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"There is no human being whose smile or frown, there is no Government, Tory or Liberal, whose favour or disfavour can start the pulse of an English Judge upon the Bench, or move by one hair's breadth the even equipoise of the scales of Justice." —*Lord Justice Bowen.*

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Banco de Portugal v. Waterlow & Sons Ltd.

Though, because of the fact that it is extremely unlikely that the next hundred years will produce a similar case, *Banco de Portugal v. Waterlow and Sons Ltd.*, 47 T.L.R. 214, on appeal 47 T.L.R. 359, is from the point of view of precedent hardly a leading decision, it is undoubtedly one of the most interesting cases of our time. The eyes of the world have seen a foreign bank receive from English Courts a verdict against one of England's oldest and most highly respected business houses for £300,000 damages for an honest and inadvertent breach of contract. One cannot help wondering whether the result would have been the same if, in the same circumstances, the case had been one of an English bank suing in a foreign country.

The Bank of Portugal made with the defendants, who were printers, a contract which provided that the defendants should print the authorised notes for the bank, the plates being left in the defendants' possession and being intended to be available only for the purposes of the bank. By means of an elaborate fraud the defendants were induced by an unauthorised person to print from the plates a large quantity of notes and to deliver the notes to him, and the result was that these notes were put into circulation. In consequence of the fraud the plaintiffs honoured a large number of the spurious notes and on learning the facts they found it necessary to withdraw all the genuine notes of the same issue from circulation as they had, at that time, no means of distinguishing the genuine from the spurious notes. In an action for breach of contract, negligence, or conversion, Wright, J., the trial Judge, held that it was an implied term of the contract that there was to be no use of the plates for any purpose not authorised by the plaintiffs and that there was an absolute duty on the defendants not to print or deliver notes of the plaintiffs without their authority. This part of the judgment appears not to have been contested on appeal, and it is difficult to see, indeed, that any different view could have been taken.

But the real legal interest of the case lies in the question of damages. It was contended on behalf of Waterlow & Sons Ltd. that the bank was not bound to pay and should not have paid the false notes and that its loss was due entirely to its own voluntary and independent act in withdrawing all the notes of the issue. Wright, J., held that, although the issue was withdrawn at very short notice, this course was justified by the fact that it was already known that there was a great falsification of notes going on and the only way to avoid a financial crisis and the entire upheaval of the currency was to withdraw the whole issue. A vital fact was that the bank did not know the extent of the falsification of notes and also that the false notes were not distinguishable from the good notes. It was suggested that the bank could have obtained a means of detecting the forged notes by applying to Sir William Waterlow and his expert, but Wright, J., held that the earliest date upon which this information could have been obtained was December 16th, thus affecting only the tail end of the period given by the bank for the exchange of the notes, and he allowed a deduction of £80,000 for the failure of the bank in this respect to minimise the damages. The total amount of the bank's claim was £1,100,281. Deducting from that the £80,000 and also a sum of nearly half a million pounds, which it was agreed the bank had recovered from the conspirators, judgment was entered for the plaintiffs for £569,421 and costs!

From this judgment Messrs. Waterlow appealed, and the plaintiffs cross-appealed as to the deduction by Wright, J., of the £80,000. The result was a reduction of the damages by over a quarter of a million pounds. The majority Judges (Lords Justices Greer and Slesser) differed from the learned trial Judge as to the date when the bank might have obtained from Messrs. Waterlow the means of distinguishing the spurious notes from the genuine; they put it at December 10th, six days earlier than Wright, J., and acting as jurymen, fixed the bank's loss up to that date, as best they could, at £300,000. Scrutton, L.J., thought differently and would have increased the judgment of Wright, J., by £80,000 had he agreed as to the measures of damages.

Perhaps the most intriguing point of the case arose from a contention on behalf of Messrs. Waterlow that the only damage recoverable was the cost of printing the new notes which had been handed out and exchanged for the issue, for, under Portuguese law, the notes were not convertible into gold. Wright, J., made short work of the argument:

> "In Portugal the notes were the currency of the country. They would purchase commodities including gold. They could buy foreign exchange, including sterling or dollars, or any currency which was convertible. They could do that because they had behind them the liability of the Bank of Portugal."

Greer, L.J., and Slesser, L.J., agreed with the view of the trial Judge: the former put the matter thus:

> "Every 96 escudos issued by the bank were worth £1 when issued. They issued good notes in place of bad and every time they issued good notes to the value of 500 escudos in place of worthless notes they lost the market value of 500 escudos. When they printed new notes to take the place of those issued in exchange they did not replace their loss."

Scrutton, L.J., however, accepted Waterlow's contention:

> "The notes of the Bank of Portugal were inconvertible. The bank were under no obligation to replace them, when presented, by anything else than their own notes. There was no evidence . . . that the increased amount of genuine notes actually in circulation owing to over 200,000 Marang notes being replaced by genuine notes had occasioned any loss to anyone. The Bank paid out 200,000 genuine notes for nothing, but was authorised to, and did, replace them in their till at an expenditure of the cost of printing them."

It will be interesting to see whether the case is taken to the House of Lords. The bank would no doubt like to see Wright, J.'s judgment restored with £80,000 added, and Waterlow's would like to have the damages reduced to the cost of printing the notes, but the chances of a cross appeal either way being successful might, perhaps, be a deterrent. We doubt very much, however, whether the House of Lords would accept Scrutton, L.J.'s view as to the quantum of damages.

Court of Appeal.

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

March 16; April 1, 1931.
Wellington.

IN RE UEROA NGAREWA.

Bankruptcy—Assets—Property Passing to Official Assignee—Native's Interest in West Coast Settlement Lands Purchased by Crown After Bankruptcy of Native But Before Discharge—Cheque Paid to Bankrupt Before Discharge Not Protected from Bankruptcy But Passing to Official Assignee—West Coast Settlement Reserves Act, 1892, Ss. 4, 13, 20, 25—Amendment Act, 1913, Ss. 15, 23—Amendment Act, 1914, S. 2—Amendment Act, 1915, S. 10—Native Land Act, 1909, S. 424—Amendment Act, 1913, Ss. 109, 125—Acts Interpretation Act, 1924, S. 5 (c)—Bankruptcy Act, 1908, S. 61 (a).

Appeal from a judgment of Ostler, J., reported 6 N.Z.L.J. 301, where the facts sufficiently appear.

Moss and **Heine** for appellant.
Taylor for respondent.

SMITH, J., delivering the judgment of the Court, said that S. 61 (a) of the Bankruptcy Act, 1908, provided that the property of the bankrupt passing to the Assignee and divisible among his creditors should comprise all property belonging to or vested in the bankrupt at the commencement of the bankruptcy or acquired by or devolving upon him before his discharge. It was clear that the shares of the bankrupt in the Taumaha Native Reserve itself were not assets in his bankruptcy at any time—S. 20 of the West Coast Settlement Reserves Act, 1892. The question which arose was whether the cheque for £300 or the proceeds thereof became assets in the bankruptcy as being property acquired by the bankrupt before his discharge. It was contended for the appellant that S. 20 of the West Coast Settlement Reserves Act, 1892, extended to protect the cheque or its proceeds. The words "other moneys" secondly appearing in that section were relied upon. The learned Judge in the Court below was of opinion that those words must be read *ejusdem generis* with the preceding words and, so construed, that they referred only to moneys in the nature of income. Their Honours did not think that that was the case. The words clearly included moneys paid by a lessee for the value of improvements—S. 13 of the Act of 1892—and moneys paid as compensation for any reserve or part thereof taken for a public work—S. 30 of the Act of 1892. A distribution of those capital moneys was permitted by S. 10 of the West Coast Settlement Reserves Amendment Act, 1915. But the words "other moneys" in Section 20 could include only such moneys as might arise from such a disposition of a reserve as was permitted by the Act, for by Section 4 of the Act of 1892 it was enacted that the reserves were to be managed, dealt with, and disposed of under the provisions of the Act and not otherwise; and by Section 25 it was enacted that save as provided by the Act, reserves or the rents, income, or profits thereof, or other moneys arising therefrom, should not be capable of being dealt with or disposed of. A disposition by way of sale by a native of his interest in a reserve was clearly not a disposition permitted by the Act of 1892; and the words "other moneys" as used in Section 20 could not possibly be said, at the time that section was enacted, to include moneys arising from such a sale.

The power of a native to sell to the Crown his interest in a reserve under the West Coast Settlement Reserves Acts was conferred by S. 109 of the Native Land Amendment Act, 1913. That was admitted by counsel for the appellant. The definitions of "Statute," "land," and "trust" in subsection (1) of S. 109 and the provisions of subsections (2) (3) and (7) of S. 109 showed that this admission was properly made. Furthermore, the provisions of S. 23 of the West Coast Settlement Reserves Act, 1913, which was enacted on the same day as the Native Land Amendment Act, 1913, assumed that the provisions of S. 109 woul apply to the "ten year leases" dealt with by that Act without the necessity of an Order in Council but for the special provisions of S. 23.

S. 109 contained special provisions as to the disposal of the moneys arising upon a voluntary sale to the Crown by a native of his interest in a native reserve but counsel for the appellant contended that S. 109, in relation to reserves under the West Coast Settlement Reserves Acts, must be read as an Amendment of the Act of 1892, and he referred in that behalf to Section 5 (c) of the Acts Interpretation Act, 1924. The rule of construction there laid down (viz., that where an Act is passed in extension of a former Act, the provisions of the former Act shall extend and apply to the cases provided for by the amending Act in the same way as if the amending Act had been incorporated with and formed part of the former Act) did not apply, however, if the provisions of the former Act were altered by or were inconsistent with the provisions of the amending Act. In their Honours' opinion, it was clear that the provisions of S. 109 relating to the disposal of the purchase moneys arising from a voluntary sale under the section—(see subsections (5) and (6) of S. 109)—were inconsistent with the provisions of the Act of 1892 pursuant to which the Public Trustee—now the Native Trustee—was entitled to receive all moneys arising out of or in respect of reserves—S. 12 of the Act of 1892. It followed, their Honours thought, that the words "other moneys" in S. 20 of the Act of 1892 could not include moneys of the kind arising under S. 109 of the Act of 1913.

The foregoing conclusion was confirmed, in their Honours' opinion, by reference to the other legislation enacted in 1913 and 1914 affecting the West Coast Settlement Reserves. S. 15 of the West Coast Settlement Reserves Amendment Act, 1913 gave the Native Land Court power to partition the lands which were subject to the provisions of that Act. Upon the expiration of the leases to be granted thereunder the lands so partitioned were to vest at law in the Native owners and certificates of title were to be issued to the Native owners freed and discharged from all restrictions whatsoever against alienation; subject to the power of the native owner of land comprised in any partition order to direct the issue of a certificate of title to the Public Trustee instead of himself. It was held by Chapman, J., in **Hokio v. Aotea Maori Land Board,** (1918) N.Z.L.R. 289, that the effect of S. 15 was not to leave a native owner free to dispose of his land as European land. Its effect was to clear the land of the restrictions imposed by the West Coast Settlement Reserves Acts but to leave it subject to the provisions of the Native Land Act, 1909. The result of that interpretation was that on the partition of land subject to the West Coast Settlement Reserves Act, 1913, and the subsequent sale thereof by the Native owner pursuant to the provisions of the Native Land Act, 1909, the proceeds of sale in the hands of the native owner or of a Maori Land Board as agent for the native owner were not protected as against his Official Assignee in bankruptcy. See S. 424 of the Native Land Act, 1909, as amended by S. 125 of the Native Land Amendment Act, 1913; and see **Smith v. Whara Whara te Rangi,** (1917) G.L.R. 63. It was therefore a reasonable inference that the Legislature did not intend by the contemporaneous legislation enacted in S. 109 of the Native Land Amendment Act, 1913, and in the absence of express provision in that behalf, to protect the proceeds of a voluntary sale to the Crown, by a native owner of his interests in a reserve subject to the West Coast Settlement Reserves Amendment Act, 1913, when such proceeds were paid by the Crown to him direct or to a Maori Land Board as his agent. Counsel for the appellant, in effect, admitted that, but he said that the Taumaha Native Reserve which was here in question was not subject to the West Coast Settlement Reserves Amendment Act, 1913; although Mr. Justice Ostler had assumed that it was. The case as now stated on appeal showed that the Taumaha Reserve was not comprised in the lands subject to the West Coast Settlement Reserves Amendment Act, 1913, but Mr. Justice Ostler's assumption was due to the incomplete statement of the facts before him. It was clear, however, that S. 2 of The West Coast Settlement Reserves Amendment Act, 1914, conferred, and retrospectively conferred, upon the Native Land Court the same power to partition all the lands within the definition of "reserves" as defined in the West Coast Settlement Reserves Act, 1892, as was conferred upon the Native Land Court by the West Coast Settlement Reserves Amendment Act, 1913. That section was not cited to the Court; but its effect was to establish the argument founded upon the intention of the Legislature in its contemporaneous legislation in the same way as if the assumption made by the learned Judge in the Court below had been correct.

