specifically negativing one of the essential documents—the insurance policy—**Mambre Saccaharine Coy. v. Corn Products,** 88 L.J. K.B. 402, 406. It would be unnecessary for any such provision if the property was intended to pass on shipment; the provision with regard to the amount of the insurance being 10 per cent. over invoice value had no significance. Reliance was also placed on the branding of the containers with the words " Mecca Motor Oil." That was evidence of an appropriation to the contract of the oil in such containers. It was some evidence of an intention to pass the property, and would be probably a strong element—**Ogg v. Shuter,** L.R. 10 C.P. 159, 162—in the absence of countervailing circumstances, which in the present case however far outweighed any inference that might be open to be drawn from that comparatively minor fact. The last point was that the goods on arrival were stored in the warehouse of Adams & Blyth who were storage agents for the Mecca Oil Company, but, as they were also storage agents for the plaintiff company and many others, no inference arose from that fact, more particularly as there was no act of the plaintiff company which could be suggested as implying any intention to store the goods otherwise than as their own property. Upon a consideration of the contract and all the surrounding circumstances, His Honour accordingly found that the intention of the parties was that the property in the goods should not pass until the payment of the draft and His Honour had no hesitation in arriving at the conclusion that the property in the goods never passed from the plaintiff company.

Question answered accordingly.

Solicitors for plaintiff: **Hadfield and Peacock,** Wellington.
Solicitors for Begg and another: **Treadwell and Sons,** Wellington.

Solicitors for Coulls, Somerville, Wilkie Ltd.: **Buddle, Anderson, Kirkcaldie and Parry,** Wellington.

Adams, J. December 4; 9, 1930.
Christchurch.

TRILLO v. DIX.

Passing-off—Trade Name—" Gold Band Taxis "—Gold Crown Taxis "—Neither Trade Name Nor Method of Advertising Calculated to Deceive—No Evidence of Confusion—Injunction Refused

Application for an injunction restraining the defendant and his agent or servants from imitating the get-up of the plaintiff's taxis and requiring him to refrain from using the words "Gold Crown Taxis" in connection with his business. At the hearing the plaintiff abandoned the first part of his claim and the complaint was confined to the use of the word "Gold" in the defendant's trade name. The facts are set forth in the report of the judgment.

Thomas for plaintiff.

Stacey for defendant.

ADAMS, J., said that the parties were engaged in competing businesses as taxi proprietors plying for hire in Christchurch. The plaintiff commenced business in 1929. His cars were distinguished by a yellow band running along the sides and back and by the name "Gold Band Taxis" and his cars became generally known as the "Gold Band" taxis. In August, 1930, the defendant and six other drivers left the plaintiff's service and formed an unregistered association for the purpose of carrying on a business similar in all respects to that of the plaintiff. It did not appear that they were partners, but they had one office in common with a person in attendance to answer telephone and other calls. They adopted as their trade name the words "Gold Crown Taxis" and that name appeared on their cars surmounted with the device of a crown in bronze. In the supplementary telephone list, the name was entered as "Gold Crown Taxis" in capital letters and if the present application failed the name would appear in the next telephone list under the letter "G" in juxtaposition with the trade name of the plaintiff. It was admitted that there was no other resemblance in the get-up of the respective cars and that no one looking at one of the defendant's cars could fail to observe the difference by day or night. The plaintiff's case, therefore, rested on an advertisement inserted three time in the Christchurch Star on 20th August and repeated twice in the same newspaper within a week, a sign on the window of the defendant's office on the first floor of the Regent Theatre building in Cathedral Square, and lettering on the lamps, and evidence relating to telephone calls to the plaintiff's office. The advertisement read: "Who are the Gold Crown Taxis? Why: Ex-Gold Band drivers on their own—Phone 37-755." It was in His Honour's opinion a clear statement that the defendant and his associates were carrying on a business of their own under that name entirely separate from the business of the plaintiff. The window sign was in four lines—Gold—Taxis—Phone 37-755 with a design of a crown in the centre of the window, the word "Gold" being on the top line, the crown immediately below, and "Taxis" and telephone number below the crown. The sign was clearly visible from the Square and the crown was prominent and must strike the eye of persons looking at the sign. There was no evidence that anyone had taken the sign for the plaintiff's and His Honour did not think any intelligent person would so take it. The evidence in relation to telephone calls did not carry the matter further. The evidence of the plaintiff's manager showed only that he had received inquiries: "Is that the Gold Crown?" and had answered: "No," Gold Band," and that sometimes he might have got the job and other times the reply had been: "We don't want you." It was obvious by the very terms of his inquiry that the person calling knew what he wanted but, as commonly happened, had connected with the wrong number. The mistake might have arisen from the fact that the defendant's name appeared only in the supplementary telephone list printed on the first page; but it was certain that the inquirer differentiated between the "Gold Band" and "Gold Crown" cars and his question showed that he was not confusing one with the other. The manager did not say that he received more than one such call. His Honour stated that the plaintiff had failed to satisfy him that the defendant's trade name or the window sign was calculated to deceive the public as alleged.

Judgment for defendant.

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

Solicitor for defendant: **W. J. Stacey**, Christchurch.

Court of Arbitration.

Frazer, J. November 28; December 8, 1930. New Plymouth.

HORSHEAD v. DUNCAN & DAVIES LTD.

Workers' Compensation—"Out of and in the course of" Employment—Worker Sent Travelling on Special Mission Injured While Returning Home—Employment Continuing on Return Journey Only Until Point on Road Nearest Usual Place of Employment Reached—Subsequent Accident—Injury Not Arising Out of and In Course of Employment.

Action for compensation in respect of an injury by accident received by the plaintiff on 7th June, 1930. The plaintiff was a foreman nurseryman employed by the defendant company, his ordinary duties being confined to the nursery. On Saturday, 7th June, 1930, he was instructed by one of the directors of the company to inspect and purchase stones for a rockery, and at 11.15 a.m. he rode on his motor-cycle from the nursery at New Plymouth to Moturoa for that purpose. His rate of wages was 2s. 6d. per hour, or £6 for a 48-hours week, and his weekly hours usually ended at noon on Saturday. It was common ground that on that occasion it was understood that his duties for the week would cease as soon as he had made the necessary arrangements for the stones to be supplied. The plaintiff duly inspected and purchased the stones, and was then free to do as he pleased. The nursery was about three miles from Moturoa, and the plaintiff's home was also about three miles from the nursery, but in the opposite direction from that in which Moturoa lies. The road from Moturoa to the plaintiff's home was for part of the distance, the same road as would be used in travelling from Moturoa to the defendant company's nursery. After that part of the distance had been covered, it was necessary to turn to the right in order to reach the nursery; but in order to reach the plaintiff's home by the most direct route, it was necessary to continue along the main road for some distance beyond the turn-off to the nursery, and then turn to the right. While riding home from Moturoa on his motor-cycle, the plaintiff collided with a motor car, on a part of the road lying between his home and the junction of the Moturoa road with the road leading to the nursery, and was incapacitated for three weeks. The accident happened at 11.50 a.m. The most direct route from the defendant company's nursery to the plaintiff's home was by another road, which did not pass the scene of the accident. The plaintiff claimed compensation for the period of incapacity, on the ground that the accident arose out of and in the course of his employment with the defendant company.

