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"When asked to give an opinion, give an opinion which is definite."

—*Lord Tomlin.*

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Widows' Claims under Family Protection Act.

Every lawyer with any practice at all knows almost by heart the words of S. 33 (1) of the Family Protection Act, 1908: "If any person (hereinafter called "the testator") dies leaving a will, and without making therein adequate provision for the proper maintenance and support of the testator's wife, husband, or children, the Court may at its discretion, on application by or on behalf of the said wife, husband, or children, order that such provision as the Court thinks fit shall be made out of the estate of the testator for such wife, husband, or children." Cases under the Act are always coming before the Courts; most of them involve no new question of principle but are simply illustrations of the application of well settled rules to particular sets of circumstances. Somehow or other a host of cases has come to be reported in the law reports but a large proportion of them are of little real value.

Perhaps the majority of applications under the Act involve the claims of widows, and as regards such claims a number of rules of general application have been laid down. It is not proposed to review these general rules here but it is of interest to recall a few of them. It has been said, for instance, that a man's widow has a higher moral claim on his estate than anyone else; that in the case of a contest between a widow and children able to maintain and support themselves the former will prevail. A widow's right to claim under the Act is not barred by the fact that she was not cohabiting with the testator at the time of his death. A divorced wife has no rights. On remarriage a widow loses her status as widow of the testator and is not entitled to provision under the Act. The latter proposition was established in *Newman v. Newman*, (1927) N.Z.L.R. 418, where a testator by his will made provision for the maintenance and support of his wife for her life so long as she remained his widow. She remarried and thereafter applied under the Act for provision to be made out of the estate for her maintenance and support. The Full Court held that the applicant had no status; Adams, J., who delivered the judgment said at p. 422:

> "Apart from the statute, there are obvious reasons which might, in some cases at least, induce a provident testator to make such provision (i.e. until remarriage). . . . The provision made in this case is . . . based upon reason and long practice. *If the Legislature had intended to impose upon a testator a duty to provide for his wife's maintenance after she had ceased to be his widow we would have expected to find that stated in plain terms.*"

Another most important question of principle as regards widow's claims—indeed it might be said to be the most important question of principle determined since *Allardice v. Allardice*, 29 N.Z.L.R. 959—has been recently determined by Myers, C.J., in *In re Winder* (June 2nd). There the testator had given his wife by his will a life annuity of £300 in addition to certain other benefits not material. The widow applied for further provision and the Chief Justice held on the facts of the case that she had established a claim under S. 33, and decided that the annual payment of £300 should be increased to £600, but he reserved his decision on the question whether the added amount should be payable for the life of the applicant or be limited to the period of her widowhood. It is indeed curious that so important a question should not before now have been determined. As the learned Chief Justice pointed out, there are some reported cases in which the further provision has been expressed to be made for the life of the widow, while in others the provision made by the Court has been limited to the period of widowhood; but the question as to what ought to be done as a matter of principle of general application seems never to have been decided or argued. Myers, C.J., said:

> "Speaking generally, as far as I can gather from the reported cases, the practice of Judges, where the testator has made provision for his wife by an annuity, has been merely to increase the annual sum, so that, as to the amount of the increase, the order has operated for the life of the widow or during widowhood according to the testator's own directions in his will in regard to the annuity that he himself thereby provided."

Obviously no principle underlies this practice. The fact that the testator has not confined the annuity to widowhood is in itself no justification for not limiting to widowhood the increased provision which the Court thinks should be given, nor, on the other hand, is the fact that the testator has limited the provision to widowhood any justification in itself for so limiting the increased provision. The justification for the limiting of the Court's provision to widowhood depends on a totally different consideration, the object of the Act; to quote again the language of Myers, C.J.:

> "The obligation that the Act imposes upon a testator . . . is, in my opinion, to make adequate provision for the proper maintenance and support of his widow as such, and not for her maintenance and support after she has become the wife of another man, and thereby lost her status as the testator's widow; and what the Act contemplates is that the Court by its order should implement the obligation to make adequate provision for the proper maintenance and support of the widow where the testator has himself failed to perform that obligation."

The same view of the Act so far as concerns claims by widows has been taken in Tasmania by the Full Court in *D'Antoine v. Field*, (1923) 19 Tas. L.R. 21, and in New South Wales by Long Innes, J., in *In re Jonathan Howard*, 25 N.S.W. S.R. 189, 193. The learned Chief Justice accordingly laid down the following principle:

> "I think that on principle—though there may be exceptional cases where a different course should be adopted—the rule should be that where the Court makes an order under S. 33 of the statute increasing an annuity given by a testator to his widow, the payment of the amount of the increase should be limited by the order to the period of widowhood."

While this general rule may, as Myers, C.J. suggests, admit of exceptions in special cases—for instance, it seems to us that the fact that property of the wife has been used by the testator in amassing his estate might in some cases warrant a departure from the principle—probably the Courts will not lightly depart from the general rule.

Supreme Court.

Myers, C.J. April 22; May 28, 1931.
Blenheim.

IN RE CARTER.

Administration—Commission—Petition by Executors for Allowance for Pains and Trouble—Death of One of Original Executor Prior to Application—Executors of Deceased Executor Joined as Parties to Petition—Allowance Made for Pains and Trouble of Deceased Executor—No Power in Court to Apportion Commission Among Several Executors—Power of Court to Fix Separately Commission Up to and After Death of Deceased Executor—Administration Act, 1908, S. 20.

Petition by Messrs. Goulter and Howard, the present trustees of the will of Thomas Carter, for an allowance under S. 20 of the Administration Act, 1908, for their pains and trouble in administrating the estate of the deceased. The deceased died on 27th February, 1900, and probate was granted on 13th March, 1900. James Bell, one of the original executors and trustees, who acted throughout from the grant of probate died on 9th November, 1925. Goulter was also one of the original trustees and executors and had acted throughout. Howard was a subsequent appointee. The petition was, in accordance with the rules in that behalf, referred to the Registrar at Blenheim whose report recommended an allowance of £3,751 8s. 7d. if it was competent to include the value of the pains and trouble taken by James Bell, but only £2,000 if the remuneration was to be confined to the pains and trouble of the petitioners themselves, The executors of James Bell appeared by counsel on the action for confirmation of the Registrar's recommendation, and they independently applied for leave to be joined as parties to the petition, their contention being that there was power to make an allowance which would enable the estate of James Bell to receive the share of the remuneration to which he would have been entitled were he still living.

Churchward for petitioning trustees.
Johnston, K.C., and **Reid** for executors of J. Bell.
Mills for certain other beneficiaries.
Newcomb for certain other beneficiaries.

MYERS, C.J., said that if there existed any power to make an allowance which would enable the estate of James Bell to receive the remuneration to which he would be entitled if still living, the present case was clearly one in which it should be exercised, because James Bell might be regarded as having been the leading trustee, and to his skilful and businesslike management the success of the administration of that very large estate had been to a great extent due. Mr. Mills and Mr. Macnab contended that the power did not exist. Their submission was that under the statute the Court had power only to grant commission to those executors who actually passed the accounts and applied for commission. They contended that remuneration could be granted only to the petitioners, and that such remuneration must be only for their own pains and trouble, and that no allowance could be made at all for the pains and trouble of James Bell. The material part of S. 20 of the Administration Act, 1908, was contained in subsection (1) which was as follows: "The Court may, out of the assets of any deceased person, allow to his administrator or trustee for the time being, in passing his accounts, such commission or percentage, not exceeding five pounds per centum, for his pains and trouble as is just and reasonable." The wording of the section was almost identical with that of S. 26 of the Victorian Administration and Probate Act, 1890, and of S. 86 of the New South Wales Wills, Probate and Administration Act, 1898. Any differences were merely verbal, and the effect of the New Zealand section was the same as that of the sections in the Victorian and New South Wales Acts. It was held by Molesworth, J., in **In re James Brown deceased,** 1 V.L.R. (Insolvency, etc.) 41, that where one of several executors applied for commission for his pains and trouble the Court would narrow the allowance if it was shown that a deceased executor had taken part in the labour for which compensation was sought. That decision was cited and followed in New Zealand in **In re Cavanagh,** (1930) N.Z.L.R. 826. But His Honour gathered that in **Brown's case** the personal representatives of the deceased executor made no claim to participate in the remuneration, because the same learned Judge who decided that case, two years afterwards in **In re Willsmore,** 3 V.L.R. (Insolvency, etc.) 60, held that where one of two executors and trustees died before the time for passing the accounts but after the estate had been got in and invested, the Court would allow his representative commission up to the date of his decease. The decision was followed by Madden, C.J., in **In re Gray,** 9 Argus L.R. (Curr. Notes) 27. It had also been followed by the present Chief Justice of New South Wales, then Mr. Justice Street, in **In re Moore deceased,** (1908) 25 N.S.W. (W.N.) 106, which case was not cited in the argument before His Honour at Blenheim. In that case an application was made by the surviving executor and trustee to pass the accounts of the two executors and trustees up till the time of the death of one of them and also the accounts of the survivor from that date until the date of the actual filing of the accounts; and commission was asked for for the two executors and trustees for work done up till the date of the death of the one, and for commission to the survivor for work done from that date until the date of the filing of the accounts. The learned Judge made an order as asked. Since the argument His Honour's attention had also been called to an order (unreported) made in similar terms by Stout, C.J., on 7th March, 1924, in **In re William Fitzgerald Levin deceased.** His Honour referred also to **In re Archibald Johnson deceased,** (1911) V.L.R. 263, where, though the application then under consideration was different from the one that His Honour was at present considering, A'Beckett, J., at p. 266, made some pertinent observations as to the manner in which the section of the Victorian statute had been construed by the Courts. His Honour could find nothing in the New Zealand decisions under S. 20 of the Administration Act to prevent his taking the same course in the present case as was taken in the two Victorian cases decided respectively by Molesworth, J., and Madden, C.J., and the New South Wales case of **In re Moore deceased.** In **In re Robert Campbell,** 11 N.Z.L.R. 514, the point really did not arise because there the deceased executor had done nothing by way of realising the estate, and the surviving executors were the only persons who had gone to pains and trouble in the administration and were, therefore, entitled to the remuneration. Both **In re Brown** and **In re Wilmore** were cited in argument but they were not referred to in the judgment, and the learned Judge who decided the case could not be regarded as having dissented from them. In **In re Cavanagh** (*sup.*), as His Honour had already pointed out, Ostler, J., followed **In re Brown** but the point arising in **In re Wilsmore** and the other similar cases did not arise. Not only then could His Honour find nothing in the New Zealand cases dissenting from **Wilsmore's case** and the other similar Australian cases, but the same course as was taken there was taken by Stout, C.J., in **In re W. F. Levin** deceased. His Honour had no doubt, therefore, that his proper course was to deal with the applications at present before him in the same way. Firstly, then, His Honour made an order, on the application of the late James Bell's executors, joining them as parties to the present proceedings. Secondly, His Honour found that the amount of £3,751 8s. 7d. recommended by the Registrar was, having due regard to all the circumstances of the case, a moderate allowance, and His Honour adopted his recommendation. There was ample authority for saying that the Court had no power to apportion the amount between several executors but had power only to grant commission to the executors as a body on the passing of their accounts: **In re Adams deceased,** 24 N.Z.L.R. 892; **In re Edmondson,** 26 N.Z.L.R. 1404; **In re Holmes,** 15 V.L.R. 734; **In re Cavanagh** (*sup.*). As the late Mr. Bell died some time ago His Honour would in the ordinary course have made an order similar to that made in **In re Moore deceased,** but it was agreed by counsel for the parties at the hearing that in the event of its being held that the estate of the late James Bell was entitled to remuneration there should be no separation of amounts of commission as between the periods to and since Mr. James Bell's death, and that the two surviving trustees and the executors of the will of the late Mr. Bell would be able to arrange their own method of division. In view of such agreement His Honour was prepared to leave the order at that, and the allowance was, therefore, made as one allowance to the petitioners and the executors of the late Mr. Bell. His Honour ordered the petitioners and the executors of the late Mr. Bell to pay their own costs of and incidental to the proceedings, subject only to the allowance expressly authorised by Rule 22. The costs of all other parties were directed to be taxed by the Registrar as between solicitor and client and paid out of the testator's estate. The allowance referred to in the judgment did not include commission in respect of the Burleigh Farm, item No. 9 (c), as to which liberty to apply was reserved.

Solicitors for petitioners: **Burden, Churchward and Reid,** Blenheim.

Solicitors for executors of James Bell: **Sainsbury, Logan and Williams,** Napier.

Myers, C.J. May 25, 1931.
Wellington.