In the present case, then, a native owner had during his bankruptcy sold his interests in a West Coast Settlement Reserve to the Crown and had himself received payment for the same by cheque. The cheque or the proceeds thereof was property acquired by him before his discharge; and there was no statutory provision protecting the moneys from becoming assets in his bankruptcy. It followed that the Official Assignee was entitled to the moneys.

A subsidiary question was indeed raised for the appellant. It was contended that the cheque in question did not represent moneys "acquired" by the bankrupt. The case stated set out

that "the cheque for £300 of the proceeds thereof are now in the hands of the appellant's solicitor." On the other hand, it was stated at the hearing in this Court that the case was to be argued on the basis that the cheque had not been presented. Their Honours' view was that the cheque was property acquired by the bankrupt before his discharge and that the proceeds thereof when received by or on behalf of the native were also property acquired by the bankrupt before his discharge. The case of **Mears v. Western Canada Pulp Coy.,** (1905) 2 Ch. 353, did not help the appellant. It only decided that it was a condition precedent to a valid allotment by a company on the basis of the minimum subscription that the whole of the application money should have been paid to and received by the company in cash. In the present case, as the cheque has not been dishonoured, the proceeds were property acquired before discharge in the same way as the cheque itself.

Appeal dismissed.

Solicitors for appellant: **R. E. Roberts,** Patea.
Solicitor for respondent: **L. A. Taylor,** Hawera.

COURT OF APPEAL.

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

March 17, 18; April 17, 1931.
Wellington.

IN RE AN ARBITRATION BETWEEN SUN NEWSPAPERS LTD. AND N.Z. NEWSPAPERS LTD.

Arbitration—Award—Valuation—Agreement for Sale and Purchase of Land and Buildings of Newspaper Company at Valuation—"Not to be Valued as a Going Concern"—Agreement a Submission to Arbitration—Award of Umpire Good on Face Not Giving Reasons—Subsequent Letter by Umpire Stating Reasons for Award But Not Admitting That Any Error Made—Letter Not Part of Award—Umpire Valuing Land and Buildings Separately and Valuing Building by Ascertaining Cost of Construction and Making Deductions for Depreciation and Reduced Cost of Materials—Land and Buildings Valued as Property Adapted for Newspaper Business and Saleable as Such—No Excess of Jurisdiction—Error, if any, Mere Mistake in Method of Valuation—No Jurisdiction in Court to Remit Award as Mistake Not Admitted by Umpire—Express Admission of Mistake Necessary—Practice—Costs.

Motion to remit an award to an arbitrator for reconsideration. The motion was removed by a consent order into the Court of Appeal for argument. The parties to the proceeding were Sun Newspapers Ltd., a company which owned the "Sun" Newspaper published in Christchurch, and for some years prior to September last also published an evening newspaper in Auckland known as the Auckland Sun, and New Zealand Newspapers Ltd., the proprietor of certain newspapers in New Zealand, including the "Auckland Star," an evening paper published in Auckland. For convenience those two companies are referred to as the vendor company and the purchasing company respectively. On 17th September, 1930, those two companies entered into an agreement which was headed as follows: "Agreement for the Sale by Sun Newspapers Ltd. of certain of their Auckland Assets to New Zealand Newspapers Ltd. Auckland the following clauses shall apply:" The agreement contained nine clauses, only the first and second of which were material to the present controversy. Those two clauses were as follows: "(1) Plant and machinery and office equipment to be purchased at valuation. One valuer to be appointed by the buyer and one by the seller. In the event of any difference of opinion the matter to be referred to a third valuer independently appointed by the valuers. The third valuer's decision shall be final. It shall not be valued as a going concern." "(2) Land and Buildings to be acquired under the same conditions as set out in clause 1." Separate sets of valuers were appointed for the purposes of those two clauses. No dispute arose in regard to the valuation of the plant and machinery and office equipment made under clause (3). For the purposes of clause (2) the parties appointed Mr. T. B. Arthur and Mr. H. E. Vaile as their respective valuers. Those two gentlemen were unable to agree and they appointed as third valuer or umpire Sir Walter Stringer, a retired Judge of the Supreme Court, who His Honour proposed, for convenience, to refer to as the Umpire. The two companies prepared and settled their agreement without professional advice. They were not represented before the valuers or the umpire by solicitors or counsel, but acted throughout as their own lawyers. Sir Walter Stringer on 20th November, 1930, duly made his award in which, after reciting the relevant provisions of the agreements and the facts as to the appointment of the two valuers and himself as umpire, he stated that he had duly considered the matter and fixed "the value of the said land and buildings (not considering the same as or as part of a going concern) at the sum of fifty nine thousand seven hundred pounds (£59,700)." The next step in the proceedings was a letter of 26th November, 1930, from the Managing Director of the purchasing company to Sir Walter Stringer. Sir Walter Stringer, although he was *functus officio*, on 5th December, 1930, sent a reply to the Managing Director of the purchasing company purporting to state the principles upon which he arrived at his valuation. The letter, in so far as it was material, was as follows: "The only condition contained in the Agreement of Sale affecting the mode of valuation of the land and building is that they are not to be valued as part of a 'going concern.' This effectually eliminated any question of goodwill but goes no further. It could not affect the value of the premises as they stood divorced from all business connection. It is possible that the purchaser understood that this condition had a much wider signification and would exclude from the consideration of the Valuers the special purpose for which the building had been erected, viz., a newspaper and publishing business. In the absence however of an express provision to this effect, it would be contrary to the well-established principles of the interpretation of written contracts to read into the Agreement such an important qualification and I had to construe the agreement as meaning no more than expressed therein. It was contended by Mr. Vaile that as the purchaser did not require and did not intend to use the premises for the purposes of a newspaper and publishing business the valuation should be made upon the basis of the necessity of reconstructing the interior of the building at the cost of several thousand pounds and the income derivable from the premises after such reconstruction had been effected. By the application of this principle Mr. Vaile valued the building which originally cost £43,341 and the Government valuation of which was £32,625 at £18,000 only. The obvious answer to this was that there was no restriction imposed by the Agreement as to the use to which the Purchaser should put the property and that the Vendor was not concerned with the purposes for which the property was acquired or was intended to be used. The vendor had sold to the purchaser (a Newspaper Company) a property specially designed and constructed for a newspaper business and claimed and I think according to the true construction of the Agreement rightly claimed that it had to be valued as such. I was therefore quite unable to accept the principle of valuation as contended for by Mr. Vaile the effect of which would have been that the price to be paid to the Vendor for the property would be dependent upon the purposes for which the Purchaser intended to make use of it. In my view it was open to the Purchaser to use the premises for the purposes for which they were originally designed and constructed or to re-sell them to any person who might so use them or to divert them to entirely different purposes, the vendor having sold the property being in no way concerned or affected. Having rejected Mr. Vaile's contention as untenable the only principle of valuation applicable to the case appeared to me to be that for which Mr. Arthur had contended. I therefore adopted the principle and applied it in the following way:—1st as to Building: Having inspected the building in company with the valuers and having ascertained the cost of construction in 1927 (which was not suggested as being excessive) I made deductions in respect of the present reduced values of some of the materials used in construction and for depreciation of the building over a period of three years and thus arrived at its present value. 2nd as to the land. I carefully considered the evidence afforded by sales of properties in the vicinity over a period of years and the prices at which some properties were in the market and with the Valuers inspected most of the properties referred to. I also considered the contention of the Valuers with regard to the present state of the land market its prospects etc. and thus assisted I arrived at my valuation of the land."

The purchasing company then proceeded with a motion for an order that the award be remitted to the umpire for re-consideration upon the ground that he adopted a principle which was erroneous in law in that he held that the land and buildings affected by the submission had to be valued as a property specially designed and constructed for a newspaper business, and upon the further grounds set forth in an affidavit made by Sir Walter Stringer himself. In that affidavit, after setting out the material portions of the agreement and referring to the appointment of the two valuers and their difference of opinion

and to the award made by himself, Sir Walter referred to the Managing Director's letter of 26th November, set out the material portions of his own letter in reply, and then proceeded in paragraph 8 as follows: "I am making this affidavit at the request of the Solicitors for New Zealand Newspapers Limited who inform me that they are advised that they cannot properly bring before the Court the principle upon which I acted in making my Award except upon an affidavit by me personally, but it must be understood that as between the parties concerned I am strictly neutral; I have no doubt in my own mind that the principle adopted and acted upon by me as stated in my letter before quoted was correct and the fact that I have made this affidavit is not to be deemed to imply that I have any such doubt but at the same time I retain the desire expressed in my letter that such principle if thought to be erroneous should be reviewed by a legal tribunal if that course be available."

Johnstone and **Rogerson** for N.Z. Newspapers Ltd. in support.
Northcroft, Cooke and **James** for Sun Newspaper Ltd. to oppose.

MYERS, C.J., said that the valuation of the transfer was an award because under the Arbitration Act, 1908, a written agreement for valuation was a "submission" and the valuers were arbitrators: **In re Bryant and Ors. and Thomson,** 33 N.Z. L.R. 983; **Hamill v. Wellington Diocesan Board of Trustees,** (1927) G.L.R. 197; **Re Napier Harbour Board and Faulkner,** (1930) N.Z.L.R. 184. The first observation that should be made was, that no exception was taken to the umpire's method of valuing the land; it was the method of valuing the building to which objection was made. The next was that, although the purchasing company might have applied to the umpire during the course of the arbitration to state a case for the opinion of the Supreme Court, no such application was made. Furthermore it appeared from Sir Walter Stringer's affidavit that when the matter was before him the purchasing company shaped its case in a certain way, its contention being that, as the company did not require and did not intend to use the premises for the purpose of a newspaper and publishing business, the valuation should be made upon the basis of the necessity of reconstructing the interior of the building at a cost of several thousand pounds and the income derivable from the premises after such reconstruction had been effected. That apparently was the only method for which the purchasing company contended. That was how it shaped the case. It was expressly admitted at the Bar by counsel for the purchasing company in answer to a question from His Honour that no evidence was adduced before the umpire in support of any valuation on the basis of the method which it was claimed he should have adopted. In other words the purchasing company sought to make out a different case from that which it presented before the umpire, and necessarily upon different and fresh evidence. His Honour could not help thinking that some coercive reason must be shown before that could be permitted. Up to that point the case bore a fairly close resemblance to **London Dock Co. v. Shadwell,** 7 L.T. 381, where the Court refused an application to set an award aside.

Clearly the umpire was right in not accepting the contention made before him on behalf of the purchasing company. Firstly, there was nothing in the agreement, nor, as His Honour understood the case, was there any evidence before the umpire, that the premises were being purchased on the condition basis or understanding between the parties that the purchaser did not require and did not intend to use the premises for the purposes of a newspaper and publishing or general printing business. Secondly, His Honour could see no foundation for the contention that the valuation was to be made upon the basis of the value of the premises to the purchasing company for any particular or special, or any limited or restricted, purpose. It might be added that there was nothing before the Court to shew that the purchasing company had power to traffic in real estate or to acquire land and buildings for any other than the main and primary object of the Company's business.