O'Dea for plaintiff.

Moss for defendant.

FRAZER, J., delivering the judgment of the Court, said that the argument for the plaintiff was that, because the plaintiff had been sent by his employer to Moturoa, he was covered by the Act while going and returning; and, further, that as he was paid wages up to noon, he was still in the course of his employment at 11.50 a.m. The argument for the defendant company was that the plaintiff, when he had completed his business at Moturoa, was no longer under any duty or obligation to his employer, but was free to do as he chose, and was not under the protection of the Act after he had left the Harbour Board's property at Moturoa and had regained the highway. It was undoubtedly true that, if the plaintiff had been injured while travelling between the nursery and Moturoa, he would have been entitled, on the authority of **Dennis v. White**, (1916) 2 K.B. 1, to compensation, for the accident would have arisen both out of and in the course of his employment. If he had been instructed to return to the nursery after transacting his business at Moturoa, and had been injured on the return journey, his claim would have been equally good in law, for the same reason. In the present case, however, it was argued, the plaintiff was free to go where he pleased when he left the quarry office at Moturoa. He owed no further duty to the defendant company and could do as he chose, though he was being paid up to noon. The question as to where a worker's employment ceased was essentially one of fact. Was the worker at the place at which he was injured, and at the time when he was

injured, in the discharge of a duty that he owed to his employer under his contract of service? If the answer to that question was "Yes," the worker was *prima facie* entitled to recover compensation. If the answer was "No,' he was not so entitled. Applying that rule to the circumstances of the case before the Court, the Court had the following material upon which to base a conclusion. The plaintiff's duties were normally confined to the nursery; his employer had sent him on a special mission to Moturoa, and had fixed the time of his departure from the nursery so as to enable him to transact his business at Moturoa shortly before noon, and had made it clear to him that he need not return to the nursery that day. It was not necessary to place any special weight on the circumstance that the plaintiff met with the accident at 11.50 a.m., instead of at, say, 12.10 p.m., for the mere fact that a worker was being paid for his time up to the moment of an accident was not conclusive evidence that he was in the course of his employment at the time: **Brown v. Union Steamship Company Ltd.,** (1925) N.Z.L.R. 246. In the judgment in **Jeffery v. Kidd,** 16 G.L.R. 293, Sim, J., made it perfectly clear that if a worker met with a street accident while doing something that he was required by the terms of his employment to do, the matter of his being or not being paid for travelling time was immaterial. If the plaintiff had reached his home, and had injured himself a few seconds before noon, while chopping firewood or doing some other domestic act for his own purposes, it could not be contended that he would be entitled, merely because he was being paid up to noon, to compensation for an accidental injury received in such circumstances. The Court thought that it was bound, in view of the admitted facts of the present case, to regard as unimportant the exact time of the happening of the accident. Looking at all the facts, the only reasonable inference was that it was in the contemplation of the parties that the plaintiff would return to New Plymouth as soon as he had completed his business at the quarry office, or, at all events, that he would do so within a reasonable time thereafter. The duty of travelling on a special mission to Moturoa necessarily involved his returning to New Plymouth, and though he was not under any obligation to do so, it would naturally be expected that the plaintiff would return to his home for his midday meal. The case from that point of view was quite different from the ordinary case of a carpenter or waterside worker whose employment began and ended at the gate of the building or wharf on which he was working on a particular day, and who was injured on his way to or from his work. In such a case there was no liability on the employer to pay compensation. The present case was more like that of a claim for compensation in respect of a street accident to a commercial traveller, who was ordinarily covered by the Act from the time he left his home or his employer's business premises, as the case might be, until he returned thereto: **Dickinson v. Barmak,** 124 L.T., 403.

The Court then was of the opinion that in the present case the deciding factor was the place at which the plaintiff met with the accident. The Court had held that the obligation to undertake the outward journey to Moturoa involved the necessity of making the return journey. His employer, therefore, would be liable to compensate him for any injury by accident that befell him before he arrived at a place where it could be said that his employment had ceased. Did the plaintiff's employment continue until he reached his home, or did it cease at some spot short of that? The Court thought that if the plaintiff had decided to proceed to his home by way of the nursery, and to follow his usual route after passing the nursery, he would have been under the protection of the Act until he had passed the nursery gate; but that, after that, he would not have been covered by the Act. He chose, however, on reaching the junction, where the road to the nursery turned off to the right, to continue along the main road, which would mean that he would have had to travel a shorter distance in order to reach his home. When he had reached the junction, he had reached the nearest point to the nursery on the route he intended to take, and it appeared to the Court that from that time he was no longer in the course of his employment, but was in exactly the same position as any other worker proceeding on his homeward way from his employer's premises after his day's work. Because of that there was no distinction between the essential features of the present case and those of **Edwards v. Wingham Agricultural Implements Ltd.,** (1913) 3 K.B., 596, and **Evans v. Postmaster-General,** 17 B.W.C.C., 151. **Brown v. Union Steamship Co. Ltd.,** (*cit. sup.*) was a somewhat similar case.

Judgment for defendant.

Solicitors for plaintiff: **O'Dea and Bayley,** Hawera.

Solicitors for defendant: **Moss and Spence,** New Plymouth.

Recent English Cases.

Some of the Latest Decisions of Dominion Interest.

(Concluded from p. 349)

INJUNCTIONS.

Attorney-General v. Sharp, 46 T.L.R. 554, is a decision of first importance. The defendant had been fined many times for plying for hire within Manchester without a license. The Attorney-General on the relation of the Manchester Corporation applied for an injunction to restrain him from so doing. Farwell, J., granted the injunction and the Court of Appeal upheld this decision, holding that where a statute creates an offence and imposes a penalty for its commission this is not the sole and exclusive remedy where public rights are involved; the Court can, in an action brought for the enforcement of public rights by the Attorney-General, at the relation of the local authority, grant an injunction to restrain the commission of the act constituting the offence.

INSURANCE.

Holmes v. Payne, (1930) W.N. 157, is a novel case on insurance against loss of jewellery, etc. The defendant was the owner of a pearl necklace which was insured with Lloyd's; the plaintiff was one of the underwriters. The defendant lost the necklace and the underwriters instead of paying cash agreed to supply her with jewellery of an agreed value; this agreement was partly performed when the missing necklace was found. The defendant was willing to hand it over to the insurers as salvage, but the plaintiff demanded the return of the articles already supplied under the agreement and rescission of the agreement. Roche, J., decided in favour of the insured, holding that the agreement could not be reopened.

LANDLORD AND TENANT.

Flexman v. Corbett, (1930) 1 Ch. 672, though really a case of vendor and purchaser, deals with the subject of "usual covenants." Maugham, J., held: (a) that the question whether covenants in a lease are "usual covenants" is in each case a question of fact for the Court to decide upon the evidence; (b) that a covenant to do nothing to the "inconvenience of occupiers of neighbouring premises" is usual only in leases of properties on large estates, and in a lease of one house is unusual and onerous; (c) that a proviso for re-entry on breach of *any* of the covenants in the lease must be held on the authorities and on the evidence to be an unusual and onerous provision.