RICHARDS v. SUN NEWSPAPERS LTD.

Practice—Costs—Amended Statement of Claim—Filing Amended Statement of Defence—Plaintiff Successful—Unsuccessful Defendant Not Entitled to Costs in Respect of Original Statement of Defence—Code of Civil Procedure, R. 148.

The original statement of claim in this action was filed with the writ of summons on 25th September, 1930, and on 13th October, 1930, the defendant filed its statement of defence thereto. On 17th October, 1930, the plaintiff filed an amended statement of claim to which the defendant filed its statement of defence on 4th February, 1931, just the day before the trial. The jury found a verdict for the plaintiff for £25 damages, and judgment was subsequently entered for that sum with costs according to scale. On taxation of the plaintiff's costs the defendant claimed to be entitled to a set-off of scale costs in respect of its original statement of defence, basing its claim upon the recent judgment of Ostler, J., in **Cantwell v. Wairarapa Farmers Co-operative Assn.,** (1929) G.L.R. 62. The plaintiff resisted this claim and relied upon the earlier judgment of Edwards, J., in **Crawford v. Ryland,** 18 N.Z.L.R. 714.

Hanna for plaintiff.
Buxton for defendant.

MYERS, C.J., said that the question arose under Rule 148 which was as follows: "Where an amended statement of claim or defence has been filed under the foregoing rules, the party filing the same shall bear all the costs of the original statement and any application for amendment, unless the Court otherwise orders." His Honour referred to **Cantwell v. Wairarapa Farmers Co-operative Assn.** (*sup.*) and to **Crawford v. Ryland** (*sup.*) and said that the English rule (O. 28, R. 13) which dealt with the question of costs where an amended pleading was filed in accordance with the rules without any leave, said that "the costs of and occasioned by any amendment made pursuant to rules 2 and 3 of this Order shall be borne by the party making the same unless the Court or a judge shall otherwise order." It was to be observed that that rule contained the words which His Honour had italicised and which did not appear in our Rule 148. Our rule referred only to the costs *of* the original statement: and the words used aptly denoted the costs of the party filing the pleading, and meant, His Honour thought, that where the party filing an amended pleading succeeded in the action he could not recover from the other side, unless the Court otherwise ordered, the costs of his original pleading, but must bear them himself. The English rule said not only that the party making the amendment should bear his own costs, but that he should also bear the costs *occasioned by* the amendment. The italicised words were apt words to denote the costs of the opposite party, and therefore in England, unless the Court otherwise ordered, the party making the amendment had to bear not only his own costs of the amendment but also the costs thereby occasioned to the opposite party. That distinction between the costs *of* a pleading and those *occasioned by* a pleading was clearly shown by reference to the rules dealing expressly with the costs of the amendment of pleadings. His Honour referred to O. 65, R. 27 (31 and 32) **1930 Annual Practice 1465, 1466: 1931 Yearly Practice 1450.** In the **Annual Practice,** at p. 1466 there was a note referring to O. 28, R. 13, that where the amendment could be made without leave under Order 28, Rules 2 and 3, the party who amended bore the costs of his own amendment as well as those occasioned thereby to his opponent. The view that His Honour took accorded, he thought, with that taken by Edwards, J., in **Crawford v. Ryland,** and it was the view which, as far as His Honour knew, had always been acted upon in practice both before and since that case was decided. The view contended for by the defendant involved the setting up of a new and different practice and the reading into Rule 148 of words which did not appear there, though they were contained in the corresponding English rule. **Cantwell's case** was applied in **Guardian Trust and Executors Co.,** (1930) N.Z.L.R. 1046, but the question as to the correctness of the decision did not appear to have been raised.

In the view that His Honour took it followed that the defendant was not entitled under Rule 148 to the costs of its original statement of defence. The plaintiff did not include in his party and party costs any claim for the costs of the original statement of claim. His advisers evidently recognised, as the fact was, that the plaintiff must bear his own costs of that statement of claim, as the Court did not otherwise order. His Honour added that, in any case, he would not have been disposed to grant the defendant costs because he was inclined to think that its second statement of defence was really unnecessary. Had it been necessary, the defendant should have filed it within a reasonable time after service of the amended statement of claim and not waited for months until the day before the trial. His Honour had, however, thought it incumbent upon him to deal with the matter upon the construction of Rule 148 because of the apparent conflict between the decisions on which the parties respectively relied.

Solicitors for plaintiff: **Duncan and Hanna,** Wellington.
Solicitors for defendants: **Earl, Kent, Massey and Northcroft,** Auckland.

MacGregor, J. May 22; 29, 1931.
Wellington.

SCOTT v. WAKEFIELD.

Moratorium—Judgment for Mortgage Debt and Interest—Charging Order Absolute in Respect of Judgment Issued and Registered Against Mortgagor's Interest in Certain Lands—Issue of Charging Order Not "Issue of Any Process of Execution"—Mortgagors Relief Act, 1931, Ss. 4, 5, 8—Code of Civil Procedure Rules 327, 336.

Motion by defendant to set aside a charging order absolute issued by the plaintiffs against the interest of the defendant in certain parcels of land, upon the ground that such charging order had been issued contrary to S. 4 of the Mortgagors Relief Act, 1931. On 1st February, 1926, the plaintiffs advanced to the defendant £530 on mortgage of a piece of land at interest payable quarterly. The principal sum became due on 9th November, 1928, and was not then paid. No interest was ever paid under the said mortgage. On 9th April, 1931, the plaintiffs sued the defendant under the covenants contained in the said mortgage for the respective sums of £530 principal and £267 9s. 10d. interest, both then overdue. No defence was filed, and on 29th April, 1931, the plaintiffs entered judgment by default against the defendant for the sum of £797 9s. 10d. and £17 12s. for costs. On 4th May, 1931, the plaintiffs issued and registered a charging order absolute now in question against the defendant's interests in certain parcels of land, which accordingly stood charged with payment of the amount of above judgment (£815 1s. 10d.) along with £6 11s. the costs of the charging order. On 6th May, 1931, the plaintiffs caused to be served on the defendant a notice claiming to "issue execution" in pursuance of the above judgment. That notice was apparently given in order to comply with the terms of section 5 of the Mortgagors Relief Act, 1931, which Act was passed on 17th April, 1931.

Scott for plaintiffs.
Garbett for defendant.

MACGREGOR, J., said that the question to be decided was in effect what was the precise meaning in S. 4 (1) (b) of the Mortgagors Relief Act, 1931, of the words "the issue of any process of execution"? In order to answer that question, one must first endeavour to arrive with precision at the sense in which the key word "execution" was used in that connection. "Execution" was not a precise term of art. It was an equivocal word, which in legal language might be used in at least two senses as applicable to the enforcement of judgments or orders. It was clear from **Halsbury's Laws of England,** Vol. 14, pp. 3, 4, that in England the word "execution" might be used either in a narrow sense, (which would exclude charging orders), or in a wide sense (which would include them). The same distinction appeared to be preserved in New Zealand under our Code of Civil Procedure. Part V of the Code related exclusively to "Execution." The opening rule was No. 336 which read thus: "Judgments may be enforced by any one or more of the following writs as hereinafter provided, viz.: A writ of sale, a writ of possession, a writ of attachment, each of which is hereinafter included in the term 'writ of execution.'" It was, therefore, quite plain at least that to issue a charging order was not to issue "a writ of execution." Charging orders were dealt with by the preceding chapter of the Code, which was headed: "Part IV—Charging Orders." The effect of a charging order affecting land was not to transfer any interest in the land itself to the judgment creditor, but merely to charge it with payment of the amount of the judgment debt. Such a charging order indeed ceased as a rule to bind the land unless a conveyance or transfer under a writ of sale was registered within six months after judgment had been signed: Rule 319. It was subject to prior charges, whether legal or equitable, and

whether with or without notice: **Butler v. Nichol,** (1923) N.Z. L.R. 1339. In the result it would, His Honour thought, be inaccurate in legal parlance to describe the issue of a charging order against land as "issuing execution." In England that aspect of the question was made clear by O. 42 R. 8. It was true that we had no precisely similar provision in our Code, but in His Honour's opinion Rule 336 in effect arrived at an analogous result.

Those considerations, however, did not quite exhaust the subject under discussion. At the argument before His Honour several English cases—for example, **Martin v. Nadel,** (1906) 2 K.B. 26—were cited in support of the contention that a charging order was in itself a "process of execution." The judgment of Farwell, L.J., at p. 428 in that case, showed that the issue of a garnishee order (or a charging order) did apparently come within the wider sense of "execution," as defined in **Halsbury** (*sup.*), but not within the narrower sense of the term already referred to. One thus came back in the end to the original question, whether the issue of a charging order absolute against land was the issue of any process of "execution" within the meaning of S. 4 of the Mortgagors Relief Act, 1931? Was the term "execution" in that section used in its wide or its narrow sense? After full consideration His Honour had come to the conclusion that it must be construed in its narrow sense, inasmuch as it was an equivocal word appearing in a statute which materially encroached on the rights of the subject—in the present case a mortgagee. In **Hough v. Windus,** 12 Q.B.D. p. 237, Bowen, L.J., referred with approval to the "recognised rule that statutes should be interpreted if possible so as to respect vested rights." See also **Maxwell on Statutes,** 7th edn., pp. 245. In the present case the plaintiff mortgagees had undoubtedly a vested right in their judgment, which right they were endeavouring to protect and preserve by means of a charging order against the defendant's real property. They could not by the charging order itself realise on that property. That must be done (if at all) by means of the subsequent issue of a writ of sale, in other words, by the plaintiffs "issuing execution" on their judgment in the usual way. As had already been seen, the plaintiffs had already given under S. 5 (1) the necessary one month's notice of their intention so "to issue execution." That notice had not yet expired. It rested with the defendant to apply to the Court for relief under S. 5 (3) of the Act. If the Court then thought fit to grant relief to the defendant under S. 8 of the Act, it would no doubt deal with the charging order in its discretion. If the defendant did not apply for relief, or if the Court should decline to grant relief, then there was no apparent reason why the charging order should be interfered with. The main effect of the charging order at present was to preserve matters *in statu quo* until a substantive application for relief under the Mortgagors Relief Act could be made and disposed of. For the foregoing reasons His Honour was satisfied that he should not either set aside or vary the charging order under Rule 327 of the Code or otherwise.

Motion dismissed.

Solicitor for plaintiffs: **J. A. Scott,** Wellington.
Solicitor for defendant: **J. J. Garbett,** Wellington.

Myers, C.J. May 21; June 2, 1931.
Wellington.

RE WINDER.

Family Protection—Widow's Application for Further Provision Out of Estate in Addition to Annuity Given by Will of Husband—Annuity Increased—General Principle that Increase in Widow's Annuity should be Confined to Widowhood—Family Protection Act, 1908, S. 33.

Application by widow for an order under S. 33 of the Family Protection Act, 1908, granting her further provision out of the testator's estate. The testator by his will gave his widow a life annuity of £300 in addition to certain other benefits which were not material to the present case. The applicant was the testator's second wife and about 45 years of age. At the conclusion of the hearing Myers, C.J., intimated that having regard to all the circumstances of the case the applicant had established a claim under S. 33, and that he intended to make an order increasing the annual payment of £300 to £600. The question was then raised as to whether the added amount should be payable for the life of the applicant or be limited to the period of widowhood, and that question was reserved for consideration. The case is reported upon that question only.

Atkinson for plaintiff.
D. Jackson for Public Trustee as executor.
Rose for Public Trustee as representing J. Winder.
Rainey for G. H. Winder.
Hay for Home for Aged and Needy.
Evans for Y.M.C.A. and Salvation Army.

MYERS, C.J., said that it was somewhat curious that the question had apparently never been raised before in New Zealand—at all events as a matter of general application in those cases. There were reported cases in which the further provision had been expressed to be made for the life of the widow, while in other cases the provision made by the order had been limited to the period of widowhood. But the question as to what ought to be done as a matter of principle of general application seemed never to have been decided or argued. Speaking generally, as far as His Honour could gather from the reported cases, the practice of Judges, where the testator had made provision for his wife by an annuity, had been merely to increase the annual sum, so that, as to the amount of the increase, the order had operated for the life of the widow or during widowhood according to the testator's own directions in his will in regard to the annuity that he himself thereby provided. There was at least one reported case, however, in which that practice had not been adopted. His Honour referred to **In re Hutchison,** (1921) N.Z.L.R. 743, where the testator gave his widow a life annuity of £150, and Adams, J., increased the allowance by £300 per annum from the date of the testator's death during the applicant's widowhood.