Mr. Johnstone's first contention was that the award was made upon a wrong principle, that the words "at valuation" meant at market value—that was to say a price which any prudent purchaser would pay for the premises as they stood. He said that the method adopted by the umpire was erroneous and that the error involved an excess of jurisdiction. It was not disputed by counsel for the vendor company that if an excess of jurisdiction could be shown the Court had power to set the award aside or remit it back to the umpire. Their contention was that the umpire did not act erroneously; and alternatively they said that, if he did, the error was an error within the jurisdition, and that, as no error had been admitted by the umpire, and the umpire had not asked that the award be remitted back, the authorities showed that the present application must fail. The umpire, of course, had to act upon the material which the parties placed before him, and he came to the conclusion that the proper method of valuing the premises was on the basis of a building specially designed and constructed for a newspaper and publishing (or presumably a general printing) business and that presumably there was a present or potential market for such premises. In that connection there were certain well-known facts which the umpire was entitled to take into consideration. It was admitted that the premises in the present case were adapted for either a newspaper and publishing or a general printing business. The umpire might in the circumstances well have thought that the vendor company could or might have found other purchasers than the purchasing company willing to purchase for both, or either of, those purposes. There was nothing in the case to show that on the material before him such a view was not justified. His Honour did not think, therefore, that it could be said that the umpire necessarily valued the premises on any wrong principle. Mr. Johnstone admitted that the umpire was entitled to take into consideration the suitability of the building for the purposes of a newspaper or of a printing business. His complaint was that that was the only method or test applied. He contended that the vendor company could not be placed in a better position under the agreement than it would have occupied if the property had been compulsorily acquired under some authorising statute. Even in such a case it seemed to His Honour that adaptability would be a proper and possibly the sole test if there was a market available. In the present case there was not only adaptability but actual adaptation, and in addition it must be assumed, His Honour thought, that in the opinion of the umpire there was a present or potential market for the premises so adapted. He said in his letter that it was open to the purchaser to resell the premises to any person who might use them for the purpose for which they were originally designed and constructed. That seemed to His Honour to indicate that in the umpire's opinion there was a market for the disposal of the premises for the purpose of a newspaper or printing business. Assuming that the case were one of property expropriated under statutory authority the principles to be applied were stated in **Fraser v. City of Fraserville,** (1917) A.C. 187, at p. 194. Assuming that Mr. Johnstone was right in saying that the same principles applied to the present case, His Honour could not see that it was necessarily to be said that the umpire had offended against them. Paraphrasing what the umpire had said in his letter and affidavit, he seemed to have valued the land and buildings not as a going concern but as a property saleable and immediately operable for the purposes of a newspaper or general printing business. During the course of the argument His Honour asked counsel for the purchasing company what he suggested was meant by the words in the agreement: "It shall not be valued as a going concern." The reply was that they meant nothing at all. His Honour could not think that business men would use such words unless some meaning was intended by them. The umpire interpreted the words as meaning simply that the property was to be valued without anything for goodwill; and His Honour was unable to say that his interpretation was wrong, particularly when it was remembered that the later clauses of the agreement provided independently for the payment by the purchasing company of what seemed to His Honour to represent the item of goodwill of the vendor company's business. Certainly His Honour thought that it was not wrong if there was a market for the property as one adapted for the purposes of a newspaper or printing business.

Even if the umpire was wrong His Honour did not think that his error would amount to an excess of jurisdiction. He was required to value the land and buildings. He did value the land and buildings, and nothing else. He included in his valuation nothing outside the land and buildings. He did not (as the arbitrator had done in **Fraser v. City of Fraserville,** (1917) A.C. 187—see at pp. 192 and 193—and in several of the other cases cited) "value another thing which was altogether outside his powers." In those cases something was valued which really did not belong to the vendor or person whose property have been appropriated. That was not so in the present case. The question whether the property had a present or potential marketable value for the purposes of a newspaper or printing business was a question of fact for the umpire. In that respect the case was very similar to **Town of Montagny v. Le Tourneau,** 55 Can. S.C.R. 543. See also **Oldfield v. Price,** 6 C.B. (N.S.) 539. If then the umpire was wrong, which in His Honour's opinion had not been shown, the most that could be said was that he applied a wrong method in arriving at his valuation. That, in His Honour's opinion, would be at most an error within his jurisdiction.

Mr. Johnstone contended that, on that assumption, the purchasing company, on the assumed authority of **A.-G. for Manitoba v. Kelly,** (1922) 1 A.C. 268, 281, was still entitled to succeed on the present application. Mr. Johnstone admitted that in that case no error appeared on the face of the award. He also

admitted that the umpire's letter of 5th December, 1930, was not so closely connected with the award that it must be regarded as part of it. But he relied upon the words of the judgment in **Kelly's case** (*sup.*) "unless the umpire himself states that he has made a mistake of law or fact leaving it to the Court to review his decision." He contended that the present case was within those words because, he submitted, the arbitrator had admitted facts from which the Court might see that he had made a mistake. But the Judicial Committee was not considering a case in which the point was whether there had been any statement by the umpire in regard to any mistake of law or fact. It was, His Honour thought, merely stating the law in a general way without full elaboration on a point which it was not concerned to consider. A close examination of the authorities lead His Honour to the conclusion that where an alleged mistake was a mistake made within the jurisdiction there must be firstly a direct statement or admission by the umpire that he had made a mistake, and secondly a request by him to the Court to remit the award back to him. One of the cases relied on by Mr. Johnstone for the contrary conclusion was **Mills v. Master of Bowyers,** 3 K. & J. 66, but the effect of that case was stated by Brett, J., in **Dinn v. Blake,** L.R. 10 C.P. 388, thus: "It was said that the Court could refer back the award if the arbitrator himself stated that in his opinion he had made a mistake of law or fact and was desirous of the assistance of the Court and willing to review his decision on the point on which he believed himself to have gone wrong." Brett, J. also referred to **In re Dare Valley Ry. Co.,** L.R. 6 Eq. 429, on which also Mr. Johnstone relied, as being a case of excess of jurisdiction. In passing it might be said that **Jones v. Corry,** 5 Bing. (N.C.) 187, and other cases relied on by Mr. Johnstone were also cases of excess of jurisdiction. Denman, J., in **Dinn v. Blake** said that the Court would not, in a case of mistake, send back the award without an assurance from the arbitrator himself that he was conscious of the mistake and desired the assistance of the Court to rectify it. Archibald, J., expressed himself in similar language, and concluded by saying: "In this case the arbitrator has stated that he decided on certain grounds, and the plaintiff's counsel states that they are erroneous, but there is nothing to shew that the arbitrator admits that he has decided erroneously. The case does not, therefore, come within the exemption to the general rule." **Dinn v. Blake** had been accepted to its full extent, by the Court of Appeal **in Proudfoot v. Turnbull,** 1 N.Z.L.R. (C.A.) 247, at p. 271, 272, by the Supreme Court of Canada in **McRae v. Lemay,** 18 Can. S.C.R. 280, and by the Court of Appeal in England in **In re Keighley Maxsted & Co. and Durant Co.,** (1893) 1 Q.B. 405, at pp. 409, 410 and 411. His Honour referred to passages from the judgment of Lopes, L.J., at p. 413, and Lord Esher, M.R., at ps. 409, 410 in the last-mentioned case, adding, that the same view was taken in **In re Montgomery Jones and Co. and Liebenthal,** 78 L.T. 406, and there were also other older authorities cited at the Bar very much to the same effect: **Walton v. Swanage Pier Co.,** 10 W.R. 629; **Imperial Royal Chartered Azienda v. Funder,** 21 W.R. 116. If then it could be said that there was a mistake made by the umpire, His Honour thought that the mistake was in regard to a matter within his jurisdiction; and, that being so, upon the authorities cited, His Honour was of opinion that the purchasing company could not succeed in its present application. The umpire did not request the Court to remit the award back to him on the ground of mistake. He did not admit having made a mistake. Indeed he asserted the contrary. For those reasons His Honour thought the application should be dismissed.

As to costs, His Honour remarked that the case was a case removed and as far as possible the Supreme Court scale should be adopted. It had been held in somewhat parallel cases to the present one that costs should be awarded as if the proceeding were an ordinary action: **In re Schniedeman Bros. Ltd.,** (1917) N.Z.L.R. 65; **In re Hardy No. 2,** (1922) N.Z.L.R. 613, at p. 624. The amount involved in the present case appeared to be over £20,000 and the scale costs would amount to several hundreds of pounds. The Court, however, had power to fix a smaller sum, and His Honour thought, on the whole that 100 guineas (plus disbursements) was a reasonable sum to order the purchasing company to pay.

REED, J., delivered a separate judgment concurring.

ADAMS and OSTLER, JJ., concurred.

SMITH, J., delivered a separate judgment concurring in the result but differing from the view of the majority of the Court as to the construction of the agreement.

Solicitors for N.Z. Newspapers Ltd.: **Nicholson, Gribbin, Rogerson and Nicholson,** Auckland.

Solicitors for Sun Newspapers Ltd.: **Earl, Kent, Massey and Northcroft,** Auckland.

Reed, J.
Adams, J.
Ostler, J.
Smith, J.

March 12; April 1, 1931.
Wellington.

DOMINION FARMERS' INSTITUTE LTD. v. COMMISSIONER OF TAXES.

Revenue—Income Tax—Deduction—Company Owning Land with Buildings Thereon Carrying on Business of Erecting Buildings and Letting Accommodation Therein—Subsequent Purchase of Vacant Land Adjoining—Rents and Other Profits Received from Vacant Land—Claim to Deduction from Total Assessable Income of Five per cent. on Capital Value of Both Properties—Rents and Profits from Vacant Land Less than Five per cent. on its Capital Value—Deduction in Respect of Vacant Land Allowed only to Extent of Rents and Profits Therefrom—Taxpayer Not Entitled to Treat Both Pieces of Land as One Rent-Producing Property—Land and Income Tax Act, 1923, S. 83.

Appeal from a judgment of Myers, C.J., reported 6 N.Z.L.J. 164, where the facts sufficiently appear.

Gray, K.C. and **Foden** for appellant.
Solicitor-General (Fair, K.C.) for respondent.

SMITH, J., delivering the judgment of the Court, said that the appeal raised the question of the true construction of S. 83 of the Land and Income Tax Act, 1923, as it was in force prior to the amendments made therein in 1926 and 1930. The object of the section was to establish a special exemption. It did so by entitling a certain class of taxpayer to deduct a certain sum from certain assessable income.

The first question was as to the class of taxpayer entitled to the benefit of the section. Sucu a taxpayer must actually own at law or in equity an interest in land—S. 83 (4)—and the land was described as "any land" in S. 83 (1). That land or part thereof so owned by the taxpayer must during the whole or part of the income year have been actually used by the taxpayer exclusively: (a) for the purposes of his business; or (b) for the purpose of deriving rent, royalties or other profits therefrom. When the taxpayer was within these requirements he was a taxpayer qualified to make the deduction which was specified.

The next question was as to the sum which he might deduct. That was stated by the section to be a sum computed in respect of the period of the use of the land for either of the specified purposes at the rate of £5 per centum per annum on the capital value of the interest in the land so used. The amount of the deduction depended upon the amount of the valuation which in its turn depended upon the extent of the land used for the specified purposes. The extent of the land involved would be dealt with under the next question.

The next question was as to the income from which the aforesaid sum was to be deducted. That income was the assessable income derived by the taxpayer during the income year, so far as derived from the use of the land for either of the specified purposes. The assessable income was not the taxable income—see definitions in S. 2 of the Act. S. 83 did not deal with the whole of the taxpayer's assessable income but only with that portion of it which was derived during the income year from the use of the land in the actual and exclusive manner specified in the section. It followed that the amount of the assessable income from which the deduction was to be made depended upon the land which was used for the specified purposes and upon that land only. The area of that land depended upon its "actual user" which meant its "actual sole and continuous user" for the specified purposes: **Commissioner of Taxes v. Kauri Timber Coy.,** 24 N.Z.L.R. 18, 36; **Wanganui Borough v. Wanganui High School Board of Governors,** (1925) N.Z.L.R. 515. The deduction was to be made then from the income derived from the land so used. It was definitely the income derived from the actual user of the land itself for the specific purposes which was to be regarded as the income from which the deduction authorised by S. 83 was to be made. It followed further, and in particular from the words "so far as derived from such use of the land" occurring in S. 83 (1) that S. 83 contemplated that the land which was actually used for the specified purposes could be regarded as a separate source of assessable income. That was not the view taken in the Court below. It was assumed in the judgment appeal from and it was assumed in argument before the Court of Appeal that if any one piece of land was actually used by a taxpayer exclusively for the purposes