LIMITATION OF ACTIONS

Elder v. Northcroft, (1930) W.N. 118, is a decision of Clauson, J., that where the principal debt is barred interest on it is also barred, although accruing due before the debt itself was barred. The decision seems to admit an exception to this rule where there is an independent agreement to pay the interest.

MASTER AND SERVANT.

Ottoman Bank v. Chakarian, (1930) A.C. 277, deals with the question of wrongful dismissal. The respondent an Armenian and a Turkish subject was in the employ of the appellant bank. He was sent on the bank's

business to its head office in Constantinople. He informed the bank that his life was in danger in Constantinople and asked to be transferred to a branch outside Turkey. That being refused he fled from Constantinople. He was dismissed without notice and brought an action for wrongful dismissal. The Privy Council, affirming the Supreme Court of Cyprus, held that as the evidence established that the respondent's personal safety was in real danger at Constantinople, his flight was not a "*faute grave*" entitling the appellants to dismiss him.

NEGLIGENCE.

Excelsior Wire Rope Co. Ltd. v. Callan, (1930) A.C. 404, deals with the liability of an owner of dangerous machinery to children. The case related to haulage machinery on land frequented by children; the machinery was used only occasionally. The House of Lords held that it being well known to the company that when the machine was going to start it was extremely likely that children would be near it, the duty owed by the company when they set the machine in motion was to see that no child was in such a position as to be exposed to danger by the occasional use to which the machine was put, and that they had failed in that duty. The immediate danger being apparent, it was not material whether the children were or were not trespassers.

Swadling v. Cooper, (1930) W.N. 204, in the House of Lords, on the subject of contributory negligence, has been previously discussed at length in our columns (*ante* p. 245, and 261).

POLICE OFFENCES.

S. 44 of the Metropolitan Police Act, 1839, (Eng.) as to the harbouring of prostitutes substantially corresponds with S. 45 of our Police Offences Act, 1927. In *Allen v. Whitehead*, (1930) 1 K.B. 211, it was held by a divisional Court that the occupier of a restaurant who has delegated his control of the premises to a manager can be convicted under the former section, the knowledge of the manager being imputable to the employer.

PRACTICE.

Jonesco v. Beard, (1930) A.C. 298, is a decision of the House of Lords on the setting aside of judgments obtained by fraud. It was held that it is the settled practice of the Court that the proper method of impeaching a completed judgment on the ground of fraud is by action, in which the particulars of the fraud must be exactly given and the allegation must be established by strict proof. Although there is jurisdiction in special cases to set aside a judgment for fraud on a motion for a new trial, if for any special reason departure from the established practice is permitted, the necessity for stating the particulars of the fraud and the burden of proof are in no way abated and all the strict rules of evidence apply.

PROBATE.

Palin v. Parting, 46 T.L.R. 310, owes its place in the reports, like so many other cases, to the use of a printed form. A woman duly executed her will on a printed form, filled up the space on the front page with directions, under which her signature appeared with those of the attesting witnesses. In the margin on the front page was written: "See other side for completion." Further directions, including a residuary clause, appeared on the other side. Bateson, J., held that the words on the other side must be treated as an interlineation on the front page, and the whole document be pronounced for as the testatrix's will.

In *Kitcat v. King*, (1930) W.N. 174, a document which was, in effect, a codicil was witnessed by four people, two of whom were beneficiaries thereunder. Evidence was given that the beneficiaries did not intend to sign as witnesses, but "to show their approval." Bateson, J., held that the codicil could be admitted, along with the will, to probate and directed omission from the probate of the signatories of the two beneficiaries.

SHIPPING.

Silver v. Ocean Steamship Co. Ltd., (1930) 1 K.B. 416, is a decision of the Court of Appeal that a shipowner who signs a bill of lading for goods "shipped in apparent good order and condition" is estopped as against the holder of the bill of lading from alleging that the goods, in respect of matters externally visible on a reasonable examination, were not in good condition when shipped, and is further estopped from alleging that by reason of the particular nature and shape of the containers in which the goods are placed damage to the goods has been caused by "insufficiency of packing" where the nature and shape of the containers were apparent on the shipment of the goods.

TRUST AND TRUSTEES.

In Re Thomson, Thomson v. Allen, (1930) 1 Ch. 203, is a decision of very considerable importance. The detendant, who had been employed by the testator in his business as a yacht agent, was one of the executors and trustees of the testator's will; and the trustees were directed to carry on the business, the defendant being given an option to purchase it. This he did not exercise, but after some little time he claimed the right to commence and carry on an independent yacht agent business of his own whilst remaining a trustee of the will. Clauson, J., held that having regard to the special nature of the business of a yacht agent which necessarily involved competition between every individual broker with all the others, it would be a breach of his fiduciary duties to the beneficiaries under the will for him to set up on his own account an independent business of yacht agent.

WILL.

In re Buxton: Buxton v. Buxton, (1930) 1 Ch. 648, is a decision on accretions to a contingent specific legacy. A testator bequeathed to his son and grandson on the death of his wife the shares belonging to him at his death in a certain company. Between the death of the testator and the subsequent death of his wife each of the 460 shares of the value of £35 each, which belonged to him at the date of his death became, as a result of the capitalisation of a portion of the reserve fund of the company, consolidated with a new share of the value of £15 into a share of the value of £50. The testator's estate, as a result of the capitalisation, also became entitled, in consequence of his holding of 460 ordinary shares, to 920 preferred ordinary shares of £10 each. Bennett, J., held that the accretions did not fall into residue but that the original 460 shares together with the accretions became on the death of the testator's wife, the property of the specific legatees.

The Judicial Committee.

The Peripatetic Proposal.

Our contemporary the *Law Times* has taken up again the suggestion made publicly for the first time, we believe, some years ago by Sir John Simon, that the Privy Council should be an ambulatory or peripatetic tribunal, visiting the Dominions in much the same way as a Judge goes circuit. It says:

"Why not arrange for a representative delegation from the Judicial Committee to tour the imperial territories on a regular circuit? Such an arrangement would bring the King's Courts to people who are unable to contemplate the enterprise of coming themselves to these Courts. The resulting total expense to the community would probably be considerably less than that which is now entailed by all parties concerned in combination; moreover, it would be in direct historic line with the development of the King's Courts themselves; for the inconvenience of the *Curia Regis* as a central tribunal enjoying a monopoly over the whole realm gave way quite early in our history to the system of the King's judges travelling on circuit, which has served to bring the august majesty of the law to the gates of every city and centre of note throughout the length and breadth of the land, redounding to the advantage both of the legal system and of the subjects submitting to its sway. Such a reform would preserve not merely the substance of a unified imperial system of law but also its symbols and ceremonies; and the latter is a consideration of by no means negligible significance, since with the growth of local self-government in the various constituent elements of the Empire it becomes increasingly necessary to maintain the historic links which bind them together into one world-wide chain. A system of judges from the Committee of the Privy Council going on circuit might do much to preserve the cherished sense of brotherhood amongst all British subjects by the settlement not alone of private litigation but also of differences which may arise from time to time as between one territory and another in the society of states which comprises the British Empire."