The actual question as to the proper course to be adopted having arisen, it must in His Honour's view be considered and decided on principle. S. 33 (1) of the Family Protection Act, 1908, said that if any person, therein called the testator, died leaving a will, and without making adequate provision for the proper maintenance and support of the testator's wife . . . the Court might at its discretion, on application by or on behalf of the said wife . . . order that such provision as the Court thought fit should be made out of the estate of the testator for such wife. As was said in the judgment of the Court of Appeal in **Newman v. Newman,** (1927) N.Z.L.R. 418 "wife" connoted "widow," since the benefits of the section could only be claimed after the death of the testator. The same case showed that if a testator's widow re-married she lost her status of widow and could no longer claim under S. 33 of the statute. The obligation that the Act imposed upon a testator therefore was, in His Honour's opinion, to make adequate provision for the proper maintenance and support of his widow as such, and not for her maintenance and support after she had become the wife of another man, and thereby lost her status as the testator's widow: and what the Act contemplated was that the Court by its order should implement the obligation to make adequate provision for the proper maintenance and support of the widow where the testator had himself failed to perform that obligation. But, if the widow elected to change her status and become the wife of another man, His Honour did not see how it could be said to be the duty of the Court under the statute to make provision out of the testator's estate to relieve the obligation of the new husband at the expense of the testator's residuary legatees or other persons whom he intended to benefit by his will. A very wide discretion was conferred upon the Court, but since the question had definitely arisen and a decision had to be given upon it, His Honour thought that on principle—though there might be exceptional cases where a different course should be adopted—the rule should be that where the Court made an order under S. 33 of the statute increasing an annuity given by a testator to his widow, the payment of the amount of the increase should be limited by the order to the period of widowhood. His Honour thought indeed that that principle was impliedly, if not expressly, laid down in **Newman v. Newman** (*sup.*) where, at page 422, Adams, J., delivering the judgment of the Court, said: "If the Legislature had intended to impose upon a testator a duty to provide for his wife's maintenance after she had ceased to be his widow, we should have expected to find that stated in plain terms." It might be that in deciding **In re Hutchison** (*sup.*) Adams, J., considered the question, though he did not say so in his judgment. However that might be, His Honour thought that the order made by him in that case limiting the increase to the period of widowhood was correct, and should be followed. Another New Zealand case in which the further provision granted to a widow was limited to the period of widowhood and where the question was unaffected by any direction or provision in the will was **In re Polson deceased** (unreported). In that case MacGregor, J.,

made an order on 4th July, 1929, adding to the provision made for the widow by the will by providing that she should receive the income arising from a certain portion of the estate so long as she should remain unmarried. The widow, considering that the provision made by the Supreme Court was not sufficient, appealed to the Court of Appeal, which Court on 4th April, 1930, increased the annuity granted by MacGregor, J., but provided by its order that the increased annuity should be paid to the appellant during her lifetime so long as she remained unmarried.

Although the point did not seem to have been the subject of express decision in New Zealand, except in so far as it may be said to have been dealt with in **Newman v. Newman,** it was considered by the Full Court in Tasmania in **D'Antoine v. Field,** (1923) 19 Tas. L.R. 21. It was true that in that case the testator provided for his wife an annuity "so long as she remained his widow," and the Court, being of opinion that the amount of the annuity was an insufficient provision, increased it, and the Judge of the first instance ordered that the annuity as so increased should be payable to the widow during her life. On appeal, however, the Full Court by a majority varied the order by providing that the amount should be payable only during widowhood. The judgments, however, did not turn on the fact that the provision made by the testator was limited to the period of widowhood. What the majority of the Court held in effect was that it was wrong under the statute to give an increased allowance for her life to a widow who was only entitled to such allowance because she was the widow of the testator, and who might the next day marry again and thus lose her status as a widow and acquire a new status as the wife of another man. The question had also been considered in New South Wales in **In re Jonathan Howard,** 25 N.S.W.S.R. 189, where Long Innes, J., at p. 193 said: "In the case of a widow I think the maintenance should be confined in most cases to the continuance of the widowhood."

The additional sum of £300 per annum was therefore ordered to be payable only during the continuance of the applicant's widowhood.

Solicitors for plaintiff: **Atkinson, Dale and Mather,** Wellington.

Solicitor for Public Trustee as executor: **D. Jackson,** Wellington.

Solicitor for Public Trustee as representing J. Winder: **Solicitor, Public Trust Office,** Wellington.

Solicitors for G. H. Winder: **Leicester, Jowett and Rainey,** Wellington.

Solicitors for Home for Aged Needy: **Mazengarb, Hay and Macalister,** Wellington.

Solicitors for Y.M.C.A. and J. Cunningham: **Bell, Gully, Mackenzie and O'Leary,** Wellington.

Blair, J. April 21, 22; June 1, 1931.
Auckland.

SMERLE v. MINISTER OF CUSTOMS.

Licensing—Distillery—Application to Minister to Approve Site and Plans for Proposed Distillery—Refusal by Minister—Application for Mandamus—Minister Not Bound to Grant License Until Buildings Completed—Duty of Minister to Grant License in Respect of Existing Site Building and Equipment Satisfying Statutory Requirements—Minister Not Entitled to Refuse Upon Ground Only of Alleged Public Policy—Distillation Act, 1908, Ss. 4, 7, 13, 14, 24-31, 51, 73, 116.

Argument of question of law in an action claiming a mandamus to compel the Minister of Customs to approve the site and the plans of the buildings and equipment for carrying on in New Zealand the business of distilling rectifying and compounding trade alcohol and spirituous liquors. The plaintiff alleged that he had a suitable site near Auckland and that on 16th January, 1930, he made application to the Minister of Customs "describing the site buildings and premises where such distillation was to be carried on accompanied by a plan of such premises showing the situation of the still and all other vessels and apparatus," etc. The Minister, in answer to the plaintiff s application, did not adopt the attitude that was adopted by way of defence to the motion, but stated that he had considered the representations which had been made in that connection, but regretted that the licenses could not be granted. In answer to a further communication from the plaintiff's solicitors the Acting-Controller of Customs on 29th December, 1930, stated that the decision of the Minister previously conveyed to them was given by him for the reason that the granting to Mr. Geo. Smerle of the licenses in question under the Distillation Act, 1908, would be opposed to public policy. In a later letter written on 7th March, 1931, it was made clear that the Minister refused to grant any licenses under that Act to any person or in respect of any site. The present action was then commenced to compel the Minister to grant his approval of the plans of the buildings and equipment and of the site of the proposed distillery.

Gould for plaintiff.

Meredith and **McCarthy** for defendant.

BLAIR, J., said the case raised a question of some importance under the Distillation Act, 1908. It was to be noted that the plaintiff did not allege that he had applied for a license, his application being merely for approval of the site and of the plans of the contemplated buildings and plant. The plaintiff had not built or equipped his proposed distillery, but he had obtained a site which was stated to be free from the objections set out in the Act. Those objections were framed to ensure that trades which could make use of spirits were not near a distillery. The plaintiff's plans of building and equipment were alleged fully to comply with the requirements of the Act and His Honour assumed in the plaintiff's favour that his site and his buildings and equipment would, if erected, fulfil all the statutory requirements. The whole scheme of the Act in relation to site, buildings, and equipment was designed to ensure protection of the revenue. The plaintiff's application to the Minister was really to ask him to approve the site and plans. That is, the plaintiff claimed that he could compel the Minister to approve plans of buildings and equipment notwithstanding that neither buildings nor equipment were at present in actual existence. Had the Minister's attitude been adopted by him in respect of an existing site building and equipment which satisfied the requirements of the statute it was clear from the decision of the Court of Appeal in **Jorgensen v. Minister of Customs,** (1931) N.Z.L.R. 133, that the Minister's attitude would have been untenable. Indeed Mr. Meredith admitted in argument that if the plaintiff had erected and equipped his building the Minister so long as the statutory requirements were fulfilled could not successfully have maintained his attitude. It would then become the Minister's duty to consider only the matters the statute required him to consider and those matters, as already mentioned, touched the question of protection of revenue. The action was one for mandamus to compel the Minister to consider and approve the site and the plans of the proposed building. The plaintiff claimed that the Act contemplated the issue by the Minister of some kind of certificate of approval of the site and plans before the building was erected. The action was no doubt commenced because of the attitude adopted by the Minister, that he would not grant any licenses under the Distillation Act to any person or in respect of any site. That attitude, as was admitted at the hearing, was untenable, and in granting or refusing a license the Minister had to consider only the matters which the Act required him to consider.

At the present time His Honour was concerned only with the question whether the plaintiff was entitled to a mandamus to compel the Minister to approve the site and the plans of the building and equipment. The plaintiff admitted that before he could obtain a mandamus he must show that there had been a breach by the Minister of a legal duty. The plaintiff's submission was that an examination of the Act showed that the Minister must issue certain certificates or intimations of approval before the actual issue of the license, because there were contained in the Act various provisions making it an offence to be in possession of utensils or apparatus for use in distilling spirits "without having first obtained a license for keeping or using the same": S. 116. It was submitted that, without the applicant's being in possession of a license for keeping distilling apparatus, an offence was complete under S. 116 as soon as there was imported into New Zealand by the applicant any plant intended to be installed in the distillery. His Honour thought that that was a strained construction particularly in view of the fact that the penal provisions of S. 116 all com-

menced with words such as "In breach of this Act" or "unlawfully," or with other words indicating unlicensed distilling. The section could have no application to a person who to the knowledge of the authorities was taking the necessary preliminary steps to instal the apparatus for lawfully carrying on a distillery. It was also urged that the provisions of S. 4 contemplated the approval of the "premises" when only in plan form. That section required an applicant to describe the premises where the distillation was to be carried on and to submit a plan of the premises showing the situation of the still and other vessels and apparatus. It was submitted that absurdity would result if the Minister, after the building had been erected and the plant installed, were to refuse to approve the site. The answer to that was that if the Minister had any discretion with regard to the site it was limited to satisfying himself that the objections to site contemplated by the Act were duly met. Those objections all touched the question of protection of revenue and the Minister could not, as was suggested during the argument, say that he objected to, say, Auckland, as the site and wanted some other place. His objections would have to be limited to the matters contemplated by the Act and he could not arbitrarily reject a site which fulfilled the statutory requirements. The only section to which His Honour was referred touching objection to the locality of the site was S. 14, which authorised the Minister to refuse to grant a license where it was too near a brewery, vinegar manufactory or cordial factory where spirits were used. S. 7 of the Act required the premises for which a license was sought to be inspected by a Chief Inspector or his deputy. The form of the Chief Inspector s certificate set out that he had inspected the premises and that they complied with the Act and were correctly described in the applicant's plans. That made it clear that the inspection preliminary to the issue of a license was to take place after the premises were complete and ready for operation. By S. 13 (3) it was provided that upon payment of the license fees and upon production of a certificate from the Chief Inspector that all the requirements of the Act had been complied with "such license shall forthwith issue." In several places throughout the Act there appeared provisions authorising the Minister if he thought fit to do certain things, but nowhere could His Honour find in the Act any provision of that nature respecting any ordinary distillation license. The plaintiff stated in his affidavit that he intended to manufacture spirits without the intermediate production of low wines, the type of still he proposed using being of the modern continuous type and not of the old "pot still" type. His Honour did not know precisely what that meant, but it was introduced into the case for the reason that by Ss. 25 to 31 of the Act there was introduced a mass of detail as to the equipment of distilleries, all of which detail, His Honour was informed, was that used in the "pot still" type of distilling. S. 51 of the Act contemplated a distiller distilling without the intermediate production of low wines and prescribed certain apparatus that must be installed if that were the practice. Under S. 73 it was provided that, if at any time it appeared to the Minister that any distilling apparatus was required of a form different from those previously mentioned in the Act, he might if satisfied that the vessel required would not be conducive to evasions of the Act and upon a certificate from the Inspector permit the use of such vessel. The plaintiff wanted to get from the Minister his present approval of the continuous still method instead of the pot still method. It was submitted that hardship arose if it were not possible to obtain at that stage the approval of the change in distilling methods proposed. His Honour did not see how he could possibly interpret the Act as requiring the Minister to give his approval at that stage. The whole scheme of the Act contemplated that the plans accompanying the application should be of a completed and equipped building which would be inspected by the Chief Inspector, and upon his certificate that the Act had been fully complied with the license issued. Nor did His Honour think that the anticipated hardship could arise for the reason that the Minister's discretion in a matter of that kind was also subject to very considerable limitation. The issue of a license was controlled by S. 24 which said that, except as provided by the Act, no license to distill spirits should be granted or renewed unless it was certified by the Chief Inspector or other officer that the several vessels enumerated and described in the Act were erected on the premises for which a license was sought and were arranged as was provided in the Act. It seemed obvious, therefore, that until due completion of the premises there was nothing that the Court could by mandamus compel the Minister to do in relation to the issue of a license.