of his business, that piece of land must be treated as comprised in a single unit with all other pieces of land similarly used by the taxpayer. The basis of that reasoning appeared to be that the word "business" in the section meant "the substantial business" of the taxpayer. The inference was then drawn that land producing income, not being income derived from the substantial business of the taxpayer, must be land from which rent royalties or other profits were being derived. The assumption was then made on the one hand that all pieces of land used for the substantial business of the company must be treated as a unit for the purposes of the exemption, and, on the other hand, that each piece of land used for the purpose of deriving separate rents royalties or other profits must be dealt with separately for the purposes of the exemption. Their Honours were unable to accept this view as representing the true construction of the section. In their opinion, the words "any land" and the words "so far as derived from such use of the land" did not require such a construction and, in their Honours' opinion, the context did not permit it. If all the pieces of land used for the "substantial" business of the taxpayer must be treated as a unit, their Honours could see no reason why all the separate pieces of land owned by the taxpayer and used for the purpose of deriving rents royalties or other profits must not also be treated as a unit. In their Honours' opinion, a reasonable meaning could be given to the words "any land" and the words "so far as derived from such use of the land" (which phrase referred to the assessable income from which the deduction was to be made) by viewing the area of land which was to be treated as a unit as that area of land which could reasonably be regarded from a business standpoint as a separate source of assessable income. As the deduction was allowed only from so much of the total assessable income of a taxpayer as was derived from the actual and exclusive use of land for either of the two specified purposes, it was necessary to arrive at that particular assessable income. That involved some apportionment of the total assessable income. In respect of lands actually used exclusively for the business of the taxpayer, their Honours thought that the words which they had quoted from the first subsection should be construed to apply to any of the lands of the taxpayer, actually and exclusively used for the purposes of his or its business, which could be regarded as constituting a separate source of assessable income. It followed that the total area of the land of a taxpayer which might be regarded as being comprised in his or its "substantial" business, might or might not coincide with that area of land which was to be regarded as a unit when viewed as a separate source of assessable income. In respect of each such unit, the deduction allowed corresponded to the deduction of rent paid for business premises which would be allowed to a taxpayer if he were a lessee and not an owner. But their Honours did not think that it was the intention of the legislature that a taxpayer could by the letting of land for the purposes of his or its business at a small rental, even in a *bona fide* manner, secure a deduction of 5 per cent. upon the capital value of that land, (which deduction might be grossly in excess of the amount of rental so derived), regardless of the question whether the rental so derived could be considered from a business standpoint as a separate course of assessable income. If it could be so considered, then the intention was, their Honours thought, that the deduction should not exceed the rental so derived. The result was that, where land was actually used either exclusively for the purposes of the taxpayer's business or for the purpose of deriving rent, royalties or other profits therefrom, the area or extent of land, which must be dealt with for the purposes of the exemption, must be determined by considering what area of land should be regarded in a business sense as the separate source of assessable income derived from the actual use of the land for either of the purposes specified in the Section; and that rule of guidance applied whether the taxpayer was a company or a private individual. A further result was that the right to a deduction depended equally upon the use of the land for either of such purposes. That was made clear by the combination of both purposes in subsection (2). The reason for specifying the two purposes was more evident when the case of a private person was considered and distinguished from the case of an incorporated company. In general a company would use all its lands exclusively for the purposes of its business—whether any particular piece was "actually" used or not—but a private individual might well use part of his lands for the purposes of his business and part for the purpose of deriving rents or profits an activity which might be outside the scope of his business altogether.

The machinery of the Section was completed by subsection (3). That subsection provided for the ready determination of the capital value of land which could reasonably be regarded from a business point of view as a separate source of assessable income derived from the actual use of land for the specified purposes, when that value was comprised in a valuation comprising both that land and other land. In such a case the Commissioner might apportion the capital value of the land between the two areas and the deduction must be computed in accordance with such apportionment.

If their Honours had correctly interpreted the section, its application to the facts of the present case presented no difficulty. It appeared that both property X and property Y, to use the nomenclature adopted by the learned Chief Justice, had each been regarded as the separate source of assessable income for the company. According to paragraph 11 of the case stated the Commissioner had already separated the income from the two properties. Moreover, one of the appellant's objections was that the Commissioner was not entitled to assess the company on two incomes. It was clear then in the present case that there was no difficulty in determining in a reasonable and businesslike way what was the assessable income derived from the actual and exclusive use of property X and property Y for either of the specified purposes. Property X, upon which the Dominion Farmers' Institute Building had been erected was plainly a property actually used exclusively for the business of the company. Property Y, which was vacant land let at a small rental, might upon the terms of the Memorandum of Association, be similarly regarded, but their Honours did not decide that question and the point was of no consequence because property Y had been plainly used for the purpose of deriving rent. It therefore came within the second purpose and either was sufficient to justify the claim for exemption, but upon the basis that each property must be dealt with as a separate unit.

Their Honours' conclusion then was that property X and property Y must be dealt with separately. A separate deduction must be made from each separate amount of assessable income. The residue then became part of the taxable income. The Statute did not require that the deduction must be made from the total assessable income of the taxpayer. On the contrary the terms of Section 83 required that the deduction should be made from that portion of the assessable income which was derived from the actual and exclusive use of the land for the purposes specified.

Appeal dismissed.

Solicitors for appellant: **Foden and Thompson,** Wellington.
Solicitors for respondent: **Crown Law Office,** Wellington.

Supreme Court

Myers, C.J. April 23; May 18th, 1931.
Blenheim.

GRIGG v. IRONS.

Practice—Appeal—Findings of Fact of Trial Court—Magistrate Not Deciding Matter on Credibility of Witnesses but Saying That Evidence of Some of Witnesses for Respondent was Exaggerated and Purporting to Decide Matter on Probabilities—Appellate Court in Same Position to Decide Matter as Court Below—Judgment of Magistrate Reversed.

Appeal from a judgment of a Stipendiary Magistrate. The case appears to be a useful illustration of a class of case where an appellate Court is justified in reversing the judgment on facts of a trial tribunal. The case is reported for this purpose only, and the facts of the case are not thought of importance.

Nathan for appellant.
Smith for respondent.

MYERS, C.J., said that the learned Magistrate, referring in his judgment to the evidence called by the respondent, said: "I think it not improbable that some of the witnesses gave exaggerated descriptions of the state of the food, and their evidence should be accepted with reservation." As to the evidence called on behalf of the appellant, he said: "I do not say the evidence for the defence is not strong." He then proceeded: "But it is I think out-weighed from the point of view of probability by the evidence for the plaintiff." He seemed, therefore, to have based his judgment not on the credibility of the witnesses in the sense in which that expression is ordin-

arily used, but on what he regarded as the probabilities. In those circumstances this Court was in the same position to decide the matter as the Court below, upon the principle enunciated by Lord Halsbury, L.C., in **Montgomerie v. Wallace-James,** (1904) A.C. 73 at p. 75. See also **Pryce v. Small,** 28 N.Z.L.R. 590. Taking the test of probabilities as applied by the learned Magistrate, there were a number of very important factors in the case which the judgment entirely overlooked. His Honour referred to certain matters in the evidence and said that taking all those matters into consideration he was unable to agree with the learned Magistrate's conclusion. Seeing that the Magistrate apparently did not feel justified in deciding the matter on the credibility of witnesses, had expressly refrained from saying that he disbelieved either one set or the other, but did expressly say that the evidence of some of the witnesses for the respondent was exaggerated, and then decided the matter on the "probabilities," His Honour thought, in view of the matters to which he had referred, that his judgment was erroneous and that it could not be allowed to stand.

Appeal allowed.

Solicitor for appellant: **A. C. Nathan,** Blenheim.
Solicitor for respondent: **C. T. Smith,** Blenheim.

Reed, J. May 12, 1931.
Wellington.

IN RE MORRISON.

Administrator—Practice—Letters of Administration—Sureties—Dispensing with Sureties—General Practice Stated—Application for Leave to Dispense with Sureties on Resealing of Letters of Administration on Ground that No Debts in New Zealand and Life Insurance Policy Sole New Zealand Asset—No Exceptional Circumstances Warranting Departure from Usual Practice—Administration Act, 1908, Ss. 21, 24.

Motion to dispense with sureties on the resealing of Letters of Administration, granted in the Federated Malay States, in the above estate. The grounds relied on were: (1) that there were no debts in New Zealand; (2) that the estate in New Zealand consisted solely of policy moneys due by the Australian Mutual Provident Society amounting to £548 1s. 11d.

REED, J., in a written memorandum, said that S. 44 of the Administration Act, 1908, provided *inter alia*, that "such Letters of Administration shall not be sealed until such bond is entered into as would have been required if such Letters had been originally granted by"—the Supreme Court in New Zealand. By S. 21 two sureties were required to a bond where Letters were originally granted in New Zealand, but the Supreme Court was empowered by S. 22, to dispense with one or both. In England the same practice as to sureties was observed on resealing grants of administration, made by the Court of any British possession, as on an application for Letters of Administration: **Mortimer on Probate Practice,** 2nd Edn. 487. Of course the practice in England was controlled by regulations made for the guidance of Registrars, but although in New Zealand there were no such regulations, His Honour thought that the regulations in England were a good guide as to what should be the practice in New Zealand; moreover, there appeared to be no good reason why different principles should apply.

His Honour thought that the general practice in New Zealand on an original application for Letters of Administration by any person other than those specifically exempted by Rule 21 of the Administration Act, 1908, was not to dispense with sureties unless in the following circumstances: (1) When all the next of kin were *sui juris* and joined in consenting to sureties being dispensed with; where there were infants, sureties were not dispensed with; (2) Where there were no debts in the estate, unless sufficiently secured. To warrant sureties being dispensed with, both those conditions should, as a rule, exist. So far as could be gathered from the cases those conditions were not inconsistent with the practice in England: see **Re Unwin,** 87 L.T. 749; **Re Harper,** (1909) P. 88; **Mortimer on Probate,** 2nd Edn. 458. But the Courts in England had, in exceptional cases, departed from that rule. Where the Court had no power to grant leave to carry on the deceased's business, and it was plainly shown that it was for the benefit of the estate that it should be carried on, sureties were dispensed with on the application for Letters of Administration by the widow, in order to give her a free hand: **In the Goods of Cory,** (1903) P. 62; **In the Goods of Rushworth,** 25 T.L.R. 128. In the latter case the creditors, including the Bank, had notice and did not oppose. In **In the Estate of the King of Siam,** 107 L.T. 589, administration was granted to an Envoy Extraordinary and Minister Plenipotentiary, as Attorney for the King of Siam, and sureties were dispensed with. Those were exceptional cases and did not affect the general practice. Where the bond of the administrator alone was not sufficient, the regulations in England only permitted the dispensing with one surety where the value of the estate did not exceed £50: **Tristram and Coote,** 16th Edn. 153. So far as His Honour was aware there was no recognised common practice in New Zealand regarding dispensing with one surety. There were no exceptional circumstances in the present application which would warrant a departure from the usual practice.

Motion dismissed.

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

MacGregor, J. March 31, April 1; 20, 1931.
Wellington.

WRIGHT v. MURPHY.

Vendor and Purchaser—Specific Performance—Conduct of Vendor—Contract Providing that Purchaser Should Take Over "Government Mortgage being Arranged by Vendor"—Vendor Making False Declarations and Representations to State Advances Department in Order to Induce Granting of "Worker's Loan"—"Settler's Loan" Granted by State Advances Department—Vendor's Conduct Disentitling Her to Specific Performance.

Action for specific performance of a contract for the sale of land. The contract was dated 25th June, 1929, and provided (*inter alia*) that the purchaser should take over "the Government Mortgage at present being arranged by the vendor" and that the purchaser would execute a second mortgage for the balance of purchase money in favour of the vendor, such second mortgage to bear interest at the rate of 7 per cent. for a term of three years. On 14th May, 1929, the plaintiff signed an application to the State Advances Office for a worker's loan and on 15th May, 1929, signed the statutory declaration required by the State Advances Act, 1913. That declaration contained a clause in the following terms: "That I will forthwith reside permanently on the property." Early in December, 1929, the Departmental file having been mislaid, the plaintiff made a fresh application for a worker's loan and made a new statutory declaration. That declaration stated (*inter alia*) (1) "I desire a loan for the sole purpose of erecting a house for myself and my family"; (2) "That I will forthwith on completion of the dwellinghouse as aforesaid reside permanently on the property." At that time the dwellinghouse was already completed and the defendant and his wife had with the plaintiff's knowledge and approval been some months previously residing there and afterwards continued to reside there. MacGregor, J., found on the facts that the plaintiff had no intention of residing on the property "permanently" or otherwise. In addition to the declarations above referred to the plaintiff had given other assurances to the Department that she intended to reside on the property. On 6th February, 1930, the Department offered to grant a loan of £900 on the property under the Settlers Branch; this loan was accepted by the plaintiff and £875 was paid over to her solicitors. The Department later declined to pay over the remaining £25. The defendant pleaded a number of defences and raised others at the trial, but the case is reported only so far as concerns the defence raised at the trial of "illegality."

Putnam for plaintiff.
Leicester for defendant.