We venture to doubt, however, whether this suggestion is really a desirable one. In the first place, for the Judicial Committee to retain the complete confidence of litigants, it is essential that its personnel should always consist of the very best available judicial talent; a tribunal of even second grade would not give satisfaction for one moment to litigants from the Dominions. If an ambulatory Court were established it seems to us that this danger would at once be present. The Lord Chancellor for the time being, for one, would always, except on the rarest occasions, be confined to London, by reason of his political and administrative duties. A fair number of those learned Law Lords who usually sit on the Judicial Committee would be required in London for the ordinary appellate work of the House of Lords. Personal and other ties and reasons of health would no doubt also prevent some others from "going the circuit" and in the result it might be found that many of the most experienced and able Judges were never available for the Dominion appeals. Again, there is a measure of respect attaching to the Judicial Committee, at all events in the public eye, simply through its being a distant tribunal, removed altogether from local associations and local prejudices; this also would be lost if effect were given to the ambulatory suggestion. How frequently, moreover, could each Dominion or Colony be visited? It is difficult to see how, at present, the tribunal could visit any portion of the Empire more often than once a year, and, if this is so, there would be in many cases a delay of much longer duration than exists at present in the hearing of appeals.

Criminal Appeals.

A Necessary Amendment of the Law.

S. 443 of the Crimes Act, 1908, provides that where the Court refuses to reserve any question of law for the opinion of the Court of Appeal under S. 442, the party applying may move the Court of Appeal for leave to appeal. The section, however, does not prescribe any time-limit for the filing of the motion; obviously a time-limit is necessary for, if leave to appeal is granted a case has to be stated and this cannot be satisfactorily done unless the recollection of the Judge and counsel as to the facts is fresh. This defect in the law has been drawn attention to by the Court of Appeal in *Rex v. Hoani Heta Hakiwai*, (December 10th). In that case the conviction was entered on 11th August, 1930, but the motion for leave to appeal was not filed until 8th October. Myers, C.J. (delivering the judgment of himself and Blair and Kennedy JJ.) said:

"An application of this kind should be made promptly while the material facts are fresh in the minds of those concerned and particularly of the trial Judge. Section 443 of the Crimes Act, 1908, requires amendment by prescribing a period within which a motion for leave to appeal may be made, but as no time is prescribed by the section as it stands we cannot now say that the application is too late."

No doubt, as this is a matter which affects the Crown, effect will be given to the learned Chief Justice's recommendation; too often, however, one finds that nothing is done as regards judicial suggestions as to amendment of the law.

Bench and Bar.

We regret to record the death of Mr. Andrew Wylie, barrister and solicitor, Wellington. The late Mr. Andrew Wylie, who was in his 70th year at the time of his death, was born in Dundee, and came to New Zealand with his parents in the ship Queen in 1865. He was educated at Nelson College. Taking up the study of the law, he was first with the legal firm of Ollivier and Brown, and subsequently with the firms of Travers and Ollivier, F. M. Ollivier, and Brown, Skerrett, and Dean till 1894. Mr. Wylie joined Mr. Skerrett, as he then was, in partnership in 1894. In 1909 the firms of Skerrett and Wylie and Chapman and Tripp amalgamated. Mr. Wylie retired from that firm in 1912. He then visited England and the Continent for about two years, and on his return practised his profession on his own account until his death.

Mr. A. A. Wylie of the firm of Wylie and Wiren, Wellington, is a brother of the deceased.

Australian Notes.

WILFRED BLACKET K.C.

Mrs. Bakewell whose regrettable shortcomings as revealed in the Divorce Court I have previously mentioned (Vol. V; p. 397) has illustrated another principle of law. She sued her husband for maintenance and the Magistrate dismissed the case immediately an admission was made that she had been found guilty of adultery by Mr. Justice Owen; but it was held by the Full Court that in this he erred for adultery did not necessarily give "reasonable cause" to a husband who deserted his wife. In the course of his judgment the Chief Justice said that the circumstances in which adultery might be committed were infinite, and the degree ot moral guilt involved might vary enormously in each case. There might be many cases in which a wife might be led into or encouraged into wrongdoing, or might even be forced into wrongdoing by her husband's treatment of her. To say that in every case she was to be precluded from obtaining any support from her husband would be to mete out to her a degree of harshness which the Legislature had clearly shown that it did not intend to allow. So the case was remitted to the Magistrate but of his decision we shall hear nothing for no reports of proceedings in his Court are permitted to be published.

The Journalists of N.S.W. at their recent Conference discussed the draft of a Bill designed to discourage the issue of "bluffing writs" for libel. It provided that when a writ was issued against a paper and no further steps were taken in the action the plaintiff should be brought before the Court and punished for contempt, presumably for abusing the process of the Court, unless he was able to show good cause ror his conduct. The Bill is an interesting experiment in legislation but its chance of being considered in this Parliament is as remote as the chance of the "Derby dog" ever winning the blue ribbon.

Thomas v. Thomas in Divorce, N.S.W., raised some interesting questions of law. The wife, petitioner had obtained a decree for restitution of conjugal rights, and upon the husband's non-compliance, had obtained a decree *nisi* for dissolution. The Crown Solicitor then intervened and moved to set aside the decree for restitution and the decree *nisi*, on the ground that the petitioner was not sincere in asking for restitution, and before that application had promised and agreed with one George Hobday that they should be married as soon as she could divorce her husband. The Judge in Divorce, upon proof of the petitioner's artfulness, rescinded both decrees and dismissed both petitions. On appeal, the Full Court by a majority varied his order by striking out so much of it as related to the petition and decree for restitution, while affirnmig its decision as to the petition and decree for dissolution. In delivering the judgment of the majority of the Bench the Chief Justice held thav although the order for restitution had been obtained by deceitful means, it could only be set aside upon appeal made by one of the parties, and that as it did not of itself affect the marriage tie and was absolute in the first instance, it was not subject to intervention by the Crown Solicitor. The matter is to go on appeal to the High Court and its further discussion there should be of interest, for it certainly does seem to be remarkable that a decree *nisi* which is based only upon an unassailable decree for restitution and proved non-compliance, can be set aside while the decree for restitution stands. His Honour made sorrowful reference to the procedure which under our Act allows divorce to be obtained upon proof of non-compliance with a decree for restitution. He said: "Section II has gone a very long way in the direction of allowing divorces to be lightly and easily obtained. It has paved the way to quick and easy divorces, and I think that in all probability in the great majority of petitions presented to the Court for restitution of conjugal rights there is no genuine desire on the part of the petitioner to secure the return of an errant spouse, but that the petition is merely a formal first step in attainment of early freedom from the marriage bond. I think that it is highly probable that deception is practised upon the Court over and over again, but it is rarely that it has the means of seeing beneath the sham and ot detecting the real motive."

The rule of law that a husband is liable to be sued for necessaries supplied to his wife although she herself has ability to pay was recently illustrated in the Windsor Petty Debts Court when William Denzall was ordered to pay £5 13s. 3d. for goods supplied to his wife. He proved that she had ample means, while he had but little, but this evidence was of no avail. He must pay the bill, and meditate on one of the disadvantages of being a husband.