Claim dismissed.

Solicitors for plaintiff: **Morpeth, Gould and Wilson,** Auckland.
Solicitors for defendant: **Meredith and Hubble,** Auckland.

Blair, J. May 26; 29, 1931.
Wellington.

KANIERI ELECTRIC LTD. v. HANSFORD & MILLS CONSTRUCTION CO. LTD. (IN LIQUIDATION) AND RIMU GOLD DREDGING CO. LTD.

Wages Protection and Contractors' Liens—Subcontractor—"Work"—Supply of Electrical Energy to Work Contractors' Mechanical Rivetters and Electric Crane—Mechanical Rivetters and Electric Cranes Used in Construction of Steel Dredge—Supply of Electrical Energy "Work"—Wages Protection and Contractors' Liens Act, 1908, S. 48.

Subcontractor's claim for charge under Wages Protection and Contractors' Liens Act, 1908, on moneys payable by owner to contractor. The Hansford & Mills Construction Co. Ltd. had contracted with the Rimu Gold Dredging Co. Ltd. to erect for the latter company a large steel dredge near Hokitika. Electrically-driven machinery was used by the contractor in the construction of the dredge. A contract was entered into by the contractors with Kanieri Electric Limited for the supply by the latter company to the contractors of all the electrical energy required for the completion of the dredge. Kanieri Electric Limited claimed a charge on the moneys payable by the Rimu Co. to the contractors for the sum of £93 1s. 3d. in respect of electrical energy so supplied and for a further sum in respect of certain electrical equipment and other articles supplied to the contractors. In respect of the latter part of the claim Blair J. decided on the facts in favour of the defendants and the case is reported as to the first part of the claim only.

Buxton for plaintiff.
James for Receiver for Second Debenture Holders of Hansford & Mills Construction Co. Ltd.
Perry for Liquidator of Hansford & Mills Construction Co. Ltd.

BLAIR, J., said that the important question was whether the supply of electrical energy was "work" within the meaning of S. 48 of the Wages Protection and Contractors' Liens Act, 1908, and its amendments. As the Act was originally framed "work" was defined as "meaning" the various things thereinafter mentioned, but by an amendment of the Act made in 1914 the word "means" was altered to "includes," and the effect of that alteration was that the word "work" would have its usual and ordinary meaning, with the addition of the various artificial meanings specially included in the definition clause. The erection of the dredge was certainly within subsection (c) as included within the words: "the placing fixing or erection of any materials, or of any plant or machinery, used or intended to be used for any of the purposes aforesaid." One of the "purposes aforesaid" was "the development or working of any mine." The dredge contract itself, it was not disputed, was "work." The plaintiff's claim was for a supply of electrical energy, which energy constituted the motive power which operated the machinery and plant used by the Hansford and Mills Company in the erection of the dredge. That dredge was fabricated in Wellington and temporarily put together there. After it was fabricated it was shipped to the Rimu Company's property near Hokitika, and a number of workmen were employed in putting it together, the main part of the work comprising rivetting. That rivetting was done by means of compressed air rivetters, and those tools were operated by means of air compressed in an air compressor, which compressor was operated by means of an electric motor, the electrical energy for that being provided by the Kanieri Company. The Hansford and Mills Company had also electric cranes and other odd power tools used in carrying out the work, and those power tools derived their power from the electrical energy supplied by the Kanieri Company. Before the invention of mechanical rivetters all rivetting was done manually, the procedure being for two boilermakers to drive the hot rivet home with hammers. There was also another man usually employed whose duty it was to press a heavy hammer against the inside of the rivet so as to provide an anvil for the rivetters to hammer upon. The compressed air rivetting tool dispensed with the services of the two rivetters, and the power formerly provided by the muscles of the workmen was generated hydraulically by the Kanieri Company, converted into electrical energy, and then again converted into the energy provided by compressed air and in that form delivered to the tool. Nobody could dispute that if the rivetting had been done by hand it would have been skilled "work" within the definition. That definition said that: "Work includes any work or labour, whether skilled or unskilled, executed or done, or commenced to be executed or

done, by any person of any occupation upon or in connection with" various special things. The section certainly said "work . . . . by any person," and "person" would include a corporation—Acts Interpretation Act, 1924, S. 5. It was true that at the point where the electrical energy was delivered to the Hansford and Mills Company's Works the human element was absent, and it was a machine that generated that energy. But behind every piece of machinery and responsible for its functioning was a human being. There was hardly a single modern mechanical operation which did not to some extent make use of tools. A workman using a saw could not cut the timber he was operating upon without that tool. Sometimes the saw was operated by means of mechanical power; the finished article nevertheless was to His Honour's mind just as much "work" whether it was done altogether manually or in part manually and in part mechanically. The electrical energy supplied by the Kanieri Company was the mere mechanical equivalent of the energy that would otherwise have been supplied by the muscles of the workmen. Regard must also be had to the fact that the definition of "work" in the statute was not exclusive. The word "work" had still its ordinary everyday meaning. If from the definition of "work" there must be excluded all those parts of the "work" which were the result of mechanical devices then the logical result of the argument raised by the defence in the present case would be that in all claims for lien under the Wages Protection and Contractors' Liens Act, 1908, there would require to be excluded from the benefit of the Act all that portion of the work which was the result of mechanical devices. In modern times it was the exception to find work done wholly by hand. There was invariably a machine of some sort or kind assisting at some stage of the operations. The charge to the extent of £93 1s. 3d., the amount of the charge for supplies of electrical energy was accordingly allowed.

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

Solicitors for the Receiver for the second debentureholders: **Izard, Weston, Stevenson and Castle,** Wellington.

Solicitors for liquidator: **Perry, Perry and Pope,** Wellington.

Blair, J. May 4; 30, 1931. Wellington.

IN RE PETERS.

Bankruptcy—Adjudication—Annulment—Adjudication on Debtor's Petition—Petition Filed to Avoid Judgment Debt on which Conditional Committal Order Made—No Abuse in Circumstances of Process of Court—Adjudication Not Annulled.

Motion by the Loan and Deposit Co. Ltd., a judgment creditor, to have the debtor's adjudication in bankruptcy upon his own petition annulled upon the ground that the debtor's petition was an abuse of the process of the Court. The judgment creditor, on 15th November, 1930, had obtained judgment for £47 7s. 6d. against the bankrupt as the indorser of a promissory note. On 19th March, 1931, the bankrupt was brought up on a judgment summons in the Magistrate's Court at Wellington and was ordered to pay the full amount of the judgment forthwith and in default to undergo one month's imprisonment, the warrant being suspended so long as he should pay ten shillings per week. On 26th March, 1931, the bankrupt filed his petition in bankruptcy. His assets were nil and the only creditor was the Loan and Deposit Company Ltd. in respect of its judgment debt which then amounted to £50 6s. The bankrupt was 23 years of age, was described as a cutter, and earned, he stated, 30/- per week working in his father's factory.

Macandrew in support.

Sievwright to oppose.

BLAIR, J., said that it was submitted that as the filing of debtor's petition was admittedly to avoid the consequences of the judgment summons order and that as he was, as found by the Magistrate, able to pay, his action in filing in bankruptcy was an abuse of the process of the Court. It was put by counsel for the company that but for the bankruptcy his client would have received 10/- per week, and the result of the bankruptcy was to deprive the creditor of the benefit of his judgment. The debtor's answer was that he was by the order offered the alternatives of payment or imprisonment, and as he could not provide the first and objected to the second he selected the only course open to him of filing in bankruptcy. It was further pointed out that if the bankrupt adopted the alternative of going to gaol the full debt would still remain after he had served his term of imprisonment, and that after putting him in gaol the company could have him adjudicated bankrupt. Moreover, the Court in bankruptcy had power to make any order for discharge conditional. Mr. MacAndrew relied upon **In re Betts,** (1901) 2 K.B. 39, and to some extent also on **Re Aekins,** 13 G.L.R. 688. In **Bett's case** the debtor had been made bankrupt in 1891 and was undischarged. In 1896 a receiving order was made against him but it was rescinded by the Court of Appeal, the ground being that there were no assets that would be available. The reason for that was that it was useless to make a second adjudication when the creditors had all remedies under the first. In 1897 a committal order was made against Betts and thereupon Betts himself petitioned for a receiving order, and he had not, in September, 1900, obtained his discharge from that second bankruptcy. In January, 1900, further committal orders were made against Betts and he presented a third petition in bankruptcy upon which a receiving order was made. He had not obtained a discharge from that bankruptcy either in September, 1900. In September, 1900, further committal orders having been made against Betts, he filed a fourth petition in bankruptcy. It was that fourth bankruptcy which it was sought to have annulled, the ground being that Betts had made a habit of incurring fresh debts and when committal orders were made he went through the form of filing in bankruptcy. He was as stated by the Court a professional bankrupt. The bankrupt in **Bett's case** relied upon **Ex parte Painter, In re Painter,** (1895), 1 Q.B. 85, where it had been held that the filing by a debtor of his petition in bankruptcy ought not to be stopped merely on the ground that his object was to escape the effect of a committal order against him under the Debtors Act. But the Court (Wright and Darling, JJ.), while saying they did not wish to criticise a word that was said in **Painter's case,** pointed out that there must be a limit to a debtor's immunity and that if it appeared as a fact that a debtor was in the habit of filing bankruptcy petitions so that the bankruptcy law was being really made use of in order to assist him in his frauds on creditors and to enable him to get credit with the intention of getting rid of his liabilities by filing his petition, such a case did not come within the protection of the Bankruptcy Act. The judgment was expressly stated as depending upon the special facts in that case. If the Court in **Bett's case** had been moved to annul the first instead of the fourth adjudication the position would have been entirely different. In **Ex Parte Painter** (*sup.*) (which was approved in **Bett's case**) the adjudication was of a man possessed of an inalienable pension and was made to avoid a possible committal order on a judgment for £294. The Court refused to annul it. **In re Hancock,** (1904) 1 K.B. 585, and **In re Archer, Ex Parte Archer,** 20 T.L.R. 390, were clear authorities against the present application. The facts in **Re Aekins** were peculiar, the debtor filing for the purpose of avoiding payments of future maintenance of his wife, which payments he could easily make.

Motion dismissed.

Solicitors for Loan and Deposit Co. Ltd.: **Fell and Putnam,** Wellington.

Solicitor for bankrupt: **A. B. Sievwright,** Wellington.

Kennedy, J. April 17; May 6, 1931. Dunedin.

IN RE SHOTOVER CONSOLIDATED LIMITED (IN LIQUIDATION).

Company—Winding-up—Distribution Among Shareholders of Surplus Remaining After Payment of Debts—Shares Unequally Paid Up—Article Providing for Distribution in Proportion to Amounts Actually Paid Up—Liquidator Not Entitled to Make Calls to Equalise Amounts Paid Up—Moneys Paid on Certain Shares in Advance Without Call—Such Shareholders Not Entitled to Priority in Respect of Moneys so Paid in Advance.

Application by the liquidator of the Shotover Consolidated Co. Ltd. to the Court for directions. The capital of the company was £80,000 divided into 80,000 shares of £1 each. At the commencement of the winding up the share capital was unequally paid up: 30,000 shares were fully paid up, having been issued in satisfaction of the vendors' interests in certain mining privileges and other assets acquired by the company; 17,000

were fully paid up, having been subscribed for by the promoters of the company in pursuance of an intimation given in a prospectus that the promoters would subscribe for 17,000 shares and would pay them up in full; 8,250 were paid up to 4/- in the £1, being shares issued to the public; and 1,700 shares were paid up to amounts varying from 6/- to 20/- being other shares subscribed for by the public. The amount payable on application and allotment was in all 4/- per share. Article 16 of Table A was excluded, but Article 8 of the company's articles of association provided as follows: "The Company shall accept from any member of the Company who desires to pay the same the whole or a part of the amount remaining unpaid on any share or shares held by him either in discharge of the amount of a call payable in respect of any other share or shares held by him or without any call having been made and such shares shall then rank according to the amount paid up thereon for calculation of dividends and distribution of surplus assets in the event of winding up." No calls were made by the company, and the payment of the sums in excess of 4/- per share upon the shares offered to the public entitled shareholders paying to claim the benefit of that article. The liquidator had a sum of £367 12s. 4d. more or less available from the realisation of the company's assets after payment of the debts of the company. The question arose whether, in adjusting the rights of members, calls should not be made upon members holding shares which were not fully paid up. Article 25 of the company's articles of association provided as follows: "If the company shall be wound up and the assets available for distribution among the members as such shall be insufficient to repay the whole of the paid up capital such assets shall be distributed so that as nearly as may be, the losses shall be borne by the members in proportion to the capital paid up or which ought to have been paid up at the commencement of the winding up on the shares held by them respectively."