MACGREGOR, J., after referring to the other defences raised by the defendant said it remained to consider the last point raised by the defendant at the trial—the suggestion of illegality. The decision of that unexpected question had given His Honour considerable difficulty and concern. The general doctrine relied on by the defendant might be easily and shortly stated, but its application to the specific facts of the present case involved considerations which His Honour had found of great importance and some difficulty. The maxim of both law and equity was "*ex turpi causa non oritur actio.*" His Honour re-

ferred to the observations of Lindley, L.J., in **Scott v. Brown and Ors.,** (1892) 2 Q.B. 724, at p. 728, concerning this maxim, and said that the question to be determined was whether the facts of the present case brought it within that principle. The immediate question for determination was whether in view of the extraordinary conduct of the plaintiff and her solicitor (her then solicitor was not the solicitor on the record) detailed above regarding the Government mortgage the Court was bound, or indeed entitled, to grant a decree of specific performance of the contract of sale. Specific performance was in every case a discretionary remedy. The law was thus broadly stated in **Kerr on Fraud and Mistake** 6th Edn. 518 as follows: "Where a party comes to the Court for specific performance of a contract, he must as to every part of the transaction be free from any imputation of fraud and deceit." His Honour regretted to state that in his judgment that had not been established in the present case. On the contrary it appeared to His Honour clear from the evidence that the Government mortgage procured by the plaintiff, and to be taken over by the defendant, was so procured by means of false declarations made by and on behalf of the plaintiff regarding her occupation of the property. It was true that those false declarations were not completely successful. She did in the end succeed in procuring a small Settler's mortgage, in place of a larger Worker's mortgage. But none the less false and misleading representations were designedly made in the course and for the purpose of arranging a mortgage, which the Court was asked to compel the defendant to take over as part of the consideration for the contract of sale sought to be enforced. In those circumstances a Court of equity should not in His Honour's opinion enforce by its decree such a contract. His Honour referred to the law in this connection as stated in **Fry on Specific Performance,** 6th Edn. 229, and **Sykes v. Beadon,** 11 Ch. D. 170, per Jessel, M.R., at p. 197.

The same result must probably be arrived at if the case were considered from a slightly different angle. It was an old maxim of equity that "he who comes into equity must come with clean hands." In the present case the plaintiff came into Court for a relief purely equitable. It was apparent from the evidence that she had been guilty of what amounted to fraud in connection with a material part of the very transaction which she was seeking to enforce. In His Honour's opinion, accordingly, her own misconduct in the matter had disentitled her to relief at the hands of the Court. If authority for that view were wanted it could be found in the passage from the judgment of Eyre, C.B., in **Dering v. Earl of Winchilsea,** 1 Cox 318, at p. 319. In the present case the making of a false declaration was in itself a "depravity" both in a legal and in a moral sense; it clearly had an immediate and necessary relation to the plaintiff's claim for specific performance. On that further ground also, accordingly, the Court should, His Honour thought, refuse to lend its aid to enforce the contract, which was both illegal and void.

Solicitors for plaintiff: **Fell and Putnam,** Wellington.

Solicitors for defendant: **Leicester, Jowett and Rainey,** Wellington.

Adams, J. April 23, 1931.
Christchurch.

ANDERSON v. LIDDELL.

Practice—Compromise—Approval of Court—Compromise Subject to Approval of Court of Infant's Right of Action for Damages—No Action Commenced—Jurisdiction of Court to Approve Compromise on Originating Summons Under R. 538 (f) of Code of Civil Procedure—Code of Civil Procedure, Rs. 537, 538.

Originating summons for an order approving and sanctioning a compromise of a right of action of an infant. The defendant, an infant, suffered injuries through the negligent driving of a motor car by the plaintiff. The amount of damages was settled at £150 subject to the approval of the Court.

J. A. Kennedy for plaintiff.
Amodeo for defendant.

ADAMS, J., said that the summons came before Mr. Justice Kennedy, at Christchurch, but was stood over for consideration of the point of practice as to whether the procedure by originating summons was proper. The summons was again mentioned in Chambers before His Honour. His Honour had the advantage of consulting the Judges present in Wellington at the Court of Appeal who agreed that such application might be made by originating summons. An order in accordance with the summons was therefore made.

The following memorandum, written by Mr. Justice Reed, had been approved by the other Judges consulted—His Honour the Chief Justice, Mr. Justice MacGregor, and Mr. Justice Smith. An infant suffered injury by being struck by a motor car. The father, advised by his solicitor, arranged a compromise of the claim. No writ had been issued. It was desired to obtain the sanction of the Court to the compromise and the question was what was the procedure. It had been doubted whether it could be dealt with on an originating summons. *Prima facie* and *ex facie* Rules 537 and 538 were to be read together and only those mentioned in R. 537 could take advantage of the procedure. They were: (1) the executors or administrators of a deceased person; (2) the trustees under any deed or instrument; (3) any person claiming to be interested in the relief sought as creditor, devisee, legatee, wife, child, or next of kin of a deceased person, or as *cestui que* trust under the trust of any deed or instrument, or as claiming by assignment or otherwise under any such creditor or other person as aforesaid. *Ex facie*, it did not appear that any person in the circumstances of the present case, could bring himself within the section, yet, under exactly the same legislation in England—O. 55 r. 3—procedure by originating summons was permitted, and the Courts acted under subsection (f) which was the same as R. 538 (f) in our Code, that was to say "The approval of any sale, purchase, compromise, or other transaction." It was stated in **7 Encyclopaedia of the Laws of England,** 2nd Edn. 165, as follows: "Where an action is pending, the terms of the proposed compromise may be brought before the Court on petition or summons" (**In re Wells,** 1903, 1 Ch. 848); where no action is pending the "matter may be dealt with by originating summons under O. 55 r. 3 (f)." Again, in the **Annual Practice 1931,** p. 2016, it was stated: "Where there is no action pending, the sanction is often obtained upon an originating summons under the provisions of O. 55 r. 3 (f)," and in Vol. 7 of the **Encyclopaedia of Forms and Precedents,** 2nd Edn. 401, appeared a Precedent under the heading of "Conditional Agreement for Compromise of Action or Dispute in which Infant is concerned," Clause 1 read: "A summons shall forthwith be issued by the plaintiff (*or* defendant) in the said action (*or* the said *infant*) shall forthwith by the said (*father or guardian*) his next friend commence proceedings in the Chancery Division of the High Court of Justice by originating summons or otherwise as he may be advised) for the purpose of obtaining the sanction of the Court to this compromise and this agreement is conditional upon the same being approved by the Court." The first of the text books referred to was published in 1907, the second in 1931, and the last named in 1925, so that apparently the practice had been in existence for at least 24 years in England. In those circumstances, in spite of the apparent want of jurisdiction, His Honour thought, as it was only a question of practice, it might be adopted in New Zealand and proceedings to obtain the sanction of the Court to a compromise, where no action was pending, might be taken by way of originating summons under R. 538 (f).

Solicitor for the plaintiff: **J. A. Kennedy,** Christchurch.

Blair, J. April 24; May 8, 1931.
Auckland.

JONES v. JONES AND JOHNSTONE.

Divorce—Wife's Costs—Security—Respondent Wife in Possession of Substantial Separate Estate—Wife *prima facie* at least Entitled to Security—Discretion of Court—Wife Entitled to Security in Circumstances—Court Entitled to Fix Security Although Registrar's Report Not Obtained as Contemplated by Rule 112—Observations as to Practice as to Ordering of Security in Various Registries—Divorce and Matrimonial Causes Act, 1928, S. 4—Divorce Rules, R. 112.

Summons by wife for security for her costs in divorce proceedings in which she was respondent. The petition of her husband was based on alleged adultery, and she had filed an answer denying the allegations in the petition. The husband said that at one time he was a farmer, but that the mortgagee had taken the farm and that he owned nothing but a little

furniture, personal effects and tools. He was living with his mother, a reputedly wealthy woman. The wife admitted possessing farm stock, furniture, and personal effects to the value of £219, and she had also a sum of £500 on fixed deposit in a bank against which she had an overdraft of £52. She had also some £600 to £700 invested in Scotland, not readily realisable. The husband contended that the possession by the wife of the property she admitted she owned afforded an effectual answer to her application for security for costs.

Cooney for petitioner.

Lennard for respondent.

BLAIR, J., said that Rule 112 differed from the English rules upon the subject. Our rule entirely omitted the words "Unless the husband shall prove to the satisfaction of the Registrar that the wife has sufficient separate estate or show other good cause." That clearly indicated that in England the possession of sufficient separate estate by the wife was an answer to her claim for payment of or security for costs. Significance attached to the omission of those words from our rule. Our rule provided that after the pleadings had been concluded a wife might file her bill of costs for taxation against her husband, and the Registrar might tax the same "and shall also ascertain and report to the Court what is a sufficient sum to cover the costs of the wife and incidental to the hearing of the cause." Thereupon the Court or a Judge "upon the application of the wife may order the husband to pay the costs so taxed or a lump sum in lieu thereof and to give security for the costs of the wife of and incidental to the hearing of the action." The course contemplated by Rule 112 therefore was that, after the answer had been filed, the wife should apply to the Registrar for taxation of her costs to date and for a report as to what was sufficient to cover the costs "of and incidental to the hearing." Upon that being done the Court might order payment of the costs so taxed and the finding of security for the estimated costs "of and incidental to the hearing." The jurisdiction given to the Court was to order payment of costs incurred and security for future costs. In England the party and party scale of costs was on the basis of an itemised bill detailing the various attendances and was not upon the basis of a lump sum as fixed by our Act. S. 4 of our Act authorised the fixing of a scale of costs and by subsection (3) it was provided that until a scale was so fixed costs when allowed were to be regulated and paid according to the scale in the second schedule to the Act. The Court had power to fix a sum in full of all costs, but Edwards, J., in **Avery v. Avery,** 19 N.Z.L.R. 76, decided that the Court could not exceed the scale. With that decision His Honour respectfully agreed. His Honour quoted the scale fixing the fees in defended cases. Until there was introduced a scale upon the basis of the English scale of costs which allowed fees for each step taken, the Registrar, if application were made to him under the Rules to tax the wife's bill up to the point of conclusion of the pleadings, could, if **Avery v. Avery** were followed, do no more than select either the lower or higher scale of costs as the basis and then attempt to apportion some part of the costs provided by the second schedule to her costs up to the conclusion of the pleadings. The practice in Wellington had always been for the Judge to fix a lump sum having regard to the scale in the rules, that being about £30, or more, depending upon the question whether the lower or higher scale was assumed as applicable, and having regard also to the number of witnesses and the distance they would have to travel. So far as His Honour knew it had never been the practice in Wellington to have any taxation before the Registrar or to get a report from him as to what was sufficient for the costs of hearing. His Honour believed a like practice had been followed in Auckland. The Wellington and Auckland practice had no doubt grown up by reason of the decision in **Avery v. Avery,** the effect of which was to put a limit on costs and leave open only the question of disbursements and witnesses' expenses. The Registrar at Wellington informed His Honour that quite a different practice was followed in Dunedin. There the Registrar was asked to tax the costs to date and the Court was asked to make an order for the costs so taxed with security for future costs. The Registrar informed His Honour that he knew of cases where the costs so taxed had exceeded the maximum provided for by the Schedule to the Act. It would seem, therefore, that the Dunedin practice disregarded the decision in **Avery v. Avery.** The differences in practice were undesirable and the obvious cure was either to amend Rule 112 or to make a scale which would be applicable to costs incurred up to the date of conclusion of pleadings as well as to the hearing itself.

The question as to the correct procedure to be followed had been definitely raised in the present case because the point was taken by counsel for the husband that there being admittedly no report from the Registrar the Court could not make any order for security. If the wife had on the present summons asked for payment of taxed costs she could not have obtained an order if she had not a taxed bill. She was contenting herself with asking for security for future costs, and a summons in that form, whether it did or did not follow the procedure laid down by Rule 112, had the merit that it followed a practice adopted for many years in Wellington and Auckland. No doubt the reason why the report from the Registrar had not been deemed necessary was the narrow limit of costs provided by the schedule to the Act. His Honour did not think the want of the Registrar's estimate constituted a bar to the Court itself fixing security, as had been for so long the practice. Such an estimate was for the purpose of assisting the Court. As was pointed out by Edwards, J., the only costs that could be awarded in a divorce proceeding were party and party and not solicitor and client costs. Costs on the latter basis could in certain cases be recovered in an ordinary action by the solicitor against the husband. See for instance **Gray and Jackson v. Mewhinney,** 31 N.Z.L.R. 968. When fixing security for costs such security must also be on a party and party basis and with regard also to the limit provided by the rules.