In Brisbane Supreme Court, Mrs. E. A. Beatty secured a verdict for £3,112 against the E.T. & A. Bank. Robert McGowan, her solicitor, whose transgressions have had earlier mention in these Notes, received a cheque on her account for £5,200. It was payable to her order, but he forged her endorsement, and paid the cheque into his overdrawn account, and drew cheques against it which were paid by the bank before the cheque had been cleared. The Bank, therefore, was not merely the collector of the cheque, but had an interest in it from the moment of its deposit. The verdict was for the amount of the cheque less £2,088 which had been paid to her by McGowan.

In two cases recently in Sydney Courts £200 was claimed and the juries gave £250 in one case and £303 in the other. As leave to amend by increasing the amount claimed was in each instance refused, the plaintiffs will have to be content with judgment for the £200 sued for. I do remember one Supreme Court case, *Ferris v. Martin*, wrongful dismissal, where a writ had issued for £250, but as the defendant had pleaded justification on the ground of the plaintiff's immoral conduct, I, before opening to the jury, applied to Darley, C.J., presiding, to amend by increasing the claim to £750. He granted the application, and the jury gave a verdict for the full amount. Unfortunately this was of no monetary benefit to her, because although she pursued the defendant through the Bankruptcy Court she, in the classic language of the Bar "didn't even get her bait back."

The N.S.W. Council of the Bar in its annual Report just issued makes pronouncement upon some matters of Etiquette as follows:—

(1) The Council is of the opinion that it is not a breach of Etiquette for Counsel to draw the attention of the Court to the fact that a document tendered by the opposing side and requring stamping has not been so stamped. Further, the Counsel's duty is to inform his client of his rights and to act upon his instructions.

(2) The Council sees no objection to Counsel who coach students for legal examinations suing for the recovery of fees in connection therewith.

(3) There is no objection to a person who has been admitted as a barrister who is not practising, accepting employment in the office of a Solicitor so long as he does not appear in Court as a Barrister or a Solicitor, or act as a Barrister or Solicitor.

Unfortunately, as a result of the disgusting depression which afflicts the Commonwealth, there are now quite a number of barristers "who are not practising" to any gratifying extent. The Report also makes mention of the fact that: The Attorney General at the request of the Council has informed Crown Prosecutors that it is undesirable for them to appear against the Crown in a criminal case on any circuit. I do not know anything of the facts making such a remarkable instruction necessary.

An ominous fact in connection with Mr. Lang's Government is the determination to bring Justice under political control. The first official act of Mr. Lamars, Minister of Justice, was the release of all prisoners convicted of assaults upon free workers, or of riot, unlawful assembly, or other offences committed by Communists or strikers. Mr. Justice Piddington, President of the Industrial Commission, is *persona grata* to the Labour Party, his colleagues, Mr. Justice Cantor and Mr. Justice Street, are not, and a promise to remove them from office was made by Mr. Lang at his pre-election meetings. Now the proposal is that every decision made by either of these two should be subject to appeal to the President sitting alone, but caucus has not yet finally decided the matter, and as an alternative to the course suggested there is a strongly-supported proposal that Mr. Justice Piddington and Dr. Evatt, K.C., a prominent member of the Labour Party should be appointed to the High Court Bench, "in order" (as it is naively stated) "to prevent the Nationalists from making partisan appointments to the Bench if they should return to power." Another matter which may be construed as an interference with the course of justice was Mr. Lang's direction to Mr. Cleary, Commissioner for Railways, to retire from an application then before the Federal Arbitration Court, made jointly by several States that the Federal awards providing for a forty-four hour week and other costly concessions to employees should cease to be binding upon the States. The Commissioner duly obeyed this direction although the burden of these awards will, as he estimates, involve a deficit of £6,000,000 on the N.S.W. railways during the current year. The amount seems large when it is remembered that this loss must be borne by 2,500,000 people who have many other annual and grevious burdens to bear, including about £15,000,000 for interest on the Public Debt, and several or more millions for Unemployed Relief.

"I do not think the law can be in a less creditable condition than that of an enormous mass of isolated decisions and statistics assuming unstated principles, cases and statutes alike being accessible only by elaborate indexes."

—Mr. Justice Stephen.

Conduct of Counsel.

Strictures of Full Court of New South Wales.

In the recent case of *Croll v. McRae*, (1930) 30 N.S.W. S.R. 137, a new trial was ordered on the ground of improper practice of counsel for the plaintiff. Cross-examining the defendant, counsel had asked: "Why did you instruct your solicitor to offer us £350 in settlement?" The defendant replied: "I never done such a thing." Again when the defendant said that he did not know whether a certain bridge had been paid for, counsel stated as a fact (there was no evidence before the Court) that the bridge had been paid for.

Street, C.J. (James and Halse Rogers, JJ. concurring) said in the course of his judgment: "I am glad to be able to say that it is almost if not entirely without precedent in our Courts for a new trial to be asked for on the ground of misconduct or impropriety on the part of counsel; but I am compelled to say that this case is one of a serious character. It is one in which counsel not once but twice offended against the rules of propriety and obtruded upon the jury statements which, if he had stopped to think for a moment, he must have realised could have no other effect than that of prejudicing their minds unfairly against the defendant. It is immaterial to say that no wrong was intended. Harm may be done by thoughtlessness or carelessness as well as by intention, and it is surprising that after one warning counsel should have so far forgotten what was proper as to bring down another rebuke from the Bench. I cannot impress too forcibly upon the members of the Bar the necessity for observing high standards of professional conduct and a proper sense of responsibility in the conduct of cases. If that is not done the whole profession will suffer in the estimation of the public. In *Reekie v. McKinven*, (1921) S.C. 733, the Lord President, in referring to an improper argument addressed to a jury, having relation to the expenses of the case, said (p. 735): 'In this matter, as in other matters germane to the fair conduct of judicial proceedings, it is the duty of everyone concerned, not merely to avoid arguments of that kind, but to eschew loose or careless statements which may—however unintentionally—insinuate such considerations into the minds of the jury. There is no safe rule except to avoid even the risk of offence. If two courses are open, one of which may pass though ambiguous, while the other unmistakably maintains the highest standard of practice, the duty of everybody is, of course, to select the latter and reject the first.' And in *Wright v. Hewson*, (1916) W.N. 216, Rowlatt, J., said: 'It is the duty of counsel to know and observe the rules governing what they may and what they may not do in the conduct of cases; they may not disregard those rules and trust to not being checked in time. In proportion as counsel voluntarily observe those rules so will their standing and reputation grow.' I hope that these observations will be taken to heart by the members of the Bar, and that they will bear in mind that, as the Lord President said, there is no safe rule except to avoid even the risk of offence."

Our English contemporary, the *Law Journal*, denies the rumour that Lord Hewart, the Lord Chief Justice is about to retire.

Summary of Legislation.

(Concluded from p. 354.)

Part 7. REVENUE AND FINANCE.

Appropriation. (No. 45; 25th October, 1930). Contains the usual appropriations from the public accounts, validation of unauthorised payments therefrom, and writing-off of sums irrecoverable.