Pollock for liquidator.
Barrowclough for R. K. Ireland.
Callan for Kawarau Gold Mining Co. Ltd.
Hay for J. M. Wilson.
Stephens for D. Foster.

KENNEDY, J., said that where the memorandum and articles of association of a company contained no provision as to the division of what remained after payment of debts and the costs, charges and expenses of winding up, then, subject to the special terms on which any capital had been issued, surplus assets were divided and losses were borne in proportion to the nominal amounts of the shares and not in proportion to the amounts paid up. Where, however, some of the shareholders had paid up more than others, the Court adjusted the amounts until all had paid up in the same proportion, and the surplus arrived at was then distributed in proportion to the nominal amount of capital held: 5 **Halsbury,** 530; **Re Hodges' Distillery Co., Ex parte Maude,** L.R. 6 Ch. App. 51, and **Birch v. Cropper,** 14 App. Cas. 525, 543.

The articles, however, of the company contained special provision as to the distribution of surplus assets and the incidence of losses.

His Honour after quoting article 25, said that such an article it was admitted excluded the right to make calls on the holders of shares partly paid up to equalise the amounts paid up: see **In re Kinatan (Borneo) Rubber Ltd.,** (1923) 1 Ch. 124, where the article was in identical terms. No call would accordingly be made for the purpose of adjusting the rights of members. The direction given would follow the declaration in **In re Kinatan (Borneo) Rubber Ltd.** (*sup.*) and would accordingly be that the assets available for distribution among the members of the company, without calling up or treating as called up any uncalled capital, ought to be distributed among the members in proportion to the amounts actually paid up at the commencement of the winding up on the shares held by them respectively.

It was contended that members of the public who had subscribed for shares, were entitled first to a refund of the amount paid in excess of 4/- per share as money paid in advance in priority to any payment to other members. Reliance for that submission was placed upon a passage in **Stiebel,** 3rd edn., p. 198, and upon observations made in **Lock v. Queensland Investment and Land Mortgage Co.,** (1896) A.C. 461. It was clear that when a payment had been made to a company authorised by its regulations to receive moneys in advance of calls, upon terms of interest being paid upon moneys paid in advance, the shareholder could not compel repayment but the interest agreed might be paid as a debt even out of capital. In His Honour's judgment payments made by members were not so made, and it was unnecessary to express any opinion upon an interesting point discussed. On the contrary the moneys paid by members of the public in excess of 4/- per share must be taken to have been paid pursuant to their right to do so conferred by article 8. The result was that the share was, in fact, paid up to the extent of the money paid. Indeed, under Article 8, for calculation of dividends and for distribution of surplus assets in the event of winding up, it ranked (when payment was made under that Article) according to "the amount paid up" thereon. The money was not received as a debt by the company, being held by it to apply in payment only when calls should subsequently be made. But the amounts received in excess of 4/- per share were, in the circumstances, when received by the company, payment on account of the balance unpaid upon the shares. Such payments paid up the shares. Article 25 excluded the principle of **Ex parte Maude** and provided for losses being borne according to the amounts paid up upon the shares. The sums paid in excess of 4/- per share paid by members of the public might not then be repaid to them in priority as claimed without cancelling the effect of Article 25.

Solicitors for Liquidator: **Lee, Grave and Grave,** Oamaru.
Solicitors for R. K. Ireland: **Ramsay, Barrowclough and Haggitt,** Dunedin.
Solicitors for Kawarau Gold Mining Co. Ltd.: **Callan and Gallaway,** Dunedin.
Solicitor for J. M. Wilson: **W. G. Hay,** Dunedin.
Solicitors for D. Foster: **Mondy, Stephens, Monro and Stephens,** Dunedin.

Smith, J. June 4; 6, 1931. Auckland.

MORTON v. MORTON.

Divorce—Restitution of Conjugal Rights—Form of Order Where Respondent Detained in Inebriates' Home Under Order of Detention Made Upon His Voluntary Application—Reformatory Institutions Act, 1908, S. 7s, 18, 23.

Petition for a decree for the restitution of conjugal rights. The petitioner made out her case but it appeared that the respondent was detained in an Inebriates' Home on Rotorua Island under an order of detention, made some three months previously upon his voluntary application under S. 7 of The Reformatory Institutions Act, 1909.

King for petitioner.

SMITH, J., said that it was not suggested that the respondent's application was made otherwise than in good faith. The detention order did not expire for some nine months to come. The respondent would then regain his liberty but he could, if he so wished, again apply for another order under S. 7. On the other hand the respondent might regain his liberty before the expiry of the term fixed by the present order. Under S. 23 (1) of the Act, the Superintendent of the institution might at any time and for any reason discharge a voluntary inmate of the institution before the expiry of the period for which he was ordered to be detained. Under S. 18, the Minister of Justice might at any time discharge any person detained or ordered to be detained in an institution and he might also release on probation on such terms and for such reasons as he thought fit any person so detained or ordered to be detained. If the Minister of Justice or the Superintendent exercised any of the aforesaid powers vested in them respectively the respondent would regain his liberty before the expiry of the term fixed by the order of detention. In those circumstances it was impracticable just then to fix a time within which the decree should be obeyed. If a time were so fixed the respondent might be quite unable at the time of service to comply voluntarily with the decree. His Honour thought the proper course was to apply the procedure adopted by the President of the Divorce Court in **Lang v. Lang,** (1915) W.N. 236, 31 T.L.R. 467, in which case the respondent was, at the time of the making of the decree for restitution of conjugal rights, on active service in France. His Honour accordingly granted the decree for restitution of conjugal rights and directed that it was not to be served until the Court gave further directions; and that until such directions should be given the decree was to remain in the office. Until the further directions were given there could be no disobedience to the decree.

Solicitor for petitioner: **L. C. Adams,** Auckland

Land Transfer Act.

Equitable and Unregistered Interests.

By H. F. VON HAAST, M.A., LL.B.

(Continued from p. 138).

DEPOSIT OF TITLE DEEDS OR CERTIFICATE OF TITLE AS SECURITY.

What is the effect of the deposit of title deeds or of a certificate of title as security for the payment of a debt? Owing to Section 63 of The Property Law Act, 1908, which 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," the decisions in the Australian States, where the validity of equitable mortgages by deposit of certificates is established either by Statute or by judicial decision, and where the sections relating to registration of certificates of title in cases of loss, etc., refer to the possibility of the missing certificate of title being deposited as security are inapplicable to New Zealand, the one definite exception in the Empire.

Smith v. Patterson, (1910) 13 G.L.R. 99, decides that an agreement to execute a mortgage of land accompanied by a deposit of the title deeds, in that case a lease of land under the Land Transfer Act, is a good equitable mortgage. But we are dealing with a deposit without an accompanying agreement to mortgage.

Beckett v. District Land Registrar, (1909) 28 N.Z.L.R. 788, throws some light on the problem but does not solve it altogether. In that case a Maori owner of land in 1886 deposited the title deeds of the land with the plaintiff as a pledge for the payment of a debt. The owner subsequently died without paying the debt or redeeming the deeds and the land became vested in his successors by order of the Native Land Court. There was no written agreement accompanying the deposit and therefore no equitable mortgage, and the debt, which was never paid by the successors, and no liability to pay which passed to the successors, became statute passed in 1892. In 1909 the successors, without the consent of the plaintiff and without redeeming the title deeds, took steps to bring the land under the Land Transfer Act. The plaintiff first of all lodged a caveat, but was advised that he could not support it and allowed it to lapse, and then moved for an injunction to restrain the successors from proceeding with their application, and to restrain the District title, on the ground that Section 21 had not been complied with, inasmuch as the title deeds had not been surrendered to the Registrar. Cooper, J., decided: (a) that the plaintiff had a lien which entitled him to hold the deeds, despite the fact that the debt was statute-barred, but that he had no interest in the land and therefore his consent was not required under Section 20; (b), that the title deeds were not in the possession or under the control of the applicants and therefore it was not a condition precedent to the bringing of the land under the Act that they should be surrendered to the Registrar. But (at p. 791) the learned Judge said: "I expressly refrain from expressing an opinion upon the question whether, where a person has possession of title deeds under a lien created by the applicant, such person is entitled to invoke the jurisdiction of this Court, and to ask the Court to restrain the lienor from any act which may render valueless a lien which the lienor himself has created, or whether under any circumstances a man who merely holds a lien upon title deeds can have any status to apply for any relief so as to prevent the owner of the land bringing the land under the Act, if the owner is the man who has created the lien, if the Registrar ignores the provisions of Section 21; for Section 21, even if it is mandatory, only requires the applicant to surrender to the Registrar the instruments of title 'in his possession or under his control.'"

Hogg in his *Registration of Title to Land Throughout the Empire* says (p. 282): "In New Zealand it would seem that no equitable mortgage could properly speaking, be created by deposit of certificate of title, and the depositee's interest, not being an actual interest in the land, would perhaps not be susceptible of protection by caveat; (this view receives support from a Malay case cited) but the depositee would seem to have the right to hold the certificate of title, by virtue of agreement to that effect, and thus delay the registration of adverse rights."

As regards the certificate of title, Hogg, at p. 278, calls attention to the difference between ordinary title deeds of land not under the system and a certificate of title which properly speaking "is not a memorial of title at all," as "the owner's title to his land rests ultimately on the register."

In the case of the original lienor applying to bring land under the Act, the title deeds are "under his control," for as Cooper, J., pointed out, in *Lewis v. Powell*, 66 L.J. (Ch.) 463, documents in the possession of a party's solicitor, who had a lien upon them for costs, were plainly under the control of the client, who could obtain them by discharging the debt due for costs. In that event, therefore, the lienee would not only be able to "sit upon" the title deeds but to "hold up" bringing the land under the Act by his lienor. But if the land is already under the Act, and the lienee holds the certificate of title, will his "hold up" be equally effectual, so as to prevent the Registrar from having reasonable cause for dispensing under Section 40 with the production of the certificate of title, could he get an injunction preventing the lienor from transferring the land, and would express notice of his lien to an intending purchaser constitute fraud if the latter with such notice took a transfer and got a clean certificate of title? It would seem to follow from the decision of Cooper, J., that the lienee has no "interest" in the land that entitles him to caveat, to prevent any purchaser from the lienor from bringing the land under the Act or if it is already under the Act from obtaining a transfer, disregarding the lien, and getting a clean certificate of title. The question cannot, however, be considered free from doubt.

The question naturally suggests itself why should we be the solitary exception to the practice of the rest of the Empire in this matter? What benefit does the community derive from Section 63 of the Property Law Act, 1908? Would it not be better to repeal it and to fall into line with the rest of the Empire?

To What Unregistered "Interests" will Protection be Given.

When we come to the vital question, what are the unregistered interests in land under the Act to which the Court will give protection and what is the nature of the relief it will afford, we are on difficult and debatable ground. In view of the general attitude adopted by the Courts of the Empire towards equitable rights in land under the Act, one would *prima facie* expect those Courts to lay down the principle that as effectual protection would be given in some method or other to rights created in land under the system as would be afforded if the land were not under the system. But while the decisions of Canadian Courts appear to go in this direction, the authorities in Australia and New Zealand "in effect, lay down the principle that rights may be created in relation to land under the system which cannot be so effectually protected as if the land were not under the system." (*Hogg's Australian Torrens System*, p. 800). "The difficulty," the same author says at p. 186, *Registration of Title to Land Throughout the Empire*, "with regard to caveats, is to determine whether, and to what extent, an interest which is not an actual equitable interest in the land at all, but a purely personal and contractual right relating to the land can be protected by caveat. . . . . The view that 'interest,' for the purpose of the right to enter a caveat, is any defined right or claim relating to land and enforceable against its then owner has received some judicial sanction. Having regard to the intimate connexion between caveats and litigation, it is submitted that any claim which would entitle the claimant to initiate litigation in respect of the land should entitle him to enter a caveat, whether the claim be based on an equitable interest or only a contractual right. Further judicial sanction for this view is contained in Manitoba and Saskatchewan cases, where it is said: 'According to the principles of the Torrens system any right conferred by contract relating to land against the registered proprietor is a sufficient 'interest' to support a caveat.' The cases relied on were, however, concerned with securities for payment of money; no recent case seems to be available as showing that such an interest as, for instance, a right to affix advertisements to the wall of a building—a mere personal obligation—could be protected by a caveat. The Australasian cases against such an interest being caveatable still stand, and to them must be added a later case, in which it was held (but wrongly, it is submitted) that the interest of a covenantee, under a covenant not to let stables for livery business could not be protected by caveat. The view above suggested, and the criticism of the Australasian cases, receive further support from the fact that in practice these cases seem not to have been followed in Canada."