There remained for decision the question whether the possession of separate estate by the wife afforded an effectual answer to her claim for security for her party and party costs. Disregarding for the moment the important distinction between our rule and the English rule it was helpful to ascertain whether such a position prevailed in England. In **Allen v. Allen,** (1894) P. 134, the Court of Appeal decided that under the English Rule the Court had a discretion as to ordering payment and security for wife's costs, and that the Judge might take into account the relative incomes of the husband and wife and was not bound to refuse the application because the wife had separate property the amount of which was much more than sufficient for payment of her costs. The husband had property bringing him in an income of £4,000 and the wife was absolutely entitled to property bringing her in £280 a year. She had in her favour an order for alimony at £500, making her income £780 and reducing her husband's to £3,500. The Court below in ordering payment of the wife's costs and ordering him to find security for future costs took into consideration not the respective capital possessed by each but the respective incomes. The Court of Appeal refused to disturb that order and approved the principle upon which it was made. In the present case no evidence was given as to the wife's income. The husband claimed that he had none and was living upon his mother. No evidence was given by him that he was unable to work. Indeed there was some evidence that he had refused to work. The whole of the wife's capital if well invested would give her but a small income, and her income would not bear the costs of divorce proceedings. The question of security for party and party costs really affected the solicitor who was acting for her. The providing of her with security for costs enabled her to be adequately represented and His Honour did not think that any small income she might have was such as would justify His Honour in depriving her of security. The husband claimed poverty: in fact he made himself out a pauper. Under those circumstances there might be some justification for the suggestion that someone else was providing the funds for him to prosecute the suit. If he were really a pauper he could have availed himself of the rules as to suits *in forma pauperis.* Even in the case of a pauper the Court in England would consider an application by a wife for security for costs: **Grinham v. Grinham and Pascoe,** (1916) P. 1. In **Smith v. Smith and Rutherford and Ors.,** (1920) P. 206, an order had been made against a pauper for security for his wife's costs on a pauper basis and on appeal that order was approved. His Honour could not disregard the significance of the omission from our rule of all reference to wife's separate estate. But on the construction of the rule most favourable to the husband the position was that *prima facie* a wife was entitled to security for her costs and it was for the husband to displace this presumption. The Court had a discretion as to granting an order for security and His Honour did not think that the husband in the present case had made out a sufficient case for an exception to be made in his favour. His Honour accordingly treated the case as one within the lower scale. The parties lived in Te Puke and the attendance of witnesses in Auckland would be necessary. Under those circumstances His Honour fixed the sum of £45 as the amount for which security must be found by the husband.

Order accordingly.

Solicitor for petitioner: **G. R. Duggan,** agent for **H. O. Cooney,** Te Puke.

Solicitors for respondent: **Lennard and Lennard,** agents for **Hodge, Keys, and Hookey,** Te Puke.

Solicitor for co-respondent: **G. P. Finlay,** agent for **Watts and Armstrong,** Hamilton.

The Earthquake.

Notes Upon Some Legal Aspects.

By F. O. LANGLEY.

(Continued from p. 102).

We have seen the effect of the loss and destruction of documents by such cataclysm (if the word may be used) as that which overtook Napier and Hastings; and, if too briefly yet necessarily finally by reason of the availability of space, we have attempted to visualise, on precedent, how the legislature must set about emergency expedients. As to private documents, however, it is impossible to forego a rather closer research than that which we have, so far, permitted ourselves, since, when you come to think of it and to search about among text-books and authorities for analogous material, so many interesting problems arise. We may recall the case cited in our last article: (*Pierson v. Hutchinson*, (1809) 2 Camp. at page 212) as bringing the mind back to the general proposition: as to the case of an instrument destroyed, not lost, there is common law authority that an action would lie, and secondary evidence may be admissible of the contents on proof of destruction. In this case, a bill of exchange was the subject matter; and a similar state of facts existed in the short case, to the same point, *Wright v. Maidstone*, (1855) 24 L.J.Ch. 623. We promised ourselves the consideration of the case where the document, which is the "policy" itself of insurance, is destroyed.

The rule is thus shortly stated by the text-books: "If a policy of insurance be lost or destroyed, an action will nevertheless lie, to recover the insurance money; and the order or judgment of the Court directing the office to pay will be a sufficient indemnity against subsequent claims." A case in point is *Crockatt v. Ford*, 25 L.J. Ch. 552. An administratrix sued the insurance company upon a policy taken out by, and lost during the lifetime of, the deceased. Her allegation was that the policies had *probably* been destroyed in the fire at the deceased's house, which had taken place in his lifetime. The deceased had, she said, written to the insurance company about it, or had told her that he had written; and, there being no contradictory evidence, that is where the matter was when judgment was pronounced upon it. The decision was shortly that the sum secured by the policies should be paid to the administratrix without any other indemnity than the decree of the Court. This will seem in odd contrast, though the comparison has perhaps no logic to warrant it, with the severity of the demands for proof of value and proportion of value, assured, as to which so many and frequent reminders reach us from the valuers who wish to make inventories of our household goods.

The important, if incidental, question in these matters, as seen from the cases and as intimated by legislation of other countries in similar emergencies, seems to be as to whether or not there shall be indemnity against the finding of the lost instrument? It is the fact, of course, that a finder of a lost bill or note acquires no property in it; the difficulty arises if he passes it to another for value, in which case, if it is not some such safeguarded instrument as a crossed cheque marked "Not Negotiable," the transferee may keep it and sue upon it. Then again, there are such rules bearing upon the situation, as the necessity of notice of loss to parties liable on the bill, and, in some circumstances, the necessity of public advertisement of the loss, to achieve the position that any person discounting it would, having regard to the notice, be in grave difficulties to prove *bona fides* (*Byles on Bills*, page 314; current edition). A party who has lost a bill must, it is to be added, make application to the drawee for payment at due date and he must give notice of dishonour. As between holder and drawer, when a bill is lost before being overdue the latter may be compelled to give him another, a typical case, of course, where indemnity is an essential. A quotation from a Quebec judgment is interesting, as showing the matter viewed from another juristic standpoint. *Pillow and Hersey Coy. v. l'Esperance:* "Le ler décembre 1900, le défendeur a donné à la demanderesse un billet à l'ordre de celle-ci pour $128.26, payable a 4 mois de date. Ce billet n'a jamais été negocié, et est tojours resté dans sa possession. Lors de l'incendie qui a détruit l'édifice du Board of Trade, la demanderesse y avait son bureau. Le billet était . . . dans une bôite en fer blanc . . . et apres l'incendie on a retrouvé cette bôite, entièrement brisée par le feu. Tout son contenu avait disparu et avait probablement été detruit. Mais ce n'est qu'à l'enquête dans la cause ces faits ont été constatés par le défendeur. Jusque là, il n'avait que l'affirmation des officiers de la demanderesse pour les établir. Etait-il obligé de les croire sur parole et d'agir en conséquence? Evidemment non. Il était donc parfaitment justifiable de refuser de donner un autre billet avant l'échéance de celui dont il s'agit, et de refuser de payer aprés son échéance, tant qu'il ne lui été pas represénté et *qu'on ne lui donnait pas caution qu'il ne serait pas trouble a son sujet.*" (The report is 22 S.C. page 213; the date is 1905).

There follows upon this rule, as *Byles* shortly states it: "A plaintiff commencing action without offering an indemnity will incur liability for the defendant's costs up to the time of his giving such indemnity; and the matter may be left with the reminder of a minor point, which may frequently be relevant in the sequel of the upheaval: "the presumption of law is that a lost or destroyed bill was duly stamped." Have you, in New Zealand, a lynx-eyed Associate, who sits beneath your Judge, watching out for lack of stamps and the catching of consequential penalties?

It is proposed to reserve the subject of Bearer Bonds (or Debentures) for a separate article, possibly additional to the number of four articles we had set ourselves. We shall see, as we go on. For the present, we propose to pass to another aspect, similar in the nature of its facts but not in the principle of its law, to the foregoing: the central point of the great Jamaica case.

Our readers will remember that, owing to the distance which separates us and the fact that our typing machine will not willingly take a carbon, we have only recollection to go upon, as to what has been said in previous articles. At the risk of repetition be it said that our information goes that the British Companies are much less disposed than the American and Continental to be pedantic about the "exceptions." It is to be hoped that this reputation will be maintained, so far as the British Companies are concerned, in the New Zealand instance, but will be belied, so far as the American and Continental companies are concerned. However it may be, the point is one which cannot fail to be of

importance, even though it be, in technical truth, more a point of fact than a point of law. Before dealing with the Jamaica case, we may remind our readers of the unreported case of *Tootal, Broadhurst, Lee and Company Ltd. v. London and Lancashire Insurance Company*, tried before Bigham, J., and a special Jury in England, in which the question was whether an earthquake-fire was or was not within the exception. The words, of course, of a policy must largely decide a matter, which is essentially one of contract; the lawyer will not require to be reminded of this, and the layman will never remember it, however many times he be reminded. But, for practical purposes, the so-to-speak "precedent of facts" is the equivalent of a rule of law, and we may usefully take the facts, the opposing contentions (or allegations) and the passages of the judgment, in detail.

Certain property belonging to the plaintiffs was insured with the defendants against loss by fire. There were exceptions in the policy to the effect that if a building or any part of a building should fall except as a result of fire, all the insurance by the company of it or its contents should immediately cease and determine. Further the policy was not to "cover . . . loss or damage by fire occasioned . . . by or through . . . any earthquake." It was admitted at the trial that the fire which caused the damage originated five hundred yards from the property damaged, and that the property was damaged seven and a half hours after the first fire. According to the defendants the fire was occasioned by the earthquake and spread by natural causes; therefore, they said, the loss complained of was covered by the exception. Moreover, as they contended, the property had fallen before the fire reached it, so that the first-named exception applied. According to the plaintiffs, on the other hand, the original fire started before the earthquake. Even if it did not, the fire which caused the damage was not the same fire as the "original fire," in that there had been too great an interval of time and distance between the two, and the wind had changed several times, thereby making the second fire distinct from the first. The plaintiffs further contended that to bring the case within the exception as to the fall of buildings otherwise than by fire, the fall must be shown to have been one involving a complete destruction of the building. (The exception said "any part" thereof).

In the course of the trial Bigham, J., said, amongst other things: "The plaintiffs are *prima facie* entitled to recover because the proximate cause of the loss of their goods was fire. There is no doubt about that. But then the exception raises quite different considerations . . . The rule of insurance law as to proximate cause may not apply where there is a special contract. Earthquake cannot, as I understand it, proximately cause fire. If the jerking caused by the earthquake occasioned burning coals to be thrown out of a grate on to some material, I doubt whether in that case, according to the rule, the earthquake is the proximate cause at all. The proximate cause is the burning coal falling on the material. The remote cause is the earthquake which causes the burning coal to jump out of the grate on to the material. . . . If, however, you find that the original fire was set in operation by the earthquake and then spread by natural causes without the intervention of any other cause, that is spread by wind or by one thing catching fire from another, and so on—that is what I call natural causes—and then spread without the intervention of any other cause to the plaintiff's goods, then your verdict must be for the defendants." He also observed that if the plaintiff's goods were burned by fire, it was the business of the insurance company to show that the risk was excepted.

Dealing with the exception as to the fall of buildings otherwise than by fire, Bigham, J., said that the fall must be of such substantial part of the building as to impair its usefulness as a building. The plaintiffs' buildings which were destroyed were two in number, a main building and a bonded store. "If" said Bigham, J., "you think that the fall of either of the main buildings or the bonded store was of such substantial and important part of the buildings as to impair its usefulness as a building and to leave the remaining part of the building subject to an increased risk of fire, if you think that either of the buildings had fallen to that extent, then you are entitled to find on that part of the case, either in respect to one building or to the other, in favour of the defendants." The verdict went for the defendants.

(*To be continued.*)

Stamp Objections.

The View of the New South Wales Bar Council.

A short time ago we published among recent rulings of the English Bar Council a decision to the effect that it is unprofessional that a counsel should object to the admissibility of any document upon the ground that it is not, or is not sufficiently, stamped, unless such defect goes to the validity of the document. The Council of the Bar of New South Wales has, however, differently ruled on this question. Its ruling is: "A barrister does not commit a breach of professional etiquette if he objects to the admission of a document on the ground that it is insufficiently stamped."

Swadling v. Cooper.

Lord Justice Scrutton on the House of Lords.

It will be remembered that in the running-down case of *Swadling v. Cooper*, (1931) A.C. 1, the House of Lords reversed the decision of the Court of Appeal. In another recent running down case *Strauss v. Cocker*, Lord Justice Scrutton, who was one of the Lords Justices whose decision was reversed in *Swadling v. Cooper*, had something to say about the House of Lords and its decision in the latter case: "I hope I am not disrespectful to the House of Lords in the remark I am about to make; if it is disrespectful I apologise; but four members of the House of Lords who came to that decision had never tried a jury case in their lives; the fifth had; and I am only speaking from my twenty years' experience of these cases in saying that I still adhere to the principle I laid down—although not to the decision on the particular facts of course—in *Cooper v. Swadling*."