Customs Acts Amendment. (No. 5; 18th August, 1930, but retrospective to sessional resolutions of House of Representatives increasing duties). In the case of thirty-odd tariff items, customs duties are altered. On goods so affected and not coming under the British Preferential Tariff, a further duty is imposed of 5 per cent. ad val. A surtax is imposed on liquors, tobacco, motor-spirits, most timbers, and some other specified articles of 1/20th of total other duties; on other goods, of 9/40th; wheat and wheat-flour are exempt. There are various savings and powers of modification. Beer duty is fixed at a minimum of 1s. per gallon. Barley for beer being dutiable, express provision is made to ensure that barley or malt so used, if imported, is properly entered. Various excise duties are imposed on tobacco manufactured in New Zealand, with adjustment where imported unmanufactured tobacco is used, and powers of modification by the Government.

Finance. (No. 6; 21st August, 1930). Part I makes various increases in stamp duties, and reduces exemptions. Part II does the same for death and gift duties. Transfers from incorporated departments of state lose their exemption, mortgages to public authorities (except the State Advances Superintendent) attract mortgage duty, and the Government Life and State Fire Offices are to pay annual license fees, duties on receipts, and duties on bills of exchange and promissory notes, as do ordinary companies. Part III increases the amusements tax. Part IV re-arranges the finances of the Main Highways Funds. Part V imposes "film-hire tax" on proceeds derived, or deemed to be derived from the renting of sound-picture films, 10 per cent. on British, and 25 per cent. on foreign films. Machinery is provided for collecting the tax, and deciding what deductions from gross proceeds are permissible. By Part VI sharebrokers' licenses are raised, the Assurance Fund under the Land Transfer Act is taken into the Consolidated Fund (out of which claims on the Assurance Fund will be paid), and £30,000 is to be paid by the Public Trustee by way of interest on money he has been holding in the Common Fund of his office as Custodian of Enemy Property.

Finance (No. 2). (No. 40; 25th October, 1930). New public borrowings authorised are: five millions for public works; two millions for electric-power works; one million for railway improvements and additions; and one million for state forest purposes—nine millions in all. Loans raised under certain special Acts are declared part of the general public debt. Various provisions extend the discretionary powers of the Treasury in handling public finance. A number of separate accounts within the Public Account are closed and their balances transferred to such main accounts as the Public Works Fund, the Consolidated Fund, and the Land for Settlements Account. Recess travelling-allowances are granted to the Speakers of both Houses visiting Wellington on official business. Fees may be charged for exhumation licenses under the Cemeteries Act. The steamer-tickets allowed to the families of South Island M.P.'s are doubled in number. There is a temporary amalgamation of departments of State into what is to be called compendiously if not concisely, the Industries and Commerce, Tourist and Publicity Department, under the Minister of Industries and Commerce. The office of Under-Secretary of Defence is constituted in the Public Service. Various pension provisions, general and personal, are made more generous or more elastic. Swamp Drainage rates are again mitigated.

Imprest Supply. (No. 1; 30th June, 1930).
Imprest Supply (No. 2). (No. 3; 31st July, 1930).
Imprest Supply (No. 3). (No. 9; 29th August, 1930).
Imprest Supply (No. 4). (No. 20; 11th October, 1930).

Land and Income Tax Amendment. (No. 8; 29th September, 1930). The special land-tax of 1929 disappears. If a mortgage stands at its maximum on 31st March, the mortgage exemption (for land-tax) is to be its average for the last day of every month of the year. This seems designed to prevent taking undue advantage of the exemption by temporary inflation of a secured overdraft. The extent to which income from land is assessable for income-tax is remodelled, in terms too detailed to summarise. South African war pensions are exempt from income-tax. Unimproved value of land is substituted for capital value as the basis for special exemption in case of income derived from land, and any special exemption allowed for land-tax is not to count. The basis for assessing income on which life insurance companies, and the Government Life Insurance Department, are to be taxed, is re-cast.

Land and Income Tax (Annual). (No. 7; 29th September, 1930). The schedule varies from that of last year by introducing a 10 per cent. surcharge on income-tax. Reference to the repealed special land-tax is also, of course, omitted.

Land Laws Amendment Act (more fully noted in Part 5 hereof) abolishes the National Endowment Trust Account and the Deteriorated Lands Account, and carries their balances to the Land for Settlements Account, abolishing also the National Endowment Trust Administration Board.

Part 8. GENERAL ADMINISTRATION.

Arms Amendment. (No. 30; 25th October, 1930). Power is given to officers of police and customs to seize firearms, ammunition, and explosives believed to be illegally imported, or brought into territorial waters for that purpose. No permit is to be needed for blasting explosives. Sporting shot-guns need not now be registered. Firearms in possession or control of an insane or intoxicated person may be seized, and persons and premises searched for that purpose. A dealer must enter in his register all firearms sold, whether a permit for purchase is required or not. Authority is given for the disposal of arms seized and detained by the police.

Births and Deaths Registration Amendment. (No. 19; 11th October, 1930). In future certified copies of entries in the register of births ("birth certificates") are to omit any indication that the child is illegitimate or legitimated. Deaths of members of the Naval Forces occurring abroad on service are to be registered at Wellington, a certificate from an officer of the Forces or other authorised person to be evidence of the particulars for registration.

Census Postponement. (No. 26; 25th October, 1930). Unless the Governor-General by Proclamation otherwise directs, the regular statutory census fixed for 1931 is not to be taken, the next census falling in 1936.

Chartered Associations (Protection of Names and Uniforms). (No. 15; 11th October, 1930). Explained by its name. Applies only to bodies incorporated by Royal Charter, in whose favour an order in Council issues. Extends to the name, to any special designation used for the members, or for members of a subsidiary organisation, to the uniform with badges, and to badges worn without uniform. Some exemption is made for existing vested interests. (An almost verbatim copy of a British act of 1926, under which protection orders were made in 1927 for the Boy Scouts' Association, the Girl Guides' Association, and the Venerable Order of the Hospital of St. John of Jerusalem).

Incorporated Societies Amendment. (No. 17; 11th October, 1930). The power to incorporate branches of a society itself incorporated, given in 1920 to societies with not less than 500 members, is conferred on all such societies; but a branch, to be incorporated, must have at least 15 members.

National Art Gallery and Dominion Museum. (No. 22; 25th October, 1930). Establishes at Wellington a National Art Gallery, a Dominion Museum, and a War Memorial Carillon and Hall of Memories; creates to manage them a board, the Board of Trustees of the National Art Gallery and Dominion Museum; incorporates the Board; vests in it the site of the institutions; provides for the Board's personnel (fourteen members, with the Prime Minister as Chairman); and makes various machinery provisions.