Caveatable Interests.

Let us examine these cases, beginning with the New Zealand one. First of all, the difference in the wording of the relevant sections should be noticed. Section 38 says: "No instrument shall be effectual to pass any *estate or interest* until registered." Section 145 enables any person *having or claiming an interest in any land*, etc., to lodge a caveat against bringing the land under the Act. Section 146 (a) enables any person *claiming to be entitled to or to be beneficially interested in any land estate or interest*, etc., to lodge a caveat against dealing with land under the Act. Section 197 provides that except in the case of fraud a transferee from a registered proprietor is not affected by notice of any . . . *unregistered interest.*

So far as New Zealand is concerned, the question what is a caveatable interest, both for objections to land being brought under the Act and to dealing with it when under the Act, would seem to have been settled by the decision of the Court of Appeal in *Staples and Co. v. Corby*, (1900) 19 N.Z.L.R. 517. In that case Corby was purchaser of land with notice of a covenant binding the grantee of the land, his heirs, executors, administrators and assigns, not to purchase from any other brewer than the plaintiff any colonial ale, etc., which might be consumed in the Prince of Wales Hotel, Wellington, or any other hotel standing on the same land, and an injunction had been granted perpetually restraining him from doing so. Corby applied to bring the land under the Act, a caveat was lodged, and a special case was stated asking whether the plaintiffs were entitled to an injunction restraining the District Land Registrar from bringing the land under the Act, and if not, whether he ought to enter upon the certificate of title a memorial of the covenant. The Court of Appeal held that the plaintiffs were not entitled to enter a caveat and that no notice of the covenant should appear on the certificate of title on two grounds: (a) That the covenant, though binding on a purchaser with notice, even after the land had been brought under the Act, did not confer an interest in land at all; (b) That no caveat can be entered unless in respect of either a "legal" interest or an equitable interest which can actually become a "legal" interest, for the system does not recognise trusts or equitable interests in its registry or certificates.

Of this decision Hogg in his *Australian Torrens System*, after calling attention on page 768 to the confusing use of the expression "legal interest," says on p. 802 that *Rogers v. Hosegood*, (1900) 2 Ch. 388, was not cited, that the decision that the covenant did not confer an interest in land is inconsistent with the English authorities, and that such a covenant would *now be held to be an interest* in land in equity. Hogg continues: "with respect to the right to enter a caveat, it is submitted that this right is not to be relative only to interests which can become 'legal' interests, but is clearly intended for the protection of interests which are incapable of becoming registered interests as in the case of trusts—the very instance given in the judgment—which are expressly recognised. Moreover, the entry of a caveat is not equivalent to 'registering' an interest, but is in the nature of an injunction to prevent the 'legal' owner from dealing with the land in derogation of equitable rights. It appears to be correct to say that English Courts of Equity will interfere by injunction to prevent loss arising under rights which are merely contractual, *i.e.*, collateral to the land and not conferring an actual estate either at law or in equity at the instance of a person who is himself party to the contract although his assignee could not have the benefit of the contract. It would seem, therefore, that the same principle should be applied when the land is under the system, and that a person who would have the right to an injunction should be allowed to enter a caveat in respect of his contractual rights, notwithstanding that his assignee might not be allowed to do so. Although the actual decision in *Staples v. Corby* related only to a covenant in existence before the land was brought under the system, yet the reasoning appears to apply *a fortiori* to a covenant entered into with respect to land already under the system,

and must, therefore, it would seem, be taken to be a decision of the Court on that footing. It is submitted that the decisions in both *Ex parte Johnson*, (1867) 5 W.W. & A'B. (L.) 55, and *Staples v. Corby* depart unnecessarily from the broad principle, which appears to govern so many decided cases, of preserving rights in land which has been brought under the system as nearly as possible by analogy to rights which would exist in the same land if held under the general law." On page 1035 he suggests that the meaning of "interest" in the Acts is to be extended so as to include any defined right relating to the property and capable of enforcement against the proprietor, and on page 1039 that "the true principle, which should govern the question whether an interest be caveatable or not, is that a caveat may be entered under circumstances which would justify an injunction being granted by the Courts."

Two dicta in *Staples and Co. v. Corby* were discussed by the late Sir John Salmond in *Wellington City Corporation v. Public Trustee*, (1921) N.Z.L.R. 423. At page 432 he said: "The question whether the right conferred by a restrictive covenant in an interest in the land within the meaning of S. 197 of the Land Transfer Act was not really before the Court in the case of *Staples and Co. v. Corby*, and the observations on that point were made *obiter*. Nor do those observations afford any assistance as to the test to be adopted in determining what is or is not an interest within the meaning of the Act. The only question before the Court in that case was whether a restrictive covenant running with land not already under the Land Transfer Act entitled the covenantee to prevent the land from being brought under the Act without a memorial of that covenant being noted on the title. It was held that the covenantee had no such right. I hesitate, therefore, to accept the doctrine that a license by way of equitable easement running with the land is not an interest in the land within the meaning of S. 197, and that a purchaser is therefore not entitled to the protection of that section. . . . I prefer, on the contrary, to say that a purchaser is entitled to the protection of S. 197 against all agreements which run with the land in equity, whether they are restrictive contracts as in *Tulk v. Moxhay*, 2 Ph. 774, or licenses irrevocable in equity as in *Hervey v. Smith*, 22 Beav. 299. The true principle would seem to be that a purchaser is entitled as against all such agreements, to the protection of S. 197, except in the case of fraud, and that it is fraud within the meaning of that section to acquire the land with actual notice of an agreement running with the land and nevertheless to claim an unencumbered title free from that agreement."

On the other point, he said at p. 434: "Notwithstanding a dictum to the contrary in *Staples and Co. v. Corby* it is not clear to me that this provision (S. 146 (a)) is inapplicable to a person claiming the benefit of a covenant or agreement that runs and binds the land in equity. It is true that a caveat lodged by such a claimant cannot be maintained against a purchaser so as to prevent the registration of the transfer. But a caveat is the only effective method of giving to purchasers that notice which is requisite to preserve the caveator's rights."

Sir John Salmond's method of protection in the case before him would have been to remove the caveat to enable registration of the transfer and then for the claimant to apply under S. 157 for leave to lodge a further caveat for the protection of its interests. But this course was rendered unnecessary by the Court of Appeal holding that the claimant's agreement operated as a valid legal grant of the rights it purported to assume and making an order for the execution of a registrable instrument evidencing the rights conferred by the agreement.

(To be Continued)

Sir John Byles.

The appearance of the nineteenth edition of *Byles on Bills* has prompted our contemporary the *Law Times* to recall some amusing anecdotes concerning the learned author of the classic treatise, Sir John Byles. "Having at a very early period in his career written the book by which he made his name, it was not unnatural that throughout his life he and it seemed to become completely identified; even the horse which he rode to chambers and to the courts at Westminster being christened 'Bills' by the wags of the Profession. Another legend has it that this animal, which, if tradition speaks truly, was, as we shall see, a steed of the highest breed, was known by its owner and by his clerk as 'Business,' so that when Serjeant Byles went out for his afternoon ride the clerk could with a clear conscience answer a too inquisitive client that his master had 'gone out on Business.' 'Bills,' or 'Business,' as the horse was thus indifferently named, figures in another story which delighted the Profession a generation or two ago. By this time Byles had been promoted to the Bench and on the occasion in question was trying a case in which sect. 17 of the Statute of Frauds, now represented by sect. 4 of the Sale of Goods Act 1893, came up for consideration. In the course of the argument Mr. Justice Byles put this hypothetical case: 'Suppose I were to agree to sell you my horse, do you mean to say that I could not recover the price unless——'. 'My Lord,' interposed counsel, 'the section only applies to things of the value of £10,' a somewhat cruel retort, which, however, is said to have been keenly enjoyed by all who had seen the animal. Being an old-fashioned gentleman, Mr. Justice Byles was a great stickler for correctitude in forensic costume, and his remark to Mr. (afterwards Lord Chief Justice) Coleridge has become famous: 'Mr. Coleridge,' he said, 'I never listen with any pleasure to the arguments of counsel whose legs are encased in light grey trousers.'"

"Prisoner at the Bar, there are mitigating circumstances in this case that induce me to take a lenient view of it. I will therefore give you a chance of redeeming a character that you have irretrievably lost."—Serjeant Arabin (while Commissioner of the Central Criminal Court).

"The great causes of crime still remain what they have been largely in the past—lust, greed, vanity and jealousy—just the fundamental weaknesses of mankind and womankind."

—Mr. Justice McCardie.

By-Laws.

Evidence of Unreasonableness.

[Contributed].

That a by-law is invalid if it appears to the Court to be unreasonable, is trite law. The rule is at bottom only one application of the doctrine of *ultra vires*, it being inferred that "Parliament never intended to give authority to make such rules": *Kruse v. Johnson*, (1898)2 Q.B. 91, per Lord Russell of Killowen, at p. 100. Unreasonableness is for the Court itself to decide, according to the circumstances of the case. A witness cannot, it would seem, be permitted to say: "I think the by-law reasonable, (or unreasonable)," as he would be arrogating to himself the functions of the Court. He may point out facts, and probabilities and consequences depending on fact, from which the Court may be invited to infer reasonableness or the opposite; but his own inference is (in the literal sense) impertinent.

In re a By-law of the Southland County Council, (1923) N.Z.L.R. 1054, might appear at first sight to violate this rule. According to the judgment, the Chairman of the Council "said also that the Council was unanimously of opinion that the fees fixed by the by-law . . . were reasonable"; but the context suggests that the evidence was really directed to giving reasons why the Court might find the fees to be reasonable, in view of the Council's estimate as to how far they would recoup certain expenditure.

If then a witness may not be asked to answer the question which is the precise issue of law before the Court, it would seem that the opinion of that question of persons not before the Court should be equally inadmissible, whether expressed in words or deduced from a line of conduct. Nevertheless in *Blythe v. Wheeler*, (1925) N.Z.L.R. 560, the fact that a local authority had instructed its officer not to prosecute for certain breaches of a by-law, having been admitted in evidence by a Magistrate, was, on appeal, the dominant evidence relied on by the Court in holding the by-law invalid. Stout, C.J., said: "The local authority has apparently come to the conclusion that it would be unreasonable to enforce its own by-law. That appears from the evidence"; and concludes: "the action of the borough in treating its own by-law as unreasonable necessarily forces every judicial tribunal to assume on the evidence tendered that it is unreasonable."

The defence thus offered has been several times set up in the Magistrates' Court: *Police v. Bolton*, 22 M.C.R. 31; *Duncan v. Harcourt*, 22 M.C.R. 54; *Devonport Borough Council v. Gardiner*, 25 M.C.R. 10. *Blythe v. Wheeler* has also been recently followed in the Supreme Court, in *Willcocks v. Hamilton Borough Council*, (1930) Gaz.L.R. 10. After referring to certain equipment required by the by-law as being suitable for a motor-omnibus but not for a service-car, Ostler, J., there said: "The borough has itself recognised this difficulty, because in most cases it has not endeavoured to enforce its own by-law against the owners of most of the service cars. . . . The borough officials must know that daily a large number of breaches of the borough by-laws are committed by the drivers of these service cars. . . . Thousands of such breaches occur every year to the knowledge of the borough, for which no one is prosecuted. Why is this? The only reasonable answer is that the borough officials must themselves recognise that it would be unreasonable to prosecute because it would be unreasonable to enforce the stringent provisions as to construction in the case of service cars. If so, than it seems to me that there is no escape from the conclusion that the by-law itself is unreasonable. If a by-law is considered by the enacting power to be too unreasonable to enforce, it must follow that that by-law is too unreasonable to be valid: see *Blythe v. Wheeler*."