"A managing clerk is a man who is supposed to remember what his principal has absolutely forgotten."
—Mr. Justice McCardie.

Land Transfer Act.

Equitable and Unregistered Interests.

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

Now that we are within measurable distance of all the land in New Zealand being under The Land Transfer Act, a consideration of the effect of equitable and unregistered interests in land under that Act and of the authorities upon the subject may be of some assistance to the legal practitioner. By far the larger number of authorities are to be found in the Australian Law Reports and although the principles of the Acts of the various States of Australia and of New Zealand are the same, there are differences of detail in the wording of the Statutes and differences in the interpretation of similar sections that necessitate careful comparison of the Acts and of the cases in Australia before deciding that they are applicable in New Zealand. One instance will suffice. In considering the effect of the deposit of a certificate of title as security for an advance it must be borne in mind that S. 30 of the Real Property Act, 1897 (Queensland), and S. 149 of the Real Property Act, 1886 (South Australia), expressly provide that an equitable mortgage of land under the Act may be created by deposit of the instrument of title and such deposit shall have the same effect as a deposit of title deeds would have had before the passing of the Act and may be protected by caveat. On the other hand S. 53 of our Property Law Act, 1908, provides that "No land shall be charged or affected, by way of equitable mortgage or otherwise, by reason only of any deposit of title deeds relating thereto, whether or not such deposit is accompanied by a written memorandum of the intent with which the same has been made."

Hence we can contrast the decisions in *Tolley and Co. Ltd. v. Byrne*, (1902) 28 V.L.R. 95, in which it was held in Victoria that the deposit of a certificate of title as security for the payment of a debt confers an interest in land under the Act and in *Beckett v. District Land Registrar*, (1909) 12 G.L.R. 26, in which it was held in New Zealand that the deposit of title deeds of land as a pledge for a debt confers no interest in the land and the depositee has, therefore, no caveating capacity by virtue of such deposit.

Relevant Sections of the Land Transfer Act.

The sections of the Land Transfer Act, 1915, that affect equitable and unregistered interests and upon which, or upon sections corresponding to which, arguments against the efficacy of such interests have been based, are:

(a) S. 38. Instruments not to be effectual to pass any estate or interest in land or to render land liable as security for the payment of money until registration.

(b) S. 58. The estate of the registered proprietor to be paramount.

(c) Ss. 145-157 relating to caveats, for as Griffith, C.J. said in *Barry v. Heider*, (1914) 19 C.L.R. at p. 206: "The provisions of the Act relating to caveats embody a scheme expressly devised for the protection of equitable rights."

(d) S. 197. Purchaser from registered proprietor not to be affected by notice except in case of fraud.

Recognition of Equitable Interests.

The first question for consideration is now far the law recognises equitable interests in land under the Land Transfer Act and what principles the Court applies in dealing with them.

In *Barry v. Heider*, (1914) 19 C.L.R. 197, Griffith, C.J. said at p. 208: "In my opinion equitable claims and interests in land are recognised by the Real Property Acts," and his statement of the law was approved and applied to the facts of *Great Western Permanent Loan Company v. Friesen*, (1925) A.C. 208, by the Judicial Committee of the Privy Council. In *Barry v. Heider*, Isaacs, J., at p. 213, said that the Land Transfer Acts "have long, and in every State, been regarded as in the main conveyancing enactments, and as giving greater certainty to titles of registered proprietors, but not in any way destroying the fundamental doctrines by which Courts of Equity have enforced, as against registered proprietors, conscientious obligations entered into by them." In a later case, *Butler v. Fairclough*, (1917) 23 C.L.R. 78, at p. 91, Griffith, C.J., said: "It must now be taken to be well settled that under the Australian system of registration of titles to land the Courts will recognise equitable estates and rights except so far as they are precluded from doing so by the Statutes. This recognition is, indeed, the foundation of the scheme of caveats which enable such rights to be temporarily protected in anticipation of legal proceedings. In dealing with such equitable rights the Courts in general act upon the principles which are applicable to equitable interests in land which is not subject to the Acts." He then states one of such principles: "In the case of a contest between two equitable claimants the first in time, all other things being equal, is entitled to priority. But all other things must be equal, and the claimant who is first in time may lose his priority by any act or omission which had or might have had the effect of inducing a claimant later in time to act to his prejudice. Thus, if an equitable mortgagee of lands allows the mortgagor to retain possession of the title deeds, a person dealing with the mortgagor on the faith of that possession is entitled to priority in the absence of special circumstances to account for it."

Other principles that are applied, as will be seen later, are those of estoppel and notice.

The point for consideration in *Barry v. Heider* was the right of the transferee under a transfer in due form executed by the registered owner, but not registered, and of the assignee of such transferee as against the registered proprietor. Counsel contended that until registration no person could acquire any interest in land, legal or equitable; that whatever personal liability existed might be enforced as a "chose in action" against the person liable, but not against the land, for the Act recognised no interests, legal or equitable, except in the registered proprietor. He based his argument on S. 41 of the Real Property Act, 1900, of New South Wales, substantially the same as S. 38 of our Act of 1915. In that case the contest was between Barry, the registered proprietor, and Heider and Gale, holders of successive unregistered mortgages given by Schmidt, the transferee under an unregistered transfer executed by Barry, purporting to transfer the land in consideration of £1,200, the receipt of which was acknowledged. An order made in an action by Barry against Schmidt declared the transfer void on the ground that it was obtained by fraud and ordered Schmidt to deliver it up for cancellation. At this stage,

before the judgment was drawn up, Heider and Gale applied to have judgment stayed and to be joined as defendants, claiming equitable charges upon the land and submitting that the plaintiff was estopped as against them from disputing the validity of the transfer. The Supreme Court of New South Wales declared both Heider and Gale entitled to charges upon the land and from this judgment Barry appealed to the High Court.

The general law on the subject was thus laid down. Griffith, C.J., said at p. 208 : " In my opinion equitable claims and interest in land are recognised by the Real Property Acts. It follows that the transfer of October 19, if valid as between the appellant and Schmidt, would have conferred upon the latter an equitable claim or right to the land in question recognised by the law. I think that it also follows that this claim or right was in its nature assignable by any means appropriate to the assignment of such an interest. It further follows that the transfer operated as a representation, addressed to any person into whose hands it might lawfully come without notice of Barry's right to have it set aside, that Schmidt had such an assignable interest." This statement of the law was approved and applied in *Great Western Permanent Loan Co. v. Friesen*, 1925 A.C. 208, already mentioned.

Isaacs, J., put it thus at p. 216 : " The Land Transfer Act does not touch the form of contracts. A proprietor may contract as he pleases, and his obligation to fulfil the contract will depend on ordinary principles and rules of law and equity, except as expressly or by necessary implication modified by the Act. . . . Consequently, Section 41, in denying effect to an instrument until registration, does not touch whatever rights are behind it. Parties may have a right to have such an instrument executed and registered ; and that right, according to accepted rules of equity, is an estate or interest in the land. Until that instrument is executed, Section 41 cannot affect the matter, and if the instrument is executed it is plain its inefficacy until registered —that is, until statutory completion as an instrument of title—cannot cut down or merge the pre-existing right which led to the execution. The basis of the contention therefore fails, and we have to consider the position as to equitable remedies as if the land were not under the Statute."

The High Court distinguished between Mrs. Heider's position and that of Gale and Gale. In the former case Mrs. Heider had every reason to believe that the transfer was in order and that Schmidt had such an interest as entitled him to possession of the certificate of title. Gale and Gale, however, before making their loan knew that a caveat had been lodged on behalf of Barry stating that the £1,200 consideration had never been paid. But acting on the untrue representation of Peterson, the solicitor for both Barry and Schmidt, that the matter had been adjusted, receiving a withdrawal of the caveat from Peterson, and being informed by the Land Transfer officials that as the caveat had not been registered and was signed by Peterson, the latter had authority to withdraw it, Gale junior, after lodging the withdrawal in the Registrar-General's office paid over the mortgage money to Peterson. The High Court held that Peterson had no authority to remove the caveat for " the authority to lodge a caveat is complete in itself and is exhausted when the caveat is lodged. The caveat when lodged is in the nature of a statutory injunction. . . . The person authorised to lodge the caveat is then *functus officio*." Hence the withdrawal was not Barry's and the representation was not his. Hence Gale's mortgage was postponed to Barry's vendor's lien for £1,200 and interest in that case.

In the Victorian Act under consideration the section as to withdrawal provided simply that : " every such caveat may be withdrawn by the caveator." S. 156 of our Act provides that " any caveat may be withdrawn by the caveator or by his attorney or agent under a written authority." Such authority must, therefore, give express authority for withdrawal, and it must not be assumed that authority to lodge a caveat carries with it authority to withdraw.

(To be continued.)

Counsel's Fees.

The New South Wales Bill.

The Administration of Justice Bill at present before the New South Wales Legislature contains many astounding provisions, and not the least extraordinary are those relating to counsel's fees. Part I of the Schedule provides a scale of fees payable on briefs to counsel in various matters ! For actions in the Supreme Court or District Court the fee is to vary from 3 guineas to 40 guineas as the amount in dispute in the action varies from £10 to £10,000! 10 guineas for a brief in a demurrer ; 15 guineas on special cases, prohibitions, etc. A brief in a defended divorce suit is to carry 15 guineas ; a criminal brief from seven to twenty guineas, as the punishment for the crime varies. Refreshers are not to exceed half the brief fee. Any sum paid to counsel in excess of the prescribed amount may be recovered as a debt !

The Perfect Alibi.

At Brighton a man charged with conspiracy and fraud was positively identified by four persons. He set up the defence of alibi, and had what is perhaps the perfect alibi. He was able to prove that he was in prison in France at the time of the alleged offence. This incidence recalls a remarkable case in the East end of London in 1897 when a man was actually found guilty by a coroner's jury of murdering his wife, on the evidence of witnesses who swore they saw him on the scene at about the time of the crime. Luckily for him he was serving a sentence of imprisonment for a minor offence, and his alibi was proved by a prison warder. Probably nothing else would have saved his neck.

" I can recall but few cases where a wife has not been ready to follow a husband's example and to support his perjured testimony with her own false evidence."

—Mr. Justice McCardie.

London Letter.

Temple, London,
April 15th, 1931.

My dear N.Z.,

The term has only resumed to-day, and the gossip has not yet reached me. I must confine myself to my own observations, and they are necessarily limited, so obsessed have I been with the process of creating a new set of Chambers: my own. These personal matters can hardly interest you, except in so far as it may interest you to know when, why, and how a man decides suddenly to have a ship of his own; or why it is that some men, though they achieve distinction and brisk business, always remain inhabitants of what is, in principle, in name, and in fact, another's lair? Prefacing the treatise with the remark, so recklessly made without caring whether it be true or false as to amount to fraud, that there is no gossip up to yet (about the seventh hour of the Easter Sittings), I will tell you all about it, being no more personal than to say that my parting from the excellent son of a most excellent, and distinguished, father only came about when he and I, facing the facts, came to the conclusion that we never saw anything whatever of each other, in Chambers; that we only meet in Court, when he leads me (or my opponent), or in our ancient Club, when we feed. So I, who, for some reason or another (and probably it was another) had decided to be always the inhabitant of his Chambers, suddenly took over that part of the premises which I have occupied for years, painted my and my "devils'" names upon the outside door and . . . "what gave rise to no little surprise, Nobody seemed one penny the worse."

My case (and that is verily the last you shall have of the first person singular, or even majestically plural) is really rather illuminating, for those who have wondered why these things be: why barristers, who may not be partners or a firm, ever share Chambers; or why barristers, who only require one room to sit in and the least assistance from a Clerk, ever refrain from sharing chambers? It is an astonishing profession: the English Bar. Men come to it, from the Universities, in the happy knowledge that the "entrance examination" is the easiest in the world, and that to qualify for what is, by universal consent, the most intellectual of trades, requires the answering of questions, as student, the least intellectual. Encouraged by the knowledge that the obstacle, which should be the most formidable, is hardly an obstacle at all, they are next dumbfounded by the discovery that the obstacle which should be no obstacle at all, is almost insurmountable. What to do next? How to take up the business, having obtained the qualification? There is apparently no means of finding out.