Unemployment. (No. 10; 11th October, 1930). A separate account on the Public Account is created, the Unemployment Account, to receive net proceeds of the Unemployment Levy (after deducting collection charges), and a subsidy from the Consolidated Fund (of one-half of all expenditure from the Unemployment Fund), and any other appropriations (including a preliminary advance of £100,000 without interest). The Fund is to be disbursed on the direction of the Minister of Finance acting on the recommendation of the Unemployment Board. The Unemployment Levy is 7s. 6d. a quarter, imposed on males of 20 and over "ordinarily resident in New Zealand." Fines and penalties are incurred for default for more than one month in payment of an instalment. Complete exemption is conferred on persons receiving a war pension for total disablement, or any pension under the Pensions Act, and on Natives unless they elect to contribute and the Board approves. Temporary exemption is conferred on inmates for a month following a quarterly date of hospitals, charitable institutions, and penal institutions, and on persons who at a payment date are school

or college students and not wage-earners. Other exemptions, whole or partial, may be created by Order in Council. All males over 20, whether exempted or not, are required to register under the Act. An Unemployment Board is created, and provision made for various interests to nominate representatives for appointment by the Government. The Fund bears allowances to members (other than the Minister administering the Act and public servants) and their travelling-expenses. The Board has functions, set out in detail, partly advisory and partly executive, and has, in short, power to arrange for employment, grant employment, train for employment, and promote employment. The Board also sanctions sustenance allowances, not to exceed in respect of a contributor, 21s., of his wife or other housekeeper, 17s. 6d., of a child, 4s. per week, and (except in special cases) not to be paid till the contributor has been unemployed for 14 days, nor to continue for more than 13 consecutive weeks. It is an offence to employ for more than seven days a person who is not registered and ought to be, or a person more than a month in arrears with his levy. Regulations on various matters, and "such other matters as may be necessary" may be made by Order-in-Council.

Part 9. CRIMINAL LAW.

Prevention of Crime (Borstal Institutions Establishment) Amendment. (No. 12; 11th October, 1930). It is made an offence to escape or attempt to escape from an institution, or to fail to return after lawful absence. Further slight amendments.

Offenders Probation Amendment. (No. 13; 11th October, 1930). Where publication of a person's name is forbidden, it is made contempt of Court, and also an offence punishable summarily with a fine of £100, to publish particulars likely to lead to his identification. Compensation to persons suffering loss through an offence may be made a condition of release; the Chief Probation Officer may extend the time fixed by the Court for such payment; a probationary license remains in force till they are paid, although the period of probation has expired, unless the Prisons Board makes an order of discharge.

Part 10. LOCAL AND PRIVATE LEGISLATION PASSED AS PUBLIC ACTS.

Kawarau Gold Mining Amalgamation. (No. 41; 25th October, 1930).

Local Legislation. (No. 39; 25th October, 1930).

Waimakariri River Improvement Amendment. (No. 34; 25th October, 1930).

Reserves and Other Lands Disposal. (No. 24; 25th October, 1930).

Also many sections in the Appropriation Act, Finance Act (No. 2), and Native Land Amendment and Native Land Claims Adjustment Act, all noted above.

Rules and Regulations.

Cemeteries Act, 1908: Finance Act (No. 2), 1930. Fees under S. 67 of Cemeteries Act, 1908, prescribed.—Gazette No. 84, 4th December, 1930.

Explosive and Dangerous Goods Act, 1908. Clause 160 of regulations of 27th July, 1914, revoked and substitution therefor.—Gazette No. 86, 11th December, 1930.

Government Railways Act, 1926.—Bylaw relating to level crossings.—Gazette No. 81, 20th November, 1930.

Hospital and Charitable Institutions Act, 1926. Amendments to Regulation 58 of Regulations of the 18th April, 1927.—Gazette No. 84, 4th December, 1930.

Naval Defence Act, 1913. Alterations to Regulations *re* government and payment of N.Z. Division of Royal Navy.—Gazette No. 84, 4th December, 1930.

Nurses and Midwives Registration Act, 1925. Amendments to regulations.—Gazette No. 81, 20th December, 1930.

Samoa Act, 1921. Samoa Customs Consolidation Amendment Order (No. 2).—Gazette No. 84, 4th December, 1930.

Treaties of Peace Act, 1919. N.Z. Reparation Estates Service Amendment Order, 1930, re travelling allowances.—Gazette No. 86, 11th December, 1930.

Persia. Notification by Minister of Internal Affairs re recognition of documents drawn up for use in Persia.—Gazette No. 86, 11th December, 1930.

Solicitors' Guarantee Fund.

Claims Rules.

IN pursuance and in exercise of the powers conferred upon it by the Law Practitioners Amendment (Solicitors' Fidelity Guarantee Fund) Act, 1929, the Council of the New Zealand Law Society on the 14th ultimo made the following further rules:—

I. These rules may be cited as the Solicitors' Fidelity Guarantee Fund Claims Rules.

II. In these rules, unless the context otherwise requires,—

"Act" means the Law Practitioners Amendment (Solicitors' Fidelity Guarantee Fund) Act, 1929:

"Committee of Management" means the committee to which the powers of the Council of the New Zealand Law Society may be delegated pursuant to section 10 of the Act:

"Council" means the Council of the New Zealand Law Society, and where the Council of the New Zealand Law Society has delegated to a Committee of Management pursuant to section 10 of the Act any of its powers in relation to the fund, means in regard to such delegated powers and as to matters within the scope of such delegation the Committee of Management for the time being:

"Fund" means the Solicitors' Fidelity Guarantee Fund established under the Act:

"Statutory declaration" means a statutory declaration as defined in section 4 of the Acts Interpretation Act, 1924.

Notices of Claims against Fund.

III. (1) Every claimant against the fund shall, within twelve months after he has become aware of the theft in respect of which he claims, give to the Council or Committee of Management notice in writing of such claim.

(2) Every such notice shall be deemed to be given to the Council or Committee of Management if it is delivered personally to the secretary for the time being of the New Zealand Law Society at Wellington, or if it is posted by registered post properly addressed to such secretary.

(3) Every such notice shall be signed by the claimant or by some person duly authorised on his behalf, and shall contain full particulars of the matters by reason of which he alleges that he is entitled to claim against the fund, and shall contain full particulars of the amount of his claim.

(4) Every such notice by a claimant shall be in the form No. 1 in the Schedule hereto with such variation or variations as the exigencies of the particular case may require.

Settlement of Claims.

IV. (1) Every claimant against the fund who desires that the Council shall consider the settlement of his claim shall comply with the provisions of the succeeding paragraphs of this rule.

(2) (*a*) Every such claimant shall either contemporaneously with the giving of the notice referred to in paragraph (1) of Rule III, or within fourteen days thereafter or such further period as the Council may in its discretion allow, give to the Council notice of his desire that the Council shall consider the settlement of his claim.

(*b*) Every such notice shall be signed by the claimant or by some person duly authorised on his behalf and shall be in form No. 2 of the Schedule hereto with such variation or variations as the exigencies of the case may require.

(*c*) Every such notice shall be given to the Council in the manner provided in paragraph (2) of Rule III.

(3) Every such claimant shall either himself or by some person duly authorised on his behalf also complete, as fully as the circumstances of the case and the knowledge of the claimant allow, and make and declare a statutory declaration in form No. 3 of the Schedule hereto with such variation or variations as the exigencies of the case may require.

V. As soon as may be after receipt of any notice given under paragraph (2) of Rule IV, and of the declaration required by paragraph (3) of Rule IV, the Council shall consider the claim, and may adjourn from time to time its consideration of the claim.