Apart from the legal question of the admissibility of the evidence, it is suggested that failure to enforce a by-law does not lead necessarily to the inference of fact that such failure is because the enacting body considers its legislation to have been *ultra vires* because unreasonable. There are several other inferences that may be drawn. One, the least likely indeed, and ruled out in *Willcock's case*, is that the community has been so law-abiding that no cause for prosecution has arisen. It is possible also, though improbable, to assign venality to the local authority or its officers. More probable is it that the local authority is disposed to show more energy in its legislative than in its administrative functions—a characteristic not peculiar to local bodies. That borough officials are overworked is a very real reason why by-laws are not strictly enforced; often there is no one who is charged as one of his chief duties with enforcing a particular by-law. On a change of personnel the local authority may have disapproved of the by-law, not on the issue of legal validity, but as a matter of policy; yet been content to leave it unenforced without formal revocation. On a further change of personnel and policy, must it re-enact its by-law to escape a presumption of invalidity through temporary non-enforcement? It appeared in *Blythe v. Wheeler* that instructions were given "not to prosecute any one for going under thirty miles" (what the witness meant was, for exceeding the speed-limit as long as he did not exceed thirty miles an hour) "until the by-law was known"; a view which is in keeping with notions of fair play; though perhaps novelty of an enactment is, on sound administrative principles, rather a matter for mitigation of penalty than a reason for abstaining from laying an information. A prosecution is the best of methods for making a by-law known.

If failure to enforce be evidence from which to infer unreasonableness, why should not activity in prosecution be admissible as evidence of reasonableness? Put in this form, it is conceived that the proposition carries its own condemnation. It is submitted, with all respect to the memory of the learned Judge who decided *Blythe v. Wheeler*, that the rule it lays down requires reconsideration, and that a truer principle is the earlier dictum of Denniston, J., in *Lord v. Usher*, (1918) Gaz. L.R. 167: "A by-law is to be tested by the powers given, not by the powers acted upon."

More than 1,000 American lawyers will travel to Europe this summer in a specially chartered liner to take a "refresher course" in international law. It is expected that the lawyers will travel in the liner *France*, which will be fitted up as a floating law school. The ship will carry a special legal library, and special instruction will be given in international law. Mr. Fenton W. Booth, Chief Justice of the United States Court of Claims, is expected to be among the authorities on international law who will make the trip.

Swadling v. Cooper.

The Contributory Negligence Problem.

A correspondent of our contemporary the *Law Journal* has sent to that paper the transcript of the shorthand notes of an unreported case in which the recent decision of the House of Lords in *Swadling v. Cooper* was discussed. The whole question is one of such practical importance that we reprint here, by permission, our contemporary's statement of the facts of the case, its quotations from the judgments and its comments thereon.

"It may be useful to call attention to a decision of the Court of Appeal from which it would appear that that Court regards the decision in *Swadling v. Cooper* as of very limited application. We have been favoured by a correspondent with the transcript of the judgments of the Court of Appeal in an unreported case in which he was professionally concerned, and in which the decision of the House of Lords in *Swadling v. Cooper* was discussed. The title of our correspondent's case was *Strauss v. Crocker*, and the appeal was heard before Scrutton, Greer and Romer, L.JJ., judgment being given on December 12, 1930. We propose to summarise the facts very shortly, and then to quote those parts of the judgment which refer to *Swadling v. Cooper*.

In *Strauss v. Crocker*, the plaintiff was a pedestrian, and he was crossing Holborn Viaduct when the collision with the defendant's car occurred. The plaintiff's case was that he was in front of the car, which ran into him and knocked him down; the defendant, on the other hand, alleged that the defendant walked into the side of his car. No shorthand note was taken of the summing-up, and the Court of Appeal had to rely on three separate notes, made shortly after the trial, as to what the learned Judge said to the jury. But it appears reasonably clear that his direction on the question of contributory negligence was more or less on the lines of *Swadling v. Cooper*. The plaintiff had claimed a large sum as special damages for loss of profit, and the defendant, who appeared in person, simply said that he had no evidence to dispute the amount. The learned Judge treated that as admission of the special damages, and told the jury that if they found for the plaintiff, they must award him that. They did find for the plaintiff, and awarded him the special damages claimed, and 1*l.* general damages—for a broken leg, involving five weeks in hospital—a verdict which, as Lord Justice Scrutton said, looks as if the jury had misunderstood their function, and we are not surprised that a new trial was ordered. But we are not so much concerned with the facts of *Strauss v. Crocker* as with the observations of the Court of Appeal on the decision of the House of Lords in *Swadling v. Cooper*. Lord Justice Scrutton says:

> . . . the jury having been told that the special damage was admitted and that they were to give it, were in effect not giving it because they thought it too much—as is shown by the fact that for five weeks pain and suffering for a broken leg they only gave 1*l.* to the plaintiff. I think that shows that they were really cutting down the special damage, which they were told they must give, and doing so by giving a totally inadequate sum for the pain and suffering which they had been told they must assess. At that stage it seems to me there is a clear position that the jury were not understanding what they were doing, and that being so it was the duty of the judge clearly to explain to them the various stages that they must go through in their judgment. They had to see, first of all, whether there was any negligence of the defendant which contributed to the accident; secondly, they had to see whether there was negligence of the plaintiff which contributed to the accident; and thirdly, they had to come to the conclusion whether the plaintiff's negligence was of that nature that the defendant could by reasonable care have avoided it.
>
> I cannot find . . . any satisfactory explanation of that to the jury. In the cases of continuing negligence on both sides you cannot say, or very often you cannot say, that one or the other substantially contributes to the accident and the other does not. You may have both parties substantially contributing to the accident by continuing negligence on both sides. It was for that reason that in *Cooper v. Swadling*, after what in my view was, and still in my view is, the proper direction, I said this: "In the present case the learned judge tried to get the jury to say what was the substantial cause. A judge who uses such phrases should explain to the jury, first, that the real or effective or substantial cause may be the combined negligence of both parties, and that it is not necessary for them to select one as the guilty party if they think the accident was caused by the combined negligence of both; and, secondly, that negligence in the plaintiff does not prevent him from recovering if the defendant after it happened could by reasonable care have prevented it."
>
> Now I am sorry to say, after more than twenty years' experience of trying running-down cases and of sitting in Appeal on cases of running-down, I still think that to ask the real or the effective or the substantial cause, without explaining carefully to the jury that both parties may be the substantial cause of the injury, is liable to produce a miscarriage of justice in innumerable cases. I recognise, and I hope I give full effect to the fact, that in that particular case the members of the House of Lords thought that the facts in that case were such that it was unnecessary to give an explanation as to the circumstances under which, though the plaintiff was negligent, yet the defendant would be liable. In the first place, I think that decision turned on the facts of that particular case, and, secondly, it seems to me, with the greatest respect to the House of Lords, that to arrive at it the House of Lords themselves must find a fact, namely, that in ten yards you cannot swerve enough if you are using due care to avoid a person in front of you when you are going 30 miles an hour. It may be so, but it is not law—it is fact—and we in the Court of Appeal in that case did not feel ourselves able to find that fact or to say it was so well known that we ought to take judicial notice of it.
>
> 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 of the 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*.

And Lord Justice Greer dealt with the decision of the House of Lords as follows:

> . . . in my judgment—notwithstanding the decision of the House of Lords in *Cooper v. Swadling*—it is still insufficient in most cases merely to ask the question in that form [whether the defendant's negligence was the substantial cause of the accident] because the facts may be such as to leave room for the application of what may be called the doctrine of *Davies v. Mann*. That means that the jury may have to consider whether, notwithstanding the negligence which they have found the plaintiff guilty of, still the defendant might have avoided the consequences of the negligence, and if he had been careful after he had knowledge of the negligence of the plaintiff there would have been no accident.
>
> Now I do not understand that the decision of the House of Lords in *Cooper v. Swadling* has thrown any doubt upon the law upon this question. I regard that decision as merely meaning this, that if the facts of the case show that there is no evidence upon which the jury could consider any such question as that which arose in *Davies v. Mann* and similar cases, then it is not necessary for the judge to call their attention to the law on the subject . . . In that case the House of Lords came to the conclusion that there was no room for the application of the *Davies v. Mann* rule, and that, therefore, there had been no miscarriage of justice by reason of its not having been explained to the jury; and, as I have said, they throw no doubt whatever upon the law as it has been settled in *Davies v. Mann* and a great many other cases since. But, if there is room for the application

of the principle of *Davies v. Mann*, then, it seems to me, the jury ought to be asked what view they take on the question as to whether the defendant could have avoided the consequences of the negligence which they have found existed on the part of the plaintiff. . . . I see nothing in the judgment of the House of Lords to prevent this Court from saying that, though *Cooper v. Swadling* was one of those cases in which it was not necessary to explain the *Davies v. Mann* principle to the jury, this is one of the cases in which it was necessary if there was to be a verdict in favour of the plaintiff.

Lord Justice Romer concurred without adding anything.

"The views of Lord Justice Scrutton and Lord Justice Greer as to the effect of the decision of the House of Lords in *Swadling v. Cooper* are so clearly expressed in the extracts from their judgments, which are quoted above, that no word of explanation is necessary. It seems plain that the Court of Appeal takes the view that *Cooper v. Swadling* is a decision of very limited range, and that it will not view with favour any attempt to treat it as of general, or even wide, application."

Punctuation of "Confessions."

Readers of the *Life of Sir Edward Marshall Hall, K.C.* will recall that several of his most important successes turned on a different meaning that could be given, by a different inflexion of the voice or different punctuation, to statements tendered by the prosecution as admissions of guilt. These instances are recalled by a recent case in which a constable gave evidence that a defendant, on being told by a police doctor that he was going to say that he was drunk, replied: "You are right." After further evidence had been given, however, and the constable had been recalled, it appeared conclusively that there was a pause between the second and third words, giving a totally different meaning: "You are. Right!"

Microphones in Court.

What are believed to be the first microphones installed in any English Court have been fitted in the Divorce Court at London. The microphones have been placed in front of the Judges and near the witness box, the speakers being placed near the Clerk's table. The ceilings of the Divorce Court, which was built after the main building, are so high that it has been found that a great deal of the sound is lost; an attempt was made some time ago to stop this by putting up strands of wire, but this proved ineffective.

"The State may sometimes be compelled to be stern. It must not be cruel. It cannot afford to be indifferent. By all means let us keep alive the feeling of terror in the contemplation of serious crime and its punishment. But let us at the same time endeavour to resist the beginnings; let us not forget that more than half of the uncharitable judgments in the world are due to lack of imagination; and let us remain unalterably convinced that magnanimity owes to prudence no account of her motives."

—LORD HEWART.

Council of Legal Education.

Address by Attorney-General at First Meeting.

The first meeting of the Council of Legal Education, which was set up under the University Amendment Act, 1930, was held on the 3rd inst., at the residence of the Hon. Mr. Justice Ostler, and was attended by the Chief Justice, the Hon. Mr. Justice Ostler, Professor Adamson, Messrs. A. H. Johnstone, P. Levi, and J. B. Callan. The Hon. J. A. Hanan, Pro-Chancellor of the University, Mr. H. F. von Haast, treasurer, and Mr. E. T. Norris, registrar, were present, representing the Senate of the University.

The Chief Justice was elected chairman of the Council,

The Hon. Sir Thomas Sidey, Attorney-General, addressing the Council, said he thought it would be acknowledged that the occasion was one upon which he was entitled to feel some gratification, as the Council was in a large measure a creation of his own. That meeting signalised the consummation of an effort to place legal education on a more satisfactory basis. The institution of the Council and the elimination of dual control in the courses of study marked a very important step. The first meeting of the Council was an epoch-making event. One had to go back to the year 1882 to find an event comparable in importance. It was in that year that articles were abolished, and the right was granted of admission to practice on examination only and without any requirement of practical experience. The legislation of last year provided the machinery for the introduction of such reforms as might from time to time be considered desirable. If it was thought right not only in the interests of the profession, but more especially in the public interest, that those who were admitted should have had some practical experience there was now no obstacle in the way of such provision being made.

If, on the other hand, it were thought desirable that at (say) Victoria University College (which it was understood would specialise in law) there should be established a school of law fully equipped for practical training on the lines of the most up-to-date American schools, where practical work of all kinds was done, including the drawing of deeds and documents, the preparation of cases for trial and pleading before a Judge or Judge and jury, the way was now clear for the creation of such an institution, and for its recognition by the University. The establishment of such a school might be recommended to some public-spirited citizen or citizens as an object worthy of private benefaction.

By the elimination of dual authority in the matter of educational requirements for admission the profession of law had been placed on the same footing as other professions, and he did not think he was over-stating the position when he declared that the legislation which had resulted in the setting up of that Council was the most important step taken in connection with legal education during the last half-century. He felt sure that the Council of Legal Education as an institution had come to stay. He fully realised that with the growth of population the time would come when each of the four University colleges would be constituted as a separate university, but when that time came the necessity for a body such as the Council might become

even greater than to-day because of the desirability of co-ordination, and of securing some uniformity of standard throughout the Dominion. The circumstances might indeed require an extension of the Council's functions.