You could never believe, until you experience it by sending a son to join us, how impossible it is to obtain guidance upon the most elementary matters; how doubly impossible it is to obtain reliable guidance. You discover that it is necessary, indeed, to be in "Chambers"; but that is subjectmatter of assumption. Your son could hardly conduct his business in the street, or on the Temple lawns; and you know that Courts only open, and stay open, while trials last. But what "Chambers" consist of, and how one is in them: these be questions, you will find when you try to answer them, wrapped in thick folds of mystery. Even barristers themselves seem unable to tell you, when you ask. They merely know, aggressively, that "Chambers" are not an "Office."

I have now had to inform so many distracted parents, so many gently curious sons, upon the hidden routine of barristering, that I sometimes think it might be a profession in itself. But the knowledge, which the necessity of teaching others imparts, is most valuable, in the revelation of how much there is unknown. Chambers being, in fact, an unassociated and unincorporated and un-anything-at-all-of-a-mutually-dependent-nature gathering of men, engaged upon the same adventure, served by the same clerk, and more or less committed to the same class of work: is it or is it not best to be the tenant yourself, or the sub-tenant of someone greater than yourself? As with our Real Property, no ordinary man is landlord: our Sovereign, here, is the Bench of our Inn, of whom even the greatest of us is but tenant. But the tenant commands the Chambers; is responsible; is, therefore, first to be considered; so that, if a man can afford it, there would appear to be every reason for not being a sub-tenant? But, asks the more informed, what difference can it make whether a man command or not; there is, is there not, a most famous of modern Chancery Juniors, the commander of whose chambers is (or was) poorer than the clerk of the famous junior, the clerk's wealth but being the halfcrowns on the master's brief? So what is the responsibility but a burden; and wherein is the value of a clerk's first consideration? And yet . . . I think if you canvassed all the views of all the practising barristers there be (and many are called, but few get up when they *are* called) you would be surprised by the unanimity with which each expressed the same view upon a subject which, when you reason it out, appears to have no reason in or for it, one way or the other. You are best in Chambers of your own, unless you have some very, very strong reason for being in someone else's: either your own youth, or the someone else's particular quality.

Thus, then arises the difficult case: the case which puzzles not the earnest enquirer (whose difficulty is rather that he is unable to discover what the problems are, rather than that he feels unable to solve them, when he at last gets on to them—generally too late, by the way, but that is another story). There are some names, two or three in the generation, perhaps, which carry an atmosphere of untold worth, of almost appalling respectability, of something above and apart from their humble fellows. In each generation of the Bar, there are such, few and not always in intensively busy practice: very high quality practice, certainly, in which never a fee is owed never to be paid, and never a doubtful case (I mean, of possible nastiness) is heard of; and to belong to such a circle, to carry about with you such an atmosphere, is, in the strange, inexplicable but very real enterprise, which is "being at the Bar," an undoubted asset. When, therefore, if ever, should a man, having got in his early youth into such admirable dependence, turn to, and become independent? "Never," said . . . I very nearly named him; and you would have laughed to recognise an old friend if I had. But he said it; and he meant it; and his "tenant" became a Judge, and so he became independent, willy nilly; and I believe he has never looked back, in the matter of cash takings, since the day arrived. On the other thand, I have heard an Authority,

but little less renowned, protest that the separation should be made at an early stage in one's career ; this separation which the Authority so clearly and forcibly advocates and which the Authority has so persistently and successfully refused ever to undertake himself.

It really all goes back to one thing. Intentionally I call him " thing "—the Clerk. Everything depends upon the mentality of that individual, who is called a " barristers clerk," but who is not a clerk at all and, whatever he may be in truth, is essentially his own. To be frank, this *sanctum sanctissimum* which we so affectionately and proudly call " Chambers " does not physically exist : it is but a concept, an " *aura*," an intangibility emanating from and consisting of a brainless and usually uneducated cockney, as shrewd as shrewdness 'self, and invariably known by his christian name only—" William," " Charles," " Henry," " Percy." Where he comes from, what mother reared him, what father cast him for this mysterious vocation : these are questions no one else but he can answer. Whither he is going, he never knows himself. He arrives : he has a look round during the years of his short youth : and then he assumes control. If his controlee becomes a " star " in the legal firmament he makes a fortune : if his master dies, he starves : and if his master (master and servant being synonymous terms in this regard) merely exists, he does the best he can on his " guarantee." He knows little and cares less about that Law with which he is so closely associated : his only definite function is to make Chambers' afternoon tea ; and he discharges that function execrably. The exact nature, degree and extent of his control is a matter for which neither statute, nor precedent, nor etiquette has ever precisely legislated. He decides that for himself : and in all fairness be it said, there is occasionally a " clerk " who consents to certain exceptions in this regard. Taking over the management of their employer's professional and private efforts, labour, time and affairs, they will sometimes allow a little latitude. I have heard of cases where counsel, being a bachelor by origin but tending, by impulse to matrimony, has been allowed to choose his bride without consulting Percy . . . But such cases are rare.

I write in the assumption that, New Zealand being an enlightened and civilised country, you, of the New Zealand Bar, are like the French : " they order these things better in France." I assume, in compliment to your sanity, that you have not taken to yourself a Percy, to be dependent on his psychology for your success or failure. In other words, I imagine this, to us, incredible thing, that a New Zealand Barrister's Clerk is, in fact, a clerk : neither less nor more. And so I venture to describe to you what is a familiar evil (and rather an enjoyable evil, at that) with us. When, and if, a man, with us, has the courageous foresight or the idiotic conceit to set up Chambers for himself, all the other difficulties, the obtaining of useful and pleasant colleagues and the furnishing of an adequate library (the skin of whose back may be relied upon to adhere to its body)—these fade into insignificance compared to the selection of a " clerk," or the coming into contact with a " clerk " by whom one is selected. It is the most important relationship into which any man ever projects himself in every walk of life : his face, his outlook and his heart will, in time become the replica of yours, and your soul, professional and personal, will become his. Forgive me, if I pass suddenly from the personal and painful aspect of this matter : I have just tied myself, for ever, to a new clerk, all my own. I discover, to my horror, that he has many virtues, the most remarkable of which is his seriousness, steadfast, unvoluble, solemn. And I realise that, in this world, there is no more mirth for me. . . .

This is the very best sort of letter a lawyer should write to other lawyers in a legal journal ? But am I not commissioned to inform you of the personalities of the Profession on this side ? And wherein are the personalities of our great men, Bench and Bar, to be more clearly seen than in their *alter ego*, their " Clerk " ? When you come " home " to see us, let me show you these same clerks, and you shall say for yourself whether I speak truth. If you are very good, very anxious to learn, very attentive, I will introduce you to the greatest of them all, the clerk of the Hon. Mr. Justice Horridge. Showing you this powerful and interesting character, I will also demonstrate to you the precision of my earlier definition of the type, the genus : how little they comply, in the particular, with the general law of their species. Mr. Justice Horridge's clerk is an excellent lawyer : a man of great refinement, education, charm : he is the last person you would call a cockney : and, as for Christian names, no one has ever dreamt of enquiring what this may be. I do not believe he has one. He is always known, and properly known, as " Mister ———."

Yours ever,

INNER TEMPLAR.

Bench and Bar.

The practices carried on by Mr. E. P. Bunny and Mr. C. R. Barrett at Wellington and Lower Hutt respectively have been amalgamated, and will be carried on by them in partnership under the style of " Bunny and Barrett."

Messrs. Gawith and Wilson of Masterton have opened a branch office in Wellington. The Wellington office will be in charge of Mr. H. R. Biss, LL.B., and will be conducted under the name of Gawith, Biss and Griffiths.

Mr. H. S. Port, formerly on the staff of Messrs. Bell, Gully, Mackenzie and O'Leary, has commenced practice on his own account in Wellington.

Mr. J. F. Paul, formerly on the staff of Messrs. Luke, Cunningham and Clere, has commenced practice on his own account in Wellington.

Mr. R. D. Bagnall, of the firm of Messrs. Russell, McVeagh, Bagnall and Macky, is practising on his own account at Auckland.

Mr. J. E. Ennis has commenced practice on his own account at Wellington.

" Many people throughout the country refer in terms of criticism to lawyers but they forget one great thing. It is not true to say that lawyers are the fomenters of litigation. Lawyers, after all, are the great conciliators."

—Mr. Justice McCardie.

Curran and Lord Robertson.

One of Curran's encounters with the Bench is that recorded of his words with Lord Robertson, the anonymous editor of *Blackstone*, wherein Curran did not see eye to eye with his lordship on a point of law. "If your lordship says so, the etiquette of the Court demands that I submit . . . but, gentlemen of the jury, it is my duty and privilege to inform you that I have never seen the law so interpreted in any book of my library."

Lord Robertson: "Perhaps your library is rather small, Mr. Curran?"

Curran: "I admit my library is small, but I have always found it more profitable to read good books than to publish bad ones—books which their very authors and editors are ashamed to own."

Lord Robertson: "You are forgetting the dignity of the judicial character."

Curran: "Speaking of dignity, your lordship reminds me of a book I have read—I refer to *Tristram Shandy*—in which, your lordship may remember, the Irish Buffer Roche, on engaging in a squabble, lent his coat to a bystander; he got a good beating and lost his coat into the bargain. Your lordship can apply the illustration."

Lord Robertson: "Sir, if you say another word I'll commit you."

Curran: "If you do, my lord, both you and I shall have the pleasure of reflecting that I am not the worst thing your lordship has committed."

Statutes Reprint.

Mr. J. Christie, the Parliamentary Law Draftsman, has recently returned to New Zealand after a visit to England where for some months he was associated with the London office of Butterworth & Co. (Aus.) Ltd., in connection with the preliminary work involved in the preparation of the manuscript of the Annotated Consolidated Reprint of the New Zealand Public General Statutes, which it is proposed to publish next year. Mr. Christie reports that when he left England in April last the editorial work was well forward.

For the purposes of the Reprint the Statutes have been arranged according to subject-matter, the classification of the law adopted in *Halsbury's Laws of England* and *Halsbury's Complete Statutes of England* being adopted so far as applicable. As has been already announced, the new work will be printed in New Zealand by the Government Printing Office.

With the exception of the years 1923 to 1927, Mr. Herbert Page has been in charge of the Butterworth Organisation in Australia and New Zealand since 1912. He went to England last September in order to finalise the plans for the preparation of the Consolidation and Reprint of New Zealand Statutes and has now arrived back in Sydney. We understand considerable progress has been made with this work.

During his visit, Mr. Page was appointed Butterworth's Resident Director for Australia and New Zealand and according to present arrangements he will be in the Dominion again about the end of June.

Rules and Regulations.

Samoa Act, 1921. Samoa Vagrancy Order, 1931.—Gazette No. 32, 30th April, 1931.

Stock Act, 1908. Amended regulations for eradication, etc., of ticks among stock.—Gazette No. 32, 30th April, 1931.

Municipal Corporations Act, 1920. Special Building Regulations in the Borough of Napier, Hastings and Wairoa.—Gazette No. 17, 6th March, 1931.

Native Land Act, 1909. Amending Rules of Native Land Court. Amended regulation relating to Maori Land Boards.—Gazette No. 25, 2nd April, 1931.

Valuation of Land Act, 1925; Valuation of Land Amendment Act, 1927. Regulation 21A made on 24th March, 1928, amended—Gazette No. 23, 26th March, 1931.

Chartered Associations (Protection of Names and Uniforms) Act, 1930. Protection of Names, Badges, etc., of Girl Guides' Association.—Gazette No. 40, 21st May, 1931.

Cook Islands Act, 1915. Cook Islands Fruit Regulations, 1931, Amendment No. 3 *re* export of oranges and tomatoes.—Gazette No. 30, 16th April, 1931. Amendment to Cook Island Treasury Regulations, 1916.—Gazette No. 40, 21st May, 1931.

Finance Act, 1931. Regulations for establishment of Adjustment Committee for relief of cases of hardship arising from operation of the Act.—Gazette No. 37, 14th May, 1931.

Fisheries Act, 1908. Amendment to Regulations.—Gazette No. 40, 21st May, 1931.

Hawke's Bay Earthquake Act, 1931. The Hawke's Bay Adjustment Court Rules, 1931.—Gazette No. 38, 18th May, 1931.

Motor-vehicles Act, 1924. Motor-drivers' Regulations, 1931, to come into force on 1st June, 1931.—Gazette No. 29, 14th April, 1931.

Native Land Amendment and Native Claims Adjustment Act, 1928. Regulations relating to Taranaki Maori Trust Board.—Gazette No. 40, 21st May, 1931.

Nurses and Midwives Registration Act, 1925. Amended regulations *re* fees payable by patients in State Maternity Hospitals.—Gazette No. 30, 16th April, 1931.