VI. The Council may, with respect to any claim if it thinks fit,—

(*a*) Make or cause to be made such inquiries or obtain such reports as it thinks fit touching the claim, or touching any other claims or possible claims in respect of the solicitor or of the solicitor's agent or servant in respect of whose acts the claim is made :

(*b*) Require the claimant to verify by statutory declaration of himself or of some person having actual knowledge of the same any statement, fact, or other matter whatsoever touching his claim :

(*c*) Require the claimant to produce either as exhibits to a statutory declaration or otherwise all or any deeds, documents of title, receipts and negotiable instruments and all or any other documents or writings of any nature or description whatsoever touching his claim :

(*d*) Require the claimant to submit himself to examination by the Council or by some person appointed by the Council in that behalf as to matters touching his claim :

(*e*) Negotiate with, or appoint some person on behalf of the Council to negotiate with, the claimant as to the compromise of his claim.

VII. (1) The Council may with respect to any claim either (*a*) allow the claim in full ; (*b*) compromise the claim ; or (*c*) refuse to allow the claim.

(2) If the Council allows the claim in full or compromises the claim, then, if the claim is allowed in full, the amount of the claim, or, if the claim is compromised, the amount of the compromise, shall, subject to the provisions of section 19 of the Act, thereupon be paid by the Council to the claimant out of the fund.

Leave to commence Actions against Fund.

VIII. (1) Every claimant desiring the leave of the Council pursuant to the provisions of subsection (1) of section 16 of the Act to commence any section in relation to the fund shall make application in writing to the Council for such leave.

(2) Every such application shall be signed by the claimant or by some person duly authorised on his behalf, shall give full particulars of the claimant's contemplated action against the fund, shall contain a full statement of the reasons for and the grounds of such application, and shall be accompanied by a statutory declaration by the claimant or by some person having actual knowledge of the same verifying such particulars and such reasons and grounds.

(3) Every such application and statutory declaration shall be served upon the Council in the manner provided by paragraph (2) of Rule III.

SCHEDULE.

No. 1.—Claim in respect of Theft by a Solicitor, or by a Servant or Agent of a Solicitor.

To the Council of the
New Zealand Law Society, Wellington.

Take notice that I [we], [*Name in full*], of [*Address in full and occupation*], having suffered pecuniary loss by reason of the theft by [*Name in full*], a solicitor (*or*, a servant or agent of [*Name in full*] a solicitor) with respect to whom the Law Practitioners Amendment (Solicitors' Fidelity Guarantee Fund) Act, 1929, applies of [*Amount of money* or *description and value of other valuable property stolen*] entrusted to the said solicitor (*or* to [*Name in full of servant or agent*], the servant or agent of the said solicitor) in the course of his practice as a solicitor (*or* as a solicitor-trustee) hereby claim against the Solicitors' Fidelity Guarantee Fund established under the said Act for the sum of pounds shillings and pence (£ : :) as reimbursement in respect of such loss.

PARTICULARS OF CLAIM.

[*Here state full particulars of the matters by reason of which the claimant alleges that he is entitled to claim against the fund.*]

Particulars of Amount of Claim.

[*Here state full particulars of amount of claim.*

Dated at this day of , 19 .

.....
[*Signature.*]

Witness to Signature—

Signature of witness :
Occupation :
Address :

No. 2.—Notice by Claimant of his Desire that Council should consider Settlement of Claim.

To the Council of the
New Zealand Law Society, Wellington.

Take notice that I [we], [*Name in full of claimant*], of [*Address in full and occupation*], desire that you shall consider the settlement of my [our] claim against the Solicitors' Fidelity Guarantee Fund, notice of which claim was given to you on the day of , 19 .

Dated at this day of , 19 .

.....
[*Signature of Claimant.*]

Witness to signature—

Signature of witness :
Occupation :
Address :

No. 3.—Declaration by Claimant desiring the Council to consider Settlement of his Claim.

I, [*Name in full*], of [*Address in full and occupation*], being desirous that the Council of the New Zealand Law Society shall consider the settlement of my claim against the Solicitors' Fidelity Guarantee Fund, hereby solemnly and sincerely declare that the underwritten answers and particulars given by me to the questions underwritten are to the best of my knowledge and belief full and true answers and particulars.

(1) (*a*) Does the claimant claim in respect of the theft of money or in respect of the theft of other valuable property ?

(*b*) What is the interest of the claimant in the money or other valuable property stolen ?

(*c*) Has any other person any interest in such money or other valuable property ?

[*Give the names and addresses of other persons having interest and the nature and extent of their respective interests.*]

(2) If the claimant's claim is in respect of the theft of money, what is the sum of money stolen

(3) If the claimant's claim is in respect of other valuable property—

(*a*) What is its nature ?

(*b*) What was its value at the date of the theft ?

(4) (*a*) To whom was the money or other valuable property entrusted ?

(5) (*a*) If the money or other valuable property was entrusted to a solicitor, for what purpose was it so entrusted to him ?

(*b*) Was it so entrusted to him—

(1) In the course of his practice as a solicitor ?

(2) As a solicitor-trustee ?

(*c*) If it was entrusted to him as a solicitor-trustee—

(1) In what trust was he acting as a trustee ?

(2) What is the interest of the claimant under the trust ?

(6) If the money or other valuable property was entrusted to a servant or agent of a solicitor—

(*a*) At what place was it entrusted to such servant or agent ?

(*b*) For what purpose was it entrusted to such servant or agent ?

(7) By whom was the theft committed ?

(8) Upon what date did the claimant become aware of the theft ?

(9) (*a*) What oral evidence can the claimant, if so required by the Council, give or obtain to support his claim ?

[*Give the names and addresses of persons who can give evidence and state briefly the facts to which each can testify*]

(*b*) What written evidence can the claimant, if so required by the Council, produce to support his claim ?

[*Give the nature and effect of all writings, their dates, and the parties thereto.*]

(10) (*a*) Has the claimant commenced any action or made any claim or demand against any person in respect of this pecuniary loss or any part thereof, or in respect of any loss of which his present claim is part ?

(If so, give full particulars.)

(*b*) Does the claimant contemplate commencing any such action or making any such claim or demand ?
(If so, give full particulars of all contemplated actions or demands.)

(*c*) Is the claimant entitled to any right of action or other legal remedy against any person in respect of the pecuniary loss in respect of which he claims ?
(If so, give full particulars.)

(11) If the claimant were to commence, against the solicitor in respect of whom or of whose servant or agent the claim is made, an action in respect of this loss—

(*a*) Would the solicitor, in the opinion of the claimant, have any defence to the whole or any part of the claim ?
(If so, give particulars.)

(*b*) Are there any facts known to the claimant which the Council should know to enable it to decide whether or not any such defence would be available to the solicitor ?
(If so, state fully such facts.)

(12) (*a*) Has the solicitor in respect of whom the claim is made become bankrupt ?

(*b*) If not, are bankruptcy proceedings pending in respect of him ?

(*c*) In either case, what is the location of the bankruptcy proceedings ?

(13) How is the amount of the claimant's claim made up ?
[*Give full particulars of all items in respect of which the claimant claims reimbursement, and state the amount claimed in respect of each item.*]

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the Justices of the Peace Act, 1927.

Declared at , this day of , 19 .

.....
[*Signature of declarant.*]

Before me—

.....
Solicitor *or* Justice of the Peace.

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"Your counsel tells me that four years' penal servitude will kill you. I don't care if it does kill you."
—Lord Justice Bramwell, sentencing a prisoner found guilty of a number of assaults on children.