So far as the immediate work of the Council was concerned it would be asked to agree to the adoption for the time being of the same rules and regulations relating to legal examination as were in force last year, but it would be for the Council to determine during the next few months what alteration, if any, in these rules and regulations it would recommend for next year or future years. Any such alteration would require to be adopted by the Council not later than October as the Academic Board would meet in November and the Senate in January. He was in hopes that one of the results that would flow from the work of the Council would be that those admitted to practice would be imbued with a very keen sense of their obligation and privilege to preserve above all things the honour and the highest traditions of the profession. Under the rules and regulations the ethics of the profession might well form a subject to be brought under the notice of every student, and the years of preparation might to a greater extent than at present be a trying-out period affording opportunity of judging the moral fibre of students.

Sir Thomas said he had the utmost confidence in the personnel of the Council. Its members had special qualifications for their duties, and he was sure that the Council had the confidence of the profession throughout New Zealand. It was his earnest wish that it would have a long and useful life, that it would fully justify its existence, and that its labours would be crowned with success.

The Council considered various matters concerning legal education, and passed resolutions making certain recommendations to the Senate through the Academic Board.

Judicial Knowledge.

A famous feat of Jervis, C.J., is recalled by a recent case in New York, during which the Magistrate gave a demonstration of card-sharping in which he identified cards face downwards. The prosecution in the case before the Chief Justice had disclaimed any intention of challenging the fairness of the cards used, these having been examined by the Brighton Magistrates who had detected no marks. "The Brighton Magistrates!" exclaimed the Chief Justice contemptuously. Adjusting his glasses, he examined one of the cards. "That means the ace of diamonds," he explained to prosecuting counsel, pointing out a minute mark on the corner, and then going through the whole pack, proceeded to identify each card. Needless to say, the accused were convicted.

At a recent inquest in London the coroner arrived twenty minutes late and was duly taken to task by a juryman: "Why are you so disgracefully late?" The coroner apologised and pleaded pressure of work. "Sorry, won't do," replied the juryman, "this is not your first offence. Have we power to fine you?" "No, certainly not," the coroner rejoined. "Then it's disgraceful and we ought to have power."

Bills Before Parliament.

Electoral Amendment (Mr. Clinkard). Preferential voting.—Cl. 3. Mode of marking voting-paper.—Cl. 4. Form of voting-paper.—Cl. 5. Preliminary count of votes.—Cl. 6. Informal votes.—Cl. 7. Duties of Returning Officer.—Cl. 8. Declaring candidate defeated or elected. Equality of votes.—Cl. 9. Subsequent dealings with voting papers—Cl. 10.

Gaming Amendment. (Mr. Armstrong). Interpretation.—Cl. 2. Business of bookmaker.—Cl. 3. Constitution of Board for licensing of bookmakers.—Cl. 4. Powers of Licensing Board.—Cl. 5. Applications for licenses: annual fee £200.—Cl. 6. Revocation of licenses; licenses to expire at end of one year from date of issue or renewal; renewal of licenses.—Cl. 7. Where bookmaking may be carried on.—Cl. 8. Clerks' permits.—Cl. 9. Sale, form and cost of betting tickets.—Cl. 10. Betting-tickets to be delivered in respect of each wager.—Cl. 11. Unlawful possession of betting-tickets.—Cl. 12. Bookmakers' accounts.—Cl. 13. Bookmakers' statements to be delivered to treasurer of racing club.—Cl. 14. Percentage payable to racing clubs.—Cl. 15. Fees for permits, licenses and tickets to be paid into Consolidated Fund.—Cl. 16. Offence to bet with minor.—Cl. 17. Totalizator and place odds prohibited.—Cl. 18. Summary proceedings in respect of offences.—Cl. 19. Regulations.—Cl. 20.

Gold Bounty. (Mr. Black). Interpretation.—Cl. 2. Appropriation.—Cl. 3. Specification of gold bounty.—Cl. 4. Registration of gold producers.—Cl. 5. Payment and distribution of bounty.—Cl. 6. Distribution of bounty.—Cl. 7. Certificate by gold-buyers.—Cl. 8. Claims for bounty.—Cl. 9. Claimants to keep accounts.—Cl. 10. Audit.—Cl. 11. Returns to Parliament.—Cl. 12. Offences against Act.—Cl. 13.

Imprest Supply. (Rt. Hon. Mr. Forbes). Imprest grants authorised out of funds and accounts in First Schedule not exceeding £2,930,000 and out of accounts in Second Schedule not exceeding £301,500.

Local Authorities Empowering (Relief of Unemployment) Extension. (Rt. Hon. Mr. Forbes). No moneys to be borrowed under authority of principal Act of 1926 after 31st July, 1932. Extension Act of 1930 repealed.

Meat-Export Control Amendment. (Mr. Lysnar). S. 2 (3) of principal Act repealed.—Cl. 2. Government representatives on Board.—Cl. 3. S. 2 (2) (b) of principal Act amended.—Cl. 4. Date of election of producers' representatives.—Cl. 5. S. 2 (4) of principal Act repealed.—Cl. 6. Oversea companies not to acquire further interests in freezing works.—Cl. 7. Work to be carried on on owner's account if oversea companies disregard law.—Cl. 8.

Unemployment Amendment. (Hon. Mr. Smith). Payments from Consolidated Fund. Subsidy to Unemployment Fund from Consolidated Fund may be paid in advance.—Cl. 2. S. 4 of principal Act repealed.—Cl. 3. Unemployment Relief Tax. Levy of unemployment-relief tax of (a) annual charge, known as general unemployment levy, of twenty shillings payable by quarterly instalments on 1st February, May, August and November and (b) a charge known as emergency unemployment charge, on salary, wages, and other income, computed and payable at the rate of one penny for every amount of six shillings and eight pence or part thereof included in the salary, wages or other income in respect of which such charge is imposed. Emergency unemployment charge not to be levied in respect of any wages, salary or other income derived in respect of any period subsequent to 31st July, 1932.—Cl. 4. Amount of unemployment-relief tax to be a special exemption for purposes of income-tax.—Cl. 5. General Unemployment Levy. Males aged 20 or upwards unless exempted to be liable for general unemployment levy.—Cl. 6. Due dates of payment of general unemployment levy.—Cl. 7. Default in payment of general unemployment levy an offence punishable by fine of five pounds; penalty, without conviction, of sixpence for every month of arrears not exceeding in aggregate two shillings and sixpence.—Cl. 8. Exemptions from general unemployment levy.—(a) persons in receipt of war pensions in respect of total disablement, (b) persons in receipt of pensions under Pensions Act, 1926, (c) Natives, (d) persons who on due date of any instalment and for at least one month thereafter inmates of (i) certain hospitals, (ii) certain charitable institutions, (iii) prisons, etc., (e) students not in receipt of salary or wages, (f) persons exempted by Governor-General by Order-in-Council on grounds of public policy.—Cl. 9. Unemployment Board may grant personal exemptions from liability to pay instalments of general unemployment levy.—

Cl. 10. Burden of proving exemption to lie on defendant.—Cl. 11. EMERGENCY UNEMPLOYMENT CHARGE. Every person who after 1st August, 1931, receives in consideration of his or her employment or service any salary or wages (including any bonus, etc.) shall be liable in respect of the amount included in every payment of such salary or wages for the emergency unemployment charge, provided that nothing herein shall apply to wages of any woman or girl in respect of private domestic service: questions as to whether service is private domestic service, as to whether remuneration is salary or wages and as to existence of relationship of employer and servant to be decided by Unemployment Board and decision of Board to be final.—Cl. 12. Every person liable for general unemployment levy who for year ended 31st March, 1931, derived income from any source other than salary or wages shall be liable in respect of an amount equal to two-thirds of such income for the emergency unemployment charge.—Cl. 13. Special provisions as to liability of women for emergency unemployment charge in respect of income other than salary or wages.—Cl. 14. Due dates of payment of emergency unemployment charge in respect of income other than salary or wages.—Cl. 15. Penalty for default fine of five pounds and ten per cent. of amount of charge in respect of which default is made.—Cl. 16. "Income" includes all income assessable under Land and Income Tax Act, 1923 (whether taxable or not) and also includes non-assessable income of the classes referred to in paragraphs (g) and (m) of S. 78 of that Act and in S. 4 (2) of Amendment Act, 1930.—Cl. 17. COLLECTION OF UNEMPLOYMENT-RELIEF TAX. Unemployment-relief stamps.—Cl. 18. Payment of unemployment-relief tax to be by cancellation of unemployment-relief stamps of appropriate value and not otherwise unless regulations provide to contrary.—Cl. 19. In certain cases general unemployment levy may be deducted from wages by employers.—Cl. 20. Emergency charge on wages to be deducted by employers.—Cl. 21. Unpaid unemployment-relief tax to be a debt due and payable to Crown and to be recoverable accordingly.—Cl. 22. Ss. 6 to 9 of principal Act repealed.—Cl. 23. ADMINISTRATION. Authority for appointment of Commissioner of Unemployment.—Cl. 24. Reconstitution of Unemployment Board.—Cl. 25. Remuneration of Board.—Cl. 26. Board may appoint committees and delegate powers.—Cl. 27. MISCELLANEOUS AMENDMENTS OF PRINCIPAL ACT. Exemption from stamp duty of declarations made for purposes of principal Act.—Cl. 28. Offence of obtaining or attempting to obtain benefits under principal Act by false representations.—Cl. 29. Wages earned on relief works may be paid to some person other than worker to be expended for maintenance of wife and children or other persons for whose maintenance in whole or in part worker may be responsible.—Cl. 30. Failure to register under principal Act a continuing offence.—Cl. 31. Burden of proving registration or payment to be on defendant.—Cl. 32. Extending the powers of the Governor-General to make regulations for purposes of principal Act.—Cl. 33.

Local Bill.

Rotorua Borough Reclamation Empowering. (MR. CLINKARD).

Rules and Regulations.

Animals Protection and Game Act, 1921-22. Opossum Regulations Amendment No. 1.—Gazette No. 47, 18th July, 1931.

Arms Act, 1920. Notice by Commissioner of Police *re* purchase and sale of rifle ammunition.—Gazette No. 49, 25th June, 1931.

Education Act, 1914. Regulations relating to Native schools.—Gazette No. 49, 25th June, 1931.

Hawke's Bay Earthquake Act, 1931. Regulations *re* licenses of hotels destroyed by earthquake. Regulations making provision regarding stamp duties. Regulations modifying financial provisions of Hospitals and Charitable Institutions Act, 1926, in their application to Hawke's Bay, Wairoa and Waipawa Hospital Districts.—Gazette No. 49, 25th June, 1931.

Slaughtering and Inspection Act, 1908. Amendment to Regulations in respect of fees payable.—Gazette No. 47, 18th July, 1931.

Hawke's Bay Earthquake Act, 1931. Hawke's Bay Earthquake Adjustment Court Remuneration Regulations, 1931.—Gazette No. 45, 4th June, 1931. Hawke's Bay Rehabilitation Committee Remuneration Regulations, 1931.—Gazette No. 45, 4th June, 1931.

New Books and Publications.

Everyday Statutes Annotated. Supplement to end of 1930. Edited by S. E. Williams. (Sweet & Maxwell Ltd.). Price 13/6.

Brown and Latey's Law and Practice in Divorce and Matrimonial Causes. Eleventh Edition. (Sweet & Maxwell Ltd.). Price 57/6.

Law Relating to Advertising. By E. Ling Mallinson. (Pitman & Sons). Price 9/6.

Hanson's Death Duties. By F. H. L. Errington. Eighth Edition. (Sweet & Maxwell Ltd.). Price 42/-.

Local Administration. (In particular on Finance and Accounts). By A. Carson Roberts. (Harrison). Price 74/-.

Constitutional Law. By E. C. S. Wade, M.A., LL.B., and G. Godfrey Phillips, M.A., LL.B. (Longmans Green & Co.). Price 25/-.

Butterworth's Twentieth Century Statutes, 1930. (Butterworth & Co. (Pub.) Ltd.). Price 37/-.

Pratt's Friendly and Industrial and Provident Societies. By Mervyn Mackinnon. Fifteenth Edition. (Butterworth & Co. (Pub.) Ltd.). Price 21/-.

Law of Running Down Cases. By Edward Terrell. (Butterworth & Co. (Pub.) Ltd.). Price 19/-.

The Main Institutions of Roman Private Law. By W. W. Buckland, LL.D., F.B.A. (Cambridge Press). Price 20/-.

The Public Health Acts and Other Statutes Relating to Public Health and Allied Subjects, 1875-1930. (Knight & Co.). Price 33/6.